

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF AUCTIONEER EXAMINERS [49 PA. CODE CH. 1] Schedule of Fees

The State Board of Auctioneer Examiners (Board) amends § 1.41 (relating to schedule of fees) to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. It is anticipated that the increased biennial renewal fees will be implemented with the February 28, 2017, biennial renewal.

Statutory Authority

Section 6(a) of the Auctioneer Licensing and Trading Assistant Registration Act (act) (63 P. S. § 734.6(a)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period.

Background and Need for Amendment

Under section 6(a) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board shall increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from application fees and civil penalties.

The Board has not raised its biennial renewal fees since 1998, when the biennial renewal fee for apprentice auctioneers increased from \$30 to \$100 and the biennial renewal fees for auctioneers, auction companies and auction houses increased from \$50 to \$200. At the time, the Board anticipated that these fees would sustain the Board for at least 10 years. At the March 12, 2012, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Year (FY) 2009-2010 and FY 2010-2011 and projected revenue and expenses through FY 2014-2015. As anticipated, the biennial renewal fees were adequate for about 10 years. However, the actual expenditures for FYs 2009-2010 and 2010-2011 outpaced revenues during the same period by approximately \$128,400. At the current fee levels, the BFO projected that, without an increase to the biennial renewal fees, the Board will incur a deficit of approximately \$155,800 by the end of FY 2013-2014, necessitating a fee increase in 2015 to recoup existing deficits and to ward off further deficits. Therefore, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures, in compliance with section 4(b) of the act (63 P. S. § 734.4(b)). As a result, the Board voted at its July 9, 2012, meeting to increase biennial renewal fees by 30% to meet projected expenditures.

Summary of Comments and the Board's Response

The Board published the proposed rulemaking at 43 Pa.B. 1279 (March 9, 2013) with a 30-day public comment period. The Board did not receive comments from the public. On April 24, 2013, the House Professional Licensure Committee (HPLC) submitted two comments to the Board. First, the HPLC requested information pertaining to the major cost centers of the Board and any significant increases in its expenditures. Second, the HPLC requested further explanation on the Board's statutory authority for establishing a renewal fee for trading assistants, noting that the act of October 8, 2008 (P. L. 1080, No. 89) established the registration requirement for trading assistants, specified that registration is required on a biennial basis, established that the registration fee shall be \$100 and specified that the Board may not promulgate regulations pertaining to the registration requirement. Therefore, the HPLC questioned the Board's statutory authority to treat this biennial registration requirement as a renewal.

On May 8, 2013, the Independent Regulatory Review Commission (IRRC) submitted comments to the Board. First, IRRC agreed with the HPLC's comments and indicated that IRRC would review the Board's response to the HPLC's comments as part of IRRC's determination of whether this rulemaking is in the public interest. IRRC further asked the Board to explain its statutory authority to include provisions for fees for trading assistants. In addition, IRRC asked for updated fee calculations and financial information and questioned the basis for the proposed 30% increase to the fees.

The Board first considered the HPLC and IRRC comments with regard to its statutory authority to include a provision for fees for trading assistants, to treat the registration fee for trading assistants as a "renewal" fee and to increase this fee which was initially set by statute. The Board believes that it has the authority to provide for and increase fees for trading assistants, which would be imposed in accordance with the act. However, the Board has determined that, at least at this time, the costs associated with regulating the 47 licensed trading assistants did not merit an increase to the fee, as for each biennial renewal period it would raise only an additional \$1,410 (47 trading assistants x \$30 increase). The Board revised this final-form rulemaking to remove the proposed inclusion of fees for trading assistants. The Board notes that it will continue to charge the fee of \$100 with each application for trading assistant registration. Under section 10.1 of the act (63 P. S. § 734.10.1), trading assistant "[r]egistration is required on a biennial basis" and "[a] registration fee of \$100 shall be included with each application for registration."

The HPLC and IRRC also questioned the major cost centers of the Board and any significant increases in expenditures. The need for a fee increase at this time is not the result of significant increases in expenditures, but rather the fact that the Board has not increased its fees since 1998. At the present time, the BFO projects biennial revenue of approximately \$546,000 for FYs 2012-2013 and 2013-2014. Projected expenditures for that same biennial period are expected to be approximately \$660,000, producing a deficit of \$114,000. It is this deficit situation that mandates that the Board raise its fees in accordance with section 6(a) of the act.

The cost centers of the Board fall into two categories: administrative costs and legal costs. Administrative costs include those associated with Board administration, the Commissioner's office, the revenue office and departmental services (human resources, finance and operations, management information systems, and the like). Legal costs include costs associated with the legal office (prosecution division, Board counsel and services of experts), hearing expenses, the Professional Compliance Office and enforcement and investigation. The largest cost center for the Board has historically been in the area of enforcement and investigation, ranging from a low of \$80,022.53 in FY 2008-2009 to a high of \$133,509.34 in FY 2010-2011, with an average of \$98,853.51 from FY 2006-2007 through FY 2012-2013. These are the costs associated with investigatory services provided by the Bureau of Enforcement and Investigation to the Board and are entirely dependent upon how many complaints are filed, and how many of those complaints merit investigation. It is difficult to predict how many complaints may be filed in a given year, and historically the numbers have fluctuated dramatically, ranging from a low of 53 in FY 2008-2009 to a high of 185 in FY 2010-2011, with an average of 106 during the FY 2006-2007 through FY 2012-2013 time frame.

The second largest cost center is Board administration, which includes costs associated with the Board's administrative staff, printing and mailing, publications, supplies, operating and fixed assets, and the like. Board administration costs tend to fluctuate somewhat depending on whether a given year is a "renewal year" or a "nonrenewal year," as more administrative staff and resources are dedicated to the Board during a renewal year. This cost center has ranged from a low of \$46,699.09 during FY 2007-2008 (a nonrenewal year) to a high of \$100,796.46 during FY 2008-2009 (a renewal year), but has averaged approximately \$68,945.47 during the FY 2006-2007 through FY 2012-2013 time frame.

The third largest cost center for the Board is the legal office which includes personnel related costs for the Board counsel, prosecuting attorneys, regulatory counsel and legal support staff. It also includes direct charges such as expert witness fees and costs associated with legal notices published on behalf of the Board. Legal office costs are also dependent to a large degree on the number of complaints that are filed, investigated and prosecuted. However, it also includes costs associated with the Board's counsel and regulatory counsel, which tend to remain fairly constant. This cost center has ranged from a low of \$46,490.75 in FY 2008-2009 to a high of \$75,387.38 in FY 2012-2013, with an average cost of \$62,350.52 from FY 2006-2007 through FY 2012-2013. These three cost centers make up approximately 70% of the Board's total expenses, with the remaining cost centers (Commissioner's office, revenue office, departmental services, hearing expenses, Professional Compliance Office and Board member expenses) making up the remaining 30%.

In response to IRRC's request for updated financial information as the basis for the fee increase, the Board attached information prepared by the BFO to the Regulatory Analysis Form. This information is available upon request. IRRC asked for information about how the proposed increases correlate with the actual expenditures the Board incurs for each activity for which it is increasing a fee. The Board notes that biennial renewal fees are not related to a specific "activity," but rather support all of the operations of the Board that are not otherwise funded by a specific fee. An application fee is an example

of a specific fee that is designed to fund an activity, that is, processing the application. On average, the Board receives less than \$50,000 in these targeted application fees each biennial renewal period. Biennial renewal fees produce over 90% of the Board's revenue. The Board's goal is to set the biennial renewal fee at a level that covers the operations of the Board, complies with section 6(a) of the act and is reasonable for the regulated community.

Description of Amendments to the Final-Form Rulemaking

The Board amended the proposed rulemaking to eliminate the increased fee for biennial registration of trading assistants. Therefore, in the final-form rulemaking, the result is that the biennial renewal fees for apprentice auctioneers increase from \$100 to \$130 and the biennial renewal fees for auctioneers, auction houses and auction companies increase from \$200 to \$260, as proposed. The biennial registration fee for trading assistants remains at \$100.

Fiscal Impact

The increased biennial renewal fees will impact licensees of the Board. There are currently approximately 311 apprentice auctioneers, 157 auction houses, 2,059 auctioneers and 220 auction companies that will be required to pay 30% more to renew their licenses and registrations when they expire in 2017, and thereafter. The Board has concluded that virtually all auction houses and auction companies in this Commonwealth are small businesses. Likewise, auctioneers and apprentice auctioneers either are themselves small businesses or are employed by small businesses. However, whether these businesses will be adversely affected by the increase in the biennial renewal fee depends on whether the employer elects to pay the biennial renewal fees on behalf of its licensed employees. Some companies may do so, others may not. A company could avoid the adverse effect by requiring its employees to pay their own licensure fees. The final-form rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions of this Commonwealth.

Paperwork Requirements

The final-form rulemaking will require the Board to alter some of its forms to reflect the new fees. However, the final-form rulemaking will not create additional paperwork for the regulated community or for the private sector.

Sunset Date

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 21, 2013, the Board submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 1279, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

On October 17, 2014, the Board delivered final-form rulemaking to the HPLC, the SCP/PLC and IRRC. On November 10, 2014, the Board withdrew the previously-delivered final-form rulemaking and delivered this revised final-form rulemaking to the HPLC, the SCP/PLC and IRRC. The General Assembly adjourned sine die on November 13, 2014, without the HPLC and the SCP/PLC having the full 20-day review period. Following designation of the legislative standing committees and publication in the *Pennsylvania Bulletin* on March 7, 2015, the Board delivered the revised final-form rulemaking to the HPLC, the SCP/PLC and IRRC on March 13, 2015.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 15, 2015, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 16, 2015, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Terrie Kocher, Board Administrator, State Board of Auctioneer Examiners, P. O. Box 2649, Harrisburg, PA 17105-2649, ra-auctioneer@pa.gov.

Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and public comments were not received.
- (3) The amendments to the final-form rulemaking do not enlarge the purpose of proposed rulemaking published at 43 Pa.B. 1279.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the act.

Order

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

- (a) The regulations of the Board, 49 Pa. Code Chapter 1, are amended by amending § 1.41 to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

SHERMAN E. HOSTETTER, Jr., AU,
Chairperson

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 45 Pa.B. 2218 (May 2, 2015).)

Fiscal Note: Fiscal Note 16A-649 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 1. STATE BOARD OF AUCTIONEER EXAMINERS

FEES

§ 1.41. Schedule of fees.

Applicants shall pay the following fees:

Application fee for auctioneer license	\$50
Biennial renewal fee for auctioneer license	\$260
Application fee for apprentice auctioneer license . . .	\$30
Biennial renewal fee for apprentice auctioneer . . .	\$130
Application fee for auction house and auction company	\$50
Biennial renewal fee for auction house and auction company	\$260
Special license to conduct auction	\$200
Application fee to approve course	\$45
Application fee to change sponsor	\$15
Application fee to change auction house or auction company license	\$15
Nonresident exam eligibility review	\$25
Certification of scores, permit or registration	\$25
Verification of license, registration, permit or approval	\$15

[Pa.B. Doc. No. 15-949. Filed for public inspection May 22, 2015, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 3, 5, 23, 31 AND 32]

[L-2013-2376902]

Household Goods in Use Carriers and Property Carriers

The Pennsylvania Public Utility Commission (Commission), on June 19, 2014, adopted a final rulemaking order amending existing regulations governing household goods carriers, eliminating the requirement that applications for authority establish a public demand or need for the proposed service and modifying insurance requirements.

Executive Summary

The Pennsylvania Public Utility Commission is vested with jurisdiction over common carriers, including household goods carriers, operating within Pennsylvania. Due to increased competition in this industry, the Commission proposed modifying its current regulations governing household goods carriers. The Proposed Rulemaking Order was published in the *Pennsylvania Bulletin* on November 23, 2013. 43 Pa.B. 6894. Comments to the Proposed Rulemaking were filed by numerous parties.

Following a thorough review of the comments, the Commission issued a Final Rulemaking Order on June 19, 2014.

The evidentiary criteria governing applications for household goods in use authority historically required that an applicant establish that approval of the application would serve a useful public purpose, responsive to a public demand or need. Protests to applications for household goods applications were filed on this basis, often frustrating the applicant's successful prosecution of its case. In light of the competitive nature of the industry, we find that it is appropriate to eliminate the requirement that an applicant for household goods in use authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need. Further, the Commission will not consider the effect that a new carrier in the household goods industry might have on existing carriers.

As a corollary to the proposed elimination of public demand or need in the application process, we have modified our tariff regulations governing household goods carriers. 52 Pa. Code § 23.67. Additionally, we will no longer restrict a carrier to a jurisdictional operating territory, unless that carrier would indicate it desired such a limitation. Existing household goods carriers are deemed to have statewide authority, unless they advise the Commission otherwise.

Household goods applicants are still required to establish that they have the technical and financial ability to provide the proposed service safely and legally.

Our insurance requirements provided for \$300,000 minimum liability coverage for property and household goods carriers. 52 Pa. Code § 32.12. We find this minimum is insufficient and therefore raise the minimum to \$750,000 for carriers operating commercial motor vehicles (vehicles weighing over 10,000 pounds). This coverage is consistent with federal requirements as well as numerous other states.

Finally, we have delineated more clearly the minimum insurance coverage for loss and damage to consumers' goods. This information is provided to prospective consumers in the required "Information for Shippers" form prescribed by our regulations. 52 Pa. Code § 31.121.

Public Meeting held
June 19, 2014

Commissioners Present: Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; James H. Cawley; Pamela A. Witmer; Gladys M. Brown

Final Rulemaking Amending 52 Pa. Code Chapters 3, 5, 23, 31, 32, and 41; Household Goods in Use Carriers and Property Carriers; Doc. No. L-2013-2376902

Final Rulemaking Order

By the Commission:

On September 12, 2013, we initiated a Proposed Rulemaking Order seeking to amend various regulations and a policy statement governing household goods carriers and property carriers. The proposal included changing the evidentiary criteria governing applications for household goods in use authority, eliminating the requirement that an applicant establish that approval of the application will serve a useful public purpose, responsive to a public demand or need. Given the elimination of public need requirement, we proposed eliminating territorial operating restrictions for household goods carriers. We also proposed eliminating the requirement that large household goods carriers, with qualifying operating ratios, file

supporting financial justification for rate changes. Finally, we proposed increasing minimum insurance requirements for property and household goods carriers and enhancing various fitness criteria for applicants for household goods authority.

The Proposed Rulemaking Order was published in the *Pennsylvania Bulletin* on November 23, 2013. 43 Pa.B. 6894. Comments to the Proposed Rulemaking were filed by Parks Moving & Storage, Inc., Representative Erin C. Molchany, Tristate Household Goods Tariff Conference, Inc., Weleski Transfer, Inc., J.H. Bennett Moving & Storage, Inc., Lytle's Transfer & Storage, Inc., Forest Hills Transfer & Storage, Inc., B.F. Fields, Inc., t/d/b/a B.F. Fields Moving and Storage, Canterbury International, Inc., d/b/a Two Men and a Truck, Advance Transportation Co., Inc., Reads Moving Systems, Inc., Connolly Options, LLC d/b/a Two Men and a Truck, International Franchise Association, Two Men and a Truck International, Inc., Lausch's Moving & Storage, Inc., Hughes Relocation Services, Inc., O'Brien's Moving & Storage-Glose Moving & Storage, Inc., Clemmer Moving & Storage, Inc., Pennsylvania Moving & Storage Associates, Williamsport Moving Company, Inc., Hoy Transfer, Inc., McNaughton Bros. Inc., M.F. Rockey Moving Co., and the Independent Regulatory Review Commission (IRRC).

Background

Pursuant to Section 1101 of the Public Utility Code (Code), 66 Pa.C.S. § 1101, a public utility must obtain a certificate of public convenience from the Commission in order to offer, render, furnish, or supply public utility service in Pennsylvania. Section 1103 of the Code, 66 Pa.C.S. § 1103, establishes the procedure to obtain a certificate of public convenience. That provision provides, inter alia, that "[A] certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public."

Pursuant to Section 102 of the Code, 66 Pa.C.S. § 102, common carriers by motor vehicle are public utilities. The Commission recognizes distinct types of common carriers in its regulations. 52 Pa. Code Chapters 21, 29, and 31. One of these common carrier types is the household goods in use carrier, which is defined as a "motor common carrier or contract carrier that transports household goods in use." 52 Pa. Code § 21.1.¹

Historically, the Commission has required applicants for household goods in use authority to establish that they are technically and financially fit, can operate safely and legally, and that there is a public demand or need for the services. 52 Pa. Code §§ 3.381, 41.14.

In light of the increased competition in the industry, we proposed eliminating the requirement that an applicant for household goods in use authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need. We opined that rather than determining public need by means of an administrative process, competition among carriers with regard to price, quality, and reliability as

¹ "Household goods in use" is defined at 52 Pa. Code § 21.1, as:
(i) 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 arranged and paid for by either the householder or by another party.
(ii) The term does not include:
(A) A motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely packed, loaded, unloaded or unpacked by an individual other than an employee or agent of the motor carrier.
(B) Transportation of property from a factory or store when the property is purchased by the householder with the intent to use it in the householder's dwelling.

well as the experienced demand for their services by consumers who may freely choose among those competing carriers, will determine whether a given carrier's service is needed by the public. In a competitive market with low barriers to entry, the Commission reasoned that there was no reason to continue to protect, by an administrative process, carriers whose services are no longer demanded by consumers who prefer and, therefore, have chosen other carriers. We believed the proposed changes are reflective of and consistent with the competitive environment that characterizes the household goods industry. Indeed, we stated that lowering these outdated barriers to entry will further promote competition in this industry, which will, in turn, provide consumers with more choices and more competition among carriers as to price, quality and reliability.

We noted that our authority to eliminate the public need requirement was considered and affirmed by the Pennsylvania Supreme Court. *Elite Industries, Inc. v. Pa. P.U.C.*, 832 A.2d 428 (Pa. 2003). In *Elite*, the Court posited:

Allowing the applicant to meet a less stringent evidentiary burden makes expansion of the market possible. This situation falls squarely within the PUC's area of expertise and is best left to the commission's discretion. (432)

The Court found that an agency may revise its policies and amend its regulations in interpreting its statutory mandates. Citing *Seaboard Tank Lines v. Pa. P.U.C.*, 502 A.2d 762 (Pa. Cmwlth. 1985), the Court reiterated that an agency's past interpretation of a statute, though approved by the judiciary, does not bind that agency to that particular interpretation. Moreover, the Court in *Elite* cited, with approval, the *Seaboard* description of the Commission's scope of authority, as follows:

The PUC's mandate with respect to the granting of certificates of public convenience is a broad one: "a certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." The legislature, however, provided no definition of specifically what the criteria were to be in determining the propriety of granting a certificate, leaving the formulation of such criteria to the PUC. . . .

Id. at 432. Accordingly, the *Elite* and *Seaboard* cases hold that the various and specific factors to be considered in determining whether to grant a certificate of public convenience to an applicant for motor carrier authority, beyond those expressly stated in the statute, are matters left to the administrative expertise, sound discretion, and good judgment of the Commission.

We noted that other jurisdictions, such as New York (New York Transportation Law Article 9), New Jersey (N.J. Statutes 45:14D-1 et seq.), Maryland, and Ohio (O.R.C. Chapter 4921), as well as the Federal Motor Safety Administration, do not require household goods applicants to establish a public demand or need as a prerequisite to certification.

We envisioned an industry that will grow even more competitive, driving market pricing and obviating the need to engage in traditional ratemaking processes geared toward monopoly markets. Chapter 23 of our regulations, 52 Pa. Code Chapter 23, governs tariffs and ratemaking procedures for common carriers. Specifically, 52 Pa. Code § 23.67 provides that household goods carriers,

with gross intrastate operating revenues of less than \$200,000, and with operating ratios of no less than 93%, need not file substantiating data to support changes in rates. By order entered October 14, 2011, we waived the \$200,000 threshold, on a case by case basis as appropriate, and increased it to \$500,000.² Petition of Tristate Household Goods Tariff Conference, Inc., Docket No. P-2011-2257808. In our proposed rulemaking order, we proposed eliminating the threshold amount completely, permitting all household goods carriers, with qualifying operating ratios, to change rates without filing supporting financial justification.

Additionally, we proposed eliminating the current territorial restrictions that accompany a household goods carrier's certificate. We proposed no longer restricting a carrier to a jurisdictional operating territory, unless that carrier would indicate it desired such a limitation.³ Also, existing household goods carriers would be deemed to have statewide authority, unless they would advise the Commission otherwise. We note that there are no regulatory provisions governing territorial restrictions. Rather, the territorial restrictions were found in the application for authority in response to the public demand or need requirement.

Given the elimination of the public need requirement for applicants as well as the statewide authorization for all household goods carriers, we proposed that the regulatory provisions providing for Emergency Temporary Authority (ETA) and Temporary Authority (TA) are no longer required for household goods carriers. 52 Pa. Code §§ 3.383—3.385. The regulations governing ETA and TA are designed to meet emergency situations when there is an immediate need for service that cannot be met by existing carriers. These provisions would not be relevant in a competitive market served by carriers that are not constrained by artificial territorial restrictions. To the extent an emergency would arise requiring service, we believed that our regulations governing Emergency Relief in general, would suffice. 52 Pa. Code §§ 3.1—3.12.

We stressed that household goods applicants will still be required to establish that they have the technical and financial ability to provide the proposed service safely and legally.⁴ We proposed that applicants should have at least two (2) years of experience with a household goods carrier, or the equivalent. Additionally, we proposed that all applicants who do not have a satisfactory safety rating by the United States Department of Transportation be required to successfully complete a Safety Fitness Review conducted by Commission staff. This requirement is currently in place for property carriers. 52 Pa. Code § 3.381(f). In addition to the Safety Fitness Review, we also proposed that, after 18 months of operation, new carriers must successfully complete a Household Goods Audit conducted by Commission staff. The Audit ensures ongoing compliance and identifies any deficiencies of a carrier.

We noted that in our review of regulations governing household goods carriers, our insurance requirements provide for \$300,000 minimum liability coverage. 52 Pa. Code § 32.12. We proposed raising the minimum to \$750,000 for carriers operating commercial motor vehicles (vehicles weighing over 10,000 pounds), consistent with

² Of the 278 currently certificated household goods carriers, only 38 have revenues above the \$500,000 threshold.

³ A carrier may wish to limit its operating territory due to operational concerns, insurance costs, etc.

⁴ Protests to household goods applications would be limited to these criteria. 52 Pa. Code § 3.381(c). Given the limited scope of any protests, the provisions providing for restrictive amendments to applications for motor carrier authority would be no longer applicable to applications for household goods authority. See 52 Pa. Code § 5.235.

federal requirements as well as numerous other states. The proposed increase would apply to both property carriers and household goods carriers.

Finally, we proposed delineating more clearly the minimum insurance coverage for loss and damage to consumers' goods. This information is provided to prospective consumers in the required "Information for Shippers" form prescribed by our regulations. 52 Pa. Code § 31.121. The minimum base coverage, provided as default coverage, is 60 cents per pound, per article. This is consistent with federal requirements. Additional coverage may be secured by the consumer for a fee, if requested. We believed that given the potential inadequacy of the default rate, the "Information for Shippers" form should be modified to better alert consumers of this issue.

Discussion

1. Elimination of Public Demand or Need

The proposal to eliminate proof of public demand or need from the application process generated numerous comments, both in support and in opposition. Commentators opposing the elimination of this requirement cited various reasons, including: encouraging unscrupulous operators to provide service; inviting out-of-state operators to take business from existing in-state, local movers; creating a more difficult marketplace in which to operate due to increased competition; increasing off-season competition for scarce business; increasing competition for large, more profitable moves; eliminating the value of existing carriers' certificates of public convenience; and hurting small businesses in favor of larger carriers. Commentators supporting the elimination of the need requirement cited increased competition, consumer choice, and job creation as reasons to eliminate need. We note that industry commentators both supported and opposed this proposal.

As noted in our proposal, we believed that the public demand or need requirement in the application process is an unnecessary barrier to entry, limiting competition in the marketplace. From the comments, it appears that it is uncontested that removing the need requirement will promote competition. The issue raised by those opposing the proposal is that increased competition may not be desirable. While we are cognizant that increased competition, and the concomitant increased number of carriers, may present challenges not associated with a protected marketplace, we are not persuaded that those challenges warrant continuation of entry barriers. The various allegations of harm to the industry and the public cited by commentators due to, for example, unscrupulous operators, inviting out-of-state operators to take business from existing in-state movers, creating a more difficult marketplace in which to operate, increasing off-season competition for scarce business, etc., are speculative and, in the Commission's judgment, insufficient to justify the maintenance of outdated barriers to entry in the household goods market. To the extent that the industry will be a more competitive environment in which to operate, we do not believe this dictates maintaining a protected market so long as the Commission maintains appropriate standards as to fitness and insurance, which is the case here.

Some commentators argue that we should not lower barriers to entry because this may diminish the market value of a current carrier's certificate of public convenience. However, this in itself is not sufficient justification to abandon the movement toward a competitive marketplace. We note that a certificate of public convenience is a privilege and not a property interest under

which a holder acquires vested rights. *Western Pennsylvania Water Co., v. Public Utility Commission*, 311 A.2d 370 (Pa. Cmwlth. 1973).

Other commentators suggest that the proposal will favor large carriers at the expense of small carriers. On the contrary, we believe that by lowering barriers to entry, the proposal will encourage small businesses to enter the marketplace, businesses that would have otherwise been reluctant to do so due to the costs in time and litigation expenses associated with entering a protected market.

We note that commentators suggested that we establish a domiciliary requirement for all household goods carriers operating within Pennsylvania. At this point, we decline to implement this requirement. Currently, no such domiciliary requirement exists in Pennsylvania. While we recognize that some neighboring states have such a requirement, we did not include such a requirement in our proposal and are not inclined to establish this requirement in the final rulemaking order. We note that we will address this issue at an appropriate time if circumstances warrant.

We further note that our proposal to eliminate geographic operating restrictions dovetails with the elimination of need. Geographic operating restrictions make no sense in a competitive environment, where carriers can readily augment their operating authority. While we recognize this territorial expansion will create increased competition, this is consistent with the purpose of eliminating entry barriers.

Finally, we note that IRRRC commented on the elimination of need requirement vis-à-vis our policy statement at 52 Pa. Code § 41.14. IRRRC Comments at 1. To be clear, we included the policy statement in this Rulemaking Order in order to provide clarity to the regulated community. However, as noted by IRRRC, the policy statement also included some provisions that are regulatory in nature. Therefore, we will delete the proposed changes to the policy statement from this rulemaking order, instead addressing the policy statement changes in a separate, companion order.⁵ Those mandatory provisions previously proposed in the policy statement will now be contained in the regulation itself, as suggested by IRRRC. The two-year experience requirement is now found at 52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(-1). The provisions for the Safety Fitness Review are at 52 Pa. Code § 3.381(e)(1)-(3). We are not incorporating the Household Goods Audit reference from the policy statement since the audit is a matter of agency discretion in terms of how it conducts its business and enforces its regulations. The audit itself does not create any substantive requirements, but rather is simply a device to ensure that certificated carriers are compliant with existing Commission regulations.

2. Fitness Requirement

Commentators generally supported our proposal regarding increasing standards for technical and financial fitness for applicants. We note that we have historically examined each application for authority on the merits of the individual application.

However, IRRRC questioned the criteria that the Commission will use to determine if an applicant lacks the propensity to operate safely and legally. 52 Pa. Code § 3.381(c)(1)(i)(A)(VII). IRRRC Comments at 2. In this regard, Commission staff will examine a carrier's financial records and supporting documentation to ensure that

⁵ We will issue the policy statement order after the regulatory changes effected by this rulemaking become final.

the applicant has the requisite qualifications to provide service. To the extent that a determination cannot be made on the basis of the supporting documentation, the application will be referred to the Office of Administrative Law Judge for hearing and decision, which decision will be subject to Commission review. We note that it is not possible to delineate exacting, quantifiable standards of what constitutes safely and legally. Each case stands on its own merits, left to the evidence presented and the Commission's sound discretion. However, in *Rosemont Taxicab Co., Inc., v. Philadelphia Parking Authority*, 68 A.3d 29, 36 (Pa. Cmwlth, 2013), the Court reiterated that the "phrase 'lacks a propensity to operate safely and legally' means that the applicant has shown a persistent disregard for, flouting or defiant attitude, i.e., a natural inclination or innate or inherent tendency, to operate outside of safety and the law."

IRRC also commented on the Safety Fitness Review (SFR) proposal at 52 Pa. Code § 3.381(e)(1), inquiring who will determine if the safety regulations of another state are comparable to the Commission's. IRRC Comments at 2. In performing the SFR, the Commission's staff will make an initial determination if an applicant is compliant with the safety regulations of another state that would be comparable to the Commission's, subject to Commission final review.⁶ Again, this determination is ultimately made by the Commission since each and every application for household goods authority will be formally approved by the Commission via order adopted at public meeting. The SFR proposal will be implemented similar to the SFR requirement already existing at 52 Pa. Code § 3.381(f)(3) for motor common carrier property authority.

IRRC also questions why the SFR is not conducted prior to issuance of the certificate of public convenience. IRRC Comments at 2. Since the application is for a new carrier, there is no in-state record to examine. Rather, the information to be gathered in the course of an SFR is a track record of subsequent operations to ensure compliance. To conduct the SFR prior to a carrier's compilation of that information would serve little purpose. Therefore, the SFR is conducted after a carrier has initiated operations. It is only upon receipt of a carrier's operating history that the Commission can make a valid judgment, through its separate prosecutory arm, the Bureau of Investigation and Enforcement, whether that particular carrier is operating in compliance with Commission regulations. If there are any lapses in compliance, the prosecutory staff has authority to seek fines and other remedies to secure compliance and protect the public.

3. Other Comments

Commentators generally supported our proposal to increase the minimum insurance to \$750,000 for carriers operating commercial motor vehicles (vehicles weighing over 10,000 pounds.). Some commentators proposed that we increase those limits beyond the proposal. We decline to do this at this juncture. However, we will continue to monitor appropriate insurance levels for the industry.

Commentators also suggested that we implement background checks for all employees. We note that 52 Pa. Code § 31.134 requires carriers to obtain criminal history records for all persons providing moving services in a shipper's dwelling.

One commentator suggested we eliminate the operating ratio requirement of 93% established at 52 Pa. Code

§ 23.67, since it is antiquated. In a protected marketplace, the inclusion of the base operating ratio serves as a guard against a carrier changing rates with no supporting financial data, where that carrier may enjoy a monopolistic market position and the proposed rates may be unjust or unreasonable. In light of our action today, it would appear that maintaining the operating ratio requirement may be unnecessary. However, we are not inclined to delete this provision at this juncture. Rather, we can revisit this issue after the industry has adjusted to the elimination of entry barriers.

Finally, commentators indicated that they would encourage the Commission to increase fines and penalties for movers operating without the proper operating authority. Citing the required level of trust and responsibility between a shipper and carrier, commentators indicate that there is no room for rogue movers and they should be dealt with severely. While not technically a part of this rulemaking, we agree with this comment. A marketplace protected by artificial barriers to entry will encourage a certain level of clandestine activity by its very nature. On a macro-economic level, the disruption of supply and demand by artificial restrictions to the supply component has historically given rise to black market activity.

In light of our easing entry requirements by eliminating the protectionist component of public demand or need, we believe that the household goods industry will benefit from fewer incidents of improperly licensed movers. We stress that we will be vigilant in this regard as well as in the area of consumer protection.

Moreover, as we stated in the proposed rulemaking, we will not hesitate to bring enforcement actions against carriers that fail to maintain proper levels of insurance, fail to operate safely and lawfully, fail to be transparent in their prices and contract terms with consumers, fail to adequately protect consumers' household goods in transit, or otherwise fail to meet their fundamental duty to provide safe, reasonable, and adequate service to the public. 66 Pa.C.S. § 1501. The Commission has statutory authority to fine carriers up to \$1,000 per violation and, for carriers in a competitive industry, the Commission has ample authority and practical ability to revoke a carrier's certificate of public convenience to operate in Pennsylvania.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 7, 2013, the Commission submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 6894 (November 23, 2013), to IRRC and the Chairpersons of the House Consumer Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 15, 2015, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 16, 2015, and approved the final-form rulemaking.

⁶ The Commission does not maintain a list of states with comparable safety regulations. That determination is made by staff based on the application under consideration. We note that other states may change their standards and regulations and therefore each case needs to be examined on its own merits.

Order

Annex A, final regulations, is permitted by sections 501, 1102, 1103, and 1501 of the Public Utility Code. Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, and the Commonwealth Documents Law, 45 P.S. §§ 1201 et seq., and regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5, we amend our regulations as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapters 3, 5, 23, 31 and 32, are amended by amending §§ 3.381—3.384, 5.235, 23.67, 31.121, 32.12 and 32.13 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(*Editor's Note:* The proposed amendments to § 41.14 have been withdrawn by the Commission.)

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and 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 review and approval by the designated standing committees of both Houses of the General Assembly, and for review and approval by IRRC.

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

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

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

8. The contact person is John Herzog, Assistant Counsel, Law Bureau, (717) 783-3714. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, regulatory coordinator, (717) 772-4597.

ROSEMARY CHIAVETTA,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 45 Pa.B. 2218 (May 2, 2015).)

Fiscal Note: Fiscal Note 57-298 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 3. SPECIAL PROVISIONS

Subchapter E. MOTOR TRANSPORTATION PROCEEDINGS

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

* * * * *

(c) *Protests.*

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

(i) *Content and effect.*

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

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

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

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

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

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

(VI) A statement of any restrictions to the application which would protect the protestant's interest, including a concise statement of any amendment which would result in a withdrawal of the protest. This provision is not applicable to applications for household goods in use authority.

(VII) A protest to a household goods in use application is limited to challenging the fitness of the applicant, including whether the applicant possesses the technical and financial ability to provide the proposed service and whether the applicant lacks a propensity to operate safely and legally.

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

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

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

(iii) *Failure to file protests.* If no protest is filed with the Commission on or before the date specified in the *Pennsylvania Bulletin* or if all protests have been withdrawn at or prior to the hearing, the Commission may take either of the following actions:

(A) Consider the application without holding an oral hearing if it deems the facts are sufficient as in the application or as determined from additional information as the Commission may require of the applicant. An application processed under this section, without oral hearing, will be determined on the basis of verified statements submitted by the applicant and other interested parties.

(I) Verified statements will be filed with the Secretary within 30 days of the Commission's request therefor. Failure to file additional information as requested by the Commission may result in dismissal of the application for lack of prosecution.

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

- (-a-) The legal name and domicile of the applicant.
- (-b-) The identity and qualifications of the person making the statement for applicant.
- (-c-) Whether or not the applicant is affiliated with any other carriers, with a description of the affiliation.
- (-d-) The authority sought.
- (-e-) The general scope of currently authorized operations—attach copies of pertinent operating rights.
- (-f-) Duplicating authority which will result from grant of authority.
- (-g-) Dual operations resulting from grant of authority.
- (-h-) Pertinent terminal facilities and communications network.
- (-i-) Pertinent equipment—make, model, year, owned or leased, and lessor; safety program; service currently provided to supporting witnesses.
- (-j-) The type of service offered.
- (-k-) Financial data—current balance sheet and income statement for corporations and partnerships and assets and liabilities for individuals.
- (-l-) A statement that the applicant has a minimum of 2 years of experience with a licensed household goods carrier or the equivalent. This requirement shall be applicable to all applications for household goods, whether protested or not.
- (-m-) Other information deemed pertinent.

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

- (-a-) The legal name and domicile of the supporting party or firm.
- (-b-) The identity and qualifications of the person making the statement for supporting party or firm.
- (-c-) A general description of the supporting party, organization or operations.
- (-d-) The volume and frequency of intended use.
- (-e-) Specific or representative origins and destinations, or both.
- (-f-) The type of service required—persons, group movements, tours, call or demand, scheduled, and the like.
- (-g-) Similar applications supported—pertinent docket numbers.
- (-h-) Other information deemed pertinent.

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

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

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

(2) *Applications for motor common carrier of property authority.* No protests to applications for motor common carrier property authority may be filed.

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

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

(i) *Scheduling hearings.*

(A) *Applications for passenger authority.* The applications to which timely protests were filed will not be acted on by the Commission for 20 days after the closing date for filing of protests to permit the applicant to make restrictive amendments leading to the withdrawal of protests. If all protests are withdrawn upon amendment, the Commission may dispose of the application in accordance with subsection (c). If the application is still subject to protest, then after the expiration of the 20-day waiting period, the Commission will set the application for hearing and will notify all parties thereof. Absent good cause shown, no further amendments to the application will be considered after expiration of the 20-day period or the commencement of hearings.

(B) *Applications for household goods in use authority.* Applications for household goods in use authority to which timely protests were filed will be set for hearing with notice to the parties.

(ii) *Requests for postponements.* If any scheduled hearing is postponed for any reason prior to the date thereof, notice of postponement and the date, time and place of the continued hearing will be given by the presiding officer of the Commission to all parties. Requests for hearing postponements shall be submitted in writing to the Secretary of the Commission and the presiding officer with copies to parties of record, no later than 5 days prior to hearing. Hearings will not be postponed absent good cause.

(iii) *Prehearing conferences.* The presiding officer may, in his discretion or at the written request of any party of record, set any protested application for prehearing conference, to simplify the issues prior to hearing.

(2) *Applications for motor common carrier of property authority.*

(i) *Scheduling hearings.* If the Bureau of Transportation and Safety prosecutory staff determine that conditional or unsatisfactory safety ratings from other jurisdictions or adverse decisions in safety related proceedings before other tribunals exist, the Bureau of Transportation and Safety 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.

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

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

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

(f) *Compliance: conditions for approval for motor common carrier property authority.* If the Bureau of Transportation and Safety determines that a hearing is not required, as provided in subsection (d)(2), the Commission will act on applications as follows:

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

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

(3) Applicants which do not possess a current satisfactory safety rating issued by the United States Department of Transportation or a state with safety regulations comparable to the Commonwealth shall complete a safety fitness review conducted by Commission staff. The safety fitness review shall be scheduled and completed within 180 days of the date of the compliance letter. If the applicant fails to attain a satisfactory safety evaluation within the 180-day period, it will be given an additional 90 days to correct the deficiencies. Failure to achieve a satisfactory evaluation within the 90-day period will result in immediate suspension of the certificate of public convenience and in proceedings to revoke the certificate.

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

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

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

§ 3.382. Evidentiary guidelines for applications for passenger and household goods in use authority.

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

- (1) The date of each request.
- (2) The name, address and phone number of the person or company requesting service.
- (3) The nature of the service requested on each occasion, including the commodities or persons to be transported, and the origin and destination of the requested transportation.
- (4) The disposition of the request, that is, whether the applicant provided the service or, if not, whether the requesting shipper was referred to another carrier and, if there was a referral, to which carrier was the shipper referred.

(b) *Prospective rate evidence.* An applicant for a motor carrier certificate or permit for the transportation of passengers or household goods in use, though not required to offer testimony as to the rates proposed to be charged, may do so if it is otherwise competent. The weight to be attributed to the evidence will depend upon the extent to which it is accompanied by cost evidence demonstrating that the prospective rates would be compensatory, that is, that the prospective rates would be

adequate to enable the applicant to recover its costs and realize a reasonable return either on investment or under operating ratio standards. The demeanor and credibility of a witness offering the evidence will also be considered in evaluating the weight to be attributed to the evidence.

§ 3.383. 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 and motor contract carriers of passengers, brokers and forwarders.

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

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

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

* * * * *

§ 3.384. Disposition of applications for ETA and TA.

(a) *General.* Initial determination of ETA and TA applications will be made by the Bureau of Technical Utility Services with the approval of the Commission.

(b) *Standards for determination of need.*

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 5. FORMAL PROCEEDINGS

Subchapter B. HEARINGS

SETTLEMENT AND STIPULATIONS

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

(a) Parties to motor carrier applications for passenger authority may stipulate as to restrictions or modifications to proposed motor carrier rights. Stipulations in the form of restrictive amendments or modifications must:

- (1) Be in writing.
- (2) Explain why the stipulation is in the public interest.
- (3) Be signed by each party to the stipulation.
- (4) Be submitted to the Secretary for insertion into the document folder.

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

Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

CHAPTER 23. TARIFFS FOR COMMON CARRIERS

NOTICE OF CHANGES IN FARES

§ 23.67. Financial data.

(a) The Commission will not permit a tariff filing increasing rates by a common carrier of household goods in use or making a general increase in rates published by a rate bureau, conference or similar organization of

carriers, which will increase gross annual revenues by more than 1%, unless financial justification in support of the proposed increase is filed with the tariff.

(b) Household goods in use carriers shall be governed by the following procedures in the filing of tariffs or tariff supplements:

(1) A tariff increasing rates shall be published to become effective on no less than 30 days' notice.

(2) At the time an increase in rates is filed with the Commission, the carrier or rate bureau, conference or similar organization requesting the increase shall submit sufficient evidence under certification by its chief executive, or other responsible officer which will enable the Commission to determine:

(i) The former or existing rate, the new or proposed rate and the percentage increase.

(ii) The dollar amount of the increased revenue which the increase is expected to provide.

(iii) The expected change resulting from the increase in the carrier's operating revenues together with known changes in operating expenses, and a calculating of operating ratio before income taxes, after the aforesaid changes.

(c) Common carriers of household goods in use with operating ratios of no less than 93%, before income taxes,* need not file substantiating data required by subsection (b)(2), but shall submit a statement with the tariff, or tariff supplement, stating that its operating ratio before income taxes for the same period is no less than 93%. The tariffs, or tariff supplements, shall be published to become effective on no less than 30 days' notice. Nothing in this subsection precludes the Commission from requiring supporting financial data in instances when increases in rates appear to be excessive.

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

CHAPTER 31. MOTOR CARRIER PROPERTY AND HOUSEHOLD GOODS TRANSPORTATION

TRANSPORTATION OF HOUSEHOLD GOODS IN USE

§ 31.121. Information for shippers.

(a) When a prospective shipper requests moving service and before an order for service is prepared, the household goods carrier shall furnish the prospective shipper with the following Commission supplied form entitled "Information for Shippers":

INFORMATION FOR SHIPPERS

* * * * *

LOSS AND DAMAGE COVERAGE

If you sustain a loss or damage to your goods, you are protected only up to but not exceeding 60 cents per pound, per article. This minimum coverage may not be adequate protection. If you desire protection greater than 60 cents per pound, per article, you may secure increased coverage by paying a higher tariff rate applicable to the coverage you desire. You may also protect yourself to the full valuation of your goods by taking out a policy of transit insurance with an insurance agent.

* * * * *

CHAPTER 32. MOTOR CARRIER INSURANCE

Subchapter B. INSURANCE REQUIREMENTS

§ 32.12. Property carrier and household goods in use carrier insurance.

(a) No common carrier or contract carrier of property or household goods in use may engage in intrastate commerce and no certificate will be issued, or remain in force, except as provided in § 32.15 (relating to applications to self-insure), until there has been filed with and approved by the Commission, a certificate of insurance by an insurer authorized to do business in this Commonwealth, to provide for the payment of valid accident claims against the insured for bodily injury to or the death of persons, or the loss or damage to property of others resulting from the operation, maintenance or use of a motor vehicle in the insured authorized service. The liability of the insurance company on each motor vehicle operated in common or contract carrier service shall be in amounts not less than \$300,000 per accident for a vehicle with a manufacturer's gross vehicle weight rating of 10,000 pounds or less, in the case of a single vehicle, or a manufacturer's gross combination weight rating of 10,000 pounds or less, in the case of an articulated vehicle. The liability of the insurance company on each motor vehicle operated in common or contract carrier service shall be in amounts not less than \$750,000 per accident for a vehicle with a manufacturer's gross vehicle weight rating over 10,000 pounds, in the case of a single vehicle, or a manufacturer's gross combination weight rating over 10,000 pounds, in the case of an articulated vehicle.

(b) The limitations in subsection (a) do not include insurance to cover damage to cargo.

(c) Insurance coverage of motor carriers of property and household goods in use shall meet the requirements of 75 Pa.C.S. §§ 1701—1799.7 (relating to Motor Vehicle Financial Responsibility Law).

§ 32.13. Cargo liability insurance.

(a) A common carrier of property or household goods in use by motor vehicle shall file with the Commission, in addition to the public liability and property damage certificate of insurance required under § 32.12 (relating to property carrier and household goods in use carrier insurance), certificates of insurance in an amount satisfactory to the Commission, but not less than \$5,000, to provide payment for loss or damage to cargo carried on a motor vehicle. No motor vehicle may be operated unless the insurance policy or other approved method of protection is in effect at the time of operation. This section may not be modified or abrogated by tariff filings. The Commission may approve another method of cargo protection in specific cases.

(b) Requirements for cargo insurance do not apply to dump trucks or vehicles limited to the transportation of coal, earth, crushed stone, amesite and similar construction materials, or vehicles which are used for the transportation of property, the value of one load being not more than \$500. This subsection applies only if an affidavit stating that the vehicle is limited to the type of transportation described in this subsection is first filed with the Commission.

[Pa.B. Doc. No. 15-950. Filed for public inspection May 22, 2015, 9:00 a.m.]