

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency  
Pennsylvania Public Utility Commission

(2) Agency Number:  
Identification Number: L-2013-2376902

3041  
IRRC Number: 57-298

(3) PA Code Cite: 52 Pa. Code Chapters 3, 5, 23, 31, 32, and 41.

(4) Short Title: Proposed Rulemaking Amending Household Goods in Use Carriers and Property Carriers Regulations.

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: John Herzog, (717)783-3714, P.O. Box 3265, Harrisburg, PA 17105-3265,  
[jherzog@state.pa.us](mailto:jherzog@state.pa.us)  
Secondary Contact:

(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The proposed regulation intends to amend the application process for applicants for household goods authority by eliminating the requirement that an applicant establish that the proposed service is responsive to a public demand or need. The Commission believes that in light of increased competition in this industry, the market will determine whether a particular applicant's service is needed by the public. Additionally, the Commission will not consider the effect that a new carrier might have on existing carriers.

Also, we propose permitting all household carriers, with qualifying operating ratios, to change rates without filing supporting financial justification with the Commission. We also propose eliminating territorial restrictions for household goods carriers. These proposals are reflective of a competitive market.

We propose increasing insurance requirements for property and household goods carriers to be consistent with federal requirements.

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(8) State the statutory authority for the regulation. Include specific statutory citation.

66 Pa.C.S. §§501, 1102, 1103.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action

No.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulation is needed to better reflect the competitive marketplace in the household goods industry. The current application process is antiquated and serves to erect unnecessary barriers to entry. Prospective movers as well as the public will benefit from this change. Additionally, the increased insurance levels will benefit the public.

(11) Are there any provisions that are more stringent than federal standards?

If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation reflects the current regulatory environment in a variety of states. The regulation will not affect Pennsylvania's ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Commission received input from the Pennsylvania Moving and Storage Association.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The proposed regulation will affect all current household goods and property carriers by increasing insurance requirements. The proposed regulation will affect all current household goods carriers by changing tariff and territorial regulation. The proposed regulation will affect applicants for household goods authority by eliminating barriers to entry. The proposed regulation will affect consumers by providing enhanced notice of a carrier's limitations regarding loss as well as providing enhanced insurance coverage.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

All current household goods carriers (278) and property carriers (approx. 6,500) will be required to comply with the increased insurance requirements.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The proposed regulation will impact the industry, as noted above. The benefits of the proposed regulation include enhanced insurance protection, increased consumer awareness, and a more competitive marketplace.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The benefits are explained above. The costs and adverse effects are minimal, if any. To the extent there may be increased costs associated with enhanced insurance coverage, this is a justifiable cost given the appropriateness of the proposed coverage levels. Many carriers currently have insurance coverage in the proposed amount.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

As noted, the costs to the regulated community are minimal and can't be quantified, and many carriers currently have insurance coverage in the proposed amount.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

None

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There will be some minimal savings to state government given the elimination of need in the application process and the concomitant savings associated therewith; i.e., hearings, stenographers, appeals, etc. The specific amount of the cost savings is not readily estimated.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b> N/A						
<b>Local Government</b> N/A						
<b>State Government</b> See 21, above.						
<b>Total Savings</b>						

<b>COSTS:</b>						
<b>Regulated Community See 19, above.</b>						
<b>Local Government N/A</b>						
<b>State Government N/A</b>						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
<b>Regulated Community N/A</b>						
<b>Local Government N/A</b>						
<b>State Government N/A</b>						
<b>Total Revenue Losses</b>						

(23a) Provide the past three year expenditure history for programs affected by the regulation. N/A

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

There is no adverse impact on small businesses. The regulation will ease barriers to entry into the competitive marketplace.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

N/A

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No other alternative provisions were considered.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

There is no adverse impact on small businesses.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

N/A

(29) Include a schedule for review of the regulation including:

- |   |                           |
|---|---------------------------|
| A. The date by which the agency must receive public comments:                               | 30 days after publication |
| B. The date or dates on which public meetings or hearings will be held:                     | N/A                       |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | Late 2014                 |
| D. The expected effective date of the final-form regulation:                                | Upon Publication          |
| E. The date by which compliance with the final-form regulation will be required:            | Upon Publication          |
| F. The date by which required permits, licenses or other approvals must be obtained:        | N/A                       |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The regulations will be reviewed on an on-going, as-needed basis.

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**

**(Pursuant to Commonwealth Documents Law)**

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DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General.

*Amy M. Elliott*

BY \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

OCT 10 2013

DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-2013-2376902/57-298

DATE OF ADOPTION September 12, 2013

BY *Rosemary Chiavetta*  
Rosemary Chiavetta

TITLE *Secy*  
SECRETARY

Copy below is hereby approved as to form and legality. Executive or independent Agencies.

*Bohdan R. Pankiw*

BY \_\_\_\_\_  
Bohdan R. Pankiw  
Chief Counsel

9-12-2013

DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-2013-2376902/57-298  
Proposed Rulemaking  
Amending Household Goods in Use Carriers  
and Property Carriers Regulations  
52 Pa Code, Chapters 3, 5, 23, 31, 32 and 41

The Pennsylvania Public Utility Commission on September 12, 2013, adopted a proposed rulemaking order amending existing regulations governing household goods carriers, eliminating the requirement that applicants for authority establish a public demand or need for the proposed service and modifying insurance requirements. The contact person is Assistant Counsel John Herzog, Law Bureau, 717 783-3714.



## **EXECUTIVE SUMMARY**

L-2013-2376902/57-298  
Proposed Rulemaking  
Amending Household Goods in Use Carriers and  
Property Carriers Regulations  
52 Pa. Code Chapters 3, 5, 23, 31, 32 and 41

The Pennsylvania Public Utility Commission is vested with jurisdiction over common carriers, including household goods carriers, operating within Pennsylvania. Due to increased competition in this industry, the Commission proposes modifying its current regulations governing household goods carriers.

The evidentiary criteria governing applications for household goods in use authority are found at 52 Pa. Code § 41.14. In light of the competitive nature of the industry, we believe that it is appropriate to eliminate the requirement that an applicant for household goods in use authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need. 52 Pa. Code § 41.14(a). Further, the Commission would not consider the effect that a new carrier in the household goods industry might have on existing carriers. 52 Pa. Code §41.14(c).

As a corollary to the proposed elimination of public demand or need in the application process, we propose modifying our tariff regulations governing household goods carriers. 52 Pa. Code § 23.67. Additionally, we will no longer restrict a carrier to a jurisdictional operating territory, unless that carrier would indicate it desired such a limitation. Existing household goods carriers would be deemed to have statewide authority, unless they would advise the Commission otherwise.

The remaining criteria set forth at 52 Pa. Code § 41.14 will remain in force. Household goods applicants will be required to establish that they have the technical and financial ability to provide the proposed service safely and legally.

Our insurance requirements provide for \$300,000 minimum liability coverage for property and household goods carriers. 52 Pa. Code § 32.12. We believe this minimum is insufficient and propose raising the minimum to \$750,000 for carriers operating commercial motor vehicles (vehicles weighing over 10,000 pounds). This coverage is consistent with federal requirements as well as numerous other states.

Finally, we propose delineating more clearly the minimum insurance coverage for loss and damage to consumers' goods. This information is provided to prospective consumers in the required "Information for Shippers" form prescribed by our regulations. 52 Pa. Code § 31.121.

The contact person is John Herzog, Assistant Counsel, Law Bureau, (717) 783-3714.

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held September 12, 2013

Commissioners Present:

Robert F. Powelson, Chairman  
John F. Coleman, Jr., Vice Chairman  
Wayne E. Gardner  
James H. Cawley  
Pamela A. Witmer

Proposed Rulemaking Amending 52 Pa. Code  
Chapters 3, 5, 23, 31, 32, and 41; Household  
Goods in Use Carriers and Property Carriers

Docket No. L-2013-2376902

**PROPOSED RULEMAKING ORDER**

**BY THE COMMISSION:**

Pursuant to Section 1101 of the Public Utility Code (Code), 66 Pa.C.S. §1101, a public utility must obtain a certificate of public convenience from the Commission in order to offer, render, furnish, or supply public utility service in Pennsylvania. Section 1103 of the Code, 66 Pa.C.S. § 1103, establishes the procedure to obtain a certificate of public convenience. That provision provides, *inter alia*, that “[A] certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.”

Pursuant to Section 102 of the Code, 66 Pa.C.S. § 102, common carriers by motor vehicle are public utilities. The Commission recognizes distinct types of common carriers in its regulations. 52 Pa. Code Chapters 21, 29, and 31. One of these common

carrier types is the household goods in use carrier, which is defined as a “motor common carrier or contract carrier that transports household goods in use.” 52 Pa. Code § 21.1.<sup>1</sup>

The evidentiary criteria governing applications for household goods in use authority are found at 52 Pa. Code § 41.14.<sup>2</sup> As part of our continuing effort to ensure

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<sup>1</sup> “Household goods in use” is defined at 52 Pa. Code § 21.1, as:

(i) As used in connection with transportation, the term means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of the dwelling, and similar property if the transportation of the effects or property is arranged and paid for by either the householder or by another party.

(ii) The term does not include:

(A) A motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely packed, loaded, unloaded or unpacked by an individual other than an employee or agent of the motor carrier.

(B) Transportation of property from a factory or store when the property is purchased by the householder with the intent to use it in the householder’s dwelling.

<sup>2</sup> 52 Pa. Code § 41.14 provides:

§ 41.14. Evidentiary criteria used to decide motor common carrier applications—Statement of Policy

(a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. In evaluating whether a motor carrier applicant can satisfy these fitness standards, the Commission will ordinarily examine the following factors, when applicable:

(1) Whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.

(2) Whether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.

(3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public.

that our regulatory requirements are necessary and appropriate, we have considered whether the evidentiary criteria at § 41.14 should be applied, in total, to applicants for household goods in use authority. In light of the increased competition in this industry, we believe that it is appropriate to eliminate the requirement that an applicant for household goods in use authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need. 52 Pa. Code § 41.14(a). Rather than determining public need by means of an administrative process, competition among these carriers in regard to price, quality and reliability as well as the experienced demand for their services by consumers who may freely choose among those competing carriers, will determine whether a given carrier's service is needed by the public. Further, the Commission would not consider the effect that a new carrier in the household goods industry might have on existing carriers. 52 Pa. Code §41.14(c). In a competitive market with low barriers to entry, the Commission finds no reason to continue to protect, by an administrative process, carriers whose services are no longer demanded by consumers who have chosen other carriers. We believe these proposed changes are reflective of and consistent with the competitive environment that characterizes the household goods industry. Indeed, lowering these outdated barriers to entry will further

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(4) Whether the applicant has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards contained in Chapter 29 (relating to motor carriers of passengers).

(5) An applicant's record, if any, of compliance with 66 Pa.C.S. (relating to the Public Utility Code), this title and the Commission's orders.

(6) Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.

(d) Subsections (a) and (c) do not apply to an applicant seeking authority to provide motor carrier of passenger service under §§ 29.331-29.335 (relating to limousine service).

promote competition in this industry, which will, in turn, provide consumers with more choices and more competition among carriers as to price, quality and reliability.

We note that our authority to eliminate the public need requirement has been considered and affirmed by the Pennsylvania Supreme Court. *Elite Industries, Inc. v. Pa. P.U.C.*, 832 A.2d 428 (Pa. 2003). In *Elite*, the Court posited:

Allowing the applicant to meet a less stringent evidentiary burden makes expansion of the market possible. This situation falls squarely within the PUC's area of expertise and is best left to the commission's discretion. (432)

The Court found that an agency may revise its policies and amend its regulations in interpreting its statutory mandates. Citing *Seaboard Tank Lines v. Pa. P.U.C.*, 502 A.2d 762 (Pa. Cmwlth. 1985), the Court reiterated that an agency's past interpretation of a statute, though approved by the judiciary, does not bind that agency to that particular interpretation. Moreover, the Court in *Elite* cited, with approval, the *Seaboard* description of the Commission's scope of authority, as follows:

The PUC's mandate with respect to the granting of certificates of public convenience is a broad one: "a certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." The legislature, however, provided no definition of specifically what the criteria were to be in determining the propriety of granting a certificate, leaving the formulation of such criteria to the PUC. ...

Id. at 432 Accordingly, the *Elite* and *Seaboard* cases hold that the various and specific factors, to be considered in determining whether to grant a certificate of public convenience to an applicant for motor carrier authority, beyond those expressly stated in the statute, are matters left to the administrative expertise, sound discretion, and good judgment of the Commission.

Other jurisdictions, such as New York (New York Transportation Law Article 9), New Jersey (N.J. Statutes 45:14D-1 *et seq.*), Maryland, and Ohio (O.R.C. Chapter 4921), as well as the Federal Motor Safety Administration, do not require household goods applicants to establish a public demand or need as a prerequisite to certification. We believe that at this juncture, it is appropriate and in the public interest to eliminate the need requirement from the household goods application process. This will foster further competition in this market.

As a corollary to the proposed elimination of public demand or need in the application process, we envision an industry that will grow even more competitive. Competition drives market pricing, obviating the need to engage in traditional ratemaking processes geared toward monopoly markets. Chapter 23 of our regulations, 52 Pa. Code Chapter 23, governs tariffs and ratemaking procedures for common carriers. Specifically, 52 Pa. Code § 23.67 provides that household goods carriers, with gross intrastate operating revenues of less than \$200,000, and with operating ratios of no less than 93%, need not file substantiating data to support changes in rates. By order entered October 14, 2011, we waived the \$200,000 threshold, on a case by case basis as appropriate, and increased it to \$500,000.<sup>3</sup> *Petition of Tristate Household Goods Tariff Conference, Inc.* Docket No. P-2011-2257808. We now propose eliminating the threshold amount completely, permitting all household goods carriers, with qualifying operating ratios, to change rates without filing supporting financial justification.

Another consequence of eliminating the public need requirement for household goods applicants is that the current territorial restrictions that accompany a carrier's certificate will no longer be necessary. Therefore, we will no longer restrict a carrier to a jurisdictional operating territory, unless that carrier would indicate it desired such a

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<sup>3</sup> Of the 278 currently certificated household goods carriers, only 38 have revenues above the \$500,000 threshold.

limitation.<sup>4</sup> Also, existing household goods carriers would be deemed to have statewide authority, unless they would advise the Commission otherwise.

Given the elimination of the public need requirement for applicants as well as the statewide authorization for all household goods carriers, we believe that the regulatory provisions providing for Emergency Temporary Authority (ETA) and Temporary Authority (TA) are no longer applicable to household goods carriers. 52 Pa. Code §§ 3.383- 3.385. The regulations governing ETA and TA are designed to meet emergency situations when there is an immediate need for service that cannot be met by existing carriers. These provisions would not be relevant in a competitive market served by carriers that are not constrained by artificial territorial restrictions. To the extent an emergency would arise requiring service, we believe that our regulations governing Emergency Relief in general, would suffice. 52 Pa. Code §§ 3.1-3.12.

We stress that the remaining criteria set forth at 52 Pa. Code § 41.14 will remain in force.<sup>5</sup> Household goods applicants will be required to establish that they have the technical and financial ability to provide the proposed service safely and legally. Toward this end, we believe that applicants should have at least two (2) years of experience with a household goods carrier, or the equivalent. This requirement would ensure that only those applicants who are familiar with the industry would be eligible to operate. An applicant could satisfy this requirement by hiring managers with the necessary experience. We note that, notwithstanding this requirement, each application will be considered on its own merits. Additionally, we propose that all applicants who do not have a satisfactory safety rating by the United States Department of Transportation be required to successfully complete a Safety Fitness Review conducted by Commission

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<sup>4</sup> A carrier may wish to limit its operating territory due to operational concerns, insurance costs, etc.

<sup>5</sup> Protests to household goods applications will be limited to these criteria. Given the limited scope of any protests, the provisions providing for restrictive amendments to applications for motor carrier authority would be no longer applicable to applications for household goods authority. See 52 Pa. Code § 5.235.



staff. This requirement is currently in place for property carriers. 52 Pa. Code § 3.381(f). In addition to the Safety Fitness Review, we also propose that, after 18 months of operation, new carriers must successfully complete a Household Goods Audit conducted by Commission staff. The Audit ensures ongoing compliance and identifies any deficiencies of a carrier.

We also note that in our review of regulations governing household goods carriers, our insurance requirements provide for \$300,000 minimum liability coverage. 52 Pa. Code § 32.12. We believe this minimum is insufficient and propose raising the minimum to \$750,000 for carriers operating commercial motor vehicles (vehicles weighing over 10,000 pounds). This coverage is consistent with federal requirements as well as numerous other states. The proposed increase would apply to both property carriers and household goods carriers.

Finally, we propose delineating more clearly the minimum insurance coverage for loss and damage to consumers' goods. This information is provided to prospective consumers in the required "Information for Shippers" form prescribed by our regulations. 52 Pa. Code § 31.121. The minimum base coverage, provided as default coverage, is 60 cents per pound, per article. This is consistent with federal requirements. Additional coverage may be secured by the consumer for a fee, if requested. We believe that given the potential inadequacy of the default rate, the "Information for Shippers" form should be modified to better alert consumers of this issue.

In sum, while we are eliminating certain outdated barriers to entry for household goods carriers, applicants will continue to be required to demonstrate their technical and financial fitness to provide the proposed service, including adequate training and experience, capitalization and insurance coverage. Moreover, we intend to remain vigilant as to consumer protection and will not hesitate to bring enforcement actions against carriers that fail to maintain proper levels of insurance, fail to operate safely or

lawfully, fail to be transparent in their prices and contract terms with consumers, fail to adequately protect consumers' household goods in transit, or otherwise fail to meet their fundamental duty to provide safe, reasonable, and adequate service to the public. 66 Pa.C.S. § 1501.

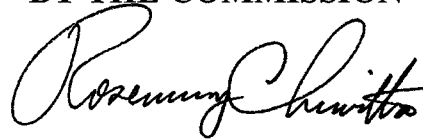
The attached Annex A, proposed regulations, is permitted by sections 501, 1102, and 1103 of the Public Utility Code. Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, and the Commonwealth Documents Law, 45 P.S. §§ 1201 *et seq.*, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5, we amend our regulations as set forth in Annex A; **THEREFORE,**

**IT IS ORDERED:**

1. That the Secretary shall submit this order and Annex A to the Office of Attorney General for preliminary review as to form and legality.
2. That the Secretary shall submit this order and Annex A, to the Governor's Budget Office for review of fiscal impact.
3. That the Secretary shall submit this order and Annex A for review and comment by the designated standing committees of both Houses of the General Assembly, and for review and comment by the Independent Regulatory Review Commission.
4. That the Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.
5. That, within thirty (30) days of this order's publication in the Pennsylvania Bulletin, an original of any comments concerning this order should be submitted to the

Office of the Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA, 17105-3265. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau at (717) 772-4597 or through the AT&T Relay Center at 1-800-654-5988. The contact person is John Herzog, Assistant Counsel, Law Bureau, (717) 783-3714.

**BY THE COMMISSION**

A handwritten signature in cursive script, reading "Rosemary Chiavetta".

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: September 12, 2013

ORDER ENTERED: September 12, 2013

ANNEX A

TITLE 52. PUBLIC UTILITIES  
PART I. PUBLIC UTILITY COMMISSION  
Subpart A. GENERAL PROVISIONS  
CHAPTER 3. SPECIAL PROVISIONS  
Subchapter E. MOTOR TRANSPORTATION PROCEEDINGS

§ 3.381. Applications for transportation of property, household goods in use and persons.

\* \* \* \* \*

(c) *Protests*

(1) *Applications for passenger or household goods in use authority.*

(i) *Content and effect.*

(A) A person objecting to the approval of an application shall file with the Secretary and serve upon the applicant and the applicant's attorney, if any, a written protest which shall contain the following:

(I) The applicant's name and the docket number of the application.

(II) The name, business address and telephone number of the protestant.

(III) The name, business address and telephone number of the protestant's attorney or other representative.

(IV) A statement of the protestant's interest in the application, including a statement of any adverse impact which approval of the application can be expected to have on the protestant.

(V) A list of all Commission docket numbers under which the protestant operates, accompanied by a copy of any portion of the protestant's authority upon which its protest is predicated.

(VI) A statement of any restrictions to the application which would protect the protestant's interest, including a concise statement of any amendment which would result in a withdrawal of the protest. This provision shall be inapplicable to applications for household goods in use authority.

(VII) A protest to a household goods in use application shall be limited to challenging the fitness of the applicant, including whether the applicant possesses the technical and financial ability to provide the proposed service and whether the applicant lacks a propensity to operate safely and legally.

\* \* \* \* \*

(iii) *Failure to file protests.* If no protest is filed with the Commission on or before the date specified in the *Pennsylvania Bulletin* or if all protests have been withdrawn at or prior to the hearing, the Commission may take either of the following actions:

(A) Consider the application without holding an oral hearing if it deems the facts are sufficient as in the application or as determined from additional information as the Commission may require of the applicant. An application processed under this section, without oral hearing, will be determined on the basis of verified statements submitted by the applicant and other interested parties.

(I) Verified statements will be filed with the Secretary within 30 days of the Commission's request therefor. Failure to file additional information as requested by the Commission may result in dismissal of the application for lack of prosecution.

\* \* \* \* \*

(V) Verified statements of supporting parties are not required for applications for household goods in use authority.

\* \* \* \* \*

(d) *Hearings on protested applications and applications for motor carrier of property authority when safety issues are raised.*

(1) *Applications for passenger or household goods in use authority.*

(i) *Scheduling hearings.*

(A) Applications for passenger authority. The applications to which timely protests were filed will not be acted on by the Commission for 20 days after the closing date for filing of protests, to permit the applicant to make restrictive amendments leading to the withdrawal of protests. If all protests are withdrawn upon amendment, the Commission may dispose of the application in accordance with subsection (c). If the application is still subject to protest, then after the expiration of the 20-day waiting period, the Commission will set the application for hearing and will notify all parties thereof. Absent good cause shown, no further amendments to the application will be considered after expiration of the 20-day period or the commencement of hearings.

(B) Applications for household goods in use authority. Applications for household goods in use authority to which timely protests were filed will be set for hearing with notice to the parties.

(ii) *Requests for postponements.* If any scheduled hearing is postponed for any reason prior to the date thereof, notice of postponement and the date, time and place of the continued hearing

will be given by the presiding officer of the Commission to all parties. Requests for hearing postponements shall be submitted in writing to the Secretary of the Commission and the presiding officer with copies to parties of record, no later than 5 days prior to hearing. Hearings will not be postponed absent good cause.

(iii) *Prehearing conferences.* The presiding officer may, in his discretion or at the written request of any party of record, set any protested application for prehearing conference, to simplify the issues prior to hearing.

\* \* \* \* \*

(e) *Compliance: conditions for approval for passenger and household goods in use authority.* When the Commission approves operation by a motor common carrier of passengers or household goods in use, forwarder, broker or motor contract carrier of passengers or household goods in use, the applicant will be notified of the approval by registered or certified mail. The applicant shall file with the Commission within 60 days of receipt of the notice, a certificate of insurance or other security required by this title, relating to insurance and security for the protection of the public. In addition, motor common carriers of passengers or household goods in use shall file tariffs of their applicable rates and charges, and contract carriers of passengers or household goods in use shall file schedules of actual charges. When all of these requirements have been met, the Commission will issue the certificate, permit or license as the case may be. Failure by an applicant to comply with this section within the 60-day period may result in the dismissal of the application and rescission of prior approval, unless the Commission has, upon written request demonstrating good cause, extended the time for compliance.

(1) An applicant for household goods in use authority that does not possess a current satisfactory safety rating issued by the United States Department of Transportation or by a state with safety regulations comparable to the Commonwealth, shall complete a safety fitness review conducted by Commission staff. The safety fitness review must be scheduled and completed within 180 days of the date of approval of the application. If the applicant fails to attain a satisfactory safety evaluation within the 180-day period, the applicant will be given an additional 90 days to correct the deficiencies. Failure to achieve a satisfactory evaluation within the 90-day period will result in immediate suspension of the certificate of public convenience and in proceedings to revoke the certificate.

(2) Safety fitness reviews must take place at the applicant's primary place of business in this Commonwealth. Out-of-State carriers without facilities in this Commonwealth must have reviews conducted at the nearest Commission office. Out-of-State carriers shall provide Commission enforcement officers with sufficient records to enable meaningful examination of the applicant's safety related programs.

(3) In the course of a safety fitness review, Commission enforcement staff will examine an applicant's management policies, records and equipment to ensure that the applicant understands and will comply with Chapter 37 (relating to safety).

\* \* \* \* \*

**§ 3.382. Evidentiary guidelines for applications for passenger and household goods in use of authority.**

(a) *Service request evidence.* Evidence of requests received by an applicant for passenger [or household goods in use] service may be offered by the applicant in a transportation application proceeding relevant to the existence of public necessity for the proposed service. The credibility and demeanor of a witness offering evidence will be considered in evaluating the evidence. The weight which will be attributed to the evidence will depend upon the extent to which the alleged requests are substantiated by evidence such as the following:

\* \* \* \* \*

**§ 3.383. Applications for temporary authority and emergency temporary authority.**

\* \* \* \* \*

(b) *Definitions and applicability.*

(1) The following words and terms, when used in relation to applications for temporary authority and emergency temporary authority, have the following meanings:

*Carrier*—Includes motor common carriers of passengers [or household goods in use] and motor contract carriers of passengers [or household goods in use], brokers and forwarders.

*ETA—Emergency temporary authority*—Limited duration operating authority issued under 66 Pa.C.S. § § 1103(d) and 2509 to authorize the transportation of passengers [or household goods in use] to meet an emergency situation and when time or circumstances do not reasonably permit the filing and processing of an application for TA.

*TA—Temporary authority*—Limited duration operating authority issued under 66 Pa.C.S. § § 1103(d) and 2509 to authorize the transportation of passengers [or household goods] to meet an emergency situation.

(2) ETA and TA are not available to motor common carriers of property and household goods in use.

\* \* \* \* \*

**§ 3.384. Disposition of applications for ETA and TA.**

(a) *General.* Initial determination of ETA and TA applications will be made by the Bureau of Technical Utility Services [Transportation and Safety] with the approval of the Commission.

(b) *Standards for determination of need.*

(1) *General.* Grants of TA or ETA shall be made upon the establishment of an immediate need for the transportation of passengers [or of household goods in use]. Requests involving service to cities, counties, townships or other defined areas warrant approval when supported by evidence that there is a need for service to or from a representative number of points in each city, county, township or areas and that there is a reasonable certainty that the service will be used.

(2) *Immediate need.* A grant of TA or ETA will be made when it is established that there is or soon will be an immediate transportation need. A showing of immediate need may involve passenger service to a new or relocated plant, an origin or destination not presently served by carriers, a discontinuance of existing service, failure of existing carriers to provide service or comparable situations which require new carrier service before an application for permanent authority can be filed and processed. An immediate need will not normally be found to exist when there are other carriers capable of rendering the service unless it is determined that there is a substantial benefit to be derived from the initiation of a competitive service.

(3) *Failure to provide equipment.* TA or ETA may be granted when existing authorized carriers are unable or refuse to furnish equipment necessary to move passengers [or household goods in use] to meet an immediate transportation need.

\* \* \* \* \*

## CHAPTER 5. FORMAL PROCEEDINGS

### Subchapter B. HEARINGS

#### SETTLEMENT AND STIPULATIONS

\* \* \* \* \*

#### **§ 5.235. Restrictive amendments to applications for motor carrier of passenger [and household goods in use] authority.**

(a) Parties to motor carrier applications for passenger [and household goods in use] authority may stipulate as to restrictions or modifications to proposed motor carrier rights. Stipulations in the form of restrictive amendments or modifications must:

- (1) Be in writing.
- (2) Explain why the stipulation is in the public interest.
- (3) Be signed by each party to the stipulation.
- (4) Be submitted to the Secretary for insertion into the document folder.

(b) Restrictive amendments shall be binding on the parties but not on the Commission if it is determined they are not in the public interest. If a restrictive amendment is not accepted by the Commission, it may remand the matter for appropriate proceedings.



**Subpart B. CARRIERS OF PASSENGERS OR PROPERTY**  
**CHAPTER 23. TARIFFS FOR COMMON CARRIERS**  
**NOTICE OF CHANGES IN FARES**

\* \* \* \* \*

**§ 23.67. Financial data.**

(a) The Commission will not[, on or after the effective date of this section,] permit a tariff filing increasing rates by a common carrier of household goods in use [with gross annual intraState revenues of \$200,000 or more,] or making a general increase in rates published by a rate bureau, conference or similar organization of carriers, which will increase gross annual revenues by more than 1%, unless financial justification in support of the proposed increase is filed with the tariff.

(b) Household goods in use carriers [referred to in subsection (a),] shall be governed by the following procedures in the filing of tariffs or tariff supplements:

(1) A tariff increasing rates shall be published to become effective on no less than 30 days' notice.

(2) At the time an increase in rates is filed with the Commission, the carrier or rate bureau, conference or similar organization requesting the increase shall submit sufficient evidence under certification by its chief executive, or other responsible officer which will enable the Commission to determine:

(i) The former or existing rate, the new or proposed rate and the percentage increase.

(ii) The dollar amount of the increased revenue which the increase is expected to provide.

(iii) The expected change resulting from the increase in the carrier's operating revenues together with known changes in operating expenses, and a calculating of operating ratio before income taxes, after the aforesaid changes.

(c) Common carriers of household goods in use[, with gross annual intraState revenues of less than \$200,000, and] with operating ratios of no less than 93%, before income taxes,\* need not file substantiating data required by subsection (b)(2), but shall submit a statement with the tariff, or tariff supplement, stating that [gross annual intraState revenues did not exceed \$200,000 in the 12-month period preceding the tariff filing together with a statement that] its operating ratio before income taxes for the same period is no less than 93%. The tariffs, or tariff supplements, shall be published to become effective on no less than 30 days' notice. Nothing in this subsection precludes the Commission from requiring supporting financial data in instances when increases in rates appear to be excessive.

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\* Operating ratio is operating expenses, excluding income taxes, divided by operating revenue.

\* \* \* \* \*

**CHAPTER 31. MOTOR CARRIER PROPERTY AND  
HOUSEHOLD GOODS TRANSPORTATION**

**TRANSPORTATION OF HOUSEHOLD GOODS IN USE**

**§ 31.121. Information for shippers.**

(a) When a prospective shipper requests moving service and before an order for service is prepared, the household goods carrier shall furnish the prospective shipper with the following Commission supplied form entitled "Information for Shippers":

\* \* \* \* \*

**LOSS AND DAMAGE COVERAGE**

If you sustain a loss or damage to your goods, you are protected only up to but not exceeding 60 cents per pound, per article. THIS MINIMUM COVERAGE MAY NOT BE ADEQUATE PROTECTION. If you desire protection greater than 60 cents per pound, per article, you may secure increased coverage by paying a higher tariff rate applicable to the coverage you desire. You may also protect yourself to the full valuation of your goods by taking out a policy of transit insurance with an insurance agent.

\* \* \* \* \*

**CHAPTER 32. MOTOR CARRIER INSURANCE.**

**Subchapter B. Insurance requirements.**

**§ 32.12. Property carrier and household goods in use carrier insurance.**

(a) No common carrier or contract carrier of property or household goods in use may engage in intrastate commerce and no certificate will be issued, or remain in force, except as provided in § 32.15 (relating to applications to self-insure), until there has been filed with and approved by the Commission, a certificate of insurance by an insurer authorized to do business in this Commonwealth, to provide for the payment of valid accident claims against the insured for bodily injury to or the death of persons, or the loss or damage to property of others resulting from the operation, maintenance or use of a motor vehicle in the insured authorized service. The liability of the insurance company on each motor vehicle operated in common or contract carrier service shall be in amounts not less than \$300,000 per accident for a vehicle with a manufacturer's gross vehicle weight rating of 10,000 pounds or less, in the case of a single vehicle, or a manufacturer's gross combination weight rating of 10,000 pounds or less, in the case of an articulated vehicle. The liability of the insurance company on each motor vehicle operated in common or contract carrier service shall be in amounts not less than \$750,000 per accident for a vehicle with a manufacturer's gross vehicle weight rating over 10,000 pounds, in

the case of a single vehicle, or a manufacturer's gross combination weight rating over 10,000 pounds, in the case of an articulated vehicle.

(b) The limitations in subsection (a) do not include insurance to cover damage to cargo.

(c) Insurance coverage of motor carriers of property and household goods in use shall meet the requirements of 75 Pa.C.S. § § 1701—1798 (relating to Motor Vehicle Financial Responsibility Law).

### **§ 32.13. Cargo liability insurance.**

(a) A common carrier of property or household goods in use by motor vehicle shall file with the Commission, in addition to the public liability and property damage certificate of insurance required by § 32.12 (relating to property carrier insurance), certificates of insurance in an amount satisfactory to the Commission, but not less than \$5,000 to provide payment for loss or damage to cargo carried on a motor vehicle. No motor vehicle may be operated unless the insurance policy or other approved method of protection is in effect at the time of operation. This section may not be modified or abrogated by tariff filings. The Commission may approve another method of cargo protection in specific cases.

(b) Requirements for cargo insurance do not apply to dump trucks or vehicles limited to the transportation of coal, earth, crushed stone, amesite and similar construction materials, or vehicles which are used for the transportation of property, the value of one load being not more than \$500. This subsection applies only if an affidavit stating that the vehicle is limited to the type of transportation described in this subsection is first filed with the Commission.

\* \* \* \* \*

## **CHAPTER 41. GENERAL ORDERS, POLICY STATEMENT AND GUIDELINES ON TRANSPORTATION UTILITIES.**

### **TRANSPORTATION**

#### **§ 41.14. Evidentiary criteria used to decide motor common carrier applications—statement of policy.**

(a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. In evaluating whether a motor carrier applicant can satisfy these fitness standards, the Commission will ordinarily examine the following factors, when applicable:

(1) Whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.

(2) Whether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested. For an applicant requesting authority to provide household goods service, this requires the applicant to have a minimum of 2 years of experience with a licensed household goods carrier or the equivalent.

(3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public.

(4) Whether the applicant has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards contained in Chapter 29 (relating to motor carriers of passengers).

(5) An applicant's record, if any, of compliance with 66 Pa.C.S. (relating to the Public Utility Code), this title and the Commission's orders.

(6) Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.

(7) An applicant for household goods authority that does not have a satisfactory safety rating issued by the U.S. Department of Transportation or by a state with safety regulations comparable to the Commonwealth, shall be required to successfully complete a Safety Fitness Review conducted by Commisison staff.

(8) After 18 months of operation, a new household goods carrier shall successfully complete a Household Goods Audit conducted by Commission staff. Failure to pass the audit may result in proceedings to revoke the carrier's certificate.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.

(d) Subsections (a) and (c) do not apply to an applicant seeking authority to provide motor carrier of passenger service under §§ 29.331—29.335 (relating to limousine service) or household goods in use service under §§31.121-31.134 (relating to household goods in use service).



COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
400 NORTH STREET  
HARRISBURG, PA 17120

ROBERT F. POWELSON  
CHAIRMAN

November 7, 2013

The Honorable Silvan B. Lutkewitte, III  
Chairman  
Independent Regulatory Review Commission  
14th Floor, Harristown II  
333 Market Street  
Harrisburg, PA 17101

**Re: L-2013-2376902/57-298; Amending Household Goods in Use Carriers and Property Carriers Regulations; 52 Pa. Code, Chapters 3, 5, 23, 31, 32 and 41**

Dear Chairman Lutkewitte:

Enclosed please find 1 copy of the proposed rulemaking and the Regulatory Analysis Form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." Pursuant to Section 5(a) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15), the Commission is submitting today a copy of the proposed rulemaking and Regulatory Analysis Form to the Chairman of the House Committee on Consumer Affairs and to the Chairman of the Senate Committee on Consumer Protection and Professional Licensure.

The purpose of this proposal is to amend existing regulations governing household goods carriers, eliminating the requirement that applicants for authority establish a public demand or need for the proposed service and modifying insurance requirements. The contact person is Assistant Counsel John Herzog, Law Bureau, 717 783-3714.

The proposal has been deposited for publication with the Legislative Reference Bureau.

Sincerely,

Robert F. Powelson

Enclosures

pc: The Honorable Robert M. Tomlinson  
The Honorable Lisa Boscola  
The Honorable Robert Godshall  
The Honorable Peter J. Daley, II  
Legislative Affairs Director Perry  
Chief Counsel Pankiw  
Assistant Counsel Herzog  
Regulatory Coordinator DelBiondo

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT  
TO THE REGULATORY REVIEW ACT

ID Number: L-2013-2376902/57-298

Subject: Proposed Rulemaking Amending Household Goods in Use  
Carriers and Property Carriers Regulations  
52 Pa. Code Chapters 3, 5, 23, 31, 32 and 41

Pennsylvania Public Utility Commission

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IRRC

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted.
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
11/7/13	<i>S. Stappert</i>	HOUSE COMMITTEE (Godshall) Consumer Affairs
11/7/13	<i>Mary Walmer</i>	SENATE COMMITTEE (Tomlinson) Consumer Protection and Professional Licensure
11/7/13	<i>K. Cooper</i>	Independent Regulatory Review Commission Attorney General
11/7/13	<i>Samantha Huser</i>	Legislative Reference Bureau