

PROPOSED RULEMAKING

INSURANCE DEPARTMENT

[31 PA. CODE CH. 167]

Workers' Compensation Act—Provider Fees; Payment for Anesthesia Services

The Insurance Department (Department) proposes to add Chapter 167 (relating to Workers' Compensation Act—provider fees) to read as set forth in Annex A. The proposed rulemaking is made under the general authority of sections 205, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) and section 306(f.1)(3)(i) of the Workers' Compensation Act (act) (77 P. S. § 531(3)(i)).

Purpose

The purpose of this proposed rulemaking is to add Chapter 167, setting the allowance for anesthesia services provided to patients under the act when the allowance utilizes the anesthesia conversion factor. The rate established by § 167.2 (relating to payment for anesthesia services) shall be used for the period from the effective date of adoption of this proposed rulemaking and updated annually thereafter in accordance with 34 Pa. Code § 127.162 (relating to medical fee updates on and after January 1, 1995—new allowances adopted by Commissioner) and section 306(f.1)(3)(ii) of the act.

Section 306(f.1)(3)(i) of the act establishes that compensation to providers of medical services, including anesthesiologists, shall be 113% of the Medicare reimbursement for the medical service or treatment, with the amounts to be modified by annual updates made under a formula in the act. Section 306(f.1)(3)(i) of the act also provides that when the Insurance Commissioner (Commissioner) determines that use of the Medicare reimbursement for a particular provider group or service is not reasonable, the Commissioner may adopt, by regulation, a new allowance. Section 306(f.1)(3)(v) of the act further provides that a Medicare allowance for a particular provider group shall be reviewed for reasonableness whenever the Commissioner determines that the use of the allowance would result in payments that are more than 10% lower than the average level of reimbursement the provider would receive from coordinated care insurers (CCOs), a classification that includes health maintenance organizations (HMOs) and preferred provider organizations under the act. In making the determination as to the reasonableness of an allowance under section 306(f.1)(3)(v) of the act, the Commissioner must consider the extent to which allowances applicable to other providers under Workers' Compensation deviate from the reimbursement those other providers receive from CCOs. In sum, to have an allowance reviewed for reasonableness, a provider group must demonstrate to the Commissioner's satisfaction that the allowance under the Medicare fee schedule is more than 10% lower than the average level of reimbursement that provider specialty receives from the private managed care market, and an allowance will not be found to be unreasonable unless that provider group can clearly demonstrate to the Commissioner's satisfaction through sufficient credible data that this disparity is substantially disproportionate to existing disparities in the allowances for other providers between the Workers' Compensation and private managed care markets.

Preexposure comments from the Insurance Federation of Pennsylvania, Inc. and the Department of Labor and Industry were taken into consideration in the drafting of this proposed rulemaking.

Explanation of the Proposed Rulemaking

In August 1995, the Pennsylvania Society of Anesthesiologists (PSA) filed a petition with the Department seeking to have the Department review the Workers' Compensation anesthesia conversion factor for reasonableness and, ultimately, to have the anesthesia conversion factor adjusted through the issuance of a regulation. The anesthesia conversion factor is an integral part of the formula under which surgical anesthesia services are reimbursed, typically multiplied by a time factor (number of units) and sometimes by other factors to determine compensation for an anesthesia procedure under the Workers' Compensation system.

Over the course of the past 8 years, the PSA submitted substantial amounts of data, including expert reports, and, through counsel, participated in a multitude of meetings with the Department to carry its initial burden of having the anesthesia conversion factor reviewed for reasonableness and to ultimately carry its burden of persuasion to convince the Department that this allowance for anesthesia services was unreasonable. Although the information and data submitted to the Department is confidential under the act, counsel for the PSA has agreed to provide an aggregate summary of the data upon request.

Based on the extensive, credible and persuasive nature of the data and expert reports submitted by the PSA, the Department eventually concluded that the PSA had met the standard required to have the anesthesia conversion factor reviewed for reasonableness. After an extensive and lengthy review process, the Department ultimately determined, based on the quantity and quality of the data presented, that the anesthesia conversion factor under Workers' Compensation was not reasonable in light of the fact that the disparity between anesthesia allowances under the Workers' Compensation and private managed care systems was substantially and patently disproportionate to disparities for other providers.

Among the data and materials considered by the Department in reaching this conclusion were four reports submitted by the PSA providing data and analysis in support of its assertion that the Workers' Compensation allowance for anesthesiologists is not reasonable compared to allowances for other medical specialties. The four reports are:

- *Survey of Anesthesia Reimbursement by Private Managed Care Payors and Comparison to Workers' Compensation Reimbursement* (January, 2001).
- *Reimbursement by HMOs and Comparison to Workers' Compensation Reimbursement for Specialties Other Than Anesthesia* (September 2001).
- *Letter of August 26, 2002, from PSA counsel providing data on reimbursement for non-surgical procedures.*
- *A Comparison of Reimbursement to Anesthesiologists and Other Medical Specialties Under Pennsylvania's Workers' Compensation Program and Private Market Fee Schedules*, prepared by Dennis Olmstead Chief Economist & Vice President of the Division of Practice Economics & Payer Relations for the Pennsylvania Medical Society (June, 2003).

In explaining the Department's decision, it is helpful to discuss the four reports individually.

1. *Survey of Anesthesia Reimbursement by Private Managed Care Payors and Comparison to Workers' Compensation Reimbursement* (January, 2001).

This report focused solely on reimbursements received by anesthesiologists under Workers' Compensation and from managed care payors looking at actual claims. The report included data from all four Workers' Compensation regions, for 27 different payors, from 12 anesthesia practices; 139 claims were reviewed and more than 55 distinct anesthesia conversion factors (by payor and practice) were identified. Only 2 of those 55 distinct conversion factors were less than that used in Workers' Compensation and both were from a single payor, a Medicaid HMO.

The data showed that Workers' Compensation was reimbursing anesthesiologists at about 50% of the level of most managed care payors. The overwhelming predominance of managed care conversion factors were between \$30 and \$55 and, within that, between \$35 and \$45, at a time when Worker's Compensation conversion factors ranged from \$19.55 to \$21.72. Based on this Report, the Department concluded that reimbursement to anesthesiologists satisfied the first statutory criteria—specifically, that the allowance be at least 10% less than the private managed care market—and that the PSA had met the

required burden to have the allowance reviewed for reasonableness. Certain of the other reports subsequently submitted, while they focused on reimbursements received by other specialties under Workers' Compensation and from managed care payors, contained some additional (and consistent) data on reimbursement to anesthesiologists.

2. *Reimbursement by HMOs and Comparison to Workers' Compensation Reimbursement for Specialties Other Than Anesthesia* (September 2001).

This report analyzed claims data on 666 "CPT Code data points" for 4 specialties—namely, cardiology, general surgery, ophthalmology and orthopedics, in three of the four Workers' Compensation regions with data from 11 managed care payors, including the major payors in all areas. A "CPT Code data point" is reimbursement of a CPT code to a distinct provider by a distinct payor. The results for the nonanesthesia specialties were virtually the mirror image of the results for anesthesiologists. While the Workers' Compensation anesthesia conversion was about 50% lower than the common range of private managed care rates (around \$35-\$45), Workers' Compensation was consistently higher, with a range around 50% higher, than the private managed care rates for the four specialties. The data was consistent in every respect among those specialties and entirely inconsistent with the anesthesia data, as the following table summarizes, by region and across specialties.

	<i>Number of CPT Code Data Points for which Workers' Compensation Allowance More than HMO Reimbursement/Total Number Data Points and Percentage</i>		<i>Average Percentage, Workers' Compensation versus HMO Reimbursement</i>
<i>Region 1</i>			
Cardiology	110/133	82.7%	145.97%
General Surgery	62/67	92.5%	165.86%
Ophthalmology	78/103	75.7%	127.49%
Orthopedics	127/144	88.79%	128.15%
Regional Summary	377/447	83.4%	141.87%
<i>Region 2</i>			
Cardiology	46/47	97.87%	152.89%
Ophthalmology	32/37	86.48%	159.70%
Regional Summary	78/84	92.86	156.30%
<i>Region 3</i>			
Cardiology	44/50	88%	198.68%
General Surgery	20/21	95.2%	155.42%
Ophthalmology	18/21	85.7%	158.63%
Orthopedics	40/43	93.02%	190.20%
Regional Summary	122/135	90.37%	175.73%

The column entitled "Average Percentage, Workers' Compensation versus HMO Reimbursement" is calculated for a specialty within a region by summing the percentages from all pertinent claims and dividing by the total number of inputs. The lowest average percentage (by region and specialty) by which Workers' Compensation payments exceeded managed care payments was 28.15% (orthopedics, Region I), while the highest was 98.68% (cardiology, Region III). There were some CPT Code data points (89 out of 666, or 13.4%) for which the managed care rates exceeded Workers' Compensation allowances by 200% to 400%, and a comparable number (99 out of 666, or 14.86%) in which Workers' Compensation allowances exceed managed care rates by 400% or more. For the overwhelming majority of CPT Code data points, however, the ratio of Workers' Compensation allowances to man-

aged care rates fell between 100% and 200% (478 out of 666 or 71.7%).

3. *Letter of August 26, 2002 from PSA counsel providing data on reimbursement for non-surgical procedures.*

At the Department's request, the PSA supplemented its analysis of the data it obtained for the second Report to examine nonsurgical procedures and nonprocedures. This included various Evaluation and Management (E & M) Codes, both generally and as to ophthalmology and cardiology, and pathology and radiology. The results were consistent with those for the four specialties reviewed in the second report. Workers' Compensation paid slightly more than 10% more than the HMOs for all E & M Codes at one large provider system and 58% more at another; approximately 22% more than the HMOs for E & M services provided by ophthalmologists and 11% more than

the HMOs for E & M services provided by cardiologists. Regarding radiology, Workers' Compensation paid approximately 45% more than the HMOs, using data from "chest codes" and those for Diagnostic Ultrasound, head and neck. Analyzing data from the six basic pathology codes, 88300—88309, from all three major HMOs, Workers' Compensation paid approximately 50% more than the HMOs. E & M, radiology and pathology were also looked at in the fourth study with consistent results. This data established that Worker's Compensation payments consistently exceed payments of other payors for two additional "nonsurgical" specialties (radiology and pathology) as well as all medical specialties that rely heavily on E & M codes.

4. *A Comparison of Reimbursement to Anesthesiologists and Other Medical Specialties Under Pennsylvania's Workers' Compensation and Private Market Fee Schedules.*

This report compared reimbursements to anesthesiologists, radiologists, pathologists, E & M Codes, surgery in general and the surgical specialties of dermatology, ENT gastroenterology and OB-GYN for 86 heavily utilized CPT

Codes (surgery—44 codes; radiology—20 codes; pathology—12 codes; and E & M—10 codes). The report compared Workers' Compensation reimbursements for these specialties with those of three Highmark fee schedules—the 5000S (poverty level fee schedule), UCR and Keystone Health Plan West (KHPW). 5000S is not a managed care plan but was included because it is a plan available only to persons whose incomes fall within established limitations and, as a consequence, has among the lowest reimbursement levels of Highmark fee schedules. The KHPW is a managed care network operated by Highmark that serves 29 counties in the western portion of this Commonwealth (Workers' Compensation Region II) and is the largest HMO in those counties by market share. The UCR schedule is also a nonmanaged care system and is considered to have relatively higher reimbursements.

The results confirmed the results of the first report that Workers' Compensation reimbursement to anesthesiologists was substantially less than that of managed care payors. The following chart summarizes the data with respect to anesthesiologists:

	Region I	Region II	Region III	Region IV	Average
Workers' Compensation	\$23.98	\$23.83	\$22.93	\$21.37	\$23.03
5000S	\$37	\$37	\$37	\$37	\$37
KHPW		\$42			
UCR	\$42	\$42	\$42	\$42	\$42
Percentage Difference, WC and 5000S	(35.2%)	(35.6%)	(38%)	(42.2%)	(37.8%)
Percentage Difference, WC and KHPW		(43.3%)			
Percentage Difference, WC and UCR	(42.9%)	(43.3%)	(45.4%)	(49.1%)	(45.2%)

Even the 5000S low income fee schedule reimbursed anesthesiologists substantially better than did Workers' Compensation. The KHPW reimbursement was approximately 43% greater (\$42 versus \$23.83) than Workers' Compensation.

The findings as to nonanesthesia specialties, including those performing surgery, those being reimbursed under E & M Codes and those (pathologists and radiologists) who primarily perform nonsurgical procedures were entirely consistent with the findings of the second and third reports. Almost without exception, Workers' Compensation reimbursed those physician specialties at levels above the managed care rates. Specifically, Workers' Compensation on average paid 41.9% more than the KHPW fee schedule for nonanesthesia codes in Workers' Compensation Region II; 74.8% and 60.5% greater than the 5000S fee schedule in Regions I and IV, respectively; and 47.1% and 35% greater than the UCR rate in Regions I and IV, respectively.

To summarize the previous information, in reviewing the PSA's initial petition and conducting its ultimate review, the Department considered data that included major HMOs; numerous codes for nonanesthesia specialties (cardiology, orthopedics, ophthalmology and surgery); surgical specialties (general surgery, ENT, dermatology and OB-GYN); nonsurgical procedures (pathology and radiology); and evaluative care (E & M). The data was very consistent from specialty to specialty and region-to-region in showing a consistent relationship between Workers' Compensation and managed care payors—Workers' Compensation is the better payor—with the sole exception of anesthesiology, in which the relationship between payors is essentially reversed. While the Workers' Compensation anesthesia conversion factor was about 50% lower than the common range of private managed

care rates (clustering between \$35-\$45 at a time when Worker's Compensation conversion factors ranged from \$19.55 to \$21.72), Workers' Compensation was consistently higher, with a range around 50% higher, than the private managed care rates for the other four specialties.

Based on the data, the Department has concluded that the Workers' Compensation Program reimburses anesthesiologists at a rate that is substantially below the rates of managed care payors throughout this Commonwealth.

Based on the data, the Department has concluded that this substantial disparity does not exist with respect to other specialties. In general, Workers' Compensation reimbursement to these specialties exceeds the payments in managed care, often by substantial amounts. This includes surgical specialties, nonsurgical specialties and E & M codes that are used by surgical and nonsurgical specialists alike (although generally excluding anesthesiologists).

Accordingly, the Department determined that the standards of section 306(f.1)(3)(i) of the act have been met with respect to the anesthesia conversion factor. The Department is proposing regulations establishing a new allowance for the anesthesia conversion factor for use in the Workers' Compensation Program.

Fiscal Impact

There is minimal fiscal impact as a result of the proposed rulemaking. There is no specific data available identifying the precise costs associated with the cost of anesthesiology benefits under the Workers' Compensation System. However, it is known that the expenses resulting from medical benefits are approximately 45% of total loss expenses. In addition, the loss expenses resulting from anesthesiology is a minor cost in comparison to the total

costs of surgical expenses. Therefore, even though the proposed rulemaking will increase the reimbursement of anesthesiology expenses by 63%, it should affect the overall costs only minimally.

Paperwork

There is no anticipated additional paperwork expected as a result of this proposed rulemaking.

Affected Parties

The proposed rulemaking will affect all anesthesiologists who provide anesthesia services to persons whose care is reimbursed under the Workers' Compensation Program when the anesthesia conversion factor is a basis for reimbursement. It will also affect all insurers and others who directly or indirectly assume responsibility for the costs of medical care provided under the Workers' Compensation Program.

Effectiveness/Sunset Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 16, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Contact Person

Questions or comments regarding the proposed rulemaking should be addressed to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, fax (717) 772-1969, psalvatore@state.pa.us within 30 days following the publication of this notice in the *Pennsylvania Bulletin*.

Under the Regulatory Review Act, the Department is required to write to all commentators requesting whether or not they wish to receive a copy of the final-form rulemaking. To better serve stakeholders, the Department has made a determination that all commentators will receive a copy of the final-form rulemaking when it is made available to IRRC and the legislative standing committees.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: 11-222. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VIII. MISCELLANEOUS PROVISIONS

CHAPTER 167. WORKERS' COMPENSATION ACT—PROVIDER FEES

Sec.	
167.1.	Purpose.
167.2.	Payment for anesthesia services.

§ 167.1. Purpose.

The purpose of this chapter is to set the allowance for anesthesia services provided to patients under the Workers' Compensation Act (77 P.S. §§ 1—2626) when the allowance utilizes the anesthesia conversion factor.

§ 167.2. Payment for anesthesia services.

The Workers' Compensation Part B Fee Schedule shall be amended by multiplying the anesthesia conversion factor applicable to Codes 100-1999 by a multiplier of 1.632. The Fee Schedule, as amended, shall apply to anesthesia services provided in all regions after _____ . (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.)

[Pa.B. Doc. No. 04-1134. Filed for public inspection June 25, 2004, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 29 AND 31]

[L-00020157]

Passenger Service and Property and Household Goods Carriers

The Pennsylvania Public Utility Commission, on March 18, 2004, adopted at proposed rulemaking order setting forth changes to regulations governing passenger service and property and household goods carriers.

Executive Summary

The Pennsylvania Public Utility Commission is vested with jurisdiction over common carriers operating within Pennsylvania. 66 Pa.C.S. §§ 102, 501, 1101, 1102, 1103. In furtherance of this statutory charge, the Commission has promulgated regulations governing common carriers of passengers and property, including household goods. 52 Pa. Code Chapters 29 and 31. Due to changes in the appropriate levels of Commission oversight of these industries mandated by federal preemption or as well as the changing dynamics within the transportation market, the Commission has proposed modifications and additions to its current regulations.

Proposed changes to regulations governing passenger service include implementation of procedural safeguards in the event of the death or incapacitation of a certificate holder, deletion of unduly burdensome accounting requirements, modification of accident reporting requirements, deletion of obsolete regulations governing smoking and passenger/driver conversation, modification of leasing regulations, implementation of a consumer information requirement for most carrier classes, and the addition of driver regulations for vehicles with seating capacities of 15 passengers or less.

Proposed changes to regulations governing property and household goods carriers include implementation of procedural safeguards in the event of the death or incapacitation of a certificate holder, modification of accident reporting requirements, modification of leasing regulations, modification of the "Information for Shippers" form provided by household goods carriers, implementation of a requirement that household goods carriers must prepare an Inventory and a Bill of Lading, and implementation of a requirement that household carriers obtain criminal history records for all persons providing moving services within a dwelling.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 16, 2004, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Meeting held
March 18, 2004

Commissioners Present: Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Glen R. Thomas; Kim Pizzingrilli; Wendell F. Holland

Proposed Rulemaking Amending 52 Pa. Code Chapters 29 and 31; Doc. No. L-00020157

Proposed Rulemaking Order

By the Commission:

On September 25, 2002, we issued an Advance Notice of Proposed Rulemaking Order, soliciting comments concerning changes to the Commission's regulations governing motor carriers of passengers and property, including household goods. 52 Pa. Code Chapters 29 and 31. The impetus for the Advance Notice was changes in the Commission's oversight of these industries mandated by federal preemption, (Federal Aviation Authorization Act of 1994 and the Transportation Equity Act for the 21st Century, P. L. 105-178), as well as changing dynamics within the transportation market. Comments were filed by numerous parties.¹ Having reviewed the comments, we now propose the following changes to the Commission's regulations at 52 Pa. Code Chapters 29 and 31.

52 Pa. Code Chapter 29

§ 29.11. Applicability.

We propose adding contract carriers of passengers to this section. This change is consistent with the scope and content of the chapter. See 52 Pa. Code § 29.111.

§ 29.31. Sale or transfer of certificates.

We propose redrafting this section to make it more readily understandable. There is no change in content.

¹ A complete list of commentators is available from the Commission's Secretary's Bureau.

§ 29.32. Death or incapacitation of a certificate holder.

We propose modifying this provision to delete the self executing termination language. Before canceling or allowing the abandonment of a certificate of public convenience, the Commission must consider whether cancellation or abandonment is in the public interest. See 66 Pa.C.S. §§ 501, 1102, 1103. The rights and obligations conferred by a certificate can be terminated only upon application for abandonment or complaint to cancel the certificate. We propose modifying this section so that it is consistent with our statutory charge.

§ 29.33. Transfer of certificate without a hearing.

We propose deleting this section. This section addresses the hearing requirement for certificate transfers. However, it is our position that this issue is adequately addressed at 52 Pa. Code § 29.31. Further, § 29.33 is not accurate to the extent that it does not contain a complete recitation of circumstances under which a certificate may be transferred without hearing.

§ 29.41. Accounts and records.

We propose deleting the requirement that motor carriers of passengers maintain books in conformity with the Uniform System of Accounts found at 99 CFR § 1206.2. Interstate carriers are no longer required to comply with the Uniform System of Accounts. We see no benefit in requiring intrastate carriers to comply with this accounting system. Rather, we will simply direct that intrastate passenger carriers follow generally accepted accounting principles for all accounting and reporting matters. We note that we will leave subsection (c) intact.

§ 29.44. Accident reports.

We propose amending this provision to provide for telephonic notification to our Bureau of Transportation and Safety within 24 hours of an accident that results in the death of a person.² Carriers must also provide a written report of the accident to the Commission within 30 days of the accident. Finally, carriers must maintain copies of police reports for any reportable accidents for one year from the date of the accident. We believe that these modifications adequately protect the public while not overburdening the industry or our staff.

Currently, our regulations provide that carriers must report accidents to the Commission within 30 days of occurrence involving death, personal injuries requiring medical attention, property damage of \$4,200 or more, or collisions at grade crossings. The Bureau of Transportation and Safety receives monthly accident reports from the Pennsylvania Department of Transportation on accidents involving all motor carriers. Therefore, the current reporting requirements are duplicative. However, in light of our paramount concern over safety, we believe that the requirement that carriers report accidents involving death be retained.

§ 29.61. Commencement of service.

We propose revising this provision to eliminate the automatic termination of the certificate of public convenience in the event a carrier fails to commence service within 30 days of authorization. See 52 Pa. Code § 29.32.

§ 29.62. Interruptions of service.

We propose amending this provision to change the reference from "order to show cause" to "complaint." This change is consistent with current practice.

² We limit applicability to carriers operating vehicles with seating capacities of 15 passengers or less, including the driver, since larger vehicles are governed by 52 Pa. Code § 37.204.

§ 29.73. Posting notice prohibiting conversation.

We propose deleting this section. This change is consistent with current Federal regulations. See 49 CFR Part 392, subpart G.

§ 29.81. Smoking limitations.

We propose deleting this section since we do not believe that it is necessary.

§ 29.101. Operation of leased equipment.

We propose modifying the current regulation by requiring drivers be qualified under the new driver regulations (subchapter F, below), prohibiting carriers (with the exception of call or demand carriers) from leasing vehicles to drivers, updating some cross references, and eliminating the formal inspection reports (subsection j) and annual reports (subsection h). The prohibition against leasing vehicles to drivers is consistent with the intent of this section to ensure that the certificated carrier maintains control over the service provided under its authority. The elimination of the inspection report does not relieve the carrier's obligation to inspect leased vehicles and to maintain a certificate of inspection. We believe that the inspection report does not enhance safety enforcement and is simply cumbersome. Further, elimination of the annual report is consistent with current Commission practice.

We have also eliminated various sections that no longer serve a useful purpose. Specifically, we have eliminated the section concerning receipts, since we believe that the lease itself suffices as adequate documentation for our purposes. Further, we have eliminated subsection (g), concerning scheduled route and group and party service. These provisions are not relevant in the current regulatory environment. We note that these carriers must continue to comply with the remainder of our leasing requirements.

We note that various commentators suggested amending this section to include a provision insulating carriers from prosecution if they utilize lease drivers who have a suspended or inactive driver's license. We decline to adopt this suggestion. As we have previously noted, it is a carrier's responsibility to ensure that all drivers operating under its authority are properly licensed. *Pa. PUC v. Yellow Cab Company of Pittsburgh*, Docket No. A-00049926C9803-C9812 (Order entered November 17, 1999). It is imperative that we take a zero tolerance stance on this issue. Public safety and insurance coverage are compromised through operation of vehicles by unlicensed drivers. We will not tolerate this at any level.

Commentators also suggest that we modify subsection 29.101(a)(3) to include reference to underinsured and uninsured motorist coverage. We decline to adopt this recommendation, since our regulations at 52 Pa. Code Chapter 32 adequately address insurance requirements.

Subchapter C. Contract carriers and brokers.

We propose deleting reference to "brokers" due to inapplicability.

§ 29.111. Accounts, records and memoranda.

We propose deleting references to 52 Pa. Code §§ 29.43, 29.73, and 29.81 to be consistent with current and proposed regulations. Further, we are deleting the annual report filing requirement for contract carriers.

Scheduled Route Service

§ 29.301. Conditions.

We propose revising this section to include reference to subchapters E (Vehicle Equipment and Inspection) and F (Driver Requirements, to be discussed below).

§ 29.303. Service standards and requirements.

This provision, concerning scheduled route carriers, is revised to ensure that particular schedule changes are provided to the Commission.

§ 29.306. Consumer information.

This provision was added in order to advise the public of the appropriate forum in which to address complaints over service. We believe that this requirement will have minimal cost to the carrier yet be a significant benefit to the public.

Call or Demand Service

§ 29.311. Conditions.

We propose revising this section to include reference to subchapters E (Vehicle Equipment and Inspection) and F (Driver Requirements, to be discussed below).

§ 29.313. Service standards and requirements.

We propose amending this provision to include a requirement that log sheets be completed contemporaneously with a trip. This requirement ensures reporting accuracy. Further, we propose that origin and destination points provided in log sheets include a street name with address, if available, or some identifiable landmark.

§ 29.314. Vehicle and equipment requirements.

We propose making meters mandatory for all call or demand carriers. We propose this as a more efficient and accurate means of charging the public for service. Meters are available at a cost of approximately \$225. Currently, approximately fifty per cent (50%) of call or demand carriers charge non-metered rates. We believe that the cost of installing the meters is not enormous and is certainly outweighed by the benefits associated therewith; i.e., charges that more accurately reflect the cost of transportation. Further, we will continue to require all meters to be sealed for security and accuracy purposes. We also will require carriers to provide an annual vehicle list to the Commission. This requirement will aid the Commission in its enforcement efforts. Further, we will require all taxicabs to have dome lights, which will aid the public in identifying taxicabs available for service. Finally, we propose that no vehicles older than eight years be permitted to be utilized in taxi service. We believe this vehicle age limitation will ensure a current, reliable fleet. This requirement will be phased in over a one year period.

§ 29.315. Alternative forms of compensation.

We propose technical amendments to this section updating cross references.

§ 29.316. Tariff requirements.

We propose amending this section by phasing out zone-based fares in three years.

§ 29.317. Accounting requirements for alternative forms of compensation for drivers.

We propose technical amendments to this section as well as phasing out references to zone-based fares. Further, the report required by subsection (c) will only be provided to drivers upon request. We believe that this

proposal minimizes unnecessary paperwork for the carrier while retaining necessary protections for the driver.

§ 29.318. Complaint decals.

We propose that all taxicabs be required to post a complaint decal inside their vehicles.³ The decal will advise a customer of relevant complaint information. The decals shall be provided by the Commission. Only decals provided by the Commission may be posted.

Limousine Service

§ 29.331. Conditions.

We propose amending this provision to include references to Subchapters E and F.

§ 29.332. Method of operation.

We propose amending this provision to prohibit the direct solicitation of passengers. While one commentator suggested establishing a 24 hour advance reservation requirement, we reject that suggestion as too restrictive. It is not our intention to deny the public a transportation service by establishing arbitrary and burdensome conditions. Rather, we believe the existing prohibition against street hail and the proposed prohibition against direct solicitation help to satisfactorily ensure the unique nature of limousine service.

§ 29.333. Vehicle and equipment requirements.

We propose amending this provision to include a requirement that limousines be no more than eight years old. This requirement helps to ensure the condition of the fleet and will be phased in over a one year period.

Further, we propose requiring limousine operators to provide the Commission with a vehicle list annually. This requirement will enhance enforcement efforts.

Finally, we reject one commentator's suggestion that Commission inspections will be performed only on a pre-arranged basis. Currently, the Commission conducts both routine and random inspections of limousines. Routine inspections are scheduled for a mutually convenient time. Random inspections are not scheduled. We believe that continuing random inspections enhances Commission enforcement efforts to help ensure the provision of safe and reliable limousine service.

§ 29.334. Tariff requirements.

We propose amending this section to prohibit the use of meters. We believe that meters are unique to taxi service and should not be utilized in luxury limousine service. Further, we propose restricting limousines from basing tariffs on mileage. We believe that a mileage based rate is more akin to taxicab service. Limousine service is a luxury service, and should not be viewed as a substitute for taxicab service. The industries serve different transportation needs. A time based tariff is more consistent with the nature of limousine service.

§ 29.335. Trip sheet requirements.

We propose amending this provision to include a requirement that the origin point be included on trip sheets. This requirement will aid in enforcement. Further, we propose deleting odometer recording requirements, as irrelevant under our proposed tariff changes.

§ 29.336. Consumer information.

The Commission proposes mandating a consumer information initiative that would provide the consumer with relevant information regarding service complaints. We

propose offering limousine carriers three choices to comply with this initiative: (1) posting a Commission supplied complaint decal, (2) providing information on the service contract, or (3) providing information on the receipt for service. We believe this initiative will aid the public and enhance transportation service.

Airport Transfer Service

§ 29.341. Conditions.

We propose amending this section to include reference to subchapters E and F.

§ 29.344. Consumer information.

The Commission proposes mandating a consumer information initiative that would provide the consumer with relevant information regarding service complaints. We propose offering airport transfer carriers two choices to comply with this initiative: (1) posting a Commission supplied complaint decal, or (2) providing information on the receipt for service. We believe this initiative will aid the public and enhance transportation service.

Other Services: Paratransit, Experimental

§ 29.351. Conditions.

We propose amending this section to include reference to subchapters E and F.

§ 29.356. Consumer information.

The Commission proposes mandating a consumer information initiative that would provide the consumer with relevant information regarding service complaints. We propose offering paratransit carriers two choices to comply with this initiative: (1) posting a Commission supplied complaint decal, or (2) providing information on the receipt for service. We believe this initiative will aid the public and enhance transportation service.

Subchapter E. Vehicle Equipment and Inspection.

§ 29.401. Applicability

We propose amending this provision to more clearly delineate its applicability to vehicles with seating capacities of 15 passengers or less, including the driver.

§ 29.402. Vehicle equipment requirements.

We propose amending this section to more clearly delineate applicability. See § 29.401.

We also propose amending this section to include a requirement that advertising be limited to the roof of the vehicle. We believe this requirement will ensure unobstructed views for driver and passenger. Further, it will aid in enforcement since vehicle identification markings will not be obscured by advertisements.

§ 29.403. Requirements for passenger service operation.

We propose amending subsection (1) of this provision to include a reference to removable seats which are currently common in vehicles. Further, we propose the following additional vehicle requirements: operative air conditioning, exterior free of dents or gouges more than four inches in diameter, vehicles must have four matching wheel covers or the equivalent, and seats shall be secure and undamaged with no protruding springs or cushioning. We believe these requirements are reasonable and serve to enhance the level of service to the public.

§ 29.404. Unsafe operations forbidden.

We propose amending this section to include a prohibition against operating a vehicle in violation of 52 Pa. Code § 29.403.

³ We note that we currently require this posting. *Call or Demand Service: Complaint Decals*, Docket No. M-00011476 (Order entered September 28, 2001).

§ 29.406. Inspection by enforcement officers.

We propose amending this provision to clarify and simplify the out-of-service procedures employed by the Commission. We will no longer differentiate between "out-of-service" and "out-of-passenger service." Our experience indicates that this distinction has no practical benefit and simply creates enforcement difficulties. Further, we propose deleting the requirement that carriers complete and provide the Commission with the "Motor Carrier Certification of Action Taken" form, since the Commission performs reinspections as a matter of course.

Subchapter F. Driver Regulations

We propose the addition of driver regulations for drivers of vehicles with seating capacities of 15 passengers or less, including the driver. We will require all drivers have a current license and be at least 21 years of age. Further, we shall require carriers to obtain a driver history for each driver and update that history every 12 months. We will require carriers to obtain a criminal history record for all drivers and update same every two years. Finally, we will prohibit operation of vehicles by anyone under the influence of alcohol or a controlled substance. We believe these requirements will help to ensure the quality and safety of public utility service in Pennsylvania.

We further propose additional driver standards for carriers operating vehicles with seating capacities of 9 to 15 passengers, including the driver. Recent amendments to federal regulations applicable to interstate carriers of this vehicle type are found at 49 CFR Part 390. We propose adopting similar standards. Specifically, we propose physical qualification and hours of service standards. We believe that the heightened scrutiny accorded drivers of these vehicles is warranted and in the public interest.

52 Pa. Code Chapter 31

Our proposed revisions to this chapter are primarily aimed at provisions governing household goods carriers, 52 Pa. Code §§ 31.121—31.130. Those proposed changes attempt to strike a continuing balance between the shipper and the carrier. We also propose some general revisions governing both property and household goods carriers.

§ 31.4. Transfer of Certificates and Permits.

We propose modifying this provision to delete the self executing termination language found in subsection (c). Before canceling or allowing the abandonment of a certificate of public convenience, the Commission must consider whether cancellation or abandonment is in the public interest. See 66 Pa.C.S. §§ 501, 1102, 1103. The rights and obligations conferred by a certificate can be terminated only upon application for abandonment or complaint to cancel the certificate. We propose modifying this section so that it is consistent with our statutory charge.

§ 31.11. Reports of Accidents and Damages.

We propose amending this provision to provide for telephonic notification to our Bureau of Transportation and Safety within 24 hours of an accident that results in the death of a person. Further, carriers must maintain copies of police reports for any reportable accidents for one year from the date of the accident. We believe that these modifications adequately protect the public while not overburdening the industry or our staff.

§ 31.32. Equipment.

We propose revising this section to simplify and clarify leasing requirements. The Commission's primary concern in leasing is that the carrier have substantial control over

the leased equipment and the transportation, ensuring compliance with relevant safety and insurance requirements. We believe that the proposed changes advance this goal while eliminating unnecessary regulatory requirements. The proposed modifications include making the regulation explicitly applicable to household goods carriers, deleting the minimum duration requirement as no longer relevant, deleting the additional documentation requirement for short term leases as no longer relevant, deleting the receipts for equipment requirement as no longer necessary, requiring carriers retain leases for 2 years following expiration of the lease, replacing the inspection report requirement with a certification requirement, deleting the prohibition on the amount of equipment leased, and deleting the interchange of equipment requirement for carriers authorized to interchange freight. The elimination of the inspection report does not relieve the carrier of its obligation to have leased vehicles inspected and to maintain a certificate of inspection. We believe that the report does not enhance the requirements.

§ 31.33. Identification of equipment.

The proposed changes include deleting excess language and replacing the requirement that identification markings be painted on the vehicle.

§ 31.121. Information for Shippers.

Our proposed modifications to this section include requiring carriers to provide shippers with the "Information for Shippers" form at least 48 hours in advance of the move, to ensure that shippers receive meaningful notice. Further, we propose requiring an Inventory be completed by the carrier and provided to the shipper, as well as a bill of lading. We propose raising the minimum insurance limits to 60 cents per pound per article.⁴ We also propose requiring carriers to use a Commission supplied form, which will be available on our web-site or upon request. This form will include the Commission's contact information for complaints. We also propose requiring carriers to retain an executed copy of the form for two years from the date of the move. We propose replacing "money order" with "cashier's check," due to the relative security of these instruments. Finally, we have reconfigured the form so that it is more user-friendly.⁵

§ 31.122. Estimate of Charges.

We propose delineating all contents required on an estimate of charges form. Further, we propose deleting current regulation § 31.130, which is a sample "Estimate of Charges" form, as unnecessary. We also propose that carriers retain the form for two years from the date of the move. Finally, we propose moving the "Notification of Charges" section, since that section is distinct from "Estimate of Charges."

§ 31.123. Delivery when Charges Exceed Estimates.

We propose replacing "money order" with "cashier's check," due to increased security.

⁴ We recognize that this proposal will necessitate a collateral proceeding to modify the existing rate structure.

⁵ We reject Commentators' suggested revisions to change damage notations. We believe the current language better informs the consumer of his rights and responsibilities. Commentators also proposed revising the required payment when charges exceed the estimate from the greater of \$25 or 10 percent to the greater of \$250 or 25 percent. We decline to adopt this proposal. For low cost moves, (under \$1,000.00) the proposed charges could place an undue hardship on a shipper. The \$250 minimum would be unduly burdensome to a shipper. We believe that limits currently in place strike a better balance between shipper and carrier. Finally, we reject commentators' suggestion to make supplying this form to the shipper optional. We believe that this form is the linchpin of consumer protection in the household goods market, and believe that supplying the shipper with same is mandatory.

§ 31.124. *Report of Underestimates.*

We propose deleting the sample report form attached to the regulations. Further, we propose carriers retain these reports for two years from the date of the move.

§ 31.125. *Obtaining Weight Tickets.*

We propose amending this section to eliminate the requirement for separate gross and tare weight tickets, since gross and tare weights are commonly included on the same weight ticket. Further, we propose eliminating the requirement that copies of bills of lading utilizing constructive weight be furnished to the Commission. This is an unnecessary requirement. If a dispute would arise, the bill of lading is available from the carrier. Finally, we propose that carriers retain the tickets for two years from the date of the move.

§ 31.127. *Failure to Comply with Provisions.*

We propose updating this section with appropriate statutory references.

§ 31.130. *Estimated Cost of Services.*

We propose deleting this provision since an example form is unnecessary in light of the specifications established for an estimated cost of services provided at § 31.122.

§ 31.131. *Notification to Shipper of Charges.*

We propose moving the notification requirement currently found at 52 Pa. Code § 31.122(1) to this location. This will reduce confusion and clarify that "Notification of Charges" is distinct from "Estimate of Charges." Further, we propose modifying the notification requirements by permitting notice by fax or e-mail.

§ 31.132. *Bill of Lading.*

We propose adding a new requirement that a household goods carrier prepare and provide to the shipper a bill of lading for the shipment. We believe that the bill of lading is currently used by carriers and should not be omitted from our regulations. The requirement is straightforward, places no undue burden on the carrier, and serves as a valuable consumer protection tool.

§ 31.133. *Inventory.*

We propose requiring a household goods carrier to prepare an inventory of the shipment. The inventory will provide a shipper with the opportunity to make any damage notations. It will act as security for items damaged, lost or misplaced. We believe that an inventory does not pose an undue burden on the carrier and aids in consumer protection.

§ 31.134. *Criminal History.*

We propose requiring carriers to obtain criminal history records for all persons providing moving services within a dwelling. Further, carriers may not permit an individual who has been convicted of a felony or a crime of moral turpitude, and who remains under court supervision, to provide moving services in a shipper's dwelling. We believe that these requirements are reflective of fundamental shipper expectations when engaging a licensed carrier.

The Annex A, proposed regulations, is permitted by Sections 501, 1102, 1103, 1501, 1502, 1504, 1506, 1508, and chapters 23 and 25 of the Public Utility Code. Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, and the Commonwealth Documents Law, 45 P.S. §§ 1201 et seq., and regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5, we

propose to amend the regulations at Chapters 29 and 31 as set forth in Annex A. *Therefore,*

It Is Ordered That:

1. The Secretary shall submit this order and Annex A to the Office of Attorney General for preliminary review as to form and legality.

2. The Secretary shall submit a copy of this order, together with Annex A, to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall submit this order and Annex A for review and comment by the designated standing committees of both Houses of the General Assembly, and for review and comment by IRRC.

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

5. Within 30 days of this order's publication in the *Pennsylvania Bulletin*, an original and 15 copies of any comments concerning this order should be submitted to the Office of the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA, 17105-3265. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau at (717) 772-4597 or through the AT&T Relay Center at (800) 654-5988. The contact person is John Herzog, Assistant Counsel, Law Bureau, (717) 783-3714.

6. A copy of this order shall be served on all commentators to the Advance Notice of Proposed Rulemaking order.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-233. 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 29. MOTOR CARRIERS OF PASSENGERS

Subchapter B. COMMON CARRIERS PRELIMINARY PROVISIONS

§ 29.11. Applicability.

This chapter applies to common carriers **and contract carriers of passengers**, and is subject to amendment, change, modification or exception as the Commission may deem advisable, just and proper.

TRANSFER OF RIGHTS

§ 29.31. Sale or transfer of certificates.

[No certificate or right described in §§ 29.31—29.35 (relating to transfer of rights) may be sold or transferred by act, deed or by operation of law, except as otherwise provided in §§ 29.31—29.35, unless the approval of the Commission is first obtained.] The approval of the Commission is required for the sale or transfer of a certificate, except as otherwise provided in this chapter. The approval may be granted with or without hearing and after such reasonable notice as the Commission may direct.

§ 29.32. Death or incapacitation of a certificate holder.

Upon the death of a holder of a certificate, or upon an individual certificate holder being legally declared insane or otherwise incompetent, the rights conferred by the certificate shall continue with the legal representative of the deceased or insane holder for a period of 1 year [, after which time the rights conferred shall terminate]. After the expiration of the one year period, appropriate proceedings shall be initiated to terminate the certificate, unless application has been made to transfer the rights to the heirs, guardian, trustees, legatees or others, in which case the rights shall continue with the legal representative until the application is granted or refused. In the event application is made by the legal representative not less than 30 days prior to the end of a period of 1 year, the Commission may, at its discretion and for cause shown, permit the transfer of the rights to the executors, administrators, guardians, trustees or other legal representatives of the deceased or insane holder for a period to be fixed by the Commission. Pertinent orders or decrees of the court having jurisdiction over the estate of the decedent or insane person may be deemed cause for the granting of the petitions by the Commission.

§ 29.33. [Transfer of certificate without a hearing] (Reserved).

[If the individual holder of a certificate dies or is legally declared insane or otherwise incompetent, and an application is made to transfer the rights granted under the certificate to his legal representative, or if the certificate holder is a copartnership and the application for a transfer is in effect to change one or more of the partners, the Commission may dispose of the application without a hearing.]

ACCOUNTS, RECORDS AND REPORTS

§ 29.41. Accounts and records.

(a) [A common carrier with average gross annual revenues, intrastate and interstate combined, during the preceding year, of \$1 million and over, shall maintain books, accounts and records in conformity with the Uniform System of Accounts for Class I Common and Contract Motor Carriers of Passengers, 49 CFR Part 1206 (relating to common and contract motor carriers of passengers), and the applicable current sections of 49 CFR (relating to transportation) governing the preservation of records of Class I motor carriers.] Common carriers of passengers shall follow generally accepted accounting principles for all accounting and reporting matters.

(b) [Other common carriers shall have the election of maintaining books, accounts and records in conformity with those required of motor carriers with average gross revenues of \$1 million and over, or on a modified basis as will permit the filing of properly completed annual reports or assessment reports with the Commission, and shall preserve their records under the applicable current sections of 49 CFR governing the preservation of records of Class I and Class II motor carriers.

(c)] Amounts received as operating subsidies or payments for services rendered from a Federal, State or local governmental agency shall be included in the respective

passenger revenue classifications corresponding to the operating authority under which the services were provided, and shall be included in the reporting company's assessment liability under 66 Pa.C.S. § 510 (relating to assessment for regulatory expenses upon public utilities).

§ 29.44. Accident reports.

(a) [Within 30 days after a reportable accident occurs, a detailed report shall be mailed to Secretary, Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, Pennsylvania 17120.] *Accidents involving death of a person.* Motor carriers of passengers, operating vehicles with seating capacities of 15 passengers or less, including the driver, shall telephonically notify the Bureau of Transportation and Safety of any accident resulting in the death of a person within 24 hours of the accident. Carriers shall maintain a copy of the police report for 1 year from the date of the accident.

(b) [A reportable accident is one involving one or more of the following:

(1) The death of a person.

(2) Personal injuries which require medical attention.

(3) Property damage amounting to \$4200 or more, based on actual costs or reliable estimates.

(4) Collisions at grade crossings between motor vehicles operated under a certificate of public convenience and trains or streetcars, whether or not a person is killed or injured in the accident.

(c) In the event of the occurrence of an accident resulting in the death of a person, an immediate report of the accident shall be made by telephone or telegraph to the Bureau of Safety and Compliance of the Pennsylvania Public Utility Commission, in addition to the detailed written report required by subsection (a).

(d) The requirements of this section for the reporting of accidents correspond closely with those of the United States Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, and the Department of Transportation, Bureau of Traffic Safety, of the Commonwealth. A copy of the report to the Bureau of Motor Carrier Safety or the Bureau of Traffic Safety will be accepted in lieu of a separate accident report.]

Other accidents. For all accidents resulting in the filing of a police report, a motor carrier shall maintain a copy of the police report for 1 year from the date of the accident.

CONTINUITY OF SERVICE

§ 29.61. Commencement of service.

A common carrier shall, within 30 days from the date of receipt of a certificate, begin operating and furnishing service. If it has not commenced operating and furnishing the authorized service within 30 days, [the rights granted by the certificate shall terminate,] appropriate proceedings shall be initiated to terminate the certificate unless, upon specific permission granted by the Commission, the time for commencement of service is extended.

§ 29.62. Interruptions of service.

An interruption of service for more than 48 hours shall be reported to the Commission with a statement of the

cause of interruption and its probable duration. Suspension of service for [a period of] 5 consecutive days without notice to the Commission will be deemed sufficient cause for revocation or cancellation of the rights of the carrier, except if the suspension is caused by strike or labor difficulties, riot, insurrection, war, government decrees or an act of God. No order of revocation will issue until the carrier is given opportunity for a public hearing on a [rule to show cause] complaint why the rights should not be revoked and cancelled.

MARKINGS AND POSTING NOTICE

§ 29.73. [Posting notice prohibiting conversation] (Reserved).

[The following notice or a notice approved by the Commission shall be posted in a conspicuous place in the front part of the interior of each bus having seating capacity in excess of nine passengers:

PENNSYLVANIA PUBLIC UTILITY COMMISSION ORDER PROHIBITING CONVERSATION

BY THE COMMISSION:

It is ordered: That operators of motor or trackless trolley buses engaged in intrastate common carrier service be and are hereby prohibited from conversing with passengers while the vehicle is in motion; and, further, that all passengers in such vehicles in motion be prohibited from distracting the attention of the operator by conversation or otherwise.]

[SAFETY]

§ 29.81. [Smoking limitations] (Reserved).

[(a) A motor common carrier of passengers subject to the act, which provides scheduled route service between fixed termini or over designated routes, and which desires to permit smoking of cigars, cigarettes or pipes, shall where smoking on passenger-carrying vehicles is not otherwise prohibited by law, provide a smoking area consisting of a number of seats at either the rear or the front of the passenger-carrying vehicle depending upon which area is best suited to the air circulating system of the vehicle, the area not to exceed 20% of the seating capacity of the vehicle.

(b) Subsection (a) does not apply to common carriers of passengers subject to the act when operating in call or demand or group or party service.]

MISCELLANEOUS PROVISIONS

§ 29.101. Operation of leased equipment.

(a) General provisions. General provisions [shall] include the following:

* * * * *

(2) Drivers. When used in the authorized service of the lessee, leased vehicles shall be operated by drivers qualified under Subchapter F (relating to driver regulations) when operating vehicles with seating capacities of 15 or less, including the driver, or Chapter 37 (relating to safety code for transportation of property and passengers), when operating vehicles with seating capacities of 16 or more, including the driver.

(3) Insurance and registration. Leased vehicles shall be covered by insurance as provided by § [29.104 (Reserved)] 32.11 (relating to passenger carrier insur-

ance) and shall conform with the requirements for registration of vehicles as set forth in 75 Pa.C.S. §§ 101—9910 (relating to the Vehicle Code).

* * * * *

(5) Control. Vehicles shall be owned by or leased by the certificate holder. Operation and service shall be under the direct control and supervision of the certificate holder. A common carrier of passengers may not lease a vehicle to a driver, except as provided in subsection (h), relating to call or demand service.

* * * * *

(c) [Receipts. When possession of the equipment is taken by the certificate holder or its regular employe or agent authorized to act for it, such certificate holder, employe or agent shall give to the owner of the equipment or to the owner's employe or agent a receipt specifically identifying the equipment and stating the date and time possession thereof is taken; and, when possession by the certificate holder ends, it or its employe or agent shall obtain from the owner of the equipment, or its regular employe or agent authorized to act for it a receipt specifically identifying the equipment and stating therein the date and the time possession thereof is retaken. The receipts shall be retained by the certificate holder for not less than 2 years.

(d) [Safety inspection. It is the duty of the certificate holder, before taking possession of equipment, to inspect the [same] equipment or to have the [same] equipment inspected by a person who is competent and qualified to make an inspection as a representative of the carrier to insure that the equipment is in a safe condition to be operated on the highway. The person making the inspection shall certify the results thereof [on a report in the form set forth in subsection (j)], which [report] certification shall be retained by the certificate holder for a period of not less than 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 certificate holder.

[(e)] (d) * * *

[(f)] (e) * * *

[(g) Scheduled route; group and party. The following applies to scheduled route carriers and to group and party carriers operating leased equipment:

(1) Leases for less than 10 days. Where a common carrier leases a vehicle for less than 10 days to another common carrier for operation in certificated service, subsections (c) and (d), relative to receipts and safety checks when taking possession of the leased vehicles are not applicable.

(2) Joint-line service. This section, with the exception of subsection (f), does not apply to vehicles when the vehicles are used in providing through transportation of passengers in regular service over the authorized routes of two or more carriers under a continuing interchange or lease of equipment arrangement between such carriers; provided that the schedules of the motor carriers show clearly the points or places between which each common carrier assumes and bears complete con-

trol and responsibility for the operation of the interchanged or leased vehicles.

(3) *Number of vehicles.* The seating capacity of the vehicles leased at any one time may not exceed the greater of one vehicle or 50% of the total seating capacity of the vehicles owned by the lessee and operated in the certificated service of the lessee; provided that, for purposes of this limitation, a vehicle shall be considered to be neither leased nor owned if the minimum duration of the lease is for a term of at least 120 days or if the lease has been continuously in force for a period of at least 120 days.

(h)] (f) *Call or demand.* The following applies to call or demand carriers operating leased equipment:

* * * * *

(2) The holder of a call or demand certificate may lease vehicles to drivers for operation in the service of the certificate holder only under the following conditions:

* * * * *

(iv) [The certificate holder shall be required to file an annual report in accordance with § 29.42 (relating to annual reports) which shall include gross operating revenues based upon the amount of the fares recorded on the daily log sheets maintained by the lessee-drivers.

(v)] The leasing plan of the certificate holder shall conform with the requirements of § 29.315 (relating to alternative forms of compensation).

[(i) [Reserved].

(j) *Form.* The following form is hereby made part of this section.]

(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete the form which appears in 52 Pa. Code page 29-18, serial page (218744).)

Subchapter C. CONTRACT CARRIERS [AND BROKERS]

§ 29.111. Accounts, records and memoranda.

* * * * *

(b) A contract carrier shall comply with §§ 29.41, [29.43,] 29.44, [29.73, 29.81] and 29.101—29.103. [A contract carrier of passengers, regardless of the amount of gross annual revenues, intrastate and interstate combined, shall file, in properly completed form, signed and notarized, on or before March 31, covering the preceding calendar year, a contract carrier annual report form as prescribed and furnished by the Commission.

(c) Other matters relating to applications for permits by contract carriers shall, if practicable, conform with subsection (b).]

Subchapter D. SUPPLEMENTAL REGULATIONS SCHEDULED ROUTE SERVICE

§ 29.301. Conditions.

This section and §§ 29.302—29.305 (relating to scheduled route service) applies to operations in the scheduled route class of common carriage. This section and §§ 29.302—29.305 [applies] apply in addition to relevant provisions of Subchapters A [and], B, E and F [(relating to general provisions; and common carri-

ers] vehicle equipment and inspection; and driver regulations) as well as particular provisions contained in each certificate of a carrier.

§ 29.303. Service standards and requirements.

* * * * *

(b) *Notice of schedule changes.* Notice of proposed changes in routes or in time schedules involving retiming or withdrawal of a trip shall be conspicuously posted in vehicles engaged in services affected by the changes and at stations and stops where practicable, for [a period of not less than] at least 10 days prior to the effective date thereof. Notice of any changes shall be provided to the Commission, in writing, 10 days prior to implementation. This section relating to changes in time schedules [do] does not apply to that portion of the service that is and will continue to be rendered on headways of 20 minutes or less.

* * * * *

§ 29.306. Consumer information.

To provide passengers with the necessary information to file a complaint, scheduled route carriers shall post a Commission-issued complaint decal in a conspicuous location inside the vehicle which lists the telephone number and website to be used to lodge a complaint or provide the following notice on the receipt for service:

For complaints and information, contact the Pennsylvania Public Utility Commission at 1-800-782-1100 or at www.puc.paonline.com. Include the company name and A-number for all complaints.

CALL OR DEMAND SERVICE

§ 29.311. Conditions.

This section and §§ 29.312—29.316 (relating to call or demand service) [applies] apply only to operations in the "call or demand"—taxi—class of common carriage. These sections apply in addition to relevant provisions of Subchapters A [and], B, E and F [(relating to general provisions; and common carriers] as well as particular provisions contained in each certificate of a carrier.

§ 29.313. Service standards and requirements.

* * * * *

(c) *Log sheets.* A driver of a vehicle in call or demand service shall keep a log sheet or manifest for each shift he operates unless some other method is, upon petition, specifically approved by the Commission. These log sheets shall be filled out contemporaneously with the trip, on a form supplied by the [certificate holder] certificateholder. The log sheets shall be retained by the [certificate holder] certificateholder for at least 2 years. Log sheets shall be turned over upon request to an authorized representative of the Commission upon the rendering of a receipt. Drivers shall fill out the log sheets with the following information:

* * * * *

(4) The times and places of origin and destination of each trip including the odometer or meter mileage at the origin and destination of each passenger trip. Origin and destination places shall contain a street name and address or, if unavailable, an identifiable landmark.

* * * * *

§ 29.314. Vehicle and equipment requirements.

* * * * *

(b) *Meters.* Meters shall conform with the following requirements:

(1) A call or demand vehicle operated within [a city, borough or township having a population of 20,000 or more] this Commonwealth shall be equipped with a meter.

* * * * *

(8) Paragraph (7) does not apply when the filed tariff provides for a flat rate in lieu of a metered charge for transportation beyond a certain mileage point or for a zone-based fare structure. **This provision is invalid after January 1, 2007.**

(c) *Vehicle list.* Between December 1 and December 31 of each year, carriers shall provide the Commission with a current list of all vehicles utilized under its call or demand authority. The list shall contain the year, make, vehicle identification number and registration number for each vehicle. The list shall be mailed to Director, Bureau of Transportation and Safety, Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265.

(d) *Vehicle age.* A vehicle may not be operated in call and demand service which is more than 8 model years old. For example, the last day on which a 1996 model year vehicle may be operated in taxi service is December 31, 2004. This provision is effective a date 1 year after _____. (*Editor's note:* The blank refers to the effective date of adoption of this proposed rulemaking.)

(e) *Dome lights.* Vehicles operated by call and demand carriers shall have a dome light affixed to the roof of the vehicle. The dome light shall be visible from a distance of 100 feet from the front and rear of the vehicle. The dome light shall be illuminated only when a customer does not occupy the vehicle.

§ 29.315. Alternative forms of compensation.

(a) [Certificate holders'] Certificateholders' plans for alternative forms of compensation for call or demand drivers, as permitted by § 29.101 (relating to operation of leased equipment), shall conform with the following conditions:

* * * * *

(2) The [certificate holder] certificateholder shall be responsible for providing and maintaining insurance as required by § [29.104 (Reserved)] 32.11 (relating to passenger carrier insurance).

(3) The [certificate holder] certificateholder shall comply with [Subchapter] Subchapters E and F (relating to vehicle equipment and inspection; and driver regulations).

* * * * *

§ 29.316. Tariff requirements.

(a) *Charges.* Every call or demand carrier shall charge according to its tariffs filed, posted[,] and published in accordance with law and [the provisions of] this title:

(1) [such] The amount as is calculated and registered on the meter [;].

(2) [when] When authorized by the tariff, a fixed amount for the trip or the amount shown to be due on the meter plus a surcharge[; or]. **This provision is invalid after January 1, 2007.**

(3) [when] When authorized by the tariff, a charge tabulated according to the zones entered in the course of the trip. **This provision is invalid after January 1, 2007.**

(b) *Zone tariff requirements.* If the rates of fare specified in the tariff of the [certificate holder] certificateholder are calculated according to the zones entered in the course of the trip: a map of the service territory on which each zone is delineated and in which the cost calculations for trips are described must be available in the vehicle for the passenger to examine, and a representative of the [certificate holder] certificateholder must be available to quote to the passenger in advance the estimated cost of the particular trip of the passenger. **This provision is invalid after January 1, 2007.**

* * * * *

§ 29.317. Accounting requirements for alternative forms of compensation for drivers.

(a) *Revenues.*

(1) *Metered rates.*

* * * * *

(ii) It is the responsibility of the [certificate holder] certificateholder to [insure] ensure that appropriate information from the log sheets is properly and correctly recorded under §§ 29.41[—] and 29.43 (relating to accounts and records[; annual reports]; and assessment reports).

(2) *Zoned rates and flat rates.* A requirement of paragraph (1) except for meter verification is applicable when the fare is based on zones entered in the course of the trip or on flat rates. **This provision is invalid after January 1, 2007.**

* * * * *

(c) *Reporting.* At the end of a calendar year, the [certificate holder] certificateholder shall supply a lease driver, upon request, with a statement of operating revenues and operating expenses based on the information supplied as required by subsections (a) and (b). The statement may be provided during the calendar year when appropriate.

§ 29.318. Complaint decals.

To provide passengers with the information necessary to file a complaint, taxicabs must display a Commission-issued complaint decal which lists the telephone number and web site to be used to lodge a complaint. The decal shall be posted on the inside of the right rear window of the vehicle, along the bottom edge.

LIMOUSINE SERVICE

§ 29.331. Conditions.

This section and §§ 29.332—29.335 (relating to limousine service) apply to operations in the limousine class of common carriage. These sections apply in addition to relevant provisions of Subchapters A [and], B, E and F [relating to general provisions; and common carriers] as well as a particular provision contained in a certificate of a carrier.

§ 29.332. Method of operation.

Unless otherwise specifically provided in the certificate of public convenience, a common carrier operating limousine service shall have the rights and be subject to the conditions as follows:

* * * * *

(3) A limousine driver may not directly solicit a passenger.

§ 29.333. Vehicle and equipment requirements.

* * * * *

(b) Luxury type vehicles are vehicles manufactured or subsequently modified so that they have physical configurations and accessory features that are not considered as being ordinary, standard or commonplace in lower to moderately priced vehicles. Luxury type vehicles are intended to afford patrons a higher level of service and comfort than are ordinarily available in call or demand, paratransit[,] and airport transfer services. To qualify as a luxury type vehicle, a vehicle shall have at a minimum: air conditioning, AM/FM stereo radio, deluxe leather or deluxe fabric upholstery, deluxe wheels or wheel covers, four doors and a wheelbase of at least 109 inches. Other amenities which limousine service might afford are [AM/FM cassette stereo radio,] CD changer, internet access, reading lights, work desk or table, cellular phone, refrigerator, television, VCR, DVD player, extended wheelbase and privacy dividers.

* * * * *

(d) Vehicle list. Between December 1 and December 31 of each year, carriers shall provide the Commission with a current list of all vehicles utilized under its limousine authority. The list shall contain the year, make, vehicle identification number and registration number for each vehicle. The list shall be mailed to Director, Bureau of Transportation and Safety, Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265.

(e) Vehicle age. A vehicle may not be operated in limousine service which is more than 8 model years old. For example, the last day on which a 1996 model year vehicle may be operated in limousine service is December 31, 2004. This provision is effective _____. (Editor's note: The blank refers to 1 year from the effective date of adoption of this proposed rulemaking.)

§ 29.334. Tariff requirements.

Limousine rates [may] shall be based solely on [mileage or] time, [or both,] and shall be contained in a tariff filed, posted and published under statute and this title. The use of meters is prohibited.

§ 29.335. Trip sheet requirements.

(a) A driver of a luxury type vehicle engaged in providing limousine service shall have a trip sheet in the vehicle evidencing that the vehicle is in service. The trip sheet shall contain the following information:

* * * * *

(5) The origin and intended destination.

* * * * *

[(7) The initial odometer reading.]

(b) At the conclusion of the trip, the driver shall record the ending time [and final odometer reading] on the trip sheet.

(c) The trip sheet shall be retained by the certificateholder for a minimum of 1 year. Copies of the documents may be required to be submitted in support of carrier proposed tariff rate increases in addition to other documentation in § 23.64 (relating to data required in filing increases in operating revenues).

§ 29.336. Consumer information.

To provide passengers with the information necessary to file a complaint, limousines must:

(1) Post, on the inside of the right rear window of the vehicle, along the bottom edge, a Commission-issued complaint decal which lists the telephone number and website to be used to lodge a complaint, or provide the following notice on the contract for service:

For complaints and information, contact the Pennsylvania Public Utility Commission at 1-800-782-1100 or at www.puc.paonline.com. Include the company name and A-number for all complaints.

(2) Provide the following notice on the receipt for service:

For complaints and information, contact the Pennsylvania Public Utility Commission at 1-800-782-1100 or at www.puc.paonline.com. Include the company name and A-number for all complaints.

AIRPORT TRANSFER SERVICE

§ 29.341. Conditions.

This section and §§ 29.342—29.343 (relating to airport transfer service) apply to operation in the airport transfer, airport limousine, class of common carriage. These provisions apply in addition to relevant provisions of Subchapters A [and], B, E and F [(relating to general provisions; and common carriers)] as well as [a] particular provisions contained in a certificate of a carrier.

§ 29.344. Consumer information.

To provide passengers with the information necessary to file a complaint, airport transfer carriers shall post, on the inside of the right rear window of the vehicle, along the bottom edge, a Commission-issued complaint decal which lists the telephone number and website to be used to lodge a complaint, or provide the following notice on the receipt for service:

For complaints and information, contact the Pennsylvania Public Utility Commission at 1-800-782-1100 or at www.puc.paonline.com. Include the company name and A-number for all complaints.

OTHER SERVICES: PARATRANSIT, EXPERIMENTAL

§ 29.351. Conditions.

This section and §§ 29.352—29.355 (relating to other services: paratransit, experimental) apply to operations conducted under certificates granting paratransit or experimental rights. These provisions apply in addition to relevant provisions of Subchapters A [and], B, E and F

[(relating to general provisions; and common carriers] vehicle equipment and inspection; and driver regulations) as well as [a] particular provisions contained in a certificate of a carrier.

§ 29.356. Consumer information.

To provide passengers with the information necessary to file a complaint, paratransit and experimental service carriers shall post, on the inside of the right rear window of the vehicle, along the bottom edge, a Commission-issued complaint decal which lists the telephone number and website to be used to lodge a complaint, or provide the following notice on the receipt for service:

For complaints and information, contact the Pennsylvania Public Utility Commission at 1-800-782-1100 or at www.puc.paonline.com. Include the company name and A-number for all complaints.

Subchapter E. VEHICLE EQUIPMENT AND INSPECTION

§ 29.401. Applicability.

This subchapter applies to vehicles having a designed seating capacity of 15 passengers or less, including the driver, which are used by common carriers or contract carriers to transport passengers in scheduled route service, [in] call or demand service, group and party service, limousine service, airport transfer service, or paratransit and experimental service defined in § 29.13(6) (relating to scheme of classification).

§ 29.402. Vehicle equipment requirements.

A common carrier or a contract carrier may not permit a vehicle having a seating capacity of 15 passengers or less, including the driver, to be operated unless it complies with the following requirements:

* * * * *

(3) [Exterior and interior advertising] Advertising on vehicles is limited to the exterior roof of the vehicle. Advertising displayed on a vehicle shall be securely fastened and may not obscure the driver's view in any direction.

§ 29.403. Requirements for passenger service operation.

A common carrier or a contract carrier may not permit a vehicle having a designed seating capacity of 15 passengers or less, including the driver, to be operated to transport passengers unless it complies with the following requirements, in addition to those [set forth] in § 29.402 (relating to vehicle equipment requirements):

(1) Vehicles which are equipped with folding [or], temporary or removable seats shall have hinges, latches, brackets or other hardware associated with the seats in working order.

* * * * *

(6) A vehicle's exterior may not have any dents or gouges larger than 4 inches in diameter.

(7) A vehicle shall have 4 matching wheel covers, or the equivalent.

(8) A vehicle shall have operative air conditioning.

(9) A vehicle's seats shall be secure and not be damaged so as to allow springs or other cushioning or support devices to protrude through the seat.

§ 29.404. Unsafe operations forbidden.

A common carrier or contract carrier may not permit or require a driver to operate a vehicle revealed by inspection or operation not to comply with §§ 29.402 or § 29.403 (relating to vehicle equipment requirements; and requirements for passenger service operation). If a vehicle being operated on a highway is discovered not to comply with § 29.402 or § 29.403, it may be continued in operation to the carrier's nearest terminal, the carrier's place of business or other similar location where repairs can be effected safely; however, this operation may be conducted only if it is less hazardous to the public than permitting the vehicle to remain on the highway.

§ 29.406. Inspection by enforcement officers.

* * * * *

(b) [The PUC Driver—Equipment Compliance Check Form will] A form designated by the Commission shall be used to record findings from vehicles selected for inspection.

(c) Vehicles in operation which are found upon inspection not to comply with §§ 29.402 and 29.403 (relating to vehicle equipment requirements; and requirements for passenger service operations) [will] shall be declared [out of service] out-of-service by an enforcement officer employed by the Commission and shall be placed out of service utilizing the Commission's out of service sticker.

(d) [Vehicles being used to transport passengers which are found upon inspection not to comply with the requirements of § 29.403 (relating to requirements for passenger service operation) will be declared out-of-passenger service by an enforcement officer employed by the Commission and placed out-of-passenger service utilizing the Commission's out-of-passenger service sticker.

(e) A common carrier or contract carrier may not require or permit a person to operate nor may a person operate a vehicle declared and placed out-of-service until repairs required by the [PUC Driver—Equipment Compliance Check Form] Commission have been satisfactorily completed, except as provided in § 29.404 (relating to unsafe operations forbidden).

[(f) A common carrier or contract carrier may not require or permit a person to transport passengers, nor may a person transport passengers in a vehicle declared and placed out-of-passenger service until repairs or maintenance required by the PUC Driver—Equipment Compliance Check Form have been completed.

(g) (e) A person may not remove an out-of-service sticker [or an out-of-passenger service sticker] from a vehicle prior to completion of the repairs required by the [PUC Driver—Enforcement Compliance Check Form] Commission.

(h) (f) The person completing the repairs required by the out-of-service notice shall sign the Certificate of Repairman in accordance with the terms prescribed [on] by the [PUC Driver—Equipment Compliance Check Form] Commission, entering the name of the

person's shop or garage and the date and time the required repairs were completed. If the vehicle operator completes the required repairs, the operator shall sign and complete the Certification of Repairman.

[(i)] (g) The carrier's disposition of [PUC Driver—Equipment Compliance Check Form] the form shall be as follows:

(1) The operator of a vehicle receiving [a PUC Driver—Equipment Compliance Check Form] the form placing the vehicle out of service shall deliver the form to the common carrier or contract carrier operating the vehicle[; it shall be the sole responsibility of the common carrier or contract carrier to return the form to the Commission in accordance with the terms prescribed thereon and in paragraphs (2) and (3)].

* * * * *

(3) [Common carriers and contract carriers shall complete the Motor Carrier Certification of Action Taken on the form in accordance with the terms prescribed thereon. They shall return the form to the Commission at the address indicated on the form within 15 days following the date of the vehicle inspection.] Carriers shall retain a copy of the form at their principal place of business for 1 year from the date of inspection.

Subchapter F. DRIVER REGULATIONS

Sec.

- 29.501. Applicability.
- 29.502. Current drivers license required.
- 29.503. Age restrictions.
- 29.504. Driver history.
- 29.505. Criminal history.
- 29.506. Alcohol prohibition.
- 29.507. Controlled substance prohibition.
- 29.508. Common or contract carriers operating vehicles with seating capacities of 9 to 15 passengers, including the driver.
- 29.509. Civil penalties for violations.

§ 29.501. Applicability.

This subchapter applies to drivers of vehicles having a designed seating capacity of 15 passengers or less, including the driver, which are used by common carriers or contract carriers to transport passengers in scheduled route service, call or demand service, group and party service, limousine service, airport transfer service, or paratransit service and experimental service, as defined in § 29.13 (relating to scheme of classification).

§ 29.502. Current driver's license required.

A common or contract carrier may not permit a person to operate a vehicle in its authorized service unless that person has a current, valid driver's license.

§ 29.503. Age restrictions.

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.

§ 29.504. Driver history.

(a) A common or contract carrier may not permit a person to operate a vehicle in its authorized service until it has obtained a driver history from the appropriate agency of every state in which that person held a motor vehicle operator's license or permit during the preceding 3 years.

(b) Following receipt of the initial driver history report, a common or contract carrier shall, at least once every 12 months from the date of the last report, obtain a driver history for each driver operating under its authority from the appropriate agency of the state in which the driver held an operator's license during the time period. Compliance with this subsection does not relieve a common or contract carrier of the responsibility to ensure its drivers hold a current, valid driver's license.

(c) A copy of the driver history shall be maintained by the common or contract carrier for at least 2 years.

§ 29.505. Criminal history.

(a) *Criminal history record required.* A common or contract carrier may not permit a person to operate a vehicle in its authorized service until it has obtained a criminal history record from the Pennsylvania State Police and every other state in which the person resided for the last 12 months. For current drivers, carriers shall obtain a criminal history record by _____. (*Editor's note:* The blank refers to a date 90 days after the effective date of adoption of this proposed rulemaking.)

(b) *Frequency of record check.* Following receipt of the initial criminal history record, a common or contract carrier shall obtain a criminal history record for each driver operating under its authority from the Pennsylvania State Police every 2 years from the date of the last criminal history check.

(c) *Disqualification by reason of felony conviction.* A common or contract carrier may not permit a person to operate a vehicle in its authorized service when the person was convicted of a felony under the laws of the Commonwealth or under the laws of another jurisdiction and who is under the supervision of a court or correctional institution as a result of that conviction, so long as a court or correctional institution maintains some form of supervision. The supervision may include incarceration, probation, parole and furlough.

(d) *Disqualification for conviction of crime of moral turpitude.* A common or contract carrier may not permit a person to operate a vehicle in its authorized service when the person was convicted of a crime of moral turpitude, whether a felony or misdemeanor, under the laws of the Commonwealth or under the laws of another jurisdiction and who is under the supervision of a court or correctional institution as a result of that conviction, so long as a court or correctional institution maintains some form of supervision. The supervision may include incarceration, probation, parole and furlough.

(e) *Record retention.* A copy of the criminal history shall be maintained by the common or contract carrier for at least 3 years.

§ 29.506. Alcohol prohibition.

A driver may not use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while operating a vehicle in passenger service.

§ 29.507. Controlled substance prohibition.

A driver may not use a controlled substance, be under the influence of a controlled substance, or

have any measured concentration or detected presence of a controlled substance, while operating a vehicle in passenger service.

§ 29.508. Common or contract carriers operating vehicles with seating capacities of 9 to 15 passengers, including the driver.

(a) A common or contract carrier may not permit a person to drive a vehicle with a seating capacity of 9 to 15 passengers, including the driver, unless the driver complies with the following:

(1) The driver is physically qualified in accordance with 49 CFR 391.41—391.49 (relating to physical qualifications and examinations).

(2) The driver is in compliance with the hours of service provisions of 49 CFR 395.5 and 395.8 (relating to maximum driving time for passenger-carrying vehicles; and driver's record of duty status).

(3) Drivers are exempt from 49 CFR 395.8 if they fall within exemption in 49 CFR 395.1(e). In this circumstance, carriers shall keep time records in accordance with 49 CFR 395.1(e)(5) (relating to scope of rules in this part).

§ 29.509. Civil Penalties for violations.

A complaint may be initiated against the carrier for violations of this subchapter.

CHAPTER 31. MOTOR CARRIER PROPERTY AND HOUSEHOLD GOODS TRANSPORTATION
GENERAL PROVISIONS

§ 31.4. Transfer of certificates and permits.

* * * * *

(c) Upon the death of an individual holder of a certificate or permit or upon an individual certificate holder being legally declared incompetent, the rights conferred by the certificate or permit shall continue with the legal representative of the deceased or incompetent holder for 1 year. [After that time, the rights conferred shall terminate,] After the expiration of the 1 year period, appropriate proceedings shall be initiated to terminate the certificate unless application has been made to transfer the rights to the heirs, guardian, trustees, legatee or others, in which case the rights shall continue with the legal representative until the application is granted or refused. If application is made by the legal representative [not less than] at least 30 days prior to the end of the period of 1 year, the Commission may, for cause shown, permit the transfer of rights to the executors, administrators, guardians, trustees or other legal representatives of the deceased or incompetent holder for a period to be fixed by the Commission. Pertinent orders or decrees of the court having jurisdiction over the estate of the decedent or incompetent person may be deemed cause for the granting of the application by the Commission.

* * * * *

§ 31.11. Reports of accidents and damage.

(a) [Within 30 days after a reportable accident occurs, a detailed report shall be mailed to: Secretary, Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, Pennsylvania 17105.

(b) A reportable accident is one involving one or more of the following:

- (1) The death of a person.
- (2) Personal injuries which require medical attention.
- (3) Property damage amounting to \$4,200 or more, based on actual costs or reliable estimates.
- (4) Collisions at grade crossings between motor vehicles operated under a certificate of public convenience or contract carrier permit and trains or streetcars, whether or not a person is killed or injured in the accident.

(c) If the occurrence of an accident results in the death of a person, an immediate report of the accident shall be made by telephone or telegraph to the Bureau of Transportation and Safety, in addition to the detailed written report required by subsection (a).

(d) The requirements of this section for the reporting of accidents correspond closely with those of the United States Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, and the Department of Transportation, Bureau of Traffic Safety, of the Commonwealth. A copy of the report to the Bureau of Motor Carrier Safety or the Bureau of Traffic Safety will be accepted in lieu of a separate accident report.]

Accidents involving death of a person. Motor carriers of property and household goods shall telephonically notify the Bureau of Transportation and Safety of any accident resulting in the death of a person within 24 hours of the accident. Carriers shall maintain a copy of the police report for 1 year from the date of the accident.

(b) *Other accidents.* For all accidents resulting in the filing of a police report, the carrier shall maintain a copy of that report for 1 year from the date of the accident.

COMMON CARRIERS OF PROPERTY AND HOUSEHOLD GOODS IN USE

§ 31.32. Equipment leasing.

(a) *Applicability.* This section applies to the [augmenting] leasing of equipment by motor carriers engaged in transporting property and household goods by motor vehicle between points in this Commonwealth[, the interchange of equipment between motor carriers of property by motor vehicle engaged in transporting property between points in this Commonwealth and the rental of equipment by motor carriers of property to private carriers and shippers, for use in transporting property between points in this Commonwealth].

(b) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Motor carrier—A person or corporation authorized to engage in the transportation of property or household goods as a common or contract carrier by motor vehicle under 66 Pa.C.S. §§ 1101—3315 (relating to Public Utility Code).

(c) [Augmenting] Leasing equipment. [The augmenting of equipment] Equipment leasing by a motor carrier shall conform with the following:

(1) *General.* [**Other than equipment exchanged between motor carriers in interchange service as defined in subsection (d), no**] A motor vehicle may not be operated between points in this Commonwealth in intrastate commerce by a motor carrier, unless the vehicle is either owned by the motor carrier or is leased to the motor carrier under the conditions in paragraphs (2)—(4).

(2) *Contract requirements.* A contract is subject to the following:

* * * * *

(iii) [*Minimum duration.* A lease between owners of equipment and motor carriers shall be in effect for a term of 30 days or more, except that the 30-day minimum period does not apply to the following:

(A) Dump equipment leased to a motor carrier for use in transporting salt and calcium chloride, in bulk, for ice and snow control purposes, during the period from October 1 to April 30, both inclusive, of each year.

(B) Equipment owned or held under lease by motor carriers of automobiles or tank truck carriers used respectively in the transportation of automobiles or commodities in bulk, if leased or subleased to other motor carriers.

(C) Equipment without drivers leased by a motor carrier.

(D) Equipment operated to meet peak demands, not exceeding 5 consecutive days in a 30-day period, or in case of an emergency such as equipment breakdown or publicly declared civil emergency.

(E) Equipment owned by the lessor or held by the lessor under a lease of 30 days or more.

(iv) [*Exclusive possession, control and responsibility.*

* * * * *

[(C) *Household goods carriers: intermittent operations under long-term lease.* If leases are entered into by motor carriers of household goods, clause (A) need only apply during the period the equipment is in operation by or for the motor carrier, lessee.

(v) [(iv) *Compensation.* The lease agreement shall specify the amount of compensation to be paid by the lessee for the rental of the leased equipment.

[(vi)] (v) *Duration.* The lease agreement shall specify the time and date or the circumstances on which the contract, lease or other arrangement begins and the time or the circumstances on which it ends. [**The duration of the contract, lease or other arrangement shall coincide with the time for the giving of receipts for the equipment as set forth in paragraph (3).**

(vii) [(vi) *Documentation.* A lease shall be executed in triplicate. The original shall be retained by the motor carrier in whose service the equipment is to be operated, one copy shall be retained by the owner of the equipment and one copy shall be carried on the equipment specified therein during the entire period of the contract, lease or other arrangement, unless a certificate is carried on the equipment in lieu thereof, certifying that the equipment is being operated by [**it**] lessee, the name of the owner, the date of the lease, contract or other arrangement, the period thereof and the location where the original of the

lease, contract or other arrangement is retained by the motor carrier. [**If the equipment is being leased for periods of less than 30 days, the motor carrier shall prepare and keep documents covering each trip for which the equipment is used in its service. The documents shall contain the name and address of the owner of the equipment, the point of origin, the time and date of departure and the point of final destination. The motor carrier shall also carry papers with the leased equipment during its operation containing this information and identifying the lading and clearly indicating that the transportation is under its responsibility. The papers shall be preserved by the motor carrier as part of its transportation records. Trip leases which contain the information required by this paragraph may be used and retained instead of the documents or papers.**] The certificate holder shall retain leases for 2 years following their expiration date.

(3) [*Receipts for equipment.* If possession of equipment is taken by the motor carrier or its regular employe or agent authorized to act for it, the carrier, employe or agent shall give to the owner of the equipment, or the owner's employe or agent, a receipt specifically identifying the equipment and stating the date and the time possession is taken. When possession by the motor carrier ends, the carrier or its employe or agent shall obtain from the owner of the equipment, or its regular employe or agent authorized to act for it, a receipt specifically identifying the equipment and stating therein the date and the time possession thereof is retaken. The receipts shall be retained by the motor carrier for a period of at least 1 year.

(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**] **person making the inspection shall certify the results thereof, which certification 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:]**

(*Editor's Note:* As part of this proposed rulemaking, the Commission is proposing to delete the form which appears in 52 Pa. Code page 31-12, serial page (241246).)

[(5) *Limitation on leasing.* The number of pieces of powered equipment leased by a motor carrier for operation in its certificated Commonwealth intrastate service may not exceed the number of pieces of powered equipment owned by that motor carrier and operating in its certificated Commonwealth intrastate service. For purposes of this paragraph, the following shall be considered to be neither leased nor owned:

(i) Leased equipment if the minimum duration of the lease is for a term of at least 120 days or if the lease has been continuously in force for a period of at least 120 days.

(ii) Equipment being leased under the interchange provisions of subsection (d).

(iii) Equipment specified in the minimum duration exemptions listed in paragraph (2)(iii).

(d) *Interchange of equipment between motor carriers.* This subsection applies to those motor carriers who own or hold equipment under a lease and who are authorized by their certificates or by the application of the regulations of the Commission to interchange freight. If carriers are so authorized, the movement to which the interchange applies shall be between points included in the interline authority of each carrier. Under these circumstances, a motor carrier may receive equipment from another motor carrier in connection with the through movement of freight, subject to the following:

(1) There shall be a written lease or other agreement describing specifically the time and date when the lease or agreement begins and ends, the equipment to be interchanged, the specific points of interchange, the use to be made of the equipment and the consideration for the use. The lease or agreement shall be signed by the parties thereto or their authorized employes or agents.

(2) The traffic shall move on a through bill of lading issued by the originating carrier and shall show the points of interchange with connecting carriers.

(3) The carrier receiving the equipment at the interchange point shall identify the equipment as required by § 31.33 (relating to identification of equipment) and shall remove the identification when the equipment is returned to the service of the originating carrier.

(e) (d) *Leasing equipment to shippers.* [Unless the service is specified in their operating authority, a] A motor carrier is prohibited from leasing equipment with or without drivers to shippers or private carriers.

§ 31.33. Identification of equipment.

(a) [This section applies to the augmenting of equipment by motor carriers engaged in transporting property by motor vehicle between points in this Commonwealth, the interchange of equipment between motor carriers of property between points in this Commonwealth, and the rental of equipment by motor carriers of property to private carriers and shippers, for use in transporting property between points in this Commonwealth.

(b) A motor carrier shall cause to be painted on each side of every [Every motor vehicle operated by [him] a motor carrier shall be marked on each side, in letters [not less than] at least 2 inches in height, and [not less than] at least 1/2 inch in width, the name and address of the motor carrier and the number of the certificate of public convenience or permit as follows: "PA. P.U.C. NO. A ____." If the vehicle is owned by someone other than the motor carrier operating it, there shall be shown on each side of the vehicle, in letters [not less than] at least two inches in height

and [not less than] at least 1/2 inch in width, the wording: "OPERATED BY (name and address of authorized motor carrier), PA. P.U.C. NO. A ____." If a removable device is used to identify the operating carrier as lessee, the device shall be of durable material and securely affixed, to the vehicle operated, throughout the duration of the lease.

[(c)] (b) * * *

[(d)] (c) * * *

TRANSPORTATION OF HOUSEHOLD GOODS IN USE

§ 31.121. Information for shippers.

(a) When a prospective shipper requests moving service and before an order for service is prepared, the household goods carrier shall furnish the prospective shipper with [a statement] the following Commission supplied form entitled "Information for Shippers [,]" [in accordance with the following specimen]:

[INFORMATION FOR SHIPPERS

The carrier must give you a written estimate that will approximate the amount he believes it will cost you to move your household furnishings. In this connection it is important that you inform the estimator of *everything* you intend to move. The total actual charges may be more or less than the estimate, depending on the size of your shipment, the distance it is to move, and other circumstances relating to your shipment.

You will be required ultimately to pay the mover's applicable tariff charges based on an hourly rate (if distance is 40 miles or less) or on a weight and mileage basis (if distance is over 40 miles).

Where the mover has not informed you *prior to delivery* that he will extend credit, the mover will expect you to make payment of the charges at time of delivery in cash, money order or certified check.

If the total actual charges *do not exceed* the estimate by more than 10 percent, you must be prepared to pay *all of the actual charges* prior to the mover unloading your goods. If the total actual charges *do exceed* the estimate by more than 10 percent, the mover is required to deliver the full and complete shipment upon payment of the estimated charges plus an additional \$25, or 10 percent of the estimate whichever is greater, and you may defer paying the balance for 15 days after delivery.

In case you sustain a loss or damage to your household effects, you are protected only up to but not exceeding 30 cents per pound per article. If you desire protection greater than 30 cents per pound, you may declare such valuation and pay the increased tariff rate applicable to the valuation you declare. You may also protect yourself to the full valuation of your goods by taking out a policy of transit insurance.

Upon completion of the delivery the driver will ask you to sign either the delivery receipt, the inventory, or both. Before signing either one, be sure that one or the other notes all the damage and any lost articles. If the driver will not make such notations, make them yourself before signing. Remember, telling the driver about these things is not enough. Do not sign any delivery papers for the driver until

delivery is completed. When you sign the delivery receipt, you accept your goods in apparent good condition, except as noted on the receipt.

I hereby certify that a copy of above Information for Shippers was furnished

_____ on _____
Name of Shipper Date

Signature of Carrier Representative]

INFORMATION FOR SHIPPERS

ESTIMATE

The carrier must give you a written estimate that will approximate the amount he believes it will cost you to move your household furnishings. It is important that you inform the estimator of *everything* you intend to move. The *actual* charges may be more or less than the estimate.

RATES

If the move is 40 miles or less, the charge will be based on an hourly rate. If the move is over 40 miles, the charge will be based on weight and mileage. You will be required to pay any increase in charges resulting from changes to the carrier's rates between the time of the estimate and the actual move.

INVENTORY

The carrier must complete a detailed inventory listing all items to be moved and their condition. All items must be given an identification number. The inventory must be completed before loading. You should observe and verify the inventory, noting the condition of all items. The carrier must provide you with a copy of the completed inventory before loading and it must be signed by you and the carrier. Upon delivery, you should verify all items in the inventory were delivered and their condition. You should note on the inventory any missing or damaged items. Retain your copy of the inventory until all disputes are settled.

BILL/RECEIPT

The carrier must give you a bill/receipt for the move within 15 days after the delivery date. The bill/receipt must detail all charges for the move. It must also contain copies of the Inventory and the Estimated Cost of Services.

PAYMENT

You will be required to pay the mover's tariff charges. If the mover has not informed you *prior to delivery* that he will extend credit, the mover will expect you to make payment of the charges at time of delivery in cash, cashier's check or certified check.

If the actual charges *do not exceed* the estimate by more than 10 percent, you must pay *all of the actual charges* prior to the mover unloading your goods. If the total actual charges *exceed* the estimate by more than 10 percent, the mover is required to deliver the full and complete shipment upon payment of the estimated charges plus an additional \$25, or 10 percent of the estimate, whichever is greater. You may defer paying the balance for 15 days after delivery.

LOSS AND INSURANCE

If you sustain a loss or damage to your goods, you are protected only up to but not exceeding 60 cents per pound per article. If you desire protection greater than 60 cents per pound, per article, you may secure increased coverage by paying a higher tariff rate applicable to the coverage you desire. You may also protect yourself to the full valuation of your goods by taking out a policy of transit insurance with an insurance agent.

PROOF OF DAMAGE/ RECEIPT

Upon completion of the delivery, the driver will ask you to sign the delivery receipt. Do not sign any delivery papers until delivery is completed. Before signing, be sure all damage and any lost articles are noted on the receipt or inventory. If the driver will not make such notations, make them yourself before signing. Remember, telling the driver about these things is not enough. Do not sign the delivery receipt if it contains language purporting to release or discharge the carrier from liability. Strike this language out before signing or refuse delivery if the mover refuses to provide a proper delivery receipt.

Complaints

For complaints and information, contact the Pennsylvania Public Utility Commission at 1-800-782-1100 or at www.puc.paonline.com. Include the company name and A-number for all complaints.

I hereby certify that a copy of above Information for Shippers was furnished on _____

Name of Shipper

Signature of Carrier Representative

(b) The carrier shall retain [a] an executed copy of this certification with shipping order for 2 years from the date of the move.

(c) [A sample form, Estimated Cost of Services, is set forth in § 31.130 (relating to estimated cost of services).] The carrier shall provide the form to the shipper at least 48 hours prior to the move.

§ 31.122. [Estimate of charges] Estimated cost of services.

(a) A [common carrier by motor vehicle engaged in transporting] household goods [in use between points in this Commonwealth] carrier shall prepare an [Estimate of Charges] estimated cost of services for the proposed service, on a form [and in the following manner:]. The form shall be supplied to the shipper prior to the move and shall contain the following information:

(1) [*Notification to shipper of charges.* Whenever the shipper specifically requests notification of the actual weight and charges on a shipment, and supplies the carrier with an address or telephone number at which the communication shall be received, the carrier shall comply with the request immediately upon determining the actual weight and charges. The notification shall be made by telephone, first-class mail or in person at the carrier's expense unless the carrier provides in its tariff that the actual cost of the notification shall be collected from the shipper.

(2) *Form for estimates of charges.* Across the top of each form there shall be imprinted in letters not less than 1/2 inch high the words "Estimated Cost of Services". The form shall be fully executed as appropriate in each case in accordance with the instructions therein and shall set forth special services for handling, packing, use of containers, the rates for vehicles and labor, weight and distance charges if applicable, and other information that may be provided in this chapter. The original or a true legible copy of each completed estimate of charges shall be given to the shipper, and a copy thereof shall be maintained by the carrier as part of its record of transportation.]

Across the top of each form there shall be imprinted in letters at least 1/2 inch high the words "Estimated Cost of Services."

(2) The names and addresses of the carrier and shipper.

(3) The origin and destination of the shipment.

(4) The date of the estimate and the date of the proposed move.

(5) A certification that the shipper accepts or rejects the minimum insurance limits.

(6) The applicable rates for handling, packing, container use, vehicles, labor, weight and distance, and excess insurance above the minimum.

(7) Notification to the shipper that he will be required to pay any increase in charges resulting from changes to the carrier's tariff between the time of the estimate and the actual move.

(8) The signature of the carrier representative and the shipper.

(b) The carrier shall maintain a copy of the estimated cost of services for 2 years from the date of the move.

§ 31.123. Delivery when charges exceed estimates.

If actual charges exceed the amount shown in the carrier's estimate, the carrier, upon request of the shipper or [his] the shipper's representative, shall relinquish possession of the complete shipment at destination upon payment of the estimated amount plus 10% over the estimate or \$25, whichever is greater. Carrier shall defer demand for the remainder of the tariff charges for [a period of] 15 days following delivery. [If carrier does not extend credit to shipper, he shall notify shipper prior to delivery that payment of charges shall be required to be made in cash, money order or certified check.]

§ 31.124. Report of underestimates.

(a) A motor common carrier of household goods in use shall file with the Pennsylvania Public Utility Commission, Bureau of [Investigations, Service and Enforcement] Transportation and Safety, Harrisburg, Pennsylvania, a quarterly report [commencing with the 3-month period ending December 31, 1973.] containing instances during the period wherein charges exceeded the estimate by more than 10% with the explanation of the reasons for the variances. [For this purpose the mover may use the Report of Underestimates which is set forth in subsection (b) or the quarterly report form prescribed by the Interstate Commerce Com-

mission.] The report shall be filed within 30 days after the end of the quarter reported. The carrier shall retain the report for 2 years after the date of filing.

(b) [A Report of Underestimates is attached hereto and made a part of this chapter:]

(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete the form which appears in 52 Pa. Code page 31-26, serial page (241260).)

Content. The report shall contain the carrier's name, address and certificate number. The report shall also contain the total number of shipments made for the quarter, the total number of reportable underestimates, and the reasons for the underestimates.

§ 31.125. Obtaining weight tickets.

The carrier shall cause every shipment of household goods in use for distances over 40 miles to be weighed by a public weighmaster. [Separate weight] Weight tickets evidencing gross and tare weights shall be obtained from the public weighmaster, which the driver shall identify by recording thereon the bill of lading number of the shipment. True copies of the weight tickets shall be attached to the receipt or bill of lading accompanying the shipment and retained in the carrier's file. True copies of the weight tickets shall also be furnished to the shipper upon request. Under circumstances where a public weighmaster is not available to the mover at origin or at a point within a radius of 10 miles thereof, a constructive weight based on [seven] 7 pounds per cubic foot of properly loaded van space may be used. [Where] When constructive weight is used, the mover shall designate same on the bill of lading, and a copy of the bill of lading shall be furnished to the Pennsylvania Public Utility Commission, Bureau of [Investigations, Service and Enforcement] Transportation and Safety, Harrisburg, Pennsylvania. Weight tickets shall be maintained by the carrier for 2 years from the date of the move.

§ 31.127. Failure to comply with provisions.

A common carrier by motor vehicle engaged in transporting household goods shall comply with this chapter, and failure to comply therewith may subject the carrier to the penalties provided under [Article XIII of the Pennsylvania Public Utility Law (66 P. S. § 1491 et seq.) (Repealed)] 66 Pa.C.S. §§ 3301—3316 (relating to violations and penalties). Whenever circumstances are present which in the opinion of the Commission indicate that a common carrier of household goods is persistently in violation of this chapter or [the Pennsylvania Public Utility Law (66 P. S. 1101 et seq.) (Repealed)] 66 Pa.C.S. (relating to public utility code), the Commission may institute appropriate enforcement action [with the view of revoking or suspending the certificate of the common carrier].

§ 31.130. [Estimated cost of services] (Reserved).

[An estimated cost of services is attached hereto and made a part of this chapter:]

(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete the form which appears in 52 Pa. Code page 31-29, serial page (241263).)

§ 31.131. Notification to shipper of charges.

Whenever the shipper specifically requests notification of the actual weight and charges on a shipment, and supplies the carrier with an address or telephone number, the carrier shall comply with the request immediately upon determining the actual weight and charges. The notification shall be made by telephone, first-class mail, fax, e-mail, or in person at the carrier's expense unless the carrier provides in its tariff that the actual cost of the notification shall be collected from the shipper.

§ 31.132. Bill of lading.

(a) A household goods carrier shall issue a bill of lading (receipt) for each shipment. The bill of lading shall contain the following information:

- (1) The name, address and telephone number of the carrier.
 - (2) The carrier's certificate number.
 - (3) The name and address of the shipper.
 - (4) The date of the shipment.
 - (5) The origin and destination of the shipment.
 - (6) A detailed account of the charges and applicable rates.
 - (7) A total of the charges due and acceptable methods of payment.
- (b) The carrier shall present the bill of lading to the shipper within 15 days of the delivery date.
- (c) The carrier shall attach a copy of the estimated cost of services and inventory to the bill of lading.
- (d) A copy of the bill of lading must accompany the shipment at all times.

(e) Carriers shall retain a copy of the bill of lading for 2 years from the date of the move.

(f) The bill of lading may not contain any language purporting to release or discharge the carrier from liability for damage. The bill of lading may include a statement that the property was received in apparent good condition except as noted on the inventory.

§ 31.133. Inventory.

(a) A household goods carrier shall prepare a written, itemized inventory for each shipment. The inventory shall identify every carton and every uncartoned item shipped. An identification number corresponding to the inventory shall be placed on each article in the shipment.

(b) The inventory shall be prepared before the shipment is loaded for transportation.

(c) The shipper shall be provided the opportunity to observe and verify the accuracy of the inventory.

(d) The carrier shall provide a copy of the inventory, signed by both the shipper and carrier, to the shipper prior to loading.

(e) Upon delivery, a carrier shall provide the shipper with the opportunity to observe and verify that the same articles are being delivered and the condition of the articles. A carrier shall also provide the shipper the opportunity to note, in writing, any missing articles and the condition of any damaged articles. The carrier shall provide the shipper with a copy of all notations.

(f) The carrier shall retain an inventory for 2 years from the date of the shipment.

§ 31.134. Criminal history.

(a) *Criminal history record required.* A household goods carrier may not permit a person to provide moving services in a shipper's dwelling until it has obtained a criminal history record from the Pennsylvania State Police and from every other state in which the person resided for the last 12 months. For current employees, carriers must obtain a criminal history record by _____. (*Editor's note:* The blank refers to a date 90 days after the effective date of adoption of this proposed rulemaking.)

(b) *Frequency of record check.* Following receipt of the initial criminal history record, a household goods carrier shall obtain a criminal history record for each employee providing moving services from the Pennsylvania State Police every 2 years from the date of the last criminal history check.

(c) *Disqualification by reason of felony conviction.* A household goods carrier may not permit a person to provide moving services in a shipper's dwelling when the person was convicted of a felony under the laws of the Commonwealth or under the laws of another jurisdiction and who is under the supervision of a court or correctional institution as a result of that conviction, so long as a court or correctional institution maintains some form of supervision. The supervision may include incarceration, probation, parole and furlough.

(d) *Disqualification for conviction of crime of moral turpitude.* A household goods carrier may not permit a person to provide moving services in a shipper's dwelling when the person was convicted of a crime of moral turpitude, whether a felony or misdemeanor, under the laws of the Commonwealth or under the laws of another jurisdiction and who is under the supervision of a court or correctional institution as a result of that conviction, so long as a court or correctional institution maintains some form of supervision. The supervision may include incarceration, probation, parole and furlough.

(e) *Record retention.* A copy of the criminal history shall be maintained by the household goods carrier for at least 3 years.

[Pa.B. Doc. No. 04-1135. Filed for public inspection June 25, 2004, 9:00 a.m.]