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18 NMAC 2

**REGULATIONS PERTAINING TO THE
MOTOR CARRIER SAFETY ACT
SECTIONS 65-3-1 THROUGH 65-3-14**

Revised June 2009

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18 NMAC 2

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**65-3-1. SHORT TITLE.--Sections 65-3-1 through 65-3-13 NMSA 1978 may be cited as the "Motor Carrier Safety Act".
(Laws 1989, Chapter 201, Section 2)**

18 NMAC 2.3.8 (MCS 1:1) - SPECIAL NOTE

All statutory references in 18 NMAC 2.3 are to the New Mexico Statutes Annotated, 1978 (NMSA 1978) unless otherwise specified.

[2/3/93, 4/30/97]

*** Originally filed as 18 NMAC 2.3.8, April 30, 1997. Formerly MCS 1:1. ***

**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.
(Laws 1989, Chapter 201, Section 3)**

65-3-3. APPLICABILITY. --

A. Notwithstanding any provision of the Motor Vehicle Code to the contrary, the provisions of the Motor Carrier Safety Act and the regulations promulgated under that act shall apply to the following motor vehicles operating on the public highways of New Mexico:

(1) interstate commercial motor carrier vehicles with a declared gross vehicle weight of over ten thousand pounds;

(2) intrastate commercial motor carrier vehicles with a declared gross vehicle weight of over twenty-six thousand pounds;

(3) buses designed to transport sixteen or more passengers, including the driver; or

(4) motor vehicles transporting hazardous materials of a type or quantity requiring placarding under applicable state or federal law.

B. Whenever a motor 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 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 a driver, the motor carrier shall likewise be bound.

(Laws 1992, Chapter 106, Section 17)

65-3-4. REGULATIONS--INSPECTIONS. --

A. The secretary is directed to adopt in accordance with Section 65-1-10 NMSA 1978 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. (Laws 1992, Chapter 106, Section 18)

18 NMAC 2.3.9 (MCS 4:2) - REFERENCES TO CODE OF FEDERAL REGULATIONS

For the purposes of 18 NMAC 2.3, 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 in effect on October 1, 1995.

Appendix A: Code of Federal Regulations, Title 49, Parts 1 to 99, Revised as of October 1, 1995, published by the Office of the Federal Register.

Appendix B: Code of Federal Regulations, Title 49, Parts 100 to 177, Revised as of October 1, 1995, published by the Office of the Federal Register.

Appendix C: Code of Federal Regulations, Title 49, Parts 178 to 199, Revised as of October 1, 1995, published by the Office of the Federal Register.

Appendix D: Code of Federal Regulations, Title 49, Parts 200 to 399, Revised as of October 1, 1995, published by the Office of the Federal Register.
[11/17/93, 2/14/95, 11/17/95, 4/30/97]

*** Originally filed as 18 NMAC 2.3.9, April 30, 1997. Formerly MCS 4:2. ***

18 NMAC 2.3.10 (MCS 4:1) – GENERAL

The Taxation and Revenue Department hereby adopts Part 390 of Title 49 of the Code of Federal Regulations (49 CFR 390 - Federal Motor Carrier Safety Regulations; General), with the following amendments:

1 Where the regulations refer to the United States Department of Transportation, and the transportation is intrastate, substitute the New Mexico Taxation and Revenue Department.

2 Where the regulations refer to the Secretary of the United States Department of Transportation, and the transportation is intrastate, substitute the New Mexico Secretary of Taxation and Revenue.

3 Where the regulations refer to a Special Agent of the Federal Highway Administration, substitute Enforcement personnel of the Motor Transportation Division of the Taxation and Revenue Department.

4 Any part of 49 CFR not specifically adopted by these regulations is hereby
deemed to be omitted and should not be considered to be part of these regulations.

5 Part 390.3 (b) and (c) are deleted.

6 Part 390.5, Definitions, is amended to read:

“*Commercial motor vehicle*” means any self propelled or towed vehicle, other than special mobile equipment, 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 of 10,001 or more pounds; or the vehicle is operated only in intrastate commerce and has a gross vehicle weight rating of 26,001 or more pounds; or

(b) The vehicle is designed to transport 16 or more passengers, including the driver; or

(c) The vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the U.S. Secretary of Transportation under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801 - 1813);” and

“*Special mobile equipment*” means a motor vehicle constructed from the ground up as machinery and not designed or used for the transportation of persons or property. Such equipment is operated on the highway only incidental to its use off road. The mounting of off road equipment on a standard truck or other chassis does not qualify a vehicle for an exemption as special mobile equipment.”

[2/3/93, 11/17/93, 2/14/95, 11/17/95, 4/30/97]

*** Originally filed as 18 NMAC 2.3.10, April 30, 1997. Formerly MCS 4:1. ***

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.

(Laws 1989, Chapter 201, Section 6)

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.

(Laws 2009, Chapter 200, Section 1)

18 NMAC 2.3.11 (MCS 7:1) - QUALIFICATION OF DRIVERS

The Taxation and Revenue Department 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) 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, with the following amendments:

1 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.”

2 Part 391.11(b)(1) is amended to read: “Is at least 21 years old; or is 18 years old and drives only intrastate motor vehicles not required to be placarded for hazardous materials;”

3 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 NMAC 19.5.10.2.

4 Part 391.51(g) is amended to read: “Upon written request to, and with the approval of, the Director, Regional Motor Carrier Safety Office, for the region in which a motor carrier has its principal place of business, an interstate carrier may retain one or more of its drivers' qualification files at a regional or terminal office. The addresses and jurisdictions of the Directors of Regional Motor Carrier Safety Offices are shown in § 390.27 of this subchapter.”

[2/3/93, 11/17/93, 4/30/97]

*** Originally filed as 18 NMAC 2.3.11, April 30, 1997. Formerly MCS 7:1. ***

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 un-authorized 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 of wearing corrective lenses and hearing aids when needed to meet physical qualifications; and
- (7) requirements for and use of lighted lamps on the highway.

(Laws 1989, Chapter 201, Section 8)

18 NMAC 2.3.12 (MCS 8:1) - DRIVING OF MOTOR VEHICLES

The Taxation and Revenue Department hereby adopts Part 392 of Title 49 of the Code of Federal Regulations (49 CFR 392 - Driving of Motor Vehicles), with no amendments. [2/3/93, 11/17/93, 2/14/95, 11/17/95, 4/30/97]

*** Originally filed as 18 NMAC 2.3.12, April 30, 1997. Formerly MCS 8:1. ***

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.

(Laws 1989, Chapter 201, Section 9)

18 NMAC 2.3.13 (MCS 9:1) - PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

The Taxation and Revenue Department hereby adopts Part 393 of Title 49 of the Code of Federal Regulations (49 CFR 393 - Parts and Accessories Necessary for Safe Operation), with no amendments. [2/3/93, 11/17/93, 4/30/97]

*** Originally filed as 18 NMAC 2.3.13, April 30, 1997. Formerly MCS 9:1. ***

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.
(Laws 1989, Chapter 201, Section 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.
(Laws 1989, Chapter 201, Section 11)

18 NMAC 2.3.14 (MCS 11:1) - HOURS OF SERVICE OF DRIVERS

The Taxation and Revenue Department hereby adopts Part 395 of Title 49 of the Code of Federal Regulations (49 CFR 395 - Hours of Service of Drivers), with the following amendments:

1 Part 395.1(e) is amended to read: “*100/150 air-mile radius driver*. A driver is exempt from the requirements of § 395.8 if:

- (1) The driver operates in interstate commerce within a 100 air-mile radius of the normal work reporting location or operates in intrastate commerce within a 150 air-mile radius of the normal work reporting location;
- (2) The driver, except a driver salesperson, returns to the work reporting location and is released from work within 12 consecutive hours;
- (3) At least 8 consecutive hours off duty separate each 12 hours on duty;
- (4) The driver does not exceed 10 hours maximum driving time following consecutive hours off duty;
- (5) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:
 - (i) The time the driver reports for duty each day;
 - (ii) The total number of hours the driver is on duty each day;
 - (iii) The time the driver is released from duty each day; and
 - (iv) The total time for the preceding 7 days in accordance with § 395.8(j)(2) of this section for drivers used for the first time or intermittently.”

2 Part 395.1(g) is amended to read: “*Retention of driver's record of duty status.* Upon written request to, and with the approval of, the Regional Director of Motor Carriers for the region in which the motor carrier has its principal place of business, an interstate motor carrier may forward and maintain such records at a regional or terminal office. The addresses and jurisdictions of the Regional Director of Motor Carriers offices are shown in § 390.27 of this subchapter.”

3 Part 395.1 is amended to add:

“(l) *Agricultural operations.* The provisions of § 395.3 shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in New Mexico if such transportation:

(1) is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies, and

(2) is conducted during the planting or harvesting seasons within New Mexico as determined by the New Mexico Department of Agriculture.

(m) *Ground water well drilling operation.* In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation and operations of a ground water well drilling rig, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more consecutive hours.

(n) *Construction materials and equipment.* In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation of construction materials and equipment, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more consecutive hours.

(o) *Utility service vehicles.* In the instance of a driver of a utility service vehicle, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more consecutive hours.”

[2/3/93, 11/17/93, 11/17/95, 4/30/97]

*** Originally filed as 18 NMAC 2.3.14, April 30, 1997. Formerly MCS 11:1. ***

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.

(Laws 1989, Chapter 201, Section 12)

18 NMAC 2.3.15 (MCS 12:1) - INSPECTION, REPAIR AND MAINTENANCE

The Taxation and Revenue Department 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 with the following amendments:

1 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."

2 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 Taxation and Revenue Department's Motor Transportation Division, 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]

***Originally filed as 18 NMAC 2.3.15, April 30, 1997. Formerly MCS 12:1. ***

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.

(Laws 1989, Chapter 201, Section 13)

18 NMAC 2.3.16 (MCS 13:1) - TRANSPORTATION OF HAZARDOUS MATERIALS - DRIVING AND PARKING RULES

The Taxation and Revenue Department hereby adopts Part 397 of Title 49 of the Code of Federal Regulations (49 CFR 397 - Transportation of Hazardous Materials; Driving and Parking Rules), with no amendments. [2/3/93, 11/17/93, 4/30/97]

*** Originally filed as 18 NMAC 2.3.16, April 30, 1997. Formerly MCS 13:1. ***

18 NMAC 2.3.17 (MCS 13:2) - ADOPTION OF FEDERAL HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

The Taxation and Revenue Department hereby adopts Parts 171, 172, 173, 177, 178 and 180 of Title 49 of the Code of Federal Regulations (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), with the following ADDITION to § 173.33:

§ 173.33(a)(4) “Cargo tanks” having a water capacity of 3,000 gallons or less, placed into service prior to April 1, 1995, operated by a solely intrastate motor carrier and used to transport Hazard Class 3 petroleum products do not have to meet the cargo tank specification requirements of 49 CFR 173.33(a)(1), 49 CFR 178.340 and 49 CFR 178.341 when operated under a valid permit issued by the Taxation and Revenue Department, Motor Transportation Division. This provision will expire April 1, 2005.

[2/3/93, 11/17/93, 11/17/95, 4/30/97]

*** Originally filed as 18 NMAC 2.3.17, April 30, 1997. Formerly MCS 13:2. ***

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.

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.

(Laws 2009, Chapter 200, Section 2)
