

This is an amendment to 18.3.4 NMAC, Sections 2, 6, 7, and 12 effective 01/30/2018.

18.3.4.2 SCOPE:

- A.** This rule applies to all drivers, all motor carriers [~~and commuter services~~] subject to the jurisdiction of the commission, and all motor vehicles operated by the motor carrier [~~or commuter service~~] in the course of its operations, subject to the exceptions and limitations stated in particular sections of this rule.
- B.** Whenever this rule prescribes a duty or imposes a prohibition on a driver, the motor carrier that uses, employs, or contracts with the driver shall require its drivers to observe the duty or prohibition.
- C.** A motor carrier who employs himself or herself as a driver must comply with both the rules that apply to motor carriers and the rules that apply to drivers.
- D.** The Commission may waive any specific requirement of this part if it conflicts with a rule or requirement of another state agency, governmental entity, or law enforcement entity or if such an agency requests in writing that the rule be waived.

[18.3.4.2 NMAC - Rp, 18.3.4.2 NMAC, 2/13/2015; A, 01/30/2018]

18.3.4.6 OBJECTIVE: The purpose of this rule is to implement Sections 65-2A-19 and 65-6-4 NMSA 1978 by establishing safety requirements for drivers, motor vehicles, and motor carriers [~~and commuter services~~] subject to the jurisdiction of the commission.

[18.3.4.6 NMAC - Rp, 18.3.4.6 NMAC, 2/13/2015; A, 01/30/2018]

18.3.4.7 DEFINITIONS: In addition to the definitions in 18.3.1.7 NMAC, as used in this rule:

- A. CDL driver** means a driver who is required by 49 CFR Section 383.3 or Section 66-5-59 NMSA 1978 to have a commercial driver's license;
- B. driver** means a person who drives a motor vehicle as, for, or on behalf of a motor carrier [~~or a commuter service~~];
- C. MVD** means the motor vehicle division of the New Mexico taxation and revenue department.

[18.3.4.7 NMAC - Rp, 18.3.4.7 NMAC, 2/13/2015; A, 01/30/2018]

18.3.4.12 REQUIREMENTS APPLICABLE ONLY TO NON-CDL DRIVERS:

A. Operators' and chauffeurs' licenses. This rule adopts by reference Chapter 66, Article 5, Part 1 NMSA 1978.

B. Qualifications, investigations, inquiries, reporting, records, driving, equipment, inspection repair and maintenance by and for small passenger vehicles and drivers of small passenger vehicles.

- (1)** Before allowing a transportation service driver to provide carriage:
 - (a)** the prospective driver shall submit an application to the transportation service that includes the individual's address, age, driver's license number and state, and driving history;
 - (b)** the transportation service shall obtain a local and national criminal background check for the prospective driver that shall include:
 - (i)** multistate or multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation and primary source search; and
 - (ii)** a national sex offender registry; and
 - (iii)** the transportation service shall obtain and review a driving history research report for the prospective driver.
- (2)** A transportation service shall not permit a person to act as a transportation service driver who:
 - (a)** has had more than three moving violations in the preceding three-year period or one violation in the preceding three-year period involving any attempt to evade law enforcement, reckless driving or driving on a suspended or revoked license;
 - (b)** has been convicted within the past seven years of:
 - (i)** a felony;
 - (ii)** misdemeanor driving under the influence, reckless driving, leaving the scene of an accident or any other driving-related offense or any misdemeanor violent offense or sexual offense; or
 - (c)** more than three misdemeanors of any kind;
 - (d)** is identified by a national sex offender registry;
 - (e)** does not possess a valid license; or
 - (f)** is not at least 21 years old.

- (3) A transportation service shall not use a small passenger vehicle that:
 - (a) is not in compliance with all federal, state and local laws concerning the operation and maintenance of the motor vehicle;
 - (b) has fewer than four doors; or
 - (c) is designed to carry more than eight passengers, including the driver.
- (4) A transportation service shall inspect or cause to be inspected every motor vehicle used by a driver to provide transportation services before allowing the driver to use the motor vehicle to provide transportation services and not less than once each year thereafter. The type of inspection required shall follow the Commission rules for annual inspections for transportation network company service driver vehicles promulgated as 18.17.1.8 NMAC.

(5) Provided that passenger services may voluntarily adopt and implement other more stringent policies and procedures for small passenger vehicles and drivers of small passenger vehicles, including full or modified forms of federal safety policies and procedures.

C. Qualifications of drivers other than drivers of small passenger vehicles. This rule adopts by reference only the following specific sections of Title 49, Part 391 of the Code of Federal Regulations:

- (1) **general qualifications of drivers:** Section 391.11(b)(8);
- (2) **application for employment:** Section 391.21;
- (3) **investigations and inquiries:** Section 391.23, except that:
 - (a) ~~[this section shall not apply to commuter services;~~
 - (b) "public regulation commission" should be substituted for:
 - (i) department of transportation in section 391.23(a)(2), (i)(1), and (i)(2);
 - (ii) FMCSA in section 391.23(c)(3) and (j)(6);
 - (iii) DOT in section 391.23(c)(4) and (e);
 - ~~(c)~~ (b) Section 391.23(d)(2) is amended to substitute "in the uniform accident report form prescribed by the state of New Mexico" for "as specified in section 390.15(b)(1) of this chapter";
- (4) **annual inquiry and review of driving record.** Section 391.25, except that:
 - (a) Subsections 391.25(a) and (b) are amended to delete: "Except as provided in subpart G of this part;"
 - (b) Section 391.25 shall not apply to volunteer drivers;
- (5) **record of violations:** Section 391.27, except that section 391.27(a) is amended to delete: "Except as provided in subpart G of this part;"
- (6) **road test:** Section 391.31, except that section 391.31(a) is amended to delete: "Except as provided in subpart G;"
- (7) **equivalent of road test:** Section 391.33; an ambulance service may also accept from a person who seeks to drive an ambulance a copy of a certificate of completion from an emergency vehicle operator's course approved by the emergency medical services bureau;
- (8) **physical qualifications for drivers:** Section 391.41, except that drivers for ambulance ~~[and commuter services]~~ are exempt from section 391.41(a);
- (9) **medical examinations; certificate of physical examination:** Section 391.43, except that:
 - ~~(a) for volunteer drivers of ambulance services only, the medical examiner (as defined in 49 CFR Section 390.5) performing the medical examination shall perform a medical examination sufficient to enable the medical examiner to certify, in accordance with Subsection C of 18.19.5.33 NMAC, whether or not the driver has a condition that may interfere with the safe operation of an ambulance and~~
 - ~~(b) this section shall not apply to commuter services;~~ for volunteer drivers of ambulance services only, the medical examiner (as defined in 49 CFR Section 390.5) performing the medical examination shall perform a medical examination sufficient to enable the medical examiner to certify, in accordance with Subsection C of 18.19.5.33 NMAC, whether or not the driver has a condition that may interfere with the safe operation of an ambulance.
- (10) **persons who must be medically examined and certified:** Section 391.45, but this section shall not apply to volunteer drivers;
- (11) **general requirements for driver qualification files:** Section 391.51, except that:
 - ~~(a) subsections 391.51(b)(8) and (d)(5) are not adopted;~~
 - ~~(b) this section shall not apply to commuter services;~~ subsections 391.51(b)(8) and (d)(5) are not adopted;

(12) **driver investigation history file:** Section 391.53, but this section shall not apply to commuter services.

D. Driving of commercial motor vehicles other than small passenger vehicles. This rule adopts by reference the following sections of Title 49, Part 392 of the Code of Federal Regulations:

- (1) **ill or fatigued operator:** Section 392.3;
- (2) **drugs and other substances:** Section 392.4;
- (3) **alcohol prohibition:** Section 392.5;
- (4) **emergency equipment, inspection and use:** Section 392.8, but this section is amended to substitute NMSA 1978 Section 66-3-849 for the reference to Section 393.95;
- (5) **inspection of cargo, cargo securement devices and systems:** Section 392.9, except that this section shall:

[~~_____ (a) _____ not apply to ambulance or commuter services;~~
~~_____ (b) _____] only apply to a motor vehicle with a gross vehicle weight rating of 10,000 pounds or more;~~

(6) **hazardous conditions; extreme caution:** Section 392.14, but this section shall not apply to ambulance services;

- (7) **use of seat belts:** Section 392.16;
- (8) **obscured lamps or reflectors:** Section 392.33;
- (9) **ignition of fuel; prevention:** Section 392.50;
- (10) **safe operation, buses:** Section 392.62;
- (11) **towing or pushing loaded buses:** Section 392.63;
- (12) **riding within closed commercial motor vehicles without proper exits:** Section 392;
- (13) **carbon monoxide; use of commercial motor vehicle when detected:** Section 392.66;
- (14) **radar detectors; use and/or possession:** Section 392.71.

E. Equipment for vehicles other than small passenger vehicles. This rule adopts by reference Chapter 66, Article 3, Parts 9 and 10 NMSA 1978.

F. Inspection, repair and maintenance for vehicles other than small passenger vehicles. This rule adopts by reference the following sections of title 49, part 396 of the code of federal regulations:

(1) **inspection, repair and maintenance:** Section 396.3, but this section shall not apply to commuter services;

(2) **lubrications:** Section 396.5;

(3) **driver vehicle inspection reports:** Section 396.1; [~~a commuter service shall be exempt from this section, but each commuter service shall require its drivers to report to it, and each commuter service shall timely repair any defect or deficiency that would be likely to affect the safe operation of the motor vehicle;~~]

(4) **driver inspection:** Section 396.13 [~~except that commuter services are exempt from subsections 396.13 (b) and (c);~~];

(5) **periodic inspection:** Section 396.17;

(6) **inspector qualifications:** Section 396.19;

(7) **periodic inspection recordkeeping requirements:** Section 396.21;

(8) **equivalent to periodic inspection:** Section 396.23(a);

(9) **qualifications of brake inspectors:** Section 396.25.

[18.3.4.12 NMAC - Rp, 18.3.4.12 NMAC, 2/13/2015; A, 11/30/2016; A, 01/30/2018]