

Comments of the Independent Regulatory Review Commission



Department of Transportation Regulation #18-436 (IRRC #3107)

Physical and Mental Criteria, Including Vision Standards Relating to the Licensing of Drivers; Field of Vision; Loss of Consciousness

August 19, 2015

We submit for your consideration the following comments on the proposed rulemaking published in the June 20, 2015 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Transportation (Department) to respond to all comments received from us or any other source.

1. Section 83.3. Visual standards. – Consistency with statute; Economic impact; Need; Clarity; Implementation procedure.

Field of vision criteria

Existing Subsection (e) states:

A person shall have a combined field of vision of at least 120 degrees in the horizontal meridian, excepting the normal blind spots.

The proposed regulation breaks down this requirement into two paragraphs. Paragraph (1) is similar to the existing criterion of a “combined field of vision of at least 120 degrees.” Paragraph (2) introduces a different criterion that a person with a “visual field defect of 30 contiguous degrees or more” may not drive. The proposed criteria do not except “the normal blind spots” found in the existing provision.

The Pennsylvania Academy of Ophthalmology (PAO) commented that the new Paragraph (2) criterion would result in allowing only persons who have a field of vision of 150 degrees to drive (e.g., 180 degrees of normal field vision minus a 30 degree defect). Paragraph (2) is therefore more restrictive than the current criterion of 120 degrees, as reflected in Paragraph (1). PAO also questions whether the implementation of Paragraph (2) would require a physician to review all existing patient records to identify patients who do not meet this new criterion.

We agree with these concerns. The Preamble’s *Summary of Significant Amendments* description confirms the concerns by stating “Section 83.3(e)(1) and (2) is proposed to be amended to disqualify an individual that has a binocular visual field defect of 30 contiguous degrees or more.” The Preamble does not mention the existing criterion of a combined field of vision of

120 degrees or that this criterion is in Paragraph (1). We also agree that this provision appears to be contrary to the Department's stated *Purpose of the Proposed Rulemaking* in the Preamble and that compliance with the regulation, as written, would require a review of existing patient records. For these reasons, we recommend deleting the amendments to Subsection (e). If the Department's intent is different for Subsection (e), this provision in the final-form regulation submittal needs to be reworded and the Department should provide a full explanation of why Subsection (e) is being amended and how the amendments are intended to be applied to health care providers and drivers.

Health care provider verification of an individual's ability to safely drive

Paragraph (e)(2)(i) provides a condition for a driver to still qualify with a defect of 30 contiguous degrees if:

The individual's health care provider verifies in writing that the individual's condition does not pose a risk to the individual's ability to safely drive.

PAO objects to this provision because it places an undue burden on physicians. An ophthalmologist can state whether certain visual requirements are met. However, PAO states that physicians are not trained to evaluate an individual's ability to safely drive and should not be asked to verify this in writing.

PAO's comment is consistent with the provisions in statute. The physical and mental criteria to be used in evaluation of a driver are found under the duties of the Medical Advisory Board in 75 Pa.C.S. § 1517(b), which states:

The board may advise the department and review regulations proposed by the department **concerning physical and mental criteria including vision standards relating to the licensing of drivers** under the provisions of this chapter. [Emphasis added.]

The physical and mental criteria established in regulation are then used by health care providers to diagnose whether or not a patient meets the criteria. For example, 75 Pa.C.S. § 1518(b), *Reports by health care personnel*, states:

All physicians, podiatrists, chiropractors, physician assistants, certified registered nurse practitioners and other persons authorized to diagnose or treat disorders and disabilities defined by the Medical Advisory Board shall report to the department, in writing, the full name, date of birth and address of every person over 15 years of age **diagnosed as having any specified disorder or disability within ten days**. [Emphasis added.]

The determination of incompetency to drive is made by the Department under 75 Pa.C.S. § 1519(a) *Determination of incompetency*, which states:

The department, having cause to believe that a licensed driver or applicant may not be physically or mentally qualified to be licensed, may require the applicant or driver to undergo one or more of the examinations authorized under this

subchapter in order to determine the competency of the person to drive. The department may require the person to be examined by a physician, a certified registered nurse practitioner, a physician assistant or a licensed psychologist Vision qualifications may be determined by an optometrist or ophthalmologist.

We recommend deleting Paragraph (e)(2)(i). If this provision is maintained, the Department should provide a detailed explanation of how it is reasonable and consistent with the statute.

Criteria for a person sighted in only one eye

Existing Subsection (f) states, in part, “a person may be adequately sighted in only one eye and still meet the requirements of this section.” Can a person, who is otherwise adequately sighted in only one eye, meet the vision field requirements in either existing Subsection (e) or as amended? If not, the regulation might prohibit a person sighted in only one eye from driving, which we do not believe is the Department’s intent. If so, how are these requirements appropriate for a person sighted in only one eye, and do they impose a more stringent field of view standard on these persons than is necessary? We recommend that the Department review Section 83.3 and, as appropriate, establish vision criteria that can be met by a person sighted in only one eye and at the same time adequately protect public safety.

Normal blind spots

Existing Subsection (e) excepts “the normal blind spots” from the measurement of combined field of vision of at least 120 degrees. Without this exception, amended Subsection (e) would be more stringent than existing Subsection (e). Why was this exception not included in the amended language?

Consistency of language

We question why Paragraphs (e)(1) and (2) use differing language to describe a field of vision. Paragraph (e)(1) and existing Subsection (e) describe a field of vision as a “combined field of vision . . . in the horizontal meridian.” Whereas, Paragraph (2) describes “a binocular visual field.” Are these the same fields of view? We ask the Department to review this language and clarify it, as appropriate.

2. Timetable for review and compliance.

Regulatory Analysis Form Question 29 asks for a schedule for review of the regulation, including the dates for when compliance with the final-form regulation will be required. The response shows dates in 2014 which have expired. We ask the Department to review and amend these dates for the final-form regulation submittal.