

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS
PART 8 CHANGES IN CERTIFICATES AND PERMITS

18.3.8.1 ISSUING AGENCY: New Mexico Public Regulation Commission (NMPRC).
[18.3.8.1 NMAC - Rp, 18.3.8.1 NMAC, 2-13-15]

18.3.8.2 SCOPE: This rule applies to all motor carriers operating pursuant to a certificate or permit issued by the commission.
[18.3.8.2 NMAC - Rp, 18.3.8.2 NMAC, 2-13-15]

18.3.8.3 STATUTORY AUTHORITY: Sections 8-8-4 and 65-2A-4 NMSA 1978.
[18.3.8.3 NMAC - Rp, 18.3.8.3 NMAC, 2-13-15]

18.3.8.4 DURATION: Permanent.
[18.3.8.4 NMAC - Rp, 18.3.8.4 NMAC, 2-13-15]

18.3.8.5 EFFECTIVE DATE: February 13, 2015, unless a later date is cited at the end of a section.
[18.3.8.5 NMAC - Rp, 18.3.8.5 NMAC, 2-13-15]

18.3.8.6 OBJECTIVE: The purpose of this rule is to implement Section 65-2A-14 NMSA 1978.
[18.3.8.6 NMAC - Rp, 18.3.8.6 NMAC, 2-13-15]

18.3.8.7 DEFINITIONS: See 18.3.1.7 NMAC.
[18.3.8.7 NMAC - Rp, 18.3.8.7 NMAC, 2-13-15]

18.3.8.8 TRANSFER BY OPERATION OF LAW OF A CERTIFICATE OR PERMIT: This section shall apply whenever the ownership of, or interest in, a certificate or permit passes to another by operation of law, as upon inheritance, bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in performance of the terms of a loan, lease or executory sales contract, or otherwise than by voluntary transfer.

A. Notice. A transferee by operation of law shall file a notice of transfer by operation of law with the commission as provided in 18.3.1.11 NMAC. The personal representative, executor, administrator, receiver, trustee, sheriff or other representative or successor-in-interest of the owner of the operating authority shall sign the notice of transfer by operation of law. The notice of transfer by operation of law shall contain:

- (1) the name of the entity from whom the certificate of public convenience or necessity or permit was transferred;
- (2) the circumstances resulting in the transfer by operation of law; and
- (3) a certified copy of a court order or other document admissible as evidence pursuant to the New Mexico rules of evidence, establishing that the transfer by operation of law has occurred; if the document appears to meet these requirements, the commission shall find that the transfer by operation of law has occurred.

B. Which application appropriate.

(1) Disposal of certificate or permit. If the transferee by operation of law does not wish to continue providing transportation services under the certificate or permit, the transferee by operation of law shall apply for voluntary suspension of the certificate or permit in accordance with 18.3.8.11 NMAC for the period of time needed to dispose of the certificate or permit.

(2) Continued provision of transportation service. If the transferee by operation of law wishes to continue providing transportation services under the certificate or permit, the transferee by operation of law shall file an application containing the information required in Subsection E of 18.3.2.13 NMAC.

C. Director decision. If the director finds that the transferee by operation of law meets the requirements of this section, the director shall promptly issue a certificate or permit in the name of the transferee by operation of law.

[18.3.8.8 NMAC - Rp, 18.3.8.12 NMAC, 2-13-15]

18.3.8.9 REINSTATEMENT OF A CERTIFICATE OR PERMIT FOLLOWING INVOLUNTARY SUSPENSION:

A. Application. An applicant for reinstatement of a certificate or permit that was suspended by the

commission for a safety violation or for failure to render reasonably continuous and adequate service may, upon expiration of the suspension period, file:

- (1) an application on the form prescribed by the director;
- (2) a copy of the commission order imposing involuntary suspension;
- (3) a detailed statement describing how the motor carrier has remedied or will remedy each of the violations stated as grounds for involuntary suspension; and
- (4) the fee required by Section 65-2A-36 NMSA 1978.

B. Notice. The director shall promptly review an application for reinstatement of an existing certificate or permit following involuntary suspension. If the director determines that the application is complete, the director will prepare and publish notice of the application pursuant to 18.3.2.15 NMAC.

C. Procedure for commission review. Following the expiration of the notice period of Section 65-2A-6 NMSA 1978, the director shall promptly file a recommendation in the docket. The commission may issue an order approving reinstatement of a certificate or permit if the statutory requirements of Section 65-2A-27 NMSA 1978 have been met.

[18.3.8.9 NMAC - Rp, 18.3.8.13 NMAC, 2-13-15]

18.3.8.10 CHANGES IN FORM OF LEGAL ENTITY; NAME; OR CONTROL OF A HOLDER OF THE CERTIFICATE OR PERMIT:

A. An application for a change of name, form of legal entity, or 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 shall be on the form prescribed by the director and shall include:

- (1) the original certificate or permit;
- (2) the fee required by Section 65-2A-36 NMSA 1978;
- (3) the information and documents required by Paragraphs (1), (2), (5) through (8), and (14) of Subsection A of 18.3.2.13 NMAC
- (4) if the application is for a change in name, the applicable insurance filing forms in the new name;
- (5) a showing that the proposed change is not being made to avoid any previously incurred taxes or other legal obligations, or to circumvent any otherwise applicable requirements of these rules or the Motor Carrier Act; and
- (6) if the application is for a change in form of legal entity or in control of a holder, a statement that all assets will or will not be transferred to the new entity.

B. If the applicant fails to comply with any of the requirements of Subsection A of this section, the director may not approve the application. If the director determines the filing is complete, the director shall promptly issue a new certificate or permit. The new entity shall file copies of all documentation required by 18.3.2.13 NMAC if that documentation is different from that documentation of the old entity.

[18.3.8.10 NMAC - Rp, 18.3.8.14 & 15 NMAC, 2-13-15]

18.3.8.11 CANCELLATION OR VOLUNTARY SUSPENSION NOT EXCEEDING TWELVE CONSECUTIVE MONTHS OF A CERTIFICATE OR PERMIT:

A. Application. An applicant for cancellation or voluntary suspension that does not exceed twelve consecutive months of all or part of its certificate or permit shall file:

- (1) an application on the form prescribed by the director;
- (2) copies of its current certificate or permit and all endorsements it seeks to cancel or voluntarily cancel in whole or in part;
- (3) the date on which the applicant proposes to terminate or suspend all or part of its service and, if applicable, the length of the suspension; and
- (4) if the motor carrier is a full service carrier and is applying for voluntary suspension of a certificate or permit, a statement explaining:
 - (a) why such voluntary suspension is not adverse to the public interest, including whether any other motor carrier is capable of providing the service; and
 - (b) why the applicant is not able to render reasonably continuous and adequate service for the period of time for which voluntary suspension is requested.

B. Review of ambulance service carrier applications. The director shall promptly review an application for cancellation or voluntary suspension of a certificate or permit submitted by an ambulance service, publish notice of the application on the commission's website, and file a recommendation in the docket. The

commission may issue an order approving the cancellation or voluntary suspension of the ambulance service's certificate or permit if the commission finds that the cancellation or voluntary suspension would not be adverse to the public interest.

C. Review of all other motor carriers' applications. If the applicant fails to comply with any of the requirements of Subsection A of this section, the director may not approve the cancellation or voluntary suspension of the certificate or permit. If the director determines the filing is complete and that the applicant is not an ambulance service, the director shall promptly cancel or suspend the certificate or permit.

[18.3.8.11 NMAC - Rp, 18.3.8.16 NMAC, 2-13-15]

18.3.8.12 REINSTATEMENT OF A CERTIFICATE OR PERMIT FOLLOWING VOLUNTARY SUSPENSION NOT EXCEEDING TWELVE CONSECUTIVE MONTHS:

A. Application. An applicant for reinstatement following a voluntary suspension that did not exceed twelve consecutive months shall file:

- (1) an application on the form prescribed by the director;
- (2) copy of the application for voluntary suspension approved by the director or commission;
- (3) a statement that the applicant is fit and able to render reasonably continuous and adequate service if the reinstatement is approved; and
- (4) the fee required by Section 65-2A-36 NMSA 1978.

B. If the director finds that the application for reinstatement meets the requirements of this section, the director shall promptly approve the application.

[18.3.8.12 NMAC - Rp, 18.3.8.18 NMAC, 2-13-15]

18.3.8.13 CONSOLIDATED CERTIFICATES AND PERMITS:

A. Amendment. Any amendment of a certificate or permit granted by the commission will be evidenced by an endorsement to the owner's existing certificate or permit and not by issuance of a separate certificate or permit.

B. Transfers.

(1) A motor carrier obtaining additional operating authority of a different kind or for a different territory by transfer of an existing certificate or permit from another carrier shall have its own existing certificate or permit endorsed to include the additional operating authority, thereby creating a single consolidated certificate or permit, issued by the director, to be operated under the transferee motor carrier's original (NMPRC) transportation number.

(2) A motor carrier obtaining both additional and duplicate operating authorities by transfer of an existing certificate or permit from another carrier shall have its own existing certificate or permit endorsed to add only the additional operating authority, thereby creating a single consolidated certificate or permit, issued by the director, to be operated under the transferee motor carrier's original NMPRC transportation number. The director shall extinguish the parts of the transferred certificate or permit that duplicate operating authority already held by the transferee.

(3) A motor carrier transferring part of its certificate or permit to another carrier shall have its existing certificate or permit endorsed by the director to exclude the part of the certificate or permit transferred.

(4) A motor carrier transferring all of its certificate or permit to another carrier shall have its NMPRC transportation number canceled by the director.

C. Existing certificates and permits.

(1) The director shall consolidate to the extent practicable a motor carrier's existing certificate or certificates to reflect the terminology, service territory, and type of transportation service as used in the Motor Carrier Act.

(2) The director shall consolidate to the extent practicable a motor carrier's existing permit or permits to reflect the terminology, service territory, and type of transportation service as used in the Motor Carrier Act.

[18.3.8.13 NMAC - Rp, 18.3.8.19 NMAC, 2-13-15]

HISTORY OF 18.3.8 NMAC:

Pre-NMAC history. The material in this rule was previously filed with the state records center as: SCC 68-16, N.M. Motor Carrier Act, Rules and Regulations, effective Sept. 1, 1967, filed on 3-14-68; SCC 71-6, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1971, filed on 9-21-71;

SCC 73-1, N.M. Motor Carrier Act, Rules and Regulations, filed on 6-14-73;
SCC 74-1, N.M. Motor Carrier Act, Rules and Regulations, effective July 1, 1973, filed on 2-5-74;
SCC 75-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1975, filed on 4-17-75;
SCC 75-3, N.M. Motor Carrier Act, Rules and Regulations (Rev.), effective Jan. 1, 1975, filed on 9-19-75;
SCC 76-1, N.M. Motor Carrier Act, Rules and Regulations, effective April 1, 1976, filed on 4-15-76;
SCC 77-1, N.M. Motor Carrier Act, Rules and Regulations, effective Jan. 1, 1977, filed on 1-25-77;
SCCMC Rule No. 20, Legal Entry, filed on 3-5-82;
SCCMC Rule No. 21, Transfer of Certificates, filed on 3-5-82;
SCCMC Rule No. 22, Lease of Certificates, filed on 3-5-82;
SCCMC Rule No. 42, Consolidation of Certificates, filed on 3-5-82;
SCC Rule 218, Changes in Operating Authority, filed on 1-5-93.

History of Repealed Material:

SCC Rule 218, Changes in Operating Authority (filed 1-5-1993) repealed 12-30-2002.
18.3.8 NMAC, Changes in Certificates of Public Convenience and Necessity and Permits (filed 12-10-2002) repealed 1-1-05.
18.3.8 NMAC, Motor Carrier General Provisions - Changes in Certificates and Permits (filed 12-16-2004), repealed 2-13-2015.

Other History:

SCC Rule 218, Changes in Operating Authority (filed 1-5-93) was replaced by 18.3.8 NMAC, Changes in Certificates of Public Convenience and Necessity and Permits, effective 12-30-2002.
18.3.8 NMAC, Changes in Certificates of Public Convenience and Necessity and Permits (filed 12-10-2002) was replaced by 18.3.8 NMAC, Changes in Certificates and Permits, effective 1-1-2005.
18.3.8 NMAC, Changes in Certificates and Permits (filed 12-16-2004) was replaced by 18.3.8 NMAC, Changes in Certificates and Permits effective 2-13-2015