

# PROPOSED RULEMAKING

## DEPARTMENT OF TRANSPORTATION

[ 67 PA. CODE CH. 229 ]

### Interstate Motor Carrier Safety Requirements

The Department of Transportation (Department), under the authority contained in 75 Pa.C.S. §§ 4704 and 6103 (relating to inspection by police or Commonwealth personnel; and promulgation of rules and regulations by department) proposes to amend Chapter 229 (relating to interstate motor carrier safety requirements) to read as set forth in Annex A.

#### *Purpose of Chapter*

The purpose of Chapter 229 is to prescribe the minimum requirements and qualifications for drivers, vehicles and other matters relating to the interstate operation of commercial vehicles.

#### *Purpose of the Proposed Amendments*

The purpose of these proposed amendments is to ensure that Pennsylvania's regulations are identical to, or have the same effect as, the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations as required to participate in the Motor Carrier Safety Assistance Program, a Federal funding source administered by the Federal Motor Carrier Safety Administration Program.

#### *Summary of Significant Amendments*

These proposed amendments will incorporate by reference into Chapter 229 the following provisions of 49 CFR Parts 382, 385, 387, 390—393, 395 and 396.

#### *Persons and Entities Affected*

These proposed regulations will affect all motor carriers and drivers who operate in interstate commerce.

#### *Fiscal Impact*

Implementation of these regulations will not require the expenditure of any additional funds by the Commonwealth or local municipalities. These regulations will not impose any additional costs on the regulated community.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of these proposed amendments, on February 10, 2009, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees (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. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed amendments within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Department, the General Assembly and the Governor of comments recommendation, or objections.

#### *Sunset Provisions*

The Department will make these proposed amendments effective upon publication in final-form following appropriate evaluation of any comments, suggestions or objections received during the period allowed for public comment. The Department is not establishing a sunset date for these regulations, since these regulations are required to participate in the Federal Motor Carrier Safety Assistance Program. The Department, however, will continue to closely monitor these regulations for their effectiveness.

#### *Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Daryl R. St. Clair within 30 days of the publication of this notice in the *Pennsylvania Bulletin*.

#### *Contact Person*

The contact person for technical questions about the proposed amendments to the regulations is Daryl R. St. Clair, Bureau of Maintenance and Operations, 400 North Street, 6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120, (717) 787-6899.

ALLEN D. BIEHLER, P. E.,  
*Secretary*

**Fiscal Note:** 18-413. No fiscal impact; (8) recommends adoption.

*(Editor's Note:* As part of this proposed rulemaking, the Department is proposing to rescind Subchapters B—J as follows:

§§ 229.21, 229.22, 229.31, 229.32, 229.41—229.44, 229.51—229.54, 229.61—229.66, 229.71 and 229.81—229.85 which appear in 67 Pa. Code pages 229-7—229-12, serial pages (251037)—(251042).

§§ 229.101—229.111, 229.121—229.128, 229.131—229.135, 229.141—229.144, 229.151—229.153, 229.161—229.163 and 229.171—229.181 which appear in 67 Pa. Code pages 229-14—229-22, serial pages (251044)—(251050) and (265935) and (265936).

§§ 229.191—229.193, 229.201, 229.202, 229.208, 229.210—229.223, 229.231—229.243, 229.251—229.254, 229.261—229.263, 229.271, 229.272, 229.281—229.299, 229.301, 229.311—229.314 and 229.321—229.325 which appear in 67 Pa. Code pages 229-25—229-40, serial pages (251055)—(251060), (265937), (265938) and (251063)—(251070).

§§ 229.331 and 229.341—229.348 which appear in 67 Pa. Code pages 229-40—229-43, serial pages (251070)—(251073).

§§ 229.361—229.371 which appear in 67 Pa. Code pages 229-43—229-46, serial pages (251073), (251074), (265939) and (265940).

§§ 229.381—229.391 which appear in 67 Pa. Code pages 229-47—229-49, serial pages (251077)—(251079).

§§ 229.431 and 229.432 which appear in 67 Pa. Code pages 229-49 and 229-50, serial pages (251079) and (251080).

§§ 229.451—229.453 which appear in 67 Pa. Code pages 229-50—229.52, serial pages (251080)—(251082).

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT

CHAPTER 229. INTERSTATE MOTOR CARRIER SAFETY REQUIREMENTS

Subchapter A. GENERAL

§ 229.1. General information and requirements.

(a) *Purpose.* This chapter prescribes the minimum requirements and qualifications for drivers, vehicles and other matters relating to the interstate operation of commercial motor vehicles. Much of this chapter incorporates by reference provisions of 49 CFR Parts [ 390—397 ] 382, 385, 387 and 390—396. Appropriate parts may be obtained from the following:

\* \* \* \* \*

(4) Commercial Vehicle Safety Alliance, 1101 17th Street NW, Suite 803, Washington, DC 20036.

\* \* \* \* \*

(c) [ *Title and name changes.* In order to reconcile differences between this chapter and the incorporated sections of Federal regulations and to effectuate their joint enforcement, the following words and phrases will be substituted for the language of the Federal regulations as follows:

A reference to the Department of Transportation means the Pennsylvania Department of Transportation.

(d) ] *Forms and documents.* References to forms in the Federal regulations incorporated by reference will be replaced by the appropriate forms prescribed by the Department of Transportation.

§ 229.2. Scope.

(a) Except as otherwise provided, this chapter applies to [ vehicles, including motor vehicles and combinations of vehicles, and drivers of motor vehicles engaged in interstate commerce if the registered gross weight of the vehicle or combination of vehicles exceeds 17,000 pounds ] commercial motor vehicles engaged in interstate commerce.

\* \* \* \* \*

[ (c) This chapter does not apply to systematic inspections of drivers of or vehicle types as follows:

- (1) Farm trucks not required to be registered.
- (2) Special mobile equipment.
- (3) Implements of husbandry. ]

§ 229.3. Definitions.

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

[ *Bus*—A motor vehicle as defined in 75 Pa.C.S. § 102 (relating to definitions).

*Business district*—The term as defined in 75 Pa.C.S. § 102.

*Department*—The Department of Transportation of the Commonwealth.

*Driveaway-towaway operation*—49 CFR 390.5 (relating to definitions) incorporated by reference.

*Driver*—49 CFR 390.5 incorporated by reference.

*Full trailer*—The term as defined in 75 Pa.C.S. § 102.

*Gross weight*—The term as defined in 75 Pa.C.S. § 102.

*Interstate commerce*—Trade, traffic or transportation of property or persons by highway between a place within this Commonwealth and a place in another state or between a place in one state and a place in another state with transportation by highway through this Commonwealth.

*Lightweight vehicle*—A motor vehicle, other than a vehicle that is being used to transport passengers for hire; or a vehicle that is being used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded under 49 CFR 177.823 (relating to marking and placarding motor vehicles) that was one of the following:

(i) Manufactured on or after January 1, 1972, and has a manufacturer's gross vehicle weight rating of 17,000 pounds or less, in the case of a single vehicle, or a manufacturer's gross combination weight rating of 17,000 pounds or less, in the case of an articulated vehicle.

(ii) Manufactured before January 1, 1972, and has a gross weight including its load and the gross weight of a vehicle being towed by the motor vehicle of 17,000 pounds or less.

*Motor carrier*—49 CFR 390.5 incorporated by reference.

*Motor carrier vehicle*—The term as defined in 75 Pa.C.S. § 102.

*Pole trailer*—49 CFR 390.5 incorporated by reference. ]

*Qualified Commonwealth [ employe ] employee*—[ A Commonwealth employe designated by the Department who is authorized to inspect vehicles, drivers, documents, equipment and loads, or cargo as provided in 75 Pa.C.S. §§ 4704 and 8302 (relating to inspection by police or department personnel; and powers and duties of department) ] The term as defined in 75 Pa.C.S. § 102 (relating to definitions).

[ *Radar detector*—49 CFR 390.5 (relating to definitions) incorporated by reference.

*Residence district*—The term as defined in 75 Pa.C.S. § 102.

*Semitrailer*—The term as defined in 75 Pa.C.S. § 102.

*Truck*—The term as defined in 75 Pa.C.S. § 102.

*Truck tractor*—49 CFR 390.5 (relating to definitions) incorporated by reference.

*Vehicle*—The term as defined in 75 Pa.C.S. § 102. ]

§ 229.4. [ General applicability ] (Reserved).

[ 49 CFR 390.3 (relating to general applicability) incorporated by reference. ]

§ 229.5. [ Vehicles used for purposes other than as defined ] (Reserved).

[ 49 CFR 390.33 (relating to vehicles used for purposes other than as defined) incorporated by reference. ]

§ 229.6. [ Motor carrier to require observance of driver regulations ] (Reserved).

[ 49 CFR 390.11 (relating to motor carrier to require observance of driver regulations) incorporated by reference. ]

§ 229.7. [ Aiding or abetting violations ] (Reserved).

[ 49 CFR 390.13 (relating to aiding or abetting violations) incorporated by reference. ]

§ 229.8. [ Additional equipment and accessories ] (Reserved).

[ 49 CFR 390.19 (relating to additional equipment and accessories) incorporated by reference. ]

§ 229.9. [ Marking of motor vehicles ] (Reserved).

[ 49 CFR 390.21 (relating to marking of commercial motor vehicles) incorporated by reference. ]

§ 229.10. [ Relief from hours-of-service regulations—disasters ] (Reserved).

[ 49 CFR 390.23 (relating to relief from hours-of-service regulations—disasters) incorporated by reference. ]

§ 229.11. [ Copies of records or documents ] (Reserved).

[ 49 CFR 390.31 (relating to copies of records or documents) incorporated by reference. ]

§ 229.12. [ Certificates, reports and records: falsification, reproduction or alteration ] (Reserved).

[ 49 CFR 390.35 (relating to certificates, reports, and records: falsification, reproduction, or alteration) incorporated by reference. ]

§ 229.13. [ Violation and penalty ] (Reserved).

[ 49 CFR 390.37 (relating to violation and penalty) incorporated by reference. ]

§ 229.14. Adoption of portions of 49 CFR by reference.

The Department incorporates by reference the following portions of 49 CFR (relating to transportation, subject to §§ 229.3 and 229.15 (relating to definitions; and additions or modifications to 49 CFR).

(1) Part 382 (relating to controlled substances and alcohol use and testing).

(2) Part 385 (relating to safety fitness procedures).

(3) Part 387 (relating to minimum levels of financial responsibility for motor carriers).

(4) Part 390 (relating to Federal motor carrier safety regulations; general).

(5) Part 391 (relating to qualifications of drivers and longer combination vehicle (LCV) driver instructors).

(6) Part 392 (relating to driving of commercial motor vehicles).

(7) Part 393 (relating to parts and accessories necessary for safe operation).

(8) Part 395 (relating to hours of service of drivers).

(9) Part 396 (relating to inspection, repair, and maintenance).

§ 229.15. Additions or modifications to 49 CFR.

A reference to special agent includes a police officer or a qualified Commonwealth employee.

§ 229.16. Adoption of out-of-service criteria.

The out-of-service criteria contained in the North American Standard Out-Of-Service Criteria is incorporated by reference.

§ 229.17 Adoption of interpretation of Federal Motor Carrier Safety Regulations.

The Department hereby adopts, as statements of policy, interpretations of the Federal Motor Carrier Safety Regulations as published by the Federal Motor Carrier Safety Administration for those parts enumerated in § 229.14 (relating to adoption of portions of 49 CFR by reference).

[Pa.B. Doc. No. 09-296. Filed for public inspection February 20, 2009, 9:00 a.m.]

[ 67 PA. CODE CH. 231 ]

Intrastate Motor Carrier Safety Requirements

The Department of Transportation (Department), under the authority contained in 75 Pa.C.S. §§ 4704 and 6103 (relating to inspection by police or Commonwealth personnel; and promulgation of rules and registrations by department) proposes to amend Chapter 231 (relating to intrastate motor carrier safety requirements) to read as set forth in Annex A.

*Purpose of Chapter*

The purpose of Chapter 231 is to prescribe the minimum requirements and qualifications for drivers, vehicles and other matters relating to the intrastate operation of commercial vehicles.

*Purpose of the Proposed Amendments*

The purpose of these proposed amendments to Chapter 231 is to ensure that Pennsylvania's regulations are identical to, or have the same effect as, the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations as required to participate in the Motor Carrier Safety Assistance Program, a Federal funding source administered by the Federal Motor Carrier Safety Administration Program.

*Summary of Significant Amendments*

These proposed amendments will incorporate by reference into Chapter 231 the following provisions of 49 CFR Parts 382, 385, 390—393, 395 and 396.

*Persons and Entities Affected*

These proposed regulations will affect all motor carriers and drivers who operate in intrastate commerce.

*Fiscal Impact*

Implementation of these proposed regulations will not require the expenditure of any additional funds by the Commonwealth or local municipalities. These proposed regulations will not impose any additional costs on the regulated community.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 § P.S. 745.5(a)), the Department submitted a copy of these proposed regulations, on February 10, 2009, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees (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. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed amendments within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Department, the General Assembly and the Governor of comments recommendation, or objections.

*Sunset Provisions*

The Department will make these proposed amendments effective upon publication in final-form following appropriate evaluation of any comments, suggestions or objections received during the period allowed for public comment. The Department is not establishing a sunset date for these regulations, since these regulations are required to participate in the Federal Motor Carrier Safety Assistance Program. The Department, however, will continue to closely monitor these regulations for their effectiveness.

*Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Daryl R. St. Clair within 30 days of the publication of this notice in the *Pennsylvania Bulletin*.

*Contact Person*

The contact person for technical questions about the proposed amendments to the regulations is Daryl R. St. Clair, Bureau of Maintenance and Operations, 400 North Street, 6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120, (717) 787-6899.

ALLEN D. BIEHLER, P. E.,  
*Secretary*

**Fiscal Note:** 18-414. No fiscal impact; (8) recommends adoption.

*(Editor's Note:* As part of this proposed rulemaking, the Department is proposing to rescind Subchapters B—J as follows:

§§ 231.21—231.25, 231.31, 231.32, 231.41—231.44, 231.61—231.66, 231.71 and 231.81—231.85 which appear in 67 Pa. Code pages 231-5—231-11, serial pages (198297)—(198303).

§§ 231.101—231.111, 231.121—231.127, 231.131—231.135, 231.141—231.144, 231.151—231.153, 231.161—231.163 and 231.171—231.181 which appear in 67 Pa. Code pages 231-13—231-18, serial pages (198305)—(198308) and (265941) and (265942).

§§ 231.201—231.223, 231.231—231.243, 231.251—231.254, 231.271, 231.272, 231.281—231.299, 231.301 and 231.311—231.314 which appear in 67 Pa. Code pages 231-20—231-29, serial pages (198312)—(198321).

§§ 231.331 and 231.341—231.347 which appear in 67 Pa. Code pages 231-29—231-36, serial pages (198321)—(198328).

§§ 231.361—231.367 which appear in 67 Pa. Code pages 231-36—231-38, serial pages (198328)—(198330).

§§ 231.381—231.392 which appear in 67 Pa. Code pages 231-38 and 231-39, serial pages (198330) and (198331).

§ 231.411 which appears in 67 Pa. Code pages 231-39 and 231-40, serial pages (198331) and (198332).

§§ 231.451—231.453 which appear in 67 Pa. Code pages 231-40—231-42, serial pages (198332)—(198334).

Appendices (A) and (B) which appear in 67 Pa. Code pages 231-42—231-59 serial pages (198334)—(198351).

**Annex A**

**TITLE 67. TRANSPORTATION**

**PART I. DEPARTMENT OF TRANSPORTATION**

**Subpart A. VEHICLE CODE PROVISIONS**

**ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT**

**CHAPTER 231. INTRASTATE MOTOR CARRIER SAFETY REQUIREMENTS**

**Subchapter A. GENERAL**

**§ 231.1. General information and requirements.**

(a) *Purpose.* The purpose of this chapter is to prescribe the minimum requirements and qualifications for drivers, vehicles and other matters relating to the intrastate operation of commercial motor vehicles. Much of this chapter incorporates by reference 49 CFR [ 390—397 ] **Parts 382, 385 and 390—396 and the North American Standard Out-of-Service Criteria.** Appropriate parts may be obtained from the following:

\* \* \* \* \*

**(4) Commercial Vehicle Safety Alliance, 1101 17th Street NW, Suite 803, Washington, DC 20036.**

\* \* \* \* \*

(c) *Title and name changes.* To reconcile differences between this chapter and the incorporated sections of Federal regulations and to effectuate their joint enforcement, **except in 49 CFR Part 382 (relating to controlled substances and alcohol use and testing),** the following words and terms, **unless the context clearly indicates otherwise,** shall be substituted for the language of the Federal regulations as follows:

(1) Reference to the Department of Transportation means the **Pennsylvania Department of Transportation.**

(2) Reference to the [ **Director means the** ] **Secretary means the Secretary of the Pennsylvania Department of Transportation.**

(3) Reference to [ the Regional Highway Administrator means the Secretary ] special agent includes a police officer or a qualified Commonwealth employee.

(4) Reference to Department means the Pennsylvania Department of Transportation.

(5) Reference to school bus means the term as defined in 75 Pa.C.S. § 102 (relating to definitions).

(6) Reference to Director, Office of Bus and Truck Standards and Operations (MC PSD) means Director of the Bureau of Driver Licensing of the Commonwealth.

(7) Reference to State Director or Division Administrator, FMCSA means the Director of the Bureau of Driver Licensing of the Commonwealth.

(8) Reference to Medical Program Specialist, FMCSA field service center means the Medical Unit of the Bureau of Driver Licensing of the Commonwealth.

\* \* \* \* \*

§ 231.2. Scope.

(a) Except as otherwise provided, this chapter applies to [ vehicles, including buses, motor vehicles and combinations of vehicles; and to drivers of buses or motor vehicles engaged in intrastate commerce if the registered gross weight of the vehicle or combination of vehicles exceeds 17,000 pounds ] commercial motor vehicles and school buses engaged in intrastate commerce.

\* \* \* \* \*

[ (c) This chapter does not apply to the following classes of vehicles and their drivers:

- (1) Farm trucks not required to be registered.
- (2) Special mobile equipment.
- (3) Implements of husbandry.

(d) Subchapters B and E (relating to qualifications of drivers; and hours of service of drivers) do not apply to drivers of farm trucks whether or not required to be registered and not carrying hazardous materials in an amount and type which require the vehicle to be placarded or marked under regulations promulgated under 75 Pa.C.S. §§ 8301—8308 (relating to hazardous materials transportation).

(e) This chapter does not apply to maintenance mechanics driving vehicles as part of their duties related to routine road tests or other maintenance tests provided the mechanic operates the vehicle within 25 air miles of the maintenance facility to which he is assigned. ]

§ 231.3. Definitions.

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

[ *Bus*—The term as defined in 75 Pa.C.S. § 102 (relating to definitions).

*Business district*—49 CFR 390.12 (relating to business districts) incorporated by reference.

*Department*—The Department of Transportation of the Commonwealth.

*Driveaway-towaway operation*—49 CFR 390.9 (relating to driveaway-towaway operation) incorporated by reference.

*Driver*—The term as defined in 75 Pa.C.S. § 102.

*Full trailer*—49 CFR 390.7 (relating to full trailer) incorporated by reference.

*Gross weight*—The term as defined in 75 Pa.C.S. § 102.

*Interstate commerce*—Trade, traffic or transportation of property or persons by highway between a place in this Commonwealth and a place in another state or between a place in one state and a place in another state with transportation by highway through this Commonwealth.

*Intrastate commerce*—The trade, traffic or transportation of property or persons by highway between places within this Commonwealth.

*Lightweight vehicle*—A motor vehicle, other than a vehicle that is being used to transport passengers for hire; or a vehicle that is being used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded under 49 CFR 177.823 that was one of the following:

(i) Manufactured on or after January 1, 1972, and has a manufacturer's gross vehicle weight rating of 17,000 pounds or less, in the case of a single vehicle, or a manufacturer's gross combination weight rating of 17,000 pounds or less, in the case of an articulated vehicle.

(ii) Manufactured before January 1, 1972, and has a gross weight including its load and the gross weight of the vehicle being towed by the motor vehicle, of 17,000 pounds or less.

*Motor carrier*—49 CFR 390.15 (relating to motor carrier) incorporated by reference.

*Motor carrier vehicle*—The term as defined in 75 Pa.C.S. § 102.

*Pole trailer*—49 CFR 390.8 (relating to pole trailer) incorporated by reference. ]

*Qualified Commonwealth [ employe ] employee*—[ A Commonwealth employe designated by the Department who is authorized to inspect vehicles, drivers, documents, equipment and loads, or cargo as provided in 75 Pa.C.S. §§ 4704 and 8302 (relating to inspection by police or Commonwealth personnel; and powers and duties of department). ] The term as defined in 75 Pa.C.S. § 4102 (relating to definitions).

[ *Radar detector*—49 CFR 390.5 (relating to definitions) incorporated by reference.

*Residence district*—49 CFR 390.13 (relating to residence district) incorporated by reference. ]

*School bus*—The term as defined in 75 Pa.C.S. § 102.

[ *Secretary*—The Secretary of the Department.

*Semitrailer*—49 CFR 390.6 (relating to semitrailer) incorporated by reference.

*Truck*—The term as defined in 75 Pa.C.S. § 102.

*Truck tractor*—49 CFR 390.5 (relating to truck tractor) incorporated by reference.

**Vehicle**—The term as defined in 75 Pa.C.S. § 102. ]  
 § 231.4. [ Other terms ] (Reserved).

[ 49 CFR 390.28 (relating to other terms) incorporated by reference. ]

§ 231.5. [ Vehicles used for purposes other than as defined ] (Reserved).

[ 49 CFR 390.31 (relating to vehicles used for purposes other than as defined) incorporated by reference. ]

§ 231.6. [ Motor carrier to require observance of driver regulations ] (Reserved).

[ 49 CFR 390.32 (relating to motor carrier to require observance of driver regulations) incorporated by reference. ]

§ 231.7 Adoption of portions of 49 CFR by reference.

The Department incorporates by reference the following portions of 49 CFR (relating to transportation), subject to §§ 231.3 and 231.8 (relating to definitions; and additions or modifications to 49 CFR).

(1) Part 382 (relating to driver drug and alcohol testing).

(2) Part 385 (relating to safety fitness procedures).

(3) Part 390 (relating to Federal motor carrier safety regulations; general).

(4) Part 391 (relating to qualifications of drivers).

(5) Part 392 (relating to driving of motor vehicles).

(6) Part 393 (relating to parts and accessories necessary for safe operation).

(7) Part 395 (relating to hours of service for drivers).

(8) Part 396 (relating to inspection, repair and maintenance).

§ 231.8 Additions or modifications to 49 CFR.

As stated in § 231.7 (relating to adoption of portions of 49 CFR by reference), this chapter generally incorporates 49 CFR Parts 382, 385, 390, 391, 392, 393, 395 and 396. The following modifications, additions and deletions to those parts apply:

(1) The definition of "commercial motor vehicle" in 49 CFR 390.5 (relating to definitions) is modified to read as follows:

**Commercial motor vehicle**—A motor vehicle or combination used on a highway in intrastate commerce to transport passengers or property when the vehicle meets one of the following conditions:

(i) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 17,001 pounds or more, whichever is greater.

(ii) Is designed or used to transport more than eight passengers (including the driver) for compensation.

(iii) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation.

(iv) Is a school bus.

(v) Is transporting hazardous materials which is required to be placarded in accordance with Department regulations.

(2) 49 CFR 390.3 (relating to general applicability) is modified by deleting subsection (f)(1) and (2).

(3) 49 CFR 390.19 (relating to motor carrier identification report) is deleted in its entirety.

(4) 49 CFR 390.21 (relating to marking of CMVs) is deleted in its entirety.

(5) 49 CFR 391.2 (relating to general exceptions) is modified to add an exemption for an inspection mechanic who is performing a road test as required under Chapter 175 (relating to vehicle equipment and inspection) from the requirements of 49 CFR Part 391 (relating to qualifications of drivers and longer combination vehicle (LCV) driver instructors).

(6) 49 CFR 391.2 is modified to add an exemption from the requirements of 49 CFR Part 391 for regularly employed drivers of State and local governments and agencies of State and local government.

(7) 49 CFR 391.11(b)(4) (relating to general qualifications of drivers) is modified to exempt school bus drivers who are required to comply with the medical regulations in Chapter 71 (relating to school bus drivers).

(8) 49 CFR Part 391 is modified by adding the following exemption regarding drivers regularly employed as of September 23, 1995, and the parameters for the exemption:

(i) A regularly employed driver as of September 23, 1995, who cannot meet the physical qualifications requirements of 49 CFR Part 391, will be considered to be qualified to operate in intrastate commerce if certified by the medical examiner and motor carrier in accordance with this section. The driver shall be considered qualified only until the existing unqualifying medical or physical condition significantly worsens or a new unqualifying medical or physical condition develops subsequent to September 23, 1995.

(ii) The motor carrier's certification shall be based on a review of the driver's past driving safety record and accident history. The motor carrier's certification must be on a form prescribed by the Department and will be valid for a period commensurate with the period of the medical examiner's certificate issued in accordance with this chapter.

(iii) A copy of the medical examiner's initial certificate establishing a driver's qualification under this section and annotated in accordance with subparagraph (iv), the most current biannual medical examiner's certificate and the most current certification by the employing motor carrier that the driver is qualified to operate in intrastate commerce shall be maintained in the driver's qualification file for the entire period of the driver's term of employment and for an additional 2 years after termination of employment.

(iv) If the medical examiner determines that the driver is only qualified to drive in intrastate commerce in accordance with the requirements in this paragraph, the medical examiner's certificate re-

quired under 49 CFR 391.43 (relating to medical examination; certificate of physical examination) must display the statement "Medically qualified to operate in intrastate commerce only."

(9) 49 CFR 391.67 is modified to reference "16 years of age or older" rather than "18 years of age or older."

(10) 49 CFR 391.11(b)(1) is deleted.

(11) 49 CFR 391.47(e) (relating to resolution of conflicts of medical evaluation) is modified to reference Chapter 491 (relating to administrative practice and procedure) instead of § 386.13(a).

(12) 49 CFR 391.47(f) is modified to read as follows:

(f) *Status of driver.* Once a petition for review of a decision of the Director of the Bureau of Driver Licensing is submitted, the driver shall be deemed disqualified until the Pennsylvania Secretary of Transportation makes a determination or orders otherwise.

(13) 49 CFR 390.27 (relating to locations of motor carrier safety service centers) is amended to read as follows:

**390.27 Address of the Medical Unit of the Bureau of Driver Licensing**

The mailing address for the Medical Unit is PENNDOT, Bureau of Driver Licensing, Medical Unit, 1101 South Front Street, 3rd Floor, Harrisburg, PA 17104-2516.

(14) 49 CFR 385.1 (relating to purpose and scope) is modified to add an exemption for farmers from the requirements of Part 385 (relating to safety fitness procedures).

**§ 231.9 Adoption of out-of-service criteria.**

The out-of-service criteria contained in the North American Standard Out-Of-Service Criteria is incorporated by reference.

**§ 231.10 Adoption of interpretation of Federal Motor Carrier Safety Regulations.**

The Department hereby adopts, as statements of policy, interpretations of the Federal Motor Carrier Safety Regulations as published by the Federal Motor Carrier Safety Administration for those parts enumerated in § 231.7 (relating to adoption of portions of 49 CFR by reference).

[Pa.B. Doc. No. 09-297. Filed for public inspection February 20, 2009, 9:00 a.m.]

**PENNSYLVANIA GAMING CONTROL BOARD**

[ 58 PA. CODE CH. 437a ]

**Vendor Permission to Conduct Business Prior to Certification or Registration**

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. § 1321 (relating to additional licenses and permits and approval of agreements), pro-

poses to amend Chapter 437a (relating to vendor certification and registration) to read as set forth in Annex A.

*Purpose of the Proposed Rulemaking*

This proposed rulemaking amends § 437a.9 (relating to permission to conduct business prior to certification or registration) which allows a vendor to provide goods or services to a slot machine applicant or licensee while the vendor's application for certification or registration is being reviewed. Under this amendment, the vendor would have to cease providing goods or services if it receives a Notice of Recommendation for Denial of its application from the Office of Enforcement Counsel.

*Explanation of Amendments to Chapter 437a*

Currently, a vendor may request permission to provide goods or services to a slot machine applicant or licensee while the application is being reviewed.

Under this proposed rulemaking, if the Office of Enforcement Counsel issues a Notice of Recommendation for Denial to a vendor applicant that has received this permission, the applicant will have to cease providing goods or services to the slot machine applicant or licensee. The Bureau of Licensing will also notify the affected slot machine applicants or licensees that they may no longer do business with the vendor applicant.

*Affected Parties*

This proposed rulemaking will affect applicants for vendor certification or registration that have been granted permission to provide goods or services to a slot machine applicant or licensee while the applicant or licensee's application is being reviewed. It may also affect slot machine applicants and licensees.

*Fiscal Impact*

*Commonwealth*

The proposed rulemaking will have no fiscal impact on the Board or other agencies of the Commonwealth.

*Political Subdivisions*

This proposed rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

*Private Sector*

Vendors who have been granted permission to provide goods or services while their application is being reviewed could lose that privilege. If the Office of Enforcement Counsel issues a Notice of Recommendation for Denial to a vendor applicant, the applicant will have to cease providing goods or services to an applicant for or holder of a slot machine license.

Similarly, the slot machine applicant or licensee will have to find a different vendor to provide the goods or services that the vendor applicant had been providing.

*General Public*

This proposed rulemaking will have no fiscal impact on the general public.

*Paperwork requirements*

No new reporting or paperwork requirements are created by this rulemaking. Issuing a Notice of Recommendation for Denial to an applicant is part of the current application process.

*Effective Date*

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

*Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Richard Sandusky, Director of Regulatory Review, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-97.

*Contact Person*

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review, at (717) 214-8111.

*Regulatory Review*

In accordance with section 5(a) and (f) of the Regulatory Review Act (71 P. S. §§ 745.5(a) and (b)), on February 5, 2009, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form, to the Legislative Reference Bureau for publication of notice of proposed rulemaking in the *Pennsylvania Bulletin*, and to the Independent Regulatory Review Commission (IRRC). In accordance with section 5(f) of the act (71 P. S. § 745.5(f)), the Board will submit the proposed rulemaking and the required material to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee no later than the second Monday after the date by which both committee designations have been published in the *Pennsylvania Bulletin*. A copy of this material is available to the public upon request and is available on the Board's web site at [www.pgcb.state.pa.us](http://www.pgcb.state.pa.us).

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

MARY DIGIACOMO COLINS,  
*Chairperson*

**Fiscal Note:** 125-97. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART VII. GAMING CONTROL BOARD**

**Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION**

**CHAPTER 437a. VENDOR CERTIFICATION AND REGISTRATION**

**§ 437a.9. Permission to conduct business prior to certification or registration.**

\* \* \* \* \*

**(b) If the Office of Enforcement Counsel issues a Notice of Recommendation for Denial to an applicant for certification or registration authorized to conduct business with a slot machine applicant or licensee under subsection (a), the applicant for certification or registration shall immediately cease conducting business with the slot machine applicant or licensee.**

**(c) When the Office of Enforcement Counsel issues a Notice of Recommendation for Denial to an applicant for certification or registration authorized to conduct business with a slot machine applicant or licensee under subsection (a), the Bureau of Licensing will notify the slot machine applicant or licensee that the authorization for the applicant for certification or registration to conduct business with the slot machine applicant or licensee under subsection (a) has been rescinded and that the slot machine applicant or licensee shall immediately cease conducting business with the applicant for certification or registration.**

**(d) Permission to conduct business under this section will be for 6 months.**

**[ (c) ] (e) The Board may extend the relief for additional 6-month periods upon a showing of good cause by the slot machine applicant or licensees.**

[Pa.B. Doc. No. 09-298. Filed for public inspection February 20, 2009, 9:00 a.m.]

**STATE BOARD OF CHIROPRACTIC**

**[ 49 PA. CODE CH. 5 ]**

**Needle Acupuncture**

The State Board of Chiropractic (Board) proposes to amend § 5.81(1)(xv) (relating to unprofessional and immoral conduct) to read as set forth in Annex A.

*Effective date*

The amendment will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

*Statutory Authority*

The amendment is authorized under sections 302(3), 506(a)(4) and 506(a)(11) of the Chiropractic Practice Act (act) (63 P. S. §§ 625.302(3), 625.506(a)(4) and 625.506(a)(11)).

*Background and Need for the Amendment*

Section 102 of the act (63 P. S. § 625.102) generally defines chiropractic as a branch of the healing arts dealing with the relationship between the articulations of the vertebral column, as well as other articulations, and the neuro-musculo-skeletal system and the role of these relations in the restoration and maintenance of health. This definition explicitly excludes surgery from the scope of chiropractic practice. Without statutory support for the practice of needle acupuncture to be considered part of the practice of chiropractic (as it is in some other jurisdictions), the Board previously prohibited its licensees from advertising or practicing needle acupuncture. Because the Board may take disciplinary action against a licensee who has displayed misconduct in the practice of chiropractic or committed unprofessional conduct, the Board achieved this prohibition by defining misconduct to include advertising or practicing needle acupuncture.

Under the Acupuncture Registration Act (63 P. S. §§ 1801—1806.1), a qualified person may become registered to practice acupuncture by the State Board of Medicine or the State Board of Osteopathic Medicine. Unlike dentists, podiatrists and veterinarians as provided in section 3(h) of the Acupuncture Registration Act (63



P. S. § 1803(h)), a chiropractor seeking to practice acupuncture must become registered with one of these medical boards under the Acupuncture Registration Act and be subject to regulation of that medical board. Although it is not the practice of chiropractic, the Board sees no compelling basis to prohibit the practice of acupuncture by a licensed chiropractor who is registered with a medical board to practice acupuncture and is acting in accordance with that medical board's regulations concerning the practice of acupuncture.

*Description of the Proposed Amendments*

The proposed rulemaking would amend § 5.81(1)(xv). A licensee who is registered to do so by the State Board of Medicine or the State Board of Osteopathic Medicine and acting in accordance with the act and regulations of the appropriate medical board would not be subject to the prohibition against advertising or practicing needle acupuncture.

*Fiscal Impact and Paperwork Requirements*

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendment will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

*Sunset Date*

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 11, 2009, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, by mail at P. O. Box 2649, Harrisburg, PA 17105-2649, or by e-mail at st-chiro@state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-4317 (Needle acupuncture), when submitting comments.

JONATHAN W. MCCULLOUGH, D. C.,  
*Chairperson*

**Fiscal Note:** 16A-4317. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 13. STATE BOARD OF CHIROPRACTIC**

**Subchapter H. DISCIPLINARY ACTION**

**§ 5.81. Unprofessional and immoral conduct.**

A licensee who engages in unprofessional or immoral conduct is subject to disciplinary action in accordance with section 506 of the act (63 P. S. § 625.506).

(1) Unprofessional conduct includes the following.

\* \* \* \* \*

(xv) Practicing or advertising needle acupuncture, **unless the licensee is registered to do so by the State Board of Medicine or the State Board of Osteopathic Medicine and acting in accordance with the Acupuncture Registration Act (63 P. S. §§ 1801—1806.1) and regulations of the State Board of Medicine in §§ 18.11—18.18 (relating to registration and practice of acupuncturists) or regulations of the State Board of Osteopathic Medicine in §§ 25.301—25.308 (relating to registration and practice of acupuncturists).**

\* \* \* \* \*

[Pa.B. Doc. No. 09-299. Filed for public inspection February 20, 2009, 9:00 a.m.]

**STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS**

[ 49 PA. CODE CH. 39 ]

**Continuing Education**

The State Board of Examiners of Nursing Home Administrators (Board) proposes to amend § 39.61 (relating to requirements), to read as set forth in Annex A. The proposed amendment would clarify, update and expand on the continuing education requirements.

**A. Effective Date**

The proposed amendment will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

**B. Statutory Authority**

The Board has authority to adopt regulations pertaining to continuing education under sections 4(c) and 9(b) of the Nursing Home Administrators License Act (act) (63 P. S. §§ 1104(c) and 1109(b)).

**C. Background and Need for Amendments**

Section 9(b) of the act requires licensees to complete continuing education as a condition of biennial renewal. The proposed amendments to § 39.61 clarify, update, and expand on the continuing education clock hour requirements.

#### D. Description of Proposed Amendments

The proposed amendment to § 39.61(b) clarifies that the 48 required continuing education clock hours must be completed in courses preapproved by the National Association of Boards of Examiners of Long-Term Care Administrators (NAB) or the Board, except in limited circumstances, including serving as an instructor or authoring an article, or when a course is approved retroactively under subsection (c)(5) for those continuing education courses that have not been preapproved.

Currently, there are restrictions placed on the number of continuing education clock hours that may be completed based on the modality of instruction. For example, licensees are required to take at least 24 hours in lecture or computer interactive courses; and licensees are permitted to take a maximum of 24 clock hours through college or university courses and a maximum of 12 hours in correspondence courses. The Board believes that these restrictions are outdated and should be lifted. The proposed amendment would permit licensees to take all 48 clock hours in any of the various modalities, including lecture, college or university, computer interactive, distance learning or correspondence courses, so long as the courses are approved by NAB or the Board.

In addition, the Board is proposing an amendment to increase the amount of time, from 30 days to 60 days, that a licensee would have in which to gain Board approval for authoring an article on long-term care after publication or for attending programs which have not been preapproved by NAB or the Board. Section 39.61(c)(5) would also raise the maximum number of clock hours that may be awarded for attending programs which have not been preapproved by NAB or the Board, from 6 to 12, so long as the licensee submits the required documentation to the Board within 60 days of attending the program.

Finally, § 30.61(f) would be amended to clarify that when the Board determines that a licensee requesting a waiver has not met the "illness, emergency or hardship" standard for grant of a waiver, the Board may elect to grant the licensee an extension of time to complete the continuing education clock hours.

#### E. Fiscal Impact

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

#### F. Paperwork Requirements

The proposed amendment will impose no additional paperwork requirements upon the Commonwealth or its political subdivisions or the private sector.

#### G. Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

#### H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 11, 2009, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objec-

tions to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

#### I. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Roberta Silver, Board Counsel, State Board of Examiners of Nursing Home Administrators, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6212 (Continuing Education) when submitting comments.

BARRY S. RAMPER, II,  
Chairperson

**Fiscal Note:** 16A-6212. No fiscal impact; (8) recommends adoption.

### Annex A

## TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

### PART I. DEPARTMENT OF STATE

#### Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

#### CHAPTER 39. STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

#### CLOCK HOURS REQUIREMENT

#### § 39.61. Requirements.

(a) A licensee shall complete at least 48 clock hours of **continuing education** during the preceding biennial period.

(b) [ **Of the 48 hours required, the following apply:** ] All continuing education clock hours shall be completed in courses preapproved by NAB or the Board, except as provided in subsection (c)(2)—(5).

(c) **Of the 48 clock hours required, the following apply:**

(1) [ **At least 24 hours shall be taken in lecture or computer interactive courses approved by NAB or the Board.**

(2) **Up to 24 clock hours may be taken through college or university courses, including distance learning, approved by NAB or the Board.** ] Up to 48 clock hours may be taken in lecture, college or university, computer interactive, distance learning or correspondence courses preapproved by NAB or the Board.

[ (3) ] (2) A maximum of 12 clock hours may be [ **taken in the following categories:**

(i) **Individual study using NAB or Board-approved correspondence courses.**

(ii) **Serving ] earned by serving** as an instructor of a NAB or Board-approved continuing education program or **as an instructor of** a college or university course **approved by NAB or the Board.** Instructors may earn 1 clock hour for each hour of instruction up to 12 clock hours.

**[ (4) Authoring ] (3) Clock hours may be earned by authoring an article on long-term care[.] as follows:**

(i) Authors whose articles relating to long-term care are published in professional journals may earn 3 clock hours per article, up to a maximum of 12 clock hours per biennium.

(ii) Additional credit per article, up to 12 of the required clock hours, may be awarded based on the complexity of the subject matter or work.

(iii) In exceptional circumstances, when the article is published in a refereed journal, and the subject matter or work is complex, a licensee may be awarded up to 24 clock hours.

(iv) Published articles used for continuing education credit shall be submitted to the Board within **[ 30 ] 60** days of publication. Upon review of the published article, the Board will determine the appropriate number of clock hours to be awarded based upon the complexity of the subject matter or work.

(4) Up to 24 clock hours may be obtained by serving as a supervisor in a Board-approved AIT program, when the AIT successfully completes the AIT program.

**[ (6) ] (5)** A maximum of **[ 6 ] 12** clock hours may be awarded retroactively for attending programs, to include lectures, and college or university courses, which have not been preapproved. The attendee shall submit a written request for approval within **[ 30 ] 60** days of attending the program and document attendance. The attendee shall demonstrate to the Board's satisfaction that the

programs meet the requirements of §§ 39.14(a)(2) and 39.51 (relating to approval of programs of study; and standards for continuing education programs).

**[ (c) ] (d)** A licensee who obtains a license after the biennial period begins shall complete a prorated amount of clock hours equal to 2 clock hours per month through the end of the biennial period. For the purpose of calculating the number of clock hours required, partial months shall count as whole months.

**[ (d) ] (e)** A licensee suspended for disciplinary reasons is not exempt from the continuing education requirements in subsection (a).

**[ (e) ] (f)** A licensee who cannot meet the continuing education requirement due to illness, emergency or hardship may apply to the Board in writing prior to the end of the renewal period for a waiver. The request **[ shall ] must** explain why compliance is impossible, and include appropriate documentation. Waiver requests will be evaluated by the Board on a case-by-case basis. **When the Board determines that a licensee has not met the illness, emergency or hardship requirement for the grant of a waiver, the Board may grant an extension of time for the licensee to complete the continuing education requirement.**

**[ (f) ] (g)** A licensee will not be credited for repeating a program in the same renewal period unless the subject matter has substantially changed during that period.

[Pa.B. Doc. No. 09-300. Filed for public inspection February 20, 2009, 9:00 a.m.]