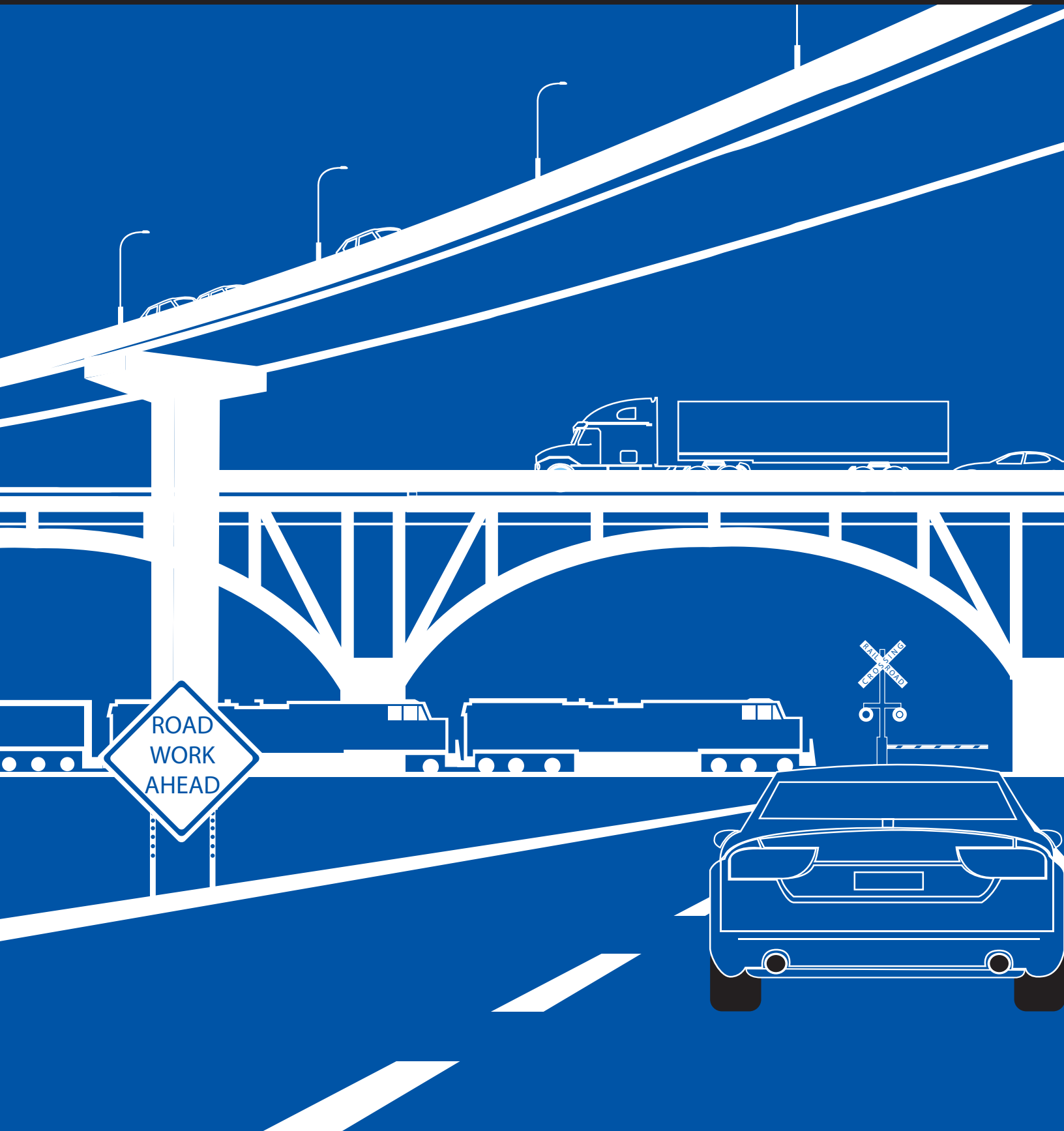




# Investigation of Kentucky For-Hire Requirements

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Kentucky Transportation Center  
College of Engineering, University of Kentucky, Lexington, Kentucky

in cooperation with  
Kentucky Transportation Cabinet  
Commonwealth of Kentucky

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**Research Report**  
KTC-18-20/SPR16-518-1F

**Investigation of Kentucky For-Hire Requirements**

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<b>16. Abstract</b> This study analyzes the costs and benefits of the Kentucky For-Hire operating authority, which is issued to all carriers who pick up and drop off freight in Kentucky on a for-hire basis. It reviews current statutory and regulatory requirements, calculates the costs and benefits of administering Kentucky For-Hire, reviews the legal history of trucking regulation and deregulation, reports on a survey of other states about their practices with intrastate operating authority, and proposes three alternatives to current policies. The primary benefit of Kentucky For-Hire is that it enables the Kentucky Transportation Cabinet to verify carriers have commercial liability insurance. Several major challenges confront Kentucky For-Hire — the costs of administering the program exceed the revenue it generates, the requirement is loosely enforced, and violations potentially punish the commercial vehicle operator instead of the motor carrier owner or management. Each solution attempts to address one or more of these challenges. The study analyzes the benefits and challenges of the proposed policy alternatives. The report concludes with a supplementary chapter pertaining to the regulation of transportation network companies and parcel delivery service subcontractors.			
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## Executive Summary

Kentucky For-Hire is an operating authority credential required of all motor carriers that pick up and drop off freight on a for-hire basis without leaving Kentucky at any point during a trip. Its requirements are laid out in Kentucky Revised Statute (KRS) 281. Revisions made to KRS 281 in 2014 and 2015 raised the cost of other certificates under KRS 281 to \$25. However, application/renewal fees for Kentucky For-Hire were not increased and remain at \$25 per year. Nor were vehicle fees increased — they remain at \$10 for each vehicle authorized to transport intrastate for-hire goods under the Kentucky For-Hire authority. Consequently, revenues from Kentucky For-Hire do not fully cover administrative costs. As a result, the Kentucky Transportation Cabinet (KYTC) requested an evaluation of the program's costs and benefits, a survey that would determine how other states regulate intrastate for-hire property carriers, a comparison of Kentucky's fees to other states where applicable, and proposed alternatives to the current policy.

The primary benefit of Kentucky For-Hire is verification of commercial liability insurance for intrastate property carriers. Verification is necessary because these carriers are not subject to the Federal Motor Carrier Safety Administration's (FMCSA) insurance verification process for interstate carriers. Currently, administering Kentucky For-Hire costs KYTC \$192,888 each year. Average Kentucky For-Hire revenues from FY 2015-2017 were just \$40,651, meaning the program has been administered at a loss of at least \$152,237 a year. Losses are actually higher if the future expense of transitioning from a mainframe to a web-based database management system are factored in, or when considering increased pension costs for employees if SB 151 — a law passed in 2018 by the General Assembly and signed by Governor Matt Bevin — is upheld, or another pension law is enacted in its place if it is struck down. Another problem is lax enforcement of the requirement. Few violators are ever cited for non-compliance.

Currently, 30 states regulate intrastate for-hire property carriers. A survey of other states found that the average application and renewal fee is \$123 and average vehicle fee is \$13 (based on information provided by seven respondents).

Researchers crafted three alternative policy options: Option 1 would keep fees at their current levels, strengthen enforcement, and redefine violations of Kentucky For-Hire requirements as a civil penalty against the motor carrier rather than a misdemeanor that applies to the commercial vehicle operator. This option would not end administrative losses; however, it preserves the insurance verification benefit, ensures better compliance, and is more equitable. Option 2 would increase Kentucky For-Hire application and renewal fees to \$250 and vehicle fees to \$30. Increasing fees in this manner would cover administrative costs in some scenarios but not in others. If SB 151 or increased pension costs are included the revenue increases most likely will not cover administrative costs. In addition, revenues would not cover implementation costs for needed information technology upgrades. The motor carrier industry would likely oppose the fee increase as well. Option 3 would eliminate the Kentucky For-Hire requirement and devolve commercial liability insurance verification responsibilities to county clerks. Under this option, KYTC would save more than \$150,000 annually. Nevertheless, KYTC will still have to coordinate with county clerks and face possible opposition from clerks and insurance companies that may not want to adhere to proposed administrative requirements for commercial liability insurance verification. The study offers further details on the strengths and weaknesses of each policy alternative based their respective costs and benefits so that administrators and legislators can decide on an appropriate course of action.

The report also contains a brief, although tangential, analysis of transportation network companies (TNCs) and parcel delivery subcontractor policy. In particular, analysis deals with insurance concerns voiced by KYTC administrators and outlines policy enhancements to current state law.

# 1. Statutory Requirements for Kentucky For-Hire

## 1.1 Report Objective and Organization

This study has the following objectives:

- 1) Analyze existing statutory and regulatory requirements of Kentucky For-Hire
- 2) Analyze the costs and benefits of current law
- 3) Document history of trucking regulation, statutes, and court rulings
- 4) Survey other states to learn how they administer intrastate operating authority
- 5) Develop and analyze alternatives to the current Kentucky For-Hire statutes and regulatory requirements

This report contains five chapters. Chapter 1 provides the statutory requirements for Kentucky For-Hire and other operating authority certificates. Chapter 2 examines the Kentucky For-Hire regulatory framework, including the background and workflow processes necessary to administer the statutory requirements. In Chapter 3, we analyze the costs and benefits of Kentucky For-Hire. Next, we provide a history of trucking regulation, deregulation, major legislation, and court rulings pertaining to intrastate trucking regulation (Chapter 4). In Chapter 5, we analyze the administration of operating authority in other states. Lastly, in Chapter 6 we describe and analyze three policy alternatives to the status quo and describe the benefits and challenges of those alternatives. In the Appendix, we also offer additional analysis of issues pertaining to regulations of parcel delivery contractors and slow-moving vehicles (e.g., golf carts) used to deliver vehicles in high-density suburban areas in Jefferson County and northern Kentucky.

## 1.2 Statutes Related to Intrastate Operating Authority Certificates

The statutes concerning intrastate operating authority for commercial vehicles are located in Kentucky Revised Statutes (KRS) Chapter 281. This KRS chapter has evolved to reflect changing economic regulatory paradigms and shifting market forces. KRS 281.630 enumerates the certificates required for intrastate commercial motor vehicle operations. The focus of this research is the property certificate for Kentucky Intrastate For-Hire Authority for carriers (Kentucky For-Hire), but the following sections discuss that certificate in the context of the overall regulatory scheme. Included in KRS 281.630 are two new motor carrier activities — Transportation Network Companies (TNCs), such as Uber and Lyft, and residential delivery using private vehicles for companies such as Amazon. A thorough review of 281.630, related statutes and the Kentucky Administrative Regulations (KAR) can help stakeholders identify potential modifications to 281.630 that could be implemented to meet the unique challenges of the changing economic landscape of intrastate operating authority. Specifically, we make recommendations regarding statutes for Kentucky For-Hire, TNCs, and the use of private vehicles for package delivery.

### 1.2.1 Authority Provided Under Chapter 281

KRS Chapter 281 contains all statutes related to motor carrier credentials and authority. According to 281.590 — the Declaration of Policy for Chapter 281 — the statutes serve as a legal mechanism to regulate the commercial transportation addressed in the chapter. These regulations ensure highway and public safety, efficient service, and fair prices for services provided by commercial carriers operating inside Kentucky. In addition, the declaration of policy states that Kentucky will build and maintain a transportation system commensurate with the needs of the state. KRS 281.600 gives authority to the Department of Vehicle Regulation (DVR) within the Kentucky Transportation Cabinet (KYTC) to regulate commercial motor vehicle activities within the state. Under KRS 281.600 Kentucky State Police are authorized to enforce safety requirements established by the Federal Motor Carrier Safety Administration (FMCSA) and the

Commonwealth. The administration of motor carrier statutes falls under the purview of the Division of Motor Carriers (DMC).

### **1.2.2 Omnibus Revisions to Chapter 281**

In 2015, the Kentucky General Assembly made multiple revisions to KRS Chapter 281. The omnibus revision bill was introduced to the Senate on Feb 11, 2015, passing on March 2, 2015. The bill was received in the House on March 3, 2015. By March 11, the bill passed the House and delivered to the governor. Governor Steve Beshear signed the bill into law on March 19, 2015.

The revisions removed language that appeared to regulate competitive practices within the motor carrier industry. For example, two phrases in 281.590, “foster sound economic conditions in transportation and among several carriers” and “unfair or destructive competitive practices,” were removed from the statute. The statute changes included revising, consolidating, and adding definitions to Chapter 281. KRS 281.605 and 281.610 were amended to eliminate references to certificates of convenience and necessity as well as related hearings. A certificate of convenience and necessity is a regulatory certification for public services or utilities. These certificates give private companies rights to offer utility services to the public. As noted in Chapter 4, given the federal preemption of most state economic regulation of the trucking industry, states have shied away from writing laws and statutes that could be construed as economic rather than those with social or safety implications.

The omnibus revisions included the addition of KRS 281.630, which requires intrastate motor carriers to obtain a certificate from the DVR prior to operation, identify the certificates issued by DVR, and establish application requirements and fees. It states that any applicant complying with the requirements of KRS Chapter 281 is to be granted a certificate. Non-exempt passenger and freight hauling statutes were combined into KRS 281.630. The revisions also established procedures for renewal, filing rates, hearings, penalties, and transferring certificates. Insurance requirements for motor carriers were increased and provisions added to allow DVR to suspend a certificate if a motor carrier’s insurance policy or bond is cancelled.

The revisions also established KYTC’s regulatory powers over household goods carriers under KRS 281.624. In addition, the revisions added a requirement for criminal background checks for any employees or owners of passenger vehicle and household goods carriers.

The omnibus bill amended KRS 281.883 to require KYTC to establish through regulation procedures for the administrative citation, assessment and appeal of penalties found under KRS 281.990. In addition, the amendment to KRS 281.990 reduced the minimum fine for operating a motor carrier without a valid certificate or in violation of a certificate from \$2,000 to \$500.

## **1.3 Kentucky Statutes Governing Intrastate Commercial Vehicle Activities**

### **1.3.1 Exempted Intrastate Activities**

KRS 281.605 lists the commercial vehicle activities exempted from regulation under Chapter 281. An exemption is a commercial vehicle activity that does not require a certificate for operating authority. Exempt activities generally involve unprocessed or unmanufactured goods, although some transportation services are included in this statute. Under KRS 281.605 exempted commodities and services include school busses transporting students and church busses transporting people to church-related activities. The statutes exempt vehicles transporting agricultural and dairy products provided they are harvested by the producer and being sent to market or storage facility. If a vehicle transports coal from the mine a processing facility, it does not need to have an intrastate authority certificate. In addition, motor carriers that haul banking documents or small packages for intermodal carriers are not required to have the intrastate

authority. Finally, ambulances for sick or injured animals, motor vehicles owned and operated by a non-profit, and vehicles used to transport children to education events sponsored by the Department of Fish and Wildlife or the Kentucky sheriffs are not required to purchase the intrastate authority certificate.

### **1.3.2 Regulated Intrastate Activities**

KRS 281.630 addresses certificates that are required for intrastate transportation of passengers and property. As stated in the statute, a motor carrier cannot engage in intrastate activities unless they have one or more of the following certificates:

- Taxi cabs
- Limousines
- Disabled persons vehicle
- Transportation Network (such as Uber and Lyft)
- Household goods
- Charter Buses
- Buses
- U-Drive It (leased and rental vehicles)
- Property
- Driveaway
- Automobile Utility Trailer

Except for property carriers, all intrastate carriers seeking operating authority are required to pay an application fee of \$250, submit a motor carrier vehicle license for every vehicle in the carrier's fleet, obtain an indemnifying bond or insurance policy, and renew the certificate annually. Certificate holders pay a \$10 vehicle fee annually. However, interstate carriers that also purchase the intrastate authority do not have to pay the \$10 annual vehicle fee because those fees are covered by the Unified Carrier Registration (UCR), a national system that registers and collects fees from commercial vehicles engaged in interstate commerce. Under the UCR agreement, states cannot require interstate carriers to pay additional motor vehicle fees or annual renewal fees.

If a motor carrier does not pay the annual renewal fee, vehicle fees, or UCR fees, their certificate becomes invalid. Without this certificate, a motor carrier must cease operations. Apart from out-of-state household goods carriers, all certificate holders must have an address in Kentucky. Motor carriers applying for a bus certificate must present proof they are authorized to operate in a city to DVR administrators.

Under KRS 281.630, DVR administrators have the right to address any unjustly discriminatory rates or complaints from customers and declare a motor carrier as "unsafe, inadequate, inconvenient, or in violation of the law or the administrative requirements." In these cases, DVR can require the motor carrier to charge the customer the rate that would have been charged at the time of the service or issue a refund to the customer. In addition, DVR administrators can determine the service or facility improvements that the motor carrier must undertake to achieve compliance with state laws and regulations.

### **1.3.3 Kentucky For-Hire**

The property certificate — known as the Kentucky Intrastate For-Hire Authority by DVR officials — is issued to intrastate and interstate carriers that pick up and deliver cargo within the state of Kentucky. Intrastate carriers must submit a \$25 application fee and pay a \$10 fee for each vehicle operating under the authority. The certificate must be renewed annually at the same rate of \$25 and again pay the \$10 per vehicle fee.

Interstate carriers do not pay a vehicle fee as that cost is considered paid under the terms of the UCR agreement and they are not required to pay a fee for renewal but they are required to keep an active Form E on file. No administrative regulations govern the Kentucky For-Hire certificate.

As noted earlier, the 2015 revisions to KRS 281.630 increased fees for all operating certificates except for property carriers. Currently, Kentucky For-Hire mainly serves as a mechanism to ensure motor carriers operating intrastate have adequate insurance coverage. While not addressed in this chapter at great length, DMC management is unsure whether the revenue and the insurance coverage verification are worth the very labor-intensive administrative requirements for the Kentucky For-Hire credential.

### 1.3.4 Fees for Intrastate Certificates

Under KRS 281.631, a motor carrier cannot operate without also obtaining the certificates enumerated in 281.630. KRS 281.631 provides the annual license fees (referred to as vehicle fees by DVR employees) for each certificate. These fees must be paid for every vehicle in a motor carrier’s fleet. If a fleet contains more than 50 vehicles, DVR offers bulk rates and tiered rates based on the certificate and number of vehicles.

Table 1 lists the vehicle fees for each certificate. The vehicle fee for taxicabs, Transportation Network Company (TNC) vehicles (e.g., Uber and Lyft vehicles), limousines, and disabled persons vehicles is \$30. Owners of vehicles transporting household goods, vehicles transporting property or freight, driveaway vehicles, and automobile utility trailers pay \$10 for each vehicle. Charter busses and busses vehicle fees are \$100 and U-Drive It vehicle fees are \$15. A bus has a regular schedule dropping passengers off at regular intervals. Coach/charter busses have fewer stops in between and travel further distances than regular busses. In addition, cities and counties in Kentucky have the option to assess a vehicle fee of \$30 or less for intrastate taxicabs, limousines, or disabled persons vehicles. If a motor carrier adds a vehicle during the year, they must pay the vehicle fee, but the fee is prorated based on the number of months left in the year. Under this statute, taxicabs, limousines, disabled persons vehicles, TNC vehicles, charter busses, and busses must be inspected once every three years.

**Table 1** Vehicle Fees for Various forms of Motor Carrier Operating Authority

Vehicle	Fees
Taxicab, TNC, Limousine, Disabled Persons	\$30
Household Goods, Property Transport (KY For-Hire), Driveaway, Automobile Utility Trailer	\$10
Charter Bus or Bus	\$100
U-Drive It	\$15

### 1.3.5 Background Checks Required for Certain Intrastate Operating Authority Certificates

Since the services authorized by operating certificates place motor carrier employees in contact with the public and in some cases their private belongings, KRS 281.6301 establishes procedures to ensure those employees are reputable. Pursuant to this statute owners, employees, independent contractors, and agents must submit to a nationwide criminal background check, and motor carriers must retain the information for at least three years. Motor carriers are responsible for paying for the background check and it must be from an “approved” source, as provided on the Motor Carrier website (drive.ky.gov). The background check must be completed before the carrier employs an individual. Furthermore, motor carriers must choose a criminal background check provider that has been approved by the DVR from the Approved National Criminal Background Check list. Individuals obtaining Kentucky For-Hire certificates for their company do not require a background check, as they are almost certainly covered under the additional background check requirements in the statute.

KRS 281.6301 also specifies which convictions that will prevent a carrier from obtaining or renewing a certificate. The statute prohibits certificate holders from employing individuals who have a conviction for a Class A felony, a Class B felony, or a sex crime. The statute also prohibits certificate holders from employing any individual who has been convicted of any of the following criminal violations: leaving the scene of an accident, causing a fatality while driving a motor vehicle, or using a motor vehicle in the commission of a felony related to drug trafficking. The statute further prohibits certificate holders from hiring individuals convicted of driving with a suspended license, speeding 26 miles per hour over the posted speed limit, or racing within the last three years. Additionally, carriers cannot employ individuals who have had points assessed to their driver license four or more times in the last three years.

### 1.3.6 Insurance Requirements for Intrastate Transportation

The certificates established under KRS 281.630 also serve as proof that DVR has confirmed the motor carrier has adequate insurance coverage. KRS 281.655 outlines the specific types of liability coverage a motor carrier must carry to obtain and renew a certificate. For a motor carrier to comply with KRS 281.630 and obtain a certificate, it must file an indemnifying bond or commercial liability policy issued by an insurance company approved to operate in the state of Kentucky. An insurance policy covers the interests of the insured while a bond protects the interests and property of the customer. Commercial liability insurance provides coverage for loads being picked up and delivered, which protects the business owner, business, and employees if another entity files a claim against the company for personal injury or property damage. KRS 281.655 states the policy or bond shall be issued in the name of the company that holds the certificate. Any equipment to be operated as part of the activities authorized by the certificate should also be listed under the bond or insurance.

The insurance must remain in effect until it is formally cancelled. When insurance or bonds are cancelled, the statute states that a motor carrier must end commercial operation. A motor carrier may lose all certificates to operate. If an insurance company cancels an insurance policy or bond, it is still liable for claims 30 days after cancellation. In addition, the insurance company is not released from liability for any claims prior to the cancellation.

The coverage amounts for Kentucky For-Hire, U-Drive-It, and Automobile Utility Trailers are summarized in Table 2. Coverage amounts are based on vehicle weight. Vehicles that are 18,000 pounds or less must have \$100,000 coverage for death or injury to one person, \$300,000 total liability for death of or injury to persons, and \$50,000 for property damages. For vehicles over 18,000 pounds, the total required liability for death or injury to persons increases to \$600,000.

**Table 2** Insurance Coverage for Kentucky For-Hire, U-Drive-It and Automobile Utility Trailers

Capacity of Vehicle	Death or Injury to Any One Person	Total Liability for Death of or Injury to Persons	Property Damage
18,000 pounds or less	\$100,000	\$300,000	\$50,000
More than 18,000	\$100,000	\$600,000	\$50,000

The amount of commercial liability coverage required for vehicles which transport people is based on the number of seats in a vehicle. As Table 3 indicates, if a vehicle has seven or fewer regular seats, the certificate applicant must have \$100,000 in coverage in the case of a death or injury to any one person. Total liability for the death or injury to persons is \$300,000. In addition, the policy must have \$50,000 in coverage for property damage. If the vehicle contains 8 or more regular seats, the coverage is the same for death or injury and property damage as vehicles seating seven or fewer passengers, but the liability coverage for death of or injury to persons increases to \$600,000.

**Table 3** Insurance or Bond Coverage for the Transportation of Persons, Including U-Drive-Its

Capacity of Vehicle	Death or Injury to Any One Person	Total Liability for Death of or Injury to Persons	Property Damage
7 Regular Seats	\$100,000	\$300,000	\$50,000
8 or More Regular Seats	\$100,000	\$600,000	\$50,000

### 1.3.7 Penalties

KRS 281.990 itemizes the penalties for violations of KRS 281.630 and 281.631. A motor carrier that violates these statutes will be fined between \$500 and \$3,500. If the motor carrier violates the terms of the certificate they also can be fined \$500 to \$3,500. The statute does not provide criteria instructing how the state is to apply the appropriate penalty.

### 1.4 Statutes and Administrative Regulations Related to Household Goods Certificates

The household goods certificate is another intrastate regulation program that has been a source of significant reform over the past twenty years. Household goods has an additional statute (281.624) that is separate from 281.630 as well as administrative regulations. This statute only applies to the movement of household goods within Kentucky; interstate moves are under the purview of FMCSA. The statute defines the certificate as granting authority to operate as an “irregular-route common carrier transporting personal property to be used in a dwelling.” The certificate only applies to activities arranged and paid for by the householder or arranged and paid for by a third party. The purpose of this statute is to establish safety and quality standards for motor carrier activities, but it is not intended to apply economical regulation to motor carriers that move household goods. The same statute states that the DVR may designate the location for the motor carrier’s office and facility. Carriers wishing to change location must apply in writing to the DVR. The certificate is to be stored in the moving vehicle for inspection if requested, and the original must be kept on file by the motor carrier. The document must be provided to shippers upon request.

The administrative regulations for the household goods certificate are found in 601 KAR 1:080. Administrative responsibilities include determination of weights. 601 KAR 1:080 Section 1 defines methods for determining weight: the tare weight (the weight of the vehicle without cargo or employees but containing moving equipment and full fuel tanks), the gross weight (the weight of the vehicle once it has been loaded without the moving crew), and the net weight (the gross weight minus the tare weight). These weights are to be measured by a weigh master certified in Kentucky or on a certified scale. If a weigh master or certified scale is not accessible to the motor carrier, it must use the constructive weight, which is a measurement of seven pounds per cubic foot of loaded van space. The regulation also articulates the process for determining the weight of a partially loaded truck that is similar to the process for determining the weight of fully loaded trucks. Once the required vehicle weights have been calculated, the company must produce a weight certificate on the requisite form from KYTC.

The administrative regulations specify the information required on the bill of lading, which serves as the contract between the customer and the household goods carrier, as well as the information required on the invoice. According to 601 KAR 1:080, the state issues the bill of lading to the shipper once the customer receives the property. The bill of lading or the receipt is required to have the name of the household goods moving company, the name and contact information of the carrier, the delivery date specified by the customer, or the projected arrival time. This document must also state any delays in delivery that may have occurred. Following delivery, the carrier must present the freight bill to the customer. This information will include the name and address of the household goods carrier, the shipper, and the delivery point. The bill

will also contain the total cost and details regarding the method used to determine the charges (the number of hours or the gross and tare weight with the number of miles).

Form TC 95-629 is the application for new authority; it is also used to add additional vehicles to an existing authority (and is available online). Household goods regulations require that carriers complete additional forms: TC 95-44, the Household Goods Annual Report, and TC 95-609, which is the form to change the address of the company.

This statute also gives DVR the authority to regulate the types of discounts prohibited, types of insurance coverage required of the carrier, along with the liability of carriers. Motor carriers have unlimited liability if damage arises from their negligence, regardless of whether the shipper purchases additional moving insurance, and must offer all-risk insurance to the shipper, which will be procured by the carrier. All-risk insurance is a policy that covers property lost through fortuitous (i.e., unpredictable) events unless it is specifically not covered by the policy. Fortuitous events are beyond the control of the insured and include natural disasters, vehicle accidents, fire, and equipment issues. The shipper must receive the insurance policy documents prior to the move.

Household goods carriers must provide DVR with a tariff — the document stating the cost of the moving service only. The carrier is not authorized to offer discounts or prepayment options. Under 601 KAR 1:080, motor carriers are required to submit tariffs that declare the charges for each type of accessorial service, which refers to services extending beyond shipping the cargo from the starting location to the destination. Accessorial services include crating, storage, packing, loading, unloading, transferring to other modes of transportation, and processing.

#### **1.4.1 Estimates of Charges**

There are regulations pertaining to estimates of charges in 601 KAR 1:080. While neither the statute nor the regulation specify the method for determining the charges, movers generally use two types of methods to compute the cost of the move. If a move is intrastate and less than 50 miles, the cost is usually based on the amount of time a service takes. If the move is more than 50 miles in-state, the cost of the move is based on weight or mileage. By regulation, an estimate is submitted to the shipper only after the estimator has visually inspected the cargo to be transported; the inspection must be conducted in the manner specified by KYTC. A copy of the estimate is retained by the carrier. Shippers can also request estimate forms from the motor carrier. Estimates provide instructions on how to calculate the estimate for shipping the property. Each quarter, household goods carriers must file a report with KYTC that discloses underestimates — when the actual charges exceeded initial quotes to the shipper. The report must include the reasons for the increased charges.

Prior to the move, the carrier is to provide an “Important Notice to Shippers of Household Goods” including a note stating the document was submitted to the shipper. Generally, this information is provided to the shipper following the first interview, but in some instances, there is no initial interview. If an initial interview was not conducted, the carrier should mail that document to the shipper.

#### **1.5 Conclusion**

Kentucky issues several kinds of operating certificates for intrastate motor carriers, including Kentucky For-Hire, which is the operating authority required for motor carriers that pick up and drop off freight on a per-hire basis and without leaving the state of Kentucky at any point the freight is in transit. Statutory and regulatory rules for many of the intrastate carriers were revised by state lawmakers in 2014 and 2015. Some of these changes pertained to TNCs, such as Uber and Lyft, whose quick rise forced many states to rewrite



statutes that previously applied only to taxicabs and limousine services, and other more traditional forms of passenger transportation. Most of the statutes and regulations pertaining to property certificates in particular were not changed. For example, while fees for several other certificates increased from \$25 to \$250, the cost for the Kentucky For-Hire certificate remained unchanged. On the other hand, there have been changes to the way the state approaches other aspects of Kentucky For-Hire, many of which are highlighted in Chapter 3.

## **2. Kentucky For-Hire Administrative and Regulatory Process**

### **2.1 Staffing for Kentucky For-Hire Certificate Administration**

The Division of Motor Carriers (DMC) in the Department of Vehicle Regulation (DVR) administers the Kentucky For-Hire program. When fully staffed, fifteen employees are responsible for administering the certificate program: six Administrative Specialist III employees, seven Program Coordinators, and two Administrative Section Supervisors. These staff members process initial applications, renewal forms, and vehicle add-on forms. In addition, employees print the letters to motor carriers indicating approval status for their Kentucky For-Hire certificate or if there are documents they need to submit to receive approval. DMC agents also communicate with the insurance companies to confirm the required Form E documents are submitted or process Form K cancellations. Each year, agents mail postcards to motor carriers reminding them of the annual renewal requirement.

### **2.2 Process for Kentucky For-Hire**

#### **2.2.1 Kentucky For-Hire Application**

TC 95-1 is a six-page application form that motor carriers submit for the following credentials: Kentucky Highway Use (KYU) license, International Fuel Tax Agreement (IFTA), Kentucky Intrastate Fuel Tax (KIT), and the Kentucky Intrastate For-Hire Certificate. Motor carriers download the form on the DMC website at <https://drive.ky.gov/Motor-Carriers/Pages/default.aspx>. A first-time Kentucky For-Hire applicant must submit a \$25 fee along with the application. Intra state carriers must also pay a \$10 fee per vehicle. Interstate carriers do not pay a vehicle fee as that cost is considered paid through the UCR program. In addition, the carrier must provide an original Form E to prove their company maintains the insurance coverage levels specified in 281.655. Applicants type or legibly print the TC 95-1 and submit the application by mail or in the One Stop Shop at the KYTC building in Frankfort, Kentucky. DMC returns the application to the motor carrier if the application form is incomplete with a letter explaining the reason for return. Motor carriers must ensure that all federal and state licenses and/or credentials are active before sending the application for the Kentucky For-Hire certificate to DMC. DMC agents also check CVIEW to ensure all of the information provided in the application matches data in that database. If the information does not match the data, an agent returns the application to the applicant with a letter explaining the issue. Applications take between 10 to 14 days to process and approve.

Motor carriers applying for the Kentucky For-Hire certificate complete sections 1, 2, 7, and 8 of TC-95-1. In Section 1 (Figure 1) the carrier provides their contact information and identification numbers. The identification numbers include the United States Department of Transportation (USDOT) number, tax identification number, the Motor Carrier (MC) Number obtained through the FMCSA for interstate carriers, and the KYTC number. The applicant lists their address information, telephone number, and a point of contact.



**KENTUCKY TRUCKING APPLICATION**

<p style="text-align: center; border: 1px solid black; margin: 0;">Office Use Only</p> <p>KYU: _____</p> <p>KIT: _____</p> <p>IFTA: _____</p> <p>KY Intra For-Hire: _____</p> <p>KYTC#: _____</p>	<p><b>Mail To:</b></p> <p>Kentucky Transportation Cabinet          Division of Motor Carriers          PO Box 2007          Frankfort, KY 40602-2007          502-564-1257</p>	<p><b>Overnight Deliveries:</b></p> <p>Kentucky Transportation Cabinet          Division of Motor Carriers          200 Mero Street, 2<sup>nd</sup> floor          Frankfort, KY 40622</p> <p style="text-align: right;"><a href="http://drive.ky.gov/">http://drive.ky.gov/</a></p>
---	--	--

**Instructions:** (Read instructions and use the checklist below before submitting an application.)

Type or print legibly and read all information carefully. **NOTE: Original Application Accepted by Mail Only**

Please ensure that all federal and state licenses and/or credentials are active before submitting an application.

Data requested below must match the (FMCSA) Federal Motor Carrier Safety Administration’s data or the application will be returned.

Incomplete applications or applications with required fields left blank will be sent back with an explanation letter.

Please allow 10-14 business days for processing.

**Carrier Checklist:** (Check the box next to the credential(s) you are requesting.)

KYU (Kentucky Highway Use Tax) license (Complete **sections 1, 2, 3, and 8 (NO FEES REQUIRED; all qualified carriers may apply)**)

IFTA (International Fuel Tax Agreement) (Complete **sections 1, 2, 4, 6, and 8 (NO FEES REQUIRED; KY Interstate based carriers only)**)

KIT (Kentucky Intra Fuel Tax) license (Complete **sections 1, 2, 5, 6, and 8 (NO FEES REQUIRED; KY Intrastate carriers only)** Kentucky

Intrastate For-Hire Certificate (Complete **sections 1, 2, 7, and 8 (First-time application fees may apply. Applicant must have an original Form E insurance filing.)**)

**Section 1: Carrier Information and Identification Numbers**

<p><b>USDOT Number:</b>          (Visit FMCSA <a href="https://www.fmcsa.dot.gov/">https://www.fmcsa.dot.gov/</a> for USDOT#.)</p>	<p><b>Tax Identification Number:</b>          (Provide FEIN or SSN if a sole proprietor. It must match FMCSA USDOT record.)</p>	
<p><b>MC Number:</b>          (Visit FMCSA <a href="https://www.fmcsa.dot.gov/">https://www.fmcsa.dot.gov/</a> for MC#.)</p>	<p><b><sup>2</sup>KYTC Number:</b>          (Visit <a href="#">Motor Carrier Portal</a> to obtain for your KYTC number.)</p>	
<p><b>Legal Name:</b></p>		
<p><b>DBA Name:</b>          (DBA must also be listed with FMCSA on your USDOT)</p>		
<p><b>Physical Address:</b></p>		
<p><b>City:</b></p>	<p><b>State:</b></p>	<p><b>ZIP Code:</b></p>
<p>Is mailing address the Carrier’s or Third Party Provider? <input type="checkbox"/> Company <input type="checkbox"/> Third Party Provider</p>		
<p><b>Mailing Address:</b></p>		
<p><b>City:</b></p>	<p><b>State:</b></p>	<p><b>ZIP Code:</b></p>
<p><b>Phone Number:</b>          (required)</p>	<p><b>FAX:</b></p>	
<p><b>Contact Person:</b>          (required)</p>	<p><b>Email:</b>          (required)</p>	

**Figure 1** Section One Kentucky For-Hire Application



### KENTUCKY TRUCKING APPLICATION

#### Section 2: Business Information

**Business Type** (Check one)

- Individual    <sup>1</sup>Partnership    <sup>1</sup>Corporation or LLC

*(If business type is a Partnership, Corporation, or LLC, list the names and titles of corporate owners, partners, and officers for the company in the space provided below.)*

Example: John Doe / President

- |                  |                  |
|------------------|------------------|
| 1. _____ / _____ | 2. _____ / _____ |
| 3. _____ / _____ | 4. _____ / _____ |
| 5. _____ / _____ | 6. _____ / _____ |

<sup>1</sup>Kentucky- based Partnerships, Corporations, LLC's, and Companies must be listed with the Kentucky Secretary of State. Register at <http://www.sos.ky.gov/Pages/default.aspx>

**Operation Classification:** (Check the one that matches your FMCSA USDOT data)

- Private (Hauling your own goods)
- For-Hire (Hauling goods that belong to someone else)
- <sup>2</sup>Leased (Leased to another carrier, KYTC Number Required to apply visit: [Motor Carrier Portal.](#))

<sup>2</sup>If leased, provide the USDOT and/or the Motor Carrier Authority number you are leasing onto below.

USDOT Number:

MC Number:



• Federal Motor Carrier Safety Administration (FMCSA) requires all entities to have an active USDOT number for vehicles with a combined licensed weight of 10,001 lbs. or greater or vehicles used to transport hazardous materials.

• USDOT numbers are required to be updated every two years even if the company information has not changed and must be in good standing before applying for credentials with Kentucky.



• Interstate motor carriers that transport commodities for-hire must have an active FMCSA operating authority (MC Number) before applying for credentials with Kentucky.

• Interstate motor carriers that transport commodities private and for-hire must register for Unified Carrier Registration (UCR) before applying for credentials with Kentucky.

• To receive all future important correspondence, make sure all contact information (mailing address, email, contact phone number, etc.) are updated on both federal and state levels.

• Visit [drive.ky.gov](http://drive.ky.gov) to access the Motor Carrier Portal to view credential information, including statuses, with the Kentucky Transportation Cabinet.

**Figure 2** Section Two of Kentucky For-Hire Application

	KENTUCKY TRANSPORTATION CABINET Department of Vehicle Regulation <b>DIVISION OF MOTOR CARRIERS</b>	TC 95-1 05/2018 Page 6 of 6
<b>KENTUCKY TRUCKING APPLICATION</b>		
<b>Section 7: Kentucky Intrastate For-Hire Certificate</b>		
<b>Instructions: This section is not for all carriers. See below for applicable fees.</b>		
Have you ever had a KY Intra For-Hire Certificate issued to you in another name? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, you are required to provide the name and number.		
<b>Name:</b> _____		<b>K-Number:</b> _____
Was the certificate cancelled? <input type="checkbox"/> No <input type="checkbox"/> Yes		
<b>Please check the <u>one</u> box below that represents your carrier operation on the Federal Motor Carrier Safety Administration:</b>		
<input type="checkbox"/> <b>Intrastate Kentucky-Based For-Hire Carriers that pick up and deliver the same cargo within Kentucky only complete this section:</b> This certificate will require a \$25.00 fee, a \$10.00 per vehicle fee, and an original Form E insurance filing from your insurance company.		
Total number of vehicle(s) to be operated under this authority: _____ x \$10.00 = \$ _____		
Application Fee: _____ + \$ 25.00		
Total: _____ = \$ _____		
<input type="checkbox"/> <b>Interstate For-Hire Carriers that pick up and deliver the same cargo within Kentucky, regardless of base state, complete this section:</b> This certificate will require a one-time \$25.00 application fee and a Form E insurance filing sent from your insurance company. There are no vehicle fees, as your current year's UCR fees will cover your vehicle fees.		
<b>Make check or money order payable to Kentucky State Treasurer.</b>		
	<ul style="list-style-type: none"> <li>The Form E filing must read exactly as it appears under Section 1 of this application. For faster delivery, the insurance company may utilize the National Online Registry (NOR) system to submit the Form E filing electronically or the original Form E filing must be submitted with the application before a license is issued. Applications received with no Form E will be returned.</li> </ul>	
<b>Section 8: Signature Authorization</b>		
The carrier must sign and meet the requirements below. If a third party provider signs the application on behalf of the carrier, they must also meet the requirements below and attach a Power of Attorney (POA) signed by both parties.		
Under penalties of perjury, I certify that the information given is, to the best of my knowledge, true, accurate, and complete. In addition, I certify that I do not have any outstanding road tax obligations or delinquencies. I agree to comply with tax reporting, payment, record keeping, and license display requirements as specified in the International Fuel Tax Agreement, and the rules and regulations of the Kentucky Department of Vehicle Regulation. I further agree that the Department of Vehicle Regulation may withhold any refunds due if I am delinquent on fuel taxes due to any member jurisdiction. I further certify that I am familiar with the Federal Motor Carrier Safety Regulations and the Federal Hazardous Materials Regulations. Failure to comply with these provisions shall be grounds for revocation of any license and/or authority in Kentucky or all member jurisdictions.		
Original signature of responsible party is required. <b>Faxes not accepted.</b> If a Kentucky-based corporation, an officer must sign, and the officer must be listed with the corporation on the Kentucky Secretary of State's website under business filings.		
Furthermore, I understand that by signing this document my signature could also hold me as the responsible party and that I can personally be liable for any delinquencies owed regarding the operations of this company and/or any other company I may be associated.		
Signature: _____		Title: _____
Printed Name: _____		Date: _____

**Figure 3** Section Seven and Eight in Kentucky For-Hire Application

Section 2 (Figure 2) asks applicants to indicate their business type (individual, partnership, or Corporation/LLC) along with the names of owners, partners, and officers. Motor carriers also indicate their operation classification. The three operation classifications are private carriers (hauling goods produced by the same company), for-hire (hauling goods that belong to someone else), and leased (leased to another carrier).

Section 7 (Figure 3) is specific to the Kentucky For-Hire certificate. First-time applicants do not have to provide the certificate name and the K number, but this information is required if the carrier is undergoing the annual renewal process. In Section 8, the motor carrier representative signs the document, attesting to the completeness and truthfulness.

Once the motor carrier submits TC 95-1, a DMC employee reviews the application. The process flow for approval is depicted in Figure 4. First, the agent checks to see if the motor carrier provided all of the necessary information and that the insurance company submitted the insurance verification document (Form E). Per Kentucky statutes, the Kentucky Department of Insurance must approve the insurance underwriter. If a Form E does not accompany the application or an insurance company submits the Form E but the motor carrier fails to file TC 95-1, the agent sends a letter to the motor carrier explaining why Kentucky denied the certificate of authority. In addition, if the insurance company files the Form E and DMC does not receive an application, an agent logs into the National Online Registry (NOR) and creates a record noting that the application was never received. If the application meets all requirements and the insurance company has submitted Form E, the agent logs into Automated Licensing and Tax System (ALTS) to input the data from the application.

# KY – Hire in ALTS

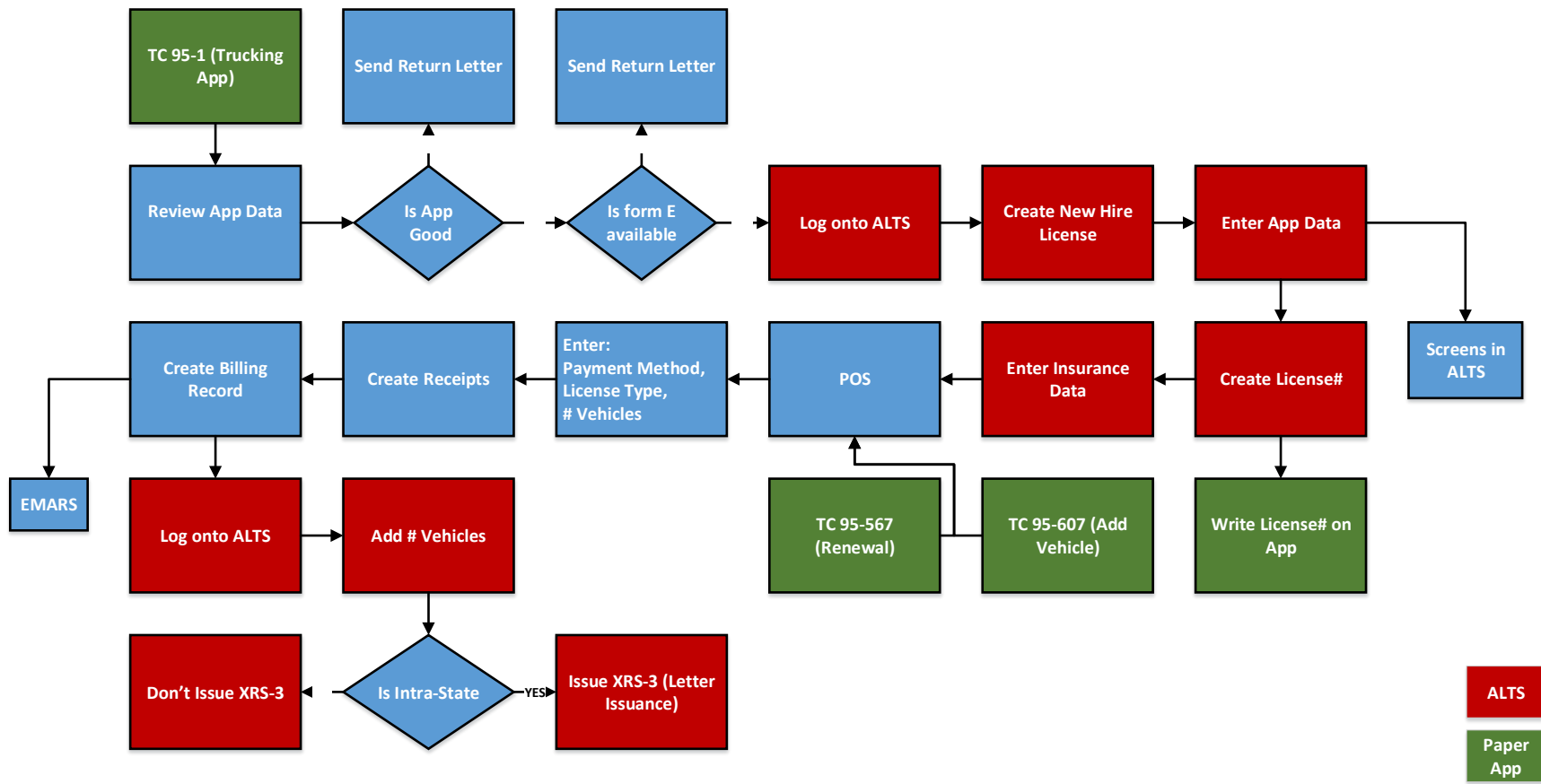


Figure 4 Workflow for Kentucky For-Hire Process

After confirming the customer provided the proper documentation, the agent begins building the new Kentucky For-Hire license and enters the application data into ALTS. Application data are screened through the ALTS database to ensure there are no previously existing authorities and that the carrier is compliant with all credentials, licenses, fees, and taxes. Once the agent inputs the application data, the ALTS system creates a new license number — the K Number. Then the agent inputs the insurance data into ALTS. Next, the agent writes the new license number on the application.

The agent then logs into the Point of Sale (POS) system to create a record for the submitted fees. The application fee is \$25, the renewal fee is \$25, and the vehicle fee is \$10 per vehicle. While in the POS system, the agent enters the payment method, license type, and number of vehicles in the fleet. The agent also creates receipts and creates a billing record in the Enhanced Management Administrative Reporting System (EMARS). It is the statewide accounting system managed by the Finance and Administration Cabinet. The agent logs into ALTS again to add the number of vehicles in the fleet. Data entry here merely consists of adding a number of specific vehicles. There is no vehicle inventory feature for Kentucky For-Hire in ALTS.

As proof of Kentucky For-Hire authority, intrastate motor carriers receive form XRS-3 from DMC. The XRS-3 form (Figure 5) shows the effective date for authority, number of vehicles in the fleet, and instructs carriers to keep a copy of this document in every vehicle. The XRS-3 also states that it is not valid for household goods or passenger carriers. Interstate carriers do not receive this document because proof of their UCR fees serves as proof of authority.





Matthew G. Bevin  
Governor

COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET  
Frankfort, Kentucky 40622  
www.transportation.ky.gov/

Greg Thomas  
Secretary

KY HIRE REG. RECEIPT - TRUCK

KY Transportation Cabinet  
Post Office Box 2007  
Frankfort, KY 40602-2007  
(502) 564-4127

Effective: 06/23/2014 Expires: 12/31/2014  
\* Initial Order \*

This receipt authorizes this motor carrier  
to operate in the state of:

\*\*\* Kentucky - 6 vehicles \*\*\*

In accordance with Kentucky  
Law -KRS 281- a copy of this  
receipt, evidencing  
registration of KY INTRASTATE  
and/or ICC EXEMPT authority,  
must be placed in each unit.

This motor carrier has been authorized  
by -KENTUCKY- to operate the number of  
vehicles listed. It DOES NOT include:  
household goods and passenger carriers  
operating for-hire or SSRS carriers.  
KY INTRASTATE FOR-HIRE ONLY

State MC Nbr: [REDACTED]

Alteration of this document will result  
in confiscation and penalties.

Duplicate original XRS-3



An Equal Opportunity Employer M/F/D

Figure 5 Kentucky For-Hire Certificate

### **2.2.2 Annual Renewal for Kentucky For-Hire**

Under KRS 281.630 intrastate motor carriers must renew their Kentucky For-Hire authority. As Figure 6 indicates, motor carriers submit the TC 95-567 annually. The original form is mailed to DMC or submitted in the One Stop Shop. Motor carriers are required to state the year of renewal, their business name and address, their K number, KYU number, USDOT number, and KIT license number. The carrier must also submit fees. Total fees are calculated by multiplying the number of vehicles in the motor carrier's fleet by \$10 and then adding in the \$25 renewal fee. Motor carriers are to certify they have proof of insurance on file in order to renew. The agent follows the same workflow process as the initial application.

If a motor carrier adds vehicles to their fleet while possessing intrastate for-hire authority, they submit Form 95-607 (Figure 7). As noted, the ALTS system does not contain an official inventory for the vehicles registered to the certificate holder. Similar to the renewal form, the vehicle add-on form instructs certificate holders to indicate the year they added the vehicle to its inventory, their K number, KYU number, KIT license number, and the USDOT number. The motor carrier also supplies the name of the company and the doing business as (DBA) name. The company includes its physical address and the form asks the certificate holder to indicate if their address changed by checking the box above the address section. Finally, the carrier totals the vehicle fees and signs the document. The agent follows the same workflow process for this document as the initial application. Interstate motor carriers obtaining authority do not have to pay renewal fees or vehicle fees.



Kentucky Transportation Cabinet  
Division of Motor Carriers

TC 95-567  
05/2018

**KENTUCKY INTRASTATE FOR-HIRE AUTHORITY RENEWAL**  
(EXCEPT HOUSEHOLD GOODS AND PASSENGERS)

**MAIL TO:**  
PO Box 2007, Frankfort KY 40602-2007  
Phone: (502)564-1257  
[Drive.ky.gov/](http://Drive.ky.gov/)

For Year: \_\_\_\_\_

Business Name and Address: \_\_\_\_\_

**LIST YOUR COMPANY NUMBER (S):**

(K) NUMBER: \_\_\_\_\_  
KYU NUMBER: \_\_\_\_\_  
DOT NUMBER: \_\_\_\_\_  
KIT NUMBER: \_\_\_\_\_

**TO ENSURE RECEIPT OF THIS AUTHORITY BEFORE THE EXPIRATION OF YOUR CURRENT AUTHORITY,  
RETURN PRIOR TO NOVEMBER 30.**

**FEES:**

Number of vehicles \_\_\_\_\_ X \$10.00 per vehicle = \$ \_\_\_\_\_  
The application fee of \$25.00 **must** also be submitted. + \$ 25.00  
Total enclosed = \$ \_\_\_\_\_

- **Make fees payable to Kentucky State Treasurer.**
- **The company's evidence of insurance (Form E) must be on file with this agency and in good standing. Carriers with invalid insurance will not be processed until receipt of the Form E.**
- **Write corrections to your company name, address and/or telephone numbers directly on this form. Name and/or address changes require a revised insurance form (Form E).**
- **Future additions to this authority must be submitted on the VEHICLE ADD ON FOR: Kentucky Intrastate For-Hire Authority form. This form may be obtained from our web site: [Drive.ky.gov/](http://Drive.ky.gov/) or by contacting this agency.**

The undersigned hereby files application for the renewal of Kentucky Intrastate For-Hire Authority. This authorization shall remain in effect until expired by law or revoked by the Kentucky Transportation Cabinet. Any vehicles operated under this authority must carry verification of insurance. I certify that I have access to and am familiar with all applicable regulations of the U.S. Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials and I will comply with these regulations:

**\*\*\* FAXED COPIES NOT ACCEPTED \*\*\***  
**Original form must be mailed**

\_\_\_\_\_  
**PRINT NAME AND TITLE**

\_\_\_\_\_  
**AUTHORIZED SIGNATURE**

( )

\_\_\_\_\_  
**TELEPHONE NUMBER**

\_\_\_\_\_  
**EMAIL ADDRESS**

\_\_\_\_\_  
**DATE**

Office Use Only	
Account codes:	
31	\$
33	\$ 25.00

**IF YOU NO LONGER NEED THIS AUTHORITY PLEASE CHECK HERE:**

If using overnight delivery services, please send to: Division of Motor Carriers, 200 Mero Street, Frankfort, KY 40622

**Figure 6 Annual Renewal Form for Kentucky For-Hire Certificate**



Kentucky Transportation Cabinet  
**Division of Motor Carriers**  
**FOR-HIRE AUTHORITY VEHICLE ADD ON**

TC 95-607  
 05/2018

**MAIL TO:**  
 PO Box 2007, Frankfort KY 40602-2007  
 Phone: (502)564-1257 Fax: (502)564-4138  
[Drive.ky.gov/](http://Drive.ky.gov/)

**For Year:** \_\_\_\_\_

**Kentucky *Intrastate* For-Hire Authority (K) Number:** K \_\_\_\_\_ (If you do not know this number, please leave blank.)

**List any of the licenses your company currently maintains:**

**Kentucky Highway Use Tax (KYU) License:** \_\_\_\_\_

**Kentucky Intrastate Tax (KIT) License:** \_\_\_\_\_

**Department of Transportation (DOT) Number:** \_\_\_\_\_

**Legal Name:** \_\_\_\_\_

**DBA Name:** \_\_\_\_\_

**Company Address:**

Check here if new address

**Physical Address:** \_\_\_\_\_  
Include street names (Drive, Road, etc.) or apartment # -- NO PO BOXES.

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_  
List address if different than above (include PO Box here).

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**FEE:**

My company has Kentucky *Intrastate* For-Hire Authority and hereby requests authority for additional vehicles x \$10.00 = \$ \_\_\_\_\_.

A fee of \$10.00 per vehicle is required payable to **Kentucky State Treasurer**.

\_\_\_\_\_  
**Authorized Company Representative Signature**

\_\_\_\_\_  
**Date**

( ) \_\_\_\_\_  
**Telephone Number of Authorized Company Representative**

Office Use Only  
 Account Code:  
 31

If using overnight delivery services, please send to: Division of Motor Carriers, 200 Mero Street, Frankfort, KY 40622.

**Figure 7** Vehicle Add-on Form for Kentucky For-Hire

### 2.2.3 Application Process for Interstate Authority and Kentucky For-Hire

The process for obtaining federal authority is very different from obtaining intrastate authority. This point is important because the process plays a role in future changes to the Kentucky For-Hire program. As Figure 8 shows, in Step 1 the motor carrier submits the OP-1 form. Once FMCSA approves the application, the motor carrier receives its motor carrier (MC) number and the FMCSA publishes the company's application on its website (Step 2). During a 10-day period, anybody can protest the motor carrier's application (Step 3). In Step Four, the insurance company submits the proof of insurance to FMCSA. In Step 5, the carrier must also have a processing agent, which is a third-party company that ensures — in the case of legal action against a motor carrier, broker, or the agent — it will be able to deliver all court documents regardless of the defendant's location. Motor carriers must have a designated processing agent in all 50 states or in the states through which the motor carrier hauls loads. Processing agents can be found on FMCSA's website (<https://www.fmcsa.dot.gov/registration/process-agents>). A processing agent files a Blanket of Coverage (BOC-3) document with FMCSA on behalf of the motor carrier, broker, or agent. Finally, in Step 6, the applicant can begin operation after receiving proof of operating authority. At this point, the interstate carrier can apply for Kentucky For-Hire authority. The motor carrier files all of the same documents as intrastate carriers, but they do not submit a vehicle add-on form.

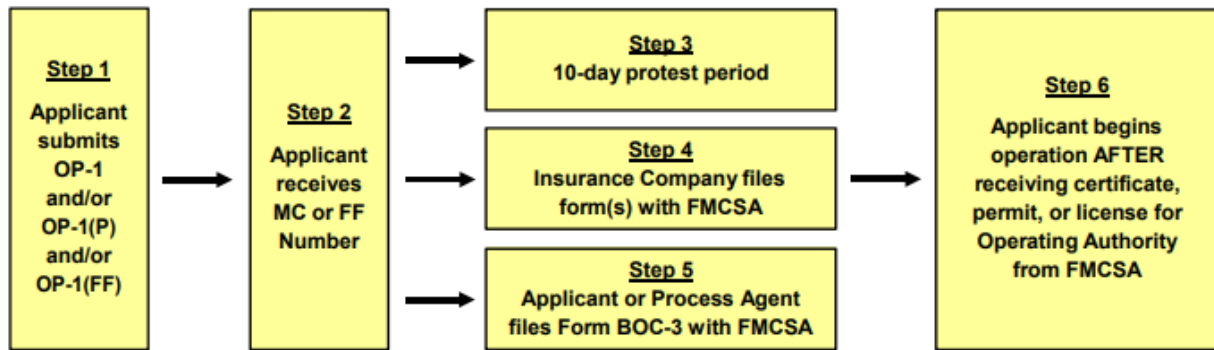


Figure 8 Proof of Insurance Interstate Motor Carrier

### 2.3 Proof of Insurance Requirements for Kentucky For-Hire Authority

Under KRS 218.655, before DMC awards or renews a Kentucky For-Hire certificate, the applicant or holder of the Kentucky For-Hire certificate must have commercial liability insurance. FMCSA requires the same type of insurance and levels of coverage for interstate carriers as Kentucky requires of intrastate carriers. Commercial liability insurance covers the load picked up and dropped off. Insurance companies can submit Form E documents by mail. Form E can also be submitted through the NOR Motor Carrier Information Exchange website. This website allows insurance companies in participating states to exchange motor carrier insurance filings online. Insurance companies can submit documents, monitor the progress of filings, and download copies of the filed documentation. States can also check for insurance documentation and approve or reject insurance filings. DMC communicates with many insurance companies through NOR.

There is some confusion over Kentucky For-Hire and the status of interstate carriers. Interstate motor carriers pay intrastate vehicle fees through their annual UCR fees (and are thus exempt from Kentucky For-Hire vehicle fees), but they are still required to submit Form E if obtaining the Kentucky For-Hire authority. Some interstate carriers mistakenly think if they have a motor carrier (MC) number from FMCSA, they are also required to get intrastate for-hire authority in Kentucky. However, many of these carriers never actually operate intrastate in Kentucky. As a result, an interstate carrier's insurance company can submit proof of insurance to DMC, but the motor carrier may fail to complete the process by submitting the application.

The DMC agent must process Form E in the same workflow used for applications and renewals, even though the applicant never finishes the application process. In these cases, insurance companies remain liable until submitting Form K to cancel the coverage. To avoid this scenario, DMC now communicates with insurance companies through NOR to apprise them of motor carriers that have not completed their application. Once the insurance company is aware the application was not completed, it submits Form K to cancel the insurance coverage.

## **2.4 Enforcement of Kentucky For-Hire**

Kentucky State Police Commercial Vehicle Enforcement (KSP-CVE) is responsible for enforcing the Kentucky For-Hire credential. KSP-CVE has 12 fixed inspection stations located throughout Kentucky and two virtual inspection stations located on US-25 and KY-9. These systems use the Kentucky Automated Truck Screening (KATS) system, an award-winning system that uses USDOT numbers and license plate numbers to check motor carrier records for compliance with safety regulations, taxes, credentialing requirements, and fees using Kentucky's CVIEW databases. The fixed stations also weigh trucks as they pass through the station. If the motor carrier fails any of the CVIEW tests for compliance, law enforcement officers detain the truck. Once detained, the truck, as well as the driver, undergo an inspection based on federally established standards and processes.

When KSP-CVE detains a truck for credential, license, or fee violation(s), KSP-CVE officers and inspectors check all of the driver's documents. If the company is conducting intrastate activities, the law enforcement officer requests to see the Kentucky For-Hire certificate. If the driver does not have this certificate in their vehicle, the officer contacts DMC agents via telephone or a dedicated email inbox to verify the motor carrier does not possess the Kentucky For-Hire authority. Once the officer confirms the motor carrier is non-compliant with Kentucky For-Hire requirements, they have the legal authority to write a citation. If a carrier does not have the Kentucky For-Hire authority, law enforcement can cite and release the truck based on the information from Kentucky's CVIEW databases.

Kentucky For-Hire is a complex authority for officers and inspectors to understand, and significant investigations are necessary before rendering a charge. The enforcement rates for Kentucky For-Hire have generally been low. Sometimes violations do not result in a citation, often because officers or inspectors released the violator with a warning.

## **2.5 Conclusion**

On its surface, Kentucky For-Hire is a relatively simple certificate program, but various nuances make it more complicated for industry, state administrators, and KSP-CVE officers. The biggest issue for carriers is knowing whether the authority is required to carry out their operations. Some interstate carriers obtain the authority but are not actually required to carry it. Some carriers improperly use farm plates in lieu of intrastate authority. Another compliance issue carriers deal with is knowing that they have to submit both an application or renewal and a Form E to receive the authority. Often carriers will only submit one of the two forms, creating a potential liability issue for insurance companies and adding to KYTC's administrative burden.

One challenge KYTC administrators face is that the ALTS system used to create and maintain Kentucky For-Hire records is not easily reprogrammed to allow for changes to the data entry process. Interstate carriers already submit proof of insurance to FMCSA as part of federal regulatory requirements. However, interstate carriers obtaining Kentucky For-Hire authority must also submit proof of insurance to KYTC because the ALTS system prevents employees from bypassing the proof of insurance data fields. Ensuring

that carriers submit both their application and Form E, and that insurance companies are aware when companies have incomplete documentation, is a time-consuming process.

Enforcement is a challenge for KSP-CVE as well. In recent years, Kentucky For-Hire has been enforced rarely (see Chapter 3). One challenge is that high turnover and personnel shortages make it difficult for officers to enforce the requirement. The KATS automated screening system has a test for Kentucky For-Hire, so officers should be aware if a particular truck has a potential issue. However, investigating whether or not the operating authority is required is a time-intensive process. It requires officers to examine the bill of lading and gather information about the cargo to determine whether the origin and destination are in Kentucky, whether the carrier is a for-hire entity, and if the cargo is not exempted under state or federal law. Furthermore, the ALTS program KYTC uses to create the license does not require Kentucky For-Hire carriers to submit an itemized vehicle inventory. As such, there is no easy way to determine if the carrier is underreporting the number of vehicles operating under Kentucky For-Hire in order to avoid paying vehicle fees. This issue is not a huge concern at present given that vehicle fees are set at \$10, but if fees are increased in the future, it may incentivize carriers to underreport vehicle numbers. Ultimately, the overarching enforcement issue is the lack of actions taken against non-compliant carriers. Continued lax enforcement of Kentucky For-Hire requirements will undermine compliance.

### 3. Costs and Benefits of Kentucky For-Hire Authority

To determine how beneficial the Kentucky For-Hire certificate requirement is, the research team compiled information on the financial benefits of Kentucky For-Hire as well as the costs of administering the credential. The principal benefit of Kentucky For-Hire is that it lets KYTC verify the identity of individuals who are applying for the authority. In doing so, administrators can review applications from carriers to ensure there are no pre-existing accounts with overdue taxes and fees; collect revenues for the application or renewal, as well as vehicle fees. Administrators also verify that intrastate carriers carry commercial liability insurance so that in the event of a crash, claims of property damages and medical costs can be processed and paid out. On the other hand, administering Kentucky For-Hire applications has a number of costs, which arise from ensuring all Form E documentation is complete, mailing out renewal notices, updating records in the Automated Licensing and Tax System (ALTS), and making phone calls to carriers or insurers when carriers do not submit all required documentation. This chapter quantitatively and qualitatively analyzes the costs and benefits of Kentucky For-Hire.

#### 3.1 Costs of Administering Kentucky For-Hire Authority

Table 4 summarizes the costs of administering Kentucky For-Hire. Currently, the primary cost of administering Kentucky For-Hire is labor related to processing applications, renewals, Form E documentation, mailing renewals, updating records in ALTS, and making phone calls to carriers and/or insurers when there is missing documentation.

Kentucky For-Hire is administered by employees in the Qualifications and Permits Section and One Stop Shop. Table 4 shows the number of employees by position, the pay grade associated with each position, the cost per employee, the percentage of time each employee spends processing Kentucky For-Hire authority, the total full-time equivalent, and total cost. The cost per employee includes salary, FICA, retirement contributions, and health insurance. Costs are based on FY 2019 cost rates. They assume a person works the entire year at 37.5 hours per week. It assumes no hazardous duty. The estimates also include updated FICA cost computations. There are two variations on retirement contributions presented here. Under the “current admin” estimate, we estimate retirement contributions at 49.47 percent, as required under current law. The “SB 151 admin” estimate includes the proposed new retirement contribution guidance as mandated by SB 151, which the Kentucky General Assembly passed and the governor signed in early 2018. The bill mandated increases in retirement contributions to 83.84 percent of total salaries for employees in the Department of Vehicle Regulation. Aside from the retirement contribution component, all other components of these estimates are the same.

When fully staffed, fifteen individuals (including supervisors) administer Kentucky For-Hire authority, including six Administrative Specialist IIIs. One Administrative Specialist III employee allocates 20 percent of their work time to processing Kentucky For-Hire documents, whereas the other five Administrative Specialist IIIs spend about 15 percent of their time administering Kentucky For-Hire. ~~Three~~ Seven Program Coordinators and administrative section supervisors in two sections manage the administration of Kentucky For-Hire, each dedicating 15 percent of their total time worked. The full-time equivalent for these employees is 2.45. Total labor costs are estimated at \$192,888 under current law and \$226,860 if SB 151 is upheld in court. This estimate omits the costs of currently vacant positions in the Qualifications and Permits Section and the One Stop Shop.



**Table 4** Kentucky For-Hire Administrative Costs

Kentucky For-Hire							
Labor Costs							
		Total Labor Cost				Total Cost for Ky. For-Hire Labor	
Position	QTY	Current	SB 151	%Time	FTE	Current Admin	SB 151 Admin
Administrative Specialist III (12)	1	\$70,565	\$84,098	20%	0.2	\$14,113	\$16,820
Administrative Specialist III (12)	5	\$70,565	\$84,098	15%	0.75	\$52,924	\$63,074
Program Coordinator (13)	7	\$77,102	\$92,065	15%	1.05	\$80,957	\$96,668
Administrative Section Supervisor (15)	2	\$91,052	\$109,066	15%	0.3	\$27,316	\$32,720
<b>Total</b>	<b>15</b>	<b>\$309,284</b>	<b>\$369,327</b>		<b>2.3</b>	<b>\$175,310</b>	<b>\$209,282</b>
COT and Technology Costs							
Cost Item	QTY		Cost Per Unit		FTE	Current Admin	SB 151 Admin
COT Maintenance and Support	1		\$15,000		1	\$15,000	\$15,000
Computers/Printers for Employees	15		\$660		2.3	\$1,518	\$1,518
Monitors for Employees	15		\$60		2.3	\$138	\$138
Phone service for Employees	15		\$240		2.3	\$552	\$552
Printing Renewal Notices	700		\$0.06			\$42	\$42
<b>Subtotal</b>						<b>\$17,250</b>	<b>\$17,250</b>
Mailing Costs							
Cost Item	QTY		Cost Per Unit			Current Admin	SB 151 Admin
Mailing Renewal Notices	700		\$0.47			\$329	\$329
<b>Subtotal</b>						<b>\$329</b>	<b>\$329</b>
Total Costs							
<b>Total</b>						<b>\$192,888</b>	<b>\$226,860</b>

Other significant expenses associated with Kentucky For-Hire pertain to maintenance and support services provided by the Commonwealth Office of Technology (COT) as well as equipment costs for computers, monitors, phone service, and printing services provided by COT for FY 2019-2020. The COT maintenance and support cost of \$15,000 is an estimate based on previous studies. We could not obtain billing information from COT on services rendered for Kentucky For-Hire program maintenance and support. Prices are based on the assumption that employees use a standard desktop with printer support, a 20” monitor, and a phone with voice-over-IP service. It also assumes all renewal notices are printed from ALTS via the rate of 6 cents per page (\$6 per 100 pages).

Every year, the Division of Motor Carriers sends out renewal notices to carriers who obtained Kentucky For-Hire authority during the previous year. The current mailing rate is 47 cents per notice. The estimate includes the assumption that DMC is mailing out 700 renewal notices based on the 700 carriers who obtained authority in FY 2017. Total mailing costs come to \$329.

We combined labor costs, COT and technology costs, and mailing costs to derive total administrative expenses for Kentucky For-Hire. Under the “current admin” scenario, the total administrative cost of Kentucky For-Hire is \$192,888. Under the “SB 151 admin” scenario, the administrative cost is \$226,860.

### **3.2 Costs of Administering Household Goods Authority**

Given that Kentucky For-Hire and Household Goods authority revenues use the same coding for revenue tracking purposes, we compiled an estimate for Household Goods administration as well. Household Goods administration costs are presented in Table 5. As with Kentucky For-Hire, the primary cost for the household goods certificate is labor. There are four employees who process household goods certificates, although none of them spend all of their time administering the credential. There are two Administrative Specialist IIs who process these documents, along with a program coordinator and administrative section supervisor. They spend between 10-15 percent of their time on such tasks; the FTE is .5. Total labor costs of the “current admin” and “SB 151” pay schedules tabulate the overall labor cost of those employees. The total costs for household goods labor is the actual amount of labor costs applied to the administrative function. By our estimates, the administrative costs are \$39,336 under the current law and \$46,989 if SB 151 is upheld.

Technology costs are also lower than for the Kentucky For-Hire credential. We estimate a COT maintenance and support cost of \$7,500 (an educated guess made in the absence of COT billing information). The computer, printer, monitor, phone service costs are based on published COT rates for the 2019-2020 fiscal year; they are also based on .5 FTE. The renewal notice printing cost is based on 100 notices being printed, which is slightly higher than the number of licenses issued during any year between FY 2014 and 2017. COT and technology costs come to \$7,986. Last, there is an assumed mailing cost of 47 cents per renewal notice, which amounts to \$47. Overall, the total cost of administering Household Goods is roughly \$47,369 a year under current policy, but will increase to \$55,022 per year if SB 151 is upheld.

**Table 5 Household Goods Administrative Costs**

Household Goods							
Labor Costs							
		Total Labor Cost				Total Cost for Household Goods Labor	
Position	QTY	Current	SB 151	%Time	%FTE	Current Admin	SB 151 Admin
Administrative Specialist III (12)	2	\$70,565	\$84,098	10%	0.20	\$14,113	\$16,819.67
Program Coordinator (13)	1	\$77,102	\$92,065	15%	0.15	\$11,565	\$13,809.77
Administrative Section Supervisor (15)	1	\$91,052	\$109,066	15%	0.15	\$13,658	\$16,359.89
<b>Total</b>	<b>4</b>	<b>\$238,719</b>	<b>\$285,229</b>		<b>0.50</b>	<b>\$39,336</b>	<b>\$46,989</b>
COT and Technology Costs							
Cost Item	QTY		Cost Per Unit		FTE	Current Admin	SB 151 Admin
COT Maintenance and Support	1		\$7,500			\$7,500	\$7,500
Computers/Printers for Employees	4		\$660		0.5	\$330	\$330
Monitors for Employees	4		\$60		0.5	\$30	\$30
Phone service for Employees	4		\$240		0.5	\$120	\$120
Printing Renewal Notices	100		\$0.06			\$6	\$6
<b>Subtotal</b>						<b>\$7,986</b>	<b>\$7,986</b>
Mailing Costs							
Cost Item	QTY	Cost Per Unit				Current Admin	SB 151 Admin
Mailing Renewal Notices	100	\$0.47				\$47	\$47
Total Costs							
<b>Total</b>						<b>\$47,369</b>	<b>\$55,022</b>

### **3.3 Costs of Migrating Kentucky For-Hire from ALTS to the Motor Carrier Portal**

Another pending cost for Kentucky For-Hire administration pertains to the planned migration of Kentucky For-Hire customer records from the ALTS mainframe system to the Motor Carrier Portal, which is a web-based system. Mainframe technology is outdated, and as time passes, it will become increasingly difficult to find computer programmers fluent in the COBOL (Common Business Oriented Language), which is no longer taught by most computer science programs. The additional benefit of moving the customer records database to the Motor Carrier Portal is that credential administrators and customers will find it much easier to create accounts, apply for credentials, approval credentials, verify insurance information, calculate application/renewal/vehicle fees, and process payments.

The COT provided a cost estimate for migrating the Kentucky For-Hire database from the ALTS mainframe to a web-based system in the Motor Carrier Portal. Depending on the length of time required to develop the new application, the cost varies between \$124,800 and \$145,600, and will take 12 to 14 months to develop.

### **3.4 Benefits of Kentucky For-Hire**

There are three primary benefits of Kentucky For-Hire. The law's original purpose was to control intrastate property freight market entry to stabilize the industry and prevent fly-by-night operators from operating legally in the state. As state and federal law evolved to accommodate deregulation, quality control of market entry is no longer a benefit, but prevention of and enforcement against fly-by-night operators remains a key strength of the authority. The second benefit is insurance verification, which ensures intrastate carriers are able to cover costs if liable for crash-related property damages and injuries. A third benefit is the application fees, renewal fees, and vehicle fees collected by the state.

#### **3.4.1 Enforcement of Kentucky For-Hire**

Enforcing Kentucky For-Hire has always been a challenge. The authority is less straightforward than other permits or credentials in terms of which carriers are required to obtain it, and because it is not a particularly common credential for carriers to obtain relative to interstate authority, taxes, permits, and credentials. Many interstate carriers that do not need the operating authority obtain it anyway. To be charged with a violation, carriers also need to be making an intrastate, for-hire freight move with no license, or a suspended or revoked license. Further complicating matters is the adjudication of charges. Because the fine for intrastate operating authority violations ranges from \$500 to \$3,500, judges are often reluctant to uphold convictions because they are generally assessed to the driver instead of the owner. In instances where the carrier is not an owner/operator, there are strong arguments against assessing the driver for the violation, as they often lack the authority or resources to purchase and manage permits, credentials, and tax licenses on behalf of a carrier.

Table 6 shows the number of Kentucky For-Hire violations detected and citations issued by KSP-CVE from 2014 to 2017. Looking at the federal violation code turned out not to be a viable strategy for identifying violations due to widespread inconsistencies in how codes are used. Instead, we determined the number of violations by searching violation descriptions for terms like "hire" and descriptions with both "intrastate" and "authority." Once the specific violations were tagged, we reviewed each case to ensure there was a legitimate Kentucky For-Hire violation. If there was a corresponding citation number for the violation, it was counted as a citation. Otherwise, we assumed that violators were simply given a warning. In 2014, there were 42 violations detected and 18 citations issued; the numbers for 2015 were similar. However, those numbers plummeted significantly in 2016 and 2017, with very few violations detected or citations issued. Enforcement of Kentucky For-Hire has all but disappeared, as officers and inspectors have turned off the Kentucky For-Hire screening algorithm the KATS system uses to detect potential violators due to data quality issues and the difficulty of determining whether the authority applies in a specific context. Over

this period, there were 486 violations and 232 citations coded as not having valid intrastate operating authority — nearly all of them in 2016 and 2017. However, KSP officers and inspectors use those codes as a “catch-all”, making it impossible to make a meaningful determination about those cases. Given KYTC administrators’ knowledge about the low volume of Kentucky For-Hire enforcement generally, we (and Study Advisory Committee) excluded those cases, as there was no basis for estimating how many were actually Kentucky For-Hire violations and not some other misclassified violation.

**Table 6** Kentucky For-Hire Violations and Citations, 2014-2017

	KY For-Hire Enforcement	
Year	Violations	Citations
2014	42	18
2015	35	19
2016	6	2
2017	3	0
Total	86	39

### 3.4.2 Insurance Verification and Compliance Check

The insurance verification and compliance check component of Kentucky For-Hire, as with the insurance verification requirements for interstate trucking companies enforced by FMCSA, safeguards the public against one of the insurance industry’s negative externalities. Every year, several thousand crashes involve commercial motor vehicles. To be sure, some crashes are the liability of a non-commercial vehicle operator — and not the commercial vehicle operator. Nevertheless, enforcement of insurance requirements is an important part of limiting all costs related to crashes on public highways. According to KTC’s *Kentucky Traffic Collision Facts 2016* report, in 2016 total economic damages from 152,890 collisions in the state topped \$2.7 billion.

Trucks are defined as any vehicle with a registered weight of 10,000 pounds or more where data were available on whether a crash involved property damage, injuries, or fatalities. A small percentage of trucks are excluded due to lack of data availability. Estimates for crash damages are prepared by several agencies, and there are different models for estimating the economic or social costs of crashes (FMCSA 2008; National Safety Council). We use a model developed by the National Safety Council (NSC). The NSC has two cost models: an economic cost model and a comprehensive cost model. Here we use the economic cost model, which calculates the cost of motor vehicle damage based on property damage, and where applicable, wage and productivity losses, medical expenses, administrative expenses, and employers’ uninsured losses. The comprehensive cost model includes the economic cost components plus the value of lost quality of life. As a result, our estimates are quite conservative because they assume a low property damage value, only a single evident injury, or single fatality. The NSC model also does not distinguish between non-truck crashes and heavy truck crashes, which is another reason to suspect the costs estimated by the model are almost certainly conservative. The model assumes \$4,300 in property damage per property crash, \$27,000 per injury crash, and \$1,578,000 per fatal crash. These figures are based on the 2016 formulas found in the NSC’s *Injury Facts* (2016 edition). Accordingly, all estimated impacts are in 2016 dollars.

Table 7 displays the number of crashes from 2007 to 2017 that involved commercial motor vehicles. Estimates of the economic costs of those crashes are provided as well. Over 9,000 crashes occurred in 2007, but the number dipped beginning in 2008 and bottomed out during the 2009 to 2011 period. Thereafter, the number of truck crashes in Kentucky ticked up each year from 2012 to 2016. Economic costs topped \$200

million in six of the 10 years. Although not shown here, comprehensive costs exceeded \$1 billion in all 10 years.

**Table 7** Kentucky Truck Crash Statistics and Economic Costs, 2007-2016

Truck Crash Statistics for Kentucky, 2007-2018					Economic Cost Model			
Year	Property Damage	Injury	Fatal	Total	Property Damage	Injury	Fatal	Total
2007	7,465	1,607	104	9,176	\$32,099,500	\$43,389,000	\$164,112,000	\$239,600,500
2008	7,194	1,490	98	8,782	\$30,934,200	\$40,230,000	\$154,644,000	\$225,808,200
2009	6,505	1,292	105	7,902	\$27,971,500	\$34,884,000	\$165,690,000	\$228,545,500
2010	6,644	1,305	87	8,036	\$28,569,200	\$35,235,000	\$137,286,000	\$201,090,200
2011	6,747	1,268	77	8,092	\$29,012,100	\$34,236,000	\$121,506,000	\$184,754,100
2012	6,183	1,189	70	7,442	\$26,586,900	\$32,103,000	\$110,460,000	\$169,149,900
2013	6,582	1,250	72	7,904	\$28,302,600	\$33,750,000	\$113,616,000	\$175,668,600
2014	7,336	1,261	67	8,664	\$31,544,800	\$34,047,000	\$105,726,000	\$171,317,800
2015	7,710	1,396	90	9,196	\$33,153,000	\$37,692,000	\$142,020,000	\$212,865,000
2016	7,935	1,352	93	9,380	\$34,120,500	\$36,504,000	\$146,754,000	\$217,378,500

The compliance check provides an opportunity for administrators to make sure other credentials and licenses are in order before granting Kentucky For-Hire authority. When new carriers submit the TC 9501 application or renewing carriers submit the TC 95-567, administrators check basic information (e.g., carrier name, address, USDOT number (if applicable), KYU number (if applicable), and KIT license number (if applicable)). This information is verified using the mainframe systems or CVIEW. This workflow helps the Cabinet monitor for-hire carriers to ensure companies are not attempting to circumvent other requirements or rebranding themselves under a different name as a chameleon carrier to avoid current back taxes, license fees, or credentials costs. The compliance check helps maintain a level playing field for all carriers.

### 3.4.3 Kentucky For-Hire and Household Goods Revenues

For accounting purposes, DMC codes all revenue from Kentucky For-Hire application and renewal fees together, and combines all vehicle fees from those two certificate programs. Consequently, determining the precise amount of revenue each program generates somewhat difficult. To assess each program’s share of revenues, we made several assumptions. First, we assumed for-hire carriers and household carriers are mutually exclusive groups. We calculated the amount of application fees and revenue fees that would be collected from application or renewal fees if every for-hire intrastate carrier and Household Goods carrier paid for a single year’s application or renewal fee, and apportioned the fees based on that ratio. In practice, this frequently does not happen because interstate carriers who obtain for-hire authority are exempted from renewal fees and vehicle fees by the UCRA. Household Goods application and renewal fees increased some time in 2015 from \$25 to \$250, so we assumed \$25 for FY 2014 and \$250 for all years after that. Vehicle fees were apportioned by the percentage of carriers in each group. For example, in FY 2014, 450 of the 535 total carriers (84 percent) were Kentucky For-Hire carriers, meaning 84 percent of the vehicle fees were assumed to come from those carriers. This approach implicitly assumes both household goods carriers and

for-hire intrastate carriers are equally likely to be required to pay the fees and that the average fleet size for carriers in both groups is the same.

Table 8 shows the number of Kentucky For-Hire carriers and Household Goods carriers, the ratio of Kentucky For-Hire to household goods carriers, actual revenues reported by the DMC, and our estimated revenue shares for both Kentucky For-Hire and Household Goods carriers for FY 2014 through FY 2017. The number of Kentucky For-Hire carriers increased significantly over this period, from 450 to 700, likely owing to a strengthening economy. Conversely, the number of Household Goods carriers fell from 90 in FY 2015 to 72 in FY 2017. One possible reason for this reduction is the increase of the Household Goods application and renewal fee from \$25 to \$250. Overall revenues jumped from \$47,353 in FY 2014 to \$73,140 in FY 2015, presumably because of growing carrier numbers and an increase in Household Goods application and renewal fees. There was some minor fluctuation in FY 2016 and 2017, but the average revenue for the last three years has been \$68,849.

Most of the revenue comes from application and renewal fees. On average, nearly 64 percent of the revenue can be traced to application and renewal fees, with the remainder coming from vehicle fees. The estimated Kentucky For-Hire share is relatively consistent across the four-year period, even as the total number of companies with the authority increases. The four-year average is \$40,651. It is possible the revenues are somewhat underestimated, although it is impossible to tell given how the money is currently tracked. We attribute most of the increase in Household Goods revenue from FY 2014 to FY 2015 to the increase in the application and renewal fees. The average revenue for the last three years (after the application and renewal fee increase) has been \$27,924.

**Table 8** Kentucky For-Hire and Household Goods Revenues, FY 2014-2017

Number of Carriers	FY 2014	FY 2015	FY 2016	FY 2017
Ky. For-Hire Carriers	450	475	619	700
Household Goods Carriers	85	90	73	72
Ratio of Ky. For-Hire/HHG	5.3	5.3	8.5	9.7
Actual Revenues (KFH & HHG)				
Application and Renewal Fee	\$22,351	\$44,330	\$39,975	\$47,182
Vehicle Fee	\$25,002	\$28,810	\$24,370	\$21,880
Total Revenues	\$47,353	\$73,140	\$64,345	\$69,062
Estimated Ky. For-Hire Share				
Application and Renewal	\$18,800	\$15,314	\$18,343	\$23,259
Vehicle Fee	\$21,030	\$24,221	\$21,800	\$19,839
Estimated Kentucky For-Hire Revenue	\$39,830	\$39,535	\$40,142	\$43,098
Estimated Household Goods Share				
Application and Renewal	\$3,551	\$29,016	\$21,632	\$23,923
Vehicle Fee	\$3,972	\$4,589	\$2,571	\$2,041
Estimated Household Goods Revenue	\$7,523	\$33,605	\$24,203	\$25,964

### 3.5 Costs vs. Benefits

There is no direct way to measure the safety benefits of erecting barriers which prevent the operation of fly-by-night carriers. Kentucky For-Hire credential likely provides some benefit, although it is hard to determine how many potential operations are impeded by the authority. The Kentucky For-Hire cost is not

much of a barrier, but if a carrier has outstanding taxes or bills from prior operations, there can be a significant financial barrier to resuming operations. However, it is unlikely enforcement action will be taken against carriers who fail to obtain this authority, particularly when one considers that a violation only results in a citation about 45 percent of the time. The driver of the carrier that is violating the law faces a steep penalty and a Class A misdemeanor charge by virtue of being an official representative of the carrier. This is problematic from a legal standpoint given that company owner(s) are typically not the person(s) operating the commercial motor vehicle. Consequently, charges for operating authority violations are typically dismissed in district court. Making enforcement effective and fair would require restructuring the penalties to make them civil penalties levied against the carrier instead of the driver and getting KSP-CVE to prioritize Kentucky For-Hire enforcement.

The insurance verification aspect of Kentucky For-Hire is absolutely essential. The total economic liabilities, not to mention comprehensive costs, are significant; KYTC and KSP-CVE have a stake in ensuring that all individuals operating vehicles on public highways have adequate insurance coverage. Administratively, DMC is currently responsible for this process. However, the costs of administering the credential exceed the revenues generated from application fees, renewal fees, and vehicle fees. Table 9 shows the overall cost impact for both Kentucky For-Hire and Household Goods administration. Under current law, Kentucky is projected to lose about \$152,237 each year administering Kentucky For-Hire; it will lose roughly \$186,209 annually administering the program if SB 151 is implemented and mandatory retirement contributions increase. The losses are not as pronounced for Household Goods administration – under currently law, annual losses are \$19,445, but this figure increases to \$27,098 if SB 151 is implemented.

**Table 9** Cost-Revenue Comparison for Kentucky For-Hire and Household Goods

Credential	Avg. Revenue (FY 2015-2017)	Projected Costs (Current)	Projected Costs (SB 151)	Projected Losses (Current)	Projected Losses (SB 151)
Kentucky For-Hire	\$40,651	\$192,888	\$226,860	(\$152,237)	(\$186,209)
Household Goods	\$27,924	\$47,369	\$55,022	(\$19,445)	(\$27,098)

### 3.6 Conclusion

Kentucky For-Hire provides three basic substantive benefits: prevention of illegal operations by disreputable commercial motor carriers, insurance verification of intrastate motor carriers, and a modest revenue stream. Of these three benefits, insurance verification is the most beneficial, and most administrators in the DVR agree it is an indispensable function of public agencies. Lax enforcement standards and inequitable penalties that place the driver in legal jeopardy at least partially offset this benefit. In addition, the costs of administering the law are far greater than the revenue it generates. Consequently, adopting an alternative approach to the status quo may make more sense in light of the cost-benefit analysis laid out in this chapter. Chapter 6 explores possible alternatives.



## 4. History of Trucking Industry Regulation in the United States

To understand the dynamics of trucking industry regulation in the U.S., it is useful to have historical context about the development of various transportation modes, social and economic issues that arose from those developments, and attempts made by state and federal governments to regulate those industries. Following the Civil War, the abolition of slavery and the technological developments fostered by the Industrial Revolution permanently changed the character of the U.S. from a largely subsistence-based, agrarian economy to an increasingly specialized, industrialized economy. Such an economy demanded more goods and people be transported over longer distances, and with greater efficiency than previously possible.

### 4.1 The Rise of Railroads and Development of a Federal Regulatory Framework

Most early legislation crafted to regulate trucking industry activities was modeled after previous government attempts to regulate U.S. railroad companies. Following the Civil War, the railroad industry boomed. According to historical Census data, the total miles of functional rail track grew from 28,920 in 1860 to 163,562 in 1890 (1890 U.S. Census). The U.S. government had a large stake in the success of railroads, both in terms of ensuring financial prosperity, but also to aid with Northern efforts to with the Civil War. President Abraham Lincoln lent the railroads \$65 million to facilitate construction of the first transcontinental railroad. Between 1861 and 1870, the federal government gifted more than 100 million acres of land to these entities (Johnson, 533). Johnson (1997) identifies at least six distinct advantages granted to railroads by federal, state, and local governments: 1) early railroad lines often had exclusive charters from state legislatures, 2) railroads had special banking privileges, which facilitated raising capital investment, 3) railroads were endowed with eminent domain rights, 4) railroads were exempt from state and federal taxes 5) railroads often enjoyed monopoly protections against competitors, and 6) additional capital and land grants were provided by governments at all levels.

Despite all of these advantages, the rise of railroads created new challenges for state and federal governments. Several political and legal issues arose. The government had a compelling interest in the success of American railroads, but also had to address social and economic controversies spawned by their development. In the realm of economic regulation, there were controversies about railroad business practices, especially as other transportation modes developed. Shippers protested disparities in shipping rates, which they viewed as introducing discriminatory pricing against firms, by charging higher rates. Additionally, the Supreme Court articulated a somewhat inconsistent doctrine about state regulation of railroads. In *Piek v. Chicago & Northwestern Ry. Co* (1877), the Supreme Court ruled that states could regulate railroads in absence of federal legislation even if their activities were interstate in nature. Additionally, it upheld an Illinois law regulating the rates private companies could charge farmers to store and transport grain (see *Munn v. Illinois* (1877)) (Kutler 1984). In the *Railroad Commission Cases* (1886), the Supreme Court upheld a Mississippi law that allowed states to set freight and passenger rates for railroad. However, in *Wabash, St. Louis and Pacific Ry. Co. vs. Illinois* (1886), the court struck down another Illinois law that prohibited long-haul and short-haul contract clauses as it began to realize the mishmash of state laws were hampering the development of an effective and profitable railroad (Kutler, 1984) (Kutler 1984). In response, Congress created the Interstate Commerce Commission in 1887 to regulate railroads under the auspices of the Constitution's commerce clause.

The Interstate Commerce Commission (ICC) was the first independent regulatory agency established in the United States. Over time, the ICC was granted increasingly broad authority over U.S. railroads, including authority over the rates charged by railroads; ensuring that no discrimination in rates and services occurred between persons, localities, or traffic; ensuring railroads did not charge higher rates for a short-distance haul relative to a long-distance haul (assuming the haul was over the same line and in the same direction);

and ensuring railroads did not pool revenue or freight. Railroads were required to file rates with the ICC, publicize rates, and adhere to published rates (Marquette Law Article). By 1910, the ICC could unilaterally impose civil and criminal penalties for discrimination and violations of published rates, whereas previously a court had to uphold such a ruling. The Hepburn Act (1913) gave the ICC jurisdiction over express, sleeping car, steamship companies, and regulatory authority over oil pipelines. The ICC was also given the ability to establish maximum allowable tariffs (or rates) (Marquette, 1164). Many of these regulatory functions would be extended to regulation of the trucking industry later in the 20<sup>th</sup> Century.

State and federal governments also grappled with social regulation as well. In the late 1800s, black passengers were routinely refused services by passenger rail operations, particularly in the South. Although Congress ratified the Fourteenth Amendment to the U.S. Constitution to guarantee equal protection under the law and subsequently passed the Civil Rights Act of 1875 to prevent discrimination, the Supreme Court ruled that the provisions only applied to state action, and not the action of private entities (see *Civil Rights Cases* (1883)) (Kutler, 1984). Over time, as segregation became less acceptable, the court modified its stance. In *Henderson v. United States* (1950), the U.S. Supreme Court abolished segregation in railroad dining cars, not because it was ready to abandon the “separate but equal” doctrine, but because the railroad had clearly failed to provide black passengers with the same level of service as white passengers. The Court did not entirely change its view on whether Congress had the authority to prohibit discrimination by private enterprises providing public accommodations until after the passage of the Civil Rights Act in 1964. In a subsequent decision, *Heart of Atlanta Motel, Inc. v. United States* (1964), the Court ruled against a hotel that refused to serve black patrons. The court ruled that a business serving the public was required to allow all clients to purchase rooms regardless of ethnicity. This decision further clarified Congress’ constitutional authority to prohibit discrimination by private businesses serving the public (Kutler 1984).

Labor issues were another key component of social regulation for railroads. After the Great Railroad Strike of 1877 required intervention by federal troops, Congress passed the Arbitration Act of 1888, which allowed for the creation of arbitration panels that could investigate labor disputes and render non-binding decisions. Given that the panels lacked the power to issue binding decisions, the law had little teeth. As with the previous major strike, federal troop intervention was necessary to end the Pullman Strike in 1894. Congress did pass effective legislation until the Newlands Act of 1913, which created a Board of Medication. In 1916, the Adamson Act established an eight-hour workday as well as overtime rules, partly because of concern over a potential rail strike. Perhaps most consequential was the Railway Labor Act (1926), which is the oldest federal collective bargaining legislation still in effect. The act provided five major functions. It: 1) prevented interruption of rail service; 2) allowed employees to organize unions; 3) provided complete independence of organizations (for management and labor); 4) assisted in prompt settlement of pay disputes or disputes over working conditions; and 5) assisted in achieving prompt settlements for disputes and grievances resulting from different interpretations or applications of previous agreements (SMART Union 2013).

Another aspect of social regulation pertains to safety. As the country’s railroad network expanded, crashes, injuries, and fatalities became an increasingly significant problem. According to the Federal Railroad Administration, U.S. railroads ranked second behind coal mines as the industry with the most on-the-job fatalities during the 1880s. In particular, many accidents involved couplers and rail car brakes. The Railroad Safety Appliance Act of 1893 required automatic couplers and airbrakes on all rail cars engaged in interstate commerce, but the law effectively applied to all rail cars. The Southern Railway Company sued the U.S. government, claiming that the requirements should not apply to cars engaged solely in intrastate commerce. In *Southern Railway Co. v. United States* (1911), the Supreme Court ruled that the Commerce Clause allows Congress to regulate not only interstate rail traffic, but intrastate rail traffic in this instance because intrastate

rail cars not equipped with automatic couplers and airbrakes pose a danger to those engaged in interstate commerce. In addition to the Hepburn Act's extension of the ICC's regulatory authority over railroad rates, it also gave the ICC authority to take action that would improve efficiency and enhance safety (Teddy Roosevelt Center 2018).

All of these legal developments pertaining to social and economic challenges created the regulatory framework that would later include the trucking industry. In many cases, the legal framework developed to regulate railroads was also used to regulate the trucking industry, which emerged a few decades later. As with railroads, there were social and economic regulations applied to interstate trucking industry commerce that were largely overseen by the ICC. Authority for these regulations was largely justified by the Constitution's Commerce Clause. However, the federal government did not always act particularly swift manner. Consequently, regulation of the trucking industry in many cases started with the states.

There are two broad types of regulation: social regulation, related to safety practices, environmental issues, and other non-monetary issues that arise; and economic regulation, which pertains to the logistical and financial

#### **4.2 Early Trucking Regulation**

In absence of early federal regulation of trucking industry activities, there was no federal regulation of interstate trucking to supersede state regulation via the Commerce Clause. Additionally, states still have the ability to regulate intrastate commerce, although the scope of allowable state-level regulation would change over time. The first state to enact intrastate trucking regulations was Pennsylvania in 1914. By 1925, 35 states regulated the trucking industry (Robyn 1987). The railroad industry, having just been nationalized as part of the World War I effort, returned to private-sector control and quickly discovered trucking companies had become formidable competitors. In response, owners and managers of railroad companies intensively lobbied state legislatures to ensure the trucking industry was not exempt from safety and economic regulations (Robyn 1987).

As a result, the federal government gradually took a greater interest in trucking industry regulation, particularly after the economy collapsed in the late 1920s. During the Great Depression, the Roosevelt administration grew concerned that too much competition would create turmoil in trucking markets. In response, Congress passed the 1935 Motor Carrier Act, which gave the ICC broad regulatory authority over market entry, shipping rates, labor practices, safety regulations, and the issuance of trucking-related securities (Robyn 1987). The law's primary objective was to shore up the industry's stability and enact appropriate social and economic regulations to prevent the recurrence of some of the negative social and economic impacts accompanied development of the railroad industry. The Motor Carrier Act forged stability by addressing competition issues among motor carriers, disputes between shippers and the public, and providing a mechanism to resolve labor disputes (Belzer 2000). Nevertheless, the act also produced a number of systemic inefficiencies, which created logistical challenges for carriers and increased costs.

The regulatory framework essentially created three types of motor carriers — common carriers, contract carriers, and private carriers. Prior to deregulation of the trucking industry, common carriers were trucking companies that offered general shipping services to the public, shipped goods according to rates set by ICC-sanctioned rate bureaus, published those rates publicly, and were required to accept any shipment along routes on which they possessed operating authority (Belzer 2000, 25). Common carriers were also held liable for any goods they hauled. Contract carriers were different in several ways. First, while they filed rates with the ICC, they were not required to post rates publicly. Second, contract carriers governed businesses with contracts between themselves and the private shipper, meaning that shipping rates could vary from load to load. Third, contract carriers were generally not liable for damaged freight (Belzer 2000,

61). Unlike common carriers, contract carriers did not have to publish rates, but their rates were restricted. The ICC placed a floor on contract carrier rates and limited the number of shippers that a contract carrier could service (Robyn 1987). Private carriers were entities hauling goods they manufactured or sold directly to a client without involving a third-party shipper. Unlike common carriers and contract carriers, private carriers were exempt from most industry regulations (Robyn 1987). One significant advantage for common carriers was that they were legally able to haul less-than-truckload shipments, where a truck would haul a partial load; other firms primarily engaged in truckload shipments, which utilized the entire trailer. Due to competition from railroads, truckload shipments were less profitable than less-than-truckload shipments (Robyn 1987).

For much of the twentieth century, common carriers and contract carriers had to obtain operating authority certificates to lawfully haul freight on particular routes. ICC regulators restricted issuance of operating authority certificates, but they could be transmitted from company to company via sale. Only trucks possessing such certificates were allowed to operate on certain routes, and given the restrictions placed on those certificates they became valuable company assets (Robyn 1987). When the Motor Carrier Safety Act was enacted in 1935, the ICC required companies to submit documentation of established routes. Citing public convenience and necessity, many of those companies had existing routes grandfathered and certified, with issuance of further certificates limited (Politsch 1999). In many cases, companies lacked sufficient operating authority to take cargo all the way from its origin to its destination — the authorized network of routes was incomplete, required circuitous routes, or prohibited two-way travel. Companies often had to practice interlining — the transfer of cargo from one carrier to another — to complete the transport of goods to their final destination. What resulted from ICC operating authority issuance practices was a very inefficient system (Robyn 1987).

This regulatory framework created significant barriers to market entry, gave shippers limited choices, forced abundant interlining, and inflated costs due to the creation of a legacy system in which only a few carriers had the requisite operating authority. Rate bureaus could easily engage in price-fixing — the ICC rarely rejected any rates filed by industry. Increasingly, however, the regulations applied to a smaller and smaller percentage of the industry. By the late 1970s about 60 percent of the industry consisted of private carriers or carriers hauling exempted commodities, meaning just over half of the industry was not required to adhere to many of the specified regulations of the time.

### **4.3 Transitioning Toward Deregulation: Railroads and Airlines**

This model of federal regulation was applied to the trucking industry until the late 1970s. The regulatory framework was similar to that of railroads and airlines (e.g., government control over market entry, the ability to set rates, designation of approved routes). Similar to trucking companies, airlines faced constraints on flight paths, requiring individuals in many cases to take several connecting flights in order to travel across the country. Just as the ICC regulated railroads and motor carriers, the Civil Aeronautics Board (CAB) regulated the airline industry. Yet, the industries were different. In the trucking industry, room for potential route variations was much greater without it facing the limitations imposed by rail tracks or airport infrastructure. Another difference is the public mostly owns that highway infrastructure. Railroad infrastructure is privately owned, and the airport system is largely government owned while private contractors often operate and maintain infrastructure. The development of the Interstate system increased the profitability of trucking industry operations. The system is funded at much higher levels than any federal assistance programs for airlines or railroads. In spite of these differences, all three industries were largely deregulated beginning in the mid-to-late 1970s. Rail and airline deregulation came first, although efforts overlapped in many ways.

The first mode to move toward deregulation was the rail industry. In the early 1970s, many railroads providing intercity passenger service began to fail, most notable Penn Central. Congress created Amtrak under the Rail Passenger Service Act (1970) (Amtrak 2012) to preserve passenger rail service. However, the law did not address freight services, which were facing similar financial challenges. Regulation concerning maintenance deferment, along with other regulations, made it difficult for railroad companies to operate as efficient, profitable firms. The Railroad Revitalization and Regulatory Reform Act (1976) eased regulations pertaining to line abandonment, rates, and mergers (Slack 2017). Later, the Staggers Rail Act (1980) introduced greater pricing freedom, streamlined merger timetables, expedited line abandonment, contained provisions for multi-modal ownership, and allowed confidential contracts between railroads and shippers.

Railroad deregulation was a major turning point for the industry. According to the Federal Railroad Administration, the act was a success. As railroad market share increased, profits went up. Railroads spent \$511 billion in capital improvements and maintenance, replacing poorly maintained infrastructure and reducing train crash rates by 65 percent (Palley 2011) between 1981 and 2009. At the same time, railroads abandoned more than 100,000 miles of track that was no longer profitable. It also went through significant consolidation, as the number of Class I railroads — defined by the Surface Transportation Board as having more than \$250 million in operating revenues or more in 1991 dollars — shrank from 56 to 7 by 2015 (excluding Amtrak) (Slack 2017; AAR 2017).

Around the same time, airline deregulation was also enacted. Congress passed the Airline Deregulation Act of 1978, which phased out CAB oversight of domestic airline services, eliminated rate setting, and rolled back regulation of market entry and exit as well as route approval. Consequently, airlines were able to discontinue serving markets that were unprofitable, at least to an extent (Martin 2017). Legislators also enacted the Essential Air Service Program to ensure communities served prior to deregulation by certified carriers were still able to receive a minimum level of air service. Still, deregulation allowed airlines greater flexibility to create a flight network that would optimize resources. It also allowed airlines to issue competitive fares, which had historically been set by government agencies. The change led to the rise of low-cost carriers such as Southwest Airlines. However, many other airlines were unprepared for the changes, and a number of airlines went bankrupt throughout the 1980s and 1990s. Even large international carriers such as Pan Am and Trans World Airlines (TWA) eventually succumbed to economic pressures. As of October 2017, there were only 11 major passenger airlines, three large regional passenger airlines, and four major freight airlines (Bureau of Transportation Statistics).<sup>1</sup> However, deregulation of the airline industry lowered the cost of air travel. Today more people utilize air travel than in previous generations, and those who do fly do so more often (Unnikrishnan 2012).

#### **4.4 Deregulation of the Trucking Industry**

Movement toward economic deregulation of the trucking industry began in the mid-to-late 1970s, when Presidents Ford and Carter began appointing advocates of deregulation to the ICC. Congress was initially reluctant to support deregulation, because both worker and industry groups — in particular, the Teamsters and the American Trucking Association — both opposed the reforms. However, shippers and consumer advocates were effective in pushing for reforms. The coalition to deregulate also had powerful allies in Sens. Howard Cannon (D-NV) and Ted Kennedy (D-MA), who along with President Carter helped secure support in Congress (Robyn 1987, 26-56). The Motor Carrier Act of 1980 made a number of key rule

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<sup>1</sup> The USDOT defines major airlines as any airline whose operating revenue exceeds \$1 billion.

changes that would upend the industry. Belzer (2000, 64-65) noted several of the major changes in the legislation:

- Carriers entering the interstate trucking market only needed to meet a “useful public purpose” standard as opposed to a “public convenience and necessity” standard to receive operating authority. Carriers were still required to demonstrate they were capable of providing services they planned to offer and furnish proof of insurance coverage.
- Regulations eliminated most interlining, as circuitous routes or incomplete routes were abolished. Companies could then take the most direct route available assuming the roadway size and weight limits were observed. Companies gained blanket round-trip authority, eliminating narrow territorial eliminations previously enacted.
- Carriers could vary rates within a specified range of those filed with the ICC. The rule relieved common carriers of legal liability for the freight’s value, paving the way for released value rates.
- Rate bureau authority was significantly reduced. Single-line rates (i.e., the rate for shipping via a single carrier) were eliminated as of January 1984. It also eliminated antitrust immunity for carriers in instances where shipments required more than two carriers. Previously, the rate bureau had allowed them to share liability for shipments as well as revenue. The practical effect of this was sharply reduced rates for large shippers who could ship goods in bulk, while substantially increasing the shipping costs to smaller shippers.
- The restriction that limited the number of clients contract carriers could serve was eliminated. Carriers were allowed to carry both common authority and contract authority. Hauling rights were expanded for private carriers as well.

The Motor Carrier Act (1980) effectively eliminated the role of rate bureaus in most instances, relaxed interstate operating authority requirements, drastically reduced the oversight role of the ICC, and required government policy analysis of any major regulatory reform (Robyn 1987; Belzer 2000). There were still some filing and reporting requirements that carriers had to fulfill throughout the 1980s and early 1990s. During this period, common carriers still had several regulatory obligations to meet: obtain certification, provide proof of insurance, file tariffs, and file operational and financial reports (Belzer 2000, 65). Furthermore, there was still substantial state regulation of intrastate trucking.

#### **4.5 Pros and Cons of Federal Deregulation of the Trucking Industry**

Deregulation of the trucking industry greatly reduced costs for shippers and consumers. Prices for truckload shipments fell 25 percent from 1977 to 1982, and 12 percent for less-than-truckload shipments (Owen 1988; FTC 2007). Deregulation reduced the percentage of empty miles by facilitating more cross-hauling because of deregulation of route-based operating authority. It also allowed greater competition in the truckload sector; less-than-truckload sector is a more complicated picture (FTC). Deregulation gave shippers more options, which often had to contract with private shippers because of the expense associated with common carriers prior to deregulation. Productivity increased, and employment opportunities generally expanded (Belzer 2000, 92).

The big losers of deregulation were truck drivers. Real wages for truck drivers declined 44 percent between 1977 and 1987, as unionization rates plummeted (Belzer 2000, 8). Companies that had made substantial investments in expensive operating authority (which cumulatively cost \$3-4 billion by 1980) saw valuable assets become worthless overnight (Belzer 2000; Snow and Sobotka 1977). For several years, there were large industry shocks. Large waves of bankruptcy throughout the 1980s occurred because of intense competition, a move away from union drivers, and changing logistics practices (Belzer 2000). Wage devaluation also impacted the caliber of drivers and the physical fitness of those on the road. Drivers were

now working longer hours to replace lost wages, which translated into higher rates of driver fatigue — a profound safety issue.

#### **4.6 Federal Turn to Safety Regulation**

To address concerns over driver quality and safety, lawmakers and federal agencies decided to increase regulation of certain issues related to safety, even as economic deregulation went into full effect. Previously, the Highway Safety Act of 1966 transferred safety regulation from commerce and the ICC to the newly created USDOT. The move facilitated greater federal involvement in safety issues in later years. The Surface Transportation Act (1982) raised gas taxes and established size and weight limits on U.S. Interstate and Highway routes. It also created the Motor Carrier Safety Assistance Program (MCSAP), which provides financial resources to state law enforcement agencies responsible for enforcing state and federal trucking laws and regulations (Belzer 2000). To address the driver fitness concerns raised by safety advocates, Congress also passed two Motor Carrier Safety Acts in 1984 and 1986. The 1984 legislation required states to comply with all federal safety laws and the 1986 version required that all commercial drivers be issued a CDL by 1992. Additionally, the Motor Carrier Act of 1991 required states to enter interjurisdictional fuel tax (IFTA) and registration (IRP) agreements to apportion fuel taxes and registration fees based on miles logged in each jurisdiction. After the ICC was disbanded, the Motor Carrier Safety Improvement Act of 1999 created FMCSA, which now oversees federal regulation of motor carriers. FMCSA also administers several grant programs designed to help states implement state and federal safety regulations. These include the Innovative Technology Development (ITD) grant (formerly Commercial Vehicle Information Systems and Networks, or CVISN), the Commercial Driver's License Program Implementation grant, MCSAP, and Safety Data Improvement Program (SaDIP) grant, among others.

#### **4.7 Federal Preemption of Intrastate Trucking Regulation**

In the early 1990s, the regulatory landscape shifted again, effectively eliminating most of the remaining economic regulations at the state and federal levels. The change was precipitated by a legal dispute between FedEx and UPS because the latter was classified as a motor carrier subject to ICC regulation, whereas FedEx was not. FedEx was originally an intermodal air taxi and air express carrier that used both trucks and small planes, and as such was exempt from intrastate regulations under California law. Because UPS was an intrastate motor carrier, it had to have rate changes approved by the California Public Utility Commission. Conversely, FedEx could change its intrastate rates as it pleased, whereas UPS needed Commission approval. UPS felt this gave FedEx an unfair advantage and filed suit. Given the legal framework, however, the courts initially sided with FedEx.

Given the stature of both companies, the dispute quickly came to the attention of Congress. Wary of the challenges created by the patchwork regulatory environments that persisted, it passed legislation designed to end such disputes. The legislation also addressed some remaining regulatory issues in the rail and airline industries. The first legislation was the Federal Aviation Administration Authorization Act of 1994, where the trucking issues were addressed in a rider; the Trucking Industry Regulatory Reform Act of 1994; and the ICC Termination Act of 1995. Collectively, the legislation eliminated most federal state oversight of economic regulations. The ICC closed its doors on January 1, 1996, with its remaining functions transferred to a newly created Surface Transportation Board (STB), which reviews mergers/ acquisitions, rail line abandonment and corporate filings. Jurisdiction for rail safety was transferred to the Federal Railroad Administration. Most significantly, the newly created Federal Motor Carrier Safety Administration (FMCSA) would handle safety regulations for motor carriers. The legislation also eliminated most state oversight by pre-empting state regulation of the trucking industry.

Preemption of state regulation of intrastate trucking was relatively broad, but came with important exceptions and caveats (see 49 U.S.C. § 14501 (2015)):

- States are not allowed to enforce a law, regulation, or provision related to the prices, routes, or services of any motor carrier (except direct air carriers).
- Preemption does not apply to motor vehicles, size and weight limitations, hazardous materials regulation, or minimum amounts of insurance coverage.
- Preemption does not apply to transportation of household goods.
- Preemption does not preempt state’s ability to enforce laws, regulations, and provisions related to tow truck operations performed without the prior consent of the motor vehicle owner/operator (not amended to its current form until 2015).
- Preemption does not apply to intrastate commuter bus operations, or to intrastate bus transportation of any kind in Hawaii.

These exceptions are important to note, particularly in context of the Kentucky regulations of intrastate for-hire carriers as well as household goods carriers. The Kentucky For-Hire authority as currently constituted is an insurance coverage requirement, and household goods are explicitly exempted from preemption. Nevertheless, there has been adjudication of cases in recent years in which state and federal courts attempted to strike a balance between questions of federal versus state regulatory authority, and whether state rules place undue burdens on interstate commerce. What follows is a synopsis of those cases that provides case facts, outcomes, and the implications for states looking to remain compliant with federal law and jurisprudence pertaining to intrastate trucking.

#### **4.8 Towing Ordinance and Regulation Cases**

The text of in 49 U.S.C. § 14501 (c)(2)(C) states that preemption “does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the regulation of tow truck operations performed without the prior consent or authorization of the owner or operator of the motor vehicle.” However, this language was not inserted into the code until passage of the FAST Act in 2015. Prior to its passage, the courts heard several cases about the doctrine of preemption and towing companies.

Harris City. Wrecker Owners for Equal Opportunity v. City of Houston, 943 F. Supp. 711 (S.D. Tex. 1996)

In this case, a wrecking association argued that a Houston city ordinance was preempted by the Federal Aviation Administration Authorization Act and ICC Termination Act, codified as part of the Interstate Commerce Act. Houston was issuing credentials for wreckers known as E-Tags. Towers without E-Tags could not engage in non-consensual towing from the scene of a crash or an arrest. The program had several criteria: (1) applicant’s moral character and criminal history; (2) ability to provide emergency towing in the needed service area; (3) applicant’s past experience; (4) applicant ability to provide service at all hours and during adverse weather; (5) special qualifications to serve the public; (6) past utilization of E-tag program; (7) applicant’s ability to purchase truck, equipment, and sustain operations; (8) payment of property taxes and other local taxes; (9) other factors.

The court determined that the overarching intent of Congress was to preempt local and state regulation of towing companies, and that the specific passage in 49 U.S.C. § 14501 (c)(2)(C) was intended to regulate maximum prices charged for non-consensual towing, but not to allow other aspects of tow truck operations to be reregulated. Although Houston officials argued this was not an economic, but a safety regulation, the court found there was only a passing reference to safety-related concerns. The U.S. District Court in Texas found the city ordinance was preempted by federal law. However, the court said the city had options to



adopt a rotation system within geographical service areas the limits the number of emergency wreckers than can arrive at the scene of a crash or arrest. In other words, there are ways to address safety concerns without controlling market participation based on concerns unrelated to safety.

Cardinal Towing & Auto Repair, Inc. v. City of Bedford, 180 F.3d 686 (5th Cir. 1999)

Bedford, Texas, police officers had historically used a rotation system to call tow trucks to remove vehicles on public streets that were either abandoned or disabled due to crashes. Local towing companies who met certain requirements were placed on a list, and the job would be assigned based on whose turn it was. The city decided to abandon the system and move to a contract with a single company that would provide all requested tows by law enforcement for abandoned or crashed vehicles. Requested tows by private property owners or vehicle owners who wanted a specific towing company were unaffected. Cardinal Towing & Auto Repair filed a bid, and in its bid stated it was minority owned and was making plans to acquire a Class 8 wrecker, the latter of which was required in the bid solicitation. Cardinal had access to a Class 8 record owned by another company but did not have ownership of it. The contract was awarded to B&B Wrecker Services. After the contract was awarded, Cardinal filed suit, asking that the contract be struck down, arguing it should be preempted. The owner also sued for intentional racial discrimination.

The city filed for summary judgement against Cardinal, as it did not know the race of any owners soliciting the bid at the time of the solicitation. It also argued the contract was not regulatory but was designed merely to procure services the city required. The U.S. District Court ruled in favor of the city, and Cardinal appealed. The U.S. 5<sup>th</sup> Circuit upheld the district court judgment. The appellate court said the district court properly dismissed the racial discrimination claims because Cardinal's bid did not meet the specification set forth by the city, and the city was able to demonstrate credibly it was unaware of the race of any applicant. The city also argued that the ordinance and contract specifications were only designed to procure services, and not regulate the conduct of companies. The city contended that its coincidental market participation does not constitute a law, regulation, or provision, and the district and appellate courts both agreed. The judgment was upheld in both respects.

Dan's City Used Cars, Inc. v. Pelkey, 568 U.S. 1223, 133 S. Ct. 1521 (2013)

Dan's City Used Car, a towing company, towed an abandoned vehicle owned by Robert Pelkey, who was bedridden with a serious medical condition. Pelkey filed suit under New Hampshire law claiming that his car was taken into custody without his knowledge, was auctioned despite Pelkey's communication stating he wanted to arrange for the car to be returned to him, and that Pelkey was not compensated for the sale of his vehicle. Dan's City Used Cars falsely told Pelkey it was auctioned, and later sold it to a third party without compensating Pelkey (Oyez). Dan's City Used Cars relied on New Hampshire laws pertaining to the disposal of vehicles due to nonpayment of towing and storage fees. Pelkey claimed the towing company did not properly comply with those laws, and that the laws were preempted by 49 U.S.C. § 14501. However, the U.S. Supreme Court upheld the New Hampshire Supreme Court's ruling that the activities in question (selling or auctioning a car due to refusal to pay towing and storage costs) are not sufficiently connected to the transportation of the vehicles for preemption to apply.

#### **4.9 Intrastate Hauling Fees**

Am. Trucking Ass'ns v. Mich. PSC, 545 U.S. 429, 125 S. Ct. 2419 (2005)

Michigan assessed a \$100 annual fee on each truck engaged in intrastate hauling. The ATA, along with USF Holland, contended the annual fee was a flat fee and discriminated against interstate carriers who also purchased intrastate authority. The fee imposed an unconstitutional burden upon interstate commerce, they

claimed, because interstate carriers had to pay this fee in addition to the charges levied against their interstate operations (e.g. IFTA, IRP, and particularly UCR). However, the Supreme Court ruled the policy was constitutional, underscoring four major points — the fee was exclusive to interstate activities, did not tax interstate truck entry, did not tax interstate truck entry, did not tax transactions spanning multiple states, and applied equitably to all carriers.

Justice Stephen Breyer, who worked previously as chief counsel to the Senate Judiciary Committee and was instrumental in passage of the airline deregulation legislation, wrote that the fee was an unobjectionable use of state police power, and contained little evidence the fee imposed any significant practical burden on interstate trade. Because the fee was a per-truck assessment and not a mileage fee, the regulation seemed fair given that its purpose was to defray the cost of regulating vehicle size and weight, administering insurance requirements, and applying safety standards. The fee did not fail the “internal consistency” test. Any interstate firm with local outlets should expect to pay local fees uniformly assessed on all those engaging in local business, whether interstate or intrastate.

Gov't Suppliers Consolidating Servs., Inc. v. Bayh, 975 F.2d 1267 (7th Cir. 1992)

Garbage brokers were hauling trash from Pennsylvania, New Jersey, and New York to landfills in Indiana. In response, Indiana passed statutes imposing restrictions on disposing out-of-state waste in Indiana. Out-of-state garbage brokers opposed several of the measures, including a backhaul ban, vehicle registration and stickering requirements, disposal fees, and a surety bond requirement for some operators. The U.S. District Court for the Southern District of Indiana upheld most of the law. In particular, it upheld the backhaul ban, the registration and sticker requirements, and disposal fees. It struck down the surety bond requirement, saying it unnecessarily burdened interstate commerce. However, the 7<sup>th</sup> Circuit Court of Appeals held that all regulations were an unconstitutional burden on interstate commerce.

In advancing its opinion on the backhaul ban, as well as registration and stickering, the court analyzed two alternative legal analytical perspectives related to the Commerce Clause: the critical consideration test and the Pike test. The critical consideration test instructs the jurist that statutes discriminating against interstate commerce are unconstitutional unless it can be demonstrated that the statute is in effect for a valid reason unrelated to interstate commerce. The Pike test holds that any statute that is facially neutral and has only indirect or incidental effects on interstate commerce can be upheld as long as the burdens are not excessive relative to the demonstrated benefits. The Pike test constitutes a lower level of scrutiny than the critical consideration test. The district court applied the lower level of scrutiny, but the circuit court determined this was an error — the crucial consideration test applied because the provisions of the statutes discriminated against interstate commerce. In this case, it was because Indiana haulers were not subjected to the same practical effects of the legislation, as most intrastate-generated waste was hauled in garbage trucks and not semi-trucks.

There was some debate over the application of the requirements to trucks hauling foodstuffs or edible goods. Indiana said the cross-hauling ban was critical to protect the public from carriers hauling garbage that could potentially contaminate food. However, the court found little merit in the argument, as the cross-haul ban lasted only 14 days after the last waste load was hauled. However, the stickering and registration provision did not provide a mechanism for tracking motor carrier waste hauling, rendering no effective enforcement mechanism. The registration fees were primarily assessed on out-of-state haulers, which in the court’s view was an undue burden on interstate commerce. Tipping fees and surety bonds were struck down because they were imposed exclusively on out-of-state carriers.

#### **4.10 Intrastate Intermodal Transportation**

Texas v. United States, 770 F.2d 452 (5th Cir. 1985)

The ICC decided to exempt interstate trailer-on-flatcar (TOFC) and container-on-flatcar (COFC) activity from regulation. In response, several intermodal railroads petitioned the Railroad Commission of Texas to exempt similar intrastate activity from regulation. The commission agreed to exempt the railroad portion of transport from exemption, but not the highway portion of transport. So intrastate railroads proceeded to petition the ICC for it to expand the exemption to intrastate trucking as well. The ICC sided with the intrastate, intermodal carriers over the Railroad Commission of Texas. The 5<sup>th</sup> Circuit Court of Appeals reversed the decision, holding that intrastate transportation — even if intermodal in nature — was subject to state regulation. This decision predated the doctrine of preemption, and so the outcome would likely be different if heard today. Indeed, the ICC no longer exists, and most state economic regulation of transportation has ceased.

#### **4.11 Intrastate Route Regulation**

Am. Trucking Ass'ns v. Whitman, 136 F. Supp. 2d 343 (D.N.J. 2001)

In 1999, the New Jersey Department of Transportation (NJDOT) issued regulations that required large commercial trucks passing through the state (i.e., those hauling a load that did not originate or terminate in New Jersey) to limit travel to roads on the national highway network, New Jersey Turnpike, and Atlantic City Expressway. Exceptions were made for drivers requiring access to food, fuel, repairs or rest areas. NJDOT officials admitted that the regulations might negatively impact carriers and shippers not doing business in the state, and that it was conceivable the regulations could affect travel times. One concrete example is the round trip from Philadelphia to New York, where the new regulations increased the trip length and time. Toll increases were significant for that particular trip as well. Several other consultants and experts offered similar examples. There was a small, but statistically insignificant reduction of crashes, by about 9-12 per year.

The U.S. District Court of New Jersey ruled that the regulations impermissibly discriminated against interstate commerce and therefore violated the Commerce Clause. Courts have been somewhat divided about which legal and analytical frameworks should be used when evaluating highway safety regulations to determine whether there is a compelling state or local interest that validates a statute or regulation. However, deference to safety concerns cannot trump interstate commerce concerns, particularly when laws and regulations discriminate facially or in effect against interstate commerce. The 3<sup>rd</sup> U.S. Circuit Court of Appeals affirmed the U.S. District Court judgement.

#### **4.12 Intrastate Household Goods**

Ky. Household Goods Carriers Ass'n v. FTC, 199 F. App'x 410 (6th Cir. 2006)

In 2003, the Kentucky Transportation Cabinet cited Wildcat Moving, LLC, for failure to obtain a Household Goods moving certificate. To obtain this certificate, a moving service must submit an application along with proposed tariffs or rates for approval to the Kentucky Household Goods Carriers Association. Wildcat Moving's application was initially rejected because a complaint had been filed against the firm for commencing operations without the appropriate certificate. KYTC maintained Wildcat Moving was given the opportunity to restart the application process. However, Wildcat Moving filed suit in response, asserting that the requirement to publish and agree to a standard rate constitutes horizontal price fixing in the Household Goods industry — a violation of Section 5 of the Federal Trade Commission Act.

An administrative law judge initially heard the case and sided with Wildcat Moving. The FTC asserted that members of the association were engaged in horizontal price fixing, and that antitrust liability exemption under state action doctrine did not apply because neither KYTC nor any other state agency practiced any meaningful oversight of the association's ratemaking activities. Citing the Supreme Court's decision in *Federal Trade Comm'n v. Ticor Title Insurance Co.*, the agency noted that staffing and jurisdiction are not enough to establish active state supervision if the state is in effect deferring to private price-fixing arrangements. According to the FTC, the state had not conducted hearings concerning household goods tariffs since the late 1950s or early 1960s, shortly after the tariff was initially established. The state was not enforcing its own requirement that carriers give public notice of proposed rate increases. KYTC did not solicit input from consumer groups or issue written decisions explaining tariff increases.

The U.S. 6<sup>th</sup> Circuit Court of Appeals upheld the FTC's findings. It noted that KYTC did not participate in the trial before the administrative law judge, and Kentucky's Attorney General said the FTC decision is consistent and fully supported by state law. In the court's view, the lackluster support for the state's ratemaking role only served to support the FTC's decision. Consequently, Kentucky no longer has a rate-setting bureau for its Household Goods carriers, rate publishing requirements or hearings. However, carriers must still obtain certificates to operate as intrastate Household Goods carriers. This component of state law was not affected, as Household Goods are expressly exempt from preemption under 49 U.S.C. § 14501 (c)(2)(B).

#### **4.13 Conclusion**

Regulation of the trucking industry at the state and federal levels has a long, complex history. When discussing regulation of intrastate trucking policy, it is imperative to understand the federal regulatory context, because it impacts the manner in which states may regulate the motor carrier industry. Although Congress eliminated most federal economic regulation of the trucking industry in the early 1980s, and instituted preemption of significant portions of state economic regulation in the mid-1990s, safety regulations continue to proliferate. Over time there has been a shifting balance between the authority of federal and state regulatory jurisdiction. As the industry became nationalized, Commerce Clause concerns tended to override state prerogatives. However, even after preemption of intrastate regulation there was some restoration of state and local authority to regulate tow truck services. In addition, there has been a move away from state economic regulation generally (at both the state and federal level), allowing private industry greater autonomy. However, safety regulations continue to be a point of emphasis. Additional regulatory requirements, such as the federal rule pertaining to electronic logging devices (ELD), is one such example.

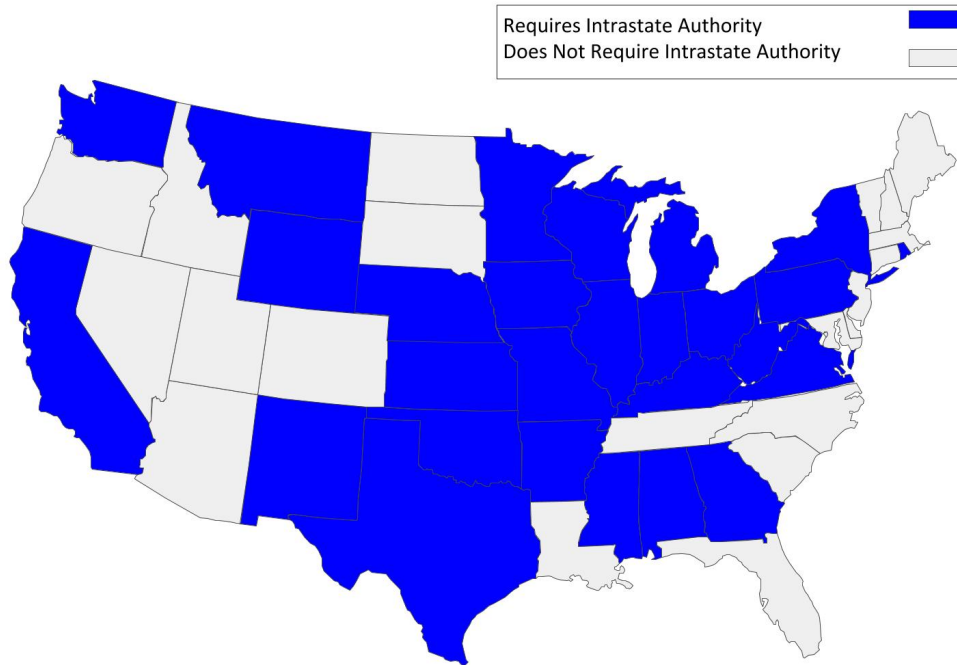
Even though most intrastate regulation has been preempted, states are still allowed to enforce state and local size and weight limitations, hazardous materials regulations, insurance verifications, household goods transportation, and tow truck operations. They also generally have the ability to regulate taxi cabs, intrastate passenger busses, limousines, and TNCs. However, regulations must generally be designed to remedy a social or safety problem. Additionally, it must not facially or incidentally discriminate against interstate commerce. As shown in Chapter 5, several states responding to the survey indicated they still have such laws enacted.

## 5. Survey on Intrastate Operating Authority in the United States

Intrastate operating authority involves commercial motor carrier activities that take place solely within the borders of one state. Individual states impose regulations for intrastate operations, while interstate motor carrier activities are under the purview of the Federal Motor Carrier Safety Association (FMCSA). Thirty states require some form of authority for intrastate commercial vehicle operations (Permit Plus Inc., 2018):

- Alabama
- Arkansas
- California
- Georgia
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Michigan
- Minnesota
- Mississippi
- Missouri
- Montana
- Nebraska
- New Mexico
- New York
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- Rhode Island
- South Carolina
- Tennessee
- Texas
- Virginia
- Washington
- West Virginia
- Wisconsin
- Wyoming

Figure 9 indicates which states currently have some form of intrastate regulation. States with blue shading require intrastate authority; states with grey shading do not require intrastate operating authority.



**Figure 9** States Requiring Intrastate Operating Authority

## 5.1 Kentucky For-Hire Survey Methodology

The Kentucky Transportation Cabinet (KYTC) wanted to gauge the extent of intrastate trucking regulation and identify ways to modify the current commercial motor vehicle regulations for intrastate authority. To that end, KTC researchers conducted a multi-state survey about intrastate operating authority.

KTC researchers first worked with experts on intrastate authority in Kentucky to develop survey questions and a method of survey distribution. Researchers then created a list of multiple-choice and open-ended questions based on topics of interest discussed in the initial Study Advisory Committee (SAC) meeting. Questions included topics such as how state departments of transportation (DOTs) regulate intrastate trucking, movers of household goods, transportation network companies, and general commercial liability insurance. Researchers submitted questions to the SAC team for review and subsequently underwent revisions. A subject matter expert in the Division of Motor Carriers (DMC) provided contact information for intrastate authority administrators in all 50 states, which was used to distribute the survey.

After finalizing the questions, researchers created the survey using Qualtrics survey software, which is used for creating, disseminating, and analyzing survey data. Qualtrics is a very efficient survey product, containing data analysis and reporting features that decrease the amount of time needed to interpret and communicate survey data clients.

There are many advantages to using email surveys as opposed to mailed or paper-based surveys or telephone interviews. Email surveys are more cost-effective since there is no need for paper, printing, live or automated phone calls, or postal service costs. It is also easier for respondents to take the survey because by using the link they can take the survey in a multitude of platforms such as PC, mobile phone, or tablet. Respondents can also take the survey at their convenience (Dillman, Smyth, and Christian, 2014). In addition, the survey can be sent to an unlimited number of people. Researchers can easily send out reminder notices to potential respondents to improve the survey response rate. The anonymity of online surveys may give respondents the freedom to be more honest and creates more objectivity because respondents are not influenced by an interviewer, as they could be in a telephone survey. In addition, online surveys allow for researchers to disseminate and receive responses in a timelier manner. Finally, electronic survey analysis is significantly more efficient than the other survey methods. Researchers are not required to manually compile the results or spend time talking with respondents on the phone. Automated phone surveys are similarly advantageous but are limited in terms of how questions can be posed. However, open-ended questions are virtually impossible, and these questions can be quite valuable in certain survey contexts such as the survey on intrastate operating authority.

Researchers sent the survey links to the email addresses gathered from the DMC agent on Monday, March 26, 2018. Email recipients were asked to complete the surveys by close of business on Monday, April 9, 2018. Researchers chose this week based on survey distribution research that found surveys distributed on Monday have the highest response rate while surveys distributed on Friday have the lowest response rate (Dillman, Smyth, and Christian, 2014). The email to respondents explained that Kentucky is exploring possible changes to its own regulatory policies and is interested in how other states regulate commercial trucking operations. Respondents were asked to complete the survey by the close of business on Monday, April 9, 2018.

On Tuesday, April 3, 2018, researchers sent a reminder email to the states that had not submitted a survey response. Once the survey responses were reviewed by the researchers, they prepared follow-up questions and sent them to states of interest. Those follow-up questions are also included in the analysis below.

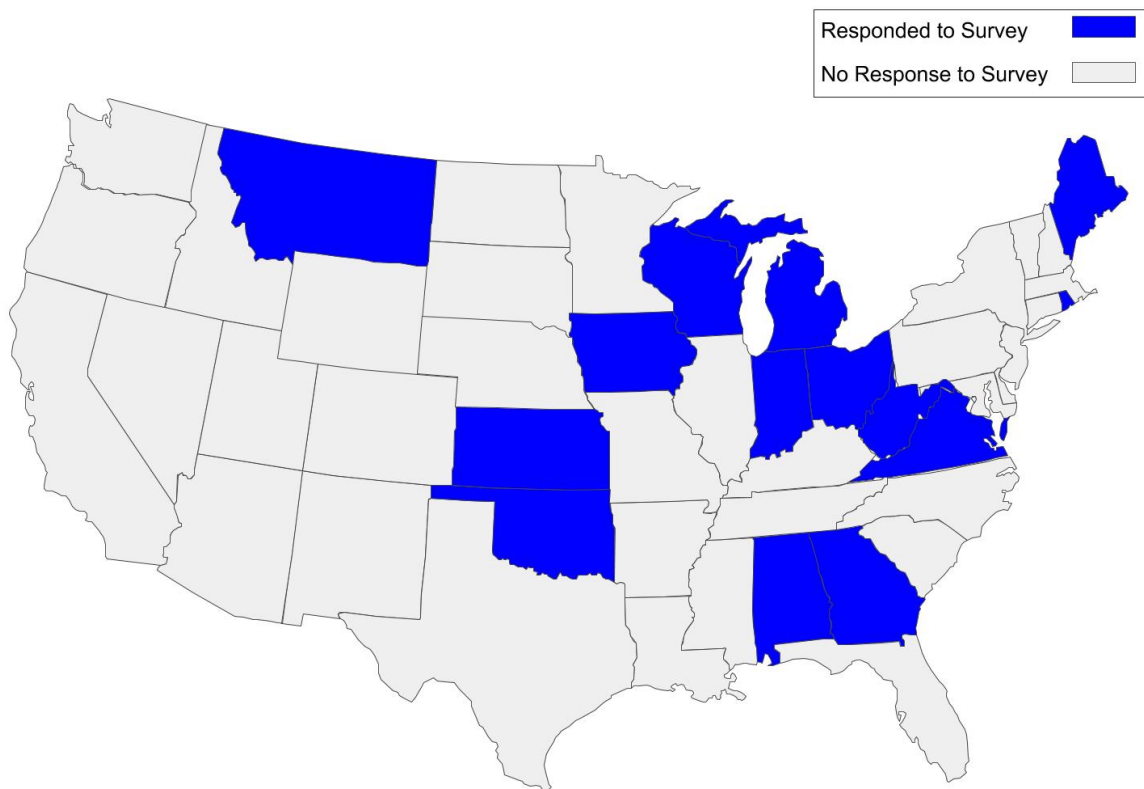
Once the surveys were distributed, some emails were returned as undeliverable. To ensure an adequate response rate, KTC researchers sought help in redistributing the surveys to recipients. The DMC subject-matter expert reviewed the list of returned addresses and sought more up-to-date contact information. The

Excel spreadsheet was updated based on those changes. KTC researchers redistributed the survey following that process. Some survey recipients contracted researchers to provide them with contact information for individuals who were more knowledgeable about the subject matter. Again, the survey was redistributed to the new contacts.

After researchers conducted preliminary data analysis, follow-up questions were sent to specific states related to commercial liability and TNCs as well as additional information on household goods regulations on Friday, June 1, 2018. While this weekday did not coincide with recommendations for survey distribution, researchers wanted to ensure that questions were sent out in the timeliest fashion possible.

## 5.2 Survey Response Rate and State Respondents

Thirteen states responded to the survey (a 26 percent response rate). In Figure 10, the states that responded are shaded blue. They include Ohio, Maine, Rhode Island, Montana, Georgia, Kansas, Michigan, Alabama, Oklahoma, West Virginia, Iowa, Indiana, and Virginia. States shaded grey did not send a response to the survey. In addition, Kentucky submitted follow-up questions to specific states and received responses from Ohio, Virginia, and Maine. Those responses are summarized under the appropriate topics.



**Figure 10** Intrastate Operating Authority Survey Responses

## 5.3 Survey Results

### 5.3.1 Regulated Sectors of Intrastate Motor Carrier Activities

Respondents were asked to indicate the types of commercial motor vehicle activities in their states that are subject to intrastate operating authority statutes. Like Kentucky, most of the responding states regulate intrastate authority. In addition, states regulate many of the same sectors currently regulated in Kentucky. To recap, Kentucky regulates the following sectors:

- Taxicabs
- Limousines
- Disabled persons vehicles
- TNCs
- Household Goods
- Charter bus
- Bus
- U-Drive-It
- Property
- Driveway
- Automobile utility trailer

Among the respondents, Maine is the only state that is completely deregulated. The remaining states regulate at least some part of intrastate motor carrier activities. Table 10 lists the regulated sectors within each state.

Ohio regulates all sectors of intrastate motor carrier activities. Georgia regulates household goods, property, and passenger carriers.

Rhode Island regulates all property carriers for new authority, but only retains "public need" for household goods carrier authority, although there is a proposed bill that would eliminate the public need requirement for this sector. Rhode Island also regulates all intrastate for-hire passenger services. Taxicabs continue to have a "need" component to obtain intrastate authority.

According to Montana's statutes (61-10-154), weight is an important factor in determining whether a vehicle requires intrastate authority. Montana and Oklahoma are the only states which use weight as a criterion. In Montana, a for-hire motor carrier or any private motor carrier used in intrastate commerce is one that "1) has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 10,001 pounds or more; 2) is not a farm vehicle operating solely in [the state]; 3) is designed or used to transport at least 16 passengers, including the driver; 4) is not used to transport passengers for compensation; 5) is designed or used to transport at least nine passengers, including the driver, for compensation, is regulated."

Kansas only regulates passenger carriers. Michigan requires intrastate operating authority for household goods, general commodity carriers, and passenger vehicles. Alabama regulates property carriers, household goods carriers, and passenger carriers. Oklahoma regulates for-hire carriers, private carriers with a gross vehicle weight rating over 26,000 pounds, household goods, passenger services, hazardous materials haulers, and deleterious substance (e.g., salt water) haulers. West Virginia has almost completely deregulated intrastate operations with the exception of taxi and certain limousine services and solid waste movers. Iowa regulates household goods (i.e., moving vans), dairy and nondairy liquids, regular routes (i.e., local bus route), charter busses, and vehicles designed to transport 16 or more passengers, including the driver. Indiana still regulates household goods and passenger carriers. Finally, Virginia has an extensive list of sectors that it continues to regulate, including passenger brokers, TNCs, property carriers, household

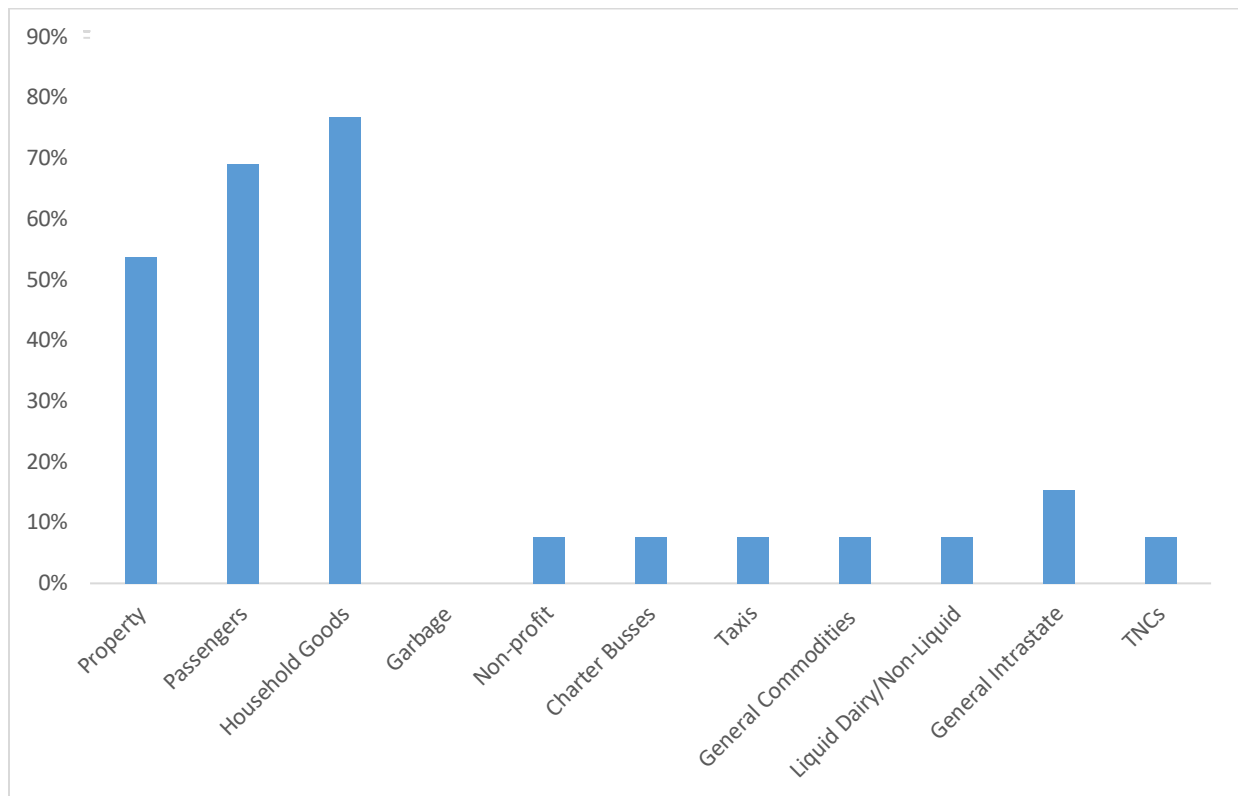


goods carriers, common carriers of passengers on regular and irregular routes, contract passenger carriers, employee haulers, non-emergency medical transportation carriers, non-profit/tax-exempt passenger carriers, sightseeing vehicles, taxicabs and TNCs.

**Table 10** Regulated Sectors in Intrastate Trucking by State

State	Sectors Regulated
Ohio	For-hire intrastate motor carrier operations
Maine	Deregulated
Rhode Island	All property carriers For-hire passenger services Public need for household goods carriers
Georgia	Property Household goods Passenger
Montana	Any for-hire motor carrier or any private motor carrier
Kansas	Passenger carriers
Michigan	Household goods General commodity carriers Passenger vehicles
Alabama	Property Household goods Passenger carriers
Oklahoma	For Hire carriers Private carriers with a GVWR over 26,000 pounds Household goods Passenger services
West Virginia	Taxi and certain limousine services Non-consensual towing Solid Waste
Iowa	Household goods (i.e., moving van), Liquid Dairy and nondairy, Other property (includes tow truck operation) Regular and charter busses Vehicle transporting 16 or more passengers, including the driver.
Indiana	Household goods Passenger carriers
Virginia	Property Carriers Household Goods carriers Common Carriers of Passengers Regular and Irregular Route Contract Passenger carriers Employee Haulers Non-Emergency Medical Transportation carriers Non-Profit/Tax-Exempt passenger carriers Sightseeing, Taxicabs TNCs and TNC brokers

Figure 11 summarizes, for each sector, the percentage of responding states that impose regulations. Because federal law preempts economic regulation in most instances, states identified these sectors as being the most likely to pose public safety challenges. Based on the data, states are most likely to regulate three motor carrier segments: property, passengers, and household goods, with household goods being the most commonly regulated. Seventy-seven percent of the responding states regulate this sector. The next-most-regulated sector is the passenger sector (69 percent), while 54 percent of states regulate the property carrier sector. Three states (23%) did not specify motor carrier sectors, only indicating they regulate general commodities or general intrastate activities. The remaining sectors subject to regulations include non-profit, charter busses, taxis, liquid dairy/non-dairy, and TNCs. One respondent indicated their state regulated each of these sectors.



**Figure 11** Prevalence of Regulated Sectors in Intrastate Authority

### 5.3.2 Statutes Governing Intrastate Authority

Survey respondents were asked to provide any statutes or administrative regulation references that describe intrastate operating authority requirements. Table 11 lists these statutes and contains web links to corresponding statutes and regulations. All states provided a reference for statutes, but some also provided web addresses. When states did not supply an online reference, researchers obtained links independently. Maine is omitted from the table because it is completely deregulated.

**Table 11** State Statutes Governing Intrastate Operating Authority

Ohio	Ohio Administrative Code 4901:2-21 Registration Ohio Administrative Code 4901:2-13 Insurance Ohio Administrative Code 4901:2-19 HHG	<a href="http://codes.ohio.gov/oac/4901:2-21-03">http://codes.ohio.gov/oac/4901:2-21-03</a> <a href="http://codes.ohio.gov/oac/4901:2-13">http://codes.ohio.gov/oac/4901:2-13</a> <a href="http://codes.ohio.gov/oac/4901:2-19-02">http://codes.ohio.gov/oac/4901:2-19-02</a>
Rhode Island	Property carriers: R.I.G.L. Title 39, Chapter 12.  Passenger carriers: R.I.G.L. Title 39, Chapters 13, 14, 14.1 and 14.2 depending on type of carrier (i.e.: jitney, taxicab, limo, TNC).	<a href="https://law.justia.com/codes/rhode-island/2012/title-39/chapter-39-12/">https://law.justia.com/codes/rhode-island/2012/title-39/chapter-39-12/</a>  <a href="http://webserver.rilin.state.ri.us/Statutes/title39/39-13/INDEX.HTM">http://webserver.rilin.state.ri.us/Statutes/title39/39-13/INDEX.HTM</a>  <a href="http://webserver.rilin.state.ri.us/Statutes/title39/39-14/INDEX.HTM">http://webserver.rilin.state.ri.us/Statutes/title39/39-14/INDEX.HTM</a>  <a href="http://webserver.rilin.state.ri.us/Statutes/title39/39-14/39-14-4.1.HTM">http://webserver.rilin.state.ri.us/Statutes/title39/39-14/39-14-4.1.HTM</a>  <a href="http://webserver.rilin.state.ri.us/Statutes/title39/39-14/39-14-4.2.HTM">http://webserver.rilin.state.ri.us/Statutes/title39/39-14/39-14-4.2.HTM</a>
Montana	Montana Code Annotated 2017 Title 61. Motor Vehicles Chapter 10. Size -- Weight -- Load	<a href="https://leg.mt.gov/bills/mca/title_0610/chapter_0100/part_0010/section_0540/0610-0100-0010-0540.html">https://leg.mt.gov/bills/mca/title_0610/chapter_0100/part_0010/section_0540/0610-0100-0010-0540.html</a>

	Part 1. Standards, Permits, and Fees	
Georgia	<p>2010 Georgia Code  Title 40 - Motor Vehicles and Traffic  Chapter 2 - Registration and Licensing of Motor Vehicles  Article 6a - Administration of Federal Unified Carrier  Registration Act of 2005  § 40-2-140</p> <p>2010 Georgia Code  TITLE 46 - Public Utilities and Public Transportation</p>	<p><a href="https://law.justia.com/codes/georgia/2010/title-40/chapter-2/article-6a/40-2-140">https://law.justia.com/codes/georgia/2010/title-40/chapter-2/article-6a/40-2-140</a></p> <p><a href="https://law.justia.com/codes/georgia/2010/title-46/">https://law.justia.com/codes/georgia/2010/title-46/</a></p>
Kansas	Kansas Statutes 66-1,114	<a href="http://www.kslegislature.org/li/b2017_18/statute/066_000_0000_chapter/066_001_0000_article/066_001_0114_section/066_001_0114_k/">http://www.kslegislature.org/li/b2017_18/statute/066_000_0000_chapter/066_001_0000_article/066_001_0114_section/066_001_0114_k/</a>
Michigan	<p>Chapter 475. Motor Carrier Act</p> <p>The Motor Carrier Act</p> <p>Act 254 of 1933</p>	<a href="https://www.legislature.mi.gov/(S(debgq255tfumpbaipxlzkm55))/documents/mcl/pdf/mcl-chapters-475-479.pdf">https://www.legislature.mi.gov/(S(debgq255tfumpbaipxlzkm55))/documents/mcl/pdf/mcl-chapters-475-479.pdf</a>
Alabama	The statutory provisions are found in Title 37, Chapter 3 of the Code of Alabama (37-3-1 thru 37-3-34).	<a href="https://www.lawserver.com/law/state/alabama/al-code/alabama_code_title_37_chapter_3">https://www.lawserver.com/law/state/alabama/al-code/alabama_code_title_37_chapter_3</a>

Oklahoma	Oklahoma Administrative Code Title 165. Corporation Commission Chapter 30. Motor Carriers, Private Carriers and Transportation Network Companies Subchapter 13. Intrastate Household Goods Certificates	<a href="http://okrules.elaws.us/oac/title165_chapter30_subchapter13">http://okrules.elaws.us/oac/title165_chapter30_subchapter13</a>
West Virginia	Title 150 Legislative Rules, Public Service Commission, Series 9 WV Code, Chapter 24A	<a href="https://www.state.wv.us/swmb/Code/150CSR9.pdf">https://www.state.wv.us/swmb/Code/150CSR9.pdf</a>
Iowa	Iowa code 325A Iowa Administrative Code Chapter 529	<a href="https://www.legis.iowa.gov/docs/ico/chapter/325A.pdf">https://www.legis.iowa.gov/docs/ico/chapter/325A.pdf</a>
Indiana	Title 8. Utilities and Transportation Article 2.1. Motor carrier regulation Chapter 24. Intrastate Motor Carrier Safety and Insurance Certification	<a href="https://law.justia.com/codes/indiana/2011/title8/article2-1/chapter24/">https://law.justia.com/codes/indiana/2011/title8/article2-1/chapter24/</a>
Virginia	Code of Virginia 46.2 2000 et seq.-Passenger Carriers 46.2-2100 et seq- Property Carriers.	<a href="https://law.lis.virginia.gov/vacode/title46.2/chapter20/">https://law.lis.virginia.gov/vacode/title46.2/chapter20/</a> <a href="https://law.lis.virginia.gov/vacode/title46.2/chapter21/">https://law.lis.virginia.gov/vacode/title46.2/chapter21/</a>

### 5.3.4 Fees for Intrastate Authority

Based on the survey responses, it remains common practice in the U.S. to require operating authority to conduct intrastate operations. Most the states require both standard fees for the certificates as well as vehicle fees. As discussed in a Chapter 2, Kentucky charges \$250 for every certificate with the exception of property (i.e. Kentucky For-Hire), which is \$25. In addition, all certificate holders pay a \$10 fee for each vehicle operating under the certificate, or authority.

Table 12 provides the required fee in each responding state. In Ohio, for-hire intrastate motor carriers must obtain a certificate of public convenience and necessity before commencing operations. The annual tax is between \$20 and \$30 per vehicle. Household goods carriers pay between \$100 and \$300, which is an annual assessment based on gross revenue.

Rhode Island requires all for-hire intrastate carriers (property and passenger) to obtain an operating certificate. The application fee is \$250, and most certificates carry a \$100 annual renewal fee and \$20 vehicle registration fee. Vehicle registration fees do not apply to interstate motor carriers that pay UCR fees. For a household goods carrier or taxicab company to obtain intrastate authority, it must prove there is a need for the service. All other intrastate carriers must only prove "fit, willing, and able" to obtain the license.

For an intrastate for-hire motor carrier to obtain the Kansas Corporation Commission (KCC) authority, it is required to pay a \$250 application fee with a vehicle fee of \$10. In Michigan, motor carriers must pay a \$100 application fee along with a \$50 renewal fee. In addition, Michigan requires a \$100 annual fee for general commodities decals and \$50 for household goods decals.

Alabama also requires fees for its intrastate operating authority. The initial application is \$100 along, which is supplemented by an additional one-time \$6 fee for each vehicle. There are no renewal fees. If a motor carrier is subject to UCR as an interstate carrier, it must show evidence of payment for the current year. For interstate carriers, the UCR fee is accepted in place of the vehicle fee. Oklahoma charges motor carriers an initial application fee of \$100 (also known as a filing fee), \$7 for each power unit, and \$10 for a rule book. Each year, motor carriers pay a \$50 renewal fee and \$7 for each power unit. West Virginia requires a \$100 original filing fee for the certificate application. It did not provide specific information on renewal fees because they are based on weight and number of vehicles being registered.

Some states do not charge any fees for intrastate operating authority. Montana does not have an established fee requirement for intrastate authority. Motor carriers only need to have a valid intrastate USDOT account, which serves as operating authority. Indiana also does not charge fees for intrastate motor carriers to obtain operating authority. However, motor carriers in Indiana must obtain an intrastate identification number and file an application with proof of insurance. Motor carriers must also renew authority every year, but there are no fees required.

Georgia uses the UCR-GA to indicate intrastate operating authority for vehicles at 10,000 pounds or more. Motor Carriers must also have a USDOT number. The charges for operating authority are based on the number of vehicles in a fleet. If there are fewer than six vehicles in the fleet, carriers pay \$90. In fleets with 6 to 15 vehicles, the fee is \$165. For fleets with 15 or more, the motor carrier pays \$215. Georgia intrastate carriers also pay a fee of \$10 per vehicle.

In Iowa, motor carriers obtain a new permit and certificate application by paying \$150. If a carrier is applying for a liquid non-dairy permit or passenger certificate for transporting 16 or more passengers (including the driver) employees must attend a Safety Education seminar. This seminar carries a fee of \$200. There are no renewal fees.

Virginia’s intrastate authority fees are based on the type of item being transported. Unless otherwise exempt, the following requirements apply: Passenger brokers and TNC brokers pay a \$50 filing fee and \$3 duplicate license fee. No renewal fee is charged. No fees are charged to property carriers, but there is \$50 filing fee for household goods carriers. A \$10 annual fee per vehicle (unless subject to UCR or IFTA) must be paid by motor carriers along with a \$3 duplicate permit/certificate fee. Again, there is no renewal fee. Passenger Carriers pay a \$50 filing fee, \$3 duplicate permit/certificate fee, and \$3 operating authority registration fee per vehicle. TNCs have filing fee options of either paying \$100,000 or a \$20 surcharge fee, which would be applied and added to each required driver transcript fee of \$8. Virginia statutes require that TNCs obtain driver transcripts for all their drivers annually as well as pay a \$3 duplicate certificate fee. TNCs have an annual renewal fee of \$60,000 or \$28 (which is the surcharge and driver transcript fee) per TNC partner. Effective January 1, 2018, the \$10 annual fee for property-carrying vehicles no longer applies to passenger cars, motorcycles, autcycles, mopeds, or vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less.

Across all states, the average vehicle fee is \$13, whereas the average application, renewal, and annual fees is \$123. These are inexact numbers given that not all states charge vehicle fees, states have different names for fees, and not all states require motor carriers to pay fees for operating authority. In some cases, states impose additional charges for rule books or safety seminars. Compared to the responding states, Kentucky’s vehicle fees are below average (26% lower than other states), although its application fees for are 68 percent higher than the average fees. However, it is crucial to note that Kentucky’s application fee and renewal fee *specifically* related to the Kentucky For-hire certificate are 132 percent lower than the average application, annual, and renewal fees charged in responding states.

**Table 12** State Fees for Intrastate Operating Authority

Maine	Not applicable
Ohio	<ul style="list-style-type: none"> <li>• The annual tax is between \$20 and \$30 per vehicle</li> <li>• Household goods fees are between \$100 to \$300 depending on gross annual revenue</li> </ul>
Rhode Island	<ul style="list-style-type: none"> <li>• Application Fee — \$200</li> <li>• Annual Renewal Fee — \$100</li> <li>• Vehicle Fee — \$20</li> </ul>
Montana	Not Applicable
Georgia	<ul style="list-style-type: none"> <li>• Fewer than 6 vehicles — \$90.00</li> <li>• 6-15 vehicles: \$165.00 Over 15 vehicles — \$215.00</li> <li>• Vehicle Fee — \$10</li> </ul>
Alabama	<ul style="list-style-type: none"> <li>• Application fee \$100</li> <li>• One-Time Vehicle Fee \$6</li> </ul>
Michigan	<ul style="list-style-type: none"> <li>• Application Fee — \$100</li> <li>• Renewal Fee — \$50</li> <li>• Annual Fee Household Goods — \$50</li> <li>• Annual Fee General Commodities — \$100</li> </ul>
Kansas	<ul style="list-style-type: none"> <li>• Application fee — \$250</li> <li>• Vehicle Fee — \$10</li> </ul>
Oklahoma	<ul style="list-style-type: none"> <li>• Filing fee — \$100</li> <li>• Vehicle Fee — \$7</li> <li>• Annual renewal — \$50 and \$7 vehicle fee</li> <li>• Rule Book — \$10</li> </ul>
West Virginia	<ul style="list-style-type: none"> <li>• Application fee — \$100</li> </ul>

	<ul style="list-style-type: none"> <li>• Renewal based on size and number of vehicles</li> </ul>
Iowa	<ul style="list-style-type: none"> <li>• Application fee — \$150</li> <li>• No Renewal Fees</li> </ul>
Indiana	<ul style="list-style-type: none"> <li>• No Application Fee</li> <li>• No Renewal Fee</li> <li>• Vehicle Fee — \$10</li> <li>• Passenger and Household Goods Permanent Authority — \$180</li> </ul>
Virginia	<ul style="list-style-type: none"> <li>• Passenger Carriers Filing Fee — \$50</li> <li>• Vehicle Registration Fee — \$3</li> <li>• Property Carriers — No Filing Fee</li> <li>• Household Goods Carriers Filing Fee — \$50</li> <li>• Vehicle Fees — \$10 annually</li> <li>• TNCs have filing fee options of either paying \$100,000 or a \$20 surcharge fee applied to the driver transcript fee of \$8. (Va. Code requires TNCs to obtain driver transcripts for all their drivers annually), also a \$3 duplicate certificate fee. TNCs have a renewal fee of \$60,000 annually or \$28 (surcharge + driver transcript fee) per TNC partner.</li> </ul>

**5.3.5 Regulation of Intrastate Private Motor Carriers**

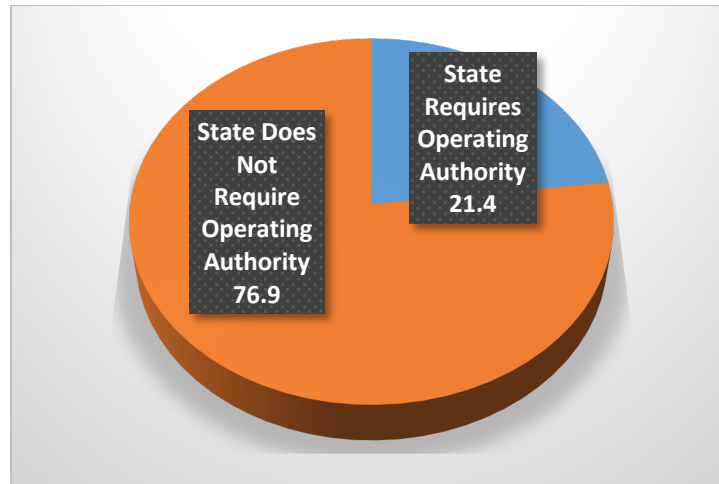
Private motor carriers only transport cargo that is produced, sold, used, or purchased by the business that is transporting the cargo. Examples of private motor carriers include beverage distributors, grocery companies, retail stores, food distributors, petroleum products, landscaping companies, and store delivery vehicles. For interstate hauling, a private carrier must obtain a USDOT number but is not required to have a Motor Carrier (MC) number, which serves as operating authority in the for-hire sector. States, however, retain the authority to regulate private, intrastate trucking.

A private carrier owns its own fleet, and there are many reasons why a company might choose this method of transporting goods. It might be less expensive to own a fleet than to contract with a for-hire carrier. This is especially true if the company ships a very high volume of products. A company may also choose to deploy its own fleet to ensure that it has a source of reliable and flexible shipping options.

Prior to deregulation, the use of private carrier fleets was much more prevalent as companies were limited by rate tariffs and the inefficiencies of backhauling (when a truck hauls another load when it returns to its home terminal). With backhauls, companies can make money on the return journey as opposed to just paying salaries and operating fees. During regulation, a truck was only licensed for particular types of freight, which meant that a truck could not haul a load unless it possessed the license to do so. Therefore, a significant amount of revenue was lost (Belzer, 2000; Robyn, 1987). However, following deregulation, shipping costs decreased, and companies could better rely on for-hire carriers, which alleviated backhaul inefficiencies.

Kentucky does not regulate private intrastate carriers. The intrastate operating authority survey asked other states if they require private carriers to obtain operating authority. Figure 12 shows that most of the surveyed states do not regulate private motor carriers. Eleven states (78.6%) do not require private motor carriers to obtain operating authority for intrastate hauling — Ohio, Maine, Rhode Island, Montana, Michigan, Alabama, Virginia, West Virginia, Iowa, Indiana, and Virginia. The remaining three states — Georgia, Kansas, and Oklahoma — place private carriers under their intrastate trucking regulations.





**Figure 12** States Regulating Intrastate Private Freight Carriers

States were also asked about the cost of operating authority in the states that do regulate private intrastate carriers. The cost of for-hire and private operating authority are the same. Table 13 lists private carrier authority fees. Georgia’s application fees are the same as those levied on for-hire carriers and determined by the number of vehicles in the fleet. Fees for fleets with fewer than six vehicles are charged \$90, those 6 to 15 vehicles \$165, and fleets over 15 vehicles pay \$215. These fleets also pay a \$10 fee per vehicle. If a private carrier is not exempt from KCC regulations, Kansas requires a \$250 application fee and \$10 per vehicle. In Oklahoma, private carriers pay a \$100 application fee and a \$7 vehicle fee for each vehicle in their fleets with a GVWR of more than 26,000 pounds.

**Table 13** Fees for Intrastate Private Carrier Authority

Georgia	Less than 6 vehicles: \$90.00 6-15 vehicles: \$165.00 Over 15 vehicles: \$215.00 Vehicle Fee- \$10
Kansas	Application Fee \$250 Vehicle Fee \$10
Oklahoma	Application Fee \$100 Vehicle Fee \$7 Rule Book \$10

### 5.3.6 Additional Requirements

Most household goods regulation is designed to protect consumers from unscrupulous movers. FMCSA regulates interstate movers at the national level. A mover can defraud a homeowner in multiple ways. The mover may provide a low estimate for moving the customer’s belongings over the telephone or internet without seeing the items that are to be moved. A moving company may not provide a written estimate for the move. Customers will often hire these companies based on the low estimate without checking out whether the company is reputable and safe. Once the carrier loads the homeowner’s possessions, they may refuse to deliver them until the owners pay an amount higher than they were originally quoted. These are known as “hostage loads.” Some movers also demand a large deposit or demand cash before they will move possessions. In other cases, household movers may also damage a customer’s belongings. According to

Anne Ferro, former administrator of FMCSA, the agency rejected 40 percent of household goods operating authority applications between 2009 and 2013 because of incomplete applications, out-of-service orders, low safety ratings, and lack of adequate insurance coverage (Ferro, 2013).

Kentucky homeowners also encounter these types of fraud, which demonstrates the continued need for regulation of household goods carriers. For example, in 2018 three Kentucky moving company owners were found guilty of overcharging employees of the United States Army and sentenced to 15 months in federal prison. In this case, the motor carriers used multiple methods to increase the weight of the shipments such as adding fuel prior to conducting the final weighing process and adding up to two tons of paper pallets to the shipment. The total amount of money overcharged to the United States Army was just over \$132,000 (U.S. Attorney's Office Western District of Kentucky, 2018).

One method states can use prevent these types of crimes is requiring additional authorities or certificate requirements for household goods movers such as background checks for employees and owners, criminal prohibitions, or forcing motor carriers to file tariffs with intrastate authority administrators. A tariff specifies a company's rates for service and terms for moving a customer's possessions. The verbiage in the document needs to be easy for the customer to understand. The Surface Transportation Board (STB), which regulates household goods movers as well as other transportation modes, recommends that household goods movers provide the following information on the tariff: the moving company's address and contact information, effective dates for the tariff, definitions of terms that are used in the tariff, the rates and charges that includes liability coverage amounts, estimate terms, accessorial charges as well as when they are applicable, an explanation of the mover's fuel surcharge, instructions on how to file claims, and the terms or conditions that will be found on the bill of lading. Kentucky's tariffs require this information.

Several responding states have mandated requirements for motor carrier services to prevent fraud. Like Kentucky, Rhode Island and Virginia require criminal background checks. Rhode Island conducts the criminal background check but does not charge applicants; it also requires household goods moving companies to prove need for the service by obtaining a Certificate of Public Convenience and Necessity (CPCN). Virginia statutes include background checks and exclude household goods carriers that employ workers with criminal convictions. Household goods movers in Virginia also file tariffs. Kansas, Ohio, Indiana, Virginia, Alabama, Montana, and Iowa require household goods carriers to file tariffs as well. Oklahoma, Maine, Georgia, Minnesota, and West Virginia do not have requirements for background checks or tariffs.

### **5.3.7 Insurance**

One of the primary reasons that Kentucky continues to regulate intrastate trucking is to ensure motor carriers maintain appropriate levels of insurance coverage. DVR officials were interested in knowing the insurance types and coverage levels required by state intrastate regulation programs. For the survey, several questions were formulated about coverage levels as well as the forms states require motor carriers to submit.

There are three main types of insurance forms used by states to document the type of insurance coverage and coverage amounts carried by the motor carrier as well as the status of that coverage. These forms are submitted by insurance companies to the states.

- Form E — States that the liability insurance coverage meets the requirements of state laws and regulations for financial responsibility.
- Form H — States the mover has enough cargo insurance coverage to meet the compulsory financial responsibilities under state laws and regulations.
- Form K — Serves as notice that the insurance coverage was cancelled.

### *Insurance and Household Goods Carriers*

In Kentucky, household goods movers provide evidence of commercial liability insurance coverage by submitting Form E to the DMC. With the exception of Maine and Montana, all responding states require intrastate for-hire motor carriers to submit Form E before issuing a certificate/credential for authority.

Researchers were also interested in determining whether cargo insurance is required for household goods movers and asked states to indicate the minimum coverage. Cargo insurance policies provide coverage for any damage or physical loss resulting from an external cause (e.g., Acts of God, terrorism, and riots). The policies cover the cargo regardless of which carrier/subcontractor is responsible for the cargo. Cargo insurance legally protects movers as well as property owners.

Some of the responding states require household goods movers to file Form H for cargo insurance — Ohio, Rhode Island, Michigan, Alabama, Oklahoma, and Virginia. In Virginia household goods movers do not have to have cargo insurance if they transport goods in personal vehicles, motorcycles, autocycles, mopeds, or vehicles with a GVWR of 10,000 pounds or less.

State administrators were also asked to provide the amount of minimum coverage. Household goods movers in Alabama must have \$5,000 in minimum coverage. Virginia requires at least \$50,000 in coverage. In Oklahoma, carriers file Form E and Form H with total liability coverage of \$750,000. Michigan also requires carriers to file Form H. Maine, Indiana, Georgia, Kansas, West Virginia, and Iowa household goods carriers do not file Form H. In Ohio, the minimum coverage for general freight and household goods movers is \$750,000. Rhode Island does not require minimum coverage, but it does require a Certificate of Insurance with the coverage amounts listed for liability, property damage, and cargo. The agency also must be listed as a certificate holder so that administrators are informed whenever a change is made to the policy.

Michigan does not specify a minimum coverage amount for insurance. Instead, state statutes indicate the coverage amount should be “in an amount sufficient to cover and protect all property received by it for transportation to the extent that the carrier is liable under any law applicable to it” (R 460.19102, Rule 1102).

### *Insurance, Intrastate Authority, and Transportation Network Companies*

TNCs contract with individual drivers who use their personal vehicles to provide fare rides to passengers matched through an application available on mobile platforms. As of February 2018, there are 768,976 Uber drivers and 613,835 Lyft drivers in the United States and Canada. Kentucky began regulating Uber and Lyft in 2015.

Ensuring that TNC drivers have adequate insurance is of great concern to states. There are many complications involving insurance and TNCs. Personal automobile insurance does not cover livery service, so fare passengers, property, and the driver’s vehicle are not protected in the event of accidents. In order to meet liability requirements, Individuals offering fare services must have commercial liability coverage. To address this market need, a growing number of insurance companies, such as State Farm, now offer products that specifically cover ride sharing activities. State Farm began offering this coverage to Kentucky drivers in 2016.

Insurance regulation involving TNCs focuses on three periods of ride sharing: Period 1, which is the pre-match period where the driver is available to provide rides; Period 2, when the driver has been matched with a passenger and is in route to pick up the passenger; and Period 3, when the driver is taking the passenger to their destination. TNCs provide insurance but most of the coverage involves Period 2 and

Period 3. However, the coverage can be inadequate for the driver in Period 1 and may not provide enough coverage for a driver’s injuries or damage to their vehicle.

Ultimately, states are concerned with two issues: 1) How do they ensure the same amount of safety established through regulation of taxis and limousines? and 2) What coverage should they require of ride sharing drivers? Uber and Lyft do provide insurance for their drivers but a remaining question is whether the TNCs’ insurance is adequate, which periods are covered, and whether the primary coverage is the responsibility of the individual driver’s policy or the TNC’s policy.

According to Moran et al. (2017), TNC operations to some degree and have insurance requirements. Regulations may or may not include insurance requirements that compel TNCs or drivers to submit proof of insurance. KYTC officials wanted to know if responding states regulate and require insurance coverage for TNC services. Specifically, officials wanted to know if states require TNCs to file evidence of liability insurance (Form E). The survey also asked if the requirement is applicable at the company level and/or the individual driver level.

None of the states compel individual drivers to submit Form E. Table 14 displays whether a responding state requires a TNC to submit Form E, does not require a TNC to submit form E, or requires proof in the form of a certificate. In Maine, a TNC must submit Form E and drivers are required to maintain regular car insurance. Rhode Island requires TNCs prove they have met state insurance requirements but not the individual driver. Indiana, Georgia, and Oklahoma only require the TNC to submit Form E to state agencies.

Not all states require Form E. Montana regulates TNCs but does not require TNCs or drivers to show proof of insurance. Neither TNCs nor individuals submit Form E in Michigan or Kansas.

Some states only require a TNC to obtain a certificate of insurance. West Virginia’s Division of Motor Vehicles requires TNCs to submit a certificate of insurance, but the individual does not have to provide this documentation. In Iowa, Uber and Lyft also submit a certificate (Certificate of Liability Insurance). Individual drivers must carry insurance and submit that proof to the company. Given the unique nature of TNC insurance, TNCs are not required to submit a Form E in Virginia, but they are required to file a certification form that serves the same purpose. Virginia law provides that TNC insurance coverage may be maintained by the TNC, the TNC partner, or both. However, the TNC has the primary responsibility for providing evidence of coverage.

While Table 14 lists Alabama as not requiring the company or the driver to submit proof of insurance, legislation authorizing TNCs was enacted in early 2018 and took effect July 1, 2018. There are ongoing rulemaking proceedings regarding TNC's.

**Table 14** States Requiring Form E or Insurance Certificate for TNCs

From E Required	Insurance Certificate Required	No Insurance Verification Required
Maine	West Virginia	Montana
Rhode Island	Iowa	Kansas
Georgia	Virginia	Michigan
Oklahoma		Alabama

Virginia TNC Liability Coverage

Virginia answered follow-up questions about the commercial liability insurance it requires of TNCs. As in many other states, commercial liability levels vary according to the stage of the TNC transaction. Virginia

requires that an insurance certificate be submitted by the TNC but does not mandate coverage by the driver. The TNC, TNC drivers, or both can meet insurance requirements — but the TNC must certify that the driver maintains a policy in the event the driver is meeting the requirements. However, a certification must also state that the driver’s insurance policy is specifically written for livery use of the vehicle.

The following requirements apply to Period 2 and Period 3 only in Virginia. In other words, these TNC insurance requirements cover from the moment a TNC partner accepts a prearranged ride request on a TNC’s digital platform until the partner completes the transaction on the digital platform, or until the prearranged ride is complete, whichever is later:

- TNC insurance shall provide motor vehicle liability coverage. The coverage must be primary and the minimum amount of liability coverage for death, bodily injury, and property damage shall be \$1 million. Automobile liability insurance covers injuries or damages to third parties and their property. This does not include the driver or the driver’s property. This insurance does not have a deductible.
- TNC insurance shall provide uninsured motorist coverage and underinsured motorist coverage. The coverage shall apply from the moment a passenger enters a TNC partner vehicle until the passenger exits the vehicle. The minimum amount of uninsured motorist coverage and underinsured motorist coverage for death, bodily injury, and property damage shall be \$1 million. Uninsured motorist coverage covers accidents with an at-fault driver who does not have liability. Underinsured coverage covers accidents where the at-fault driver’s liability limits do not cover the damage or medical expenses.

These requirements apply to Period 1, Period 2, and Period 3. In other words, these TNC insurance requirements apply (i) from the moment a TNC partner logs on to a transportation network company’s associated digital platform until the TNC partner accepts a request to transport a passenger and (ii) from the moment the TNC partner completes the transaction on the digital platform or the prearranged ride is complete, whichever is later, until the TNC partner either accepts another prearranged ride request on the digital platform or logs off the digital platform:

- TNC insurance shall provide motor vehicle liability coverage. The coverage shall be primary and shall provide liability coverage of at least \$50,000 per person and \$100,000 per incident for death and bodily injury and at least \$25,000 for property damage.

#### Maine TNC Insurance Coverage

Maine provided information on commercial liability coverage for TNCs. The TNC or the driver is to maintain liability insurance that contains coverage for TNC company operations.

When the driver is logged into the application but not actively engaged in transporting a passenger, primary automobile insurance must be maintained in the following amounts:

- For death and bodily injury, \$50,000 per person; for death and bodily injury per incident, \$100,000; and for property damage, \$25,000;
- Medical Payments, minimum \$2,000 per person as a result of injuries sustained in an accident involving the insured vehicle by the driver and passengers in the vehicle;
- Uninsured coverage, no less than the coverage for death and bodily injury.

While the driver is engaged in a prearranged ride:

- Death, bodily injury, and property damage \$1,000,000
- Medical Payments, minimum \$2,000 per person as a result of injuries sustained in an accident involving the insured vehicle by the driver and passengers in the vehicle;
- Uninsured coverage, no less than the coverage for death and bodily injury.

### **5.3.8 Intrastate Authority for Parcel Delivery Services and Independent Contractors**

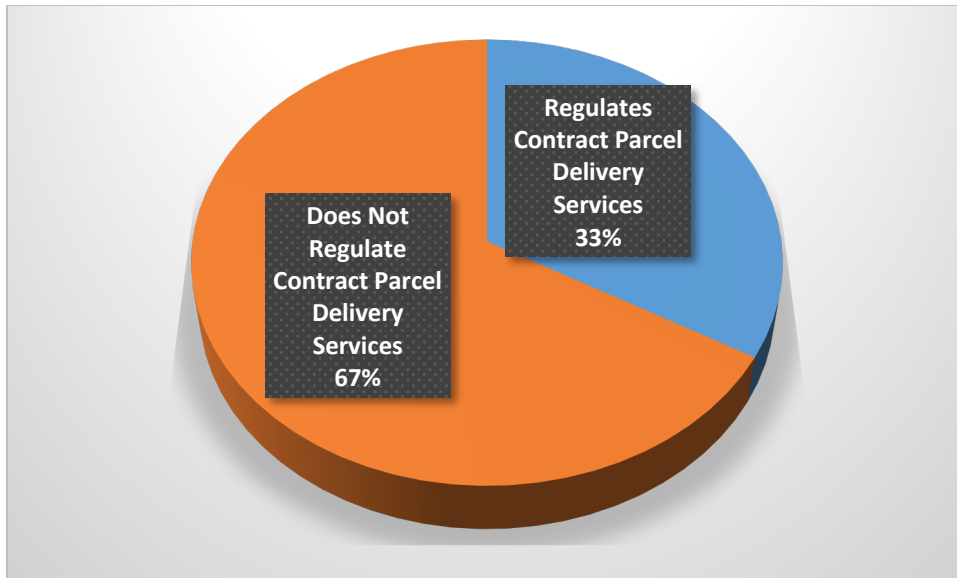
Companies such as UPS and Amazon have adapted their delivery fleets to accommodate shipping demands brought on by the increase in online shopping among consumers. UPS now uses modified golf carts or low-speed vehicles to deliver packages in neighborhoods. UPS also has Portable On Demand Storage (PODS) placed in neighborhoods in residential areas in select cities, including Louisville, and fills PODS with packages for delivery. Contract workers pick up the packages in golf carts and deliver them to residences in the neighborhood. These services are generally used during the peak Christmas season, from November to January. Kentucky legalized these services in 2017. Similarly, in 2005 Amazon began offering its Prime service, which provides discounted one-day and free two-day shipping options for customers. To meet its deadlines, Amazon contracts with Lasership, an interstate courier service, which utilizes drivers who use their personal vehicles to deliver packages. Amazon also developed its own delivery fleet. Known as Amazon Flex, the service employs contract workers who use their own vehicles to deliver packages. Both Lasership and Amazon Flex operate in Kentucky as for-hire carriers.

Also growing in popularity are on-demand restaurant delivery services such as DoorDash and Uber Eats. DoorDash and Uber Eats partner with local restaurants to provide home delivery previously unavailable from most establishments. Like Lasership, these companies hire drivers who pick up food from local restaurants and deliver it to offices and residents in personal vehicles.

In both of these instances, states and localities have adopted their statutes to regulate these activities. Kentucky has already regulated the UPS golf carts services and the contract deliveries are administered under Kentucky For-Hire. These regulations provide standards for golf cart safety features, roadway safety, delivery hours, vehicle markings, and uniform requirements for delivery workers. However, Kentucky has not yet established similar standards for other contract delivery services such as Lasership and Amazon Flex. There been complaints nationally about these services in terms of irregular delivery hours, inadequate marking of vehicles, and delivery workers that are not properly identified. Lasership has an “F” rating according to the Better Business Bureau. There have been 365 customer complaints filed with the agency during the last three years, 329 of which involved delivery issues. Only 65 of those complaints — just under 1 in 5 overall — were resolved the customer’s satisfaction as of August 2018.

KYTC has also received previous complaints about home and contract delivery services and is considering placing more regulations on these services. Last-mile contract delivery services are required to have general liability insurance under the Kentucky For-Hire program. However, DVR officials expressed concern that more specific regulations need to be established to provide additional guidelines for these types of delivery services in Kentucky.

With that context in mind, DVR officials wanted to gauge how many and to what extent states regulate these services. As seen in Figure 13, 33 percent of responding states regulate contract delivery services — Ohio, Kansas, Michigan, and Alabama. Sixty-seven percent of the responding states do not regulate these services — Maine, Rhode Island, Georgia, Oklahoma, West Virginia, Iowa, Indiana, and Virginia. Montana did not provide a response.



**Figure 13** Regulation of Contract Delivery Services

Despite numerous complaints leveled against these contract delivery services states are not addressing these issues statutorily. In addition, it appears that many states, unlike Kentucky, do not require insurance coverage. Survey takers were asked if independent contractors working for parcel services are required to carry commercial general liability insurance. None of the states, with the exception of Ohio, require these delivery services to carry general liability insurance. Montana did not provide an answer to this question.

#### Ohio Regulations of Parcel Delivery Services and Independent Contractors

Ohio answered follow-up questions about its regulation of companies that hire independent contractors who use personal vehicles or low-speed vehicles such as golf carts for home deliveries. Those regulations are found in Ohio Revised Codes (ORC) 4921. However, Ohio does not track the number of companies that hire independent contractors, nor does it require these contractors to wear uniforms, apparel, patches, or clothing articles identifying the service or company for which they are delivering. Contract carriers are not required to maintain cargo insurance. Companies are required to maintain commercial liability coverage for independent contractors making home deliveries in vehicles weighing under 10,001 pounds with a minimum amount of \$300,000 pursuant to ORC 4901.

Ohio does require that personal vehicles or low-speed vehicles contain markings indicating the service or company for which they are delivering. Those standards are based on the marking requirements of 49 CFR 390.21 unless there is a written exemption from the DOT. The markings required under FMCSA 390.21 are as follows:

(a) General. Every self-propelled CMV subject to subchapter B of this chapter must be marked as specified in paragraphs (b), (c), and (d) of this section, and each unit of intermodal equipment interchanged or offered for interchange to a motor carrier by an intermodal equipment provider subject to subchapter B of this chapter must be marked as specified in paragraph (g) of this section.

(b) Nature of marking. The marking must display the following information:

- (1) The legal name or a single trade name of the motor carrier operating the self-propelled CMV, as listed on the Form MCSA-1, the URS online application, or the motor carrier identification report (Form MCS-150) and submitted in accordance with §390.201 or §390.19, as appropriate.

- (2) The identification number issued by FMCSA to the motor carrier or intermodal equipment provider, preceded by the letters “USDOT.”
- (3) If the name of any person other than the operating carrier appears on the CMV, the name of the operating carrier must be followed by the information required by paragraphs (b)(1), and (2) of this section, and be preceded by the words “operated by.”
- (4) Other identifying information may be displayed on the vehicle if it is not inconsistent with the information required by this paragraph.
  - (c) Size, shape, location, and color of marking. The marking must—
    - (1) Appear on both sides of the self-propelled CMV;
    - (2) Be in letters that contrast sharply in color with the background on which the letters are placed;
    - (3) Be readily legible, during daylight hours, from a distance of 50 feet (15.24 meters) while the CMV is stationary; and
    - (4) Be kept and maintained in a manner that retains the legibility required by paragraph (c)(3) of this section.
  - (d) Construction and durability. The marking may be painted on the CMV or may consist of a removable device, if that device meets the identification and legibility requirements of paragraph (c) of this section, and such marking must be maintained as required by paragraph (c)(4) of this section.

### **5.3.9 Court Cases Regarding Intrastate Authority**

SAC members were interested in whether states have a history of court cases that challenged the regulation of intrastate authority. Only two states, Rhode Island and West Virginia, said there had been challenges to the intrastate authority (Note: a more expansive summary of relevant court cases pertaining to intrastate authority is provided in Chapter 4, Sections 7-13).

In 2006, West Virginia was one of two states that required intrastate hauling authority (certificate) for solid waste haulers. West Virginia’s regulatory scheme was similar to Kentucky’s regulation of household goods. The Public Service Commission (PSC) reviewed and approved applications for certificates. Under this regulation, a solid waste hauler would apply for a certificate and the Public Service Commission would publish the application to give current haulers the chance to oppose the application. If the existing haulers do not contest the petition, the certificate is granted. If there is opposition from the existing haulers, the application is subject to a hearing where it must prove there is a public need for the applicant to offer their services to the public. Then the PSC determines whether the current market is efficient and provides adequate service. The company must also demonstrate that it is financially solvent and has the ability to serve all members of the public. If the current market services the public need, the application is denied. West Virginia’s Solid Waste Management Act also states that the regulatory regime protects the public from a unique service that involves cargo that can pose a danger to the general population and animals such as disease and environmental pollution, as well as protecting consumers against unreasonable rates. According to other companies that already held a certificate, West Virginia is predominately rural, roads are difficult to navigate in those areas, and the low population in some areas make them more vulnerable to high rates and therefore regulation was necessary. In addition, given the necessity of the solid waste service, the PSC contends that it is basically a utility the same as other services like water and sewer. *Harper v. Public Service Commission* involved a protest by an Ohio-based garbage collection company that



provided services in West Virginia. They were initially required to obtain a certificate of necessity from West Virginia, but this law was struck down by federal courts, which ruled this requirement represented an interference with interstate commerce.

### 5.3.10 Employees Administering Intrastate Authority

A major challenge of administering the statutes and regulations under KRS 281.630 is the amount of time and labor hours needed to process documents. As mentioned in the background chapter, processing the documents for the Kentucky For-Hire authority requires significant staffing levels and the challenges are magnified given the ambiguity of documenting insurance and the confusion over requirements for interstate and intrastate carriers. Currently, Kentucky has 12 employees who dedicate at least 15 percent of their time on Kentucky For-Hire.

With that in mind, KYTC officials were interested to know how many staff members responding states utilize to administer intrastate operating authority and related documents. Table 15 displays the state responses. On average, six employees are needed to administer intrastate trucking regulations. Georgia and Virginia have the largest number of administrators with 12 and 10, respectively. Rhode Island has the fewest administrators. The remaining states — Ohio, Kansas, Michigan, West Virginia, Alabama, and Oklahoma — employ similar numbers of staff members, using between four and five administrators. Montana did not provide data for this question. Maine does not employ anyone to administer intrastate authority documents because there are no regulations; it is not included in the table.

**Table 15** Number of Employees Administering Intrastate Authority

Ohio	4
Rhode Island	6
Georgia	12
Kansas	4
Michigan	4
Alabama	5
Oklahoma	5
West Virginia	4
Iowa	2
Indiana	2
Virginia	10

Staffing numbers for the Kentucky For-Hire program are above the average reported by responding states. Reducing the number of administrators could be achieved by improving workflow efficiency. This could be accomplished by streamlining the insurance documentation issues discussed elsewhere in this study.

### 5.4 Conclusions

The survey sought to understand the extent of intrastate trucking regulation in the U.S. and determine ways to improve intrastate trucking regulation in Kentucky. Survey responses and supplemental research make it clear that Kentucky, by regulating for-hire intrastate trucking, is within the mainstream. Kentucky also regulates the same trucking sectors as the majority of states: household goods, property, and passengers. Like Kentucky, other states use intrastate regulations as a means to ensure that motor carriers maintain appropriate insurance levels. In terms of household goods, all of the responding states require carriers to maintain liability insurance, although only about half of the states require cargo insurance. In addition, all of the states surveyed require TNCs to file some form of proof of insurance, whether that be a state-specific certificate or a Form E.

A couple of findings stand out from the survey answers that would help Kentucky determine a path forward in terms of intrastate motor carrier regulation. The most important finding is that Kentucky For-Hire's application and renewal fees are significantly lower than the average fees charged by other states. Given the labor and administration issues highlighted in this chapter and elsewhere, Kentucky needs to weigh costs and benefits of maintaining the program.

Secondly, many states regulate TNC insurance coverage, and the primary responsibility for proving coverage lies with the TNC. Those states also require coverage from Period 1 through 3. However, only about half of the states regulate independent contractors. Based on the response from Ohio, states may not be establishing standards beyond insurance coverage. Given the serious customer services issues that have been reported at the national level as well as within Kentucky with contract delivery services, the state should consider establishing more stringent regulations beyond those found in the Kentucky For-Hire requirements, such as requiring contract workers to wear identifying clothing, adhere to acceptable delivery times, and prominently marking their vehicles.

## 6. Kentucky For-Hire Policy Alternatives

In its current form, Kentucky For-Hire provides a limited policy and regulatory benefit. Lax enforcement of the credential, coupled with its current classification as a misdemeanor that can be applied to the vehicle operator, limits the deterrent effect and calls into question the equity of the current law. The credentials cost more to administer than they generate in revenue, as it only applies to a relatively small number of intrastate motor carriers. However, the commercial liability insurance verification requirement is important given the property damages and medical injury liabilities created by the crashes involving commercial motor vehicles in Kentucky every year. There are basically three possible alternatives that could ameliorate some of the challenges associated with the current policy. Option 1 is to maintain the status quo application fees, renewal fees, and vehicle fees for Kentucky For-Hire while changing the penalty from a misdemeanor to a civil penalty and enhancing enforcement efforts to deter non-compliance. Option 2 is to increase the Kentucky For-Hire application and renewal fees, as well as vehicle fees, to bolster the revenue enough to avoid administering the program at a loss. This option could be paired with the enhanced enforcement aspect of Option 1. Option 3 is eliminating the Kentucky For-Hire requirement and delegating the commercial liability insurance verification process for intrastate for-hire carriers to the Kentucky County Clerks Association, and each of its offices in Kentucky's 120 counties.

### 6.1 Option 1: Status Quo Fees, Penalty Change and Enforcement Enhancement

This option would bring modest reforms related to the status quo fees, while modifying the penalty assessed to violators as well as enforcement practices. Currently, KYTC is losing an estimated \$143,153 per year from administering Kentucky For-Hire. Operating such a program at a net loss is not desirable from a business perspective. Enforcing the commercial liability insurance requirement is in some ways absorbing a negative externality of the motor carrier industry. However, there are collective benefits to having liabilities and damages insured in the event of a crash involving a commercial vehicle. As such, there may be justification for absorbing those costs and operating the program at a loss. Government agencies engage in a number of regulatory practices (e.g., environmental regulations, highway safety, and public health services) that require taxpayer money, which is not necessarily recovered exclusively from the individuals or organizations receiving oversight. KYTC officials, industry stakeholders, and lawmakers may decide that commercial liability insurance verification is a public service worth the investment of Road Fund receipts to supplement fees paid by intrastate carriers to ensure property damages and medical damages are covered.

A complete continuance of the status quo, particularly in terms of the amount of enforcement and criminal designation of the driver operating the vehicle, is problematic for a number of reasons. Unless the driver is an owner-operator, they typically have little control over whether a company complies with credentialing and permitting requirements imposed by federal or state governments. Nevertheless, a driver caught operating without a Kentucky For-Hire credential is charged with a Class A misdemeanor, which carries a potential jail term of one year. In practice, the fines and potential jail sentence are rarely — if ever — applied to drivers operating without a Kentucky For-Hire certificate. Charges are usually dropped or amended, and even if a conviction is upheld, the fines are generally covered by the carrier and not the employee. Regardless, the employee must often show up to court, which takes up significant time and causes much stress and confusion. Consequently, KRS 281.990 should be modified to reclassify a violation of Kentucky For-Hire as a civil penalty. As noted in KTC's "Redefining Commercial Vehicle Permitting and Credentialing Violations" study, this change should probably accompany a broader reclassification of trucking-related violations from criminal to civil violations, with the statutes explicitly stating the company and not the employee is liable for any fines, penalties, taxes, or fees recovered from enforcement efforts.

Creating an administrative board to hear these cases instead of filing them with district courts throughout the state will benefit both the courts and the industry. The former will no longer hear cases about obscure trucking credentials and permits about which the judge may have little familiarity. Industry will benefit because vesting responsibility for adjudicating credentialing violations in one administrative body. Administrative adjudication will generate more consistent case dispositions than those currently observed in district courts around the state.

Enforcement efforts would also require further enhancement. From 2014 to 2017, there were only 86 violations and 39 citations issued for Kentucky For-Hire violations, with only 9 violations and 2 citations found in the last two years of available data. The low number of violations, as well as charges issued, increases the likelihood of non-compliance. When KSP-CVE inspects a carrier, vehicle, and/or driver, the inspection report will contain any number of potential violations. Violations that carry a criminal penalty are also known as charges, and those charges all appear on an official citation. Citations are separate documents from inspection reports. Whereas inspection reports include all issues found during inspection, citations only include charges referred to a state court. For example, safety issues are often listed as violations on an inspection report but are usually not cited as a charge on a citation. If there are several violations, the vehicle or driver may be removed from service until mechanical repairs or CDL status changes can be made. On the other hand, a large percentage of credential, permitting, tax, and size and weight violations end up on a citation form. Obviously moving violations end up in court as well, although those are not as common at inspection stations as they are at roadside enforcement stops.

Table 16 reports the number of violations, charges, and charge percentage by federal code title for 2014 to 2017. The table is not exhaustive — it includes violations from chapters of the federal code that FMCSA finds most critical to commercial vehicle enforcement. The chart provides a federal code title description, title number, number of violations and number of charges, and the percentage of violations that ended up as a charge on a citation. Kentucky For-Hire violations fall under Title 392. The citation rate for Title 392 violations was 62.4%. The citation rate for Kentucky For-Hire was only 47.6% — significantly lower than all Title 392 violations during the same period. In other words, carriers that violated the Kentucky For-Hire provisions were less likely to receive a citation than those that violated other credentialing and permitting requirements. Although the number is higher for Kentucky For-Hire than some other kinds of violations, the target should be in line with the overall Title 392 citation rate.

Setting a target for the total number of Kentucky For-Hire violations uncovered (cited offenses plus warnings) can be somewhat arbitrary. One way to establish a baseline is to look at the enforcement levels of another credential — the weight-distance tax license (KYU). As of October 2018, there were 81,446 active KYU licenses, which is significantly higher than the number of Kentucky For-Hire firms (700 as of FY 2017). From 2004 to 2013, there were an average of 5,466 KYU-related citations per year — one citation for every 15 active licenses. If the same ratio were applied to Kentucky For-Hire, one would expect there to be about 47 citations issues per year. Thus, law enforcement officials would likely need to uncover between 75 and 100 Kentucky For-Hire violations per year to meet the citation target, assuming a citation rate between 47.6% and 62.4%. In other words, the enforcement goal would probably be 75 to 100 violations, with 47 citations and anywhere from 28 to 53 violations where the individual received a warning due to officer or inspector discretion.

**Table 16** KSP-CVE Violations, Charges, and Charge % by Federal Title Chapter, 2014-2017

Federal Code Title Description	Title	Violations	Charges	Charge %
Transportation of Household Goods in Interstate Commerce	375	16	3	18.8%
Lease and Interchange of Vehicles	376	273	66	24.2%
Commercial Driver's License Standards; Requirements and Penalties	383	2,940	1,794	61.0%
Safety Fitness Procedures	385	2,311	751	32.5%
Rules of Practice for Motor Carrier, Intermodal Equipment Provider...	386	17	10	58.8%
Minimum Levels of Financial Responsibility for Motor Carriers	387	532	125	23.5%
Federal Motor Carrier Safety Regulations; General	390	10,409	2,392	23.0%
Qualifications of Drivers and Longer Combination Vehicle Driver Instructors	391	6,704	3,286	49.0%
Driving of Commercial Motor Vehicles	392	104,405	65,152	62.4%
Parts and Accessories Necessary for Safe Operation	393	166,004	10,828	6.5%
Hours of Service of Drivers	395	33,833	6,763	20.0%
Inspection, Repair, and Maintenance	396	31,326	3,972	12.7%
Transportation of Hazardous Materials; Driving and Parking Rules	397	65	41	63.1%
Transportation of Migrant Workers	398	4	-	0.0%
Employee Safety and Health Standards	399	116	2	1.7%
Total	N/A	358,955	95,185	26.5%

Migrating the current, mainframe-based Kentucky For-Hire user database to a web-based application would likely increase losses for one or two fiscal years. There will be development costs associated with a web-based application. As noted in Chapter 3, development costs are estimated to fall between \$124,800 and \$145,600, depending on the time necessary for development (12-14 months). If these development costs are spread evenly across two fiscal years (i.e., development started toward the middle of a fiscal year), the estimated loss to KYTC would increase from \$143,153 to either \$205,553 or \$215,953, depending on whether the development time was 12 or 14 months. To be clear, such development would probably also decrease the overall long-term labor costs, although it is impossible to forecast precisely how much cost savings would be realized without a developed application with clearly defined workflow processes.

## 6.2 Option 2: Increase Fees, Penalty Change and Enforcement Enhancement

Another option to reduce the fiscal burden of Kentucky For-Hire is to increase carrier fees. This option would require making changes to KRS 281.660 to increase the application and renewal fees as well as the vehicle fees. Currently, all other types of intrastate operating authority for household goods carriers, taxi and limousine services, and others is \$250. In addition, taxicab, TNC vehicles, limousines and disabled persons vehicle fees are \$30. To estimate the potential revenue impact of increasing these fees, this scenario assumes an increase from \$25 to \$250 for Kentucky For-Hire application and renewal fees, and an increase in vehicle fees from \$10 to \$30. Underpinning the assumption is the notion that state lawmakers might be more open to enacting a fee increase that keeps the application, renewal, and vehicle fees in line with other

authorities issued to intrastate transportation companies. As with Option 1, this option includes modification of the current penalty structure and an enhanced enforcement mechanism. Given that both penalty structure changes and enhanced enforcement were both discussed as part of Option 1, they will not be repeated here. Functionally, they will work the same way in both Option 1 and Option 2.

Given the manner in which Kentucky For-Hire revenues are tracked, the amount of information the research team has to use as a basis for projections is limited. To compensate for this lack of information, the research team constructed several scenarios based on assumptions about revenues for both application and renewal fees, as well as vehicle fees. Rather than project future revenues, revenues from recent fiscal years were retroactively forecast, as if the fee increases were in place in FY 2014-2017. There are low-, intermediate, and high-end projections for vehicle application fees and renewals, and low- and high-end projections for vehicle fees. Each combination of projections for application fees and renewals with projections for vehicle fees yields six scenarios.

Before reporting the revenue estimates for the six scenarios, some legwork was necessary. Raising application and renewal fees would certainly raise revenue, but how much? Because Kentucky For-Hire revenues and household goods revenues are deposited in the same revenue fund, it was necessary to parse how much comes from each credentialing program. Therefore, the number of carriers receiving a Kentucky For-Hire certificate and household goods certificate was needed. From there, two kinds of estimates could be calculated.

Since revenue is not tracked specifically for each program, the first step was to estimate the share of revenue going to Kentucky For-Hire and Household Goods, respectively. Estimates are shown in Table 17. The first estimate was made by multiplying the number of carriers by the application or renewal fee. Here the simple assumption was that all Kentucky For-Hire carriers pay \$25 in each fiscal year, and that all household goods carriers pay \$25 in FY 2014, and \$250 in FY 2015-2017, owing to the changes in the KRS 281.660 revision. Note that such calculations yield combined estimate totals much lower than the actual revenue. KYTC administrators state this is because of prorated, multi-year renewals, carriers cancelling and then reapplying for authority, and various other transactions that boost overall collections. Consequently, the estimation procedure was adjusted to provide estimates that account for all revenue.

The second estimate adjusted the numbers to match the actual revenue figures. To make these adjustments, the assumption was that the processes that result in greater-than-expected collections are equally likely for all intrastate carriers regardless of whether they are for-hire carriers or household goods carriers. Consequently, the best starting point was to calculate the percentage of revenues based on the initial estimation. Based on a straightforward calculation of fees used in the first estimate, the percentage of revenue that would go to Kentucky-for-Hire carriers was calculated. The percentage was higher for Kentucky For-Hire in FY 2014 than in ensuing years because the fee for household goods carriers was 10 times that of for-hire carriers. The percentages were then applied to the total revenues for application and renewal fees, such that they are apportioned between for-hire carriers and household good carriers. The Kentucky For-Hire share bounces around, but averages \$18,929 for the four-year period. Household Goods revenue for renewal and application fees jump significantly, from \$3,551 in FY 2014 to \$29,016 in FY 2015. The revenues in Estimate 2 were divided by Estimate 1 to derive a ratio, which was used to derive high-end estimates for Kentucky For-Hire application and renewal fees under the increased fee scenario.

**Table 17** Kentucky For-Hire and Household Goods Application and Renewal Revenues

Number of Carriers	FY 2014	FY 2015	FY 2016	FY 2017
Ky. For-Hire Carriers	450	475	619	700
Household Goods Carriers	85	90	73	72
Actual Revenues (KFH & HHG)				
Application and Renewal Fee	\$22,351	\$44,330	\$39,975	\$47,182
Estimate 1: Application & Renewals (By Fees)				
Ky. For-Hire Revenues (By Fees)	\$11,250	\$11,875	\$15,475	\$17,500
HHG Revenues (By Fees)	\$2,125	\$22,500	\$18,250	\$18,000
Total Revenues (By Fees)	\$13,375	\$34,375	\$33,725	\$35,500
Percentage Ky. For-Hire Revenues	84.1%	34.5%	45.9%	49.3%
Estimate 2: Application & Renewals (By % Revenue)				
Ky. For-Hire Revenues (By Fees)	\$18,800	\$15,314	\$18,343	\$23,259
HHG Revenues (By Fees)	\$3,551	\$29,016	\$21,632	\$23,923
Ratio of Estimate 2/Estimate 1	1.67	1.29	1.19	1.33

Next, a method was devised to estimate vehicle fees (see Table 18). There is no inventory management protocol for Kentucky For-Hire or Household Goods, so it is unknown how many vehicles exist per carrier. Here the assumption was the average number of vehicles is the same for both types of carriers, although it is not certain whether that is the case. To determine how much revenue falls under each program, the percentage of carriers in both the Kentucky For-Hire and Household Goods groups were calculated, as they are mutually exclusive certificates. For each of the years, Kentucky For-Hire carriers comprised between 84.1 and 90.7 percent of all carriers, whereas Household Goods carrier share fell from 15.9 to 9.3 percent, possibly as a response to price increases for the operating authority application and renewal fees. The vehicle fees were apportioned accordingly. Overall, Kentucky For-Hire is estimated to receive anywhere between \$21,880 and \$28,810 during the four-year period. The number of vehicle fees is significantly less as a share for Household Goods carriers, which is to be expected given that the vast majority of carriers obtained Kentucky For-Hire authority.

**Table 18** Kentucky For-Hire and Household Goods Vehicle Fee Revenues

Number of Carriers	FY 2014	FY 2015	FY 2016	FY 2017
Ky. For-Hire Carriers	450	475	619	700
Household Goods Carriers	85	90	73	72
Total Carriers	535	565	692	772
% Ky. For-Hire Carriers	84.1%	84.1%	89.5%	90.7%
% Household Goods Carriers	15.9%	15.9%	10.5%	9.3%
Estimate: Vehicle Fees				
Vehicle Fee Revenues	\$25,002	\$28,810	\$24,370	\$21,880
Ky. For-Hire Vehicle Fee Revenue	\$21,030	\$24,221	\$21,800	\$19,839
Household Goods Vehicle Fee Revenue	\$3,972	\$4,589	\$2,571	\$2,041

After defining Kentucky For-Hire costs and benefits (similar to Chapter 3), information from these tables was used to create six retroactive revenue scenarios based on different assumptions about revenue impacts

of increasing Kentucky For-Hire application and renewal fees as well as vehicle fees. These retroactive projections should serve as a guide for the kinds of revenue KYTC should expect moving forward in the event changes are made. Projections were based on three estimates of application and renewal fee revenues and two estimates of vehicle fee revenues. The low estimate for vehicle and application fees assumed the application and renewal fees was the number of carriers multiplied by the new fee — \$250. Depending on the year, the estimates range from \$12,500 to \$175,000. The high estimate used the low estimate and applied the application and renewal revenue ratio that was calculated in Table 19, which takes into account that revenues tend to be higher due to the churn of companies registering throughout the year, dropping and adding authority, along with prorated certificates extending for part of one year and all of the next year. The medium estimate for application and renewal fees used the calculations for the high estimate but assumed that the number of carriers would decline by 19 percent, as was the case for household goods carriers when Household Goods certificates increased from \$25 to \$250 in FY 2015.

The high estimate for vehicle fees is a straightforward calculation based on the assumption that the average revenue per carrier will triple (e.g. in FY 2014, from \$47 to roughly \$140). The low estimate for vehicle fees assumes that the average revenue per carrier decreases by 25 percent relative to the high estimate because of fewer carriers obtaining authority or carriers registering fewer trucks.

The bottom portion of Table 19 contains estimates for each of the six scenarios over the four years of available data. Estimates range from as low as \$159,817 (Scenario 1, FY 2014) to as high as \$292,105 (Scenario 6, FY 2017). Retroactive revenue projections change significantly based on the assumptions used. Depending on the elasticity of demand for the freight certificates, either Scenarios 1-3 or Scenarios 4-6 could be more plausible. Future years may or may not follow these levels of activity, but they should provide a useful guidepost in terms of what to expect.

The other major question is whether the revenue scenarios produce enough revenue to cover the administrative costs and/or the transition costs. At the bottom of the table, there are six cost scenarios based on three factors: whether or not development costs are included with administrative costs, whether or not the low-end or high-end estimate for development costs is used, and whether current law or the pension reform bill is used to determine retirement contributions (and thus labor costs). 19 of 24 revenue scenarios in all fiscal years generate enough funds to cover the administrative costs under current law, but in just 9 of 24 scenario-years if SB 151 is enacted. For administrative and development costs on the low end, revenues exceed costs in 2 of 24 scenario-years under current law, and in 1 of 24 scenario-years under the SB 151 alternative. If high-end development costs are included along with administrative costs, revenues exceed costs in 2 of 24 scenario-years under current law, and in none of the 24 scenario-years under the SB 151 alternative.



**Table 19** Kentucky For-Hire Revenue Scenarios based on Retroactive Fee Increases

Number of Carriers	FY 2014	FY 2015	FY 2016	FY 2017
Ky. For-Hire Carriers	450	475	619	700
Application & Renewal Fees				
Application and Renewal Revenue Ratio	1.67	1.29	1.19	1.33
Low Estimate	\$112,500	\$118,750	\$154,750	\$175,000
Medium Estimate	\$152,282	\$124,043	\$148,577	\$188,396
High Estimate	\$188,002	\$153,140	\$183,429	\$232,587
Vehicle Fees				
Current Vehicle Fees Per Carrier	\$47	\$51	\$35	\$28
Low Estimate (Vehicle Fee Increase)	\$47,317	\$54,497	\$49,049	\$44,639
High Estimate (Vehicle Fee Increase)	\$63,089	\$72,662	\$65,399	\$59,518
Alternative Revenue Scenarios: Application & Renewal & Vehicle Fees				
Scenario 1: Low App. & Renewal, Low Vehicle Fees	\$159,817	\$173,247	\$203,799	\$219,639
Scenario 2: Low App. & Renewal, High Vehicle Fees	\$175,589	\$191,412	\$220,149	\$234,518
Scenario 3: Medium App. & Renewal, Low Vehicle Fees	\$199,599	\$178,540	\$197,626	\$233,034
Scenario 4: Medium App. & Renewal, High Vehicle Fees	\$215,371	\$196,706	\$213,976	\$247,914
Scenario 5: High App. & Renewal, Low Vehicle Fees	\$235,319	\$207,637	\$232,478	\$277,226
Scenario 6: High App. & Renewal, High Vehicle Fees	\$251,092	\$225,802	\$248,827	\$292,105
Costs and Number of Scenarios where Revenues Exceed Costs				
	Total Costs		Revenue > Costs	
	Current Law	SB 151	Current Law	SB 151
Administrative Costs	\$192,888	\$226,860	19/24	9/24
Administrative Costs + Development Costs (Low)	\$255,288	\$289,260	2/24	1/24
Administrative Costs + Development Costs (High)	\$265,688	\$299,660	2/24	0/24

\*Assumes development costs are spread evenly across two fiscal years.

If KYTC pursues Option 2, revenues will more closely approximate existing administrative costs if assumptions hold (i.e., demand for Kentucky For-Hire authority keeps pace with recent fiscal years, increases do not incentivize non-compliance or switching to interstate designation, etc.) and increased pension contributions are not required; if there are increased pension requirements, the odds of revenues exceeding costs are unlikely. Economic trends, enforcement levels, and demand for intrastate for-hire trucking operations will of course influence revenues, as could public awareness campaigns to ensure intrastate for-hire carriers are aware they need the authority to operate.

The advantages of Option 2 are that the fee increases would cover more administrative costs than under current law. However, it may not cover all costs, especially when SB 151's contribution requirements for employee retirement contributions and development costs are taken into account. Transition costs resulting from the development of a new database to track Kentucky For-Hire would have to be absorbed, but once developed the maintenance costs will be essentially the same as current maintenance costs. A new system should provide for a less labor-intensive workflow and thereby reduce labor costs. For example, there would be no need to collect insurance information from carriers that are also interstate carriers, as these companies already have commercial liability insurance on file with FMCSA. A main drawback is that motor carriers may oppose the fee increase and pressure lawmakers not to enact it. It would place Kentucky's intrastate operating authority fees above the average of \$123 for application and renewal fees and the average \$13 vehicle fee calculated using data provided by states responding to the survey detailed in Chapter 5. There may also be more non-compliance with Kentucky For-Hire requirements. At any rate, future cost savings from reduced labor are merely theoretical at present and cannot be projected at this time.

### **6.3 Option 3: Devolve Commercial Liability Insurance Verification to County Clerks**

Another approach to address the Kentucky For-Hire requirements is to eliminate the operating authority certificate requirement, which in turn requires that the state eliminates the application and renewal fees, eliminates vehicle fees, and devolves the insurance verification responsibilities to county clerks. The original purpose of Kentucky For-Hire was to prevent over competition, ensure fair rates were charged to shippers, prevent the entry of fly-by-night operators into the market, ensure compliance with other licenses and credentials, provide a check against chameleon carriers, and ensure the social costs of crashes involving commercial carriers are absorbed through adequate insurance coverage.

Option 3 would require making changes to KRS 281 that would designate the county clerks as having administrative authority over commercial liability insurance for intrastate motor carriers. Specifically, it would require an exception to KRS 281.600(1), which states “[t]he Department of Vehicle Regulation shall exercise all administrative functions of the state in relation to motor carrier transportation in this chapter, and shall apply, as far as practicable, the administrative and judicial interpretations of acts administered by the Federal Motor Carrier Safety Administration and other federal agencies under the United State Department of Transportation.” It would require alterations to KRS 281.630 pertaining to property certificates in KRS 281.630(3)(a). Under this option, county clerks will have to decide whether to issue a property certificate with application fees and vehicle fees or merely conduct a commercial liability insurance verification check. In addition, Option 3 should include amendment of KRS 304.39-087 to include commercial motor vehicles and commercial liability insurance, in addition to personal motor vehicles and personal liability insurance, as well as update 806 KAR 39:070 as needed to clarify the requirements for insurance companies and/or carriers submitting commercial policy verification documentation, whether for fleets or individual vehicles.

There are several advantages and disadvantages of conducting the verification process in county clerk offices. Eliminating the requirement would save KYTC between \$152,237 and \$186,209 each year and

allow the reallocation of labor to other functions. As noted, KYTC currently spends more on administrative and information technology functions than it receives in revenue from first-time applications, renewals, and vehicle fees. Lawmakers could address the challenge by adopting the fee increases in Option 2. However, expending political capital on such a relatively minor change may make little sense unless Option 2 is part of a more ambitious comprehensive reform.

Another advantage is that most carriers are already going visit county clerk offices to pick up new license plates and renew registrations. As such, it may be of little consequence to the carrier whether the insurance verification is done at the clerk's office or by the DMC. In most cases, commercial operations require companies, service providers, and permitting agents to conduct administrative processes with both the DMC and the county clerks. From the carriers' perspective, the change will not have a significant impact if they use the NOR Motor Carrier Information Exchange website or submit documentation in person. The exception would be if they were accustomed to mailing proof of commercial liability insurance, particularly if they have vehicles registered in several different counties. As previously stated, lawmakers could shore this up by requiring insurance companies to file Form Es and Form Ks respecting commercial liability insurance via NOR.

Another advantage of such an approach is that Cabinet employees will not have to coordinate with law enforcement agencies on Kentucky For-Hire authority enforcement. Enforcement of Kentucky For-Hire has been challenging because it is not a particularly common credential, and many law enforcement officers are not knowledgeable about its requirements. DVR administrators typically train officers and take phone calls from individuals with questions about a company's compliance with state law. Commercial liability insurance verification would still be required, and officers would still need to check for it when conducting an inspection or performing traffic enforcement; but checking for insurance would be more straightforward than checking for the credential. Overall, lessening this burden may provide few benefits simply because KYTC and KSP-CVE already coordinate on a host of other motor carrier enforcement issues.

This approach also carries disadvantages. Devolving the commercial liability insurance verification requirement to county clerks means that 120 agencies scattered throughout the state would be responsible for verifying commercial liability insurance instead of a single agency in Frankfort. Although KYTC would probably still be involved as it has to update the software clerks use for driver's licensing and vehicle licensing information, training and data entry related to commercial liability insurance verification would largely be up to local agencies, which could mean uneven application of requirements across the state, particularly in counties with few intrastate carriers. As of 2017, there are only 700 carriers this authority — fewer than six per county. Therefore, KYTC would still be absorbing the technological costs even if it eliminated its labor costs.

A second issue is that county clerks may also want a fee to cover the labor costs of administering the commercial liability insurance verification component, as it involves a procedure that is slightly different from that used for current insurance verification conducted by clerks when individuals register or renew a registration for a personal vehicle. Overall, labor costs to administer the insurance verification at 120 county clerk agencies (some of which have multiple offices) could be higher than keeping administration at the state level. Even though commercial liability insurance would account for a small number of transactions, virtually all employees would require training on the documentation and processes necessary to verify insurance. The number of employees needed to administer these activities would greatly exceed the 12 staff members who are currently required. Although KYTC may save money, it may just be a form of cost-shifting that in the end does not save taxpayers money.

Another issue is that motor carriers, insurance companies, and law enforcement officers (or inspectors) will have a more difficult time identifying and contacting the appropriate authority for instructions on what to do if there are issues with a carrier's commercial liability insurance policy. Currently, all questions are referred to individuals in the DMC, who are all reachable at the same number and work in the same building. Administering a check for commercial liability insurance compliance will be less efficient at the local level than at the state level. Once employees representing carriers, insurance companies, or law enforcement officials identify the entity responsible for insurance verification, they can more easily speak in person with an administrator in a county clerk's office than an administrator at KYTC in Frankfort. However, such an undertaking requires time and effort, which the individual seeking answers to questions may or may not have.

The other potential downside is that verifying commercial liability insurance verification only at the local level will deny DMC administrators the chance to verify that a carrier is compliant with other licenses and credentials required for legal operation in Kentucky. The application and renewal forms provide an opportunity to check data against existing records pertaining to other licenses and taxes, or to look up carrier information in the Kentucky CVIEW to ensure a company has no federal or state compliance issues and is not a chameleon carrier.

Ideally, as with Option 1 and Option 2, this reform would be accompanied by a legal redefinition of the penalty for operations such that it is no longer a misdemeanor for the commercial vehicle operator. It will also require a continued commitment to commercial liability insurance enforcement by state and local law enforcement agencies.

#### **6.4 Implementation**

Who is responsible for implementing policy changes hinges on which alternative is chosen. Each scenario requires stakeholder coordination, including state legislators, the Department of Vehicle Regulation, the motor carrier industry, and law enforcement agencies. Scenario 3 requires coordination with the Kentucky county clerks. Table 20 summarizes 12 of the benefits and challenges mentioned in the policy discussions above. Some alternatives have more benefits or challenges than others do, but that alone may not make a particular policy the best option, as which factors receive the greatest weight will vary among stakeholders. The research team is not recommending a particular policy — it is merely describing the issues stakeholders need to consider when choosing a path forward.

There are six basic benefits of the three policy alternatives. Option 2 is the only option that would generate more revenues to cover costs for the Department of Vehicle Regulation related to administration and issuance of the Kentucky For-Hire authority. The issue of whether clerks would charge a fee to do an additional commercial insurance verification under Option 3 is beyond the scope of this investigation. Strengthening enforcement of either the Kentucky For-Hire certificate in Option 1 and Option 2, or of commercial liability insurance in Option 3 is the ultimate goal of any policy, as this will help the state ensure carriers have adequate coverage of damages in the event of a crash. One advantage specific to Option 3 is that devolving the insurance verification process to the county clerks would reduce the administrative burden for the Department of Vehicle Regulation and allow its personnel to prioritize other tasks. Regardless of what happens moving forward, there will eventually be a transition away from the ALTS mainframe system to a web-based system for issuing a Kentucky For-Hire credential or checking insurance status. The Commonwealth Office of Technology and/or Office of Information Technology will need to be involved whether Option 1 or Option 2 is pursued. Technology application development will probably be necessary to help county clerks track Form Es and Form Ks in the event the insurance verification process is devolved to local agencies. KYTC will probably have to steer development of any technological

solutions, as local agencies do not have the capacity for such an undertaking. There will be opportunities for additional compliance checks for motor carriers submitting the TC 95-1 and TC 95-567 paperwork under Option 1 and Option 2. County clerks will not check for permitting or credentialing issues that are solely within the administrative jurisdiction of state and federal governments. Perhaps most importantly, all three alternatives guarantee that interstate carriers are sufficiently covered for possible liabilities for property damages, injuries, or fatalities by ensuring that have adequate commercial liability insurance.

**Table 20** Implementation Benefits and Challenges

Benefit/ Challenge	Factor	Option 1	Option 2	Option 3
Benefit	Increased revenue for program costs		✓	
Benefit	Better enforcement and adjudication	✓	✓	✓
Benefit	Cost and labor savings for DVR			✓
Benefit	Better information technology	✓	✓	✓
Benefit	Allows for additional compliance checks	✓	✓	
Benefit	Ensures coverage of industry liabilities	✓	✓	✓
Challenge	Possible opposition from industry		✓	
Challenge	Possible opposition from County Clerks, insurance companies			✓
Challenge	Less efficient, equitable administration			✓
Challenge	Fee increase		✓	
Challenge	DVR labor costs exceed revenues	✓	?	
Challenge	DVR labor/increased pension/IT costs exceed revenues	✓	✓	
Challenge	Requires legislative action	✓	✓	✓

Each policy has challenges. Option 2 will likely be opposed by the trucking industry, as it requires fee increases for applications and renewals, as well as vehicle fees. It is possible that Option 3 will be opposed by county clerks and insurance companies because of proposed administrative requirements. County clerks will be required to take on another responsibility without a mechanism to fund the extra administrative work, although most counties will have few companies apply during a given year. Depending on the county, clerks might approach administrative procedures slightly differently. Even small differences in administrative processes can significantly impact policy outcomes, and standardizing that approach across 120 counties for a seldom utilized process will be difficult. If Option 2 is pursued, even absent much industry objection, the possibility remains that individual carriers engage in non-compliance, operating without obtaining a Kentucky For-Hire authority. There is probably some non-compliance now, but the assumption is the level of non-compliance will increase relative to the current baseline if fees rise from \$25 to \$250 for application and renewal fees and from \$10 to \$30 for vehicle fees. If Option 1 is pursued, DVR will continue to lose at least \$152,237 annually, not including the costs of an impending transition from mainframe to web-based administrative software applications in the next few years, increasing labor costs, or the pending outcome of litigation over SB 151. It is unclear whether the increased revenues generated under Option 2 will cover all current administrative costs, and they almost certainly would not cover the costs of IT developments or increased pension contribution requirements. And while we believe a new system would reduce labor costs, those considerations are beyond the scope of this study. Last, all three options include a reclassification of violations as a civil penalty, and Option 3 requires further changes to

KRS 281, which cannot occur without legislative action. Legislative changes are always challenging, especially with so many other competing priorities.

## 7. Statutes and Regulations Related to TNCs

### 7.1 Background

A TNC is a rideshare service that allows an individual to obtain transportation driven by a private vehicle owner. Rideshare activities can use personal vehicles or vehicles rented through a third party that have a contractual agreement with the TNC. Potential passengers are matched with an on-duty driver by using a mobile application on tablets and smartphones. In many locations, TNCs have taken the place of taxicabs, a transportation mode that has a well-established regulatory structure that includes routine inspections, insurance requirements, and tightly controlled fee schedules. TNCs are a decidedly more informal and flexible way to obtain transportation. Uber and Lyft are often available at times during which taxicabs may not be. In addition, TNC service tends to be cheaper than taxi cab service. Critics of the ridesharing business model say this is a way to avoid the regulations controlling the operational activities of taxi cabs. This is a concern for taxi cab unions, municipal agencies, and state governments.

When Uber began offering rideshare service in early 2014 in the state, Kentucky was among the first states that created rules for Uber and Lyft through an emergency regulation that was codified in KRS 281.630 and 601 KAR 1:113. The emergency regulation terms were created through a cooperative effort between KYTC, taxi operators, and insurance officials. The primary concern was ensuring passenger safety and appropriate insurance coverage.

TNCs are required to register with the Secretary of State as a business and obtain a certificate under the terms described in 281.630. The certificate must be renewed annually. In addition, the company submits the background check required in 281.630 before drivers can accept passengers. The state requires the company to submit a copy of the most recent contractual agreement between the driver and TNC. Finally, the TNC must also demonstrate that it meets the insurance requirements for TNCs.

### 7.2 Insurance Concerns

The primary purpose of these regulations is to ensure that ridesharing drivers maintain appropriate insurance coverage. There are three periods to consider when evaluating TNC rideshare service insurance liability:

- Period 1 — Driver for the TNC service is actively soliciting passengers
- Period 2 — A passenger has been matched and the driver will pick up the passenger
- Period 3 — The passenger is being transported to their destination

Some state laws specify which periods require insurance coverage. Period 1 probably has the lowest liability risk because the driver is not transporting a passenger, although they may be distracted by the mobile application while waiting for a match. However, there are cases where pedestrians have been injured by vehicles in Period 1, which shows this period is by no means without possible liability (NAIC, 2015). Periods 2 and 3 are regarded as presenting the greatest sources of risk given that passengers are in the vehicle and the vehicle itself is navigating traffic. One of the primary concerns about the grey areas involving TNC ridesharing is the possibility that an Uber or Lyft driver may decide to start providing services for cash to passengers as opposed to arranging pickups via the mobile applications. In these cases, the passenger is at great risk since they are not covered under the TNC's insurance policy.

Crashes while driving for Lyft or Uber are typically not covered under personal insurance because most of these policies exclude livery services, or transportation provided for a fee. If a driver is providing livery services and attempts to acquire insurance, they are required to declare that and obtain commercial liability

insurance. If the driver does not inform the insurance company that they are providing livery services, the insurance company is at an increased risk for a liability and/or property claim since the policy holder would likely drive more miles, carry multiple passengers, and face a greater number of driver distractions than a typical motorist. It is possible that a driver might not reveal they are using the vehicle for livery services and the insurance company would be held liable for an accident.

Lyft and Uber provide insurance to their drivers. The coverage types can consist of commercial liability (covers businesses for bodily or personal injury as well as property damage by the company), uninsured and underinsured coverage, comprehensive (covers a vehicle that is stolen or damaged), and contingent insurance (coverage contingent on the absence of other insurance).

Table 21 shows the coverage amounts for each period offered by Lyft and Uber. During Period 1, Lyft’s insurance covers \$50,000 per person, \$100,000 per accident, and \$25,000 in property damage. Uber’s policy provides contingent liability in the same amounts as Lyft. Similarly, Lyft and Uber’s coverage contains a \$1,000,000 limit on commercial auto liability and uninsured/underinsured motorists. The two companies differ on contingent collision and comprehensive. Lyft provides an amount equal to the amount covered by the personal coverage with a \$1,000 deductible. Uber provides \$50,000 worth of coverage with a \$2,500 deductible. The deductible is paid by the TNC.

**Table 21** Insurance Coverage for Lyft and Uber

TNC Company	Period 1	Periods 2 and 3
Lyft	Contingent Liability <ul style="list-style-type: none"> <li>● \$50,000 per person,</li> <li>● \$100,000 per accident</li> <li>● \$25,000 property damage</li> </ul>	<ul style="list-style-type: none"> <li>● Commercial Auto liability and uninsured motorist/underinsured motorist coverage up to \$1,000,000 per occurrence</li> <li>● Contingent Collision and comprehensive equal to the amount maintained by the driver’s personal auto coverage (\$1,000 deductible)</li> </ul>
Uber	Contingent Liability <ul style="list-style-type: none"> <li>● \$50,000 per person,</li> <li>● \$100,000 per accident</li> <li>● \$25,000 property damage</li> </ul>	<ul style="list-style-type: none"> <li>● Commercial Auto liability and uninsured motorist/underinsured motorist coverage up to \$1,000,000 per occurrence</li> <li>● Contingent collision and comprehensive up to \$50,000 per accident (\$2,500 deductible)</li> </ul>

TNC insurance companies use surplus lines policies, which cover financial risks that are much higher than the typical insurance company can handle. Generally, these policies are used in cases where an entity needs coverage that is not normally available. Surplus lines coverage is a somewhat problematic because it does not have a guaranty fund from which it can claim payment should the insurance company become insolvent. With regular insurance, if an insurance provider goes bankrupt, the state offers guaranty funds.

One gray area that is of great concern to many insurers and states involves a TNC driver that exchanges their personal information with a passenger to circumvent sharing the fare with the TNC. In these scenarios, it is unclear how injuries, fatalities, and property damages would be covered since the TNC coverage would not apply and the driver may not have commercial liability (NAIC, 2015).

### 7.3 TNC Insurance Requirements in Kentucky

KRS 281.655 establishes DVR’s right to develop regulations for liability during the three periods of ride sharing through TNCs such as Uber and Lyft. 601 KAR 1:113 Section 3 enacts insurance requirements for



TNCs and specifies the types of policies and coverage. This regulation states that a TNC will keep insurance coverage if the driver is engaging in rideshare for their company and the coverage must include liability during Periods 1, 2, and 3. This coverage must meet the requirements of 281.655 and can be satisfied by the driver, TNC, or both. The insurance coverage should include primary automobile insurance, basic reparation benefits (personal injury protection), underinsured protection, and uninsured protection.

A TNC driver's insurance may lapse or a TNC driver may not maintain the required insurance during the time they are accepting drivers through the match application. In those cases, the TNC will be responsible for the coverage starting at the first dollar of a claim and defending any claim for damages.

Kentucky statutes do not currently address situations in which a TNC driver has an accident with a fare that has been arranged outside of the TNC match application. Such an accident would not be included under Uber or Lyft's coverage and the driver may not have commercial liability insurance. Kentucky should consider the ramifications of this scenario and seek legislative solutions to determine how liability and coverage will be assessed for accidents resulting in injury, death, or property damage.

#### **7.4 Commercial Parcel Delivery in Residential Areas**

Many retailers, such as Amazon, have adjusted their shipping practices, giving customers ready and inexpensive access to two-day and next-day shipping. Besides using the services of Fed Ex and UPS, Amazon contracts with companies such as LaserShip to supplement residential delivery. Amazon also established its own fleet of delivery vehicles known as Amazon Flex, with personal vehicles driven by contract workers.

Traditional shipping companies have added shipping modes to their delivery fleets to meet the increased shipping demands following the rise of online shopping on websites such as Amazon. In recent years, UPS, the largest for-hire carrier in North America, has used retrofitted golf carts to deliver packages in some residential neighborhoods (Ziobro, 2017). These golf carts have turn signals, seat belts, and markers indicating they are low-speed vehicles. The golf carts typically have a flatbed or pull a trailer and only travel at 15 miles per hour (Ziobro, 2017). This practice initially began in warm weather communities like Tampa Bay, Florida, and is generally used to handle the large influx of package deliveries during the Christmas season (November through January). UPS delivers PODS storage units to a neighborhood and UPS seasonal employees pick up the packages in golf carts and deliver them to the residents.

On June 29, 2017, following the passage of House Bill 404, it became legal for delivery services to use golf carts and low-speed vehicles in residential areas in Kentucky. The bill was introduced on February 15, 2017, and signed by Governor Matt Bevin on April 11, 2017. KRS 189.283 regulates the commercial delivery of express documents and packages using low-speed vehicles, golf carts, and utility vehicles by commercial delivery personnel in residential areas comprised of single-family or multi-family residential units. A low-speed vehicle is self-propelled, uses a motor that is either electric or combustion powered, has four wheels, and cannot operate above 25 miles an hour. A golf cart is a self-propelled vehicle that transports individuals on a golf course, has four wheels, and operates at a maximum of 35 miles an hour. These vehicles can only carry the driver and five other passengers. They have a maximum gross vehicle weight of 2,500 pounds and a rated payload capacity of 1,200 pounds or less.

Low-speed vehicles used to deliver packages in Kentucky must meet several requirements. Delivery personnel must be licensed drivers, and the vehicles can only operate in residential areas or roads with a speed limit of 35 miles an hour or less. Furthermore, local ordinances cannot have already prohibited the use of these vehicles for deliveries. The statute specifies the size and weight limits of delivery items. The cargo cannot measure more than 130 inches or weigh in excess of 150 pounds. These vehicles are only

authorized to operate between sunrise and sunset unless local ordinances have specified other allowable times for delivery. The vehicles are to be visibly marked to designate the name of the delivery service. The vehicle must also display an ID sticker that is supplied by the DVR as well as meet any additional vehicle standards that are specified in KRS Chapter 13A.

The commercial delivery company must inform local government of their intent to operate delivery vehicles at least 60 days prior to operation. Local governments have jurisdiction over these types of package delivery activities since they have jurisdiction over local roadways. They also have the legal authority to create ordinances that bar these vehicles from operating on local roadways. Delivery services can only operate in jurisdictions if they have been approved or there is no ordinance that prohibits them.

Online companies such as Amazon have introduced multiple shipping modes that include personal vehicles to meet the shipping demands engendered by two-day shipping, next-day shipping, and a general increase in online shopping. These delivery fleets include LaserShip as well as Amazon's own fleet, Amazon Flex. Both companies operate in Kentucky. These fleets are regulated under Kentucky For-Hire as interstate carriers that pay UCR. They must meet the same regulations related to the Kentucky For-Hire certificate and submit an initial application with a fee and pay an annual renewal fee. They must also show proof that they have the required insurance in the amounts required by the FMCSA for interstate motor carriers.

However, the KRS and KAR currently lack other regulations that specifically address additional challenges associated with motor carriers such as LaserShip and Amazon Flex. The potential challenges associated with these delivery services are similar to the challenges that can arise from golf cart delivery services: ensuring public safety — particularly limiting delivery hours — and stipulating vehicle markings. National reports and customer service feedback indicate these delivery services do not clearly mark their vehicles; employees do not wear clothing that clearly identifies their association with Amazon, and that these companies are delivering packages well outside of the normal delivery hours of other services such as FedEx and UPS. To address this issue and protect consumer safety, researchers recommend DVR use KRS 189.283 as a model for establishing restrictions on retailers that use personal vehicle fleets for shipping. This statute would specify appropriate delivery hours, vehicle markings, and contain a requirement for delivery personnel to wear clothing that clearly indicates they are delivering packages on the behalf of the specific company.

## **7.5 Conclusion**

After reviewing the statutes, it is clear there are ways that KRS 281.630 could be adjusted to address some of DVR's concerns regarding insurance coverage for TNCs, and parcel delivery by personal vehicles. Kentucky needs to review statutes and administrative regulations to determine how the state might address the grey areas that still exist to ensure TNCs have adequate insurance coverage. Based on complaints by citizens of Kentucky, companies like LaserShip and Amazon Flex are not properly identifying their vehicles or their employees, and they are not delivering during reasonable hours. Lawmakers could use KRS 189.283 (the golf cart statute) as a model for additional requirements for these specific delivery services.

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