

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 1, 3, 5, 21, 23, 29 AND 31]

[L-950106]

Motor Carriers of Property

Executive Summary

The Federal Aviation Authorization Act of 1994 amended the Interstate Commerce Act, preempting state regulation of motor carriers of property in the areas of rates, routes and service. The Commission historically regulated intrastate property transportation in these areas as well as in the areas of safety and insurance. In light of the Federal preemption, the Commission proposed modifying its regulations to reflect its changed regulatory role. Also, the Commission took this opportunity to delete the requirement of filing annual reports for both motor carriers of passengers and property. Finally, the Commission invited comments on the possibility of allowing binding estimates for household goods carriers.

Comments to the proposed amendments were limited to the binding estimates proposal. The Commission rejected implementing binding estimates for household goods movers, thereby preserving the current regulatory framework.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of the final-form regulations, which was published as proposed at 26 Pa.B. 1350 (March 30, 1996), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Commission also provided IRRC and the Committees with copies of the comments received as well as other documentation.

In preparing these final-form regulations, the Commission has considered all comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House Committee on Consumer Affairs on October 30, 1997, were approved by the Senate Committee on Consumer Protection and Professional Licensure on October 28, 1997, and were approved by IRRC on November 6, 1997, in accordance with section 5(c) of the Regulatory Review Act.

Public meeting held
June 5, 1997

Commissioners present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; John Hanger; David W. Rolka; Nora Mead Brownell

Order

By the Commission:

By order entered December 19, 1995, the Pennsylvania Public Utility Commission (Commission) initiated a proposed rulemaking to amend its regulations governing motor carriers of property. The Commission's regulatory oversight of the property carrier industry was dramati-

cally changed by passage of the Federal Aviation Authorization Act of 1994, which, inter alia, amended the Interstate Commerce Act at 49 U.S.C.A. §§ 14501(c) and 41713(b). In effect, the Aviation Act preempted state regulation of rates, routes or service of property carriers. However, states do maintain oversight of safety and financial responsibility for property carriers. It was the Commission's changed regulatory role, as dictated by the changes in Federal Legislation, that was the impetus for the proposed rulemaking.

On March 15, 1996, the Office of Attorney General issued its approval of the proposed regulations as to form and legality. On March 25, 1996, copies of the proposed amendments were delivered for review and comment to the designated standing committees of both houses of the General Assembly and IRRC. The proposed rulemaking was published at 26 Pa.B. 1358 (March 30, 1996).

Comments to the proposed amendments were filed by the Pennsylvania Motor Truck Association, Tri-State Household Goods Tariff Conference, Inc., Morgan Moving and Storage, Ltd., Williamsport Moving Company, Inc., Adam Meyer Moving and Storage, B.F. Fields Moving and Storage, Weleski Transfer, Inc., O'Brien's Moving and Storage, Hoy Transfer, Inc., Clemmer Moving and Storage, Inc. and IRRC. None of the commentators offered any substantive comments on the proposed amendments. Instead, the exclusive focus of the commentators was the possibility of requiring binding estimates for household goods movers, an issue raised in Commissioner Robert K. Bloom's statement accompanying the proposed rulemaking. We will address these comments below.

In light of the absence of any comments to the proposed amendments, we will promulgate the final-form regulations as proposed with two major exceptions. First, the proposed amendments defined "household goods in use carrier" consistent with the then current Federal definition. See proposed § 21.1. However, from the time these regulations were proposed, Federal Legislation narrowed that definition of "household goods" to include only a portion of those moves previously considered household goods movements. 49 U.S.C.A. § 13102(10). In effect, this definitional change broadened the preemption created by the Federal Aviation Act of 1994, since moves that were previously labeled household goods moves (and subject to continued state economic regulation) are no longer considered household goods moves, but rather general property moves (and exempt from state economic regulation). We have modified the final rulemaking to reflect the definitional change at the Federal level.

The second change to the proposed amendments concerns § 3.381(n)(3). The proposed amendments provided for a safety fitness review to be conducted within 180 days of the date of the Commission's compliance letter approving an application. If an applicant failed that review, it was given 60 days to correct the deficiencies and pass the review. If an applicant failed to pass the review the second time, its certificate would be immediately suspended. The carrier was then given 30 days from the date of suspension to pass the review or have its certificate revoked.

Enforcement personnel within the Commission commented that the 60-day period allotted a carrier to correct deficiencies and pass the review was too short. They recommended that this period be extended to 90 days. Further, staff commented that in light of the extension

given to carriers to correct deficiencies, revocation should occur following a carrier's failure to pass the review after the 90-day period. We agree with these comments and modify the proposed amendments accordingly.

Finally, we note that we have modified the structure of § 3.381. This is purely an organizational change aimed at making those provisions more user friendly. Further, we have made some technical changes to the following provisions: §§ 3.383, 3.384, 5.235, 21.2, 23.1, 23.53, 23.101, 23.103, 23.104, 23.114, 23.121, 23.124, 23.125, 23.148, 31.4, 31.8, 31.11 and 31.35. Also, we have deleted § 31.8, concerning accounts and records, as no longer serving any useful public purpose.

Household Goods-Binding Estimates

Commissioner Robert K. Bloom issued a statement accompanying the proposed rulemaking directing that the Commission examine the possibility of requiring binding estimates for household goods carriers. Only industry representatives and IRRC submitted comments on this issue. Industry comments to this proposal were negative. The industry alleged that the establishment of binding estimates will adversely affect both consumers and the moving industry. Commentators claimed that binding estimates promote discriminatory pricing by encouraging carriers to attract business by undercutting currently filed rates and by encouraging carriers to charge excessive rates when there is no competition. Further, industry commentators alleged that binding estimates will encourage carriers to charge lower rates to high volume shippers and higher rates for smaller shippers. Finally, industry commentators alleged that binding estimates may be inappropriate due to the tariff structure differences for local intrastate moves compared to interstate moves. Interstate tariffs are generally based on weight and mileage, while tariffs for intrastate moves of less than 40 miles are based on time. Commentators suggested that it is much more difficult to accurately estimate time than mileage and weight, since the time it takes to perform a move is dependent on factors that the carrier has no control over; such as, the weather, the moving sites, and shipper preparation.

IRRC commented that binding estimates would not encourage discriminatory pricing any more than current Commission pricing regulations. IRRC commented that the industry commentators provide no data regarding discriminatory pricing. IRRC postulates that consumers can protect themselves from overcharges by soliciting bids from competing carriers. Further, IRRC discounts the notion that binding estimates encourage "low-balling" to attract business. IRRC argues that the current Commission tariff regulations encourage "low-balling" more than binding estimates would, since under current regulations the shipper is required to pay 110% of the estimated cost to receive his goods from the carrier. Moreover, the carrier can collect the remainder of the charges that exceed 110% of the estimate within 15 days of delivery.

At the Federal level, household goods carriers are permitted to issue binding estimates at their discretion for interstate moves. 49 U.S.C.A. § 13704(a)(1). Under 49 U.S.C.A. § 13702(c), interstate household goods carriers must maintain rates in a published tariff and carriers must provide for binding estimates in their tariffs if they wish to utilize them. 49 CFR § 1056.3. However, neither the Federal Highway Administration nor the Surface Transportation Board, successors to the duties of the Interstate Commerce Commission, require that carriers actually file their tariffs with them. Further, the actual rates to be charged in a binding estimate are not included

in a carrier's tariff, but rather are a matter of negotiation between the carrier and shipper. Binding estimate rates are not subject to reasonableness standards as are non-binding rates. 49 U.S.C.A. § 13701. However, rates used for binding estimates can not be preferential or predatory. 49 U.S.C.A. § 13704(a)(2).

Staff conversations with personnel from the Surface Transportation Board and the Federal Highway Administration indicate that the Federal experience with binding estimates for household goods carriers has been negative. Numerous consumer complaints have been generated as a result of binding estimates used by unscrupulous operators. These operators use binding estimates to attract business but later renege on the estimate, alleging that the shipper did not fully inform them of the extent of the shipment. Under these circumstances, the carrier voids the binding estimate and demands payment for services which were not detailed in the estimate.

Based on the Federal experience, we are cautious about instituting binding estimates in this Commonwealth. Notwithstanding the potential for abuse by unscrupulous carriers, an additional concern over the introduction of binding estimates is Pennsylvania's statutory requirement that rates charged by carriers be just and reasonable. 66 Pa.C.S. § 1301. Under the Federal scheme, the only statutory requirement for binding estimates is that the rates be nonpredatory and nondiscriminatory. 49 U.S.C.A. § 13704(a). The Federal scheme allows the market, through private negotiations, to set rates for binding estimates. No mechanism is available in this Commonwealth. Household goods carriers in this Commonwealth are required to charge rates in accordance with their filed tariffs, regardless of whether the estimate is binding or nonbinding. 66 Pa.C.S. § 1303.

Further, even if a Commonwealth household goods carrier was statutorily permitted to negotiate rates with shippers for binding estimates, it is questionable whether those negotiations would be a viable means of setting rates. Barriers to market entry remain for household goods carriers in this Commonwealth. Prospective carriers must establish that a public demand exists for the proposed service. See 66 Pa.C.S. § 1103, 52 Pa. Code § 41.14.¹ Given the restrictions to competition among carriers in this Commonwealth, the negotiating table would possibly be skewed toward the carrier, leaving the shipper with little bargaining power to reach a fairly negotiated rate. See *Petition of the Pennsylvania Bus Association*, Docket No. P-00950983 (Order entered June 10, 1996). Therefore, even if we were to adopt binding estimates for household goods carriers, the rates charged would have to be contained in the carrier's tariff to ensure reasonableness. 66 Pa.C.S. §§ 1301 and 1303.

Requiring a carrier to follow its tariff rates in offering a binding estimate presents a serious problem. Carriers are required to charge according to their tariff rates. 66 Pa.C.S. § 1303. In rendering a binding estimate, a carrier would apply those rates to a particular move, binding itself to that estimate. However, if the binding estimate given proved to be too high or too low for the move (as calculated by the carrier's tariff) the carrier and shipper would still be bound by the estimate. The carrier would not be able to charge in accordance with its tariff due to the binding estimate, thus creating a violation of the Code. 66 Pa.C.S. § 1303.

Based on the foregoing, we are not persuaded to institute binding estimates for household goods carriers at this time. While we agree with IRRC's comment that binding estimates would not encourage "low-balling" any more than the Commission's current 110% role, we believe that it would be nearly impossible for carriers to offer binding estimates and follow their tariffs. As in the Federal scheme, we believe that binding estimates are more appropriate in an environment where rates would be set by negotiation in an open market. Our statute does not provide for this option. Further, given the restrictions to entry imposed on prospective carriers, we can not assume that the market would be a viable means of setting rates even if statutorily permitted. Therefore, we will not institute binding estimates for household goods carriers.

Finally, we note that, having received no comments, we will not, at this time, modify the leasing and insurance regulations governing common carriers of property.

Having considered all comments filed to the proposed rulemaking, we believe the regulations as set forth in Annex A should be adopted as the final rulemaking.

Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, and the Commonwealth Documents Law (45 P.S. § 1201 et seq.), and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we find that regulations in 52 Pa. Code shall be amended; *Therefore,*

It is Ordered that:

1. The regulations of the Commission, 52 Pa. Code Chapters 1, 3, 5, 21, 23, 29 and 31, are amended by amending §§ 1.43, 3.381—3.385, 5.235, 21.1, 21.2, 23.1, 23.14, 23.16, 23.21, 23.22, 23.53, 23.67, 23.101, 23.103, 23.104, 23.114, 23.121, 23.124, 23.125, 23.148, 31.1, 31.2, 31.4, 31.11, 31.16, 31.27, 31.41, 31.45 and 31.62; and by deleting §§ 23.33, 23.81—23.83, 23.85, 23.91, 23.92, 23.116, 23.131—23.135, 23.149, 29.42, 31.8, 31.9, 31.21—31.25, 31.28—31.31, 31.34, 31.37, 31.47—31.50, 31.61 and 31.66—31.71 to read as set forth in Annex A, with ellipses relating to the existing text of the regulations.

(Editor's Note: The amendment of §§ 5.235, 21.2, 23.53, 23.101, 23.103, 23.114, 23.121, 23.124, 23.125, 23.148 and 31.11 and the deletion of § 31.8 were not included in the proposal at 26 Pa.B. 1358. The proposal to amend § 31.10, included at 26 Pa.B. 1358, has been withdrawn by the Commission.)

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to the legality.

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

4. The Secretary shall submit this order and Annex A for formal review by the designated standing committees of both Houses of the General Assembly, and for formal review by IRRC.

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

6. The Secretary shall serve copies of this order and Annex A upon each of the commentators.

7. These amendments shall become effective immediately upon publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6128 (November 22, 1997).)

Fiscal Note: Fiscal Note 57-166 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 1. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

Subchapter E. FEES

§ 1.43. Schedule of fees payable to the Commission.

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

<i>Description</i>	<i>Fee (in dollars)</i>
Initial filing of Form A for intangible transition property notice	\$550
Subsequent filing of notice changes in intangible transition property notice on Form B	\$350
Chapter 74 public information requests relating to perfection of security interests	\$10 plus standard per page copying costs
Copies of papers, testimony, microfiche, records and computer printouts per sheet	\$.75
Copies of microfiche per sheet	\$1.50
Copies of microfilm per roll	\$80
Certifying copy of a paper, testimony or record	\$5
Filing each securities certificate	\$350
Filing each abbreviated securities certificate	\$25
Filing each application for a certificate, permit or license or amendment of a certificate, permit or license	\$350
Filing an application for a certificate of public convenience for a motor common carrier of property	\$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) *Fees for testing.* The fees fixed by section 317 of the act (relating to fees for services rendered by commission)

to be charged and collected from public utilities for the testing of their instruments of precision and measuring apparatus are as follows:

<i>Description</i>	<i>Fee (in dollars)</i>
Testing each watthour meter	\$16
Testing each indicating instrument	10
Testing each transformer	10
Testing each standard cell	5
Testing each standard resistance	10
Testing each potentiometer	50
Testing each gas meter prover	35
Testing each calorimeter tested at the gas company's plant	35
Testing each calorimeter tested at the Commission laboratory	10
Each water meter testing apparatus tested at the company's plant	15
Each water meter tested at the Commission laboratory	3

(c) *Condensation and steam flow meters.*

(1) The schedule of fees for testing condensation and steam flow meters is as follows:

(i) For condensation meters having an outlet not exceeding 2 inches—\$5.

(ii) For condensation meters having an outlet in excess of 2 inches—\$10.

(iii) For steam flow meters—\$25.

(2) Upon receipt of complete specifications, the Commission will determine the fees for testing those meters located so that the cost is out of proportion to the fee specified or those not included in the classification in this subsection

(d) *Water meters.*

(1) The schedule of fees for testing meters is as follows:

(i) For each water meter having an outlet not exceeding 1 inch—\$5.

(ii) For other water meters having an outlet not exceeding 2 inches—\$10.

(2) Rates for testing other meters, including those which are located so that the cost is out of proportion to the fee specified, will be furnished by the Commission upon the receipt of complete specifications.

(e) *Supersession.* Subsections (a)—(d) supersede 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:

* * * * *

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

* * * * *

(3) *Filing and verification.* An original application, together with two copies, 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 may be accompanied by verified statements of the applicant and supporting party or firm, as set forth in subsection (c)(1)(iii)(A)(II) and (III). 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.

* * * * *

(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.

* * * * *

(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 the following information:

* * * * *

(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 the following information:

* * * * *

(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 thereafter forwarded for publication in the *Pennsylvania Bulletin*. No other notice to the public or to a carrier, forwarder or broker is required, except that an applicant filing an application for the discontinuance of the transportation of persons, on a scheduled basis, shall certify to the Commission that it has done the following:

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

(ii) Posted notice of the proposed discontinuance in a conspicuous place in vehicles engaged in service on affected routes.

(c) *Protests*

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

(i) *Content and effect.*

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

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

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

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

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

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

(VI) A statement of any restrictions to the application which would protect the protestant's interest, including a concise statement of any amendment which would result in a withdrawal of the protest.

(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 motion).

(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-) Other information deemed pertinent.

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

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

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

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

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

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

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

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

(-h-) Other information deemed pertinent.

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

(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 authority.*

(i) *Content and effect.*

(A) A person objecting to the approval of an application for motor common carrier of property authority shall file with the Secretary and serve upon the applicant, the applicant's attorney, if any, and the Bureau of Transportation and Safety a written protest which shall contain the following:

(I) The applicant's name and 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) Specific factual allegations regarding an applicant's safety fitness. Factual allegations which specifically reference the applicant's United States Department of Transportation Safety rating, safety ratings from other State agencies or adverse decisions in safety related proceedings before other tribunals will be required in protests. Protests which are not supported by specific factual allegations will not be considered.

(B) Upon the filing of timely protests which contain specific factual allegations relating to an applicant's safety fitness, the application and comments will be referred to the prosecutory staff of the Bureau of Transportation and Safety for a determination as to the necessity for a hearing.

(ii) *Time for filing.* Protests to applications for motor common carrier property authority shall be filed within the time specified in the *Pennsylvania Bulletin*, which will not be less than 10 days from the date of publication.

(iii) *Failure to file protests.* If no protests are filed, or if the Bureau of Transportation and Safety has determined that the protests do not raise significant allegations of safety fitness, the Commission will act on motor common carrier of property applications as follows:

(A) 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. Temporary evidence of insurance may be filed in the form of an

insurance identification card for Pennsylvania registered vehicles, 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.

(B) 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, between points in this Commonwealth.

(C) 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's, 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.

(D) 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 enforcement officers with sufficient records to enable meaningful examination of the applicant's safety related programs.

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

(d) *Hearings on protested applications.*

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

(i) *Scheduling hearings.* 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.

(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 authority.*

(i) *Scheduling hearings.* If protests are filed which raise significant issues regarding an applicant's safety fitness, or if the Bureau of Transportation and Safety prosecutory staff determine that safety ratings from other jurisdictions or adverse decisions in safety related proceedings before other tribunals exist, the Bureau of Transportation and Safety shall enter its 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.

(f) *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 and household goods in use of authority.

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

- (1) The date of each request.
- (2) The name, address and phone number of the person or company requesting service.

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

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

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

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

* * * * *

(b) *Definitions and applicability.*

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

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

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

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

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

* * * * *

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

(1) *How and where filed.* An original and one copy 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.

* * * * *

(3) *Supporting statements.* An application shall be accompanied by supporting statements of the applicant and shippers or other witnesses which establish an immediate

need for service. A statement shall contain a certification of its accuracy and shall be signed by the person submitting the statement.

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

* * * * *

(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.*

* * * * *

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

* * * * *

§ 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 Transportation and Safety with the approval of the Commission.

(b) *Standards for determination of need.*

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

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

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

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

- (i) Failure to meet statutory standards and this title.
- (ii) Unfitness of the applicant.

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

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

(2) Alleged violations of statute or regulations or a pending fitness investigation when no formal proceeding

has been instituted may not be used as grounds for denial unless the Commission has evidence that the carrier applicant has a history of willful or flagrant violation of the statute or regulations. If authority is denied for lack of fitness on this basis, the decision will state the basis for denial.

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

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

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

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

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

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

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

CHAPTER 5. FORMAL PROCEEDINGS

Subchapter B. HEARINGS

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

(a) The participants to motor carrier applications for passenger and household goods in use authority may stipulate as to restrictions or modifications to proposed motor carrier rights. Stipulations in the form of restrictive amendments or modifications shall be in writing, signed by each participant to the stipulation, and a copy submitted to the Secretary for insertion into the document folder.

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

Subpart B. CARRIERS OF PASSENGERS, PROPERTY OR HOUSEHOLD GOODS IN USE

CHAPTER 21. GENERAL PROVISIONS

§ 21.1. Definitions.

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

Certificate—A certificate of public convenience as issued by the Commission.

Commission—The Pennsylvania Public Utility Commission.

Common carrier of property—A motor common carrier who or which transports property, other than household goods in use.

Corporation—A body corporate, joint stock company or association, domestic or foreign, its lessee, assignee, trustee, receiver or other successor in interest, having the powers or privileges of corporations not possessed by individuals or partnerships, but not including a municipal corporation except as otherwise expressly provided in the act.

Household goods in use—As used in connection with transportation, the term means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of the dwelling, and similar property if the transportation of the effects or property is one of the following:

(i) Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his dwelling.

(ii) Arranged and paid for by another party.

Household goods in use carrier—A motor common or contract carrier that transports household goods in use.

Motor carrier—A common or contract carrier by motor vehicle.

Passenger carrier—A motor common or contract carrier that transports passengers.

§ 21.2. Advertising by common carriers of passengers or household goods in use.

A common carrier of passengers or household goods in use which advertises its services as an intraState carrier within this Commonwealth shall include in the advertisements its certificate number issued by the Commission. A common carrier of passengers or household goods in use which does not comply with this section shall be subject to penalty under 66 Pa.C.S. §§ 3301—3315 (relating to violations and penalties).

CHAPTER 23. TARIFFS FOR PASSENGER AND HOUSEHOLD GOODS IN USE 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, 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.

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.

§ 23.14. Numbering of tariffs and supplements.

(a) Tariffs shall be numbered consecutively with the prefix "Pa. P.U.C. No." and a separate series of numbers shall be used for tariffs pertaining to each kind of service furnished.

(b) The designation on tariffs of motor carriers shall show the kind of service and serial number as follows:

- (1) "Bus Pa. P.U.C. No. ____"
- (2) "Call and Demand Pa. P.U.C. No. ____"
- (3) "Contract Pa. P.U.C. No. ____"
- (4) "Group or Party Pa. P.U.C. No. ____"

(c) Supplements to tariffs shall be numbered in the same manner, in the form "Supplement No. ____ to ____ Pa. P.U.C. No. ____"

§ 23.16. Filing in numerical order.

(a) Tariffs and supplements should be filed in numerical order insofar as possible and when this cannot be done suitable explanation shall be made concerning missing numbers.

(b) Each tariff or supplement filed with the Commission shall be accompanied by a separate letter of transmittal, in duplicate if receipt is desired, prepared on paper not larger than 8 1/2 by 11 inches in size. Specific reference shall be made thereon to all of the following:

- (1) The tariff or supplement being filed.
- (2) The effective date of the tariff or supplement.

(3) Supporting data required by §§ 23.63—23.66 (relating to data required in filing proposed rate changes; data required in filing increases in operating revenues; exemptions from filing; filings as public record), unless the supporting data has been previously filed.

(c) If the tariff transmitted is a joint one, a statement should be included to the effect that it is concurred in by all participants, under appropriate authorization on file with the Commission or attached to the tariff.

(d) The original letter of transmittal will be retained by the Commission. The duplicate, when accompanied by an addressed, stamped envelope or postage sufficient to cover return mailing, will be stamped and returned to the carrier to evidence receipt of the tariff matters filed.

(e) If a number of tariffs or supplements pertaining to one kind of service are filed simultaneously, they may be included in one transmittal letter.

(f) Separate letters shall be used for tariffs or supplements filed for different classes of service. Tariffs tendered for filing shall be addressed to:

Bureau of Transportation and Safety
 Pennsylvania Public Utility Commission
 Post Office Box 3265
 Harrisburg, Pennsylvania 17105-3265.

CONTENT AND ARRANGEMENT OF TARIFFS

§ 23.21. Title page.

Each tariff shall contain a title page showing the following information in the sequence specified:

(1) The Commission (Pa. P.U.C.) number of tariff or supplement, as indicated in § 23.14 (relating to numbering of tariffs and supplements). The designation shall be placed in the upper right corner, and immediately under it the numbers of tariffs or supplements cancelled thereby. Motor carriers shall place in the upper left corner their certificate or permit and folder numbers.

(2) The name of the issuing carrier or publishing agent. The names of motor carriers shall be exactly as they appear in the certificates or permits.

(3) The kind of service to which the tariff applies. Motor carriers shall describe exactly the right authorized. If the rights are extensive they may be described in the body of the tariff or in a separate issue with appropriate reference to it on the title page.

(4) Reference by title and Commission number to any other tariff which may apply in connection with the tariff or schedule. If not practical to show, this information may be included in the body of the tariff under rules and regulations. When a carrier proposes to apply the rates named in agency tariffs for all or part of its services, it is necessary to submit a tariff in the name of the individual,

precludes the Commission from requiring supporting financial data in instances when increases in rates appear to be excessive.

§ 23.81. (Reserved).

§ 23.82. (Reserved).

§ 23.83. (Reserved).

§ 23.85. (Reserved).

§ 23.91. (Reserved).

§ 23.92. (Reserved).

RATES RELATED TO VALUE OF SHIPMENTS

§ 23.101. Applications to establish rates related to value.

(a) Applications for authority to establish rates for the transportation of household goods in use related to the released value of the shipments shall contain full and complete information concerning the grounds and facts upon which the request is based.

(b) Each application shall show the names of the carriers for and on behalf of which it is made, or if made on behalf of all carriers, parties to a particular tariff or classification may refer by Commission number to the tariff or classification.

(c) The existing and the proposed rules, regulations, rates or ratings shall be plainly set forth. A mere reference to existing rules, regulations, rates or ratings will not suffice.

(d) Four copies of each application shall be filed, one of which shall be verified.

(e) In referring to existing rules, regulations, rates or ratings, the Commission numbers of the tariffs or classifications in which same are published, shall be shown.

(f) Carriers shall recite fully in their applications all further information in connection with any facts which are presented as justifying the authorization sought.

§ 23.103. Applications based on special circumstances.

When applications are based upon special circumstances and conditions, or upon rules, regulations, rates or ratings applying in other localities or territories, or applicable over the lines of other carriers, full information respecting these special circumstances and conditions or existing rules, regulations, rates or ratings shall be given.

§ 23.104. Changes where declared value and routes or destinations remain unchanged.

If authority has been granted under 66 Pa.C.S. § 2304 (relating to liability of common carriers for damages to property in transit; bills of lading), to establish and maintain rules, regulations, rates or ratings dependent upon the value declared in writing by the shipper, or agreed upon in writing as the released value of household goods in use, changes in rates, ratings or carload minimum weights may be established thereafter and filed under authority of the original order without securing new released rate orders, if the rules or regulations, or the declared or agreed values on which same are dependent are not changed, and, if they additional routes or points of origin or destination are not added.

§ 23.114. Suspension supplements.

(a) If the Commission, under 66 Pa.C.S. § 1308(b) (relating to voluntary changes in rates), suspends any proposed rates, charges or regulations contained in any tariff, the previous rates, charges or regulations shall

remain in effect during the period of suspension or until lawfully cancelled, reissued or otherwise ordered by the Commission.

(b) If an order of suspension is received by a carrier against whose tariffs the order of suspension is directed, it is the duty of the carrier immediately to post in its offices and file with the Commission a supplement, which shall bear no effective date, announcing that the rates, charges or regulations are suspended by order of the Commission until the date stated in the order of suspension. Reference shall also be made in this supplement to the tariffs where the rates, charges or regulations remaining in effect during the period of suspension will be found.

(c) If the order directs the suspension of a part of a tariff which, except as to that part, is allowed to become effective, the supplement announcing the suspension shall also contain the rates, charges and regulations applicable during the period of suspension or shall make specific reference by Commission number to the tariff or supplement where they will be found.

(d) The regulations limiting the number of supplements which may be issued do not apply with respect to suspension supplements.

(e) If, upon final determination, the matter suspended is found not unlawful and the Commission directs that the order of suspension be vacated or the case be dismissed, the affected carrier shall issue a supplement announcing the vacation of the order of suspension and providing the proper publication of the rates, charges or regulations authorized, and otherwise comply with the orders of the Commission.

(f) The provisions of 66 Pa.C.S. § 1308(d) apply to every public utility described in 66 Pa.C.S. § 102 (relating to definitions), except common carriers of property.

§ 23.116. (Reserved).

GRANTING OF POWER OF ATTORNEY AND ISSUING OF CONCURRENCE IN TARIFFS OF COMMON CARRIERS

§ 23.121. Filing of tariffs of joint rate.

(a) Tariffs of joint rates need only be filed with the Commission by one of the participant common carriers or its agents. The remaining participant common carriers shall file evidence of concurrence therein or acceptance thereof in accordance with the rules and forms provided in this title.

(b) The forms prescribed shall be on paper 8 by 10 1/2 inches in size, and may be either printed or typewritten. The original and one copy of the form shall be filed with the Commission and a copy furnished to the carrier or agent in whose favor the instrument is issued.

(c) One of the following serial designations shall be used for power of attorney:

(1) Pa. F 1 No. _____ (for household goods tariffs).

(2) Pa. P 1 No. _____ (for passenger tariffs).

(d) One of the following serial designations shall be used for concurrences:

(1) Pa. F 2 No. _____ (for household goods tariffs).

(2) Pa. P 2 No. _____ (for passenger tariffs).

§ 23.124. Form for giving authority.

(a) The form in subsection (c) shall be used to give authority to the following:

(1) An attorney and agent to file tariffs and supplements.

(2) An agent to receive occurrences for it.

(3) Another agent to give and receive concurrences.

(b) The authorization may not be given to an association or bureau, except if incorporated and in instances other than covered by § 23.121 (relating to filing of tariffs of joint rate), shall name an alternate agent to act in the event of the death or disability of the principal agent and may not contain authority to delegate to another the power thereby conferred.

(c) The form shall be as follows: _____
(Name of carrier in full)
Date _____, 19__

Pa. H 1 No. (for household goods tariffs) or

Pa. P 1 No. (for passenger tariffs)

KNOW ALL MEN BY THESE PRESENTS:

That the (name of the carrier) has made, constituted, and appointed, and by these presents does make, constitute, and appoint (name of principal agent appointed) is true and lawful attorney and agent for the said carrier, and in its name, place, and stead, (1) for it alone, and (2) for it jointly with other carriers to receive concurrences in, and to file, rate schedules and supplements thereto, as required of carriers by the Public Utility Law and by regulations established by the Pennsylvania Public Utility Commission thereunder, for the period of time, the traffic, and the territory specified below, and to accept service of any notice, order or process for it and on its behalf which may be issued in proceedings before the Commission involving the lawfulness of rates, charges, classifications or practices contained or proposed in tariffs or schedules so filed:

And the said (name of carrier) does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully, to all intents and purposes, as if the same were done and performed by the said carrier, hereby ratifying and confirming all that its said attorney and agent may lawfully do by virtue hereof, and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder. And further, That the (name of carrier) has made, constituted and appointed, and by these presents does make, constitute and appoint as alternate (name of alternate agent appointed) its true and lawful attorney and agent, for said carrier and in its name, place and stead, (1) for it alone, and (2) for it jointly with other carriers, in case and only in case of death or disability of the said (here insert name of principal agent) to do and perform the same acts and exercise the same authority as hereinabove granted to (here insert name of principal agent.)

In witness whereof the said carrier has caused these presents to be signed in its name by its president and to be fully attested under its incorporated seal by its secretary, at _____ in the State of _____, on this ___ day of _____, in the year of our Lord nineteen hundred and ___.

(Name of carrier)
By _____
(Name of officer)

(Title of officer)

ATTEST (if a corporation)

Secretary

(d) The form contained in subsection (c) may be modified by omitting the words "(1) for it alone, and (2)" or "and (2) for it jointly with other carriers," or "to receive concurrences in, and" or "and to file," when the words are inapplicable. When used to give authority to an agent for the publication of a classification, a classification exception tariff, a rules or regulations tariff or a carrier directory, the power of attorney form should be modified by striking out the words "rate schedule" and substituting therefor the word or words "classification," "classification exception tariffs," or "rules and regulations tariff" and "carrier directory," as the case may be.

§ 23.125. Form for concurring in rate or fare tariffs.

The following form shall be used in concurring in rate or fare tariffs published by common carriers, or their appointed agents:

(Name of carrier in full)
Date _____, 19__

Pa. H 2 No. (for household goods tariffs) or

Pa. P 2 No. (for passenger tariffs)

To: PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. Box 3265
HARRISBURG, PENNSYLVANIA 17105-3265

THIS IS TO CERTIFY that (name of carrier) assents to and concurs in the publication and filing of any (household goods or passenger) rate (or fare) tariff or supplements thereto which the (name of carrier) or its agent may make and file, and in which this company is shown as a participating carrier and hereby makes itself a party to and bound thereby insofar as such schedule or supplements thereto contain rates (or fares) as described below:

until this authority is revoked by formal and official notice of revocation placed in the hands of Pennsylvania Public Utility Commission and of the carrier to which this concurrence is given.

(Name of carrier)
By _____
(Name of officer)

(Title of officer)

§ 23.131. (Reserved).

§ 23.132. (Reserved).

§ 23.133. (Reserved).

§ 23.134. (Reserved).

§ 23.135. (Reserved).

CONTRACT CARRIERS

§ 23.148. Filing of schedules with the Commission.

(a) Each contract carrier shall file with the Commission one copy of each schedule or supplement accompanied by a letter of transmittal listing the publications enclosed and addressed to the Bureau of Transportation and Safety, Pennsylvania Public Utility Commission, Harrisburg, Pennsylvania 17105-3265.

(b) Postage or other charges shall be prepaid.

§ 23.149. (Reserved).

CHAPTER 29. MOTOR CARRIERS OF PASSENGERS

Subchapter B. COMMON CARRIERS

ACCOUNTS, RECORDS AND REPORTS

§ 29.42. (Reserved).

CHAPTER 31. MOTOR CARRIER PROPERTY AND HOUSEHOLD GOODS TRANSPORTATION

GENERAL PROVISIONS

§ 31.1. Definitions.

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

Common carrier by motor vehicle—A person or corporation holding out or undertaking, directly or indirectly, to transport household goods in use or property between points within this Commonwealth by motor vehicle for compensation, whether or not as the owner or operator of the motor vehicle. The term includes persons or corporations providing or furnishing a motor vehicle with or without a driver for the transportation or for use in the transportation of household goods in use or property; a common carrier by rail, water or air; and express or forwarding public utilities insofar as the common carrier or the public utility is engaged in motor vehicle operation, except as expressly exempted by the act.

Contract carrier by motor vehicle—A person or corporation who or which provides or furnishes transportation of household goods in use between points within this Commonwealth by motor vehicle for compensation whether or not as the owner operator of the motor vehicle. The term includes a person or corporation providing or furnishing a motor vehicle with or without a driver for the transportation or for use in the transportation other than as a common carrier by motor vehicle, except as expressly exempted by the act.

Corporation—As defined in § 21.1 (relating to definitions), but shall also exclude *bona fide* corporate associations which furnish service on a nonprofit basis only to their stockholders or members, as expressly exempted by the act.

Forwarder—A person or corporation not included in the terms “common carrier by motor vehicle,” “contract carrier by motor vehicle” or “broker,” who or which issues receipts or billings for property received by the person or corporation for transportation, forwarding or consolidating, or for distribution by a medium of transportation or combination of media of transportation other than solely by motor vehicle.

Household goods in use. See § 21.1 (relating to definitions).

Household goods in use carrier—A motor common or contract carrier who or which holds a certificate or permit to transport household goods in use.

Motor common carrier of property—A motor common carrier who or which transports property, other than household goods in use.

Permit—A permit issued by the Commission to contract carriers by motor vehicle.

Property—Tangible property, other than household goods in use.

§ 31.2. Applicability.

This chapter applies to common carriers by motor vehicle, contract carriers by motor vehicle and forwarders operating at the time of the adoption of this chapter; and also to those to whom a certificate or permit may be issued.

§ 31.4. Transfer of certificates and permits.

(a) A certificate or permit or the rights thereunder may not be sold or transferred by act, deed or operation of law, unless the approval of the Commission is first obtained. The approval may be granted with or without hearing and after reasonable notice in the *Pennsylvania Bulletin* as the Commission directs.

(b) Certificates issued to motor common carriers of property are nontransferable, except as provided in subsections (c)—(e).

(c) Upon the death of an individual holder of a certificate or permit or upon an individual certificate holder being legally declared incompetent, the rights conferred by the certificate or permit shall continue with the legal representative of the deceased or incompetent holder for 1 year. After that time, the rights conferred shall terminate, unless application has been made to transfer the rights to the heirs, guardian, trustees, legatee or others, in which case the rights shall continue with the legal representative until the application is granted or refused. If application is made by the legal representative not less than 30 days prior to the end of the period of 1 year, the Commission may, for cause shown, permit the transfer of rights to the executors, administrators, guardians, trustees or other legal representatives of the deceased or incompetent holder for a period to be fixed by the Commission. Pertinent orders or decrees of the court having jurisdiction over the estate of the decedent or incompetent person may be deemed cause for the granting of the application by the Commission.

(d) If the individual holder of a certificate of permit dies or is legally declared incompetent and an application is made to transfer the rights granted under the certificate to his legal representative or if the certificate holder is a copartnership and the application for transfer is in effect to change one or more of the partners, the Commission may dispose of the application without a hearing.

(e) If a trustee, receiver, assignee, custodian or similar officer is appointed by a court of competent jurisdiction or is selected by creditors in accordance with provisions of law, with authority to take or retain possession and to operate the property and business of a certificate holder, the officer shall have authority to perform the service authorized in the certificates of the debtor carrier for 90 days from his appointment or selection. The officer may petition the Commission for authority to conduct the operations for an additional period of time, and the Commission may, for good cause shown, grant the authority. If the petition is filed within 90 days of the appointment or selection of the petitioner, the petitioner shall have the authority to continue operations pending decision by the Commission on the petition. Pertinent orders or decrees of the court having jurisdiction may be deemed a basis for action on the petitions by the Commission.

§ 31.8. (Reserved).

§ 31.9. (Reserved).

§ 31.11. Reports of accidents and damage.

(a) Within 30 days after a reportable accident occurs, a detailed report shall be mailed to: Secretary, Pennsylva-

nia Public Utility Commission, Post Office Box 3265, Harrisburg, Pennsylvania 17105.

(b) A reportable accident is one involving one or more of the following:

- (1) The death of a person.
- (2) Personal injuries which require medical attention.
- (3) Property damage amounting to \$4,200 or more, based on actual costs or reliable estimates.
- (4) Collisions at grade crossings between motor vehicles operated under a certificate of public convenience or contract carrier permit and trains or streetcars, whether or not a person is killed or injured in the accident.

(c) If the occurrence of an accident results in the death of a person, an immediate report of the accident shall be made by telephone or telegraph to the Bureau of Transportation and Safety, in addition to the detailed written report required by subsection (a).

(d) The requirements of this section for the reporting of accidents correspond closely with those of the United States Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, and the Department of Transportation, Bureau of Traffic Safety, of the Commonwealth. A copy of the report to the Bureau of Motor Carrier Safety or the Bureau of Traffic Safety will be accepted in lieu of a separate accident report.

§ 31.16. Mileage description in certificates.

A certificate of public convenience issued by the Commission for the transportation of household goods in use to common carriers by motor vehicle, in which mileage distances are provided without being described in terms of "airline distance," "statute miles," "usually traveled highways" or other comprehensive definition, shall be construed to mean airline distance measured in statute miles.

COMMON CARRIERS OF PROPERTY AND HOUSEHOLD GOODS IN USE

§ 31.21. (Reserved).

§ 31.22. (Reserved).

§ 31.23. (Reserved).

§ 31.24. (Reserved).

§ 31.25. (Reserved).

§ 31.27. Rate schedules and tariffs.

(a) Each common carrier of household goods in use shall comply with regulations the Commission may formulate governing the filing, publishing and posting of tariffs by common carriers of household goods in use as set forth in Chapter 23 (relating to tariffs for common carriers of passengers and household goods in use).

(b) No rate based upon a limitation of liability may be published in the tariff and no limitation of liability may be prescribed in a bill of lading, unless approval has been obtained from the Commission for the publication of tariffs providing rates limited to value of the commodity, in the form and manner of the petition and proceedings as the Commission may provide in its rules governing filing, publishing and posting of tariffs by common carriers of household goods in use as set forth in Chapter 23.

§ 31.28. (Reserved).

§ 31.29. (Reserved).

§ 31.30. (Reserved).

§ 31.31. (Reserved).

§ 31.34. (Reserved).

§ 31.35. Maintenance of equipment lists.

(a) A motor carrier engaged in transporting property or household goods in use by motor vehicle between points in this Commonwealth shall maintain at its principal place of business in this Commonwealth a current list of equipment owned and leased which is used in the transportation of property or household goods in use for-hire, containing the following information:

- (1) Year.
- (2) Make.
- (3) Type.
- (4) Manufacturer's serial number.
- (5) State and license number.
- (6) Name and address of the owner-lessor.

(b) The information shall be made available during regular business hours to authorized representatives of the Commission.

§ 31.37. (Reserved).

CONTRACT CARRIERS OF HOUSEHOLD GOODS IN USE

§ 31.41. Classification.

The classification of contract carriers of household goods in use is as described in the permit.

§ 31.45. Contracts.

(a) *Form.* The special or individual agreements entered into by a contract carrier of household goods in use with shippers shall be in writing, shall provide for transportation for a particular shipper, shall be bilateral and impose specific obligations upon both carrier and shipper.

(b) *Filing.* Each contract carrier of household goods in use shall file and keep on file with the Commission copies or abstracts of contracts in a manner the Commission may by regulation from time to time prescribe. The contracts shall be certified by the carrier and the shipper.

(c) *Cancellation or expiration.* Notice of cancellation or expiration of every contract shall be given to the Commission within 10 days following the cancellation or expiration of the contract. Upon receipt of the notice, the Commission may, without further hearing or notice, revoke or rescind the authorization to operate under the provisions of the contract.

(d) *Addition or substitution.* Contracts may be added to or substituted for those named in the permit only upon the issuance of an amendment to the permit obtained upon the approval of the Commission and only after compliance with the following:

(1) Application to the Commission showing the name and address of the proposed customer, route or area sought to be served, extent to which the route or area differs from or conforms to the provisions of the existing permit, commodity to be hauled and the extent to which they exceed or are covered by existing permit, duration of proposed contract or arrangement, and, if substitution, the contract or customer for which to be substituted.

(2) Publication of notice of the application in the *Pennsylvania Bulletin*.

(3) If no protests to the application are filed on or before the date prescribed in the *Pennsylvania Bulletin* for protest, the Commission may issue an amended permit upon consideration of the application and without

hearing. If protest is filed, a hearing will be held. Further, the applications may, in the discretion of the Commission, be scheduled for hearing before protests are filed.

(4) If the application is for substitution of a contract or customer covering the same commodities and route or territory as for the customer or contract covered by the permit and for which the substitution is to be made, the Commission may grant the same without notice but subject to protest, upon issuance of the amended permit.

§ 31.47. (Reserved).

§ 31.48. (Reserved).

§ 31.49. (Reserved).

§ 31.50. (Reserved).

FORWARDERS OF PROPERTY

§ 31.61. (Reserved).

§ 31.62. Use of or interchange with carriers.

(a) No forwarder in intrastate commerce may use or interchange with a motor or water common carrier which does not have a certificate of public convenience issued by the Commission, if the certificate is required.

(b) No forwarder may accept freight from, or deliver freight to, a motor, air or water contract carrier which does not have a permit issued by the Commission, if the permit is required. A forwarder may accept freight from, or deliver freight to, a contract carrier with the permit for the customers the contract carrier is authorized to serve, and only to the extent the contract carrier is authorized to serve the customer. The forwarder shall neither receive allowance nor participate in joint rates with a contract carrier.

§ 31.66. (Reserved).

§ 31.67. (Reserved).

§ 31.68. (Reserved).

§ 31.69. (Reserved).

§ 31.70. (Reserved).

§ 31.71. (Reserved).

¹In contrast, the application process for interstate household goods carriers is limited to a fitness test and does not include a public demand component. 49 U.S.C.A. § 13902.

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

[Pa.B. Doc. No. 98-212. Filed for public inspection February 6, 1998, 9:00 a.m.]