

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 194

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO MOTOR CARRIERS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE MOTOR CARRIER ACT; PROVIDING FOR COMMUNITY QUALITY OF SERVICE STANDARDS; SIMPLIFYING AND CLARIFYING ADMINISTRATIVE PROCEDURES; PROVIDING FOR ADDITIONAL UNFAIR PRACTICES ACT CIVIL PENALTIES; PROVIDING FOR FEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 65-2A-2 NMSA 1978 (being Laws 2003, Chapter 359, Section 2) is amended to read:

"65-2A-2. TRANSPORTATION POLICY [~~PURPOSE~~].--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~~] through state licensing and regulation of motor carriers."

SECTION 2. Section 65-2A-3 NMSA 1978 (being Laws 2003, Chapter 359,

Section 3, as amended) is amended to read:

"65-2A-3. DEFINITIONS.--As used in the Motor Carrier Act:

A. "ability to provide certificated service" means that an applicant or carrier can provide reasonably continuous and adequate transportation service of the type required by its application or its operating authority in the territory authorized or sought to be authorized;

B. "ambulance service" means the intrastate transportation of sick or injured persons in an ambulance meeting the standards established by the commission under the Ambulance Standards Act;

~~[A.]~~ C. "amendment of a certificate or permit" means a permanent change in the type or nature of service, ~~[or]~~ territory or terms of service authorized by an existing certificate or permit;

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

~~[C.]~~ E. "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]~~ unified carrier registration system;

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

~~[E.]~~ G. "certificate" means the ~~[operating]~~ authority issued by the commission to ~~[intrastate common motor carriers of persons or household goods]~~ a person that authorizes the person to offer and provide a certificated service as a motor carrier;

H. "certificated service" means one of the following transportation services:

(1) an ambulance service;

(2) a household goods service;

(3) a shuttle service;

(4) a specialized passenger service; or

(5) a taxicab service;

~~[F.]~~ I. "change in a certificate or permit" means the voluntary amendment, cancellation, [change in tariff] change in form of [ownership] legal entity of the holder, 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;]~~

J. "charter service" means the compensated transportation of a group of persons in a motor vehicle who, pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle and driver, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin;

~~[H.]~~ K. "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] the intrastate transportation of passengers in motor vehicles having a capacity of seven to fifteen persons,

including the driver, provided 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;]~~

M. "continuous and adequate service" means:

(1) for full-service carriers, reasonably continuous availability, offering and provision of transportation services through motor vehicles, equipment and resources satisfying safety and financial responsibility requirements under the Motor Carrier Act and commission rule, which are reasonably adequate to serve the entire full-service territory authorized in the certificate, with reasonable response to all requests for service for the nature of passenger service authorized, based on the nature of public need, expense and volume of demand for the type of service authorized during seasonal periods; and

(2) for general-service carriers, reasonably continuous availability and offering of transportation services through motor vehicles, equipment and resources satisfying safety and financial responsibility requirements under the Motor Carrier Act and commission rule for the nature of the transportation service authorized in the certificate;

N. "contract driver" means a person who contracts with a motor carrier as an independent contractor to drive a vehicle pursuant to an operating authority issued to the motor carrier;

O. "endorsement" means the specification in a certificate of the territory in which the carrier is authorized to operate, the nature of service to be provided by a certificated passenger service and any additional terms of service that may be reasonably granted or required by the commission for the particular authority granted;

P. "fare" means the full compensation charged for transportation by a tariffed passenger service;

[P.] Q. "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;

R. "fitness to provide a transportation service" means that an applicant or carrier complies with state law as provided in the Motor

Carrier Act or by rule of the commission;

S. "for hire" means that transportation is offered or provided to the public for remuneration, compensation or reward of any kind, paid or promised, either directly or indirectly;

T. "full service" means one of the following certificated passenger services that are endorsed and required to meet specific standards for the provision of service to or throughout a community:

(1) an ambulance service;

(2) a scheduled shuttle service; or

(3) a municipal taxicab service;

U. "general service" means one of the following certificated services that provides transportation services of the type authorized, but is not required to provide unprofitable or marginally profitable carriage:

(1) a general shuttle service;

(2) a general taxicab service;

(3) a specialized passenger service; or

(4) a household goods service;

~~[Q.]~~ V. "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;

W. "holder of an operating authority" means the grantee of the operating authority or a person that currently holds all or part of the right to exercise the authority through a transfer by operation of law;

~~[R.]~~ X. "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 to or from a factory or store, other than property the householder

has purchased to use in the householder's 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 transports passengers using vehicles designed to transport sixteen or more passengers, including the driver, and for which the customer pays either directly or indirectly;]~~

Y. "household goods service" means the intrastate transportation, packing and storage of household goods for hire;

~~[T.]~~ Z. "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 an order of the commission or a rule proposed for adoption by the commission or a person the commission may deem interested in a particular matter;

~~[U.]~~ AA. "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.]~~ BB. "intrastate motor carrier" means a ~~[person]~~ motor carrier offering or providing ~~[compensated]~~ transportation for hire by motor vehicle between points and places in the state;

~~[W.]~~ CC. "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.]~~ DD. "lease of a certificate or permit" means an agreement by

which the ~~[owner]~~ holder of a certificate or permit grants to another person the exclusive right to use all or part of the certificate or permit for a specified period of time in exchange for consideration, but does not include an agreement between a motor carrier and its contract driver;

~~[Z.]~~ EE. "lease of equipment" means an agreement whereby a motor carrier obtains equipment owned by another person for use by the motor carrier in the exercise of its operating authority, but does not include an agreement between a motor carrier and its contract driver;

~~[AA.]~~ FF. "motor carrier" or "carrier" means a person offering ~~[compensated]~~ or providing transportation of persons, ~~[or]~~ property or household goods for hire by motor vehicle, whether in intrastate or interstate commerce;

~~[BB.]~~ GG. "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]~~ and to discuss and propose industry interests and matters other than rates, as well as discussing and proposing rates and other matters pertaining to statewide tariffs;

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

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

II. "nature of service" means the type of transportation service to be provided by a certificated passenger service as set forth in Subsection A of Section 65-2A-8 NMSA 1978;

~~[EE.]~~ JJ. "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;

KK. "notice period" means the period of time specified in Section 65-2A-6 NMSA 1978 following publication of notice during which the commission may not act;

LL. "objection" means a document filed with the commission by an interested person or a member of the public during the notice period for an application for a certificate or a permit, or for amendment, lease or transfer of a certificate or permit, that expresses an objection to, or provides information concerning, the matter before the commission;

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

NN. "passenger" means a person other than the driver of a motor vehicle transported in a motor vehicle;

OO. "passenger service" means a transportation service offered or provided for the transportation of passengers by motor vehicle;

[~~GG.~~] PP. "permit" means the [~~operating~~] authority issued by the commission to [~~intrastate contract motor carriers of persons or household goods~~] a person that authorizes the person to offer and provide a permitted service as a motor carrier;

OO. "permitted service" means the intrastate transportation of passengers or household goods for hire pursuant to a contract between the motor carrier and another person;

RR. "predatory rate or practice" means the knowing and willful requirement by a carrier that a passenger or shipper pay a rate, fare or

other charge in excess of the rates and charges or in a manner other than in accordance with terms of service as provided by law, as provided in a tariff governing the carrier or as provided in a pre-existing written contract regarding the carriage, when such charge is made:

(1) by a passenger carrier as a prior condition for the provision of transportation or continued transportation of a passenger; or

(2) as a prior condition by a towing service carrier performing nonconsensual tows or a household goods service carrier for delivery of, release of or access to vehicles or household goods by the shipper or registered owner;

~~[HH.]~~ SS. "process" means, in the context of legal process, an order, subpoena or notice issued by the commission or an order, subpoena, notice, writ or summons issued by a court;

~~[II.]~~ TT. "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.]~~ UU. "protest" means a document in the form of a pleading filed with the commission by ~~[an interested person]~~ a full-service carrier that expresses an objection to ~~[a matter]~~ an application before the commission for a certificate for passenger service or for a permit for ambulance service or for passenger service pursuant to a public-charge contract or for amendment, lease or transfer of such a certificate or permit:

(1) when the territory involved in the application includes all or a portion of the full-service territory of the protesting carrier;

and

(2) for a carrier other than an ambulance service carrier, when the grant of the application will, or presents a reasonable potential to, impair, diminish or otherwise adversely affect its existing provision of full-service passenger service to the public within its full-service territory;

VV. "public-charge contract" means a contract or contractual arrangement between a motor carrier and a third party for passenger service that requires or allows the motor carrier to charge passengers a fare for the transportation service to be provided pursuant to the contract;

~~[KK.]~~ WW. "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.]~~ XX. "record of a motor carrier" means an account, correspondence, memorandum, tape, disc, paper, book or transcribed information, or electronic data information, including the electronic hardware or software necessary to access the electronic data information in its document form, regarding the operation of a motor carrier;

~~[MM.]~~ YY. "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.]~~ ZZ. "revocation" means the involuntary, permanent termination of all or part of an operating authority ordered by the commission for cause;

~~[PP.]~~ AAA. "shipper" means a person who consigns or receives property or household 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.]~~ BBB. "shuttle service" means the intrastate transportation of passengers for hire pursuant to a set fare for each passenger between two or more specified terminal points or areas and includes both scheduled shuttle service and general shuttle service as follows:

(1) "scheduled shuttle service" means a shuttle service that transports passengers to and from an airport both through prior arrangement and through presentment at terminal locations, on the basis of a daily time schedule filed with the commission, which must be met in a timely fashion with a vehicle present at the terminal location regardless of the number of passengers carried on any run, if any, and includes general shuttle service; and

(2) "general shuttle service" means a shuttle service that is not required to operate on a set schedule, that may optionally use a grid map to specify distant or adjacent terminal areas and that is not required to accept passengers other than pre-arranged passengers;

CCC. "specialized passenger service" means the intrastate transportation for hire of passengers with special physical needs by specialized types of vehicles, or for specialized types of service to the public or community, as the commission may by rule provide;

DDD. "tariff" means a document filed by a [motor carrier of persons or household goods or a towing service performing nonconsensual ~~tows]~~ tariffed service carrier 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] of service and applicable time schedules relating to those services; [including a common ~~tariff;~~

~~SS.]~~ EEE. "tariffed service" means one of the following transportation services authorized by the commission for the provision of service on the basis of rates and terms of service contained in a tariff approved by the commission:

(1) an ambulance service;

(2) a household goods service;

(3) a shuttle service;

(4) a specialized passenger service;

(5) a taxicab service; or

(6) a towing service performing nonconsensual tows;

FFF. "taxicab association" means an association, cooperative or other legal entity whose members are taxicab drivers, which shall be treated in the same manner as any other applicant with regard to applications for a certificate for general taxicab service or for full-service municipal taxicab service, and shall be subject in the same manner to all other provisions, requirements and limitations of the Motor Carrier Act;

GGG. "taxicab service" means [~~a common motor carrier engaged in unscheduled passenger transportation~~] intrastate transportation of passengers for hire in a motor vehicle having a capacity of not more than eight [~~passengers~~] persons, 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;~~

~~FF. "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.] for which the passenger or other person engaging the vehicle is allowed to specify not only the origin and destination points of the trip but also, within reason, the route taken by the vehicle, any intermediate stop, any optional waiting at a stop and any other passengers transported during the trip and that charges a fare for use of the vehicle primarily on the basis of a drop-flag fee, cumulative mileage and cumulative wait time through a taxicab meter used to cumulate and display the fare to the passenger and includes both municipal taxicab service and general taxicab service, as follows:

(1) "municipal taxicab service" means a taxicab service that deploys vehicles at all times of the day and year, is centrally dispatched and reasonably responds to all calls for service within its endorsed full-service territory regardless of profitability of the individual trip, in addition to the transportation service provided by a general taxicab service; and

(2) "general taxicab service" means a taxicab service that need not be dispatched, that may pick up on-demand passengers through flagging or at a taxicab stand or queue, that need not deploy vehicles in any particular manner and that may charge for trips to destination points

or places outside of the taxicab service's certificated territories on the basis of a set fare;

HHH. "terms of service" means all terms, aspects, practices, limitations, conditions and schedules of service other than specific rate amounts pertaining to a tariffed service;

III. "towing [~~services~~] service" means the use of specialized equipment, including repossession services using towing equipment, to transport or store:

(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.]~~ JJJ. "transfer of a certificate or permit" means a permanent conveyance of all or part of a certificate or permit;

~~[WW.]~~ KKK. "transfer by operation of law" means that ~~[the ownership of or]~~ all or a part of a grantee's interest in [a certificate or permit] an operating authority passes to ~~[another]~~ a fiduciary or other person by application of established rules of law;

LLL. "transportation service" means transportation subject to the jurisdiction of the commission, offered or provided by a motor carrier, that requires the carrier to obtain an operating authority from the

commission under the Motor Carrier Act, regardless of whether the motor carrier has obtained appropriate operating authority from the commission;

MMM. "verification" means a notarized signature verifying the contents of the document or other filing or a signature verifying the contents of the document or other filing under penalty of perjury, expressly providing that the signatory swears or affirms the contents under penalty of perjury as provided in Subsection A of Section 65-2A-33 NMSA 1978;

~~[XX.]~~ NNN. "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]~~ holder for a specified period of time, not to exceed twelve consecutive months;

~~[YY.]~~ OOO. "warrant" means the ~~[operating]~~ authority issued by the commission to ~~[charter services, towing services, commuter services and motor carriers of property; and]~~ a person that authorizes the person to offer and provide a warranted service as a motor carrier;

PPP. "warranted service" means one of the following intrastate transportation services offered or provided for hire:

(1) a charter service;

(2) a commuter service;

(3) a property transportation service; or

(4) a towing service; and

~~[ZZ.]~~ OOO. "weight-bumping" means the knowing and willful statement of a fraudulent weight on a shipment of household goods."

SECTION 3. Section 65-2A-4 NMSA 1978 (being Laws 2003, Chapter 359, Section 4) is amended to read:

"65-2A-4. POWERS AND DUTIES OF THE COMMISSION.--

A. In accordance with the Motor Carrier Act, 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]~~ carriers; provided that the financial responsibility standards required shall not be inconsistent with applicable federal standards;

(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]~~ tariffed service carriers to the extent provided in the Motor Carrier Act, including rates and terms of service for storing household goods and motor vehicles;

(6) determine matters of public ~~[convenience and necessity]~~ interest and other matters relating to authorities, rates, territories, nature of service and other terms of service of motor carriers;

(7) have jurisdiction to determine any matter under the Motor Carrier Act relating to any transportation service carrier that has not obtained an appropriate operating authority from the commission;

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

~~[-8-]~~ (9) hold a public hearing specific to a protest or a request by the transportation division of the commission that has been

filed [~~timely~~] within the notice period in opposition to or in consideration of an application; [~~and~~

~~(9)~~] (10) create a statewide tariff for household goods service carriers establishing maximum rates that may be charged by carriers; and

(11) adopt rules, issue orders and conduct activities necessary to implement and enforce the Motor Carrier Act.

B. The commission may:

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

(4) establish statewide tariffs as needed for voluntary and optional use by tariffed service carriers; and

(5) adopt rules to implement these powers."

SECTION 4. Section 65-2A-5 NMSA 1978 (being Laws 2003, Chapter 359, Section 5) is amended to read:

"65-2A-5. APPLICATIONS IN GENERAL--MINISTERIAL GRANTS OF AUTHORITY--
WHEN PUBLIC HEARINGS REQUIRED.--

A. A person shall file an application [~~if~~] for any matter for which 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 on its own initiative or specific to [~~a protest or request~~] an objection that has been [~~timely~~] filed within the notice period 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~~] a protest is filed concerning 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, or allow or require particular terms of service as it may find reasonable and appropriate. If no objection, protest or request for hearing by the transportation division of the commission is filed during the notice period, the commission may grant the application by ministerial action, if the application complies with the provisions of the Motor Carrier Act and the rules of the commission regarding fitness, ability, financial responsibility and safety."

SECTION 5. Section 65-2A-6 NMSA 1978 (being Laws 2003, Chapter 359, Section 6) is amended to read:

"65-2A-6. NOTICE.--

A. [~~If the Motor Carrier Act requires publication of~~] The commission shall electronically publish notice regarding an application before the commission for a certificate or permit or for a change in a certificate or permit, regarding proposed rulemaking, or regarding other

orders of the commission of general application, by posting a copy of the notice or document on the commission's internet web site and sending electronic mail to all motor carriers, public officials or agencies, or other persons or entities who have previously supplied electronic mail addresses to the commission for the purpose of publication, advising such persons of the filing and posting. If the commission in its discretion should also require publication by newspaper, 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]~~ an application for a certificate or permit or for an amendment, lease or transfer of a certificate or permit less than twenty days after the date notice was published.

B. Whenever the Motor Carrier Act requires publication of notice regarding ~~[a]~~ any other 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."

SECTION 6. Section 65-2A-7 NMSA 1978 (being Laws 2003, Chapter 359, Section 7) is amended to read:

"65-2A-7. OPERATING AUTHORITIES IN GENERAL.--

A. No person shall offer or provide a transportation service for hire within the state without first obtaining an appropriate operating authority from the commission. Every motor carrier providing a transportation service shall meet and comply with the requirements of the Motor Carrier Act and the lawfully adopted rules and orders of the commission.

B. A certificate, permit or warrant, or a change in a certificate or permit, 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], suspended or amended.~~

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

~~[C.]~~ D. A ~~[motor]~~ certificated service 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.]"~~

SECTION 7. Section 65-2A-8 NMSA 1978 (being Laws 2003, Chapter 359, Section 8) is amended to read:

"65-2A-8. CERTIFICATES FOR ~~[INTRASTATE COMMON MOTOR CARRIERS OF PERSONS]~~ PASSENGER SERVICE.--

A. ~~[A common motor carrier of persons shall not provide compensated intrastate transportation in the state without a certificate from the commission.]~~ The commission may issue a certificate for a passenger service as follows:

(1) a certificate for an ambulance service;

(2) a certificate for a shuttle service shall be endorsed for nature of service as a scheduled shuttle service or as a general shuttle service;

(3) a certificate for a specialized passenger service shall be endorsed for nature of service as provided by commission rule; and

(4) a certificate for a taxicab service shall be endorsed for nature of service as a municipal taxicab service or as a general taxicab service.

B. Except as provided in this section and in Section 65-2A-13

NMSA 1978, the commission shall issue a certificate allowing a person to provide ~~[compensated intrastate transportation as a common motor carrier of persons]~~ passenger service after notice and public hearing requirements are met, if:

(1) the ~~[person]~~ applicant is fit ~~[willing]~~ and able to provide the transportation service to be authorized by the certificate;

(2) the ~~[person]~~ applicant 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) for an application for ambulance service, 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; and

(4) the applicant has filed a tariff as provided in Section 65-2A-20 NMSA 1978.

C. Before granting a certificate ~~[to an intrastate common motor carrier of persons]~~ for passenger service, the commission shall consider any objections or protests that were filed within the notice period.

D. Before granting a certificate for ambulance service, the commission shall also 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]~~ ambulance service in the territory.

~~[D.]~~ E. A certificate issued by the commission ~~[to an intrastate common motor carrier of persons]~~ for provision of passenger service shall contain one or more endorsements, each of which shall specify the:

(1) nature of service to be rendered;

(2) territory authorized to be served; and

(3) reasonable terms [~~conditions and limitations~~] of service as the [~~public convenience and necessity~~] commission may allow or 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]~~ for the particular certificate.

F. Territorial endorsements to a certificate for passenger service shall:

(1) be limited to territory sought in the application that will be served in a reasonably continuous and adequate manner beginning within thirty days of the issuance of the certificate or such other definite period or date as the commission may provide for a particular application and shall generally be authorized on the basis of county or incorporated municipal boundaries, subject to other specification reasonably allowed or required by the commission;

(2) except for shuttle services, authorize transportation between points and places within the specified territory, and from points and places within the specified territory to all points and places in the state and return, unless otherwise expressly allowed or specified in the terms of service in the endorsement to the certificate; and

(3) for shuttle services, provide for transportation between two or more specified end or intermediate terminal points or areas, and authorize pick-up or drop-off of passengers throughout a terminal area, but shall not authorize transportation between points and places within a single terminal area or the provision of transportation services in any other areas of the state."

SECTION 8. Section 65-2A-9 NMSA 1978 (being Laws 2003, Chapter 359, Section 9) is amended to read:

"65-2A-9. CERTIFICATES FOR [~~INTRASTATE COMMON MOTOR CARRIERS OF~~] HOUSEHOLD GOODS SERVICE.--

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

~~B.]~~ A. Except as provided in this section and in Section 65-2A-13 NMSA 1978, the commission shall issue a certificate allowing a person to provide [~~compensated intrastate transportation as a common motor carrier of~~] household goods service after notice and public hearing requirements are met, if the applicant:

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

(2) [~~the person~~] has a place of business and stations equipment within the state and 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 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]~~ has filed a tariff as provided in Section 65-2A-20 NMSA 1978.

~~[E.]~~ B. Before granting a certificate for household goods service to an ~~[intrastate common motor carrier of household goods]~~ applicant, 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]~~ any objections that were filed within the notice period.

~~[D.]~~ C. A certificate issued by the commission ~~[to an intrastate common motor carrier]~~ for provision of household goods service shall contain one or more endorsements, each of which shall specify:

(1) the territory to be served, which shall be limited to territory sought in the application that will be served in a reasonably continuous and adequate manner beginning within thirty days of the issuance of the certificate or such other definite period or date as the commission may provide for a particular application, and shall generally be specified on the basis of county boundaries, subject to other or further specification by the commission by rule or in regard to a particular application; and

(2) any reasonable terms of service that the commission may allow or require for the particular certificate."

SECTION 9. Section 65-2A-10 NMSA 1978 (being Laws 2003, Chapter 359, Section 10, as amended) is amended to read:

"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.] A.~~ Except as provided in this section and in Section 65-2A-13 NMSA 1978, the commission shall issue a permit allowing a person to provide ~~[compensated intrastate]~~ permitted service for transportation ~~[as a contract motor carrier of persons]~~ of passengers or household goods pursuant to contract after notice and public hearing requirements are met, if the applicant is:

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

(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.] B.~~ Before granting a permit to an ~~[intrastate contract motor carrier of persons]~~ applicant, 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.] any objections or protests that were filed within the notice period.~~

C. The commission shall not grant a permit for ambulance or household goods service, or for provision of passenger service pursuant to a public-charge contract, or for a lease or transfer of such a permit, unless the applicant holds a certificate for provision of the appropriate certificated service in the territory to be served under contract. A carrier's operations pursuant to permits for contracts for ambulance service or household goods service, or for public-charge contracts for passenger service, shall be held to the same standards as are the carrier's certificated service operations. If the transportation to be provided under the contract is passenger service other than ambulance service, the contractual rates and terms of service affecting passengers shall be provided in the carrier's tariff.

D. The commission shall not issue a permit for passenger service if the contract or arrangement between the carrier and the other contracting party effectively excludes or otherwise impairs a certificated

carrier's access to public places or the public's access to certificated carriers for the provision of transportation services by a certificated passenger service carrier then serving the same territory, and no permit issued may be used to effect such exclusion or impairment of certificated passenger service.

E. 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.]~~ F. An [~~intrastate contract motor carrier of persons or household goods~~] applicant for a permit 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]"

SECTION 10. Section 65-2A-11 NMSA 1978 (being Laws 2003, Chapter 359, Section 11) is amended to read:

"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~~] applicant for a certificate or permit or for amendment, lease or transfer of all or part of a certificate or permit for a period not to exceed [~~ninety days~~] the duration of the application process, if it finds that:

(1) the notice period for such application has not yet

expired, the application is one directly involving public safety, a governmental program or a specific public event, there is an urgent and immediate public need for such service and the public may be harmed by waiting for the notice period to expire;

(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;

(3) the applicant is fit to provide the transportation service requested, is able to provide any certificated service requested and is in compliance with the safety and financial responsibility requirements of the Motor Carrier Act and the rules of the commission; and

~~[B.]~~ (4) satisfactory proof of urgent and immediate need ~~[shall be]~~ has been made by ~~[affidavit or other]~~ verified proof as the commission shall by rule prescribe.

~~[C.]~~ B. An applicant for temporary authority as a ~~[common motor]~~ tariffed service 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]~~ C. If a hearing is held before a hearing examiner for any reason on an application for a certificate or permit or for amendment, lease or transfer of all or part of a certificate or permit or for a tariff rate increase, the applicant may move in such proceeding for a

grant of temporary authority or rate approval for a period not to exceed the duration of the application process, and any protesting carrier or the transportation division of the commission may move in such proceeding for reconsideration or modification of any grant of temporary authority previously granted by the commission or the hearing examiner. The hearing examiner in the proceeding shall hold an expedited preliminary public hearing on the grant of temporary authority on the issues in the proceeding and the testimony evidence presented in the hearing on such procedural basis as the commission shall by rule prescribe.

D. Motor carriers operating under temporary authority shall comply with the requirements of the Motor Carrier Act and the rules of the commission.

~~[F.]~~ E. A grant of temporary authority shall not create a presumption that permanent authority will be granted."

SECTION 11. Section 65-2A-12 NMSA 1978 (being Laws 2003, Chapter 359, Section 12) is amended to read:

"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.]~~ A. The commission shall issue a warrant that allows a person to provide [~~compensated intrastate transportation~~] warranted service as a commuter service, charter service, towing service or motor carrier of property if the commission finds that the [~~person~~] applicant is in compliance with the financial responsibility and safety requirements of the Motor Carrier Act 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.]~~

B. A towing service carrier performing nonconsensual tows is subject to tariff rates and terms of service. A towing service carrier performing nonconsensual tows shall not use the same motor vehicles, equipment and facilities used by another warranted towing service carrier performing nonconsensual tows.

~~[D.]~~ C. A warrant shall not be transferred or leased to another person.

~~[E.]~~ D. 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 or fails to provide proof of financial responsibility as required by the commission for four consecutive months."

SECTION 12. Section 65-2A-13 NMSA 1978 (being Laws 2003, Chapter 359, Section 13) is amended to read:

"65-2A-13. PROTESTS, ~~[OF APPLICATIONS FOR A CERTIFICATE OR PERMIT OR FOR A CHANGE IN A CERTIFICATE OR PERMIT]~~ OBJECTIONS AND HEARINGS.--

~~[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.]~~

A. Any interested person or any member of the public may provide information to the commission or express an objection to any application for a certificate or permit, or for amendment, lease or transfer of a certificate or permit, during the notice period for the application by filing a written objection in regard to the application. The commission shall consider any objections filed in regard to determining whether to hold a hearing on the application. The commission is not required to hold a hearing pursuant to any objection but may, in its discretion or on its own motion for any reason, hold a hearing on any application for a certificate or permit or for an amendment, lease or transfer of a certificate or permit.

B. The commission shall hold a hearing on an application whenever a protest is filed within the notice period or the transportation division of the commission files a request for a hearing relative to an application within the notice period. The commission shall allow a protesting carrier to proceed as an intervenor in the application proceeding.

C. In any hearing held on an application:

(1) the applicant has the burden of proving that the applicant meets the requirements of the Motor Carrier Act and the rules of the commission for the application at issue, the burden of demonstrating with reasonable specificity the nature and scope of its proposed transportation service, the burden of proving any particular factual

matters that the commission or the transportation division of the commission may identify and require, the burden of proving any additional allegations and matters of public interest that it may raise and, if the application pertains to ambulance service, the burden of proving that the ambulance service that currently exists in the territory sought in the application is inadequate and that the proposed service is directly responsive to a public need and demand for the service proposed;

(2) a protesting carrier has the burden of proving all matters of fact pertaining to its full-service operation within its certificated full-service territory, the burden of proving the potential impairment or adverse impact on its existing full-service operation by the transportation service proposed by the applicant and the burden of proving all other allegations and matters of public interest that it may raise. The protesting carrier's proof should include, without limitation, a demonstration with reasonable specificity of the nature of the existing full service being provided, the volume of passengers transported, economic analysis related to expenses and revenues of the full-service operation and the anticipated economic, business or functional effect of the proposed service on the existing provision of, or rates for, full-service transportation within the full-service territory;

(3) the commission may allow other interested persons to intervene, either generally or on the basis of specific facts or issues. A permissive intervenor has the burden of proof for its position on all factual matters and legal issues that it alleges and on which it is permitted to intervene; and

(4) all parties to a hearing may base their demonstration and proof on business data, experienced persons and mathematical calculations. Expert testimony shall not be required of any party but may be provided at the option of a party.

D. The commission shall not grant an application:

(1) for a certificate or permit for ambulance service, or for amendment, lease or transfer of such a certificate or permit, if it finds after hearing that the existing ambulance service is provided on a reasonably continuous and adequate basis in the territory in which the new service is sought or that the holder of the certificate or lessee providing the existing ambulance service in such territory is willing and able to provide, and does subsequently provide, reasonably continuous and adequate service within such territory, as specified by commission order;

(2) for a new certificate for general taxicab service within the full-service territory of a protesting municipal taxicab service carrier; or

(3) for a certificate for any passenger service other than those identified in Paragraphs (1) and (2) of this subsection, or for a permit for passenger service other than for an ambulance service pursuant to a public-charge contract, or for amendment, lease or transfer of such a certificate or permit, within a protesting full-service carrier's full-service territory, if it finds after hearing that the grant of the application presents a reasonable potential to impair, diminish or otherwise adversely affect the existing provision of full-service passenger service to the public in the full-service territory or if the application is otherwise contrary to the public interest in the full-service territory. In considering the potential effect on provision of transportation services to the public in regard to such an application, the commission shall consider all evidence presented pertaining to such potential effect, including evidence of the effect that diversion of revenue or traffic may have on the provision of full-service passenger service to the community. Diversion of revenue or traffic from an existing motor carrier shall not, however, be sufficient grounds for denying the application without a

showing that the diversion presents a reasonable potential to affect the provision of full-service passenger service to the community."

SECTION 13. Section 65-2A-14 NMSA 1978 (being Laws 2003, Chapter 359, Section 14) is amended to read:

"65-2A-14. CHANGES IN CERTIFICATES OR PERMITS.--

A. A change in a certificate or 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~~] holder if the commission finds:

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

~~(2)]~~ (1) that the applicant for amendment, lease or transfer of a certificate for passenger service 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~~] for such passenger service;

~~[(3) that the applicant meets the requirements pursuant to Section 10 of the Motor Carrier Act for an amendment of a permit as a contract motor carrier of persons;~~

~~(4)]~~ (2) that the applicant for amendment, lease or a transfer of a certificate for household goods service 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~~] for such household goods service;

~~[(5)]~~ (3) that the applicant for amendment, lease or a transfer of a permit meets the requirements pursuant to Section [~~10 of the Motor Carrier Act~~] 65-2A-10 NMSA 1978 for [~~an amendment of~~] such 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 and the rules of the commission;~~

~~(b)] and~~

(4) in addition, that:

(a) for transfer or lease of all or part of a certificate or permit, the transferor-applicant has rendered reasonably continuous and adequate service in the territory to be transferred or leased prior to the application for lease or transfer; and

~~[(c)]~~ (b) for transfer of all or a part of a certificate or permit, 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 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]~~ holder:

(1) voluntary cancellation of the certificate or permit;

(2) voluntary suspension of the certificate or permit for a period not to exceed twelve consecutive months;

(3) change in the form of ~~[ownership]~~ legal entity or name of the holder of the certificate or permit; ~~[and]~~

(4) reinstatement of the certificate or permit following voluntary suspension of a period not exceeding twelve consecutive months;

(5) change in control of a holder of the certificate or permit through issuance or transfer of stock or other legal interest in a holder that is a corporation, partnership, trust or other legal business entity; and

(6) matters pertaining to transfers by operation of law."

SECTION 14. Section 65-2A-15 NMSA 1978 (being Laws 2003, Chapter 359, Section 15) is amended to read:

"65-2A-15. MULTIPLE OPERATING AUTHORITIES AND BUSINESS TRADE NAMES 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.]~~

A. A person may simultaneously hold certificates for different kinds of certificated services, permits for different contracts and warrants for different kinds of warranted service within the same territory.

B. Any motor carrier that holds more than one certificate for the same kind and nature of certificated service in the same territory or more than one permit for the same contract shall file an application with the commission to consolidate such operating authorities.

C. The commission shall not grant any new operating authority to a motor carrier that ~~[(1)]~~ duplicates the 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.]~~

D. Certificated service carriers holding both a certificate and permit or warrant for related services may use the same vehicles and may transport passengers and property, or mixed loads of household goods and property, pursuant to those authorities in the same vehicles and on the

same trip.

E. Every certificated, permitted or warranted service carrier shall file with the transportation division of the commission all business trade names under which the carrier operates its service or services authorized and shall provide the transportation division of the commission with proof of financial responsibility for all business trade names in addition to its legal name. The commission shall accept business trade names as submitted by a carrier. Filing with the transportation division of the commission shall not, by itself, establish or otherwise affect the ownership or right to use a business trade name under the intellectual property laws of the state of New Mexico."

SECTION 15. Section 65-2A-16 NMSA 1978 (being Laws 2003, Chapter 359, Section 16, as amended) is amended to read:

"65-2A-16. INTERSTATE MOTOR CARRIERS.--

A. Foreign and domestic motor carriers, motor private carriers, leasing companies, brokers and freight forwarders shall not operate in interstate commerce in this state without first registering with a base state and paying all fees as required under the federal Unified Carrier Registration Act of 2005. The commission is authorized to register applicants and collect all fees without notice or a public hearing.

B. The commission is authorized to follow rules and collect fee assessments set by the federal secretary of transportation from foreign and domestic motor carriers, motor private carriers, leasing companies, brokers and freight forwarders, and do all things necessary to enable New Mexico to participate in the federal unified carrier registration system pursuant to the federal Unified Carrier Registration Act of 2005, including the collection of an equal amount of revenue as was collected by the commission in the last registration year under Section 4005 of the federal Intermodal Surface Transportation Efficiency Act of 1991 and the collection of an

equal amount of revenue annually from all other sources allowed under the federal Unified Carrier Registration Act of 2005 in the last year that such collections were not prohibited by federal law.

C. The commission is the state agency in New Mexico responsible for operation of the federal Unified Carrier Registration Act of 2005, including participating in the development, implementation and administration of the unified carrier registration agreement. The commission is authorized to follow rules governing the unified carrier registration agreement issued under the unified carrier registration plan by its board of directors.

D. Compliance by an interstate motor carrier with the provisions of the federal Unified Carrier Registration Act of 2005 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 traveling to or from a federally licensed airport terminal facility located in the state of New Mexico 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."

SECTION 16. Section 65-2A-18 NMSA 1978 (being Laws 2003, Chapter 359, Section 18, as amended) is amended to read:

"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 adopt the same minimum liability insurance requirements as those required by the federal motor carrier safety administration for interstate motor carriers for all motor vehicles for carriage of property or household goods and for all passenger motor vehicles with such capacities. The commission shall adopt reasonable minimum liability insurance requirements for the use of passenger motor vehicles with capacities less than those regulated by the federal motor carrier safety administration and in doing so 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)] and 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]~~ carriers using vehicles of those capacities.

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 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~~] unified carrier 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."

SECTION 17. Section 65-2A-19 NMSA 1978 (being Laws 2003, Chapter 359, Section 19) is amended to read:

"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.

E. The commission shall implement rules requiring carriers to obtain criminal background reports for all employed or contract drivers of certificated service carriers and for all other persons employed by certificated household goods service carriers who enter private dwellings in the course of household goods service."

SECTION 18. Section 65-2A-20 NMSA 1978 (being Laws 2003, Chapter 359, Section 20) is amended to read:

"65-2A-20. TARIFFS.--

A. [~~An intrastate common motor~~] A tariffed service 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]~~ having an approved tariff ~~[from]~~ on file with 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.]~~ A tariffed service carrier shall file with the commission proposed tariffs showing the rates for transportation and all related activities and containing a description of the type and nature of the service, territory and all terms of service for transportation and related services. The rates shall be stated in terms of United States currency. Tariffs for individual carriers shall also include the carrier's legal name, all business trade names used by the carrier, contact information, information for service of process, the territory authorized for each transportation service listed in the tariff and any terms of service contained in the operating authorities for that particular carrier. Each tariffed service carrier operating pursuant to a statewide tariff shall file with the commission a tariff statement referencing the statewide tariff being used and include the carrier's legal name, all business trade names used by the carrier, contact information, information for service of process, the territory authorized for that carrier and any terms of service contained in the operating authority for that particular carrier.

C. ~~[An intrastate common motor]~~ A tariffed service carrier ~~[of persons or household goods or a towing service performing nonconsensual tows]~~ shall not charge, or permit its ~~[bona fide]~~ agents, ~~[or]~~ employees or contract drivers to charge, a different or additional rate, or to use

different or additional practices or terms of service, for transportation or for a service rendered to or for the user of the service other than the rates and terms of service 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~~] except:

(1) for ambulance and household goods service carriers, in accordance with rates and terms of service established by federal or state law for federal or state governmental programs or operations; and

(2) for tariffed passenger service carriers other than ambulance service carriers, in accordance with the rates and terms of service established by governmental programs or operations in which they voluntarily participate.

D. [~~An intrastate common motor~~] A tariffed service carrier [~~of persons or household goods or a towing service performing nonconsensual tows~~] shall not pay or refund, directly or indirectly to any person, 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:

(1) in accordance with tariffs approved by the commission;

(2) for ambulance and household goods service carriers, in accordance with rates and terms of service established by federal and state law for federal and state governmental entities, programs or operations;

(3) for tariffed passenger service carriers other than ambulance service carriers, in accordance with the rates and terms of service established by governmental programs or operations in which they voluntarily participate; or

(4) in settling or resolving a claim by a customer.

E. The commission shall post on its internet web site electronic copies of all currently approved individual and statewide tariffs, and all

tariff statements filed by carriers using statewide tariffs, in a manner to facilitate public access, review and comparison of rates and terms of service. A certificated passenger service carrier other than an ambulance service carrier shall post its tariff rates in each vehicle used in the provision of its transportation service.

F. A tariffed service carrier shall file an application with the commission for any change in the tariff, accompanied by the proposed tariff, at least twenty days prior to implementation of the amended rates and terms of service contained in the tariff. Except as provided in this section, an amended tariff shall be approved and become effective twenty days after filing of the application for a change in the tariff. The commission shall post notice of each application for a change in a tariff along with a copy of the proposed tariff on the commission web site.

G. No changes in terms of service disapproved by the transportation division of the commission as inconsistent with the Motor Carrier Act, rule of the commission, the individual operating authority of the carrier or otherwise in violation of law shall become effective or be part of the approved tariff. The following terms of service contained in a tariff shall not be considered inconsistent with, or predatory or discriminatory in nature under the Motor Carrier Act or commission rule:

(1) a carrier may decline or terminate service under circumstances that reasonably appear to present a physical danger to the driver, to another employee of the carrier or to passengers or, for carriers other than ambulance service carriers, a danger to the condition of the motor vehicle or cargo;

(2) a carrier is not responsible for cancellations or delays due to weather or road conditions when reasonably required for safety or when due to road construction, road closures, law enforcement stops or similar matters beyond the control of the carrier;

(3) a passenger service carrier may require that all firearms carried by any passenger other than an authorized law enforcement officer be unloaded and placed in a locked area of the vehicle during transport, along with all ammunition and any other weapons; or

(4) a passenger service carrier other than an ambulance service carrier may decline or terminate service when the passenger cannot give an adequate description of, or direction to, the destination or cannot transfer into or out of the motor vehicle without requiring physical assistance from the driver.

H. An application for amendment of tariff rates that increases any tariff rate to a level greater than that previously approved by the commission for a full-service carrier or a towing service providing nonconsensual tows shall not become effective until approved by the commission as reasonable under Section 65-2A-21 NMSA 1978. The commission shall hold a hearing appropriate to the type of transportation service provided by the carrier for any such application, if requested by the applicant or by the transportation division of the commission, or if ordered in the discretion of the commission. The commission may provide for reasonable periodic rate increases for full-service carriers or towing services providing nonconsensual tows pursuant to a rate escalator or adjustment clause for any or all rates of a carrier on such basis as the commission finds reasonable.

~~[E.]~~ I. A person may make a complaint in writing to the commission that [an individual or joint] a rate or [practice is] term of service contained in a tariff, or a rate otherwise charged or practice otherwise effected, is inconsistent with or in violation of the Motor Carrier Act, commission rule or the operating authority or current tariff of the motor carrier. The commission may suspend the operation of a rate, term of service or practice for a period not to exceed sixty days to

investigate its reasonableness. If the commission finds that [~~an individual or joint~~] a 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~~] a tariffed carrier, or a term of service or practice effected by a tariffed carrier, is unauthorized, predatory or discriminatory, the commission shall prescribe the rate or the maximum or minimum rate to be observed or the [~~practice~~] terms of service to be made effective."

SECTION 19. Section 65-2A-21 NMSA 1978 (being Laws 2003, Chapter 359, Section 21) is amended to read:

"65-2A-21. RATES.--

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

B. Reduced rates for minor children accompanied by an adult, 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 or other business personnel of the motor carrier and their dependents. [~~Stock owners 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 service carrier shall establish and observe [~~just and reasonable]~~ nonpredatory and nondiscriminatory 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.]~~ E. 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."

SECTION 20. Section 65-2A-22 NMSA 1978 (being Laws 2003, Chapter 359, Section 22) is amended to read:

"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.~~] A scheduled shuttle service carrier shall file a proposed time schedule with its tariff and shall file any change in its schedule through an amended tariff.

B. Failure by [~~an intrastate common motor carrier of persons~~] a scheduled shuttle service carrier to operate the service on each day pursuant to commission rule as scheduled in its tariff 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~~] terminal areas at a rate of speed greater than the maximum speed allowed."

SECTION 21. Section 65-2A-23 NMSA 1978 (being Laws 2003, Chapter 359, Section 23) is amended to read:

"65-2A-23. MOTOR CARRIER ORGANIZATIONS [~~COMMON TARIFFS~~].--

A. [~~An intrastate common motor~~] A tariffed service carrier may enter into discussions with another [~~intrastate common motor~~] tariffed service carrier to establish a motor carrier organization. The organization shall obtain authorization from the commission before its members enter into any discussions concerning the rates contained in a [common] statewide 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 to discuss and promote industry matters, other than the rates of individual carriers, if the organization:

(1) allows any intrastate motor carrier authorized to provide the same type of service to become a member of the organization, and 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~~] matters before the organization and to vote upon [~~the~~] any 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~~] an objection, 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; and

~~[(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]~~ (5) proposes matters concerning statewide 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 general industry matters, terms of service or any matters concerning a [common] statewide tariff, including the rates contained in a statewide 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.]"~~

SECTION 22. Section 65-2A-24 NMSA 1978 (being Laws 2003, Chapter 359, Section 24) is amended to read:

"65-2A-24. MOTOR VEHICLE LEASES--DRIVER CONTRACTS.--

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~~] in the course of its transportation service except as provided by commission rule. 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 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.]~~

B. A motor carrier may use employed or contract drivers or

taxicab association member drivers in the provision of a transportation service. Regardless of the provisions of any written or oral agreement between a motor carrier and a contract driver or taxicab association member driver, motor carriers providing transportation services that use contract drivers or taxicab association member drivers remain fully responsible to the commission for complying with all provisions of the Motor Carrier Act and commission rules applicable to transportation service carriers.

C. Motor carriers providing intrastate transportation services that use contract drivers or taxicab association member drivers shall maintain, at their principal places of business within the state, a current written agreement with each such driver. No agreement with any contract driver or taxicab association member driver shall contain any provision contrary to a provision of the Motor Carrier Act or a rule of the commission. Each written agreement shall contain a clause that requires the contract driver or taxicab association member driver to adhere to all provisions of the Motor Carrier Act and to all commission rules applicable to transportation service carriers."

SECTION 23. Section 65-2A-25 NMSA 1978 (being Laws 2003, Chapter 359, Section 25) is amended to read:

"65-2A-25. HOUSEHOLD GOODS OPERATIONS.--

A. [~~An intrastate common motor carrier of~~] The commission shall establish a statewide tariff for household goods services, containing terms of service and maximum rates that household goods service carriers may charge the public.

B. A certificated household goods service carrier 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]~~ certificated household goods service carrier.

~~[B. An intrastate common motor carrier of]~~

C. A certificated household goods service carrier 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]~~ certificated household goods service carrier.

~~[C.]~~ D. 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.]~~ E. 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]~~ 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 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.]~~ F. The commission shall adopt rules for the following elements of household goods transportation services:

- (1) ~~[rates]~~ methods of determining shipping charges;
- (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) equipment stationing by, and joint transportation between ~~[common motor carriers of]~~, household goods service carriers;
- (8) household goods agents; and
- (9) service standards.

~~[F.]~~ G. In adopting reasonable rules for intrastate ~~[common motor carriers of]~~ household goods service carriers, 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]~~ balance the interests of shippers and carriers and consider and observe industry standards.

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

SECTION 24. Section 65-2A-26 NMSA 1978 (being Laws 2003, Chapter 359, Section 26) is amended to read:

"65-2A-26. HOUSEHOLD GOODS VOLUNTARY DISPUTE SETTLEMENT [~~PROGRAMS~~] PROGRAM.--

A. [~~A common motor carrier of household goods may submit an application to~~] The commission [~~to~~] shall establish a program to settle

disputes, at the voluntary option of the shipper, between shippers and ~~[common motor carriers of]~~ all household goods service carriers 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]~~ which shall be 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]~~ household goods service 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.]~~ B. The commission may investigate at any time the functioning of ~~[a]~~ the program approved under this section and may, after

notice and an opportunity to be heard, [~~suspend or revoke its approval~~]
take appropriate action against any household goods service carrier for
failure to meet the requirements of this section and rules as the
commission may prescribe.

[~~E.~~] C. In a court action to resolve a dispute between a shipper
and a [~~common motor carrier of~~] household goods service carrier, 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)~~] (3) a decision resolving the dispute was not rendered
under [~~a~~] the dispute settlement program [~~approved under this section~~]
within sixty days or an extension of the sixty-day period; or

[~~(5)~~] (4) the court proceeding is to enforce a decision
rendered under [~~a~~] the dispute settlement program [~~approved under this
section~~] and is instituted after the period for performance under the
decision has elapsed.

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

(2) after institution of a proceeding by the shipper to

resolve the dispute under [~~a~~] the 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."

SECTION 25. Section 65-2A-27 NMSA 1978 (being Laws 2003, Chapter 359, Section 27) is amended to read:

"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, 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 service of an operating authority or tariff; 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]~~ holder of the operating authority is fit, ~~[willing]~~ and a certificate holder is able, to provide the authorized transportation services, and ~~[to]~~ the holder will comply with the Motor Carrier Act and the rules of the commission."

SECTION 26. Section 65-2A-28 NMSA 1978 (being Laws 2003, Chapter 359, Section 28) is amended to read:

"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]~~ the holder of 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]~~ holder 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~~] the holder of 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."

SECTION 27. Section 65-2A-29 NMSA 1978 (being Laws 2003, Chapter 359, Section 29) is amended to read:

"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~~] any holder of an operating authority from the commission or any lessee of an authority 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, 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. No trade secret or business confidentiality immunity or privilege may be asserted by the motor carrier in response to such an order or request; provided that nothing in this provision shall prevent a carrier from moving for, or the commission from entering, an appropriate protective order to preserve the carrier's trade secrets or business confidentiality from further disclosure, nor shall this provision or any production required under this provision waive or diminish the carrier's trade secret or business confidentiality immunity or privilege as to persons other than the commission.

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.

F. All applications, protests, objections, amendments to filings, operating authorities, tariffs, pleadings or any other documents filed in docketed proceedings not subject to confidentiality orders are public

records and shall, as soon as practical, be made electronically available to the public."

SECTION 28. Section 65-2A-30 NMSA 1978 (being Laws 2003, Chapter 359, Section 30) is amended to read:

"65-2A-30. UNAUTHORIZED CARRYING OF PERSONS PROHIBITED.--~~[A motor]~~
Except in the case of an emergency, a transportation service carrier not authorized to transport ~~[persons]~~ passengers shall not carry a ~~[person]~~ passenger, including a hitchhiker, except on-duty employees of the motor carrier or commission representatives on official business ~~[or in case of an emergency]~~ in a vehicle used in the provision of transportation service under its operating authority."

SECTION 29. Section 65-2A-33 NMSA 1978 (being Laws 2003, Chapter 359, Section 33) is amended to read:

"65-2A-33. CRIMINAL AND CIVIL PENALTIES--UNFAIR TRADE PRACTICES.--

A. A person who knowingly makes a false statement of material fact under oath or penalty of perjury 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 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 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.

J. It is an unfair and deceptive trade practice under the Unfair Practices Act for any transportation service carrier to offer or provide transportation services of a type for which, or in any territory in which, it is not authorized to do so by the commission. The attorney general or a person who has been damaged or who is likely to be damaged as the result of such unauthorized service, including a shipper, a passenger or an authorized transportation service carrier, may bring an action pursuant to the Unfair Practices Act against the transportation service carrier regarding such unauthorized service. Any such civil action shall be in addition to, and shall not bar, any investigation or civil or criminal enforcement action regarding the unauthorized service available to the attorney general or a district attorney, or available to the commission under the Motor Carrier Act.

K. It is an unfair and deceptive trade practice under the Unfair Practices Act for any transportation service carrier or its agent, employee or contract driver to charge or collect a predatory rate or to undertake a predatory practice in the provision of transportation services. The attorney general or a person who has been damaged or who is likely to be damaged as the result of a predatory rate or practice may bring an action pursuant to the Unfair Practices Act against the transportation service

carrier regarding such predatory rate or practice. Any such civil action shall be in addition to, and shall not bar, any investigation or civil or criminal enforcement action regarding the predatory rate or practice available to the attorney general or a district attorney, or available to the commission under the Motor Carrier Act."

SECTION 30. Section 65-2A-36 NMSA 1978 (being Laws 2003, Chapter 359, Section 36) is amended to read:

"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~~] or an application for an amendment of a certificate, or for any protest or permissive intervention in regard to such application, two hundred fifty dollars (\$250);

(2) for filing an application for a permit [~~as an intrastate contract motor carrier of persons or household goods~~] or an application for amendment of a permit, or for any protest or permissive intervention in regard to such application, 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 or motion 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)]~~ (5) for filing an application for a change in [~~an intrastate~~] a tariff for a tariffed service carrier, two hundred dollars

(\$200);

~~[(7)]~~ (6) for filing an application for lease or transfer of a certificate or permit, or for any protest or permissive intervention in regard to such application, two hundred dollars (\$200);

~~[(8)]~~ (7) for filing an application for reinstatement of a certificate or permit following voluntary or involuntary suspension, one hundred dollars (\$100);

~~[(9)]~~ (8) for filing an application for voluntary suspension of a certificate or permit, fifteen dollars (\$15.00);

~~[(10)]~~ (9) 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)]~~ (10) for filing a change ~~[of name]~~ in the legal name of any holder of an operating authority, or a change of business trade name or the addition or deletion of a business trade name of any holder or lessee of an operating authority, ten dollars (\$10.00);

~~[(13)] for filing proof of financial responsibility, fifteen dollars (\$15.00) per filing;~~

~~[(14)]~~ (11) for filing an equipment lease, five dollars (\$5.00) per vehicle leased;

~~[(15)]~~ (12) for a miscellaneous filing, five dollars (\$5.00) per document;

~~[(16)]~~ (13) for certifying copies of a record, order or operating authority, ~~[fifteen dollars (\$15.00)]~~ the charge per page provided by law for governmental agencies;

~~[(17)]~~ (14) for copies of written commission documents or records, ~~[one dollar (\$1.00) per page]~~ the charge per page provided by law

for governmental agencies, in addition to any applicable certification charge; and

[~~(18)~~] (15) 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~~] the applicant shall pay the applicable fee."

SECTION 31. Section 65-2A-37 NMSA 1978 (being Laws 2003, Chapter 359, Section 37) is amended to read:

"65-2A-37. ELECTRONIC FILING AND CERTIFICATION OF DOCUMENTS--
ELECTRONIC PAYMENT OF FEES.--

A. The commission may adopt rules permitting the electronic filing, submission and service of documents by facsimile, electronic mail

or other electronic transmission, including original documents, and the certification of electronically filed documents when filing or certification is required or permitted pursuant to the Motor Carrier Act. 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 line, 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."

SECTION 32. Section 65-2A-38 NMSA 1978 (being Laws 2003, Chapter 359, Section 38) is amended to read:

"65-2A-38. EXEMPTIONS.--The Motor Carrier Act 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."

SECTION 33. A new section of the Motor Carrier Act is enacted to read:

" [NEW MATERIAL] TRANSITION.--

A. Except as provided in this section, certificates, permits and warrants issued to a motor carrier by the commission prior to July 1, 2013 shall remain in effect, subject to the provisions of the Motor Carrier Act, the Ambulance Standards Act and the commission's rules.

B. Certificates for limousine service and for tour and sightseeing service issued prior to July 1, 2013 shall, on and after that date, become certificates for specialized passenger service endorsed for the same territory and with the same additional terms of service as in the preexisting certificate, and for nature of service as provided by commission rule. The commission may require holders of such certificates to exchange their certificates for newly issued certificates.

C. Each certificate for terminal shuttle service, shared-ride service and bingo bus service issued prior to July 1, 2013 shall, on and after that date, become a certificate for shuttle service endorsed for the same territory and with the same additional terms of service as in the preexisting certificate, and for nature of service as general shuttle service. The commission may require holders of such certificates to exchange their certificates for newly issued certificates.

D. Each certificate for taxicab service issued prior to July 1, 2013 shall become void on and after that date and shall be replaced by a certificate for taxicab service endorsed for the same territory and with the same additional terms of service as in the preexisting certificate, but endorsed also for nature of service as a municipal taxicab service or a general taxicab service or both, depending on the actual nature of service provided by the holder within the certificated territory directly or under lease of the certificate continuously for the immediately prior twelve-month period. The commission may provide for reasonable procedures regarding replacement of certificates and shall issue new certificates

effective on July 1, 2013.

E. Each certificate for shuttle service issued prior to July 1, 2013 shall become void on and after that date and shall be replaced by a certificate for shuttle service endorsed for the same terminals or terminal areas and with the same additional terms of service as in the preexisting certificate, but endorsed also for nature of service as a scheduled shuttle service or a general shuttle service or both, depending on the actual nature of service provided by the holder directly or under lease of the certificate continuously for the immediately prior twelve-month period. The commission may provide by order for reasonable procedures regarding replacement of certificates and shall issue new certificates effective on July 1, 2013.

F. The common tariff of the New Mexico movers and warehousemen's association shall, on July 1, 2013, become the individual tariff of each of the individual member carriers of the New Mexico movers and warehousemen's association using that common tariff on June 30, 2013.

G. The commission shall not deny the application of a person applying for a new household goods service certificate during the period from July 1, 2013 through June 30, 2015 solely on the grounds that the applicant has provided household goods service without an appropriate operating authority. The commission may consider the nature of the applicant's unauthorized operations or the applicant's response to prior notices or efforts of the commission directed to the applicant, as well as any matters of public safety, financial liability and consumer issues involved in the applicant's unauthorized transportation service, in determining the applicant's fitness for the grant of a certificate."

SECTION 34. REPEAL.--Sections 65-2A-17 and 65-2A-40 NMSA 1978 (being Laws 2003, Chapter 359, Sections 17 and 40) are repealed.

SECTION 35. EFFECTIVE DATE.--The effective date of the provisions of

this act is July 1, 2013.

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