RULES AND REGULATIONS

Title 22—EDUCATION

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 11]

Nonimmunized Children

The State Board of Education (Board) amends Chapter 11 (relating to student attendance) to read as set forth in Annex A. Notice of proposed rulemaking was published at 46 Pa.B. 1806 (April 9, 2016).

Statutory Authority

The Board acts under the authority of sections 2603-B and 2604-B of the Public School Code of 1949 (24 P.S. §§ 26-2603-B and 26-2604-B).

Purpose

Section 11.20 (relating to nonimmunized children) is amended for clarity and for consistency with a final-form rulemaking of the Department of Health (Department) amending 28 Pa. Code Chapter 23, Subchapter C (relating to immunization).

Background

Currently, a child in this Commonwealth may not be admitted or permitted to attend school unless the child has met the immunization requirements established by the Department, which also provide for medical or religious exemptions from immunizations. On October 20, 2016, the Independent Regulatory Review Commission (IRRC) approved the Department's final-form rulemaking that amended the immunization requirements in 28 Pa. Code Chapter 23, Subchapter C. Section 11.20(a) contains related provisions that address the attendance of nonimmunized children. In early 2016, the Board undertook an effort parallel to that of the Department to amend the Board's regulations for consistency with amendments by the Department to the immunization requirements in 28 Pa. Code Chapter 23, Subchapter C.

Following an informational briefing from the Department on January 13, 2016, and a public hearing convened by the Board on March 9, 2016, the Board's proposed rulemaking was published at 46 Pa.B. 1806, with a 30-day public comment period. In preparing this final-form rulemaking, the Board reviewed and considered the public comments received and the Department's final-form rulemaking amending 28 Pa. Code Chapter 23, Subchapter C published at 47 Pa.B. 1300 (March 4, 2017). This final-form rulemaking was adopted at the Board's public meeting on January 12, 2017.

Public Comments on Proposed Rulemaking

Public comments on the proposed rulemaking largely were duplicative of the public comments submitted on the companion proposed rulemaking of the Department published at 46 Pa.B. 1798 (April 9, 2016), and, in most instances, reflected comments submitted to the Board and the Department. Those comments substantively fell within the purview of the Department's rulemaking and expertise, and those comments were addressed and responded to by the Department in the preamble of the final-form rulemaking published at 47 Pa.B. 1300.

The Board notes that a small number of comments involved issues that potentially questioned the Board's authority to promulgate this final-form rulemaking. In particular, one commentator stated that "[t]he Department of Education is to Educate. (Period)." The Board disagrees. Instead, the Board's authority, through its Council of Basic Education, includes the formulation of policy proposals "in all educational areas," relating to Basic Education, specifically including "admission, attendance, graduation and other separation requirements." This final-form rulemaking specifically implements admission and attendance requirements, and therefore is expressly within the Board's purview.

Further, some commentators questioned the administrative burden that they believed would arise from the addition of a 12th grade meningococcal conjugate vaccine. The Board reviewed the Department's response to the concerns, and agrees with the Department that the burden would be outweighed by the prevention of meningitis, which has a fatality rate of approximately 10%.

Some commentators raised questions about medical privacy. One commentator asked how the Department and the Department of Education will protect medical privacy and ensure that children do not suffer the loss of privacy with the requirement of electronic reporting. With respect to the commentators' concerns about immunization record confidentiality within school districts, requirements regarding confidentiality in an educational setting are addressed by another law. Specifically, section 444 of the Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S.C.A. § 1232g) protects a student's privacy. Issues regarding whether a school district has complied with FERPA would be best addressed by the Family Policy Compliance Office within the United States Department of Education. Finally, with respect to comments regarding the transmission of immunization data, the regulations do not request or require that school districts share individually identifiable immunization information with the Board or with the Department of Education.

Some commentators argued that the regulation should require school districts to use "standardized language" in communications regarding vaccine requirements. The Board disagrees. Instead, local school districts are in the best position to determine how best to communicate the requirements in this final-form rulemaking to parents in their districts.

The Board notes comments submitted by the Pennsylvania State Education Association (PSEA). PSEA commented in support of most provisions of this final-form rulemaking. Notably, PSEA expressed concern that the effective date of the proposed rulemaking did not provide school districts with sufficient opportunity to prepare for its implementation. In response, the Department and the Board amended the effective dates of the final-form rulemakings and they are effective for the 2017-2018 school year.

An introductory cover letter to the public comments submitted by the Pennsylvania Association of School Administrators requested that the Board provide clarification on the responsibilities of public school entities, if any, related to whether school entities are required to convene an individualized education program (IEP) team to approve a change in placement for IEP students who are excluded for more than 10 days and whether school entities have an obligation to provide continuing education services to special education students who are excluded from school because they are not fully immunized.

To provide clarification to school entities on these issues, the Department of Education will issue guidance to the field on requirements regarding continuing education and the convening of IEP teams to approve a change in placement as they pertain to the exclusion of students who are not fully immunized.

The Board also received comments from IRRC that raised a procedural concern about the promulgation of the Board's proposed rulemaking simultaneous with the proposed rulemaking of the Department. IRRC expressed concern regarding clarity and implementation of this final-form rulemaking as the proposed rulemaking included a reference to "temporary waivers" that were proposed, but not yet finalized, in the Department's rulemaking amending 28 Pa. Code Chapter 23, Subchapter C. IRRC stated that the Board's final-form rulemaking should not be submitted for review until after the Department's final-form rulemaking was published in the *Pennsylvania Bulletin* and temporary waivers are established in regulation. The Board heeded the comments received from IRRC and transmitted this final-form rulemaking for review after IRRC's approval of the Department's final-form rulemaking.

Provisions of this Final-Form Rulemaking

This final-form rulemaking makes clarifying amendments to § 11.20(a). The amendments delete language that is duplicative to requirements established by the Department in 28 Pa. Code § 23.84 (relating to exemption from immunization) and maintain the requirement for students to comply with the immunization regulations established by the Department to be admitted or permitted to attend school. Further, the amendments allow a student who is unable to provide documentation of full immunization to attend a public, private, nonpublic, special education or vocational school under certain circumstances when the Secretary of Health issues a temporary waiver of the immunization requirements. The reference to a temporary waiver is added for consistency with new provisions in 28 Pa. Code Chapter 23, Subchapter C that allow the Secretary of Health to issue a temporary waiver to immunization requirements in the event of a Nationwide vaccine shortage or in the event of a disaster.

Former § 11.20(b) is deleted to eliminate duplication with requirements established by the Department in 28 Pa. Code Chapter 23, Subchapter C, which is cross-referenced in § 11.20(a). Former § 11.20(c) is renumbered as § 11.20(b) in this final-form rulemaking.

Affected Parties

This final-form rulemaking will affect public, private, parochial and nonpublic schools, including vocational schools, intermediate units, and special education and home education programs, cyber and charter schools, and their employees. This final-form rulemaking also will affect citizens of this Commonwealth with school-aged children and their children.

Cost and Paperwork Estimates

This final-form rulemaking makes amendments for clarity and for consistency with recently-approved amendments to 28 Pa. Code Chapter 23, Subchapter C. The Board's regulations in and of themselves do not establish new requirements that carry an additional cost or create new paperwork requirements for the regulated community.

Effective Date

This final-form rulemaking will be effective on August 1, 2017. This will allow parents, guardians and schools time to become familiar with the requirements, prepare for their implementation and obtain the required vaccinations prior to the start of the 2017-2018 school year.

Sunset Date

The Board will review the effectiveness of § 11.20 every 4 years in accordance with the Board's policy and practice respecting its regulations. Therefore, a sunset date is not necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 29, 2016, the Board submitted a copy of the notice of proposed rulemaking, published at 46 Pa.B. 1806, to IRRC and the Chairpersons of the House and Senate Committees on Education for review and comment. As a courtesy, at the same time the Board also delivered a copy of the notice of proposed rulemaking to the House Health and Human Services Committee and the Senate Public Health and Welfare Committee.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered all comments from IRRC, the House and Senate Committees, and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on April 19, 2017, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 20, 2017, and approved this final-form rulemaking.

Contact Person

For information about this final-form rulemaking, contact Karen Molchanow, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-3787.

Findings

The Board finds that:

(1) Public notice of the intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking is necessary and appropriate for the administration of the Public School Code of 1949 (24 P.S. §§ 1-101—27-2702).

Order

The Board, acting under the authorizing statute, orders that:

(a) The regulations of the Board, 22 Pa. Code Chapter 11, are amended by amending § 11.20 to read as set forth in Annex A.

(b) The Chairperson of the Board will submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect August 1, 2017.

KAREN MOLCHANOW,
Executive Director

(*Editor's Note*: See 47 Pa.B. 2684 (May 6, 2017) for IRRC's approval order.)

Fiscal Note: Fiscal Note 6-336 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 11. STUDENT ATTENDANCE

ADMISSION TO PUBLIC SCHOOLS

§ 11.20. Nonimmunized children.

(a) A child may not be admitted to or permitted to attend a public, private, nonpublic, special education or vocational school unless the immunization, exemption, temporary waiver or provisional admission requirements of the Department of Health in 28 Pa. Code Chapter 23, Subchapter C (relating to immunization) have been met.

(b) A child who has been admitted to school or permitted attendance in violation of this section may not be counted toward receipt of Commonwealth reimbursement for the period of the admission or attendance.

[Pa.B. Doc. No. 17-926. Filed for public inspection June 2, 2017, 9:00 a.m.]

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 741]

Postsecondary Distance Education Reciprocity

The Department of Education (Department) adds Chapter 741 (relating to State authorization reciprocity) to set fees for institutions of higher education seeking to participate in the State Authorization Reciprocity Agreement (SARA) to support the Department's costs in implementing and administering SARA. The Department is publishing this final-omitted rulemaking under the authority granted by section 124(b) of the Public School Code of 1949 (School Code) (24 P.S. § 1-124(b)), as added by the act of June 1, 2016 (P.L. 252, No. 35).

Description

Chapter 741 sets fees for the administrative costs of implementing the mandate in section 124 of the School Code to join SARA.

Reason

At present, institutions of higher education in this Commonwealth that seek to offer distance education to students residing in other states apply for approval in those states and pay registration fees to each state. To address this issue, the four interstate education compacts have banded together to organize SARA as a way to provide for reciprocity among member states and their participating institutions. Section 124 of the School Code provides for Pennsylvania affiliation with one of the regional compacts and membership in SARA and establishes the Department as the agency responsible for implementation. Implementation requires the Commonwealth to pay an annual fee of $50,000 to affiliate with a regional compact. In addition, the Department estimates a need for $227,600 in additional staffing and administrative costs for implementation of the program with those institutions of higher education in this Commonwealth that are interested in joining SARA. The administrative responsibilities for SARA will exceed the Department's current staffing capacity.

Section 741.1 (relating to definitions) defines terms used in Chapter 741.

Section 741.11 (relating to State membership in a regional compact) sets forth that the Commonwealth has affiliated with the Southern Regional Education Board for the purposes of membership in SARA as authorized by section 124 of the School Code and to allow interested institutions in this Commonwealth to offer distance education in other SARA states without paying fees to each state. States can only join SARA through membership or affiliation with a regional compact and the Commonwealth was one of four states that was not a member of a regional compact.

Section 741.12 (relating to State membership in SARA) provides that the Department will be the portal agency for membership in SARA. Membership requires the identification of a single portal agency in each state. This section also provides for the Department's hiring of staff necessary to implement SARA and that the costs of staff and SARA membership will be covered by fees paid by postsecondary institutions rather than general fund resources. Postsecondary institutions are the prime beneficiary of membership in SARA and they will see a significant cost-savings through participation, notwithstanding the fees imposed under Chapter 741.

Section 741.13 (relating to institutional participation in SARA) requires institutions seeking to participate in SARA to submit an annual application to the Department on a form provided by the Department along with the required fees. Institutions whose submitted fee does not match distance education data in the Federal Integrated Postsecondary Education Data System database will be required to defend their calculation. This section further provides that applications will not be processed until the fees are received by the Department. Finally, this section establishes that the fees that are paid to the Department do not cover other institutional financial obligations related to SARA participation. Institutions are required to pay an annual fee of $2,000 to $6,000 directly to the National SARA organization for participation. It is not possible for the Department to pay this fee on behalf of institutions because an electronic payment system is employed for this payment.

Section 741.21 (relating to fee for postsecondary institutions in this Commonwealth to participate in SARA) provides that the fee paid to the Department is calculated based on tuition revenue from distance education in the most recently completed calendar year. Calendar year is used for consistency because different institutions follow different calendars for the academic year and the fiscal year. The fee is calculated based on tuition revenue rather than enrollment so that institutions with the highest tuition rates pay a fair share of the cost of supporting the Commonwealth's membership in SARA. Moreover, using tuition revenue in the calculation shares the cost equitably between public and private institutions in that the community colleges and State-system universities have the lowest tuition rates. In addition, some

small institutions are very active in distance education and will experience very significant savings from membership. Likewise, some large institutions offer very little by distance education and would experience a minimal benefit. By calculating the fee based on distance education revenue only, the costs of membership will be distributed equitably based on the benefit to the institution.

Section 741.22 (relating to fees nonrefundable) establishes that fees will not be refunded if the application is denied or if the institution withdraws the application. This is to protect against the provision of review services without compensation because the Department will incur all costs associated with processing the application within a few days of receipt. Likewise, this section provides that fees will not be refunded if the institution is suspended from participation or if the institution voluntarily withdraws from participation, since the Department's costs will likely have been incurred.

Section 741.23 (relating to institutional renewal to participate in SARA) clarifies that participation in SARA is valid for 1 calendar year, consistent with SARA requirements, and that the application process for the renewal follows the same process as the initial application, using a form provided by the National SARA organization with an addendum specific to Pennsylvania.

Persons or Entities Affected

This final-omitted rulemaking affects institutions of higher education in this Commonwealth that provide or seek to provide distance education to students in other states.

Fiscal Impact

There is no fiscal impact on the General Fund from the fees. There is a fiscal impact upon institutions of higher education in this Commonwealth that choose to participate in SARA. However, the fees represent a small fraction of the costs that these institutions currently bear to obtain state authorization to offer distance education in other states.

Paperwork Requirements

This final-omitted rulemaking will impose additional paperwork responsibilities on the Department and the regulated community because application materials will be developed by the Department and those materials will have to be completed and filed by interested institutions of higher education.

Effective and Sunset Dates

This final-omitted rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. This final-omitted rulemaking will expire June 30, 2018, and will be replaced by regulations promulgated in accordance with the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on March 27, 2017, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on May 17, 2017, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 18, 2017, and approved the final-omitted rulemaking.

Contact Person

The Department contact person for this final-omitted rulemaking is Patricia Landis, Division Chief, Division of Higher and Career Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 783-8228.

Findings

The Department finds that:

(1) Public notice of the Department's intention to amend its regulations has been omitted under section 124(b) of the School Code, which allows the Department to promulgate a final-omitted rulemaking.

(2) The amendment of the Department's regulations in the manner provided in this order is necessary and appropriate for the administration of the School Code.

Order

The Department, acting under its authorizing statute, orders that:

(a) The regulations of the Department, 22 Pa. Code, are amended by adding §§ 741.1, 741.11—741.13 and 741.21—741.23 to read as set forth in Annex A.

(b) The Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Department shall submit this order and Annex A to IRRC and the House and Senate Committees as required by law.

(d) The Department shall certify this order and Annex and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect upon publication and expire on June 30, 2018.

PEDRO A. RIVERA,
Secretary

(*Editor's Note*: See 47 Pa.B. 3157 (June 3, 2017) for IRRC's approval order.)

Fiscal Note: 6-337. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART XXIII. RECIPROCITY FOR DISTANCE EDUCATION

Chap.
741. STATE AUTHORIZATION RECIPROCITY

CHAPTER 741. STATE AUTHORIZATION RECIPROCITY

DEFINITIONS

741.1. Definitions.

SARA MEMBERSHIP

741.11. State membership in a regional compact.
741.12. State membership in SARA.
741.13. Institutional participation in SARA.

FEES

741.21. Fee for postsecondary institutions in this Commonwealth to participate in SARA.
741.22. Fees nonrefundable.
741.23. Institutional renewal to participate in SARA.

DEFINITIONS

§ 741.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Calendar year—January 1—December 31.

Department—The Department of Education of the Commonwealth.

Distance education—

(i) Instruction offered by any means when the student and faculty member are in separate physical locations so that face-to-face communication is absent and communication is accomplished by one or more technological media. It includes real-time or delayed interaction using voice, video, data and/or text, including instruction provided online, by correspondence or by interactive video.

(ii) Instruction provided by synchronous video from an institution in this Commonwealth to additional campus sites of the same institution in this Commonwealth is not considered distance education.

(iii) Distance education is instructor-led and is not independent study.

Portal agency—The single entity designated to serve as the interstate point of contact for SARA questions, complaints and other communications.

Postsecondary institution—An institution legally authorized to award degrees at the associate level or above.

Regional compact—A nonprofit organization with member states dedicated to advancing education in a region. The four regional compacts are the Midwestern Higher Education Compact, the New England Board of Higher Education, the Southern Regional Education Board and the Western Interstate Commission for Higher Education.

SARA—State Authorization Reciprocity Agreement—A voluntary agreement adopted by the regional compacts to establish National standards for interstate delivery of postsecondary education through distance education.

Tuition—

(i) Moneys charged by the institution for instruction.

(ii) The term does not include moneys charged as fees, such as technology fees, student services fees or activities fees if those fees are noted on the invoice and in publications as fees that are separated from tuition.

SARA MEMBERSHIP

§ 741.11. State membership in a regional compact.

The Department, consistent with section 124(b) of the Public School Code of 1949 (24 P.S. § 1-124(b)), has affiliated with the Southern Regional Education Board for the sole purpose of being able to participate in SARA and facilitate interested postsecondary institutions in this Commonwealth offering distance education to students in other SARA member states.

§ 741.12. State membership in SARA.

(a) The Department will be the SARA portal agency for the Commonwealth and will employ staff as necessary to provide the services required to implement SARA.

(b) The Department's staffing and other costs related to SARA membership and responsibilities will be covered by fees paid by postsecondary institutions in accordance with §§ 741.21 and 741.22 (relating to fee for postsecondary institutions in this Commonwealth to participate in SARA; and fees nonrefundable).

§ 741.13. Institutional participation in SARA.

(a) Postsecondary institutions will apply annually to the Department for authorization to participate in SARA in a manner and on forms as prescribed by the Department. If the fee submitted with the application does not correspond to the distance education enrollment data in the Federal Integrated Postsecondary Education Data System database for the most recent reporting year, the institution will be required to provide evidence to support the calculation of the fee amount.

(b) The required fees in §§ 741.21 and 741.22 (relating to fee for postsecondary institutions in this Commonwealth to participate in SARA; and fees nonrefundable) must accompany the application. The Department will not process an application until the fees are received.

(c) The fees established by this chapter cover the administrative costs of the Department and do not cover other fees due to other organizations.

FEES

§ 741.21. Fee for postsecondary institutions in this Commonwealth to participate in SARA.

Postsecondary institutions in this Commonwealth shall pay a fee to the Department based on tuition revenue from distance education in the most recently completed calendar year for the initial application fee and for each annual renewal to the Department to participate in SARA.

Distance Tuition Revenue	*Fee*
$0—9,999	$1,000
$10,000—999,999	$2,000
$1,000,000—4,999,999	$5,000
$5,000,000—9,999,999	$10,000
$10,000,000—19,999,999	$20,000
$20,000,000—29,999,999	$30,000
$30,000,000—39,999,999	$40,000
$40,000,000—49,999,999	$50,000
$50,000,000 and over	$60,000

§ 741.22. Fees nonrefundable.

(a) The fee submitted with an application is not refundable if the registration or participation is denied or if the postsecondary institution withdraws its application.

(b) No portion of the fee will be refunded upon suspension or revocation of participation or optional termination of participation.

§ 741.23. Institutional renewal to participate in SARA.

(a) Approval for participation in SARA is valid for 1 calendar year.

(b) An application for renewal of participation is required annually in accordance with § 741.13 (relating to institutional participation in SARA).

[Pa.B. Doc. No. 17-927. Filed for public inspection June 2, 2017, 9:00 a.m.]

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 1181]

Physicians and Practitioners; Temporary Regulations

The Department of Health (Department) is publishing temporary regulations in Chapter 1181 (relating to physicians and practitioners) to read as set forth in Annex A. The temporary regulations are published under the Medical Marijuana Act (act) (35 P.S. §§ 10231.101—10231.2110). Section 1107 of the act (35 P.S. § 10231.1107) specifically provides that, to facilitate the prompt implementation of the act, the Department may promulgate temporary regulations that are not subject to sections 201—205 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1205), known as the Commonwealth Documents Law, the Regulatory Review Act (71 P.S. §§ 745.1—745.14) and sections 204(b) and 301(10) of the Commonwealth Attorneys Act (71 P.S. §§ 732-204(b) and 732-301(10)).

To implement the Medical Marijuana Program, the Department will be periodically publishing temporary regulations regarding various sections of the act. The temporary regulations for physicians and practitioners will expire on June 3, 2019.

Chapter 1181 pertains to physicians employed by a dispensary and physicians who wish to become practitioners who will issue patient certifications to patients with serious medical conditions in accordance with the act. The next set of temporary regulations that the Department anticipates publishing relate to patients and caregivers.

Interested persons are invited to submit written comments, suggestions or objections regarding the temporary regulations to John J. Collins, Office of Medical Marijuana, Department of Health, Room 628, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120, (717) 787-4366, RA-DHMedMarijuana@pa.gov. Persons with a disability who wish to submit comments, suggestions or objections regarding the temporary regulations may do so by using the previous contact information. Speech and/or hearing impaired persons may use V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT). Persons who require an alternative format of this document may contact John J. Collins so that necessary arrangements may be made.

KAREN M. MURPHY, PhD, RN,
Secretary

(*Editor's Note*: Title 28 of the *Pennsylvania Code* is amended by adding temporary regulations in §§ 1181.21—1181.32 to read as set forth in Annex A.)

Fiscal Note: 10-204. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART IX. MEDICAL MARIJUANA

CHAPTER 1181. PHYSICIANS AND PRACTITIONERS

Sec.

§ 1181.21. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Continuing care—Treating a patient, in the course of which the practitioner has completed a full assessment of the patient's medical history and current medical condition.

Medical Board—Either of the following:

(i) The State Board of Medicine as defined in section 2 of the Medical Practice Act of 1985 (63 P.S. § 422.2).

(ii) The State Board of Osteopathic Medicine as defined in section 2 of the Osteopathic Medical Practice Act (63 P.S. § 271.2).

Medical marijuana cardholder—A patient or caregiver who possesses a valid identification card.

Medical professional—A physician, pharmacist, physician assistant or certified registered nurse practitioner employed by a dispensary.

Patient certification—The form provided by the Department that is issued by a practitioner to certify that a patient has one or more serious medical conditions.

Patient consultation—A complete in-person examination of a patient and the patient's health care records at the time a patient certification is issued by a practitioner.

Practitioner registry—A list of practitioners established and maintained by the Department.

Prescription Drug Monitoring Program—The Achieving Better Care by Monitoring All Prescriptions Program (ABC-MAP) Act (35 P.S. §§ 872.1—872.40).

Professional disciplinary action—A disciplinary proceeding taken by the applicable Medical Board against a physician that results in a corrective action or measure.

§ 1181.22. Practitioners generally.

(a) The qualifications that a physician shall meet to be registered with the Department and approved as a practitioner are continuing qualifications.

(b) A physician may not issue a patient certification without being registered by the Department as a practitioner in accordance with § 1181.24 (relating to physician registration).

(c) A practitioner shall notify a dispensary by telephone of a patient's adverse reaction to medical marijuana dispensed by that dispensary immediately upon becoming aware of the reaction.

§ 1181.23. Medical professionals generally.

(a) The qualifications that a medical professional shall meet to be employed by a dispensary are continuing qualifications.

(b) A medical professional may not assume any duties at a dispensary until the training required under

§ 1181.32 (relating to training) and any other requirements for medical professionals under the act and this part are complete.

(c) A medical professional shall notify by telephone the practitioner listed on a patient certification of a patient's adverse reaction to medical marijuana dispensed by that dispensary immediately upon become aware of the reaction.

§ 1181.24. Physician registration.

(a) A physician may file an application for registration with the Department as a practitioner on a form prescribed by the Department if the physician:

(1) Has an active medical license in this Commonwealth in accordance with the Medical Practice Act of 1985 (63 P.S. §§ 422.1—422.51a) or the Osteopathic Medical Practice Act (63 P.S. §§ 271.1—271.18) applicable to the physician.

(2) Is qualified, as determined by the Department from information provided by the physician under subsection (b), to treat patients with one or more serious medical conditions.

(b) An application for registration must include, at a minimum, all of the following:

(1) The physician's full name, business address, professional e-mail address, telephone numbers and, if the physician owns or is affiliated with a medical practice, the name of the medical practice.

(2) The physician's credentials, education, specialty, training and experience, and supporting documentation when available.

(3) The physician's medical license number.

(4) A certification by the physician that states:

(i) That the physician's Pennsylvania license to practice medicine is active and in good standing.

(ii) If the physician has been subject to any type of professional disciplinary action that would prevent the physician from carrying out the responsibilities under the act and this part, together with, if applicable, an explanation of the professional disciplinary action.

(iii) That the physician does not hold a direct or economic interest in a medical marijuana organization.

(5) A statement that a false statement made by a physician in an application for registration is punishable under the applicable provisions of 18 Pa.C.S. Chapter 49 (relating to falsification and intimidation).

(c) The Department may list a physician on the practitioner registry only after the physician has successfully completed the training course required under § 1181.32 (relating to training) and any other requirements for registration under the act and this part.

§ 1181.25. Practitioner registry.

(a) The Department will maintain a practitioner registry on its publicly-accessible web site listing practitioners who are approved by the Department to issue patient certifications.

(b) The practitioner registry will include only the practitioner's name, business address and medical credentials.

(c) The inclusion of a physician in the practitioner registry will be subject to annual review by the Department to determine if the physician's license is inactive, expired, suspended, revoked, limited or otherwise restricted by the applicable Medical Board, or if the physician has been subject to professional disciplinary action.

§ 1181.26. Removal of a practitioner from the practitioner registry.

(a) A practitioner will be removed from the practitioner registry if the practitioner's medical license is inactive, expired, suspended, revoked, limited or otherwise restricted by the applicable Medical Board, or if the physician has been subject to professional disciplinary action, including an immediate, temporary action.

(b) A practitioner may be removed from the practitioner registry if the practitioner has been the subject of professional disciplinary action.

(c) A physician who has been removed from the practitioner registry may reapply to the Department for inclusion in the practitioner registry in accordance with § 1181.24 (relating to physician registration) when the event that led to the physician's removal has been resolved and the physician's medical license is designated as active by the applicable Medical Board. The physician's application for registration under this subsection must include evidence of the resolution.

(d) A physician who has been removed from the practitioner registry may not do any of the following:

(1) Have electronic access to a patient certification.

(2) Issue or modify a patient certification.

(3) Provide a copy of an existing patient certification to any person, including a patient or a caregiver, except in accordance with applicable law.

§ 1181.27. Issuing patient certifications.

(a) A practitioner may issue a patient certification to a patient if all of the following conditions are met:

(1) The practitioner has determined, based upon a patient consultation and any other factor deemed relevant by the practitioner, the patient has a serious medical condition and has included that condition in the patient's health care record.

(2) The practitioner has determined the patient is likely to receive therapeutic or palliative medical benefit from the use of medical marijuana based upon the practitioner's professional opinion and review of all of the following:

(i) The patient's prior medical history as documented in the patient's health care records if the records are available for review.

(ii) The patient's controlled substance history if the records are available in the Prescription Drug Monitoring Program.

(b) A patient certification that is issued by a practitioner must include, at a minimum, all of the following:

(1) The patient's name, home address, telephone number, date of birth and e-mail address, if available.

(2) The practitioner's name, business address, telephone numbers, professional e-mail address, medical license number, area of specialty, if any, and signature.

(3) The date of the patient consultation for which the patient certification is being issued.

(4) The patient's specific serious medical condition.

(5) A statement by the practitioner that the patient has a serious medical condition, and the patient is under the practitioner's continuing care for the condition.

(6) A statement as to the length of time, not to exceed 1 year, for which the practitioner believes the use of medical marijuana by the patient would be therapeutic or palliative.

(7) A statement by the practitioner that includes one of the following:

(i) The recommendations, requirements or limitations as to the form or dosage of medical marijuana.

(ii) The recommendation that only a medical professional employed by the dispensary and working at the facility consult with the patient or the caregiver regarding the appropriate form and dosage of medical marijuana to be provided.

(8) A statement by the practitioner that the patient is terminally ill, if applicable.

(9) Any other information that the practitioner believes may be relevant to the patient's use of medical marijuana.

(10) A statement that the patient is homebound or an inpatient during the time for which the patient certification is issued due to the patient's medical and physical condition and is unable to visit a dispensary to obtain medical marijuana.

(11) A statement that the practitioner has explained the potential risks and benefits of the use of medical marijuana to the patient and has documented in the patient's health care record that the explanation has been provided to the patient and informed consent has been obtained.

(12) A statement that a false statement made by the practitioner in the patient certification is punishable under the applicable provisions of 18 Pa.C.S. Chapter 49 (relating to falsification and intimidation).

(c) Upon completion of a patient certification, a practitioner shall:

(1) Provide a copy of the patient certification to the patient or the patient's caregiver, if the patient is a minor, and to an adult patient's caregiver if authorized by the patient.

(2) Provide the patient certification with the original signature to the Department, which may be submitted electronically.

(3) File a copy of the patient certification in the patient's health care record.

§ 1181.28. Modifying a patient certification.

(a) A practitioner may not modify the form of medical marijuana on a patient certification for 30 days from the date the receipt is entered into the electronic tracking system by the dispensary unless the practitioner notifies the Department of the intent to modify the patient certification.

(b) After modifying a patient certification, a practitioner shall:

(1) Provide a copy of the patient certification to the patient or the patient's caregiver, if the patient is a minor, and to an adult patient's caregiver if authorized by the patient.

(2) Provide the patient certification with the original signature to the Department, which may be submitted electronically.

(3) File a copy of the patient certification in the patient's health care record.

§ 1181.29. Revocation of a patient certification.

(a) A practitioner shall immediately notify the Department in writing if the practitioner knows or has reason to know that any of the following events are true with respect to a patient for whom the practitioner issued a patient certification:

(1) The patient no longer has the serious medical condition for which the patient certification was issued.

(2) The use of medical marijuana by the patient would no longer be therapeutic or palliative.

(3) The patient has died.

(b) The Department will revoke a patient certification upon receiving notification of the occurrence of an event listed in subsection (a).

(c) Notwithstanding subsection (a), a practitioner may withdraw the issuance of a patient certification at any time by notifying, in writing, both the patient and the Department.

(d) The Department will immediately notify a medical marijuana cardholder upon the revocation of a patient certification and the information shall be entered into the electronic tracking system.

§ 1181.30. Prescription Drug Monitoring Program.

(a) A practitioner shall review the Prescription Drug Monitoring Program prior to issuing or modifying a patient certification to determine the controlled substance history of the patient to determine whether the controlled substance history of the patient would impact the patient's use of medical marijuana.

(b) A practitioner may access the Prescription Drug Monitoring Program to do any of the following:

(1) Determine whether a patient may be under treatment with a controlled substance by another physician or other person.

(2) Allow the practitioner to review the patient's controlled substance history as deemed necessary by the practitioner.

(3) Provide to the patient, or caregiver if authorized by the patient, a copy of the patient's controlled substance history.

§ 1181.31. Practitioner prohibitions.

(a) A practitioner may not accept, solicit or offer any form of remuneration from or to any individual, prospective patient, patient, prospective caregiver, caregiver or medical marijuana organization, including an employee, financial backer or principal, to certify a patient, other than accepting a fee for service with respect to a patient consultation of the prospective patient to determine if the prospective patient should be issued a patient certification to use medical marijuana.

(b) A practitioner may not hold a direct or economic interest in a medical marijuana organization.

(c) A practitioner may not advertise the practitioner's services as a practitioner who can certify a patient to receive medical marijuana.

(d) A practitioner may not issue a patient certification for the practitioner's own use or for the use of a family or household member.

(e) A practitioner may not be a designated caregiver for a patient that has been issued a patient certification by that practitioner.

(f) A practitioner may not receive or provide medical marijuana product samples.

§ 1181.32. Training.

(a) The following individuals shall complete a 4-hour training course within the times specified:

(1) A physician prior to being included in the practitioner registry under § 1181.24 (relating to physician registration).

(2) A medical professional prior to assuming any duties at a dispensary under § 1161.25 (relating to licensed medical professionals at facility).

(b) The requirements of the training course required under subsection (a) must include, at a minimum, all of the following:

(1) The provisions of the act and this part relevant to the responsibilities of a practitioner or medical professional.

(2) General information about medical marijuana under Federal and State law.

(3) The latest scientific research on the endocannabinoid system and medical marijuana, including the risks and benefits of medical marijuana.

(4) Recommendations for medical marijuana as it relates to the continuing care of a patient in the following areas:

(i) Pain management, including opioid use in conjunction with medical marijuana.

(ii) Risk management, including drug interactions, side effects and potential addiction from medical marijuana use.

(iii) Palliative care.

(iv) The misuse of opioids and medical marijuana.

(v) Recommendations for use of medical marijuana and obtaining informed consent from a patient.

(vi) Any other area determined by the Department.

(5) Use of the Prescription Drug Monitoring Program.

(6) Best practices for recommending the form of medical marijuana and dosage based on the patient's serious medical condition and the practitioner's or medical professional's medical specialty and training.

(c) Successful completion of the course required under subsection (a) shall be approved as continuing education credits as determined by:

(1) The State Board of Medicine and the State Board of Osteopathic Medicine.

(2) The State Board of Pharmacy.

(3) The State Board of Nursing.

(d) The individuals listed in subsection (a) shall submit documentation of the completion of the 4-hour training course to the Department.

(e) The Department will maintain on its publicly-accessible web site a list of approved training providers that offer the 4-hour training course.

[Pa.B. Doc. No. 17-928. Filed for public inspection June 2, 2017, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 1, 3, 23 AND 29]

[L-2015-2507592]

Reduce Barriers to Entry for Passenger Motor Carriers

The Pennsylvania Public Utility Commission (Commission), on October 27, 2016, adopted a final rulemaking order to reduce the 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.

Executive Summary

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.

We note that in the recent Temporary Regulations the Commission issued governing the taxi and limousine industries, we allowed rates be changed on one days' notice to the Commission, or alternatively, permitted flexible rates allowing rates to change in real time in response to supply and demand. Temporary Regulations for the Taxi and Limousine Industries, Docket No. L-2016-2556432 (Order entered December 23, 2016). Neither rate scenario required supporting financial justification to be filed with the tariff. We will not deviate from those Temporary Regulations here as far as the taxi and limousine industries are concerned and will address the issue more fully in a future rulemaking necessitated by the Temporary Regulations. Additionally, we note that the Temporary Regulations further support our action here of encouraging competition and removing entry barriers.

Another consequence of eliminating the public need requirement for passenger carrier applicants is that the current territorial restrictions that accompany a carrier's certificate may no longer be necessary. Therefore, the Commission proposed that passenger carriers will be deemed to have statewide authority, unless otherwise requested. Following review of the comments on this issue, the Commission has determined that it will not advance this proposal at this time. Additionally, given the elimination of the public need requirement for passenger carrier applicants and the statewide authorization for all passenger carriers, the Commission proposed eliminating the regulatory provisions providing for Emergency Temporary Authority (ETA) and Temporary Authority (TA) for passenger carriers. 52 Pa. Code §§ 3.383—3.385. Following review of the comments on this issue, the Commission has determined that it will not advance this proposal at this time.

Public Meeting held
October 27, 2016

Commissioners Present: Gladys M. Brown, Chairperson; Andrew G. Place, Vice Chairperson; John F. Coleman, Jr., joint statement follows; Robert F. Powelson, joint statement follows; David W. Sweet

Final 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; L-2015-2507592

Final Rulemaking Order

By the Commission:

On November 5, 2015, we issued a Proposed Rulemaking Order (PRO) seeking to amend various regulations governing passenger motor carriers. The proposal sought to modify our existing application process for passenger motor carriers by eliminating unnecessary barriers to entry for the various types of passenger carriers. Additionally, the proposal addressed other regulatory issues implicated by the change to the application criteria, including territorial restrictions, protest content, tariff filings and emergency authority considerations.

The PRO was published in the *Pennsylvania Bulletin* on February 27, 2016. 46 Pa.B. 1016. Comments to the PRO were filed by 13 public commentators as well as Representatives Daley, Godshall, Hanna, Harper and Murt. Additionally, the Independent Regulatory Review Commission (IRRC) filed comments, incorporating both public comments as well as the comments from the various legislators.

Background

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.

Summary of the PRO

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 proposed in the PRO reducing 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] We found that 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.

We opined in the PRO that in a competitive market with reduced barriers to entry for qualified carriers, there is 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, we noted that 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 believed 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 noted 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,

[1] In 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 recognized in the PRO that we still must address ancillary regulatory provisions that may be affected by our action. Additionally, we noted in our PRO 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 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). In our January 11, 1999 Order 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. The PRO reflected these changes.

beyond those expressly stated in the statute, are matters left to the administrative expertise, sound discretion, and good judgment of the Commission.

We noted in the PRO that 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 posited that at this juncture, it is appropriate and in the public interest to eliminate the need requirement from the passenger carrier application process, fostering further competition in this market.

As a corollary to the proposed elimination of public demand or need in the application process, we envisioned an industry that will grow even more competitive. Noting that since competition drives market pricing, the need to engage in traditional ratemaking processes geared toward monopoly markets will be obviated. Therefore, as barriers to entry are reduced and competition increases, we found that reducing and eliminating regulations that were adopted for a monopoly environment and are no longer necessary is appropriate.

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 proposed permitting 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 would still 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, 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. We noted that 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.

In our PRO, we noted that 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 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. We noted that with the elimination of the need requirement, the corresponding limitation on carriers' certificates to specific service territories is no longer necessary. Therefore, we proposed that existing passenger carriers will be deemed to have statewide authority. Recognizing that a carrier may wish to limit its operating territory due to operational concerns, insurance costs, or other factors, we proposed allowing existing carriers to advise the Commission accordingly. We noted that new carriers will retain the ability to propose limitations on its operating territory at the time of application.

Finally, given the elimination of the public need requirement for passenger carrier applicants and the statewide authorization for all passenger carriers, we believed 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 stressed in the PRO 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 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]

Discussion

The Commission has reviewed all of the comments filed in this proceeding. Based on those comments, the Commission has determined that it continue to proceed with the proposal in the PRO, with a few modifications. Specifically, the Commission will make the following changes to its proposal: (1) modify the application process for passenger motor carrier applicants to require more information at the beginning of the application process; (2) continue to require applicants to specify the territory in which they wish to operate, instead of defaulting to statewide authority; (3) keep the restrictive amendment regulation; and (4) retain the regulations providing for Temporary Authority and Emergency Temporary Authority. The Commission will address these changes, as well as other comments to the PRO below.

Commission Authority

Initially, IRRC raises a jurisdictional issue in its comments, questioning whether the Commission has the authority to change its regulations governing application criteria, or whether the proposed regulatory change is so substantial that any changes would properly fall within the legislature's purview. IRRC Comments at 2, 3. We recognize that our proposal eliminating the "public demand or need" standard is a significant change from our

[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 one (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 noted that 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 proposed modifying 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.

[4] We noted in the PRO 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 believed that these groups can likewise avail themselves of our regulations governing emergency relief should it be required.

[5] We proposed limiting protests to passenger carrier applications to these criteria. 52 Pa. Code § 3.381(c). Also, we noted that 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.

existing regulations and policy statement. However, the authority to make that change is squarely vested in the Commission.

The Pennsylvania Supreme Court confirmed this authority in its decision in *Elite Industries*, infra. There the Court held that the elimination of the public need requirement in the Commission's application process for limousine carriers was a decision that fell "squarely within the PUC's area of expertise and is best left to the Commission's discretion." *Elite*, 432. The Court specifically recognized that the Legislature provided no specific criteria in determining the propriety of granting a certificate of public convenience, leaving the formulation of the criteria to the Commission. *Elite*, 432.

We disagree with IRRC to the extent that it believes we do not have the authority to modify our regulations governing application criteria for motor carriers and need to seek legislative relief. In fact, we recently completed an identical modification to our regulations by eliminating the public demand or need application criteria for applicants seeking authority to transport household goods. Final Rulemaking: Household Goods in Use and Property Carriers, Docket No. L-2013-2376902 (Order entered June 19, 2014). We also note that the rulemaking process itself incorporates legislative review of any proposed regulatory changes.

Disproportionate Impacts of Competition

IRRC and other commentators also question whether introducing competition into the taxi industry will adversely affect persons in rural areas who rely on taxi service as a primary means of transportation. IRRC Comments at 2. We share this concern, but are confident that eliminating artificial entry barriers will best serve the public. We are cognizant of the ongoing evolution of the transportation industry, and believe that encouraging competition and open markets will ultimately provide superior service.

We are witnessing such a competitive transformation with the advent of Transportation Network Company (TNC) service. TNC service has been available in Pennsylvania for over two (2) years now, and that service is growing, meeting a pent-up demand and even creating an additional demand for that transportation service. We have been at the forefront of this movement, establishing sufficient regulatory safeguards and requirements and ensuring compliance. TNC service competes with traditional transportation modalities head-on. That increased competition has not adversely affected the public, but rather has enhanced customer choice and service. While the incumbent industry will have to respond to the TNC service in order to remain viable, we believe, that in itself is not sufficient reason to reject the necessary changes to our current regulations in order to increase competition. We continue to believe that increased competition is in the public interest for the transportation industry.

Here we proposed eliminating a barrier to market entry that will help foster competition and to allow for easier market entry for new and qualified carriers. We are not abrogating all oversight, and applicants will still have to establish their technical and financial fitness and to document adequate insurance coverage in order to be qualified. Our experience over the last 50 years indicates that the "public need" application requirement has been increasingly utilized by existing carriers to quash competition to protect market share. Some commentators acknowledge this. We do not believe this is in the public interest. Through our statutory obligations in regulating transportation services, we have noticed significant shortcomings in transportation services where the market has been restricted. We believe that all markets, urban and rural, will benefit from choice. We do not believe it is beneficial to exclude qualified new businesses from the market.

IRRC cites to some studies[6] submitted by commentators which questioned the benefits of deregulation of the taxi industry, those studies did not unequivocally reject deregulation, finding that the effects of taxi deregulation have ranged from benign to adverse, depending on the local conditions and markets. Further, those studies included markets that were totally deregulated, including entry and rates. That is not what we are proposing here; this proposal is not deregulation. On the contrary, the Commission will continue to require that applicants establish fitness to serve the requested market. Additionally, we will require vehicles and drivers to comply with all prescribed regulatory safeguards, including maintaining minimum insurance requirements. Finally, we note that these studies were done nearly 20 years ago, prior to the advent of new technologies, such as TNC service. The viability of those studies should be viewed from the current transportation framework.

Additionally, we note that there has been a significant push toward open markets in the transportation industry over the last two decades. Regulation of Motor Carriers of Property, Docket No. P-00940884 (Order entered December 20, 1994), Regulation of Group and Party Carriers, Docket No. P-00981458 (Order entered January 11, 1999), Final Rulemaking: Household Goods in Use and Property Carriers, infra, *Elite Industries*, infra.

Monitoring the Success of the Rulemaking

In response to IRRC's comment regarding monitoring the success of the proposal, we note that we have been at the forefront of regulatory changes in other industries, such as the telecommunications, electric and gas, and have successfully implemented and continue to implement those changes in Pennsylvania. IRRC Comments at 4. We will do the same here, monitoring the markets and utilizing our expertise to ensure the health of those markets and the provision of safe, reliable service.

Economic Impact

IRRC seeks quantification of the economic impact of the proposed change. IRRC Comments at 2. We are hesitant to project future economic impacts because these projections may not supply precise numbers. However, this is not sufficient reason to reject the changes in this rulemaking which we continue to believe will enhance competition in transportation services. For example, experienced trip date from the early advent of TNC service has demonstrated a clear customer demand for new services. The Commission has extensive experience in managing market entry in the motor carrier industry, is vested with the lawful discretion to determine appropriate market entry standards, and is utilizing its extensive experience in proposing this change.

Impact on the Public Health, Safety and Welfare

IRRC next questions how the Commission will protect the public health, safety and welfare by eliminating the public need application requirement. IRRC Comments at 2. The Commission will continue to examine an applicant's fitness, deciding whether the applicant has the technical expertise and financial wherewithal to provide service. This determination is made in every case. One

[6] The studies are dated from 1993 to 1998.

commentator, supporting our proposal, suggested that we require more information from an applicant in the initial application itself, rather than in the later stages of the application. Craig A. Doll Comments 1—4. This would enable existing carriers to make an informed decision regarding whether to protest the application on fitness grounds. We agree that this is a good idea and will modify the final regulation to require applicants to include verified statements with their initial application. 52 Pa. Code § 3.381(a)(3). This change will help the PUC be diligent in ensuring all applicants are fit to provide service.

Necessity

IRRC also questions the necessity of eliminating the "public need" application criteria. IRRC Comments at 2. Again, we will cite to our expertise and experience, noting that the public need requirement has been used to stifle competition to the detriment of the public and that, as explained by the Pennsylvania Supreme Court in *Elite*, the Commission has the discretion under Pennsylvania law to eliminate this element of the various standards to be examined in determining whether to grant a certificate of public convenience under Section 1103 of the Public Utility Code. 66 Pa.C.S. § 1103.

Implementation Procedures

IRRC comments on the implementation procedures to be utilized. IRRC Comments at 2. The procedures are not new or cumbersome. We have extensive experience in this regard for other industries where need is no longer an application criteria. We will follow our application procedure in place, as we currently do, with the exception of requiring proof of public need.

Data in Support

IRRC also seeks data to support the proposal to eliminate the public need application criteria. We have previously addressed this issue in the context of IRRC's comment on the necessity and impact of the proposal. To reiterate, the PUC has significant experience and expertise in regulating the motor carrier industry and recognize that insulating that industry from competition is not in the public interest. Our experience in the economic deregulation of the property and group and party industries, as well as reducing entry barriers for the limousine and household goods carrier industries, supports this result. Regulation of Motor Carriers of Property, Docket No. P-00940884 (Order entered December 20, 1994), Regulation of Group and Party Carriers, Docket No. P-00981458 (Order entered January 11, 1999), Final Rulemaking: Household Goods in Use and Property Carriers, infra, *Elite Industries*, infra.

Less Costly Alternatives

IRRC also questions if there are less costly and intrusive alternatives to our proposal to eliminate proof of public need in the application stage. IRRC Comments at 2. We believe that, at this time, the elimination of proof of public need is the most appropriate way to foster a competitive marketplace that will be more responsive to the public's needs. While this may adversely affect some existing carriers to the extent they will now have competition for their services, that in itself is not sufficient reason to abandon the rulemaking. Conversely, prospective small business carriers will be benefited by allowing them to compete for the public's business and not be barred from starting a business.

Negative Impact on Ambulance Services

Both IRRC and members of the legislature commented on the potential negative effect competition will have on ambulance services, which also provide paratransit service to help subsidize their emergency operations. IRRC Comments at 3, 4. Paratransit service is a form of common carrier service regulated by this Commission. While we are cognizant that this subsidization of ambulance service may be occurring, this situation does not warrant continued market protection for all motor carriers. The provision of paratransit service should be available to a qualified applicant who wants to operate this type of common carrier service. We recognize that allowing competition in the paratransit industry may subject some ambulance companies to economic pressures that they will have to address on a going-forward basis.

Pending TNC Legislation

Additionally, we are cognizant that there is a legislative action (Senate Bill 984) pending regarding TNC service. IRRC Comments at 3. However, that action has no bearing on the implementation of our action here. SB 984 concerns TNC service and the attendant regulatory framework governing that service. It includes provisions establishing an application process for a TNC license, which process does not contain a need component. SB 984 does not pertain to other types of passenger service beyond TNC service. Regardless of the ultimate outcome of any pending legislation, we believe it is appropriate to eliminate the public need application criteria at this time. The need criterion is a vestigial item left over from the regulatory apparatus of prior generations. Current market conditions dictate that reducing entry barriers is in the public interest.

Impact of Increased Competition on Operational Investments

Commentators argue that competition will discourage operational investments by existing carriers, since they will no longer enjoy market protection. IRRC Comments at 3, 4. We understand that it may be the decision by some existing carriers to no longer invest in their operations if competition in the marketplace increases. However, many businesses across the Commonwealth and the United States operate in a non-protective market and nonetheless invest in their operations, even though they experience competition. In fact, competition often spurs investment in order for a business to ensure its continued viability and relevance. For example, many companies across the United States are currently engaged in investing in driverless technology, including some TNCs. Competition is a catalyst for their investment.

Significantly, there is another side to the commentators' argument, which is that a monopolist does not necessarily have to invest and innovate, since there is a captive market, and a reduced level of investment will allow the company to maximize its profits. We live in a market based economy, which has proven itself superior to a centralized planning economy in terms of innovation, resource allocation, and responsiveness to public demand. We do not believe fostering competition in the passenger carrier industry will result in that industry's demise. To the contrary, we believe competition will encourage innovation and will benefit the public while, at the same time, the Commission monitors the industry in accordance with its statutory mandates and current regulations.

Amount of Regulation Necessary

Commentators next posit that there should be no tariff regulation in an open market. IRRC Comments at 4. We agree with this observation theoretically, however, the reality is that passenger motor carriers in Pennsylvania do not operate in an open market at this point and, as explained herein, the proposal in the PRO is not the equivalent of deregulation. Passenger motor carrier service is and remains a public utility service which necessitates rate oversight, as well as the statutory obligation to provide safe, reasonable and adequate service. 66 Pa.C.S. §§ 1301 and 1501. That being said, the Commission has previously approved flexible tariff structures for the limousine and TNC industries. That same flexibility may be appropriate for other passenger carrier types and is in keeping with our charge under 66 Pa.C.S. Chapter 13. Should this issue arise in the future, it can be addressed under our current tariff regulations.

Increase in Protests

Commentators suggest that as a result of this rulemaking, there will be more protests based on fitness, thus diminishing projected administrative cost savings in the application process. IRRC Comments at 4. While this may or may not be the case, this is insufficient justification to maintain barriers to market entry. We will discourage existing carriers from filing specious protests based on fitness and we will address all pleadings in accordance with our regulations and due process provisions.

Geographic Territorial Restrictions

IRRC next comments about the territorial component of the PRO. IRRC Comments at 4. In the PRO, we proposed eliminating geographic territorial restrictions for carriers unless a carrier would request to serve only a specified geographic area. IRRC questions whether this authorization would affect territories and service within the Philadelphia Parking Authority's (PPA) jurisdiction. To provide clarity on that issue, none of the regulatory changes proposed in the PRO will impact the jurisdiction of the PPA or the passenger motor carriers operating within the PPA's territory. A PUC certificated carrier cannot perform call or demand service within Philadelphia. As a matter of law, the PUC only has the powers given it by the legislature. The PPA has the statutory authority to regulate taxi and limousine service within Philadelphia, not the PUC. 53 Pa.C.S. §§ 5701—5745. Statewide authority would therefore be limited to that territory falling within the Commission's statutory jurisdiction, as is presently the case.

However, upon further consideration of the comments of IRRC and others, we will modify the PRO regarding service territories to the extent we would deem existing carriers to have state-wide authority. For reasons cited by the commentators, including the potential result of increasing protests as well as fitness issues attendant to unrestricted territorial service, we believe that at this juncture it is better to retain our existing territorial framework. Specifically, this means that the PUC will continue to require all new applicants to specify the geographic territory they wish to service. If a carrier wishes to expand its operations to other territories, or would like statewide authority, in light of the changes in this rulemaking, the carrier can file an application requesting such a change.

Restrictive Amendments

Furthermore, our discussion of the restrictive amendment process in the PRO, 52 Pa. Code § 5.235, drew comments questioning the role of the restrictive amendment process in encouraging settlements. We are persuaded by the comments to abandon our decision to delete the restrictive amendment process at this point. While our experience with that process is that it has been utilized exclusively as a form of market protectionism arising from the public need application criteria, there may be situations conceivable where it could be useful in resolving a contested application on fitness issues. While protests to applications will continue to be permitted, albeit limited to an applicant's fitness, fitness is not an issue to be settled away by agreement amongst the parties by a restrictive amendment. However, this is not to say that the parties cannot, via negotiation and settlement, bring the applicant's fitness into better focus for the Commission's consideration. Therefore, we will retain the restrictive amendment regulation.

Regulatory Analysis Form

IRRC next comments that the Commission should review the Regulatory Analysis Form and public comments thereon and make any revisions deemed appropriate. IRRC Comments at 5. The Commission will review the Regulatory Analysis form and make the necessary changes, as IRRC requests.

Temporary Authority and Emergency Temporary Authority

IRRC next comments on our proposed deletion of our regulations dealing with Temporary Authority (TA) and Emergency Temporary Authority (ETA). IRRC Comments at 5. IRRC notes that the Public Utility Code provides that TA should be considered by the Commission "under such regulations as it shall prescribe. . ." 66 Pa.C.S. §§ 1103(d), 2509.

In our PRO, we indicated that the need for TA or ETA would be greatly diminished or extinguished in light of the elimination of entry barriers. This has been our experience in the property, group and party, and limousine industries. We cited our regulations concerning issuance of emergency orders as sufficient to meet our statutory obligations in this regard. We believe those regulations would satisfy our statutory requirements. However, at this point we are persuaded that maintaining these regulations, albeit with modifications to reflect the elimination of public need application criteria, is appropriate since the current ETA/TA regulations provide significant guidance regarding application content.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 10, 2016, the Commission submitted a copy of the notice of proposed rulemaking, published at 46 Pa.B. 1016 (February 27, 2016), to IRRC and the Chairpersons of the House Consumer Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, the Commission shall submit to IRRC and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Commission has considered all comments from IRRC, the House and Senate Committees, and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on April 19, 2017, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 20, 2017, and approved the final-form rulemaking.

Related Regulatory Updates

Finally, IRRC comments on our tariff provisions at 52 Pa. Code §§ 23.1 and 23.69, suggesting they be amended to be consistent with changes made to § 23.68. IRRC Comments at 5. We agree with IRRC's suggestion, and will make the necessary changes to those provisions; *Therefore*,

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapters 1, 3, 23 and 29, are amended by deleting § 23.64 and amending §§ 1.43, 3.381—3.384, 23.1, 23.41, 23.61—23.63, 23.65, 23.68, 23.69, 29.13, 29.323 and 29.324 to read as set forth in Annex A.

(*Editor's Note*: The proposed rescission of §§ 3.383 and 3.384 included in the proposed rulemaking have been withdrawn by the Commission; these sections are amended in Annex A. The proposed rescission of §§ 3.385 and 5.235 included in the proposed rulemaking have been withdrawn by the Commission. The amendments to §§ 23.65 and 23.69 were not included in the proposed rulemaking.)

2. The Law Bureau shall submit this order and Annex A to the Office of Attorney General for review as to form and legality.

3. The Law Bureau shall submit this order and Annex A, to the Governor's Budget Office for review of fiscal impact.

4. The Law Bureau shall submit this order and Annex A for review and approval by the designated standing committees of both Houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

5. The Law Bureau shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. A copy of this order shall be served on commentators to the proposed rulemaking order.

7. This final-form rulemaking shall become effective upon final publication in the *Pennsylvania Bulletin*.

8. The contact person is John Herzog, Deputy Chief Counsel, Law Bureau, (717) 783-3714. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Alyson Zerbe, Regulatory Coordinator, (717) 772-4597.

ROSEMARY CHIAVETTA,
Secretary

(*Editor's Note*: See 47 Pa.B. 2684 (May 6, 2017) for IRRC's approval order.)

Fiscal Note: Fiscal Note 57-312 remains valid for the final adoption of the subject regulations.

Joint Statement of Commissioner Robert F. Powelson and Commissioner John F. Coleman, Jr.

Before the Pennsylvania Public Utility Commission (Commission) today for consideration and disposition is the Final Rulemaking Order (Rulemaking Order) amending several of the Commission's Regulations to reduce barriers to entry for passenger motor carriers. The Rulemaking Order specifically reduces current barriers to entry 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 (i.e., the "need" requirement).[7]

The elimination of the need requirement for passenger carriers highlights the Commission's efforts to ensure regulatory flexibility in light of the changing transportation industry. Due to increased competition in the motor carrier industry, the need requirement had become outdated. Instead of serving a useful purpose, this requirement posed an obstacle to otherwise viable applications and served to protect monopoly interests to the detriment of healthy competition.

It is important to note that with the elimination of the need requirement, the Commission will continue to ensure that passenger carriers are technically and financially fit and can operate safely and legally. Passenger carriers must provide service that is safe, reliable, and fully insured. The elimination of the need requirement will simply provide consumers with more choices and more competition among passenger carriers as to price, quality, and reliability.

We want to recognize our legal and technical staff for their work in crafting today's Rulemaking Order. The elimination of the need requirement together with our Transportation 2.0 initiatives to undertake a comprehensive examination of all of our transportation regulations, will result in a current set of rules that will ensure the transportation industry in Pennsylvania not only operates safely and reliably, but continues to innovate.

JOHN F. COLEMAN, Jr.,
Commissioner

ROBERT F. POWELSON,
Commissioner

[7] The Commission similarly issued a Final Rulemaking Order on June 19, 2014 to eliminate the need requirement for household goods carriers. Final Rulemaking Amending 52 Pa. Code Chapters 3, 5, 23, 31, 32, and 41; Household Goods in Use Carriers and Property Carriers, Docket No. L-2013-2376902 (June 19, 2014). The Independent Regulatory Review Commission (IRRC) approved the rulemaking on April 16, 2015, stating that the regulation is consistent with the statutory authority of the PUC and the intention of the General Assembly. IRRC Approval Order for Pennsylvania Public Utility Commission Household Goods in Use Carriers and Property Carriers, Regulation No. 57-298 (# 3041) (April 16, 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:

Description	*Fee (in dollars)*
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	$0.75
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 or a group and party carrier of more than 15 passengers	$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.

(a) *Applications.*

(1) *Forms*. The following forms may be obtained from the Office of the Secretary of the Commission:

(i) An application by a common carrier, including a forwarder, for a certificate of public convenience.

(ii) An application by a contract carrier for a permit.

(iii) An application by a broker for a license.

(iv) An application for amendment of a certificate, permit or license.

(v) An application by a common carrier of passengers or household goods in use to abandon or discontinue service in whole or in part.

(2) *Separate applications*. An applicant desiring to furnish service of more than one class shall file a separate application for each class of service.

(3) *Filing and verification*. An original application shall be filed by the applicant, or an authorized officer or representative, with the Secretary of the Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265. The application shall be verified under § 1.36 (relating to verification). An application by a common carrier for a certificate of public convenience authorizing the transportation of passengers or household goods in use shall be accompanied by verified statements of the applicant, as set forth in subsection (c)(1)(iii)(A)(II). An application by a contract carrier for a permit authorizing the transportation of passengers or household goods in use may be accompanied by a verified statement of the applicant, as set forth in subsection (c)(1)(iii)(A)(II) and a copy of the bilateral contract or statement of the shipper that it will enter into a bilateral contract with the carrier.

(4) *Filing fee*. A filing fee, as prescribed under the fee schedule in § 1.43 (relating to schedule of fees payable to the Commission), shall accompany an application. The fee shall be paid by certified check or money order made payable to the "Commonwealth of Pennsylvania."

(5) *Abandonment or discontinuance of service.* A motor common carrier of property, contract carrier or broker is not required to file an application to abandon or discontinue service. Abandonment or discontinuance of service, in whole or in part, by a motor common carrier of property, contract carrier or broker shall require the submission of a letter to the Commission containing a statement that the service is no longer being rendered or that the contract has expired.

(6) *Change in name of motor carrier*.

(i) *Requirements*.

(A) If a motor carrier changes its name, it shall submit a verified letter of notification to the Secretary containing the following information:

(I) The docket number of the motor carrier and the name of the motor carrier as presently shown in Commission records.

(II) A copy of the amended articles of incorporation or revised partnership agreement, if applicable, or other proper evidence of the name change.

(III) The names of the owners of the stock and distribution of shares, if applicable.

(IV) The names of the officers and directors of the corporation, if applicable.

(V) A statement that there has been no change in the ownership or control of the business.

(B) Upon submission of the information in clause (A) to the Commission, the Commission will endorse the existing certificate or permit of the motor carrier in the new name, with no change to the existing docket number.

(ii) *Additions to or change in name*. If a motor carrier makes an addition to or a change of a fictitious trade name, it shall notify the Secretary by letter, identifying the name and docket number of the motor carrier and submitting a copy of the fictitious name registration form filed with the Department of State, under 54 Pa.C.S. § 312 (relating to amendment). Upon notification, the Commission will endorse the existing certificate or permit of the motor carrier in the new fictitious name, with no change to the existing docket number.

(iii) *Change in insurance and tariff filings*. Within 30 days after the Commission's endorsement of an existing certificate or permit of a motor carrier in the new name or new fictitious name, the motor carrier shall effect the name change on its insurance and tariff filings with the Commission.

(7) *Change in entity of motor carrier.*

(i) *Filing of application required*. A change in the entity of a motor carrier, which is accompanied by a change in the ownership or control of the business—for example, through a transfer, merger or addition/deletion of a partner—requires the filing of an application under paragraphs (3) and (4) and § 5.12 (relating to contents of applications). If the Commission approves the application, a new certificate or permit will be issued under a new docket number, upon receipt of insurance and tariff filings reflecting the change in the entity of the motor carrier.

(ii) *Filing of verified letter of notification required.*

(A) A change in the entity of a motor carrier, which is not accompanied by a change in the ownership or control of the business—for example, through incorporation of a sole proprietorship or partnership—requires the submission of a verified letter of notification to the Secretary containing the following information:

(I) The docket number of the motor carrier and the name of the motor carrier as presently shown in Commission records.

(II) A copy of the articles of incorporation or partnership agreement, if applicable.

(III) The names of the owners of the stock and distribution of shares, if applicable.

(IV) The names of the officers and directors of the corporation, if applicable.

(V) A statement that there has been no change in the ownership or control of the business.

(B) Upon submission of the information in clause (A) to the Commission, the Commission will endorse the existing certificate or permit of the motor carrier in the name of the new entity, with no change to the existing docket number. Within 30 days of the Commission's endorsement, the motor carrier shall effect the change in the entity on its insurance and tariff filings with the Commission.

(8) *Change in the name of shipper of a motor carrier of passengers or household goods in use.*

(i) If a shipper named in the existing or proposed operating authority of a motor carrier of passengers or household goods in use changes its name, the motor carrier shall submit a verified letter of notification to the Secretary containing all of the following information:

(A) The docket number of the motor carrier, specifically identifying the portion of the operating authority involved.

(B) Identification of the name of the shipper as presently specified in the carrier's pertinent operating authority.

(C) A copy of the shipper's amended articles of incorporation or revised partnership agreement, if applicable, or other proper evidence of the shipper's name change.

(D) A statement that there has been no change in the ownership or control of the business.

(ii) If a shipper named in the existing or proposed operating authority of a motor carrier of passengers or household goods in use simply makes an addition to or change of a fictitious trade name, the motor carrier shall notify the Secretary by letter, identifying the name and docket number of the motor carrier and submitting a copy of the shipper's fictitious name registration form filed with the Department of State under 54 Pa.C.S. § 312.

(9) *Change in entity of named shipper of a motor carrier of passengers or household goods in use.*

(i) A change in the entity of a shipper named in the existing or proposed operating authority of a motor carrier of passengers or household goods in use, which is accompanied by a change in the ownership or control of the shipper's business—for example, through a sale or merger—requires the filing of an application by the motor carrier in accordance with paragraphs (3) and (4) and § 5.12.

(ii) A change in the entity of a shipper named in the existing or proposed operating authority of a motor carrier of passengers or household goods in use, which is not accompanied by a change in the ownership or control of the shipper's business—for example, through the incorporation of a sole proprietorship or partnership—requires the submission by the motor carrier of a verified letter of notification to the Secretary containing all of the following information:

(A) The docket number and name of the motor carrier.

(B) Identification of the portion of the operating authority involved and the name of the shipper as presently specified in the carrier's pertinent operating authority.

(C) A copy of the shipper's amended articles of incorporation or revised partnership agreement, if applicable, or other proper evidence of the shipper's name change.

(D) A statement that there has been no change in the ownership or control of the shipper's business.

(10) *Change in location of named shipper of a motor carrier of passengers or household goods in use.*

(i) A change in the location of an existing facility of a shipper named in the existing or proposed operating authority of a motor carrier of passengers or household goods in use requires the filing of an application under paragraphs (3) and (4) and § 5.12, except as provided in subparagraph (ii).

(ii) A change in the location of an existing facility of a shipper named in the existing or proposed operating authority of a motor contract carrier of passengers or household goods in use, which is not accompanied by a change in ownership or control of the business, requires the submission of a verified letter of notification to the Secretary containing the name and docket number of the motor carrier, and a statement that there is no change in ownership or control of the business.

(b) *Notice.* Applications will be docketed by the Secretary and, with the exception of motor common carrier property and group and party carrier of more than 15 passenger 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:

(1) Notified the local government having jurisdiction over affected areas.

(2) 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 all of 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.

(V) A list of all Commission docket numbers under which the protestant operates.

(VI) A protest 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) 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.

(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 more than 15 passenger authority*. No protests to applications for motor common carrier property and group and party carrier more 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 more 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 more than 15 passenger authority.*

(i) *Scheduling hearings.* If the Commission's prosecutory staff determines that conditional or unsatisfactory safety ratings from other jurisdictions or adverse decisions in safety related proceedings before other tribunals exist, prosecutory staff shall enter 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).

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

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

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

(3) In the course of a safety fitness review, Commission enforcement staff will examine an applicant's manage-

ment policies, records and equipment to ensure that the applicant understands and will comply with Chapter 37 (relating to safety code for transportation of property and passengers).

(f) *Compliance: conditions for approval for motor common carrier property and group and party more than 15 passenger authority.* If the 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 more 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 more than 15 passenger, and household goods in use authority.

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. 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, household goods in use, and group and party carriers transporting more than 15 passengers.

(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. A statement shall contain a certification of its accuracy and shall be signed by the person submitting the statement. The applicant's statement, which shall be prepared by the applicant or an authorized representative of the applicant, shall contain all of the following information:

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

(ii) A description of the applicant's terminal facilities and personnel.

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

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

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

(vi) 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.

(vii) 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.

(viii) 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 employees 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.

(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 Technical Utility Services 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)(viii). An ETA application will be granted for an initial period not to exceed 60 days.

(ii) The filing of ETA applications by 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.

(iii) 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 clause (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 Technical Utility Services, 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)(viii).

(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, household goods in use 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 employees 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. 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.*

(1) *General.* Grants of TA or ETA shall be made upon the establishment of an emergency as defined in § 3.1 (relating to definitions) which requires new carrier service before an application for permanent authority can be filed and processed.

(2) *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 re-established 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.

Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

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 more 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.

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 more than 15 passengers.

NOTICE OF TARIFF CHANGES

§ 23.41. Notice requirements for filing changes in rates.

(a) 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 subsection is not applicable to group and party carriers of 11 to 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 the rate has been in operation and effect for at least 30 days. This limitation does 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 subsection is not applicable to group and party carriers of 11 to 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.

(a) Upon the filing and posting of new tariffs or supplements to tariffs making increases in passenger fares by carriers other than railroads and aircraft, notice thereof shall be given to the public by posting in offices, waiting rooms and stations a notice on a poster, which shall be not less than 15 by 20 inches in size, or 300 square inches, printed in bold type of not less than 1 inch in height, as follows:

NOTICE
NEW RATES (FARES) TO BECOME EFFECTIVE
here insert date
MAKING INCREASES IN RATES (FARES) AFFECTING
here designate
the class of
service affected

HAVING BEEN FILED AND POSTED IN THE OFFICES OF THIS CARRIER AND WILL BE PRODUCED FOR EXAMINATION UPON REQUEST.

(b) The notice shall be posted in the offices so that it may be readily seen, and in two conspicuous places in each station and waiting room where tariffs are placed in the custody of a representative. Unless otherwise authorized by this subchapter or by the Commission, the notice shall be posted for a period of not less than 30 days before the increases become effective, and is in addition to the notices prescribed in §§ 23.41—23.43 (relating to notice of tariff changes).

(c) Carriers, except railroads and aircraft, shall also post in every car or other means of conveyance employed by them for the transportation of passengers, over the line affected, a notice similar to that prescribed in subsection (a) for the period indicated, the notice to be of a size and type appropriate to the vehicle involved.

(d) Subsections (a)—(c) are not applicable to group and party carriers of 11 to 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 (relating to data required in filing proposed rate changes), 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 section is not applicable to group and party carriers of 11 to 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) Subsection (a) is not applicable to group and party carriers of 11 to 15 passengers and limousine carriers.

§ 23.64. (Reserved).

§ 23.65. Exemptions from filing.

The filing requirements of § 23.63 (relating to data required in filing proposed rate changes) do not apply to rate changes pertaining solely to temporary or excursion traffic.

§ 23.68. Filing requirements for passenger carriers.

(a) 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) Subsection (a) is not applicable to group and party carriers of 11 to 15 passengers and limousine carriers.

§ 23.69. Stay-out provision.

A passenger carrier will not be permitted to request another increase in rates or operating revenues under § 23.68 (relating to filing requirements for passenger carriers) from the Commission for 1 year following a prior Commission-approved rate increase under § 23.68. A passenger carrier with gross intrastate operating revenues of less than $500,000, but with an operating ratio that is 93% or above, shall be excepted from this 1-year stay-out restriction.

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, when 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, when 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 2 classes of group and party service, group and party carriers of 11 to 15 passengers, including the driver, and group and party carriers of more 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 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 2 classes of group and party service, group and party carriers of 11 to 15 passengers, including the driver, and group and party carriers of more 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 section is not applicable to group and party carriers of more than 15 passengers, including the driver.

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