

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 2 MOTOR CARRIER
PART 3 MOTOR CARRIER SAFETY

18.2.3.1 ISSUING AGENCY: Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87504-1628.
[4-30-97; 18.2.3.1 NMAC - Rp 18 NMAC 2.3.1, 6-29-00]

18.2.3.2 SCOPE: This part applies to all owners, operators and drivers of commercial motor carrier vehicles.
[4-30-97; 18.2.3.2 NMAC - Rp 18 NMAC 2.3.2, 6-29-00]

18.2.3.3 STATUTORY AUTHORITY: Section 9-19-6 NMSA 1978 and Section 65-3-4 NMSA 1978.
[4-30-97; 18.2.3.3 NMAC - Rp 18 NMAC 2.3.3, 6-29-00; A, 07-16-07]

18.2.3.4 DURATION: Permanent.
[4-30-97; 18.2.3.4 NMAC - Rp 18 NMAC 2.3.4, 6-29-00]

18.2.3.5 EFFECTIVE DATE: June 29, 2000, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[4-30-97; 18.2.3.5 NMAC - Rp 18 NMAC 2.3.5, 6-29-00]

18.2.3.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Motor Transportation Act.
[4-30-97; 18.2.3.6 NMAC - Rp 18 NMAC 2.3.6, 6-29-00]

18.2.3.7 DEFINITIONS: Reserved.
[4-30-97; 18.2.3.7 NMAC - Rp 18 NMAC 2.3.7, 6-29-00]

18.2.3.8 SPECIAL NOTE: All statutory references in 18.2.3 NMAC are to the New Mexico Statutes Annotated, 1978 (NMSA 1978) unless otherwise specified.
[2-3-93; 4-30-97; 18.2.3.8 NMAC - Rp 18 NMAC 2.3.8, 6-29-00]

18.2.3.9 INCORPORATION BY REFERENCE: For the purposes of 18.2.3 NMAC, the term "Code of Federal Regulations" means the Code of Federal Regulations published by the office of the federal register, national archives and records administration as presently in effect including subsequent amendments.

A. Appendix A: Code of Federal Regulations, Title 49, Parts 1 to 99, published by the office of the federal register, are incorporated by reference as presently in effect including subsequent amendments.

B. Appendix B: Code of Federal Regulations, Title 49, Parts 100 to 185, published by the office of the federal register, are incorporated by reference as presently in effect including subsequent amendments.

C. Appendix D: Code of Federal Regulations, Title 49, Parts 200 to 399, published by the office of the federal register, are incorporated by reference as presently in effect including subsequent amendments.

[11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.9 NMAC - Rp 18 NMAC 2.3.9, 6-29-00; A, 7/31/02; A, 3/31/03; A, 1/30/04; A, 07-16-07; A, 11-14-08]

18.2.3.10 GENERAL: The department of public safety hereby adopts Parts 385, 387, 390 and Appendix F (Commercial Zones) of Subchapter B of Chapter III of Title 49 of the Code of Federal Regulations. The provisions in these parts are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees with the following amendments:

A. Where the regulations refer to the United States department of transportation (DOT), substitute the New Mexico department of public safety.

B. Where the regulations refer to the federal motor carrier safety administration, substitute the New Mexico department of public safety.

C. Where the regulations refer to the secretary of the United States department of transportation, substitute the New Mexico secretary of the department of public safety.

D. Where the regulations refer to a special agent of the federal motor carrier safety administration, substitute all personnel safety certified and approved by the director of the motor transportation division of the department of public safety.

E. Part 385.13(a) is amended to read "Generally, a motor carrier rated "unsatisfactory" is prohibited from operating a CMV. Information on motor carriers, including their most current safety rating, is available from the department of public safety on the internet at <http://www.dps.nm.org> or by telephone at (505) 827-0645."

F. Part 385.13(d) is amended to read "*Penalties*. If a proposed "unsatisfactory" safety rating becomes final, the department of public safety will issue an order placing its intrastate operations out of service. Any motor carrier that operates CMVs in violation of this section will be subject to the penalty provisions listed in Sections 66-2-9 NMSA 1978, 66-5-71 NMSA 1978, 66-5-58 NMSA 1978 and 66-8-7 NMSA 1978."

G. Part 385.14(a) is amended to read "A CMV owner or operator that has failed to pay civil penalties imposed by the taxation and revenue department, or has failed to abide by a payment plan, may be prohibited from operating CMVs in intrastate commerce."

H. Part 385.14(b) is amended to read "A broker, freight forwarder, or for-hire motor carrier that has failed to pay civil penalties imposed by the taxation and revenue department, or has failed to abide by a payment plan, may be prohibited from operating in intrastate commerce, and its registration may be suspended under the provisions of section 66-2-9 NMSA 1978.

I. Part 385.15(c) is amended to read "The motor carrier must submit its request in writing to the Department of Public Safety, Motor Transportation Division, P.O. Box 1628 Santa Fe, NM 87504."

J. Part 385.17(b) is amended to read "A motor carrier must make this request in writing to the Department of Public Safety, Motor Transportation Division, P.O. Box 1628 Santa Fe, NM 87504."

K. Part 390.5, Definitions, is amended to read:

(1) "*Commercial motor vehicle*" means any self propelled or towed vehicle used on public highways in commerce to transport passengers or property when:

(a) the vehicle is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more whichever is greater; or the vehicle 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 26,001 or more pounds whichever is greater; or

(b) is designed or used to transport more than 8 passengers (including the driver); for compensation; or

(c) is designed or used to transport more than 15 passengers, (including the driver) and is not used to transport passengers for compensation; or

(d) is used in transporting material found by the secretary of transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the secretary under 49 CFR, subtitle B, Chapter I, subchapter C;

(2) 390.19 is amended to add: "Intrastate motor carriers operating commercial motor vehicles are required to apply for a New Mexico safety identification number from the motor vehicle division, New Mexico taxation and revenue department."

(3) 390.21 is amended to add: "Intrastate carriers operating commercial motor vehicles are required to mark their vehicles with the assigned New Mexico safety identification number, preceded by the letters USDOT." [2-3-93; 11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.10 NMAC - Rp 18 NMAC 2.3.10, 6-29-00; A, 7/31/02; A, 1/30/04; A, 07-16-07; A, 11-14-08]

18.2.3.11 QUALIFICATION OF DRIVERS: The department of public safety hereby adopts Part 40 and Appendix A to Part 40 of Title 49 of the Code of Federal Regulations (49 CFR 40 - Procedures for Transportation Workplace Drug Testing Programs), Part 391 of Title 49 of the Code of Federal Regulations (49 CFR 391 - Qualification of Drivers), Part 382 of Title 49 of the Code of Federal Regulations (49 CFR 382 -Controlled Substances and Alcohol Use and Testing) and Appendices C (Written Examination for Drivers), D (Table of Disqualifying Drugs and Other Substances, Schedule I) and E (Table of Disqualifying Drugs and Other Substances, Schedules II through V) of Subchapter B of Chapter III of Title 49 of the Code of Federal Regulations. All provisions set forth in these parts as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with the following amendments:

A. Part 391.2(c) is amended to read: "*Certain farm vehicle drivers*. The rules in this part do not apply to a farm vehicle driver other than a farm vehicle driver who drives an articulated (combination) motor vehicle

interstate that has a gross weight, including its load, of more than 10,000 pounds or drives an articulated motor vehicle intrastate that has a gross weight, including its load, of 26,001 pounds or more."

B. Part 391.11(b)(1) is amended to read: "Is at least 21 years old; or is 18 years old and drives only in intrastate commerce operating commercial vehicles that are not required to be placarded for hazardous materials."

C. Part 391.49, Waiver of Certain Physical Defects, is amended to add: "(m) A person who is not physically qualified to drive under 391.41(b)(1) or (2) and who is not eligible for a waiver under the provisions of 391.49 (a) through 391.49(l) and who drives only intrastate, may apply for a waiver from the Director, Motor Vehicle Division, New Mexico Taxation and Revenue Department, P.O. Box 1028, Santa Fe, New Mexico, 87504-1028 under 18.19.5.33 NMAC.

[2-3-93; 11-17-93; 4-30-97; 18.2.3.11 NMAC - Rp 18 NMAC 2.3.11, 6-29-00; A, 1/30/04; A, 07-16-07; A, 11-14-08]

18.2.3.12 DRIVING OF MOTOR VEHICLES: The department of public safety hereby adopts Part 392 of Title 49 of the Code of Federal Regulations (49 CFR 392 - Driving of Motor Vehicles). All provisions set forth in CFR 49 Part 392 as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with no amendments.

[2-3-93; 11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.11 NMAC - Rp 18 NMAC 2.3.11, 6-29-00; A, 07-16-07; A, 11-14-08]

18.2.3.13 PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION: The department of public safety hereby adopts Part 393 of Title 49 of the Code of Federal Regulations (49 CFR 393 - Parts and Accessories Necessary for Safe Operation). All provisions set forth in CFR 49 Part 393 as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and drivers, with no amendments.

[2-3-93; 11-17-93; 4-30-97; 18.2.3.13 NMAC - Rp 18 NMAC 2.3.13, 6-29-00; A, 07-16-07; A, 11-14-08]

18.2.3.14 HOURS OF SERVICE OF DRIVERS: The department of public safety hereby adopts Part 395 of Title 49 of the Code of Federal Regulations (49 CFR 395 - Hours of Service of Drivers). All provisions set forth in CFR 49 Part 395 as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with the following amendments: Where the regulation refers to 100 air mile radius, and the transportation is intrastate, substitute 150 air mile radius.

[2-3-93; 11-17-93; 11-17-95; 4-30-97; 18.2.3.14 NMAC - Rp 18 NMAC 2.3.14, 6-29-00; A, 1/30/04; A, 07-16-07; A, 11-14-08]

18.2.3.15 INSPECTION, REPAIR AND MAINTENANCE: The department of public safety hereby adopts Part 396 of Title 49 of the Code of Federal Regulations (49 CFR 396 - Inspection, Repair, and Maintenance) and Appendix G (Minimum Periodic Inspection Standards) of Subchapter B of Chapter III of Title 49 of the Code of Federal Regulations. All provisions set forth in these parts as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with the following amendments:

A. Part 396.9(a) *Personnel authorized to perform inspections* is amended to add: "If the persons have successfully completed approved training, have met minimum performance standards and have been certified and approved by the director of the division, all personnel of the motor transportation division, police officers and any other state inspectors are authorized to enter upon and perform inspections of motor carriers' vehicles in operation."

B. Part 396.9(b) *Prescribed inspection report* is amended to add: "The driver-vehicle inspection form, MTD-10987 and MTD-10988 or computer-generated facsimile, shall be used to record results of motor vehicle inspections conducted by personnel of the motor transportation division of the department of public safety, police officers or other state inspectors authorized to perform inspections by the director of the motor transportation division."

[2-3-93; 11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.15 NMAC - Rp 18 NMAC 2.3.15, 6-29-00; A, 07-16-07; A, 11-14-08]

18.2.3.16 TRANSPORTATION OF HAZARDOUS MATERIALS - DRIVING AND PARKING RULES: The department of public safety hereby adopts Part 397 of Title 49 of the Code of Federal Regulations (49 CFR 397 - Transportation of Hazardous Materials; Driving and Parking Rules). All provisions set forth in CFR 49 Part 397 as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with no amendments.

[2-3-93; 11-17-93; 4-30-97; 18.2.3.16 NMAC - Rp 18 NMAC 2.3.16, 6-29-00; A, 07-16-07; A, 11-14-08]

18.2.3.17 ADOPTION OF FEDERAL HAZARDOUS MATERIALS TRANSPORTATION

REGULATIONS: The department of public safety hereby adopts Parts 107, 171, 172, 173, 177, 178 and 180 of Title 49 of the Code of Federal Regulations (49 CFR 107 - Hazardous Materials Program Procedures, 49 CFR 171 - General Information, Regulations and Definitions, 49 CFR 172 - Hazardous Materials Table, Special Provisions, Hazardous Materials Communications Requirements and Emergency Response Information Requirements, 49 CFR 173 - Shippers - General Requirements for Shipments and Packaging, 49 CFR 177 - Carriage by Public Highway, 49 CFR 178 - Specifications for Packagings and 49 CFR 180 - Continuing Qualification and Maintenance of Packagings). All provisions set forth in these parts as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with no amendments.
[2-3-93; 11-17-93; 11-17-95; 4-30-97; 18.2.3.17 NMAC - Rp 18 NMAC 2.3.17, 6-29-00; A, 7/31/02; A, 07-16-07; A, 11-14-08]

HISTORY of 18.2.3 NMAC:

Pre-NMAC History:

TRD 65-3/1990, Regulations Pertaining to the Motor Carrier Safety Act, Sections 65-3-1 through 65-3-13, 6-15-90.
TRD Rule MCS-93, Regulations Pertaining to the Motor Carrier Safety Act, Sections 65-3-1 through 65-3-13, 2/3/93.

History of the Repealed Material:

18 NMAC 2.3, Motor Carrier Safety - Repealed, 6-29-00.