

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
JOHN F. MIZNER, ESQ.
MURRAY UFBERG, ESQ.
KIM KAUFMAN, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

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

July 27, 2005

Honorable Allen D. Biehler, P.E., Secretary
Department of Transportation
Keystone Building, 8th Floor
400 North Street
Harrisburg, PA 17120-0041

Re: Regulation #18-402 (IRRC #2482)
Department of Transportation
School Bus Drivers

Dear Secretary Biehler:

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. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Kim Kaufman
Executive Director

wbg
Enclosure

cc: Honorable Roger A. Madigan, Chairman, Senate Transportation Committee
Honorable J. Barry Stout, Minority Chairman, Senate Transportation Committee
Honorable Richard A. Geist, Majority Chairman, House Transportation Committee
Honorable Keith R. McCall, Democratic Chairman, House Transportation Committee

Comments of the Independent Regulatory Review Commission

on

Department of Transportation Regulation #18-402 (IRRC #2482)

School Bus Drivers

July 27, 2005

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 Department of Transportation (Department) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on June 27, 2005. 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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Section 71.2. Definitions. - Consistency with the statute; Need; Clarity.

Doctor of Chiropractic Medicine

The proposed regulation adds the new term “Doctor of Chiropractic Medicine” instead of using the statutory term “chiropractor” that was added to the Vehicle Code by Act 76 of 2004 (75 Pa.C.S.A. § 1508.1(b)). The proposed definition of this new term also differs substantially from the statutory definition of “chiropractor.” For consistency, the final-form regulation should use the statutory term “chiropractor” and replace the proposed definition with the statutory definition for “chiropractor” verbatim or with a reference to the statutory definition. In addition, the statutory term “chiropractor” should be used in place of the term “Doctor of Chiropractic Medicine” throughout the final-form regulation.

School transportation physician

The existing regulation defines this term as a physician appointed or approved by the school board or authorities for private schools. There are two concerns.

First, is this term necessary if the Department is not involved in the appointment or approval of physicians? It is our understanding that when school authorities appoint physicians, they pay for the physical examinations conducted by the appointee. If the applicant sees a different licensed health care provider, then the applicant is responsible for payment. Hence, it is a financial incentive that attracts applicants to the appointed physician rather than a requirement imposed by the Department. Finally, Department staff indicate that very few school boards still appoint or approve physicians for these services.

If the term “school transportation physician” is not needed and is out-of-date, it should be replaced with the word “physician” in the final-form regulation. This would be helpful since the term “physician” is used repeatedly throughout Chapter 71 but it is not defined except within the definition for “school transportation physician.” The definition of “physician” should be a

reference to the definition of “licensed physician” in existing regulations at 67 Pa. Code § 83.2 (relating to definitions), which includes both doctors of medicine and doctors of osteopathic medicine.

Second, if the concept of an appointment or approval of practitioners is included in the final-form regulation, the definition should include all practitioners allowed by the statute or the Department should explain why it is limited to physicians. The Vehicle Code now allows other health care practitioners, including certified registered nurse practitioners (CRNPs), chiropractors and physician assistants, to conduct physical examinations for school bus driver endorsements.

2. Section 71.3. Physical examination. - Reasonableness; Clarity.

Subsection (a) contains a list of the practitioners who may give physical examinations to drivers or applicants for the school bus driver endorsement on their commercial driver’s licenses. This list in the proposed regulation includes “a school transportation physician, a Doctor of Chiropractic Medicine, a CRNP or a physician assistant.” There are two concerns.

First, the placement of the term “school transportation physician” in this list may create two erroneous impressions. One possible misreading is that applicants can only go to physicians appointed by school authorities. Another possible misinterpretation is that while their choice of physicians is limited to the “school transportation physician,” applicants may choose other practitioners, such as CRNPs, chiropractors or physician assistants, who are not appointed by a school authority. The Department has stated that this is not its intent. This concern may be resolved in large part by the response to comments on the definition of this term discussed above in **Issue #1**. However, if the concept of a school transportation practitioner is retained in the final-form regulation, the term “physician” should be added to Subsection (a).

Second, the term “chiropractor” should replace the term “Doctor of Chiropractic Medicine” in Subsection (a) as noted above in **Issue #1** and the term “chiropractor” should be added to the list of practitioners in Subsection (c) (relating to physical examination certificate).

Facsimile Cover Sheet

Kristine M. Shomper
Administrative Officer



Phone: (717) 783-5419
Fax #: (717) 783-2664
E-mail: kriss@irrc.state.pa.us
Website: www.irrc.state.pa.us

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

To: Stephen Martin
Agency: Department of Transportation
Phone: 7-5079
Fax: 2-2741
Date: July 27, 2005
Pages: 4

2005 JUL 27 AM 11:49
INDEPENDENT REGULATORY REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Transportation's regulation #18-402 (IRRC #2482). 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: _____

Date: _____

07-27-05