

RULES AND REGULATIONS

Title 37—LAW

STATE POLICE

[37 PA. CODE CH. 42]

Use of Unmarked Vehicles

The State Police adopts Chapter 42 (relating to use of unmarked vehicles) to read as set forth in Annex A.

Section 5 of the act of June 26, 2001 (P. L. 374, No. 75) (Act 75) requires the State Police, in consultation with the Department of Transportation, to promulgate regulations for the use of unmarked vehicles by police officers. The effective date of the act was August 25, 2001. This final-form rulemaking requires officers using unmarked vehicles to carry identification and display it upon request unless it would jeopardize officer's safety. Officers using unmarked vehicles for patrol duties must be in uniform; officers using unmarked cars for duties that are likely to involve vehicle stops must wear clothing bearing the specific name of the law enforcement agency or task force. When making a stop in an unmarked vehicle, the officer must choose the safest location possible. In a vehicle pursuit, officers in an unmarked vehicle must have audible and visual signals that comply with 75 Pa.C.S. § 4571 (relating to visual and audible signals on emergency vehicles). Unmarked vehicles must relinquish the lead in pursuit as soon as marked vehicles are available.

Statutory Authority

This final-form rulemaking is authorized by section 5 of Act 75.

Effect

The final-form proposed rulemaking will affect all Commonwealth police agencies that use unmarked vehicles.

Effective Date/Sunset Date

This rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*. No sunset date has been assigned; however, every facet of this proposed rulemaking will be continuously reviewed for effectiveness, clarity and whether they are serving the greater interests of citizens of this Commonwealth.

Comments and Responses

The State Police received the following comments:

§ 42.1. (relating to purpose)

The Independent Regulatory Review Commission (IRRC) questioned whether the section applies to stops or pursuits relating to traffic violations or all stops and pursuits that involve unmarked cars. IRRC also commented on the fact that § 42.1 refers to the use of unmarked vehicles for law enforcement whereas 75 Pa.C.S. § 3328 (relating to unmarked vehicles) directs the State Police to promulgate regulations for the use of unmarked vehicles by police officers. The State Police has amended § 42.1 to more closely parallel the statute by explaining that it is necessary to establish uniformity in the use of unmarked cars by police officers.

§ 42.2. (relating to policy and effect)

IRRC noted that the phrase "permit the use of unmarked vehicles for law enforcement" also appears in

§ 42.2. The State Police has replaced the words "for law enforcement" with "by police officers" to more closely conform to 75 Pa.C.S. § 3328. IRRC also questioned whether there is a statutory or constitutional basis for stating in the regulation that failure to comply with Chapter 42 will not affect the legality of any arrest or citation nor be grounds for the suppression of evidence. The United States Supreme Court has ruled that violation of a regulation does not mandate suppression of evidence. See *United States v. Caceres*, 440 U.S. 741 (1979); see also, *United States v. Hinton*, 222 F.3d 666, 674-75 (2000). In *Commonwealth v. Thill*, 612 A.2d 1043 (Pa. Super. 1992), the State Superior Court determined that suppression of a breath test result was the proper remedy for violating regulatory requirements because statutory requirement in the Vehicle Code made compliance with the regulation mandatory for admissibility. In stark contrast, nothing in 75 Pa.C.S. § 3328 indicates that the General Assembly intended to remedy a violation of these unmarked vehicle regulations by suppressing evidence or dismissing criminal charges. IRRC has opined that the remedy to be imposed is a policy decision of such a substantial nature that it requires legislative review. The State Police agrees that this is a substantial policy question and has amended § 42.2 to provide that failure to comply with the regulations will not affect the legality of the arrest or citation nor be grounds for suppression of evidence except as provided by statutory or constitutional law.

§ 42.3. (relating to definitions)

Light bar assembly

IRRC pointed out that the definition of "light bar assembly" differs from that found in 67 Pa. Code § 173.2 (relating to definitions) and recommends amending the definition to be consistent with 67 Pa. Code § 173.2. The State Police has changed the definition to more closely parallel the language in 67 Pa. Code § 173.2 except that the State Police has retained the requirement that the beams of light have 360° visibility. The 360° requirement is necessary to ensure the safety of officers and the public, and it reflects the current, state-of-the art standards for light bar assembly.

Marked police vehicle and unmarked police vehicle

IRRC noted that this section defines "marked police vehicle" and "unmarked police vehicle" whereas the body of the chapter uses the terms "marked unit" and "unmarked vehicle." The State Police has amended §§ 42.21 and 42.22 to use the defined terms.

IRRC commented that the term "unmarked police vehicle" is defined as, "a police vehicle not equipped with a roof mounted light-bar assembly. The vehicle may display graphics, markings or decals identifying the agency or department." IRRC believes the second sentence makes the definition ambiguous and recommends deleting it. The State Police disagrees. The State Police believes the second sentence is necessary to make it clear that a vehicle is considered unmarked even if it displays graphic markings that are commonly associated with marked police vehicles.

The Pennsylvania Sheriffs' Association recommended replacing the terms "marked police vehicle" and "unmarked police vehicle" with "marked law enforcement vehicle" and "unmarked law enforcement vehicle." As

IRRC pointed out, however, the authorizing statute tasks the State Police with the responsibility for regulating the use of unmarked vehicles by police officers. Accordingly, the State Police has rejected the recommendation of the Sheriffs' Association.

Police Officer

IRRC commented that 75 Pa.C.S. § 3328 uses the term "police officer" whereas the rulemaking uses the term "officer." IRRC recommended that the preamble to the final-form rulemaking explain the reason for the use of the term "officer" instead of "police officer" and then define the term "officer" in the chapter. The State Police has chosen to remedy this inconsistency by replacing the term "officer" in the final-form rulemaking with the term "police officer."

§ 42.21 (relating to identification and uniform requirements)

IRRC commented on the requirement in subsection (a) that police officers without identification should not attempt to stop traffic law violators absent an immediate threat to public safety. At IRRC's suggestion, this requirement has been changed to provide that officers without identification may not attempt to stop traffic law violators unless there is immediate threat to public safety. Likewise, IRRC commented on the requirement in subsection (b) that markings on alternative attire should be visible from the front and back. IRRC recommended replacing the word "should" with the word "shall." Although the State Police believes markings should be visible from the front and back, this may not always be practical. Consequently, the provision has been eliminated from the final-form rulemaking.

§ 42.22 (relating to vehicle stops and pursuits)

IRRC pointed out that subsection (b) inaccurately cited 67 Pa. Code Chapter 173 (relating to flashing or evolving lights on emergency and authorized vehicles) as containing the requirements related to audible and visual signals. The reference to 67 Pa. Code Chapter 173 has been replaced with a reference to 75 Pa.C.S. § 4571 (relating to visual and audible signals and emergency vehicles).

Fiscal Impact

This final-form rulemaking will have a minimal fiscal impact.

Paperwork Requirements

This final-form rulemaking will not require the completion of additional forms, reports or other paperwork.

Regulatory Review

On February 4, 2004, copies of this final-form rulemaking were delivered to IRRC and the Majority and Minority Chairpersons of the House Judiciary Committee and the Senate Law and Justice Committee. Notice of proposed rulemaking was published at 34 Pa.B. 853 (February 14, 2004) and provided for a 30-day public comment period. In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the State Police provided IRRC and the Committees with copies of all comments received during the public comment period, as well as other documents if requested. In preparing the final-form rulemaking, the State Police has considered all comments received 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)), this final-form rulemaking was

deemed approved by the Senate Committee on Law and Justice. The House Judiciary Committee disapproved the rulemaking on October 19, 2004. Under section 5.1(e) of the Regulatory Review Act, IRRC approved the final-form rulemaking on November 4, 2004. Under section 5.1(j.2) of the Regulatory Review Act, on November 4, 2004, IRRC notified the House Judiciary Committee that it had approved the final-form rulemaking. More than 14 days have passed since the House Judiciary Committee received notice of IRRC's approval order, and the Committee has not taken further action on the final-form rulemaking. Accordingly, under section 5.1(j.2) of the Regulatory Review Act, the State Police are entitled to promulgate this final-form rulemaking.

Contact Person

The contact person is Syndi L. Guido, Policy Director, State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110, (717) 772-0905. Individuals with a disability and require an alternative format of this document (that is, large print, audio tape, Braille), should contact Syndi Guido so that she may make the necessary arrangements.

Findings

The State Police finds that:

(1) Public notice of intention to adopt this final-form rulemaking 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 7.2.2003.

(2) A public comment period was provided as required by law and all comments were considered and forwarded to IRRC, the Senate Committee on Law and Justice and the House Judiciary Committee.

(3) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statute.

Order

The State Police, acting under the authorizing statutes, orders that:

(a) The regulations of the State Police, 37 Pa. Code, are amended by adding §§ 42.1—42.3, 42.21 and 42.22 to read as set forth in Annex A.

(b) The State Police will submit this order and Annex A to the Office of General Counsel and Office of Attorney General as required by law for approval as to form and legality.

(c) The State Police shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

COLONEL JEFFREY B. MILLER,
Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa. B. 6292 (November 20, 2004).)

Fiscal Note: Fiscal Note 17-65 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 37. LAW

PART I. STATE POLICE

CHAPTER 42. USE OF UNMARKED VEHICLES

GENERAL PROVISIONS

Sec.	
42.1.	Purpose.
42.2.	Policy and effect.
42.3.	Definitions.

PROCEDURES

42.21.	Identification and uniform requirements.
42.22.	Vehicle stops and pursuits.

GENERAL PROVISIONS

§ 42.1. Purpose.

This chapter governs the use of unmarked vehicles. It is necessary to establish uniformity in the use of unmarked vehicles by police officers.

§ 42.2. Policy and effect.

The policy of the Commonwealth is to permit the use of unmarked vehicles by police officers. Failure to comply with this chapter does not affect the legality of any arrest or citation, nor will it be grounds for the suppression of evidence except as provided by statutory or constitutional law.

§ 42.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless otherwise indicated:

Light bar assembly—A device designed and constructed to display more than one steady burning, flashing or revolving beam of light with 360° visibility.

Marked police vehicle—A police vehicle that is equipped with at least one light-bar assembly and displays graphics, markings or decals identifying the agency or department on a minimum of three sides (front, rear, left or right).

Official identification—Identification issued, designated or approved by the individual law enforcement agency or municipality.

Official uniform—Any attire designated or approved by the individual law enforcement agency or municipality.

Unmarked police vehicle—A police vehicle not equipped with a roof mounted light-bar assembly. The vehicle may display graphics, markings or decals, identifying the agency or department.

PROCEDURES

§ 42.21. Identification and uniform requirements.

(a) *Identification.* Police officers using an unmarked police vehicle shall ensure they are carrying official identification, other than their uniform, to verify their identity, unless it would jeopardize the police officers' safety due to their work assignment. Police officers shall be prepared to display their official identification upon request. Police officers shall honor these requests when the request is reasonable and the police officer's safety has been ensured. If the police officer does not carry official identification, the police officer may not attempt to stop traffic law violators, unless there is immediate threat to public safety.

(b) *Uniforms.* Police officers assigned to use an unmarked police vehicle to perform patrol duties shall be

attired in an official uniform. Police officers assigned other duties that are likely to include or require traffic stops shall wear an official uniform or alternative attire, such as a police raid jacket, that bears the name of a specific law enforcement agency or task force.

§ 42.22. Vehicle stops and pursuits

(a) *Stopping suspected violators while operating an unmarked police vehicle.* Police officers stopping suspected violators shall attempt to ascertain the safest available location for the police officer and the motorist, consistent with the need for prompt action. Police officers shall take into consideration the road and weather conditions, terrain, lighting, traffic and the nature of the violation. The police officer shall also attempt to choose a location that will afford both the driver and the police officer a sense of safety.

(b) *Use of audible and visual signals required while operating an unmarked police vehicle.* Audible and visual signals meeting the requirements of 75 Pa.C.S. § 4571 (relating to visual and audible signals on emergency vehicles) shall be utilized when police officers stop suspected violators.

(c) *Unmarked police vehicle pursuits.* Police officers engaged in a pursuit using an unmarked police vehicle, shall relinquish their role as the primary pursuit vehicle and permit police officers in marked police vehicles to assume the role of the primary pursuit vehicle when that assistance is available.

[Pa.B. Doc. No. 05-55. Filed for public inspection January 7, 2005, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 32]

Corrective Amendment to 61 Pa. Code § 32.34(a)(3)(iii)(G)

The Department of Revenue has discovered a discrepancy between the agency text of 61 Pa. Code § 32.34(a)(3)(iii)(G) (relating to public utilities) originally the *Pennsylvania Code Reporter* (MTS 109) (December 1983) and the official text of 61 Pa. Code § 32.34(a)(3)(iii)(G) codified in the December 1990 *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 193), and as currently appearing in the *Pennsylvania Code*. The word "not" was inadvertently deleted from the last sentence of subsection (a)(3)(iii)(G).

Therefore, under 45 Pa.C.S. § 901: The Department of Revenue has deposited with the Legislative Reference Bureau a corrective amendment to 61 Pa. Code § 32.34(a)(3)(iii)(G). The corrective amendment to 61 Pa. Code § 32.34(a)(3)(iii)(G) is effective as of December 1, 1990, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of 61 Pa. Code § 32.34(a)(3)(iii)(G) appears in Annex A, with ellipses referring to the existing text of the regulation.

Annex A
TITLE 61. REVENUE
PART I. DEPARTMENT OF REVENUE
Subpart B. GENERAL FUND REVENUES
ARTICLE II. SALES AND USE TAX
CHAPTER 32. EXEMPTIONS
BUSINESS EXEMPTIONS

§ 32.34. Public utilities.

(a) *Equipment, machinery, parts and foundations therefor, and supplies used directly in rendering public utility service.* The purchase or use by a public utility of tangible personal property or services performed thereon to be predominantly used directly by it in producing, delivering or rendering of a public utility service or constructing, reconstructing, remodeling, repairing or maintaining facilities directly used in the service is exempt from tax, whether or not the facilities constitute real estate. However, for purposes of this exemption, real estate does not include buildings, roads or similar facilities. Effective March 4, 1971, foundations for exempt machinery or equipment became subject to tax and remained taxable until February 9, 1981. Effective February 7, 1981, foundations used to support equipment, machinery and parts used directly in rendering a public utility service are exempt from tax. The term "foundations" includes sand, gravel, crushed rock, concrete or similar material used as bedding or surrounding pipe used directly in rendering a public utility sanitary sewer or water service. Purchases of any vehicles required to be registered under 75 Pa.C.S. §§ 101—9909 (relating to Vehicle Code), ex-

cept those vehicles used directly by a public utility engaged in business as a common carrier as well as supplies and repair parts for the vehicles, is subject to tax.

* * * * *

(3) *Property not directly used.* Property in the following categories is not directly used in public utility operations and the purchase or use of the property is subject to tax:

* * * * *

(iii) *Managerial, sales or other nonoperational activities.* Property used in managerial, sales or other nonoperational activities is not directly used in the production, delivery or rendition of a public utility service and is therefore subject to tax. This category includes, but is not limited to, property used in any of the following activities:

* * * * *

(G) *Activities prior to production, delivery or rendition of services.* Property used to transport personnel or to collect, convey or transport other property, and storage facilities or devices used to store or hold property prior to its use in the production, delivery or rendition of a public utility service is subject to tax. Property used to transport, store or hold the actual product which is delivered as a public utility service is directly used and therefore is not subject to tax.

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