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State of Rhode Island
Division of Public Utilities and Carriers
Docket 06 MC 08
Testimony
Of
Terrence E. Mercer
Associate Administrator For Motor Carriers
Division of Public Utilities and Carriers

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Q. **PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Terrence Mercer and my business address is:
Associate Administrator, Division of Public Utilities and Carriers
("Division"), 89 Jefferson Boulevard, Warwick, RI 02888.

Q. **WHAT IS YOUR POSITION AT THE DIVISION?**

A. I am the Associate Administrator for Motor Carriers Section.

Q. **HOW LONG HAVE YOU WORKED FOR THE DIVISION?**

A. I have been with the Division for five and a half (5 ½) years, the
past three and a half (3 ½) overseeing the Motor Carriers Section.

Q. **HAVE YOU PREVIOUSLY TESTIFIED IN DIVISION
HEARINGS?**

A. Yes, I have testified in numerous Division hearings regarding
Motor Carrier issues.

Q. **ARE YOU AWARE OF THE RATIONALE BEHIND THE RULES
PROPOSED IN THIS DOCKET?**

A. Yes. The Motor Carriers Section initiated this rule-making
proceeding to codify many aspects of the Division's dealings with taxi,
LPMV and PMV drivers, namely the licensing procedure for such drivers
and the professional conduct of such drivers – among other things.

1 Q. **LET’S START AT THE BEGINNING, WITH SECTIONS ‘A’ and**
2 **‘B’ OF THE PROPOSED RULES. CAN YOU EXPLAIN THESE**
3 **SECTIONS?**

4
5 A. Sure. Section ‘A’ essentially sets out the statutory authority of the
6 Division regarding the regulation of common carriers such as Taxicabs,
7 Limited Public Motor Vehicles and Public Motor Vehicles. Rule A-1 also
8 deals with the licensing of the actual drivers of such vehicles pursuant to
9 R.I.G.L. §§ 39-14-20 and 39-14.1-8, respectively.

10 Section ‘B’ sets out the definitions for terms found in the proposed
11 rules, many of which come straight from definitions in Title 39 of R.I.G.L.
12 Since most driver do not have ready access to the General Laws, we want
13 to restate the relevant definitions in our rules where the drivers can easily
14 find them.

15
16 Q. **LET’S TURN TO SECTION ‘C’ OF THE PROPOSED RULES. CAN**
17 **YOU SUMMARIZE THE SECTION TITLED ‘APPLICANT**
18 **ELIGIBILITY’?**

19
20 A. Yes. As I said earlier, the Division is identified by §§ 39-14-20 and
21 39-14.1-8 as the state agency responsible for issuing Hackney Operator’s
22 Licenses for drivers of the types of for-hire vehicles we are discussing.
23 Section ‘C’ simply sets out the minimum qualifications expected of an
24 applicant, all but one of which are either spelled out in statute or existing
25 Division rules. For the most part, nothing in the section is ‘new’ in that all
26 requirements can be found codified elsewhere.

27 That is, with the exception of C-1(d), which requires that
28 applicants “Be able to speak, read, write and understand the English
29 language sufficiently to understand highway traffic signs and signals and
30 communicate with passengers.” I would emphasize the words “*sufficiently*
31 *to understand highway traffic sign and traffic, signals and communicate*
32 *with passengers.*” This obviously does not mean to require academic

1 proficiency in the English language, but rather to insure a sufficient
2 working knowledge as to complete Division paperwork and to understand
3 passenger requests and road signs so as to adequately complete the
4 transportation service.

5
6 **Q. LET'S TURN TO SECTION 'D' THEN. CAN YOU SUMMARIZE**
7 **THE SECTION TITLED 'DIVISION LICENSING PROCEDURE'?**

8
9 **A.** Yes. This is one of the major sections of the proposed rules, in that
10 we are now intent on spelling out clearly the process for licensing taxi,
11 LPMV and PMV drivers. Although we have long been the agency
12 responsible for licensing such drivers, it was only recently that the General
13 Assembly actually changed the statute to place the responsibility with the
14 Division; previously the statute identified the Registry of Motor Vehicles
15 as the responsible agency.

16 Since the Division has indeed been issuing such "Blue Cards," as
17 we call them, much of what is contained in Section 'D' already is codified
18 in existing taxi rules. In fact, Section D-1 is essentially taken verbatim
19 from Rule H of the Division's existing taxi rules, which were promulgated
20 in conformance with state law.

21
22 **Q. IS THERE ANYTHING ELSE WE SHOULD KNOW ABOUT**
23 **SECTION 'D'?**

24
25 **A.** Yes. Section D-2 spells out the actual licensing procedure to be
26 followed by Division employees. It spells out clearly what criteria Motor
27 Carrier Section personnel will use to evaluate "Blue Card" applications.
28 For example, it sets out what type or criminal conviction(s) or what type
29 of moving violation(s) or frequency of moving violations will be grounds
30 for denial of an application. We think it is very important to have these
31 guidelines codified in a rule so as to insure that all applicants are treated
32 fairly.

1 You should also know that these criteria were not created out of
2 whole cloth. They have been adopted from criteria used by RIDOT to
3 issue licenses to school bus drivers, who also transport passengers.
4

5 **Q. IS THERE ANYTHING ELSE SIGNIFICANT ABOUT SECTION**
6 **‘D’?**

7
8 **A.**Yes. Sections D-2(c) and D-2(d) spell out an applicant’s rights if
9 an application is denied by a Motor Carrier Section inspector and adds a
10 new layer of “quick redress,” if you will.

11 Currently, if an application is denied for either criminal problems
12 listed on the BCI check provided and/or driving problems listed on the
13 driving abstract provided, the applicant may request a full reconsideration
14 hearing before a Division hearing officer. That is the only redress
15 currently available. And, it can take a couple of days, if not longer, to set
16 up such a hearing before a hearing officer, complete with a stenographic
17 record and testimony by Division personnel and the applicant. It can be
18 quite an undertaking. Oftentimes, after all this, the Advocacy Section
19 recommends the applicant be granted a probationary “Blue Card” and that
20 position is adopted by the Administrator.

21 So, what D-2(c) does, is add a new layer of review by the
22 Associate Administrator of Motor Carriers, the position I currently hold.
23 The section allows an applicant whose driving abstract or BCI check
24 warrants an initial denial to explain the situation in writing and request an
25 additional review by the Associate Administrator, who can take one of
26 three positions – grant an unconditional license, grant a restricted or
27 probationary license or uphold the denial altogether.

28 If the applicant is not satisfied with the review and decision of the
29 Associate Administrator, he retains his/her right to request a full hearing
30 before a hearing officer. I want to make it clear that in no way is the
31 applicant’s right to a full reconsideration hearing modified or reduced in
32 any way. This new layer of review is simply designed to streamline the

1 process for certain applicants, so he/she doesn't have to necessarily lose a
2 day or more of work while we schedule and conduct a full hearing and
3 await a written decision by the hearing officer and Administrator.

4 I see it as a 'win-win' for all concerned – except, oddly, for me. In
5 my current position, I'll likely have to review quite a few initial denials,
6 but it's a good mechanism to get deserving drivers back on the road as
7 quickly as possible.

8
9 **Q. LET'S ADDRESS SECTION 'E'. CAN YOU SUMMARIZE THE**
10 **ESSENTIAL ASPECTS OF THE SECTION TITLED "CONDUCT**
11 **OF TAXICAB DRIVERS"?**

12
13 **A.** Yes, and for the record let me say that the majority of the
14 provisions of Section 'E' deal with both drivers of taxicabs and LPMVs,
15 except, of course, conduct at taxi stands, because LPMVs are not allowed
16 at taxi stands.

17 Essentially, the provisions of Section 'E' come directly from Rule
18 H of the Division's existing taxi rules. They're already in effect. We just
19 felt that we should list them in these proposed rules because they deal
20 directly with drivers. But, again, drivers of taxis and LPMVs are already
21 bound by these provisions. It's nothing new.

22
23 **Q. COULD THE SAME BE SAID FOR SECTIONS 'F' AND 'G'?**

24
25 **A.** Absolutely. Section 'F' requires drivers to maintain proper
26 manifests, or logs, and Section 'G' spells out how tariff rates apply and
27 what is and is not allowed under state law. Again, the provisions of both
28 these sections already appear in the existing taxi rules and statute. We
29 included them in these proposed rules to be sure drivers are fully aware of
30 their existing responsibilities.

1 Q. **WHAT CAN YOU TELL US ABOUT SECTION ‘H’?**

2

3 A. There are fewer rules governing PMV drivers, because the industry
4 is not as thoroughly regulated as taxis and LPMVs. By that, I mean that
5 with PMVs, there are no territory restrictions, no tariff rates and no taxi
6 stand rules, etcetera. However, Section ‘I’ does spell out requirements
7 and/or prohibitions in PMV driver conduct and the same NOPV schedule
8 of fines would apply for similar offenses, such as a driver smoking in the
9 vehicle or failing to provide passengers with receipts.

10

11 Q. **YOU SAID *DRIVERS*, SMOKING IN PMVs. DID YOU MEAN**
12 ***ANYONE* SMOKING IN A PMV?**

13

14 A. Actually, no. The taxi rules prohibit *anyone* from smoking in a taxi
15 – be it the driver or a passenger. However, there is no similar rule
16 prohibiting PMV *passengers* from smoking, just *drivers*.

17

18 Q. **WHAT CAN YOU TELL US ABOUT SECTION ‘I’?**

19

20 A. This section spells out penalties for violating Division rules and/or
21 Rhode Island statute. The most important aspect of this penalty section is
22 set forth in Section I-3.

23

24 Essentially, these sections authorize Division Motor Carriers
25 Section personnel designated by the Associate Administrator to issue to
26 drivers a Notice of Probable Violation (“NOPV”) for common minor
27 violations of Division rules. What this does, is streamline the process
28 much as we attempted to do in the license application process.

28

29 As it currently works, if an inspector finds a driver smoking in the
30 cab, for example, or operating without his/her Blue Card posted as
31 required, the inspector likely will set the matter up for a hearing before a
Division hearing officer. Oftentimes, the driver shows up for the hearing

1 and admits the violation on the record and is ultimately assessed a
2 monetary penalty or fine.

3 The proposed rule is designed to streamline the process by
4 allowing a driver to admit to a violation, if he/she chooses, and pay a fine
5 according to the schedule listed in the proposed rules. It keeps him/her
6 from having to take time out of work to attend a hearing, admit guilt and
7 ultimately pay a fine anyway.

8 In no way, however, does this rule preclude a driver from
9 contesting an NOPV and requesting a hearing before a Division hearing
10 officer. It doesn't infringe on that right whatsoever.

11
12 **Q. WHAT CAN YOU TELL US ABOUT SECTIONS 'J' AND 'K'?**

13
14 A. Like other sections previously discussed, Sections 'J' and 'K' are
15 taken virtually verbatim from the Division's existing taxi rules.
16 Essentially, they spell out the procedure the Division will follow when
17 investigating complaints – either consumer complaints or those initiated
18 by the Division itself – and providing notice of any scheduled hearings.

19
20 **Q. MR. MERCER, HAVE YOU CONSIDERED THE IMPACT OF**
21 **ANY OF THESE RULES ON SMALL BUSINESSES?**

22
23 A. First of all, as I am sure the Hearing Officer knows, under Rhode
24 Island General Statutes §42-35-3.3, “all utilities, water companies, and
25 power transmission companies, except electrical power generating
26 companies providing less than four and one-half kilowatts” are exempt
27 from being treated as small businesses for regulatory purposes. Utilities
28 are defined under Rhode Island General Statutes § 39-1-2(20) to include
29 common carriers. And, under Rhode Island General Statutes § 39-14-1(2),
30 taxicabs, limited public motor vehicles and public motor vehicles are
31 defined as common carriers. Therefore, taxicab, limited public motor
32 vehicle and public motor vehicle companies are not considered small

1 businesses for the purpose of promulgating regulations under Title 42, and
2 I need not consider the financial impact on them of any such regulations.
3 Additionally, these rules deal specifically with drivers of regulated
4 vehicles, not the companies themselves. So, again, a small business
5 designation would not apply.

6 However, having said that, I would like to point out that the
7 proposed rules do not substantially change the way these drivers are being
8 regulated, at least on a day-to-day basis. All the proposed rules do is
9 clarify and reduce to writing the existing regulatory policy of the Division
10 or reiterate existing appropriately-promulgated regulations.

11 Since they do not represent a substantial change in the way any of
12 these drivers have, in fact, been regulated, there should be no adverse
13 financial impact whatsoever. On the other hand, by attempting to
14 streamline licensing and penalty procedures, the rules should reduce the
15 number of times a driver has to come before the Division for a fitness or
16 Blue Card reconsideration hearing. This would certainly represent a
17 positive financial impact from these rules.

18
19 Q. **MR. MERCER, DOES THIS CONCLUDE YOUR TESTIMONY IN**
20 **THIS MATTER?**

21
22 A. Yes, it does.