

RULES AND REGULATIONS

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 105]

Mechanical, Electrical and Electronic Speed-Timing Devices

The Department of Transportation (Department), under the authority in 75 Pa.C.S. §§ 3368 and 6103 (relating to speed timing devices; and promulgation of rules and regulations by department), amends Chapter 105, Subchapter C (relating to speedometers) to read as set forth in Annex A. The statutory provisions direct the Department to promulgate standards for speed-timing devices and testing, and authorize the Department to promulgate regulations to implement 75 Pa.C.S. (relating to Vehicle Code).

Purpose of Chapter

The purpose of Chapter 105, Subchapter C is to govern the calibrating and testing of mechanical electrical and electronic speed-timing devices by stations appointed by the Department.

Purpose of the Final-Form Rulemaking

The purpose of this final-form rulemaking is to delete outdated speed-timing testing devices and procedures, modernize the language and include provisions permitting the use of new technologies approved by the Department.

Summary of Significant Amendments

Section 105.31 (relating to appointment of speedometer testing station) is amended to require speedometer testing stations to prominently display a valid Certificate of Appointment provided by the Department. An identical requirement is deleted from § 105.34 (relating to manner of testing speedometers). Section 105.31 is also amended to require that a separate application be filed for each mobile testing unit that a station intends to operate.

Section 105.32 (relating to operation of speedometer testing station) is amended to delete a testing station's ability to delegate speedometer testing to another testing station. This amendment is made based upon recommendations from industry stakeholders.

Section 105.33 (relating to required equipment) is amended to allow for the use of new devices and technologies in speedometer testing and calibration that have been approved by the Department and are necessitated by advances in technology. The former language did not allow for the introduction and approval of new devices and technologies. Section 105.33 has been further amended to delete outdated testing devices and procedures.

Section 105.34 is amended to: allow for electronic generation and signature of Certificates of Accuracy and to permit their reproduction; require testing devices in accordance with the testing equipment manufacturer's specifications, if the manufacturer specifies a testing schedule; require a station to document the testing and calibration of its testing equipment; and require that this documentation is made available at the request of the Department. Section 105.34 is also amended to provide greater detail regarding the standard for accuracy and specifications for testing accuracy.

Summary of Comments and Changes in in this Final-Form Rulemaking

Notice of proposed rulemaking was published at 44 Pa.B. 4500 (July 19, 2014) with a 30-day public comment period. The proposed rulemaking was also submitted to the Independent Regulatory Review Commission (IRRC) and the House and Senate Transportation Committees. Three comments were received from the public. IRRC submitted several comments. The House and Senate Committees did not comment.

Elam M. Herr, Pennsylvania State Association of Township Supervisors, commented that the proposed rulemaking did not directly affect the organization and that the provision for mobile testing units could have a positive impact on township police. Changes were not made in response to this comment.

Jim Cowden, YIS/Cowden Group, Inc., an approved speed timing station, submitted three substantive comments. These comments were incorporated into IRRC's comments. IRRC suggested that the Department either revise the final-form rulemaking in response or explain its reasons for not doing so. Regarding § 105.34(a), the commentator questioned the Department's addition of a required accuracy window of $2 \pm$ miles per hour to speedometer calibration. He pointed out that even new vehicles may not comply with this requirement, and this could potentially result in certain vehicles being unable to be certified. In response, the Department has withdrawn the proposed amendment and § 105.34(a) will retain the current language. Regarding § 105.34(b), the commentator requested clarity regarding "duplicate copy, executed and signed in the same manner as the original." In response the Department rephrased this subsection and deleted the phrase "duplicate copy," allowing instead for additional Certificates of Accuracy to be completed in the same manner as the original. Finally, he questioned if Certificates of Accuracy could be completed, signed and distributed electronically, which would lead to significant savings on mailing costs. The Department amended this subsection to allow electronic generation and signature of Certificates of Accuracy.

Lt. Robert J. Krol, Jr., Pennsylvania State Police (PSP), commented that the PSP no longer maintains a position called "Inspection Station Supervisor." In response, the Department deleted the reference to this position from § 105.34(b). IRRC incorporated this comment into its suggested changes.

IRRC provided a number of comments suggesting minor wording changes and requesting additional clarity in several places throughout the proposed rulemaking. The Department addressed these changes.

Persons and Entities Affected

This final-form rulemaking affects speedometer testing station owners and personnel, as well as future applicants who intend to have their stations appointed by the Department as a speedometer testing station.

Fiscal Impact

Implementation of this final-form rulemaking will not require the expenditure of additional funds by the Commonwealth or local municipalities. Speedometer testing stations may incur additional short-term compliance costs in the application process and implementation of mobile

testing units. However, short-term costs will be outweighed by more opportunities to calibrate a broader range of vehicles.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 8, 2014, the Department submitted a copy of the notice of proposed rulemaking, published at 44 Pa.B. 4500, to IRRC and the Chairpersons of the House and Senate Committees for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on August 17, 2016, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 18, 2016, and approved the final-form rulemaking.

Sunset Provisions

This final-form rulemaking is effective upon publication. The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer provisions required under 75 Pa.C.S. The Department, however, will continue to closely monitor these regulations for their effectiveness.

Contact Person

The contact person for technical questions about this final-form rulemaking is Kay Kishbaugh, Manager, Vehicle Inspection Division, 1101 South Front Street, 4th Floor, Harrisburg, PA 17104, (717) 783-4597.

Findings

The Department finds that:

- (1) Public notice of the proposed rulemaking was 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 regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposed rulemaking published at 44 Pa.B. 4500.

Order

The Department orders that:

- (a) The regulations of the Department, 67 Pa. Code, Chapter 105, are amended by amending §§ 105.31—105.34 to read as set forth in Annex A.
- (b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality and form, as required by law.
- (c) The Secretary shall submit this order and Annex A to IRRC and the Senate and House Committees as required under the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

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

LESLIE S. RICHARDS,
Secretary

(*Editor's Note:* See 46 Pa.B. 5790 (September 3, 2016) for IRRC's approval order.)

Fiscal Note: Fiscal Note 18-460 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VI. OPERATION OF VEHICLES

CHAPTER 105. MECHANICAL, ELECTRICAL AND ELECTRONIC SPEED-TIMING DEVICES

Subchapter C. SPEEDOMETERS

§ 105.31. Appointment of speedometer testing station.

(a) *Application.* Application for appointment as a speedometer testing station or mobile testing unit to be operated by a speedometer testing station shall be made on a form provided by the Department and submitted for each speedometer testing station and each mobile testing unit to be operated by a speedometer testing station.

(b) *Applicant.* Each applicant intending to be appointed as a speedometer testing station or mobile testing unit to be operated by a speedometer testing station that is not a business entity, including a sole proprietor or partner in a general or limited partnership, shall be at least 18 years of age.

(c) *Place of business.* An applicant shall have an established place of business properly equipped to conduct speedometer tests and repairs or to operate as an approved mobile testing unit.

(d) *Certificate of Appointment.* A speedometer testing station and each mobile testing unit operated by a speedometer testing station shall prominently display a valid Certificate of Appointment provided by the Department.

§ 105.32. Operation of speedometer testing station.

(a) *Testing and repair.* Testing and repair of speedometers shall be provided, as necessary, upon notice by the police.

(b) *Hours.* Speedometer testing stations shall be open for business, at a minimum, Monday through Friday during the hours of 8 a.m. to 5 p.m., except for legal holidays or alternative business hours approved in writing by the Department.

(c) *Personnel.* A speedometer testing station shall employ at least one technician certified as follows:

- (1) An application of a technician for certification shall be made on a form provided by the Department.
- (2) The applicant shall present proof of education or experience in the testing and repair of speedometers.
- (3) The applicant shall be at least 18 years of age.

(d) *Location.* Speedometer testing and repair shall take place at an approved speedometer testing station, except that, upon application to and approval by the Department, a speedometer testing station may operate one or more mobile testing units of a type approved by the Department.

§ 105.33. Required equipment.

(a) *Items.* A speedometer testing station or mobile testing unit shall have sufficient tools to make repairs or adjustments and one or more of the following required equipment:

- (1) A dynamometer of a type approved by the Department.
- (2) A Speed-Master Quartz Speedometer Tester.
- (3) A 650-H-1 Stewart-Warner Speedometer Calibrator with adaptive equipment needed to operate this device or any device.

(4) Any equipment or alternative technique approved by the Department and published in the *Pennsylvania Bulletin*.

(b) *Periodic testing of speedometer testing equipment.* Speedometer testing equipment shall be repaired, tested and adjusted for accuracy in accordance with the testing equipment manufacturer's specifications. If the testing equipment manufacturer does not specify a testing schedule, the speedometer testing equipment shall be tested and adjusted for accuracy at least once every 60 days.

§ 105.34. Manner of testing speedometers.

(a) *Accuracy.* A speedometer shall be tested for accuracy and, if necessary, repaired and adjusted to obtain the greatest possible degree of accuracy. Testing shall be conducted in accordance with the following:

(1) Testing equipment and alternative techniques set forth in or approved in accordance with § 105.33 (relating to required equipment) shall be used.

(2) Testing shall occur using manufacturer's specifications and procedures.

(3) It is necessary to have a measured or surveyed calibration course laid out and properly marked when using a technique that requires a calibration course for testing.

(b) *Forms.* A Certificate of Accuracy, on a form provided by the Department, shall be completed after a speedometer test or repair and signed by the certified technician that performed the speedometer test. The Certificate of Accuracy may be completed on an electronic fillable form provided by the Department and signed electronically by the certified technician. A copy of the certificate shall be kept on file at the speedometer testing station for at least 3 years, and be made available to the State Police or Department representatives, as necessary. Additional Certificates of Accuracy completed, executed and signed in the same manner as the original, have the same force and effect as the original.

[Pa.B. Doc. No. 16-1676. Filed for public inspection September 30, 2016, 9:00 a.m.]