

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 29]

[L-2013-2349042]

Motor Carrier Vehicle List and Vehicle Age Requirements

The Pennsylvania Public Utility Commission (Commission), on November 13, 2014, adopted a final rulemaking order amending its current motor carrier passenger regulations to eliminate the vehicle list requirements for taxis and limousines, eliminate the waiver exception for vehicle age limitation for taxis and replace the vehicle age limitation for limousines with a vehicle mileage requirement.

Executive Summary

Section 1501 of the Public Utility Code requires every public utility in Pennsylvania to “maintain adequate, efficient, safe, and reasonable service and facilities” and to “make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” 66 Pa.C.S. § 1501. Pursuant to that authority and Section 501 of the Public Utility Code, the Pennsylvania Public Utility Commission (Commission) is amending its motor carrier passenger regulations to ensure the availability of safe and reliable taxi and limousine fleets for the public.

On April 4, 2013, the Commission sought public comment on proposed revisions to its motor carrier regulations in Sections 29.314 and 29.333 in Title 52 of the *Pennsylvania Code*. The Commission analyzed the public comments, reevaluated its proposed regulations, and entered a Final Rulemaking Order on November 19, 2014, wherein the Commission eliminated the vehicle list requirement for taxis and limousines, as the vehicle list did not effectively aid the Commission in enforcement efforts. The Commission also eliminated the vehicle waiver program for both taxis and limousines, finding that the waiver exception no longer served the public interest, as limited Commission resources could be more effectively and efficiently utilized in other areas of motor carrier enforcement. As a result of eliminating the vehicle waiver program, the Commission replaced the 8-year vehicle age limitation for taxis with either a 10-year age limitation or a 350,000 mileage limitation, whichever comes first. The Commission also replaced the 8-year vehicle age limitation for limousines with a vehicle mileage limitation of 350,000 miles. The final regulations also incentivize the use of alternative fuel vehicles (AFVs) by allowing AFVs to operate in taxi service until reaching the age of 12 model years.

Public Meeting held
November 13, 2014

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

Vehicle List, Age, and Mileage Requirements for Taxis and Limousines, 52 Pa. Code §§ 29.314(c)—(d), 29.333(d)—(e); Doc. No. L-2013-2349042

Final Rulemaking Order

By the Commission:

On April 4, 2013, the Pennsylvania Public Utility Commission (Commission) adopted a Proposed Rule-

making Order seeking to amend our current motor carrier passenger regulations to: (1) eliminate the vehicle list requirements for taxis and limousines in Sections 29.314(c) and 29.333(d); (2) eliminate the waiver exception for vehicle age limitation for taxis in Section 29.314(d); and (3) replace the vehicle age limitation for limousines in Section 29.333(e) with a 200,000 vehicle mileage limitation. See 52 Pa. Code §§ 29.314(c)—(d), 29.333(d)—(e). The Commission proposed these regulations to protect the public interest and to more efficiently and effectively use Commission resources in the regulation of taxis and limousines. Pursuant to the Commonwealth Documents Law, we requested public comment on our proposed regulations. See 45 P.S. § 1201(5). Upon review and consideration of those comments, we issue final-form regulations, as set forth in Annex A of this Order.

Background

In late 2012 and early 2013, the Commission determined that public interest and public safety concerns warranted revising our current regulations and procedures for vehicle list and vehicle age requirements for taxis and limousines under our jurisdiction. Accordingly, on April 4, 2013, we adopted a Proposed Rulemaking Order proposing to: (1) eliminate the vehicle list requirements for taxis and limousines in Sections 29.314(c) and 29.333(d); (2) eliminate the waiver exception for vehicle age limitation for taxis in Section 29.314(d); and (3) replace the vehicle age limitation for limousines in Section 29.333(e) with a 200,000 vehicle mileage limitation. See 52 Pa. Code §§ 29.314(c)—(d), 29.333(d)—(e). Docket No. L-2013-2349042 (Order entered Apr. 5, 2013).

As required by the Regulatory Review Act, the Proposed Rulemaking Order, Executive Summary thereof, and Regulatory Analysis Form were submitted to the Office of Attorney General and the Office of Budget on June 6, 2013, receiving approval by the Attorney General on June 25, 2013. See 71 P.S. § 745. The Proposed Rulemaking Order, Executive Summary, and Regulatory Analysis Form were submitted on October 3, 2013 to the Independent Regulatory Review Commission (IRRC), the Legislative Reference Bureau, and the legislative committees. See 71 P.S. § 745.5a; 1 Pa. Code § 305.1. The Legislative Reference Bureau published the Proposed Rulemaking Order on October 19, 2013 in the *Pennsylvania Bulletin*, providing for a 30-day public comment period. 43 Pa.B. 6203.

Comments

Comments were filed by thirty-two interested parties, including industry representatives and stakeholders, IRRC, and members of the State House of Representatives. As required by the Commonwealth Documents Law, we have reviewed the comments, which we will summarize and discuss, as necessary and applicable, to explain the determination of our final-form regulations. See 45 P.S. § 1202.

IRRC's Comments

In its Comments filed on December 13, 2013, IRRC seeks more information from the Commission regarding the potential financial impact of the proposed regulations on small businesses and carriers. IRRC also seeks more information on costs and/or savings to the regulated community and to the Commission, specifically the expenditure history of the waiver program for the past three

years. Comments at 1-2. IRRC is concerned that eliminating the waiver program for taxis older than eight model years will have “severe consequences for small carriers.” Id. at 3. IRRC expressed concern that allowing a carrier to file a petition for waiver pursuant to 52 Pa. Code § 5.43 would not eliminate the administrative burden, but simply transfer and potentially increase the burden on the Commission and carriers. Id. IRRC asked the PUC to consider delaying the effective date of the regulation to ensure carriers have time to comply with the regulation and avoid experiencing financial hardship. Id.

As to limousines, IRRC encourages the PUC to reevaluate the proposed 200,000 mileage limitation in Section 29.333 to determine the appropriate limit that balances the public interest with the adverse fiscal impact on the regulated community. Id. at 3-4.

Comments from State Representatives

In a letter dated April 18, 2013, State Representative Tim Krieger expressed general support for the proposed regulations for limousine service. In a letter dated December 5, 2013, State Representatives Kerry Benninghoff and C. Adam Harris also supported the Commission’s proposal to utilize a mileage standard over an age standard for limousines.

In a letter dated October 31, 2013, State Representative Thomas Murt endorsed the comments of Willow Grove Yellow Cab t/d/b/a Bux-Mont, which are provided directly as follows. Mr. Murt recommended staggering vehicle inspections, simplifying the waiver process, and utilizing a mileage standard over an age standard.

Willow Grove Yellow Cab t/d/b/a Bux-Mont

Willow Grove Yellow Cab t/d/b/a Bux-Mont (Bux-Mont), which possesses both call and demand and limousine authority, expressed concern that elimination of the waiver process will result in financial hardship in an already difficult economic climate. Comments at 1, 3. Rather than abolish the waiver process, Bux-Mont provided solutions to ease the Commission’s administrative burden, first suggesting that the Commission stagger dates by which taxicab carriers must file waiver requests. Id. at 1-2. Bux-Mont recommended that the Commission combine inspections associated with waiver petitions with other existing enforcement activity, noting repeated visits by Commission staff to Bux-Mont’s facility over a short time period. Id. at 2. Bux-Mont suggests that the waiver process could be improved if the Commission implemented clearer instructions and more specific criteria as to what the Commission expects in a waiver petition. Id.

Bux-Mont limited its comments to taxi service in Section 29.314, but contends that the mileage standard proposed for limousines in Section 29.333 is more reasonable than the age standard and should also be applied to vehicles used as taxis. Id. at 3. An absolute age limit would prevent the use of older, safe vehicles with lower mileage used primarily in suburban and rural areas. Id. *The Greater Pennsylvania Taxicab Association*

The comments of the Greater Pennsylvania Taxicab Association (GPTA), which represents 28 taxicab companies providing call and demand service, only addressed proposed changes to call and demand (taxi) service in Section 29.314 of Title 52 of the *Pennsylvania Code*.

Instead of supporting the Commission’s proposed elimination of the vehicle list requirement, Section 29.314, GPTA proposed new language that would require limited reporting of only those vehicles which will exceed the eight year age limitation during the next twelve months. Specifically, GPTA proposed:

(d) *Vehicle list*. [**Between December 1 and December 31**] **During the first quarter** of each calendar year, carriers shall provide the Commission with a current list of all vehicles utilized under its call or demand authority **which will exceed 8 model years old during the succeeding twelve months**. The list must contain the year, make, vehicle identification number, **current odometer reading** and registration number for each vehicle.

Comments at 4. In supporting the previous language, GPTA asserted that requiring an annual list only for those vehicles that are about to “age out” will allow PUC Enforcement Officers to better schedule and perform vehicle inspections throughout the upcoming year, thereby resulting in greater efficiencies and cost savings. Id. at 3-4. Requiring the list at the beginning of the calendar year would also avoid any end of the year rush to inspect multiple vehicles. Id. at 4. Instead of entirely eliminating the Commission’s current vehicle age waiver provision and program, GPTA would like “wheels off” inspections conducted for taxis that a carrier has maintained well, but will soon surpass the Commission’s eight year age limitation.

Accordingly, GPTA opposes the elimination of Section 29.314(d)’s language “unless otherwise permitted by the Commission,” which led to the Commission’s waiver program for vehicles older than eight model years, but determined safe after an inspection. Id. at 5, 8. In stressing that age is not necessarily a true indicator of a particular vehicle’s safety, GPTA asserted that age should not be the sole criterion for elimination of a particular vehicle in a taxicab fleet. Comments at 3, 6. GPTA contends that an absolute eight year age limitation with no waiver exception would result in financial hardship to certain taxicab carriers, observing that rural taxicabs are not in constant use and transport individuals over greater distances than vehicles used in metropolitan areas. Id. at 6, 15. GPTA also observed that an absolute eight year age rule prevents companies from using safe, antique vehicles and older vehicles with limited mileage.¹ Id. at 7. An absolute eight year limitation would require faster vehicle turnover and especially impact smaller carriers with less revenue, cash flow, and financial flexibility. See id. at 12-14 (explaining that the 8 year age rule has resulted in the use of vehicles that are under 8 years but have more than 400,000 cumulative miles).

So that age is not used as the sole criterion to determine whether a particular vehicle is safe, GPTA proposed the following language change to Section 29.314(d) to allow for a special “wheels off” inspection for vehicles older than eight model years:

(d) *Vehicle age*. Unless otherwise permitted by the Commission, a vehicle may not be operated in call and demand service which is more than 8 model years old **unless the vehicle is submitted for and passes a special wheels off inspection in the presence of a Commission Enforcement Officer. This inspection shall be in addition to any routine inspection pursuant to the Motor Vehicle Code or 52 Pa. Code § 29.406.**

Comments at 8, 20. Alternatively, GPTA proposed an absolute 10 year vehicle age limitation. Id. at 16-17.

¹ In the Proposed Rulemaking Order, the Commission noted that carriers could still apply for waiver of Commission regulations for vehicles, like antiques, that are older but still safe. GPTA contends that this will result in substitution of one regulation for another and therefore not save administrative costs and resources. See Comments at 9-12.

Central Pennsylvania Taxicab Association

The Central Pennsylvania Taxicab Association submitted comments comprised of a single statement expressing strong support for GPTA's previous comments.

Philadelphia Regional Limousine Association and Lehigh Valley Transportation Service

The Philadelphia Regional Limousine Association and the Lehigh Valley Transportation Service (collectively "the Limousine Association") filed joint comments, pertaining only to the proposed changes to Section 29.333 regarding limousine service. The Limousine Association supports the elimination of the vehicle list requirement for an entire fleet, but suggests that a carrier be required to provide a list of any vehicle that would either "age or mileage out" during the first quarter of the calendar year. Comments at 3-4. Specifically, the Limousine Association proposed retaining Section 29.333(d) with the following language modifications:

(d) *Vehicle list.* [**Between December 1 and December 31**] **During the first quarter** of each calendar year, carriers shall provide the Commission with a current list of all vehicles utilized under its limousine authority **which it anticipates will exceed an odometer reading of 500,000 miles during the succeeding twelve months.** The list must contain the year, make, vehicle identification number, **current odometer reading** and registration number for each vehicle. . . .

Comments at 15. In the same vein as the comments of GPTA regarding modifications to taxi service, the Limousine Association asserted that the previous proposed changes would allow the PUC's Enforcement Division to better manage and schedule special "wheels off" inspections throughout the course of the year. Instead of entirely eliminating the Commission's vehicle waiver provision, the Limousine Association would like "wheels off" inspections conducted for limousines that a carrier has maintained well, but will soon surpass the Commission's mileage limitation.

Accordingly, the Limousine Association opposes the elimination of Section 29.333(e)'s language "unless otherwise permitted by the Commission," which led to the Commission's waiver program for vehicles older than eight model years, but determined safe after an inspection. Specifically, the Limousine Association proposes the following language modifications to Section 29.333(e):

(e) *Vehicle [age] mileage.* Unless otherwise permitted by the Commission, a vehicle **with more than 500,000 miles of cumulative mileage registered on its odometer** may not be operated in limousine service **unless the vehicle is submitted for and passes a special wheels off inspection in the presence of a Commission Enforcement Officer.** **This inspection shall be in addition to any routine inspection pursuant to the Motor Vehicle Code or 52 Pa. Code § 29.406.**

Comments at 15.

In advocating for a 500,000 mileage limitation instead of the Commission's proposed 200,000 mileage limitation, the Limousine Association contended that the annual limousine usage per vehicle averages 60,000. Comments at 10-11. Therefore, the average limousine would reach 200,000 miles in only three and half years. Since the average limousine would reach 480,000 miles in eight years, the Limousine Association proposed a 500,000 mileage limitation. Id. at 10-11, fn. 16. The Limousine

Association acquired these numbers through dissemination of a questionnaire to its members. See id., fn. 17. The Limousine Association concluded that the Commission's proposed 200,000 mileage limitation would result in financial duress its members, who would have to purchase more limousines to comply with the proposed regulation. Id. at 11-12. The Limousine Association contended that consistent routine maintenance ensures the safety of vehicles with higher mileage and mitigates the need to replace those vehicles. Id.

Raymond J. Lech d/b/a Steel City Car Service

Comments were filed by Raymond J. Lech (Mr. Lech) who conducts business under the name Steel City Car Service, a limousine service. Mr. Lech did not object to the elimination of the vehicle list for limousines, but asserted that the 200,000 mileage limitation would create an "unjustifiable financial burden" on small limousine carriers like Mr. Lech. Comments at 2. Mr. Lech asserted that a 350,000 mileage limitation would be fairer and more reasonable, given that many vehicles in the limousine industry accumulate over 300,000 miles before vehicle repairs become too costly to continue operation of the vehicle. Id. Mr. Lech also asked for the postponement of the effective date of the regulation until one year after adoption by the Commission. Alternatively, Mr. Lech requested the possible "grandfathering" of current vehicles, only requiring the final regulation to apply to new vehicles. Id. at 3.

Cranberry/Veterans Taxi and Classy Cab

Cranberry/Veterans Taxi Inc. and Classy Cab Company Inc., both certificated operators of call and demand (taxi) service, filed joint comments objecting to the elimination of the waiver exception to the eight year vehicle age limitation for taxis. Comments at 2. Both carriers plan to replace their current fleet with alternative fuel vehicles with longer expected engine lives—hybrid electric vehicles and vehicles fueled by compressed natural gas (CNG) and propane. Given the expected longer engine lives of those vehicles, the carriers object to elimination of the waiver exception. Id.

Classic Limousine

Classic Limousine Transportation, LLC (Classic Limousine), a certificated provider of limousine service, operates sedans, SUVs, and larger limousines. Classic Limousine opposes the 200,000 mileage limitation, contending that this would have an adverse financial impact on its fleet, wherein many of the vehicles currently have or will soon have over 200,000 miles registered on their odometers. Comments at 2. Classic Limousine believes that a 300,000 mile limitation is reasonable, as well-maintained vehicles can still run safely with that level of mileage. Id. at 3. Classic Limousine objects to the application of mileage requirement on its sedans and SUVs, as its sedans average 50,000-60,000 miles and SUVs average 40,000-50,000 miles annually. Id.

Star Limousine

Star Limousine Services Inc. (Star Limousine), a certificated limousine carrier, has 11 sedans, as well as larger limousines and other vehicles. Since seven out of 11 of Star Limousine's sedans have more than 200,000 miles, Star Limousine asks the Commission not to apply the 200,000 mileage limitation to sedans. Comments at 2. Alternatively, Star Limousine suggests increasing the mileage limitation to 350,000, especially in light of the fact that Star Limousine plans to use CNG and propane-fueled sedans, which have engine lives in excess of 500,000 miles according to Star Limousine. Id. at 2-3.

White Knight Limousine

White Knight Limousine (White Knight), which has provided limousine service since 2001, stated in its comments that the vehicle age requirement for limousines caused White Knight to lose business. White Knight supports the mileage limitation metric, but asks for the mileage requirement to be increased to 250,000 miles.

Regency Transportation Group

Regency Transportation Group, Ltd. (Regency) has provided limousine service since 1996, operating 25 sedans and other larger limousines. Regency has six diesel-fueled Mercedes sedans (five 2014 models and one 2012 model) and expects to purchase more diesel-fueled sedans with expected longer useful lives. Comments at 2. Since Regency averages 75,000 miles per year for each of its sedans, Regency objects to the 200,000 vehicle mileage limitation. Id. at 2-3. Therefore, Regency asks the Commission not to apply the mileage limitation to sedans. Alternatively, Regency suggests a mileage limitation of 300,000 miles. Id. at 3.

Erie Transportation Services

Erie Transportation Services, Inc. (Erie) provides call and demand (taxi) service in the Commonwealth. Erie believes that the proposed regulations will create a substantial and financial burden on Erie, especially in light of Erie's declining business due to declining demand. Comments at 1. Erie asserted that its older cars are regularly maintained through "extensive preventive maintenance" and "daily care." Id. at 2. Accordingly, Erie asks the Commission to consider a "grandfathering" clause for vehicles currently in use or an increase in the vehicle age requirement for taxis from eight to ten years. Id.

Metro Transportation

Metro Transportation of Pennsylvania, LLC (Metro) provides call and demand service. As a small business, Metro only operates one car at a time. Comments at 1. Metro voiced similar financial concerns as Erie, and also asked the Commission to consider a "grandfathering" clause for vehicles currently in use or an increase in the vehicle age requirement for taxis from eight to ten years. Id. at 2.

A-1 Limousine

As one of the larger certificated carriers, A-1 Limousine, Inc. operates a fleet with over 200 vehicles. Comments at 1. A-1 Limousine objects to the 200,000 vehicle mileage limitation due to expected significant financial hardship. Id. A-1 explained that it routinely accrues 10,000 miles a month per vehicle and can easily maintain its vehicles within industry guidelines and specifications through the use of ASE (Automotive Service Excellence) certified mechanics. Id. Therefore, A-1 Limousine asserted preference for an age standard over a mileage standard. Id. at 2.

A. Royal Limousine

As a small limousine company, A. Royal Limousine LLC (A. Royal) asserted that it can safely maintain older vehicles, which continue to pass Pennsylvania's annual inspection. Since A. Royal's older Lincoln stretch limousines are cost effective and safe for at least 250,000 to 300,000 miles, A. Royal "wholeheartedly" agreed with the Commission's proposal to replace the age standard with the mileage standard.

Fantasy Limousine Service

Fantasy Limousine Service, Inc. (Fantasy) operates a fleet with one Model Year 2000 Lincoln Town Car and 10

stretch limousines. Fantasy endorses the Commission's mileage proposal, as more practical and more in line with the mission of the Commission.

Haines Transportation Services

Haines Transportation Service, Inc. d/b/a Michael's Classic Limousine (Haines) fully supports the Commission's replacement of the vehicle age standard with a mileage standard. Comments at 1. Haines asserts that a 2003 and 2011 Lincoln Town Car are nearly visually and functionally identical. Id. Haines stated that many sedans travel over 70,000 miles in one year. Id. at 2. Since most of those miles involve highway travel, the wear and tear on the sedans is minimal. Id. Therefore, Haines believes a 300,000 vehicle mileage limitation is more appropriate than a 200,000 mileage limitation. Id.

Infinity Limousine

Infinity Limousine, Inc. (Infinity) noted that its sedans accumulate mileage at a higher rate than its stretch limousines. Therefore, Infinity requested that the vehicle mileage limitation be increased from 200,000 to 250,000 miles.

Jetway Transport

Jetway Transport, Inc. d/b/a Main Line Taxi & Limousine Company (Jetway) commented only on the Commission's proposal to replace the vehicle age limitation for limousines with a vehicle mileage limitation. Jetway asserted that it would experience financial hardship as a result of the 200,000 vehicle mileage limitation, as many of Jetway's limousines use between 40,000 and 60,000 miles per year. Therefore, Jetway asked the Commission not to replace the vehicle age limitation with a mileage limitation.

Limousines For Less

As a certificated limousine carrier, Limousines For Less, Inc. (Limos For Less) staunchly opposes the proposed 200,000 vehicle mileage limitation due to expected financial hardship. Accordingly, Limos For Less asked the Commission not to replace the age standard with the mileage standard.

Parrish Transportation

Parrish Transportation expressed frustration with the Commission's current waiver program for limousines and asked the Commission to conduct random inspections instead of the time-consuming and stressful waiver process.

Reliable Limousine Service

Reliable Limousine Service (Reliable) operates only one vehicle, a 1994 Lincoln stretch limousine that travels less than 3,000 miles per year. Reliable expressed frustration that the proposed rules could put Reliable out of business, as Reliable could not afford to purchase another vehicle.

Rhoads Limousine Service

Rhoads Limousine Service, Inc. (Rhoads) expressed concern about the 200,000 mileage limitation since most of Rhoads' vehicles acquire 350,000 miles during the first five to six years of service. Comments at 1. Rhoads conducts strict routine maintenance and checks for safety-related defects every 5,000-6,000 miles per vehicle. Id. In expressing concern that the mileage limitation could put small companies like Rhoads out of business, Rhoads asked the Commission to increase the mileage limitation to at least 350,000 miles. Id. at 2. Rhoads also

contended that the 200,000 mileage limitation per vehicle would cause rates for customers to increase by 20-25%. *Id.*

Ruffo's Auto Repair

Ruffo's Auto Repair (Ruffo's) fully supports the Commission's proposal to replace the vehicle age requirement with a vehicle mileage requirement for limousines. Ruffo's stated that it has a 1997 Lincoln Town Car with 38,000 miles.

South Shore Limousine

South Shore Limousine, LLC (South Shore) expressed concern that the proposed 200,000 vehicle mileage requirement for limousines would cause South Shore unnecessary economic hardship. Comments at 1. South Shore has two vehicles, including a well-maintained, 2007 Stretch Lincoln Town Car with 224,000 miles. *Id.* South Shore ensures the safety of its limousines through inspections by state-certified mechanics, preventative maintenance, and daily care. *Id.* at 1-2. Accordingly, South Shore does not support the 200,000 mileage limitation and requested a "grandfathering clause" to provide smaller carriers with more time to invest in new vehicles. *Id.* at 2.

Unique Limousine

Unique Limousine stressed that the safety of a limousine should not be determined by mileage alone, asserting that use and maintenance are the most important aspects to longevity of a vehicle. Unique Limousine stated that the Commission's 200,000 mileage limitation would cause limousines to increase rates, thereby financially burdening the general public and make limousine service unaffordable to the middle class. Therefore, Unique Limousine proposed a 500,000 vehicle mileage limitation.

Classic British Limousine Service

Classic British Limousine Service, Inc. (British Limousine) fully endorsed the Commission's proposal to replace the vehicle age with a vehicle mileage limitation, finding the current waiver application process time-consuming and expensive.

A-1 Altoona Taxi

A-1 Altoona Taxi expressed concern that elimination of the Commission's waiver program for taxis older than 8 model years would result in undue financial hardship on call and demand carriers in the Commonwealth. A-1 Altoona Taxi asserted that age is not a good indicator of a vehicle's safety and that annual wheels off inspections, as well as random Commission inspections, would still ensure the safety of vehicles on the road.

AA Taxi Inc.

AA Taxi Inc. (AA Taxi) asserted that elimination of the Commission's waiver program would result in undue hardship on AA Taxi, who needs to utilize older taxis to stay in business. Comments at 1. AA Taxi believes Pennsylvania's annual inspections will ensure the safety of older vehicles. *Id.* Understanding that the PUC's waiver program consumes time and resources, AA Taxi proposed a streamlined waiver program, wherein the carrier files all pictures and documentation online at an earlier deadline. *Id.* at 2. If the PUC insists on eliminating the waiver program, AA Taxi asked the Commission to delay enactment of the new regulations until the beginning of 2015. *Id.*

City Car Services of NJ LLC

City Car Services of NJ LLC (City Car), a certificated limousine carrier, expressed concern that the 200,000

vehicle mileage limitation would create economic hardship on its business and the citizens of Pennsylvania. Accordingly, City Car staunchly opposed the mileage limitation and requested that the vehicle age limitation remain intact.

Discussion

Upon thorough review of the previous comments filed by the interested parties, the state representatives, and IRRC, we are ready to issue final-form regulations. See 45 P.S. § 1202; see 66 Pa.C.S. § 501(b) (providing the Commission the power to make regulations, as may be necessary or proper in the exercise of its powers and performance of its duties). In this effort to create reasonable regulations through the use of fair metrics that balance the interests of the motor carriers, the consumers, and the public, the Commission focused on its Mission Statement, which states:

The Pennsylvania Public Utility Commission balances the needs of consumers and utilities; ensures safe and reliable utility service at reasonable rates; protects the public interest; educates consumers to make independent and informed utility choices; furthers economic development; and fosters new technologies and competitive markets in an environmentally sound manner.

The Pennsylvania Public Utility Commission, About the PUC, available at http://www.puc.pa.gov/about_puc.aspx; see 66 Pa.C.S. § 1301 (requiring public utility rates to be just and reasonable); see also 66 Pa.C.S. § 1501, 2301 (requiring adequate, efficient, safe, and reasonable services and facilities for common carriers).

Pennsylvania Case Law

The Commonwealth Court has recently analyzed the regulations at issue in this rulemaking, providing helpful, concrete guidance and rules of law. See *Keystone Cab Serv. v. Pa. Public Utility Commission*, 54 A.3d 126, 128 (Pa. Cmwlth. 2012) (observing that the Commission carefully considered comments from the industry during the rulemaking process). In *Keystone Cab*, the appealing taxi carrier argued that the PUC could not impose stricter safety standards for vehicles used in public taxicab service than the Pennsylvania Department of Transportation (PennDoT) imposes on private vehicles for state inspections. *Id.* at 129. Importantly for purposes of this rulemaking, the Court clarified that PennDoT only establishes "minimum standards" for private vehicles. *Id.* (quoting 75 Pa.C.S. § 4101). The Court then held that the PUC may, under its statutory mandate in the Public Utility Code, impose stricter safety standards for vehicles used in public taxicab service. *Id.* at 128-129 (citing *Harrisburg Taxicab & Baggage Co. v. Pa. PUC*, 786 A.2d 288, 292 (Pa. Cmwlth. 2001), (citing 66 Pa.C.S. § 501, § 1501)).

In *Keystone Cab*, the Court observed that the correlation between a vehicle's age and mileage and its reliability and safety is a matter of common sense and practical experience. *Id.* at 129. Accordingly, the Court held that the Commission acted well within its statutory authority in imposing the eight-year age limitation on licensed common carriers. *Id.* at 128. Furthermore, the decision as to whether or not a carrier must replace a vehicle after eight years is a decision within the regulatory purview of the Commission and not a decision reserved exclusively to the carrier's management. *Id.*

Vehicle Age and Mileage Standards in Other Jurisdictions

Vehicle age and mileage requirements for taxis and limousines vary significantly by jurisdiction. Unlike the

PUC's statewide statutory reach through urban, suburban, and rural service territories, the jurisdiction of many taxi and limousine commissions is limited to a confined, densely populated metropolitan area. Regulations tend to be stricter in more metropolitan areas and less stringent in more rural areas, where taxis and limousines may only be subject to inspections and not age/mileage limitations.

The Philadelphia Parking Authority (PPA), which regulates taxis and limousines operating in Philadelphia County, requires a taxicab to retire upon surpassing the age of eight model years or 250,000 miles. 52 Pa. Code § 1017.4(a).² The PPA also has more extensive rules for vehicle entry mileage and basic vehicle standards. 52 Pa. Code §§ 1017.4(b), 1017.5. The PPA's vehicle age/mileage rules do not have language similar to the Commission's current "unless otherwise permitted" language that created the waiver program. However, the PPA does allow for petitions for waiver for antique vehicles. See 52 Pa. Code § 1017.4(c). As to limousines, the PPA does not allow a limousine older than eight years to operate. 52 Pa. Code § 1055.3(b) (providing an exception for antique limousines that pass a compliance exception). The PPA also has a 350,000 cumulative mileage limitation for limousines. 52 Pa. Code § 1055.3(c) (allowing a one year extension for vehicles that pass a compliance inspection).

Similar to the PPA, the District of Columbia Taxicab Commission has a dual mileage/age approach for taxis. Effective January 1, 2018, a vehicle may not operate in taxicab service in D.C. if the vehicle is more than 7 model years old or has accumulated in excess of 400,000 miles.³ The Code of the Metropolitan Government of Nashville and Davidson County Tennessee⁴ requires that a taxicab must be no older than nine model years. Ord. No. BL2011-81, Ch. 6.72.245. There is no mileage limit for taxis. A limousine must be no older than 10 model years or must not have more than 350,000 miles registered on its odometer. Ord. No. BL2011-81, Ch. 6.72.245, Ch. 6.74.230.

In New York City, the New York City Taxi & Limousine Commission (TLC) promulgated a general rule that taxicabs must retire after 60 months (five years) of service. 35 R.C.N.Y. § 67-18(b). There are retirement date extensions, including a 12 month extension of allowable service for demonstration of a financial hardship by an independent taxicab owner or long-term driver, a 24 month automatic extension for use of a CNG vehicle, specific minivan extensions, and specific extensions for clean air and wheelchair accessible taxicabs. 35 R.C.N.Y. § 67-18(b). While there are no general mandatory vehicle age restrictions for limousines, there are significant vehicle alteration regulations as well as specific retirement schedules for certain vehicles. 35 R.C.N.Y. § 59A-28(a), (d). A limousine must be removed from service if the TLC or the New York State Department of Motor Vehicles determines the vehicle is unsafe or unfit for use. 35 R.C.N.Y. § 59A-27(a)(1).

In contrast to the previous metropolitan area commissions, Arizona regulates the licensing of taxis and limousines on a statewide basis. Finding that the regulation of taxis and limousines is a statewide concern, Arizona preempts the regulation of taxis and limousines at the local level, unless conducting business at a public airport.

² PPA's hybrid age and mileage limitation approach was approved by IRRC and therefore enjoys a presumption of reasonableness.
³ See <http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleID=15440>.
⁴ The Transportation Licensing Commission licenses taxis and limousines in Nashville and Davidson County. See <https://law.resource.org/pub/us/code/city/tn/Metropolitan%20Government%20of%20Nashville%20and%20Davidson%20County,%20TN%20Code%20thru%20supp%20%2313%20VOL%20I.pdf> at p. CD6.74:9.

A.R.S. § 28-142.⁵ The Arizona Department of Weights and Measures, which processes licenses for taxi and limousine operation throughout the state, does not have specific mileage and age limitations for taxis and limousines, but requires vehicle inspection appointments and vehicle maintenance records.⁶

Industry Statistics on Vehicle Age and Mileage for Taxis and Limousines

In 2012, the Taxicab, Limousine & Paratransit Association (TLPA)⁷ issued two comprehensive reports on statistics in the taxicab industry and the limousine and sedan industry. The TLPA determined that the average annual total miles per taxi in 2011 was 53,409.⁸ In the year 2011, the average model year for taxis was 2005.6.⁹ For taxis in fleets with less than 24 vehicles, the average model year was 2003.9.¹⁰ The average age limit was 8 years overall, but 10 years for taxis in fleets with fewer than 24 vehicles.¹¹ For 51.2% of the members surveyed in TLPA's study, there was no applicable age limit for taxis.¹²

The TLPA determined that the average annual total miles was 29,367 for SUVs, 46,804 for sedans, and 15,163 for stretch limousines.¹³ The TLPA did not acquire statistical information on the average ages of limousines and sedans, but did conclude that new sedans and new SUVs were purchased much more frequently in 2011 than new stretch limousines.¹⁴

Technology and Safety Standards and Considerations

Over time, motor vehicles have become safer due to improved safety technologies and features, some of which are mandatory under the law. The National Highway Traffic Safety Administration, part of the United States Department of Transportation, promulgates Federal Motor Vehicle Safety Standards and Regulations.¹⁵ Historic safety technologies included seat belts, improved lighting, airbags, and anti-lock brakes. Modern improvements, such as side airbags have contributed to a substantial reduction in death risks in cars and SUVs.¹⁶ More recent safety technology features include Electronic Stability Control (assists in braking), Automatic Crash Notification (alerts emergency responders), Lane Departure Warning, Backup Cameras (sensors detect vehicles behind), Forward Collision Warning (sensors that detect vehicles ahead), and Frontal Pedestrian Impact Mitigation Braking (automatic braking to help avoid impact with pedestrian).¹⁷ Since 1975, the rate of motor vehicle crash deaths per 100,000 people has declined by about half.¹⁸ This decrease in death rate has been largely attributed to safer vehicles with improved safety technology.¹⁹ Since safety technology continues to improve (and often becomes mandatory in new vehicle construction), the newer

⁵ There have been legislative efforts to amend this preemption statute. See 2014 AZ H.B. 2262 (NS).
⁶ See <http://www.azdwm.gov/?q=resource/vehicles-hire-licensing>.
⁷ The TLPA is the leading national association for information, education, and legislative resources in the passenger transportation industry. <http://www.tlpa.org/about/index.cfm>.
⁸ 2012 TLPA Taxicab Fact Book: Statistics on the U.S. Taxicab Industry (Sep. 2012), at p. 3.
⁹ Id.
¹⁰ Id.
¹¹ Id.
¹² Id.
¹³ 2012 TLPA Limousine & Sedan Fact Book: Statistics on the U.S. Limousine & Sedan Industry (Sep. 2012), at p. 10.
¹⁴ Id. at 11.
¹⁵ See <http://www.nhtsa.gov/Laws-Regs>.
¹⁶ See <http://www.iihs.org/iihs/news/desktopnews/side-airbags-substantially-reduce-death-risk-in-cars-and-suvs-those-that-protect-peoples-heads-are-especially-effective>.
¹⁷ Safercar.gov, Safety Technology, available at http://www.safercar.gov/statistics/safety-tech/st_landing_ca.htm.
¹⁸ The Insurance Institute For Highway Safety, General Statistics, Fatality Facts, available at <http://www.iihs.org/iihs/topics/t/general-statistics/fatalityfacts/overview-of-fatality-facts>.
¹⁹ See, e.g., <http://www.iihs.org/iihs/news/desktopnews/declining-death-rates-due-to-safer-vehicles-not-better-drivers-or-improved-roads>.

the vehicle, the safer the vehicle. With these safety and technology considerations in mind, we will discuss and dispose of the public comments in rendering our final-form regulations.

Disposition of Comments to Call and Demand (Taxi) Service Regulations

Vehicle List Requirement at 52 Pa. Code § 29.314(c)

Very few commenters specifically discuss, let alone oppose the Commission's proposed elimination of the vehicle list requirement at 52 Pa. Code § 29.314(c). Instead of completely eliminating the vehicle list requirement, GPTA proposed new language that would require limited reporting of a carrier's vehicles that will exceed the eight year age limitation during the next twelve months in order to schedule an inspection that would potentially result in a waiver of an older vehicle deemed safe upon completion of a "wheels off" inspection. Comments at 3-4. We appreciate GPTA's efforts to create a more efficient system that would potentially allow older, yet safer, vehicles to still operate. However, GPTA's desire for the vehicle list hinges on the Commission's decision to maintain the waiver program. We find that elimination of a formal waiver program, as discussed as follows, and elimination of the vehicle list requirement is in the public interest. As discussed in our Proposed Rulemaking Order, the vehicle list requirement proved to be an ineffective tool at allowing Commission staff to maintain up-to-date, accurate information of a carrier's fleet for the purpose of aiding in Commission enforcement efforts. See Docket No. L-2013-2349042 at p. 4-5 (Order entered Apr. 5, 2013). Accordingly, in light of our findings and minimal opposition in the comments, we will eliminate the vehicle list requirement at 52 Pa. Code § 29.314(c). See Annex A.

Vehicle Age Requirement at 52 Pa. Code § 29.314(d)

The Commission's proposal to eliminate the waiver exception for taxis older than eight model years did receive some disapproving comments, mainly from carriers asserting that elimination of the waiver exception would cause financial hardship to carriers. See Bux-Mont Comments at 1, 3 (endorsed by State Representative Thomas Murt); GPTA Comments at 6, 15 (endorsed by Central Pennsylvania Taxicab Association); Cranberry/Veterans Taxi and Classy Cab Comments; Erie Comments at 1; Metro Comments at 1-2; A-1 Altoona Taxi Comments; AA Taxi Comments at 1. Due to these assertions by the taxi carriers who submitted comments,²⁰ IRRC expressed concern that elimination of the waiver exception could result in severe consequences for those carriers. Comments at 3. IRRC and some taxi carriers asked the Commission to delay the effective date of the proposed regulations in order to provide the carriers with time to comply with the regulation and avoid experiencing financial hardship. IRRC Comments at 3; Erie and Metro Comments at 2 (requesting a "grandfathering clause" for older vehicles currently in service); AA Taxi Comments at 2.

While we are very sensitive to the financial concerns of the smaller carriers, we must strike a balance between the financial needs of the carriers and our public safety obligations to consumers. Accordingly, we have proceeded deliberately with the implementation of this rulemaking, carefully reviewing the public comments in response to our April 5, 2013 Proposed Rulemaking Order before issuing this Final Rulemaking Order. Furthermore, we will delay the effective date of these final-form regula-

tions until six months after the regulations are published in the *Pennsylvania Bulletin* to allow time for carriers to adapt to these new public safety standards.

Also, throughout the 2014 calendar year we have been and will continue to accept waiver applications from carriers requesting to use vehicles older than eight model years in taxi service for the 2015 calendar year. We will allow vehicles whose 2014 waiver applications were approved to be used in taxi service throughout the course of the 2015 calendar year. However, we will not accept and process waiver applications in the 2015 calendar year from carriers requesting to use older vehicles for the 2016 calendar year. Thus, the last day a vehicle older than eight years, whose waiver application was approved, could be used in taxi service is December 31, 2015. We believe this timeframe is more than sufficient to allow carriers to prepare and invest accordingly.

Instead of eliminating the waiver exception, some carriers suggested that the Commission maintain the waiver program and stagger dates by which taxicab carriers must file waiver requests. Bux-Mont Comments at 1-2; see also AA Taxi Comments at 2 (suggesting electronic filing of documents and pictures of vehicles with waiver requests). Then, the Commission's Enforcement Officers could conduct "wheels-off" inspections for taxis that will soon surpass the Commission's eight model year age limitation. GPTA Comments at 4-5 (endorsed by Central Pennsylvania Taxicab Association); A-1 Altoona Taxi Comments. Commenters suggest this process would be fairer, result in greater efficiencies and cost-savings, and ease the Commission's administrative burden by allowing Enforcement Officers to conduct inspections alongside other enforcement activities. Bux-Mont Comments at 1-2; GPTA Comments at 4-5.

We appreciate these alternative proposals from the commenters. However, upon further examination, we find that maintaining the waiver program through the use of staggered inspections does not sufficiently remove the administrative burden and save costs. Simply put, the Commission's current complement of Enforcement Officers do not have the time and availability to conduct multiple "wheels off" inspections for taxis at staggered intervals throughout the year. The Commission's 40 Enforcement Officers are responsible for conducting investigations, safety audits, and driver/vehicle inspections in all 67 counties. The bulk of an Enforcement Officer's inspection time is spent on large commercial vehicles, including large trucks, buses, and full-size motor coaches under the federal Motor Carrier Safety Assistance Program (MCSAP) program. The job duties of an Enforcement Officer also include issuing traffic and non-traffic citations and recommending Commission complaints; providing testimony at Commission hearings, District Justice hearings, and County Common Pleas Courts; conducting safety fitness reviews of motor carrier applicants; preparing detailed reports of investigations and inspections with analyses and recommendations; maintaining the high condition and functionality of an assigned patrol vehicle; and flexibility to travel and work outside assigned counties. Enforcement Officers must also maintain an effective knowledge of pertinent Public Utility transportation statutes and regulations, the Pennsylvania Motor Vehicle Code, the Pennsylvania Department of Transportation Vehicle Equipment and Inspection Manual, the Federal Motor Carrier Safety Regulations, and the Hazardous Material Regulations. Therefore, the Commission does not have the personnel to conduct additional inspections on the vehicles of small passenger carriers.

²⁰ We note that not all Commission-licensed call and demand carriers or interested parties submitted comments.

Some commenters questioned the regulatory metric, contending that a vehicle's age is not a true indicator of a vehicle's safety. A-1 Altoona Taxi Comments; GPTA Comments at 3, 6. We disagree, as correlation between a vehicle's age and its reliability and safety is a matter of common sense and practical experience. See *Keystone Cab*, 54 A.3d at 129; see also 52 Pa. Code § 1017.3(b)(1), 35 R.C.N.Y. § 67-18(b) (establishing a general rule for a 5 year vehicle age cap in New York City and a 8 year age cap and 250,000 mileage limitation in Philadelphia). While acknowledging that age can be a factor in vehicle safety, Erie insisted that its older vehicles could be maintained through "extensive vehicle maintenance" and "daily care." Comments at 2. However, generally, older vehicles wear down and the Commission does not have the resources to conduct inspections at the frequency required to ensure the ongoing safety of these vehicles. Aside from carriers' assurances of self-maintenance, a few carriers suggested that Pennsylvania's annual state vehicle inspections are sufficient to ensure the safety of older vehicles, rendering an additional inspection by a PUC Enforcement Officer unnecessary. See, e.g., AA Taxi Comments at 1. However, the Commonwealth Court has stated that since Title 75 in the Motor Vehicle Code only establishes "minimum standards" for private vehicles, the PUC may, under its statutory mandate in the Public Utility Code, impose stricter safety standards for vehicles used in public taxicab service.²¹ See *Keystone Cab*, 54 A.3d at 128-129. Furthermore, the vehicle at issue could easily deteriorate and become unsafe over the course of the year after the state annual inspection. Also, the safety features of older vehicles become technologically outdated over the course of time.

The Commission finds that the use of new vehicles in taxi service can enable carriers to save costs in the long-term. Ongoing maintenance for older vehicles may be cost-prohibitive, as a carrier may find that investment in new vehicles actually results in total savings in the long-term. Commission staff informally asked a few smaller carriers to compare the costs and benefits of maintaining vehicles older than eight model years versus purchasing new vehicles. Burgit's City Taxi²² (Burgit's) of Wilkes-Barre, a mid-size carrier with approximately 15 vehicles, estimates that older vehicle maintenance costs are \$1,000 per month compared to new vehicle maintenance at \$350 or less per month. Burgit's also estimates an approximate 35% in fuel savings by using the newer vehicles. Yellow Cab of Lebanon, a smaller carrier with approximately six vehicles, estimates a 40% reduction in maintenance costs due to a recent purchase of new vehicles. Both Burgit's and Yellow Cab of Lebanon believe that their new vehicles have increased their businesses, as the public appreciates their new vehicles. Accordingly, we find unpersuasive the generalized assertions that carriers will be unduly financially burdened as a result of having to invest in new vehicles.

Some commenters asked the Commission to replace the taxi age limitation with a mileage limitation, as we have proposed for vehicles used in limousine service. Bux-Mont Comments at 3 (endorsed by State Representative Thomas Murt); GPTA Comments at 6-14. Given the faster rate of mileage accumulation by taxis as compared to limousines, the Commission had found that an age limitation for taxis (1) provides a clear and fair standard for the industry and (2) is a viable and efficient tool for the Commission to utilize in ensuring safe and reliable taxi

service for the public. Importantly, Bux-Mont and GPTA observe that taxicabs used in suburban and rural areas do not accumulate mileage like taxicabs used in more urban areas. Bux-Mont Comments at 3; GPTA Comments at 6-7, 15 (also asserting that an absolute 8 year limit would prevent the use of safe, antique vehicles). GPTA further contends that an "absolute" eight year vehicle age limitation would require faster vehicle turnover and impact smaller carriers with less financial flexibility. Comments at 12-14.

We are persuaded by the concerns and proposals in the previous comments. True, an eight year vehicle age limitation is accommodating and less stringent than or on par with the general rules for taxi service in Philadelphia and New York City. See 52 Pa. Code § 1017.4, 35 R.C.N.Y. § 67-18(b). However, unlike the PPA, which only regulates taxicabs in a geographically contiguous, metropolitan area with a dense urban population, we regulate taxicabs in urban, suburban, and rural areas with greater variability regarding population density, geographic terrain and road conditions, supply of carriers, and customer demand for service. Establishing a simple, singular regulatory metric for taxi service based on model age alone does not sufficiently account for this variability. A purely model year age limitation metric may allow the use of taxis with excessive cumulative mileage, but still under the 8 model year age limitation.

GPTA admits that taxis with more than 400,000 miles are currently employed in service. Comments at 13. A purely mileage limitation for taxis could allow for the use of vehicles older than 10, 15, or 20 years. As explained, the use of older vehicles is not in the public interest, as older vehicles do not have the latest technology and safety features. Accordingly, a dual age/mileage standard will ensure that vehicles without the latest technology and safety features and vehicles with excessive-use related defects are retired from fleets at a reasonable and appropriate time. The dual mileage/age approach enjoys a presumption of reasonableness, as IRRC approved PPA's current standard of an 8 model years or a 250,000 mileage limitation, whichever comes first. See 52 Pa. Code § 1017.4(a). Therefore, based on the comments received and upon further review and analysis, we find that a dual mileage/age limitation metric for taxis is in the public interest.

In implementing the mileage limitation, we stress that we will not tolerate carriers who roll back the odometers in an effort to prolong the lifespan of a vehicle beyond 350,000 miles, which is a very reasonable and accommodating standard. A carrier who has unlawfully tampered with an odometer is subject to state and federal liabilities, fines, and potential imprisonment. See 49 U.S.C. § 32709 (federal liability); 75 Pa.C.S. § 7138 (Pennsylvania civil and criminal liability); 75 Pa.C.S. § 7139 (Pennsylvania corporate liability).

In determining the appropriate mileage limitation for taxis, we note that the TLPA found that the average annual total miles per taxi in 2011 was 53,409. Thus, in eight years, the average taxi accumulates 427,272 miles. In other jurisdictions, mileage limitations range from 250,000 (e.g., the PPA) to 400,000 (e.g., D.C.) to unlimited (e.g., Arizona). Currently, taxis with over 400,000 miles are operating in the Commonwealth. We find that allowing taxis to operate with over 350,000 cumulative miles is not in the public interest, as such excessive cumulative mileage potentially creates a higher likelihood of an unsafe vehicle that endangers public safety. IRRC has approved the 250,000 mileage limitation for taxis operat-

²¹ Unlike private passenger vehicles, taxicabs transport the public on a daily basis, often operating 20-24 hours a day.

²² See <http://burgitcitytaxi.com/>.

ing in Philadelphia County. We find that a higher 350,000 mileage limitation for taxis operating outside of Philadelphia is reasonable and appropriate in light of the previous statistics and the variability regarding population density, geographic terrain and road conditions, supply of carriers, and customer demand for service in driving conditions throughout the Commonwealth, as compared to the geographically contiguous and densely populated Philadelphia County. Thus, we will establish a 350,000 mileage limitation for taxis.

In light of the elimination of the Commission's waiver program, some parties recommended increasing the model year age limitation from 8 to 10 years. See GPTA Comments at 16-17, Erie Comments at 2, Metro Comments at 2. In determining the appropriate age limitations for taxis, we note that the TLPA found that the average age limit was 8 years overall, but 10 years for taxis in fleets with fewer than 24 vehicles. In the year 2011, the average model year was 2003.9 for taxis in fleets with less than 24 vehicles. For 51.2% of the members surveyed in TLPA's study, there was no applicable age limit for taxis.

Based on the previous statistics and in response to the litany of comments expressing financial concerns of smaller carriers upon elimination of the Commission's waiver program, we will increase the model year age limitation from 8 to 10 years. See Bux-Mont Comments at 1, 3 (endorsed by State Representative Thomas Murt); GPTA Comments at 6, 15 (endorsed by Central Pennsylvania Taxicab Association); Cranberry/Veterans Taxi and Classy Cab Comments; Erie Comments at 1; Metro Comments at 1-2; A-1 Altoona Taxi Comments; AA Taxi Comments at 1. Notably, the 10 year model age limitation will be restrained by a mileage limitation so that a taxi under 10 model years of age with more than 350,000 miles is not on the road.

Accordingly, in establishing a dual mileage/age metric, the final form regulation will provide:

A vehicle that is more than 10 model years old or has more than 350,000 miles of cumulative mileage registered on its odometer may not be operated in call and demand service.

See Annex A. Importantly, the vehicle will not be allowed to operate upon the occurrence of either condition—surpassing the 10 model year age limit or the 350,000 mileage limit. Thus, once a vehicle reaches either the age or mileage limit, that vehicle will not be allowed to operate in call and demand service.

While we are eliminating the waiver program to save Commission time and resources, we believe that increasing the model year age by two years in tandem with a 350,000 mileage limitation generously accommodates smaller carriers throughout the Commonwealth. Carriers will now have the flexibility to effectively utilize vehicles in their current fleets before those vehicle age or mileage out and have sufficient preparation time to invest in new vehicles. While these standards are very accommodating, we still believe it is important to set firm regulatory limits in the interest of public safety.

IRRC and GPTA contend that allowing a carrier to file a petition for waiver pursuant to 52 Pa. Code § 5.43 would not eliminate the administrative burden, but simply transfer and potentially increase the burden on the Commission and carriers. IRRC Comments at 3; GPTA Comments at 9-12. Based on our explanations of and adjustments to the regulations in this final rulemaking and the more formal requirements attendant to the filing

of a petition for waiver with the Commission as compared to submitting a waiver application to the Commission's Bureau of Technical Utility Services, we do not believe a simple transfer of administrative burden on the Commission will result. As GPTA notes, filing Petitions for Waiver under 52 Pa. Code § 5.43 requires more time, expenses, and resources from carriers than submitting documents to Commission staff under a waiver program. See Comments at 10-12. Therefore, it is only in a carrier's economic and temporal interest to file a petition for waiver for older vehicles in very good condition. Under our waiver program, we received multiple incomplete applications requiring re-submission from the carrier and multiple applications for vehicles in mediocre or poor condition, which resulted in denial of the waiver requests. We will not exert extensive Commission resources to process incomplete petitions or petitions for waiver for vehicles in mediocre or poor condition.²³ Accordingly, we do not expect an onslaught of petitions for waiver, especially in light of the fact that we are increasing the model year age limitation from 8 to 10 years.

Cranberry/Veterans Taxi and Classy Cab objected to the elimination of the waiver program because both carriers plan to replace their current fleet with alternative fuel vehicles with longer expected engine lives—hybrid electric vehicles and vehicles fueled by CNG and propane. Comments at 2; see Veterans Taxi, available at <http://www.startransportationgroup.com/veterans/> (emphasizing that its fleet is powered by American-made natural gas). In light of the growing use and commercial viability of alternative fuel vehicles (AFVs), numerous programs at the national, state, and county level have been promoting the use of AFVs to increase fuel efficiency and curb carbon dioxide emissions. The federal government has spearheaded multiple initiatives to incentivize the use of alternative fuels and AFVs.²⁴ The Pennsylvania Department of Environmental Protection (DEP) administers an Alternative Fuel Rebate Program²⁵ and a Natural Gas Vehicle Program²⁶ to incentivize AFV purchases. See 73 P. S. § 1647.3 (establishing an Alternative Fuels Incentive Fund). In 2013 Bradford County purchased natural gas vehicles through the DEP grant program.²⁷ On March 14, 2014, Governor Tom Corbett awarded 25 grants, funded by Act 13 impact fees,²⁸ to companies and organizations throughout Pennsylvania for heavy-duty fleet vehicles fueled by natural gas.²⁹ The Pennsylvania Turnpike Commission has already installed electric vehicle charging stations on the Turnpike and is currently exploring the installation of CNG stations.³⁰

As part of our mission, the Commission endeavors to further economic development and foster new technolo-

²³ See *Pa. PUC, Bureau of Technical Utility Services v. TJT Inc. t/d/b/a A&A Limousine Service*, Docket Nos. P-2014-2400725 and A-00111863 (Pa. P.U.C. Feb. 20, 2014) (denying petition for waiver for limousines in carrier's fleet older than 8 model years).

²⁴ See U.S. Dept. of Energy, Alternative Fuels Data Center, Federal Laws and Incentives, available at http://www.afdc.energy.gov/laws/fed_summary (last accessed July 18, 2014).

²⁵ See Pennsylvania Department of Environmental Protection, Alternative Fuel Vehicle Rebate Program, available at http://www.portal.state.pa.us/portal/server.pt/community/alternative_fuels_incentive_grant/10492/alternative_fuel_vehicles/553206.

²⁶ See Pennsylvania Department of Environmental Protection, Natural Gas Vehicle Program, available at http://www.portal.state.pa.us/portal/server.pt/community/act_13/20789/natural_gas_vehicle_program/1157504.

²⁷ See, e.g., James Loewenstein, "Bradford County Now Has Vehicles That Run On Natural Gas" (Aug. 20, 2013), <http://thedailyreview.com/news/bradford-county-now-has-vehicles-that-run-on-natural-gas-1.1538548>.

²⁸ Act 13 of 2012 imposes an unconventional gas well fee on the companies engaged in natural gas drilling in the Commonwealth due to the impact of the drilling on surrounding communities and the environment. 58 Pa.C.S. § 2301 et. seq. The PUC administers the collection and disbursement of the fee. See http://www.puc.state.pa.us/filing_resources/issues_laws_regulations/act_13_impact_fee.aspx.

²⁹ Governor Corbett Awards 25 Grants for Natural Gas Vehicle Conversion, March 21, 2014 Press Release, available at <http://www.portal.state.pa.us/portal/server.pt/community/newsroom/14287?id=20415&typeid=1>.

³⁰ See Electric-Vehicle Charging Available at Two Pa. Turnpike Service Plazas (Apr. 21, 2014), <http://www.paturnpike.com/Press/2014/20140421120629.htm>.

gies and competitive markets in an environmentally sound manner. Accordingly, in light of the aforementioned state programs and the environmental benefits and economic opportunities attendant to alternative fuels, we find that incentivizing the use of AFVs in motor carrier passenger service is in the public interest. Therefore, the Commission will provide explicit language in our regulations at 52 Pa. Code § 29.314 that extends the vehicle age limitation for AFVs to 12 model years or 350,000 miles registered on the odometer, whichever comes first. See Annex A. However, AFVs will still be subject to random “four wheels off” inspections conducted by the Commission’s Enforcement Officers and must still pass annual state inspections.

In our final-form regulations in Annex A, we reference the Pennsylvania Motor Vehicle Code for the definitions of “alternative fuels,” “electric vehicle,” and “hybrid electric vehicle,” which are as follows:

“Alternative fuels.” Natural gas, compressed natural gas (CNG), liquified natural gas (LNG), liquid propane gas and liquified petroleum gas (LPG), alcohols, gasoline-alcohol mixtures containing at least 85% alcohol by volume, hydrogen, hythane, electricity and any other fuel used to propel motor vehicles on the public highways which is not taxable as fuels or liquid fuels under this chapter.

“Electric vehicle.” A motor vehicle which operates solely by use of a battery or battery pack and which meets the applicable Federal motor vehicle safety standards. The term includes a motor vehicle which is powered mainly through the use of an electric battery or battery pack but which uses a flywheel that stores energy produced by the electric motor or through regenerative braking to assist in operation of the motor vehicle.

“Hybrid electric vehicle.” An electric vehicle which allows power to be delivered to the drive wheels solely by a battery-powered electric motor but which also incorporates the use of a combustion engine to provide power to the battery and which meets the applicable Federal motor vehicle safety standards. The primary source of power for the motor must be the electric battery or battery pack and not the combustion engine.

75 P.S. §§ 102, 9001. Importantly, the definition of “alternative fuels” includes CNG, propane, and electricity, the sources or fuels that Cranberry/Veterans Taxi and Classy Cab use and plan to use in their fleets. The broader, more all-encompassing definitions will allow for other technologies that develop and become more viable in the future. Therefore, we will state in our regulations that the vehicle age limitation for taxis shall not apply to electric vehicles, hybrid electric vehicles, and vehicles utilizing alternative fuels, as defined in the Motor Vehicle Code in Title 75 of the *Pennsylvania Consolidated Statutes*. See Annex A. In allowing extended use for AFVs, we encourage and expect carriers to use new vehicles in their fleet, similar to the vehicles used by Veterans Taxi. See <http://www.starttransportationgroup.com/veterans/>. We strongly discourage retrofitting older vehicles in an effort to qualify for this exemption. Since older vehicles present other safety considerations, regardless of the type of engine or the expected life of that engine, we will not issue a blanket, unlimited exemption for AFVs.

Disposition of Comments to Limousine Service Regulations Vehicle List Requirement at 52 Pa. Code § 29.333(d)

Very few commenters discuss, let alone oppose the Commission’s proposed elimination of the vehicle list requirement at 52 Pa. Code § 29.333(d). Instead of completely eliminating the vehicle list requirement, the Limousine Association proposed new language that would require limited reporting of a carrier’s vehicles that will “age or mileage out” in the next twelve months in order to schedule an inspection that would potentially result in a waiver of an older vehicle deemed safe upon completion of a “wheels off” inspection. Comments at 3-5. We appreciate the Limousine Association’s efforts to create a more efficient system that would potentially allow older, yet safer, vehicles to still operate. However, the Limousine Association’s desire for the vehicle list hinges on the Commission’s decision to maintain a formal waiver program. We find that elimination of the waiver program, as discussed as follows, and elimination of the vehicle list requirement is in the public interest. As discussed in our Proposed Rulemaking Order, the vehicle list requirement proved to be an ineffective tool at allowing Commission staff to maintain up-to-date, accurate information of a carrier’s fleet for the purpose of aiding in Commission enforcement efforts. Accordingly, in light of our findings and minimal opposition in the comments, we will eliminate the vehicle list requirement at 52 Pa. Code § 29.333(d).

Vehicle Age Requirement at 52 Pa. Code § 29.333(e)

The Commission’s proposal to replace the vehicle age requirement with a mileage requirement for limousines received general support. See Comments of State Representatives Tim Krieger, Kerry Benninghoff, and C. Adam Harris; White Knight Comments; A. Royal Comments; Fantasy Limousine Comments (contending that the mileage requirement is more practical and in line with the Commission’s mission); Haines Comments at 1; Ruffo’s Comments; British Limousine Comments; Reliable Comments; Parrish Transportation (supporting elimination of the stressful and time-consuming waiver process). Only a few commenters opposed the mileage metric and requested that the vehicle age limitation remain intact. See City Year Comments; Limos For Less Comments; Jetway Comments; A-1 Limousine Comments.

Although the majority of commenters were overwhelmingly supportive of the change in metric from an age cap to a mileage cap, most commenters requested the Commission to increase the mileage limitation beyond 200,000 miles, as the 200,000 cap would require faster vehicle turnover and result in financial burdens to the carriers. Therefore, IRRC asked the Commission to reevaluate the proposed 200,000 mileage limitation to determine the appropriate mileage cap that balances public interest safety concerns with the potential adverse fiscal impact on carriers. Comments at 3-4.

As to the lower counter-proposed mileage limitations, Infinity and White Knight propose a 250,000 mileage cap. See Comments. A. Royal asserts that its older Lincoln stretch limousines are cost effective and safe for at least 250,000 to 300,000 miles. See Comments. Haines proposes a 300,000 mileage cap, explaining that many of its sedans travel over 70,000 miles a year. Comments at 2. Similarly, Regency proposes a 300,000 mileage cap, explaining that many of its sedans travel over 75,000 miles a year. Comments at 3. Classic Limousine also believes a 300,000 mileage cap is reasonable, explaining that many of its sedans average 50,000-60,000 miles and its SUVs

average 40,000-50,000 miles annually. Comments at 3. Mr. Lech believes a 350,000 mileage limitation is fair and reasonable, given that many vehicles in the limousine industry accumulate 300,000 miles before vehicle repairs become too costly to continue using the vehicle. Comments at 2. Star Limousine also suggests increasing the mileage limitation to 350,000 miles, especially in light of the high mileage on its sedans. Comments at 2-3.

On the high end, Unique Limousine and the Limousine Association proposed a 500,000 mileage limitation. See Limousine Association Comments at 10-15. Unique Limousine did not explain how it arrived at the 500,000 mileage cap proposal. The Limousine Association arrived at its proposal upon compiling data from the results of a questionnaire disseminated to its members. Comments at 10-11. In proposing the 500,000 mileage limitation, the Limousine Association used a 60,000 average annual vehicle mileage for eight years, resulting in a total of 480,000 miles. See *id.* Notably, the Limousine Association stated that “annual usage per vehicle *can* average 60,000 miles.” *Id.* at 10 (emphasis added); see fn. 16 (invoking the anecdote of King Limo’s experience). The Limousine Association arrived at this 60,000 mile average anecdotally and not representationally by averaging annual vehicle usage from all of its members. Importantly, the Limousine Association did not discuss in its comments the individual carrier results obtained from its other members regarding a carrier’s average annual vehicle mileage. Thus, we find the Limousine Association’s counter-proposal of 500,000 miles unpersuasive and unsubstantiated.

Accordingly, we find that the 500,000 mileage limitation request too high and not effectively supported. The next highest request, a 350,000 vehicle mileage limitation, appears fairer and more reasonable. The PPA also requires a 350,000 vehicle mileage limitation for limousines operating in Philadelphia County. 52 Pa. Code § 1055.3(c). However, before rendering a determination on these grounds alone, we will examine additional statistical findings. According to the 2012 TLPA Limousine & Sedan Fact Book, stretch limousines average 15,163 annual miles, passenger vans average (15 or fewer passengers) average 19,564 annual miles, SUVs average 29,367 annual miles, and sedans average 46,804 annual miles.

As indicated by the TLPA statistics and the comments to this rulemaking, sedans will be the first vehicles in danger of exceeding the Commission’s 200,000 vehicle mileage limitation. See Infinity Comments. Since 7 out of 11 of Star Limousine’s sedans have more than 200,000 miles, Star Limousine asked the Commission not to apply the 200,000 vehicle mileage limitation to sedans. Comments at 2. Classic Limousine objected to the application of the vehicle mileage requirement on its sedans that annually average 50,000-60,000 miles and its SUVs that annually average 40,000-50,000 miles. Comments at 3. Since Regency averages 75,000 miles per year for each of its sedans, Regency asked the Commission to increase the mileage limitation to 300,000 miles. Comments at 3. Similarly, since Haines averages 75,000 miles per year for each of its sedans, Haines asked the Commission to increase the mileage limitation to 300,000 miles. Comments at 2; see also Rhoads Comments at 2 (asking the Commission to increase the mileage limitation to 350,000 miles).

Based on our further consideration of the TLPA statistics, the public comments, and the requirements in other jurisdictions (e.g., the 350,000 mileage limitation in Nash-

ville and Davidson County), we find that increasing the vehicle mileage limitation in 52 Pa. Code § 29.333 for vehicles operating in limousine service to 350,000 miles is fair, reasonable, and in the public interest. See Annex A.

A few commenters suggested that routine preventative maintenance and annual state inspections could keep their limousines safe well beyond 200,000 miles. See South Shore Comments at 1-2; Unique Limousine Comments; Rhoads Comments at 1; A-1 Comments at 1 (asserting its vehicles accrue 10,000 miles per month); Limousine Association Comments at 11-12. We agree that effective maintenance can prolong the lifespan of a vehicle used in limousine service. However, the more cumulative mileage registered on the vehicle’s odometer, the greater likelihood of safety risks and issues with the vehicle. See *Keystone Cab*, 54 A.3d 126, 129 (a vehicle’s mileage and its reliability and safety is a matter of common sense and practical experience). Furthermore, the Commission does not have the resources to conduct inspections at the frequency required to ensure the ongoing safety of vehicles with high levels of cumulative mileage. While passing an annual state inspection does indicate that the vehicle is safe at the time of the inspection, the Motor Vehicle Code only establishes “minimum standards” for private vehicles and the vehicle at issue could easily deteriorate and become unsafe over the course of that year after the state annual inspection. See *id.* at 128-129.

A few commenters asked the Commission to allow for the “grandfathering” of current vehicles in the carrier’s fleet, only requiring the final regulation to apply to vehicles purchased after the effective date of the regulation. See South Shore Comments at 2; Mr. Lech Comments at 3. While we are very sensitive to the financial concerns of the carriers, we must strike a balance between the financial needs of the carriers and our public safety obligations to consumers. Accordingly, we have proceeded deliberately with the implementation of this rulemaking, carefully reviewing the public comments in response to our April 5, 2013 Proposed Rulemaking Order before issuing this Final Rulemaking Order. Furthermore, we will delay the effective date of these final-form regulations until six months after the regulations are published in the *Pennsylvania Bulletin*. We believe this timeframe, as well as our final-form regulation that increased the cumulative mileage limitation to 350,000 miles, is more than sufficient to allow carriers to prepare and invest accordingly. See Annex A.

In asking the Commission to increase the mileage limitation to 350,000 miles, Star Limousine highlighted its plans to use CNG and propane-fueled sedans with longer engine lives. Comments at 2-3. Accordingly, our decision to increase the mileage limitation to 350,000 miles would fulfill Star Limousine’s request. Furthermore, as in our previous disposition of similar comments regarding AFVs in taxi service, we find that, due to the environmental benefits and economic opportunities, incentivizing the use of AFVs in limousine service is in the public interest. We encourage and expect carriers to use new vehicles in their fleet, similar to the vehicles used by Veterans Taxi.³¹ However, older vehicles present other safety considerations, regardless of the type of engine or the expected life of that engine. For example, the safety features of older vehicles become technologically outdated over the course of time. Since we are generously increasing the mileage limitation to 350,000 miles, we find it unnecessary to provide explicit language

³¹ See <http://www.startransportationgroup.com/veterans/>.

in our final regulations that exempts AFVs from the mileage limitation in limousine service. If a limousine carrier believes its AFV can still operate safely beyond 350,000 miles, that carrier may file a petition for waiver of Commission regulations under 52 Pa. Code § 5.43 to use that AFV in its fleet.

Consistent with the previous discussion, we will adopt the final-form regulations in Annex A that replace the eight-year vehicle age limitation with a 350,000 vehicle mileage limitation. In replacing the age limitation with a mileage limitation, we stress that we will not tolerate carriers who roll back the odometers in an effort to prolong the lifespan of a vehicle beyond 350,000 miles, which is a very reasonable and accommodating standard. A carrier who has unlawfully tampered with an odometer is subject to state and federal liabilities, fines, and potential imprisonment. See 49 U.S.C. § 32709 (federal liability); 75 Pa.C.S. § 7138 (Pennsylvania civil and criminal liability); 75 Pa.C.S. § 7139 (Pennsylvania corporate liability).

Conclusion

Upon receiving and analyzing the numerous public comments to the April 5, 2013 Proposed Rulemaking Order at this Docket, the Commission finalizes its regulations at 52 Pa. Code §§ 29.314, 29.333 to balance the needs of consumers and motor carriers for passenger service, to protect the public safety, to further economic development, and to promote new technologies in an environmentally sound manner. We find that elimination of the Commission’s vehicle list requirement and vehicle waiver program regarding vehicle age limitations for taxis and limousines is in the public interest and will allow the Commission to more efficiently and effectively use its resources in the regulation of taxis and limousines. We find that implementing a dual age/mileage limitation for taxis at 10 model years or 350,000 miles, whichever comes first, is in the public interest. We find that incentivizing alternative fuel vehicles in taxi service will result in environmental benefits and economic opportunities for the Commonwealth, its citizenry, and its visitors. We also find that replacing the eight year vehicle age limitation with a 350,000 mileage limitation for limousines is in the public interest. Based on the previous discussion and disposition, we amend and finalize our regulations, consistent with this Final Rulemaking Order. Accordingly, the Commission formally adopts the final regulations, as set forth in Annex A.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 3, 2013, the Commission submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 6203 (October 19, 2013), to IRRC and the Chairpersons of the House Consumer Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Commission has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on April 15, 2015, the final-form rulemaking was deemed approved by the Committees.

Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 16, 2015, and disapproved the final-form rulemaking.

Under section 7(d) of the Regulatory Review Act (71 P.S. § 745.7(d)), on June 11, 2015, this final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 28, 2015, and approved the final-form rulemaking.

Order

Accordingly, under sections 501, 1301, 1501, and 2301 of the Public Utility Code (66 Pa.C.S. §§ 501 and 1501); sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 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 thereunder at 4 Pa. Code §§ 7.231—7.234, we will adopt the final-form regulations set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapter 29, are amended by amending §§ 29.314 and 29.333 to read as set forth in Annex A.
2. The Secretary shall serve a copy of this Order and Annex A on all limousine and taxi service industry groups and associations in the Commonwealth and all other parties that filed comments at Docket No. L-2013-2349042, Rulemaking Re Motor Carrier Vehicle List And Vehicle Age Requirements (entered Apr. 5, 2013).
3. The Secretary shall certify this order and Annex A and deposit them with the Legislative Bureau for publication in the *Pennsylvania Bulletin*.
4. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
5. The Secretary shall submit this order and Annex A to the Governor’s Office of Budget for review of fiscal impact.
6. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.
7. The final regulations shall become effective six months after publication in the *Pennsylvania Bulletin*.
8. The contact persons for this Final Rulemaking are Ken Stark, Assistant Counsel, (717) 787-5558 (legal) and Robert Bingaman, Bureau of Technical Utility Services, (717) 787-1168 (technical). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri Delbiondo, Regulatory Review Assistant, Law Bureau, (717) 772-4597.

ROSEMARY CHIAVETTA,
Secretary

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 45 Pa.B. 2961 (June 13, 2015).)

Fiscal Note: Fiscal Note 57-296 remains valid for the final adoption of the subject regulations.

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 D. SUPPLEMENTAL REGULATIONS
CALL OR DEMAND SERVICE

§ 29.314. Vehicle and equipment requirements.

(a) *Seating capacity.* A call or demand service may be operated only in vehicles with seating capacities of eight passengers or less, excluding the driver.

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

(1) A call or demand vehicle operated within this Commonwealth shall be equipped with a meter.

(2) The meter shall be installed in the front of the vehicle so that, at all times, it is plainly visible to and the fare is readily ascertainable by all occupants of the vehicle. The face of the meter must be properly illuminated at all times.

(3) No meter affixed to a vehicle may be operated from a drive other than the transmission of the vehicle unless some other method is, upon petition, specifically approved by the Commission.

(4) Unless otherwise permitted by the Commission, the meter and meter driving equipment must be sealed so that the meter case, meter driving equipment or additional gear boxes, if any, cannot be disconnected without breaking a seal.

(5) The responsibility for sealing the meter and appurtenant equipment and for maintaining the seals intact while the vehicle is in operation lies with the certificateholder.

(6) It is the responsibility of the certificateholder to cause the meters to be so regulated that the fare is calculated and registered in accordance with the current tariff rates on file with and approved by the Commission.

(7) The meter must be in operation during the entire time the vehicle is engaged by a passenger, and the passenger shall be required to pay only the amount recorded by the meter, except that, when back-mileage or surcharge provisions of the tariff of the carrier apply, the back-mileage charge or surcharge shall be added to the amount recorded by the meter. Each meter charge shall be collected only once regardless of whether the vehicle is being used in exclusive service or in nonexclusive service.

(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 paragraph is invalid after January 1, 2007.

(c) *Vehicle age and mileage.* A vehicle that is more than 10 model years old or has more than 350,000 miles of cumulative mileage registered on its odometer may not be operated in call and demand service. For example, for a vehicle with less than 350,000 miles, the last day on which a 2016 model year vehicle may be operated in taxi service is December 31, 2026. Electric vehicles, hybrid electric vehicles and vehicles utilizing alternative fuels, as defined in 75 Pa.C.S. §§ 102 and 9002 (relating to

definitions), may operate in call and demand service until the vehicle age of 12 model years or the cumulative mileage level of 350,000 miles registered on the odometer. For example, for a vehicle with less than 350,000 miles, the last day on which a qualifying model year 2016 alternative fuel vehicle, hybrid electric vehicle or electric vehicle may be operated in taxi service is December 31, 2028. This subsection is effective January 19, 2016.

(d) *Dome lights.* Unless otherwise permitted by the Commission, vehicles operated by call and demand carriers must 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.

LIMOUSINE SERVICE

§ 29.333. Vehicle and equipment requirements.

(a) Limousine service may be operated only in luxury type vehicles with seating capacities of ten passengers or less, excluding the driver.

(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 must 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 CD changer, Internet access, reading lights, work desk or table, cellular phone, refrigerator, television, VCR, DVD player, extended wheelbase and privacy dividers.

(c) Section 29.71(a) (relating to marking of vehicles) does not apply to luxury type vehicles engaged in limousine service under this section and §§ 29.331, 29.332, 29.334 and 29.335.

(d) A vehicle with more than 350,000 miles of cumulative mileage registered on its odometer may not be operated in limousine service. This subsection is effective January 19, 2016.

[Pa.B. Doc. No. 15-1317. Filed for public inspection July 17, 2015, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) amends Chapter 65 (relating to special fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

A. *Effective Date*

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the final-form rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. The final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

The final-form rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the amendment is described in more detail under the summary of change.

E. Summary of Change

Lake Perez, a 72-acre impoundment owned by the Pennsylvania State University, is located in Barree Township, Huntingdon County, approximately 3 miles northeast from the Village of Neffs Mills. This lake was completely dewatered during late spring 2009 to complete dam and spillway repairs and modifications per Department of Environmental Protection dam safety standards. The earth-fill dam, constructed in 1959, impounds Shaver Creek at river mile 13.6 upstream from the mouth at the Juniata River. Prior to the drawdown in 2009, access to the shoreline was primarily provided at two discrete access points as well as from numerous walking trails surrounding the lake. Approximately 80% of this shoreline was considered fishable. Additionally, one boat ramp provided boat access for nonpowered and electric motor crafts. The lake offered angling opportunities for multiple warm and coolwater fish species and adult trout stocked by the Commission during spring, fall and winter offered seasonal angling opportunities for trout. Dam and spillway repairs were completed during early summer 2014, and the reservoir began refilling at that time.

The Commission plans to stock the lake and establish a high quality warmwater and coolwater fishery through fingerling plants of select species. Immediately upon refilling of the lake, the Commission will open the lake to fishing under a miscellaneous special regulation that will allow for the harvest of trout under Commonwealth inland regulations but allow only catch and release fishing for all other fish species. The Commission believes that this approach will allow the development of a balanced warmwater and coolwater fish community to rapidly develop while offering acceptable levels of recreational angling opportunities. The Commission will monitor the fish populations as needed while they develop and make the necessary adjustments to the species being stocked and the regulations governing the fishery to continually provide high quality recreational angling opportunities at Lake Perez.

The Commission amends § 65.24 to read as set forth at 44 Pa.B. 7878 (December 20, 2014).

F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will not impose new costs on the private sector or the general public.

H. Public Involvement

Notice of proposed rulemaking was published at 44 Pa.B. 7878. The Commission did not receive public comments concerning the proposed rulemaking.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendment adopted by this order has been given under 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, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and no public comments were received.

(3) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statute.

Order

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 65, are amended by amending § 65.24 to read as set forth at 44 Pa.B. 7878.

(b) The Executive Director will submit this order and 44 Pa.B. 7878 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 44 Pa.B. 7878 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-260 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 15-1318. Filed for public inspection July 17, 2015, 9:00 a.m.]

FISH AND BOAT COMMISSION
[58 PA. CODE CH. 75]
Fishing; Endangered Species

The Fish and Boat Commission (Commission) amends Chapter 75 (relating to endangered species). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

A. Effective Date

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the final-form rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The amendments to § 75.2 (relating to threatened species) are published under the statutory authority of section 2305 of the code (relating to threatened and endangered species).

D. Purpose and Background

The specific purpose of the amendments is described in more detail under the summary of changes.

E. Summary of Changes

(1) Bluebreast Darter (*Etheostoma camurum*): The Bluebreast Darter is a small species that inhabits rivers and large streams, preferring fast, clean riffles and runs having large gravel, rubble and boulder substrate. It occurs in the Ohio River basin from western New York to eastern Illinois, and south to the Tennessee River in Tennessee and Alabama. It is locally common but absent from large portions of its range. In this Commonwealth, it occurs throughout French Creek, the middle and lower sections of the Allegheny River and the Ohio River as well as additional tributaries to these waterways. It formerly occurred in the Shenango River as well but is now considered extirpated there.

The Bluebreast Darter has experienced a considerable range expansion since it was listed as threatened in 1999. At that time it was spottily distributed in French Creek and the middle Allegheny River. It is now known to occur throughout French Creek, from near the Erie County/New York border to its mouth in Venango County (88 river miles). It occurs in the Allegheny River from Warren to its mouth in Pittsburgh, including the lock-and-dam section (189 river miles), and has been documented in the Ohio River (40 river miles) as far downriver as the tailrace of Montgomery Lock and Dam, Beaver County. It also occurs in much of the following areas: Tionesta Creek and a tributary; Big Sandy Creek, Venango County; Redbank Creek, Clarion County; Mahoning Creek, Armstrong County; Kiskiminetas River, Armstrong and Westmoreland Counties; and Bull Creek, Deer Creek and Pine Creek, Allegheny County. In addition, it has experienced a similar expansion in Ohio, where it has been collected as far downriver as the Cincinnati area and was delisted in 2012 (Zimmerman, 2014). It has also been collected in Oswayo Creek, Cattaraugus County, New York.

The status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds criterion A.1 (Population Reduction) in that its population is significantly increasing. Since the Bluebreast Darter now occupies more than 200 river miles of waterway, it also significantly exceeds Criterion B.3 (Extent of Occupancy). In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator (Criswell, 2014) and received a State Conservation Rank of S4S5, meaning it is apparently secure to secure in this Commonwealth with a fairly low to very low risk of extirpation due to its extensive range and/or many populations or occurrences. The Fishes Technical Committee of the Pennsylvania Biological Survey (PABS) reviewed this documentation and rank assignment and recommended that the Bluebreast Darter be delisted. Enough information is available to make the determination that it is secure in this Commonwealth at present and to justify its removal from the Commonwealth's list of threatened fishes. Therefore, the Commission removes the Bluebreast Darter from the Commonwealth's list of threatened species.

(2) Gilt Darter (*Percina evides*): The Gilt Darter is a small species that inhabits clear rivers and large streams,

where it prefers deeper riffles and runs with moderate to swift current over silt-free sand, gravel, cobble and rubble. It occurs in the Mississippi River basin from New York to Minnesota and south to northern Alabama and northern Arkansas. It also occurs in the Maumee River system of the Lake Erie drainage in Ohio and Indiana. In this Commonwealth, it occurs throughout French Creek, the middle and lower sections of the Allegheny River, and the Ohio River.

The Gilt Darter has experienced a considerable range expansion since it was listed as threatened in 1999. At that time it was spottily distributed in French Creek and the middle Allegheny River. It is now known to occur throughout French Creek, from Erie County to its mouth in Venango County (88 river miles). It occurs in the Allegheny River from Warren to its mouth in Pittsburgh, including the lock-and-dam section (189 river miles), and has been documented in the Ohio River as far downriver as the tailrace of Dashields Lock and Dam, Allegheny County.

It is now common in French Creek and abundant in sections of the Allegheny River. At least 7 benthic trawl events from the latter have resulted in the collection of more than 100 individuals, and 2 of those trawls included nearly 200 specimens.

The status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds criterion A.1 (Population Reduction) in that its population is significantly increasing. Since the Gilt Darter now occupies more than 150 river miles of waterway, it also significantly exceeds Criterion B.3 (Extent of Occupancy). In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator (Criswell, 2014) and received a State Conservation Rank of S4, meaning it is apparently secure in this Commonwealth with a fairly low to very low risk of extirpation due to its extensive range and/or many populations or occurrences. The Fishes Technical Committee of PABS reviewed this documentation and rank assignment and recommended that the Gilt Darter be delisted. Enough information is available to make the determination that it is secure in this Commonwealth at present and to justify its removal from the Commonwealth's list of threatened fishes. Therefore, the Commission removes the Gilt Darter from the Commonwealth's list of threatened species.

(3) Spotted Darter (*Etheostoma maculatum*): The Spotted Darter is a small species that inhabits large streams and rivers, where it prefers the faster, deeper portions of riffles possessing gravel and rubble substrates. It occurs in the Ohio River basin from western New York and Pennsylvania to northern Indiana and south to West Virginia and Kentucky. It is extremely localized and uncommon in much of its range. In this Commonwealth, it occurs in French Creek, the Allegheny River and the Ohio River.

The Spotted Darter has experienced a considerable range expansion since it was listed as threatened in 1999. At that time it was spottily distributed in French Creek and the middle Allegheny River. It is now known to occur throughout French Creek, including its West Branch, from near the Erie County/New York border to its mouth in Venango County (88 river miles). It occurs in the Allegheny River from Warren to its mouth in Pittsburgh, including the lock-and-dam section (189 river miles), and has been documented in the Ohio River as far downriver as the tailrace of Dashields Lock and Dam, Allegheny County. It also occurs in Oil Creek and South Sandy Creek.

Benthic trawls in the Allegheny River included yields of as many as 89 and 202 individuals. It is well distributed and relatively common, although not necessarily abundant, through its Pennsylvania range. The Spotted Darter was recently considered for Federal protection under the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531—1544) but a review published in 2011 concluded that “threats to spotted darter are not of sufficient imminence, intensity, or magnitude that would cause substantial losses of population distribution or viability.”

The status of this species was reviewed using the Commission’s documentation and objective listing/delisting process. It exceeds criterion A.1 (Population Reduction) in that its population is significantly increasing. Since the Spotted Darter now occupies more than 200 river miles of waterway, it also significantly exceeds Criterion B.3 (Extent of Occupancy). In addition, it was evaluated with NatureServe’s Conservation Status Assessments Rank Calculator (Criswell, 2014) and received a State Conservation Rank of S4, meaning it is apparently secure in this Commonwealth with a fairly low to very low risk of extirpation due to its extensive range and/or many populations or occurrences. The Fishes Technical Committee of PABS reviewed this documentation and rank assignment and recommended that the Spotted Darter be delisted. Enough information is available to make the determination that it is secure in this Commonwealth at present and to justify its removal from the Commonwealth’s list of threatened fishes. Therefore, the Commission removes the Spotted Darter from the Commonwealth’s list of threatened species.

(4) *Tippecanoe Darter (Etheostoma tippecanoe)*: The Tippecanoe Darter is a small species that inhabits rivers and large streams, where it requires clean gravel or sand/gravel substrates. It occurs in the Ohio River basin from western Pennsylvania to Indiana, and south to the Cumberland River drainage in Tennessee. It is extremely localized but locally common. In this Commonwealth, it occurs throughout French Creek, the middle and lower sections of the Allegheny River, the Ohio River and additional tributaries to these waterways.

The Tippecanoe Darter has experienced a considerable range expansion since it was listed as threatened in 1999. At that time it was spottily distributed in French Creek and the middle Allegheny River. It is now known to occur throughout French Creek, from near the Erie County/New York border to its mouth in Venango County (88 river miles). It occurs in the Allegheny River from Warren to its mouth in Pittsburgh, including the lock-and-dam section (189 river miles), and has been documented in the Ohio River as far downriver as the tailrace of Montgomery Lock and Dam, Beaver County. It also occurs in the following areas: Oil Creek, Venango County; Kiskiminetas River, Armstrong and Westmoreland Counties; and Bull Creek, Deer Creek and Pine Creek, Allegheny County.

Hundreds of Tippecanoe Darters were easily captured in a riffle below Lock and Dam 3 on the Allegheny River (Koryak et al., 2009), and at least 17 stations have produced 20 or more individuals. It is locally common at many locations within its Pennsylvania range.

The status of this species was reviewed using the Commission’s documentation and objective listing/delisting process. It exceeds criterion A1 (Population Reduction) in that its population is significantly increasing. Since the Tippecanoe Darter now occupies more than 150 river miles of waterway, it also significantly exceeds Criterion B3 (Extent of Occupancy). In addition, it was

evaluated with NatureServe’s Conservation Status Assessments Rank Calculator (Criswell, 2014) and received a State Conservation Rank of S4, meaning it is apparently secure in this Commonwealth with a fairly low risk of extirpation due to its extensive range and/or many populations or occurrences. The Fishes Technical Committee of PABS reviewed this documentation and rank assignment and recommended that the Tippecanoe Darter be delisted. Enough information is available to make the determination that it is secure in this Commonwealth at present and to justify its removal from the Commonwealth’s list of threatened fishes. Therefore, the Commission removes the Tippecanoe Darter from the Commonwealth’s list of threatened species.

The Commission amends § 75.2 to read as set forth at 44 Pa.B. 7876 (December 20, 2014).

F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will not impose new costs on the private sector or the general public.

H. Public Involvement

Notice of proposed rulemaking was published at 44 Pa.B. 7876. The Commission did not receive public comments concerning the proposed amendments.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendment adopted by this order has been given under 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, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and no public comments were received.

(3) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statute.

Order

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 75, are amended by amending § 75.2 to read as set forth at 44 Pa.B. 7876.

(b) The Executive Director will submit this order and 44 Pa.B. 7876 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 44 Pa.B. 7876 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-261 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 15-1319. Filed for public inspection July 17, 2015, 9:00 a.m.]