

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121, 126 AND 139]

Gasoline Volatility Requirements

The Environmental Quality Board (Board) proposes to amend Chapters 121, 126 and 139 to read as set forth in Annex A. The proposed amendments will eliminate the use of Federal reformulated gasoline (RFG) as a compliant fuel in the Pittsburgh-Beaver Valley Area during the ozone season. In addition, the proposed amendments will make a technical language correction relating to sampling procedures.

The Board approved the proposed amendments at its July 21, 1998, meeting.

A. *Effective Date*

These proposed amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rule-making.

B. *Contact Persons*

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Compliance and Enforcement, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-1663, or R. A. Reiley, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection (Department) Web site (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

This action is being taken under the authority of section 5 of the Air Pollution Control Act (35 P. S. § 4005) which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background and Summary of the Proposed Amendments*

These amendments propose to eliminate the use of RFG as a compliant fuel in the Pittsburgh-Beaver Valley Area during the ozone season. Because of concerns with implementation of the current regulation as it relates to RFG, the Department is eliminating the RFG provisions. Since refiners and marketers have been supplying low Reid vapor pressure (RVP) gasoline during the ozone season, these proposed amendments will have minimal practical consequences. These amendments also propose to correct technical language relating to sampling procedures.

These proposed amendments were submitted to and approved by the Air Quality Technical Advisory Committee and the Small Business Assistance Program Compliance Advisory Committee.

E. *Summary of the Regulatory Revisions*

The Department is proposing to delete definitions for the term "Federal Reformulated Gasoline or RFG" and

eliminate RFG from the term "compliant fuel." The Department also proposes to eliminate the references to RFG in §§ 126.301—126.303. In addition, the Department proposes to clarify the record retention requirements in § 126.302(c) (relating to recordkeeping and reporting) that records shall be kept onsite. Finally, the Department proposes to correct technical language in § 139.4(18) (relating to references).

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments.

Compliance Costs

There will be no increased cost to the regulated community as a result of this proposal. Since low RVP gasoline is already required in the area, there will be no additional cost to the public or to local or State government. Low RVP gasoline on average is 2 ¢ per gallon less than RFG gasoline.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community with understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing regional compliance assistance program.

Paperwork Requirements

There will be no additional recordkeeping and reporting costs for an entity that sells or transfers gasoline intended for use in the seven-county Pittsburgh-Beaver Valley Area during the ozone season.

G. *Sunset Review*

These proposed amendments will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the amendments effectively fulfill the goals for which they were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 8, 1998, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department 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 the Department, the Governor and the General Assembly to review these objections before final publication of the amendments.

I. Public Comment and Public Hearing
Public Hearing

The Board will hold one public hearing for the purpose of accepting comments on the proposed amendments. The hearing will be held at 2 p.m. on November 2, 1998, at the Department's Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA.

Persons wishing to present testimony at the hearing are asked to contact Kate Coleman at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to 10 minutes for each witness and three written copies of the oral testimony must be submitted at the hearing. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodations to participate, should contact Kate Coleman at (717) 787-4526 or through the Pennsylvania AT&T relay service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Written Comments

In lieu of or in addition to presenting oral testimony at the hearing, interested persons may submit written comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, 15th Floor, Rachel Carson State Office Building, P. O. Box 8477, Harrisburg, PA 17105-8477. Comments received by facsimile will not be accepted. Comments must be received by December 2, 1998. In addition to the written comments, interested persons may also submit a summary of their comments to the Board. This summary may not exceed one page in length and must be received by December 2, 1998. The summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

Electronic Comments

Comments may be submitted electronically to the Board at RegComments@dep.state.pa.us. A subject heading identifying the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by December 2, 1998.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-341. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE III. AIR RESOURCES
CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Compliant fuel—Low RVP gasoline [or RFG].

* * * * *

[RFG—Federal Reformulated Gasoline—Gasoline that meets the requirements for RFG as specified in 40 CFR Part 80 Subpart D (relating to reformulated gasoline).]

* * * * *

CHAPTER 126. STANDARDS FOR MOTOR FUELS
Subchapter C. GASOLINE VOLATILITY REQUIREMENTS

§ 126.301. Compliant fuel requirement.

* * * * *

[(d) If RFG is required by operation of Federal law to be sold in the Pittsburgh-Beaver Valley, this subchapter no longer applies after the date that RFG is required to be sold.]

§ 126.302. Recordkeeping and reporting.

(a) Beginning with the terminal owner or operator who sells or transfers gasoline intended for use in the Pittsburgh-Beaver Valley area during the period described in § 126.301(a) (relating to compliant fuel requirement), each time the physical custody of or title to a shipment of gasoline changes hands, other than when gasoline is sold or transferred for use in motor vehicles at a retail outlet or wholesale purchaser-consumer's facility, the transferor shall provide to the transferee a copy of the record described in this subsection. This record shall legibly and conspicuously contain, at a minimum, the following information:

* * * * *

(6) A statement or grade code certifying that the gasoline has an RVP of 7.8 pounds per square inch or less per gallon [or is certified as RFG. If the gasoline is certified as RFG, each invoice, loading ticket, bill of lading, delivery ticket and other document that accompanies a shipment of RFG shall contain a statement from the refiner that certifies this fact].

* * * * *

(c) Each person in the gasoline distribution network shall maintain records containing the compliance information in subsection (a). These records shall be retained for at least 2 years from the date of the sale or transfer of compliant fuel, and shall be kept onsite at each point in the distribution network.

§ 126.303. Compliance and test methods.

[(a)] * * *

* * * * *

[(b) RFG shall be certified and tested in accordance with 40 CFR Part 80, Subpart D (relating to reformulated gasoline).]

CHAPTER 139. SAMPLING AND TESTING
Subchapter A. SAMPLING AND TESTING METHODS AND PROCEDURES
GENERAL

§ 139.4. References.

The references referred to in this chapter are as follows:

* * * * *

(18) "Sampling Procedures for Fuel Volatility," 40 CFR Part 80, Appendix D (relating to [**reformulated gasoline**] **sampling procedures for fuel volatility**).

* * * * *

[Pa.B. Doc. No. 98-1551. Filed for public inspection September 25, 1998, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 84]

Tables Approved for Use in Determining Minimum Nonforfeiture Standards and Minimum Standards for Valuation

The Insurance Department (Department) proposes to amend Chapter 84 (relating to tables approved for use in determining minimum nonforfeiture standards and minimum standards for valuation) to read as set forth in Annex A, under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412), section 301(c)(1) of The Insurance Department Act of 1921 (40 P. S. § 71(c)(1)) and section 410F (e)(8)(F) of The Insurance Company Law (40 P. S. § 510.1(e)(8)(F)).

Purpose

The purpose of the proposed amendments to Chapter 84 is to adopt new mortality tables for use in determining the minimum reserves for annuities. These new minimum standards apply to annuities issued on or after the effective date of adoption of the proposed amendments. The proposed mortality tables are based on historical experience and have been developed by the Society of Actuaries. In December 1996, the National Association of Insurance Commissioners adopted the proposed mortality tables as part of its Model Rule (Regulation) For Recognizing A New Annuity Mortality Table For Use In Determining Reserve Liabilities For Annuities. The Department's adoption of the proposed mortality tables will help to assure the solvency of insurance companies by requiring adequate reserves based on the most recent mortality tables.

The Insurance Federation of Pennsylvania, representing a substantial portion of the life insurance industry operating in this Commonwealth, has expressed a desire that the new annuity mortality tables set forth in the proposed rulemaking be adopted for use in this Commonwealth in determining the minimum reserves.

Explanation of Regulatory Requirements

The following is a description of the significant features of and changes contained in the proposed rulemaking:

Section 84.3 (relating to 1983 Table "a"). This section provides for the use of the Annuity 2000 Mortality Table excluding mortality rates independent of sex and the 1994 GAR Table as additional mortality tables which may be used to determine minimum reserves for annuities issued prior to the effective date of adoption of the proposed amendment and as the mortality tables which must be used to determine minimum reserves for annuities on and after the effective date of adoption of the proposed amendment.

Affected Parties

This proposed rulemaking will apply to life insurance companies marketing annuity contracts in this Commonwealth.

Fiscal Impact

State Government

There will be no increase in cost to the Department due to the adoption of new annuity tables since the proposed rulemaking does not impose additional requirements on the insurance industry which the Department must monitor for compliance.

General Public

It is unlikely that there will be any adverse fiscal impact on the consumers who purchase annuity contracts. The general public will be purchasing annuity contracts from more financially stable insurers.

Political Subdivisions

The proposed rulemaking will strengthen the solvency requirements of insurance companies issuing annuity contracts. Increasing insurance company solvency requirements has the potential to minimize insurance company insolvencies which could result in less erosion of the tax base since insurers pay premium taxes on premium income and pay salaries which are taxed.

Private Sector

The proposed rulemaking may have some fiscal impact on insurance companies marketing annuity contracts. Insurers will be required to expend the time necessary to determine if their current annuity reserve standards meet the new requirements. To the extent that the standards do not comply with the new requirements, an insurance company must increase the reserves for contracts issued on or after the effective date of adoption of the proposed amendment to Chapter 84.

Paperwork

The adoption of this proposed rulemaking will not impose additional paperwork on the Department and the insurance industry. The proposed rulemaking provides for the use of additional mortality tables and does not impose additional requirements resulting in additional paperwork.

Effectiveness/Sunset Date

The proposed rulemaking will become effective upon final adoption and publication in the *Pennsylvania Bulletin* as final rulemaking. No sunset date has been assigned.

Contact Person

Questions or comments concerning this proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 14, 1998, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with

a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department 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 the Department, the Governor and the General Assembly to review these objections before final publication of the amendments.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: 11-181. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 31. INSURANCE
PART IV. LIFE INSURANCE

CHAPTER 84. TABLES APPROVED FOR USE IN DETERMINING MINIMUM NONFORFEITURE STANDARDS AND MINIMUM STANDARDS FOR VALUATION

§ 84.2. Definitions.

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

Act—The Insurance Department Act of [one thousand nine hundred and twenty-one] 1921 (40 P. S. §§ 1—321).

Annuity 2000 Mortality Table—The mortality table developed by the Society of Actuaries Committee on Life Insurance Research and shown on page 240 of Volume XLVII of the *Transactions of the Society of Actuaries* (1995) and adopted as a recognized mortality table for annuities in December 1996 by the NAIC.

* * * * *

1983 Table "a"—The mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the NAIC.

1983 GAM Table—The mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the NAIC.

1994 GAR Table—The mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force and shown on pages 866—867 of volume XLVII of the *Transactions of the Society of Actuaries* (1995) and adopted as a recognized mortality table for annuities in December 1996 by the NAIC.

§ 84.3. [1983 Table "a"] 1983 Table "a," Annuity 2000 Mortality Table, 1983 GAM Table and 1994 GAR Table.

(a) The 1983 Table "a" [was adopted as a recognized mortality table for annuities in June 1982 by the NAIC], the Annuity 2000 Mortality Table excluding mortality rates independent of sex, the 1983

GAM Table and the 1994 GAR Table are approved by the Commissioner as annuity mortality tables for valuation.

(b) [The 1983 Table "a" is approved by the Commissioner.] At the option of the company, [it] the 1983 Table "a" may be used [for the purpose of] in determining the minimum standard of valuation for an individual annuity or pure endowment contract issued prior to January 1, 1986, and for an annuity or pure endowment purchased prior to January 1, 1986, under a group annuity or pure endowment contract.

(c) The 1983 Table "a," or [a modification of this table approved by the Commissioner,] the Annuity 2000 Mortality Table excluding mortality rates independent of sex shall be used in determining the minimum standard of valuation for an individual annuity or pure endowment contract issued on or after January 1, 1986, and prior to _____. (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.)

(d) The Annuity 2000 Mortality Table excluding mortality rates independent of sex shall be used, except as provided by subsection (e), in determining the minimum standard of valuation for an individual annuity or pure endowment contract issued on or after _____. (*Editor's Note:* The blank refers to the effective date of this proposal.)

(e) The 1983 Table "a" shall be used in determining the minimum standard of valuation for an individual annuity or pure endowment contract issued on or after _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.) when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

(1) Settlements of claims pertaining to court settlements or out of court settlements from tort actions.

(2) Settlements of claims, such as worker's compensation claims.

(3) Settlements of long term disability claims when a temporary or life annuity has been used in lieu of continuing disability payments.

(f) At the option of the company, the 1983 GAM Table or the 1994 GAR Table may be used in determining the minimum standard of valuation for an annuity or pure endowment purchased prior to January 1, 1986, under a group annuity or pure endowment contract.

(g) The 1983 GAM Table or the 1994 GAR Table shall be used in determining the minimum standard of valuation for an annuity or pure endowment purchased on or after January 1, 1986, and prior to _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.) under a group annuity or pure endowment contract.

(h) 1994 GAR Table.

(1) The 1994 GAR Table shall be used in determining the minimum standard of valuation for an annuity or pure endowment purchased on or after _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.) under a group annuity or pure endowment contract.

(2) In using the 1994 GAR Table, the mortality rate for a person age x in year (1994 + n) shall be calculated as follows:

$$q_x^{1994+n} = q_x^{1994} (1-AA_x)^n$$

where the values of q_x^{1994} and AA_x are as specified in the 1994 GAR Table.

§ 84.4. [1983 GAM table] (Reserved).

[(a) The 1983 GAM Table was adopted as a recognized mortality table for annuities in December 1983 by the NAIC.

(b) The 1983 GAM Table is approved by the Commissioner. At the option of the company, it may be used for the purpose of determining the minimum standard of valuation for an annuity or pure endowment purchased under a group annuity or pure endowment contract.

(c) The 1983 GAM Table, or a modification of this table approved by the Commissioner, shall be used in determining the minimum standard of valuation for an annuity or pure endowment purchased on or after January 1, 1986, under a group annuity or pure endowment contract.]

[Pa.B. Doc. No. 98-1552. Filed for public inspection September 25, 1998, 9:00 a.m.]

[31 PA. CODE CH. 125] Title Insurance Rebates

The Insurance Department (Department) hereby proposes to amend Chapter 125 (relating to title insurance rebates) to read as set forth in Annex A, under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412), sections 701(4) and 731 of The Insurance Company Law of 1929 (40 P. S. §§ 910-1(4) and 910-31) and sections 635 and 636 of The Insurance Company Act of 1921 (40 P. S. §§ 275 and 276).

Purpose

The purpose of this proposal is to amend Chapter 125 to make it consistent with the act of December 21, 1995 (P. L. 714, No. 79) (Act 79). This Chapter, adopted in 1968, identified and defined prohibited rebating and inducement activities associated with title insurance transactions.

Explanation of Regulatory Requirements

The Department has determined that § 125.1(b) (relating to prohibited rebates and inducements) and §§ 125.5—125.9 should be deleted from the chapter as sections without statutory basis or are redundant and unnecessary.

Section 125.1(b) is being deleted as the controlling law, section 730 of the Insurance Company Law (40 P. S. § 910-30), was repealed in 1995. Section 10 of Act 79, further amended section 731 of The Insurance Company Law (40 P. S. § 910-31) having to do with "Commissions; Other Considerations Prohibited." Act 79 specifically identifies and defines activities which constitute per se unlawful inducements. Sections 125.5—125.9 do not enhance the prohibitions already delineated in section 10 of Act 79, and are, therefore, found to be redundant.

Minor revisions to § 125.3 (relating to increasing the charge or fee) have been made to clarify the nature of the prohibited activity.

External Comments

Comments regarding these proposed amendments were solicited from the Pennsylvania Land Title Association (PLTA), which represents the title insurance industry. The PLTA agreed with the Department that this chapter should be amended as recommended.

Fiscal Impact

There is no fiscal impact as a result of the proposed amendments.

Paperwork

The proposed amendments will affect all licensed title insurers, agents and approved attorneys in this Commonwealth.

Effectiveness/Sunset Date

The proposed rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. Because the rulemaking proposes to amend the chapter, no sunset date has been assigned.

Contact Person

For information on this matter, contact Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120 within 30 days of this publication.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 14, 1998, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to the submitted proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days after 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 the Department, the Governor and the General Assembly to review these objections before final publication of the proposal.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: 11-175. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VIII. MISCELLANEOUS PROVISIONS CHAPTER 125. TITLE INSURANCE REBATES

§ 125.1. Prohibited rebates and inducements.

[(a)] A title insurance company or agent or approved attorney of a title insurance company may not pay to an approved attorney, real estate broker, real estate salesman, attorney at law or other person, partnership or corporation, who or which, from time to time, apply to a

title insurance company or to an agent of a title insurance company for title insurance and who at the time of the application are not licensed agents for a title insurance company, compensation, consideration, benefit or remuneration directly or indirectly.

[(b) The payment of compensation, consideration, benefit or remuneration shall be deemed to be an illegal rebate and inducement, except that a title insurance company or an agent of a title insurance company may pay to an attorney at law in good standing (but not to an approved attorney of the title insurance company) or a real estate broker licensed in this Commonwealth, a cash commission for procuring a title insurance for a client in a real estate transaction, if the cash commission is not in excess of that set forth in the schedule of commissions filed by the title insurance company with the Insurance Department.]

§ 125.3. Increasing the charge or fee.

Increasing the charge or fee for a title insurance policy by an amount and **[payment of]** returning any or all of the added amount **[or increase]** to **[anyone]** any person is an illegal rebate and inducement.

(Editor's Note: The Department is proposing to delete §§ 125.5—125.9 as they currently appear in the Pennsylvania Code at pages 125-2 and 125-3 (serial pps. (143746) and (143747).)

§§ 125.5—125.9. (Reserved).

[Pa.B. Doc. No. 98-1553. Filed for public inspection September 25, 1998, 9:00 a.m.]

STATE HORSE RACING COMMISSION

[58 PA. CODE CHS. 163 AND 165]

Rules of Racing

The State Horse Racing Commission (Commission) acting under the authority conferred by section 202(a) of the Race Horse Industry Reform Act (4 P. S. § 325.202(a)) (act), hereby proposes to amend Chapters 163 and 165 (relating to rules of racing; and administrative rules) of the Commission's regulations.

Chapter 163 of the Commission's regulations governs all of the facets of racing including matters such as, entries, licensing of owners, trainer and jockeys, racing violations, medication/drug violations, the power of the Board of Stewards and the Breeders Fund Program. Chapter 163 also includes the Commission's regulations regarding racing entries. Specifically, the Commission proposes to amend §§ 163.95 and 163.531 (relating to coupled entries; and definitions). The proposed amendments will help clarify and update the present rules of racing and bring them into conformance with surrounding racing jurisdictions.

Summary of Proposed Major Amendments

Entries and Subscriptions

Section 163.95 (Coupled entries)

At the request of the Pennsylvania Thoroughbred Horsemen's Association (THA), the Commission proposes

to amend the so-called "coupled entry" rule. The proposed amendment will eliminate an outdated rule of racing and make it more consistent with § 163.119 (relating to double entry in the same ownership) of the Commission's regulations. Additionally, the proposed amendment will bring the Commission's regulation into parity with Delaware and Florida racing jurisdictions.

Specifically, the coupled entry rule is activated when an owner or trainer attempts to enter more than one horse in the same race. An "entry" as defined in the Commission's regulations is a horse, which is made eligible to run in a particular race. That entry is thereafter known as a "starter." As presently promulgated, when an owner or trainer enters two or more horses in the same race, the two horses are combined as one entry for purposes of betting. Thus, a wager placed on one horse is considered a wager on both horses (the entry). Historically, two or more horses owned or trained by the same persons were coupled to avoid any potential collusion between the owner or trainer and the jockeys of the two horses, which could affect the outcome of the race. Today, in this heavily regulated industry the potential for collusion has been greatly diminished, if not completely eradicated.

The practical effect of the proposed amendment is to "uncouple" the entry in the race but only as to trainers. Thus, when two or more horses entered in a race are trained by the same trainer, the two horses may race as an independent or uncoupled entry, which has been shown to increase betting interest with the public. The coupled-entry requirement however, will remain in effect as to horses owned wholly or in part by the same person.

Pennsylvania Breeder's Fund Program

Section 163.531 Definitions.

At the request of the Pennsylvania Horse Breeders Association (PHBA), the Commission proposes to amend the regulations governing the Pennsylvania Breeders' Fund Program (Fund), which was established in 1974. Historically, the Fund was designed to stimulate and sustain the Commonwealth's thoroughbred breeding industry, whose product would in turn, support live racing programs at the licensed thoroughbred racetracks by providing, in essence, an incentive to breed horses in this Commonwealth. The Fund, by providing monetary awards to breeders, stallion owners and owners of registered Pennsylvania-bred (Pa-Bred) horses, offers the thoroughbred industry economic advantages to help offset the high-risk enterprise of breeding racehorses. The Fund is financed by 7/10 of 1% of the total thoroughbred pari-mutuel handle. It provides for individual award payments, purse bonus supplements, PA-Bred stakes races and expenses incurred by the PHBA in its role as program administrator. Additionally, an amount equal to 1/3 of 1% of each thoroughbred racetrack's daily pari-mutuel handle is utilized in conjunction with Fund moneys by that racetrack to provide for owner bonuses earned by PA-Bred horses racing there.

As presently promulgated, the definition of "Pennsylvania-bred horse" requires only that the foaling occur in this Commonwealth for the horse to be eligible for program registration and all its entitlements. The definition was originally designed to simplify matters for Commonwealth breeders unfamiliar with the incentive programs and which would attract breeders from surrounding states to come to this Commonwealth and breed horses. However, due to increased sums of PA-Bred moneys as a result of off-track wagering facilities, full card simulcasting and the downsides being experienced in

breeding programs in surrounding states, out-of-State breeders are now quick to take advantage of the overly-broad definition of a PA-Bred. Out-of-State breeders are entering this Commonwealth simply to foal their horse (and gaining eligibility into the program) and immediately leaving this Commonwealth without necessarily contributing to the commerce of this Commonwealth's thoroughbred industry. The proposed rulemaking will amend the definition by requiring that during the year of foaling, the foal or its dam spend a minimum of 90 days at a facility in this Commonwealth. The PHBA and the Commission believe the proposed amendment will modify the current trend and ensure that Fund program participants contribute more significantly to this Commonwealth's commerce than the current definition requires.

Finally, the Commission will also propose to amend or entirely delete several other sections, including § 163.537 (relating to records of expenses) within the Breeders Fund Program to clarify and update, when appropriate, the language of the regulations relating to such matters as the registration, eligibility, appeals and awards of Pa-Bred horses. Specifically, § 163.537, which was promulgated in the mid-1970s prior to the enactment of Race Horse Industry Reform Act in 1981 (4 P. S. §§ 325.101—325.402), presently requires the PHBA to submit quarterly estimates to the Commission. This is inconsistent with section 325.223(g) of the act (4 P. S. § 325.223(g)), which only requires annual estimates. The Commission and the Pennsylvania Breeding Fund Advisory Board propose to delete this section because of this inconsistency and because they believe section 325.223(g) of the act adequately addresses the expense-records requirement.

Section 165.118(j) (Trifecta)

For purposes of uniformity and consistency, this section is proposed to be amended to delete the existing restriction regarding coupled entries in Trifecta races. The Commission does not believe there is any further legitimate reason to continue this restriction, especially in light of the preceding proposed amendment.

Fiscal Impact

Commonwealth

The Commission has determined that the amendments will have no adverse fiscal impact on the Commonwealth.

Political Subdivisions

The proposed amendments will not have any direct fiscal impact on political subdivisions.

Private Sector

The proposed amendments will not have any negative fiscal impact on the private sector within this Commonwealth. There may be limited fiscal impact upon out-of-State breeders who enter this Commonwealth to become eligible for the Breeders' Fund Program. The impact should be offset as a result of the commerce generated with the new 90-day requirement for the dam and foal, which will have to be met to qualify for the Pa-Bred registration.

General Public

The proposed amendments will not have any fiscal impact on the general public. The proposed amendments will, however, bring the Commission's regulations relating to coupled entries and the Breeders' Fund Program into conformity with the other racing jurisdictions.

Paperwork Requirements

The proposed amendments will not generate any new substantial paperwork for the public or the Commonwealth.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 14, 1998, the Commission submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate State Government Committees. 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.

If IRRC has objections to any portion of the proposed amendments, it must 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.

Contact Person

Individuals interested in commenting on the proposed amendments or who require further information may contact Benjamin H. Nolt, Jr., Executive Secretary, State Horse Racing Commission, Room 304 Agriculture Building, 2301 N. Cameron Street, Harrisburg, PA 17110-9408, (717) 787-5196, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

BENJAMIN H. NOLT, Jr.,
Executive Secretary

Fiscal Note: 34-63. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART IV. HORSE RACING COMMISSION

CHAPTER 163. RULES OF RACING

ENTRIES AND SUBSCRIPTIONS

§ 163.95. Coupled entries.

(a) The term "entry" means a horse made eligible to run in a race. When starters in a race include two or more horses owned [**or trained**] by the same person, [**trained in the same stable or trained by the same management,**] they shall be coupled as an entry, with no exceptions. A wager on one horse in the entry shall be a wager on all horses in the entry. If a race is split in two or more divisions, horses in an entry shall be seeded in separate divisions, but the divisions in which they compete and their post positions shall be drawn by lot.

(b) Horses owned wholly or in part by the same person or the spouse of the person or trained by the same trainer shall be coupled and run as an entry. **A trainer may not have any ownership interest in any other horse in the same race unless the horses are coupled as a single wagering interest.**

* * * * *

(d) Starters in a race which include two horses of different ownership trained by the same person, trained in the same stable or trained by the same management may not be coupled as an entry and shall constitute separate wagering interests. In no case may more than two horses having common trainer ties as defined in this section start in a race.

PENNSYLVANIA BREEDERS' FUND PROGRAM

§ 163.531. Definitions.

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

Breeder—A breeder is the owner of the dam at the time of foaling and when held under a lease or in partnership, only the lease or partnership will be recognized for purposes of which it is filed with the Jockey Club.

Pennsylvania-bred horse— A Pennsylvania-bred horse is a thoroughbred horse foaled in [Pennsylvania] this Commonwealth, which during the year of foaling, the foal or its dam spent a minimum of 90 days at a facility in this Commonwealth and is subsequently registered with the Pennsylvania Horse Breeders Association and the Jockey Club.

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§ 163.532. Eligibility for Pennsylvania-bred races.

To be eligible for preferences in races in which Pennsylvania-breds are preferred and to be eligible for entry in races which are restricted by condition to registered Pennsylvania-breds, a horse shall be registered as a Pennsylvania-bred with the Pennsylvania Horse Breeders Association at the time of entry. [To be eligible for the registration, the horse shall have been foaled in this Commonwealth.]

§ 163.533. [Eligibility of breeders for awards] (Reserved).

[In order for a Pennsylvania-bred horse to be eligible to earn an award for its breeder, under section 17.1(b)(3) of the act of December 11, 1967 (P. L. 707, No. 301) (15 P. S. § 2667.1) (Repealed), in a race conducted by a pari-mutuel permit holder in this Commonwealth, the horse shall be registered as a Pennsylvania-bred with the Pennsylvania Horse Breeders Association prior to entry for the race.]

§ 163.534. [Eligibility of owners of Pennsylvania sires for awards] (Reserved).

[In order for a sire of this Commonwealth to be eligible to earn an award for its owner, under section 17.1(b)(4) of the act of December 11, 1967 (P. L. 707, No. 331) (15 P. S. § 2667.1) (Repealed), the sire shall have been registered as a sire of this Commonwealth with the Pennsylvania Horse Breeders Association during each breeding season when the sire covered the dams that, as a result of that cover, produced Pennsylvania-breds. A sire of this Commonwealth not registered with the Pennsylvania Horse Breeders Association prior to 1975 may be registered with the Pennsylvania Horse Breeders Association, for years prior to 1975 if registered by December 31, 1975. To be eligible for a sire award, it is not necessary that the foal entitling the sire owner to the award be itself registered but only that it have been foaled in this Commonwealth by a sire registered as set forth in this section.]

§ 163.537. [Records of expenses] (Reserved).

[The Pennsylvania Breeders Association will maintain a complete record of reasonable and necessary expenses and will submit quarterly estimates to the Commission, on the basis of which the Commission may disburse advances. The quarterly estimated statements of expenses and advances shall be reconciled annually with a certified statement of expenses to be prepared by an auditor approved in advance by the Commission. The Commission will thereafter review them and after approval of allowable items shall then reimburse the Pennsylvania Breeders Association for expenses the Commission finds reasonable and appropriate to this program. If advances on account of expenses exceeds actual expenses as approved at the end of a given year, the excess shall be deemed disbursed on account of the ensuing year's expenses.]

CHAPTER 165. ADMINISTRATIVE RULES

Subchapter E. PARI-MUTUEL WAGERING

§ 165.118. Trifecta.

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(j) Coupled entries and fields are [prohibited] allowed in Trifecta races, at the discretion of the Commission or its designee.

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[Pa.B. Doc. No. 98-1554. Filed for public inspection September 25, 1998, 9:00 a.m.]