

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

DEPARTMENT OF THE AUDITOR GENERAL

[4 PA. CODE CH. 501]

Auditee Reporting Requirements

The Department of the Auditor General (Department) adopts Chapter 501 (relating to auditee reporting requirements—statement of policy) for the purpose of interpreting and implementing recent amendments to section 403 of The Fiscal Code (act) (72 P.S. § 403) regarding the auditee reporting requirements under section 1.5 of the act of October 30, 2017 (P.L. 725, No. 44) (Act 44).

Under section 403 of the act, the Department has the authority to audit every person, association, corporation and public agency receiving State funds payable out of any fund in the State Treasury. Further, the 2004 Commonwealth Court decision in *Com., Dept. of the Aud. Gen. v. State Emp. Ret. Sys.*, 860 A.2d 206, 214 (Pa. Cmwlth. 2004) (citing to the prior case in *Com., Dept. of the Aud. Gen. v. State Emp. Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003)), observed “[t]he Court’s conclusion plainly was that the Auditor General under Article VIII, Section 10 of the Constitution and Sections 402 and 403 of The Fiscal Code has the authority to conduct performance audits.” (Emphasis added.)

Therefore, section 402 of the act (72 P.S. § 402) and section 403 of the act provide the basis for the Auditor General to have broad authority to audit every Commonwealth department, board and commission, as well as every person association, corporation and public agency receiving State funds at his discretion.

Purpose of this Statement of Policy

A “statement of policy” is defined in section 102(13) of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1102(13)), known as the Commonwealth Documents Law (CDL), as:

any document, except an adjudication or a regulation, promulgated by an agency which sets forth substantive or procedural personal or property rights, privileges, immunities, duties, liabilities or obligations of the public or any part thereof, and includes, without limiting the generality of the foregoing, *any document interpreting or implementing any act of Assembly enforced or administered by such agency.*

(Emphasis added.)

Further, the Commonwealth Court recently observed in *Borough of Bedford v. Com., Dept. of Environmental Protection*, 972 A.2d 53, 61-62 (Pa. Cmwlth. 2009) (citing *Com., Dept. of Corrections and Com., Dept. of Public Welfare v. Pennsylvania State Corrections Officers Association*, 932 A.2d 359, 365 n. 9 (Pa. Cmwlth. 2007)):

The value of a statement of policy is that it communicates, in advance of a discrete agency action, how the agency interprets a law and intends to give it effect. A statement of policy can be published in the Pennsylvania Code, but *publication is not required*; by contrast, a regulation must be published in the Pennsylvania Code.

(Emphasis added.)

Therefore, the Department adopts Chapter 501 to assist the entities impacted by the auditee reporting require-

ments in section 403 of the act regarding auditee reporting requirements under Act 44.

As set forth in Annex A, the Department interprets the Act 44 auditee reporting requirements to apply to any entity that receives a direct or indirect appropriation from the Commonwealth including any Commonwealth executive and independent department, board and commission, and a school district.

Contact Person

The contact person for technical issues is Penelope LaFoe, Administrative Officer III, Department of the Auditor General, Office of Chief Counsel, (717) 787-4546, PLaFoe@PaAuditor.Gov. The contact person for legal questions is Christal Pike-Nase, Deputy Chief Counsel, Department of the Auditor General, Office of Chief Counsel, (717) 787-4546, CPike-Nase@PaAuditor.Gov.

EUGENE A. DePASQUALE,
Auditor General

(*Editor’s Note:* Title 4 of the *Pennsylvania Code* is amended by adding statements of policy in §§ 501.1—501.10 and Appendix A to read as set forth in Annex A. This statements of policy is effective upon publication in the *Pennsylvania Bulletin*.)

Fiscal Note: 128-1. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART XIV. DEPARTMENT OF THE AUDITOR GENERAL

Chap.

501. AUDITEE REPORTING REQUIREMENTS—STATEMENT OF POLICY

CHAPTER 501. AUDITEE REPORTING REQUIREMENTS—STATEMENT OF POLICY

Sec.

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§ 501.1. Statement of policy.

The Department of the Auditor General declares that it interprets the entities that are subject to the auditee reporting requirements in section 403 of The Fiscal Code (72 P.S. § 403) as including any Commonwealth executive and independent department, board and commission, and any school district receiving a direct or indirect appropriation from the Commonwealth (auditee).

§ 501.2. Performance audits.

Under case law, the Auditor General has the authority to conduct “special” audits, including special performance audits, under sections 402 and 403 of The Fiscal Code (72 P.S. §§ 402 and 403).

§ 501.3. Timely response.

Every auditee, including any Commonwealth department, board and commission, and any school district, receiving recommendations in any of its audits shall

submit a response to the Department of the Auditor General detailing adoption of the recommendations, or the reason why recommendations have not been adopted (Act 44 Auditee Reporting Form), within 120 business days of the publication of the audit.

§ 501.4. Department auditee notice.

The Department of the Auditor General will provide notice to every auditee (any department, board and commission, and any school district) 60 business days after the date of the audit's publication that future appropriations could be denied for failure to respond.

§ 501.5. Response notification.

The Department of the Auditor General (Department) will regularly notify (quarterly) the Governor and the Chairpersons and Minority Chairpersons of the Appropriations Committees of the Senate and the House of Representatives of the auditees' responses received, accompanied by comments the Department may wish to submit.

§ 501.6. Web site postings.

The Department of the Auditor General (Department) will post all of the auditees' responses on the Department's publicly accessible web site.

§ 501.7. Responses considered.

The Governor and the Chairpersons and Minority Chairpersons of the Appropriations Committees of the

Senate and the House of Representatives may consider the auditees' responses when determining whether future appropriations will be considered.

§ 501.8. Failure to report notification.

If the auditee does not respond to the Department of the Auditor General (Department) within 120 business days from the date of the publication of the audit, the Department will notify the Governor and the Chairpersons and Minority Chairpersons of the Appropriations Committees of the Senate and the House of Representatives.

§ 501.9. Failure to report considered.

The Governor and the Chairpersons and Minority Chairpersons of the Appropriations Committees of the Senate and the House of Representatives may consider a failure to respond to the audit when determining future appropriations.

§ 501.10. Department coordination.

The Department of the Auditor General (Department) will work with the Chairpersons and Minority Chairpersons of the Appropriations Committees of the Senate and the House of Representatives to determine the most effective method to communicate information concerning responses to the Department's audit recommendations based on the type of audit and significance of the recommendations.

Note: Pursuant to Section 1.5 of Act 44, if the Auditee fails to respond to the Department's recommendations within **120 business days**, the Department will notify the Governor and the Chairpersons and Minority Chairpersons of the Appropriations Committees of the Senate and the House of Representatives, which may consider an Auditee's failure to respond to the Department's audit when determining the Auditee's future appropriations.

[Pa.B. Doc. No. 18-217. Filed for public inspection February 9, 2018, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 41]

[M-2017-2629722]

Motor Common Carrier Applications

The Pennsylvania Public Utility Commission (Commission), on December 7, 2017, adopted a final policy statement regarding the evidentiary criteria used to evaluate motor carrier applications to reflect the elimination of the public need component in applications for motor carrier authority.

Public Meeting held
December 7, 2017

Commissioners Present: Gladys M. Brown, Chairperson; Andrew G. Place, Vice Chairperson; Norman J. Kennard; David W. Sweet; John F. Coleman, Jr.

*Policy Statement Revision of 52 Pa. Code § 41.14;
M-2017-2629722*

Final Policy Statement

By the Commission:

On October 27, 2016, the Commission entered a Final Rulemaking Order wherein the Commission, inter alia, eliminated the requirement that an applicant for common carrier authority establish that approval of the application will serve a useful public purpose, responsive to public demand or need. Final Rulemaking Amending 52 Pa. Code Chapters 1, 3, 5, 23 and 29, Docket No. L-2015-2507592 (Order entered October 27, 2016).¹ In that Order, we found that public need for a particular service was best determined by a competitive market for qualified applicants.

Consistent with this regulatory change, we will now modify our existing policy statement regarding the evidentiary criteria used to evaluate motor carrier applications at 52 Pa. Code § 41.14 to reflect the elimination of the public need component in applications for motor carrier authority.

Specifically, we will eliminate subsections (a), (c), and (d) of the policy statement at 52 Pa. Code § 41.14(a), (c), and (d). Subsection (a) should be deleted because it refers to the applicant's burden of demonstrating that there is public demand for the proposed service. As applicants for a certificate no longer need to prove demand to obtain a

certificate to operate as a motor common carrier, the Commission will delete this subsection from the policy statement.

Also, subsection (c) should be deleted because that provision provides that the Commission will grant motor common carrier authority commensurate with the demonstrated public need unless the entry of the new carrier would endanger or impair existing common carrier operations. As this is no longer a valid criterion for considering motor common carrier authority under our regulations, this provision is properly deleted from our policy statement.

Finally, subsection (d) provides for an exclusion to the traditional "need" requirements of subsections (a) and (c) for applicants for limousine authority. Since subsections (a) and (c) are no longer applicable evidentiary criteria for any common carrier applicants, this provision should also be eliminated.

Accordingly, pursuant to 66 Pa.C.S. §§ 501, 505, 506, and 512, we will adopt as final, the revisions to Section 41.14 as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The Commission amends the final policy statement in § 41.14 to read as set forth in Annex A.
2. The Law Bureau shall submit this Order and Annex A to the Governor's Budget Office for review of fiscal impact.
3. The Law Bureau shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
4. This policy statement shall become effective upon publication in the *Pennsylvania Bulletin*.
5. This Final Order and Annex A be posted on the Commission's website.
6. The contact person is Joseph P. Cardinale, Jr., Assistant Counsel, Law Bureau, (717) 787-5558. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Alyson Zerbe, Regulatory Review Coordinator, Law Bureau, (717) 772-4597.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: 57-318. No fiscal impact; (8) recommends adoption.

¹ The rulemaking was effective upon publication in the *Pennsylvania Bulletin* on June 3, 2017. 47 Pa.B. 3099.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart B. CARRIERS OF PASSENGERS OR
PROPERTYCHAPTER 41. GENERAL ORDERS, POLICY
STATEMENT AND GUIDELINES ON
TRANSPORTATION UTILITIES

TRANSPORTATION

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

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

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

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

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

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

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

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

[Pa.B. Doc. No. 18-218. Filed for public inspection February 9, 2018, 9:00 a.m.]