

# RULES AND REGULATIONS

## Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
[52 PA. CODE CHS. 29—31]

[L-950111]

### Rescission of Obsolete Regulations Regarding Motor Carriers; Amendment of Medallion Program

The Pennsylvania Public Utility Commission (Commission) on January 16, 1997, adopted a final order to rescind obsolete regulations regarding motor carriers and to supplement regulations regarding taxi service in cities of the first class. The contact person is John Herzog, Assistant Counsel, Bureau of Transportation and Safety, Legal Division, (717) 783-3713.

#### *Executive Summary*

By Order entered February 5, 1996, the Commission initiated a proposed rulemaking to rescind obsolete regulations regarding motor carriers. The Commission also proposed amending two regulations. The first amendment prohibited taxi drivers in cities of the first class from discriminating against a person with a disability. The second amendment required motor carriers of property to ensure that the equipment they are using has a valid inspection decal or complies with Federal inspection requirements.

The Independent Regulatory Review Commission (IRRC) was the sole commentator. In response to those comments, the Commission amended its proposed amendments by more clearly delineating a taxi driver's responsibilities when called upon to render service to a person with a disability. Also, the Commission rescinded its original proposal to delete its hazardous materials regulation. This regulation has no substantive content, but rather requires carriers to comply with United States Department of Transportation and Pennsylvania Department of Transportation regulations in transporting hazardous materials. The Commission retained this regulation since it provides it with an independent basis for prosecution of hazardous materials violations.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 4, 1997, 1997, the Commission submitted a copy of the final rulemaking, which was published as proposed at 26 Pa.B. 2808 (June 15, 1996) to IRRC and the Chairpersons of House Committee Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Commission also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Commission has considered comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House Committee on Consumer Affairs on April 24, 1997, were approved by the Senate Committee on Consumer Protection and Professional Licensure on April 15,

1997, and were approved by IRRC on May 1, 1997, in accordance with section 5(c) of the Regulatory Review Act.

*Commissioners Present:* John M. Quain, Chairperson; Lisa Crutchfield, Vice Chairperson; John Hanger; David W. Rolka; Robert K. Bloom

Public meeting held  
January 16, 1997

#### **Order**

By Order entered February 5, 1996, the Commission initiated a proposed rulemaking to rescind obsolete regulations regarding motor carriers and to supplement its regulations regarding taxi service in cities of the first class. The purpose of the rulemaking was to clarify, simplify and remove excessive and burdensome requirements from our motor carrier regulations. Also, we proposed amending our regulations regarding taxi service in cities of the first class to include a prohibition against drivers refusing service to persons with disabilities.

On April 29, 1996, the Office of Attorney General issued its approval of the proposed regulations as to form and legality. On May 30, 1996, copies of the proposed regulations were delivered for review and comment to the designated standing committees of both houses of the General Assembly and IRRC. The proposed rulemaking was published in the June 15, 1996 edition of the *Pennsylvania Bulletin*, 26 Pa.B. 2808.

The only comments to the proposed rulemaking were filed by IRRC. First, IRRC comments that the Americans with Disabilities Act (ADA), 42 U.S.C.A. §§ 12101—12213, prohibits providers of taxi service from discriminating against persons with disabilities. IRRC suggests that the Commission add language to the proposed regulation to detail the requirements that will be imposed on taxicab operators. Specifically, IRRC proposes that the Commission require a taxicab operator to stop and determine if the service requested by a disabled person can be reasonably accommodated by that driver's vehicle. If not, IRRC proposes excusing the operator from providing service but requiring the operator to immediately call a dispatcher to arrange for service by the closest vehicle equipped to handle the customer's request and to advise the customer of the status before departing. Further, IRRC suggests the Commission expand the nondiscrimination provision to taxicab operators in other areas of this Commonwealth and to other types of transportation providers; for example, group and party carriers and limousine carriers.

In Chairperson Quain's Motion which resulted in the inclusion of the antidiscrimination provision in this rulemaking, the applicability of the ADA to taxi service was recognized. Specifically, the ADA prohibits taxicab operators from discriminating against an individual on the basis of a disability. 42 U.S.C.A. § 12184. Pursuant to the directives of Congress, 42 U.S.C.A. § 12186, the Secretary of Transportation promulgated regulations to carry out the prohibition against discrimination. Specifically, 49 CFR 37.29 sets forth requirements under the ADA for private entities providing taxi service. That provision provides, in relevant part, that providers of taxi service are not required to purchase or lease accessible automobiles. However, when a taxi company purchases or leases a vehicle other than an automobile, that vehicle is required to be accessible, unless the provider demonstrates equivalency as provided at 49 CFR 37.105. A taxi

company is not required to purchase vehicles other than automobiles in order to have a number of accessible vehicles in its fleet. Further, 49 CFR 37.29 provides that a taxi company may not discriminate against individuals with disabilities by actions including, but not limited to, refusing to provide service to individuals who can use taxicabs, refusing to assist in the stowing of mobility devices or charging higher fees for carrying individuals with disabilities. See also, 49 CFR Part 37, App.D.

In the proposed rulemaking, we generically prohibited refusal of service to a person with a disability. We are cognizant of the ADA's impact on this issue and we agree with IRRC that a more detailed explanation of our intent is appropriate. Therefore, we will modify the regulation accordingly.

IRRC also comments on our proposed deletion of § 31.13 concerning transportation of explosives and dangerous commodities. IRRC comments that it was unable to locate any other Commission regulation on this subject and, therefore, deletion of the regulation is inappropriate.

IRRC is correct that the only Commission regulation addressing the transportation of explosives and other dangerous materials is § 31.13. In its current form, § 31.13 does not provide any substantive guidance for transportation of explosives or hazardous materials. Rather, the Commission's regulation requires carriers transporting explosives or hazardous materials to comply with the "laws of the Commonwealth and the regulations of the Interstate Commerce Commission not inconsistent with those laws." Carriers transporting explosives and other hazardous materials must comply with regulations of the United States Department of Transportation, 49 CFR Part 397, and the Department of Transportation, 67 Pa. Code Chapter 403. Therefore, our deletion of § 31.13 would not affect the manner in which carriers must transport hazardous commodities since, regardless of our regulations, carriers must still comply with the regulations of other governmental bodies.

Notwithstanding its lack of substantive content, we have reconsidered our proposed deletion of § 31.13 and have determined to retain this provision, albeit in modified form.<sup>1</sup> Our rationale for retention is that this provision provides the Commission with an independent basis for prosecution. Without this provision, the Commission's regulations would be silent on the transportation of hazardous materials and, therefore, prosecution of a carrier before the Commission for violations of existing hazardous material regulations would be tenuous. We agree with IRRC that this provision should be retained.

Having considered all comments filed to the proposed rulemaking, we believe the regulations as set forth in Annex A should be adopted as the final rulemaking. Accordingly, under sections 501, 504—506, 1301 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501, and the Commonwealth Documents Law (45 P. S. § 1201 et seq.), and the regulations promulgated thereunder, we amend 52 Pa. Code Chapters 29—31; *Therefore,*

*It Is Ordered That:*

1. The regulations of the Commission, 52 Pa. Code Chapters 29—31, are amended by amending §§ 29.71, 30.75, 31.13 and 31.32 and by deleting § 31.14 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

<sup>1</sup> Modification is necessary to accurately reflect changes in nomenclature and the abolition of the Interstate Commerce Commission.

2. The Secretary shall submit this Order and Annex A to the Office of Attorney General for approval as to legality.

3. The Secretary shall submit this Order and Annex A to the Governor's Budget Office for review of fiscal impact.

4. The Secretary shall submit this Order and Annex A for formal review by the designated standing committees of both Houses of the General Assembly, and for formal review by the IRRC.

5. The Secretary shall deposit this Order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. The Secretary shall serve copies of this Order and Annex A upon the commentator.

7. These amendments shall become effective August 25, 1997.

JOHN G. ALFORD,  
*Secretary*

**Fiscal Note:** Fiscal Note 57-167 remains valid for the final adoption of the subject regulations.

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 2490 (May 17, 1997).)

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

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

**CHAPTER 29. MOTOR CARRIERS OF PASSENGERS**

**Subchapter B. COMMON CARRIERS MARKINGS AND POSTING NOTICE**

**§ 29.71. Marking of vehicles.**

(a) *Identification.* A common carrier shall paint or affix on each side of each motor vehicle operated in certificated service by him in letters of at least 2 inches in height and at least 1/2 inch in width, the name or registered insignia, if approved by the Commission, of the carrier and the number of the certificate of public convenience as follows:

"Pa.P.U.C. No. A—"

(b) *Exceptions.*

(1) Subsection (a) does not apply to vehicles owned by another carrier which may be used temporarily in situations arising from accident, breakdown or peak demand.

(2) Subsection (a) does not apply to vehicles operated in luxury limousine service as provided in § 29.333c (relating to vehicle and equipment requirements).

(c) *Numbers.* A common carrier of passengers by taxicab operating more than one taxi shall cause to be painted or affixed a distinguishing number of at least 4 inches in height and at least 1/2 inch in width, in numerical sequence beginning with No. 1, in a conspicuous location on the rear and on each front side where it is clearly distinguishable from the rear and front side of each motor vehicle. If the common carrier operates under the name of an association not certificated by the Commission, there shall also be, in lieu of a separate numbering system, a single numerical sequence for an association and there shall be painted on the taxicab the name

of the association, and the sequential number assigned by the association. The association shall supply the Commission with a current listing of the numbers assigned to each certificated carrier.

**CHAPTER 30. MEDALLION PROGRAM**

**Subchapter F. DRIVER REGULATIONS**

**§ 30.75. Driver standards.**

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(f) *Discrimination prohibited.* A driver may not refuse service to a member of the public on the basis of sex, race, religious preference, nationality, age, point of origin, point of destination or to a person with a disability. A driver shall, when on duty and not engaged, furnish trip service on demand to an orderly person for lawful purposes.

(1) A taxi driver shall stop his vehicle, if not engaged, when hailed by a person with a disability. The driver shall determine if the services requested by the person can be reasonably accommodated by the vehicle.

(i) If the service request can be reasonably accommodated, the driver shall provide the service.

(ii) If the service request cannot be reasonably accommodated, the driver shall call a dispatcher immediately to arrange for service by the closest vehicle available that can accommodate the person's request. The driver shall advise the person of the status before departing.

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**CHAPTER 31. MOTOR CARRIER PROPERTY TRANSPORTATION**

**GENERAL PROVISIONS**

**§ 31.13. Transportation of hazardous materials.**

(a) A common carrier by motor vehicle, and forwarder, when transporting an article or commodity now classified, or which may be classified as a hazardous material under the regulations of the United States Department of

Transportation shall transport the material as provided by the laws of the Commonwealth and the regulations of the Department of Transportation not inconsistent with those laws.

(b) Subsection (a) is subject to changes and modifications that the laws of the Commonwealth or the regulations of the Department of Transportation may provide.

**§ 31.14. (Reserved).**

**COMMON CARRIERS OF PROPERTY BY MOTOR VEHICLE**

**§ 31.32. Equipment.**

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(c) *Augmenting equipment.* The augmenting of equipment shall conform with the following:

\* \* \* \* \*

(4) *Safety inspection of equipment.* It is the duty of the motor carrier, before taking possession of equipment, to ensure that the equipment has a valid State inspection decal or complies with the periodic inspection requirements in § 37.204(7) (relating to adoption of portions of 49 CFR by reference), or to inspect or to have the equipment inspected by a person who is competent and qualified to make an inspection and who has been authorized by the carrier to make the inspection as a representative of the carrier, to ensure that the equipment is in a safe condition to be operated on the highways. The inspection report shall be retained by the motor carrier for at least 1 year. If the inspection discloses that the equipment is not in a safe condition to be operated on the highways, possession thereof may not be taken by the motor carrier. The person making the inspection shall certify the results on a report in the form which follows:

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[Pa.B. Doc. No. 97-1180. Filed for public inspection July 25, 1997, 9:00 a.m.]

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