

Regulatory Analysis Form

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(1) Agency

Pennsylvania Public Utility Commission

RECEIVED

2000 MAY 18 PM 3: 11

(2) I.D. Number (Governor*s Office Use)

L-00970124/57-189

INDEPENDENT REGULATORY
REVIEW COMMISSION

IRRC Number: #1944

(3) Short Title

Passenger Carrier Insurance Regulations to Clarify Coverage Requirements

(4) PA Code Cite

52 Pa. Code § 32.11

(5) Agency Contacts & Telephone Numbers

Primary Contact: Rhonda L. Daviston, Assistant Counsel
717-787-6166

Secondary Contact:

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The changes will clarify insurance requirements for common and contract carriers. The changes will clarify the amount of third party liability insurance required for motor carriers with a capacity of fewer than 16 passengers.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Sections 501, 504, 2412 and 2416 of the Public Utility Code (66 Pa. C.S. §§501, 504, 2412 and 2416); Sections 201, 202 and 205 of the Commonwealth Documents Law (45 P.S. §§1201, 1202 and 1205); and regulations promulgated thereunder at 1 Pa. Code §§7.1 - 7.4.

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The changes are necessary to clarify a regulation which has caused confusion in the past.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Lack of regulation in this area would result in passenger carriers being insured at the lower level of coverage required by the Pennsylvania Insurance Commission. The Insurance Commission's regulations anticipate coverage for personal automobiles and were not intended to cover passenger carriers which are at greater risk.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Because the changes will clarify precisely the amount and type of insurance coverage required, the amended regulation is expected to quiet controversies and avoid litigation. This will benefit the insurance carriers, the insured passenger carriers, and those injured and claiming benefits which will not be the subject of protracted litigation.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Because the amended regulation merely clarifies the language and present intent, no person or entity will be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All common and contract carriers capable of transporting fewer than 16 persons operating intrastate and their insurance carriers will be affected. The changes, however, merely clarify the existing regulation and impose no additional requirements.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Communications from Clarendon Insurance Company alerted the PUC to the confusion caused by existing language which was the subject of a federal law suit. In addition, even though the changes do not alter the existing requirements for passenger carrier insurance coverage, the PUC issued the changes as a Proposed Rulemaking. The Proposed Rulemaking was published in the Pennsylvania Bulletin on May 9, 1998, at 28 Pa. B. 2146 with a 60 day public comment period. One comment was received from the Independent Regulatory Review Commission. This regulation was also be made available to the Budget Office and the Office of the Attorney General.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

While costs and/or savings to the regulated community are not readily quantifiable, the changes will more clearly define the required insurance coverage which in turn will reduce the number of disputes and proceedings filed with the PUC and other adjudicative bodies. By reducing the number of contested proceedings, legal fees, paperwork, and other costs associated with litigation and/or the formal complaint process will be reduced.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

While costs and/or savings to local governments are not readily quantifiable, the changes will more clearly define the required insurance coverage which in turn will reduce the number of disputes and proceedings filed with the local courts.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

While costs and/or savings to the regulated community are not readily quantifiable, the changes will more clearly define the required insurance coverage which in turn will reduce the number of disputes and proceedings filed with the PUC and other state adjudicative bodies. By reducing the number of contested proceedings before the PUC, PUC paperwork and formal complaint workload will be reduced.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

| | Current FY Year | FY +1 Year | FY +2 Year | FY +3 Year | FY +4 Year | FY +5 Year |
|-----------------------------|--------------------|---------------|---------------|---------------|---------------|---------------|
| SAVINGS: | \$ N/A | \$ | \$ | \$ | \$ | \$ |
| Regulated Community | | | | | | |
| Local Government | | | | | | |
| State Government | | | | | | |
| Total Savings | | | | | | |
| COSTS: | N/A | | | | | |
| Regulated Community | | | | | | |
| Local Government | | | | | | |
| State Government | | | | | | |
| Total Costs | | | | | | |
| REVENUE LOSSES: | N/A | | | | | |
| Regulated Community | | | | | | |
| Local Government | | | | | | |
| State Government | | | | | | |
| Total Revenue Losses | | | | | | |

(20a) Explain how the cost estimates listed above were derived.

N/A

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

| Program | FY -3 | FY -2 | FY -1 | Current FY |
|---------|-------|-------|-------|------------|
| N/A | | | | |
| | | | | |
| | | | | |
| | | | | |

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The benefits of an unambiguous regulation will be the increased certainty of precisely the amount and type of insurance required for common carriers in the Commonwealth. This in turn will deter lawsuits claiming unlawful insurance coverage. The costs of addressing disputes is not insignificant. Not only does the affected insurance carrier incur costs, but the PUC or other adjudicatory body incurs costs.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The PUC did not consider nonregulatory alternatives because the regulation imposes a specific obligation on any common carrier doing business in the Commonwealth and on any insurance carrier providing coverage to these common carriers. This cannot be done on a case by case basis and must be imposed through regulation.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

The PUC attempted to resolve any confusion and clarify the requirements of its regulation regarding passenger carrier insurance through the publication of a Policy Statement at section 41.21 of Title 52 of the Pennsylvania Code. Such an alternative proved unsatisfactory and insufficient to quiet controversies over the type of insurance coverage required.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

N/A. Motor carrier insurance is regulated by the states.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Insurance rates vary from state to state. The amended regulation, as written, will maintain adequate insurance coverage for Pennsylvania's common carriers while maintaining rates which will be affordable, even in the high rate area of Philadelphia.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No additional reporting, record keeping or other paperwork will be required by the amended regulation.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No. Because the provisions of this regulation relate solely to insurance coverage of intrastate common and contract carriers, special needs are not a factor.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The PUC issued a final regulation after the 60-day comment period. Implementation will occur after the formal regulatory review process.

(31) Provide the schedule for continual review of the regulation.

The PUC periodically reviews all its regulations for obsolete or ineffective regulations. Additionally, as cases come before it, the PUC examines whether an applicant has sufficient insurance. If areas of improvements are needed or perceived, the PUC will further amend the regulation.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

RECEIVED
2000 MAY 18 PM 3:11
INDEPENDENT REGULATORY
REVIEW COMMISSION

#1944

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General.

BY _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-00970124/57-189

DATE OF ADOPTION May 11, 2000

BY James J. McNulty
James J. McNulty

TITLE (SECRETARY)

Copy below is hereby approved as to form and legality. Executive or independent Agencies.

BY Bohdan R. Pankiw
Bohdan R. Pankiw
Chief Counsel

5-11-00
DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-00970124/57-189
Final Rulemaking
Passenger Carrier Insurance Regulation
to Clarify Coverage Requirements
52 Pa. Code, Chapter 32

The Pennsylvania Public Utility Commission on May 11, 2000, adopted a final rulemaking to clarify in Section 32.11 that the amount of minimum third party coverage refers to split coverage. The contact person is Rhonda Daviston, Law Bureau, 787-6166.

EXECUTIVE SUMMARY

**L-00970124/57-189
Final Rulemaking
Re Passenger Carrier Insurance Regulations
To Clarify Coverage Requirements
52 Pa. Code, Chapter 32**

In 1994, the Pennsylvania Public Utility Commission (PUC) issued a policy statement in an attempt to quiet confusion in the passenger carrier industry concerning the minimum requirements under the PUC's regulation regarding insurance coverage for passenger carriers. Since then, it has become apparent that the policy statement did not meet the intended goal. In an effort to formalize the PUC's intent and clarify the language of the regulations, the PUC proposes to amend 52 Pa. Code §32.11(b).

Section 32.11(b) has been amended to clarify that the amount of minimum third party coverage refers to split coverage.

**The contact person is Rhonda Daviston, Assistant Counsel, Law Bureau,
(717) 787-6166.**

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held May 11, 2000

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
Nora Mead Brownell
Aaron Wilson, Jr. , Statement attached
Terrance J. Fitzpatrick

Rulemaking Re: Passenger Carrier :
Insurance Regulation to Clarify : Docket No.
Coverage Requirements : L-00970124
52 Pa. Code §32.11 :

FINAL RULEMAKING ORDER

BY THE COMMISSION:

By order adopted October 28, 1994, Docket No. L-940087, we issued a final policy statement interpreting the minimum insurance requirements for passenger carriers transporting fewer than 16 passengers. The final policy statement was published in the Pennsylvania Bulletin on February 25, 1995, 25 Pa. B. 681. 52 Pa. Code §41.21.

The issuance of the policy statement was the culmination of a request to issue a declaratory order in Petition of Damone Clayter, Docket No. P-00930722. In Damone Clayter, petitioner was a passenger in a taxi owned by Jenny Cab Company and said cab was involved in a motor vehicle accident. Clayter was injured in the accident and was at risk of losing rights to underinsured motorist coverage because of a controversy as to the

amount of liability coverage required by Section 32.11 of the Commission's regulations, 52 Pa. Code §32.11. Clayter petitioned this Commission requesting a declaratory order which detailed the third party insurance limits that a cab company must maintain in Pennsylvania and approved as valid the liability policy of Jenny Cab Company. In response to Clayter's petition, the Commission ordered an investigation into insurance claims, state liability coverage requirements and driver safety records.

At the conclusion of the investigation, the Commission issued a policy statement detailing its interpretation of section 32.11 of its regulations. 52 Pa. Code §41.21; 52 Pa. Code §32.11. In issuing the policy statement, it was this Commission's intent to put to rest any confusion or controversy regarding third party insurance coverage as required by Section 32.11(b).¹

Unfortunately, as evidenced by the recent federal case Adams v. Clarendon, confusion and controversy remains. Adams v. Clarendon, Civil Action No. 95-6392 (U.S. District Ct. (E.D. Pa.)). Adams, who was injured in a Philadelphia taxicab insured by Clarendon Insurance Co., filed a class action suit against Clarendon charging, inter alia, that Clarendon had issued policies at less than the minimum amounts required by 52 Pa. Code §32.11(b). The Courts have found that insurance carriers may be liable for more than the policy limits if the carrier issued insurance at less than the minimum amount required by law. Metro Transp. Co. v. North Star Reinsurance Co., 912 F.2d 672 (3rd. Cir. 1990).

¹ Specifically not addressed in the policy statement was any interpretation of first party benefits.

Adams argued that Section 32.11(b) requires a minimum of \$35,000 in third party liability coverage for each individual passenger/pedestrian injured in a taxicab accident, regardless of the number of individuals injured in a particular accident or of the aggregate required minimum amount of insurance coverage.² Such an interpretation is at odds with our interpretation as set forth in the policy statement at 52 Pa. Code §41.21.

To avoid future controversies regarding the minimum amount of insurance required by this Commission, we proposed to amend the existing regulation covering motor vehicles capable of carrying fewer than 16 passengers in an attempt to remove doubt as to the required minimum amount of insurance coverage and how it is applied. By amending the existing regulation, we will formalize our intent as expressed in the policy statement.

The proposed rulemaking was published in the Pennsylvania Bulletin on May 9, 1998 at 28 Pa. B. 2146. Following publication, the Commission received one formal comment from the Independent Regulatory Review Commission (IRRC) which raised two questions. In its comment, IRRC noted that the required coverage may be inadequate when considering that the minimum \$35,000 per accident could conceivably need to provide coverage for up to 15 passengers.

In responding to this comment, the Commission notes that in addition to ensuring that the public is adequately covered in the event of an accident, the Commission must also take into consideration the high cost of insurance for taxicab companies. We are

² Although the federal suit settled, Clarendon Insurance Co. has petitioned the Commonwealth Court of

mindful that our goal is not to make getting and maintaining insurance an insurmountable burden on taxicab companies. We must balance the interest of protecting the public with the interests of making it financially feasible for taxicab companies to continue providing adequate, safe and reasonable service to the public. To that end, we do not believe that raising the established minimum requirements is in the best interest of all parties concerned.

IRRC also raised a clarification concern. IRRC noted that the first sentence in Annex A of Section 32.11(b) makes reference to “liability insurance maintained by a common carrier of passengers.” However, the existing text in Section 32.11(b) references “liability insurance maintained by a common or contract carrier of persons.” The omission of the word “contract” is a typographical error. Annex A will be corrected to include the word “contract” in the first sentence of Section 32.11(b).

The purpose of this rulemaking is to clarify the Commission’s intent that third party benefits refer to “split” coverage. That is, the \$35,000 minimum amount of coverage required for bodily injury, death or property damage must be split in the amounts of \$15,000 bodily injury per person, \$30,000 bodily injury per accident and \$5,000 property damage per accident.

We believe that the changes will promote ease of application as well as fairness while greatly reducing the confusion evidenced in the recent Adams lawsuit.

Pennsylvania for a declaratory judgment as to the proper interpretation of our regulation at 52 Pa. Code §32.11(b). Clarendon v. Pa. P.U.C., 359 M.D. 1997 (Pa. Cmwlth. Ct.).

Accordingly, pursuant to Sections 501 and 512 of the Public Utility Code, 66 Pa. C.S. §§501 and 512, and the Commonwealth Documents Law, 45 P. S. §§1201 et seq., and the regulations promulgated thereunder, we hereby amend the regulations at 52 Pa. Code §32.11; **THEREFORE,**

IT IS ORDERED:

1. That Title 52 of the Pennsylvania Code (Public Utilities) is amended consistent with this order by amending the reporting requirements at 52 Pa. Code §32.11 as set forth in Annex A of this order.

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

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

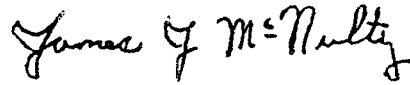
4. That the Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

5. That the Secretary shall submit this order and Annex A for review by designated standing committees of both Houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

6. That a copy of this order and Annex A shall be served upon the Pennsylvania Insurance Department, the Pennsylvania Taxicab & Paratransit Association, the Delaware Valley Limo Association, the Northeastern Limo Association, the Western Pennsylvania Limousine Association, and the Radio Associations in the Commonwealth.

7. The contact person for this matter is Rhonda L. Daviston, Law Bureau
(717) 787-6166.

BY THE COMMISSION



James J. McNulty

Secretary

(SEAL)

ORDER ADOPTED: May 11, 2000

ORDER ENTERED: **MAY 18 2000**

**ANNEX A
TITLE 52. PUBLIC UTILITIES
PART 1
PUBLIC UTILITY COMMISSION
SUBPART B. CARRIERS OF PASSENGERS OR PROPERTY
CHAPTER 32. MOTOR CARRIER INSURANCE
SUBCHAPTER B. INSURANCE REQUIREMENTS**

* * * * *

§32.11. Passenger Carrier Insurance

(a) No common carrier or contract carrier of passengers may engage in intrastate commerce and no certificate or permit will issue, or remain in force, except as provided in § 32.15 (relating to applications to self-insure) until there has been filed with and approved by the Commission a certificate of insurance by an insurer authorized to do business in this Commonwealth, to provide for the payment of valid accident claims against the insured for bodily injury to or the death of a person, or the loss of or damage to property of others resulting from the operation, maintenance or use of a motor vehicle in the insured authorized service.

(b) The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle capable of transporting fewer than 16 passengers shall be in an amount not less than \$35,000 to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service. The \$35,000 minimum coverage is split coverage in the amounts of \$15,000 bodily injury per person, \$30,000 bodily injury per accident and \$5,000 property damage per accident. This coverage shall include first party medical benefits in the amount of \$25,000[,] and first party wage loss benefits in the amount of \$10,000 for passengers and pedestrians. Except as to the required amount of coverage, ~~first-party~~ THESE benefits shall conform to 75 Pa. C.S. §§ 1701--[1798] 1799.7 (relating to Motor Vehicle Financial Responsibility Law). First party coverage of the driver of certificated vehicles shall meet the requirements of 75 Pa. C.S. § 1711 (relating to required benefits).

(c) The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle capable of transporting 16 to 28 passengers shall be in an amount not less than \$1 million to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service. Except as to the required amount of liability coverage, this coverage shall meet the requirements of 75 Pa.C.S. §§ 1701--[1798] 1799.7.

(d) The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle capable of transporting more than 28 passengers shall be in an amount not less than \$5 million to cover liability for

bodily injury, death or property damage incurred in an accident arising from authorized service. Except as to the required amount of liability coverage, this coverage shall meet the requirements of 75 Pa.C.S. §§ 1701--[1798] 1799.7.

(e) The limits in subsections (b) -- (d) do not include the insurance of cargo.



PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA

JOHN M. QUAIN
CHAIRMAN

May 18, 2000

The Honorable John R. McGinley, Jr.
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown II
333 Market Street
Harrisburg, PA 17101

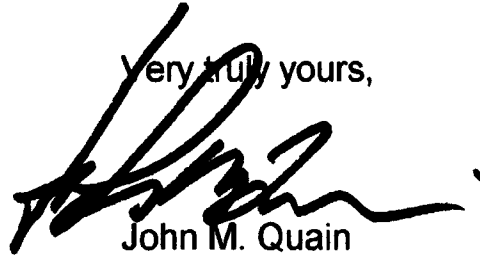
Re: L-970124/57-189
Final Rulemaking
Passenger Carrier Insurance Regulations
to Clarify Coverage Requirements
52 Pa. Code Chapter 32

Dear Chairman McGinley:

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission, on April 28, 1998, submitted a copy of the Notice of Proposed Rulemaking to the House Committee on Consumer Affairs, the Senate Committee on Consumer Protection and Professional Licensure and to the Independent Regulatory Review Commission (IRRC). This notice was published at 28 Pa.B. 2146 on May 9, 1998. In compliance with Section 745.5(b.1) copies of all comments received were provided to your Commission and the Committees.

In preparing this final form rulemaking, the Public Utility Commission has considered all comments received from the Committees, IRRC and the public.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John M. Quain', written over the typed name.

John M. Quain
Chairman

Enclosures

- cc: The Honorable Clarence D. Bell
The Honorable Lisa Boscola
The Honorable Chris R. Wogan
The Honorable Keith McCall
Legislative Affairs Director Perry
Chief Counsel Pankiw
Regulatory Coordinator DelBiondo
Assistant Counsel Daviston
Mr. Zogby

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
RECEIVED TO THE REGULATORY REVIEW ACT

2000 MAY 18 PM 3:01
ID Number: L-00970124/57-189

INDEPENDENT REGULATORY
REVIEW COMMISSION
Subject: Passenger Carrier Insurance Regulation to Clarify
Coverage Requirements

Pennsylvania Public Utility Commission

TYPE OF REGULATION

- _____ Proposed Regulation
- _____ Final Regulation with Notice of Proposed Rulemaking
Omitted.
- X Final Regulation
- _____ 120-day Emergency Certification of the Attorney
General
- _____ 120-day Emergency Certification of the Governor

FILING OF REPORT

| <u>Date</u> | <u>Signature</u> | <u>Designation</u> |
|----------------|--------------------|--|
| <u>5/18/00</u> | <u>[Signature]</u> | <u>HOUSE COMMITTEE</u> Consumer Affairs |
| <u>5-18-00</u> | <u>Tami Tarasi</u> | <u>SENATE COMMITTEE</u> Consumer Protection and Professional Licensure |
| <u>5-18-00</u> | <u>[Signature]</u> | Independent Regulatory Review Commission |
| _____ | _____ | Attorney General |
| _____ | _____ | Legislative Reference Bureau |