

# CHAPTER 65

## Motor Carriers

### ARTICLE 1

#### Motor Transportation

##### 65-1-1. Short title.

Chapter 65, Articles 1, 3 and 5 NMSA 1978 may be cited as the Motor Transportation Act.

**History:** 1978 Comp., § 65-1-1, enacted by Laws 1989, ch. 201, § 1.

#### ANNOTATIONS

**Repeals and reenactments.** — Laws 1989, ch. 201, § 1 repealed former 65-1-1 NMSA 1978, and enacted a new section, effective July 1, 1989.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 13 Am. Jur. 2d Carriers § 20.

Liability of land carrier to passenger who becomes victim of third party's assault on or about carrier's vehicle or premises, 34 A.L.R.4th 1054.

60 C.J.S. Motor Vehicles §§ 44, 45.

##### 65-1-2. Definitions.

As used in the Motor Transportation Act:

A. "combination" means any connected assemblage of a motor vehicle and one or more semitrailers, trailers or semitrailers converted to trailers by means of a converter gear;

B. "combination gross vehicle weight" means the sum total of the gross vehicle weights of all units of a combination;

C. "commercial motor carrier vehicle" means a self-propelled or towed vehicle, other than special mobile equipment, used on public highways in commerce to transport passengers or property when the vehicle:

(1) is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of four thousand five hundred thirty-six kilograms, or ten thousand one pounds or more; or is operated only in intrastate commerce and has a gross vehicle weight rating or gross

combination weight rating, or gross vehicle weight or gross combination weight, of twenty-six thousand one or more pounds;

(2) is designed or used to transport more than eight passengers, including the driver, and is used to transport passengers for compensation;

(3) is designed or used to transport more than fifteen passengers, including the driver, and is not used to transport passengers for compensation; or

(4) is used to transport hazardous materials of the type or quantity requiring placarding under rules prescribed by applicable federal or state law;

D. "converter gear" means any assemblage of one or more axles with a fifth wheel mounted thereon, designed for use in a combination to support the front end of a semitrailer but not permanently attached thereto. A "converter gear" shall not be considered a vehicle as that term is used in Chapter 66 NMSA 1978, but its weight shall be included in declared gross weight;

E. "declared gross weight" means maximum gross vehicle weight or combination gross vehicle weight at which a vehicle or combination will be operated during the registration period as declared by the registrant for registration and fee purposes. The vehicle or combination shall have only one "declared gross weight" for all operating considerations;

F. "department", without modification, means the department of public safety, the secretary of public safety or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

G. "director" means the secretary;

H. "division" means the New Mexico state police division of the department;

I. "evidence of registration" means documentation issued by the taxation and revenue department identifying a motor carrier vehicle as being registered with New Mexico or documentation issued by another state pursuant to the terms of a multistate agreement on registration of vehicles to which this state is a party identifying a motor carrier vehicle as being registered with that state; provided that evidence of payment of the weight distance tax and permits obtained under either the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] or Trip Tax Act [Chapter 7, Article 15 NMSA 1978] are not "evidence of registration";

J. "field enforcement" or "in the field" means patrolling of the highway, stopping of commercial motor carrier vehicles or establishing ports of entry and roadblocks for the purpose of checking motor carriers and includes similar activities;

K. "freight trailer" means any trailer, semitrailer or pole trailer drawn by a truck tractor or road tractor and any trailer, semitrailer or pole trailer drawn by a truck that has a gross vehicle weight of more than twenty-six thousand pounds, but the term does not include house trailers, trailers of less than one-ton carrying capacity used to transport animals or fertilizer trailers of less than three thousand five hundred pounds empty weight;

L. "gross vehicle weight" means the weight of a vehicle without load plus the weight of any load thereon;

M. "motor carrier" means any person that owns, controls, operates or manages any motor vehicle with gross vehicle weight of twelve thousand pounds or more that is used to transport persons or property on the public highways of this state;

N. "motor vehicle" means any vehicle or device that is propelled by an internal combustion engine or electric motor power that is used or may be used on the public highways for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

O. "one-way rental fleet" means two or more vehicles each having a gross vehicle weight of under twenty-six thousand one pounds and rented to the public without a driver;

P. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or an agency, department or instrumentality; "person" also includes an officer or employee of a corporation, a member or employee of a partnership or any individual who, as such, is under a duty to perform any act in respect of which a violation occurs;

Q. "properly registered" means bearing the lawfully issued and currently valid evidence of registration of this or another jurisdiction, regardless of the owner's residence, except in those cases where the evidence has been procured by misrepresentation or fraud;

R. "public highway" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

S. "secretary" means the secretary of public safety and, except for the purposes of Section 65-1-33 NMSA 1978, also includes a deputy secretary and any division director delegated by the secretary;

T. "state" or "jurisdiction" means a state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, a foreign country or a state or province of a foreign country; and

U. "utility trailer" means any trailer, semitrailer or pole trailer and includes house trailers that exceed neither eight feet in width nor forty feet in length, but does not include freight trailers, trailers of less than one-ton carrying capacity used to transport animals or fertilizer trailers of less than three thousand five hundred pounds empty weight.

**History:** 1953 Comp., § 64-34-2, enacted by Laws 1978, ch. 19, § 1; 1987, ch. 268, § 11; 1992, ch. 106, § 1; 1993, ch. 294, § 1; 1998 (1st S.S.), ch. 10, § 4; 2003, ch. 10, § 1; 2015, ch. 3, § 31.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1978, ch. 19, § 1, repealed 64-34-2, 1953 Comp. (former 65-1-2 NMSA 1978), and enacted a new 65-1-2 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, amended certain definitions in the Motor Transportation Act to reflect the reorganization of the department of public safety; in Subsection D, after "Chapter 66 NMSA 1978, but", added "its", and after "weight", deleted "attributable thereto"; in Subsection H, after "means the", deleted "motor transportation" and added "New Mexico state police"; in Subsection P, after "instrumentality", deleted "thereof"; and in Subsection S, after "purposes of", added "Section", and after "includes, deleted "the" and added "a".

**The 2003 amendment,** effective July 1, 2003, in Subsection C, substituted the present language of the subsection for the former definition of "commercial motor carrier vehicle"; and deleted "or firm" following "any person" near the beginning of Subsection M.

**The 1998 amendment,** effective July 1, 1998, substituted "department of public safety" and "secretary of public safety" for "taxation and revenue department" and "secretary of taxation and revenue" in Subsection F; rewrote Subsection H, which read: "'division' or 'motor transportation division' means the department;"; inserted "taxation and revenue" near the beginning of Subsection I; deleted former Subsection K, relating to the definition of "fleet", and redesignated former Subsections L through Q as K through P; deleted former Subsection R, relating to the definition of "preceding year", and redesignated former Subsections S through W as Q through U; and in present Subsection S, substituted "public safety" for "taxation and revenue", and deleted "Sections 65-1-10 and" preceding "65-1-33".

**The 1993 amendment,** effective July 1, 1993, substituted "Sections 65-1-10 and 65-1-33 NMSA 1978" for "Section 65-1-33 NMSA 1978" in Subsection U.

**The 1992 amendment**, effective July 1, 1992, substituted "gross vehicle weight" for "gross weight" and twice deleted "or merchandise" following "property" in Subsection C; rewrote Subsection F, which formerly read: " 'department' means the taxation and revenue department"; substituted "secretary" for "head of the division" in Subsection G; rewrote Subsection H, which formerly read: " 'division' means the motor transportation division of the taxation and revenue department"; added present Subsection I; redesignated former Subsection I as present Subsection J, while inserting "stopping of commercial motor carrier vehicles" therein; added present Subsection K; redesignated former Subsections J through M as present Subsections L through O; added present Subsections P through S; redesignated former Subsections N through Q as present Subsections T through W; substituted all of the present language of Subsection U beginning with "secretary of taxation and revenue" for "head of the taxation and revenue department"; and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles §§ 4, 7(2), 46.

### **65-1-3. Public policy.**

It is the public policy of New Mexico to provide for fair and impartial enforcement of the motor transportation regulation and taxation laws of this state, and to promote safe, adequate, economical and efficient motor carrier service for the public benefit, without discrimination, preference, advantage or unfair competitive practices between carriers.

**History:** 1953 Comp., § 64-34-4, enacted by Laws 1967, ch. 97, § 4.

### **65-1-4, 65-1-5. Repealed.**

## **ANNOTATIONS**

**Repeals.** — Laws 1992, ch. 106, § 23 repealed 65-1-4 and 65-1-5 NMSA 1978, enacted by Laws 1977, ch. 250, § 101 and Laws 1967, ch. 97, § 6, respectively, relating to the director of the motor transportation division and to organization of the division, effective July 1, 1992. For provisions of former sections, see the 1991 NMSA 1978 on *NMOneSource.com*.

### **65-1-6. Field enforcement of Motor Transportation Act and Motor Carrier Act and rules.**

The department shall:

A. enforce in the field the provisions of the Motor Transportation Act and the Motor Carrier Act [65-2A-1 through 65-2A-41 NMSA 1978] and the rules promulgated by the public regulation commission pursuant to the Motor Carrier Act; and

B. maintain sufficient personnel in the field to enforce the provisions of the Motor Transportation Act and the Motor Carrier Act and the rules promulgated by the public regulation commission pursuant to the Motor Carrier Act.

**History:** 1953 Comp., § 64-34-8, enacted by Laws 1967, ch. 97, § 8; 1977, ch. 250, § 104; 1989, ch. 319, § 1; 1992, ch. 106, § 2; 1998 (1st S.S.), ch. 10, § 5; 2003, ch. 359, § 41; 2011, ch. 101, § 1.

## ANNOTATIONS

**The 2011 amendment,** effective June 17, 2011, provided for the field enforcement of the Motor Transportation Act.

**The 2003 amendment,** effective July 1, 2003, in the introductory language, substituted "shall" for "has authority to"; and in Subsections A and B, deleted "the state corporation commission or" following "promulgated by".

**The 1998 amendment,** effective July 1, 1998, inserted "or the public regulation commission" in Subsections A and B.

**The 1992 amendment,** effective July 1, 1992, substituted the present section catchline for "Field enforcement of motor carrier regulations" and made minor stylistic changes throughout the section.

**The 1989 amendment,** effective July 1, 1989, in the introductory language, deleted "motor transportation" preceding "division"; and in Subsections A and B, substituted "the Motor Carrier Act" for "Sections 64-27-1 through 64-27-81 NMSA 1953" and "pursuant to that act" for "thereunder" and inserted "state" preceding "corporation commission".

**No authority to enforce Criminal Code.** — Department inspectors may not make arrests under and otherwise enforce the Criminal Code. These inspectors have no statutory authority to make arrests for any offenses not specified in the Motor Carrier Act and other laws regulating commercial vehicles or enforcing state taxes or fees. 1992 Op. Att'y Gen. No. 92-02.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Utilities § 232.

60 C.J.S. Motor Vehicles § 45.

### **65-1-7. Repealed.**

**History:** 1978 Comp., § 65-1-7, enacted by Laws 1998 (1st S.S.), ch. 10, § 6; repealed by Laws 2015, ch. 3, § 45.

## ANNOTATIONS

**Repeals.** — Laws 2015, ch. 3, § 45 repealed 65-1-7 NMSA 1978, as enacted by Laws 1998 (1st S.S.), ch. 10, § 6, relating to enforcement employees of division are police officers, effective July 1, 2015. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

## **65-1-8. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1992, ch. 106, § 23 repealed 65-1-8 NMSA 1978, as enacted by Laws 1967, ch. 97, § 10, relating to bonding of division employees, effective July 1, 1992. For provisions of former section, see the 1991 NMSA 1978 on *NMOneSource.com*.

## **65-1-9. Department to enforce laws.**

The department shall enforce and collect all excise taxes, license fees and other fees and charges of every nature and perform all inspections and collect all information considered necessary to enforce the laws of all departments, commissions and other agencies of state government, in addition to those specifically assigned to the department, whenever the department is so requested and agrees and the agreement is in writing containing all reasonable detail concerning the responsibilities of the parties to the agreement. The department shall also assist, as far as practicable and in accordance with a proper written agreement, in the enforcement of statutory, administrative and judicial provisions of the federal Motor Carrier Act.

**History:** 1953 Comp., § 64-34-11, enacted by Laws 1967, ch. 97, § 11; 1977, ch. 250, § 107; 1992, ch. 106, § 4; 1998 (1st S.S.), ch. 10, § 7.

### **ANNOTATIONS**

**Compiler's notes.** — The federal Motor Carrier Act (part II of the Interstate Commerce Act) was compiled as 49 U.S.C. App. §§ 301 to 327, before being repealed in 1978 and 1983.

**The 1998 amendment,** effective July 1, 1998, deleted "by law" following "assigned" near the middle of the first sentence, and deleted the former last sentence, which read: "Enforcement employees of the department shall be considered to have the same powers as the enforcement officers of the department, commission or other agency having the primary responsibility."

**The 1992 amendment,** effective July 1, 1992, substituted "Department" for "Division" in the section catchline; and substituted "department" for "division" several times throughout the section.

**Appointment of division inspectors to enforce Motor Vehicle Code.** — Although motor transportation division (MTD) statutes do not specifically grant MTD inspectors authority to enforce traffic laws against noncommercial drivers and vehicles, the Motor Vehicle Code, Chapter 66, Articles 1 through 8 NMSA 1978, allows the director of the motor vehicle division to appoint MTD inspectors to assist him in the enforcement of the Motor Vehicle Code. 1992 Op. Att'y Gen. No. 92-02.

## **65-1-10. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 31, § 7 repealed 65-1-10 NMSA 1978, enacted by Laws 1967, ch. 97, § 12, relating to issuance of regulations, effective July 1, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 9-11-6.2 NMSA 1978.

## **65-1-11. Ports of entry.**

The department shall designate the main highways upon which motor carriers shall enter and leave the state and shall designate stations or establish places, either temporary or permanent, where inspection, registration and permit services shall be maintained. The state highway and transportation department shall provide the necessary right-of-way, approach roads, ramps and other road facilities required by the department for places established after June 17, 1967.

**History:** 1953 Comp., § 64-34-13, enacted by Laws 1967, ch. 97, § 13; 1977, ch. 250, § 109; 1987, ch. 268, § 15; 1992, ch. 106, § 5.

### **ANNOTATIONS**

**Cross references.** — For vehicles entering or leaving state, to stop at registration places, see 65-5-1 to 65-5-3 NMSA 1978.

**The 1992 amendment,** effective July 1, 1992, twice substituted "department" for "division"; and substituted "June 17, 1967" for "the effective date of this section, unless the governor certifies in writing that the location selected will result in an intolerable traffic hazard" at the end of the second sentence.

**Legal stop ripening into illegal arrest.** — Although initial stop of commercial truck was legal under New Mexico's inspection statutes, the stop ripened into an unlawful de facto arrest when, without probable cause, officer required the driver to wait an hour; the illegality of the arrest vitiated driver's subsequent consent to the search of his truck, and rendered stolen motorcycles which were found inadmissible under the exclusionary rule. *State v. Jutte*, 1998-NMCA-150, 126 N.M. 244, 968 P.2d 334, cert. denied, 126 N.M. 533, 972 P.2d 352.

**Invalid stopping of vehicles.** — Motor transportation division officer's stop of a rental truck was not made at a port of entry and was invalid, where the officer had not set out any signs or other indication to vehicle drivers that they would be required to stop, had stopped vehicles randomly and at his own discretion, and had chosen his own schedule of where to patrol, as opposed to his supervisor making the decision. *State v. Clark*, 1991-NMCA-082, 112 N.M. 500, 816 P.2d 1122.

## **65-1-12. Recompiled.**

### **ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-12 NMSA 1978, relating to motor carriers required to register with the department, as 66-3-1.1 NMSA 1978, effective July 1, 1998.

## **65-1-12.1. Recompiled.**

### **ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-12.1 NMSA 1978, relating to tax identification card, as 66-3-3.1 NMSA 1978, effective July 1, 1998.

## **65-1-13 to 65-1-22. Recompiled.**

### **ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-13 through 65-1-22 NMSA 1978, relating to proportional registration of fleets, registration of additional motor vehicles, withdrawal of fleet motor vehicles, preservation of proportional registration records, estimated mileage of new fleets, denial of fleet registration, relationship to other state laws, and nonexclusivity of proportional registration, as 66-3-2.1 through 66-3-2.10 NMSA 1978, effective July 1, 1998.

## **65-1-23. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1992, ch. 106, § 23 repealed 65-1-23 NMSA 1978, as enacted by Laws 1978, ch. 76, § 1, relating to definitions concerning proportional registration, effective July 1, 1992. For provisions of former section, see the 1991 NMSA 1978 on *NMOneSource.com*.

## **65-1-24. Recompiled.**

## ANNOTATIONS

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-24 NMSA 1978, relating to allocation registration, one-way rental fleet vehicles, allocation of vehicles, fee, and identification, as 66-3-2.11 NMSA 1978, effective July 1, 1998.

### **65-1-25. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1992, ch. 106, § 23 repealed 65-1-25 NMSA 1978, as enacted by Laws 1967, ch. 97, § 15, relating to exemption of certain motor carriers, effective July 1, 1992. For provisions of former section, see the 1991 NMSA 1978 on *NMOneSource.com*.

### **65-1-25.1. Reserved.**

### **65-1-25.2. Recompiled.**

## ANNOTATIONS

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-25.2 NMSA 1978, relating to intrastate livestock haulers, as 66-3-29 NMSA 1978, effective July 1, 1998.

### **65-1-26. Documents; required in each commercial motor carrier vehicle; detention of vehicles.**

A. A commercial motor carrier vehicle operated on a New Mexico public highway by a motor carrier required to be registered with the department shall have in it at all times:

- (1) proof of payment of the trip tax; or
- (2) both evidence of registration and a tax identification permit issued by the department.

B. The driver of the vehicle shall be able to display either proof of payment of the trip tax or both the evidence of registration and the tax identification permit upon request by any law enforcement officer or any employee of the department.

C. Upon failure of the driver to display either proof of payment of the trip tax or evidence of registration, it shall be presumed that the vehicle is subject to registration under the laws of New Mexico unless it can be demonstrated that the vehicle is exempt from registration requirements of the Motor Vehicle Code [Chapter 66, Articles 1

through 8 NMSA 1978]. A vehicle presumed subject to registration may be detained until registration, including payment of all required fees, is completed.

D. Upon failure of the driver to display either proof of payment of the trip tax or a tax identification permit issued by the department, the trip tax shall be presumed due. A vehicle presumed subject to the trip tax may be detained until the trip tax is paid.

E. A commercial motor carrier vehicle subject to and not in compliance with the weight distance requirements of the Weight Distance Tax Act [Chapter 7, Article 15A NMSA 1978] may be detained until the tax is paid. A nonfiler or zero-filer status or an inactive weight distance account is proof of failure to pay the weight distance tax.

**History:** 1953 Comp., § 64-34-16, enacted by Laws 1967, ch. 97, § 16; 1969, ch. 19, § 2; 1972, ch. 7, § 45; 1977, ch. 250, § 119; 1988, ch. 24, § 8; 1990, ch. 21, § 1; 1992, ch. 106, § 9; 2007, ch. 209, § 1.

## ANNOTATIONS

**The 2007 amendment,** effective July 1, 2007, added Subsection E.

**The 1992 amendment,** effective July 1, 1992, substituted "Documents; required in each motor carrier vehicle" in the catchline; rewrote Subsection A; inserted "either proof of payment of the trip tax or" in Subsection B; and added Subsections C and D.

**The 1990 amendment,** effective July 1, 1990, substituted "Documents" for "Cab cards" in the catchline; designated the former section as Subsection A; in Subsection A, rewrote the first sentence following "registered" which read "with the division shall have in it at all times an identification card, issued by the division, known as a 'cab card' ", substituted "tax identification card" for "cab card" and "motor vehicle division" for "division" in the second sentence, deleted the former third sentence which read "The cab card shall include all information necessary for use as a user permit under the provisions of Section 7-16-6 NMSA 1978", and substituted " 'evidence of registration' " for " 'cab card' " in the present third sentence; and added Subsection B.

### **65-1-27. Hearings; attendance.**

The secretary or the secretary's representative may attend all hearings held by the state corporation commission [public regulation commission] concerning motor transportation. The state corporation commission [public regulation commission] shall notify the secretary of all such hearings, and the department is declared to be an interested party and as such may present any evidence pertaining to matters under consideration by the commission. The state corporation commission [public regulation commission] shall send copies of all orders entered by the commission in motor transportation matters to the department.

**History:** 1953 Comp., § 64-34-17, enacted by Laws 1967, ch. 97, § 17; 1977, ch. 250, § 120; 1992, ch. 106, § 10.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that all references to the state corporation commission be construed as references to the public regulation commission.

**The 1992 amendment,** effective July 1, 1992, substituted "secretary or the secretary's representative" for "director or his designated representative" in the first sentence; substituted "secretary" for "motor transportation director" and "department is declared" for "division is hereby declared" in the second sentence; substituted "department" for "motor transportation division" in the last sentence; and substituted "state corporation commission" for "corporation commission" several times throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Utilities §§ 264, 266.

73B C.J.S. Public Utilities §§ 44, 50, 79, 87.

### **65-1-28. Payment by credit card; optional services; fees; appropriations.**

A. Notwithstanding any other provision of law, the department is authorized to enter into agreements with financial institutions and credit card companies under which the department may accept payment by credit card from motor carriers of the taxes, fees or other charges due pursuant to the Motor Transportation Act, Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978], Trip Tax Act [Chapter 7, Article 15 NMSA 1978], Special Fuels Tax Act [repealed] or Weight Distance Tax Act [Chapter 7, Article 15A NMSA 1978]. Any fee payable to the financial institution or credit card company for a payment by credit card authorized under this section may be deducted from the proceeds of the taxes, fees or other charges paid on a pro-rata basis prior to any other distribution of the proceeds required by law. The necessary portion of the proceeds of the taxes, fees and other charges collected under this subsection is hereby appropriated for the purpose of paying the fee payable to the financial institution or credit card company.

B. The secretary is authorized to establish by regulation fees to cover the expense of providing additional services for the convenience of the motoring public. Any service established for which a fee is adopted under this section shall be optional, with the fee not being charged to any person not taking advantage of the service. Amounts collected pursuant to this subsection are appropriated to the department for the purpose of defraying the expense of providing the service.

**History:** 1978 Comp., § 65-1-28, enacted by Laws 1987, ch. 128, § 1; 1992, ch. 106, § 11.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1992, ch. 51, § 23 repealed the Special Fuels Tax Act, 7-16-1 to 7-16-26 NMSA 1978, effective January 1, 1993. For present comparable provisions, see Chapter 7, Article 16A NMSA 1978.

**Cross references.** — For provisions regarding payment in foreign currency, see 66-6-36 NMSA 1978.

**The 1992 amendment,** effective July 1, 1992, substituted the present section catchline for "Optional services; fees; appropriations"; added Subsection A; designated the formerly undesignated provisions as Subsection B; and, in Subsection B, substituted "secretary" for "director" in the first sentence and substituted "subsection" for "section" and "department" for "division" in the last sentence.

### **65-1-28.1. Special methods of payment.**

The department may require the motor carriers specified in this section to make payment of taxes, fees and other charges due under the Motor Transportation Act, Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978], Trip Tax Act [Chapter 7, Article 15 NMSA 1978], Special Fuels Tax Act [repealed] or Weight Distance Tax Act [Chapter 7, Article 15A NMSA 1978] by credit card, certified check or other method of guaranteed payment. The provisions of this section apply to any motor carrier whose check in payment of any amount due under any act administered by the department has been dishonored upon presentment on two or more occasions within the previous two years.

**History:** 1978 Comp., § 65-1-28.1, enacted by Laws 1992, ch. 106, § 12.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1992, ch. 51, § 23 repealed the Special Fuels Tax Act, 7-16-1 to 7-16-26 NMSA 1978, effective January 1, 1993. For present comparable provisions, see Chapter 7, Article 16A NMSA 1978.

### **65-1-29. Disposition of certain money collected.**

All money collected by the department as agent for any other department, commission or agency of state government shall forthwith be remitted to them and by them distributed in the same manner as all other collections for the same items under their respective laws.

All money collected by the department for other jurisdictions shall forthwith be remitted to them.

**History:** 1953 Comp., § 64-34-19, enacted by Laws 1967, ch. 97, § 19; 1969, ch. 17, § 3; 1976, ch. 13, § 1; 1977, ch. 250, § 122; 1992, ch. 106, § 13.

### **ANNOTATIONS**

**The 1992 amendment,** effective July 1, 1992, rewrote this section to the extent that a detailed comparison would be impracticable.

### **65-1-29.1. Receipts; disbursements.**

Money collected under the Motor Transportation Act shall be paid to the state treasurer for the credit of the motor vehicle suspense fund not later than the close of the second business day after their [its] receipt. At the same time, the department shall deliver to the taxation and revenue department documentation sufficient to make refunds, distributions and other disbursements of the money paid into the fund by the department.

**History:** Laws 1998 (1st S.S.), ch. 10, § 8.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **65-1-30. Reciprocity commission; saving clause; transfer of records.**

All current valid agreements entered into with other states by the commission created for the purpose of representing New Mexico in the matter of making reciprocal agreements relating to the operation of motor vehicles shall continue in effect according to their terms until such time as they are otherwise acted upon by the reciprocity commission created by the Motor Transportation Act. All records and property of the commission are transferred to the reciprocity commission.

**History:** 1953 Comp., § 64-34-21, enacted by Laws 1967, ch. 97, § 40.

### **ANNOTATIONS**

**Compiler's notes.** — The commission referred to in the first and last sentences was established by Laws 1947, ch. 56, § 1, and differed from the reciprocity commission; it was repealed by Laws 1967, ch. 97, § 22.

## **65-1-31. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 319, § 15 repealed 65-1-31 NMSA 1978, as enacted by Laws 1972, ch. 7, § 46, relating to members, terms and duties of the reciprocity commission, effective July 1, 1989.

## **65-1-32. Reciprocity policy.**

It is the policy of New Mexico to grant to vehicles properly registered or licensed in another jurisdiction, while engaged in interstate commerce in New Mexico, exemption from all or part of the fees, taxes or compensation required for unusual use of the highways and exemption from all or part of the requirements for the display of registration numbers, compensation permits or other numbers or permits. As a condition for application of this policy, however, it is required that vehicles properly registered in New Mexico, while engaged in interstate commerce in the other jurisdictions, be granted like privileges or exemptions to those which New Mexico extends to vehicles properly registered or licensed in the other jurisdiction.

**History:** 1953 Comp., § 64-34-21.2, enacted by Laws 1972, ch. 7, § 47; 1989, ch. 319, § 2.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1972, ch. 7, § 47, repealed Laws 1947, ch. 56, § 2, compiled as former 64-12-2, 1953 Comp., relating to the policy for reciprocal agreements and proportional registration privileges, and enacted a new 65-1-32 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, in the first sentence, inserted "and" preceding "exemption" and, in the second sentence, inserted "As a condition for application of this policy, however", deleted "however" following "required", and substituted "be granted" for "are granted".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A C.J.S. Conflict of Laws § 5.

## **65-1-32.1. Reciprocity.**

The director shall extend to qualified motor vehicle fleets from states with which New Mexico has reciprocal agreements the privilege of either full reciprocity or proportional

registration, as appropriate, of such motor vehicles engaged in interstate commerce in this state.

**History:** 1978 Comp., § 65-1-32.1, enacted by Laws 1989, ch. 319, § 3.

### **65-1-33. Negotiation of reciprocal agreements; proportional registration rules.**

A. The secretary shall enter into agreements with the authorities of other jurisdictions to carry out the policy stated in Section 65-1-32 NMSA 1978. The secretary shall negotiate and perfect such agreements.

B. The secretary may enter into agreements with other jurisdictions on behalf of this state relating to proportional registration under the Motor Transportation Act for the purpose of facilitating the administration of that act, including arrangements or agreements with other jurisdictions for exchange of information for audit and enforcement activities in connection with proportional registration.

C. The director, in accordance with the provisions of Section 65-1-10 NMSA 1978 [repealed], may prescribe rules and regulations necessary to effectuate and administer the proportional registration of vehicles, which registration is subject to the rights, terms and conditions granted or contained in any applicable agreement made under the authority of Subsection B of this section.

D. In the absence of an agreement or arrangement with an other jurisdiction, the director, with the approval of the secretary, may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in the other jurisdiction or to the owners of the vehicles which, in the judgment of the director, are in the best interest of this state and its citizens, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

E. Reciprocity shall not exist for fleet vehicles between this state and another jurisdiction which has adopted proportional registration for vehicles subject to this section.

**History:** 1953 Comp., § 64-34-21.3, enacted by Laws 1972, ch. 7, § 48; 1977, ch. 250, § 124; 1989, ch. 319, § 4.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1972, ch. 7, § 48, repealed Laws 1947, ch. 56, § 3, compiled as former 64-12-3, 1953 Comp., relating to the negotiation and reciprocal agreements and providing for proportional registration privileges, and enacted a new 65-1-33 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1995, ch. 31, § 7 repealed 65-1-10 NMSA 1978, effective July 1, 1995. For present comparable provisions, see 9-11-6.2 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, substituted references to the secretary for references to the reciprocity commission and deleted "motor transportation" preceding "director" throughout the section; in Subsection A, substituted "Section 65-1-32 NMSA 1978" for "Section 64-34-21.2 NMSA 1953"; in Subsection C, inserted "in accordance with the provisions of Section 65-1-10 NMSA 1978"; in Subsection E, substituted "for fleet vehicles" for "for fleets of two or more vehicles" and "subject to this section" for "subject to Sections 64-34-21.1 through 64-34-21.3 NMSA 1953"; and made minor stylistic changes.

**Compiler's notes.** — The annotations appearing below are taken from opinions rendered under former law.

**Reciprocity statute constitutional.** — That the reciprocity statute in force in the state of New Mexico is constitutional is answered by the following quotation from 11 Am. Jur., § 220, p. 931, which reads as follows: ". . . [I]n most jurisdictions such retaliatory legislation has been sustained and held not to be an improper delegation of legislative authority. Similarly, no invalid delegation is involved in making an exemption on foreign motor vehicles, provided similar exemption is accorded to vehicles by the enacting state in which the foreign-owned vehicles are registered, such exemption to be contingent upon the making of an agreement for such reciprocal exemption between the local secretary of state and the proper officer of the other state . . ." 1961-62 Op. Att'y Gen. No. 61-76.

**Domicile not considered in prorating fleets.** — The question of domicile cannot legally be a consideration in the determination of what fleets should be prorated and what fleets should not be prorated. 1961-62 Op. Att'y Gen. No. 61-76.

**Formula for payment of vehicle registration.** — The practice of the motor vehicle division and the reciprocity commission has been to require payment for registration of vehicles based on the mathematical formula of : in-state miles/total miles x total fleet miles. 1961-62 Op. Att'y Gen. No. 61-76.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 82; 13 Am. Jur. 2d Carriers § 228.

**65-1-34. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1992, ch. 106, § 23 repealed 65-1-34 NMSA 1978, as enacted by Laws 1967, ch. 97, § 43, relating to assistance to carriers and motor vehicle division, effective July 1, 1992. For provisions of former section, see the 1991 NMSA 1978 on *NMOneSource.com*.

### **65-1-35. Duplicate records.**

If the New Mexico state police division in carrying out any of the powers and duties granted or imposed on it by the Motor Transportation Act needs duplicates of any records not transferred to it by that act, all departments, agencies and commissions of this state shall, upon request, make the records available to the division for copying.

**History:** 1953 Comp., § 64-34-25, enacted by Laws 1967, ch. 97, § 44; 1977, ch. 250, § 128; 2015, ch. 3, § 32.

### **ANNOTATIONS**

**The 2015 amendment**, effective July 1, 2015, provided the New Mexico state police division with the authority to receive records from all state offices in order to carry out its duties imposed on it by the Motor Transportation Act; after "If the", deleted "motor transportation" and added "New Mexico state police", and after "transferred to it by", deleted "this" and added "that".

### **65-1-36. Penalty for violations of act.**

A. Violation of Section 65-5-1, 65-5-2 or 66-3-1.1 NMSA 1978 is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or imprisonment not exceeding ninety days or by both the fine and imprisonment.

B. Violation of any section of the Motor Transportation Act other than a violation of Section 65-1-26, 65-1-36.1, 66-5-1, 65-5-2 or 66-3-1.1 NMSA 1978 or of the Motor Carrier Safety Act [65-3-1 through 65-3-14 NMSA 1978] is a misdemeanor punishable by a fine of not more than one hundred dollars (\$100) or by imprisonment not exceeding thirty days or by both the fine and imprisonment or is subject to the penalty assessment and fee provisions pursuant to Sections 66-8-116 through 66-8-116.3 NMSA 1978.

C. The payment of a fine under the provisions of any act under the jurisdiction of the department pursuant to the Motor Transportation Act shall not relieve the offender from the payment of any fees or taxes or from any other of the provisions of the Motor Transportation Act.

D. The department may, for the proper enforcement of the duties imposed upon the department pursuant to the Motor Transportation Act, detain any motor vehicle whose operator or owner is in violation of any law the department is empowered under the Motor Transportation Act to administer or enforce.

**History:** 1953 Comp., § 64-34-27, enacted by Laws 1978, ch. 16, § 1; 1989, ch. 319, § 5; 1992, ch. 106, § 14; 2007, ch. 209, § 2.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1978, ch. 16, § 1, repealed 64-34-27, 1953 Comp. (former 65-1-36 NMSA 1978), relating to penalty for violations, and enacted a new 65-1-36 NMSA 1978.

**The 2007 amendment,** effective July 1, 2007, changed references from Section 65-1-12 NMSA 1978 to Sections 65-5-1 and 66-3-1.1 NMSA 1978.

**The 1992 amendment,** effective July 1, 1992, inserted "or 65-5-2", and substituted "the fine" for "such fine" in Subsection A; rewrote Subsection B; substituted "department pursuant to the Motor Transportation Act" for "division" in Subsection C; and, in Subsection D, substituted "department" for "division" near the beginning of the subsection, substituted "department pursuant to the Motor Transportation Act" for "division" near the middle of the section, and substituted "department is empowered under the Motor Transportation Act" for "division is empowered" near the end of the subsection.

**The 1989 amendment,** effective July 1, 1989, in Subsections A and B, substituted "Section 65-1-12 NMSA 1978" for "Section 64-34-14 NMSA 1953"; in Subsection B, inserted "or is subject to the penalty assessment provisions pursuant to Section 66-8-116 NMSA 1978"; in Subsection C, deleted "motor transportation" preceding "division"; and, in Subsection D, substituted "violation of any law that the division is empowered to administer or enforce" for "violation of the Motor Transportation Act"; and made minor stylistic changes.

**Jurisdiction of magistrate court.** — Section 35-3-4 NMSA 1978, prior to its 1973 amendment, did not give magistrate courts jurisdiction to try cases arising out of violations of the Motor Transportation Act. 1969 Op. Att'y Gen. No. 69-53 (opinion rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Am. Jur. 2d Automobiles and Highway Traffic §§ 312 to 346.

60 C.J.S. Motor Vehicles § 135.

### **65-1-36.1. Civil penalty for bad checks.**

If any payment required pursuant to the Motor Transportation Act is attempted to be made by check that is not paid upon presentment, such dishonor is presumptive of negligence. The penalty for such dishonor shall be not less than ten dollars (\$10.00). This penalty is in addition to any other penalty imposed under any other law.

**History:** 1978 Comp., § 65-1-36.1, enacted by Laws 1992, ch. 106, § 15.

### **65-1-37. Recompiled.**

#### **ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-37 NMSA 1978, relating to proportional registration or reciprocal agreements with other jurisdictions for a declared gross weight, as 66-3-1.2 NMSA 1978, effective July 1, 1998.

### **65-1-38. Repealed.**

**History:** Laws 2007, ch. 54, § 1; repealed by Laws 2015, ch. 3, § 45.

#### **ANNOTATIONS**

**Repeals.** — Laws 2015, ch. 3, § 45 repealed 65-1-38 NMSA 1978, as enacted by Laws 2007, ch. 54, § 1, relating to division organized, effective July 1, 2015. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

### **65-1-39. Repealed.**

**History:** Laws 2007, ch. 54, § 2; repealed by Laws 2015, ch. , § 45.

#### **ANNOTATIONS**

**Repeals.** — Laws 2015, ch. 3, § 45 repealed 65-1-39 NMSA 1978, as enacted by Laws 2007, ch. 54, § 2, relating to definitions, effective July 1, 2015. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

### **65-1-40. Repealed.**

**History:** Laws 2007, ch. 54, § 3; repealed by Laws 2015, ch. , § 45.

#### **ANNOTATIONS**

**Repeals.** — Laws 2015, ch. 3, § 45 repealed 65-1-40 NMSA 1978, as enacted by Laws 2007, ch. 54, § 3, relating to division organization, effective July 1, 2015. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

### **65-1-41. Repealed.**

**History:** Laws 2007, ch. 54, § 4; repealed by Laws 2015, ch. , § 45.

## ANNOTATIONS

**Repeals.** — Laws 2015, ch. 3, § 45 repealed 65-1-41 NMSA 1978, as enacted by Laws 2007, ch. 54, § 4, relating to appointments, removal, effective July 1, 2015. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

### **65-1-42. Repealed.**

**History:** Laws 2007, ch. 54, § 5; repealed by Laws 2015, ch. , § 45.

## ANNOTATIONS

**Repeals.** — Laws 2015, ch. 3, § 45 repealed 65-1-42 NMSA 1978, as enacted by Laws 2007, ch. 54, § 5, relating to qualifications of an officer, effective July 1, 2015. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

### **65-1-43. Repealed.**

**History:** Laws 2007, ch. 54, § 6; repealed by Laws 2015, ch. 3, § 45.

## ANNOTATIONS

**Repeals.** — Laws 2015, ch. 3, § 45 repealed 65-1-43 NMSA 1978, as enacted by Laws 2007, ch. 54, § 6, relating to director and other officers, powers and duties, effective July 1, 2015. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

### **65-1-44. Repealed.**

**History:** Laws 2007, ch. 54, § 7; repealed by Laws 2015, ch. 3, § 45.

## ANNOTATIONS

**Repeals.** — Laws 2015, ch. 3, § 45 repealed 65-1-44 NMSA 1978, as enacted by Laws 2007, ch. 54, § 7, relating to commissions, salary, effective July 1, 2015. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

### **65-1-45. Repealed.**

**History:** Laws 2007, ch. 54, § 8; repealed by Laws 2015, ch. 3, § 45.

## ANNOTATIONS

**Repeals.** — Laws 2015, ch. 3, § 45 repealed 65-1-45 NMSA 1978, as enacted by Laws 2007, ch. 54, § 8, relating to uniform and badges, uniform allowance to be set by

secretary, effective July 1, 2015. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

## **ARTICLE 2**

### **Motor Carrier Regulation**

#### **65-2-1 to 65-2-79. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1981, ch. 358, § 49, repealed 65-2-1 to 65-2-79 NMSA 1978, relating to motor carrier regulation, effective April 10, 1981. For present provisions, see 65-2A-1 NMSA 1978 et seq.

#### **65-2-80 to 65-2-127. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 359 § 44, repealed 65-2-80 to 65-2-127 NMSA 1978, the Motor Carrier Act, effective July 1, 2003. For provisions of former sections, see the 2002 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 65-2A-1 NMSA 1978 et seq.

## **ARTICLE 2A**

### **Motor Carrier Act**

#### **65-2A-1. Short title.**

Sections 1 through 40 [41] [65-2A-1 through 65-2A-41 NMSA 1978] of this act may be cited as the "Motor Carrier Act".

**History:** Laws 2003, ch. 359, § 1.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2013, ch. 77, § 33 enacted a new section of the Motor Carrier Act, compiled as 65-2A-41, effective July 1, 2013.

**Effective dates.** — Laws 2003, ch. 359, § 45 made Laws 2003, ch. 359, § 1 effective July 1, 2003.

## **65-2A-2. Transportation policy.**

It is the policy of this state to foster the development, coordination and preservation of a safe, sound and adequate motor carrier system, requiring financial responsibility and accountability on the part of motor carriers through state licensing and regulation of motor carriers.

**History:** Laws 2003, ch. 359, § 2; 2013, ch. 73, § 1; 2013, ch. 77, § 1.

### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, provided that the policy of the Motor Carrier Act is to promote a safe and adequate motor carrier system through licensing; and after "on the part of motor carriers", deleted "providing for economic regulation of motor carriers of persons and household goods and towing services performing nonconsensual tows and by streamlining and promoting uniformity of state" and added "through state licensing and".

Laws 2013, ch. 73, § 1 and Laws 2013, ch. 77, § 1, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 1. See 12-1-8 NMSA 1978.

## **65-2A-3. Definitions.**

As used in the Motor Carrier Act:

A. "ability to provide certificated service" means that an applicant or carrier can provide reasonably continuous and adequate transportation service of the type required by its application or its operating authority in the territory authorized or sought to be authorized;

B. "ambulance service" means the intrastate transportation of sick or injured persons in an ambulance meeting the standards established by the commission under the Ambulance Standards Act [65-6-1 through 65-6-6 NMSA 1978];

C. "amendment of a certificate or permit" means a permanent change in the type or nature of service, territory or terms of service authorized by an existing certificate or permit;

D. "antitrust laws" means the laws of this state relating to combinations in restraint of trade;

E. "base state" means the registration state for an interstate motor carrier that either is subject to regulation or is transporting commodities exempt from regulation by the federal motor carrier safety administration pursuant to the unified carrier registration system;

F. "cancellation of an operating authority" means the voluntary, permanent termination of all or part of an operating authority;

G. "certificate" means the authority issued by the commission to a person that authorizes the person to offer and provide a certificated service as a motor carrier;

H. "certificated service" means one of the following transportation services:

- (1) an ambulance service;
- (2) a household goods service;
- (3) a shuttle service;
- (4) a specialized passenger service; or
- (5) a taxicab service;

I. "change in a certificate or permit" means the voluntary amendment, cancellation, change in form of legal entity of the holder, lease, reinstatement, transfer or voluntary suspension of a certificate or permit;

J. "charter service" means the compensated transportation of a group of persons in a motor vehicle who, pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle and driver, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin;

K. "commission" means the public regulation commission;

L. "commuter service" means the intrastate transportation of passengers in motor vehicles having a capacity of seven to fifteen persons, including the driver, provided to a volunteer-driver commuter group that shares rides to and from the workplace or training site, where participation is incidental to the primary work or training-related purposes of the commuter group, and where the fees paid by the participants do not exceed the costs for transportation, including gas and other trip-related expenses;

M. "continuous and adequate service" means:

- (1) for full-service carriers, reasonably continuous availability, offering and provision of transportation services through motor vehicles, equipment and resources satisfying safety and financial responsibility requirements under the Motor Carrier Act and commission rule, that are reasonably adequate to serve the entire full-service territory authorized in the certificate, with reasonable response to all requests for service for the nature of passenger service authorized, based on the nature of public need,

expense and volume of demand for the type of service authorized during seasonal periods; and

(2) for general-service carriers, reasonably continuous availability and offering of transportation services through motor vehicles, equipment and resources satisfying safety and financial responsibility requirements under the Motor Carrier Act and commission rule for the nature of the transportation service authorized in the certificate;

N. "contract driver" means a person who contracts with a motor carrier as an independent contractor to drive a vehicle pursuant to an operating authority issued to the motor carrier;

O. "endorsement" means the specification in a certificate of the territory in which the carrier is authorized to operate, the nature of service to be provided by a certificated passenger service and any additional terms of service that may be reasonably granted or required by the commission for the particular authority granted;

P. "fare" means the full compensation charged for transportation by a tariffed passenger service;

Q. "financial responsibility" means the ability to respond in damages for liability arising out of the ownership, maintenance or use of a motor vehicle in the provision of transportation services;

R. "fitness to provide a transportation service" means that an applicant or carrier complies with state law as provided in the Motor Carrier Act or by rule of the commission;

S. "for hire" means that transportation is offered or provided to the public for remuneration, compensation or reward of any kind, paid or promised, either directly or indirectly;

T. "full service" means one of the following certificated passenger services that are endorsed and required to meet specific standards for the provision of service to or throughout a community:

- (1) an ambulance service;
- (2) a scheduled shuttle service; or
- (3) a municipal taxicab service;

U. "general service" means one of the following certificated services that provides transportation services of the type authorized, but is not required to provide unprofitable or marginally profitable carriage:

- (1) a general shuttle service;
- (2) a general taxicab service;
- (3) a specialized passenger service; or
- (4) a household goods service;

V. "highway" means a way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

W. "holder of an operating authority" means the grantee of the operating authority or a person that currently holds all or part of the right to exercise the authority through a transfer by operation of law;

X. "household goods" means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of the dwelling and other similar property as the federal motor carrier safety administration may provide by regulation, but shall not include property moving to or from a factory or store, other than property the householder has purchased to use in the householder's dwelling that is transported at the request of, and the transportation charges are paid to the carrier by, the householder;

Y. "household goods service" means the intrastate transportation, packing and storage of household goods for hire;

Z. "interested person" means a motor carrier operating in the territory involved in an application or grant of temporary authority, a person affected by an order of the commission or a rule proposed for adoption by the commission or a person the commission may deem interested in a particular matter;

AA. "interstate motor carrier" means a person providing compensated transportation in interstate commerce, whether or not the person is subject to regulation by the federal motor carrier safety administration;

BB. "intrastate motor carrier" means a motor carrier offering or providing transportation for hire by motor vehicle between points and places in the state;

CC. "involuntary suspension" means the temporary cessation of use of all or part of an operating authority ordered by the commission for cause for a stated period of time or pending compliance with certain conditions;

DD. "lease of a certificate or permit" means an agreement by which the holder of a certificate or permit grants to another person the exclusive right to use all or part of

the certificate or permit for a specified period of time in exchange for consideration, but does not include an agreement between a motor carrier and its contract driver;

EE. "lease of equipment" means an agreement whereby a motor carrier obtains equipment owned by another person for use by the motor carrier in the exercise of its operating authority, but does not include an agreement between a motor carrier and its contract driver;

FF. "motor carrier" or "carrier" means a person offering or providing transportation of persons, property or household goods for hire by motor vehicle, whether in intrastate or interstate commerce;

GG. "motor carrier organization" means an organization approved by the commission to represent motor carriers and to discuss and propose industry interests and matters other than rates, as well as discussing and proposing rates and other matters pertaining to statewide tariffs;

HH. "motor vehicle" or "vehicle" means a vehicle, machine, tractor, trailer or semitrailer propelled or drawn by mechanical power and used on a highway in the transportation of property, household goods or persons, but does not include a vehicle, locomotive or car operated exclusively on rails;

II. "nature of service" means the type of transportation service to be provided by a certificated passenger service as set forth in Subsection A of Section 65-2A-8 NMSA 1978;

JJ. "nonconsensual tow" means the compensated transportation of a motor vehicle by a towing service, if such transportation is performed at the request of a law enforcement officer or without the prior consent or authorization of the owner or operator of the motor vehicle;

KK. "notice period" means the period of time specified in Section 65-2A-6 NMSA 1978 following publication of notice during which the commission may not act;

LL. "objection" means a document filed with the commission by an interested person or a member of the public during the notice period for an application for a certificate or a permit, or for amendment, lease or transfer of a certificate or permit, that expresses an objection to, or provides information concerning, the matter before the commission;

MM. "operating authority" means a certificate, permit, warrant, unified carrier registration or temporary authority issued by the commission to a motor carrier;

NN. "passenger" means a person other than the driver of a motor vehicle transported in a motor vehicle;

OO. "passenger service" means a transportation service offered or provided for the transportation of passengers by motor vehicle;

PP. "permit" means the authority issued by the commission to a person that authorizes the person to offer and provide a permitted service as a motor carrier;

QQ. "permitted service" means the intrastate transportation of passengers or household goods for hire pursuant to a contract between the motor carrier and another person;

RR. "predatory rate or practice" means the knowing and willful requirement by a carrier that a passenger or shipper pay a rate, fare or other charge in excess of the rates and charges or in a manner other than in accordance with terms of service as provided by law, as provided in a tariff governing the carrier or as provided in a preexisting written contract regarding the carriage, when such charge is made:

(1) by a passenger carrier as a prior condition for the provision of transportation or continued transportation of a passenger; or

(2) as a prior condition by a towing service carrier performing nonconsensual tows or a household goods service carrier for delivery of, release of or access to vehicles or household goods by the shipper or registered owner;

SS. "process" means, in the context of legal process, an order, subpoena or notice issued by the commission or an order, subpoena, notice, writ or summons issued by a court;

TT. "property" means movable articles of value, including cadavers, hazardous matter, farm products, livestock feed, stock salt, manure, wire, posts, dairy products, livestock hauled in lots of twenty-five thousand pounds or more, farm or ranch machinery and the items transported by a towing service, but does not include household goods or unprocessed farm products transported by a farmer from the place of harvesting to market, storage or a processing plant;

UU. "protest" means a document in the form of a pleading filed with the commission by a full-service carrier that expresses an objection to an application before the commission for a certificate for passenger service or for a permit for ambulance service or for passenger service pursuant to a public-charge contract or for amendment, lease or transfer of such a certificate or permit:

(1) when the territory involved in the application includes all or a portion of the full-service territory of the protesting carrier; and

(2) for a carrier other than an ambulance service carrier, when the grant of the application will, or presents a reasonable potential to, impair, diminish or otherwise

adversely affect its existing provision of full-service passenger service to the public within its full-service territory;

VV. "public-charge contract" means a contract or contractual arrangement between a motor carrier and a third party for passenger service that requires or allows the motor carrier to charge passengers a fare for the transportation service to be provided pursuant to the contract;

WW. "rate" means a form of compensation charged, whether directly or indirectly, by a person for a transportation service subject to the jurisdiction of the commission;

XX. "record of a motor carrier" means an account, correspondence, memorandum, tape, disc, paper, book or transcribed information, or electronic data information, including the electronic hardware or software necessary to access the electronic data information in its document form, regarding the operation of a motor carrier;

YY. "registration year" means a calendar year;

ZZ. "revocation" means the involuntary, permanent termination of all or part of an operating authority ordered by the commission for cause;

AAA. "shipper" means a person who consigns or receives property or household goods for transportation;

BBB. "shuttle service" means the intrastate transportation of passengers for hire pursuant to a set fare for each passenger between two or more specified terminal points or areas and includes both scheduled shuttle service and general shuttle service as follows:

(1) "scheduled shuttle service" means a shuttle service that transports passengers to and from an airport both through prior arrangement and through presentment at terminal locations, on the basis of a daily time schedule filed with the commission, that must be met in a timely fashion with a vehicle present at the terminal location regardless of the number of passengers carried on any run, if any, and that includes general shuttle service; and

(2) "general shuttle service" means a shuttle service that is not required to operate on a set schedule, that may optionally use a grid map to specify distant or adjacent terminal areas and that is not required to accept passengers other than pre-arranged passengers;

CCC. "specialized passenger service" means the intrastate transportation for hire of passengers with special physical needs by specialized types of vehicles, or for

specialized types of service to the public or community, as the commission may by rule provide;

DDD. "tariff" means a document filed by a tariffed service carrier that has been approved by the commission and sets forth the transportation services offered by the motor carrier to the general public, including the rates, terms of service and applicable time schedules relating to those services;

EEE. "tariffed service" means one of the following transportation services authorized by the commission for the provision of service on the basis of rates and terms of service contained in a tariff approved by the commission:

- (1) an ambulance service;
- (2) a household goods service;
- (3) a shuttle service;
- (4) a specialized passenger service;
- (5) a taxicab service; or
- (6) a towing service performing nonconsensual tows;

FFF. "taxicab association" means an association, cooperative or other legal entity whose members are taxicab drivers, which shall be treated in the same manner as any other applicant with regard to applications for a certificate for general taxicab service or for full-service municipal taxicab service and which shall be subject in the same manner to all other provisions, requirements and limitations of the Motor Carrier Act;

GGG. "taxicab service" means intrastate transportation of passengers for hire in a motor vehicle having a capacity of not more than eight persons, including the driver, for which the passenger or other person engaging the vehicle is allowed to specify not only the origin and destination points of the trip but also, within reason, the route taken by the vehicle, any intermediate stop, any optional waiting at a stop and any other passengers transported during the trip and that charges a fare for use of the vehicle primarily on the basis of a drop-flag fee, cumulative mileage and cumulative wait time through a taxicab meter used to cumulate and display the fare to the passenger and includes both municipal taxicab service and general taxicab service, as follows:

(1) "municipal taxicab service" means a taxicab service that deploys vehicles at all times of the day and year, is centrally dispatched and reasonably responds to all calls for service within its endorsed full-service territory regardless of profitability of the individual trip, in addition to the transportation service provided by a general taxicab service; and

(2) "general taxicab service" means a taxicab service that need not be dispatched, that may pick up on-demand passengers through flagging or at a taxicab stand or queue, that need not deploy vehicles in any particular manner and that may charge for trips to destination points or places outside of the taxicab service's certificated territories on the basis of a set fare;

HHH. "terms of service" means all terms, aspects, practices, limitations, conditions and schedules of service other than specific rate amounts pertaining to a tariffed service;

III. "towing service" means the use of specialized equipment, including repossession services using towing equipment, to transport or store:

- (1) a damaged, disabled or abandoned motor vehicle and its cargo;
- (2) a motor vehicle to replace a damaged, disabled or abandoned motor vehicle;
- (3) parts and equipment to repair a damaged, disabled or abandoned motor vehicle;
- (4) a motor vehicle whose driver has been declared unable to drive by a law enforcement officer;
- (5) a motor vehicle whose driver has been removed from the scene or is unable to drive; or
- (6) a motor vehicle repossessed or seized pursuant to lawful authority;

JJJ. "transfer of a certificate or permit" means a permanent conveyance of all or part of a certificate or permit;

KKK. "transfer by operation of law" means that all or a part of a grantee's interest in an operating authority passes to a fiduciary or other person by application of established rules of law;

LLL. "transportation service" means transportation subject to the jurisdiction of the commission, offered or provided by a motor carrier, that requires the carrier to obtain an operating authority from the commission under the Motor Carrier Act, regardless of whether the motor carrier has obtained appropriate operating authority from the commission;

MMM. "verification" means a notarized signature verifying the contents of the document or other filing or a signature verifying the contents of the document or other filing under penalty of perjury, expressly providing that the signatory swears or affirms

the contents under penalty of perjury as provided in Subsection A of Section 65-2A-33 NMSA 1978;

NNN. "voluntary suspension" means the commission-authorized cessation of use of all or part of a certificate or permit at the request of the holder for a specified period of time, not to exceed twelve consecutive months;

OOO. "warrant" means the authority issued by the commission to a person that authorizes the person to offer and provide a warranted service as a motor carrier;

PPP. "warranted service" means one of the following intrastate transportation services offered or provided for hire:

- (1) a charter service;
- (2) a property transportation service; or
- (3) a towing service; and

QQQ. "weight-bumping" means the knowing and willful statement of a fraudulent weight on a shipment of household goods.

**History:** Laws 2003, ch. 359, § 3; 2005, ch. 288, § 1; 2007, ch. 188, § 1; 2013, ch. 73, § 2; 2013, ch. 77, § 2; 2017, ch. 109, § 1.

## ANNOTATIONS

**The 2017 amendment**, effective July 1, 2017, revised the definition of "commuter service" as the term is used in the Motor Carrier Act; in Subsection L, after "where participation is", deleted "open to the public and", after "and where the", deleted "volunteer drivers have no employer-employee relationship with the commuter service" and added "fees paid by the participants do not exceed the costs for transportation, including gas and other trip-related expenses;"; and in Subsection PPP, deleted Paragraph PPP(2) and redesignated the succeeding paragraphs accordingly.

**The 2013 amendment**, effective July 1, 2013, rewrote the section to the extent that a detailed comparison would be impracticable.

**The 2007 amendment**, effective June 15, 2007, changed the definition of "incidental carrier" to include a vehicle that holds sixteen or more passengers.

**The 2005 amendment**, effective June 17, 2005, added Subsection S to define "incidental carrier".

## 65-2A-4. Powers and duties of the commission.

A. In accordance with the Motor Carrier Act, the commission shall:

- (1) issue operating authorities for a motor carrier operating in New Mexico;
- (2) establish minimum requirements for financial responsibility for motor carriers; provided that the financial responsibility standards required shall not be inconsistent with applicable federal standards;
- (3) establish safety requirements for intrastate motor carrier motor vehicles and drivers subject to the jurisdiction of the commission, provided that the safety requirements shall not be inconsistent with or more stringent than applicable federal safety standards;
- (4) establish reasonable requirements with respect to continuous and adequate service to be provided under an operating authority;
- (5) regulate the rates of tariffed service carriers to the extent provided in the Motor Carrier Act, including rates and terms of service for storing household goods and motor vehicles;
- (6) determine matters of public interest and other matters relating to authorities, rates, territories, nature of service and other terms of service of motor carriers;
- (7) have jurisdiction to determine any matter under the Motor Carrier Act relating to any transportation service carrier that has not obtained an appropriate operating authority from the commission;
- (8) subpoena witnesses and records, enforce its subpoenas through a court and, through the court, seek a remedy for contempt;
- (9) hold a public hearing specific to a protest or a request by the transportation division of the commission that has been filed within the notice period in opposition to or in consideration of an application;
- (10) create a statewide tariff for household goods service carriers establishing maximum rates that may be charged by carriers; and
- (11) adopt rules, issue orders and conduct activities necessary to implement and enforce the Motor Carrier Act.

B. The commission may:

- (1) designate inspectors who may inspect the records of a motor carrier subject to the Motor Carrier Act and who shall have the powers of peace officers in the state's political subdivisions with respect to a law or rule that the commission is

empowered to enforce pursuant to Section 65-1-6 NMSA 1978, excluding the enforcement authority granted to the motor transportation division of the department of public safety;

(2) institute civil actions in the district court of Santa Fe county in its own name to enforce the Motor Carrier Act, its orders and rules, and in the name of the state to recover assessments of administrative fines;

(3) from time to time, modify the type and nature of service, territory and terms of service of operating authorities previously issued, and change or rescind rates previously approved;

(4) establish statewide tariffs as needed for voluntary and optional use by tariffed service carriers; and

(5) adopt rules to implement these powers.

**History:** Laws 2003, ch. 359, § 4; 2013, ch. 73, § 3; 2013, ch. 77, § 3.

#### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, authorized the commission to establish rates and tariffs and to determine matters relating to carriers that do not have operating authority; in Paragraph (2) of Subsection A, after "motor", deleted "carrier" and added the remainder of the sentence; in Paragraph (5) of Subsection A, after "the rates of", deleted "intrastate common motor carriers of persons and household goods and towing services performing nonconsensual tows" and added "tariffed service carriers to the extent provided in the Motor Carrier Act", and after "including rates", added "and terms of service"; in Paragraph (6) of Subsection A, after "public", deleted "convenience and necessity", and added "interest and other matters", and after "relating to", added "authorities, rates, territories, nature of service and other terms of service of"; added Paragraph (7) of Subsection A; in Paragraph (9) of Subsection A, after "request", added "by the transportation division of the commission" and after "filed", deleted "timely" and added "within the notice period"; added Paragraph (10) of Subsection A; in Paragraph (3) of Subsection B, after "type", added "and nature", after "territory and terms", deleted "conditions and limitations" and added "of service", and after "previously", deleted "adopted as needed; and" and added "approved"; and added Paragraph (4) of Subsection B.

Laws 2013, ch. 73, § 3 and Laws 2013, ch. 77, § 3, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 3. See 12-1-8 NMSA 1978.

**65-2A-5. Applications in general; ministerial grants of authority; when public hearings required.**

A. A person shall file an application for any matter for which commission approval is required. An application shall be made in writing, verified and in a form that contains information and is accompanied by proof of service upon interested persons as required by the commission.

B. The commission shall simplify to the extent possible the process for approving applications. The commission may hold a public hearing on its own initiative or specific to an objection that has been filed within the notice period in opposition to or in consideration of an application.

C. The commission shall hold a public hearing on an application whenever a protest is filed concerning the application during the notice period or the transportation division of the commission requests a hearing during the notice period.

D. The commission may approve or deny an application in whole or in part, or allow or require particular terms of service as it may find reasonable and appropriate. If no objection, protest or request for hearing by the transportation division of the commission is filed during the notice period, the commission may grant the application by ministerial action, if the application complies with the provisions of the Motor Carrier Act and the rules of the commission regarding fitness, ability, financial responsibility and safety.

**History:** Laws 2003, ch. 359, § 5; 2013, ch. 73, § 4; 2013, ch. 77, § 4.

## ANNOTATIONS

**The 2013 amendment**, effective July 1, 2013, authorized the commission to hold hearings on its own initiative; granted the commission ministerial authority to grant applications without a hearing; in the title of the section, added "ministerial grants of authority"; in Subsection A, in the first sentence, after "application", deleted "if" and added "for any matter for which"; and in the second sentence, after "verified", deleted "under oath"; in Subsection B, in the first sentence, after "commission shall", deleted "streamline and"; and in the second sentence, after "public hearing" added "on its own initiative or", after "specific to", deleted "a protest or request" and added "an objection", after "objection that has been", deleted "timely", and after "filed", added "within the notice period"; in Subsection C, after "application whenever", deleted "an interested person protests" and added "a protest is filed concerning"; and in Subsection D, in the first sentence, after "in whole or in part", added the remainder of the sentence and added the second sentence.

Laws 2013, ch. 73, § 4 and Laws 2013, ch. 77, § 4, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 4. See 12-1-8 NMSA 1978.

**A public hearing is required upon the filing of a protest.** — Where a cab company filed an application for a certificate of authority to provide taxi services in an area in which appellants were doing business; appellants filed a protest and motion to

intervene; a public regulation commission regulation required that before intervention could be allowed, appellants were required to provide the commission with facts and details that supported their protest; a hearing officer appointed by the commission denied appellants' motion to intervene without a hearing and allowed commission staff to process the application as an uncontested matter; and the commission granted the applicant a certificate of authority without ever holding a public hearing, the commission's regulation imposed a greater burden on interested parties who seek to protest at a public hearing than the burden established by the Motor Carrier Act and the commission acted outside its grant of statutory authority by treating the matter as an uncontested matter because a public hearing must be held upon the filing of a protest, it does not turn on the grant of a party's status as an intervenor. *Albuquerque Cab Co. v. N.M. Pub. Regulation Comm'n*, 2014-NMSC-004.

### **65-2A-6. Notice.**

A. The commission shall electronically publish notice regarding an application before the commission for a certificate or permit or for a change in a certificate or permit, regarding proposed rulemaking, or regarding other orders of the commission of general application, by posting a copy of the notice or document on the commission's internet web site and sending electronic mail to all motor carriers, public officials or agencies, or other persons or entities who have previously supplied electronic mail addresses to the commission for the purpose of publication, advising such persons of the filing and posting. If the commission in its discretion should also require publication by newspaper, the requirement is met if notice is published once in a newspaper of general circulation in the state. The commission shall not act on an application for a certificate or permit or for an amendment, lease or transfer of a certificate or permit less than twenty days after the date notice was published.

B. Whenever the Motor Carrier Act requires publication of notice regarding any other matter, the requirement is met if notice is published once in a newspaper of general circulation in the state. The commission shall not act on a matter less than ten days after the date notice was published.

**History:** Laws 2003, ch. 359, § 6; 2013, ch. 73, § 5; 2013, ch. 77, § 5.

### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, authorized the commission to electronically publish notice of pending actions of the commission; in Subsection A, in the first sentence, at the beginning of the sentence, deleted "If the Motor Carrier Act requires publication of" and added "The commission shall electronically publish" and after "before the commission", added the remainder of the sentence, at the beginning of the second sentence, added "If the commission in its discretion should also require publication by newspaper", and in the third sentence, after "application", added "for a certificate or permit or for an amendment, lease or transfer of a certificate or permit";

and in Subsection B, in the first sentence, after "notice regarding", added "any other" and after the phrase "any other matter", deleted "other than an application".

Laws 2013, ch. 73, § 5 and Laws 2013, ch. 77, § 5, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 5. See 12-1-8 NMSA 1978.

## **65-2A-7. Operating authorities in general.**

A. Other than an entity receiving funding to supplement transportation services through Title III B of the federal Older Americans Act of 1965, no person shall offer or provide a transportation service for hire within the state without first obtaining an appropriate operating authority from the commission. Every motor carrier providing a transportation service shall meet and comply with the requirements of the Motor Carrier Act and the lawfully adopted rules and orders of the commission.

B. A certificate, permit or warrant, or a change in a certificate or permit, shall be effective from the date issued by the commission and shall remain in effect until canceled, revoked, suspended or amended.

C. A motor carrier shall carry a copy of its operating authority in each motor vehicle it operates in New Mexico.

D. A certificated service carrier shall render reasonably continuous and adequate service as the commission may by rule prescribe.

**History:** Laws 2003, ch. 359, § 7; 2013, ch. 73, § 6; 2013, ch. 77, § 6; 2016, ch. 58, § 2.

### **ANNOTATIONS**

**The 2016 amendment**, effective March 7, 2016, exempted entities receiving funding to supplement transportation services through the federal Older Americans Act of 1965 from obtaining operating authority from the public regulation commission; in Subsection A, added "Other than an entity receiving funding to supplement transportation services through Title III B of the federal Older Americans Act of 1965".

**The 2013 amendment**, effective July 1, 2013, required persons who offer transportation services for hire to obtain an appropriate operating authority from the commission; added Subsection A; in Subsection B, after "warrant", added "or a change in a certificate or permit", after "revoked", deleted the former second and third sentences, which provided for the period of time a single state registration and a single trip ticket are effective and added "suspended or amended"; in Subsection D, at the beginning of the sentence, after "A", deleted "motor" and added "certificated service"; and deleted former Subsection D, which required motor carriers to comply with the commission's rules.

## **65-2A-7.1. Findings.**

The legislature finds that:

A. the federal Older Americans Act of 1965 was enacted in part to allow older Americans to continue "meaningful activity within the widest range of civic, cultural, education and training and recreational opportunities";

B. federal funding through Title III B of the Older Americans Act of 1965 supplements, but does not supplant, funding for transportation services for older Americans; and

C. the Older Americans Act of 1965 specifically authorizes the solicitation of voluntary contributions for services supplemented by Title III B funding as long as the solicitation is not coercive.

**History:** Laws 2016, ch. 58, § 1.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2016, ch. 58, § 3, contained an emergency clause and was approved March 7, 2016.

## **65-2A-8. Certificates for passenger service.**

A. The commission may issue a certificate for a passenger service as follows:

- (1) a certificate for an ambulance service;
- (2) a certificate for a shuttle service shall be endorsed for nature of service as a scheduled shuttle service or as a general shuttle service;
- (3) a certificate for a specialized passenger service shall be endorsed for nature of service as provided by commission rule; and
- (4) a certificate for a taxicab service shall be endorsed for nature of service as a municipal taxicab service or as a general taxicab service.

B. Except as provided in this section and in Section 65-2A-13 NMSA 1978, the commission shall issue a certificate allowing a person to provide passenger service after notice and public hearing requirements are met, if:

- (1) the applicant is fit and able to provide the transportation service to be authorized by the certificate;

(2) the applicant is in compliance with the safety and financial responsibility requirements of the Motor Carrier Act, the rules of the commission and other applicable federal and state laws and rules;

(3) for an application for ambulance service, the transportation service to be provided under the certificate is or will serve a useful public purpose that is responsive to a public demand or need; and

(4) the applicant has filed a tariff as provided in Section 65-2A-20 NMSA 1978.

C. Before granting a certificate for passenger service, the commission shall consider any objections or protests that were filed within the notice period.

D. Before granting a certificate for ambulance service, the commission shall also consider the effect that issuance of the certificate would have on existing ambulance service in the territory.

E. A certificate issued by the commission for provision of passenger service shall contain one or more endorsements, each of which shall specify the:

(1) nature of service to be rendered;

(2) territory authorized to be served; and

(3) reasonable terms of service as the commission may allow or require for the particular certificate.

F. Territorial endorsements to a certificate for passenger service shall:

(1) be limited to territory sought in the application that will be served in a reasonably continuous and adequate manner beginning within thirty days of the issuance of the certificate or such other definite period or date as the commission may provide for a particular application and shall generally be authorized on the basis of county or incorporated municipal boundaries, subject to other specification reasonably allowed or required by the commission;

(2) except for shuttle services, authorize transportation between points and places within the specified territory, and from points and places within the specified territory to all points and places in the state and return, unless otherwise expressly allowed or specified in the terms of service in the endorsement to the certificate; and

(3) for shuttle services, provide for transportation between two or more specified end or intermediate terminal points or areas, and authorize pick-up or drop-off of passengers throughout a terminal area, but shall not authorize transportation

between points and places within a single terminal area or the provision of transportation services in any other areas of the state.

**History:** Laws 2003, ch. 359, § 8; 2013, ch. 73, § 7; 2013, ch. 77, § 7.

## ANNOTATIONS

**The 2013 amendment**, effective July 1, 2013, clarified and simplified procedures for issuance of certificates for passenger service; in the title, deleted "intrastate common motor carrier of persons" and added "passenger service"; in Subsection A, deleted the former first sentence which required a carrier of persons to obtain a certificate for intrastate transportation and added the first sentence, and added Paragraphs (1) through (4); in Subsection B, after "this section", added "and in Section 65-2A-13 NMSA 1978", and after "person to provide", deleted "compensated intrastate transportation as a common motor carrier of persons" and added "passenger service"; in Paragraph (1) of Subsection B, deleted "person" and added "applicant", and after "fit", deleted "willing"; in Paragraph (2) of Subsection B, deleted "person" and added "applicant"; in Paragraph (3) of Subsection B, at the beginning of the sentence, added "for an application for ambulance service"; added Paragraph (4) of Subsection B; in Subsection C, after "certificate", deleted "to an intrastate common motor carrier of persons" and added "for passenger service" and after "consider", added the remainder of the sentence; in Subsection D, at the beginning of the sentence, added "Before granting a certificate for ambulance service, the commission shall also consider" and after "existing", deleted "motor carriers; provided that the commission shall not find diversion of revenue or traffic from an existing motor carrier to be, in and of itself, sufficient grounds for denying the certificate" and added "ambulance service in the territory"; in Subsection E, after "commission", deleted "to an intrastate common motor carrier of persons" and added "for provision of passenger service", after "passenger service shall", added "contain one or more endorsements, each of which shall", in Paragraph (1), at the beginning of the sentence, added "nature of", in Paragraph (2), after "territory", added "authorized", in Paragraph (3), after "terms", deleted "conditions and limitations" and added "of service", after "terms of service as the", deleted "public convenience and necessity" and added "commission", after "commission may", added "allow or", after "require", deleted "and, if necessary", and deleted former Subparagraphs (a) and (b) which authorized the commission to specify in a certificate the terminals between service and the routes and schedules of service, and added "for the particular certificate"; and added Subsection F.

Laws 2013, ch. 73, § 7 and Laws 2013, ch. 77, § 6, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 7. See 12-1-8 NMSA 1978.

**Sufficient evidence to support finding that applicant is fit and able to provide transportation services.** — Where new taxicab company applied to the New Mexico public regulation commission (PRC) for a certificate to provide general taxicab services within Bernalillo county, and where the applicant taxicab company had undertaken a course of action to get each regulatory requirement met, had utilized legal services to

compensate for the language barrier, had met all requirements for certification and was compliant with state law and compliant with the statutory fitness requirements, there was substantial evidence to support the PRC's determination of the applicant taxicab company's fitness to operate. *Albuquerque Cab Co. v. N.M. Pub. Regulation Comm'n*, 2017-NMSC-028.

**Failure to show financial fitness to provide service.** — Where the applicant for a permanent certificate of authority to provide ambulance services significantly overstated its assets, submitted a balance sheet that overstated the applicant's cash on hand by almost \$30,000, neglected to mention two lawsuits for non-payment of significant amounts against it, failed to list its hundreds of thousands of dollars in tax delinquencies, and failed to pay federal and state taxes in the past and accrued significant liabilities, the public regulation commission's holding that the applicant satisfied the financial requirement for issuance of a certificate and that the applicant was fit, willing and able to provide services was arbitrary and capricious and an abuse of discretion. *Bernalillo Co. Health Care Corp. v. N.M. Pub. Regulation Comm'n*, 2014-NMSC-008.

**Failure to comply with laws and regulations.** — Where the applicant for a permanent certificate of authority to provide ambulance services failed to pay its gross receipts tax; violated public regulation commission regulations by providing false statements regarding its balance sheets, failing to have a consultant pharmacist, billing at rates other than its tariff rate for scheduled transports, and operating without appropriate authority from the commission; and made false representations on its website that offered special services the applicant was not qualified to provide, the commission's ruling that the applicant had complied with state and federal regulations was arbitrary and capricious. *Bernalillo Co. Health Care Corp. v. N.M. Pub. Regulation Comm'n*, 2014-NMSC-008.

**A public hearing is required upon the filing of a protest.** — Where a cab company filed an application for a certificate of authority to provide taxi services in an area in which appellants were doing business; appellants filed a protest and motion to intervene; a public regulation commission regulation required that before intervention could be allowed, appellants were required to provide the commission with facts and details that supported their protest; a hearing officer appointed by the commission denied appellants' motion to intervene without a hearing and allowed commission staff to process the application as an uncontested matter; and the commission granted the applicant a certificate of authority without ever holding a public hearing, the commission's regulation imposed a greater burden on interested parties who seek to protest at a public hearing than the burden established by the Motor Carrier Act and the commission acted outside its grant of statutory authority by treating the matter as an uncontested matter because a public hearing must be held upon the filing of a protest, it does not turn on the grant of a party's status as an intervenor. *Albuquerque Cab Co. v. N.M. Pub. Regulation Comm'n*, 2014-NMSC-004.

## **65-2A-9. Certificates for household goods service.**

A. Except as provided in this section and in Section 65-2A-13 NMSA 1978, the commission shall issue a certificate allowing a person to provide household goods service after notice and public hearing requirements are met, if the applicant:

(1) is fit and able to provide the transportation to be authorized by the certificate;

(2) has a place of business and stations equipment within the state and is in compliance with the safety and financial responsibility requirements of the Motor Carrier Act, the rules of the commission and other applicable federal and state laws and rules; and

(3) has filed a tariff as provided in Section 65-2A-20 NMSA 1978.

B. Before granting a certificate for household goods service to an applicant, the commission shall consider any objections that were filed within the notice period.

C. A certificate issued by the commission for provision of household goods service shall contain one or more endorsements, each of which shall specify:

(1) the territory to be served, which shall be limited to territory sought in the application that will be served in a reasonably continuous and adequate manner beginning within thirty days of the issuance of the certificate or such other definite period or date as the commission may provide for a particular application, and shall generally be specified on the basis of county boundaries, subject to other or further specification by the commission by rule or in regard to a particular application; and

(2) any reasonable terms of service that the commission may allow or require for the particular certificate.

**History:** Laws 2003, ch. 359, § 9; 2013, ch. 73, § 8; 2013, ch. 77, § 8.

## ANNOTATIONS

**The 2013 amendment**, effective July 1, 2013, clarified and simplified procedures for issuance of certificates for household goods service; in the title, deleted "intrastate common motor carrier of" and after "goods", added "service"; deleted former Subsection A, which required a carrier of household goods to obtain a certificate; in Subsection A, in the introductory sentence, after "in this section", added "and in Section 65-2A-13 NMSA 1978", after "provide", deleted "compensated intrastate transportation as a common motor carrier of", after "household goods", added "service", and after "requirements are met, if", added "the applicant", in Paragraph (1), after "fit", deleted "willing", in Paragraph (2), at the beginning of the sentence, added "has a place of business and stations equipment within the state and", and deleted former Paragraph (3), which required the applicant's transportation service to provide a useful public purpose and provided criteria for determining a useful public purpose and added "has

filed a tariff as provided in Section 65-2A-20 NMSA 1978"; in Subsection B, after "certificate", added "for household goods service", after "household goods service to an", deleted "intrastate common motor carrier of household goods" and added "applicant", and after "commission shall consider" deleted "the effect that issuance of the certificate would have on existing carriers; provided that the commission shall not find diversion of revenue or traffic from an existing carrier to be, in and of itself, sufficient grounds for denying the certificate" and added "any objections that were filed within the notice period"; and in Subsection C, in the introductory sentence, after "commission", deleted "to an intrastate common motor carrier" and added "for provision", and after "household goods", added "service shall contain one or more endorsements, each of which", in Paragraph (1), after "served", added the remainder of the sentence, and added Paragraph (2).

Laws 2013, ch. 73, § 8 and Laws 2013, ch. 77, § 8, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 8. See 12-1-8 NMSA 1978.

## **65-2A-10. Permits**

A. Except as provided in this section and in Section 65-2A-13 NMSA 1978, the commission shall issue a permit allowing a person to provide permitted service for transportation of passengers or household goods pursuant to contract after notice and public hearing requirements are met, if the applicant is:

- (1) fit to provide the transportation to be authorized by the permit; and
- (2) in compliance with the safety and financial responsibility requirements of the Motor Carrier Act, the rules of the commission and other applicable federal and state laws and rules.

B. Before granting a permit to an applicant, the commission shall consider any objections or protests that were filed within the notice period.

C. The commission shall not grant a permit for ambulance or household goods service, or for provision of passenger service pursuant to a public-charge contract, or for a lease or transfer of such a permit, unless the applicant holds a certificate for provision of the appropriate certificated service in the territory to be served under contract. A carrier's operations pursuant to permits for contracts for ambulance service or household goods service, or for public-charge contracts for passenger service, shall be held to the same standards as are the carrier's certificated service operations. If the transportation to be provided under the contract is passenger service other than ambulance service, the contractual rates and terms of service affecting passengers shall be provided in the carrier's tariff.

D. The commission shall not issue a permit for passenger service if the contract or arrangement between the carrier and the other contracting party effectively excludes or

otherwise impairs a certificated carrier's access to public places or the public's access to certificated carriers for the provision of transportation services by a certificated passenger service carrier then serving the same territory, and no permit issued may be used to effect such exclusion or impairment of certificated passenger service.

E. A permit issued by the commission shall specify the business of the carrier, the scope of the authority granted to it and the terms, conditions and limitations of the authority.

F. An applicant for a permit shall file with the commission each contract under which it intends to operate.

**History:** Laws 2003, ch. 359, § 10; 2005, ch. 229, § 1; 2013, ch. 73, § 9; 2013, ch. 77, § 9.

## ANNOTATIONS

**The 2013 amendment**, effective July 1, 2013, clarified and simplified procedures for issuing permits; in the title, after "Permits", deleted "for intrastate contract motor carrier permits of persons or household goods", deleted former Subsection A, which required carriers of persons and household goods to obtain a permit; in Subsection A, in the introductory sentence, after "this section", added "and in Section 65-2A-13 NMSA 1978", after "a person to provide", deleted "compensated intrastate" and added "permitted service for", after "transportation", deleted "as a contract motor carrier of persons" and added "of passengers", after "household goods", added "pursuant to contract", and after "requirements are met, if", added "the applicant is", in Paragraph (1), after "fit", deleted "willing and able", and deleted former Paragraph (3), which required that the transportation be in the public interest; in Subsection B, in the introductory sentence, after "permit to an", deleted "intrastate contract motor carrier of persons" and added "applicant"; and deleted former Paragraphs (1) through (5), which provided criteria to be considered in issuing permits and added "any objections or protests that were filed within the notice period"; deleted former Subsection D, which prohibited the issuance of a permit if it would impair the service of a certificated carrier in the same territory; deleted former Subsection E, which provided criteria to be considered in issuing permits to carriers of household goods; added Subsections C through D; in Subsection E, after "the business of the", deleted "intrastate contract motor"; in Subsection F, at the beginning of the sentence, deleted "intrastate contract motor carrier of persons or household goods" and added "applicant for a permit", and deleted the former last sentence, which required the commission to approve a contract and authorize operation if they were in the public interest; deleted former Subsection H, which prohibited the commission from limiting the number of contracts of carriers of persons and household goods; and deleted former Subsection I, which permitted a carrier owning a certificate and a permit for the same service to use the same equipment for both common and contract services.

Laws 2013, ch. 73, § 9 and Laws 2013, ch. 77, § 9, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 9. See 12-1-8 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, deleted from Subsection C(3) the requirement that the commission consider the operations of motor carriers protesting the application for a permit and deleted from Subsection E(3) the requirement that the commission consider the operations of carriers protesting the application for a permit.

**Intervention under prior law.** — Prior to the 2005 amendment to Subsection C(3) of 65-2A-10 NMSA 1978, motor carriers of persons operating over the routes or in the territory involved in an application for a permit could protest the application on whether the permit would endanger or impair their operations contrary to the public interest. *T-N-T Taxi, Ltd. Co. v. N.M. Pub. Regulation Comm'n*, 2006-NMSC-016, 139 N.M. 550, 135 P.3d 814.

### **65-2A-11. Temporary authority.**

A. The commission may without notice grant temporary authority to an applicant for a certificate or permit or for amendment, lease or transfer of all or part of a certificate or permit for a period not to exceed the duration of the application process, if it finds that:

(1) the notice period for such application has not yet expired, the application is one directly involving public safety, a governmental program or a specific public event, there is an urgent and immediate public need for such service and the public may be harmed by waiting for the notice period to expire;

(2) the applicant for temporary authority has a complete application for a certificate or permit or for amendment, lease or transfer of all or part of a certificate or permit, pending before the commission;

(3) the applicant is fit to provide the transportation service requested, is able to provide any certificated service requested and is in compliance with the safety and financial responsibility requirements of the Motor Carrier Act and the rules of the commission; and

(4) satisfactory proof of urgent and immediate need has been made by verified proof as the commission shall by rule prescribe.

B. An applicant for temporary authority as a tariffed service carrier shall file tariffs covering the transportation services for which temporary authority is being sought.

C. If a hearing is held before a hearing examiner for any reason on an application for a certificate or permit or for amendment, lease or transfer of all or part of a certificate or permit or for a tariff rate increase, the applicant may move in such proceeding for a grant of temporary authority or rate approval for a period not to exceed the duration of

the application process, and any protesting carrier or the transportation division of the commission may move in such proceeding for reconsideration or modification of any grant of temporary authority previously granted by the commission or the hearing examiner. The hearing examiner in the proceeding shall hold an expedited preliminary public hearing on the grant of temporary authority on the issues in the proceeding and the testimony evidence presented in the hearing on such procedural basis as the commission shall by rule prescribe.

D. Motor carriers operating under temporary authority shall comply with the requirements of the Motor Carrier Act and the rules of the commission.

E. A grant of temporary authority shall not create a presumption that permanent authority will be granted.

**History:** Laws 2003, ch. 359, § 11; 2013, ch. 73, § 10; 2013, ch. 77, § 10.

### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, clarified and simplified procedures for granting certificates and permits for temporary service; in the title, after "authority", deleted "for intrastate motor carriers of persons or household goods"; in Subsection A, in the introductory sentence, after "grant temporary", deleted "operating", after "temporary authority to an", deleted "intrastate motor carrier of persons or household goods" and added "applicant for a certificate or permit or for amendment, lease or transfer of all or part of a certificate or permit", and after "not to exceed", deleted "ninety days" and added "the duration of the application process", in Paragraph (1), at the beginning of the sentence, added "the notice period for such application has not yet expired, the application is one directly involving public safety, a governmental program or a specific public event"; and after "such service and" added the remainder of the sentence; added Paragraph (3), and in Paragraph (4), after "need", deleted "shall be" and added "has been" and after "made by", deleted "affidavit or other"; in Subsection B, after "temporary authority as a" deleted "common motor" and added "tariffed service"; deleted former Subsection D, which required the applicant for temporary service to notify a motor carrier authorized to perform the service temporarily authorized and permitted the motor carrier to request a hearing on the grant of temporary authority; and added Subsection C.

Laws 2013, ch. 73, § 10 and Laws 2013, ch. 77, § 10, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 10. See 12-1-8 NMSA 1978.

### **65-2A-12. Warrants.**

A. The commission shall issue a warrant that allows a person to provide warranted service as a charter service, towing service or motor carrier of property if the

commission finds that the applicant is in compliance with the financial responsibility and safety requirements of the Motor Carrier Act and the rules of the commission.

B. A towing service carrier performing nonconsensual tows is subject to tariff rates and terms of service. A towing service carrier performing nonconsensual tows shall not use the same motor vehicles, equipment and facilities used by another warranted towing service carrier performing nonconsensual tows.

C. A warrant shall not be transferred or leased to another person.

D. The commission may without notice or a public hearing cancel a warrant if the owner fails to operate under the warrant for twelve consecutive months or fails to provide proof of financial responsibility as required by the commission for four consecutive months.

**History:** Laws 2003, ch. 359, § 12; 2013, ch. 73, § 11; 2013, ch. 77, § 11; 2017, ch. 109, § 2.

## ANNOTATIONS

**The 2017 amendment**, effective July 1, 2017, removed "commuter services" from the list of entities that are required to obtain a warrant from the public regulation commission authorizing the entity to offer and provide a warranted service as a motor carrier; in Subsection A, after "service as a", deleted "commuter service".

**The 2013 amendment**, effective July 1, 2013, clarified and simplified procedures for granting warrants; deleted former Subsection A, which required a commuter service, charter service, towing service or carrier of property to obtain a warrant; in Subsection A, after "provide", deleted "compensated intrastate transportation" and added "warranted service"; deleted former Subsection C, which provided for protests to applications for warrants; added Subsection B; and in Subsection D, after "twelve consecutive months", added the remainder of the sentence.

### **65-2A-13. Protests, objections and hearings.**

A. Any interested person or any member of the public may provide information to the commission or express an objection to any application for a certificate or permit, or for amendment, lease or transfer of a certificate or permit, during the notice period for the application by filing a written objection in regard to the application. The commission shall consider any objections filed in regard to determining whether to hold a hearing on the application. The commission is not required to hold a hearing pursuant to any objection but may, in its discretion or on its own motion for any reason, hold a hearing on any application for a certificate or permit or for an amendment, lease or transfer of a certificate or permit.

B. The commission shall hold a hearing on an application whenever a protest is filed within the notice period or the transportation division of the commission files a request for a hearing relative to an application within the notice period. The commission shall allow a protesting carrier to proceed as an intervenor in the application proceeding.

C. In any hearing held on an application:

(1) the applicant has the burden of proving that the applicant meets the requirements of the Motor Carrier Act and the rules of the commission for the application at issue, the burden of demonstrating with reasonable specificity the nature and scope of its proposed transportation service, the burden of proving any particular factual matters that the commission or the transportation division of the commission may identify and require, the burden of proving any additional allegations and matters of public interest that it may raise and, if the application pertains to ambulance service, the burden of proving that the ambulance service that currently exists in the territory sought in the application is inadequate and that the proposed service is directly responsive to a public need and demand for the service proposed;

(2) a protesting carrier has the burden of proving all matters of fact pertaining to its full-service operation within its certificated full-service territory, the burden of proving the potential impairment or adverse impact on its existing full-service operation by the transportation service proposed by the applicant and the burden of proving all other allegations and matters of public interest that it may raise. The protesting carrier's proof should include, without limitation, a demonstration with reasonable specificity of the nature of the existing full service being provided, the volume of passengers transported, economic analysis related to expenses and revenues of the full-service operation and the anticipated economic, business or functional effect of the proposed service on the existing provision of, or rates for, full-service transportation within the full-service territory;

(3) the commission may allow other interested persons to intervene, either generally or on the basis of specific facts or issues. A permissive intervenor has the burden of proof for its position on all factual matters and legal issues that it alleges and on which it is permitted to intervene; and

(4) all parties to a hearing may base their demonstration and proof on business data, experienced persons and mathematical calculations. Expert testimony shall not be required of any party but may be provided at the option of a party.

D. The commission shall not grant an application:

(1) for a certificate or permit for ambulance service, or for amendment, lease or transfer of such a certificate or permit, if it finds after hearing that the existing ambulance service is provided on a reasonably continuous and adequate basis in the territory in which the new service is sought or that the holder of the certificate or lessee providing the existing ambulance service in such territory is willing and able to provide,

and does subsequently provide, reasonably continuous and adequate service within such territory, as specified by commission order;

(2) for a new certificate for general taxicab service within the full-service territory of a protesting municipal taxicab service carrier; or

(3) for a certificate for any passenger service other than those identified in Paragraphs (1) and (2) of this subsection, or for a permit for passenger service other than for an ambulance service pursuant to a public-charge contract, or for amendment, lease or transfer of such a certificate or permit, within a protesting full-service carrier's full-service territory, if it finds after hearing that the grant of the application presents a reasonable potential to impair, diminish or otherwise adversely affect the existing provision of full-service passenger service to the public in the full-service territory or if the application is otherwise contrary to the public interest in the full-service territory. In considering the potential effect on provision of transportation services to the public in regard to such an application, the commission shall consider all evidence presented pertaining to such potential effect, including evidence of the effect that diversion of revenue or traffic may have on the provision of full-service passenger service to the community. Diversion of revenue or traffic from an existing motor carrier shall not, however, be sufficient grounds for denying the application without a showing that the diversion presents a reasonable potential to affect the provision of full-service passenger service to the community.

**History:** Laws 2003, ch. 359, § 13; 2013, ch. 73, § 12; 2013, ch. 77, § 12.

### ANNOTATIONS

**The 2013 amendment**, effective July 1, 2013, clarified and simplified procedures for protests; in the title, deleted "of application for a certificate or permit or for a change in a certificate of permit" and added "objections and hearings"; deleted former Subsection A, which prohibited a contract carrier from protesting a certificate; deleted former Subsection B, which prohibited a common or contract carrier from protesting a permit; deleted former Subsection C, which prohibited a common carrier from protesting a certificate unless the carrier had the authority and was willing and able to provide the service, the carrier had provided the service during the past twelve months, and the commission granted leave to intervene; and added Subsections A through D.

Laws 2013, ch. 73, § 12 and Laws 2013, ch. 77, § 12, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 12. See 12-1-8 NMSA 1978.

**Protesting municipal taxicab company's burden of proof.** — Section 65-2A-13(D)(2) NMSA 1978 does not automatically protect municipal taxicab companies from new entrants, because 65-2A-13(C)(2) NMSA 1978 requires protesting municipal taxicab companies to first demonstrate that they are providing a full-service taxicab

operation within their certified territories. *Albuquerque Cab Co. v. N.M. Pub. Regulation Comm'n*, 2017-NMSC-028.

**Protesting municipal taxicab companies failed to meet burden of proving their full-service operations.** — Where new taxicab company applied to the New Mexico public regulation commission (PRC) for a certificate to provide general taxicab services within Bernalillo county, the PRC did not err in approving the taxicab company's application, because the protesting municipal taxicab companies were not protected from new entrants by 65-2A-13(D)(2) NMSA 1978, because both protesting companies were on notice that to receive the protection provided by 65-2A-13(D)(2) NMSA 1978, they must prove their full-service operation and each failed to do so below, and the protesting companies failed to present evidence that allowing the applicant taxicab company to operate would cause actual impairment of either of their businesses or the passenger service within their territories as required by 65-2A-13(D)(3) NMSA 1978. *Albuquerque Cab Co. v. N.M. Pub. Regulation Comm'n*, 2017-NMSC-028.

### **65-2A-14. Changes in certificates or permits.**

A. A change in a certificate or permit shall not be valid or effective without the approval of the commission.

B. The commission may, for good cause and after notice and public hearing requirements are met, authorize the following changes in all or part of a certificate or permit at the request of the holder if the commission finds:

(1) that the applicant for amendment, lease or transfer of a certificate for passenger service meets the requirements pursuant to Section 65-2A-8 NMSA 1978 for a certificate for such passenger service;

(2) that the applicant for amendment, lease or a transfer of a certificate for household goods service meets the requirements pursuant to Section 65-2A-9 NMSA 1978 for a certificate for such household goods service;

(3) that the applicant for amendment, lease or a transfer of a permit meets the requirements pursuant to Section 65-2A-10 NMSA 1978 for such a permit; and

(4) in addition, that:

(a) for transfer or lease of all or part of a certificate or permit, the transferor-applicant has rendered reasonably continuous and adequate service in the territory to be transferred or leased prior to the application for lease or transfer; and

(b) for transfer of all or a part of a certificate or permit, accrued taxes, rents, wages of employees and other indebtedness pertaining to all or part of a certificate or permit proposed to be transferred have been paid by the transferor-applicant or assumed by the transferee-applicant.

C. The commission may, without notice or a public hearing, authorize the following changes in all or part of a certificate or permit at the request of the holder:

- (1) voluntary cancellation of the certificate or permit;
- (2) voluntary suspension of the certificate or permit for a period not to exceed twelve consecutive months;
- (3) change in the form of legal entity or name of the holder of the certificate or permit;
- (4) reinstatement of the certificate or permit following voluntary suspension of a period not exceeding twelve consecutive months;
- (5) change in control of a holder of the certificate or permit through issuance or transfer of stock or other legal interest in a holder that is a corporation, partnership, trust or other legal business entity; and
- (6) matters pertaining to transfers by operation of law.

**History:** Laws 2003, ch. 359, § 14; 2013, ch. 73, § 13; 2013, ch. 77, § 13.

### ANNOTATIONS

**The 2013 amendment**, effective July 1, 2013, clarified and simplified procedures for making changes in certificates and permits; in Subsection A, after "permit", deleted "or tariff"; in Subsection B, in the introductory sentence, after "request of the", deleted "person owning the certificate or permit" and added "holder", deleted former Paragraph (1), which required the commission to find that the rates were reasonable, non-predatory and nondiscriminatory; in Paragraph (1), after "applicant", added "for amendment, lease or transfer of a certificate for passenger service", after "Section", deleted "8 of the Motor Carrier Act" and added "65-2A-8 NMSA 1978", after "65-2A-8 NMSA 1978 for", deleted "an amendment of", after "for a certificate", deleted "as a common motor carrier of persons" and added "for such passenger service", deleted former Paragraph (3), which required the applicant to meet the requirement of Section 10 of the Motor Carrier Act; in Paragraph (2), after "the applicant", added "for amendment, lease or a transfer of a certificate for household goods service", after "Section", deleted "9 of the Motor Carrier Act" and added "65-2A-9 NMSA 1978" and after "65-2A-9 NMSA 1978 for", deleted "an amendment of", after "a certificate", deleted "as a common motor carrier of" and added "for such", and after "household goods", added "service", in Paragraph (3), after "applicant", added "for amendment, lease or a transfer of a permit", after "Section", deleted "10 of the Motor Carrier Act" and added "65-2A-10 NMSA 1978" after "65-2A-10 NMSA 1978 for" deleted "an amendment of" and added "such", and after "such a permit", deleted "as a contract motor carrier of household goods", deleted former subparagraph (a) of former Paragraph (6), which required that the transferee be fit, willing and able to provide the service and to comply

with the act, in Paragraph (4), added the introductory sentence, in Subparagraph (a) of Paragraph (4), at the beginning of the sentence, added "for transfer or lease of all or part of a certificate or permit" and after "adequate service" added "in the territory to be transferred or leased", in Subparagraph (b) of Paragraph (4), at the beginning of the sentence, added "for transfer of all or a part of a certificate or permit", deleted former Subparagraphs (d) and (e) of Paragraph (4), which required that the transfer not destroy competition, create a monopoly, or be inconsistent with the public interest, and deleted former Paragraph (7), which provided criteria for evaluating changes in leases; and in Subsection C, in the introductory sentence, after "request of the", deleted "person owning the certificate or permit" and added "holder", in Paragraph (1), at the beginning of the sentence, added "voluntary", in Paragraph (2), after "permit", added "for a period not to exceed twelve consecutive months", in Paragraph (3), after "form of", deleted "ownership" and added "legal entity or name" and after "name of the", added "holder of the", in Paragraph (4), after "suspension", added "of a period not exceeding twelve consecutive months", and added Paragraphs (5) and (6).

Laws 2013, ch. 73, § 13 and Laws 2013, ch. 77, § 13, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 13. See 12-1-8 NMSA 1978.

### **65-2A-15. Multiple operating authorities and business trade names allowed.**

A. A person may simultaneously hold certificates for different kinds of certificated services, permits for different contracts and warrants for different kinds of warranted service within the same territory.

B. Any motor carrier that holds more than one certificate for the same kind and nature of certificated service in the same territory or more than one permit for the same contract shall file an application with the commission to consolidate such operating authorities.

C. The commission shall not grant any new operating authority to a motor carrier that duplicates the operating authority of the same kind and for the same territory already held by that motor carrier.

D. Certificated service carriers holding both a certificate and permit or warrant for related services may use the same vehicles and may transport passengers and property, or mixed loads of household goods and property, pursuant to those authorities in the same vehicles and on the same trip.

E. Every certificated, permitted or warranted service carrier shall file with the transportation division of the commission all business trade names under which the carrier operates its service or services authorized and shall provide the transportation division of the commission with proof of financial responsibility for all business trade names in addition to its legal name. The commission shall accept business trade names

as submitted by a carrier. Filing with the transportation division of the commission shall not, by itself, establish or otherwise affect the ownership or right to use a business trade name under the intellectual property laws of the state of New Mexico.

**History:** Laws 2003, ch. 359, § 15; 2013, ch. 73, § 14; 2013, ch. 77, § 14.

## **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, clarified and simplified procedures for making changes in certificates and permits; clarified and simplified provisions relating to multiple operating authorities and business trade names; in the title, after "authorities", added "and business trade names" and after "allowed", deleted "common control and sham competition prohibited"; deleted former Subsection A, which permitted a person to hold a certificate, permit and warrant if the commission found that the multiple authorities were in the public interest; deleted former Subsection B, which prohibited a person from controlling more than one certificate or permit for the same territory; added Subsections A and B; in Subsection C, deleted the paragraph number for former Paragraph (1), deleted former Paragraph (2), which prohibited the commission from granting new operating authority to a carrier that is under common control with another carrier that duplicates operating authority of the same kind or in common territory; deleted former Subsection D, which provided for the modification of operating authority to exclude authority of the same kind or territory when carriers come to be held in common control; deleted former Subsection E, which permitted carriers of household goods that held both a certificate and a permit to transport mixed loads of common and contract carrier household goods; and added Subsections D and E.

Laws 2013, ch. 73, § 14 and Laws 2013, ch. 77, § 14, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 14. See 12-1-8 NMSA 1978.

### **65-2A-16. Interstate motor carriers.**

A. Foreign and domestic motor carriers, motor private carriers, leasing companies, brokers and freight forwarders shall not operate in interstate commerce in this state without first registering with a base state and paying all fees as required under the federal Unified Carrier Registration Act of 2005. The commission is authorized to register applicants and collect all fees without notice or a public hearing.

B. The commission is authorized to follow rules and collect fee assessments set by the federal secretary of transportation from foreign and domestic motor carriers, motor private carriers, leasing companies, brokers and freight forwarders, and do all things necessary to enable New Mexico to participate in the federal unified carrier registration system pursuant to the federal Unified Carrier Registration Act of 2005, including the collection of an equal amount of revenue as was collected by the commission in the last registration year under Section 4005 of the federal Intermodal Surface Transportation Efficiency Act of 1991 and the collection of an equal amount of revenue annually from

all other sources allowed under the federal Unified Carrier Registration Act of 2005 in the last year that such collections were not prohibited by federal law.

C. The commission is the state agency in New Mexico responsible for operation of the federal Unified Carrier Registration Act of 2005, including participating in the development, implementation and administration of the unified carrier registration agreement. The commission is authorized to follow rules governing the unified carrier registration agreement issued under the unified carrier registration plan by its board of directors.

D. Compliance by an interstate motor carrier with the provisions of the federal Unified Carrier Registration Act of 2005 shall not authorize a carrier to provide intrastate transportation services in New Mexico. An interstate motor carrier wishing to provide compensated transportation in intrastate commerce shall apply for the appropriate intrastate operating authority from the commission. A taxicab service or shuttle service traveling to or from a federally licensed airport terminal facility located in the state of New Mexico is engaged in nonexempt intrastate business within the state regardless of a prior exemption if its service provides, with regard to any service run, for both:

(1) initiation of the transportation of one or more passengers within this state; and

(2) delivery to a departure point within this state of one or more passengers whose transportation on that service run was initiated at a point within this state.

**History:** Laws 2003, ch. 359, § 16; 2006, ch. 71, § 1; 2013, ch. 73, § 15; 2013, ch. 77, § 15.

## ANNOTATIONS

**Cross references.** — For the federal Intermodal Surface Transportation Efficiency Act, see Title 23 of the U.S. Code.

For the federal Unified Carrier Regulations Act of 2005, see 49 U.S.C. § 14504a.

**The 2013 amendment**, effective July 1, 2013, clarified the nonexempt status of taxicab service with respect to federally licensed airports; and in Subsection D, in the third sentence, after "taxicab service or", deleted "terminal" and after "shuttle service", added "traveling to or from a federally licensed airport terminal facility located in the state of New Mexico".

Laws 2013, ch. 73, § 15 and Laws 2013, ch. 77, § 15, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 15. See 12-1-8 NMSA 1978.

**The 2006 amendment**, effective January 1, 2007, deleted former Subsection A, which required a state registration receipt from a base state; deleted former Subsection B, which authorized the commission to collect an annual per vehicle fee, enter into agreements with other states and promulgate rules to participate in the single state registration system; deleted former Subsection C, which required an application, proof of financial responsibility and a single state registration receipt; added a new Subsection A to require registration with a base state and payment of fees; added a new Subsection B to authorize the commission to follow rules and collect fee assessments set by the federal secretary of administration; added a new Subsection C to designate the commission as the state agency in New Mexico to operate the Unified Carrier Registration Act; and changed the reference in Subsection D from the Intermodal Surface Transportation Efficiency Act to the Unified Carrier Registration Act.

**Contingent effective date.** — Laws 2006, ch. 71, § 3 made Laws 2006, ch. 71 effective January 1, 2007, unless congress or the United States department of transportation delays the implementation of the federal Unified Carrier Registration Act of 2005. The New Mexico compilation commission was not notified of a delay as required by Laws 2006, ch. 71, § 3.

### **65-2A-17. Repealed.**

**History:** Laws 2003, ch. 359, § 17; repealed by Laws 2013, ch. 73, § 34 and Laws 2013, ch. 77, § 34.

## **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 73, § 34 and Laws 2013, ch. 77, § 34 repealed 65-2A-17 NMSA 1978, as enacted by Laws 2003, ch. 359, § 17, relating to single trip tickets, effective July 1, 2013. For provisions of former section, see the 2013 NMSA 1978 on *NMOneSource.com*.

### **65-2A-18. Financial responsibility.**

A. The commission shall prescribe minimum requirements for financial responsibility for all motor carriers.

B. A motor carrier shall not operate on the highways of this state without having filed with the commission proof of financial responsibility in the form and amount as the commission shall by rule prescribe.

C. In prescribing minimum requirements for financial responsibility for motor carriers, the commission shall adopt the same minimum liability insurance requirements as those required by the federal motor carrier safety administration for interstate motor carriers for all motor vehicles for carriage of property or household goods and for all passenger motor vehicles with such capacities. The commission shall adopt reasonable minimum liability insurance requirements for the use of passenger motor vehicles with

capacities less than those regulated by the federal motor carrier safety administration and in doing so shall consider the number of passengers being transported and the nature of the transportation services provided by the motor carriers using vehicles of those capacities.

D. The commission may authorize a motor carrier to carry its own insurance in lieu of filing a policy of insurance, certificate showing the issuance of a policy of insurance or a surety bond. In approving an application to be self-insured, the commission shall consider:

- (1) the financial stability of the carrier;
- (2) previous loss history of the carrier;
- (3) the safety record of the carrier;
- (4) the size, nature of operations and other operating characteristics of the carrier; and
- (5) other factors necessary for the protection of passengers, shippers and the public.

E. Notwithstanding any requirement of the New Mexico Insurance Code [Chapter 59A, except Articles 30A and 42A NMSA 1978] to the contrary, the commission may accept proof of public liability insurance from an insurer not authorized in New Mexico if:

- (1) the insurance is for an interstate motor carrier transporting commodities exempt from regulation by the federal motor carrier safety administration participating in the unified carrier registration system for those motor carriers; and
- (2) the insurer is authorized to write public liability insurance in at least one other state.

F. All motor carriers shall carry proof of financial responsibility in each motor vehicle they operate in this state.

**History:** Laws 2003, ch. 359, § 18; 2005, ch. 288, § 2; 2013, ch. 73, § 16; 2013, ch. 77, § 16.

## ANNOTATIONS

**The 2013 amendment**, effective July 1, 2013, clarified and simplified the requirements for financial responsibility; in Subsection A, after "motor carriers", deleted language which included incidental carriers and required the commission to adopt rules regarding financial responsibility of incidental carriers; in Subsection B, after "motor carrier", deleted "or incidental carrier" and deleted the former second sentence, which provided

for the maximum amount of financial responsibility for incidental carriers; in Subsection C, in the first sentence, after "the commission shall adopt", added the remainder of the sentence, added the language of the second sentence up to the word "consider", after "consider", deleted "the creation of sufficient incentives to motor carriers to maintain and operate their equipment in a safe manner", and after "transportation services provided by the motor", deleted "; and other factors necessary to ensure that motor carriers maintain an appropriate level of financial responsibility" and added "carriers using vehicles of those capacities"; and in Paragraph (1) of Subsection E, after "participating in the", deleted "single state", and added "unified carrier".

Laws 2013, ch. 73, § 16 and Laws 2013, ch. 77, § 16, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 16. See 12-1-8 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, added Subsection A to provide that the commission shall prescribe minimum requirement for financial responsibility for motor carriers, including incidental carriers and to provide that rules for incidental carriers shall be adopted by July 1, 2006 and implemented beginning on July 1, 2006; and provided in Subsection B that incidental carriers shall not operate on highways without filing proof of financial responsibility and that the maximum amount of financial responsibility for incidental carriers shall not exceed that required for other motor carriers.

## **65-2A-19. Safety requirements for motor vehicles and drivers.**

A. A motor carrier shall provide safe and adequate service, equipment and facilities for the rendition of transportation services in this state.

B. The commission shall prescribe safety requirements for drivers and for motor vehicles weighing twenty-six thousand pounds or less or carrying fifteen or fewer persons, including the driver, used by intrastate motor carriers operating in this state. The commission may prescribe additional requirements related to safety, including driver safety training programs, vehicle preventive maintenance programs, inquiries regarding the safety of the motor vehicles and drivers employed by a motor carrier, and the appropriateness of the motor vehicles and equipment for the transportation services to be provided by the motor carrier.

C. The New Mexico state police division of the department of public safety may immediately order, without notice or a public hearing, a motor vehicle to be taken out of service for violation of a federal or state law or rule relating to safety if the violation would endanger the public health or safety.

D. The commission shall implement rules requiring carriers to obtain criminal background reports for all employed or contract drivers of certificated service carriers and for all other persons employed by certificated household goods service carriers who enter private dwellings in the course of household goods service.

**History:** Laws 2003, ch. 359, § 19; 2013, ch. 73, § 17; 2013, ch. 77, § 17; 2017, ch. 109, § 3.

## **ANNOTATIONS**

**The 2017 amendment**, effective July 1, 2017, removed the provision related to drug testing requirements for any person seeking to be a commuter service driver, and replaced "motor transportation division" with "New Mexico state police division" regarding the authority to order a motor vehicle to be taken out of service for certain safety violations; and deleted former Subsection C, which related to drug testing requirements for commuter service drivers, and redesignated the succeeding subsections accordingly.

**The 2013 amendment**, effective July 1, 2013, required criminal background reports for drivers and persons employed by household goods carriers; in the title, after "drivers", deleted "used in compensated transportation"; and added Subsection E.

### **65-2A-20. Tariffs.**

A. A tariffed service carrier shall not commence operations or perform a new service under its operating authority without having an approved tariff on file with the commission.

B. A tariffed service carrier shall file with the commission proposed tariffs showing the rates for transportation and all related activities and containing a description of the type and nature of the service, territory and all terms of service for transportation and related services. The rates shall be stated in terms of United States currency. Tariffs for individual carriers shall also include the carrier's legal name, all business trade names used by the carrier, contact information, information for service of process, the territory authorized for each transportation service listed in the tariff and any terms of service contained in the operating authorities for that particular carrier. Each tariffed service carrier operating pursuant to a statewide tariff shall file with the commission a tariff statement referencing the statewide tariff being used and include the carrier's legal name, all business trade names used by the carrier, contact information, information for service of process, the territory authorized for that carrier and any terms of service contained in the operating authority for that particular carrier.

C. A tariffed service carrier shall not charge, or permit its agents, employees or contract drivers to charge, a different or additional rate, or to use different or additional practices or terms of service, for transportation or for a service rendered to or for the user of the service other than the rates and terms of service specified in approved tariffs in effect at the time, except:

(1) for ambulance and household goods service carriers, in accordance with rates and terms of service established by federal or state law for federal or state governmental programs or operations; and

(2) for tariffed passenger service carriers other than ambulance service carriers, in accordance with the rates and terms of service established by governmental programs or operations in which they voluntarily participate.

D. A tariffed service carrier shall not pay or refund, directly or indirectly to any person, a portion of the rate specified in its approved tariff, offer to a person privileges or facilities, perform a service or remit anything of value, except:

(1) in accordance with tariffs approved by the commission;

(2) for ambulance and household goods service carriers, in accordance with rates and terms of service established by federal and state law for federal and state governmental entities, programs or operations;

(3) for tariffed passenger service carriers other than ambulance service carriers, in accordance with the rates and terms of service established by governmental programs or operations in which they voluntarily participate; or

(4) in settling or resolving a claim by a customer.

E. The commission shall post on its internet web site electronic copies of all currently approved individual and statewide tariffs, and all tariff statements filed by carriers using statewide tariffs, in a manner to facilitate public access, review and comparison of rates and terms of service. A certificated passenger service carrier other than an ambulance service carrier shall post its tariff rates in each vehicle used in the provision of its transportation service.

F. A tariffed service carrier shall file an application with the commission for any change in the tariff, accompanied by the proposed tariff, at least twenty days prior to implementation of the amended rates and terms of service contained in the tariff. Except as provided in this section, an amended tariff shall be approved and become effective twenty days after filing of the application for a change in the tariff. The commission shall post notice of each application for a change in a tariff along with a copy of the proposed tariff on the commission web site.

G. No changes in terms of service disapproved by the transportation division of the commission as inconsistent with the Motor Carrier Act, rule of the commission, the individual operating authority of the carrier or otherwise in violation of law shall become effective or be part of the approved tariff. The following terms of service contained in a tariff shall not be considered inconsistent with, or predatory or discriminatory in nature under the Motor Carrier Act or commission rule:

(1) a carrier may decline or terminate service under circumstances that reasonably appear to present a physical danger to the driver, to another employee of the carrier or to passengers or, for carriers other than ambulance service carriers, a danger to the condition of the motor vehicle or cargo;

(2) a carrier is not responsible for cancellations or delays due to weather or road conditions when reasonably required for safety or when due to road construction, road closures, law enforcement stops or similar matters beyond the control of the carrier;

(3) a passenger service carrier may require that all firearms carried by any passenger other than an authorized law enforcement officer be unloaded and placed in a locked area of the vehicle during transport, along with all ammunition and any other weapons; or

(4) a passenger service carrier other than an ambulance service carrier may decline or terminate service when the passenger cannot give an adequate description of, or direction to, the destination or cannot transfer into or out of the motor vehicle without requiring physical assistance from the driver.

H. An application for amendment of tariff rates that increases any tariff rate to a level greater than that previously approved by the commission for a full-service carrier or a towing service providing nonconsensual tows shall not become effective until approved by the commission as reasonable under Section 65-2A-21 NMSA 1978. The commission shall hold a hearing appropriate to the type of transportation service provided by the carrier for any such application, if requested by the applicant or by the transportation division of the commission, or if ordered in the discretion of the commission. The commission may provide for reasonable periodic rate increases for full-service carriers or towing services providing nonconsensual tows pursuant to a rate escalator or adjustment clause for any or all rates of a carrier on such basis as the commission finds reasonable.

I. A person may make a complaint in writing to the commission that a rate or term of service contained in a tariff, or a rate otherwise charged or practice otherwise effected, is inconsistent with or in violation of the Motor Carrier Act, commission rule or the operating authority or current tariff of the motor carrier. The commission may suspend the operation of a rate, term of service or practice for a period not to exceed sixty days to investigate its reasonableness. If the commission finds that a rate charged by a tariffed carrier, or a term of service or practice effected by a tariffed carrier, is unauthorized, predatory or discriminatory, the commission shall prescribe the rate or the maximum or minimum rate to be observed or the terms of service to be made effective.

**History:** Laws 2003, ch. 359, § 20; 2013, ch. 73, § 18; 2013, ch. 77, § 18.

## ANNOTATIONS

**The 2013 amendment**, effective July 1, 2013, clarified and simplified procedures for establishing and administering tariffs; in Subsection A, at the beginning of the sentence, deleted "An intrastate common motor" and added "A tariffed service", after "tariffed service carrier", deleted "of persons or household goods or a towing service performing nonconsensual tows", after "operating authority without", deleted "approval of a" and

added "having an approved", and after "approve tariff", deleted "from" and added "on file with"; deleted former Subsection B, which required carriers of persons and household goods and towing services performing nonconsensual tows to file proposed tariffs in terms of United States currency; added Subsection B; in Subsection C, in the introductory sentence, deleted "An intrastate common motor", and added "A tariffed service", after "tariffed service carrier", deleted "of persons or household goods or a towing service performing nonconsensual tows", after "or permit its", deleted "bona fide", after "agents", deleted "or", after "employees", added "or contract drivers", after "charge, a different", added "or additional", after "additional rate", added "or to use different or additional practices or terms of service", after "service other than the rates", added "and terms of service", and after "in effect at the time", deleted "The rates of an otherwise valid tariff are not applicable when a medicaid program directly pays for services" and added "except", and added Paragraphs (1) and (2); in Subsection D, in the introductory sentence, deleted "An intrastate common motor" and added "A tariffed service", after "tariffed service carrier", deleted "of persons or household goods or a towing service performing nonconsensual tows", after "tariffed service carrier shall not", added "pay or", and after "directly or indirectly", added "to any person"; added Paragraphs (2) through (4); added Subsections E through H; and in Subsection I, in the first sentence, after "the commission that", deleted "an individual or joint" and added "a", after "a rate or", deleted "practice is" and added "term of service contained in a tariff, or a rate otherwise charged or practice otherwise effected, is inconsistent with or", and after "Motor Carrier Act", added "commission rule or the operating authority or current tariff of the motor carrier", and in the third sentence, after "commission finds that", deleted "an individual or joint" and added "a", after "a rate charged by", deleted "an intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual tows, or an individual or joint practice of any intrastate common motor carrier of persons or household goods or any towing service performing nonconsensual tows affecting the rate, is unreasonable" and added "a tariffed carrier, or a term of service or practice effected by a tariffed carrier, is unauthorized", and after "to be observed or the", deleted "practice" and added "terms of service".

Laws 2013, ch. 73, § 18 and Laws 2013, ch. 77, § 18, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 18. See 12-1-8 NMSA 1978.

## **65-2A-21. Rates.**

A. Tariffed service carriers shall observe nonpredatory and nondiscriminatory rates and terms of service for the transportation services they provide. A predatory or discriminatory charge for service is unlawful.

B. Reduced rates for minor children accompanied by an adult, for students traveling between their homes and their schools and for persons sixty-five years of age or older shall not be considered discriminatory. A motor carrier shall not furnish free transportation to persons except to bona fide owners, officers, employees or other business personnel of the motor carrier and their dependents.

C. Towing services performing nonconsensual tows may charge rates lower than the rates in their approved tariff to members of not-for-profit motor clubs after those rates have been filed with the commission.

D. A household goods service carrier shall establish and observe nonpredatory and nondiscriminatory rates and practices relating to the manner and method of presenting, marking, packing and delivering household goods for transportation and other matters relating to the transportation of household goods.

E. In proceedings to determine the reasonableness of rates, the commission shall authorize revenue levels that are adequate under honest, economical and efficient management to cover total operating expenses, including the operation of leased motor vehicles, and depreciation, plus a reasonable profit. The rules adopted by the commission to implement this section shall allow a carrier to achieve revenue levels that will provide a flow of net income, plus depreciation, adequate to support prudent capital outlays, ensure the repayment of a reasonable level of debt, permit the raising of needed equity capital and attract and retain capital in amounts adequate to provide a sound motor carrier transportation system in the state.

**History:** Laws 2003, ch. 359, § 21; 2013, ch. 73, § 19; 2013, ch. 77, § 19.

### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, clarified and simplified procedures for establishing rates; in Subsection A, in the first sentence, at the beginning of the sentence, deleted "An intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual towing" and added "Tariffed service carriers", after "shall observe", deleted "reasonable", and after "nondiscriminatory rates and", deleted "practices" and added "terms of service", in the second sentence, at the beginning of the sentence, deleted "An unreasonable" and added "A"; in Subsection B, in the first sentence, after "Reduced rates", added "for minor children accompanied by an adult", and after "discriminatory", deleted "within the meaning of this section", and in the second sentence, after "employees", added "or other business personnel", and deleted the third sentence, which provided that shareholders of carriers were not considered owners; in Subsection C, deleted the former first sentence which prohibited carriers from giving an advantage to a person, point of entry, territory or classification of carrier, after "filed with the commission", deleted "and further provided that this subsection shall not be construed to apply to disadvantages to the transportation service of other motor carriers", in Subsection D, at the beginning of the sentence, after "A", deleted "common motor carrier of", after "household goods", added "service carrier" and after "establish and observe", deleted "just and reasonable" and added "nonpredatory and nondiscriminatory"; and deleted former Subsection E, which required carriers to mutually establish routes and joint rates and practices.

Laws 2013, ch. 73, § 19 and Laws 2013, ch. 77, § 19, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 19. See 12-1-8 NMSA 1978.

### **65-2A-22. Time schedules.**

A. A scheduled shuttle service carrier shall file a proposed time schedule with its tariff and shall file any change in its schedule through an amended tariff.

B. Failure by a scheduled shuttle service carrier to operate the service on each day pursuant to commission rule as scheduled in its tariff shall result in an appropriate penalty as the commission, in its discretion, shall determine.

C. A time schedule shall not be designed to require the operation of a motor vehicle between given terminals or terminal areas at a rate of speed greater than the maximum speed allowed.

**History:** Laws 2003, ch. 359, § 22; 2013, ch. 73, § 20; 2013, ch. 77, § 20.

### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, required scheduled shuttle services to file a time schedule with their tariff; deleted former Subsection A, which required carriers to file a time schedule with their application for a certificate and required commission approval before the schedule was put into effect; added Subsection A; in Subsection B, at the beginning of the sentence, after "Failure by", deleted "an intrastate common motor carrier of persons" and added "a scheduled shuttle service carrier" and after "service on each day", added "pursuant to commission rule", and after "as scheduled", added "in its tariff"; and in Subsection C, after "given terminals or", deleted "between way stations" and added "terminal areas".

Laws 2013, ch. 73, § 20 and Laws 2013, ch. 77, § 20, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 20. See 12-1-8 NMSA 1978.

### **65-2A-23. Motor carrier organizations.**

A. A tariffed service carrier may enter into discussions with another tariffed service carrier to establish a motor carrier organization. The organization shall obtain authorization from the commission before its members enter into any discussions concerning the rates contained in a statewide tariff. The commission may authorize the creation of a motor carrier organization to discuss and promote industry matters, other than the rates of individual carriers, if the organization:

(1) allows any intrastate motor carrier authorized to provide the same type of service to become a member of the organization, and allows a member carrier to discuss matters before the organization and to vote upon any proposal;

(2) does not interfere with a member carrier's right to establish its own tariff and does not change or cancel an independently established tariff;

(3) does not file an objection, protest or complaint with the commission against a tariff item independently published by or for the account of a member carrier;

(4) does not permit its employees or an employee committee to file or act upon a proposal effecting a change in a tariff item published by or for the account of a member carrier; and

(5) proposes matters concerning statewide tariffs for approval by the commission.

B. A member carrier of the organization shall file with the commission information as the commission may by rule prescribe.

C. A motor carrier organization approved by the commission pursuant to this section shall be subject to accounting, record-keeping, reporting and inspection requirements as the commission may by rule prescribe.

D. The commission may, upon complaint or upon its own initiative, investigate and determine whether a motor carrier organization previously authorized by it is not in conformity with the requirements of this section or with the terms and conditions upon which the motor carrier organization was granted authorization. The commission may modify or terminate its authorization of a motor carrier organization found to be noncompliant with the requirements of this rule.

E. The antitrust laws of the state shall not apply to discussions concerning general industry matters, terms of service or any matters concerning a statewide tariff, including the rates contained in a statewide tariff, by member carriers of a motor carrier organization authorized by the commission.

**History:** Laws 2003, ch. 359, § 23; 2013, ch. 73, § 21; 2013, ch. 77, § 21.

## **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, clarified and simplified the procedure for organizing and conducting a carrier organization; in the title, after "organizations", deleted "common tariffs"; in Subsection A, in the introductory paragraph, in the first sentence, at the beginning of the sentence, deleted "An intrastate common motor" and added "A tariffed service" and after "discussions with another", deleted "intrastate common motor" and added "tariffed service", in the second sentence, after "discussions

concerning", added "the rates contained in", and after "contained in a", deleted "common" and added "statewide", deleted the former third sentence, which required notice and a public hearing to establish a carrier organization, and in the current third sentence, after "motor carrier organization", added "to discuss and promote industry matters, other than the rates of individual carriers", in Paragraph (1), after "allows", added "any intrastate motor carrier authorized to provide the same type of service to become a member of the organization, and allows" and after "member carrier to discuss", deleted "a tariff proposal filed with it, provided that only those carriers with authority to participate in the transportation to which the proposal applies may" and added "matters before the organization and to", in Paragraph (3), after "does not file" deleted "a" and added "an objection", deleted former Paragraph (5), which required the organization to disclose the proponent of a rate or tariff and admit the public to a meeting at which the rate or tariff was discussed, deleted former Paragraph (6), which prohibited a carrier from voting on behalf of other carriers, deleted former Paragraph (7), which required the organization to make a final disposition of a rate or tariff filed with the organization within one hundred twenty days, deleted former Paragraph (8), which required an organization to adopt quorum standards, in Paragraph (5), at the beginning of the sentence, added "proposes matters concerning state-wide"; in Subsection E, after "discussions concerning", added "general industry matters, terms of service or any matters concerning", after "matters concerning a", deleted "common" and added "statewide" and after "concerning a statewide tariff", added "including the rates contained in a statewide tariff"; deleted former Subsection F, which required a carrier organization to obtain approval of a common tariff from the commission, required the commission to hold a public hearing on the common tariff, and authorized the commission to approve the common tariff if it was limited to matters relating to transportation services provided by members of the organization proposing the tariff; and deleted former Subsection G, which placed the burden of proof of a violation of the section on the party alleging the violation.

Laws 2013, ch. 73, § 21 and Laws 2013, ch. 77, § 21, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 21. See 12-1-8 NMSA 1978.

## **65-2A-24. Motor vehicle leases; driver contracts.**

A. An intrastate motor carrier shall not lease a motor vehicle or operate a leased motor vehicle in the course of its transportation service except as provided by commission rule. The commission may approve a motor vehicle lease without notice or a public hearing.

B. A motor carrier may use employed or contract drivers or taxicab association member drivers in the provision of a transportation service. Regardless of the provisions of any written or oral agreement between a motor carrier and a contract driver or taxicab association member driver, motor carriers providing transportation services that use contract drivers or taxicab association member drivers remain fully responsible to the

commission for complying with all provisions of the Motor Carrier Act and commission rules applicable to transportation service carriers.

C. Motor carriers providing intrastate transportation services that use contract drivers or taxicab association member drivers shall maintain, at their principal places of business within the state, a current written agreement with each such driver. No agreement with any contract driver or taxicab association member driver shall contain any provision contrary to a provision of the Motor Carrier Act or a rule of the commission. Each written agreement shall contain a clause that requires the contract driver or taxicab association member driver to adhere to all provisions of the Motor Carrier Act and to all commission rules applicable to transportation service carriers.

**History:** Laws 2003, ch. 359, § 24; 2013, ch. 73, § 22; 2013, ch. 77, § 22.

### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, provided for the use of employed or contract drivers; in the catchline, added "driver contracts"; in Subsection A, in the first sentence, after "leased motor vehicle", deleted "without approval of each motor vehicle lease from the commission" and added "in the course of its transportation service except as provided by commission rule"; deleted former Subsection B, which required carriers to file separate leases for each vehicle leased; deleted former Subsection C, which prohibited the commission from approving a lease if the purpose of the lease is to circumvent the act; deleted former Subsection D, which required the commission to specify which of two parties to a lease was responsible for complying with the financial responsibility and safety requirements of the act; and added Subsections B and C.

Laws 2013, ch. 73, § 22 and Laws 2013, ch. 77, § 22, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 22. See 12-1-8 NMSA 1978.

### **65-2A-25. Household goods operations.**

A. The commission shall establish a statewide tariff for household goods services, containing terms of service and maximum rates that household goods service carriers may charge the public.

B. A certificated household goods service carrier shall be responsible for acts or omissions of its agents that relate to the performance of household goods transportation services, including accessorial or terminal services, that are within the actual or apparent authority of the agent derived from or ratified by the certificated household goods service carrier.

C. A certificated household goods service carrier shall use reasonable care in selecting and retaining household goods agents who are sufficiently knowledgeable, fit, willing and able to provide adequate household goods transportation services, including

accessorial and terminal services, and to fulfill the obligations imposed upon them by the Motor Carrier Act and by the certificated household goods service carrier.

D. If the commission has reason to believe from a complaint or investigation that a household goods agent has violated Subsection G or H of Section 65-2A-33 NMSA 1978, or is consistently unfit, unwilling or unable to provide adequate household goods transportation services, including accessorial and terminal services, the commission may issue to that household goods agent notice of the complaint, specific charges and the time and place for a hearing on the complaint. The hearing shall be held no later than sixty days after service of the complaint to the household goods agent. The household goods agent has the right to appear at the hearing and rebut the charges contained in the complaint.

E. If the household goods agent does not appear at the complaint hearing, or if the commission finds that the household goods agent has violated Subsection G or H of Section 65-2A-33 NMSA 1978, or is consistently unfit, unwilling or unable to provide adequate household goods transportation services, including accessorial and terminal services, the commission shall issue an order to compel compliance by the household goods agent. Thereafter, the commission may issue an order to limit or prohibit the household goods agent from any involvement in the provision of household goods transportation services if, after notice and an opportunity to be heard, it finds that the household goods agent has failed to comply with the order within a reasonable time after the date of its issuance, but in no event less than thirty days after its issuance. A household goods agent may file a petition with the commission seeking reconsideration of an order entered by the commission pursuant to this section.

F. The commission shall adopt rules for the following elements of household goods transportation services:

- (1) methods of determining shipping charges;
- (2) cost estimates, for which charges shall be subject to the antitrust laws of this state;
- (3) inventory;
- (4) weighing;
- (5) receipts and bills of lading;
- (6) liability based on value established between the motor carrier and the shipper;
- (7) equipment stationing by, and joint transportation between, household goods service carriers;

- (8) household goods agents; and
- (9) service standards.

G. In adopting reasonable rules for intrastate household goods service carriers, the commission shall balance the interests of shippers and carriers and consider and observe industry standards.

H. The antitrust laws shall not apply to discussions or agreements between a household goods service carrier and its authorized agents, whether or not an agent is also a household goods service carrier when related solely to:

- (1) rates for the transportation of household goods under the authority of the principal carrier;
- (2) accessorial, terminal, storage or other charges for transportation services incidental to the transportation of household goods transported under the authority of the principal carrier;
- (3) allowances relating to transportation of household goods under the authority of the principal carrier; or
- (4) ownership of a household goods service carrier by an agent or membership on the board of directors of any household goods service carrier by an agent.

**History:** Laws 2003, ch. 359, § 25; 2013, ch. 73, § 23; 2013, ch. 77, § 23.

### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, required the commission to establish a statewide tariff for household goods services and to adopt rules that balance the interests of shippers and carriers and that consider industry standards; added Subsection A; in Subsection B, at the beginning of the sentence, deleted "An intrastate common motor carrier of" and added "A certificated", after "certificated household goods", added "service carrier", after "ratified by the", deleted "common motor carrier of" and added "certificated", and at the end of the sentence, after "household goods", added "service carrier"; in Subsection C, at the beginning of the sentence, deleted "An intrastate common motor carrier of" and added "A certificated", after "certificated household goods", added "service carrier", and after "Motor Carrier Act and by the", deleted "common motor" and added "certificated household goods service"; in Subsection D, in the first sentence, after "Section", deleted "33 of the Motor Carrier Act" and added "65-2A-33 NMSA 1978"; in Subsection E, in the first sentence, after "Section", deleted "33 of the Motor Carrier Act" and added "65-2A-33 NMSA 1978"; in Subsection F, in Paragraph (1), deleted "rates" and added "methods of determining shipping charges" and in Paragraph (7), at the beginning of the sentence, added

"equipment stationing by, and", after "between", deleted "common motor carriers of", and after "goods", added "service carriers"; in Subsection G, after "adopting", added "reasonable", after "intrastate", deleted "common motor carriers of", after "household goods", added "service carriers", after "commission shall", deleted "consider", deleted former Paragraphs (1) through (6), which required the commission to consider the level of performance a well-managed carrier could achieve, the degree of harm to individual shippers that could result from a violation of the rule, the need to deter abuses that harm shippers, service requirements of shippers, cost of compliance in relation to benefits, and the need to encourage carriers to offer service responsive to shippers' needs, and added "balance the interests of shippers and carriers and consider and observe industry standards"; and in Subsection H, in the introductory sentence, after "agreements between", deleted "an intrastate common motor carrier of" and added "a", after "between a household goods", added "service carrier", after "agent is also a", deleted "motor carrier of", after "is also a household goods", added "service carrier", and in Paragraph (4), after "ownership of a", deleted "common motor carrier of", after "ownership of a household goods", added "service carrier", after "directors of any", deleted "common motor carrier of", and after "directors of any household goods", added "service carrier".

Laws 2013, ch. 73, § 23 and Laws 2013, ch. 77, § 23, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 23. See 12-1-8 NMSA 1978.

## **65-2A-26. Household goods voluntary dispute settlement program.**

A. The commission shall establish a program to settle disputes, at the voluntary option of the shipper, between shippers and all household goods service carriers concerning the transportation of household goods, which shall be a fair and expeditious method for settling disputes and complies with each of the following requirements and rules the commission may prescribe:

(1) the program is designed to prevent a household goods service carrier from having any special advantage in a case in which the shipper resides or does business at a place distant from the motor carrier's place of business;

(2) the program provides adequate notice of its availability, including a concise, understandable and accurate summary of the program and disclosure of the legal effects of using the program. The notice shall be given to the shipper before the shipper tenders the household goods to the motor carrier for transportation;

(3) upon request of a shipper, the motor carrier shall promptly provide forms and other information necessary to initiate an action to resolve a dispute under the program;

(4) a person authorized pursuant to the program to settle disputes shall be independent of the parties to the dispute and shall be capable, as determined by rules

prescribed by the commission, to resolve disputes fairly and expeditiously. The program shall ensure that a person chosen to settle a dispute is authorized and able to obtain from the shipper or motor carrier any material and relevant information necessary to carry out a fair and expeditious decision-making process;

(5) the person settling the dispute may charge the shipper a fee of not more than twenty-five dollars (\$25.00) for instituting a proceeding under the program if the program is binding solely on the carrier, but shall not charge the shipper a fee otherwise. The person settling the dispute shall refund the fee to the shipper in a case in which the dispute is settled in favor of the shipper, unless the person settling the dispute determines that the refund is inappropriate;

(6) the program shall not require the shipper to agree to use the dispute settlement program prior to the time that a dispute arises;

(7) the program may provide for an oral presentation of a dispute concerning transportation of household goods by a party to the dispute or a party's representative, but an oral presentation shall not be made unless the parties to the dispute expressly agree to the presentation and the date, time and location of the presentation; and

(8) a person settling a dispute under the program shall, as expeditiously as possible, but no later than sixty days after receipt of written notification of the dispute, render a decision based on the information gathered; except that, in a case in which a party to the dispute fails to timely provide information that the person settling the dispute may reasonably require, the person settling the dispute may extend the sixty-day period for a reasonable period of time. A decision resolving a dispute may include remedies appropriate under the circumstances, including repair, replacement, refund or reimbursement for expenses and compensation for damages.

B. The commission may investigate at any time the functioning of the program approved under this section and may, after notice and an opportunity to be heard, take appropriate action against any household goods service carrier for failure to meet the requirements of this section and rules as the commission may prescribe.

C. In a court action to resolve a dispute between a shipper and a household goods service carrier, concerning the transportation of household goods by the carrier, the shipper shall be awarded reasonable attorney fees if:

(1) the shipper submits a claim to the carrier within one hundred twenty days after the date the shipment is delivered or the date delivery is scheduled, whichever is later;

(2) the shipper prevails in the court action; and

(3) a decision resolving the dispute was not rendered under the dispute settlement program within sixty days or an extension of the sixty-day period; or

(4) the court proceeding is to enforce a decision rendered under the dispute settlement program and is instituted after the period for performance under the decision has elapsed.

D. In a court action to resolve a dispute between a shipper and a household goods service carrier concerning the transportation of household goods by the carrier, the carrier shall be awarded reasonable attorney fees by the court only if the shipper brought the action in bad faith:

(1) after resolution of the dispute under the dispute settlement program; or

(2) after institution of a proceeding by the shipper to resolve the dispute under the dispute settlement program and before:

(a) the expiration of the sixty-day period or extension of the sixty-day period for resolution of the dispute; and

(b) a decision resolving the dispute is rendered under the program.

**History:** Laws 2003, ch. 359, § 26; 2013, ch. 73, § 24; 2013, ch. 77, § 24.

#### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, required the commission to establish a voluntary settlement program between shippers; in Subsection A, at the beginning of the sentence, deleted "A common motor carrier of household goods may submit an application to", after "The commission", deleted "to" and added "shall", after "settle disputes", added "at the voluntary option of the shipper", after "between shippers and", deleted "common motor carriers of", and added "all", after "all household goods", added "service carriers", and deleted the former second sentence, which required that an application to establish a settlement program be in the form prescribed by the commission; deleted former Subsection B, which required the commission to review the application for a settlement program within forty-five days; incorporated former Subsection C into Subsection A and in former Subsection C, at the beginning of the sentence, deleted "The commission shall not approve a program for settling disputes concerning the transportation of household goods unless the program is" and added "which shall be"; in Paragraph (1) of Subsection A, after "designed to prevent a", deleted "motor" and added "household goods service"; in Subsection B, after "opportunity to be heard", deleted "suspend or revoke its approval" and added "take appropriate action against any household goods service carrier", in Subsection C, in the introductory sentence, after "shipper and a", deleted "common motor carrier of" and after "household goods", added "service carrier", deleted former Paragraph (3), which permitted an award of attorney fees if a settlement program was not available to resolve the dispute, in Paragraph (3), after "settlement program", deleted "approved under this section", and in Paragraph (4), after "settlement program", deleted "approved under this section"; and in Subsection D, in the introductory sentence, after "shipper and a",

deleted "common motor carrier of", and after "and a household goods", added "service carrier", in Paragraph (1), after "program", deleted "approved under this section" and in Paragraph (2), after "program", deleted "approved under this section".

Laws 2013, ch. 73, § 24 and Laws 2013, ch. 77, § 24, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 24. See 12-1-8 NMSA 1978.

### **65-2A-26.1. Indemnity provisions in motor carrier transportation contracts void.**

A. A provision or agreement contained in, collateral to or affecting a motor carrier transportation contract that requires the motor carrier to indemnify or hold harmless, or that has the effect of indemnifying or holding harmless, the shipper from liability for loss or damage resulting from the negligence or intentional acts or omissions of the shipper, or agents, employees or independent contractors that are directly responsible to the shipper, is against the public policy of this state and is void and unenforceable.

B. As used in this section, "motor carrier transportation contract":

(1) means a contract, agreement or understanding covering:

(a) the transportation of property for compensation or hire by the motor carrier;

(b) the entrance on real property by the motor carrier for the purpose of loading, unloading or transporting property for compensation or hire; or

(c) a service incidental to an activity described in Paragraph (1) or (2) of this subsection, including storage of property; and

(2) does not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the intermodal association of North America or other agreements providing for the interchange, use or possession of intermodal chassis or other intermodal equipment.

**History:** Laws 2009, ch. 183, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 183 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2009, ch. 183, § 2 provided that the provisions of Laws 2009, ch. 183, § 1 were applicable to motor carrier transportation contracts entered into or renewed on or after July 1, 2009.

## **65-2A-27. Involuntary suspension, revocation or amendment of operating authorities; reinstatement.**

A. The commission shall immediately suspend, without notice or a public hearing, the operating authority of a motor carrier for failure to continuously maintain the forms and amounts of financial responsibility prescribed by commission rule.

B. The commission may immediately suspend, without notice or a public hearing, the operating authority of a motor carrier for violation of a safety requirement of the Motor Carrier Act, the commission's rules or the rules of the motor transportation division of the department of public safety, if the violation endangers the public health or safety.

C. The commission may, upon complaint or the commission's own initiative and after notice and a public hearing, if required, order involuntary suspension, revocation or amendment, in whole or in part, of an operating authority for failure to:

- (1) comply with a provision of the Motor Carrier Act;
- (2) comply with a lawful order or rule of the commission;
- (3) comply with a term of service of an operating authority or tariff; or
- (4) render reasonably continuous and adequate service under a certificate.

D. The commission may approve an application for reinstatement of an operating authority following involuntary suspension if it finds, after notice and public hearing requirements are met, that:

- (1) the reasons for the involuntary suspension no longer pertain; and
- (2) the holder of the operating authority is fit, and a certificate holder is able, to provide the authorized transportation services, and the holder will comply with the Motor Carrier Act and the rules of the commission.

**History:** Laws 2003, ch. 359, § 27; 2013, ch. 73, § 25; 2013, ch. 77, § 25.

### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, eliminated permits from the scope of the section; in Subsection C, in Paragraph (3), after "term", deleted "condition or limitation" and added "of service" and after "authority" added "or tariff" and in Paragraph (4), after

"certificate" deleted "or permit"; and in Subsection D, in Paragraph (2), at the beginning of the sentence, after "the", deleted "owner" and added "holder", after "fit", deleted "willing", after "fit, and", added "a certificate holder is", and after "services, and", deleted "to" and added "the holder will".

Laws 2013, ch. 73, § 25 and Laws 2013, ch. 77, § 25, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 25. See 12-1-8 NMSA 1978.

## **65-2A-28. Designation of an agent for service of process.**

A. An applicant for an operating authority shall file with the commission an appointment in writing of a resident agent for service of process. The appointment shall specify the address of the agent and shall stipulate that service upon the appointed agent of process of the commission or of a court shall have the same force and effect as if service had been made personally upon the motor carrier within this state. The appointment shall continue in force until the motor carrier files an appointment of a substitute agent or until liability against the motor carrier growing out of its operations in the state has terminated. A copy of the appointment, duly certified by the commission, shall be accepted as sufficient evidence of appointment of an agent in a court of the state.

B. If the holder of an operating authority from the commission operates without appointing a resident agent for service of process, or the commission has unsuccessfully attempted to serve process upon the designated resident agent, the holder shall be deemed to have appointed the secretary of state as its resident agent for service of process in an action or proceeding against the motor carrier growing out of an accident, collision or transaction in which the motor carrier may be involved by operating in this state.

C. If the secretary of state is served with process directed to the holder of an operating authority from the commission, the secretary of state shall forward the process by certified mail to the motor carrier at the address shown on its last change of address report, annual report or application with respect to its operating authority, whichever is most recent. The secretary of state shall file a certificate of service with the commission, which shall be accepted as prima facie proof of service.

D. The secretary of state shall assess to the motor carrier the fee prescribed in Section 65-2A-36 NMSA 1978 for a process from a court served upon the secretary of state but shall not charge a fee for service of commission process.

E. The principal motor carrier of a household goods agent shall be deemed to be the agent for service of process of the household goods agent unless the household goods agent notifies the commission in writing of the substitution of another agent for service of process.

**History:** Laws 2003, ch. 359, § 28; 2013, ch. 73, § 26; 2013, ch. 77, § 26.

## ANNOTATIONS

**The 2013 amendment**, effective July 1, 2013, changed terms; in Subsection B, at the beginning of the sentence, deleted "a motor carrier owning" and added "the holder of" and after "resident agent, the", deleted "motor carrier" and added "holder"; in Subsection C, after "directed to", deleted "a motor carrier owning" and added "the holder of"; and in Subsection D, after "Section", deleted "36 of the Motor Carrier Act" and added "65-2A-36 NMSA 1978".

Laws 2013, ch. 73, § 26, and Laws 2013, ch. 77, § 26, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 26. See 12-1-8 NMSA 1978.

### **65-2A-29. Reports and records.**

A. The commission shall establish reasonable requirements with respect to reports, records and uniform systems of accounts and preservation of records for motor carriers.

B. The commission may require any holder of an operating authority from the commission or any lessee of an authority to prepare and transmit to the commission an annual report of its operations. The report shall be in the form, contain specific information, including financial information, and be due on a date as the commission may by rule require. Financial data filed by motor carriers in annual reports shall not be made available for inspection by the public.

C. The commission or its employees or duly authorized agents shall, at all times, have access to:

(1) land, buildings, improvements to real property and equipment of motor carriers used in connection with their operations; and

(2) records kept by motor carriers.

D. The commission may, by order, require a motor carrier subject to the Motor Carrier Act, or its officers or agents, to produce within this state at such reasonable time and place as it may designate, original or certified copies of records regardless of where they are kept by the motor carrier when their production is pertinent to a matter before the commission, in order that the commission may examine them. No trade secret or business confidentiality immunity or privilege may be asserted by the motor carrier in response to such an order or request; provided that nothing in this provision shall prevent a carrier from moving for, or the commission from entering, an appropriate protective order to preserve the carrier's trade secrets or business confidentiality from further disclosure, nor shall this provision or any production required under this

provision waive or diminish the carrier's trade secret or business confidentiality immunity or privilege as to persons other than the commission.

E. The motor transportation division of the department of public safety shall furnish to the commission all information needed or required by the commission to carry out its responsibilities when the information is obtainable only through field enforcement.

F. All applications, protests, objections, amendments to filings, operating authorities, tariffs, pleadings or any other documents filed in docketed proceedings not subject to confidentiality orders are public records and shall, as soon as practical, be made electronically available to the public.

**History:** Laws 2003, ch. 359, § 29; 2013, ch. 73, § 27; 2013, ch. 77, § 27.

### ANNOTATIONS

**The 2013 amendment**, effective July 1, 2013, imposed limitations on trade secret and business confidentiality; in Subsection B, after "commission may require", deleted "a motor carrier owning" and added "any holder of an" and after "from the commission", added "or any lessee of an authority"; added the second sentence in Subsection D; and added Subsection F.

Laws 2013, ch. 73, § 27 and Laws 2013, ch. 77, § 27, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 27. See 12-1-8 NMSA 1978.

### **65-2A-30. Unauthorized carrying of persons prohibited.**

Except in the case of an emergency, a transportation service carrier not authorized to transport passengers shall not carry a passenger, including a hitchhiker, except on-duty employees of the motor carrier or commission representatives on official business in a vehicle used in the provision of transportation service under its operating authority.

**History:** Laws 2003, ch. 359, § 30; 2013, ch. 73, § 28; 2013, ch. 77, § 28.

### ANNOTATIONS

**The 2013 amendment**, effective July 1, 2013, clarified the language of the section; at the beginning of the sentence, deleted "A motor" and added "Except in the case of an emergency, a transportation service", after "authorized to transport", deleted "persons" and added "passengers", after "shall not carry a", deleted "person" and added "passenger", and after "official business", deleted "or in case of an emergency" and added "in a vehicle used in the provision of transportation service under its operating authority".

Laws 2013, ch. 73, § 28 and Laws 2013, ch. 77, § 28, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 28. See 12-1-8 NMSA 1978.

### **65-2A-31. Witnesses; subpoenas; service of process.**

A. If the commission orders a person to appear before it, the commission shall compensate the witness one full day's per diem plus mileage as provided for employees in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978]. The state shall pay such compensation out of the motor transportation fee fund pursuant to rules of the department of finance and administration. Witnesses subpoenaed by parties other than the commission shall be paid the same compensation by the party issuing the subpoena.

B. A person shall not be excused from testifying or producing documentary evidence before the commission or a court in obedience to a subpoena of the commission issued pursuant to the Motor Carrier Act on the ground that the testimony or documentary evidence required of the person may tend to incriminate him or subject him to a penalty. A person shall not be prosecuted or subjected to a penalty for a transaction or matter about which he may be required to testify or produce documentary evidence; provided that a person testifying shall not be exempt from prosecution and punishment for perjury committed in testifying. A person shall not be required to testify or produce documentary evidence in response to an inquiry not pertinent to a question lawfully before the commission or court for determination.

C. Upon request of a member of the commission, a district court may issue a writ of attachment to a person who fails to comply with a subpoena issued by the commission compelling the person to comply with the subpoena. The court shall have the power to punish for contempt in the same manner as for disobedience of a subpoena issued by the court.

D. A member of the commission may administer an oath, certify to an official act, issue a subpoena and compel the attendance of a witness and the production of evidence in hearings before the commission for the purposes provided in the Motor Carrier Act.

E. The commission may issue and serve process on the person affected by delivering a copy of the process, signed by a member of the commission, to the person or to an officer or agent of the person. An employee of the commission, a duly authorized law enforcement officer or a person over the age of eighteen who is not a party to the proceeding may serve process and shall return a copy of the process served, with an endorsement of service, to the commission. The endorsed process shall be entered into the record of the proceeding and shall be prima facie evidence that the process was duly served.

F. The commission may in writing authorize a commissioner, the chief of staff or other person to investigate and take testimony regarding a matter pending before the commission.

**History:** Laws 2003, ch. 359, § 31.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 359, § 45 made Laws 2003, ch. 359, § 31 effective July 1, 2003.

#### **65-2A-32. Administrative penalties.**

A. If the commission finds after investigation that a provision of the Motor Carrier Act or an order or rule of the commission is being, has been or is about to be violated, it may issue an order specifying the actual or proposed acts or omissions to act that constitute a violation and require that the violation be discontinued, rectified or prevented.

B. Notwithstanding the existence of any other penalties, the commission may assess an administrative fine of not more than ten thousand dollars (\$10,000) for each violation of a provision of the Motor Carrier Act or of a lawful rule or order of the commission. In case of a continuing violation, each day's violation shall be deemed to be a separate and distinct offense.

C. Notwithstanding the existence of other penalties, the commission may assess an administrative fine of not more than ten thousand dollars (\$10,000) against a person knowingly using a motor carrier not properly authorized by the commission.

D. All penalties accruing under the Motor Carrier Act shall be cumulative, and a suit for recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or be a bar to any criminal prosecution under the Motor Carrier Act.

**History:** Laws 2003, ch. 359, § 32.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 359, § 45 made Laws 2003, ch. 359, § 32 effective July 1, 2003.

#### **65-2A-33. Criminal and civil penalties; unfair trade practices.**

A. A person who knowingly makes a false statement of material fact under oath or penalty of perjury in a commission proceeding, whether orally or in writing, shall be guilty of perjury.

B. A person who willfully makes a false return of process or report to the commission or a member or employee of the commission, and a person who knowingly aids or abets a person who willfully makes a false return of process or report to the commission or a member or employee of the commission, shall be guilty of a felony, and upon conviction shall be imprisoned for not more than five years.

C. A person who willfully makes a false entry in records required by the Motor Carrier Act or the rules of the commission, willfully destroys, mutilates or by other means willfully falsifies the records or willfully neglects or fails to make full, true and correct entries of all facts, shall be guilty of a felony and upon conviction shall be imprisoned for not more than five years.

D. An employee of the commission who divulges information about an inspection, examination or investigation of a record or of the property and facilities of a motor carrier, except insofar as may be authorized by the commission or a court of competent jurisdiction, shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000).

E. A person who violates or who procures, aids or abets in the violation of a provision of the Motor Carrier Act or a rule or order of the commission shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000), imprisoned for not more than ninety days, or both.

F. A motor carrier shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500), imprisoned for not more than six months, or both, if the motor carrier:

- (1) refuses to permit examination of its records;
- (2) conceals, destroys or mutilates its records;
- (3) attempts to conceal, destroy or mutilate its records; or
- (4) removes its records beyond the limits of the state for the purpose of preventing examination.

G. A person who commits weight-bumping shall be guilty of a felony and upon conviction shall be fined not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), imprisoned for not more than two years, or both.

H. A person shall be assessed a civil penalty of not more than two thousand dollars (\$2,000) for each violation and not more than five thousand dollars (\$5,000) for each subsequent violation if the person knowingly engages in or authorizes an agent or other person to:

(1) falsify the documents used in the transportation of household goods that evidence the weight of shipment; or

(2) charge for accessorial services that are not performed, or for which the carrier is not entitled to be compensated, in a case in which such services are not reasonably necessary for the safe and adequate transportation of the shipment.

I. A law enforcement officer of the state shall arrest and the district attorney and attorney general shall prosecute a violation of the Motor Carrier Act.

J. It is an unfair and deceptive trade practice under the Unfair Practices Act [Chapter 57, Article 12 NMSA 1978] for any transportation service carrier to offer or provide transportation services of a type for which, or in any territory in which, it is not authorized to do so by the commission. The attorney general or a person who has been damaged or who is likely to be damaged as the result of such unauthorized service, including a shipper, a passenger or an authorized transportation service carrier, may bring an action pursuant to the Unfair Practices Act against the transportation service carrier regarding such unauthorized service. Any such civil action shall be in addition to, and shall not bar, any investigation or civil or criminal enforcement action regarding the unauthorized service available to the attorney general or a district attorney, or available to the commission under the Motor Carrier Act.

K. It is an unfair and deceptive trade practice under the Unfair Practices Act for any transportation service carrier or its agent, employee or contract driver to charge or collect a predatory rate or to undertake a predatory practice in the provision of transportation services. The attorney general or a person who has been damaged or who is likely to be damaged as the result of a predatory rate or practice may bring an action pursuant to the Unfair Practices Act against the transportation service carrier regarding such predatory rate or practice. Any such civil action shall be in addition to, and shall not bar, any investigation or civil or criminal enforcement action regarding the predatory rate or practice available to the attorney general or a district attorney, or available to the commission under the Motor Carrier Act.

**History:** Laws 2003, ch. 359, § 33; 2013, ch. 73, § 29; 2013, ch. 77, § 29.

### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, added unfair trade practices; in the title, added "unfair trade practices"; in Subsection A, after "under oath", added "or penalty of perjury"; and added Subsections J and K.

Laws 2013, ch. 73, § 29 and Laws 2013, ch. 77, § 29, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 29. See 12-1-8 NMSA 1978.

**65-2A-34. Actions to enforce commission orders.**

If a person fails to comply with an order of the commission within the time prescribed in the order or within thirty days after the order is entered, whichever is later, unless a stay has been granted, the commission shall seek enforcement of the order in the district court for Santa Fe county. The enforcement hearing shall be held on an expedited basis. At the hearing, the sole question shall be whether the person has failed to comply with the order.

**History:** Laws 2003, ch. 359, § 34.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 359, § 45 made Laws 2003, ch. 359, § 34 effective July 1, 2003.

### **65-2A-35. Appeal to supreme court.**

A. A motor carrier or other interested person aggrieved by a final order or determination of the commission issued pursuant to the Motor Carrier Act may appeal to the supreme court within thirty days. The appellant shall pay to the commission the costs of preparing and transmitting the record to the court.

B. The pendency of an appeal shall not automatically stay the order appealed from. The appellant may petition the commission or the supreme court for a stay of the order.

C. The appeal shall be on the record of the hearing before the commission and shall be governed by the appellate rules applicable to administrative appeals. The supreme court shall affirm the commission's order unless it is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

**History:** Laws 2003, ch. 359, § 35.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 359, § 45 made Laws 2003, ch. 359, § 35 effective July 1, 2003.

### **65-2A-36. Fees.**

A. The commission shall charge and collect the following fees:

(1) for filing an application for a certificate or an application for an amendment of a certificate, or for any protest or permissive intervention in regard to such application, two hundred fifty dollars (\$250);

(2) for filing an application for a permit or an application for amendment of a permit, or for any protest or permissive intervention in regard to such application, two hundred fifty dollars (\$250);

(3) for filing an application for a warrant, twenty-five dollars (\$25.00);

(4) for filing an application or motion for temporary authority, one hundred dollars (\$100);

(5) for filing an application for a change in a tariff for a tariffed service carrier, two hundred dollars (\$200);

(6) for filing an application for lease or transfer of a certificate or permit, or for any protest or permissive intervention in regard to such application, two hundred dollars (\$200);

(7) for filing an application for reinstatement of a certificate or permit following voluntary or involuntary suspension, one hundred dollars (\$100);

(8) for filing an application for voluntary suspension of a certificate or permit, fifteen dollars (\$15.00);

(9) for filing an application for a single trip ticket, five dollars (\$5.00) per vehicle per trip;

(10) for filing a change in the legal name of any holder of an operating authority, or a change of business trade name or the addition or deletion of a business trade name of any holder or lessee of an operating authority, ten dollars (\$10.00);

(11) for filing an equipment lease, five dollars (\$5.00) per vehicle leased;

(12) for a miscellaneous filing, five dollars (\$5.00) per document;

(13) for certifying copies of a record, order or operating authority, the charge per page provided by law for governmental agencies;

(14) for copies of written commission documents or records, the charge per page provided by law for governmental agencies, in addition to any applicable certification charge; and

(15) for copies of other commission records, including electronic media, an amount set by the commission, in addition to any applicable certification charge.

B. The secretary of state shall charge and collect a fee of four dollars (\$4.00) for each process from a court served upon the secretary of state as the designated agent for service of process by operation of law.

C. The "motor transportation fee fund" is created in the state treasury. The commission shall collect all fees at the time an application is filed or service is provided, and shall remit them to the state treasurer, who shall deposit them in the fund. At the end of each month, the state treasurer shall transfer the unencumbered balance in the fund to the state road fund.

D. If a fee has been erroneously paid, the person having paid the fee may apply for a refund in writing to the commission no later than sixty days after the erroneous payment. Upon approval of the application by the commission, the amount erroneously paid shall be refunded from the motor transportation fee fund to the person who made the payment.

E. An application shall be fully completed within sixty days or the fee submitted with the application shall be forfeited to the state. If the applicant renews the application, the applicant shall pay the applicable fee.

**History:** Laws 2003, ch. 359, § 36; 2013, ch. 73, § 30; 2013, ch. 77, § 30.

## ANNOTATIONS

**The 2013 amendment**, effective July 1, 2013, imposed fees for filing applications for amendments of certificates and permits, protests, interventions, and to change a legal or business name; and in Subsection A, in Paragraph (1), after "application for a certificate", deleted "as an intrastate common motor carrier of persons or household goods" and added "or an application for an amendment of a certificate, or for any protest or permissive intervention in regard to such application", in Paragraph (2), after "for a permit", deleted "as an intrastate common motor carrier of persons or household goods" and added "or an application for amendment of a permit, or for any protest or permissive intervention in regard to such application", in Paragraph (3), after "application for a warrant", deleted "as an intrastate commuter service, charter service, towing service or motor carrier of property", in Paragraph (4), after "filing an application", added "or motion", after "motion for", deleted "intrastate", and after "temporary authority", deleted "as a common or contract motor carrier of persons or household goods", deleted former Paragraph (5), which imposed a fee for filing an application for extension of temporary authority, in Paragraph (5), after "application for a change in", deleted "an intrastate" and added "a" and after "change in a tariff", added "for a tariffed service carrier", in Paragraph (6), after "certificate or permit", added "or for any protest or permissive intervention in regard to such application", deleted former Paragraph (11), which imposed a fee for filing a single state registration receipt for interstate motor carriers, in Paragraph (10), after "filing a change", deleted "of name" and added "in the legal name of any holder of an operating authority, or a change of business trade name or the addition or deletion of a business trade name of any holder or lessee of an

operating authority", deleted former Paragraph (13), which imposed a fee for filing proof of financial responsibility, in Paragraph (13), after "operating authority", deleted "fifteen dollars (\$15.00)" and added "the charge per page provided by law for governmental agencies", and in Paragraph (14), after "documents or records", deleted "one dollar (\$1.00) per page" and added "the charge per page provided by law for governmental agencies".

Laws 2013, ch. 73, § 30 and Laws 2013, ch. 77, § 30, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 30. See 12-1-8 NMSA 1978.

### **65-2A-37. Electronic filing and certification of documents; electronic payment of fees.**

A. The commission may adopt rules permitting the electronic filing, submission and service of documents by facsimile, electronic mail or other electronic transmission, including original documents, and the certification of electronically filed documents when filing or certification is required or permitted pursuant to the Motor Carrier Act. The rules shall provide for the appropriate treatment of electronic filings to satisfy requirements for original documents or copies and shall provide the requirements for signature with respect to electronic filings. If the commission accepts electronic filing of a document, it may accept for filing a document containing a signature line, however made.

B. The commission may accept a credit or debit card or other means of payment, in lieu of cash or check, as payment of a fee pursuant to the Motor Carrier Act. The commission shall determine those credit or debit cards or other means of payment that may be accepted for payment.

**History:** Laws 2003, ch. 359, § 37; 2013, ch. 73, § 31; 2013, ch. 77, § 31.

#### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, permitted the submission and service of documents by facsimile, electronic mail or other electronic transmission; and in Subsection A, in the first sentence, after "electronic filing", added "submission and service"; after "service of documents", added "by facsimile, electronic mail or other electronic transmission", and in the third sentence, after "containing", deleted "a copy of" and after "signature", added "line".

Laws 2013, ch. 73, § 31 and Laws 2013, ch. 77, § 31, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 77, § 31. See 12-1-8 NMSA 1978.

### **65-2A-38. Exemptions.**

The Motor Carrier Act shall not apply to:

A. school buses, provided that school buses shall be subject to applicable school bus safety provisions established by the state transportation director;

B. United States mail carriers, unless they are engaged in other business as motor carriers of persons or household goods;

C. hearses, funeral coaches or other motor vehicles belonging to or operated in connection with the business of a funeral service practitioner licensed by the state;

D. a county or municipal public bus transportation system;

E. private carriers; or

F. commuter services.

**History:** Laws 2003, ch. 359, § 38; 2013, ch. 73, § 32; 2013, ch. 77, § 32; 2017, ch. 109, § 4.

#### **ANNOTATIONS**

**The 2017 amendment**, effective July 1, 2017, exempted "commuter services" from the Motor Carrier Act; and added Subsection F.

**The 2013 amendment**, effective July 1, 2013, changed terms; and in Subsection B, after "in other business as", deleted "common or contract".

#### **65-2A-39. Effect on municipal powers.**

Nothing contained in the Motor Carrier Act shall be construed:

A. to limit or restrict the police jurisdiction or power of a municipality over its streets, highways and public places except as otherwise provided by law;

B. in respect to matters other than rates and service regulations, to repeal a power of a municipality:

(1) to adopt and enforce reasonable police regulations and ordinances in the interest of the public safety, morals and convenience; or

(2) to protect the public against fraud, imposition or oppression by motor carriers within their respective jurisdiction.

**History:** Laws 2003, ch. 359, § 39.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 359, § 45 made Laws 2003, ch. 359, § 39 effective July 1, 2003.

## **65-2A-40. Repealed.**

**History:** Laws 2003, ch. 359, § 40; repealed by Laws 2013, ch. 73, § 34 and Laws 2013, ch. 77, § 34.

### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 73, § 34 and Laws 2013, ch. 77, § 34 repealed 65-2A-40 NMSA 1978, as enacted by Laws 2003, ch. 359, § 40, relating to transition, effective July 1, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMOneSource.com*.

## **65-2A-41. Transition.**

A. Except as provided in this section, certificates, permits and warrants issued to a motor carrier by the commission prior to July 1, 2013 shall remain in effect, subject to the provisions of the Motor Carrier Act, the Ambulance Standards Act [65-6-1 through 65-6-6 NMSA 1978] and the commission's rules.

B. Certificates for limousine service and for tour and sightseeing service issued prior to July 1, 2013 shall, on and after that date, become certificates for specialized passenger service endorsed for the same territory and with the same additional terms of service as in the preexisting certificate, and for nature of service as provided by commission rule. The commission may require holders of such certificates to exchange their certificates for newly issued certificates.

C. Each certificate for terminal shuttle service, shared-ride service and bingo bus service issued prior to July 1, 2013 shall, on and after that date, become a certificate for shuttle service endorsed for the same territory and with the same additional terms of service as in the preexisting certificate, and for nature of service as general shuttle service. The commission may require holders of such certificates to exchange their certificates for newly issued certificates.

D. Each certificate for taxicab service issued prior to July 1, 2013 shall become void on and after that date and shall be replaced by a certificate for taxicab service endorsed for the same territory and with the same additional terms of service as in the preexisting certificate, but endorsed also for nature of service as a municipal taxicab service or a general taxicab service or both, depending on the actual nature of service provided by the holder within the certificated territory directly or under lease of the certificate continuously for the immediately prior twelve-month period. The commission may provide for reasonable procedures regarding replacement of certificates and shall issue new certificates effective on July 1, 2013.

E. Each certificate for shuttle service issued prior to July 1, 2013 shall become void on and after that date and shall be replaced by a certificate for shuttle service endorsed for the same terminals or terminal areas and with the same additional terms of service as in the preexisting certificate, but endorsed also for nature of service as a scheduled shuttle service or a general shuttle service or both, depending on the actual nature of service provided by the holder directly or under lease of the certificate continuously for the immediately prior twelve-month period. The commission may provide by order for reasonable procedures regarding replacement of certificates and shall issue new certificates effective on July 1, 2013.

F. The common tariff of the New Mexico movers and warehousemen's association shall, on July 1, 2013, become the individual tariff of each of the individual member carriers of the New Mexico movers and warehousemen's association using that common tariff on June 30, 2013.

G. The commission shall not deny the application of a person applying for a new household goods service certificate during the period from July 1, 2013 through June 30, 2015 solely on the grounds that the applicant has provided household goods service without an appropriate operating authority. The commission may consider the nature of the applicant's unauthorized operations or the applicant's response to prior notices or efforts of the commission directed to the applicant, as well as any matters of public safety, financial liability and consumer issues involved in the applicant's unauthorized transportation service, in determining the applicant's fitness for the grant of a certificate.

**History:** Laws 2013, ch. 73, § 33 and Laws 2013, ch. 77, § 33.

#### **ANNOTATIONS**

**Compiler's notes.** – Laws 2013, ch. 73, § 33 and Laws 2013, ch. 77, § 33, both effective July 1, 2013, enacted identical new sections. The section was set out as enacted by Laws 2013, ch. 77, § 33. See 12-1-8 NMSA 1978.

## **ARTICLE 3**

### **Motor Carrier Safety**

#### **65-3-1. Short title.**

Sections 65-3-1 through 65-3-13 [65-3-14] NMSA 1978 may be cited as the "Motor Carrier Safety Act".

**History:** 1978 Comp., § 65-3-1, enacted by Laws 1989, ch. 201, § 2.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1989, ch. 201, § 2 repealed former 65-3-1 NMSA 1978, as amended by Laws 1977, ch. 250, § 95, relating to drivers' hours and enforcement thereof, and enacted a new section, effective July 1, 1989.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2007, ch. 151, § 1 enacted a new section of the Motor Carrier Safety Act, compiled as 65-3-14 NMSA 1978, effective June 15, 2007.

## **65-3-2. Purpose.**

The legislature finds that highway safety is of utmost public concern. The purpose of the Motor Carrier Safety Act is to protect the New Mexico traveling public by ensuring the safe operation of commercial motor carrier vehicles on New Mexico's highways.

**History:** 1978 Comp., § 65-3-2, enacted by Laws 1989, ch. 201, § 3.

## **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1989, ch. 201, § 3 repealed former 65-3-2 NMSA 1978, as amended by Laws 1973, ch. 255, § 1, relating to maximum hours and rest periods for drivers, and enacted a new section, effective July 1, 1989.

**A lessor of trucks is not a motor carrier.** — A lessor of trucks is not a motor carrier subject to statutory duties and regulatory duties of inspection, maintenance, and repair under the New Mexico Motor Carrier Safety Act, §§ 65-3-1 to -14 NMSA 1978. *Hernandez v. Grando's LLC*, 2018-NMCA-072.

**Defendant was not subject to the duties of inspection, maintenance, and repair imposed on motor carriers.** — Where plaintiff injured himself while exiting a commercial truck that plaintiff's employer had leased from defendant, and where defendant's business was limited to leasing trucks to plaintiff's employer, plaintiff did not establish a disputed question of fact regarding defendant's alleged breach of statutory or regulatory duties of a motor carrier where the evidence established that defendant did not provide transportation of persons, property or household goods for hire or provide transportation for compensation; obligations imposed on motor carriers are not meant to apply to persons who lease vehicles to motor carriers. *Hernandez v. Grando's LLC*, 2018-NMCA-072.

## **65-3-3. Applicability.**

A. Notwithstanding any provision of the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] to the contrary, the provisions of the Motor Carrier Safety Act and the regulations promulgated under that act shall apply to a commercial motor carrier vehicle operating on the public highways of New Mexico of a type that:

(1) is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of four thousand five hundred thirty-six kilograms, or ten thousand one pounds or more; or is operated only in intrastate commerce and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of twenty-six thousand one or more pounds;

(2) is designed or used to transport more than eight passengers, including the driver, and is used to transport passengers for compensation;

(3) is designed or used to transport more than fifteen passengers, including the driver, and is not used to transport passengers for compensation; or

(4) is used to transport hazardous materials of the type or quantity requiring placarding under rules prescribed by applicable federal or state law.

B. Whenever a commercial motor carrier vehicle of one type is used to perform the functions normally performed by a motor vehicle of another type, the requirements of the Motor Carrier Safety Act shall apply to that motor vehicle and to its operation as if that motor vehicle were actually a motor vehicle of the latter type.

C. Whenever a duty is prescribed for a driver or a prohibition is imposed upon the driver pursuant to the provisions of the Motor Carrier Safety Act, it shall be the duty of the motor carrier to require observance of such prescription or prohibition. If the motor carrier is also the driver, the motor carrier shall likewise be bound.

**History:** 1978 Comp., § 65-3-3, enacted by Laws 1989, ch. 201, § 4; 1992, ch. 106, § 17; 2003, ch. 10, § 2.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1989, ch. 201, § 4 repealed former 65-3-3 NMSA 1978, as enacted by Laws 1933, ch. 61, § 3, relating to emergencies, and enacted a new 65-3-3 NMSA 1978, effective July 1, 1989.

**The 2003 amendment,** effective July 1, 2003, in Subsection A, substituted "a commercial motor carrier vehicle" for "the following motor vehicles" and substituted the present Paragraphs A(1) to (4) for the former provisions that listed the vehicle types; and substituted "commercial motor carrier vehicle" for "motor vehicle" near the beginning of Subsection B.

**The 1992 amendment,** effective July 1, 1992, rewrote the introductory paragraph of Subsection A, which formerly read: "The provisions of the Motor Carrier Safety Act shall apply to the following vehicles operating on the public highways of New Mexico:"; inserted "commercial" in Subsection A(2); substituted "motor vehicles" for "vehicles" in Subsection A(4); and made minor stylistic changes in Subsection C.

**A lessor of trucks is not a motor carrier.** — A lessor of trucks is not a motor carrier subject to statutory duties and regulatory duties of inspection, maintenance, and repair under the New Mexico Motor Carrier Safety Act, §§ 65-3-1 to -14 NMSA 1978. *Hernandez v. Grando's LLC*, 2018-NMCA-072.

**Defendant was not subject to the duties of inspection, maintenance, and repair imposed on motor carriers.** — Where plaintiff injured himself while exiting a commercial truck that plaintiff's employer had leased from defendant, and where defendant's business was limited to leasing trucks to plaintiff's employer, plaintiff did not establish a disputed question of fact regarding defendant's alleged breach of statutory or regulatory duties of a motor carrier where the evidence established that defendant did not provide transportation of persons, property or household goods for hire or provide transportation for compensation; obligations imposed on motor carriers are not meant to apply to persons who lease vehicles to motor carriers. *Hernandez v. Grando's LLC*, 2018-NMCA-072.

#### **65-3-4. Regulations; inspections.**

A. The secretary is directed to adopt in accordance with Section 65-1-10 NMSA 1978 [repealed] necessary rules and regulations under the Motor Carrier Safety Act as they apply to motor carrier safety. Such rules and regulations shall not be inconsistent with or more stringent than applicable federal safety standards.

B. The department is authorized to inspect at the motor carrier's place of business those safety records required to be retained by the motor carrier pursuant to the provisions of the Motor Carrier Safety Act.

**History:** 1978 Comp., § 65-3-4, enacted by Laws 1989, ch. 201, § 5; 1992, ch. 106, § 18.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1995, ch. 31, § 7 repealed 65-1-10 NMSA 1978, effective July 1, 1995. For similar provisions, see 9-11-6.2 NMSA 1978.

**Repeals and reenactments.** — Laws 1989, ch. 201, § 5 repealed former 65-3-4 NMSA 1978, as enacted by Laws 1933, ch. 61, § 4, relating to penalty for violation of maximum driving hours provisions, and enacted a new 65-3-4 NMSA 1978, effective July 1, 1989.

**The 1992 amendment,** effective July 1, 1992, substituted the present section catchline for "Motor Carrier Safety; Director of the Division; Authorization"; in Subsection A, rewrote the first sentence and substituted "or" for "nor" in the second sentence; and, in Subsection B, substituted "The department" for "In addition to the provisions of

Subsection A of this section, the director" near the beginning of the Subsection, and inserted "by the motor carrier" near the end of the subsection.

**Temporary provisions.** — Laws 1992, ch. 106, § 22, effective July 1, 1992, provided that all regulations in effect issued prior to July 1, 1992, with respect to the Motor Transportation Act shall continue in force until repealed, amended or superseded by regulations of the secretary of taxation and revenue.

**A lessor of trucks is not a motor carrier.** — A lessor of trucks is not a motor carrier subject to statutory duties and regulatory duties of inspection, maintenance, and repair under the New Mexico Motor Carrier Safety Act, §§ 65-3-1 to -14 NMSA 1978. *Hernandez v. Grando's LLC*, 2018-NMCA-072.

**Defendant was not subject to the duties of inspection, maintenance, and repair imposed on motor carriers.** — Where plaintiff injured himself while exiting a commercial truck that plaintiff's employer had leased from defendant, and where defendant's business was limited to leasing trucks to plaintiff's employer, plaintiff did not establish a disputed question of fact regarding defendant's alleged breach of statutory or regulatory duties of a motor carrier where the evidence established that defendant did not provide transportation of persons, property or household goods for hire or provide transportation for compensation; obligations imposed on motor carriers are not meant to apply to persons who lease vehicles to motor carriers. *Hernandez v. Grando's LLC*, 2018-NMCA-072.

### **65-3-5. Violation of act; penalty.**

A. Any person who violates the provisions of the Motor Carrier Safety Act is guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars (\$500) or thirty days in jail, or both.

B. The director may, by regulation, authorize a penalty assessment program to impose penalties under the provisions of the Motor Carrier Safety Act.

**History:** 1978 Comp., § 65-3-4, enacted by Laws 1989, ch. 201, § 6.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1989, ch. 201, § 6 repealed former 65-3-5 NMSA 1978, as enacted by Laws 1947, ch. 171, § 1, relating to prohibition of stoves for heating private buses or trucks, and enacted a new section, effective July 1, 1989. For current provisions governing heating equipment, see 65-3-9 NMSA 1978.

### **65-3-6. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 21, § 5 repealed 65-3-6 NMSA 1978, as enacted by Laws 1947, ch. 171, § 2, relating to penalty for violating former 65-3-5 NMSA 1978, effective July 1, 1990. For provisions of former section, see the 1989 NMSA 1978 on *NMOneSource.com*.

### **65-3-7. Qualifications of drivers.**

A. A person shall not drive a motor vehicle unless the person is qualified to drive a motor vehicle, and a motor carrier shall not require or permit a person to drive a motor vehicle unless that person is qualified to drive a motor vehicle.

B. A person is qualified to drive a commercial motor carrier vehicle if the person:

(1) is at least:

(a) twenty-one years old; or

(b) eighteen years old if involved only in intrastate commerce and drives only within the boundaries of the state of New Mexico;

(2) is physically qualified to drive a motor vehicle;

(3) is not disqualified from driving a motor vehicle;

(4) has been issued a currently valid motor vehicle operator's license or permit of the proper class for the vehicle that the person is driving;

(5) can, by reason of experience, training or both, safely operate the type of motor vehicle that the person drives; and

(6) can, by reason of experience, training or both, determine whether the cargo that the person transports is properly located, distributed and secured in or on the motor vehicle that the person drives.

C. The director shall adopt regulations requiring motor carriers to maintain appropriate records pertaining to the qualifications of every commercial motor carrier vehicle driver in its employ, either regularly or casually. Such regulations shall not be inconsistent with or more stringent than applicable federal safety standards.

D. The director is authorized to adopt specific exceptions for the qualifications of drivers under the Motor Carrier Safety Act for drivers of articulated farm vehicles and intrastate drivers of motor vehicles transporting combustible liquids.

**History:** 1978 Comp., § 65-3-7, enacted by Laws 1989, ch. 201, § 7; 2009, ch. 200, § 1.

### **ANNOTATIONS**

**The 2009 amendment**, effective July 1, 2009, in Subparagraph (b) of Paragraph (1) of Subsection B, after "eighteen years old", added "if involved only in intrastate commerce"; deleted former Subsection C, which authorized the director to adopt regulations pertaining to the qualifications and disqualification of commercial motor carrier vehicle drivers; and deleted former Subsection F, which provided that disqualification after receipt of a license is grounds for revocation of the license.

### **65-3-8. Equipment; loading; driving; unsafe practices.**

A. No person shall drive a motor vehicle, and no motor carrier shall be required or permit a person to drive a motor vehicle, unless the driver has satisfied himself that:

- (1) all safety-related parts and accessories are in good working order;
- (2) the cargo and equipment are properly distributed and secured; and
- (3) the cargo and equipment do not obscure the driver's vision or range of motion.

B. The director shall adopt regulations, not inconsistent with nor more stringent than applicable federal safety standards concerning:

- (1) the care and safety of stopped and disabled vehicles and the use of emergency signals;
- (2) restrictions on and eliminations of unsafe practices pertaining to the operation of vehicles;
- (3) the transportation of unauthorized persons and the driving of a vehicle by an unauthorized driver;
- (4) the use and operation of a vehicle in which carbon monoxide has been detected in the cab or sleeper berth;
- (5) procedures and precautions required for safe fueling of motor vehicles;
- (6) requirements for wearing corrective lenses and hearing aids when needed to meet physical qualifications; and
- (7) requirements for and use of lighted lamps on the highway.

**History:** 1978 Comp., § 65-3-8, enacted by Laws 1989, ch. 201, § 8.

### **65-3-9. Commercial motor vehicles; equipment; regulations.**

The director shall adopt regulations not inconsistent with or more stringent than applicable federal safety standards concerning the following parts and accessories necessary for the safe operation of a commercial motor carrier:

- A. lighting devices, reflectors and electrical equipment;
- B. brake systems and performance;
- C. glazing and window obstructions;
- D. fuel systems;
- E. coupling devices and towing methods;
- F. tires and wheels;
- G. heaters;
- H. exhaust systems;
- I. frames and body components;
- J. suspension systems;
- K. steering systems;
- L. cargo securement;
- M. emergency safety equipment; and
- N. any other miscellaneous parts and accessories he deems necessary.

**History:** 1978 Comp., § 65-3-9, enacted by Laws 1989, ch. 201, § 9.

### **65-3-10. Notification, reporting and recording of accidents.**

The director shall adopt rules and regulations not inconsistent with or more stringent than applicable federal safety standards concerning records and reports required to be made and kept by motor carriers of accidents which occur during their operations. Nothing in this section shall alter the requirements that drivers of commercial motor carrier vehicles report accidents under Section 66-7-201 NMSA 1978.

**History:** 1978 Comp., § 65-3-10, enacted by Laws 1989, ch. 201, § 10.

### **65-3-11. Hours of service of drivers.**

The director shall adopt rules and regulations not inconsistent with nor more stringent than applicable federal safety standards concerning the hours of service of drivers.

A. These regulations shall include but not be limited to maximum driving and on-duty time, travel time, maintenance of a driver's log or record of duty status, adverse driving conditions, emergency conditions and emergency transportation.

B. These regulations shall authorize a driver to be placed out-of-service for driving or working too many hours or any other conditions identified in federal safety standards and found by the director to contribute to unsafe operations. The out-of-service conditions shall preclude a driver from driving until the condition for placing the driver out-of-service is remedied.

**History:** 1978 Comp., § 65-3-11, enacted by Laws 1989, ch. 201, § 11.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 48A Am. Jur. 2d Labor and Labor Relations § 4125 et seq.

Hours of service or other conditions affecting drivers of motor trucks, statutes relating specifically to, 120 A.L.R. 295.

Deviation from employment in use of employer's car during regular hours of work, 51 A.L.R.2d 8.

Liability of land carrier to passenger who becomes victim of third party's assault on or about carrier's vehicle or premises, 34 A.L.R.4th 1054.

60 C.J.S. Motor Vehicles § 56.

### **65-3-12. Repair and maintenance.**

The director shall adopt rules and regulations concerning the systematic inspection, repair and maintenance of all commercial motor carrier vehicles. The regulations shall not be inconsistent with or more stringent than applicable federal safety standards.

A. The regulations shall provide for:

- (1) proper lubrication and absence of oil and grease leaks;
- (2) inspection of motor vehicles in operation by certified inspectors of the division at ports of entry, at suitable locations along the highway and at a carrier's place of business;

- (3) driver's vehicle inspection reports;
- (4) periodic vehicle inspection by the motor carrier, by a certified inspector of the division or by another inspector authorized by the director;
- (5) inspector qualifications;
- (6) minimum periodic inspection standards; and
- (7) record-keeping associated with these requirements.

B. These regulations shall authorize a vehicle to be placed out-of-service because of mechanical or operational dysfunction causing a vehicle to be unsafe. The out-of-service condition shall preclude the use of the vehicle until the condition for placing the vehicle out-of-service is remedied.

C. Motor carriers shall make safety-related records available to division enforcement personnel upon request.

**History:** 1978 Comp., § 65-3-12, enacted by Laws 1989, ch. 201, § 12.

### **65-3-13. Transportation of hazardous materials.**

The director shall adopt regulations not inconsistent with or more stringent than applicable federal safety standards concerning the safe transportation of hazardous materials, including hazardous substances and waste.

A. These regulations shall include but not be limited to:

- (1) marking;
- (2) labeling;
- (3) placarding;
- (4) shipping documents;
- (5) hazardous material packaging;
- (6) driving;
- (7) parking;
- (8) attendance and surveillance of motor vehicles;
- (9) smoking;

- (10) fueling;
- (11) checking tires;
- (12) loading and securement;
- (13) cargo tanks;
- (14) damaged and leaking packagings and containers;
- (15) maintenance of emergency instructions and documents; and
- (16) avoidance of heavily populated areas and open fires.

B. These regulations shall authorize a vehicle to be placed out-of-service because of an unsafe condition relating to the hazardous materials being transported. The out-of-service condition shall preclude the movement of the vehicle until the unsafe condition is remedied.

**History:** 1978 Comp., § 65-3-13, enacted by Laws 1989, ch. 201, § 13.

#### **65-3-14. Drug and alcohol testing program; report of positive test.**

A. A motor carrier shall have an in-house drug and alcohol testing program that meets the requirements of 49 C.F.R. part 382 or be a member of a consortium, as defined in 49 C.F.R. part 382.107, that provides testing that meets the requirements of C.F.R. part 382.

B. A person or entity specified in 49 C.F.R. part 382.103, who is not explicitly excepted by New Mexico law, is subject to the provisions of this section and shall report positive test results or a refusal to submit to a test pursuant to provisions in this section. A refusal to submit to a pre-employment test shall not be considered a violation of this section.

C. When a person or entity specified in 49 C.F.R. part 382.103 determines that a positive test result is valid, the person or entity shall report the findings to the motor vehicle division of the taxation and revenue department. The motor vehicle division shall enter the report of a positive test result or refusal to submit to a test on the reported person's motor vehicle record so that it can be contained in the commercial driver's license information system pursuant to the New Mexico Commercial Driver's License Act [66-5-52 through 66-5-72 NMSA 1978].

D. The division shall keep the report of a positive test result or the refusal to submit to a test in the motor vehicle record of the driver for five years from the time the report was received by the motor vehicle division.

**History:** Laws 2007, ch. 151, § 1; 2009, ch. 200, § 2.

## **ANNOTATIONS**

**The 2009 amendment**, effective July 1, 2009, deleted former Subsection B, which provided that at the time of registration or renewal of registration of a commercial motor vehicle, a motor carrier shall certify that the motor carrier is in compliance with the requirements of Subsection A; added Subsection B; in Subsection C, after "When a", deleted "medical review officer of a motor carrier's testing program or of the consortium to which the motor carrier belongs" and added "person or entity specified in 49 C.F.R. part 382.103"; in the second sentence, after "division shall enter the" added "report of a"; and after "positive test", deleted "results" and added "result or refusal to submit to a test on the reported person's motor vehicle record so that it can be contained"; and added Subsection D.

## **ARTICLE 4**

### **Motor Carrier Transportation Agents**

(Repealed by Laws 2003, ch. 359, § 44.)

#### **65-4-1 to 65-4-18. Repealed.**

## **ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 359 § 44, repealed 65-4-1 to 65-4-18 NMSA 1978, as enacted by Laws 1933, ch. 120, §§ 1 to 19, relating to motor carrier transportation agents, effective July 1, 2003. For provisions of the former sections, see the 2002 NMSA 1978 on *NMOneSource.com*. For the Motor Carrier Act, see 65-2A-1 NMSA 1978.

## **ARTICLE 5**

### **Procedures for Vehicles Entering or Leaving State**

#### **65-5-1. Vehicles to stop at ports of entry; field enforcement; information; inspection.**

A. All commercial motor carrier vehicles shall enter, leave or travel through the state on designated highways and shall stop at every port of entry as designated by the division for manifesting and clearance stickers, except as provided in Subsection H of this section.

B. An officer may enforce in the field the provisions of the Motor Transportation Act and the Motor Carrier Act [65-2A-1 through 65-2A-41 NMSA 1978] and perform inspections as provided in this section whenever the officer stops a commercial motor

carrier vehicle after observing that the vehicle is in, or is being operated in, violation of those acts, the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] or the Criminal Code [Chapter 30 NMSA 1978].

C. The operator of a commercial motor carrier vehicle shall:

(1) upon request, make out and deliver to the agent of the division at a port of entry or to an officer conducting field enforcement a manifest showing that part of the following information requested:

- (a) the point of origin of the shipment;
- (b) the ultimate destination of the shipment; and
- (c) the gross vehicle weight of the vehicle and cargo;

(2) sign the manifest and present it to the agent at the port of entry or to the officer conducting field enforcement; and

(3) present for inspection to the agent at the port of entry or the officer conducting field enforcement a copy of the billing or invoice describing the contents of the cargo and the weight of the cargo.

D. The agent at the port of entry or the officer conducting field enforcement may verify the information contained upon the billing or invoice and shall:

(1) check the license, permit, engine and serial numbers, weight and description of the vehicle; and

(2) inspect the vehicle and ascertain whether it is in safe and road-worthy condition and properly equipped with all lights, brakes and other appliances required by law.

E. The agent at the port of entry or officer conducting field enforcement may confirm the contents and weight of the cargo of a commercial motor carrier vehicle and interview the operator about the cargo and, if in doubt as to the declared gross weight, may order the cargo weighed before issuing any clearance certificate for the vehicle.

F. The agent at the port of entry or the officer conducting field enforcement may inspect the contents of a commercial motor carrier vehicle to determine whether all taxes on gasoline and motor fuel and excise taxes on alcoholic liquors and all taxes on any other property have been fully paid.

G. The agent at the port of entry or the officer conducting field enforcement may inspect a commercial motor carrier vehicle and its contents to determine whether they

are in compliance with laws and rules regarding public safety, health, welfare and comfort.

H. An agricultural product transport vehicle is excluded from the requirements of Subsection A of this section if the agricultural product transport vehicle has cleared the port of entry at least once and has successfully passed a commercial vehicle safety alliance level 1 inspection during the current harvest season.

I. As used in this section, "agricultural product transport vehicle" means a motor vehicle, freight trailer or utility trailer or a combination thereof used exclusively for hauling agricultural products harvested by a farmer from the place of harvesting to market, storage or a processing plant.

**History:** 1941 Comp., § 68-1527, enacted by Laws 1943, ch. 125, § 8; 1953 Comp., § 64-30-8; Laws 1967, ch. 97, § 37; 1977, ch. 250, § 96; 1983, ch. 142, § 1; 2008, ch. 63, § 1; 2011, ch. 101, § 2.

## ANNOTATIONS

**Cross references.** — For definition of division, see 65-1-2 NMSA 1978.

For ports of entry designated by motor transportation division, see 65-1-11 NMSA 1978.

**The 2011 amendment,** effective June 17, 2011, authorized officers in the field to enforce the Motor Transportation Act and the Motor Carrier Act and to inspect commercial motor carrier vehicles and eliminated from the list of information that an operator is required to provide in a manifest the names of the owner, operator and forwarding company, the license number and state in which the vehicle is permitted, the engine number, the serial number of the vehicle, the factory list capacity of the vehicle, the number of taxable miles traveled in New Mexico, and the public liability insurance coverage of the vehicle and cargo.

**The 2008 amendment,** effective May 14, 2008, added Subsections G and H.

**Constitutionality.** — New Mexico's regulatory scheme is a sufficient substitute for a warrant as determined by the three-part test articulated in *N.Y. v. Burger*, 482 U.S. 691 (1987). *U.S. v. Mitchell*, 518 F.3d 740 (10th Cir. 2008); *U.S. v. Gwathney*, 465 F.3d 1133 (10th Cir. 2006).

The regulatory scheme governing commercial carriers provides adequate notice to owners and operators of commercial carriers that their property will be subject to periodic inspections and adequately limits the discretion of inspectors in place and scope. *U.S. v. Vasquez-Castillo*, 258 F.3d 1207 (10th Cir. 2001).

**Limitation on stopping of vehicles.** — In the absence of reasonable suspicion, stops must be carried out pursuant to a plan which embodies explicit, neutral limitations on

the conduct of individual officers. *State v. Clark*, 1991-NMCA-082, 112 N.M. 500, 816 P.2d 1122.

**Legal stop ripening into illegal arrest.** — Although initial stop of commercial truck was legal under New Mexico's inspection statutes, the stop ripened into an unlawful de facto arrest when, without probable cause, officer required the driver to wait an hour; the illegality of the arrest vitiated driver's subsequent consent to the search of his truck, and rendered the stolen motorcycles which were found inadmissible under the exclusionary rule. *State v. Jutte*, 1998-NMCA-150, 126 N.M. 244, 968 P.2d 334, cert. denied, 126 N.M. 533, 972 P.2d 352.

**Invalid stopping of vehicles.** — Motor transportation division officer's stop of a rental truck was not made at a port of entry and was invalid, where the officer had not set out any signs or other indication to vehicle drivers that they would be required to stop, had stopped vehicles randomly and at his own discretion, and had chosen his own schedule of where to patrol, as opposed to his supervisor making the decision. *State v. Clark*, 1991-NMCA-082, 112 N.M. 500, 816 P.2d 1122.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Commerce §§ 26 to 34.

15 C.J.S. Commerce § 71(3).

### **65-5-1.1. Joint ports of entry; intent; bilateral agreements.**

A. It is the intent of the legislature to promote economic development and to streamline the collection of revenues and the regulation of the trucking industry by authorizing the secretary to enter into bilateral agreements for the location, erecting, staffing and operation of ports of entry jointly with contiguous jurisdictions. Because of the many cost efficiencies that can be achieved, the legislature intends that the secretary explore the possibility of entering into bilateral agreements for the joint operation of ports of entry with all neighboring states. The legislature recognizes that officials of the state of Arizona have offered to negotiate an arrangement by which two joint Arizona-New Mexico ports would be established, the first in New Mexico near Gallup and the second on interstate 10 in Arizona; the legislature intends that the secretary and the secretary of highway and transportation use the authority granted in this section to explore this opportunity to serve the public interest. The legislature recognizes that expenditures by the state highway and transportation department will be necessary to contribute New Mexico's share of the total cost for the construction of such facilities and finds that such expenditures are appropriate and in the public interest.

B. The secretary may negotiate and enter into bilateral agreements with designated representatives of contiguous states to provide for the staffing and operation of jointly occupied ports of entry located within the boundaries of this state or an adjoining state. An agreement may allow employees of either state to collect fees, taxes, interest and penalties imposed by the rules, regulations or laws of either state for the operation of

vehicles on the highways of either state and for the issuance of required permits. The secretary or the secretary's delegate may appoint employees of the adjoining state as peace officers of the department for the enforcement of tax, weight, size and load, equipment, safety and financial responsibility laws and regulations of this state relating to vehicles entering or exiting this state and may allow employees of the department to accept similar appointments with the adjoining states. Any agreement entered into under the authority of this section shall provide that an employee of the adjoining state appointed pursuant to this section shall not be compensated by this state or for the purpose of employment rights and benefits to be considered an employee of this state. An employee of the adjoining state must agree that he shall not be compensated by this state or for purposes of employment rights or benefits be considered an employee of this state. Employees of this state accepting appointments from the adjoining state shall not be by virtue of the appointment be considered employees of that state nor be compensated by that state or for purposes of employment rights or benefits be considered an employee of that state.

**History:** 1978 Comp., § 65-5-1.1, enacted by Laws 1988, ch. 69, § 1.

## **ANNOTATIONS**

**Compiler's notes.** — Laws 1988, ch. 67, § 1 and Laws 1988, ch. 69, § 1 enacted new sections designated 65-5-1.1 NMSA 1978. The two sections were identical, except for the addition in the Chapter 67 version of a Subsection C, which read "This act shall have no force and effect on any boundary of New Mexico adjoining a foreign country". The section was set out as enacted by Laws 1988, ch. 69, § 1. See 12-1-8 NMSA 1978.

### **65-5-1.2. Joint ports of entry; enforcement authority.**

The department may require commercial motor carrier vehicles to stop at a joint port of entry in an adjoining state. The joint port of entry shall be established pursuant to an agreement entered into between the department and another state pursuant to Section 9-11-12 NMSA 1978.

**History:** 1978 Comp., § 65-5-1.2, enacted by Laws 1989, ch. 319, § 7.

### **65-5-2. Proof of compliance; schedule of penalties.**

Except as otherwise provided in this section, a commercial motor carrier vehicle having a gross vehicle weight or combination gross vehicle weight of over twenty-six thousand pounds shall not travel on New Mexico highways without either proof that the trip tax has been paid for the movement of the vehicle or both evidence of registration and a tax identification permit issued by the department, unless that vehicle is exempt from the weight distance tax. The department may, by regulation, exempt portions of a highway from the requirements of this section if those portions are prior to reaching a port of entry where the trip tax may be paid.

**History:** 1941 Comp., § 68-1528, enacted by Laws 1943, ch. 125, § 9; 1953 Comp., § 64-30-9; Laws 1967, ch. 97, § 38; 1977, ch. 250, § 97; 1983, ch. 142, § 2; 1987, ch. 272, § 1; 1992, ch. 106, § 19; 2007, ch. 209, § 3.

## ANNOTATIONS

**Cross references.** — For definition of department, see 65-1-2 NMSA 1978.

**The 2007 amendment,** effective July 1, 2007, changed "card" to "permit".

**The 1992 amendment,** effective July 1, 1992, rewrote this section to the extent that a detailed comparison would be impracticable.

### 65-5-2.1. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 1992, ch. 106, § 23 repealed 65-5-2.1 NMSA 1978, as enacted by Laws 1987, ch. 272, § 2, relating to multiple-offense citations, effective July 1, 1992. For provisions of former section, see the 1991 NMSA 1978 on *NMOneSource.com*.

### 65-5-3. Clearance certificates; types of carriers.

After inspection of the vehicle and related documentation and any necessary registration, clearance certificates or special permits may be issued by the department for:

A. commercial motor carrier vehicles operating in compliance with the provisions of the Motor Carrier Act [65-2A-1 through 65-2A-41 NMSA 1978] when:

(1) all taxes and registration fees required by the laws of this state upon the vehicles and contents of the vehicles have been paid and all other laws and rules and regulations of departments of this state applicable to the vehicles and contents have been complied with; and

(2) the operator or owner of the vehicle is not in default or delinquent in the payment of any tax, the filing of any report or the observance of any requirements of the Motor Carrier Act;

B. commercial motor carrier vehicles classified and designated in law as exempt when:

(1) all taxes required by the laws of this state upon the contents of the vehicles have been paid and all other laws and rules and regulations of departments of this state applicable to the contents have been complied with; and

(2) the vehicles have been registered in this state or another state and evidence of registration, including proper display of registration plates, required by the laws of this state is provided;

C. commercial motor carrier vehicles not registered or licensed in this state that are transporting passengers for hire or property for hire or resale when:

(1) all taxes and registration fees required by the laws of this state upon the vehicles and contents of the vehicles have been paid and all other laws and rules and regulations of departments of this state applicable to the vehicles and contents have been complied with;

(2) the vehicle is properly covered by liability insurance in accordance with the provisions of the Motor Carrier Act and the regulations of the state corporation commission [public regulation commission]; and

(3) the trip tax has been fully paid; and

D. commercial motor carrier vehicles not registered or licensed in this state that are transporting property not for hire or resale when:

(1) all taxes required by the laws of this state upon the contents of the vehicles have been paid and all other laws, rules and regulations applicable to such contents have been complied with; and

(2) the trip tax has been fully paid.

**History:** 1941 Comp., § 68-1529, enacted by Laws 1943, ch. 125, § 10; 1953 Comp., § 64-30-10; Laws 1967, ch. 97, § 39; 1992, ch. 106, § 20.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that all references to the state corporation commission be construed as references to the public regulation commission.

**The 1992 amendment,** effective July 1, 1992, rewrote this section to the extent that a detailed comparison would be impracticable.

**Legislative intent.** — Although the wording of this section is not entirely clear, it appears that the intention of the legislature was to include and describe therein all types of commercial motor vehicle operations. Certain types under Subsections A and B were to be given clearance certificates or special permits. All other types would then fall

under Subsections C and D. As to those a mileage tax is assessed. 1955-56 Op. Att'y Gen. No. 6447 (rendered under prior law).

**Meaning of "registration".** — The reference to "registration" means that if such carrier is required under licensing statutes to obtain a license tag, such inspection station shall require a purchase of such license tag. 1953-54 Op. Att'y Gen. No. 54-5940 (rendered prior to 1992 amendment).

#### **65-5-4. Recompiled.**

### **ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-5-4 NMSA 1978, relating to unregistered foreign commercial motor carrier vehicle operations, as 66-3-1.3 NMSA 1978, effective July 1, 1998.

#### **65-5-5. Mexican commercial motor vehicles; movement through border commercial zone; registration exemption; financial responsibility; domestic transportation.**

A. A Mexican commercial motor vehicle is exempt from requirements for motor vehicle registration in this state, including temporary registration, if the motor vehicle is engaged solely in movement across the international border between New Mexico and the United Mexican States into or from an international border commercial zone, and the motor vehicle is registered and licensed as required by the law of another country. A Mexican commercial motor vehicle and its driver operating pursuant to the exemption under this section may be considered unregistered if the motor vehicle is operated in this state outside the border commercial zone or in violation of United States law.

B. The department shall adopt rules that conform with federal law requiring motor carriers operating Mexican commercial motor vehicles in this state to maintain financial responsibility.

C. A Mexican commercial motor vehicle shall not transport persons or cargo in intrastate commerce in this state unless the motor vehicle is authorized to conduct operations in interstate and foreign commerce domestically between points in the United States under federal law or international agreement.

D. As used in this section:

(1) "border commercial zone" means a commercial zone established pursuant to federal law or regulations, any portion of which is contiguous to the border between this state and the United Mexican States; and

(2) "Mexican commercial motor vehicle" means a commercial motor carrier vehicle that is registered or titled in the United Mexican States.

**History:** Laws 2003, ch. 24, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 24, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on June 20, 2003, 90 days after adjournment of the legislature.

## **ARTICLE 6**

### **Ambulance Standards**

#### **65-6-1. Short title.**

Sections 1 through 6 [65-6-1 through 65-6-6 NMSA 1978] of this act may be cited as the "Ambulance Standards Act".

**History:** 1953 Comp., § 64-40-1, enacted by Laws 1974, ch. 82, § 1.

### **ANNOTATIONS**

**Cross references.** — For ambulance service for political subdivisions, see 5-1-1 NMSA 1978.

For traffic laws pertaining to authorized emergency vehicles, see 66-7-6 and 66-7-332 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability of operator of ambulance service for personal injuries to person being transported, 68 A.L.R.4th 14.

#### **65-6-2. Definitions.**

As used in the Ambulance Standards Act:

A. "ambulance" means a vehicle, including motor vehicles or watercraft, designed and used or intended to be used for the transportation of sick or injured persons;

B. "driver" means a person who, on a regular or irregular basis, either paid or voluntary, serves as the operator of an ambulance;

C. "attendant" means a person who, on a regular or irregular basis, either paid or voluntary, serves as an assistant to the driver in the operation of the ambulance; and

D. "commission" means the public regulation commission.

**History:** 1953 Comp., § 64-40-2, enacted by Laws 1974, ch. 82, § 2; 1977, ch. 156, § 1; 1998, ch. 108, § 78.

## ANNOTATIONS

**The 1998 amendment**, effective January 1, 1999, deleted "ambulance" preceding "assistant to the" near the end of Subsection C, substituted "public regulation" for "state corporation" at the end of Subsection D, and made minor stylistic changes.

### **65-6-3. Legislative purpose.**

The purpose of the Ambulance Standards Act is to provide uniform standards of design, equipment and operation of ambulances used in the transportation of the sick and injured, and to ensure the highest standards of competence in the ambulance drivers and attendants providing service to the public.

**History:** 1953 Comp., § 64-40-3, enacted by Laws 1974, ch. 82, § 3.

### **65-6-4. Corporation commission [public regulation commission]; duties.**

The corporation commission [public regulation commission], in accordance with its responsibilities to regulate common carriers, shall, within one year of the effective date of this act, hold public hearings, as prescribed in Article 2 of Chapter 65 NMSA 1978 [repealed], and adopt regulations:

A. for the establishment of reasonable, flexible standards for ambulances, including but not limited to:

- (1) vehicle design;
- (2) health and safety equipment to be maintained and used in ambulances;
- (3) procedures for the operation of ambulances; and
- (4) at least annual inspection of ambulances; and

B. for the licensure of all ambulance drivers and attendants, to include:

- (1) minimum training requirements to include basic and advanced red cross and such other available training as the commission finds reasonable and in the best interests of the public; and

(2) a written and practical examination of competence limited to that material, information and training required of ambulance drivers and attendants, respectively, in the regulations adopted by the corporation commission [public regulation commission].

In establishing standards for ambulances, the commission shall give serious consideration to the vehicle needs and limitations imposed by the topography and road and weather conditions of various localities. Further, the commission shall take into consideration the resources of the various communities, institutions and sponsoring organizations providing ambulance service to the public.

**History:** 1953 Comp., § 64-40-4, enacted by Laws 1974, ch. 82, § 4.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1981, ch. 358, § 49 repealed 65-2-1 to 65-2-79 NMSA 1978, effective April 10, 1981, and Laws 2003, ch. 359 § 44 repealed 65-2-80 to 65-2-127 NMSA 1978, effective July 1, 2003. For present comparable provisions of "Article 2, Chapter 65", as referenced in the first paragraph, see Chapter 65, Article 2A NMSA 1978.

Laws 1998, ch. 108, § 80 provided that all references to the state corporation commission be construed as references to the public regulation commission.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 185, 202.

60 C.J.S. Motor Vehicles § 26.

### 65-6-5. Applicability of act.

Upon the effective date of the Ambulance Standards Act all ambulances operating in New Mexico, except those excluded in Section 6 [65-6-6 NMSA 1978], shall be issued a three-year certificate of public convenience and necessity by the state corporation commission [public regulation commission].

**History:** 1953 Comp., § 64-40-5, enacted by Laws 1974, ch. 82, § 5.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1998, ch. 108, § 80 provided that all references to the state corporation commission be construed as references to the public regulation commission.

## **65-6-6. Exceptions.**

The Ambulance Standards Act does not apply to:

A. gratuitous assistance by any individual in the case of an emergency;

B. law enforcement officials in the pursuit of their duties; and

C. ambulances owned by a private company, corporation or business used primarily for the transportation of sick or injured employees from the place of business to a hospital or other facility for treatment; however, no such ambulance may be used to transport any person from one hospital to another hospital or similar facility, or from a hospital to the sick or injured person's home.

**History:** 1953 Comp., § 64-40-6, enacted by Laws 1974, ch. 82, § 6.

# **ARTICLE 7**

## **Transportation Network Company Services**

### **65-7-1. Short title.**

Sections 1 through 22 [65-7-1 through 65-7-22 NMSA 1978] of this act may be cited as the "Transportation Network Company Services Act".

**History:** Laws 2016, ch. 80, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### **65-7-2. Definitions.**

As used in the Transportation Network Company Services Act:

A. "digital network" means an internet-supported application, software, program, website or system offered or utilized by a transportation network company that enables the prearrangement of transportation by passengers with transportation network company drivers;

B. "personal vehicle" means a vehicle that is used by a transportation network company driver and is:

(1) owned, leased or otherwise authorized for use by a transportation network company driver; and

(2) not a taxicab or other vehicle for hire;

C. "prearranged ride" means transportation provided by a transportation network company driver, which shall be deemed to commence when a driver accepts a transportation request through a digital network and continue until all passengers have exited from the personal vehicle at the destination requested by the rider. "Prearranged ride" does not include shared-expense vanpool or carpool arrangements or transportation provided using a taxicab, limousine or other vehicle for hire pursuant to the Motor Carrier Act [65-2A-1 through 65-2A-41 NMSA 1978];

D. "transportation network company" means a corporation, partnership, sole proprietorship or other entity that is licensed pursuant to the Transportation Network Company Services Act and lawfully operating in New Mexico that uses a digital network, but which shall not:

(1) be deemed to control, direct or manage the personal vehicles or transportation network company drivers that connect to its digital network except where agreed to by written contract; or

(2) include any entity receiving funding to supplement transportation services through Title III B of the federal Older Americans Act of 1965, including any driver for such an entity, but only when the driver is providing those services;

E. "transportation network company driver" or "driver" means an individual who:

(1) accepts a prearranged ride requested through a digital network and for a fee paid by a transportation network company rider to the transportation network company; and

(2) uses a personal vehicle to provide a prearranged ride through a digital network;

F. "transportation network company insurance" means a liability insurance policy that specifically covers a transportation network company driver's use of a transportation network company digital network; and

G. "transportation network company rider" or "rider" means a person who uses a digital network for a prearranged ride.

**History:** Laws 2016, ch. 80, § 2; 2017, ch. 13, § 1.

## **ANNOTATIONS**

**The 2017 amendment**, effective June 16, 2017, amended the definition of "transportation network company" to exclude entities receiving federal subsidies to provide service under the federal Older Americans Act of 1965; and in Subsection D, after "shall not", added new paragraph designation "(1)", and added Paragraph D(2).

### **65-7-3. Not other carriers.**

Transportation network companies and transportation network company drivers shall not be subject to the Motor Carrier Act [65-2A-1 through 65-2A-41 NMSA 1978] or deemed to provide any transportation service as defined in the Motor Carrier Act. A transportation network company driver shall not be required to register a personal vehicle as a commercial vehicle or vehicle for hire.

**History:** Laws 2016, ch. 80, § 3.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### **65-7-4. Transportation network company permit required.**

A. A person shall not operate a transportation network company in New Mexico without first having obtained a permit from the public regulation commission.

B. A permit issued to a transportation network company by the public regulation commission shall be effective for one year.

C. The public regulation commission shall issue a permit to a transportation network company that meets the requirements set forth in the Transportation Network Company Services Act and any rules adopted by the commission pursuant to that act. The transportation network company shall pay an annual permit fee of ten thousand dollars (\$10,000) to the commission.

**History:** Laws 2016, ch. 80, § 4.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### **65-7-5. Fare collected for services.**

On behalf of a transportation network company driver, a transportation network company may charge a fare for the services provided to riders; provided that, if a fare is collected from a rider, the transportation network company shall disclose to the rider the fare calculation method, including the applicable rates and any fees, and shall provide an estimated fare before the rider enters a personal vehicle for a prearranged ride.

**History:** Laws 2016, ch. 80, § 5.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

#### **65-7-6. Identification of transportation network company vehicles and drivers.**

A digital network shall display a current photograph of the transportation network company driver, and the license plate number, state of vehicle registration and make and model of the personal vehicle for a prearranged ride.

**History:** Laws 2016, ch. 80, § 6.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

#### **65-7-7. Electronic receipt.**

Within twenty-four hours after the completion of a prearranged ride, a transportation network company shall electronically transmit a receipt to the rider that includes:

- A. the origin and destination addresses of the prearranged ride;
- B. the total time elapsed of and distance of the prearranged ride; and
- C. an itemization of the total fare paid, if any.

**History:** Laws 2016, ch. 80, § 7.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

## **65-7-8. Financial responsibility of transportation network companies.**

A. Either the transportation network company driver, or the transportation network company on the driver's behalf, shall maintain primary automobile insurance that acknowledges that the driver is a transportation network company driver or otherwise uses a vehicle to transport riders for compensation and covers the driver:

- (1) while the driver is logged on to the transportation network company's digital network; or
- (2) while the driver is engaged in a prearranged ride.

B. While a transportation network company driver is logged on to the transportation network company's digital network, but is not engaged in a prearranged ride, the following minimum automobile insurance requirements shall apply: primary automobile liability insurance in the amount of at least fifty thousand dollars (\$50,000) for death and bodily injury per person, one hundred thousand dollars (\$100,000) for death and bodily injury per incident and twenty-five thousand dollars (\$25,000) for property damage and uninsured and underinsured motorist coverage to the extent required by Section 66-5-301 NMSA 1978.

C. While a transportation network company driver is engaged in a prearranged ride, the following minimum automobile insurance requirements shall apply:

- (1) insurance of at least one million dollars (\$1,000,000) primary automobile liability for death, bodily injury and property damage; and
- (2) uninsured and underinsured motorist coverage to the extent required by Section 66-5-301 NMSA 1978.

D. If insurance maintained by a transportation network company driver has lapsed or does not provide the minimum coverage required by this section, insurance maintained by a transportation network company shall provide the coverage required as the primary coverage.

E. Insurance required by this section shall be obtained from an insurer authorized to do business in the state or with a surplus lines insurer eligible pursuant to the New Mexico Insurance Code [Chapter 59A NMSA 1978].

F. Insurance satisfying the requirements of this section shall be deemed to satisfy the insurance requirements of the Mandatory Financial Responsibility Act [66-5-201

through 66-5-239 NMSA 1978] for a transportation network company driver while engaged in a prearranged ride or logged onto a digital network.

G. At all times while a transportation network company driver is logged onto a digital network, the driver shall possess digital and physical proof of coverage required by this section.

H. In the event of a motor vehicle accident involving a transportation network company driver, which occurs while the driver is logged on to a digital network or engaged in a prearranged ride, the driver shall provide the required proof of insurance coverage to all passengers, other drivers, injured persons, automobile insurers and investigating law enforcement officers. A transportation network company driver shall also disclose whether the driver was logged on to a digital network, or on a prearranged ride, at the time of an accident.

**History:** Laws 2016, ch. 80, § 8.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

#### **65-7-9. Insurance coverage disclosures.**

A transportation network company shall disclose in writing to its transportation network company drivers:

A. the insurance coverage that the transportation network company provides the transportation network company driver while the driver is logged on to a digital network, including the types of coverage and the limits for each coverage; and

B. that the transportation network company driver's insurance policy might exclude coverage while the driver is logged on to the transportation network company's digital network or while engaged in a prearranged ride.

**History:** Laws 2016, ch. 80, § 9.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

#### **65-7-10. Automobile insurance provisions.**

A. Insurers that write automobile insurance in New Mexico may exclude any part or all coverage of and the duty to defend and indemnify an owner or operator of a personal vehicle for any loss or injury that occurs while a driver is logged on to a digital network or while engaged in a prearranged ride. Such exclusions shall apply notwithstanding requirements of the Mandatory Financial Responsibility Act [66-5-201 through 66-5-239 NMSA 1978].

B. In a claims coverage investigation, a transportation network company and any insurer providing coverage for the transportation network company driver shall disclose the precise times that a transportation network company driver logged on and off of the transportation network company's digital network in the twelve-hour period immediately preceding an accident, and in the twelve-hour period immediately following the accident, and disclose all coverage, exclusions and policy limits provided for all insurance maintained under the Transportation Network Company Services Act.

C. If a transportation network company's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, and for property damage to a vehicle subject to a finance lien, the transportation network company shall cause its insurer to issue the payment directly to the business repairing the vehicle or jointly to the owner of the vehicle and any lienholder.

**History:** Laws 2016, ch. 80, § 10.

## ANNOTATIONS

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### **65-7-11. Zero tolerance for drug or alcohol use.**

A. A transportation network company shall implement and enforce a zero-tolerance policy regarding drug and alcohol use by transportation network company drivers. The zero-tolerance policy shall prohibit any use or impairment due to intoxicating drugs or liquor while a transportation network company driver is providing prearranged rides or is logged on to the transportation network company's digital network.

B. A transportation network company shall publish on its website notice of its zero-tolerance policy, as well as procedures for a rider to report a complaint about a driver suspected to have been under the influence of illegal drugs or alcohol during a prearranged ride.

C. A transportation network company shall immediately conduct an investigation into every reported complaint of violation of its zero-tolerance policy, and the policy shall include procedures for suspension or termination of transportation network company drivers.

D. A transportation network company shall maintain records relevant to the enforcement of the requirements of this section for a period of at least four years from the date that a rider complaint is received by the transportation network company.

**History:** Laws 2016, ch. 80, § 11.

## ANNOTATIONS

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### **65-7-12. Transportation network company driver requirements.**

A. Before allowing a transportation network company driver to accept prearranged ride requests through a transportation network company's digital network:

(1) the prospective driver shall submit an application to the transportation network company that includes the individual's address, age, driver's license number and state, driving history, motor vehicle registration and proof of the insurance required;

(2) the transportation network company shall obtain a local and national criminal background check for the prospective driver that shall include:

(a) multistate or multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation and primary source search; and

(b) a national sex offender registry; and

(3) the transportation network company shall obtain and review a driving history research report for the prospective driver.

B. A transportation network company shall not permit a person to act as a transportation network company driver who:

(1) has had more than three moving violations in the preceding three-year period or one violation in the preceding three-year period involving any attempt to evade law enforcement, reckless driving or driving on a suspended or revoked license;

(2) has been convicted within the past seven years of:

(a) a felony;

(b) misdemeanor driving under the influence, reckless driving, leaving the scene of an accident or any other driving-related offense or any misdemeanor violent offense or sexual offense; or

- (c) more than three misdemeanors of any kind;
- (3) is identified by a national sex offender registry;
- (4) does not possess a valid license;
- (5) does not possess proof of registration for the motor vehicle used to provide prearranged rides;
- (6) does not possess proof of automobile liability insurance for the motor vehicle used to provide prearranged rides; or
- (7) is not at least twenty-one years old.

C. A transportation network company driver shall not provide prearranged rides for more than twelve hours out of any twenty-four-hour period.

**History:** Laws 2016, ch. 80, § 12.

## **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### **65-7-13. Vehicle safety.**

A. A transportation network company shall not allow a driver to be connected to potential passengers using the digital network or software application service of the transportation network company if the motor vehicle operated by the driver to provide transportation services:

- (1) is not in compliance with all federal, state and local laws concerning the operation and maintenance of the motor vehicle;
- (2) has fewer than four doors; or
- (3) is designed to carry more than eight passengers, including the driver.

B. A transportation network company shall inspect or cause to be inspected every motor vehicle used by a driver to provide transportation services before allowing the driver to use the motor vehicle to provide prearranged rides and not less than once each year thereafter.

C. The public regulation commission shall promulgate rules and regulations setting forth the requirements of annual inspection of a vehicle used by a transportation

network company driver while logged on to a digital network or engaged in a prearranged ride.

**History:** Laws 2016, ch. 80, § 13.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

#### **65-7-14. No street hails.**

A transportation network company driver shall not solicit or accept street hails.

**History:** Laws 2016, ch. 80, § 14.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

#### **65-7-15. No cash trips.**

A transportation network company shall adopt and enforce a policy prohibiting solicitation or acceptance of cash payments from riders. Any payment for prearranged rides shall be made only electronically by a digital network.

**History:** Laws 2016, ch. 80, § 15.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

#### **65-7-16. Nondiscrimination; accessibility.**

A. A transportation network company shall adopt a written policy of nondiscrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation or gender identity with respect to transportation network company drivers, riders and potential riders and shall notify transportation network company drivers of the policy.

B. Transportation network company drivers shall comply with all applicable laws regarding nondiscrimination against transportation network company drivers, riders or potential riders on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation or gender identity.

C. Transportation network company drivers shall comply with all applicable laws relating to accommodation of service animals.

D. A transportation network company shall not impose additional charges for providing services to persons with physical disabilities.

E. A transportation network company shall provide riders an opportunity to indicate whether they require a wheelchair-accessible vehicle. If a transportation network company cannot arrange a wheelchair-accessible prearranged ride in any instance, it shall direct the rider to an alternate provider of wheelchair-accessible service, if available.

**History:** Laws 2016, ch. 80, § 16.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

#### **65-7-17. Records.**

A. A transportation network company shall maintain:

(1) individual prearranged ride records for at least four years from the date each ride was provided; and

(2) individual records of transportation network company drivers for at least four years after the driver's relationship with the transportation network company has ended.

B. A transportation network company and a transportation network company driver shall not use or disclose a transportation network company rider's personal identifiable information to a third party unless the rider consents; disclosure is required by court order; or disclosure is required to investigate violations of the Transportation Network Company Services Act.

**History:** Laws 2016, ch. 80, § 17.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### **65-7-18. Controlling authority.**

A. No municipality or other local entity may impose a tax on or require a license for a transportation network company, a transportation network company driver or a vehicle used by a transportation network company driver where a tax or license relates to providing prearranged rides or subjects a transportation network company to the municipality's or other local entity's rate, tax, license, entry, operational or other requirements, except for generally applicable business licenses or taxes.

B. Nothing in this section prohibits an airport with more than one million annual enplanements, as reported by the federal aviation administration in the previous calendar year, from requiring a transportation network company to establish fees and other requirements to operate at that airport.

**History:** Laws 2016, ch. 80, § 18.

### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### **65-7-19. Transportation division fund created; assessment and collection of fees.**

A. The "transportation division fund" is created in the state treasury for the purpose of ensuring the safety and financial responsibility of transportation network companies and transportation network company drivers. The fund shall consist of fees collected pursuant to the Transportation Network Company Services Act, administrative fines collected under that act, appropriations, gifts, grants, donations and earnings on investment of the fund. Balances in the fund shall not revert to the general fund or any other fund at the end of any fiscal year.

B. The transportation division fund shall be administered by the public regulation commission. Money in the fund is appropriated to the commission to carry out its duties pursuant to the provisions of the Transportation Network Company Services Act. Not more than five percent of the fees collected pursuant to this section shall be used by the commission for administrative purposes.

C. Payments from the transportation division fund shall be made upon vouchers issued and signed by the director of the administrative services division of the public

regulation commission or the director's authorized representative upon warrants drawn by the secretary of finance and administration.

**History:** Laws 2016, ch. 80, § 19.

### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### **65-7-20. Records pursuant to rules of the public regulation commission.**

A. A transportation network company holding a permit issued by the public regulation commission shall maintain the records required pursuant to the Transportation Network Company Services Act to be collected by the transportation network company, including records regarding transportation network company drivers.

B. In response to a specific complaint, the public regulation commission, its employees or its duly authorized agents may inspect those records held by a transportation network company for the investigation and resolution of the complaint.

C. No more than semiannually and as determined by the public regulation commission, the commission, its employees or its duly authorized agents may, in a mutually agreed setting, inspect those records held by a transportation network company whose review is necessary to ensure public safety; provided that such review shall be on an audit rather than a comprehensive basis.

D. Any proprietary records obtained by the public regulation commission pursuant to this section shall not be subject to disclosure by the commission.

**History:** Laws 2016, ch. 80, § 20.

### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### **65-7-21. Administrative penalties.**

A. If the public regulation commission finds after investigation that a provision of the Transportation Network Company Services Act or an order or rule of the commission is being, has been or is about to be violated, it may issue an order specifying the actual or

proposed acts or omissions to act that constitute a violation and require that the violation be discontinued, rectified or prevented.

B. Notwithstanding the existence of any other penalties, the public regulation commission may assess an administrative fine of not more than one thousand dollars (\$1,000) for each violation of a provision of the Transportation Network Company Services Act or of a lawful rule or order of the commission. In the case of a continuing violation, each day's violation shall be deemed to be a separate and distinct offense.

C. All penalties accruing under the Transportation Network Company Services Act shall be cumulative, and a suit for recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or be a bar to any criminal prosecution.

**History:** Laws 2016, ch. 80, § 21.

### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### **65-7-22. Involuntary suspension and revocation.**

A. The public regulation commission shall immediately suspend, without notice or a hearing, the permit of a transportation network company that:

(1) does not continuously maintain the insurance coverage prescribed by the Transportation Network Company Services Act;

(2) does not pay the fees owed by the transportation network company and the transportation network company's drivers; or

(3) operates in a manner that poses an immediate or imminent threat to public safety.

B. Once suspended, the transportation network company may apply for reinstatement by requesting a public hearing before the public regulation commission and shall establish that the basis for the suspension has been corrected.

**History:** Laws 2016, ch. 80, § 22.

### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 80 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.