

PROPOSED RULEMAKING

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 21]

[L-2008-2038549/57-262]

Household Goods in Use Carrier

The Pennsylvania Public Utility Commission (Commission) on May 22, 2008, adopted a proposed rulemaking order which amend the definition of the term "household goods in use carrier."

Executive Summary

The recent emergence of containerized moving service firms, such as Portable on Demand Storage (PODS), as an alternative to traditional full service loading and unloading, packing and unpacking moving services for consumers, has raised issues regarding how PODS-type carriers should be regulated. In particular, it appears that PODS-type services, in which the customer is responsible for packing and unpacking, and loading and unloading the container, is more akin to common carrier of property service. Under these circumstances, the only service ordinarily provided by the carrier is transportation, making it appropriate to impose the lesser degree of regulation associated with property common carriers to these containerized moving service carriers.

Based upon the Commission's consideration of this issue to date, as well as our review of the approach to this issue taken by the Federal government and other states, we are proposing to amend our regulation to distinguish the operating authority of carriers of household goods and carriers of property based upon the nature of the service provided and not upon the type of contents being transported. By changing the definition of a household goods carrier, the Commission's regulation will be more consistent with the Federal government as well as the majority of other states. A service-based definition of a household good user will obviate the need for determining whether certain items qualify as household goods. A service-based definition will also eliminate unequal treatment among PODS carriers who transport household goods and PODS carriers who transport property, when the same service is being provided.

The Commission, therefore, formally commences its rulemaking process to amend its existing regulation in 52 Pa. Code § 21.1 defining the term "household goods in use carrier." The proposed amended definition will categorize PODS-type services as transportation of property irrespective of the contents of the move, so long as the only service provided is the transportation of property from one location to another. If, however, a company such as PODS provides packing and unpacking or loading and unloading services, or both, it will still be required to have a certificate as a household goods in use carrier.

Additionally, the existing regulation in § 21.1 includes as a "household goods in use carrier" the "transportation of property from a factory or store when the property is purchased by the householder with intent to use in his dwelling." *Id.* Thus, the current regulation covers instances such as when a buyer purchases a large appliance or furniture from a department store, and then arranges for the department store to deliver the item to buyer's

dwelling. The proposed amendment seeks to change this in keeping with its Federal counterpart, 49 U.S.C.A. § 13102(10) as amended. In 1999, the Federal government amended § 13102(10) to exclude moves from a factory or store, whereas this provision previously included such moves. The Commission believes a similar amendment to § 21.1 is in order, as we no longer intend to require household goods authority for such deliveries.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 25, 2008, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees (Committees). In addition to submitting the proposed rulemaking, the Commission provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Commission within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Department, the General Assembly and the Governor of objections raised.

Public Meeting held
May 22, 2008

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Tyrone J. Christy; Kim Pizzigrilli

*Rulemaking Re Amendment to 52 Pa. Code § 21.1;
Defining the Term Household Goods in Use Carrier;
Doc. No. L-2008-2038549*

Proposed Rulemaking Order

By the Commission

In accordance with section 501 of the Public Utility Code, 66 Pa.C.S. § 501, the Commission formally commences its rulemaking process to amend its existing regulations at 52 Pa. Code § 21.1 defining the term "Household goods in use carrier." The Commission seeks comments from all interested parties on this proposed regulation amendment, which is found at Annex A to this Order.

A. Background and Procedural History

The recent emergence of containerized moving service firms, such as PODS, as an alternative to traditional full service loading and unloading, packing and unpacking moving services for consumers, has raised issues regarding how PODS-type carriers should be regulated.¹ In particular, it appears that PODS-type services, in which the customer is responsible for packing and unpacking,

¹PODS provides a "you pack, we haul" moving service where the company delivers a portable storage unit to the customer. The customer packs the unit, and then PODS loads the unit onto a truck and transports the shipment to its destination, where the customer unpacks. PODS uses a special hydraulic truck to lift the unit so as not to disturb the contents inside. PODS handles the customer's contents when the unit is being hoisted onto the truck, during transport and during the detachment from the truck. PODS also gives the customer an option to arrange for a team of "expert packers" to pack boxes as well as load and unload the unit. See <http://www.pods.com/>. See also <http://www.getasam.com/sam/portable-storage> (Providing the same service as PODS.)

and loading and unloading the container, and the only service ordinarily provided by the carrier is transportation, is more akin to common carrier property service. Under those circumstances, it may be appropriate to impose the lesser degree of regulation associated with property common carriers to these containerized moving service carriers.

Based upon the Commission's consideration of this issue to date, as well as our review of the approach to this issue taken by the Federal government and other states, we are proposing to amend our regulations to distinguish the operating authority of carriers of household goods and carriers of property based upon the nature of the service provided and not upon the type of contents being transported. By changing the definition of a household goods carrier, the Commission's regulation will be more consistent with the Federal government as well as the majority of other states. A service-based definition of a household good user will lessen confusion about determining what items qualify as household goods. A service-based definition will also eliminate unequal treatment among PODS carriers who transport household goods and PODS carriers who transport property, when the same service is being provided.

DISCUSSION

The Commission currently determines whether to grant a certificate for moving household goods or a certificate for moving property based upon the contents being transported. The regulations define "household goods in use" as "personal effects and property used or to be used in a dwelling."² 52 Pa. Code § 21.1. Companies such as PODS offer services to individuals who are moving personal items from one residence to another. The customer pays for the transportation service, but handles the loading and unloading of the items him/herself. Thus, the kinds of contents that these service providers transport sometimes fall within the Commission's definition of household goods. However, these carriers may also transport property aside from household goods. In these instances, the Commission requires these carriers to obtain a certificate as a carrier of property.

Several differences exist between the requirements for obtaining a certificate to be a carrier of household goods and a carrier of property. Generally, the application to obtain a household goods certificate imposes more requirements upon the carrier than those required for a carrier of property. First, the application fee for a household goods certificate is more expensive (\$350 as opposed to \$100 for a carrier of property). Second, the household goods application requires the applicant to specifically describe the nature and character of its service, including a full description of the territory where the applicant plans to operate. There is no corresponding requirement on the application to be a common carrier of property. Third, carriers of household goods must file a tariff and seek Commission approval for any change in rates, whereas carriers of property are not required to file a tariff. This third requirement for a household goods carrier is arguably the most stringent one; it regulates a carrier's rates by binding the carrier to a tariff that must be approved by the Commission. And last, after the application for a household goods carrier is accepted by the Commission, it is published in the *Pennsylvania Bulletin*. Any active Pennsylvania certified carrier holding household goods authority in the same geographical area

may file a protest to the granting of the application. Thereafter, carriers may resolve protests amongst themselves or, if an agreement cannot be reached, a hearing will be held before an administrative law judge. A carrier of property does not have to encounter protests when it files an application for authority.

There are, however, several similarities between the manner in which a carrier of household goods and a carrier of property are regulated. For example, the Commission requires both types of carriers to maintain the same amount of insurance: \$300,000 per accident per vehicle to cover liability for bodily injury, death or property damage and \$5,000 for loss or damage to cargo. Additionally, the Commission imposes the same requirements to both types of carriers related to annual assessments, safety regulations, the marking of vehicles, fines and penalties and other general requirements. Therefore, carriers of household goods must abide by more regulations and are more limited in the scope of their operating authority. The resulting inequality is that carriers like PODS who transport household goods are regulated more than carriers of property even though they provide the exact same service.

a. Federal Law

The Federal government determines the scope of the operating authority of household goods carriers based on the nature of service provided rather than the kind of goods being transported. The Interstate Commerce Commission (ICC)³ has expressly declined to apply household goods regulatory requirements to general freight carriers transporting household goods. *See Practices of Motor Common Carriers of Household Goods*, 17 MCC 467 (1939) (holding that general freight carriers transporting household goods were not subject to the ICC's household goods regulations unless they performed services typical of a household goods carrier); *American Red Ball Transit Co. v. McLean Trucking Co., Inc.*, 67 MCC 305 (1956) (concluding that a general freight carrier with a household goods exclusion in its certificate could transport household goods in the same equipment used to transport general freight); *Glosson Motor Lines, Inc.—Purchase—Helderman*, 101 M.C.C. 151 (1966).

In 2001, a subdivision of the United States Department of Transportation (DOT), the Federal Motor Carrier Safety Administration (FMSCA) denied a petition for declaratory order filed by the American Moving and Storage Association, Inc. (AMSA). The petition requested that carriers such as PODS be subject to the same regulatory requirements applicable to registered household goods carriers. *Am. Moving and Storage Assoc., Pet. for Declaratory Order*. (United States Dep't of Transp. June 13, 2001). AMSA contended that consumers using customer-packed and carrier-hauled services were being unfairly denied the regulatory protections established for users of traditional household goods carriers. In denying AMSA's petition, FMSCA explained that it has adopted the underlying rationale of the ICC decisions, namely that the household goods requirements are directed at a discrete segment of the transportation industry that is service oriented. But, because carriers such as PODS are customer-packed, loaded and unloaded, the service aspect is missing. The FMSCA also explained that there is no evidence that Congress intended to change the longstanding treatment of household goods transportation, which is more service oriented than carriers of property. *Id.* at 2.

²Household goods in use also includes transportation "arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his dwelling." 52 Pa. Code § 21.1.

³The ICC has since been dissolved and its functions have been transferred to the United States Department of Transportation (DOT). The DOT considers ICC orders to have precedential effect. *See Interstate Commerce Comm'n Termination Act of 1995*, Pub. L. 104-88, § 204, 109 Stat. 803 (1995).

Federal case law also supports the FMSCA's decision to regulate PODS as carriers of property. See *Hath v. Alleghany Color Corp.*, 369 F. Supp. 2d 1116 (D. Ariz. 2005).

Additionally, in 2005, Congress amended its statutory definition of a household goods motor carrier to exclude services by PODS carriers.⁴ The Federal Highway Authorization bill has adopted this definition. See *Safe, Accounting, Flexible, Efficient Transportation Equity Act: A Legacy for USERS*, H.R. 3, 109th Congress § 4202 (2005). Therefore, the decisions of the DOT/ICC, Federal case law and federal statutes interpret PODS-type carriers to be excluded from household goods regulatory requirements because of the nature of the service provided.

b. Other States

A number of other states exclude PODS-type carriers from being considered household goods carriers.⁵ These states, which consider these carriers to be carriers of property, place emphasis on the nature of the service provided, rather than the type of contents being transported. These states do not believe that the inherent nature of a household goods shipment, which is predominantly a packing and handling service, is present since the individual customer packs and seals their goods. The Commission concurs with this view. The transportation of household goods is a more personal service that includes entry into the customer's residence, packing of the customer's household goods, loading the household goods into the truck, transport to another residence, entry into the other residence, and subsequent unloading and unpacking. The personal nature of this service warrants greater regulatory oversight to protect the public interest. In contrast, the PODS-type service is more akin to the transportation of property in that the only service provided, in most cases, is transportation of the customer's property or household goods.

c. Exclusions

The existing regulation at 52 Pa. Code § 21.1 includes as a "household goods in use carrier" the "transportation of property from a factory or store when the property is purchased by the household with intent to use in his dwelling." *Id.* Thus, the current regulation covers instances such as when a buyer purchases a large application or furniture from a department store, and then arranges for the department store to deliver the item to his/her dwelling. The current regulation exists in keeping with Federal counterpart, 49 U.S.C.A. § 13102(10), as it existed prior to the 1999 amendments, which changed the definition for *including* moves from a factory or store, to *excluding* moves from a factory or store.⁶ The Commission believes a similar amendment to 52 Pa. Code § 21.1 is in order, as we no longer intend to require household goods authority for such deliveries.

Therefore, the regulation as amended in Annex A specifically excludes the transportation of property from a factory or store when property is purchased by the

householder with intent to use in his dwelling. It is intent of the Commission not to require such factories or stores to have a household goods certificate for such moves, even in the instance where an agent or employee loads and unloads the items.

CONCLUSION

The Commission, therefore, formally commences its rulemaking process to amend its existing regulations at 52 Pa. Code § 21.1 defining the term "Household goods in use carrier" consistent with Annex A to this Order. The proposed amended definition will categorize PODS-type services as transportation of property irrespective of the contents of the move, so long as the only service provided is the transportation of property from one location to another. If, however, a company such as PODS provides packing and unpacking and/or loading and unloading services, it will still be required to have a certificate as a household goods in use carrier. The Commission seeks comments from all interested parties on this proposed regulation amendment, which is found at Annex A to this Order.

Accordingly, under sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501; 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 in 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 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 in 4 Pa. Code §§ 7.231—7.234, we are considering adopting the proposed amendment set forth in Annex A, *therefore*,

It Is Ordered that:

1. A proposed rulemaking be opened to consider the proposed amendment set forth in Annex A.

2. The Secretary shall submit this proposed 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. The Secretary shall submit this proposed rulemaking order and Annex A for review and comments to the IRRC and the Legislative Standing Committees.

4. The Secretary shall certify this proposed rulemaking order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*. The Secretary shall specify publication of the Order in accordance with 45 Pa.C.S. § 727.

5. An original and 15 copies of any written comments referencing the docket number of the proposed amendment be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265.

6. A copy of this proposed rulemaking order and Annex A shall be served on the Office of Trial Staff, the Office of Consumer Advocate, and the Office of Small Business Advocate, the Tri-State Household Goods Tariff Conference, the Pennsylvania Moving and Storage Association, and all carriers currently holding Household Goods authority from the Commission.

7. The contact person for this proposed rulemaking is Adam D. Young, Assistant Counsel, Law Bureau, (717) 772-8582. Alternate formats of this document are available to persons with disabilities and may be obtained by

⁴The term does not include a motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual (other than an employee or agent of the motor carrier)." 49 U.S.C.A. § 13102, (1995), amended by 49 U.S.C.A. § 13102(12)(C)(Supp. 2005).

⁵Based on staff's contacts with other state utility commissions, the following states have determined that PODS-type carriers are excluded from the type of regulation imposed on household goods carriers: Alabama, Idaho, Indiana, Iowa, Massachusetts, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Dakota, Virginia, and Washington.

⁶1999 Amendments. Par. (10)(A). Pub. L. 106-159, § 209(a), struck out, "including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling," and inserted, "except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder."

contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4579.

By the Commission,

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-262. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

CHAPTER 21. GENERAL PROVISIONS

§ 21.1. Definitions.

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

* * * * *

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

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

(ii) Arranged and paid for by another party.]

(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.

* * * * *

[Pa.B. Doc. No. 08-1846. Filed for public inspection October 10, 2008, 9:00 a.m.]
