

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

2016 FEB 10 AM 10:41

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

(1) Agency

Pennsylvania Public Utility Commission

(2) Agency Number: 57-312

Identification Number: L-2015-2507592

IRRC Number: 3135

(3) PA Code Cite: 52 PA Code Chapters 1, 3, 5, 23 & 29

(4) Short Title: Proposed Rulemaking Amending Passenger Carrier Regulations to Reduce Barriers to Entry and Eliminate Unnecessary 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

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 regulation intends to amend the application process for applicants for passenger carrier 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, 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. The regulations accomplish this by limiting application protests to the fitness of the applicant, eliminating the requirement of supporting verified statements, and eliminating the service request evidentiary requirement.

The Commission is addressing regulatory changes only in this regard. It will issue a Policy Statement after the rulemaking becomes final as guidance.

Also, the Commission will permit all passenger carriers to change rates without filing extensive, supporting financial justification with the Commission. However, carriers will be required to support rate changes with basic operational and financial data. We also will eliminate territorial restrictions for passenger carriers.

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

66 Pa. C.S. §§501, 1102, 1103, 1501

(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 passenger carrier industry. The current application process is antiquated and serves to erect unnecessary barriers to entry. Prospective passenger carriers, as well as the public, will benefit from this change by removing unnecessary barriers to entry, thereby fostering a competitive marketplace.

The Commission receives an average of 260 applications each year from prospective passenger carriers. Of the 260 applications, approximately 70 are protested. Approximately 400 protests are filed each year, averaging approximately 5.7 protestants in each of the 70 protested applications.

Under current regulations, the process of receiving a certificate of public convenience can range from three to six months or more. In addition to the application filing fee, an applicant may spend an average of \$25,000 in legal fees for a protested application. This figure is derived from data received by the Commission from motor carrier financial statements. Additionally, each protestant may spend an average of \$7,000 in legal fees to challenge the application. The primary challenge lodged against an applicant is whether there is a public demand or need for the service. The proposed changes would eliminate protests based on need and thereby reduce processing time and money spent on legal fees.

There are 1,127 certificated passenger carriers that will be affected, in that they would no longer be permitted to protest an application based on service area. Both existing and prospective carriers would benefit in that they would recognize savings in legal fees.

The benefit to the general public is greater choice in service and reduced fares as a result of a competitive marketplace. In particular, the general public will benefit from a greater number of service providers who will compete in terms of price, quality, reliability and innovation to meet the needs of the public. And, rather than an administrative determination by the Commission, "need" will be determined by consumer demand and preferences.

Additionally, the revision to the tariff provisions will streamline the ratemaking process, resulting in time and cost savings to the carrier. Carriers will no longer be required to file extensive supporting justification to support rate changes. Carriers will still be required to notify the Commission of tariff changes and to provide the basic operational and financial data enumerated at 52 Pa. Code §23.68, including the reasons for the proposed change, the effect of the change on the carrier's revenues, the gross intrastate revenue for the most recent fiscal year, the projected operating revenue and expense and the resulting operating ratio.

Finally, eliminating territorial restrictions will benefit carriers and the public. Carriers will no longer be restricted by arcane limitations on their operating territory, allowing them to expand into areas to meet public demand for service.

(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?

The regulation reflects the current regulatory environment in a variety of states, including Delaware, Maryland, New Jersey, and Ohio, as well as the Federal Motor Carrier Safety Administration. The regulation will not affect Pennsylvania's ability to compete with other states since the regulation affects only intrastate business, which must be licensed by the PUC.

(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 has relied on its own experience and expertise in issuing the proposed rulemaking. The Commission will solicit and consider, through the comments, input from all concerned parties following comment to the proposal.

(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 regulation will affect all 1,127 current passenger carriers providing service in vehicles seating 15 passengers or less including the driver. Tariff and territorial streamlining and relaxation will affect these carriers. The approximately 260 applicants applying annually will be affected by the elimination of barriers to entry. The regulation's effect on consumers will be increased competition for service, resulting in better service and pricing options. All of the aforementioned passenger carriers qualify as small businesses.

(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 1,127 current passenger carriers, as well as all future carriers, will be required to comply with the tariff regulations.

(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.

For consumers, the impact will be positive with more choice and market-driven pricing. Small

businesses will be impacted economically and financially because they will be subject to a more competitive marketplace. Since all certificated passenger carriers are small businesses as defined within the context of this query, the above described economic and financial impacts will be applicable to them. While some small businesses will gain revenues, others who fail to meet consumers' demands and preferences may lose revenues. It is impossible to quantify, with certainty, the impact. However, the marketplace will be open for competition, and the extensive supporting financial justification for rate changes will be reduced. The net effect on small business revenue, assuming no aggregate change in demand, may be zero. Also, costs associated with the current application process will be reduced for existing and prospective carriers as described in paragraph 10.

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

Benefits are explained in the preceding sections. Costs and adverse effects will be minimal, if any. As with any industry, competition has costs as well as benefits. Competition and reduced barriers to entry are most often opposed by entrenched monopolies or oligopolies. From the perspective of a prospective entrant or consumer, competition enables desirable changes in service, price, and market share. Streamlined ratemaking will benefit the industry, removing unnecessary obstacles to proper pricing. Eliminating territorial restrictions will benefit the consumer and competing carriers, providing more choice. An application process not encumbered with unnecessary delays will benefit the public and prospective carriers, with no attendant costs.

(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.

Savings to the regulated community will be found in that litigious application proceedings will no longer be the norm for entrants, resulting in savings for applicants, as well as the current regulated community. Most applications are protested by incumbent carriers who challenge the entry of another potential competitor. The average number of protests filed by incumbent carriers against new applications is over 400 per year. The procedures following those filings cost an applicant who is seeking to enter the market an average of \$25,000 in legal fees for a protested application. Additionally, each protestant spends an average of \$7,000 in legal fees and there are approximately 5.7 protestants in each of the 70 protested applications, averaging \$40,000 per protested application. Therefore, there will be approximately a \$4.55 million savings to the regulated community ($\$25,000 + \$40,000 \times 70$). Dollar estimates were derived from financial statements filed by carriers in the course of filing requests for rate increases as well as interviews with carriers. These are the legal costs that can be avoided if the application can no longer be protested by incumbent carriers on the basis of need.

The costs to the regulated community result in those members assigning a value to a certificate of public convenience. It should be noted that a certificate of public convenience is not a property interest. *Western Pennsylvania Water Company v. Pa. PUC*, 311 A.2d 370 (Pa. Cmwlth. 1973). Any value associated with the certificate itself stems from its value as a barrier to entry for new carriers. The Commission is not able to quantify the value for any one certificate since that would be dependent on the market territory for which the certificate was issued. The Commission notes that as a stand-alone asset, the certificate has no inherent value as a property interest.

(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.

The specific amount of savings cannot be calculated; however, a reasonable estimate can be calculated. In 2014 there were 60 passenger application cases which resulted in hearings. The Commission's cost per hour is approximately \$150 (stenographer's fee, salaries of administrative law judge and incidental employee). The average length of these hearings is five hours, resulting in an average cost per hearing to state government of \$750. A judge must then prepare and issue a decision on the case, resulting in additional administrative costs.

Related to protested cases, there are additional savings which would be difficult to estimate. Many cases are mediated by administrative law judges, but are resolved prior to formal hearing. If any of the judges' decisions are appealed, there are additional costs incurred as Commission staff reviews each case and prepares orders.

The Commission notes that highly contested applications may result in hundreds of thousands of dollars of cost to the Commission, which may include appellate court costs and time.

Savings will also be realized in that applicants will no longer be required to submit affidavits testifying to the need for service nor witnesses in the event of a hearing. This paperwork averages 15 sheets of paper per application case, and with an annual average of 260 applications, this results in eliminating 3,900 sheets of paper. Elimination of those filings results in many hours of processing.

Additionally, the PUC Motor Carrier Enforcement Division would save a significant amount of time by not having to prosecute and issue Bureau Complaints for operating without the required passenger certificate. Most unlicensed carriers, once they are contacted by enforcement staff, are more than willing to comply with the regulations given the opportunity to operate legally. They can't afford to cease operations for 6 to 8 months while their application is being processed or protested by an existing carrier. An average unlicensed passenger carrier complaint investigation and prosecution could take up to 30 to 40 hours of an enforcement officer's time.

The annual savings to state government would be approximately \$500,000 or more. This figure was calculated using the 70 protested applications that may require hearings. These proceedings would involve time from the Office of Administrative Law Judge, the Office of Special Assistants, the Secretary's Bureau, and the Commissioners offices and their staff.

(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.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	-0-*	\$4.55M	\$4.55M	\$4.55M	\$4.55M	\$4.55M
Local Government	-0-	-0-	-0-	-0-	-0-	-0-
State Government	-0-*	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Total Savings		\$5.05M	\$5.05M	\$5.05M	\$5.05M	\$5.05M
COSTS:						
Regulated Community	-0-	-0-	-0-	-0-	-0-	-0-
Local Government	-0-	-0-	-0-	-0-	-0-	-0-
State Government	-0-	-0-	-0-	-0-	-0-	-0-
Total Costs	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE LOSSES:						
Regulated Community	-0-	-NQ- (not quantifiable)	-NQ-	-NQ-	-NQ-	-NQ-
Local Government	-0-	-0-	-0-	-0-	-0-	-0-
State Government	-0-	-0-	-0-	-0-	-0-	-0-
Total Revenue Losses	-0-	-0-	-0-	-0-	-0-	-0-

*Since the regulation will not be effective in the current fiscal year, there will be no effect.

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

The Commission provides the following expenditure history based on costs incurred during the most recent four (4) calendar years.

Program	FY -3	FY -2	FY -1	Current FY
Passenger Carriers	\$,2801,822	\$2,394,561	\$2,818,168	\$2,525,880

(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.

The 1,127 currently certificated passenger carriers and future applicants for passenger carrier service.

- (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.

None.

- (c) A statement of probable effect on impacted small businesses.

The regulation will ease barriers to entry into the competitive marketplace. This will encourage small businesses to enter the industry. Existing carriers will see increased competition. This will provide a forward thinking business environment within Pennsylvania. The rulemaking facilitates a more open business climate that is not subject to the antiquated strictures of overly burdensome regulation and is more responsive to market demand and pricing. The Commission will continue to ensure that carriers are technically, financially, and legally fit to provide service.

- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

None available.

(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.

As stated throughout the RAF, small businesses will enjoy a more open market, stripped of the outdated, monopolistic application process. Additionally, a streamlined ratemaking process will be implemented.

(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;

The regulation does not involve reporting requirements. Compliance requirements have been

eased for tariff filings. These changes do not qualify as adverse.

- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

The regulation does not implement schedules or deadlines for compliance or reporting requirements which are burdensome.

- c) The consolidation or simplification of compliance or reporting requirements for small businesses;

The regulation does not consolidate compliance or reporting requirements. The regulation will simplify compliance requirements for tariff changes by eliminating unnecessary data submissions.

- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and

The regulation does not establish performance standards nor does it replace designer operational standards.

- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

This was not possible given the content and context of the regulation.

There is no net adverse impact on small businesses. While existing carriers will be subject to increased competition, this is not necessarily an adverse impact.

Competition spawns innovation and efficiency, certainly worthy goals of any business. Additionally, new entrants, many of which will be small businesses, will not be frustrated by artificial entry barriers. Also, all carriers will benefit from streamlined ratemaking.

(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:

Mid - 2016

D. The expected effective date of the final-form regulation:

Upon publication as final

E. The date by which compliance with the final-form regulation will be required:

Upon publication as final

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.

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

Amy M. Elliott

BY _____
(DEPUTY ATTORNEY GENERAL)

FEB 02 2016

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-2015-2507592/57-312

DATE OF ADOPTION 11/5/2015

Rosemary Chiavetta

BY _____
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

11/5/2015

DATE OF APPROVAL

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

L-2015-2507592/57-312
Proposed Rulemaking
Reduce Barriers to Entry for
Passenger Motor Carriers
52 Pa Code, Chapters 1, 3, 5, 23 and 29

The Pennsylvania Public Utility Commission on November 5, 2015, adopted a proposed rulemaking order to reduce the current barriers to entry for qualified passenger motor carrier applicants by eliminating the requirement that an applicant for passenger motor carrier authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need. The contact person is Assistant Counsel John Herzog, Law Bureau, 717-783-3714.

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EXECUTIVE SUMMARY

L-2015-2507592/57-312

Proposed Rulemaking Amending Passenger Carrier Regulations to Reduce Barriers to Entry and Eliminate Unnecessary Regulations Governing Temporary and Emergency Temporary Authority Amending 52 Pa. Code Chapters 1, 3, 5, 23, and 29

The Pennsylvania Public Utility Commission is vested with jurisdiction over passenger common carrier service in Pennsylvania. The Commission recognizes several distinct types of passenger common carriers in its regulations, including scheduled route carriers, call or demand (taxi) carriers, group and party carriers, limousine carriers, airport transfer carriers, paratransit carriers, and experimental service carriers. 52 Pa. Code §§ 29.301-29.356. Each of these carriers has unique equipment and operating characteristics.

Historically, the Commission has required applicants for passenger carrier authority to establish that they are technically and financially fit, can operate safely and legally, and that there is a public demand or need for the services. 52 Pa. Code §§ 3.381 and 41.14. Upon consideration of the acknowledged benefits of increased competition among passenger motor carriers and advances in technology, the Commission believes that it is appropriate to reduce the current barriers to entry for *qualified* applicants by eliminating the requirement that an applicant for passenger motor carrier authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need. Rather than determining public need by means of a complex, costly and time consuming administrative process, public need or demand will be determined in the marketplace by competition among passenger 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. Passenger carrier applicants will continue to be required to establish, in the application process at 52 Pa. Code § 3.381, that they have the technical and financial ability to provide the proposed

service safely, reliably and legally, and that they are fully insured in accordance with the requirements of state law and Commission regulations.

As a corollary to the proposed elimination of public demand or need in the application process, the Commission envisions 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. The Commission proposes to permit all passenger carriers to change rates without filing the extensive supporting financial justification required by 52 Pa. Code § 23.64 by eliminating the threshold interstate revenue amount for passenger carriers in § 23.68. Passenger carriers will continue to be required to submit filings notifying the Commission of tariff changes and to provide the basic operational and financial data enumerated at 52 Pa. Code § 23.68 to support those filings.

Another consequence of eliminating the public need requirement for passenger carrier applicants is that the current territorial restrictions that accompany a carrier's certificate are no longer necessary. Therefore, passenger carriers will be deemed to have statewide authority, unless otherwise requested. Additionally, given the elimination of the public need requirement for passenger carrier applicants and the statewide authorization for all passenger carriers, the Commission believes that the regulatory provisions providing for Emergency Temporary Authority (ETA) and Temporary Authority (TA) are no longer applicable to passenger carriers. 52 Pa. Code §§ 3.383-3.385.

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

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

Public Meeting held November 5, 2015

Commissioners Present:

Gladys M. Brown, Chairman
John F. Coleman, Jr., Vice Chairman
Pamela A. Witmer
Robert F. Powelson
Andrew G. Place

Proposed Rulemaking Amending 52 Pa. Code
Chapters 1, 3, 5, 23 and 29 to Reduce Barriers to Entry
for Passenger Motor Carriers and to Eliminate
Unnecessary Regulations Governing Temporary and
Emergency Temporary Authority

Docket No. L-2015-2507592

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 several distinct types of common

carriers in its regulations. 52 Pa. Code Chapters 21, 29, and 31. A passenger carrier is defined as “a motor common or contract carrier that transports passengers.” 52 Pa. C.S. § 21.1. Our regulations recognize several types of passenger carriers, including scheduled route carriers, call or demand (taxi) carriers, group and party carriers, limousine carriers, airport transfer carriers, paratransit carriers, and experimental service carriers. 52 Pa. Code §§ 29.301-29.356.

Each of these carriers has unique equipment and operating characteristics:

Scheduled route carriers operate over a scheduled route and pick up and discharge persons at points along that route, as authorized by their certificate. These carriers are obligated to provide printed time schedules for their routes, and must provide notice of any changes in routes or time schedules. In addition, these carriers must operate vehicles with seating capacities of six passengers or greater, excluding the driver. 52 Pa. Code §§ 29.301 – 29.305.

Call or demand carriers, or taxis, transport persons on an exclusive or nonexclusive basis in vehicles with seating of eight passengers or less, excluding the driver. These carriers must transport passengers by the shortest practical route unless otherwise directed by the passenger, and must maintain log sheets for each trip. The call and demand vehicle must also be equipped with a meter that records the fare. The meter must be plainly visible to the passenger and, if requested, the carrier must provide a receipt to the passenger. 52 Pa. Code §§ 29.311 – 29.316.

Group and party carriers transport persons in charter service, tour or sightseeing service, or special excursions, and operate vehicles with seating capacities of 10 passengers or greater, excluding the driver. Unless these carriers obtain a special permit from the Commission, they may not provide service that duplicates a direct or connecting

service rendered by a scheduled route carrier or a public transportation system. 52 Pa. Code §§ 29.321 – 29.324.

Limousine carriers transport persons on an advance reservation basis in exclusive service provided by luxury vehicles with seating capacities of 10 passengers or less, excluding the driver. These carriers must provide service on an advance reservation service and not by street hail, must charge a single person or organization for the service and not by passengers as individuals, and must maintain trip logs for each vehicle. In addition, limousine carrier rates must be based solely upon time, and must be contained in tariffs. 52 Pa. Code §§ 29.331 – 29.335.

Airport transfer carriers transport persons on a nonexclusive, individual charge basis from points authorized by the certificate to the airport specified by the certificate, and *vice versa*. Airport transfer service may be offered on a scheduled basis serving specified points according to a published time schedule or on a request basis with the origin or destination of the transportation to or from the airport arranged between the individual and the carrier, or on both bases. A material change in a time schedule shall be posted at terminals and in vehicles engaged in service affected by the change for a period of not less than seven days prior to the effective date of the change. 52 Pa. Code §§ 29.341 – 29.343.

Paratransit carriers transport persons on an advance reservation basis in nonexclusive service in vehicles with seating capacities of 15 passengers or less, excluding the driver. The paratransit vehicles used to transport handicapped persons must contain equipment necessary for the safety and comfort of handicapped passengers. The service must be provided on an advance reservation basis, and the rates charged must be contained in tariffs. 52 Pa. Code §§ 29.353 – 29.356.

Experimental carriers provide a new, innovative, or experimental type of service not encompassed within the other recognized categories of service. A certificate for experimental service is valid only until the service is abandoned, until two years have elapsed from the time the certificate was approved, or until the Commission enacts regulations covering the service, whichever occurs first. Carriers must abide by any regulations or requirements which the Commission prescribes. 52 Pa. Code § 29.352.

Discussion

Historically, the Commission has required applicants for passenger carrier authority to establish that they are technically and financially fit, can operate safely and legally, and that there is a public demand or need for the services. 52 Pa. Code §§ 3.381 and 41.14. Upon consideration of the acknowledged benefits of increased competition among passenger motor carriers and advances in technology, we believe that it is appropriate to reduce the current barriers to entry for *qualified* applicants by eliminating the requirement that an applicant for passenger motor carrier authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need.¹ Rather than determining public need by means of a complex, costly

¹ Pursuant to our Order in dated March 22, 2001, we adopted a final policy statement wherein we eliminated the requirement that applicants for limousine authority are required to establish that the proposed service is responsive to a public demand or need, and that the proposed service will not endanger or impair the operation of existing carriers. *Evidentiary Criteria Used to Decide Motor Common Applications*, Docket No. L-00980135 (Order entered March 22, 2001). Notwithstanding our adoption of this policy statement for these carriers, we still must address ancillary regulatory provisions that may be affected by our action. Additionally, we note that 49 U.S.C. § 14501(a) preempts state regulation of intrastate 'charter bus service' as far as rates, routes, and service requirements. This preemption was implemented in 1998. The Commission has previously determined that "charter bus transportation," per §14501(a)(1)(C), is limited to group and party service provided in vehicles with seating capacities of 16 or more, including the driver. *Regulation of Group and Party Carriers*, Docket No. P-00981458 (Order entered January 11, 1999). *Regency Transportation Group, Ltd., v. Pa. Public Utility Commission*, 44 A. 3d 107 (Pa. Cmwlth. 2012). We also determined that it was appropriate to extend the preemption to the ancillary tour and sightseeing and special excursion services. Therefore, per our January 11, 1999 order, we bifurcated the group and party service category into 'group and party 11-15' and 'group and party greater than 15,' for regulatory purposes. Since that time, we have not required proof of public demand or need for processing of group and party greater than 15 carrier applications, but maintained the public need requirement for group and party 11-15 carrier applications. Our proposed regulations will reflect these changes.

and time consuming administrative process, public need or demand will be determined in the marketplace by competition among passenger 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.

In a competitive market with reduced barriers to entry for qualified carriers, the Commission finds no reason to continue to protect, by an administrative process, passenger carriers whose services are no longer demanded by consumers who have chosen other carriers. Indeed, lowering outdated barriers to entry will further 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.

Consistent with our policy statement and in light of the benefits of increased competition in the passenger carrier industry, we believe that it is appropriate to modify our regulations governing all passenger carrier applications by lowering the barriers to entry for qualified carriers who are technically and financially fit and who can provide service that is safe, reliable and fully insured.

We note that our legal authority to eliminate the public need requirement has been considered and affirmed by the Pennsylvania Supreme Court. *Elite Industries, Inc. v. Pa. Public Utility Commission*, 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.

Id. at 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. Public Utility Commission*, 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 Jersey, Ohio and Maryland, as well as the Federal Motor Safety Administration, do not require passenger carrier 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 passenger carrier 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. Therefore, as barriers to entry are reduced and competition increases, the Commission is able to reduce and eliminate regulations that were adopted for a monopoly environment and are no longer necessary.

Chapter 23 of our regulations, 52 Pa. Code Chapter 23, governs tariffs and ratemaking procedures for common carriers. Specifically, 52 Pa. Code § 23.68 provides that small passenger carriers with gross annual intrastate revenue of less than \$500,000 need not file the substantiating data required by 52 Pa. Code § 23.64, to support changes in rates. We now propose to permit all passenger carriers to change rates without filing the extensive supporting financial justification required by 52 Pa. Code § 23.64 by eliminating the threshold interstate revenue amount for passenger carriers in § 23.68. Passenger carriers are still required to submit filings notifying the Commission of tariff changes and to provide the basic operational and financial data enumerated at 52 Pa. Code § 23.68, including the reasons for the proposed tariff change, the effect of the change on the carrier's revenues, the gross intrastate revenue for the most recent fiscal year, the projected operating revenue and expense, and the projected operating ratio. The Commission will continue to review such filings to ensure that rates are just and reasonable based on the required submittal.² See 66 Pa. C.S. § 1301.

Another consequence of eliminating the public need requirement for passenger carrier applicants is that the current territorial restrictions that accompany a carrier's certificate are no longer necessary.³ Currently, passenger carriers generally demonstrate that their business will serve a useful public purpose, responsive to a public demand or need by presenting witnesses who testify that the service is needed in a particular

² By Order entered October 16, 1997, the Commission allowed limousine and group and party carriers to engage in flexible ratemaking. *Investigation of Flexible Ratemaking for the Bus and Limousine Industries*, Docket No. I-00960063 (Order entered October 16, 1997). In that Order, the Commission allowed group and party and limousine carriers to establish initial rates and change existing rates with at least (1) day notice to the Commission, with no supporting financial justification as provided at 52 Pa. Code §§ 23.62-23.64 for new tariffs or changes to existing tariffs. Finally, we waived the requirement that group and party and limousine carriers post a notice of changes in fares. 52 Pa. Code § 23.61. Since our 1997 Order establishing flexible ratemaking, we have not observed any reason to deviate from this practice. Market driven pricing, obviating the need to engage in traditional ratemaking processes geared toward monopoly markets, has been successful. We will modify our regulations to reflect our 1997 order and current practice accordingly.

³ We have followed this practice since 2001 in the limousine industry and have observed a functional marketplace without the strictures of unnecessary economic regulation. Likewise, large group and party carriers and property carriers have been operating with statewide authority since federal preemption in 1998 and 1994, respectively.

geographic territory. As such, the PUC routinely limits carriers' authority to the geographic territories where the carrier was able to demonstrate a need for the service. With the elimination of the need requirement, the corresponding limitation on carriers' certificates to specific service territories is no longer necessary. Therefore, existing passenger carriers will be deemed to have statewide authority. However, a carrier may wish to limit its operating territory due to operational concerns, insurance costs, or other factors. If this is the case for an existing carrier, the carrier may advise the Commission accordingly. New carriers will retain the ability to propose limitations on its operating territory at the time of application.

Given the elimination of the public need requirement for passenger carrier applicants and the statewide authorization for all passenger carriers, we believe that the regulatory provisions providing for Emergency Temporary Authority (ETA) and Temporary Authority (TA) are no longer applicable to passenger 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 or a change in rates, we believe that our regulations governing Emergency Relief in general, would suffice. 52 Pa. Code §§ 3.1-3.12.⁴

We stress that passenger carrier applicants are still required to establish, in the application process at 52 Pa. Code § 3.381, that they have the technical and financial

⁴ We note that ETA and TA are also available to broker and contract carriers. Our experience indicates that these provisions have not been utilized by either group in recent history. We believe that these groups can likewise avail themselves of our regulations governing emergency relief should it be required.

ability to provide the proposed service safely, reliably and legally, and that they are fully insured in accordance with the requirements of state law and our regulations.⁵

In sum, while we are eliminating certain outdated barriers to entry for passenger carriers and unnecessary regulations as a result of these changes, 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, or otherwise fail to meet their fundamental duty to provide safe, reasonable, and adequate service to the public. 66 Pa. C.S. § 1501.⁶

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.

⁵ Protests to passenger carrier applications have been limited to these criteria. 52 Pa. Code § 3.381(c). 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 passenger authority. *See* 52 Pa. Code § 5.235.

⁶ We note that in addition to our regulations at 52 Pa. Code Chapter 3, the public need requirement is also referenced in our policy statement at 52 Pa. Code § 41.14. After the regulatory changes effected by this rulemaking became final, we will issue an order amending our policy statement so that it is consistent with current regulations.

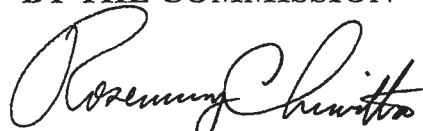
2. That the Secretary shall submit this order and Annex A, to the Governor's Budget Office for review of fiscal impact.

3. That the Secretary shall submit this order and Annex A for review 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 Alyson Zerbe, 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



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: November 5, 2015

ORDER ENTERED: November 5, 2015

ANNEX A

TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart A. GENERAL PROVISIONS
CHAPTER 1. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE
Subchapter E. FEES

* * *

§ 1.43. Schedule of fees payable to the Commission.

(a) *Fees for services.* The fees for services rendered by the Commission are as follows:

<i>Description</i>	<i>Fee (in dollars)</i>
Initial filing of Form A for intangible transition property notice...	\$550
Subsequent filing of notice changes in intangible transition property notice on Form B...	\$350
Chapter 74 public information requests relating to perfection of security interests...	\$10 plus standard per page copying costs
Copies of papers, testimony, microfiche, records and computer printouts per sheet...	\$.75
Copies of microfiche per sheet...	\$1.50
Copies of microfilm per roll...	\$80
Certifying copy of a paper, testimony or record...	\$5
Filing each securities certificate...	\$350
Filing each abbreviated securities certificate...	\$25
Filing each application for a certificate, permit or license or amendment of a certificate, permit or license...	\$350
Filing an application for a certificate of public convenience for a motor common carrier of property <u>or a group and party carrier of greater than 15 passengers</u> ...	\$100
[Filing an application for emergency temporary authority as common carrier of passengers or household goods in use, contract carrier of passengers or household goods in use, or broker or for an extension thereof...	\$100
Filing an application for temporary authority as common carrier of	

passengers or household goods in use, contract carrier of passengers or household goods in use, or broker... \$100]

Filing an application for a certificate to discontinue intrastate common carrier passenger or household goods in use service... \$10

(b) *Supersession.* Subsection (a) supersedes 1 Pa. Code § § 33.21(b) and 33.23 (relating to filing fees; and copy fees).

* * * * *

CHAPTER 3. SPECIAL PROVISIONS
Subchapter E. MOTOR TRANSPORTATION PROCEEDINGS

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

* * * * *

(b) *Notice.* Applications will be docketed by the Secretary and, with the exception of motor common carrier property and group and party carrier of greater than 15 passengers applications, thereafter forwarded for publication in the *Pennsylvania Bulletin*. No other notice to the public or to a carrier, forwarder or broker is required, except that an applicant filing an application for the discontinuance of the transportation of persons, on a scheduled basis, shall certify to the Commission that it has done the following:

- (i) Notified the local government having jurisdiction over affected areas.
- (ii) Posted notice of the proposed discontinuance in a conspicuous place in vehicles engaged in service on affected routes.

(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 is not applicable to applications for household goods in use authority.

(VII)] A protest [to a household goods in use application] is 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.

(B) Upon the filing of a timely protest, the protestant will be allowed to participate in the proceeding as a party intervenor.

(C) A protest shall be treated as a pleading and the applicant may, within 20 days after the closing date for the filing of protests, file motions to strike, to dismiss, or for amplification as provided in § 5.101 (relating to preliminary objections).

(ii) *Time of filing.* A protest shall be filed within the time specified in the notice appearing in the *Pennsylvania Bulletin*, which shall be no less than 15 days from the date of publication. Failure to file a protest in accordance with this subsection shall bar subsequent participation in the proceeding, except when permitted by the Commission for good cause shown.

(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.

(II) The applicant's verified statement shall be in paragraph form and shall contain the following information, as applicable:

(-a-) The legal name and domicile of the applicant.

(-b-) The identity and qualifications of the person making the statement for applicant.

(-c-) Whether or not the applicant is affiliated with any other carriers, with a description of the affiliation.

(-d-) The authority sought.

(-e-) The general scope of currently authorized operations—attach copies of pertinent operating rights.

(-f-) Duplicating authority which will result from grant of authority.

(-g-) Dual operations resulting from grant of authority.

(-h-) Pertinent terminal facilities and communications network.

(-i-) Pertinent equipment—make, model, year, owned or leased, and lessor; safety program; service currently provided to supporting witnesses.

(-j-) The type of service offered.

(-k-) Financial data—current balance sheet and income statement for corporations and partnerships and assets and liabilities for individuals.

(-l-) A statement that the applicant has a minimum of 2 years of experience with a licensed household goods carrier or the equivalent. This requirement shall be applicable to all applications for household goods, whether protested or not.

(-m-) Other information deemed pertinent.

(III) [Verified statements of the supporting party or firm shall be in paragraph form and shall contain the following information, as applicable:

(-a-) The legal name and domicile of the supporting party or firm.

(-b-) The identity and qualifications of the person making the statement for supporting party or firm.

(-c-) A general description of the supporting party, organization or operations.

(-d-) The volume and frequency of intended use.

(-e-) Specific or representative origins and destinations, or both.

(-f-) The type of service required—persons, group movements, tours, call or demand, scheduled, and the like.

(-g-) Similar applications supported—pertinent docket numbers.

(-h-) Other information deemed pertinent.

(IV)] There will be the following extensions of time to file verified statements. When extenuating circumstances exist, the Commission will grant up to 45 days to file verified statements. Requests for extensions of time may be granted by the Commission based upon a written request giving reasons for the extension.

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

(B) Schedule the unprotested application for oral hearing at a time, date and place to be set, thereafter notifying the applicant by letter of the scheduling.

(2) Applications for motor common carrier of property and group and party service for greater than 15 passenger authority. No protests to applications for motor common carrier property and group and party carrier greater than 15 passenger authority may be filed.

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

(1) Applications for passenger, excluding group and party service greater than 15 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 passenger and household goods in use authority. Applications for passenger and 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.

(2) Applications for motor common carrier of property and group and party service for greater than 15 passenger authority.

(i) *Scheduling hearings.* If the [Bureau of Transportation and Safety] Commission's prosecutory staff [determine] determines that conditional or unsatisfactory safety ratings from other jurisdictions or adverse decisions in safety related proceedings before other tribunals exist, [the Bureau of Transportation and Safety] prosecutory staff shall enter [its] an appearance and refer the matter to the Office of Administrative Law Judge for hearing on the applicant's safety fitness. A determination by the Commission, after hearing, that the applicant possesses the necessary safety fitness will result in the application being processed as though the applicant possessed a satisfactory safety rating.

(ii) *Requests for postponement.* Requests for postponement shall be made and disposed of in accordance with paragraph (1)(ii).

(iii) *Prehearing conferences.* Prehearing conferences shall be conducted in accordance with paragraph (1)(iii).

* * * * *

(f) Compliance: conditions for approval for motor common carrier property and group and party greater than 15 passenger authority. If the [Bureau of Transportation and Safety] Commission's prosecutory staff determines that a hearing is not required, as provided in subsection (d)(2), the Commission will act on applications as follows:

(1) A compliance letter will be issued directing that the applicant file a Form E Uniform Motor Carrier Bodily Injury and Property Liability Certificate of Insurance and a Form H Uniform Cargo Insurance Certificate, if applicable. Temporary evidence of insurance may be filed in the form of an insurance identification card for vehicles registered in this Commonwealth, a copy of the declaration page of the insurance policy, a copy of a valid binder of insurance or a copy of a valid application for insurance to the Pennsylvania Automobile Insurance Plan. The temporary evidence of insurance shall be replaced by the required certificates within 60 days. A carrier may begin operations upon filing acceptable evidence of insurance.

(2) Once acceptable Form E and Form H certificates of insurance have been filed, a certificate of public convenience will be issued authorizing the transportation of property, not including household goods in use or group and party greater than 15 passenger authority, between points in this Commonwealth.

(3) Applicants which do not possess a current satisfactory safety rating issued by the United States Department of Transportation or a state with safety regulations comparable to the Commonwealth shall complete a safety fitness review conducted by Commission staff. The safety fitness review shall be scheduled and completed within 180 days of the date of the compliance letter. If the applicant fails to attain a satisfactory safety evaluation within the 180-day period, it 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.

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

(5) 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.

(g) *New applications: conditions for reconsideration.* Applications filed within 6 months of the date of an order refusing or dismissing, on the merits, an application for the same rights filed by the same party shall set forth any new facts or changed conditions not previously presented to the Commission for consideration. The Commission may, in its administrative discretion, either accept or refuse the filing of the application.

§ 3.382. Evidentiary guidelines for applications for passenger, excluding group and party greater than 15 passenger, and household goods in use authority.

[(a) *Service request evidence.* Evidence of requests received by an applicant for passenger 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:

(1) The date of each request.

(2) The name, address and phone number of the person or company requesting service.

(3) The nature of the service requested on each occasion, including the commodities or persons to be transported, and the origin and destination of the requested transportation.

(4) The disposition of the request, that is, whether the applicant provided the service or, if not, whether the requesting shipper was referred to another carrier and, if there was a referral, to which carrier was the shipper referred.

(b)] *Prospective rate evidence.* An applicant for a motor carrier certificate or permit for the transportation of passengers or household goods in use, though not required to offer testimony as to the rates proposed to be charged, may do so if it is otherwise competent. The weight to be attributed to the evidence will depend upon the extent to which it is accompanied by cost evidence demonstrating that the prospective rates would be compensatory, that is, that the prospective rates would be adequate to enable the applicant to recover its costs and realize a reasonable return either on investment or under operating ratio standards. The demeanor and credibility of a witness offering the evidence will also be considered in evaluating the weight to be attributed to the evidence.

§ 3.383. Reserved. [Applications for temporary authority and emergency temporary authority.

(a) *Controlling legislation.* The provisions of 66 Pa.C.S. § § 1103(d) and 2509 (relating to procedure to obtain certificates of public convenience and temporary permits and licenses) are as follows:

“§ 1103(d) Temporary authority—Except during the threat or existence of a labor dispute, the commission under such regulations as it shall prescribe may, without hearing, in proper cases, consider and approve applications for certificates of public convenience, and in emergencies grant temporary certificates under this chapter, pending action on permanent certificates; but no applications shall be denied without right of hearing thereon being tendered to the applicant.”

“§ 2509 Temporary permits and licenses—The commission, under such regulations as it shall prescribe, may, without hearing, in proper cases, consider and approve applications for permits and licenses, and in emergencies grant temporary permits and licenses under this chapter, pending action on permanent permits or licenses; but no application shall be denied without right of hearing thereon being tendered the applicant.”

(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 and motor contract carriers of passengers, 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 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 to meet an emergency situation.

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

(c) *Filing of applications.* An application shall be filed as follows:

(1) *How and where filed.* An original of each application for TA or ETA (Form C) is to be filed with the Secretary, Pennsylvania Public Utility Commission, Harrisburg, Pennsylvania 17105-3265. The envelope containing the application shall be clearly marked: “TA” APPLICATION or “ETA” APPLICATION.

(2) *Filing fees.* An application for TA, ETA and extensions of ETA shall be accompanied by a filing fee, as prescribed under the fee schedule in § 1.43 (relating to schedule of fees payable to the Commission).

(3) *Supporting statements.* An application shall be accompanied by supporting statements of the applicant and shippers or other witnesses which establish an immediate need for service. A statement shall contain a certification of its accuracy and shall be signed by the person submitting the statement.

(i) *Applicant’s statement.* The applicant’s statement, which shall be prepared by the applicant or an authorized representative of the applicant, shall contain the following information:

(A) A description of the equipment which will be used to render service, including a statement of whether it is specialized equipment.

(B) A description of the applicant’s terminal facilities and personnel.

(C) A statement of whether the filing of the application resulted from a warning, road check or investigation by the Commission.

(D) A telephone number at which the applicant or an authorized representative of the applicant may be contacted.

(E) A statement of the proposed rates, fares or charges and schedule provisions.

(F) A statement of whether there are under suspension rates, fares or charges published for its account or whether an application for special permission to file its rates, fares or charges on less

than 30 days' notice in connection with another ETA, TA or permanent authority application covering the same territory has been granted or denied.

(G) Proof of ability to comply with the Commission's insurance requirements, or in the case of an authorized carrier, a statement indicating that it currently has evidence of insurance on file with the Commission.

(H) Names and addresses of labor unions which represent, or which within the past 12 months have represented, or which have filed a petition to represent the employes of the applicant with the National Labor Relations Board or the Pennsylvania Labor Relations Board. If the application seeks the temporary approval of a transfer of rights under a certificate of public convenience, this information shall be supplied for the transferor and the transferee.

(ii) *Statements of supporting shippers or witnesses.* The statement of a supporting shipper or witness, which shall be prepared by the shipper or witness, or an authorized representative of the shipper or witness, shall contain the following information:

(A) Points or areas to, from or between which the transportation will be provided.

(B) A statement of the shipper's current and recent needs concerning volume of traffic, frequency of movement and manner of transportation.

(C) A statement indicating when the service shall be provided.

(D) A statement indicating how long the need for service will continue and whether the supporting shipper or witness will support the permanent authority application.

(E) An explanation of the consequences of not having the service made available.

(F) A description of the circumstances which created an immediate need for the requested service.

(G) A statement of whether efforts have been made to obtain the service from existing carriers, including the data and results of these efforts.

(H) Names and addresses of existing carriers who have failed or refused to provide the service and the reasons given for the failure or refusal.

(I) A statement of whether the supporting shipper or witness has supported a recent application for permanent, temporary or ETA covering all or part of the requested service, the carrier's name, address and docket numbers, if known, and whether the application was granted or denied and the date of the action, if known.

(J) Names and addresses of labor unions which represent, or which within the past 12 months have represented, or which have filed a petition to represent the employes of the supporting shipper with the National Labor Relations Board or the Pennsylvania Labor Relations Board.

(4) *Procedures for filing ETA application.* Procedures for filing ETA applications are as follows:

(i) An ETA application may normally be filed only when a corresponding application for permanent authority has been filed and emergency conditions exist which do not permit sufficient time to afford the notice required by paragraph (5)(i). If the application demonstrates the existence of emergency conditions, the Bureau of Transportation will make a reasonable effort to identify and communicate with those carriers who may hold the authority to provide the emergency service being sought by the applicant and those unions described in paragraph (3)(i)(H) and (ii)(K). An ETA application will be granted for an initial period not to exceed 60 days.

(ii) If the urgency of the situation warrants, the supporting statement of those having the immediate need for service may be furnished by telegram. The telegram shall contain substantially the factual information described in paragraph (3). The telegram shall be sent to the Director, Bureau of Transportation and Safety.

(iii) The filing of ETA applications by telegram or telephone shall be acceptable in exigent circumstances. Confirmation shall be made by filing written application—Form C—with the supporting statements, within 5 working days from the filing by telephone or telegram.

(iv) If an emergency continues beyond the initial 60-day period, the ETA may be extended pending disposition of the TA application. Extensions of ETA may be obtained in the following ways:

(A) *Filing the ETA application simultaneously with the corresponding applications for TA and permanent authority.* The simultaneous filing of ETA, TA and permanent authority applications automatically extends the grant of ETA pending disposition of the TA application. No filing fee for ETA extension is required under these circumstances.

(B) *Filing corresponding TA and permanent authority applications within 15 days of the date of filing the ETA application.* The filing of corresponding TA and permanent authority applications within 15 days of the filing of the ETA application automatically extends the grant of ETA pending disposition of the TA application, if the applicant states the following on the ETA application: “Applicant certifies that, within 15 days of the date of filing this application, corresponding TA and permanent authority applications will be filed, and hereby requests that an automatic extension be granted of the ETA.” No filing fee for ETA extension is required under these circumstances.

(C) *If the corresponding TA and permanent authority applications are neither filed simultaneously with nor within 15 days of the date of filing the ETA application.* A request for an extension of ETA which does not comply with subparagraph (iv)(A) or (B) shall be accompanied by corresponding applications for TA and permanent authority and a filing fee, as prescribed under the fee schedule in § 1.43 in addition to the appropriate filing fees for TA and permanent authority applications, and shall be filed with the Bureau of Transportation, prior to the expiration date of the ETA.

(5) *Procedures for filing TA applications.* An application for TA shall be accompanied by a corresponding application for permanent authority. Unless otherwise specified in the TA application, it will be considered as proposing service pending disposition of the permanent authority application.

(i) *Notice to interested persons.*

(A) *Publication in Pennsylvania Bulletin.* Notice of the filing of a TA application and an application for permanent authority will be given by simultaneous publication in the *Pennsylvania Bulletin*.

(B) *Service on unions.* Service of temporary authority applications shall be made by certified mail upon the unions described in paragraph (3)(i)(H) and (ii)(J).

(ii) *Filing of protests.*

(A) A person who can and will provide all or part of the proposed service may file a protest to the TA application. Protests shall be consistent with § 3.381 (relating to applications for transportation of property and persons). The protest shall indicate whether it protests the application for TA or for permanent authority, or both.

(B) A union which represents the employes of a motor carrier or supporting shipper, which may be affected by the approval of an application for TA, may file a protest to the application. The protest shall be limited to the issue of whether a threatened or existing labor dispute precludes Commission consideration and approval of the TA application.

(C) Protests shall be filed with the Secretary of the Public Utility Commission.

(iii) *Revocation of ETA upon approval of TA applications.* Approval of a TA application is effective upon compliance with the Commission order, which results in the automatic revocation of corresponding ETA.]

§ 3.384. Reserved. [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 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. 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 to meet an immediate transportation need.

(4) *General bases for disapproval.* Applications for TA or ETA may be denied for the following reasons:

(i) Failure to meet statutory standards and this title.

(ii) Unfitness of the applicant.

(c) *Determination of fitness issues in motor carrier applications.* The following standards shall be used in the initial or appellate determination of fitness issues in applications by motor carriers for TA or ETA:

(1) Unless there is a particularly urgent transportation need, an application will normally be denied when the applicant has been found unfit or in substantial noncompliance with Chapter 37 (relating to safety code for transportation of property and passengers) or 67 Pa. Code Part I (relating to Department of Transportation). An application may, however, be approved if the carrier has reestablished compliance or if the application contains sufficient evidence to establish that the carrier has taken significant steps to remedy its deficiencies and is now in substantial compliance.

(2) Alleged violations of statute or regulations or a pending fitness investigation when no formal proceeding has been instituted may not be used as grounds for denial unless the Commission has evidence that the carrier applicant has a history of willful or flagrant violation of the statute or regulations. If authority is denied for lack of fitness on this basis, the decision will state the basis for denial.

(3) The granting of ETA or TA will not give rise to a presumption regarding the applicant's fitness.

(4) A grant of authority may be later revoked by the Commission if it determines that the applicant is unfit under this subsection. The Commission may revoke a carrier's ETA or ETA extension. The denial of a TA application will have the effect of automatically revoking the corresponding ETA or ETA extension.

(5) Allegations of unfitness in these proceedings will be considered in light of the urgency of the shipper's needs.]

§ 3.385. Reserved. [Rates, fares and charges for TA and ETA authorities.

(a) *Rates requirements of motor carriers—publish on less than 30 days' notice.* Under § 23.42 (relating to establishment of new rates), rates, fares, charges and related provisions may be established by motor carriers upon not less than 1 day's notice to apply on shipments transported under TA.

(b) *Insurance—motor carriers.* A carrier may not render transportation services until it has complied with the provisions concerning the filing of evidence of insurance.

(c) *Publication of rates and charges.* A motor carrier who has been granted ETA or TA may not render transportation services until it has complied with the rate filing requirements as stated in the Commission order.]

* * * * *

CHAPTER 5. FORMAL PROCEEDINGS

Subchapter B. HEARINGS

SETTLEMENT AND STIPULATIONS

§ 5.235. Reserved. [Restrictive amendments to applications for motor carrier of passenger authority.

(a) Parties to motor carrier applications for passenger 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.]

* * * * *

CHAPTER 23. TARIFFS FOR COMMON CARRIERS

GENERAL PROVISIONS

§ 23.1. Definitions and applicability.

(a) *Definitions.* The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Common carrier or carrier—A person or corporation holding out, offering or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or household goods in use, or both, or any class of passengers or household goods in use, between points within this Commonwealth by, through, over, above or under land, water or air, including forwarders, but not motor common carriers of property, group and party carriers of greater than 15 passengers, contract carriers, brokers or any bona fide cooperative association transporting property exclusively for the members of the association on a nonprofit basis.

Contract carrier—A person or corporation who or which provides or furnishes transportation of passengers or household goods in use, or both, or any class of passengers or household goods in use, between points within this Commonwealth by motor vehicle for compensation, whether or not the owner or operator of the motor vehicle, or who or which provides or furnishes, with or without drivers, any motor vehicle for the transportation, or for use in transportation, other than as a common carrier by motor vehicle, but not including any of the following:

(i) A lessor under a lease given on a bona fide sale of a motor vehicle where the lessor retains or assumes no responsibility for maintenance, supervision or control of the motor vehicle sold.

(ii) A bona fide agricultural, cooperative association transporting property exclusively for the members of the association on a nonprofit basis or any independent contractor hauling exclusively for the association.

(iii) An owner or operator of a farm transporting agricultural products from, or farm supplies to, the farm, or an independent contractor hauling agricultural products or farm supplies, exclusively, for one or more owners or operators of farms.

(iv) Transportation of school children in any motor vehicle owned by any school district, or operated under contract with any school district, for which transportation is lawfully paid by the school district from district funds.

(v) A person or corporation who or which uses, or furnishes for use, dump trucks for the transportation of ashes, rubbish, excavated or road construction materials.

(vi) Transportation of voting machines to and from polling places by any person or corporation for or on behalf of any political subdivision of this Commonwealth for use in any primary, general or special election.

Operating ratio—The operating ratio at present rates shall be calculated as a ratio of intrastate operating expenses to intrastate operating revenues, where the numerator includes operations and maintenance expense, annual depreciation, applicable taxes, and the denominator consists of the utility's intrastate operating revenues at present rates, including all surcharges.

Rate—An individual or joint fare, toll, charge, rental or other compensation of a public utility, other than a motor common carrier of property in its transportation of property, or contract carrier by motor vehicle, made, demanded or received for jurisdictional service, offered, rendered or furnished by the public utility, other than a motor carrier of property in its transportation of property, or contract carrier by motor vehicle, whether in currency, legal tender or evidence thereof, in kind, in services or in another medium or manner, and whether received directly or indirectly, and rules, regulations, practices, classifications or contracts affecting the compensation, charge, fare, toll or rental.

Small passenger carrier—A person or corporation holding out, offering or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or any class of passengers with gross intrastate operating revenues of less than \$500,000.

Tariff—Schedules of rates, rules, regulations, practices or contracts involving any rate, including contracts for interchange of service and, in the case of a common carrier, other than a common carrier of property in the transportation of property, schedules showing the method of distribution of the facilities of the common carrier.

(b) *Applicability.* This chapter applies to motor carriers except common carriers of property and group and party carriers of greater than 15 passengers.

Subpart B. CARRIERS OF PASSENGERS OR PROPERTY CHAPTER 23. TARIFFS FOR COMMON CARRIERS

NOTICE OF TARIFF CHANGES

§ 23.41. Notice requirements for filing changes in rates.

(a) In order to establish uniformity in the rules, regulations, and practices of common carriers subject both to the jurisdiction of the Interstate Commerce Commission and the Commission, and so that common carriers subject to the exclusive jurisdiction of the Commission may not be unreasonably prejudiced or burdened, all common carriers, except as specified in subsection (c), are, unless otherwise directed, permitted to file changes in existing and duly established rates upon 30 days' notice to the Commission and the public. This provision is not applicable to group and party carriers of 11-15 passengers and limousine carriers, which carriers are permitted to change rates on 1 day's notice to the Commission.

(b) Except by specific authority of the Commission, no change shall be made in any existing and duly established rate, except as specified in subsection (c), unless such rate has been in operation and effect for at least 30 days. This limitation shall not, however, apply to tariffs on schedules containing rates for excursions limited to certain designated periods under authority of § 23.43 (relating to excursion fares). This provision is not applicable to group and party carriers of 11-15 passengers and limousine carriers

(c) Railroads and their agents operating in Pennsylvania intrastate transportation are permitted to file decreased rates on 10 days' notice and increased rates on 20 days' notice.

NOTICE OF CHANGES IN FARES

§ 23.61. Posting of changes in passenger fares.

* * * * *

(d) The provisions in (a)-(c) are not applicable to group and party carriers of 11-15 passengers and limousine carriers.

§ 23.62. Notification to the Commission of proposed rate changes.

In order that the Commission may be concurrently advised of the net effect of a proposed change in rates upon the patrons and the revenues of common carriers of passengers other than railroad and aircraft, as well as the prima facie reasonableness of the proposed rate changes, the data called for in § § 23.63 and 23.64 (relating to data required in filing proposed rate changes; and data required in filing increases in operating revenues), as appropriate, shall accompany the filing of the proposed rates, and shall be submitted in triplicate, and under oath of a responsible officer. Tariffs or tariff supplements not accompanied by the data, but required to be so accompanied, will be returned to the sender as not acceptable for filing. This provision is not applicable to group and party carriers of 11-15 passengers and limousine carriers.

§ 23.63. Data required in filing proposed rate changes.

(a) If a common carrier of passengers, other than railroad and aircraft, files a tariff or tariff supplement which will increase or decrease fares to any of its patrons, it shall submit to the Commission, with the tariff or tariff supplement, statements showing all of the following:

- (1) The changes in rates proposed, stating the effective and proposed fares.
- (2) The specific reasons for each increase or decrease.

(3) The estimated effect of each rate increase or decrease on the carrier's annual revenues.

(4) The calculations by which the estimates in paragraph (3) were determined.

(b) The provision in (a) is not applicable to group and party carriers of 11-15 passengers and limousine carriers.

§ 23.64. Reserved. [Data required in filing increases in operating revenues.

If a common carrier of passengers, other than railroad or aircraft, files a tariff or tariff supplement which will increase the operating revenues of the carrier for the latest 12-month period, it shall submit to the Commission with the tariff or tariff supplement, in addition to the statements required in § 23.63 (relating to data required in filing proposed rate changes), the following information in the detail required to be maintained in the records under the system of accounts applicable to the operation of the carrier:

(1) A detailed balance sheet of the carrier at the end of a month not more than 45 days prior to such filing.

(2) A summary, by primary accounts, of the book value of the property of the carrier devoted to passenger transportation at the date of the balance sheet required by paragraph (1).

(3) A statement showing the amount of the depreciation reserve, at the date of the balance sheet required by paragraph (1), applicable to the property referred to in that paragraph.

(4) A statement showing passenger motor vehicles owned at the date of the balance sheet required by paragraph (1), setting forth the make, date of purchase, the cost of each vehicle, the depreciation accrued on each vehicle and the basis for allocation of depreciation to interstate or intrastate operations, or both, if applicable.

(5) A statement of operating income derived from passenger transportation, setting forth the operating revenues and expenses by detailed accounts, by months, for the 12-month period which ended on the date of the balance sheet referred to in paragraph (1). Expenses claimed to be variable costs shall be designated as such.

(6) A statement of the salaries paid to and the duties performed by the owners and officers of the carrier.

(7) A statement to the effect that in the event of any proceedings before the Commission with respect to the proposed rates it is agreed that the tariff and the financial data submitted therewith will be offered in evidence by the utility respondent as an exhibit.

(8) A map or sketch of the operation indicating zones, if any.

(9) An income and expense statement for Commonwealth operations for the 12 months preceding the tariff filing. Expenses claimed to be variable costs shall be designated as such. If

expenses are allocated between interstate and intrastate operations, include a description of the method of allocation.

(10) Total passenger miles systemwide and total passenger miles intrastate in this Commonwealth for the 12 months preceding the tariff filing.

(11) Costs of capital improvements within this Commonwealth for the 3 years previous to the tariff filing with a detailed explanation of how the costs were allocated between interstate and intrastate operations, whether the costs were included in justifications for previous tariff filings and allocation of depreciation—if any—taken on the capital improvements.

(12) A statement of revenues derived from terminals and similar facilities—not actual passenger fares—in this Commonwealth for the 12-month period preceding the tariff filing with a detailed explanation of how the revenues are allocated between intrastate and interstate operations or why such an allocation is not performed.

(13) An explanation of the methodology used to determine the rates attributed to interstate and intrastate routes provided in a passenger fare comparison.

(14) A statement of rate reductions filed with the Interstate Commerce Commission concerning points in this Commonwealth for the 6-month period preceding the tariff filing.

(15) A statement of the last approved rate increase from the Interstate Commerce Commission, including the corresponding document filing and the order approving the increase.]

* * * * *

§ 23.68. Filing requirements for [small] passenger carriers.

(a) [Small passenger] Passenger carriers [with gross annual intrastate revenue of less than \$500,000 do not need to file the substantiating data required under § 23.64 (relating to data required in filing increases in operating revenues) when requesting an increase in rates. Small passenger carriers] shall submit a statement with the tariff or tariff supplement stating the following:

- (1) The information required under § 23.63 (relating to data required in filing proposed rate changes).
- (2) The total gross annual intrastate revenue for the most recent fiscal year.
- (3) The dollar amount of increased annual revenue that the rate increase is expected to produce.
- (4) The total projected operating revenue after the revenue increase.
- (5) The total projected operating expenses.

(6) The projected operating ratio.

(b) The provision in (a) is not applicable to group and party carriers of 11-15 passengers and limousine carriers.

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CHAPTER 29. MOTOR CARRIERS OF PASSENGERS

Subchapter B. COMMON CARRIERS

PRELIMINARY PROVISIONS

* * * * *

§ 29.13. Scheme of classification.

The following standard classification of types of service furnished by common carriers of passengers is adopted, and the following is hereby recognized as a standard class of common carrier service. The rights and conditions pertaining to a standard class of service are specified in Subchapter D (relating to supplemental regulations). A certificated service which does not completely correspond to a standard class may be governed, where practicable, by the regulations for the standard class to which it most nearly corresponds:

(1) *Scheduled route service.* Common carrier service for passengers, rendered on either an exclusive or a nonexclusive basis, wherein the vehicles delivering the service operate according to schedules along designated routes.

(2) *Call or demand service.* Local common carrier service for passengers, rendered on either an exclusive or a nonexclusive basis, where the service is characterized by the fact that passengers normally hire the vehicle and its driver either by telephone call or by hail, or both.

(3) *Group and party service.* Common carrier service for passengers, rendered on an exclusive basis as charter service for groups or rendered on a nonexclusive basis for tour or sightseeing service and special excursion service. There are two classes of group and party service, group and party carriers of 11 to 15 passengers, including the driver, and group and party carriers of greater than 15 passengers, including the driver.

(4) *Limousine service.* Local, nonscheduled common carrier service for passengers rendered in luxury-type vehicles on an exclusive basis which is arranged for in advance.

(5) *Airport transfer service.* Common carrier service for passengers rendered on a nonexclusive basis which originates or terminates at an airport.

(6) *Other services: paratransit, experimental.* Common carrier service for passengers which differs from service as described in any one of the five classes set forth in paragraphs (1)—(5)

and is provided in a manner described in the certificate of public convenience of the carrier and is subject to restrictions and regulations are stated in the certificate of the carrier or in this chapter.

Subchapter D. SUPPLEMENTAL REGULATIONS

GROUP AND PARTY SERVICE

* * * * *

§ 29.323. Vehicle and equipment requirements.

A group and party service may be operated only in vehicles with seating capacities of ten passengers or greater, excluding the driver. There are two classes of group and party service, group and party carriers of 11 to 15 passengers, including the driver, and group and party carriers of greater than 15 passengers, including the driver.

§ 29.324. Tariff requirements.

The rates charged and collected shall be contained in the tariff filed, posted and published under the statute and this title. This provision is not applicable to group and party carriers of greater than 15 passengers, including the driver.



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

GLADYS M. BROWN
CHAIRMAN

February 10, 2016

The Honorable John F. Mizner
Chairman
Independent Regulatory Review Commission
14th Floor, Harrisstown II
333 Market Street
Harrisburg, PA 17101

Re: L-2015-2507592/57-312
Proposed Rulemaking to Reduce Barriers to Entry for Passenger Motor Carriers
52 Pa. Code, Chapters 1, 3, 5, 23, and 29

Dear Chairman Mizner:

Enclosed please find one 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), today the Commission is submitting a copy of the proposed rulemaking and Regulatory Analysis Form to the Chairman of the House Committee on Consumer Affairs and the Chairman of the Senate Committee on Consumer Protection and Professional Licensure.

The purpose of this proposal is to reduce the current barriers to entry for qualified passenger motor carrier applicants by eliminating the requirement that an applicant for passenger motor carrier authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need. 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,

Gladys M. Brown
Chairman

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 Zerbe

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-2015-2507592/57-312

Subject: Proposed Rulemaking to Reduce Barriers to Entry for
Passenger Motor Carriers
52 Pa. Code, Chapters 1, 3, 5, 23 and 29

Pennsylvania Public Utility Commission





2016 FEB 10 AM 10:41

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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>
2/14/16		<u>HOUSE COMMITTEE</u> (Godshall) Consumer Affairs
2/10/16		<u>SENATE COMMITTEE</u> (Tomlinson) Consumer Protection and Professional Licensure
2/10/16		Independent Regulatory Review Commission
		Attorney General
2/10/16		Legislative Reference Bureau