



Pennsylvania Public
Transportation Association

November 11, 2004

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Ms. Dianna J. Reed, Transportation Planning Manager
Bureau of Highway Safety and Traffic Engineering
PA Department of Transportation
Commonwealth Keystone Building
400 North Street, P.O. Box 2047
Harrisburg, PA 17105-2047

RE: Proposed Rulemaking Amending 67 PA. Code CH. 102 Child Passenger Protection

Dear Ms. Reed:

It is the position of PPTA that public transportation vehicles should be exempt from this rule making. The rule is intended to apply to private vehicles. Public transportation is inherently different and is designed to accommodate the public at large. As such, providers are confronted with many obstacles, which negate their ability to meet the regulation's requirements. For instance, public transportation providers cannot possibly anticipate who will ride the vehicle and the required type of child passenger protection needed. Further, many of our vehicles not only lack seat or shoulder harnesses, some seats cannot accommodate the addition of a child restraint system or booster seat. Due to the variables and challenges, PPTA strongly recommends an exemption for all public transportation vehicles.

Failing such a ruling, the following are our comments:

Vehicles – The scope affects all vehicle operators transporting children under 8 years of age. We must emphasize again our position that all public transportation vehicles should be exempt from this rule making. Public transportation vehicles range from trains and large articulated buses to small vans and station wagons. Some require operators to hold a CDL designation, others do not. There needs to be a more clear definition of vehicles and operators who are exempt from this rule. Expectations for each type of public transportation vehicle in operation must be outlined. At the very least, public transit should be granted a waiver for vehicles currently in operation, with the stipulation that new vehicles must comply with the specifications.

Physical Criteria – The passenger age, weight and height requirements and related restraint is delineated. Drivers of public transportation vehicles cannot be responsible for assessing passenger criteria such as age, weight and height. If each passenger supplies that information, and it is incorrect, liability issues arise. If such passenger information is kept on file, responsibility for updates as the child changes age, weight and height must fall upon the passenger. Liability again becomes an issue if the information is not updated. The method, frequency and responsibility for maintaining and updating passenger criteria for riders of public transportation must be clearly defined so that liability is not placed upon the public transportation provider.

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Physician Exemption – The method and criteria for medical exemption is outlined. It must be clearly stated that physician exemptions, and any changes thereto, are the responsibility of the passenger. Drivers are hired to drive vehicles, not to assess or maintain medical records. The exemption could be kept on file at the transit system, but not the vehicle since round trips are not necessarily provided by the same vehicle. Healthcare privacy laws also come into play, along with liability.

Fiscal Impact – Expenditure of additional funds by the Commonwealth will not be required. Just as the saying goes, “there is no free lunch,” so goes the idea of a cost-neutral mandate. Passenger responsibility for the purchase, provision, and maintenance of a child restraint system, i.e., booster seat, must be clearly defined. Just as other mobility devices, such as wheel chairs, are the responsibility of the passenger, supplying a car seat must rest with the passenger, not the public transportation provider. This could have a financial impact upon the Department of Public Welfare and the Medical Assistance Transportation Program. Just like wheel chair securement, securing the child restraint device rests with the public transportation provider, which takes additional time and space. This will alter the timing of vehicle schedules and vehicle capacity, which has a fiscal impact upon the provider. Staff securement training and additional trips and vehicles may be necessary, which in turn affects fleet size, staffing, and other costs, which are all, or in part, supported by state and federal funds. All mandates have a fiscal impact upon the Commonwealth, directly or indirectly, particularly if public transportation providers are not deemed to be exempt.


It is PPTA’s position that public transportation providers must be exempt from this lawmaking. The variables in documentation in all areas create burdensome liability issues and costly and challenging implementation concerns. Failing exemption, specific clarification, as noted above, is required. Additionally, a tremendous effort to educate the public must be undertaken by the Commonwealth to assure compliance by both our member public transportation systems and our customers.

We appreciate this opportunity to comment on the proposed rulemaking published in the Pennsylvania Bulletin, Vol. 34, No. 42, on October 16, 2004, regarding child passenger protection. While we emphasize “safety first” in all our transit operations and support initiatives that increase the wellbeing of our passengers, the proposed rules, as published, create concern throughout the public transportation industry. **Therefore an exemption for public transportation providers is imperative.**

Sincerely,



Michael E. Imbrogno
PPTA Chairman and
CEO, ATA



Martha Knarr Pierce
PPTA Executive Director

Original: 2439

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November 15, 2004

Dianna J. Reed, Transportation Planning Manager
Bureau of Highway Safety and Traffic Engineering
Department of Transportation
Commonwealth Keystone Building
400 North Street
PO Box 2047
Harrisburg, PA 17105-2047

Dear Ms. Reed:

Please accept the following written comments to the proposed changes to Title 67 of the Pennsylvania Code Chapter 102 (Child Passenger Protection) as published in the Pennsylvania Bulletin on or about October 16, 2004 (Vol. 34, No. 42). These comments are submitted by undersigned counsel on behalf of the Pennsylvania Taxi and Paratransit Association (PTPA); The Yellow Cab Company of Pittsburgh; Airport Limousine Service, Inc.; Checker Cab Company; and YC Holdings, Inc.

COMMENTS

As noted in the Proposed Rulemaking notice, the proposed rule will affect all vehicle operators transporting children under 8 years of age. The proposed rule does not make exception for common

carriers of passengers such as the commentators. The proposed rule making notes that the fiscal impact to the regulated community will “be in the cost of a booster seat which range between \$25 and \$130.”

The proposed rule, in essence requires that children under eight years of age be restrained in an appropriate safety seat belt system or booster seat. The regulation is mandatory and failure to comply could result in a finable summary offense per 75 Pa.C.S. § 4581 (b).

The Commentators believe that the Department failed to consider the effect on common carriers, such as the Commentators, who are already subject to the regulations of the Pennsylvania Utility Commission. Common carriers, particularly those who are in the business of call and demand transportation (such as taxis), must under most circumstances provide service upon request. These carriers do not have discretion under the PUC regulations to deny service to children.

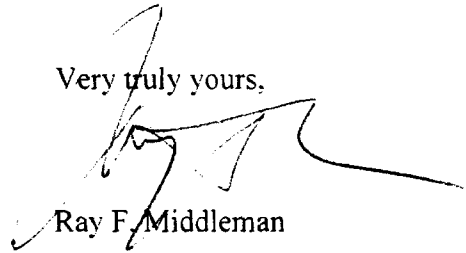
In order to comply with the proposed regulation, a carrier in call and demand service would need to be prepared with a nearly unlimited number of child passenger restraint systems. This is because an operator would need to have available an “appropriate” restraint or booster for all ages, heights, and weights, multiplied by the maximum passenger capacity of the vehicle. This is obviously impractical if not physically impossible, and is far beyond the fiscal impact contemplated by the Department’s proposed rulemaking.

An additional difficulty facing operators of vehicles in common carrier service is that an operator may not be familiar with his or her passengers prior to the time of service. The operator is without knowledge of a child’s age, height or weight, and is not well situated to make a proper determination on whether the child is required to be restrained or what restraint would be appropriate. There is no exception in the regulation for an operator’s reliance upon information provided to him or her.

The Commentators recommend that the proposed rule be amended to exempt or provide an exception for vehicles which are regulated by the Pennsylvania Utility Commission. It is the Commentators belief that such regulation of passenger safety would be naturally within the Pennsylvania Public Utility Commission’s authority. As such, Commentator’s believe that the Pennsylvania Public

- Utility Commission would be able to address the issue of insuring passenger safety in a practical and efficient manner.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ray F. Middleman', with a long horizontal flourish extending to the right.

Ray F. Middleman

RFM/car