

**CHAPTER 41. GENERAL ORDERS, POLICY STATEMENT AND
GUIDELINES ON TRANSPORTATION UTILITIES****GENERAL PROVISIONS**

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Source

The provisions of this Chapter 41 adopted October 14, 1977, effective October 15, 1977, 7 Pa.B. 3086, unless otherwise noted.

GENERAL PROVISIONS**§ 41.1. Lavatory facilities at terminals.**

(a) A carrier of persons by rail, motor vehicle or aircraft shall provide a minimum of 1/2 of their rest room commodes free of charge to patrons, prospective customers and persons picking up and leaving off patrons and prospective customers. The carrier may restrict the use of rest room facilities to passengers and other persons properly waiting at the terminal, but these carriers shall have on duty and available during hours during which the terminal is open an employe who can allow persons to gain entrance to the facilities. In the event a system of restricted usage is employed, signs shall be posted to acquaint persons with this procedure.

(b) In situations where rest room entry doors are locked, admission keys shall be readily provided without charge when requested, and notice as to the availability of the key shall be posted on the rest room entry door.

TRANSPORTATION**§ 41.11. Transportation of persons to or from medical locations by paratransit operations utilizing specialized equipment—statement of policy.**

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Health care facility—A general or special hospital, as defined in section 103 of the Health Care Facilities Act (35 P. S. § 448.103).

Health care institution—The major categories of health care institutions include: hospitals, nursing care institutions, home health agencies, infirmaries and behavioral health services.

Health care provider—A person who operates a health care facility, health care institution or health maintenance organization.

Health maintenance organization—An organization which provides health care services as defined in section 103 of the Health Care Facilities Act.

(b) If the following circumstances are present, the Commission will regard that operation as beyond the regulatory jurisdiction of the Commission, under 66 Pa.C.S. § 102(9) (relating to definitions):

(1) The transportation is performed by a carrier providing paratransit service utilizing specialized equipment.

(2) The passengers are persons, including patients, who—because they are injured or ill—require transportation to or from health care providers, as defined in this section.

(c) This policy statement effectuates the Commonwealth Court decision of *Chappell v. Pennsylvania Public Utility Commission*, 57 Pa. Commw. 17, 425 A.2d 873 (1981).

(d) This policy statement also incorporates the Commonwealth Court decision of *Triage, Inc. v. Pennsylvania Public Utility Commission*, 69 Pa. Commw. 230, 450 A.2d 790 (1982) and the Commission's decision of *Pennsylvania Public Utility Commission v. National MediVans, Inc.*, Docket No. C-903059 (Order entered April 18, 1991).

Source

The provisions of this § 41.11 adopted September 11, 1981, effective September 12, 1981, 11 Pa.B. 3108; amended September 11, 1981, effective September 12, 1981, 11 Pa.B. 3553; amended September 6, 1991, effective November 6, 1991, 21 Pa.B. 3998. Immediately preceding text appears at serial page (134474).

§ 41.12. Issuance of certificates of public convenience for taxicab service in Philadelphia—statement of policy.

(a) The act authorizes the Commission to regulate call or demand common carrier service in this Commonwealth. This authority was recently supplemented by the section 1 of the act of June 19, 1980 (P. L. 244, No. 69) which amended 66 Pa.C.S. § 1103 (relating to procedure to obtain certificates of public convenience). Act 1980-69 authorized the Commission to immediately issue a maximum of 1400 certificates of public convenience for taxicab service in the City of Philadelphia. The act further authorized the Commission, as of December 19, 1981, to issue in its discretion a maximum of 1700 certificates for taxicab service in Philadelphia.

(b) As a result of the Commission's prior finding of necessity for additional taxicab service in Philadelphia in the proceeding at I. D. 171 and the initial authorization of Act 1980-69, 1400 certificates of public convenience for taxicab service in Philadelphia have been issued. Anticipating Act 1980-69's additional authorization to issue up to 1700 certificates, final orders have been entered issuing a number of these certificates. Moreover, hearings have been scheduled or held on a number of applications requesting taxicab authority in Philadelphia. Consistent with the Commission's practice with applications for taxicab authority in Philadelphia, these applications have been considered in chronological order on the basis of filing date. As of February 6, 1982, the Commission will suspend the scheduling of hearings on applications for taxicab authority in Philadelphia. Applications in which hearings have been scheduled or in which hearings have already been held will proceed to a final disposition. The Commission believes that a suspension is appropriate in view of the number of certificates of public convenience for taxicab service in Philadelphia which the Commission has issued in the recent past.

(c) The act provides the Commission with the discretion to determine the amount of competition which best serves the public interest. Besides issuing a significant number of new certificates in the last year, the Commission has also approved the transfer of several hundred previously unused certificates held by

the Yellow Cab Company to new owners who are bound to operate them in compliance with the act and this title. The result of these activities has been a virtual doubling of the number of issued certificates for taxicab service in Philadelphia in the past 18 months. At this point, the Commission deems it appropriate, as detailed in subsection (b) to suspend the issuance of additional certificates and to investigate anew the adequacy of taxicab service in the city of Philadelphia.

(d) Act 1980-69 requires the Commission to institute a formal investigation on the future need for taxi service in Philadelphia in June of 1982 and to report the findings and conclusions of such investigation to the General Assembly. In view of the rapidly increasing number of vehicles in taxicab service in Philadelphia, the Commission deems it appropriate to begin this investigation earlier and to use the results to guide its discretion in increasing the number of certificates for taxi service in the City. The Commission anticipates beginning this investigation in April of 1982. The investigation will be formally announced in the *Pennsylvania Bulletin*.

(e) Act 1980-69 ultimately vests the Commission with the discretion to issue a maximum of 2,000 certificates for taxi service in Philadelphia on December 19, 1982. Our discretion to reach this maximum will be guided by the results of the investigation into the adequacy of taxi service in Philadelphia. At the present time, the Commission has received approximately 520 applications for certificates of public convenience to provide taxicab service in the city of Philadelphia. These applications will be considered in chronological order on the basis of filing date. Any additional applications for this authority subsequently filed will be considered in a similar fashion. Should the Commission revoke any certificates for taxicab service in Philadelphia as a result of the holder's failure to comply with the act and this title, those certificates will be reissued so as to maintain the number of certificates at the level chosen by the Commission.

Authority

The provisions of this § 41.12 issued under the Public Utility Code, 66 Pa.C.S. § 1103.

Source

The provisions of this § 41.12 adopted February 5, 1982, effective February 6, 1982, 12 Pa.B. 524.

§ 41.13. [Reserved].

Authority

The provisions of this § 41.13 issued under the Second Class County Port Authority Act (55 P.S. § 552).

Source

The provisions of this § 41.13 adopted March 12, 1982, effective March 13, 1982, 12 Pa.B. 944; reserved March 20, 2020, effective March 21, 2020, 50 Pa.B. 1695. Immediately preceding text appears at serial pages (218780) and (390485).

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

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

- (1) Whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.
- (2) Whether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.
- (3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public.
- (4) Whether the applicant has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards in Chapter 29 (relating to motor carriers of passengers).
- (5) An applicant's record, if any, of compliance with 66 Pa.C.S. (relating to Public Utility Code), this title and the Commission's orders.
- (6) Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.

Source

The provisions of this § 41.14 adopted November 19, 1982, effective January 1, 1983, 12 Pa.B. 4282; amended May 4, 2001, effective May 5, 2001, 31 Pa.B. 2385; amended July 23, 2004, effective July 24, 2004, 34 Pa.B. 3912; amended February 9, 2018, effective February 10, 2018, 48 Pa.B. 882. Immediately preceding text appears at serial pages (337331) to (337332).

Notes of Decisions

Applicant's Burden

Motor common carrier applicants need not show inadequacy in the existing service and protestants assume the burden of showing that the entry of a new carrier endangers the existing carrier's operation, thus rendering the grant of the application contrary to public policy. *Morgan Drive Away, Inc. v. Pennsylvania Public Utility Commission*, 512 A.2d 1359 (Pa. Cmwlth. 1986).

Commission Authority

While denying transfer of a certificate of public convenience on the grounds of profiteering and trafficking, the Commission exceeded its authority by applying criteria not specifically provided for by regulation. *South Hills Movers, Inc. v. Pennsylvania Public Utility Commission*, 601 A.2d 1308 (Pa. Cmwlth. 1992).

The Commission did not exceed its authority in reformulating evidentiary criteria under this section, since the requirement of proving inadequacy of existing service was not statutory but had arisen in a regulatory context. *Yellow Cab Company v. Pennsylvania Public Utility Commission*, 524 A.2d 1069 (Pa. Cmwlth. 1987).

Evidence

On an application for additional transportation authority, the Commission properly considered the applicant's unauthorized service as proof of public need where the service was based on a good faith misunderstanding of the scope of its certificate and the revenues generated thereby may be consid-

ered in determining the applicant's financial fitness. *W. C. McQuaide, Inc. v. Pennsylvania Public Utility Commission*, 585 A.2d 1151 (Pa. Cmwlth. 1991).

The Commission's regulations promulgating evidentiary criteria are applicable to passenger carrier applications. *Yellow Cab Company v. Pennsylvania Public Utility Commission*, 524 A.2d 1069 (Pa. Cmwlth. 1987).

Evidence/Sufficient

Although the Pennsylvania Public Utility Commission admonished the taxicab company for its unauthorized operations and the irregularities in its past annual reports, the Commission accepted the evidence presented by the company as credible and determined that the company was likely to comply with the regulation in the future. Thus, the Commission's finding that the company possessed the propensity to operate legally was based upon its credibility determinations and should not be disturbed on appeal. *Loma, Inc. v. Pennsylvania Public Utility Commission*, 682 A.2d 424 (Pa. Cmwlth. 1996); appeal denied 698 A.2d 597 (Pa. 1992).

Although the primary shareholder of the corporation filing an application for common carrier had some previous legal problems, these incidents were not sufficient to justify piercing the corporate veil and thereby deny common carrier status for these incidents failed to show that the corporation lacked the ability to operate safely and legally. *Yellow Cab Co. v. Pennsylvania Public Utility Commission*, 673 A.2d 1015 (Pa. Cmwlth. 1996).

Public Utility Commission erred in concluding that testimony of witness, even if credible, was not sufficiently definite to serve as basis for finding that applicant assaulted witness. *Limelight Limousine, Inc. v. Pennsylvania Public Utility Commission*, 580 A.2d 472 (Pa. Cmwlth. 1990).

Evidence of record supported Commission's finding that application for Certificate of Public Convenience satisfied the Commission's established criteria and standard. *Limelight Limousine, Inc. v. Pennsylvania Public Utility Commission*, 570 A.2d 1378 (Pa. Cmwlth. 1990).

Court may not make independent judgment and substitute the Commission's findings under the evidentiary criteria promulgated by the Commission, where the findings are adequately supported by the evidence. *Yellow Cab Company v. Pennsylvania Public Utility Commission*, 524 A.2d 1069 (Pa. Cmwlth. 1987).

Prior Unlawful Operations

It is well established that a motor carrier authority applicant's prior unlawful operations do not preclude the Commission from granting authority in a subsequent proceeding. *Loma, Inc. v. Pennsylvania Public Utility Commission*, 682 A.2d 424 (Pa. Cmwlth. 1996).

§ 41.15. Policy statement regarding transfer of call or demand certificates to the vehicle's drivers when the certificate holder does not control the operations under the certificate—statement of policy.

When the Commission becomes aware that a certificated holder is not controlling the operation of a taxicab and, therefore, the drivers are, in fact, providing the utility service, the Commission will consider actions against the certificate holder which could include, inter alia, fines, suspension, revocation of the certificate, or the forced transfer of the certificate to the driver who is actually controlling the certificate, if that person is shown fit to provide dependable taxicab service.

Authority

The provisions of this § 41.15 issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 1103.

Source

The provisions of this § 41.15 adopted January 27, 1984, effective January 28, 1984, 14 Pa.B. 337.

§ 41.16. Transportation of waste for disposal—statement of policy.

(a) In *Pennsylvania Public Utility Commission v. Edward Armstrong & Sons, Inc.*, C-850073 (Order entered April 28, 1986), the Commission ruled that the transportation of waste water sludge which has little or no intrinsic value does not involve the transportation of property under 66 Pa.C.S. §§ 102 and 2501 (relating to definitions); and declaration of policy and definitions), and therefore is not subject to the Commission's jurisdiction.

(b) The Commission has no jurisdiction over the transportation by motor vehicle of waste, including but not limited to rubbish, garbage, sludge, sewage and hazardous waste, in solid, liquid or semiliquid state, for disposal.

(c) This exemption does not alter Commission regulation of fixed utility sewage companies or the transportation of scrap materials, such as metal and glass, which have commercial value.

Source

The provisions of this § 41.16 adopted December 5, 1986, effective December 6, 1986, 16 Pa.B. 4721.

§ 41.17. [Reserved].**Source**

The provisions of this § 41.17 adopted July 17, 1987, effective July 18, 1987, 17 Pa.B. 3029; renumbered to § 21.2 and reserved December 3, 1993, effective December 4, 1993, 23 Pa.B. 5715. Immediately preceding text appears at serial page (172373).

§ 41.18. Evidentiary criteria used to decide property broker applications—statement of policy.

In cases controlled by 66 Pa.C.S. §§ 2501 and 2505(b) (relating to declaration of policy and definitions; and licenses and financial responsibility required of brokers) it is the policy of this Commission that an applicant seeking a license to provide property broker services has the burden of demonstrating that it is fit, willing and able to provide the proposed service and to conform to 66 Pa.C.S. and this title.

Authority

The provisions of this § 41.18 issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 2501.

Source

The provisions of this § 41.18 adopted April 22, 1988, effective April 23, 1988, 18 Pa.B. 1933.

§ 41.19. Evidentiary criteria used to decide passenger broker applications—statement of policy.

In cases controlled by 66 Pa.C.S. §§ 2501 and 2505(b) (relating to declaration of policy and definitions; and licenses and financial responsibility required of

brokers) it is the policy of this Commission that an applicant seeking a license to provide passenger broker services has the burden of demonstrating that it is fit, willing and able to provide the proposed service and to conform to 66 Pa.C.S. and this title.

Authority

The provisions of this § 41.19 issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 2501.

Source

The provisions of this § 41.19 adopted April 22, 1988, effective April 23, 1988, 18 Pa.B. 1933.

§ 41.20. Horse and carriage services—statement of policy.

A provider of horse and carriage services is not a “common carrier” under 66 Pa.C.S. § 102 (relating to definitions), and is not subject to the Commission’s jurisdiction.

Source

The provisions of this § 41.20 adopted March 10, 1989, effective March 11, 1989, 19 Pa.B. 1093.

§ 41.21. Insurance coverage for common or contract carriers of less than 16 passengers—statement of policy.

Common or contract carriers of passengers transporting fewer than 16 passengers maintain insurance as required by § 32.11(b) (relating to passenger carrier insurance) of not less than \$35,000 to cover liability for bodily injury, death or property damages incurred in an accident from authorized service. The Commission considers this \$35,000 minimum coverage as split coverage in the amounts of \$15,000 bodily injury per person, \$30,000 bodily injury per accident and \$5,000 property damage per accident.

Authority

The provisions of this § 41.21 issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 512.

Source

The provisions of this § 41.21 adopted February 24, 1995, effective February 25, 1995, 25 Pa.B. 681.

§ 41.22. Motor carrier passenger transportation services by municipal corporations or State instrumentalities—statement of policy.

(a) *General rule.* As a general rule, passenger transportation services are not subject to Commission jurisdiction when provided by any of the following:

- (1) State instrumentalities.
- (2) Municipal authorities.
- (3) Municipal corporations within their corporate limits. The geographic limitation applicable to municipal corporations will be satisfied as long as the

passenger transportation service provided by a municipal corporation is restricted to residents of the municipality, regardless of whether the actual service is provided within the corporate limits of the municipality.

(b) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Municipal authority—An authority created or organized by a municipality in accordance with the laws of the Commonwealth for the purpose of rendering service similar to that of a public utility.

Municipal corporation—The term as defined in 66 Pa.C.S. § 102 (relating to definitions).

Public transportation authority—An authority created or organized under the laws of the Commonwealth for the purpose of rendering public transportation service.

State instrumentality—

(i) The Commonwealth, its agencies, boards, offices, commissions, councils, departments, bureaus and authorities.

(ii) The term includes independent agencies of the Commonwealth and State affiliated entities such as the State System of Higher Education.

Substantial ongoing control—The act of setting or affirmatively approving the rates, routes, schedules, terms and conditions of service, and the monitoring and enforcement of a contractor's compliance with them.

(c) *Evidence of substantial ongoing control.* Substantial ongoing control is evidenced through:

(1) The terms of a written contract between the third party and the contracting entity.

(2) A statute, regulation, ordinance or other provision of law that the third party contractor must comply with in the provision of the transportation services.

(3) Written audits or inspection reports of the contractor's compliance with the contract and relevant provisions of law.

(d) *Exemptions.*

(1) *State instrumentalities.* Passenger transportation services provided by third parties under contract to State instrumentalities, and their subcontractors, are not subject to Commission jurisdiction when the following conditions are present:

(i) The State instrumentality's enabling legislation does not expressly require the third party to obtain a certificate of public convenience from the Commission when providing the service.

(ii) The service is subject to substantial ongoing control by the State instrumentality as to the following:

(A) The rates charged to passengers for the service.

(B) The routes for the service.

(C) The schedule of the service.

- (D) The terms and conditions of the service, including who is eligible to be a passenger.
- (2) *Municipal authorities.* Passenger transportation services provided by third parties under contract to municipal authorities, and their subcontractors, are not subject to Commission jurisdiction when the following conditions are present:
- (i) The service would be nonjurisdictional if provided by the municipal authority itself.
 - (ii) The service is subject to substantial ongoing control by the municipal authority as to the following:
 - (A) The rates charged to passengers for the service.
 - (B) The routes for the service.
 - (C) The schedule of the service.
 - (D) The terms and conditions of the service, including who is eligible to be a passenger.
- (3) *Municipal corporations.* Passenger transportation service provided by third parties under contract to municipal corporations, and their subcontractors, are not subject to Commission jurisdiction when the following conditions are present:
- (i) The service would be nonjurisdictional if provided by the municipal corporation itself.
 - (ii) The service is subject to substantial ongoing control by the municipal corporation as to the following:
 - (A) The rates charged to passengers for the service.
 - (B) The routes for the service.
 - (C) The schedule of the service.
 - (D) The terms and conditions of the service, including who is eligible to be a passenger.
- (4) *Public transportation authorities.* When a public transportation authority's enabling legislation exempts it from Commission jurisdiction, passenger transportation services provided by third parties under contract to the public transportation authority are not subject to the Commission's jurisdiction when the following conditions are present:
- (i) The public transportation authority's enabling legislation expressly authorizes it to contract with third parties to provide passenger transportation services.
 - (ii) The service is subject to substantial ongoing control by the public transportation authority as to the following:
 - (A) The rates charged to passengers for the service.
 - (B) The routes for the service.
 - (C) The schedule of the service.
 - (D) The terms and conditions of the service, including who is eligible to be a passenger.

(5) *Cooperative agreements.* Passenger transportation services provided under a cooperative agreement between municipal corporations or authorities, which permit them to operate in each other's geographic service areas, are not subject to Commission jurisdiction. Passenger transportation services provided by third parties under contract to the contracting municipal corporation or authority are not subject to Commission jurisdiction so long as the services are subject to the substantial ongoing control of the contracting municipal corporation or authority, or both, as to the following:

- (i) The rates charged to passengers for the service.
- (ii) The routes for the service.
- (iii) The schedule of the service.
- (iv) The terms and conditions of the service, including who is eligible to be a passenger.

Source

The provisions of this § 41.22 adopted May 24, 2013, effective May 25, 2013, 43 Pa.B. 2852.

MEDIATION PROCESS GUIDELINES

§ 41.31. General.

The Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation. To further promote the goal of obtaining negotiated settlements in the public interest, the Commission has adopted guidelines that offer the parties, in certain contested proceedings, the option of mediation.

Source

The provisions of this § 41.31 adopted October 29, 1999, effective October 30, 1999, 29 Pa.B. 5616.

§ 41.32. Availability of mediation process.

The mediation process is intended to be a flexible program designed to facilitate the amicable resolution of disputes between parties. The Office of Administrative Law Judge manages the mediation program. The mediation process administered by the Commission follows the procedures in Chapter 69 (relating to general orders, policy statements and guidelines on fixed utilities) regarding mediation process for fixed service utilities.

Source

The provisions of this § 41.32 adopted October 29, 1999, effective October 30, 1999, 29 Pa.B. 5616.

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