

# PROPOSED RULEMAKING

## DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 60]

### Permanent Registration of Fleet Vehicles; Request for Public Participation

The Department of Transportation, Bureau of Motor Vehicles, under the authority contained in 75 Pa.C.S. § 1307.1 (relating to permanent fleet registration), and consistent with the goals of Executive Order 1996-1, February 6, 1996, Regulatory Review and Promulgation, announces its intention to amend Chapter 60 (relating to permanent registration of fleet vehicles).

The purpose of the rulemaking is to bring Chapter 60 into compliance with 75 Pa.C.S. §§ 1927, 1929, 1932 and 1952. The amendments to these sections increased the fees collected by the Department for vehicle registration transactions. Further, the Department will be increasing other fees delineated within the chapter which have been established under authority of 75 Pa.C.S. (relating to the Vehicle Code) but are not specifically listed within it.

The Department anticipates that this rulemaking will affect vehicle owners who title and register their vehicles in this Commonwealth.

Accordingly, the Department is requesting that within 10 days of the publication of this notice in the *Pennsylvania Bulletin*, all interested persons desiring to participate in the development of the rulemaking or that have questions, suggestions or comments, please contact Thomas Zamboni, Manager of Commercial Registration Section, at 1101 South Front Street, Ground Floor, Riverfront Office Center, Harrisburg, PA, 17104 (717) 783-6095.

BRADLEY L. MALLORY,  
*Secretary*

[Pa.B. Doc. No. 98-722. Filed for public inspection May 8, 1998, 9:00 a.m.]

[67 PA. CODE CH. 63]

### Proportional Registration of Fleet Vehicles; Request for Public Participation

The Department of Transportation, Bureau of Motor Vehicles, under the authority contained in 75 Pa.C.S. §§ 6103, 6142 and 6145, and consistent with the goals of Executive Order 1996-1, February 6, 1996, Regulatory Review and Promulgation, announces its intention to amend Chapter 63 (relating to proportional registration of fleet vehicles).

The purpose of the rulemaking is to bring Chapter 63 into compliance with 75 Pa.C.S. §§ 1927, 1929, 1932 and 1952.

Amendments to those sections increased the fees collected by the Department for vehicle registration and title transactions. Further, the Department will be increasing other fees delineated within the chapter which have been established under authority of 75 Pa.C.S. but are not specifically listed within the same.

The Department anticipates that this rulemaking will affect vehicle owners who title and register their vehicles in the Commonwealth's Apportioned Registration Program.

Accordingly, the Department is requesting that within 10 days of the publication of this notice in the *Pennsylvania Bulletin*, all interested persons desiring to participate in the development of this rulemaking or that have questions, suggestions or comments, please contact Thomas Zamboni, Manager of Commercial Registration Section, at 1101 South Front Street, Ground Floor, Riverfront Office Center, Harrisburg, PA, 17104 (717) 783-6095.

BRADLEY L. MALLORY,  
*Secretary*

[Pa.B. Doc. No. 98-723. Filed for public inspection May 8, 1998, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 54]

[L-980132]

### Competitive Safeguards for the Electric Industry

The Pennsylvania Public Utility Commission (Commission), on January 29, 1998, adopted an order to promulgate a proposed rulemaking to establish competitive safeguards for interaction between electric distribution utilities, electric generation suppliers and customers in the competitive market in electric generation to be established under 66 Pa.C.S. Chapter 28 (relating to Electricity Generation Customer Choice and Competition Act) (act). The contact person is John Levin, Assistant Counsel, Law Bureau, (717) 787-5978.

#### *Executive Summary*

With the passage of the act, the General Assembly amended 66 Pa.C.S. (relating to Public Utility Code) (code) and established a comprehensive scheme for the restructuring of the Commonwealth's electric industry. This proposed rulemaking establishes competitive safeguards for interaction between electric distribution utilities, electric generation suppliers and customers in the furtherance of the act's provisions directing the establishment of a new, vibrant and effective competitive market in electricity generation in this Commonwealth by January 1, 2001.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 28, 1998, the Commission submitted a copy of these proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed regulations, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1. A

copy of this material is available to the public upon request.

If the Legislative Committees have objections to any portion of the proposed regulations, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed regulations, it will notify the Commission within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Commission, the General Assembly and the Governor of objections raised.

Public Meeting held  
January 29, 1998

*Commissioners Present:* John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; John Hanger, Concurring—Statement follows; David W. Rolka; Nora Mead Brownell

### **Proposed Rulemaking Order**

*By the Commission:*

This proposed rulemaking establishes competitive safeguards in furtherance of the act, and the act's provisions directing the establishment of a new, vibrant and effective competitive market in electricity generation in this Commonwealth by January 1, 2001.

With the passage of Chapter 28 of the act on December 3, 1996, the General Assembly amended the code and established a comprehensive scheme for the restructuring of the Commonwealth's electric industry. Prior to the enactment of Chapter 28 of the act, electricity was provided by utilities which were essentially vertically integrated companies responsible for supplying generation, transmission and distribution of electricity to electricity customers within their service area. Wholesale generation and transmission rates and conditions of service were governed by the Federal Energy Regulatory Commission (FERC), under the Federal Power Act (16 U.S.C.A. §§ 791a—825r), while retail services were regulated as to rates, terms and conditions by the Commission. Rates were generally determined by utilizing a traditional rate base/rate of return ratemaking methodology. The rate regulation in theory establishes just and reasonable rates and provides the regulated utility with an opportunity to recover its expenses and a fair return on its investment in public utility property devoted to the public service.

With the issuance of Order 888, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs. ¶131,036 (1996), FERC restructured the transmission industry, opening it to equal and open access by anyone who might wish to transport electricity. That, in turn, set the stage for the creation of a competitive market in electricity by anyone who had generation and wished to sell it to anyone who might wish to buy it. FERC also asserted jurisdiction over what were previously considered to be state-regulated transmission facilities. In effect, FERC invited the states to establish a retail competitive market in electricity generation. Although Order 888 did not and could not direct states to create the competitive energy markets within their borders, the Commonwealth was among the first states to do so. By creating a competitive market in electricity at the retail level, the General Assembly has adopted the position that competition yields greater benefits to the public than even the most diligent

and careful rate regulation. At the same time, the Legislature recognized that transmission and distribution remain natural monopolies and will likely continue to be regulated in the traditional manner by existing entities.

We announced in our February 13, 1997, order at M-00960890, Folder 0003 (Tentative Order Re: Electric Utility Restructuring Filings Made Pursuant to 66 Pa.C.S. § 2806(e)) that we would convene a series of working groups open to public participation to consider various issues of generic importance in the restructuring process, in order to develop a public consensus on solutions.<sup>1</sup>

The initial meeting of the Competitive Safeguards Working Group (the "working group") was held Friday, May 9, 1997. Additional meetings were held on July 15, July 23, August 6, August 13, August 27 and September 10, 1997. Participation grew over time and at the time of the working group's final meeting on September 10, 1997, it comprised 35 stakeholder members and four Commission representatives. On October 6, 1997, the working group issued its final report to the Commission.<sup>2</sup> The group proposed ten consensus principles for adoption as proposed regulations.

Two suggested principles were deferred by consensus for later consideration because the resolution of the principles will require detailed fact-based analysis or investigation. The deferred proposals include a provision dealing with electric generation market share reporting and another dealing with suspension of provisions during system emergencies. With regard to the former proposal, while it was the group's consensus that the reporting would be a critical Commission tool in assessing market power, it was also the group's consensus that, due to operational considerations, detailed study was needed to determine the most feasible method of collecting the data.

Two significant matters with regard to which the working group was unable to reach consensus were joint marketing by electric generation suppliers and their affiliated electric distribution utilities, as well as the various proposals to separate the operation of electric generation suppliers from related electric distribution utilities. Both issues are discussed in the following paragraph.

The effort and product of those that participated in the working group are greatly appreciated by the Commission, and we wish to express our thanks to the members of the working group for their devotion of time and energy in this important endeavor. We have largely adopted verbatim all of the consensus principles of the working group for the purpose of this proposed rule-

<sup>1</sup> The order stated: "We would also like to direct the public's attention to the establishment of several working groups which we have organized for the purpose of providing the Commission with timely recommendations on broad areas of concern regarding certain issues of general interest in the restructuring process. These groups, which are currently considering issues relating to customer education, customer information and billing, universal service and conservation, service reliability, retail access phase-in, metering, competitive safeguards, and supplier/utility customer interaction are expected to produce timely recommendations which will serve to guide our consideration of specific proposals. Additional groups may be formed. All participants in restructuring proceedings are invited and encouraged to participate in these working groups. For each topic a Working Group composed of any interested party will meet to discuss the issues raised and attempt to reach a consensus."

<sup>2</sup> Representatives from Alleghany Power Energy Associates, ARIPPA, Commission Staff, Competitive Energy Strategies, Inc., Enron Power Marketing, Inc. Horizon Energy, New Energy Ventures, IECPA, Office of Consumer Advocate, Pennsylvania Rural Electric Association, Pennsylvania Petroleum Assn., et al, PP&L, Pennsylvania Electric Association, and Schuylkill Energy Resources formally signed off on the report. Representatives from PECO Energy and the Pennsylvania Rural Development Council transmitted their formal agreement with the joint consensus principles after the report was issued.

making with but one minor exception. With regard to principle "C," which prohibits false or deceptive advertising, the working group made it applicable to electric distribution utilities only, but recommended that a parallel provision apply to generation suppliers. We have simply added language making it applicable to generation suppliers.

As noted above, the working group identified two issues which could not be resolved by consensus: joint marketing by related electric distribution utilities and electric generation suppliers and the separation of the operations of related electric distribution utilities and electric generation suppliers to prevent unlawful discrimination and cross subsidy. We have prescribed rules to provide for separation of employees, records, communications and information systems of related transmission, distribution and generation companies. These rules are modeled to some extent on parallel rules prescribed by FERC. Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, 18 CFR 37.4, 61 FR 21,737, 21,764 (May 10, 1996). Commentators are asked to supply an analysis of proposed § 54.122(k) with respect to the scope of the Commission's jurisdiction to enforce rules regulating electric distribution company personnel interactions with transmission suppliers.

We have not prescribed rules restricting joint marketing, except as are already included in the working group's consensus recommendations. It is suggested that enforceable separation rules which prevent an electric generation utility from using distribution and transmission functions to give related generation functions an unfair or unlawful competitive advantage should address most of the concerns regarding denial of direct access or unfair discrimination and cross subsidy. We are also reluctant to become the arbiter of frequent and subtle disputes over advertising unless the advertising is alleged to be false, deceptive or misleading.

Comments on this proposed rulemaking are due 30 days from publication of this order in the *Pennsylvania Bulletin*. Comments should be clear, concise and as brief as reasonably possible. Comments on specific provisions of the proposed regulations or suggestions for additional provisions should track the organization of Annex A, and should contain suggested alternative language in support of the comments. Commentators suggesting changes or nonadoption of the proposed draft regulations on the basis of allegations of financial or technical hardship are directed to disclose in detail the basis of the allegations, including all cost studies or technical analyses upon which the allegations are based. Commentators alleging that any provision of these proposed regulations are contrary to provisions of the constitutions, laws or judicial decisions or in conflict with other regulations or directives of the United States or the Commonwealth shall provide verbatim copies of the provisions relied upon, and sufficient explanation of the controlling nature of the precedent.

Accordingly, under 66 Pa.C.S. §§ 501, 502, 504—506, 508, 701, 1301, 1304, 1501, 1502, 1505, 1701—1705, 2101—2107 and 2801—2811, the Commonwealth Documents Law (45 P.S. § 1201 et seq.) and the regulations promulgated thereunder at 1 Pa.Code §§ 7.1—7.4, we are considering adopting the proposed rules set forth above and in the manner set forth in Annex A; *Therefore*,

*It is Ordered that:*

1. A rulemaking proceeding shall be initiated to consider the proposed regulations set forth in Annex A hereto.

2. This order shall be published in the *Pennsylvania Bulletin*. Interested persons may submit written comments, an original and 15 copies, as well as a copy of the comments on a 3.5" MS-DOS readable diskette to the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, and shall have 30 days from the date the order is published in the *Pennsylvania Bulletin* to submit comments. Commentators are strongly encouraged, if suggesting changes or additions to the proposed regulations, to supply alternative regulatory language. Commentators suggesting changes or nonadoption of the proposed draft regulations on the basis of allegations of financial or technical hardship are directed to disclose in detail the basis of the allegations, including all cost studies or technical analyses upon which the allegations are based.

3. A copy of this order and Annex A shall be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, all members of the Competitive Safeguards Working Group, all jurisdictional electric companies, all licensed electric providers and the Pennsylvania Electric Association.

4. The Secretary shall submit this order and Annex A to the Office of the Attorney General for approval as to legality, and to the Governor's Budget Office for review of fiscal impact.

5. The Secretary shall submit this order and Annex A for review by the designated standing committees of both Houses of the General Assembly, and for review by IRRC.

JAMES J. MCNULTY,  
*Secretary*

*Statement of Commissioner John Hanger*

The Notice of Proposed Rulemaking being issued today concerning Competitive Safeguards is a crucial beginning as the Commission addresses an important responsibility under the Electric Generation Customer Choice and Competition Act. As the electric industry undergoes a transition from monopoly to competitive markets, this Commission must ensure that the terms of competition are fair to all participants.

I concur with the initiation of this rulemaking while recognizing that the proposed regulations provide only a starting point for what will become a final set of competitive safeguards. The proposed regulations are based upon the efforts of a Working Group composed of many parties, including utilities, competitive suppliers, and consumer representatives with diverse interests. I truly appreciate the time and effort provided by the members of the Working Group to define issues and ascertain common ground. This common ground is an appropriate starting point for the rulemaking.

It would be inappropriate, however, to assume that such common ground reflects a complete set of competitive safeguards that fulfill the Commission's responsibility to serve fully the public interest as defined in the Act. To the contrary, the common ground by definition reflects the most noncontroversial matters, or the "least common denominator" of the issues considered.

All interested parties now have an opportunity to provide comments and suggestions for a complete set of standards so that the Commission may consider the more difficult issues. I encourage parties to consider the follow-

ing comments that I have adopted from the debate of these issues to date in Pennsylvania as well as in other jurisdictions:

1. In a fully competitive market, an EDC has no reason or ability to treat its competitive supplier affiliates any differently than any other competitive supplier. What additional rules are necessary to fully implement this principle?

2. Some regulated utilities and other interested parties have proposed divestiture of generation assets as the best way to implement this principle. Section 2804(5) provides that the Commission may permit but not require a utility to divest itself of facilities or to reorganize its corporate structure. Chapter 11 of the Public Utility Code requires the Commission to approve transfers of utility assets such as divestiture, only upon finding that the transaction is in the public interest. Should the regulations provide specific guidelines for divestiture of generating assets in response to the restructured industry? Should transfers to unrelated parties be treated the same as transfers to unregulated affiliates? Should the Commission require that transactions with divisional affiliates be subject to the same standards as transactions with legally distinct affiliates?

3. Chapter 21 of the Public Utility Code requires the Commission to determine that a proposed contract with an affiliate is in the public interest. Should the regulations provide more specific guidelines or "safe harbors" for affiliate transactions to ensure that such transactions do not inappropriately cross-subsidize a competitive affiliate? For example, should the regulations affirm that transactions between an EDC and a competitive affiliate, even if approved by the Commission prior to the competitive era, are not valid without filing a new Affiliated Agreement for approval by the Commission pursuant to Chapter 21? Should the request for approval specify documentation of competitive bidding or other assurances that the transaction cannot be provided by an unrelated entity and that the full value of the goods or services are being compensated without cross-subsidization? Should the regulations specifically prohibit or discourage transactions related to competitive generation services unless it is for goods or services made available to all competitors on comparable terms and conditions?

4. Since the existing monopoly electric companies might not legally divest generation functions from EDC functions, most parties agree that "functional separation" is necessary. The proposed regulations address functional separation, but do not include any broadly applicable standard that "complete" functional separation is required. For example, the consensus regulations separately require comparable treatment of all suppliers in processing customer requests for service, disseminating customer information, disclosing operational status of the distribution system, providing regulated services and applying tariffs. Does this suggest that noncomparable terms are permissible for other activities or for competitive market transactions such as the sale of energy or capacity? Should the regulations make clear that all goods, services, tariffs and information must be made available and provided to all suppliers and customers on comparable terms without discrimination, unreasonable preference or advantage?

5. The proposed regulations include several provisions addressing separation of employees, records, communications and information systems related to EDC and competitive generation functions. Should specific training and enforcement standards or expectations be included in the

regulations? How should an EDC or EGS be held accountable for noncompliance by an employee or other person on their behalf?

6. The consensus regulations include several prohibitions on EDC activities that could serve to promote a competitive affiliate, but do not specifically prohibit all activities that could serve to promote any particular supplier. Should more specific regulations be included, such as prohibitions on EDC recommendations to consumers or use of an EDC name?

I look forward to receiving detailed comments on this important rulemaking by all interested parties.

**Fiscal Note:** 57-195. No fiscal impact; (8) recommends adoption.

## **Annex A**

### **TITLE 52. PUBLIC UTILITIES**

#### **PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION**

##### **Subpart C. FIXED SERVICE UTILITIES**

##### **CHAPTER 54. ELECTRIC GENERATION CUSTOMER CHOICE**

##### **Subchapter E. COMPETITIVE SAFEGUARDS**

Sec.

54.121. Purpose.

54.122. Code of conduct.

#### **§ 54.121. Purpose.**

The purpose of these competitive safeguards is to:

(1) Assure the provision of open access on comparable terms to all customers and generation suppliers.

(2) Prevent unlawful discrimination in rates, terms or conditions of service by electric distribution utilities.

(3) Prevent the unlawful cross subsidization of service amongst customers, customer classes or between related electric distribution utilities and electric generation suppliers.

(4) Forbid unfair or deceptive practices by electric generation utilities and electric generation suppliers.

(5) Establish and maintain an effective and vibrant competitive market in the purchase and sale of retail electric energy in this Commonwealth.

#### **§ 54.122. Code of conduct.**

Electric generation suppliers (EGS) and electric distribution utilities shall comply with the following requirements:

(1) An electric distribution company (EDC) may not give an EGS, including without limitation its affiliate or division, a preference or advantage over any other EGS in processing a request by a distribution company customer for retail generation supply service.

(2) Subject to customer privacy or confidentiality constraints, an EDC may not give an EGS, including without limitation its affiliate or division, a preference or advantage in the dissemination or disclosure of customer information and any dissemination or disclosure shall occur at the same time and in a comparable manner. "Customer information" means all information pertaining to retail electric customer identity and current and future retail electric customer usage patterns, including appliance usage patterns, service requirements or service facilities.

(3) An EDC or EGS may not engage in false or deceptive advertising to customers with respect to the retail supply of electricity in this Commonwealth.

(4) An EDC shall, in cooperation with all stakeholders, establish and file with the Pennsylvania Public Utility Commission (Commission) dispute resolution procedures to address alleged violations of this section.

(5) An EDC may not illegally tie the provision of electric distribution service within the jurisdiction of the Commission to one or both of the following:

(i) The purchase, lease or use of other goods or services offered by the EDC or its affiliates.

(ii) A direct or indirect commitment not to deal with any competing EGS.

(6) An EDC may not provide a preference or advantage to an EGS in the disclosure of information about operational status and availability of the distribution system.

(7) An EDC shall supply all regulated services and apply tariffs to nonaffiliated electric generation suppliers in the same manner as it does for itself and its affiliated or division EGS, and shall uniformly supply all regulated services and apply its tariff provisions in a nondiscriminatory manner.

(8) Every EDC and its affiliated or divisional EGS shall formally adopt and implement this section as company policy and shall take appropriate steps to train and instruct its employees in their content and application.

(9) If an EDC customer requests information about EGS, the EDC shall provide the latest list as compiled by the Commission to the customer over the telephone, or in written form or by other comparable means. In addition, an EDC may provide the address and telephone of an EGS if specifically requested by the customer by name. To enable EDCs to fulfill this obligation, the Commission will maintain a written list of licensed EGSs. The Commission will regularly update this list and provide these updates to EDCs as soon as reasonably practicable. The Commission will compile the list in a manner that is fair to all EGSs and that is not designed to provide a particular EGS with a competitive advantage.

(10) An EDC or its affiliate or division may not state or imply that delivery services provided to an affiliate or division or customer of either are inherently superior, solely on the basis of its affiliation with the EDC, to those provided to any other EDC or customer or that the EDC's delivery services are enhanced if supply services are procured from its affiliate or division.

(11) An EDC which is related by affiliation or by other form of control to an EGS or transmission supplier (meaning a public utility that owns, operates or controls facilities used for the transmission of electric energy) which serves any portion of this Commonwealth; and an EGS which is related by affiliation or other form of control to an EDC or transmission supplier which serves any portion of this Commonwealth shall insure that its employees function independently of the other related companies as follows:

(i) Employees of EGS may not conduct transmission system or distribution system operations or reliability functions.

(ii) Employees of EGSs may not consult or discuss with employees of any related EDC or transmission supplier with regard to current or future operations of their own or related companies, except to the extent that the

consultation is part of a process open to the public and expressly sanctioned by the Commission by written order.

(iii) Employees of EDCs may not consult or discuss with employees of any related EGSs or transmission supplier with regard to current or future operations of their own or related companies, except to the extent that the consultation is part of a process open to the public and expressly sanctioned and supervised by the Commission by written order.

(iv) Employees of EGSs may not provide to, obtain from or accept information from a related transmission supplier, except information as is comparably available to its competitors. An employee of an EGS may not have access to the system control center or similar facility of a related transmission supplier or electric distribution utility in a manner that differs from access available to other EGSs.

(v) Electric distribution utilities subject to the jurisdiction of the Commission which are related to EGSs and transmission suppliers shall maintain books and records, communications systems, information systems and accounting systems separately from these related companies.

(vi) Employees of related EGSs, electric distribution utilities or transmission suppliers may not transfer between the functions to circumvent this section.

(12) In a complaint or other proceeding against an electric distribution utility or EGS brought under 66 Pa.C.S. § 2811(f) (relating to market power remediation) or any successor provision, it shall be a defense in mitigation of penalties to the extent relevant to the issues in the case that the respondent has adequately and physically separated its offices, communications and accounting systems, information systems, lines of authority and operations from its related EDC, EGS or transmission supplier to prevent the violation and that the respondent has actively and effectively enforced this subsection.

[Pa.B. Doc. No. 98-724. Filed for public inspection May 8, 1998, 9:00 a.m.]

## [52 PA. CODE CHS. 3 AND 5]

[L980133]

### Motor Carrier Property Applications

The Pennsylvania Public Utility Commission (Commission) on February 26, 1998, adopted a proposed rulemaking to discontinue publication of property carrier applications. Given the Commission's limited regulatory role of safety and insurance issues, it no longer serves a useful purpose to require publication of property carrier applications. The contact person is John Herzog, Assistant Counsel, Legal Division, Bureau of Transportation and Safety, (717) 783-3714.

#### *Executive Summary*

The Federal Aviation Authorization Act of 1994 preempted state regulation of motor carriers of property in the areas of rates, routes and service. See 49 U.S.C.A. §§ 14501(c) and 41713(b). Currently, the Commission's regulatory oversight of property carriers is limited to safety and insurance issues. In light of the Federal preemption, the Commission modified its regulations to reflect its changed regulatory role. See *Regulation of Motor Carriers of Property*, Docket No. L-00950106.

Historically, property carrier applications have been published in the *Pennsylvania Bulletin* to afford existing carriers the opportunity to protest new entrants into the market. Since the Commission no longer regulates the rates, routes and service of property carriers, the rationale for requiring publication of applications no longer exists. Further, the protest mechanism is a vestigial process left over from the bygone era of economic regulation and should likewise be eliminated.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 28, 1998, the Commission submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendments, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Legislative Committees have objections to any portion of the proposed amendments, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed amendments, it will notify the Commission within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Commission, the General Assembly and the Governor of objections raised.

Public Meeting held  
February 26, 1998

*Commissioners Present:* John M. Quain, Chairperson;  
Robert K. Bloom, Vice Chairperson; John Hanger;  
David W. Rolka; Nora Mead Brownell

#### **Proposed Rulemaking Order**

##### *By the Commission:*

Under section 501 of the Public Utility Code, 66 Pa. C.S. § 501, the Commission proposes a rulemaking to amend our regulations governing publication of applications for motor carrier property authority. In 1994, the United States Congress adopted the Federal Aviation Administration Authorization Act of 1994 (Aviation Act), which inter alia, amended the Interstate Commerce Act (49 U.S.C.A. §§ 14501(c) and 41713(b)). In effect, the Aviation Act preempted state regulation of rates, routes or service of property carriers. However, states do maintain oversight of safety and financial responsibility for property carriers.

In response to the Aviation Act, the Commission promulgated regulations consistent with its changed regulatory role. Docket No. L-00950106. Those regulations provided, in part, for the continuing publication of property carrier applications. Further, the regulations provided that protests to property applications on the basis of safety/fitness could be filed within 10 days of the date of publication of the application in the *Pennsylvania Bulletin*.

Since passage of the Aviation Act, there have been approximately 2,214 new applications filed with the Com-

mission for property carrier authority. Only one protest has been filed, which was dismissed because it failed to address safety issues.

Given the Commission's limited regulatory role over property carriers, it no longer serves a useful public purpose to require publication of property carrier applications. As noted, the Commission's oversight of property carriers is limited to safety and insurance issues. No property carrier application has been protested on these issues since passage of the Aviation Act. Further, since passage of the Aviation Act, the Commission has instituted a Safety Fitness Review program for new carriers and a Safety Audit program for existing carriers. We believe that these programs effectively carry out the Commission's charge to ensure that property carriers provide safe service in this Commonwealth.

In light of the foregoing, we propose to delete the publication requirement for motor carrier property applications. Further, we propose to eliminate the protest process for property carrier applicants. As noted, no protests on the basis of safety/insurance have been filed to property carrier applications since passage of the Aviation Act. We believe the protest mechanism is a vestigial process left over from the bygone era of economic regulation. Currently, the protest process serves no useful purpose. Safety and insurance concerns are adequately addressed through the application process and the safety fitness review. We believe that deletion of the protest process in conjunction with the publication requirement eliminates an unnecessary step in the application process.

Accordingly, under section 501 of the Pennsylvania Public Utility Code, the Commonwealth Documents Law (45 P.S. § 1201 et seq.) and 45 Pa.C.S. § 702(3), we propose to amend the regulations in 52 Pa. Code, as discussed previously and as set forth in Annex A; *Therefore,*

#### *It is Ordered that:*

1. A proposed rulemaking docket be opened to consider the proposed revisions to regulations set forth in Annex A of this order.
2. The Secretary shall submit a copy of this order, together with Annex A to the Office of Attorney General for preliminary review as to form and legality.
3. The Secretary shall submit a copy of this order, together with Annex A, to the Governor's Budget Office for review of fiscal impact.
4. The Secretary shall submit a copy of this order, together with Annex A, for review by the designated standing committees of both Houses of the General Assembly, and for informal review and comments by IRRC.
5. The Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Interested persons may submit written comments, an original and 15 copies, to James J. McNulty, Secretary, Pennsylvania Public Utility Commission, and shall have 30 days from the date of publication to submit comments.

JAMES J. MCNULTY,  
*Secretary*

**Fiscal Note:** 57-196. No fiscal impact; (8) recommends adoption.

## Annex A

## TITLE 52. PUBLIC UTILITIES

PART I. PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

## Subpart A. GENERAL PROVISIONS

## CHAPTER 3. SPECIAL PROVISIONS

Subchapter E. MOTOR TRANSPORTATION  
PROCEEDINGS§ 3.381. Applications for transportation of property,  
household goods in use and persons.

\* \* \* \* \*

(b) *Notice.* Applications will be docketed by the Secretary and, **with the exception of motor common carrier property applications**, thereafter, forwarded for publication in the *Pennsylvania Bulletin*. No other notice to the public or to a carrier, forwarder or broker is required, except that an applicant filing an application for the discontinuance of the transportation of persons, on a scheduled basis, shall certify to the Commission that it has done the following:

\* \* \* \* \*

(c) *Protests.*

\* \* \* \* \*

(2) *Applications for motor common carrier of property authority.*

(i) [ *Content and effect.*

(A) A person objecting to the approval of an application for motor common carrier of property authority shall file with the Secretary and serve upon the applicant, the applicant's attorney, if any, and the Bureau of Transportation and Safety a written protest which shall contain the following:

(I) The applicant's name and docket number of the application.

(II) The name, business address and telephone number of the protestant.

(III) The name, business address and telephone number of the protestant's attorney or other representative.

(IV) Specific factual allegations regarding an applicant's safety fitness. Factual allegations which specifically reference the applicant's United States Department of Transportation Safety rating, safety ratings from other State agencies or adverse decisions in safety related proceedings before other tribunals will be required in protests. Protests which are not supported by specific factual allegations will not be considered.

(B) Upon the filing of timely protests which contain specific factual allegations relating to an applicant's safety fitness, the application and comments will be referred to the prosecutory staff of the Bureau of Transportation and Safety for a determination as to the necessity for a hearing.

(ii) *Time for filing.* Protests to applications for motor common carrier property authority shall be filed within the time specified in the *Pennsylvania Bulletin*, which will not be less than 10 days from the date of publication.

(iii) *Failure to file protests.* If no protests are filed, or if the Bureau of Transportation and Safety

has determined that the protests do not raise significant allegations of safety fitness, the Commission will act on motor common carrier of property applications as follows:

(A) A compliance letter will be issued directing that the applicant file a Form E Uniform Motor Carrier Bodily Injury and Property Liability Certificate of Insurance and a Form H Uniform Cargo Insurance Certificate. Temporary evidence of insurance may be filed in the form of an insurance identification card for Pennsylvania registered vehicles, a copy of the declaration page of the insurance policy, a copy of a valid binder of insurance or a copy of a valid application for insurance to the Pennsylvania Automobile Insurance Plan. The temporary evidence of insurance shall be replaced by the required certificates within 60 days. A carrier may begin operations upon filing acceptable evidence of insurance.

(B) Once acceptable Form E and Form H certificates of insurance have been filed, a certificate of public convenience will be issued authorizing the transportation of property, not including household goods in use, between points in this Commonwealth.

(C) Applicants which do not possess a current satisfactory safety rating issued by the United States Department of Transportation or a state with safety regulations comparable to the Commonwealth's, shall complete a safety fitness review conducted by Commission staff. The safety fitness review shall be scheduled and completed within 180 days of the date of the compliance letter. If the applicant fails to attain a satisfactory safety evaluation within the 180-day period, it will be given an additional 90-days to correct the deficiencies. Failure to achieve a satisfactory evaluation within the 90-day period will result in immediate suspension of the certificate of public convenience and in proceedings to revoke the certificate.

(D) Safety fitness reviews will take place at the applicant's primary place of business in this Commonwealth. Out-of-State carriers without facilities in this Commonwealth will have reviews conducted at the nearest Commission office. Out-of-State carriers shall provide Commission enforcement officers with sufficient records to enable meaningful examination of the applicant's safety related programs.

(E) In the course of a safety fitness review, Commission enforcement staff will examine an applicant's management policies, records and equipment to ensure that the applicant understands and will comply with Chapter 37 (relating to safety) ].

*No protests to applications.* No protests to applications for motor common carrier property authority may be filed.

(d) *Hearings on protested applications and applications for motor carrier of property authority when safety issues are raised.*

\* \* \* \* \*

(2) *Applications for motor common carrier of property authority.*

(i) *Scheduling hearings.* If [ protests are filed which raise significant issues regarding an applicant's

safety fitness, or if ] the Bureau of Transportation and Safety prosecutory staff determine that **conditional or unsatisfactory** safety ratings from other jurisdictions or adverse decisions in safety related proceedings before other tribunals exist, the Bureau of Transportation and Safety shall enter its appearance and refer the matter to the Office of Administrative Law Judge for hearing on the applicant's safety fitness. A determination by the Commission, after hearing, that the applicant possesses the necessary safety fitness will result in the application being processed as though the applicant possessed a satisfactory safety rating.

\* \* \* \* \*

(f) **Compliance: conditions for approval for motor common carrier property authority.** If the Bureau of Transportation and Safety determines that a hearing is not required, as provided in subsection (d)(2), the Commission will act on applications as follows:

(1) A compliance letter will be issued directing that the applicant file a Form E Uniform Motor Carrier Bodily Injury and Property Liability Certificate of Insurance and a Form H Uniform Cargo Insurance Certificate. Temporary evidence of insurance may be filed in the form of an insurance identification card for vehicles registered in this Commonwealth, a copy of the declaration page of the insurance policy, a copy of a valid binder of insurance or a copy of a valid application for insurance to the Pennsylvania Automobile Insurance Plan. The temporary evidence of insurance shall be replaced by the required certificates within 60 days. A carrier may begin operations upon filing acceptable evidence of insurance.

(2) Once acceptable Form E and Form H certificates of insurance have been filed, a certificate of public convenience will be issued authorizing the transportation of property, not including household goods in use, between points in this Commonwealth.

(3) Applicants which do not possess a current satisfactory safety rating issued by the United States Department of Transportation or a state with safety regulations comparable to the Commonwealth, shall complete a safety fitness review conducted by Commission staff. The safety fitness review shall be scheduled and completed within 180 days of the date of the compliance letter. If the applicant fails to attain a satisfactory safety evaluation within the 180-day period, it will be given an additional 90 days to correct the deficiencies. Failure to achieve a satisfactory evaluation within the 90-day period will result in immediate suspension of the certificate of public convenience and in proceedings to revoke the certificate.

(4) Safety fitness reviews will take place at the applicant's primary place of business in this Commonwealth. Out-of-State carriers without facilities in this Commonwealth will have reviews conducted at the nearest Commission office. Out-of-State carriers shall provide Commission enforcement officers with sufficient records to enable meaningful examination of the applicant's safety related programs.

(5) In the course of a safety fitness review, Commission enforcement staff will examine an applicant's management policies, records and equipment

to ensure that the applicant understands and will comply with Chapter 37 (relating to safety).

[ (f) ] (g) \*\*\*

## CHAPTER 5. FORMAL PROCEEDINGS

### Subchapter A. PLEADINGS AND OTHER PRELIMINARY MATTERS

#### PROTESTS

#### § 5.51. Protest to an application.

\* \* \* \* \*

(b) No protests to motor carrier property applications are permitted. See § 3.381(c) (relating to applications for transportation of property, household goods in use and persons).

[ (b) ] (c) \*\*\*

[Pa.B. Doc. No. 98-725. Filed for public inspection May 8, 1998, 9:00 a.m.]

## [52 PA. CODE CH. 32]

[L-970124]

### Passenger Carrier Insurance

The Pennsylvania Public Utility Commission (Commission) on August 28, 1997, adopted a proposed rulemaking to clarify in § 32.11 (relating to passenger carrier insurance) that the amount of minimum third-party coverage refers to split coverage. The contact person is Kathryn G. Sophy, Assistant Counsel, Law Bureau (717) 772-8839.

#### Executive Summary

In 1994, the Commission issued a statement of policy in an attempt to quiet confusion in the passenger carrier industry concerning the minimum requirements under the Commission's regulation regarding insurance coverage for passenger carriers. Since then, it has become apparent that the statement of policy did not meet the intended goal. In an effort to formalize the Commission's intent and clarify the language of the regulation, the Commission proposes to amend § 32.11(b).

Section 32.11(b) has been amended to clarify that the amount of minimum third-party coverage refers to split coverage.

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 28, 1998, the Commission submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendment, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.



If the Legislative Committees have objections to any portion of the proposed amendment, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed amendment, it will notify the Commission within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Commission, the General Assembly and the Governor of objections raised.

Public Meeting held  
August 28, 1997

*Commissioners Present:* John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; John Hanger; David K. Rolka; Nora Mead Brownell

### **Proposed Rulemaking Order**

*By the Commission:*

By order adopted October 28, 1994, Docket No. L-940087, we issued a final policy statement interpreting the minimum insurance requirements for passenger carriers transporting fewer than 16 passengers. The final policy statement was published at 25 Pa.B. 681 (February 25, 1995). See § 41.21 (relating to insurance coverage for common or contract carriers of less than 16 passengers—statement of policy).

The issuance of the statement of policy was the culmination of a request to issue a declaratory order in *Petition of Damone Clayter*, Docket No. P-00930722. In *Damone Clayter*, the petitioner was a passenger in a taxi owned by Jenny Cab Company and involved in a motor vehicle accident. Clayter was injured in the accident and was at risk of losing rights to underinsured motorist coverage because of a controversy as to the amount of liability coverage required by § 32.11 of the Commission's regulations. Clayter petitioned the Commission requesting a declaratory order which detailed the third-party insurance limits that a cab company must maintain in this Commonwealth and approved as valid the liability policy of Jenny Cab Company. In response to Clayter's petition, the Commission ordered an investigation into insurance claims, State liability coverage requirements and driver safety records.

At the conclusion of the investigation, the Commission issued a policy statement detailing its interpretation of § 32.11 codified in § 41.21. In issuing the statement of policy, the Commission's intent to put to rest any confusion or controversy regarding third-party insurance coverage as required by § 32.11(b).<sup>1</sup>

Unfortunately, as evidenced by the recent Federal case *Adams v. Clarendon*, confusion and controversy remains. *Adams v. Clarendon*, Civil Action No. 95-6392 (U. S. District Ct. (E. D. Pa.)). Adams, who was injured in a Philadelphia taxicab insured by Clarendon Insurance Co., filed a class action suit against Clarendon charging, inter alia, that Clarendon had issued policies at less than the minimum amounts required by § 32.11(b). Under *Metro*, insurance carriers may be liable for more than the policy limits if the carrier issued insurance at less than the minimum amount required by law. *Metro Transp. Co. v. North Star Reinsurance Co.*, 912 F.2d 672 (3rd. Cir. 1990).

Adams argued that § 32.11(b) requires a minimum of \$35,000 in third-party liability coverage, \$25,000 in first-

party medical benefits coverage and \$10,000 in work loss benefits coverage for each individual passenger/pedestrian injured in a taxicab accident, regardless of the number of individuals injured in a particular accident or of the aggregate required minimum amount of insurance coverage.<sup>2</sup> This interpretation is at odds with our interpretation in the statement of policy in § 41.21.

To avoid future controversies regarding the minimum amount of insurance required by this Commission, changes are proposed to the existing regulation covering motor vehicles capable of carrying fewer than 16 passengers in an attempt to remove doubt as to the required minimum amount of insurance coverage and how it is applied. By amending the existing regulation, we will formalize our intent as expressed in the policy statement.

Specifically, the proposed change clarifies the Commission's intent that third-party benefits refer to "split" coverage. That is, the \$35,000 minimum amount of coverage required for bodily injury, death or property damage must be split in the amounts of \$15,000 bodily injury per person, \$30,000 bodily injury per accident and \$5,000 property damage per accident.

We believe that the proposed changes will promote ease of application as well as fairness while greatly reducing the confusion evidenced in the recent *Adams* lawsuit. We encourage those affected by these changes to file comments which address these and related questions, and to give concrete suggestions for specific revisions to better achieve the delicate balance of compensating those injured in an accident while maintaining affordable insurance rates.

Accordingly, under sections 501, and 512 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 512, and the Commonwealth Documents Law (45 P. S. § 1201 et seq.) and the regulations promulgated thereunder, we shall institute a rulemaking proceeding to accomplish the objectives described in the body of this order. *Therefore,*

*It is Ordered that:*

1. A rulemaking proceeding is hereby instituted at this docket.
2. The Commission's regulations are hereby proposed to be amended by amending § 32.11.
3. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
4. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
5. The Secretary shall submit this order and Annex A for informal review by the designated standing committees of both houses of the General Assembly, and for informal review and approval by IRRC.
6. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Interested persons may submit written comments, an original and 15 copies, to the Secretary's Office, Pennsylvania Public Utility Commission, and shall have 60 days from the date this order is published to submit comments.

<sup>2</sup> Although the Federal suit settled, *Clarendon Insurance Co.* has petitioned the Commonwealth Court of Pennsylvania for a declaratory judgment as to the proper interpretation of § 32.11(b). *Clarendon v. Pa. P.U.C.*, 369 M.D. 1997 (Pa. Cmwlth. Ct.).

<sup>1</sup> Specifically not addressed in the statement of policy was any interpretation of first-party benefits.

7. A copy of this order shall be served upon the Insurance Department.

8. A copy of this order shall be served upon the Pennsylvania Taxicab & Paratransit Association.

9. A copy of this order shall be served upon the Delaware Valley Limo Association.

10. A copy of this order shall be served upon the NorthEastern Limo Association.

11. A copy of this order shall be served upon the Western Pennsylvania Limousine Association.

12. A copy of this order shall be served upon the Radio Associations in this Commonwealth.

JAMES J. MCNULTY,  
*Secretary*

**Fiscal Note:** 57-189. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 52. PUBLIC UTILITIES

#### PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION

#### Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

#### CHAPTER 32. MOTOR CARRIER INSURANCE

#### Subchapter B. INSURANCE REQUIREMENTS

#### § 32.11. Passenger carrier insurance.

\* \* \* \* \*

(b) The liability insurance maintained by a common carrier of passengers on each motor vehicle capable of transporting fewer than 16 passengers shall be in an amount not less than \$35,000 to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service. **The \$35,000 minimum coverage is split coverage in the amounts of \$15,000 bodily injury per person, \$30,000 bodily injury per accident and \$5,000 property damage per accident.** This coverage shall include [ **first party** ] **first-party** medical benefits in the amount of \$25,000 [ , ] and [ **first party** ] **first-party** wage loss benefits in the amount of \$10,000 for passengers and pedestrians. Except as to the required amount of coverage, [ **first party** ] **first-party** benefits shall conform to 75 Pa.C.S. [ §§ 1701—1798 ] **Chapter 17** (relating to Motor Vehicle Financial Responsibility Law). [ **First party** ] **First-party** coverage of the driver of certificated vehicles shall meet the requirements of 75 Pa.C.S. § 1711 (relating to required benefits).

(c) The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle capable of transporting 16 to 28 passengers shall be in an amount not less than \$1 million to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service. Except as to the required amount of liability coverage, this coverage shall meet the requirements of 75 Pa.C.S. [ §§ 1701—1798 ] **Chapter 17**.

(d) The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle capable of transporting more than 28 passengers shall be in an amount not less than \$5 million to cover liability for

bodily injury, death or property damage incurred in an accident arising from authorized service. Except as to the required amount of liability coverage, this coverage shall meet the requirements of 75 Pa.C.S. [ §§ 1701—1798 ] **Chapter 17**.

\* \* \* \* \*

[Pa.B. Doc. No. 98-726. Filed for public inspection May 8, 1998, 9:00 a.m.]

## STATE BOARD OF EDUCATION

### [22 PA. CODE CH. 44]

#### Program Standards and Eligibility Criteria for the Higher Education Equal Opportunity Act

The State Board of Education (Board) proposes to amend Chapter 44 (relating to program standards and eligibility criteria for the Higher Education Equal Opportunity Act) to read as set forth in Annex A, under the authority of sections 3 and 4 of the Higher Education Equal Opportunity Act (act) (24 P.S. §§ 2510-303 and 2510-304).

Chapter 44 governs the responsibility of institutions of higher education to administer counseling and tutorial programs (commonly referred to as Act 101 programs) for educationally- and economically-disadvantaged students provided for in the act (24 P.S. §§ 2510-301—2510-305) and the eligibility of students for participation in those programs. Proposed amendments to § 44.4(a)(1) (relating to eligible students) are designed to amend the income eligibility criteria from one based on a Pennsylvania Higher Education Assistance Agency (PHEAA) determined adjusted gross income adjusted annually by a percentage of growth in the Consumer Price Index (CPI) to one based on a percentage of the poverty guidelines as determined annually by the United States Department of Health and Human Services.

#### *Purpose*

The purpose of amending § 44.4(a)(1) is to employ a measure of income eligibility designed to reflect growth (or decline) in income for students and families for whom the act was designed to serve. Current measures of income eligibility do not as accurately reflect the economics of poverty-level and low income families. A multiple of Federally-determined poverty guideline is employed in a number of State-administered programs designed to serve a similar clientele. Two hundred percent of poverty is proposed because it most accurately reflects the maximum income level for participation in Act 101 programs at the time Chapter 44 was originally promulgated. The definition of CPI is proposed to be deleted because the CPI will no longer be applicable to the regulations.

#### *Affected Parties*

The proposed amendments will benefit current and potential college and university students participating in institutional the act programs.

#### *Cost and Paperwork Estimates*

Proposed amendments to § 44.4(a)(1) will not substantially alter paperwork, accounting or reporting requirements already in place.

*Effective Date*

These proposed amendments will become effective upon final publication in the *Pennsylvania Bulletin*.

*Sunset Date*

The effectiveness of Chapter 44, including § 44.4(a)(1), will be reviewed by the Board every 4 years, in accordance with the Board's policy and practice respecting all regulations of the Board. Thus, no sunset date is necessary.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 28, 1998, the Board submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Board, the General Assembly and the Governor of objections raised.

*Public Comments and Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Peter H. Garland, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333 within 30 days of publication in the *Pennsylvania Bulletin*. Persons needing additional information regarding this proposal may contact Peter H. Garland at (717) 787-3787.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Dr. Garland at (717) 787-3787 or TDD (717) 787-7367.

Alternative formats of the proposed amendments (for example braille, large print, cassette tape) can be made available to members of the public upon request to Dr. Garland at the telephone and TDD numbers listed in the preceding paragraph.

PETER H. GARLAND,  
*Executive Director*

**Fiscal Note:** 6-263. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 22. EDUCATION****PART I. STATE BOARD OF EDUCATION****Subpart C. HIGHER EDUCATION****CHAPTER 44. PROGRAM STANDARDS AND ELIGIBILITY CRITERIA FOR THE HIGHER EDUCATION EQUAL OPPORTUNITY ACT****§ 44.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

\* \* \* \* \*

**[ CPI—The Consumer Price Index as determined and published by the Federal government. ]**

\* \* \* \* \*

**§ 44.4. Eligible students.**

(a) A bona fide domiciliary of this Commonwealth who is attending an institution which is an eligible grant applicant under § 44.3 (relating to eligible grant applicants) and who is determined to be economically and educationally disadvantaged under this section is eligible for participation in the program. To be eligible for participation, a student shall meet the following criteria. The student shall be:

(1) Economically disadvantaged by having **[ resources for higher education derived from an adjusted annual family income of \$18,750 or less as defined in Higher Education Assistance Agency procedures for calculating student financial aid ]** an annual family income equal to or less than 200% of the family income level established by the United States Bureau of the Census for determining poverty status and published by the United States Department of Health and Human Services in the *Federal Register*. The **[ Secretary will annually revise the family income level by a factor that is 25% of the adjusted annual most recent 12-month change in the CPI, rounded to the nearest \$50. The revision factor used and the revised adjusted ]** annual family income to be used to recruit students who will enter the program on or after July 1 of every year beginning in **[ 1993 ] 1997** will be provided to institutions by the Secretary by **[ January 15 ] March 31** of the same year and will be published in the *Pennsylvania Bulletin* by **[ January 31 ] April 15** of the same year. The Secretary's **[ determinations and notifications ] notification** under this section will comply with this chapter and will not be subject to the regulatory review procedures under section 5 of the Regulatory Review Act (71 P. S. § 745.5).

\* \* \* \* \*

[Pa.B. Doc. No. 98-727. Filed for public inspection May 8, 1998, 9:00 a.m.]