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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

August 25, 2004

Honorable Terrance J. Fitzpatrick, Chairman  
Pennsylvania Public Utility Commission  
Keystone Building, 3rd Floor  
400 North Street  
Harrisburg, PA 17105

Re: Regulation #57-233 (IRRC #2410)  
Pennsylvania Public Utility Commission  
Passenger Service and Property and Household Goods Carriers

Dear Chairman Fitzpatrick:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

A handwritten signature in cursive script that reads "Robert E. Nyce".

Robert E. Nyce  
Executive Director

evp

Enclosure

cc: Honorable Robert J. Flick, Majority Chairman, House Consumer Affairs Committee  
Honorable Joseph Preston, Jr., Democratic Chairman, House Consumer Affairs Committee  
Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional  
Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional  
Licensure Committee

## **Comments of the Independent Regulatory Review Commission**

**on**

### **Pennsylvania Public Utility Commission Regulation #57-233 (IRRC #2410)**

#### **Passenger Service and Property and Household Goods Carriers**

**August 25, 2004**

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Pennsylvania Public Utility Commission (PUC) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on July 26, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

#### **CHAPTER 29. MOTOR CARRIERS OF PASSENGERS**

##### **1. Section 29.32. Death or incapacitation of a certificate holder. – Clarity.**

Existing language in the first sentence of this section refers to a certificate holder “being legally declared insane.” Is this terminology still used in legal proceedings, or is there updated terminology that has replaced “insane”?

The second sentence of the section references “appropriate proceedings.” Section 29.61 (relating to Commencement of service) also references “appropriate proceedings.” Where can the reference to these proceedings be found?

##### **2. Section 29.44. Accident reports. – Clarity.**

The Preamble states that “carriers must also provide a written report of the accident to the Commission within 30 days of the accident.” However, the 30 day requirement in Subsection (a) is being deleted. Does the PUC still intend to receive an accident report within 30 days?

##### **3. Section 29.306. Consumer information. – Clarity.**

This new section requires scheduled route carriers to post a PUC-issued complaint decal inside the vehicle which lists the phone number and website to be used to file a complaint, *or* provide this information on the receipt. The same requirements apply to airport transfer carriers (Section 29.344) and paratransit and experimental service carriers (Section 29.356). The comparable provision for call or demand service (Section 29.318) requires only the decal, and for limousine service (Section 29.336) both the decal and the information on the receipt are required.

PUC staff has indicated that the intent is to allow a carrier in all categories to be able to choose which method of complaint information notices are used under each of these sections. The PUC’s intent should be clearly delineated in the final-form regulation.

**4. Section 29.314. Vehicle and equipment requirements. – Fiscal impact; Reasonableness.**

Subsection (d) prohibits a vehicle that is more than eight model years old from being operated in call or demand service. This provision is also found in 29.333(e) (relating to Limousine service). Commentators have voiced objections to this provision asserting that it will impose substantial financial burdens on their operations. How did the PUC determine the age threshold? Has the PUC considered any alternative limitations, such as a mileage limitation?

**5. Section 29.505. Criminal history. – Statutory authority; Legislative intent; Clarity.**

*Subsections (a) and (b)*

Subsection (a) requires a common or contract carrier to obtain a criminal history record from the Pennsylvania State Police before permitting a driver to operate a vehicle in its service. Subsection (b) requires that the carrier obtain a new record every two years.

We object to these provisions for two reasons. First, there is no statutory authority for a carrier to obtain a criminal history record. Other than certain criminal justice agencies and licensing authorities, the Criminal History Record Information Act authorizes only an individual or his legal representative to obtain and review his criminal history information (18 Pa.C.S. § 9151(a)).

Second, there is nothing in the provisions of the Public Utility Code governing certificates of public convenience (66 Pa.C.S. §§ 1101-1104) which authorizes the PUC to require that either carriers or drivers obtain this information. Whenever the legislature intended to authorize an agency to require an applicant for licensure or employment to submit his criminal history information, it provided for that authority in clear and unmistakable terms. Some examples of statutory provisions where this authority has been granted relate to humane society police (3 P.S. § 456.4), mortgage brokers (63 P.S. § 456.310(c)(3)), and applicants for nurse aide training programs (63 P.S. § 674(a)(1)). Additionally, we note that the USA Patriot Act of 2001 (49 U.S.C. § 5103a), requires commercial drivers who transport hazardous materials to submit a criminal history background check. This requirement does not apply to commercial drivers who transport other materials.

*Subsection (d)*

Subsection (d) prohibits a carrier from allowing a person convicted of a felony or misdemeanor involving moral turpitude from operating one of its vehicles, as long as the person remains under the supervision of the courts or the corrections system.

We find this provision to be unclear. The regulation does not define “crime of moral turpitude.” Some commentators have understandably expressed confusion as to what crimes are included in this category. If the PUC decides to retain this provision, it should include a definition of this phrase.

A similar provision exists in Subsections 31.134(a), (b) and (d). The same concerns outlined above should be addressed in these subsections, as well.

## **CHAPTER 31. MOTOR CARRIER PROPERTY AND HOUSEHOLD GOODS TRANSPORTATION**

### **6. Section 31.121. Information for shippers. – Fiscal impact; Reasonableness; Need; Clarity.**

#### *Subsection (a)*

This subsection contains an “Information for Shippers” form that a household goods carrier is required to provide to a prospective shipper when the shipper requests moving service and before the carrier prepares an order for service. The following comments relate to the language in the form.

#### **INVENTORY**

Under this section of the form, the carrier is required to “complete a detailed inventory listing all items to be moved and their condition.” Additionally, the carrier is required to assign an identification number to all items. This inventory requirement also appears in Section 31.133(a). It is not contained in the existing regulations.

Commentators have noted that inventories are routinely performed on moves over 40 miles. However, they have objected to this requirement for moves under 40 miles. They assert that a detailed inventory will be expensive and time consuming for both the carrier and the shipper. One carrier notes that it takes approximately 20 to 30 minutes to inventory one average room of household goods. At the conclusion of the move, additional time would be required to verify that the inventoried items were delivered. Since the shipper is charged by the hour in these types of moves, the overall cost for a move could significantly increase. Commentators also note that the additional time required for inventories will place a financial burden on carriers since they will have to either schedule fewer moves per day, or hire additional employees.

Based on discussion with PUC staff, we understand that federal regulations require inventories for interstate moves. The preamble, however, does not explain the need to apply this requirement to all moves. Additionally, it is unclear if this requirement is based on a significant complaint volume related to the lack of a detailed inventory on moves under 40 miles. The PUC should explain the basis for this requirement.

Additionally, commentators have suggested that the shipper be given the right to waive the inventory requirement for moves under 40 miles. We agree that a waiver provision would maintain the consumer protections associated with the inventory while providing flexibility for shippers who may not want to pay the additional cost of having an inventory prepared. The PUC should include this option in the final-form regulation.

#### **LOSS AND INSURANCE**

This section of the form provides that in the case of loss or damage to a shipper’s goods, the shipper is protected up to 60 cents per pound per article. The existing regulation protected the shipper up to 30 cents per pound. The PUC should explain how it determined the proposed increase to 60 cents per pound.

## **PROOF OF DAMAGE/RECEIPT**

This section of the form states, in part, “Do not sign the delivery receipt if it contains language purporting to release or discharge the carrier from liability.” Similar language appears in proposed Section 31.132(f). Some commentators have asserted that the Pennsylvania Code and existing tariffs establish limitations on a carrier’s liability in certain situations. Are there instances in which the carrier would be released from liability? If so, these instances should be identified in the final-form regulation.

### *Subsection (c)*

This subsection requires that the form be provided to the shipper “at least 48 hours prior to the move.” Commentators have noted that some short distance moves are arranged quickly, and in these instances, it may not be possible to comply with the 48-hour requirement. Has the PUC considered allowing the shipper to waive the 48-hour requirement in these instances?

### **7. Section 31.122. Estimated cost of services. – Clarity.**

Subsection (a) requires the carrier to prepare the estimated cost of services on a form and provide it “to the shipper prior to the move . . . .” Does the PUC intend this form to be given before the move begins? Or is it intended to be given 48 hours prior to that time, consistent with the requirements for delivering the “Information for Shippers” form in Section 31.121? The final-form regulation should specify the time frame within which the estimate must be provided.

### **8. Section 31.123. Delivery when charges exceed estimates.**

The preamble states that the PUC is amending this section to replace “money order” with “cashier’s check.” However, this change does not appear in the regulation. PUC staff explained that the sentence which refers to a money order is no longer necessary since the amendments to the Information for Shippers form address payment options. Therefore, when the PUC submits the final-form regulation, it should update the preamble to reflect the amendments in the regulation.

### **9. Miscellaneous clarity issue.**

#### *Electronic communication*

The proposed regulation contains numerous requirements related to reports to the PUC and documents for customers. For example, Section 29.313 requires drivers of vehicles in call or demand services to keep log sheets for each shift that is operated. Section 31.121 requires a carrier to provide shippers with an Information for Shippers form. The regulation does not address the issue of electronic versions of these various reports or forms. The PUC should consider allowing carriers to meet the requirements of the regulation through electronic communication methods when available and practical.

### Facsimile Cover Sheet

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Administrative Officer



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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14<sup>TH</sup> FLOOR, HARRISBURG, PA 17101

**To:** Sherri A. DelBiondo  
Regulatory Review Coordinator  
Law Bureau  
**Agency:** Pennsylvania Public Utility Commission  
**Phone:** 2-4597  
**Fax:** 3-3458  
**Date:** August 25, 2004  
**Pages:** 6

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**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Public Utility Commission's regulation #57-233 (IRRC #2410). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

**Accepted by:** *S. DelBiondo* **Date:** 8-25-04

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