

# PROPOSED RULEMAKING

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Regulation of Motor Carriers of Passengers and Property; Advance Notice of Proposed Rulemaking

Public Meeting held  
June 14, 2017

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

*Rulemaking for Title 52 of the Pennsylvania Code Pertaining to Regulation of Motor Carriers of Passengers and Property; L-2017-2604692*

#### Advance Notice of Proposed Rulemaking Order

*By the Commission:*

The Commission's regulations and policy statements governing motor carriers of passengers and property, including household goods, are found at 52 Pa. Code Subpart A, Chapter 3, and Subpart B, Chapters 21 through 41. In recent years, the Commission's oversight of these industries has changed in response to federal preemption mandated by the Federal Aviation Authorization Act of 1994, the Transportation Equity Act for the 21st Century, P.L. 105-178, and the passage of P.L. 1222, No. 164 (Act 164). Further, these industries have responded to changes mandated by market forces.

In light of these changes, the Commission has determined that it is appropriate to reexamine its regulations governing the motor carrier industry. Toward this end, we are initiating this Advance Notice of Proposed Rulemaking. We encourage members of the regulated industry, the public, and any other interested parties to file comments with the Commission. The comments should include specific section references to the Commission regulations. Comments should delineate the rationale for the proposed change as well as specific proposed language for the regulations.

As a starting point, our review of the regulations indicates that revisions may be beneficial in the following areas:

#### 1. Fuel Surcharge.

The fuel surcharge currently applies only to household goods carriers and is adjusted annually. We question whether it is appropriate to maintain a generic fuel surcharge, or whether the fuel surcharge should be contained in the carrier's particular tariff.

#### 2. Fines and Assessments.

The Commission expends considerable resources addressing de minimus delinquent assessments and fines. We question whether alternative procedures, as opposed to our current complaint procedures, may be appropriate to address these limited circumstances. In particular, we request comments on whether there are any more efficient procedures to address de minimus delinquent assessments and fines that continue to provide the due process required under law.

#### 3. Granting of Provisional Authority.

Commission regulations currently provide for Emergency Authority and Emergency Temporary Authority. 52 Pa. Code §§ 3.383—3.385. We question whether the procedure for granting these types of authorities should be revised to allow applicants to operate while an application for permanent authority is processed due to protests.

#### 4. Web-based Training.

The Commission solicits input on whether the Commission should provide web-based training for new motor carriers or continued training for existing motor carriers. If so, what aspects of the Commission's motor carrier application, assessment and other regulatory processes should be covered?

#### 5. 52 Pa. Code Chapter 32—Motor Carrier Insurance.

- Chapter 32 governs Commission motor carrier insurance requirements. The current limits of coverage have been in place for a significant period of time. We question whether these limits should be adjusted.

- The Commission currently requires Form E insurance certificates to be filed with the Commission by the insurer or the insured's broker. However, an insurer or broker may fail to file Form E certificate despite a motor carrier's best efforts. The Commission questions whether to allow and rely upon motor carriers themselves to file Form E certificates to avoid such situations. We note that any changes would need to address the public protections afforded in our current Form E process which presently requires the insurance carrier to guarantee that the motor carrier has the coverage that is required under Pennsylvania law and the Commission's orders and regulations. See *Ins. Corp. of N.Y. v. Antrom*, 2008 Pa. Super. LEXIS 5616 (Pa. Super. Ct. Dec. 3, 2008).

#### 6. 52 Pa. Code Chapter 37—Safety Code for Transportation of Property and Passengers.

The regulations in Chapter 37 govern the Commission's safety requirements for motor carriers. The Commission solicits input as to whether any updates or other changes should be made to these regulations.

#### 7. 52 Pa. Code Chapter 41—General Orders, Policy Statement and Guidelines on Transportation Utilities.

Chapter 41 covers the Commission's policy statements for transportation. The Commission is soliciting input as to whether any provisions contained therein should be modified or codified in the form of a regulation. For example, should Section 41.14 be promulgated as a regulation, and if so, what specific language should it contain? In particular, if entry standards are to be promulgated as regulations, what specific standards would be necessary to specify as to, for example, operational fitness and financial fitness and would this limit the Commission's discretion in the granting of motor carrier applications?

#### 8. Other Considerations.

The Commission is soliciting input as to whether any regulations need to be modified in light of Act 164 of 2016, Act 85 of 2016, providing for the regulation of Transportation Network Companies (TNCs), as well as the recent regulatory change which eliminated the requirement for motor common carrier applicants to establish need for service. Final Rulemaking Amending 52 Pa. Code Chapters 1, 3, 5, 23 and 29 to Reduce Barriers

to Entry for Passenger Motor Carriers, Docket No. L-2015-2507592 (Final Rulemaking Order entered October 27, 2016).

9. *P-00940884; Regulation of Property Carriers.*

Per our order at Docket No. P-00940884, we revised our oversight of property carriers due to the Federal Aviation Authorization Act of 1994. Within the context of a prior rulemaking at Docket No. L-00950106, we modified our regulations consistent with the federal preemption of the Federal Aviation Authorization Act of 1994. The Commission solicits comment if any further regulatory changes are needed, beyond the changes already in place.

10. *P-00981458; Regulation of Group and Party Carriers.*

Per our order at Docket No. P-00981458, we revised our oversight of charter bus carriers due to the Transportation Equity Act for 21st Century, P.L. 105-178. Within the context of the prior rulemaking at Docket No. L-2015-2507592, we modified our regulations consistent with the federal preemption of the Transportation Equity Act for 21st Century. The Commission solicits comment if any further regulatory changes are needed, beyond the changes already in place.

Due to the comprehensive nature of this rulemaking and the sheer number of regulatory sections which are open for review, interested parties will be given sixty (60) days from the date of publication of the Advance Notice of Proposed Rulemaking in the *Pennsylvania Bulletin* for

the submission of comments. The Commission is committed to completing any revisions to its regulations in a timely fashion; *Therefore,*

*It Is Ordered That:*

1. A rulemaking proceeding is hereby initiated at this docket to consider the revision of the regulations appearing in Title 52 of the *Pennsylvania Code*, relating to the Commission's rules governing the passenger and property carrier industries.

2. This Advance Notice of Proposed Rulemaking be published in the *Pennsylvania Bulletin*.

3. Interested parties shall have 60 days from the date of publication in the *Pennsylvania Bulletin* of the Advance Notice of Proposed Rulemaking to file written comments.

4. Comments should include, where appropriate, a numerical reference to the existing regulation(s) which the comment(s) address, the proposed language for revision, and a clear explanation for the recommendation.

5. Comments referencing Docket No. L-2017-2604692 be submitted to the Secretary, Pennsylvania Public Utility Commission, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120. The Commission's contact person is Assistant Counsel Joseph Cardinale, (717) 787-5558.

ROSEMARY CHIAVETTA,  
*Secretary*

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