

PROPOSED RULEMAKING

DEPARTMENT OF DRUG AND ALCOHOL PROGRAMS

[28 PA. CODE CH. 709]

Standards for Licensure of Freestanding Treatment Facilities

The Department of Drug and Alcohol Programs (Department) proposes to amend §§ 709.21—709.26 and 709.28—709.32 and add § 709.34 (relating to reporting of unusual incidents) to read as set forth in Annex A.

This proposed rulemaking reduces redundant and outdated requirements but maintains the elements regarding quality and safety. Under proposed § 709.34, the Department will require that all drug and alcohol facilities develop and implement policies and procedures to respond to and report specific unusual incidents. Some facilities are currently required under § 715.28 (relating to unusual incidents) to report unusual incidents and most other facilities are also providing these reports on a voluntary basis.

The preliminary proposed regulation was presented and discussed with the Department's stakeholders at a meeting held on June 28, 2013, which was followed by a 30-day comment period. This proposed rulemaking is a result of comments and suggestions made at the stakeholder meeting and the comment period.

A. *Effective Date*

This proposed rulemaking will be effective upon final form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Ronald G. Young, Director, Division of Program Licensure, 132 Kline Plaza, Harrisburg, PA 17104, (717) 783-8675; or Tawny K. Mummah, Deputy General Counsel, Counsel, Department of Drug and Alcohol Programs, 333 Market Street, 17th Floor, Harrisburg, PA 17101, (717) 787-9354. This proposed rulemaking is available on the Department's web site at www.ddap.pa.gov.

C. *Statutory Authority*

This proposed rulemaking is authorized under the act of July 9, 2010 (P. L. 348, No. 50) (Act 50), which created the Department. Specifically, Act 50 added section 2301-A of The Administrative Code of 1929 (71 P. S. § 613.1) and provided the Department with the power to promulgate rules and regulations necessary to carry out the provisions in paragraph (9) of this section.

D. *Background and Purpose*

Act 50 transferred the powers, duties and functions of the Department of Health concerning drug or alcohol abuse to the Department. The goal of this proposed rulemaking is to eliminate redundant and outdated requirements and maintain or strengthen the elements regarding quality and safety.

E. *Summary of Regulatory Requirements*

Except for proposed § 709.34, this proposed rulemaking reduces the burden on the regulated community currently imposed by Chapter 709 (relating to standards for licensure of freestanding treatment facilities). For instance, the Department is proposing to delete require-

ments that specifically provide how the facility should be governed and how the facility should manage its personnel policies, procedures and records.

In most instances when it appears that the Department is increasing requirements, it is instead incorporating or restating Department of Health interpretive guidelines that did not have the force and effect of law but were used by the Department of Health to explain or augment the regulatory requirements.

Under proposed § 709.34, the Department is requiring that drug and alcohol facilities develop and implement policies and procedures to respond to and report specific unusual incidents. This requirement is not overly burdensome as some treatment facilities are already required under § 715.28 to report unusual incidents and most other facilities are also providing these reports on a voluntary basis under a Department of Health-issued Licensing Alert, which, similar to interpretive guidelines, does not have the force and effect of law.

F. *Benefits, Cost and Compliance*

Benefits

This proposed rulemaking will benefit drug and alcohol facilities by reducing the Department's inspection time at a facility. Specifically, the Division of Program Licensure will no longer be reviewing the policies, procedures and records that are reviewed under the current regulation.

Compliance Costs

There are no compliance costs for the drug and alcohol facilities associated with this proposed rulemaking.

Paperwork Requirements

There are no additional paperwork requirements associated with this proposed rulemaking as the unusual incident reports required under proposed § 709.34 are currently being submitted by the regulated community.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 26, 2014, 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 Committee on Public Health and Welfare and the House Committee on Human Services. 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 must 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.

H. *Public Comments*

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking within 30 days following publication in the *Pennsylvania Bulletin*. Comments should be mailed to Ronald G. Young, Director, Division of Program Licensure, 132 Kline Plaza, Harrisburg, PA, 17104. Com-

ments submitted by facsimile will not be accepted. Comments are public documents that will be posted on the IIRC web site.

Electronic comments. Comments may be submitted electronically to the Department at RA-licensure@pa.gov and must be received by the Department within 30 days following publication in the *Pennsylvania Bulletin*. A subject heading of proposed rulemaking and a return name and address must be included in each transmission. If the sender does not receive an acknowledgement of electronic comments within 2 working days, the comments should be retransmitted to ensure receipt.

GAROLD E. TENNIS,
Secretary

Fiscal Note: 74-1. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART V. DRUG AND ALCOHOL FACILITIES AND SERVICES

CHAPTER 709. STANDARDS FOR LICENSURE OF FREESTANDING TREATMENT FACILITIES

Subchapter C. GENERAL STANDARDS FOR FREESTANDING TREATMENT ACTIVITIES

§ 709.21. Applicability.

* * * * *

(b) A facility in which freestanding treatment activities are provided that has a valid full license from the Department of Public Welfare under 55 Pa. Code Chapters 5300 and 5310 (relating to private psychiatric hospitals; and community residential rehabilitation services for the mentally ill) is deemed to be in compliance with [**the following standards: Sections**] §§ 709.22—709.27, 709.29 and 709.32. This subsection shall remain in effect as long as the Department finds the standards in 55 Pa. Code Chapters 5300 and 5310 to be consistent with **the requirements** of this subchapter.

§ 709.22. Governing body.

(a) A project shall have a governing body and legal responsibility for the project rests in the governing body.

[(b) If a project is publicly funded, not more than one staff member of the project may sit on the governing body at a designated time.

(c) If the governing body consists of a board, it shall adopt written policies which shall include, but not be limited to:

- (1) A method of selection for membership.
- (2) Qualifications for membership.
- (3) Criteria for continued membership.
- (4) Frequency of meetings.

(d)] (b) The duties of the governing body include, but are not limited to, the following:

(1) [**Selecting a**] Designating the position to serve as project director as the person officially responsible to the governing body **either directly or indirectly**.

(2) Identifying the project's purpose and philosophy **directly related to drug and alcohol services**.

(3) [**Describing**] Documenting the project's organizational structure.

[(e)] (c) If a facility is publicly funded, the governing body shall make available to the public an annual report which includes, but is not limited to[:], **a statement disclosing the names of officers, directors and principal shareholders, when applicable**.

[(1) **Activities and accomplishments of the preceding year**.

(2) **A financial statement of income and expenses**.

(3) **A statement disclosing the names of officers, directors and principal shareholders, where applicable.**]

§ 709.23. Project director.

[(a) **The project director**] Project directors shall prepare [**and**], annually update **and sign** a written manual delineating project policies and procedures.

[(b) **The project director shall assist the governing body in formulating policy and present the following to the governing body at least annually:**

(1) Project goals and objectives which include time frames and available resources.

(2) Written reports of project operations.

(3) **A performance report summarizing the progress towards meeting goals and objectives.**]

§ 709.24. Treatment/rehabilitation management.

(a) The governing body shall adopt a written plan for the coordination of client treatment and rehabilitation services which includes, but is not limited to:

(1) [**Defined target population.**] **Definition of the target population toward whom facility services are directed.**

(2) [**Treatment**] **Identification of the treatment models and practices** utilized by the project.

(3) Written procedures for the management of treatment/rehabilitation services for clients.

(4) Written procedures for referral outlining cooperation with other service providers **including, but not limited to, provisions for access to emergency services**.

[(b) **The project shall obtain written letters of agreement or understanding with primary referral sources.**

(c)] (b) The project shall maintain a current community resource listing of other health and social service agencies.

[(d) **Provisions shall be made, through written agreement with a licensed hospital or physician, for 24-hour emergency psychiatric and medical coverage.**]

§ 709.25. Fiscal management.

[(a)] The project shall obtain the services of an independent **certified** public accountant for an annual **financial** audit of [**financial**] activities associated with the project's drug/alcohol abuse services, **in accordance with generally accepted accounting principles which include reference to the drug and alcohol treatment activities**.

[(b) **Projects shall develop a service fee schedule which shall be posted in a prominent place.**]

§ 709.26. Personnel management.

(a) The governing body shall adopt and have implemented written project personnel policies and procedures [which] in compliance with State and Federal employment laws. These laws include, but are not limited to:

[(1) Recruitment, selection, promotion and termination of staff.

- (2) Utilization of volunteers.
- (3) Wage and salary administration.
- (4) Employe benefits.
- (5) Working hours.
- (6) Vacation and sick leave.
- (7) Rules of conduct.
- (8) Disciplinary actions.
- (9) Supervision of staff.
- (10) Work performance evaluations.
- (11) Employe accidents and safety.
- (12) Employe grievances.]

- (1) Utilization of volunteers.
- (2) Rules of conduct.
- (3) Supervision of staff.
- (4) Orientation of new employees.

[(b) The governing body shall adopt a written policy to implement and coordinate personnel management, which includes, but is not limited to:

(1) Confidential maintenance of personnel records.

(2) The dissemination of employment information to project staff.

(3) The orientation of new employes.

(4) The implementation of Federal, State and local statutes concerning fair employment practices.

(c) The project director shall develop written policies and procedures to provide for ongoing staff training and staff evaluation. Documentation shall include, but is not limited to:

- (1) An assessment of staff training needs.
- (2) Plans for addressing these needs.
- (3) A mechanism to collect feedback on training completed.
- (4) An annual evaluation of the overall training program.

(d)] (b) The personnel records [shall] must include, but are not [be] limited to:

- [(1) The application for employment.
- (2) The results of reference investigations.
- (3) The verification of training experience and professional licensure or registration, where applicable.
- (4) Salary information.
- (5) Work performance evaluation including the following:
- (i) Individual staff performance shall be evaluated at least annually.

(ii) The individual shall be informed, by written copy, of the annual evaluation.

(6) Disciplinary actions.]

(1) Application or resume for employment.

(2) Written verification of qualifying professional credentials.

(3) Annual written individual staff performance evaluations, copies of which shall be reviewed and signed by the employee.

(4) Disciplinary actions.

[(e) The project director shall develop written policies on employe rights and demonstrate the project's efforts toward informing staff of the following:

(1) The employe's right to inspect his own records.

(2) The employe's right to request the correction or removal of inaccurate, irrelevant, outdated or incomplete information from the records.

(3) The employe's right to submit rebuttal data or memoranda to his own records.

(f)] (c) There shall be written job descriptions for project positions [which include, but are not limited to:]:

[(1) Job title.

(2) Tasks and responsibilities of the job.

(3) The requisite skills, knowledge and experience.]

§ 709.28. Confidentiality.

(a) A written procedure shall be developed by the project director which shall comply with 4 Pa. Code § 255.5 (relating to projects and coordinating bodies: disclosure of client-oriented information). The procedure [shall] must include, but not be limited to:

(1) Confidentiality of client identity and records. Procedures must include a description of how the project plans to address security and release of electronic and paper records and identification of the person responsible for maintenance of client records.

(2) [Staff access to client records.] Identification of project staff having access to records, and the methods by which staff gain access.

(b) The project shall secure hard copy client records within locked storage containers. Electronic records must be stored on secure, password protected data bases.

(c) The project shall obtain an informed and voluntary consent from the client for the disclosure of information contained in the client record. The consent shall be in writing and include, but not be limited to:

* * * * *

(4) Dated signature of client or guardian as provided for under 42 CFR 2.14(a) and (b) and 2.15 (relating to minor patients; and incompetent and deceased patients).

(5) Dated signature of witness.

(6) [Expiration date of the consent.] Date, event, or condition upon which the consent will expire.

(d) A copy of a client consent shall be offered to the client and a copy maintained in the client **[records] record.**

* * * * *

§ 709.29. Retention of client records.

(a) Client records, **[whether original, reproductions or microfilm, shall be kept on file]** regardless of format, shall be readily accessible for a minimum of 4 years following the discharge of a client.

* * * * *

§ 709.30. Client rights.

The project **[director]** shall develop written policies and procedures on client rights and **[shall demonstrate efforts toward informing clients of the following:]** document written acknowledgement by clients that they have been notified of those rights.

(1) A **[person]** client receiving care or treatment under section 7 of the act (71 P.S. § 1690.107)[,] shall retain civil rights and liberties except as provided by statute. No client may be deprived of a civil right solely by reason of treatment.

(2) The project may not discriminate in the provision of services on the basis of age, race, creed, sex, ethnicity, color, national origin, marital status, sexual orientation, handicap or religion.

(3) **[A client has the right to inspect his own records.]** Clients have the right to inspect their own records. The project, facility or clinical director may temporarily remove portions of the records prior to the inspection by the client if the director determines that the information may be detrimental if presented to the client. Reasons for removing sections shall be documented **[and kept on file]** in the record.

(4) **[The client has]** Clients have the right to appeal a decision limiting access to **[his]** their records to the **[project]** director.

(5) **[The client has]** Clients have the right to request the correction of inaccurate, irrelevant, outdated or incomplete information **[from his]** in their records.

(6) **[The client has]** Clients have the right to submit rebuttal data or memoranda to **[his]** their own records.

§ 709.31. [Uniform] Data Collection System.

[(a) If a project utilizes Department funds, it shall comply with the Department's UDCS.

(b)] (a) A data collection and recordkeeping system shall be developed that allows for the efficient retrieval of data needed to measure the project's performance in relationship to its stated goals and objectives.

(b) The recordkeeping system must allow for the identification of clients' admissions and discharges within a specific time period.

§ 709.32. Medication control.

(a) **[Projects which furnish pharmaceutical services shall comply with applicable Federal, State and local ordinances, statutes and regulations regarding the storing, compounding, administering or dispensing of medication.]** Projects furnishing

pharmaceutical services shall present a license from the Department of Health's Board of Examiners or the Department of State's State Board of Pharmacy and a DEA registration to Department employees. Other notices of review or inspection, or both, shall be made available upon request.

(b) **[Verbal medication orders may be accepted but shall be put in writing and signed within 24 hours thereafter by the prescribing physician.]** Verbal orders for medication can be given only by a physician or other medical professional authorized by State and Federal law to prescribe medication and verbal orders may be received only by another physician, pharmacist or nurse, or medical professional authorized by State and Federal law to receive verbal orders. When a verbal or telephone order is given, it has to be authenticated in writing by a physician or other medical professional authorized by State and Federal law to prescribe medication. In detoxification levels of care, written authentication shall occur no later than 24 hours from the time the order was given. Otherwise, written authentication shall occur within 3 business days from the time the order was given.

(c) The project shall have **and implement** a written policy **and procedures** regarding all medications used by clients which shall include, but not be limited to:

(1) Administration of medication**[.], including the documentation of the administration of medication:**

(i) By individuals permitted to administer by Pennsylvania law.

(ii) When self administered by the client.

(2) Drug storage areas **including, but not limited to, the secure storage of controlled substances and other abusable drugs in accordance with State and Federal regulations and program requirements.**

(3) Inspection of storage areas **that ensures compliance with State and Federal laws and program policy. The policy must include, but not be limited to:**

(i) What is to be verified through the inspection, who inspects, how often, but not less than quarterly, and in what manner it is to be recorded.

(ii) Disinfectants and drugs for external use are stored separately from oral and injectable drugs.

(iii) Drugs requiring special conditions for storage to insure stability are properly stored.

(iv) Outdated drugs are removed.

(v) Copies of drug-related regulations are available in appropriate areas.

(4) Methods for control and accountability of drugs**[.], including, but not limited to:**

(i) Who is authorized to remove drug.

(ii) The program's system for recording drugs, which includes the name of the drug, the dosage, the staff person, the time and the date.

(5) Security of drugs, **including, but not limited to, the loss, theft or misuse of drugs.**

[(6) Inventories.

(7)] (6) Medication errors and drug reactions shall be recorded in the client record. This may be the medical record if a separate medical record is maintained for all clients.

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 709.34. Reporting of unusual incidents.

(a) The project shall develop and implement policies and procedures to respond to the following unusual incidents:

(1) Physical assault or sexual assault by staff or a client.

(2) Selling or use of illicit drugs on the premises.

(3) Death or serious injury due to trauma, suicide, medication error or unusual circumstances while in residential treatment or, when known by facility, for ambulatory services.

(4) Significant disruption of services due to disaster such as fire, storm, flood or other occurrence which closes the facility for more than 1 day.

(5) Theft, burglary, break-in or similar incident at the facility.

(6) Event at the facility requiring the presence of police, fire or ambulance personnel.

(7) Fire or structural damage to the facility.

(8) Outbreak of a contagious disease requiring Centers for Disease Control (CDC) notification.

(b) Policies and procedures must include the following:

(1) Documentation of the unusual incident.

(2) Prompt review and identification of the causes directly or indirectly responsible for the unusual incident.

(3) Implementation of a timely and appropriate corrective action plan, when indicated.

(4) Ongoing monitoring of the corrective action plan.

(5) Reporting mechanism to ensure that reporting of an unusual incident to an entity is in compliance with State and Federal confidentiality laws.

(c) To the extent permitted by State and Federal confidentiality laws, the project shall file a written unusual incident report with the Department within 3 business days following an unusual incident involving:

(1) Physical or sexual assault by staff or a client.

(2) Death or serious injury due to trauma, suicide, medication error or unusual circumstances.

(3) Significant disruption of services due to a disaster such as a fire, storm, flood or other occurrence that results in the closure of a facility for more than 1 day.

(4) Event at the facility requiring the presence of police, fire or ambulance personnel.

(5) Outbreak of a contagious disease requiring CDC notification.

[Pa.B. Doc. No. 14-466. Filed for public inspection March 7, 2014, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

Acceptance of Rulemaking Petition for Study

On February 18, 2014, the Environmental Quality Board (Board) accepted a rulemaking petition for study under 25 Pa. Code Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy).

The petition, submitted by the University of Pittsburgh School of Law on behalf of the Mountain Watershed Association, requests the amendment of 25 Pa. Code § 93.9v (relating to Drainage List V) to redesignate Stony Run Watershed in Fayette County from Cold Water Fishes to Exceptional Value waters.

Under 25 Pa. Code § 93.4d(a) (relating to processing of petitions, evaluations and assessments to change a designated use), the Department of Environmental Protection (Department) is required to publish a notice of intent to assess candidate waters. The Department's assessment notice for this rulemaking petition will appear in a future issue of the *Pennsylvania Bulletin*.

The previously-referenced petition is available to the public by contacting the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, and is accessible on the Department's web site at www.depweb.state.pa.us (DEP Keywords: "EQB") (click "2014 EQB Meeting Dates"; see February 18, 2014, meeting).

E. CHRISTOPHER ABRUZZO,
Chairperson

[Pa.B. Doc. No. 14-467. Filed for public inspection March 7, 2014, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 57]

Advance Notice of Proposed Rulemaking; Inspection Requirements for Automatic Splices

Public Meeting held
February 20, 2014

Commissioners Present: Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; James H. Cawley; Pamela A. Witmer; Gladys M. Brown

Advance Notice of Proposed Rulemaking for Revision of 52 Pa. Code Chapter 57 Relating to Inspection Requirements for Automatic Splices; L-2014-2400191

Advance Notice of Proposed Rulemaking

By the Commission:

On January 9, 2014, the Commission entered an Order at Docket No. C-2012-2307244 disposing of a joint petition filed by the Commission's Bureau of Investigation and Enforcement (I&E) and West Penn Power Company (West Penn) on February 13, 2013. The petition sought approval of a settlement entered into by I&E and West Penn to resolve an investigation undertaken by I&E relating to a fatal accident that occurred in June 2009

when West Penn's electric distribution line fell onto a tree. A woman residing on the affected property located in Allegheny County was killed when she came into contact with the line.

As part of the non-monetary remedies in the West Penn Order, the Commission approved provisions that required West Penn to, among other things: (1) modify its training program to ensure that its linemen and line supervisors are properly trained in automatic splice installations, including preparation of the conductor, and that refresher training at regular intervals with regard to techniques of properly preparing conductors for automatic splice installation is provided as well; (2) conduct an inspection of automatic splices on its primary distribution system using infrared technology and replace automatic splices identified through this inspection as being at risk of failure; (3) maintain written records of the automatic splice inspections and replacements that are completed; and (4) perform spot checks of 5% of the installations per year (up to a cap of 100 installations per year) of those automatic splices identified as requiring replacement on a non-immediate basis following the inspection using infrared technology. West Penn Order at 5-7.

Our existing regulations require all Pennsylvania electric distribution companies (EDCs) to conduct visual overhead line inspections every year or two. 52 Pa. Code § 57.198(n)(4).¹ Infrared inspections, however, are not currently required by our regulations, but were found to be reasonable as part of the remedial measures approved in that settlement. The unresolved issue from that proceeding, however, is whether, and to what extent, any of the remedial measures proposed therein, particularly the measure relating to annual inspections of automatic splices using infrared technology, should be required of all Pennsylvania EDCs. West Penn Order at 11.

As we said in the West Penn Order, we did not have enough information at that time to indicate that annual infrared inspections of automatic splices are a cost effective use of inspection and maintenance funds. *Id.* In this regard, West Penn argued, and we agreed, that it was premature to consider a second infrared inspection or an annual inspection of all of West Penn's primary distribution system automatic splices when the results of the initial infrared inspection were not yet completed and analyzed. *Id.* at 8-11.

We also found that it would be discriminatory to impose such an annual inspection requirement only on West Penn and not address the issue on an industry-wide basis by amending the Commission's maintenance and inspection regulations at 52 Pa. Code §§ 57.191—57.198. As we concluded in the West Penn Order, implementation of a new inspection requirement for automatic splices that applies to all EDCs is more appropriately addressed through a rulemaking proceeding that provides all interested parties with notice and an opportunity to be heard. West Penn Order at 8-11.

We, therefore, are opening this docket and issuing this advance notice of proposed rulemaking in order to solicit comments from EDCs and other interested parties that address whether our existing regulations at 52 Pa. Code, Chapter 57, relating to electric distribution reliability should be amended to require regular inspections of

automatic splices using infrared technology or any other necessary changes related to this matter.

We are particularly interested in seeking comments on:

1. Whether standards should be established by the Commission for inspection, maintenance, repair, and replacement of automatic splice connections. Comments are requested on what, if any, those standards should be; or, alternatively, why you believe no inspection program for automatic splice connections should be implemented by the Commission.

2. If standards are ultimately adopted, should a prescriptive-based inspection program be instituted based on a time frequency that is added into the EDC's existing line inspection programs? Or should an annual performance-based program be implemented that uses a sampling population that is statistically significant to determine how many automatic splice connections to inspect annually based on the number of high risk automatic splice connections identified during sampling? Comments are also requested on the difference in the projected costs between the two programs.

3. What, if any, are the EDCs' internal practices regarding inspection of automatic splice connections and for the systematic replacement of automatic splices before they fail? If you have an internal practice already in place, how many automatic splices were proactively replaced in each of the last five calendar years?

4. If internal practices/procedures are currently in place for an EDC regarding inspection of automatic splice connections, describe those procedures and how detected deficiencies and/or abnormalities are addressed and documented?

5. If an infrared technology such as infrared thermography is used to inspect automatic splices, is supporting documentation kept as part of the inspection? If so, are temperature measurements recorded, stored, and data trended?

6. Is the use of infrared technology such as infrared thermography the preferred way to inspect automatic splices? Is there any other method or technology that can be used to inspect automatic splices safely and effectively? If known, what are the differences in costs of the various technologies available?

7. Are there any limitations to the physical inspection of an automatic splice? If so, what are they?

8. For EDCs, does your company look for possible annealing of the conductor due to possible overloading when performing overhead line inspections? If so, describe how your company documents and possibly mitigates such a condition. Also, if annealing of the conductor is detected, are automatic splices inspected for integrity?

9. For EDCs, does your company perform any electrical resistance tests on automatic splices? Are there any other testing or monitoring methods that should be considered for automatic splices?

10. For EDCs, what is the average age of existing automatic splice connections and, if known, how many are there for each of the following categories: 0-10 years, 10-20 years, 30-40 years, 40-50 years, greater than 50 years?

11. At a minimum, should some type of automatic splice inspection be mandated for critical loads or publicly sensitive areas such as at or near hospitals, schools, playgrounds, major highways, etc.? If so, how should these areas be defined and/or criteria implemented to address this concern?

¹ The Public Utility Code at 66 Pa.C.S. § 2802(20) provides the necessary authority to support the issuance of regulations relating to electric distribution reliability. Specifically, section 2802(20) states that "[s]ince continuing and ensuring the reliability of electric service depends . . . on conscientious inspection and maintenance of transmission and distribution systems, . . . the Commission shall set through regulations, inspection, maintenance, repair and replacement standards and enforce those standards."

12. What incremental costs would the EDCs incur if required to comply with an automatic splice inspection and maintenance program interval of no less than once every five years for every automatic splice connection in their service territory? Would you recommend some other time interval and, if so, please explain why?

13. What potential cost savings could the EDC realize with such a program?

14. If a systematic replacement program were required of every automatic splice connection in an EDC's service territory, either in addition to an inspection program or in the alternative, what would be the optimal replacement schedule and why? What costs would an EDC incur if such a requirement was put into place?

15. Do EDCs include the automatic splice manufacturer's installation and/or technical recommendations in the EDC's automatic splice installation procedures? If not, why?

16. How many automatic splice failures have the EDCs had per year in their service territories since 1994? What was the root cause, if known, for each such occurrence? If known, provide the manufacturer, model number, and the splice's age for each failed automatic splice occurrence? If known, what percentage of the EDC's overall automatic splice connections does this failure rate represent?

17. What have the EDCs paid over the last five years annually in compensatory and/or punitive damages to customers or others who have had property damages or personal injury due to a failed automatic splice connection?

18. If automatic splice connection inspections are determined to be impracticable or unreasonable under all the facts, what assurances and/or procedure enhancements can be made or implemented by an EDC to ensure that newly installed automatic splice connections are defect free and installed properly?

Additionally, the commenting parties are requested to submit draft regulatory provisions, including any supporting justification, as they deem appropriate for consideration.

Accordingly, pursuant to 66 Pa.C.S. §§ 501 and 2802(20), the Commission issues this Advance Notice of Proposed Rulemaking for comment; *Therefore,*

It Is Ordered That:

1. A rulemaking proceeding is hereby initiated at this docket to consider the revision of the regulations appearing in 52 Pa. Code, Chapter 57, relating to inspection requirements for automatic splices.

2. This Advance Notice of Proposed Rulemaking be published in the *Pennsylvania Bulletin*, with comments from interested parties due 60 days from the date of publication and reply comments due 30 days thereafter.

3. Comments should address the 18 issues identified in this Order, along with any other issues the commenting party deems relevant, and should include, where applicable, a numerical reference to the existing regulation(s) which the comments address, proposed language for revision, and a clear explanation for the recommendation.

4. An original of any comments or reply comments be served upon the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265.

5. An electronic copy of the comments and reply comments should be electronically mailed to Carl S. Hisiro, Assistant Counsel, at chisiro@pa.gov.

6. The contact persons for this rulemaking are Carl S. Hisiro, Assistant Counsel, Law Bureau, (717) 783-2812 (legal), and David Washko, Fixed Utility Valuation Engineer, Bureau of Technical Utility Services, (717) 425-7401 (technical).

7. A copy of the Advance Notice of Proposed Rulemaking shall be served on the Office of Consumer Advocate, the Office of Small Business Advocate, all jurisdictional electric distribution companies, and all parties of record at C-2012-2307244.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 14-468. Filed for public inspection March 7, 2014, 9:00 a.m.]

PHILADELPHIA PARKING AUTHORITY

[52 PA. CODE CHS. 1017 AND 1019]

Taxicab Safety Cameras

The Philadelphia Parking Authority (Authority), on November 25, 2013, adopted a proposed rulemaking order to provide for the use of safety cameras in Philadelphia taxicabs.

Proposed Rulemaking Order; Philadelphia Taxicab and Limousine Regulations; Doc. No. 126-8

Proposed Rulemaking Order

By the Authority:

In accordance with of the act of July 16, 2004, (P. L. 758, No. 94), 53 Pa.C.S. §§ 5701 et seq., as amended, (the "act"),¹ the Authority formally commences its rulemaking process to promulgate a regulation to provide for safety cameras in taxicabs in Philadelphia. The Authority seeks comments from all interested parties on the proposed regulation, which are found at Annex A to this Order.

A. *Background and discussion.*

The Authority regulates all taxicab and limousine service in Philadelphia, pursuant to the act. The Authority's regulations may be found at 52 Pa. Code Part II. It has been widely recommended to the Authority on several occasions, including a recent public comment hearing related to driver safety issues, that cameras should be affixed to all taxicabs in Philadelphia. The purpose of the cameras is to monitor the environment in which taxicab drivers provide service.

We believe that this monitoring will significantly reduce the rate of violence and crime perpetrated against drivers and assist law enforcement with investigations of such crimes. The images captured by the cameras will also be available to drivers or the Authority in furtherance of regulatory enforcement matters.

B. *The regulation.*

We propose amending 52 Pa. Code § 1017.5. (relating to basic vehicle standards) by adding a new paragraph to subsection (b) to require each taxicab in Philadelphia to be equipped with an approved safety camera system. We also propose adding a new Subchapter G (relating to safety cameras) to Chapter 1017 (relating to vehicle and

¹ See 53 Pa.C.S. §§ 5722 and 5742.

equipment requirements) to provide for the general requirements of the safety camera system and the manner in which it may be installed, inspected and operated.

The use of safety cameras in taxicabs is not a new idea. Such cameras are already in place in New York City, New Orleans, Chicago, San Francisco and other US cities. We anticipate that the implementation of this process will be relatively easy because this technology is in wide use. We have already been approached by medallion owners that wish to install such systems and the idea has the wide support of taxicab drivers who view this technology as a crucial tool to make their jobs safer.

§ 1017.5. *Basic vehicle standards.*

We propose amending 52 Pa. Code § 1017.5(b) (relating to basic vehicle standards) to add the safety camera requirement. The proposed paragraph (26) references the requirements of proposed Subchapter G.

Subchapter G. Safety Cameras

§ 1017.71. *Taxicab safety cameras.*

We propose adding § 1017.71 that taxicab owners be provided 120 days from the effective date of the regulation to present their taxicabs with an approved and installed safety camera system for inspection by the Authority. We believe that 4 months is a sufficient amount of time, after the notice provided through the promulgation process, to meet these requirements. Because this technology is already in wide use and has been the subject of repeated commenting and public hearings in Philadelphia, we believe that taxicab owners will be able to meet this deadline without significant challenge.

We also propose guidelines related to the initial inspection, sealing and posting of notices necessary to place the camera systems in operation.

§ 1017.72. *Safety camera system testing.*

We propose adding § 1017.72 to clarify that the testing of the safety camera system may include the actual operation of the taxicab with an inspector while the camera system is engaged. This form of inspection will truly test each unit and provide a method to assure that both the cameras and the recording and data storage process are currently functioning. As with other components of a taxicab, the safety camera system is subject to field inspections by Authority inspectors.

§ 1017.73. *Approved safety camera system.*

We propose adding § 1017.73 to advise regulated parties of the presence of a list of already approved safety camera systems that will be maintained by the Authority. This is a process similar to that employed as to taxicab meter systems as provided in § 1017.23 (relating to approved meters). The list is not exclusive or mandatory, but provided to assist certificate holders who simply seek to employ an already approved system, in lieu of suggesting an unreviewed safety camera system for approval. We believe we have clarified that point through the addition of subsection (b).

§ 1017.74. *Safety camera requirements.*

We propose adding § 1017.74 to provide minimum components of what a safety camera system must include. We believe that any system that is capable of meeting the requirements of this section will produce a result that will satisfy the purpose of this rulemaking. However, we have not outlined every system or method of functionality that may be used to achieve these objectives. Because technology steadily advances and often produces products that function at a higher quality, more efficiently and at a

lower cost point than the generation of equipment before, we leave room here for the approval of different and evolving systems, without the need to promulgate regulations in order to enroll each enhancement into the system.

The safety camera system must work in conjunction with the approved meter system for several reasons. The meter system itself includes certain safety features that will only be enhanced through the cooperation of the safety camera system. The meter system's existing distress button, required by § 1017.24(d)(8) (relating to meter activation and display), silently communicates the need for assistance to the taxicab driver's dispatch company when pressed by the driver. The dispatcher is able to immediately determine where the driver in distress is located due to the GPS functionality of the meter system. The ability to know that a driver needs help, know where the driver is and be able to see what is happening in the taxicab through simultaneous wireless communication will greatly improve driver safety.

The proposed regulation identifies the areas of the taxicab that must be monitored by the safety camera system. We avoid dictating a specific number of cameras to be used in the event that improving technology provides the means of doing so with fewer cameras than the number of monitored locations would seem now to require.

§ 1017.75. *One safety camera system.*

We propose adding section 1017.75 to limit each taxicab to only one safety camera system for ease of monitoring and general simplicity purposes. While an owner can switch between approved systems at their own discretion, they may only use one approved system at a time.

§ 1017.76. *Certificate holder responsible.*

The addition of section 1017.76 will require the taxicab's owner to make certain that the safety camera system works each day. This is the standard that already applies in Philadelphia to the taxicab's overall functionality. The owner may assign a representative to confirm that the safety camera system is functioning. Some certificate holders do not reside in the Philadelphia area and use business managers to supervise certain aspects of taxicab operations.

§ 1017.77. *Public notice.*

Each taxicab that operates with a safety camera system will display a notice of the presence of the system on the exterior and interior of the taxicab. While we anticipate that the public will receive notice through media releases and other sources, it is important to remind passengers that the taxicab trip is being monitored. This monitoring is a continuation of that which will likely have occurred while the passenger was hailing the taxicab on the street corner or while in the course of a trip on public transportation. Also, we believe that knowledge of the presence of this system will cause those who wish to do drivers harm to reconsider, given the increased likelihood of apprehension represented by that monitoring.

§ 1019.8. *Dispatcher requirements.*

We propose adding a new paragraph (17) to clarify that dispatchers must be equipped with the necessary communication lines and computer hardware and software necessary to support the safety camera system. Just as with the meter system required by § 1017.23 (relating to approved meters), the safety cameras system must be properly used and supported by the taxicab owner, driver and dispatcher.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 25, 2014, the Authority submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Urban Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposed rulemaking, the Commission provided IRRC and will provide the Committees with a copy of a detailed Regulatory Analysis Form. 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 must 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 Authority, the General Assembly and the Governor of comments, recommendations or objections raised.

Conclusion

The Authority, therefore, formally commences its rule-making process to promulgate this regulation to become part of 52 Pa. Code Part II in a manner consistent with Annex A to this Order. The Authority seeks comments from all interested parties on this proposed body of regulations, which are found at Annex A to this Order. The Authority hereby advises that all comments submitted in response to this Order will be posted, without redaction of name, address, or other personal information or comment provided, on the website of the Independent Regulatory Review Commission, which may be reached at 717-783-5417.

Accordingly, under sections 13 and 17 of the act (53 Pa.C.S. §§ 5722 and 5742); section 5505(d)(17), (23) and (24) of the Parking Authorities Act (53 Pa.C.S. §§ 5505(d)(17), (23) and (24)); sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732.204(b)); section 745.5 of the Regulatory Review Act (71 P.S. § 745.5) and section 612 of The Administrative Code of 1929 (71 P.S. § 232), and the regulations promulgated at 4 Pa. Code §§ 7.231—7.234, the Authority proposes adoption of the regulations set forth in Annex A; *Therefore, It Is Ordered That:*

1. A proposed rulemaking be opened to consider the regulation set forth in Annex A.
2. The Executive Director shall submit this proposed rulemaking Order and Annex A to the Office of Attorney General for review as to form and legality.
3. The Executive Director shall submit this proposed rulemaking Order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.
4. The Executive Director shall do all such other things necessary to advance this regulation through the appropriate promulgation process in an expeditious manner.
5. The Secretary of the Board shall certify this proposed rulemaking Order and Annex A and that the Executive Director shall deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

6. An original and 15 copies of any written comments referencing the docket number of the proposed regulation be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Philadelphia Parking Authority, Attn: General Counsel, 701 Market Street, Suite 5400, Philadelphia, PA 19106.

7. A copy of this proposed rulemaking Order and Annex A shall be served on the City of the First Class Taxicab and Limousine Advisory Committee and a copy shall be posted on the Authority’s web site at www.philapark.org/tld.

8. The contact person for this proposed rulemaking is James R. Ney, Director, Taxicab and Limousine Division, (215)-683-9417.

VINCENT J. FENERTY, Jr.,
Executive Director

Fiscal Note: 126-8. No fiscal impact; (8) recommends adoption.

(Editor’s Note: See 43 Pa.B. 6373 (October 26, 2013) for proposed amendments to § 1019.8.)

Annex A

TITLE 52. PUBLIC UTILITIES

PART II. PHILADELPHIA PARKING AUTHORITY

Subpart B. TAXICABS

CHAPTER 1017. VEHICLE AND EQUIPMENT REQUIREMENTS

Subchapter A. GENERAL PROVISIONS

§ 1017.5. Basic vehicle standards.

* * * * *

(b) *Standard taxicab vehicle requirements.* Each taxicab is subject to the following requirements:

* * * * *

(25) The Authority may require the installation of a separate heating and air conditioning system in a taxicab if necessary to comply with paragraph (19).

(26) A taxicab must be equipped with a safety camera system approved for use as provided in § 1017.71 (relating to taxicab safety cameras).

* * * * *

(Editor’s Note: The following subchapter is new and printed in regular type to enhance readability.)

Subchapter G. SAFETY CAMERAS

- Sec.
- 1017.71. Taxicab safety cameras.
 - 1017.72. Safety camera system testing.
 - 1017.73. Approved safety camera system.
 - 1017.74. Safety camera requirements.
 - 1017.75. One safety camera system.
 - 1017.76. Certificate holder responsible.
 - 1017.77. Public notice.

§ 1017.71. Taxicab safety cameras.

(a) *Generally.* Beginning on _____, *(Editor’s Note:* The blank refers to a date 120 days after the effective date of adoption of this proposed rulemaking.) a taxicab must be equipped with one safety camera system that satisfies the requirements in this subchapter.

(b) *Inspection and approval.*

(1) A taxicab safety camera system must be inspected by the Authority prior to use.

(2) The Authority will conduct safety camera system testing to ensure the system meets the requirements of this subchapter.

(3) Upon determining that a safety camera system functions properly, the Enforcement Department will:

(i) Download and retain a view captured by each camera lens.

(ii) Seal the data extraction port.

(iii) Post notice of the safety camera system on each side of the exterior of the taxicab.

(4) A safety camera system may not be used in a taxicab unless it is sealed as provided in paragraph (3). When the seal is broken or damaged, the certificate holder shall remove the taxicab from service immediately and schedule a new safety camera system inspection by the Enforcement Department.

(5) In the event that a safety camera system is not fully operational, the taxicab shall be taken out of service and the Enforcement Department shall be notified immediately.

§ 1017.72. Safety camera system testing.

(a) Safety camera system testing may include the road operation of the taxicab with an inspector while the camera system is engaged.

(b) A safety camera system is subject to a field inspection by an inspector at any time and may be tested as part of each scheduled inspection.

§ 1017.73. Approved safety camera system.

(a) The Authority will maintain a list of safety camera systems approved for use in taxicabs. The list may be obtained from the Authority's web site at www.philapark.org/tld.

(b) A safety camera system may be added to the list maintained under this section upon request of a certificate holder and evidence of compliance with this subchapter.

§ 1017.74. Safety camera requirements.

(a) The purpose of this section is to establish certain minimum safety camera system requirements.

(b) A taxicab safety camera system must work in conjunction with the approved meter system used in the taxicab.

(c) The safety camera system must be in operation during the entire time the vehicle's engine is running.

(d) The safety camera system may not make an audio recording.

(e) The safety camera system must record as required under this subchapter in an uninterrupted visual stream without interruption. Timed or sequenced images are not permitted.

(f) The safety camera system must include a number of cameras sufficient to record:

(1) The entire interior of the taxicab, including the faces of all occupants.

(2) Images on the exterior of the taxicab, viewed from the interior of the taxicab. For example, the safety camera system should capture the image of a person who attempts to commit an act or robbery against a driver.

(g) The safety camera system must wirelessly transmit recorded data to TLD Headquarters and other locations designated by the Director.

(h) In the event that a driver presses the distress button required under § 1017.24(d)(8) (relating to meter activation and display), the safety camera system must immediately transmit all images to the taxicab's dispatcher, in addition to the transmission to TLD Headquarters.

§ 1017.75. One safety camera system.

A taxicab is prohibited from containing a safety camera system other than the approved safety camera system that has been inspected and approved by the Authority for use in that taxicab.

§ 1017.76. Certificate holder responsible.

The certificate holder shall inspect each taxicab safety camera system prior to service each day to ensure it is in compliance with this subchapter and is in proper working order. A certificate holder may select a person to conduct the inspections required under this section on the certificate holder's behalf.

§ 1017.77. Public notice.

(a) The Authority will produce a standardized posting to be displayed on taxicabs to provide public notice of the presence of the safety camera system in each taxicab as provided in § 1017.12(b) (relating to required markings and information).

(b) The notice required under this section shall be posted in every taxicab that employs the use of a safety camera system.

CHAPTER 1019. DISPATCHERS

§ 1019.8. Dispatcher requirements.

A dispatcher shall continually maintain standards and equipment capable of providing prompt and adequate service to the public, including the following:

* * * * *

(17) Operate and maintain a safety camera system as provided § 1017.73 (relating to approved safety camera system), including the computer hardware and software means of wireless communication necessary.

[Pa.B. Doc. No. 14-469. Filed for public inspection March 7, 2014, 9:00 a.m.]