

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 repeals former 65-1-1 NMSA 1978, as amended by Laws 1977, ch. 250, § 98, relating to short title, and enacts the above section, effective July 1, 1989. For provisions of former section, see 1981 Replacement Pamphlet.

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 [Chapter 65, Articles 1, 3 and 5 NMSA 1978]:

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 weight attributable thereto 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 motor transportation 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 thereof; "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 the 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.

ANNOTATIONS

Repeals and reenactments. — Laws 1978, ch. 19, § 1, repealed 64-34-2, 1953 Comp. (former 65-1-2 NMSA 1978), relating to definitions in the Motor Transportation Act, and enacted a new 65-1-2 NMSA 1978.

Bracketed material. — The bracketed material in Paragraph S was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

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.

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 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 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 "of firm" following "any person" near the beginning of Subsection M.

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 repeals 65-1-4 and 65-1-5 NMSA 1978, as amended by Laws 1987, ch. 268, §§ 12 and 13, relating to director of the motor transportation division and to organization of the division, effective July 1, 1992. For provisions of former sections, see 1990 Replacement Pamphlet.

65-1-6. Field enforcement of Motor Carrier Act and regulations.

The department shall:

A. enforce in the field the provisions of the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] and the regulations promulgated by the public regulation commission pursuant to that act; and

B. maintain sufficient personnel in the field to enforce the provisions of the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] and the regulations promulgated by the public regulation commission pursuant to that 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.

ANNOTATIONS

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".

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

The 2003 amendment, effective July 1, 2003, substituted "shall" for "has authority to" in Subsection A and deleted "the state corporation commission or" following "promulgating by" once in each subsection.

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. Enforcement employees of division are police officers.

The enforcement employees of the division designated by the director of the division are police officers as defined in Section 29-7-7 NMSA 1978.

History: 1978 Comp., § 65-1-7, enacted by Laws 1998 (1st S.S.), ch. 10, § 6.

ANNOTATIONS

Cross references. — For police powers of state corporation commission (now public regulation commission) inspectors, see 65-2-114 NMSA 1978.

Repeals and reenactments. — Laws 1998 (1st S.S.), ch. 10, § 6, effective July 1, 1998, repealed former 65-1-7 NMSA 1978, as enacted by Laws 1967, ch. 97, § 9, and

as last amended by Laws 1993, ch. 294, § 2, relating to police powers of enforcement employees, and enacts the above section.

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*, 112 N.M. 500, 816 P.2d 1122 (Ct. App. 1991).

Comparison to powers of peace officers. — This section does not grant motor transportation inspectors more power than other peace officers. *State v. Clark*, 112 N.M. 500, 816 P.2d 1122 (Ct. App. 1991).

No authority to enforce Criminal Code. — Division 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.

Attendance at law enforcement academy. — Inspectors of the motor transportation division of the New Mexico department of transportation are required to attend a New Mexico law enforcement academy approved course and receive certification from the academy. 1987 Op. Att'y Gen. No. 87-25.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 C.J.S. Motor Vehicles § 44.

65-1-8. Repealed.

ANNOTATIONS

Repeals. — Laws 1992, ch. 106, § 23 repeals 65-1-8 NMSA 1978, as amended by Laws 1977, ch. 250, § 106, relating to bonding of division employees, effective July 1, 1992. For provisions of former section, see 1990 Replacement Pamphlet.

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

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.

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."

Motor Carrier Act. — 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.

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, 66-1-1 to 66-8-140 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 repeals 65-1-10 NMSA 1978, as amended by Laws 1933, ch. 294, § 3, relating to issuance of regulations, rulings, instructions and orders by the secretary, effective July 1, 1995. For provisions of the former section, see the 1993 Cumulative Supplement. 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 (1998).

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*, 112 N.M. 500, 816 P.2d 1122 (Ct. App. 1991).

65-1-12. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1998 (1st S.S.), ch. 10, § 10, recompiles 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, recompiles 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, recompiles 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, respectively, effective July 1, 1998.

65-1-23. Repealed.

ANNOTATIONS

Repeals. — Laws 1992, ch. 106, § 23 repeals 65-1-23 NMSA 1978, as amended by Laws 1988, ch. 24, § 6, relating to definitions concerning proportional registration, effective July 1, 1992. For provisions of former section, see 1990 Replacement Pamphlet.

65-1-24. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1998 (1st S.S.), ch. 10, § 10, recompiles 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 repeals 65-1-25 NMSA 1978, as amended by Laws 1977, ch. 250, § 118, relating to exemption of certain motor carriers, effective July 1, 1992. For provisions of former section, see 1990 Replacement Pamphlet.

65-1-25.1. Reserved.

65-1-25.2. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1998 (1st S.S.), ch. 10, § 10, recompiles 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. Every commercial motor carrier vehicle operated on any 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 card issued by the department.

B. The driver of the vehicle must be able to display either proof of payment of the trip tax or both the evidence of registration and the tax identification card 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 [66-1-1 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 card 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.

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.

ANNOTATIONS

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.

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

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

Cross references. — For hearings before state corporation commission (now public regulation commission), see 65-2-106 NMSA 1978.

For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

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 [Chapter 65, Articles 1, 3 and 5 NMSA 1978], Motor Vehicle Code [66-1-1 NMSA 1978], Trip Tax Act [Chapter 7, Article 15 NMSA 1978], Special Fuels Tax Act 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

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.

Compiler's notes. — The Special Fuels Tax Act, referred to in Subsection A, appeared as 7-16-1 to 7-16-26 NMSA 1978 before being repealed by Laws 1992, ch. 51, § 23, effective January 1, 1993. For present comparable provisions, see Chapter 7, Article 16A NMSA 1978.

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 [Chapter 65, Articles 1, 3 and 5 NMSA 1978], Motor Vehicle Code [66-1-1 NMSA 1978], Trip Tax Act [Chapter 7, Article 15 NMSA 1978], Special Fuels Tax Act 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

Compiler's notes. — The Special Fuels Tax Act, referred to in this section, appeared as 7-16-1 to 7-16-26 NMSA 1978 before being repealed by Laws 1992, ch. 51, § 23, 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 [Chapter 65, Articles 1, 3 and 5 NMSA 1978] 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 in this section was inserted by the compiler. It was not enacted by the legislature 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 [Chapter 65, Articles 1, 3 and 5 NMSA 1978]. 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

Meaning of "commission". — 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 repeals 65-1-31 NMSA 1978, as amended by Laws 1977, ch. 250, § 123, relating to members, terms and duties of the reciprocity commission, effective July 1, 1989. For provisions of former section, see 1981 Replacement Pamphlet.

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 [Chapter 65, Articles 1, 3 and 5 NMSA 1978] 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, 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.

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. — Section 65-1-10 NMSA 1978, referred to in this section, was repealed in 1995. For similar provisions, see 9-11-6.2 NMSA 1978.

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 repeals 65-1-34 NMSA 1978, as amended by Laws 1977, ch. 250, § 127, relating to assistance to carriers and motor vehicle division, effective July 1, 1992. For provisions of former section, see 1990 Replacement Pamphlet.

65-1-35. Duplicate records.

If the motor transportation division in carrying out any of the powers and duties granted or imposed on it by the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978] needs duplicates of any records not transferred to it by this 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.

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

A. Violation of Section 65-1-12 or 65-5-2 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 [Chapter 65, Articles 1, 3 and 5 NMSA 1978] other than a violation of Section 65-1-12, 65-1-26, 65-1-36.1 or 65-5-2 NMSA 1978 or of the Motor Carrier Safety Act [65-3-1 to 65-3-13 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 also, 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.

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 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.

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.

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 [Chapter 65, Articles 1, 3 and 5 NMSA 1978] 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, recompiles 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.

ARTICLE 2

Motor Carrier Regulation

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

ANNOTATIONS

Repeals. — Laws 1981, ch. 358, § 49, repeals 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, repeals 65-2-80 to 65-2-127 NMSA 1978, the Motor Carrier Act, effective July 1, 2003. For provisions of the former sections, see 1998 Replacement Pamphlet and 2001 Cumulative Supplement. For present comparable provisions, see 65-2A-1 NMSA 1978 et seq.

Laws 2003, ch. 358, §§ 1 - 3 amended Sections 65-2-82, 65-2-83 and 65-2-115 NMSA 1978. Laws 2003, Chapter 358, Section 1 amended 65-2-82 by inserting new definitions "taxicab service" and "terminal shuttle service" as new Subsections Y and Z as follows:

"Y. 'taxicab service' means a common motor carrier engaged in unscheduled passenger transportation in a motor vehicle having a capacity of not more than eight passengers, including the driver, not operated on a regular route or between specified places, and that:

"(1) is licensed as a taxicab by a state or a local jurisdiction; or

"(2) if not licensed or regulated by a state or local jurisdiction as a taxicab service, is offered by a person that:

"(a) provides local transportation for a fare determined, except with respect to transportation to or from airport, train or bus terminals, primarily on the basis of the distance traveled; and

"(b) does not primarily provide transportation to or from one or more airport, train or bus terminals;

"Z. 'terminal shuttle service' means a common motor carrier engaged in passenger transportation service that:

"(1) is:

"(a) pre-arranged by contract; or

"(b) operated for hire on a regular route, allowing for deviation to pick up or drop off passengers, between specified or generally specified points; and

"(2) primarily provides transportation to or from one or more airport, train or bus terminals but may also provide for intermediate pickup and departure of passengers;"

Laws 2003, Chapter 358, Section 2 amended Section 65-2-83 by adding a new Subsection C as follows:

"C. regulate, as intrastate services, taxicab services and terminal shuttle services, including those that may operate in part between this state and other states; provided that the 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;"

Chapter 358, Section 3 added at the end of Subsection B of Section 65-2-115 the following:

"A taxicab service or terminal shuttle service is engaged in non-exempt intrastate business within the state, regardless of any 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."

All three sections were repealed by Chapter 359, Section 44. See 12-1-8 NMSA 1978.

ARTICLE 2A

Motor Carrier Act

65-2A-1. Short title.

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

History: Laws 2003, ch. 359, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on 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, 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 regulation of motor carriers.

History: Laws 2003, ch. 359, § 2.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-3. Definitions.

As used in the Motor Carrier Act [65-2A-1 NMSA 1978]:

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

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

C. "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 single state registration system;

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

E. "certificate" means the operating authority issued by the commission to intrastate common motor carriers of persons or household goods;

F. "change in a certificate or permit" means the amendment, cancellation, change in tariff, change in form of ownership, lease, reinstatement, transfer or voluntary suspension of a certificate or permit;

G. "change of name" means a change in the legal name of the owner of an operating authority or in the does-business-as name of the motor carrier, but does not include a change in the form of ownership;

H. "commission" means the public regulation commission;

I. "common control" means control of more than one operating authority of the same kind for the same or overlapping territory;

J. "common motor carrier" means a person offering compensated transportation by motor vehicle to the general public, whether over regular or irregular routes, or under scheduled or unscheduled service, but does not include commuter services;

K. "common tariff" means a tariff applying to two or more common motor carriers;

L. "commuter service" means a person who provides seven- to fifteen-passenger motor vehicles to a volunteer-driver commuter group that shares rides to and from the workplace or training site, where participation is open to the public and incidental to the primary work or training-related purposes of the commuter group, and where the volunteer drivers have no employer-employee relationship with the commuter service;

M. "contract motor carrier" means a person offering compensated transportation by motor vehicle under individual agreements with particular customers or shippers;

N. "control" means the power to direct or cause the direction of the management and policies of a motor carrier deriving from:

(1) ownership of a sole proprietorship, if the operating authority is held by an individual as a sole proprietor;

(2) ownership of ten percent or more of the voting stock of the corporation, if the operating authority is held by a corporation;

(3) a partnership interest in a general partnership, if the operating authority is held by a general partnership;

(4) an interest in a limited partnership of ten percent or more of the total value of contributions made to the limited partnership, or entitlement to ten percent or more of the profits earned or other compensation paid by the limited partnership, if the operating authority is held by a limited partnership;

(5) a membership interest of ten percent or more in a limited liability company, if the operating authority is held by a limited liability company; or

(6) capacity as a trustee, personal representative or other person with a fiduciary duty to a motor carrier;

O. "electronic filing" means submission of a document by facsimile, electronic mail or other electronic transmission;

P. "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;

Q. "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;

R. "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 from a factory or store, other than property the householder has purchased to use in his dwelling that is transported at the request of, and the transportation charges are paid to the carrier by, the householder;

S. "incidental carrier" means a motor carrier of persons that provides services for which the customer pays either directly or indirectly and that transports passengers in conjunction with the primary service that it provides;

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

U. "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;

V. "intrastate motor carrier" means a person providing compensated transportation by motor vehicle between points and places in the state;

W. "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;

X. "irregular route" means that the route to be used by a motor carrier is not restricted to a specific highway within the territory the motor carrier is authorized to serve;

Y. "lease of a certificate or permit" means an agreement by which the owner of a certificate or permit grants to another the exclusive right to use all or part of the certificate or permit for a specified period of time in exchange for consideration;

Z. "lease of equipment" means an agreement whereby a motor carrier obtains equipment owned by another for use by the motor carrier in the exercise of its operating authority;

AA. "motor carrier" means a person offering compensated transportation of persons or property by motor vehicle, whether in intrastate or interstate commerce;

BB. "motor carrier organization" means an organization approved by the commission to discuss and propose a common tariff for a group of motor carriers or to represent motor carriers that have adopted the common tariff;

CC. "motor carrier of persons" means a person who provides compensated transportation of persons on a highway in the state;

DD. "motor 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 or persons, but does not include a vehicle, locomotive or car operated exclusively on rails;

EE. "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;

FF. "operating authority" means a certificate, permit, warrant, single trip ticket, single state registration receipt or temporary authority issued by the commission to a motor carrier;

GG. "permit" means the operating authority issued by the commission to intrastate contract motor carriers of persons or household goods;

HH. "process" means an order, subpoena or notice issued by the commission or an order, subpoena, notice, writ or summons issued by a court;

II. "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;

JJ. "protest" means a document filed with the commission by an interested person that expresses an objection to a matter before the commission;

KK. "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;

LL. "record" means an account, correspondence, memorandum, tape, disc, paper, book or transcribed information regarding the operation of a motor carrier;

MM. "registration year" means a calendar year;

NN. "regular route" means a route used by a motor carrier within the territory in which the motor carrier is authorized to serve that is fixed by its operating authority;

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

PP. "shipper" means a person who consigns or receives goods for transportation;

QQ. "single state registration receipt" means the document issued annually to a motor carrier operating in interstate commerce evidencing that proof of financial responsibility and safety has been filed with the base state and that the annual per vehicle fees have been paid for that registration year;

RR. "tariff" means a document filed by a motor carrier of persons or household goods or a towing service performing nonconsensual tows 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 and conditions and applicable time schedules relating to those services, including a common tariff;

SS. "taxicab service" means a common motor carrier engaged in unscheduled passenger transportation in a motor vehicle having a capacity of not more than eight passengers, including the driver, not operated on a regular route or between specified places, and that:

(1) is licensed as a taxicab service by a state or local jurisdiction; or

(2) if not licensed or regulated by a state or local jurisdiction as a taxicab service, is offered by a person that:

(a) provides local transportation for a fare determined, except with respect to transportation to or from airport, train or bus terminals, primarily on the basis of the distance traveled; and

(b) does not primarily provide transportation to or from one or more airport, train or bus terminals;

TT. "terminal shuttle service" means a common motor carrier engaged in passenger transportation service that:

(1) is prearranged by contract or operated by hire on a regular route, allowing for deviation to pick up or drop off passengers, between specified or generally specified points; and

(2) primarily provides transportation to or from one or more airport, train or bus terminals but may also provide for intermediate pickup or departure of passengers;

UU. "towing services" means the use of specialized equipment, including repossession services using towing equipment, to transport:

(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;

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

WW. "transfer by operation of law" means that the ownership of or interest in a certificate or permit passes to another by application of established rules of law;

XX. "voluntary suspension" means the commission-authorized cessation of use of all or part of a certificate or permit at the request of the motor carrier for a specified period of time;

YY. "warrant" means the operating authority issued by the commission to charter services, towing services, commuter services and motor carriers of property; and

ZZ. "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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

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

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

A. In accordance with the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978], the commission shall:

- (1) issue operating authorities for a motor carrier operating in New Mexico;
- (2) establish minimum requirements for financial responsibility for a motor carrier;
- (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 intrastate common motor carriers of persons and household goods and towing services performing nonconsensual tows, including rates for storing household goods and motor vehicles;
- (6) determine matters of public convenience and necessity relating to motor carriers;

(7) subpoena witnesses and records, enforce its subpoenas through a court and, through the court, seek a remedy for contempt;

(8) hold a public hearing specific to a protest or request that has been filed timely in opposition to or in consideration of an application; and

(9) adopt rules, issue orders and conduct activities necessary to implement and enforce the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978].

B. The commission may:

(1) designate inspectors who may inspect the records of a motor carrier subject to the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] 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 of service, territory, terms, conditions and limitations of operating authorities previously issued, and change or rescind rates previously adopted as needed; and

(4) adopt rules to implement these powers.

History: Laws 2003, ch. 359, § 4.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-5. Applications in general; when public hearings required.

A. A person shall file an application if commission approval is required. An application shall be made in writing, verified under oath and be 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 streamline and simplify to the extent possible the process for approving applications. The commission may hold a public hearing specific to a protest or request that has been timely filed in opposition to or in consideration of an application.

C. The commission shall hold a public hearing on an application whenever an interested person protests 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.

History: Laws 2003, ch. 359, § 5.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-6. Notice.

A. If the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] requires publication of notice regarding an application before the commission, the requirement is met if notice is published once in a newspaper of general circulation in the state. The commission shall not act on the application less than twenty days after the date notice was published.

B. Whenever the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] requires publication of notice regarding a matter other than an application, 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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

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

A. A certificate, permit or warrant shall be effective from the date issued by the commission and shall remain in effect until canceled or revoked. A single state registration receipt for interstate motor carriers shall be effective only for the registration year for which it is issued. A single trip ticket shall be effective only for the duration of the trip for which it is issued.

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

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

D. A motor carrier shall comply with lawfully adopted rules of the commission.

History: Laws 2003, ch. 359, § 7.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-8. Certificates for intrastate common motor carriers of persons.

A. A common motor carrier of persons shall not provide compensated intrastate transportation in the state without a certificate from the commission.

B. Except as provided in this section, the commission shall issue a certificate allowing a person to provide compensated intrastate transportation as a common motor carrier of persons after notice and public hearing requirements are met, if:

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

(2) the person is in compliance with the safety and financial responsibility requirements of the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978], the rules of the commission and other applicable federal and state laws and rules; and

(3) 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.

C. Before granting a certificate to an intrastate common motor carrier of persons, the commission shall consider the effect that issuance of the certificate would have on existing 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.

D. A certificate issued by the commission to an intrastate common motor carrier of persons shall specify the:

(1) service to be rendered;

(2) territory to be served; and

(3) reasonable terms, conditions and limitations as the public convenience and necessity may require; and, if necessary:

(a) terminals between which service is to be provided; or

(b) routes, schedules and intermediate and off-route points on the route for regular route service.

History: Laws 2003, ch. 359, § 8.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-9. Certificates for intrastate common motor carriers of household goods.

A. A common motor carrier of household goods shall not provide compensated intrastate transportation in the state without a certificate from the commission.

B. Except as provided in this section, the commission shall issue a certificate allowing a person to provide compensated intrastate transportation as a common motor carrier of household goods after notice and public hearing requirements are met, if:

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

(2) the person is in compliance with the safety and financial responsibility requirements of the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978], the rules of the commission and other applicable federal and state laws and rules; and

(3) the transportation service to be provided under the certificate is or will serve a useful public purpose, responsive to a public demand or need. The proposed transportation service will be deemed to serve a useful public purpose, responsive to a public demand or need, if the application is for authority to provide:

(a) transportation to a community not regularly served by an authorized intrastate common motor carrier of household goods;

(b) transportation services that will be a direct substitute for abandoned rail service to a community if the abandonment results in the community not having rail service and if the application is filed within one hundred twenty days after the abandonment has been approved by the commission or by the federal railway administration; or

(c) transportation for the United States government of used household goods that is incidental to a pack and crate service on behalf of the department of defense.

C. Before granting a certificate to an intrastate common motor carrier of household goods, the commission shall consider 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.

D. A certificate issued by the commission to an intrastate common motor carrier of household goods shall specify the territory to be served.

History: Laws 2003, ch. 359, § 9.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-10. Permits for intrastate contract motor carriers of persons or household goods.

A. A contract motor carrier shall not provide compensated intrastate transportation of persons or household goods in the state without first having applied for and obtained a permit from the commission.

B. Except as provided in this section, the commission shall issue a permit allowing a person to provide compensated intrastate transportation as a contract motor carrier of persons or household goods after notice and public hearing requirements are met, if:

(1) the person is fit, willing and able to provide the transportation to be authorized by the permit;

(2) the person 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) the transportation to be provided under the permit is or will be consistent with the public interest.

C. Before granting a permit to an intrastate contract motor carrier of persons, the commission shall consider:

(1) the number of customers to be served by the carrier;

(2) the nature of the transportation proposed to be provided;

(3) whether granting the permit would endanger or impair the operations of motor carriers to an extent contrary to the public interest;

(4) the effect that denying the permit would have on the person applying for the permit and its customers; and

(5) the changing character of the requirements of the applicant's customers.

D. The commission shall not issue a permit to an intrastate contract motor carrier of persons if it finds that the authority sought will impair the provision of transportation services by a certificated intrastate common motor carrier of persons then serving the same territory.

E. Before granting a permit to an intrastate contract motor carrier of household goods, the commission shall consider:

(1) whether granting the permit would endanger or impair the operations of carriers to an extent contrary to the public interest; and

(2) the effect that denying the permit would have on the person applying for the permit and its shippers.

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

G. An intrastate contract motor carrier of persons or household goods shall file with the commission each contract under which it intends to operate. The commission shall approve a contract and authorize operations if it finds that the contract is consistent with the public interest and the provisions of this section.

H. The commission shall not limit an intrastate contract motor carrier of persons or household goods to a fixed number of contracts.

I. A motor carrier owning a certificate and a permit for the same type of service may use the same equipment for both common and contract services provided that shared use does not impair the provision of transportation services under the certificate.

History: Laws 2003, ch. 359, § 10; 2005, ch. 229, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

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

65-2A-11. Temporary authority for intrastate motor carriers of persons or household goods.

A. The commission may without notice grant temporary operating authority to an intrastate motor carrier of persons or household goods for a period not to exceed ninety days if it finds that:

(1) there is an urgent and immediate need for such service; and

(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.

B. Satisfactory proof of urgent and immediate need shall be made by affidavit or other verified proof as the commission shall by rule prescribe.

C. An applicant for temporary authority as a common motor carrier shall file tariffs covering the transportation services for which temporary authority is being sought.

D. After temporary authority has been granted, the applicant shall give notice of the grant of temporary authority to a motor carrier authorized to perform the service temporarily authorized. If such motor carrier or the staff of the transportation division of the commission files a written request for a hearing within twenty-five days of the date notice was mailed, the commission shall hold a public hearing and make such further determination with respect to the grant of temporary authority as the public interest may require.

E. Intrastate motor carriers operating under temporary authority shall comply with the requirements of the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] and the rules of the commission.

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

History: Laws 2003, ch. 359, § 11.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-12. Warrants.

A. It is unlawful for any commuter service, charter service, towing service or motor carrier of property to provide compensated intrastate transportation in the state without a warrant from the commission.

B. The commission shall issue a warrant that allows a person to provide compensated intrastate transportation as a commuter service, charter service, towing service or motor carrier of property if the commission finds that the person is in

compliance with the financial responsibility and safety requirements of the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] and the rules of the commission.

C. A person may protest an application for a warrant if the person has reason to believe that the applicant does not meet the safety or financial responsibility requirements of the Motor Carrier Act and the rules of the commission.

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

E. 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.

History: Laws 2003, ch. 359, § 12.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-13. Protests of applications for a certificate or permit or for a change in a certificate or permit.

A. A contract motor carrier shall not protest an application for a certificate or for a change in a certificate.

B. A common or contract motor carrier shall not protest an application for a permit or for a change in a permit.

C. A common motor carrier shall not protest an application for a certificate or for a change in a certificate unless:

(1) it possesses authority to handle, in whole or in part, the traffic for which the applicant seeks authority, or it has pending before the commission an application for authority for substantially the same traffic filed prior to the application to be protested; and

(2) it is willing and able to provide service that meets the reasonable needs of the customers or shippers involved; and

(3) it has provided service within the scope of the protested application during the previous twelve-month period, or has actively and in good faith solicited service within the scope of the protested application during such period; or

(4) the commission grants leave to intervene upon a showing of other interests that are not contrary to the provisions of the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978].

History: Laws 2003, ch. 359, § 13.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

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

A. A change in a certificate, permit or tariff 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 person owning the certificate or permit if the commission finds:

(1) that the proposed rates are reasonable, non-predatory and nondiscriminatory for a change in a tariff;

(2) that the applicant meets the requirements pursuant to Section 8 of the Motor Carrier Act [65-2A-8 NMSA 1978] for an amendment of a certificate as a common motor carrier of persons;

(3) that the applicant meets the requirements pursuant to Section 10 of the Motor Carrier Act [65-2A-10 NMSA 1978] for an amendment of a permit as a contract motor carrier of persons;

(4) that the applicant meets the requirements pursuant to Section 9 of the Motor Carrier Act [65-2A-9 NMSA 1978] for an amendment of a certificate as a common motor carrier of household goods;

(5) that the applicant meets the requirements pursuant to Section 10 of the Motor Carrier Act [65-2A-10 NMSA 1978] for an amendment of a permit as a contract motor carrier of household goods;

(6) that for a transfer of all or part of a certificate or permit:

(a) the transferee-applicant is fit, willing and able to provide the authorized transportation services and to comply with the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA] and the rules of the commission;

(b) the transferor-applicant has rendered reasonably continuous and adequate service prior to the application for lease or transfer;

(c) 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;

(d) the transfer does not have the effect of destroying competition or creating a monopoly; and

(e) the transfer is not inconsistent with the public interest; or

(7) that for a lease of all or part of a certificate or permit:

(a) the lessee-applicant is fit, willing and able to provide the authorized transportation services and to comply with the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] and the rules of the commission;

(b) the lessor-applicant has rendered reasonably continuous and adequate service prior to the application for lease;

(c) the lease does not have the effect of destroying competition or creating a monopoly; and

(d) the lease is not inconsistent with the public interest.

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 person owning the certificate or permit:

(1) cancellation of the certificate or permit;

(2) voluntary suspension of the certificate or permit;

(3) change in the form of ownership of the certificate or permit; and

(4) reinstatement of the certificate or permit following voluntary suspension.

History: Laws 2003, ch. 359, § 14.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-15. Multiple operating authorities allowed; common control and sham competition prohibited.

A. A person may simultaneously hold a certificate as a common motor carrier, a permit as a contract motor carrier and a warrant authorizing transportation by motor

vehicle over the same routes or within the same territory, if the commission finds that the multiple operating authorities are consistent with the public interest.

B. A person shall not control more than one certificate or more than one permit for the same kind of service in the same territory.

C. The commission shall not grant any new operating authority to a motor carrier that:

(1) duplicates operating authority of the same kind and for the same territory already held by that motor carrier; or

(2) is under common control with another motor carrier that duplicates operating authority of the same kind or for the same or overlapping territory already held by either of them.

D. If two motor carriers come to be held in common control, and each motor carrier has operating authority that duplicates the operating authority of the other, then one of them shall have its operating authority modified to exclude the portion of the operating authority that is of the same kind and for the same territory, but shall be allowed to operate in the name and under the operating authority of the other motor carrier with which it is held in common control.

E. Motor carriers of household goods possessing both a certificate and permit may transport mixed loads of common and contract motor carrier household goods.

History: Laws 2003, ch. 359, § 15.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-16. Interstate motor carriers.

A. A motor carrier engaged in interstate commerce shall not provide compensated interstate transportation of persons or property on the highways of this state without a single state registration receipt from a base state. The commission is authorized to issue single state registration receipts without notice or a public hearing.

B. The commission is authorized to collect an annual per vehicle fee, enter into agreements with state agencies and other state governments and promulgate rules necessary to enable New Mexico to participate in the single state registration system or its successor system for interstate motor carriers either subject to regulation, or transporting commodities exempt from regulation, by the federal motor carrier safety administration pursuant to Section 4005 of the federal Intermodal Surface

Transportation Efficiency Act of 1991, and implementing regulations promulgated by the federal motor carrier safety administration.

C. The commission shall require an application, proof of financial responsibility and a single state registration receipt showing that the annual per vehicle fee has been paid for New Mexico from an interstate motor carrier transporting commodities exempt from regulation by the federal motor carrier safety administration in interstate commerce on the highways of the state, but shall not require payment of duplicate annual per vehicle fees from an interstate motor carrier transporting both exempt and regulated commodities.

D. Compliance by an interstate motor carrier with the provisions of the federal Intermodal Surface Transportation Efficiency Act of 1991 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 terminal shuttle service 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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

Compiler's notes. — The federal Intermodal Surface Transportation Efficiency Act of 1991, referred to in Subsection B, appears primarily as various provisions in 23 USCS.

65-2A-17. Single trip tickets.

The owner of a motor vehicle regularly used to convey children to and from school or school activities shall not use the motor vehicle for compensated transportation for a single trip sponsored by a charitable organization without a single trip ticket from the commission. An application for a single trip ticket shall be in a form prescribed by the commission and shall state the time, purpose, origin and destination of the trip and the name, purpose and status of the charitable organization sponsoring the trip. The commission may issue a single trip ticket without notice or a public hearing only if it finds that no certificated or permitted common or contract motor carrier service is available for the trip described in the application and that the motor vehicle to be used

for the trip complies with the safety requirements prescribed by the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] and the commission's rules.

History: Laws 2003, ch. 359, § 17.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-18. Financial responsibility.

A. The commission shall prescribe minimum requirements for financial responsibility for all motor carriers, including incidental carriers pursuant to this section. Rules regarding financial responsibility of incidental carriers shall be adopted by July 1, 2006 by the commission, and implementation of the financial responsibility requirements for incidental carriers shall begin on July 1, 2006.

B. A motor carrier or incidental 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. The maximum amount of financial responsibility, as determined by the commission, for incidental carriers shall not exceed that required of other motor carriers.

C. In prescribing minimum requirements for financial responsibility for motor carriers, the commission shall consider:

- (1) the creation of sufficient incentives to motor carriers to maintain and operate their equipment in a safe manner;
- (2) the number of passengers being transported;
- (3) the nature of the transportation services provided by the motor carrier; and
- (4) other factors necessary to ensure that motor carriers maintain an appropriate level of financial responsibility.

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 [59A-1-1 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 single state 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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

The 2005 amendment, effective June 17, 2005, adds 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 provides 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 used in compensated transportation.

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. A commuter service shall certify that it has a program providing for an initial drug test for a person seeking to be a commuter service driver. The program shall use reasonable collection and analysis procedures to ensure accurate results, require testing only for substances controlled by federal regulation of commercial motor carriers and ensure the confidentiality of the test results and medical information obtained.

D. The motor transportation 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.

History: Laws 2003, ch. 359, § 19.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-20. Tariffs.

A. An intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual tows shall not commence operations or perform a new service under its operating authority without approval of a tariff from the commission.

B. An intrastate common motor carrier of persons or household goods and a towing service performing nonconsensual tows shall file with the commission proposed tariffs showing the rates, terms and conditions for transportation and related services between points in its territory. The rates shall be stated in terms of United States currency.

C. An intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual tows shall not charge, or permit its bona fide agents or employees to charge, a different rate for transportation or for a service rendered to or for the user of the service other than the rates specified in approved tariffs in effect at the time. The rates of an otherwise valid tariff are not applicable when a medicaid program directly pays for services.

D. An intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual tows shall not refund, directly or indirectly, 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 in accordance with tariffs approved by the commission.

E. A person may make a complaint in writing to the commission that an individual or joint rate or practice is in violation of the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978]. The commission may suspend the operation of a rate or practice for a period not to exceed sixty days to investigate its reasonableness. If the commission finds that an individual or joint rate charged by 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, predatory or discriminatory, the commission shall prescribe the rate or the maximum or minimum rate to be observed or the practice to be made effective.

History: Laws 2003, ch. 359, § 20.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-21. Rates.

A. An intrastate common motor carrier of persons or household goods and a towing service performing nonconsensual tows shall observe reasonable, nonpredatory and nondiscriminatory rates and practices for the transportation services they provide. An unreasonable, predatory or discriminatory charge for service is unlawful.

B. Reduced rates for students traveling between their homes and their schools and for persons sixty-five years of age or older shall not be considered discriminatory within the meaning of this section. A motor carrier shall not furnish free transportation to persons except to bona fide owners, officers or employees of the motor carrier and their dependents. Stockowners of incorporated motor carriers shall not be considered owners for purposes of this subsection.

C. An intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual tows shall not give an unreasonable advantage to a person, point of entry, territory or classification of motor carrier in any respect; provided that 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; and further provided that this subsection shall not be construed to apply to disadvantages to the transportation service of other motor carriers.

D. A common motor carrier of household goods shall establish and observe just and reasonable 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. An intrastate common motor carrier of persons or household goods and a towing service performing nonconsensual tows shall establish with each other reasonable through routes and joint rates and practices. Participating motor carriers shall have the duty to establish reasonable practices in connection with joint transportation and reasonable and equitable divisions of the joint rates adopted so as not to unduly prefer or prejudice any participating motor carrier.

F. 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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-22. Time schedules.

A. An intrastate common motor carrier of persons providing scheduled service to the general public shall file a proposed time schedule with its application for a certificate. The commission shall approve the time schedule before the schedule is put into effect.

B. Failure by an intrastate common motor carrier of persons to operate the service on each day as scheduled 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 between way stations at a rate of speed greater than the maximum speed allowed.

History: Laws 2003, ch. 359, § 22.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-23. Motor carrier organizations; common tariffs.

A. An intrastate common motor carrier may enter into discussions with another intrastate common motor carrier to establish a motor carrier organization. The organization shall obtain authorization from the commission before its members enter into any discussions concerning a common tariff. The commission shall not enter an order authorizing a motor carrier organization except after notice and public hearing requirements are met. The commission may authorize the creation of a motor carrier organization if the organization:

(1) allows a member carrier to discuss a tariff proposal filed with it, provided that only those carriers with authority to participate in the transportation to which the proposal applies may vote upon the 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 a 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;

(5) makes available, upon request, the name of the proponent of a rate or tariff item filed with it, admits the public to a meeting at which rates or tariff items will be discussed or voted upon and makes available the vote cast by a member carrier on a proposal before the motor carrier organization;

(6) prohibits a carrier to vote on behalf of one or more other member carriers without specific written notarized authority from the member carrier being represented;

(7) makes a final disposition of a rate or tariff item filed with the motor carrier organization within one hundred twenty days from the date the proposal is filed, except that if unusual circumstances require, the organization may extend the period, subject to review by the commission;

(8) adopts reasonable quorum standards for its meetings; and

(9) will propose common 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 a common tariff by member carriers of a motor carrier organization authorized by the commission.

F. The motor carrier organization shall obtain approval of a common tariff from the commission before its member carriers may operate pursuant to the common tariff. The commission shall not enter an order approving a common tariff except after notice and public hearing requirements are met. The commission may approve a common tariff if the common tariff is limited to matters relating to transportation services provided by the member carriers party to the common tariff. The commission shall approve or disapprove a common tariff, in whole or in part, and may prescribe such terms and conditions as the public interest may require. The antitrust laws of the state shall not apply to common motor carriers who operate pursuant to a common tariff approved by the commission.

G. In any proceeding in which a party to the proceeding alleges that a member carrier voted, discussed or agreed on a common tariff in violation of this section, that party has the burden of showing that the vote, discussion or agreement occurred. A showing of parallel behavior shall not by itself satisfy that burden.

History: Laws 2003, ch. 359, § 23.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-24. Motor vehicle leases.

A. An intrastate motor carrier shall not lease a motor vehicle or operate a leased motor vehicle without approval of each motor vehicle lease from the commission. The commission may approve a motor vehicle lease without notice or a public hearing.

B. A motor carrier shall file a separate motor vehicle lease for each motor vehicle to be leased.

C. The commission shall not approve a proposed motor vehicle lease if it finds that the purpose of the motor vehicle lease is to circumvent a provision of the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] or rule of the commission.

D. The commission shall by rule specify which of the two parties to a motor vehicle lease will be responsible for complying with the financial responsibility and safety requirements of the Motor Carrier Act and the rules of the commission.

History: Laws 2003, ch. 359, § 24.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-25. Household goods operations.

A. An intrastate common motor carrier of household goods 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 common motor carrier of household goods.

B. An intrastate common motor carrier of household goods 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 common motor carrier.

C. 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 33 of the Motor Carrier Act [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.

D. 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 33 of the Motor Carrier Act, 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.

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

- (1) rates;
- (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) joint transportation between common motor carriers of household goods;
- (8) household goods agents; and
- (9) service standards.

F. In adopting rules for intrastate common motor carriers of household goods, the commission shall consider:

- (1) the level of performance that can be achieved by a well-managed motor carrier of household goods;
- (2) the degree of harm to individual shippers that could result from a violation of the rule;
- (3) the need to deter abuses that result in harm to shippers;
- (4) service requirements of motor carriers of household goods;
- (5) the cost of compliance in relation to the benefits to shippers to be achieved from such compliance; and
- (6) the need to encourage motor carriers of household goods to offer service responsive to shippers' needs.

G. The antitrust laws shall not apply to discussions or agreements between an intrastate common motor carrier of household goods and its authorized agents, whether or not an agent is also a motor carrier of household goods, 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 common motor carrier of household goods by an agent or membership on the board of directors of any common motor carrier of household goods by an agent.

History: Laws 2003, ch. 359, § 25.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-26. Household goods voluntary dispute settlement programs.

A. A common motor carrier of household goods may submit an application to the commission to establish a program to settle disputes between shippers and common motor carriers of household goods concerning the transportation of household goods. The application shall be in a form and contain information as the commission may by rule require.

B. The commission shall review and approve, within forty-five days of the filing of an application, a program for settling disputes concerning the transportation of household goods that meets the requirements of Subsection C of this section.

C. The commission shall not approve a program for settling disputes concerning the transportation of household goods unless the program is 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 motor 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.

D. The commission may investigate at any time the functioning of a program approved under this section and may, after notice and an opportunity to be heard, suspend or revoke its approval for failure to meet the requirements of this section and rules as the commission may prescribe.

E. In a court action to resolve a dispute between a shipper and a common motor carrier of household goods, 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; and

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

(3) a dispute settlement program approved under this section was not available for use by the shipper to resolve the dispute; or

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

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

F. In a court action to resolve a dispute between a shipper and a common motor carrier of household goods 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 a dispute settlement program approved under this section; or

(2) after institution of a proceeding by the shipper to resolve the dispute under a dispute settlement program approved under this section; 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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

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 [65-2A-1 to 65-2A-40 NMSA 1978], 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, condition or limitation of an operating authority; or
- (4) render reasonably continuous and adequate service under a certificate or permit.

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 owner of the operating authority is fit, willing and able to provide the authorized transportation services and to comply with the Motor Carrier Act and the rules of the commission.

History: Laws 2003, ch. 359, § 27.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

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 a motor carrier owning 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 motor carrier 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 a motor carrier owning 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 36 of the Motor Carrier Act [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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

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 a motor carrier owning operating authority from the commission 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 [65-2A-1 to 65-2A-40 NMSA 1978], 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.

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.

History: Laws 2003, ch. 359, § 29.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

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

A motor carrier not authorized to transport persons shall not carry a person, including a hitchhiker, except on-duty employees of the motor carrier, commission representatives on official business or in case of an emergency.

History: Laws 2003, ch. 359, § 30.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

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 to 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 [65-2A-1 to 65-2A-40 NMSA 1978] 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 [65-2A-1 to 65-2A-40 NMSA].

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 makes the act effective on July 1, 2003.

65-2A-32. Administrative penalties.

A. If the commission finds after investigation that a provision of the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] 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 [65-2A-1 to 65-2A-40 NMSA 1978] 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 [65-2A-1 to 65-2A-40 NMSA 1978] 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 makes the act effective on July 1, 2003.

65-2A-33. Criminal and civil penalties.

A. A person who knowingly makes a false statement of material fact under oath 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 [65-2A-1 to 65-2A-40 NMSA 1978] 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 [65-2A-1 to 65-2A-40 NMSA 1978] 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 [65-2A-1 to 65-2A-40 NMSA 1978].

History: Laws 2003, ch. 359, § 33.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

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 makes the act effective on 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 [65-2A-1 to 65-2A-40 NMSA 1978] 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 makes the act effective on 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 as an intrastate common motor carrier of persons or household goods, two hundred fifty dollars (\$250);
- (2) for filing an application for a permit as an intrastate contract motor carrier of persons or household goods, two hundred fifty dollars (\$250);
- (3) for filing an application for a warrant as an intrastate commuter service, charter service, towing service or motor carrier of property, twenty-five dollars (\$25.00);
- (4) for filing an application for intrastate temporary authority as a common or contract motor carrier of persons or household goods, one hundred dollars (\$100);
- (5) for filing an application for extension of temporary authority, fifty dollars (\$50.00);
- (6) for filing an application for a change in an intrastate tariff, two hundred dollars (\$200);
- (7) for filing an application for lease or transfer of a certificate or permit, two hundred dollars (\$200);
- (8) for filing an application for reinstatement of a certificate or permit following voluntary or involuntary suspension, one hundred dollars (\$100);
- (9) for filing an application for voluntary suspension of a certificate or permit, fifteen dollars (\$15.00);
- (10) for filing an application for a single trip ticket, five dollars (\$5.00) per vehicle per trip;
- (11) for a single state registration receipt for interstate motor carriers, ten dollars (\$10.00) per vehicle per registration year or portion of a registration year;
- (12) for filing a change of name, ten dollars (\$10.00);
- (13) for filing proof of financial responsibility, fifteen dollars (\$15.00) per filing;
- (14) for filing an equipment lease, five dollars (\$5.00) per vehicle leased;
- (15) for a miscellaneous filing, five dollars (\$5.00) per document;
- (16) for certifying copies of a record, order or operating authority, fifteen dollars (\$15.00);

(17) for copies of written commission documents or records, one dollar (\$1.00) per page, in addition to any applicable certification charge; and

(18) 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, he shall pay the applicable fee.

History: Laws 2003, ch. 359, § 36.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

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

A. The commission may adopt rules permitting the electronic filing of documents, including original documents, and the certification of electronically filed documents when filing or certification is required or permitted pursuant to the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978]. 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 copy of a signature, 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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

65-2A-38. Exemptions.

The Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] 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 common or contract 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; or
- E. private carriers.

History: Laws 2003, ch. 359, § 38.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

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

Nothing contained in the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] 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 makes the act effective on July 1, 2003.

65-2A-40. Transition.

A. A certificate of public convenience and necessity and a permit issued to an intrastate motor carrier of persons or household goods by the commission under the authority of previous acts shall remain in effect, subject to the provisions of the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] and the commission's rules.

B. A certificate of public convenience and necessity and a permit issued to an intrastate motor carrier of property by the commission under the authority of previous acts shall become null and void on July 1, 2003. The commission shall issue a warrant to an intrastate motor carrier of property upon surrender of its certificate of public convenience and necessity or permit if, as of June 30, 2003, the motor carrier has valid proof of financial responsibility and current vehicle inspection certificates on file with the commission. The commission shall not charge the warrant application fee prescribed in Section 36 [65-2A-36 NMSA 1978] of the Motor Carrier Act.

C. A certificate of registration issued to a commuter vanpool or farm carrier by the commission under the authority of previous acts shall become null and void on July 1, 2003. The commission shall issue a warrant to a commuter service or motor carrier of property, commuter vanpool or farm carrier under previous acts upon surrender of its certificate of registration if, as of June 30, 2003, the motor carrier has valid proof of financial responsibility and current vehicle inspection certificates on file with the commission. The commission shall not charge the warrant application fee prescribed in Section 36 of the Motor Carrier Act [65-2A-36 NMSA 1978].

D. A warrant issued to an intrastate charter service or a motor carrier of property by the commission pursuant to its rules shall remain in effect, subject to the provisions of the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA] and the commission's rules.

History: Laws 2003, ch. 359, § 40.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 359, § 45 makes the act effective on July 1, 2003.

ARTICLE 3

Motor Carrier Safety

65-3-1. Short title.

Sections 65-3-1 through 65-3-13 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 repeals former 65-3-1 NMSA 1978, as amended by Laws 1977, ch. 250, § 95, relating to drivers' hours and enforcement thereof, and enacts the above section, effective July 1, 1989. For provisions of former section, see 1981 Replacement Pamphlet.

65-3-2. Purpose.

The legislature finds that highway safety is of utmost public concern. The purpose of the Motor Carrier Safety Act [65-3-1 to 65-3-13 NMSA 1978] 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 repeals former 65-3-2 NMSA 1978, as amended by Laws 1973, ch. 255, § 1, relating to maximum hours and rest periods for drivers, and enacts the above section, effective July 1, 1989. For provisions of former section, see 1981 Replacement Pamphlet.

65-3-3. Applicability.

A. Notwithstanding any provision of the Motor Vehicle Code [66-1-1 NMSA 1978] to the contrary, the provisions of the Motor Carrier Safety Act [65-3-1 to 65-3-13 NMSA 1978] 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 [65-3-1 to 65-3-13 NMSA 1978] 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. For provisions of former section, see 1981 Replacement Pamphlet.

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.

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 vehicle carrier" for "motor vehicle" near the beginning of Subsection B.

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 [65-3-1 to 65-3-13 NMSA 1978] 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

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. For provisions of former section, see 1981 Replacement Pamphlet.

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, provides 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.

Compiler's notes. — Section 65-1-10 NMSA 1978, referred to in this section, was repealed in 1995. For similar provisions, see 9-11-6.2 NMSA 1978.

65-3-5. Violation of act; penalty.

A. Any person who violates the provisions of the Motor Carrier Safety Act [65-3-1 to 65-3-13 NMSA 1978] 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 repeals 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 enacts the above section, effective July 1, 1989. For provisions of former section, see 1981 Replacement Pamphlet. For current provisions governing heating equipment, see 65-3-9 NMSA 1978.

65-3-6. Repealed.

ANNOTATIONS

Repeals. — Laws 1990, ch. 21, § 5 repeals 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 1989 Cumulative Supplement.

65-3-7. Qualifications of drivers.

A. A person shall not drive a motor vehicle unless he 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 he:

- (1) is at least twenty-one years old; or
- (2) is at least eighteen years old and drives only within the boundaries of the state of New Mexico;
- (3) is physically qualified to drive a motor vehicle;
- (4) is not disqualified from driving a motor vehicle;
- (5) has been issued a currently-valid motor vehicle operator's license or permit of the proper class for the vehicle he is driving;
- (6) can, by reason of experience, training, or both, safely operate the type of motor vehicle he drives; and
- (7) can, by reason of experience, training, or both, determine whether the cargo he transports is properly located, distributed and secured in or on the motor vehicle he drives.

C. The director may adopt regulations pertaining to the qualification and disqualification of commercial motor carrier vehicle drivers including documentation thereof. The regulations shall include but not be limited to background and character, road testing and written examination, physical qualification, examination and waivers of certain physical defects.

D. 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.

E. The director is authorized to adopt specific exceptions for the qualifications of drivers under the Motor Carrier Safety Act [65-3-1 to 65-3-13 NMSA 1978] for drivers of articulated farm vehicles and intrastate drivers of vehicles transporting combustible liquids.

F. Any disqualification after receipt of a license shall be grounds for revocation of the license.

History: 1978 Comp., § 65-3-7, enacted by Laws 1989, ch. 201, § 7.

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.

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, repeals 65-4-1 to 65-4-18 NMSA 1978, concerning motor carrier transportation agents, effective July 1, 2003. For provisions of the former sections, see 1998 Replacement Pamphlet. For 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; information; inspection.

A. All commercial motor carrier vehicles, as defined in the Motor Transportation Act [65-1-1 NMSA 1978], must 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.

B. The operators of any motor vehicles described in Subsection A of this section shall, upon request, make out and deliver to the agent of the division a manifest showing that part of the following information requested:

- (1) the name of the owner of the vehicle;
- (2) the name of the operator or driver;
- (3) the name of the forwarding or other company in whose service the vehicle is licensed;
- (4) the license number;
- (5) the state in which the vehicle has been granted a common or contract motor carrier permit, if any, and the number of the permit;
- (6) the engine number;
- (7) the serial number of the vehicle;
- (8) a description of the vehicle;
- (9) the point of origin of the shipment;
- (10) the ultimate destination of the shipment;
- (11) the gross vehicle weight of the vehicle and cargo;
- (12) the factory list capacity or the actual capacity if rebuilt;
- (13) the number of taxable miles to be traveled within the state; and
- (14) the nature, amount and coverage of all public liability and other insurance carried upon the vehicle and upon the cargo thereon.

The operator of the vehicle shall declare upon the manifest the name and number of the highways which he intends to use within the state and the place where he intends to leave the state if the point of final destination is outside the state. The manifest shall be signed by the operator and filed with the person in charge of the port of entry. The

operator of the vehicle shall present for inspection to the person in charge of the port of entry a copy of the billing or invoice describing the contents of the cargo and the weight of the cargo.

C. The person in charge of the port of entry may verify the information contained upon the billing or invoice and shall check the license, permit, engine and serial numbers, weight and description of the vehicle. The person shall inspect the vehicle and ascertain whether it is in safe and roadworthy condition, properly equipped with all lights, brakes and other appliances required by any statute of this state, in such condition as to be safe for operation upon the public highways of this state.

D. The person in charge of the port of entry may satisfy himself as to the contents of the cargo and, the weight thereof and is authorized to interview operators to obtain information in respect thereto and, if in doubt as to the declared gross weight, may order the cargo weighed before issuing any clearance certificate for the motor vehicle.

E. The person in charge of the port of entry may inspect the contents of the 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.

F. The person in charge of the port of entry may inspect the vehicle and its contents to determine whether all laws and all rules and regulations of the departments of this state with respect to public safety, health, welfare and comfort have been fully complied with.

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.

ANNOTATIONS

Cross references. — For definition of "division," see 65-1-2 NMSA 1978.

As to ports of entry designated by motor transportation division, see 65-1-11 NMSA 1978.

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*, 112 N.M. 500, 816 P.2d 1122 (Ct. App. 1991).

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 (1998).

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*, 112 N.M. 500, 816 P.2d 1122 (Ct. App. 1991).

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. — Both Laws 1988, ch. 67, § 1, approved March 8, 1988, and Laws 1988, ch. 69, § 1, approved later on March 8, 1988, enacted new sections designated 65-5-1.1 NMSA 1978. The two sections are 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 enacted by Laws 1988, ch. 69, § 1 is set out above. 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, no commercial motor carrier vehicle having a gross vehicle weight or combination gross vehicle weight of over twenty-six thousand pounds shall 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 card 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.

ANNOTATIONS

Cross references. — For definition of "department," see 65-1-2 NMSA 1978.

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 repeals 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 1990 Replacement Pamphlet.

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 to 65-2A-40 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

Cross references. — For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

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. 5940.

65-5-4. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1998 (1st S.S.), ch. 10, § 10, recompiles 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, contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 to 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 regulation of motor carriers by state corporation commission (now public regulation commission), see 65-2-80 NMSA 1978 et seq.

For ambulance service for political subdivisions, see 5-1-1 NMSA 1978.

For emergency medical care, see 24-10-1 to 24-10-5 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 [65-6-1 to 65-6-6 NMSA 1978]:

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 [65-6-1 to 65-6-6 NMSA 1978] 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, 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

Cross references. — For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

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 [65-6-1 to 65-6-6 NMSA 1978] 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

Cross references. — For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

65-6-6. Exceptions.

The Ambulance Standards Act [65-6-1 to 65-6-6 NMSA 1978] 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.