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PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
http://www.irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

January 25, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Building, 400 North Street
2nd Floor, North Wing
Harrisburg, PA 17120

Re: Regulation #57-317 (IRRC #3185) (L-2017-2600599)
Pennsylvania Public Utility Commission
Motor Carrier Age Requirement

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2018 JAN 26 AM 10:23
PA PUC
SECRETARY'S BUREAU

Dear Secretary Chiavetta:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Very truly yours,

David Sumner
Executive Director

sfh

Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Robert W. Godshall, Majority Chairman, House Consumer Affairs Committee
Honorable Thomas R. Caltagirone, Minority Chairman, House Consumer Affairs Committee
Amy Elliott, Esq., Office of Attorney General
Marisa G.Z. Lehr, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-317 (IRRC #3185)

Motor Carrier Age Requirement

January 25, 2018

We submit for your consideration the following comments on the proposed rulemaking published in the November 25, 2017 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. Intent of the amendments. – Clarity; Reasonableness; Economic impact.

The Executive Summary of the Preamble explains the intent of the proposed regulation:

The Pennsylvania Public Utility Commission's **current regulations require that drivers of paratransit vehicles be at least 21 years old**. The Department of Health oversees emergency medical transportation and allows drivers 18 years and older to operate ambulances, if the drivers have proper training and certification. Many ambulance companies also operate paratransit service and cannot utilize the under 21 year-old ambulance driver in their paratransit service. This has caused operation and hiring problems for these companies. **The Pennsylvania Public Utility Commission has granted several waivers with respect to the 21 year age requirement to paratransit operators so that ambulance drivers under 21 may also operate paratransit vehicles.** 66 Pa.C.S. § 501. **This proposed rulemaking reduces the minimum age requirement for paratransit drivers to 18 years of age under limited circumstances.**
[Emphasis added.]

We agree with the PUC's stated intent to reduce the minimum age requirement to 18 years of age for properly qualified drivers. This comment is directed to the proposed wording of amendments shown in Annex A of the proposed regulation.

The PUC proposes amending Section 29.503 of existing regulation by adding an exception to the existing minimum age 21 requirement as Subsection (b). Subsection (b) states, in part:

(b) A common or contract carrier providing paratransit service may permit a person to operate a paratransit vehicle in its authorized service if that person is at least 18 years of age. All of the following conditions shall be met:

The conditions include certification as an Emergency Medical Services Vehicle Operator (EMSVO).

The concern is that the exception in Subsection (b) is not limited to drivers under 21 years of age. While we do not believe this was the PUC's intent, the wording of Annex A in the proposed regulation would require all drivers to have EMSVO certification, including current drivers over 21. For the final regulation, we recommend that the PUC amend Annex A to clearly implement its stated intent.

2. Department of Health (Department) statute and regulations – Consistency with statute; Protection of the Public Health, Safety and Welfare; Reasonableness; Feasibility; Implementation procedures.

Subsection (b) lists four conditions a person at least 18 years of age must meet to operate a vehicle, including EMSVO certification by the Department. Below are our concerns relating to reliance on Department statute and regulations.

Disqualification

The Department's statute includes provisions relating to discipline of a driver including:

- Grounds for suspension (35 Pa. C.S. § 8122(d));
- Suspension of certification ((35 Pa. C.S. § 8122(e));
- Reporting responsibilities and automatic suspension (35 Pa. C.S. § 8122(f)); and
- Suspension of certification (35 Pa. C.S. § 8123), including temporary suspensions and automatic suspensions.

These provisions include many safety provisions relating to reckless driving, driving under the influence of alcohol or drugs, and requiring a driver to report to the Department when their driver's license is suspended for a conviction for reckless driving, a felony, or a misdemeanor. We also note that 35 Pa. C.S. § 8123(a) states, in part:

The department may temporarily suspend the certification of an EMS provider or EMS vehicle operator without a hearing if the department determines that the person is a clear and immediate danger to the public health and safety.

By statute, the Department has broad discretion to suspend the driving privileges of dangerous drivers. However, how would the PUC know whether one of the drivers under its jurisdiction had driving privileges suspended by the Department? The PUC should explain how its adoption of Department requirements adequately protects the public from dangerous drivers under the PUC's jurisdiction.

Driver history and criminal history

The PUC regulation would establish different requirements for classes of drivers regarding the record check of the driver's history and criminal history and what actions would disqualify a driver. The three classes of drivers and qualifications are:

- **Common or contract carrier drivers at least 18 years of age with EMSVO certification**, under Paragraph (b)(1), must meet the Department's requirements "under 35 Pa.C.S. § 8122 (relating to emergency medical services vehicle operators) and 28 Pa. Code §§ 1023.21—1023.34 (relating to EMS providers and vehicle operators). These requirements are thorough, specifically addressing convictions for driving under the influence of alcohol or drugs, reckless driving, moving traffic violations and driver license suspensions. Additionally, under 35 Pa.C.S. § 8122(f), an EMSVO must report to the Department "a suspension of that person's driver's license or a conviction of reckless driving, a felony, a misdemeanor or any other crime that is not a summary offense or equivalent."
- **Common or contract carrier drivers at least 21 years of age** under existing PUC regulation, must have a driver history check under 52 Pa. Code § 29.504(a), but this subsection does not specify what transgressions in the history would disqualify a driver. Carriers are also required to obtain a driver's criminal history under 52 Pa. Code § 29.505(a), but disqualification under Paragraph (3) is limited to felony and misdemeanor convictions and by the vague phrase "to the extent the conviction relates adversely to that person's suitability to provide service safely and legally."
- **Call or demand and limousine drivers**, under 52 Pa. Code § 29.504(b)(1), must have a driver history check that includes disqualification for moving violations and major violations. They are also subject to disqualification if a criminal background check shows the applicant was convicted of any one of nine specific crimes.

Given that all of these drivers use public roads, we question why the PUC requirements vary for different driver classifications and ultimately how these provisions adequately protect the public from dangerous drivers. We note that since Subsection (b), as written, would subject all drivers to EMSVO certification, the requirements for checking driver history and criminal history would significantly change. We recommend that the PUC review its requirements for driver history checks, criminal history checks and disqualifications. In the final submittal, the PUC should explain how these standards adequately protect the public and are in the public interest. To the extent that requirements vary between driver classifications, the PUC should explain why these requirements are appropriate for each driver classification and why the requirements should vary.

Paragraph (b)(1)

This paragraph states:

The person shall be certified as an emergency medical services vehicle operator (EMSVO) by the Department of Health (Department) after meeting the requirements under 35 Pa.C.S. § 8122 (relating to emergency medical services

vehicle operators) and 28 Pa. Code §§ 1023.21—1023.34 (relating to EMS providers and vehicle operators).

We have four concerns with Paragraph (b)(1). First, Paragraph (b)(1) states a person shall be certified by the Department “after meeting the requirements under 35 Pa.C.S. § 8122 (relating to emergency medical services vehicle operators) and 28 Pa. Code §§ 1023.21—1023.34 (relating to EMS providers and vehicle operators).” The intent of including this phrase in PUC regulation is not clear. Does the PUC intend to accept Department certification or does the PUC also intend to review whether a person met 35 Pa.C.S. § 8122 and 28 Pa. Code §§ 1023.21—1023.34? This phrase should be deleted or amended in the final regulation.

Second, 35 Pa.C.S. § 8122(b) *Registration* states an EMSVO’s certification must additionally be registered and an operator “may not operate a ground EMS vehicle unless the certification is currently registered.” Why does the PUC regulation allow persons to drive after meeting “certification” requirements when, by statute, the Department cannot allow a certified person to drive until after the certification is registered? This inconsistency should be reconciled in the final regulation.

Third, Paragraph (b)(1) requires a driver to meet the Department’s requirements under “28 Pa. Code §§ 1023.21 - 1023.34 (relating to EMS providers and vehicle operators).” These requirements include many provisions unrelated to driving, such as scope of practice and continuing education. The scope of the cross-reference should be limited to requirements that establish training to safely drive a vehicle.

Fourth, relating to registration, 35 Pa.C.S. § 8122(b) treats “Quick Response Service” (QRS) differently than EMSVO, in that a QRS is required to be certified but does not have to be registered. The regulation should address the status of a certified QRS to drive under the PUC’s jurisdiction.

Paragraph (b)(2)

This paragraph states:

The person shall carry the Department-issued EMSVO certification on board while operating a paratransit vehicle.

It is not clear what specific documentation the person must carry. Is this the identification issued under the Department’s 28 Pa. Code § 1023.21(h)? The regulation should cross-reference the appropriate provision to clarify how to comply with the PUC’s regulation. Additionally, the description of the document in the PUC regulation should be consistent with the Department regulation which requires “a card or certificate issued by the Department that shows current registration.” [Emphasis added.]

Paragraph (b)(3)

This paragraph states:

The carrier shall comply with all applicable Department regulations and maintain records for 4 years to prove each person's EMSVO certification. The records must be available for inspection by Commission staff upon request.

We have three concerns. First, this provision directs PUC carriers to comply with another agency's regulations. How could the PUC enforce Department regulations and under what authority? This provision should be deleted. Alternatively, the PUC should rewrite this provision to better explain its purpose and how it would be enforced.

Second, this sentence is vague by requiring compliance with "all applicable" Department regulations. It is not clear how to comply with this requirement because it is not clear who determines which Department regulations are applicable. The regulation should cross-reference the specific Department regulation to be complied with.

Third, this provision begins by addressing compliance with Department regulations and then addresses record requirements. It is not clear how these requirements are related or even if they are related. These directives should be expressed separately for clarity. Alternatively, the PUC should explain how these requirements are related.

3. Paragraph (b)(4) – Protection of the public health, safety and welfare; Clarity.

This paragraph states:

The carrier shall immediately notify the Commission's Bureau of Technical Utility Services of an accident involving a paratransit driver who is under 21 years of age, regardless of the severity of the accident.

We have two concerns. First, while we support notification of an accident, we again express our concern that the regulation does not clearly require reporting of driving-related violations such as moving violations, reckless driving and driving under the influence of alcohol or drugs.

Second, the word "immediately" is vague. It should be replaced by a specific time period for reporting.

4. Regulatory Analysis Form (RAF). – Compliance with the Regulatory Review Act and regulations of the Commission.

RAF Question 12

RAF Question 12 asks how this regulation compares with other states and how the regulation will affect Pennsylvania's ability to compete with other states. The response does not include a comparison to other states. What are the age restrictions in other states? We recommend developing a direct and thorough response to RAF Question 12.

RAF Questions 18 through 24

The PUC responses to these RAF questions include almost no dollar estimates, and where a dollar estimate is included, it is not reflected consistently throughout the responses. As examples, we note the following:

- The response to RAF 19 states that petitioning the PUC for a waiver costs over \$500. However, that savings to the regulated community is not reflected in the response to RAF 23.
- The RAF 21 response explains a reduction of workload for state government, but does not provide “a specific estimate of the costs and/or savings to the state government” as requested. Related to this concern, why are savings to state government “N/A” in response to RAF 23?
- Why is the response to RAF 23a “N/A”?
- RAF Question 24(b) asks for an economic impact statement that includes projected administrative costs for compliance. The response does not provide a cost estimate.
- What is the cost to acquire and maintain EMSVO certification?

The PUC should include as many dollar estimates in its RAF responses as possible and apply them consistently. If a cost is not quantifiable or not applicable, the PUC should explain why. The PUC should review and amend its responses to RAF 18 through 24 so that we can better evaluate whether the final regulation is in the public interest.

5. Miscellaneous clarity.

Subsection (a)

As amended, Subsection (a) would state:

Except as provided in subsection (b), a common or contract carrier may not permit a person to operate a vehicle in its authorized service unless that person is at least 21 years of age.

The wording lacks clarity because it uses an exception, and the age requirement is expressed in the negative. See *Pennsylvania Code and Bulletin Style Manual*, Chapter 8. We recommend rewriting Subsection (a).

Content of Paragraphs (b)(2) to (4)

These provisions are under Section 29.503. *Age restrictions*, but their content does not relate to age restrictions. We recommend moving these provisions elsewhere in the regulation.