**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held February 8, 2018

|  |  |
| --- | --- |
| Commissioners Present: |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Gladys M. Brown, Chairman | |  | |
| Andrew G. Place, Vice Chairman | |  | |
| Norman J. Kennard  David W. Sweet | |  | |
| John F. Coleman, Jr. | |  | |
|  |  | |
| Rulemaking Pertaining to Minimum Insurance Requirements for Motor Carriers of Passengers, 52 Pa. Code Chapter 32 | L-2017-2604692 | |

**PROPOSED RULEMAKING ORDER**

**BY THE COMMISSION:**

The Pennsylvania Public Utility Commission (Commission) proposes to amend its regulations governing minimum insurance coverage requirements for motor carriers of passengers. 52 Pa. Code Chapter 32. By way of background, on June 14, 2017, the Commission entered an Advanced Notice of Proposed Rulemaking Order wherein we invited comments on certain existing motor common carrier regulations that may need to be updated or revised in response to changing market conditions. These proposals would be in addition to the changes previously approved by the Commission in *Temporary Regulations for the Taxi and Limousine Industries* at Docket No. L-2016-2556432.[[1]](#footnote-1)

Specifically, we sought comments in this proceeding concerning the following areas: fuel surcharge; fines and assessments; provisional authority; web-based training; motor-carrier insurance; safety code for transportation of property and passengers; policy statements found at Chapter 41 of our regulations; property carrier regulation, group and party carrier regulation; and any other issues commentators deemed relevant.

The Commission received comments from BestDarnMovers, Clarion County Taxi, Safe Transportation Group, Pennsylvania Moving and Storage Associates, Pennsylvania Bus Association, Billtown Cab, K-Cab, Suburban Transit Network, Willow Grove Yellow Cab, Easton Coach Company, Tri-County Transit Service, Bucks County Transport, Rasier-PA LLC, and Robert Ely (collectively “Commentators”). Having reviewed the comments, the Commission now proposes to amend the minimum insurance coverage requirements for motor common carriers of passengers at 52 Pa. Code § 32.11. However, before addressing this regulatory proposal, we will discuss the comments received to the advanced notice of proposed rulemaking.

1. **Advanced Notice Of Proposed Rulemaking**

Commentators provided comments on the following topics, which we address *ad seriatim*:

1. *Fuel Surcharge*

Some commentators suggested that a fuel surcharge should be applied to other carriers in addition to household goods carriers, which is the only carrier group which has a fuel surcharge currently established. See *Fuel Cost Recovery Surcharge Special Permission*, Docket No. SP-28207 (Order entered April 17, 2003) and *Extension of the Fuel Cost Recovery Surcharge Special Permission 28207*, Docket No. R-2009-2094616 (Order entered May 4, 2017). Commentators submitted that monthly tariff adjustments to reflect fuel price changes are difficult and costly for the Commission and carriers to implement. Commentators recommended that we should consider quarterly adjustments for the Commission to publish so each carrier could incorporate it into their individual tariff on one day’s notice. One commentator also suggested that the fuel surcharge on household goods carriers should stay the same because it directly affects operating costs. Finally, there was a comment recommending that the Commission should allow a flexible tariff to allow the use of a surcharge as needed.

The Commission notes that it has recently implemented tariff regulations for limousine and taxi carriers, allowing those industries greater flexibility. See *Temporary Regulation for Taxi and Limousine Industries*, Docket No. L-2016-2556432 (Order entered December 23, 2016). The Commission believes that limousine and taxi carriers have sufficient flexibility in setting rates to account for market factors without having to add a specific fuel surcharge. Additionally, other carrier types such as paratransit, airport transfer, and scheduled route carriers, did not request any change to the Commission’s regulations to account for fuel pricing. Therefore, the Commission declines to implement a regulation providing for a fuel surcharge.

1. *Fines and Assessments*

Commentators recommended that the Commission enhance its means to collect fines by other means such as wage garnishment and liens. One commentator proposed that the Commission institute a “diamond system” like the Taxi and Limousine Commission in New York City. It was suggested that every motor carrier should be required to register with the Commission and receive a “diamond” for each vehicle indicating they have paid their assessment and met other requirements.

In the Commission’s judgment, sufficient measures are currently in place to ensure fine and assessment collection, and no change needs to be made. We do not have a significant delinquency issue regarding fines and assessments. The total delinquent amount for fines on taxi and limousine service in 2017 was $19,062, and the total delinquent assessments for taxi and limousine service for 2017-2018 was $351,785. The Commission will pursue satisfaction of these delinquencies through available tools, up to and including cancellation of carrier certificates of public convenience. Additionally, the “diamond system” proposed is not feasible since the Commission does not certificate motor common carriers on a per-vehicle basis. Furthermore, implementing such a system would be costly and cumbersome. Given that the current collection process is sufficient, we decline to adopt this proposal.

1. *Provisional Authority*

The Commission received one comment from a household goods carrier suggesting provisional authority to allow applicants to operate during the pendency of the application process, asserting that protests only serve to protect monopoly interests of certificated movers. In contrast, several commentators noted that provisional authority should not be granted. They opined that provisional authority would allow applicants with poor safety records, inadequate financial capability, and lack of operational experience to prey upon the public. It was also recommended that provisional authority should not be granted until the process for certification is complete. One commentator recommended that the Commission should adopt a “conditional” status to accommodate single-vehicle operators upon which permanent authority can be granted after an operator satisfies all conditions. It was suggested that if the Commission were to adopt provisional authority, a very high burden on the applicant should be imposed to demonstrate that provisional authority is in the public interest.

The Commission has regulations in place governing emergency temporary authority and temporary authority.[[2]](#footnote-2) *See* 52 Pa. Code § 3.383. Those regulations permit service while an application for permanent authority is pending. We believe that these provisions allow sufficient flexibility to provide immediate transportation during the pendency of an application for permanent authority, while ensuring those services are provided safely. Significantly, no protests are permitted to an application for emergency temporary authority. Additionally, since we no longer allow protests on the basis of lack of public need applications for permanent authority should be much less cumbersome. See *Final Rulemaking Amending 52 Pa. Code Chapters 1, 3, 5, 23 and 29*, Docket No. L‑2015-2507592 (Order entered October 27, 2016). Under these circumstances, we decline to propose new regulations providing for provisional authority, since our current processes provide adequate flexibility to respond to immediate transportation needs.

1. *Web-Based Training*

Commentators suggested that web-based training should be provided to include skill-based programs for stakeholders. The topics recommended were:

* How to register for intrastate operating authority (the steps a carrier should take, including who to contact, forms, cost, etc.);
* The responsibility of a motor carrier when an accident occurs;
* What a carrier can expect from a roadside/destination stop;
* A primer on Commission and FMCSA Regulations (including a discussion as to how the Commission regulations compare to the FMCSA regulation);
* Commission motor carrier compliance issues, including the scheduling of inspections by Commission enforcement officers; and
* Training that condenses the motor carrier regulations that are applicable to the charter bus industry.

The Commission believes that web-based training can serve as a benefit to motor common carriers. However, we believe that web-based training should be voluntary and administered through the Bureau of Technical Utility Services and Bureau of Investigation and Enforcement. Therefore, we decline to propose regulations making web-based training mandatory. Rather, we plan to develop current training modules that will be available to the industry to enhance service.

1. *52 Pa. Code Chapter 32 – Motor Carrier Insurance*

Several commentators suggested that the current minimum insurance coverage limits are very low given the level of potential liability for property damage and bodily injury that can be incurred in motor carrier accidents and, therefore, that the Commission should look at the minimum limits required by other state and local agencies to determine appropriate coverage limits. Commentators submitted that most states require minimum coverages of $1 million (and up to $5 million). However, one commentator suggested that any cost increase on motor common carriers occasioned by higher mandated insurance levels would cripple existing conventional carriers and hurt rural and suburban carriers, except for TNCs. Another commentator suggested that the insurance minimum should not increase on vehicles that transport more than 28 passengers unless the Commission conducts a study that demonstrates that an increase would benefit the public safety and is in the public interest.

With respect to how proof of insurance is tendered to the Commission, it was recommended that only insurance carriers should be permitted to file the Form E certificate with the Commission to avoid fraud. Commentators also argued that Form E requirements should remain the same so that motor carriers cannot misrepresent their coverage. Commentators stated that changing this rule would abrogate important oversight, and advised that the Commission should check other jurisdictions on whether carriers are permitted to self-file their own Form E.

We believe that the current procedure requiring insurers to file Form E certificates directly with the Commission does not require any changes. However, appropriate insurance levels should be addressed in a rulemaking and we will do so herein.

1. *52 Pa. Code Chapter 37 – Safety Code For Transportation of Property And Passengers*

The Commission received comments pertaining to the Safety Code for Transportation of Property and Passengers. One commentator recommended that the safety regulations should not depart from the FMCSA regulations to keep the riding public safe. A comment was also made with respect to TNC safety, suggesting that TNC drivers should be given an online test on applicable regulations and that a separate license should be issued to TNC drivers.

The Commission will not propose any changes to the safety code for transportation of property and passengers. We note that the Commission’s regulations already incorporate the safety regulations from the FMCSA. *See* 52 Pa. Code § 37.204. We also note that Act 164 has expressly stated that a separate license may not be required for a TNC driver and the Commission cannot require a separate TNC driver license. *See* 66 Pa. C.S. § 2605. Therefore, we will not propose any changes to Chapter 37.

1. *52 Pa. Code Chapter 41 – General Orders, Policy Statement And Guidelines On Transportation Utilities*

A few Commentators suggested that current guidelines offer little in terms of concrete metrics for reviewing applications. Other Commentators, however, believe that existing fitness guidelines should remain in effect and be administered according to the Public Utility Code.

The Commission is currently addressing its policy statement at 52 Pa. Code § 41.14 at Docket No. M-2017-2629722, to reflect the change in evidentiary criteria that motor carrier applicants are required to present to the Commission for a certificate of public convenience. Further, we believe there is sufficient information to guide applicants in the policy statement concerning motor carrier application criteria. There is a necessary flexibility attached to those criteria, evidencing that applicants do not lend themselves to a “one-size-fits-all approach”. Therefore, we decline to address those guidelines at this time.

1. *P-00940884; Regulation Of Property Carriers, And P-00981458; Regulation Of Group And Party Carriers*

The Commission did not receive any comments on regulations at dockets P‑00940884 or P-00981458. Accordingly, the Commission will not make any updates or changes with respect to these dockets.

1. **Rulemaking**

The Commission has considered all the comments it received at this docket and will open a rulemaking to consider appropriate insurance requirements for passenger motor carriers. 52 Pa. Code § 32.11.

The Commission’s regulation at Section 32.11 currently provides:

#### § 32.11. Passenger carrier insurance.

 (a)  A common carrier or contract carrier of passengers may not engage in intrastate commerce and a certificate or permit will not 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 a person, or the loss of or damage to property of others resulting from the operation, maintenance or use of a motor vehicle in the insured authorized service.

 (b)  The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle capable of transporting fewer than 16 passengers shall be in an amount not less than $35,000 to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service. The $35,000 minimum coverage is 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. This coverage shall include first party medical benefits in the amount of $25,000 and first party wage loss benefits in the amount of $10,000 for passengers and pedestrians. Except as to the required amount of coverage, these benefits shall conform to 75 Pa. C.S. § § 1701—1799.7 (relating to Motor Vehicle Financial Responsibility Law). First party coverage of the driver of certificated vehicles shall meet the requirements of 75 Pa. C.S. § 1711 (relating to required benefits).

 (c)  The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle capable of transporting 16 to 28 passengers shall be in an amount not less than $1 million to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service. Except as to the required amount of liability coverage, this coverage shall meet the requirements of 75 Pa.C.S. § § 1701—1799.7.

 (d)  The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle capable of transporting more than 28 passengers shall be in an amount not less than $5 million to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service. Except as to the required amount of liability coverage, this coverage shall meet the requirements of 75 Pa.C.S. § § 1701—1799.7.

 (e)  The limits in subsections (b)—(d) do not include the insurance of cargo.

The last time the Commission amended Section 32.11 was on May 11, 2000. *Rulemaking Re: Passenger Carrier Insurance Regulation to Clarify Coverage Requirements 52 Pa. Code § 32.11*,Docket No. L-00970124 (Order May 11, 2000). The Independent Regulatory Review Commission noted that the minimum requirement of $35,000 per accident may be inadequate coverage for passenger carriers of less than 16 passengers. *Id*. at 3. We addressed this comment and reasoned that:

in addition to ensuring that the public is adequately covered in the event of an accident, the Commission must also take into consideration the high cost of insurance for taxicab companies. We are mindful that our goal is not to make getting and maintaining insurance an insurmountable burden on taxicab companies. We must balance the interest of protecting the public with the interests of making it financially feasible for taxicab companies to continue providing adequate, safe and reasonable service to the public.

*Id.* at 3-4.

Given the concerns that $35,000 split coverage per accident may be insufficient and that the Commission received comments suggesting the minimum insurance coverage is insufficient the Commission opens a rulemaking to consider increasing this amount. The Commission has reviewed the minimum liability insurance limits in Maryland, Michigan, New York, and Ohio as well as federal requirements for motor common carriers of passengers.

Based on that review, it is apparent that the minimum liability insurance limits for motor common carriers of passengers with a capacity under 16 passengers in the Commonwealth is significantly lower by comparison to these jurisdictions. In Maryland, passenger carriers of seven passengers or less are required to have at least a $120,000 combined single limit liability insurance policy. *See* Md. Code Regs. 20.95.01.18. Passenger carriers in Michigan with a seating capacity under nine passengers requires at least a $300,000 combined single limit liability insurance policy. Mich. Comp. Laws Ann. § 257.2121 (West). In New York, passenger carriers carrying less than 12 passengers under the jurisdiction of the New York Department of Transportation are required to maintain at least $100,000 for personal injury or death to one person, $300,000 for personal injury or death to all persons in one accident with a maximum of $100,000 for each person; and property damage in the amount of $50,000. N.Y. Comp. Codes R. & Regs. Title 17, § 750.1. The Public Utilities Commission in Ohio directs its motor common carriers to maintain liability insurance on vehicles with a capacity of less than 16 passengers in the amount of $1.5 million. Ohio motor common carriers with a seating capacity of 16 or more passengers are required to maintain at least $5 million in liability insurance. Ohio Admin. Code 4901:2-13-03. Finally, the federal regulations provide that any motor common carrier operating vehicles with a passenger capacity less than 16 (except for taxis that can carry up to seven passengers) must have at least $1.5 million in liability insurance. Motor common carriers under federal jurisdiction with passenger capacity of 16 or more must have at least $5 million in liability insurance. 49 C.F.R. § 387.31.

Considering other jurisdictions’ requirements for liability insurance on motor common carriers of passengers, the Commission believes it is in the public interest that the minimum level of liability insurance for motor common carriers of passengers operating vehicles with a capacity of less than 16 passengers should be raised to $100,000 for bodily injury and $25,000 for property damage. This amount of minimum required liability insurance will ensure that the public is adequately protected in the event of an accident while not imposing an insurmountable burden on passenger carriers operating smaller vehicles. We propose that this coverage amount will be split coverage of $50,000 for death or bodily injury per person, $100,000 for death or bodily injury per incident, and $25,000 for property damage. Additionally, we propose maintaining current first party medical benefits of $25,000 and first party wage loss benefits of $10,000 for passengers and pedestrians. We note that this proposed coverage is consistent with coverage amounts and types required for vehicles used in transportation network service that are available for service but not engaged in a ride.

Finally, we do not propose any changes to the current insurance requirements for motor carriers operating vehicles with seating capacities of 16 passengers or more. As noted, those limits are $1 million for carriers transporting 16 to 28 passengers and $5 million for carriers transporting over 28 passengers.

Accordingly, pursuant to Sections 501, 512, 2502 of the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq*., the Commonwealth Documents Law, 45 P.S. §§ 1201-1202, and the regulation promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732-204(b); Section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; and Section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231, 7.232, and 7.234, we propose adopting the regulation set forth in Annex A, attached hereto; **THEREFORE**,

**IT IS ORDERED:**

1. That a rulemaking be opened to consider the regulations set forth in Annex A.

2. That the Law Bureau shall submit this rulemaking order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor’s Budget Office for review of fiscal impact.

3. That the Law Bureau shall submit this rulemaking order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.

4. That the Law Bureau shall deposit this rulemaking order and Annex A with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. That original written comments referencing Docket Number L‑2017‑2604692 be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, Commonwealth Keystone Building, 2nd Floor 400 North Street, Harrisburg, PA 17120.

6. That a copy of this rulemaking order and Annex A shall be served on the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate.

7. That the contact person for legal matters on this rulemaking is Joseph P. Cardinale, Jr., Assistant Counsel, Law Bureau, (717) 787-5558. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Alyson Zerbe, Regulatory Review Coordinator, Law Bureau, (717) 772‑4597.

**BY THE COMMISSION**,

Rosemary Chiavetta,

Secretary

(SEAL)

ORDER ADOPTED: February 8, 2018

ORDER ENTERED: February 9, 2018

**ANNEX**

**TITLE 52. PUBLIC UTILITIES**

**PART 1. PUBLIC UTILITY COMMISSION**

**Subpart B. CARRIERS OF PASSENGERS OR PROPERTY**

**CHAPTER 32: MOTOR CARRIER INSURANCE**

**Subchapter B. INSURANCE REQUIREMENTS**

\* \* \* \* \*

**52 Pa. Code § 32.11. Passenger carrier insurance.**

**(a) A common carrier or contract carrier of passengers may not engage in intrastate commerce and a certificate or permit will not 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 a person, or the loss of or damage to property of others resulting from the operation, maintenance or use of a motor vehicle in the insured authorized service.**

**(b) The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle capable of transporting fewer than 16 passengers shall be in an amount not less than [$35,000] $125,000 to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service. The [$35,000] $125,000 minimum coverage is split coverage in the amounts of [$15,000] $50,000 bodily injury per person, [$30,000] $100,000 bodily injury per accident and [$5,000] $25,000 property damage per accident. This coverage shall include first party medical benefits in the amount of $25,000 and first party wage loss benefits in the amount of $10,000 for passengers and pedestrians. Except as to the required amount of coverage, these benefits shall conform to 75 Pa.C.S. §§ 1701--1799.7 (relating to Motor Vehicle Financial Responsibility Law). First party coverage of the driver of certificated vehicles shall meet the requirements of 75 Pa.C.S. § 1711 (relating to required benefits).**

**(c) The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle capable of transporting 16 to 28 passengers shall be in an amount not less than $1 million to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service. Except as to the required amount of liability coverage, this coverage shall meet the requirements of 75 Pa.C.S. §§ 1701--1799.7.**

**(d) The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle capable of transporting more than 28 passengers shall be in an amount not less than $5 million to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service. Except as to the required amount of liability coverage, this coverage shall meet the requirements of 75 Pa.C.S. §§ 1701--1799.7.**

**(e) The limits in subsections (b)--(d) do not include the insurance of cargo.**

1. Those temporary regulations addressed, *inter alia*, use of electronic log sheets, use of driver owned or leased vehicles, flexible tariff rates. Pursuant to Act 164 of 2016, amending Act 85 of 2016, the temporary regulations will expire upon the promulgation of final-form regulations or November 4, 2018 whichever is later. As such, absent a new rulemaking on these topics, these temporary regulations remain in place and are enforceable. [↑](#footnote-ref-1)
2. Our authority to grant temporary authority stems from Section 1103 of the Public Utility Code. 66 Pa. C.S. § 1103. There is no provision in the Code governing provisional authority. Temporary authority is available in an emergency situation, which is defined as “[a] situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.” 52 Pa. Code § 3.1. [↑](#footnote-ref-2)