

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

<b>IN THE MATTER OF ADOPTION</b>	)	
<b>OF PROPOSED AMENDMENTS</b>	)	<b>Case No. 09-00192-TR-P</b>
<b>TO THE COMMISSION’S MOTOR</b>	)	
<b>TRANSPORTATION RULES</b>	)	
_____	)	

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the New Mexico Public Regulation Commission ("NMPRC" or "Commission") proposes to initiate a rulemaking docket to consider amending the Commission’s financial responsibility rule. This matter comes before the Commission upon the Motion to Initiate Rulemaking ("Motion") that was filed in this case on June 1, 2009 by the Commission’s Transportation Division Staff ("Staff"); whereupon, having reviewed the record and being duly advised,

**THE COMMISSION FINDS AND CONCLUDES:**

1. The Commission has jurisdiction over motor carrier companies in the State of New Mexico. N.M. Const., Art. XI, Section 2, NMSA 1978 Section 65-1-1, *et seq.* The proposed new rule would be adopted under the authority granted the Commission by the New Mexico Constitution, art. XI, Section 2, the Public Regulation Commission Act (*see* NMSA 1978, Section 8-8-4 and 8-8-15), the State Rules Act, NMSA 1978, Section 14-4-2(C), and the Motor Carrier Act, NMSA 1978, Section 65-2A-1, *et seq.*

2. At a recent Commission Open Meeting, the Commission, upon hearing that the Commission’s rule pertaining to financial responsibility for motor carriers of passengers is different from the rule actually enforced in the field by the Motor Transportation Division of the Department of Public Safety ("MTD"), directed Staff to meet with MTD to resolve the problem.

3. In its Motion, Staff states that it met with MTD and learned that MTD relies on NMSA 1978 Section 65-3-4 of the Motor Carrier Safety Act, NMSA 1978 Section 65-3-1 through Section 65-3-13, for authority to promulgate rules on financial responsibility.<sup>1</sup> Staff states that the MTD has incorporated by reference the federal rule 49 C.F.R Part 387[.33] pertaining to minimum levels of financial responsibility applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees as 18.2.3.10 NMAC.

<sup>1</sup> *NMSA 1978 Section 65-3-4 provides: "[t]he 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."*

- 4. The current minimum limits contained in 49 C.F.R 387.33 are:
  - a) \$5,000,000 for any vehicle with a seating capacity of 16 passengers or more
  - b) \$1,500,000 for any vehicle with a seating capacity of 15 passengers or less

5. Under the Motor Carrier Act, NMSA 1978 Section 65-2A-1 to Section 65-2A-40 ("Act"), the Commission shall, among other things, establish minimum requirements for financial responsibility of intrastate common motor carriers of persons and adopt rules prescribing the form and amount of minimum financial responsibility. *See*, NMSA 1978 Section 65-2A-4.A(2) and NMSA 1978 Section 65-2A-18.

- 6. The current limits promulgated by the Commission under the Act are found at 18.3.3.10 NMAC and are as follows:
  - a) \$3,500,000 for any vehicle with a seating capacity of 40 persons or more, excluding the driver;
  - b) \$2,000,000 for any vehicle with a seating capacity of 16 to 39 persons, excluding the driver; and
  - c) \$1,000,000 for any vehicle with a seating capacity of 15 persons or less, excluding the driver.

7. Staff believes that minimum financial responsibility limits for identical vehicle seating capacities between the MTD and the Commission are necessary to avoid confusion to the public and that the Commission's current financial responsibility limits could be too low, indicating that the Commission should consider raising such limits to those adopted by MTD.

8. Staff therefore requests that the Commission issue an order opening a rulemaking docket to consider amending the Commission's financial responsibility rule, 18.3.3 NMAC, and for such other relief as the Commission deems proper.

9. A new rule should be promulgated to establish financial responsibility minimum limits consistent with those adopted by the MTD.

10. The proposed rule would apply to all motor carriers of passengers holding certificates, permits or warrants issued by the Commission.

11. The purpose of the proposed rule would be to establish minimum financial responsibility limits promulgated by the Commission under the Act that would be more consistent with such limits established by the MTD in order to avoid confusion of the public and ensure adequate minimum financial responsibility limits, especially for vehicles with a seating capacity of 16 or more persons, excluding the driver.

12. This Notice of Proposed Rulemaking should constitute due and lawful notice to all potentially interested parties.

13. All interested persons should be afforded the opportunity to receive notice of and to comment upon the attached Proposed Rule.

14. A copy of the proposed rule to be considered for promulgation is attached hereto as Exhibit "A." Additional copies of the proposed rule can be obtained from:

Mr. Ron X. Montoya  
Records Management Bureau  
PERA Building  
1120 Paseo de Peralta  
Santa Fe, New Mexico 87501  
Telephone: (505) 827-6970.

15. Commission Rule 1.2.3.7(B), "Ex Parte Communications", draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications". In order to assure compliance with 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds such date should be December 18, 2009. The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

**IT IS THEREFORE ORDERED:**

A. A rulemaking proceeding should be, and hereby is, instituted in this proceeding.

B. The Commission seeks comment from all interested persons concerning whether the proposed rule, attached as an Exhibit "A" to this Order, should be adopted.

C. This *Notice of Proposed Rulemaking* shall constitute due and lawful notice to all potentially interested persons.

D. Any person wishing to comment on the proposed rule may do so by submitting written comments no later than November 11, 2009. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be provided in a format consistent with that of the New Mexico Administrative Code (“NMAC”).

E. The record in this case shall close on the earlier of the date of a Final Order in this case or December 18, 2009.

F. All pleadings, including comments, shall bear the caption and case number set out on the first page of this Notice. Comments on the Proposed Rule shall be filed with the Commission’s Records Division, at the address set out herein at ¶ 12.

G. A public hearing on the proposed rule, to be held before the Commission, shall be held beginning at **1:00 P.M. on November 19, 2009** at the offices of the Commission, at the following location:

**4<sup>th</sup> Floor Hearing Room  
PERA Building  
1120 Paseo de Peralta  
Santa Fe, New Mexico 87501  
Tel. (505) 827-4500**

H. All persons attending the hearing should be prepared to address the issues set forth herein. Interested persons should contact the Commission to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Hearing should contact Ms. Cecilia Rios at 827-6947 at least 48 hours prior to the commencement of the Hearing.

I. Pursuant to NMSA 1978, Section 8-8-15(B), this *Notice of Proposed Rulemaking*, including Exhibit “A”, shall be published at least once at least thirty days prior to the hearing date in the NEW MEXICO REGISTER and two newspapers of general circulation in the State of New Mexico and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice and to all motor carrier companies subject to the jurisdiction of the Commission. Copies of this *Notice of Proposed Rulemaking* shall be provided promptly by e-mail or by facsimile transmission to any persons who have so requested.

J. Affidavits attesting to the publication of this *Notice of Proposed Rulemaking* as described above shall be filed in this docket.

K. This Notice shall be posted on the Commission’s official Web site.

L. Copies of any forthcoming final order adopting a new rule shall be mailed, along with a copy of the new rule, to all affected motor carrier companies, all commentors in this case, and all individuals requesting such copies.

M. This *Notice of Proposed Rulemaking* is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 1st day of October, 2009.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

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**SANDY JONES, CHAIRMAN**

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**DAVID W. KING, VICE CHAIRMAN**

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**JASON MARKS, COMMISSIONER**

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JEROME D. BLOCK, COMMISSIONER

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CAROL K. SLOAN, COMMISSIONER

Exhibit "A"

**TITLE 18      TRANSPORTATION AND HIGHWAYS**  
**CHAPTER 3    MOTOR CARRIER GENERAL PROVISIONS**  
**PART 3        FINANCIAL RESPONSIBILITY**

**18.3.3.10      MINIMUM LIMITS OF PUBLIC LIABILITY INSURANCE:**

**A.** Motor carriers of persons providing service in vehicles with a seating capacity of ~~forty (40)~~ sixteen (16) persons or more, excluding the driver, must maintain a combined single-limit public liability insurance policy of at least ~~three million five hundred thousand dollars (\$3,500,000)~~ five million dollars (\$5,000,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

~~**B.** Motor carriers of persons that provide providing service in vehicles with a seating capacity of sixteen (16) to thirty nine (39) fifteen (15) persons or less, excluding the driver, must maintain a combined single-limit public liability insurance policy of at least two million dollars (\$2,000,000) one million, five hundred thousand dollars (\$1,500,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.~~

~~**C.** Household goods carriers must maintain a combined single limit public liability insurance policy of at least one million five hundred thousand dollars (\$1,500,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.~~

~~**[D.] B.** Motor carriers of persons providing service in vehicles with a seating capacity of fifteen (15) persons or less, excluding the driver, must maintain a combined single-limit public liability insurance policy of at least ~~one million dollars (\$1,000,000)~~ one million five hundred thousand dollars (\$1,500,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.~~

**C.** Household goods carriers must maintain a combined single-limit public liability insurance policy of at least one million five hundred thousand dollars (\$1,500,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

~~**[E.] D.** Towing services, repossession services, and motor carriers of property must maintain a combined single-limit public liability insurance policy of at least seven hundred and fifty thousand dollars (\$750,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.~~

~~**[F.] E.** Motor carriers of property transporting hazardous matter in intrastate commerce in New Mexico must maintain the minimum levels of financial responsibility required by 49 CFR 387.9 for interstate commerce.~~

~~**[G.] F.** Incidental carriers must maintain a combined single limit public liability policy amount of at least two hundred and fifty thousand dollars (\$250,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.~~