

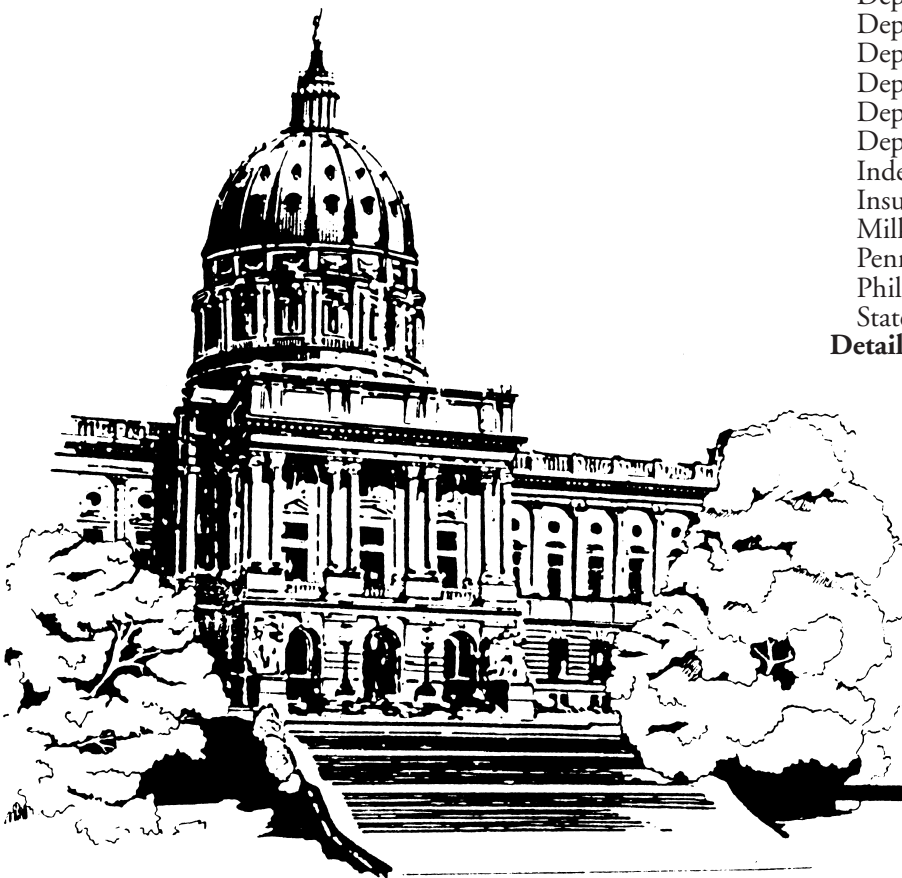
PENNSYLVANIA BULLETIN

Volume 49
Saturday, February 2, 2019 • Harrisburg, PA
Number 5
Pages 431—586

Agencies in this issue

The Governor
The Courts
Bureau of Professional and Occupational Affairs
Delaware River Basin Commission
Department of Banking and Securities
Department of Education
Department of Environmental Protection
Department of General Services
Department of Health
Department of Labor and Industry
Department of Revenue
Department of Transportation
Independent Regulatory Review Commission
Insurance Department
Milk Marketing Board
Pennsylvania Public Utility Commission
Philadelphia Parking Authority
State Board of Nursing

Detailed list of contents appears inside.



RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 29]

[L-2017-2600599]

Motor Carrier Age Requirement

The Pennsylvania Public Utility Commission, on June 14, 2018, adopted a final rulemaking order to amend § 29.503 (relating to age restrictions) for consistency with Department of Health regulations by reducing the minimum age requirement for paratransit drivers from 21 years of age to 18 years of age in limited circumstances.

Executive Summary

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 final-form rulemaking reduces the minimum age requirement for paratransit drivers to 18 years of age under limited circumstances.

Public Meeting held
June 14, 2018

Commissioners Present: Gladys M. Brown, Chairperson; Andrew G. Place, Vice Chairperson; Norman J. Kennard; David W. Sweet; John F. Coleman, Jr.

Final Rulemaking Re Motor Carrier Age Requirement,
52 Pa. Code Chapter 29; L-2017-2600599

Final Rulemaking Order

By the Commission:

On July 13, 2017, we issued a Proposed Rulemaking Order (PRO) seeking to amend our regulation governing the minimum driver-age requirement for paratransit drivers. See 52 Pa. Code § 29.503. The impetus for this change is that the Department of Health's (DOH) minimum age requirement for ambulance drivers is 18 years of age while the Commission requires paratransit drivers to be 21 years of age. As a result of the inconsistency between the DOH's age requirement for ambulance drivers and the Commission's minimum age requirement for paratransit drivers, the Commission has granted several petitions for waiver of Section 29.503 to accommodate paratransit service providers that also provide ambulance service, allowing these providers to utilize drivers younger than 21 years old if those drivers meet the DOH licensing requirements. The update to Section 29.503 reduces the minimum age requirement for paratransit drivers in limited circumstances.

The PRO was published in the *Pennsylvania Bulletin* on November 25, 2017. 47 Pa.B. 7235. Comments to the PRO were filed by Greater Valley Emergency Medical

Services¹ and the Independent Regulatory Review Commission (IRRC). Having reviewed the comments, we now address the following changes to our regulation at 52 Pa. Code § 29.503.

Summary of the PRO

The Commission's regulations currently require, *inter alia*, that paratransit drivers be 21 years of age or older.² We explained that the 21-year age requirement, established in 2006, was due to statistically documented increases in accidents involving drivers under the age of 21. 36 Pa.B. 4181 (August 5, 2006).

We opined in the PRO that there are many organizations that provide non-emergency paratransit service that also provide emergency medical transportation (dual-service companies). While the Commission's regulations prohibit paratransit carriers from employing drivers under 21 years of age, the DOH's regulations permit drivers at least 18 years of age to operate emergency medical vehicles, if those drivers meet certain criteria. We noted that the inconsistency between the Commission's age requirements for paratransit drivers and the DOH's age requirements for ambulance drivers puts these dual-service companies in a cumbersome position for hiring prospective drivers.

Historically, dual-service companies that employ drivers under 21 years of age as ambulance drivers have filed waiver petitions with the Commission to allow those drivers to operate vehicles in non-emergency paratransit service. To avert the necessity of filing petitions, the Commission sought to change the minimum-driving age for paratransit drivers, in limited circumstances, to 18 years.

We proposed amending Section 29.503 to include an exception to the 21-year requirement. In the PRO we stated that if a driver is at least 18 years old but under 21, the driver will be eligible to operate a non-emergency paratransit vehicle if the DOH has certified the driver to operate an emergency medical services vehicle (EMSV) pursuant to Section 8122 of the Emergency Medical Services System Act, 35 Pa.C.S. §§ 8101 et seq., and the DOH's regulations at 28 Pa. Code Chapter 1023, Subchapter B. The PRO provided that drivers under the age of 21 would be required to carry their EMSV operator's certificate issued by the DOH on board. An under-21 paratransit vehicle driver would also have to comply with all other applicable paratransit driver regulations. Finally, the PRO provided that the paratransit carriers would be required to (1) maintain records to prove driver certification, and (2) notify the Commission of any accident involving a paratransit vehicle driver under the age of 21.

Discussion

The Commission has reviewed the comments filed in this proceeding. Based upon those comments, the Commission has determined that it will proceed with the proposal in the PRO, with modifications. We first note that the IRRC agrees with our intent to reduce the minimum-age requirement to 18 years of age for properly

¹ Greater Valley Emergency Medical Services generally supported the Commission's PRO but did not offer any substantive comments.

² The 21-year age requirement is not unique to paratransit but extends to all passenger carriers.

qualified drivers. However, the IRRC questions whether the proposed regulation should be modified to provide greater clarity since it may be susceptible to misinterpretation. We agree with the IRRC's comments and have modified the PRO to provide more clarity. Specifically, the Commission has amended the language in Subsection (a) and (b) to clearly indicate that only drivers aged 18 to 21 years are required to register with the DOH as certified EMSVOs to qualify as a paratransit driver.

The IRRC also questions how the Commission will know when an under-21 paratransit driver has their EMSVO certification suspended or revoked by the DOH. The Commission notes that Subsection (b)(3) directs paratransit carriers to maintain records on its drivers' EMSVO certification and those records must be available for inspection by Commission staff upon request. If an under-21 paratransit driver has their EMSVO certification revoked, the carrier is required to maintain this documentation and make it available to the Commission upon request. The Commission would become apprised of such suspension or revocation upon inspection of a dual-service carrier's driver records.

The IRRC also noted that Subsection (b) creates a third class of drivers and qualifications under the Commission's regulations. (IRRC Comments 3). The IRRC questions whether creating another qualification for paratransit drivers aged 18 to 21 adequately protects the public and whether that it is in the public interest.

With respect to the classification the IRRC refers to as "common or contract carrier drivers at least 18 years of age with EMSVO certification", this exception only applies to paratransit drivers; not all types of common or contract carriers. The Commission refers to the DOH's driver qualifications for under-21 paratransit drivers to assure they provide safe transportation to the public. While statistics show that drivers under 21 have more accidents, the additional requirements for the EMSVO certification assures that drivers under 21 that are employed as paratransit drivers can provide safe transportation to the public. The remaining classes of drivers are required to be at least 21 years of age because this group has statistically documented fewer accidents. As such, the Commission believes that these classes will adequately protect the public and are in the public interest.³

The IRRC comments that our PRO appears to infer that DOH regulations would be enforced by the Commission because of the reference to DOH regulations and directing compliance therewith. That was not the intent of the regulation. Rather, the intent was for the Commission to accept DOH registration of EMSVO certification. Therefore, we will modify the proposed regulation to make this point clear. Specifically, the Commission will delete the reference to the requirements under 35 Pa.C.S. § 8122 and 28 Pa. Code §§ 1023.2—1023.34, since it is sufficient that the DOH has registered an EMSVO certification. We will also add language to make it clear that an under-21 paratransit driver must have his or her EMSVO certification registered with the DOH pursuant to 35 Pa.C.S. § 8122. The Commission notes that EMSVO certification by itself is not sufficient for an under-21 paratransit driver because registering as a certified EMSVO with the DOH ensures that the under-21

paratransit driver has been properly vetted by the DOH under its applicable regulations.⁴

The IRRC questions whether the Commission's reference to "Department-issued EMSVO certification" is in reference to the identification issued under the DOH's 28 Pa. Code § 1023.21(h). The IRRC recommends that we include a cross reference to the appropriate provision to clarify how to comply with the Commission's regulation. The Commission will include a cross reference to 28 Pa. Code § 1023.21(h) to clarify how a paratransit driver under 21 years of age complies with the Commission's regulation.

The IRRC raises concerns with the PRO referencing another agency's regulations in Subsection (b)(3). The IRRC recommends that this provision should be deleted or rewritten to better explain its purpose and how it would be enforced. (IRRC Comments at 5).

The Commission agrees that it does not have the authority to enforce the DOH's regulations and amends the language in Subsection (b)(3) from "[t]he carrier shall comply with all applicable DOH regulations" to "[t]he carrier shall ensure compliance with all applicable DOH regulations." The Commission's intention is to ensure that paratransit drivers under 21 years of age remain registered with the DOH as certified EMSVOs, and this will be accomplished by requiring paratransit carriers to maintain records proving each under-21 driver's EMSVO registration.

The IRRC also commented that Subsections (b)(2)—(4) should be moved to a separate section because they do not appear to apply to EMSVO driver requirements. However, the Commission believes creating a third subsection would make this regulation overly complex for its basic purpose. Subsection (b) contains all the eligibility requirements for EMSVO drivers under 21 as well as the requirements attendant to the carriers without having to reference another subsection.

The IRRC also comments that the reporting of accidents, however minor, should also clearly include reporting of driving-related violations such as moving violations, reckless driving and driving under the influence of alcohol and/or drugs. (IRRC Comments at 5). Additionally, the time for reporting accidents is vague and the word "immediately" in Subsection (b)(4) should be replaced with a specific period for reporting.

The Commission agrees that the regulation should include driving-related violations and amends it to include driving-related violations such as moving violations, reckless driving and driving under the influence. The regulation also expressly states that a paratransit carrier must notify the Commission's Bureau of Technical Utility Services within three calendar days of the event.

Conclusion

Accordingly, pursuant to 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. §§ 1201-1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P.S.

⁴ There is no need to address Quick Response Service (QRS) in the regulation because the Commission's regulation will specify that in order for an under-21 paratransit driver to qualify that driver must have his or her EMSVO certification registered with the DOH. Section 8122 of the Emergency Medical Services Systems Act does not require EMSVOs that work for a carrier that exclusively operates QRS to register their EMSVO certification with the DOH. Accordingly, QRS does not have to be addressed.

³ We note that to the extent the IRRC's comments address 29.504(a) and 29.504(b)(1), those issues are beyond the scope of this rulemaking, which is limited to paratransit drivers under the age of 21.

§ 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—7.234, we are considering adopting the final regulations set forth in Annex A, attached hereto; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission are amended to read as set forth in Annex A.

2. The Law Bureau shall submit this order and Annex A to the Office of Attorney General for review as to form and legality.

3. The Law Bureau shall submit this order and Annex A, to the Governor’s Budget Office for review of fiscal impact.

4. The Law Bureau shall submit this order and Annex A for review and approval by the designated standing committees of both Houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

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

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

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

8. The contact person is 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 Coordinator, (717) 772-4597.

ROSEMARY CHIAVETTA,
Secretary

(Editor’s Note: See 48 Pa.B. 7494 (December 1, 2018) for IRRC’s approval order.)

Fiscal Note: Fiscal Note 57-317 remains valid for the final adoption of the subject regulation.

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART 1. PUBLIC UTILITY COMMISSION
Subpart B. CARRIERS OF PASSENGERS OR PROPERTY
CHAPTER 29. MOTOR CARRIERS OF PASSENGERS
Subchapter F. DRIVER REGULATIONS

§ 29.503. Age restrictions.

(a) A common or contract carrier may permit a person to operate a vehicle in its authorized service if that person is at least 21 years of age.

(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 but under 21 years of age if the following conditions are met:

(1) The person shall be registered as a certified emergency medical services vehicle operator (EMSVO) with the Department of Health (Department).

(2) The person shall carry the Department-issued registration of their EMSVO certification on board while operating a paratransit vehicle under 28 Pa. Code § 1023.21(h) (relating to general rights and responsibilities).

(3) The carrier shall verify that the paratransit driver is in good standing with the Department and maintain records for 4 years to prove each person’s EMSVO certificate registration. The records must be available for inspection by Commission staff upon request.

(4) The carrier shall notify the Commission’s Bureau of Technical Utility Services within 3 calendar days of the occurrence of the following events involving a paratransit driver who is under 21 years of age:

- (i) an accident, regardless of the severity of the accident.
- (ii) a driving-related violation such as a moving violation.
- (iii) reckless driving.
- (iv) driving under the influence of alcohol or drugs.

[Pa.B. Doc. No. 19-141. Filed for public inspection February 1, 2019, 9:00 a.m.]