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**ARTICLE 2A**  
**Motor Carrier Act**

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**65-2A-1. Short title. (2003)**

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

**65-2A-2. Transportation policy. (2003)**

It is the policy of this state to foster the development, coordination and preservation of a safe, sound and adequate motor carrier system, requiring financial responsibility and accountability on the part of motor carriers, providing for

economic regulation of motor carriers of persons and household goods and towing services performing nonconsensual tows and by streamlining and promoting uniformity of state regulation of motor carriers.

### **65-2A-3. Definitions. (2007)**

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

- A. "amendment" means a permanent change in the type of service or territory authorized by an existing certificate or permit;
- B. "antitrust laws" means the laws of this state relating to combinations in restraint of trade;
- C. "base state" means the registration state for an interstate motor carrier that either is subject to regulation or is transporting commodities exempt from regulation by the federal motor carrier safety administration pursuant to the single state registration system;
- D. "cancellation" means the voluntary, permanent termination of all or part of an operating authority;
- E. "certificate" means the operating authority issued by the commission to intrastate common motor carriers of persons or household goods;
- F. "change in a certificate or permit" means the amendment, cancellation, change in tariff, change in form of ownership, lease, reinstatement, transfer or voluntary suspension of a certificate or permit;
- G. "change of name" means a change in the legal name of the owner of an operating authority or in the does-business-as name of the motor carrier, but does not include a change in the form of ownership;
- H. "commission" means the public regulation commission;
- I. "common control" means control of more than one operating authority of the same kind for the same or overlapping territory;
- J. "common motor carrier" means a person offering compensated transportation by motor vehicle to the general public, whether over regular or irregular routes, or under scheduled or unscheduled service, but does not include commuter services;
- K. "common tariff" means a tariff applying to two or more common motor carriers;
- L. "commuter service" means a person who provides seven- to fifteen-passenger motor vehicles to a volunteer-driver commuter group that shares rides to and from the workplace or training site, where participation is open to the public and incidental to the primary work or training-related purposes of the commuter group, and where the volunteer drivers have no employer-employee relationship with the commuter service;
- M. "contract motor carrier" means a person offering compensated transportation by motor vehicle under individual agreements with particular customers or shippers;
- N. "control" means the power to direct or cause the direction of the management and policies of a motor carrier deriving from:
  - (1) ownership of a sole proprietorship, if the operating authority is held by an individual as a sole proprietor;
  - (2) ownership of ten percent or more of the voting stock of the corporation, if the operating authority is held by a corporation;
  - (3) a partnership interest in a general partnership, if the operating authority is held by a general partnership;
  - (4) an interest in a limited partnership of ten percent or more of the total value of contributions made to the limited partnership, or entitlement to ten percent or more of the profits earned or other compensation paid by the limited partnership, if the operating authority is held by a limited partnership;
  - (5) a membership interest of ten percent or more in a limited liability company, if the operating authority is held by a limited liability company; or
  - (6) capacity as a trustee, personal representative or other person with a fiduciary duty to a motor carrier;
- O. "electronic filing" means submission of a document by facsimile, electronic mail or other electronic transmission;
- P. "financial responsibility" means the ability to respond in damages for liability arising out of the ownership, maintenance or use of a motor vehicle in the provision of transportation services;
- Q. "highway" means a way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;
- R. "household goods" means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of the dwelling and other similar property as the federal motor carrier safety administration

may provide by regulation, but shall not include property moving from a factory or store, other than property the householder has purchased to use in 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;

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

U. "interstate motor carrier" means a person providing compensated transportation in interstate commerce, whether or not the person is subject to regulation by the federal motor carrier safety administration;

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

W. "involuntary suspension" means the temporary cessation of use of all or part of an operating authority ordered by the commission for cause for a stated period of time or pending compliance with certain conditions;

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

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

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

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

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

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

DD. "motor vehicle" means a vehicle, machine, tractor, trailer or semitrailer propelled or drawn by mechanical power and used on a highway in the transportation of property or persons, but does not include a vehicle, locomotive or car operated exclusively on rails;

EE. "nonconsensual tow" means the compensated transportation of a motor vehicle by a towing service, if such transportation is performed at the request of a law enforcement officer or without the prior consent or authorization of the owner or operator of the motor vehicle;

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

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

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

II. "property" means movable articles of value, including cadavers, hazardous matter, farm products, livestock feed, stock salt, manure, wire, posts, dairy products, livestock hauled in lots of twenty-five thousand pounds or more, farm or ranch machinery and the items transported by a towing service, but does not include household goods or unprocessed farm products transported by a farmer from the place of harvesting to market, storage or a processing plant;

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

KK. "rate" means a form of compensation charged, whether directly or indirectly, by a person for a transportation service subject to the jurisdiction of the commission;

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

MM. "registration year" means a calendar year;

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

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

- PP. "shipper" means a person who consigns or receives goods for transportation;
- QQ. "single state registration receipt" means the document issued annually to a motor carrier operating in interstate commerce evidencing that proof of financial responsibility and safety has been filed with the base state and that the annual per vehicle fees have been paid for that registration year;
- RR. "tariff" means a document filed by a motor carrier of persons or household goods or a towing service performing nonconsensual tows that has been approved by the commission and sets forth the transportation services offered by the motor carrier to the general public, including the rates, terms and conditions and applicable time schedules relating to those services, including a common tariff;
- SS. "taxicab service" means a common motor carrier engaged in unscheduled passenger transportation in a motor vehicle having a capacity of not more than eight passengers, including the driver, not operated on a regular route or between specified places, and that:
- (1) is licensed as a taxicab service by a state or local jurisdiction; or
  - (2) if not licensed or regulated by a state or local jurisdiction as a taxicab service, is offered by a person that:
    - (a) provides local transportation for a fare determined, except with respect to transportation to or from airport, train or bus terminals, primarily on the basis of the distance traveled; and
    - (b) does not primarily provide transportation to or from one or more airport, train or bus terminals;
- TT. "terminal shuttle service" means a common motor carrier engaged in passenger transportation service that:
- (1) is rearranged by contract or operated by hire on a regular route, allowing for deviation to pick up or drop off passengers, between specified or generally specified points; and
  - (2) primarily provides transportation to or from one or more airport, train or bus terminals but may also provide for intermediate pickup or departure of passengers;
- UU. "towing services" means the use of specialized equipment, including repossession services using towing equipment, to transport:
- (1) a damaged, disabled or abandoned motor vehicle and its cargo;
  - (2) a motor vehicle to replace a damaged, disabled or abandoned motor vehicle;
  - (3) parts and equipment to repair a damaged, disabled or abandoned motor vehicle;
  - (4) a motor vehicle whose driver has been declared unable to drive by a law enforcement officer;
  - (5) a motor vehicle whose driver has been removed from the scene or is unable to drive; or
  - (6) a motor vehicle repossessed or seized pursuant to lawful authority;
- VV. "transfer of a certificate or permit" means a permanent conveyance of all or part of a certificate or permit;
- WW. "transfer by operation of law" means that the ownership of or interest in a certificate or permit passes to another by application of established rules of law;
- XX. "voluntary suspension" means the commission-authorized cessation of use of all or part of a certificate or permit at the request of the motor carrier for a specified period of time;
- YY. "warrant" means the operating authority issued by the commission to charter services, towing services, commuter services and motor carriers of property; and
- ZZ. "weight-bumping" means the knowing and willful statement of a fraudulent weight on a shipment of household goods.

**65-2A-4. Powers and duties of the commission. (2003)**

- A. In accordance with the Motor Carrier Act [65-2A-1 NMSA 1978], the commission shall:
- (1) issue operating authorities for a motor carrier operating in New Mexico;
  - (2) establish minimum requirements for financial responsibility for a motor carrier;
  - (3) establish safety requirements for intrastate motor carrier motor vehicles and drivers subject to the jurisdiction of the commission, provided that the safety requirements shall not be inconsistent with or more stringent than applicable federal safety standards;
  - (4) establish reasonable requirements with respect to continuous and adequate service to be provided under an operating authority;
  - (5) regulate the rates of intrastate common motor carriers of persons and household goods and towing services performing nonconsensual tows, including rates for storing household goods and motor vehicles;
  - (6) determine matters of public convenience and necessity relating to motor carriers;
  - (7) subpoena witnesses and records, enforce its subpoenas through a court and, through the court, seek a remedy for contempt;
  - (8) hold a public hearing specific to a protest or request that has been filed timely in opposition to or in consideration of an application; and

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

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 of service, territory, terms, conditions and limitations of operating authorities previously issued, and change or rescind rates previously adopted as needed; and

(4) adopt rules to implement these powers.

#### **65-2A-5. Applications in general; when public hearings required. (2003)**

A. A person shall file an application if commission approval is required. An application shall be made in writing, verified under oath and be in a form that contains information and is accompanied by proof of service upon interested persons as required by the commission.

B. The commission shall streamline and simplify to the extent possible the process for approving applications. The commission may hold a public hearing specific to a protest or request that has been timely filed in opposition to or in consideration of an application.

C. The commission shall hold a public hearing on an application whenever an interested person protests the application during the notice period or the transportation division of the commission requests a hearing during the notice period.

D. The commission may approve or deny an application in whole or in part.

#### **65-2A-6. Notice. (2003)**

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

B. Whenever the Motor Carrier Act requires publication of notice regarding a matter other than an application, the requirement is met if notice is published once in a newspaper of general circulation in the state. The commission shall not act on a matter less than ten days after the date notice was published.

#### **65-2A-7. Operating authorities in general. (2003)**

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

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

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

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

#### **65-2A-8. Certificates for intrastate common motor carriers of persons. (2003)**

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

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

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

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

(3) the transportation service to be provided under the certificate is or will serve a useful public purpose that is responsive to a public demand or need.

C. Before granting a certificate to an intrastate common motor carrier of persons, the commission shall consider the effect that issuance of the certificate would have on existing motor carriers; provided that the commission shall not find diversion of revenue or traffic from an existing motor carrier to be, in and of itself, sufficient grounds for denying the certificate.

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

(1) service to be rendered;

(2) territory to be served; and

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

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

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

#### **65-2A-9. Certificates for intrastate common motor carriers of household goods. (2003)**

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

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

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

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

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

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

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

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

C. Before granting a certificate to an intrastate common motor carrier of household goods, the commission shall consider the effect that issuance of the certificate would have on existing carriers; provided that the commission shall not find diversion of revenue or traffic from an existing carrier to be, in and of itself, sufficient grounds for denying the certificate.

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

#### **65-2A-10. Permits for intrastate contract motor carriers of persons or household goods. (2005)**

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

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

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

- (2) the person is in compliance with the safety and financial responsibility requirements of the Motor Carrier Act [65-2A-1 NMSA 1978], the rules of the commission and other applicable federal and state laws and rules; and
- (3) the transportation to be provided under the permit is or will be consistent with the public interest.
- C. Before granting a permit to an intrastate contract motor carrier of persons, the commission shall consider:
  - (1) the number of customers to be served by the carrier;
  - (2) the nature of the transportation proposed to be provided;
  - (3) whether granting the permit would endanger or impair the operations of motor carriers to an extent contrary to the public interest;
  - (4) the effect that denying the permit would have on the person applying for the permit and its customers; and
  - (5) the changing character of the requirements of the applicant's customers.
- D. The commission shall not issue a permit to an intrastate contract motor carrier of persons if it finds that the authority sought will impair the provision of transportation services by a certificated intrastate common motor carrier of persons then serving the same territory.
- E. Before granting a permit to an intrastate contract motor carrier of household goods, the commission shall consider:
  - (1) whether granting the permit would endanger or impair the operations of carriers to an extent contrary to the public interest; and
  - (2) the effect that denying the permit would have on the person applying for the permit and its shippers.
- F. A permit issued by the commission shall specify the business of the intrastate contract motor carrier, the scope of the authority granted to it and the terms, conditions and limitations of the authority.
- G. An intrastate contract motor carrier of persons or household goods shall file with the commission each contract under which it intends to operate. The commission shall approve a contract and authorize operations if it finds that the contract is consistent with the public interest and the provisions of this section.
- H. The commission shall not limit an intrastate contract motor carrier of persons or household goods to a fixed number of contracts.
- I. A motor carrier owning a certificate and a permit for the same type of service may use the same equipment for both common and contract services provided that shared use does not impair the provision of transportation services under the certificate.

**65-2A-11. Temporary authority for intrastate motor carriers of persons or household goods. (2003)**

- A. The commission may without notice grant temporary operating authority to an intrastate motor carrier of persons or household goods for a period not to exceed ninety days if it finds that:
  - (1) there is an urgent and immediate need for such service; and
  - (2) the applicant for temporary authority has a complete application for a certificate or permit or for amendment, lease or transfer of all or part of a certificate or permit, pending before the commission.
- B. Satisfactory proof of urgent and immediate need shall be made by affidavit or other verified proof as the commission shall by rule prescribe.
- C. An applicant for temporary authority as a common motor carrier shall file tariffs covering the transportation services for which temporary authority is being sought.
- D. After temporary authority has been granted, the applicant shall give notice of the grant of temporary authority to a motor carrier authorized to perform the service temporarily authorized. If such motor carrier or the staff of the transportation division of the commission files a written request for a hearing within twenty-five days of the date notice was mailed, the commission shall hold a public hearing and make such further determination with respect to the grant of temporary authority as the public interest may require.
- E. Intrastate motor carriers operating under temporary authority shall comply with the requirements of the Motor Carrier Act [65-2A-1 NMSA 1978] and the rules of the commission.
- F. A grant of temporary authority shall not create a presumption that permanent authority will be granted.

**65-2A-12. Warrants. (2003)**

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

- B. The commission shall issue a warrant that allows a person to provide compensated intrastate transportation as a commuter service, charter service, towing service or motor carrier of property if the commission finds that the person is in compliance with the financial responsibility and safety requirements of the Motor Carrier Act [65-2A-1 NMSA 1978] and the rules of the commission.
- C. A person may protest an application for a warrant if the person has reason to believe that the applicant does not meet the safety or financial responsibility requirements of the Motor Carrier Act and the rules of the commission.
- D. A warrant shall not be transferred or leased to another person.
- E. The commission may without notice or a public hearing cancel a warrant if the owner fails to operate under the warrant for twelve consecutive months.

**65-2A-13. Protests of applications for a certificate or permit or for a change in a certificate or permit. (2003)**

- A. A contract motor carrier shall not protest an application for a certificate or for a change in a certificate.
- B. A common or contract motor carrier shall not protest an application for a permit or for a change in a permit.
- C. A common motor carrier shall not protest an application for a certificate or for a change in a certificate unless:
  - (1) it possesses authority to handle, in whole or in part, the traffic for which the applicant seeks authority, or it has pending before the commission an application for authority for substantially the same traffic filed prior to the application to be protested; and
  - (2) it is willing and able to provide service that meets the reasonable needs of the customers or shippers involved; and
  - (3) it has provided service within the scope of the protested application during the previous twelve-month period, or has actively and in good faith solicited service within the scope of the protested application during such period; or
  - (4) the commission grants leave to intervene upon a showing of other interests that are not contrary to the provisions of the Motor Carrier Act [65-2A-1 NMSA 1978].

**65-2A-14. Changes in certificates or permits. (2003)**

- A. A change in a certificate, permit or tariff shall not be valid or effective without the approval of the commission.
- B. The commission may, for good cause and after notice and public hearing requirements are met, authorize the following changes in all or part of a certificate or permit at the request of the person owning the certificate or permit if the commission finds:
  - (1) that the proposed rates are reasonable, non-predatory and nondiscriminatory for a change in a tariff;
  - (2) that the applicant meets the requirements pursuant to Section 8 of the Motor Carrier Act [65-2A-8 NMSA 1978] for an amendment of a certificate as a common motor carrier of persons;
  - (3) that the applicant meets the requirements pursuant to Section 10 of the Motor Carrier Act [65-2A-10 NMSA 1978] for an amendment of a permit as a contract motor carrier of persons;
  - (4) that the applicant meets the requirements pursuant to Section 9 of the Motor Carrier Act [65-2A-9 NMSA 1978] for an amendment of a certificate as a common motor carrier of household goods;
  - (5) that the applicant meets the requirements pursuant to Section 10 of the Motor Carrier Act for an amendment of a permit as a contract motor carrier of household goods;
  - (6) that for a transfer of all or part of a certificate or permit:
    - (a) the transferee-applicant is fit, willing and able to provide the authorized transportation services and to comply with the Motor Carrier Act [65-2A-1 NMSA 1978] and the rules of the commission;
    - (b) the transferor-applicant has rendered reasonably continuous and adequate service prior to the application for lease or transfer;
    - (c) accrued taxes, rents, wages of employees and other indebtedness pertaining to all or part of a certificate or permit proposed to be transferred have been paid by the transferor-applicant or assumed by the transferee-applicant;
    - (d) the transfer does not have the effect of destroying competition or creating a monopoly;
  - and
  - (e) the transfer is not inconsistent with the public interest; or

- (7) that for a lease of all or part of a certificate or permit:
  - (a) the lessee-applicant is fit, willing and able to provide the authorized transportation services and to comply with the Motor Carrier Act and the rules of the commission;
  - (b) the lessor-applicant has rendered reasonably continuous and adequate service prior to the application for lease;
  - (c) the lease does not have the effect of destroying competition or creating a monopoly; and
  - (d) the lease is not inconsistent with the public interest.

C. The commission may, without notice or a public hearing, authorize the following changes in all or part of a certificate or permit at the request of the person owning the certificate or permit:

- (1) cancellation of the certificate or permit;
- (2) voluntary suspension of the certificate or permit;
- (3) change in the form of ownership of the certificate or permit; and
- (4) reinstatement of the certificate or permit following voluntary suspension.

#### **65-2A-15. Multiple operating authorities allowed; common control and sham competition prohibited. (2003)**

A. A person may simultaneously hold a certificate as a common motor carrier, a permit as a contract motor carrier and a warrant authorizing transportation by motor vehicle over the same routes or within the same territory, if the commission finds that the multiple operating authorities are consistent with the public interest.

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

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

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

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

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

#### **65-2A-16. Interstate motor carriers. (2006)**

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 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 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.

**65-2A-17. Single trip tickets. (2003)**

The owner of a motor vehicle regularly used to convey children to and from school or school activities shall not use the motor vehicle for compensated transportation for a single trip sponsored by a charitable organization without a single trip ticket from the commission. An application for a single trip ticket shall be in a form prescribed by the commission and shall state the time, purpose, origin and destination of the trip and the name, purpose and status of the charitable organization sponsoring the trip. The commission may issue a single trip ticket without notice or a public hearing only if it finds that no certificated or permitted common or contract motor carrier service is available for the trip described in the application and that the motor vehicle to be used for the trip complies with the safety requirements prescribed by the Motor Carrier Act [65-2A-1 NMSA 1978] and the commission's rules.

**65-2A-18. Financial responsibility. (2005)**

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

B. A motor carrier or incidental carrier shall not operate on the highways of this state without having filed with the commission proof of financial responsibility in the form and amount as the commission shall by rule prescribe. The maximum amount of financial responsibility, as determined by the commission, for incidental carriers shall not exceed that required of other motor carriers.

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

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

D. The commission may authorize a motor carrier to carry its own insurance in lieu of filing a policy of insurance, certificate showing the issuance of a policy of insurance or a surety bond. In approving an application to be self-insured, the commission shall consider:

- (1) the financial stability of the carrier;
- (2) previous loss history of the carrier;
- (3) the safety record of the carrier;
- (4) the size, nature of operations and other operating characteristics of the carrier; and
- (5) other factors necessary for the protection of passengers, shippers and the public.

E. Notwithstanding any requirement of the New Mexico Insurance Code [59A-1-1 NMSA 1978] to the contrary, the commission may accept proof of public liability insurance from an insurer not authorized in New Mexico if:

- (1) the insurance is for an interstate motor carrier transporting commodities exempt from regulation by the federal motor carrier safety administration participating in the single state registration system for those motor carriers; and
- (2) the insurer is authorized to write public liability insurance in at least one other state.

F. All motor carriers shall carry proof of financial responsibility in each motor vehicle they operate in this state

**65-2A-19. Safety requirements for motor vehicles and drivers used in compensated transportation. (2003)**

- 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.

**65-2A-20. Tariffs. (2003)**

- A. An intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual tows shall not commence operations or perform a new service under its operating authority without approval of a tariff from the commission.
- B. An intrastate common motor carrier of persons or household goods and a towing service performing nonconsensual tows shall file with the commission proposed tariffs showing the rates, terms and conditions for transportation and related services between points in its territory. The rates shall be stated in terms of United States currency.
- C. An intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual tows shall not charge, or permit its bona fide agents or employees to charge, a different rate for transportation or for a service rendered to or for the user of the service other than the rates specified in approved tariffs in effect at the time. The rates of an otherwise valid tariff are not applicable when a medicaid program directly pays for services.
- D. An intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual tows shall not refund, directly or indirectly, a portion of the rate specified in its approved tariff, offer to a person privileges or facilities, perform a service or remit anything of value except in accordance with tariffs approved by the commission.
- E. A person may make a complaint in writing to the commission that an individual or joint rate or practice is in violation of the Motor Carrier Act [65-2A-1 NMSA 1978]. The commission may suspend the operation of a rate or practice for a period not to exceed sixty days to investigate its reasonableness. If the commission finds that an individual or joint rate charged by an intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual tows, or an individual or joint practice of any intrastate common motor carrier of persons or household goods or any towing service performing nonconsensual tows affecting the rate, is unreasonable, predatory or discriminatory, the commission shall prescribe the rate or the maximum or minimum rate to be observed or the practice to be made effective.

**65-2A-21. Rates. (2003)**

- A. An intrastate common motor carrier of persons or household goods and a towing service performing nonconsensual tows shall observe reasonable, nonpredatory and nondiscriminatory rates and practices for the transportation services they provide. An unreasonable, predatory or discriminatory charge for service is unlawful.
- B. Reduced rates for students traveling between their homes and their schools and for persons sixty-five years of age or older shall not be considered discriminatory within the meaning of this section. A motor carrier shall not furnish free transportation to persons except to bona fide owners, officers or employees of the motor carrier and their dependents. Stockowners of incorporated motor carriers shall not be considered owners for purposes of this subsection.
- C. An intrastate common motor carrier of persons or household goods or a towing service performing nonconsensual tows shall not give an unreasonable advantage to a person, point of entry, territory or classification of motor carrier in any respect; provided that towing services performing nonconsensual tows may charge rates lower

than the rates in their approved tariff to members of not-for-profit motor clubs after those rates have been filed with the commission; and further provided that this subsection shall not be construed to apply to disadvantages to the transportation service of other motor carriers.

D. A common motor carrier of household goods shall establish and observe just and reasonable rates and practices relating to the manner and method of presenting, marking, packing and delivering household goods for transportation and other matters relating to the transportation of household goods.

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

F. In proceedings to determine the reasonableness of rates, the commission shall authorize revenue levels that are adequate under honest, economical and efficient management to cover total operating expenses, including the operation of leased motor vehicles, and depreciation, plus a reasonable profit. The rules adopted by the commission to implement this section shall allow a carrier to achieve revenue levels that will provide a flow of net income, plus depreciation, adequate to support prudent capital outlays, ensure the repayment of a reasonable level of debt, permit the raising of needed equity capital and attract and retain capital in amounts adequate to provide a sound motor carrier transportation system in the state.

#### **65-2A-22. Time schedules. (2003)**

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

B. Failure by an intrastate common motor carrier of persons to operate the service on each day as scheduled shall result in an appropriate penalty as the commission, in its discretion, shall determine.

C. A time schedule shall not be designed to require the operation of a motor vehicle between given terminals or between way stations at a rate of speed greater than the maximum speed allowed.

#### **65-2A-23. Motor carrier organizations; common tariffs. (2003)**

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

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

(2) does not interfere with a member carrier's right to establish its own tariff and does not change or cancel an independently established tariff;

(3) does not file a protest or complaint with the commission against a tariff item independently published by or for the account of a member carrier;

(4) does not permit its employees or an employee committee to file or act upon a proposal effecting a change in a tariff item published by or for the account of a member carrier;

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

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

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

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

(9) will propose common tariffs for approval by the commission.

B. A member carrier of the organization shall file with the commission information as the commission may by rule prescribe.

- C. A motor carrier organization approved by the commission pursuant to this section shall be subject to accounting, record-keeping, reporting and inspection requirements as the commission may by rule prescribe.
- D. The commission may, upon complaint or upon its own initiative, investigate and determine whether a motor carrier organization previously authorized by it is not in conformity with the requirements of this section or with the terms and conditions upon which the motor carrier organization was granted authorization. The commission may modify or terminate its authorization of a motor carrier organization found to be noncompliant with the requirements of this rule.
- E. The antitrust laws of the state shall not apply to discussions concerning a common tariff by member carriers of a motor carrier organization authorized by the commission.
- F. The motor carrier organization shall obtain approval of a common tariff from the commission before its member carriers may operate pursuant to the common tariff. The commission shall not enter an order approving a common tariff except after notice and public hearing requirements are met. The commission may approve a common tariff if the common tariff is limited to matters relating to transportation services provided by the member carriers party to the common tariff. The commission shall approve or disapprove a common tariff, in whole or in part, and may prescribe such terms and conditions as the public interest may require. The antitrust laws of the state shall not apply to common motor carriers who operate pursuant to a common tariff approved by the commission.
- G. In any proceeding in which a party to the proceeding alleges that a member carrier voted, discussed or agreed on a common tariff in violation of this section, that party has the burden of showing that the vote, discussion or agreement occurred. A showing of parallel behavior shall not by itself satisfy that burden.

**65-2A-24. Motor vehicle leases. (2003)**

- A. An intrastate motor carrier shall not lease a motor vehicle or operate a leased motor vehicle without approval of each motor vehicle lease from the commission. The commission may approve a motor vehicle lease without notice or a public hearing.
- B. A motor carrier shall file a separate motor vehicle lease for each motor vehicle to be leased.
- C. The commission shall not approve a proposed motor vehicle lease if it finds that the purpose of the motor vehicle lease is to circumvent a provision of the Motor Carrier Act [65-2A-1 NMSA 1978] or rule of the commission.
- D. The commission shall by rule specify which of the two parties to a motor vehicle lease will be responsible for complying with the financial responsibility and safety requirements of the Motor Carrier Act and the rules of the commission.

**65-2A-25. Household goods operations. (2003)**

- A. An intrastate common motor carrier of household goods shall be responsible for acts or omissions of its agents that relate to the performance of household goods transportation services, including accessorial or terminal services, that are within the actual or apparent authority of the agent derived from or ratified by the common motor carrier of household goods.
- B. An intrastate common motor carrier of household goods shall use reasonable care in selecting and retaining household goods agents who are sufficiently knowledgeable, fit, willing and able to provide adequate household goods transportation services, including accessorial and terminal services, and to fulfill the obligations imposed upon them by the Motor Carrier Act and by the common motor carrier.
- C. If the commission has reason to believe from a complaint or investigation that a household goods agent has violated Subsection G or H of Section 33 of the Motor Carrier Act [65-2A-33 NMSA 1978], or is consistently unfit, unwilling or unable to provide adequate household goods transportation services, including accessorial and terminal services, the commission may issue to that household goods agent notice of the complaint, specific charges and the time and place for a hearing on the complaint. The hearing shall be held no later than sixty days after service of the complaint to the household goods agent. The household goods agent has the right to appear at the hearing and rebut the charges contained in the complaint.
- D. If the household goods agent does not appear at the complaint hearing, or if the commission finds that the household goods agent has violated Subsection G or H of Section 33 of the Motor Carrier Act, or is consistently unfit, unwilling or unable to provide adequate household goods transportation services, including accessorial and terminal services, the commission shall issue an order to compel compliance by the household goods agent. Thereafter, the commission may issue an order to limit or prohibit the household goods agent from any involvement in the provision of household goods transportation services if, after notice and an opportunity to be heard, it finds

that the household goods agent has failed to comply with the order within a reasonable time after the date of its issuance, but in no event less than thirty days after its issuance. A household goods agent may file a petition with the commission seeking reconsideration of an order entered by the commission pursuant to this section.

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

- (1) rates;
- (2) cost estimates, for which charges shall be subject to the antitrust laws of this state;
- (3) inventory;
- (4) weighing;
- (5) receipts and bills of lading;
- (6) liability based on value established between the motor carrier and the shipper;
- (7) joint transportation between common motor carriers of household goods;
- (8) household goods agents; and
- (9) service standards.

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

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

and

- (6) the need to encourage motor carriers of household goods to offer service responsive to shippers' needs.

G. The antitrust laws shall not apply to discussions or agreements between an intrastate common motor carrier of household goods and its authorized agents, whether or not an agent is also a motor carrier of household goods, related solely to:

- (1) rates for the transportation of household goods under the authority of the principal carrier;
- (2) accessorial, terminal, storage or other charges for transportation services incidental to the transportation of household goods transported under the authority of the principal carrier;
- (3) allowances relating to transportation of household goods under the authority of the principal carrier; or
- (4) ownership of a common motor carrier of household goods by an agent or membership on the board of directors of any common motor carrier of household goods by an agent.

#### **65-2A-26. Household goods voluntary dispute settlement programs. (2003)**

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

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

C. The commission shall not approve a program for settling disputes concerning the transportation of household goods unless the program is a fair and expeditious method for settling disputes and complies with each of the following requirements and rules the commission may prescribe:

- (1) the program is designed to prevent a motor carrier from having any special advantage in a case in which the shipper resides or does business at a place distant from the motor carrier's place of business;
- (2) the program provides adequate notice of its availability, including a concise, understandable and accurate summary of the program and disclosure of the legal effects of using the program. The notice shall be given to the shipper before the shipper tenders the household goods to the motor carrier for transportation;
- (3) upon request of a shipper, the motor carrier shall promptly provide forms and other information necessary to initiate an action to resolve a dispute under the program;
- (4) a person authorized pursuant to the program to settle disputes shall be independent of the parties to the dispute and shall be capable, as determined by rules prescribed by the commission, to resolve disputes fairly and expeditiously. The program shall ensure that a person chosen to settle a dispute is authorized and able to obtain from

the shipper or motor carrier any material and relevant information necessary to carry out a fair and expeditious decision-making process;

(5) the person settling the dispute may charge the shipper a fee of not more than twenty-five dollars (\$25.00) for instituting a proceeding under the program if the program is binding solely on the carrier, but shall not charge the shipper a fee otherwise. The person settling the dispute shall refund the fee to the shipper in a case in which the dispute is settled in favor of the shipper, unless the person settling the dispute determines that the refund is inappropriate;

(6) the program shall not require the shipper to agree to use the dispute settlement program prior to the time that a dispute arises;

(7) the program may provide for an oral presentation of a dispute concerning transportation of household goods by a party to the dispute or a party's representative, but an oral presentation shall not be made unless the parties to the dispute expressly agree to the presentation and the date, time and location of the presentation; and

(8) a person settling a dispute under the program shall, as expeditiously as possible, but no later than sixty days after receipt of written notification of the dispute, render a decision based on the information gathered; except that, in a case in which a party to the dispute fails to timely provide information that the person settling the dispute may reasonably require, the person settling the dispute may extend the sixty-day period for a reasonable period of time. A decision resolving a dispute may include remedies appropriate under the circumstances, including repair, replacement, refund or reimbursement for expenses and compensation for damages.

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

E. In a court action to resolve a dispute between a shipper and a common motor carrier of household goods, concerning the transportation of household goods by the carrier, the shipper shall be awarded reasonable attorney fees if:

(1) the shipper submits a claim to the carrier within one hundred twenty days after the date the shipment is delivered or the date delivery is scheduled, whichever is later; and

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

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

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

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

F. In a court action to resolve a dispute between a shipper and a common motor carrier of household goods concerning the transportation of household goods by the carrier, the carrier shall be awarded reasonable attorney fees by the court only if the shipper brought the action in bad faith:

(1) after resolution of the dispute under a dispute settlement program approved under this section; or

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

(a) the expiration of the sixty-day period or extension of the sixty-day period for resolution of the dispute; and

(b) a decision resolving the dispute is rendered under the program.

#### **65-2A-26.1. Indemnity provisions in motor carrier transportation contracts void. (2009)**

A. A provision or agreement contained in, collateral to or affecting a motor carrier transportation contract that requires the motor carrier to indemnify or hold harmless, or that has the effect of indemnifying or holding harmless, the shipper from liability for loss or damage resulting from the negligence or intentional acts or omissions of the shipper, or agents, employees or independent contractors that are directly responsible to the shipper, is against the public policy of this state and is void and unenforceable.

B. As used in this section, "motor carrier transportation contract":

(1) means a contract, agreement or understanding covering:

(a) the transportation of property for compensation or hire by the motor carrier;

(b) the entrance on real property by the motor carrier for the purpose of loading, unloading or transporting property for compensation or hire; or

(c) a service incidental to an activity described in Paragraph (1) or (2) of this subsection, including storage of property; and

(2) does not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the intermodal association of North America or other agreements providing for the interchange, use or possession of intermodal chassis or other intermodal equipment.

**65-2A-27. Involuntary suspension, revocation or amendment of operating authorities; reinstatement. (2003)**

A. The commission shall immediately suspend, without notice or a public hearing, the operating authority of a motor carrier for failure to continuously maintain the forms and amounts of financial responsibility prescribed by commission rule.

B. The commission may immediately suspend, without notice or a public hearing, the operating authority of a motor carrier for violation of a safety requirement of the Motor Carrier Act [65-2A-1 NMSA 1978], the commission's rules or the rules of the motor transportation division of the department of public safety, if the violation endangers the public health or safety.

C. The commission may, upon complaint or the commission's own initiative and after notice and a public hearing, if required, order involuntary suspension, revocation or amendment, in whole or in part, of an operating authority for failure to:

- (1) comply with a provision of the Motor Carrier Act;
- (2) comply with a lawful order or rule of the commission;
- (3) comply with a term, condition or limitation of an operating authority; or
- (4) render reasonably continuous and adequate service under a certificate or permit.

D. The commission may approve an application for reinstatement of an operating authority following involuntary suspension if it finds, after notice and public hearing requirements are met, that:

- (1) the reasons for the involuntary suspension no longer pertain; and
- (2) the owner of the operating authority is fit, willing and able to provide the authorized transportation services and to comply with the Motor Carrier Act and the rules of the commission.

**65-2A-28. Designation of an agent for service of process. (2003)**

A. An applicant for an operating authority shall file with the commission an appointment in writing of a resident agent for service of process. The appointment shall specify the address of the agent and shall stipulate that service upon the appointed agent of process of the commission or of a court shall have the same force and effect as if service had been made personally upon the motor carrier within this state. The appointment shall continue in force until the motor carrier files an appointment of a substitute agent, or until liability against the motor carrier growing out of its operations in the state has terminated. A copy of the appointment, duly certified by the commission, shall be accepted as sufficient evidence of appointment of an agent in a court of the state.

B. If a motor carrier owning an operating authority from the commission operates without appointing a resident agent for service of process, or the commission has unsuccessfully attempted to serve process upon the designated resident agent, the motor carrier shall be deemed to have appointed the secretary of state as its resident agent for service of process in an action or proceeding against the motor carrier growing out of an accident, collision or transaction in which the motor carrier may be involved by operating in this state.

C. If the secretary of state is served with process directed to a motor carrier owning an operating authority from the commission, the secretary of state shall forward the process by certified mail to the motor carrier at the address shown on its last change of address report, annual report or application with respect to its operating authority, whichever is most recent. The secretary of state shall file a certificate of service with the commission, which shall be accepted as prima facie proof of service.

D. The secretary of state shall assess to the motor carrier the fee prescribed in Section 36 of the Motor Carrier Act [65-2A-36 NMSA 1978] for a process from a court served upon the secretary of state but shall not charge a fee for service of commission process.

E. The principal motor carrier of a household goods agent shall be deemed to be the agent for service of process of the household goods agent unless the household goods agent notifies the commission in writing of the substitution of another agent for service of process.

**65-2A-29. Reports and records. (2003)**

- A. The commission shall establish reasonable requirements with respect to reports, records and uniform systems of accounts and preservation of records for motor carriers.
- B. The commission may require a motor carrier owning operating authority from the commission to prepare and transmit to the commission an annual report of its operations. The report shall be in the form, contain specific information, including financial information, and be due on a date as the commission may by rule require. Financial data filed by motor carriers in annual reports shall not be made available for inspection by the public.
- C. The commission or its employees or duly authorized agents shall, at all times, have access to:
  - (1) land, buildings, improvements to real property and equipment of motor carriers used in connection with their operations; and
  - (2) records kept by motor carriers.
- D. The commission may, by order, require a motor carrier subject to the Motor Carrier Act [65-2A-1 NMSA 1978], or its officers or agents, to produce within this state at such reasonable time and place as it may designate, original or certified copies of records regardless of where they are kept by the motor carrier when their production is pertinent to a matter before the commission, in order that the commission may examine them.
- E. The motor transportation division of the department of public safety shall furnish to the commission all information needed or required by the commission to carry out its responsibilities when the information is obtainable only through field enforcement.

**65-2A-30. Unauthorized carrying of persons prohibited. (2003)**

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

**65-2A-31. Witnesses; subpoenas; service of process. (2003)**

- A. If the commission orders a person to appear before it, the commission shall compensate the witness one full day's per diem plus mileage as provided for employees in the Per Diem and Mileage Act [10-8-1 NMSA 1978]. The state shall pay such compensation out of the motor transportation fee fund pursuant to rules of the department of finance and administration. Witnesses subpoenaed by parties other than the commission shall be paid the same compensation by the party issuing the subpoena.
- B. A person shall not be excused from testifying or producing documentary evidence before the commission or a court in obedience to a subpoena of the commission issued pursuant to the Motor Carrier Act [65-2A-1 NMSA 1978] on the ground that the testimony or documentary evidence required of the person may tend to incriminate him or subject him to a penalty. A person shall not be prosecuted or subjected to a penalty for a transaction or matter about which he may be required to testify or produce documentary evidence; provided that a person testifying shall not be exempt from prosecution and punishment for perjury committed in testifying. A person shall not be required to testify or produce documentary evidence in response to an inquiry not pertinent to a question lawfully before the commission or court for determination.
- C. Upon request of a member of the commission, a district court may issue a writ of attachment to a person who fails to comply with a subpoena issued by the commission compelling the person to comply with the subpoena. The court shall have the power to punish for contempt in the same manner as for disobedience of a subpoena issued by the court.
- D. A member of the commission may administer an oath, certify to an official act, issue a subpoena and compel the attendance of a witness and the production of evidence in hearings before the commission for the purposes provided in the Motor Carrier Act.
- E. The commission may issue and serve process on the person affected by delivering a copy of the process, signed by a member of the commission, to the person or to an officer or agent of the person. An employee of the commission, a duly authorized law enforcement officer or a person over the age of eighteen who is not a party to the proceeding may serve process and shall return a copy of the process served, with an endorsement of service, to the commission. The endorsed process shall be entered into the record of the proceeding and shall be prima facie evidence that the process was duly served.
- F. The commission may in writing authorize a commissioner, the chief of staff or other person to investigate and take testimony regarding a matter pending before the commission.

**65-2A-32. Administrative penalties. (2003)**

- A. If the commission finds after investigation that a provision of the Motor Carrier Act [65-2A-1 NMSA 1978] or an order or rule of the commission is being, has been or is about to be violated, it may issue an order specifying the actual or proposed acts or omissions to act that constitute a violation and require that the violation be discontinued, rectified or prevented.
- B. Notwithstanding the existence of any other penalties, the commission may assess an administrative fine of not more than ten thousand dollars (\$10,000) for each violation of a provision of the Motor Carrier Act or of a lawful rule or order of the commission. In case of a continuing violation, each day's violation shall be deemed to be a separate and distinct offense.
- C. Notwithstanding the existence of other penalties, the commission may assess an administrative fine of not more than ten thousand dollars (\$10,000) against a person knowingly using a motor carrier not properly authorized by the commission.
- D. All penalties accruing under the Motor Carrier Act shall be cumulative, and a suit for recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or be a bar to any criminal prosecution under the Motor Carrier Act.

### **65-2A-33. Criminal and civil penalties. (2003)**

- A. A person who knowingly makes a false statement of material fact under oath in a commission proceeding, whether orally or in writing, shall be guilty of perjury.
- B. A person who willfully makes a false return of process or report to the commission or a member or employee of the commission, and a person who knowingly aids or abets a person who willfully makes a false return of process or report to the commission or a member or employee of the commission, shall be guilty of a felony, and upon conviction shall be imprisoned for not more than five years.
- C. A person who willfully makes a false entry in records required by the Motor Carrier Act [65-2A-1 NMSA 1978] or the rules of the commission, willfully destroys, mutilates or by other means willfully falsifies the records or willfully neglects or fails to make full, true and correct entries of all facts, shall be guilty of a felony and upon conviction shall be imprisoned for not more than five years.
- D. An employee of the commission who divulges information about an inspection, examination or investigation of a record or of the property and facilities of a motor carrier, except insofar as may be authorized by the commission or a court of competent jurisdiction, shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000).
- E. A person who violates or who procures, aids or abets in the violation of a provision of the Motor Carrier Act or a rule or order of the commission shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000), imprisoned for not more than ninety days, or both.
- F. A motor carrier shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500), imprisoned for not more than six months, or both, if the motor carrier:
- (1) refuses to permit examination of its records;
  - (2) conceals, destroys or mutilates its records;
  - (3) attempts to conceal, destroy or mutilate its records; or
  - (4) removes its records beyond the limits of the state for the purpose of preventing examination.
- G. A person who commits weight-bumping shall be guilty of a felony and upon conviction shall be fined not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), imprisoned for not more than two years, or both.
- H. A person shall be assessed a civil penalty of not more than two thousand dollars (\$2,000) for each violation and not more than five thousand dollars (\$5,000) for each subsequent violation if the person knowingly engages in or authorizes an agent or other person to:
- (1) falsify the documents used in the transportation of household goods that evidence the weight of shipment; or
  - (2) charge for accessorial services that are not performed, or for which the carrier is not entitled to be compensated, in a case in which such services are not reasonably necessary for the safe and adequate transportation of the shipment.
- I. A law enforcement officer of the state shall arrest and the district attorney and attorney general shall prosecute a violation of the Motor Carrier Act.

### **65-2A-34. Actions to enforce commission orders. (2003)**

If a person fails to comply with an order of the commission within the time prescribed in the order or within thirty days after the order is entered, whichever is later, unless a stay has been granted, the commission shall seek enforcement of the order in the district court for Santa Fe county. The enforcement hearing shall be held on an expedited basis. At the hearing, the sole question shall be whether the person has failed to comply with the order.

**65-2A-35. Appeal to supreme court. (2003)**

A. A motor carrier or other interested person aggrieved by a final order or determination of the commission issued pursuant to the Motor Carrier Act [65-2A-1 NMSA 1978] may appeal to the supreme court within thirty days. The appellant shall pay to the commission the costs of preparing and transmitting the record to the court.

B. The pendency of an appeal shall not automatically stay the order appealed from. The appellant may petition the commission or the supreme court for a stay of the order.

C. The appeal shall be on the record of the hearing before the commission and shall be governed by the appellate rules applicable to administrative appeals. The supreme court shall affirm the commission's order unless it is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

**65-2A-36. Fees. (2003)**

A. The commission shall charge and collect the following fees:

- (1) for filing an application for a certificate as an intrastate common motor carrier of persons or household goods, two hundred fifty dollars (\$250);
- (2) for filing an application for a permit as an intrastate contract motor carrier of persons or household goods, two hundred fifty dollars (\$250);
- (3) for filing an application for a warrant as an intrastate commuter service, charter service, towing service or motor carrier of property, twenty-five dollars (\$25.00);
- (4) for filing an application for intrastate temporary authority as a common or contract motor carrier of persons or household goods, one hundred dollars (\$100);
- (5) for filing an application for extension of temporary authority, fifty dollars (\$50.00);
- (6) for filing an application for a change in an intrastate tariff, two hundred dollars (\$200);
- (7) for filing an application for lease or transfer of a certificate or permit, two hundred dollars (\$200);
- (8) for filing an application for reinstatement of a certificate or permit following voluntary or involuntary suspension, one hundred dollars (\$100);
- (9) for filing an application for voluntary suspension of a certificate or permit, fifteen dollars (\$15.00);
- (10) for filing an application for a single trip ticket, five dollars (\$5.00) per vehicle per trip;
- (11) for a single state registration receipt for interstate motor carriers, ten dollars (\$10.00) per vehicle per registration year or portion of a registration year;
- (12) for filing a change of name, ten dollars (\$10.00);
- (13) for filing proof of financial responsibility, fifteen dollars (\$15.00) per filing;
- (14) for filing an equipment lease, five dollars (\$5.00) per vehicle leased;
- (15) for a miscellaneous filing, five dollars (\$5.00) per document;
- (16) for certifying copies of a record, order or operating authority, fifteen dollars (\$15.00);
- (17) for copies of written commission documents or records, one dollar (\$1.00) per page, in addition to any applicable certification charge; and
- (18) for copies of other commission records, including electronic media, an amount set by the commission, in addition to any applicable certification charge.

B. The secretary of state shall charge and collect a fee of four dollars (\$4.00) for each process from a court served upon the secretary of state as the designated agent for service of process by operation of law.

C. The "motor transportation fee fund" is created in the state treasury. The commission shall collect all fees at the time an application is filed or service is provided, and shall remit them to the state treasurer, who shall deposit them in the fund. At the end of each month, the state treasurer shall transfer the unencumbered balance in the fund to the state road fund.

D. If a fee has been erroneously paid, the person having paid the fee may apply for a refund in writing to the commission no later than sixty days after the erroneous payment. Upon approval of the application by the

commission, the amount erroneously paid shall be refunded from the motor transportation fee fund to the person who made the payment.

E. An application shall be fully completed within sixty days or the fee submitted with the application shall be forfeited to the state. If the applicant renews the application, he shall pay the applicable fee.

**65-2A-37. Electronic filing and certification of documents; electronic payment of fees. (2003)**

A. The commission may adopt rules permitting the electronic filing of documents, including original documents, and the certification of electronically filed documents when filing or certification is required or permitted pursuant to the Motor Carrier Act [65-2A-1 NMSA 1978]. The rules shall provide for the appropriate treatment of electronic filings to satisfy requirements for original documents or copies and shall provide the requirements for signature with respect to electronic filings. If the commission accepts electronic filing of a document, it may accept for filing a document containing a copy of a signature, however made.

B. The commission may accept a credit or debit card or other means of payment, in lieu of cash or check, as payment of a fee pursuant to the Motor Carrier Act. The commission shall determine those credit or debit cards or other means of payment that may be accepted for payment.

**65-2A-38. Exemptions. (2003)**

The Motor Carrier Act [65-2A-1 NMSA 1978] shall not apply to:

A. school buses, provided that school buses shall be subject to applicable school bus safety provisions established by the state transportation director;

B. United States mail carriers, unless they are engaged in other business as common or contract motor carriers of persons or household goods;

C. hearses, funeral coaches or other motor vehicles belonging to or operated in connection with the business of a funeral service practitioner licensed by the state;

D. a county or municipal public bus transportation system; or

E. private carriers.

**65-2A-39. Effect on municipal powers. (2003)**

Nothing contained in the Motor Carrier Act [65-2A-1 NMSA 1978] shall be construed:

A. to limit or restrict the police jurisdiction or power of a municipality over its streets, highways and public places except as otherwise provided by law;

B. in respect to matters other than rates and service regulations, to repeal a power of a municipality:

(1) to adopt and enforce reasonable police regulations and ordinances in the interest of the public safety, morals and convenience; or

(2) to protect the public against fraud, imposition or oppression by motor carriers within their respective jurisdiction.

**65-2A-40. Transition. (2003)**

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

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

C. A certificate of registration issued to a commuter vanpool or farm carrier by the commission under the authority of previous acts shall become null and void on July 1, 2003. The commission shall issue a warrant to a commuter service or motor carrier of property, commuter vanpool or farm carrier under previous acts upon surrender of its certificate of registration if, as of June 30, 2003, the motor carrier has valid proof of financial

responsibility and current vehicle inspection certificates on file with the commission. The commission shall not charge the warrant application fee prescribed in Section 36 of the Motor Carrier Act [65-2A-36 NMSA 1978].

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

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