

PROPOSED RULEMAKING

GAME COMMISSION

[58 PA. CODE CHS. 135 AND 141]

Lands and Buildings; Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 23, 1996, meeting, proposed the following amendments:

1. Amend § 135.107 (relating to Middle Creek Wildlife Management Area) to provide more flexibility in the administration of the Middle Creek Wildlife Management Area (MCWMA) and to provide for some additional recreational activities through special hunting opportunities on the area.

2. Amend § 141.1 (relating to special regulations areas) to provide adequate flexibility for the controlling of deer by political subdivisions issued a deer control permit and located within the Special Regulations Areas by adding new language to allow the use of rifles and single-projectile ammunition specifically for deer control purposes within the Special Regulations Areas.

3. Amend § 141.23 (relating to nontoxic shot) to restrict the shot size of nontoxic shot used to hunt waterfowl in this Commonwealth.

4. Amend § 141.25 (relating to early and late goose hunting seasons) to permit the taking of Canada geese until September 25 Statewide, except in Crawford County where the season will have to close on September 15.

5. Amend Chapter 141 by adding §§ 141.26 and 141.27 (relating to early Canada goose hunting season on Middle Creek Wildlife Management Area; and early Canada goose hunting season on Pymatuning Wildlife Management Area) to better utilize the controlled hunting areas at the MCWMA, as well as the Pymatuning Wildlife Management Area (PWMA) and to fall into place with our existing language that establishes the early and late Canada goose hunting season.

6. Amend § 141.45 (relating to turkey) to restrict fall turkey hunting in Turkey Management Area No. 9-B to shotguns and bows and arrows only.

7. Amend § 141.61 (relating to trapping hours) to permit the removal of traps by trappers no later than sunset on the last day of the trapping season, instead of the 12 noon time currently provided for.

These amendments will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for these proposed amendments is 34 Pa.C.S. (relating to the Game and Wildlife Code) (code).

The proposals were made public at the January 23, 1996, meeting of the Commission and comments on these proposals can be sent to the Executive Director of the Game Commission, 2001 Elmerton Ave., Harrisburg, PA 17110-9797, until April 10, 1996.

Proposed Amendment to § 135.107

1. *Introduction*

To provide more flexibility in the administration of the MCWMA and to provide additional recreational opportunities, the Commission proposes to amend § 135.107 relating to MCWMA to allow fishing by permit only, to allow closing of roadways and trails utilizing gates, to

control shot size for small game and waterfowl hunting and to provide for special rabbit and squirrel hunts. These proposals are made under the authority contained in section 721(a) of the code (relating to control of property).

2. *Purpose and Authority*

Section 135.107 currently does not permit fishing or special rabbit and squirrel hunts in controlled hunting areas on the MCWMA nor does it regulate shot sizes for hunting small game and waterfowl on the MCWMA. The Commission has decided that these activities can be safely conducted by permit only in the controlled hunting areas with limitations on shot size. These changes are proposed under authority contained in section 721(a) of the code which requires the Commission to promulgate regulations necessary to properly manage State game lands.

3. *Regulatory Requirements*

The proposed changes would require the obtaining of a permit prior to fishing or participating in special rabbit or squirrel hunts in controlled hunting areas of the MCWMA. The changes would also permit closing of roads to all entry by closing of gates and require that nontoxic shot no larger than #4 Bismuth/tin and #2 steel be used in hunting small game in the controlled and propagation areas and no larger than Size "T" to hunt waterfowl.

4. *Persons Affected*

Persons wishing to use the MCWMA may be affected by the proposed changes.

5. *Cost and Paperwork Requirements*

Persons wishing to fish in controlled hunting areas of the MCWMA would need to first obtain a permit. It is anticipated that the number of those permits will be fairly small.

Proposed Amendment to § 141.1

1. *Introduction*

The Commission proposes to amend § 141.1 to create an exception which would allow municipalities holding valid deer control permits to kill deer with rifles firing single projectile ammunition in the special regulations areas. These changes are proposed under sections 322(c)(5) and 2102(b)(1) of the code (relating to powers and duties of Commission; and regulations).

2. *Purpose and Authority*

Currently, § 141.1 makes it unlawful to kill wildlife in special regulations areas with single projectile ammunition. The purpose behind issuing deer control permits to municipalities is to reduce deer populations in the most efficient manner possible. The proposed changes will provide an option under appropriate circumstances to achieve this purpose while still insuring safety.

Section 322(c)(5) of the code empowers the Commission to fix the type and number of devices which may be used to take game or wildlife. Section 2102(b) of the code authorizes the Commission to promulgate regulations relating to these devices. The proposed changes would be adopted under this authority.

3. *Regulatory Requirements*

The proposed changes would not result in any additional regulatory requirements.

4. *Persons Affected*

Municipalities with deer control permits will be affected by the proposed changes.

5. *Cost and Paperwork Requirements*

The proposed amendment would not result in additional costs or paperwork.

Proposed Amendment to § 141.23

1. *Introduction*

The Commission proposes to amend § 141.23 to permit the use of any shot composition and size up to "T" approved by the Director of the United States Fish and Wildlife Service (USFWS) to hunt migratory waterfowl in this Commonwealth. This change was made under sections 322(c)(1) and 2102(b)(1) of the code.

2. *Purpose and Authority*

The Commission has the authority under section 2102(a) of the code to "... promulgate such regulations as it seems necessary and appropriate concerning game and wildlife..." Section 322 of the code specifically empowers the Commission to "fix the type and number of devices which may be used to take game or wildlife."

The proposed change broadens the language of § 141.25 to permit the lawful use of shot composition and cartridge lengths approved by the Director of the USFWS in the future to hunt migratory waterfowl. The proposed changes also puts a maximum lawful size limit on the shot of "T."

3. *Regulatory Requirements*

The proposed change permits the lawful use of shot compositions and cartridge lengths to hunt migratory waterfowl in this Commonwealth so long as they are approved by the Director of the USFWS.

4. *Persons Affected*

Persons wishing to hunt waterfowl in this Commonwealth would be affected.

5. *Cost and Paperwork*

The proposed change would not result in additional costs either to the Commission or to hunters.

Proposed Amendment to § 141.25

1. *Introduction*

The Commission proposes to amend § 141.25 to extend the early Canada goose hunting season an additional 10 days. This change was proposed under sections 322(c)(1) and 2102(b)(1) of the code.

2. *Purpose and Authority*

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Section 322 of the code specifically empowers the Commission to fix seasons for any species of game or wildlife. Section 2102(b) of the code mandates that the Commission promulgates regulations relating to seasons and bag limits.

Because concerns about the migratory goose populations will likely result in no regular goose hunting season in this Commonwealth, extension of the early season, which targets resident geese, should help to control resident populations. This should result in a reduction in nuisance goose complaints.

3. *Regulatory Requirements*

These proposed changes would make it lawful to hunt Canada Geese in this Commonwealth except Crawford County during an additional 10-day period.

4. *Persons Affected*

Persons wishing to hunt geese in this Commonwealth would be affected by the proposed change.

6. *Cost and Paperwork Requirements*

The proposed change would not result in additional costs, either to the Commission or to hunters or furtakers.

Proposed Additions of §§ 141.26 and 141.27

1. *Introduction*

The Commission proposes to add §§ 141.26 and 141.27. These sections would provide procedures to have goose hunting during the early goose season at the MCWMA and PWMA when the USFWS closes the regular goose hunting season. These provisions are proposed under section 2102(b)(1) of the code and the authority contained in section 721(a) of the code.

2. *Purpose and Authority*

Because of concerns about a dramatic drop in migratory Canada goose populations, the USFWS closed the regular 1995 goose hunting season in all but four counties in northwestern Pennsylvania. As a result, the provisions for controlled goose hunting at the MCWMA and PWMA contained in § 135.103 could not be implemented. At the same time, resident Canada goose populations have been increasing throughout this Commonwealth since the 1970's. Associated with these increases have been increases in crop damage and nuisance complaints. The experimental early and late Canada goose seasons started in 1992 were successful in harvesting nuisance geese and providing additional recreational opportunities.

The proposed changes would give the Commission the option of having goose hunting during the early goose season at the MCWMA and PWMA if the USFWS closes the regular goose hunting season. Section 2102(b) of the code mandates that the Commission promulgate regulations relating to seasons and bag limits. Section 721(a) of the code authorizes the Commission to adopt regulations to manage lands and waters under its control. Both of these sections authorize the proposed regulations.

3. *Regulatory Requirements*

The proposed additions would not involve additional regulatory requirements over and above what is already in § 135.103.

4. *Persons Affected*

Persons wishing to hunt Canada Geese in this Commonwealth in the early season at the MCWMA or PWMA would be affected by these regulations.

5. *Cost and Paperwork Requirements*

No additional costs or paperwork over and above what has been already established.

Proposed Amendment to § 141.45

1. *Introduction*

The Commission proposes to amend § 141.45 to prohibit the use of rifles, single projectile ammunition except bows and arrows for taking wild turkey during the fall season in Turkey Management Area No. 9. This change is proposed under section 2102(b) of the code.

2. Purpose and Authority

At its October 3, 1995, meeting, the Commission decided that wild turkey populations in part of Turkey Management Area No. 9 are sufficient to permit a fall turkey hunting season. Because of the density of development in these areas, however, it was decided that safety required excluding rifles and single projectile ammunition except bows and arrows. The proposed changes would accomplish this purpose.

Section 2102(b) of the code directs the Commission to "... promulgate regulations relating to seasons and bag limits for hunting and furtaking... and the use and possession of devices." That section provides authority for this change in the regulation.

3. Regulatory Requirements

The proposed change would prohibit the use of rifles and single projectile ammunition except bows and arrows to hunt wild turkeys during the fall season in Turkey Management Area Number 9.

4. Persons Affected

Those wishing to hunt turkeys during the fall season in Turkey Management Area Number 9 would be affected by the change.

5. Cost and Paperwork Requirements

The Commission anticipates no additional cost or paperwork to result from this change.

Proposed Amendments to § 141.61

1. Introduction

The Commission proposes to amend § 141.61 to allow trappers until sunset on the closing day to remove their traps. The change was proposed under sections 322(c)(1) and 2102(a) of the code.

2. Purpose and Authority

Section 141.61 currently requires trappers to remove their traps by noon of the closing day of the season. This can be burdensome on individuals with extensive trap lines. Because the impact on the wildlife resources of moving the closing time to later is negligible, the Commission has decided to move the deadline to sunset.

Section 322(c)(1) of the code empowers the Commission to fix daily shooting or taking hours. Section 2102(a) of the code authorizes the Commission to promulgate regulations relating to furtaking in this Commonwealth. The proposed change would be adopted under this authority.

3. Regulatory Requirements

The proposed change would relax regulatory requirements.

4. Persons Affected

Individuals wishing to trap in this Commonwealth would be affected by the proposed change.

5. Cost and Paperwork Requirements

The proposed change would not result in additional costs or paperwork.

Effective Date

These changes would be effective on final publication in the *Pennsylvania Bulletin* and would remain in effect until changed by the Commission.

Contact Person

For further information on the proposed changes, contact James R. Fagan, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

DONALD C. MADL,
Executive Director

Fiscal Note: 48-93. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 135. LANDS AND BUILDINGS

Subchapter F. SPECIAL WILDLIFE MANAGEMENT AREAS

§ 135.107. Middle Creek Wildlife Management Area.

(a) In addition to §§ 135.2 and 135.41 (relating to unlawful actions; and State game lands) and this subchapter, the following pertain to the Middle Creek Wildlife Management Area:

(1) Entering, hunting [or], trapping or fishing on the controlled hunting areas shall be by permit only, except as listed in [paragraphs (2)—(4)] paragraph (3).

(2) [From February 1 to March 15, hunting (except waterfowl), trapping, dog training and hiking is permitted.

(3) From March 16] From March 1 to September 14, entry on foot or vehicle is restricted to roadways and designated trails, except that when gates are closed, entry is prohibited.

[(4)] (3) ***

[(5)] (4) ***

[(6)] (5) A permit holder shall surrender, in person, the permit at the registration center through which he entered. A hunter shall submit for examination all game taken. The deadline for checking out is 2:30 p.m.

(6) Nontoxic shot in sizes no larger than #4 Bismuth/tin and #2 steel shall be used in the controlled and propagation areas for hunting small game. For hunting waterfowl, nontoxic shot no larger than Size "T" shall be used.

* * * * *

(c) The following apply to special rabbit and squirrel hunts on the controlled hunting areas:

(1) Rabbit and squirrel hunting will be by permit only.

(2) A drawing will be conducted at the visitor center to determine successful applicants on dates designated by the Director.

(3) The number of permits and methods of issue shall be set by the Director or a designee prior to the drawing.

(4) The Director or a designee reserve the right to suspend the hunt and cancel remaining permits when an adequate number of rabbits and squirrels, or both, have been taken.

(5) The permittee shall return the permit and report form to the visitor center by United States Postal Service no later than 5 days after the expiration of the permit.

CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.1. Special regulations areas.

* * * * *

(c) Prohibitions.

(1) It is unlawful to take, kill or attempt to take or kill wildlife through the use of a rifle of any description which discharges single-projectile ammunition, or, while hunting for wild birds or wild animals, to possess single-projectile ammunition, except for political subdivisions that have a valid deer control permit issued under the authority of section 2901 of the act (relating to general categories of permits) and Chapter 147, Subchapter R (relating to deer control).

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Subchapter B. SMALL GAME

§ 141.23. Nontoxic shot.

It is unlawful to hunt for or take migratory waterfowl in this Commonwealth while possessing or using lead shot or shotshells loaded with shot [other than steel shot or shot, shot size or cartridge length not approved by the Director of the United States Fish and Wildlife Service or an authorized representative under 50 CFR 20.134 (relating to nontoxic shot)] of a composition or alloy and of a cartridge length not approved by the Director of the United States Fish and Wildlife Service or an authorized representative under 50 CFR 20.134 (relating to nontoxic shot). It is unlawful to hunt for or take migratory waterfowl in this Commonwealth using nontoxic shot larger than Size "T."

§ 141.25. Early and late goose hunting seasons.

(a) Early season and description.

(1) Subject to approval of the United States Fish and Wildlife Service, there will be an early Canada goose hunting season starting on September 1 (except when Sunday, then September 2), and ending on September [15] 25 (except when Sunday, then September [14] 24) Statewide, except in Crawford County where the season will end on September 15 (except when Sunday, then September 14). Geese may be taken on the Pymatuning State Park Reservoir and an area to extend 100 yards inland from the shoreline of the reservoir excluding the area east of L. R. 20006.

* * * * *

§ 141.26. Early Canada goose hunting season on Middle Creek Wildlife Management Area.

In lieu of fall season, the following apply:

(1) Opening of controlled hunting area. In years when the United States Fish and Wildlife Service does not authorize a regular fall Canada goose hunting season, but does authorize an early Canada goose hunting season, the Director may open the controlled hunting area at Middle Creek Wildlife Management Area for Canada goose hunting. When the controlled hunting area is open during an early

Canada goose hunting season, the closed areas in Lebanon and Lancaster Counties, as defined in § 141.25(a)(2) (relating to early and late goose hunting seasons) do not apply.

(2) Registration for Middle Creek controlled goose hunting area, early season and description.

(i) Section 135.103 (relating to registration for controlled goose hunting areas) applies, except that applications will be accepted through the second Saturday in August and a public drawing will be held at the registration center at 10 a.m. on the second Saturday in August.

(ii) The restrictions as defined in § 135.104 (relating to restrictions on controlled goose hunting areas) apply.

(3) Bag limits. The bag limit in the controlled area of Middle Creek Wildlife Management Area is one goose.

§ 141.27. Early Canada goose hunting season on Pymatuning Wildlife Management Area.

(a) In lieu of fall season, the following apply:

(1) Opening of controlled hunting area. In years when the United States Fish and Wildlife Service does not authorize a regular fall Canada goose hunting season, but does authorize an early Canada goose hunting season, the Director may open the controlled hunting area at Pymatuning Wildlife Management Area for Canada goose hunting. When the controlled hunting area is open during an early Canada goose hunting season, the closed areas in Crawford County, as defined in § 141.25(a)(2) (relating to early and late goose hunting seasons) do not apply.

(2) Registration for Pymatuning controlled goose hunting area, early season and restrictions.

(i) Section 135.103 (relating to registration for controlled goose hunting areas) applies, except that applications will be accepted through the second Saturday in August and a public drawing will be held at the registration center at 10 a.m. on the second Saturday in August.

(ii) The restrictions defined in § 135.104 (relating to restrictions on controlled goose hunting areas) apply.

(3) Bag limits. The bag limit in the controlled area of Pymatuning Wildlife Management Area is one goose.

Subchapter C. BIG GAME

§ 141.45. Turkey.

(a) While hunting wild turkey, it is unlawful to:

* * * * *

(4) Use or possess rifles or single projectile ammunition, except arrows, in Turkey Management Area #1 and Turkey Management Area #9.

* * * * *

Subchapter D. TRAPPING

§ 141.61. Trapping hours.

Except on the opening and closing day of trapping seasons, [fur-bearing] furbearing animals may be taken by trapping any hour, day or night, during the open season. On the opening day of trapping season, it is

unlawful to set, place or stake out traps prior to 7 a.m. On the closing day, traps shall be removed by [12 noon] sunset.

[Pa.B. Doc. No. 96-479. Filed for public inspection March 29, 1996, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA CODE CHS. 1, 3, 21, 23, 29 AND 31]

[L-950106]

Motor Carriers of Property

At a public meeting held December 14, 1995, the Pennsylvania Public Utility Commission (Commission) adopted an order which promulgated a proposed rulemaking modifying regulations to reflect its changed regulatory role since the Federal Aviation Authorization Act of 1994 amended the Interstate Commerce Act, preempting state regulation of motor carriers of property in the areas of rates, routes and service. The Commission historically regulated intrastate property transportation in these areas as well as in the areas of safety and insurance. In light of the preemption, the Commission has proposed these changes. Also, the Commission has taken this opportunity to delete the requirement of filing annual reports for both motor carriers of passengers and property. The contact person is John Herzog, Assistant Counsel, Legal Division, Bureau of Transportation and Safety, (717) 783-3173.

Executive Summary

The Federal Aviation Authorization Act of 1994 amended the Interstate Commerce Act, preempting state regulation of motor carriers of property in the areas of rates, routes and service. The Commission historically regulated intrastate property transportation in these areas, as well as in the areas of safety and insurance. In light of the preemption, the Commission has promulgated a proposed rulemaking modifying its regulations to reflect its changed regulatory role. Also, the Commission has taken this opportunity to delete the requirement of filing annual reports for both motor carriers of passengers and property.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Commission submitted a copy of these proposed amendments on March 15, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendments, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

If the Committees have objections to any portion of the proposed amendments, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed amendments, it will notify the Commission within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory

Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Commission, the General Assembly and the Governor of any objections raised.

Public meeting held
December 14, 1995

Commissioners Present: John M. Quain, Chairperson, Statement follows; Lisa Crutchfield, Vice Chairperson; John Hanger; David W. Rolka; and Robert K. Bloom, Statement follows

Order

By the Commission:

Under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, the Commission proposes a rulemaking to amend our regulations governing motor common carriers of property now found in 52 Pa. Code. In 1994, the United States Congress adopted legislation entitled the Federal Aviation Authorization Act of 1994 which amended, inter alia, the Interstate Commerce Act at sections 41713(b) and 1501(h), 49 U.S.C.A. §§ 41713(b) and 1501(h), (hereinafter referred to as the Act.) These sections provide, in pertinent part, that states are not permitted to regulate rates, routes or service of motor carriers of property, except household goods. However, our oversight of safety and financial responsibility of property carriers are not affected and remain necessary and essential parts of our obligation to ensure safe and available transportation throughout the Commonwealth.

Historically, we have used economic regulation of motor carrier transportation as a means to carry out our responsibilities under the Public Utility Code to promote safe and reasonable transportation service within the Commonwealth. For example, our regulations are designed to require a showing of market need for transportation services prior to a grant of authority. See e.g., 52 Pa. Code § 3.381. This was an efficient method to ensure stability in the transportation industry and sufficient earnings to promote safe operations and available service. However, Federal legislation requires that we alter our current methodology and move to a safety/insurance based system for motor carriers of property.

Our goal in this proposed rulemaking is to excise economic regulation over motor carriers of property without disturbing those measures which should remain regarding common carriers of property, passenger and household goods common carriers and contract carriers of household goods in use. Consistent with our responsibilities under the Public Utility Code to ensure safe transportation within the Commonwealth, we are proposing to amend our regulations to provide for an abbreviated application process for motor common carriers of property. This proposed procedure is designed to highlight safety issues and continue our insurance requirements while removing economic factors. We are also amending regulations such as rate and tariff requirements to conform to the preemptive provisions of the Act as it relates to motor common carriers of property. In addition, we are taking this opportunity to delete certain regulations which are no longer useful or in the public interest.

A discussion of the affected provisions with a brief description of the changes is set forth below. In addition to the regulations specifically discussed herein, our current leasing regulation now found at 52 Pa. Code § 31.32 require examination in light of the significant changes now being undertaken. While specific changes are not proposed at this time, we invite comments to that regulation in the context of this proceeding. We also invite

comments to our insurance regulations now found at 52 Pa. Code §§ 32.12 and 32.13. Amendment to those sections may be undertaken in our final form rulemaking. Corrections to grammar, addresses and bureau titles have been made throughout this rulemaking without specific discussion in this order.

We propose to amend the following regulations as discussed herein and as set forth in Annex A:

§ 1.43. Schedule of fees payable to the Commission.

This section has been modified to recognize a new application for motor common carriers of property with a \$100 fee. We have also specified that Emergency Temporary Authority and Temporary Authority applications are available for passenger and household goods carriers. This indicates that these forms of authority will not be available for property carriers. Since all property carriers will possess Statewide authority, it is doubtful that the shipping public will be faced with such a lack of carriers that Emergency Temporary Authority will be required. Also, the application process for motor common carriers of property set forth below is such that permanent authority can be obtained by fit carriers in a very brief time period thereby alleviating the need for a Temporary Authority procedure. It should be noted that no such applications for motor common carriers of property have been filed within the last 6 months.

§ 3.381. Applications for transportation of property, household goods in use and persons.

This section has been substantially revised. Subsections (a), (c), (d)—(f) and (i) have been revised to clarify that common carriers of property will be considered separate and distinct from common carriers of passengers and household goods in use. Subsection (i) deletes the word "order" to conform to current practice which uses letters to apprise applicants of compliance requirements.

§ 3.381(k)—(n). Adverse Comments to Property Applications.

These subsections are the heart of the proposed rulemaking. The new subsections provide for the application process for motor common carriers of property. As described in the proposed regulations, the application process is intended to focus on the safety fitness of applicants and is in keeping with the Commission's mandate to approve such applications if it finds that granting the certificate is "necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa.C.S. § 1103(a).

Contrary to the former procedure in which adverse parties could intervene in carrier applications by filing protests on economic and fitness grounds, the proposed procedure permits intervention by staff of the Bureau of Transportation and Safety only on significant safety fitness grounds. That Bureau has the responsibility to screen adverse comments to ensure that frivolous or non-safety related issues do not interfere with the application process. In addition, the Bureau of Transportation and Safety may intervene based upon its own determination of safety issues. It need not rely solely on outside comments.

In the event significant safety issues are raised regarding an application, the matter will be referred to the Office of Administrative Law Judge for hearing. If no safety issues are raised, or the Bureau of Transportation and Safety determines that filed comments do not raise significant safety issues, the matter will be processed as

set forth in § 3.381(n). That section provides that a Statewide certificate will be issued upon the filing of appropriate evidence of insurance. It is contemplated that an applicant which possesses a satisfactory safety rating from the United States Department of Transportation, or from a state with safety regulations consistent with those of the Commonwealth, will be presumed to be fit.

In cases in which an applicant does not possess a satisfactory safety rating from the United States Department of Transportation or a state regulatory body with safety regulations similar to those of the Commonwealth, the applicant will be required to complete a safety fitness review conducted by Commission enforcement staff within 180 days of the issuance of the compliance letter apprising them of the review requirement. If the review is not successfully completed within 180 days, a 60 day grace period will begin. If the review is not successfully completed within the grace period, the certificate will be immediately suspended without formal action by the Commission. Failure to successfully complete the safety fitness review within 30 days of notice of suspension for such failure will result in revocation proceedings.

§ 3.382. Transportation applications—evidentiary guidelines.

Evidence of market need is no longer relevant in motor common carrier of property applications. Accordingly, we propose to modify this section to clarify that such evidence will not be received in motor common carrier of property proceedings.

§ 3.383. Applications for temporary authority and emergency temporary authority.

This section has been revised to make it applicable to passenger and household goods carriers. Given the time frame for property carrier applications and the fact that any property carrier can transport any commodities within this Commonwealth, it is unnecessary to provide for Emergency Temporary Authority in property matters. For consistency, we have deleted the requirement that information relating to commodities to be transported be provided in verified statements filed in these proceedings.

§ 3.384. Disposition of applications.

This section is the companion to § 3.383 and has been modified to restrict its application to passenger and household goods carriers.

§ 3.385. Rates, fares and charges for TA and ETA authorities.

Subsection (b) has been deleted as not serving any useful purpose.

§ 21.1. Definitions.

This section provides for definitions of motor common carriers of property and household goods carriers. The definitions are those set forth in the Commission's Final Decision at P-00940884 (entered December 20, 1994) and, for household goods carriers, conform to definitions now used at the Federal level.

This section, through the definitions, is intended to restrict the application of sections in this subpart when such application would not be permitted by the act. The definition of the phrase "motor carrier" limits it to only passenger and household goods in use carriers.

§ 23.1. Definitions.

This is one of the more significant sections of the proposed rulemaking. The definitions provided here serve

to restrict the applicability of some regulations to passenger and household goods carriers. Federal preemption has eliminated our ability to engage in ratemaking and impose tariff restrictions on motor common carriers of property. Accordingly, by altering the definitions section here, we are attempting to limit the applicability of ratemaking and tariff filings to passenger and household goods carriers.

§ 23.14. Numbering of tariffs and supplements.

This proposed modification removes the "Express" and "Freight" tariff designations from our regulations as the tariff requirements will no longer apply to motor common carriers of property.

§ 23.16. Filing in numerical order.

This change merely reflects the new Bureau of Transportation and Safety and the correct address for the Commission.

§ 23.21. Title page.

This change restricts applicability to passenger and household goods carriers. We have also removed "aircraft" from this section since it is of no use.

§ 23.22. List of changes made by tariff.

Again, we have attempted to limit this section's scope to remove motor common carriers of property and aircraft.

§ 23.33. Index of commodities.

This section has been deleted since tariff requirements no longer apply to motor common carriers of property.

§ 23.67. Financial data.

We have restricted the scope of this section to passenger and household goods in use carriers.

§§ 23.81, 23.82, 23.83 and 23.85. Relating to carrier rates at intermediate points.

These sections have been deleted as no longer serving any useful purpose.

§ 23.116. Transportation of circuses and other shows.

This section has been deleted as no longer serving any useful purpose.

§§ 23.131—23.135. Relating to embargoes.

These sections have been deleted as no longer serving any useful purpose.

§ 23.149. Filing of discontinuance or termination.

This section has been deleted as serving no useful purpose.

Appendix I, Pennsylvania Public Utility Commission Policy Statement on Federal Anti-Inflation Guidelines.

This Appendix appears at the end of Chapter 23 and was adopted in response to the rampant inflation experienced in the 1970's. It is being deleted as no longer serving any useful purpose.

§ 29.42. Annual reports.

This section requires annual reports for passenger carriers. It is being deleted since most of the useful information required in the reports is duplicated in the annual Assessment Report. The Assessment Report will continue to be required and can be modified to provide information which used to be provided in the annual report.

§ 31.1. Definitions.

In this section, we are again restricting the applicability of preempted provisions through our definitions. We have provided for the definition of "motor common carrier of property" separate and distinct from "common carrier by motor vehicle." The definition of "household goods carrier" is that now used at the Federal level. We have also eliminated the former definition of "property carrier" to avoid conflicting interpretations.

§ 31.2. Applicability.

This section, together with the definitions, provides for motor common carriers of property as a separate class of carrier. It further advances our goal of restricting application of preempted regulations to passenger and household goods carriers. We have also deleted the final clause of this section as surplusage.

§ 31.4. Transfer of certificates and permits.

This section has been modified to provide that certificates for motor common carriers of property are non-transferable. Because our oversight of these carriers is strictly safety and insurance based, those qualities run with the specific carrier. It would be pointless to permit a transfer since we would have to perform the same checks on a transferee as on a new applicant. There appears to be no public benefit to a transfer process.

§ 31.9. Annual reports.

This section has been deleted to eliminate annual reports for property carriers and household goods carriers. As pointed out in our discussion of § 29.42, any useful information now contained in these reports can be provided in the Assessment Report forms.

§ 31.10. Assessment reports.

Because we have defined motor common carriers of property separately from common carrier, that class has been specifically added to this section. It is important to note here that the Congressional Conference Committee Report on the act expressly provided that the act was not intended to affect state taxation of motor common carriers of property. Accordingly, our mechanism of funding oversight of this industry through assessments remains unaffected.

§ 31.16. Mileage description in certificates.

This has been revised to apply only to household goods carriers. Mileage restrictions no longer apply to property carriers.

§§ 31.21—31.25. Relating to classification.

These sections provided the separate classifications for motor carriers which indicated territorial and route restrictions depending on the type of class involved. These classifications have been uniformly ignored since certificates now describe the authorized territory. Also, all motor common carriers of property will now have State-wide authority. The sections are being deleted as no longer necessary.

§§ 31.27. Rate schedules and tariffs.

This section has been modified to recognize the elimination of regulation of property rates. It retains its usefulness as a tool for consumer protection in the regulation of household goods in use carriers.

§§ 31.28—31.31. *Relating to commencement of service, interruptions in service, credit requirements and bills of lading and receipts.*

These sections have been deleted as no longer serving a useful purpose.

§ 31.34. *Handling of c.o.d. shipments.*

This section has no application to property carriers and serves no useful purpose in the regulation of household goods in use. Accordingly, it has been deleted.

§ 31.37. *Return of refused, rejected or damaged shipments to points of origin.*

Motor common carriers of property will have Statewide authority. Also, this section has no use in household goods transportation. This section is being deleted as unnecessary.

§§ 31.41 and 31.45. *Relating to contract carrier classifications and contracts.*

These two sections have been modified to restrict their application to contract carriers of household goods in use.

§§ 31.47—31.50. *Relating to commencement of service, interruptions of service, credit requirements and bills of lading and receipts.*

These sections are being deleted as no longer serving any useful purpose.

§ 31.61. *Classification.*

This section eliminates the classification scheme for forwarders to be consistent with our modification to §§ 31.21—31.25.

§ 31.62. *Use of or interchange with carriers.*

This section has been modified to remove air carriers from its application. The final sentence has been deleted since motor common carriers of property no longer have any designated routes or territories in their certificates.

§§ 31.66—31.71. *Relating to rate schedules and tariffs, commencement of service, interruptions of service, credit requirements, bills of lading and receipts and allowances and rebates.*

These sections are being deleted as no longer serving a useful purpose.

Due to the recent Federal preemption of economic oversight of motor common carriers of property, the Commission has determined that modifications to our regulations must be made as more specifically discussed above. In addition, we are taking this opportunity to remove certain regulations which are no longer useful or in the public interest. We invite all interested parties to file comments to the proposed revisions set forth in Annex A attached to this order. Also, we invite comments regarding our current regulations found at 52 Pa. Code §§ 32.12, 32.13 and 31.32 (relating to insurance; cargo insurance; and leasing).

Accordingly, under section 501 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 501, the Commonwealth Documents Law (45 P. S. § 1201 et seq.), and 45 Pa.C.S. § 702(3), we propose to amend the regulations in 52 Pa. Code, as discussed above and as set forth in Annex A; *Therefore,*

It is Ordered that:

1. A proposed rulemaking docket be opened to consider the proposed revisions to regulations set forth in Annex A of this order.

2. The Secretary shall submit a copy of this order, together with Annex A to the Office of Attorney General for preliminary review as to form and legality.

3. The Secretary shall submit a copy of this order, together with Annex A, to the Governor's Budget Office for review of fiscal impact.

4. The Secretary shall submit a copy of this order, together with Annex A, for review by the designated standing committees of both Houses of the General Assembly, and for informal review and comments by the Independent Regulatory Review Commission.

5. The Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. The public is invited to submit comments, original and 10 copies, regarding the proposed rulemaking with the Secretary of the Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, within 30 days after publication in the *Pennsylvania Bulletin*.

JOHN G. ALFORD,
Secretary

Statement of Chairperson John M. Quain

Before us today are two significant rulemakings that when combined, will delete or rescind 62 obsolete and redundant sections of our regulations and revise another 43 sections. Furthermore, when this Commission again meets on January 11, 1996, we will consider another 58 sections pertaining to Chapters 63, 64 and 56 for possible rescission or revision.

I wish to express my appreciation to all of the staff of the various bureaus, and those public commentators who contributed to this massive undertaking.

Statement of Commissioner Robert K. Bloom

Before us for consideration is the proposed rulemaking which would amend regulations governing motor carrier regulation. I offer the following comments associated with the proposed rulemaking.

In *Frank Renda v. Edward Rabel*, Docket A-00101022C9501, Mr. Renda filed a formal complaint against Mr. Rabel, a household goods mover for failure to provide a binding estimate. In the Initial Decision of Administrative Law Judge Michael C. Schnierle, issued December 7, 1995, the ALJ stated:

"One final comment is necessary. These kinds of cases could be avoided in large measure if the Commission would simply require movers to render binding estimates, as the Federal government did many years ago for interstate moves. I strongly recommend that the Commission institute a proposed rulemaking to require movers to render binding estimates for any customer requesting one." Initial Decision p. 16.

I would examine the ALJ's recommendation in the context of this rulemaking proceeding to see if it is appropriate for this Commission to require binding estimates. I would like a copy of this Statement attached to the Order served on the parties.

Fiscal Note: 57-166. No fiscal impact; (8) recommends adoption.

(Editor's Note: A proposal to amend § 1.43 (relating to schedule of fees payable to the Commission) remains outstanding at 25 Pa.B. 1288 (April 8, 1995).)

Annex A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart A. GENERAL PROVISIONS
CHAPTER 1. RULES OF ADMINISTRATIVE
PRACTICE AND PROCEDURE
Subchapter E. FEES

§ 1.43. Schedule of fees payable to the Commission.

(a) *Fees for services.* The fees for services rendered by the Commission are as follows:

<i>Description</i>	<i>Fee (in dollars)</i>
* * * * *	
Filing an application for a certificate of public convenience for a motor common carrier of property	\$100
Filing an application for emergency temporary authority as common carrier [or] of passengers or household goods in use , contract carrier of passengers or household goods in use , or broker or for an extension thereof	\$100
Filing an application for temporary authority as common carrier of passengers or household goods in use , contract carrier of passengers or household goods in use , or broker	\$100
Filing an application for a certificate to discontinue intrastate common carrier transportation of household goods in use or passenger service	\$ 10
* * * * *	

CHAPTER 3. SPECIAL PROVISIONS
Subchapter E. MOTOR TRANSPORTATION
PROCEEDINGS

§ 3.381. Applications for transportation of property, household goods in use and persons.

(a) *Applications.*

(1) *Forms.* The following **[applications shall be made to the Commission substantially in accordance with the forms prescribed in § 3.551 (relating to official forms)] list of forms may be obtained from the Office of the Secretary of the Commission:**

* * * * *

(3) *Filing and verification.* An original application, together with two copies, shall be filed by the applicant, or an authorized officer or representative, with the Secretary of the Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, Pennsylvania **[17120] 17105-3265**. The application shall be verified under § 1.36 (relating to verification). An application by a common carrier for a certificate of public convenience **authorizing the transportation of passengers or household goods in use** may be accompanied by verified statements of the applicant and supporting party or firm, as set forth **[at] in** subsection (e)(1)(ii) and (iii). An application by a contract carrier for a permit **authorizing the transportation of passengers or household goods in use** may be accompanied by a verified statement of the applicant, as set forth at subsection (e)(1)(ii)

and a copy of the bilateral contract or statement of the shipper that it will enter into a bilateral contract with the carrier.

* * * * *

(5) *Abandonment or discontinuance of service.* A **motor common carrier of property**, contract carrier or broker is not required to file an application to abandon or discontinue service. Abandonment or discontinuance of service, in whole or in part, by a **motor common carrier of property**, contract carrier or a broker shall require the submission of a letter to the Commission containing a statement that the service is no longer being rendered or that the contract has expired.

* * * * *

(8) *Change in the name of shipper:*

(i) If a shipper named in the existing or proposed operating authority of a motor carrier of **passengers or household goods in use** changes its name, the motor carrier shall submit a verified letter of notification to the Secretary containing the following information:

* * * * *

(ii) If a shipper named in the existing or proposed operating authority of a motor carrier of **passengers or household goods in use** simply makes an addition to or change of a fictitious trade name, the motor carrier shall notify the Secretary by letter, identifying the name and docket number of the motor carrier and submitting a copy of the shipper's fictitious name registration form filed with the Department of State under 54 Pa.C.S. § 312.

(9) *Change in entity of named shipper:*

(i) A change in the entity of a shipper named in the existing or proposed operating authority of a motor carrier of **passengers or household goods in use**, which is accompanied by a change in the ownership or control of the shipper's business—for example, through a sale or merger—requires the filing of an application by the motor carrier in accordance with paragraphs (3) and (4) and § 5.12.

(ii) A change in the entity of a shipper named in the existing or proposed operating authority of a motor carrier of **passengers or household goods in use**, which is not accompanied by a change in the ownership or control of the shipper's business—for example, through the incorporation of a sole proprietorship or partnership—requires the submission by the motor carrier of a verified letter of notification to the Secretary containing the following information:

* * * * *

(10) *Change in location of named shipper:*

(i) A change in the location of an existing facility of a shipper named in the existing or proposed operating authority of a motor carrier of **passengers or household goods in use** requires the filing of an application under paragraphs (3) and (4) and § 5.12, except as provided in subparagraph (ii).

(ii) A change in the location of an existing facility of a shipper named in the existing or proposed operating authority of a motor contract carrier of **passengers or household goods in use**, which is not accompanied by a change in ownership or control of the business, requires the submission of a verified letter of notification to the Secretary containing the name and docket number of the

motor carrier, and a statement that there is no change in ownership or control of the business.

* * * * *

(c) *Protests to applications for passenger or household goods in use authority: content and effect.*

(1) A person objecting to the approval of an application for **passenger or household goods in use authority** shall file with the Secretary of the Commission and serve upon the applicant and the applicant's attorney, if any, a written protest which shall contain [**all of**] the following:

* * * * *

(2) Upon the filing of a timely protest to an **application for passenger or household goods in use authority**, the protestant will be allowed to participate in the proceeding as a party intervener.

(3) A protest to an **application for passenger or household goods in use authority** shall be treated as a pleading and the applicant may, within 20 days after the closing date for the filing of protests, file motions to strike, to dismiss, or for amplification as provided in § 5.101 (relating to preliminary motion).

(d) *Protests: time of filing.* A protest to an **application for passenger or household goods authority** shall be filed within the time specified in the notice appearing in the *Pennsylvania Bulletin*, which shall be no less than 15 days from date of publication [**thereof**]. Failure to file such a protest in accordance with this subsection shall be a bar to subsequent participation in the proceeding, except [**where**] **when** permitted by the Commission for good cause shown.

(e) *Failure to file protests.* If no protest to an **application for passenger or household goods in use authority** is filed with the Commission on or before the date specified in the *Pennsylvania Bulletin* or if all protests have been withdrawn at or prior to the hearing, the Commission may [**, in its discretion,**] take either of the following actions:

* * * * *

(f) *Scheduling hearings.* The applications for **passenger or household goods in use authority** to which timely protests were filed will not be acted on by the Commission for [**a period of**] 20 days after the closing date for filing protests, to permit the applicant to make restrictive amendments leading to the withdrawal of protests. [**In the event that**] **If** all protests are withdrawn upon amendment, the Commission may dispose of the application in accordance with subsection (e). [**In the event that**] **If** the application is still subject to protest, then after the expiration of the 20-day waiting period, the Commission will set the application for hearing and will notify the parties thereof. Absent good cause shown, no further amendments to the application will be considered after the expiration of the 20-day period or the commencement of hearings.

* * * * *

(i) *Compliance [**order**]: conditions for approval.* Whenever the Commission shall approve operation by a motor common carrier of **passengers or household goods in use**, forwarder, broker or motor contract carrier of **passengers or household goods in use**, the motor common carrier, forwarder, broker or motor contract carrier will be notified thereof by registered or certified

mail, whereupon it shall file with the Commission, within 60 days of receipt of [**such**] **the** notice, a certificate of insurance or other security required by this title, relating to insurance and security for the protection of the public. In addition, motor common carriers of **passengers or household goods in use** shall file tariffs of their applicable rates and charges, and contract carriers of **passengers or household goods in use** shall file schedules of actual charges. When all of these requirements have been met, the Commission will issue the certificate, permit [**,**] or license as the case may be. Failure on the part of any motor common carrier of **passengers or household goods in use**, forwarder, broker or motor contract carrier of **passengers or household goods in use** to comply with [**the provisions of**] this section within the 60-day period may result in the dismissal of the application and rescission of prior approval, unless the Commission shall have, upon written request demonstrating good cause, extended the time for compliance.

* * * * *

(k) *Adverse comments to applications for motor common carrier of property authority: content and effect.*

(1) A person objecting to the approval of an application for motor common carrier of property authority may file with the Secretary of the Commission and serve upon the applicant, the applicant's attorney, if any, and the Bureau of Transportation and Safety written comments which shall contain specific factual allegations regarding an applicant's safety fitness. Factual allegations which specifically reference the applicant's United States Department of Transportation Safety rating, safety ratings from other State agencies or adverse decisions in safety related proceedings before other tribunals will be required in the comments. Comments which are not supported by specific factual allegations as described will not be considered.

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

(l) *Adverse comments: time for filing.* Adverse comments to applications for motor common carrier property authority shall be filed within the time specified in the *Pennsylvania Bulletin*, which shall be at least 10 days from the date of publication.

(m) *Hearings on applications for motor common carrier property authority.* If adverse comments are filed which raise significant issues regarding an applicant's safety fitness, or if the Bureau of Transportation and Safety prosecutory staff determine that safety ratings from other jurisdictions or adverse decisions in safety related proceedings before other tribunals exist, the Bureau of Transportation and Safety shall enter its appearance and refer the matter to the Office of Administrative Law Judge for hearings on the applicant's safety fitness. A determination by the Commission, after hearing, that the applicant possesses the necessary safety fitness will result in the application being processed as though the applicant possessed a satisfactory safety rating.

(n) *Action on applications for motor common carrier property authority without adverse comments or hearing.* If no adverse comments are filed, or if the Bureau of Transportation and Safety has determined that the adverse comments do not raise significant allegations of safety fitness, the Commission will act on motor common carrier of property applications as follows:

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

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

(3) Applicants which do not possess a current satisfactory safety rating issued by the United States Department of Transportation or a state with safety regulations comparable to the Commonwealth, shall complete a safety fitness review conducted by Commission staff. The safety fitness review shall be scheduled and completed within 180 days of the date of the compliance letter. If the applicant fails to attain a satisfactory safety rating within the 180 day period, it will be given an additional 60-days to correct the deficiencies. Failure to achieve a satisfactory rating within the 60-day period will result in immediate suspension of the certificate of public convenience. Failure to achieve a satisfactory safety rating within 30 days of notification of suspension under this section will result in proceedings to revoke the certificate.

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

(5) In the course of a safety fitness review, Commission enforcement staff will examine an applicant's management policies, records and equipment to ensure that the applicant understands and will comply with the Commission's regulations in Chapter 37 (relating to safety code for transportation of property and passengers).

§ 3.382. Transportation applications—evidentiary guidelines.

(a) *Service request evidence.* Evidence of requests received by an applicant for **passenger or household goods in use** service may be offered by the applicant in a transportation application proceeding relevant to the existence of public necessity for the proposed service. The credibility and demeanor of a witness offering evidence

will be considered in evaluating the evidence. The weight which will be attributed to the evidence will depend upon the extent to which the alleged requests are substantiated by [such] the evidence as [the following] follows:

* * * * *

(b) *Prospective rate evidence.* An applicant for a motor carrier certificate or permit **for the transportation of passengers or household goods in use**, though not required to offer testimony as to the rates proposed to be charged, may do so provided it is otherwise competent. The weight to be attributed to the evidence will depend upon the extent to which it is accompanied by cost evidence demonstrating that the prospective rates would be compensatory, that is, that the prospective rates would be adequate to enable the applicant to recover its costs and realize a reasonable return either on investment or under operating ratio standards. The demeanor and credibility of a witness offering the evidence will also be considered in evaluating the weight to be attributed to the evidence.

§ 3.383. Applications for temporary authority and emergency temporary authority.

* * * * *

(b) *Definitions.* The following words and terms, when used in this subchapter, have the following meanings:

Carrier—Includes **motor common carriers of passengers or household goods in use** and **motor contract carriers [by motor vehicle] of passengers or household goods in use**, brokers and forwarders.

Emergency temporary authority (ETA)—Limited duration operating authority issued under 66 Pa.C.S. §§ 1103(d) and 2509 to authorize **the transportation [service] of passengers or household goods in use** to meet an emergency situation and **[where] when** time or circumstances do not reasonably permit the filing and processing of an application for TA.

Temporary authority (TA)—Limited duration operating authority issued under 66 Pa.C.S. §§ 1103(d) and 2509 to authorize **the transportation [service] of passengers or household goods** to meet an emergency situation.

(c) *Filing of applications.* An application shall be filed as follows:

* * * * *

(3) *Supporting statements.* An application shall be accompanied by supporting statements of the applicant and shippers or other witnesses which establish an immediate need for service. A statement shall contain a certification of its accuracy and shall be signed by the person submitting the statement.

* * * * *

(ii) *Statements of supporting shippers or witnesses.* The statement of a supporting shipper or witness, which shall be prepared by the shipper or witness, or an authorized representative of the shipper or witness, shall contain the following information:

[(A) A description of the specific commodity which will be transported, if the transportation of property is involved.]

[(B)] (A) ***

[(C)] (B) ***

[(D)] (C) ***

- [(E)] (D) ***
- [(F)] (E) ***
- [(G)] (F) ***
- [(H)] (G) ***
- [(I)] (H) ***
- [(J)] (I) ***
- [(K)] (J) ***

(4) *Procedures for filing ETA application.* Procedures for filing ETA applications are as follows:

* * * * *

(ii) If the urgency of the situation warrants, the supporting statement of those having the immediate need for [carrier] service may be furnished by telegram. The telegram shall contain substantially the factual information described in paragraph (3). The telegram shall be sent to the Director, Bureau of Transportation and Safety.

* * * * *

§ 3.384. Disposition of applications.

(a) *General.* Initial determination of ETA and TA applications will be made by the Bureau of [Nonrail] Transportation and Safety with the approval of the Commission.

(b) *Standards for determination of need.*

(1) *General.* Grants of TA or ETA shall be made upon the establishment of an immediate need for the transportation of passengers or of [particular commodities or classes of commodities] household goods in use. Requests involving service to cities, counties, townships[,] or other defined areas warrant approval when supported by evidence that there is a need for service to or from a representative number of points in each [such] city, county, township or areas and that there is a reasonable certainty that the service will be used.

(2) *Immediate need.* A grant of TA or ETA will be made [where] when it is established that there is or soon will be an immediate transportation need. A showing of immediate need may involve passenger service to a new or relocated plant, [a different method of distribution, new or unusual commodities,] an origin or destination not presently served by carriers a discontinuance of existing service, failure of existing carriers to provide service or comparable situations which require new carrier service before an application for permanent authority can be filed and processed. An immediate need will not normally be found to exist where there are other carriers capable of rendering the service unless it is determined that there is a substantial benefit to be derived from the initiation of a competitive service.

* * * * *

§ 3.385. Rates, fares and charges for TA and ETA authorities.

* * * * *

[(b) *Emergency temporary authority.* Upon completion of services rendered under ETA, a carrier shall submit to the Bureau of Transportation a statement containing the gross revenue and other

charges related to the transportation, and the total tonnage or number of persons transported.]

[(c)] (b) ***

[(d)] (c) ***

Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

CHAPTER 21. GENERAL PROVISIONS

§ 21.1. Definitions.

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

* * * * *

Common carrier of property—A motor common carrier who or which transports property, other than household goods in use. Common carriers of property shall by definition be permitted to transport those items described in subparagraph (iii) in the definition of "household goods in use carrier" in this section.

* * * * *

Household goods in use carrier—A motor common or contract carrier who or which holds authority to transport:

(i) Personal effects and property used or to be used in a dwelling when a part of the equipment or supply of the dwelling and other similar property; except that this does not include property moving from a factory or store, except property that the householder has purchased with the intent to use in his dwelling and which is transported at the request of and the transportation charges paid to the carrier by the householder.

(ii) Furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment or supply of the store, offices, museums, institutions, hospitals or other establishments; except that this does not include the stock-in-trade of any establishment, whether consignor or consignee, except when transported as incidental to moving of the establishment from one location to another.

(iii) Articles, including objects of art, displays, exhibits and business machines, which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods; except that this does not include any article whether crated or uncrated, which does not, because of the unusual nature or value require specialized handling usually employed in moving household goods.

Motor carrier—A common or contract carrier by motor vehicle of passengers or household goods in use.

CHAPTER 23. TARIFFS FOR COMMON CARRIERS OF PASSENGERS AND HOUSEHOLD GOODS IN USE

GENERAL PROVISIONS

§ 23.1. Definitions.

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

Common carrier or [Carrier] carrier—A person or corporation holding out, offering or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or [property] household goods in use, or both, or any class of passengers or [property] household goods in use, between points within this Commonwealth by, through, over, above or under land, water or air, including forwarders, but not motor common carriers of property, contract carriers [by motor vehicles], brokers[,] or any bona fide cooperative association transporting property exclusively for the members of [such] the association on a non-profit basis.

Contract carrier—Any person or corporation who or which provides or furnishes transportation of passengers or [property] household goods in use, or both, or any class of passengers or [property] household goods in use, between points within this Commonwealth by motor vehicle for compensation, whether or not the owner or operator of [such] the motor vehicle, or who or which provides or furnishes, with or without drivers, any motor vehicle for the transportation, or for use in the transportation, other than as a common carrier by motor vehicle, but not including [any] one or more of the following:

* * * * *

Rate—An individual or joint fare, toll, charge, rental or other compensation of a public utility, other than a motor common carrier of property in its transportation of property, or contract carrier by motor vehicle, made, demanded or received for [a] jurisdictional service [within this act], offered, rendered or furnished by the public utility, other than a motor carrier of property in its transportation of property, or contract carrier by motor vehicle, whether in currency, legal tender or evidence thereof, in kind, in services or in another medium or manner, and whether received directly or indirectly, and rules, regulations, practices, classifications or contracts affecting the compensation, charge, fare, toll or rental.

Tariff—Schedules of rates, rules, regulations, practices or contracts involving any rate or rates, including contracts for interchange of service and, in the case of a common carrier, other than a common carrier of property in the transportation of property, schedules showing the method of distribution of the facilities of the common carrier.

FORM AND FILING OF TARIFFS

§ 23.14. Numbering of tariffs and supplements.

* * * * *

(b) The designation on tariffs of motor carriers shall show the kind of service and serial number as follows:

* * * * *

[(4) "Express Pa.P.U.C. No. ____ ."]

[(5) "Freight Pa.P.U.C. No. ____ ."]

[(6)] (4) ***

* * * * *

§ 23.16. Filing in numerical order.

* * * * *

(f) Separate letters shall be used for tariffs or supplements filed for different classes of service. Tariffs tendered for filing shall be addressed to:

Bureau of Transportation and Safety
Pennsylvania Public Utility Commission
P. O. Box 3254
Harrisburg, Pennsylvania [17120] 17105-3265

CONTENT AND ARRANGEMENT OF TARIFFS

§ 23.21. Title page.

Each tariff shall contain a title page showing [all of] the following information in the sequence specified:

* * * * *

(9) [All] The tariffs and supplements filed by other than [motor carriers of property,] railroad companies [, and aircraft,] or their agents, shall indicate the amendments to existing rules and rates made by the tariff or supplement, together with reference to the page [or pages] on which they are listed, and which shall be shown at the bottom of the page, as follows:

* * * * *

§ 23.22. List of changes made by tariff.

(a) Except as to [motor carriers of property,] railroad companies [, and aircraft], page two of the tariff or supplement shall begin with the following:

LIST OF CHANGES MADE BY THIS TARIFF (or supplement)

* * * * *

§ 23.33. [Index of commodities] (Reserved).

[A complete and alphabetically arranged index of all commodities upon which commodity rates are named shall be provided.]

NOTICE OF CHANGES IN FARES

§ 23.67. Financial data.

(a) The Commission will not, on or after the effective date of this order, permit a tariff filing increasing rates by a common carrier of [property] household goods in use with gross annual intrastate revenues of \$200,000 or more, or making general increase in rates published by a rate bureau, conference [,] or similar organization of carriers, which will increase gross annual revenues by more than 1.0%, unless financial justification in support of the proposed increase is filed with the tariff.

(b) [Property] Household goods in use carriers referred to in subsection (a), shall be governed by the following procedures in the filing of tariffs or tariff supplements:

* * * * *

(c) Common carriers of [property] household goods in use, with gross annual intrastate revenues of less than \$200,000, and with operating ratios of [no less than] at least 93%, before income taxes, [*] need not file substantiating data required by subsection (b)(2), but shall submit a statement with the tariff, or tariff supplement, stating that gross annual intrastate revenues did not exceed \$200,000 in the 12-month period preceding the

tariff filing together with a statement that its operating ratio before income taxes for the same period is no less than 93%. [*] The tariffs, or tariff supplements, shall be published to become effective on no less than 30 days notice. Nothing in this subsection [shall preclude] preclude the Commission from requiring supporting financial data in instances where increases in rates appear to be excessive.

[*Operating ratio is operating expenses, excluding income taxes, divided by operating revenues.]

[CARRIER RATES AT INTERMEDIATE POINTS]

(Editor's Note: The following sections which appear at 52 Pa. Code pages 93—95, serial pages (20773), (26114)—(28769) are proposed to be deleted in their entirety.)

- § 23.81. (Reserved).
- § 23.82. (Reserved).
- § 23.83. (Reserved).
- § 23.85. (Reserved).

[EXCEPTIONS TO PUBLIC UTILITY LAW PROHIBITIONS PERTAINING TO RATES]

(Editor's Note: The following sections which appear at 52 Pa. Code pages 95—98, serial pages (28769), (20776)—(20778) are proposed to be deleted in their entirety.)

- § 23.91. (Reserved).
- § 23.92. (Reserved).

OTHER RULES PERTAINING TO CARRIER RATES

§ 23.116. [Transportation of circuses and other shows] (Reserved).

[Rates for specified movements of circuses and other show outfits may be established on not less than one day's notice to the Commission. Such tariffs shall bear reference to this section and publish the charges specifically, showing the number and kind of cars moved, or may consist of a proper title page reading "as per copy of contract attached," and to it may be attached a copy of the contract under which the movement is made. Tariffs containing such rates need not be posted at stations. As far as practicable, general rules or regulations governing the fixing of such rates should be regularly published, posted, and filed upon the usual notice.]

[EMBARGOES]

(Editor's Note: The following sections which appear at 52 Pa. Code pages 106—108, serial pages (26116), (20787) and (20788) are proposed to be deleted in their entirety.)

- § 23.131. (Reserved).
- § 23.132. (Reserved).
- § 23.133. (Reserved).
- § 23.134. (Reserved).
- § 23.135. (Reserved).

CONTRACT CARRIERS

§ 23.149. [Filing of discontinuance or termination] (Reserved).

[If any contract carrier discontinues any service provided for in any schedule or terminates any contract approved by the Commission, such carrier

shall file with the Commission a suitable supplement providing for cancellation of the existing charges for such service from its schedule or schedules.]

(Editor's Note: Appendix I, PENNSYLVANIA PUBLIC UTILITY COMMISSION POLITY STATEMENT ON FEDERAL ANTI-INFLATION GUIDELINES, which appears at 52 Pa. Code page 110, serial page (120404), is proposed to be deleted in its entirety.)

APPENDIX I. (Reserved)

CHAPTER 29. MOTOR CARRIERS OF PASSENGERS

Subchapter B. COMMON CARRIERS ACCOUNTS, RECORD AND REPORTS

§ 29.42. [Annual reports] (Reserved).

[(a) A common carrier having average gross annual revenues, intrastate and interstate combined, during the preceding year of \$1 million and over, shall file, in properly completed form, signed and notarized, a Class I Annual Report Form as prescribed and furnished by the Commission, on or before March 31, covering the preceding calendar year.

(b) A common carrier having gross annual revenues, intrastate and interstate combined, during the preceding year, or an average over the preceding 3 years, of less than \$1 million, shall file, in properly completed form, signed and notarized, a Class II Annual Report Form as prescribed and furnished by the Commission, on or before March 31, covering the preceding calendar year.]

CHAPTER 31. MOTOR CARRIER PROPERTY TRANSPORTATION

GENERAL PROVISIONS

§ 31.1. Definitions.

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

Common carrier by motor vehicle—A person or corporation holding out or undertaking, directly or indirectly, to transport [property, or a class of property,] household goods in use between points within this Commonwealth by motor vehicle for compensation, whether or not as the owner or operator of the motor vehicle. The term includes, [but is not limited to, person] persons or [corporation] corporations providing or furnishing a motor vehicle with or without a driver for the transportation or for use in the transportation of [property] household goods in use; a common carrier by rail, water or air; and express or forwarding public [utility] utilities insofar as the common carrier or the public utility is engaged in motor vehicle operation, except as expressly exempted by the act. For purposes of this chapter, the term does not include motor common carriers of property.

Contract carrier by motor vehicle—A person or corporation who or which provides or furnishes transportation of [property or a class of property] household goods in use between points within this Commonwealth by motor vehicle for compensation, whether or not as the owner or operator of the motor vehicle. The term includes a person or corporation providing or furnishing a motor

vehicle with or without a driver for the transportation or for use in the transportation other than as a common carrier by motor vehicle or a motor common carrier of property, except as expressly exempted by the act.

* * * * *

Household goods carrier—A motor common or contract carrier who or which holds a certificate or permit to transport:

(i) Personal effects and property used or to be used in a dwelling when a part of the equipment or supply of the dwelling and other similar property; except that this does not include property moving from a factory or store, except property the householder has purchased with the intent to use in his dwelling and which is transported at the request of and the transportation charges paid to the carrier by, the householder.

(ii) Furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment or supply of the store, offices, museums, institutions, hospitals, or other establishments; except that this does not include the stock-in-trade of any establishment, whether consignor or consignee, except when transported as incidental to moving of the establishment from one location to another.

(iii) Articles, including objects of art, displays, exhibits and business machines, which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods; except that this does not include any article whether crated or uncrated, which does not, because of the unusual nature or value require specialized handling usually employed in moving household goods.

Motor common carrier of property—A motor common carrier who or which transports property, other than household goods in use. Motor common carriers of property shall be permitted to transport those items described in subparagraph (iii) in the definition of "household goods carrier" in this section.

* * * * *

Property—Tangible property, other than household goods in use.

[**Property carrier**—A person or corporation engaged in transporting property by means of motor vehicle or motor vehicles for compensation, in intrastate commerce, and includes common carriers, contract carriers and forwarders.]

§ 31.2. Applicability.

This chapter applies to common carriers by motor vehicle, contract carriers by motor vehicle, motor common carriers of property and forwarders operating at the time of the adoption of this chapter; and also to those to whom a certificate or permit may be issued[; and this chapter is subject to amendment, change or modification that the Commission may deem advisable, and to exceptions in individual cases as the Commission deems proper].

§ 31.4. Transfer of certificates and permits.

(a) No certificate or permit or the rights thereunder may not be sold or transferred by act, deed or operation of law, unless the approval of the Commission is first obtained. The approval may be granted with or without hearing and after reasonable notice in the *Pennsylvania Bulletin* as the Commission directs. **Certificates issued to motor common carriers of property are nontransferrable.**

* * * * *

§ 31.9. [Annual reports] (Reserved).

[(a) A common carrier and forwarder of property having gross annual revenues, intrastate and interstate combined, during the preceding year, or an average over the preceding 3 years, of \$1 million and over, shall file, in properly completed form, signed and notarized, a Class I Annual Report form as prescribed and furnished by the Pennsylvania Public Utility Commission, on or before March 31, covering the preceding calendar year.

(b) A Class I common carrier, contract carrier and forwarder of property subject to the jurisdiction of the Commission and the Interstate Commerce Commission and required to file an Interstate Commerce Commission Class I or Class II Annual Report with that commission, may file with the Commission, on forms obtained by the carrier, a copy of its Interstate Commerce Commission Class I or Class II Annual Report in substitution of the Class I Annual Report prescribed by the Commission, if the Commonwealth intrastate gross revenues included in the form are set forth separately.

(c) A common carrier and forwarder of property having gross annual revenues, intrastate and interstate combined, during the preceding year, of less than \$1 million, shall file, in properly completed form, signed and notarized, on or before March 31, covering the preceding calendar year, a Class II Annual Report Form as prescribed and furnished by the Commission.

(d) A contract carrier of property, regardless of the amount of gross annual revenues, intrastate and interstate combined, shall file, in properly completed form, signed and notarized, on or before March 31, covering the preceding calendar year, a contract carrier annual report form as prescribed and furnished by the Commission.]

§ 31.10. Assessment reports.

Each common carrier, motor common carrier of property and forwarder of property shall file with the Commission each year an assessment report, on Form MT—(year) provided by the Commission, showing gross Commonwealth intrastate revenues for assessment purposes. The assessment report shall be filed by March 31, covering the preceding calendar year.

§ 31.16. Mileage description in certificates.

A certificate of public convenience issued by the Commission for the transportation of [property] household goods in use to common carriers by motor vehicle, in which mileage distances are provided without being described in terms of "airline distance," "statute miles," "usually traveled highways[,]" or other comprehensive definition, shall be construed to mean airline distance measured in statute miles.

MOTOR COMMON CARRIERS OF PROPERTY [BY MOTOR VEHICLE] AND HOUSEHOLD GOODS IN USE CARRIERS

(Editor's Note: The following sections, which appear at 52 Pa. Code pages 31-10—31-13, serial pages (142878)—(142881) are proposed to be deleted in their entirety.)

§ 31.21. (Reserved).

§ 31.22. (Reserved).

§ 31.23. (Reserved).

§ 31.24. (Reserved).

§ 31.25. (Reserved).

§ 31.27. Rate schedules and tariffs.

(a) Each common carrier [by motor vehicle] of household goods in use shall comply with the regulations the Commission may formulate governing the filing, publishing and posting of tariffs by [common carriers of property by motor vehicle] household goods carriers as set forth in Chapter 23 (relating to tariffs for common carriers of passengers and household goods in use).

(b) No rate based upon a limitation of liability may be published in the tariff and no limitation of liability may be prescribed in a bill of lading, unless approval has been obtained from the Commission for the publication of tariffs providing rates limited to value of the commodity, in the form and manner of [such] the petition and proceedings as the Commission may provide in its rules governing filing, publishing and posting of tariffs by [common carriers of property by motor vehicle] household goods carriers as set forth in Chapter 23. [Rates based upon a limitation of liability for loss or damage to baggage may be published without approval of the Commission.]

(Editor's Note: The following sections, which appear at 52 Pa. Code pages 31-14—31-16, serial pages (142882)—(142884) are proposed to be deleted in their entirety.)

§ 31.28. (Reserved).

§ 31.29. (Reserved).

§ 31.30. (Reserved).

§ 31.31. (Reserved).

§ 31.34. [Handling of c.o.d. shipments] (Reserved).

[(a) This section applies to the handling of c.o.d., that is, cash on delivery shipments by common carriers, except transportation which is auxiliary to or supplemental to transportation by railroad and performed on railroad bills of lading, or performed for freight forwarders on freight forwarder bills of lading.

(b) No common carrier, except as otherwise provided in subsection (a), may render c.o.d. service, unless the carrier has published, posted and filed tariffs which contain the rates, charges and rules governing the service, which rules shall conform with this chapter.

(c) Each common carrier, except as otherwise provided in subsection (a), shall remit each c.o.d. collection directly to the consignor or other person designated by the consignor as payee promptly and within 10 days after delivery of the c.o.d. shipment to the consignee. If the c.o.d. shipment moved in

interline service, the delivering carrier shall, at the time of remittance of the c.o.d. collection to the consignor or payee, notify the originating carrier of the remittance.

(d) A common carrier, except as otherwise provided in subsection (a), handling c.o.d. shipments as a delivering carrier shall maintain a record of c.o.d. shipments received for delivery in a manner and form that will plainly and readily show the following information with respect to each shipment.

- (1) The number and date of the freight bill.
- (2) The name and address of the consignee.
- (3) The date the shipment was delivered.
- (4) The amount of c.o.d.
- (5) The date collected by the delivering carrier.
- (6) The date remitted to the payee.
- (7) The check number or other identification of the remittance to payee.]

§ 31.37. [Return of refused, rejected or damaged shipments to points of origin] (Reserved).

[Common carriers by motor vehicle now holding certificates of public convenience from the Commission for the transportation of property shall of right be authorized to return refused, rejected or damaged shipments to the point of origin without further Commission approval.]

CONTRACT CARRIERS OF [PROPERTY] HOUSEHOLD GOODS IN USE BY MOTOR VEHICLE

§ 31.41. Classification.

The classification of contract carriers of [property] household goods in use is as described in the permit.

§ 31.45. Contracts.

(a) *Form.* The special or individual agreements entered into by a contract carrier of [property by motor vehicle] household goods in use with shippers shall be in writing, shall provide for transportation for a particular shipper, shall be bilateral and impose specific obligations upon both carrier and shipper [and shall cover a series of shipments over a stated route or in a stated area during a stated period of time in contrast to contracts of carriage governing individual shipments].

(b) *Filing.* Each contract carrier of [property by motor vehicle] household goods in use shall file and keep on file with the Commission copies or abstracts of contracts in [such] a manner [as] the Commission may by regulation from time to time prescribe. The contracts shall be certified by the carrier and the shipper.

* * * * *

(Editor's Note: The following sections, which appear at 52 Pa. Code page 31-27, serial page (122611) are proposed to be deleted in their entirety.)

§ 31.47. (Reserved).

§ 31.48. (Reserved).

§ 31.49. (Reserved).

§ 31.50. (Reserved).

FORWARDERS OF PROPERTY

§ 31.61. [Classification] (Reserved).

[Classification regulations applicable to common carriers, the provisions of which are set forth in § 31.21 (relating to classification), also apply to forwarders.]

§ 31.62. Use of or interchange with carriers.

(a) No forwarder in intrastate commerce may use or interchange with a motor[, air] or water common carrier which does not have a certificate of public convenience issued by the Commission, if the certificate is required. [The forwarder may use or interchange with a certified common carrier, but only over a route or within a territory covered by the certificate.]

* * * * *

(Editor's Note: The following sections, which appear at 52 Pa. Code page 31-29, serial page (132651) are proposed to be deleted in their entirety.)

- § 31.66. (Reserved).
- § 31.67. (Reserved).
- § 31.68. (Reserved).
- § 31.69. (Reserved).
- § 31.70. (Reserved).
- § 31.71. (Reserved).

[Pa.B. Doc. No. 96-480. Filed for public inspection March 29, 1996, 9:00 a.m.]

[52 PA. CODE CH. 59]

[L-950109]

Obsolete Regulations

The Pennsylvania Public Utility Commission (Commission) on December 14, 1995, adopted a proposed rulemaking regarding obsolete regulations in Chapter 59 (relating to gas service). The proposed amendments are to reflect changes in 11 sections in this chapter which will clarify, simplify and remove excessive and burdensome requirements from the Commission's gas service regulations. Sections will be eliminated which no longer serve a useful purpose and other sections will be modified to promote ease of application, as well as fairness. The contact persons are R. K. Smith, Assistant Counsel, Legal Division, Bureau of Transportation and Safety, (717) 783-3713, and Joseph A. Finnan, Bureau of Transportation and Safety, (717) 787-1063.

Executive Summary

By order entered May 23, 1995, the Commission issued an Advance Notice of Proposed Rulemaking to Review and Rescind All Obsolete and Excessive Rules and Regulations. Comments were received from Columbia Gas of Pennsylvania, Pennsylvania Gas Association and the Commission's Bureau of Transportation and Safety, and the Bureau of Conservation Economics Energy Planning which reflect the need to evaluate and update several sections contained in Chapter 59.

The proposed amendments reflect changes in 11 sections in Chapter 59, and the Commission believes these changes will clarify, simplify and remove excessive and

burdensome requirements from the Commission's gas service regulations. Sections will be eliminated which no longer serve a useful purpose and other sections will be modified to promote ease of application as well as fairness.

Public Meeting held
December 14, 1995

Commissioners present: John M. Quain, Chairperson, Statement follows; Lisa Crutchfield, Vice Chairperson; John Hanger, Dissenting in part—Statement follows; David W. Rolka; and Robert K. Bloom.

Order

By the Commission:

By Order entered May 23, 1995, we issued an Advance Notice of Proposed Rulemaking To Review And Rescind All Obsolete And Excessive Rules And Regulations at Docket No. L-950103. The advance notice was published in the *Pennsylvania Bulletin* on June 3, 1995, 25 Pa.B. 2188, and a 60-day comment period was set.

We received comments from Columbia Gas of Pennsylvania, Pennsylvania Gas Association and our own Bureau of Transportation and Safety and CEEP which reflect the need to evaluate and update several sections contained in Chapter 59. We are setting forth proposed changes in 11 sections in Chapter 59, and we believe these changes will clarify, simplify and remove excessive and burdensome requirements from our gas service regulations.

Our review of the affected chapters was careful and meticulous. We are well aware of our duty to ensure the safety of utility service, and our proposed changes will not result in any lapse in our mandate. At the same time, this is not a complete list of regulations which have become obsolete. Due to the Federal legislation which preempted a portion of the Commission's jurisdiction in the motor carrier field, we are preparing another rulemaking to bring affected regulations up to date. Those included in the present rulemaking are those which are not affected by the Federal legislation but should be amended or deleted for other reasons.

What follows is a summary of the proposed changes.

§ 59.1. Definitions.

Definitions are added for the terms "distribution line," "gathering line," "liquefied natural gas," "LNG facility," "pipeline," "public utility service line," "specified minimum yield strength" and "transmission line." The definition of "main" is updated. Utility system designations are deleted as obsolete.

§ 59.11. Accidents.

The definition of a reportable accident is changed to coincide as much as possible under the confines of 66 Pa.C.S. § 1508 with the definition of a reportable incident in 49 CFR Part 191.3.

§ 59.15. Measurement of gas at higher than standard service pressure.

The verification period in subsection (c) is enlarged from 2 to 5 years to reflect technological advances in meter equipment which has produced more reliable and accurate instruments to measure utility service.

§ 59.21. Meter tests.

Consistent with the change to § 59.15, this section provides that the period between inspections is lengthened from 2 to 5 years and the recordkeeping period is reduced from 10 to 5 years.

§ 59.26. Refusal to serve applicants or customers.

A subsection is added to specifically provide that a utility may suspend service anytime a hazardous condition is found.

§ 59.29. Gas pressure requirements for low-pressure distribution systems.

This section is modified to eliminate references to pressure districts and exceptions.

§ 59.33. Safety.

References to Federal standards are updated in this section.

§ 59.35. Increasing pressure in distribution facilities and transmission facilities.

Minor word changes are substituted for greater accuracy.

§ 59.38. Filing of major construction reports.

The monetary amount defining "major construction" is increased from \$200,000 to \$300,000 to account for inflation.

§ 59.41. Classification of gas public utilities.

This section proposes to adopt the Federal classification system to simplify the matter for gas companies.

§ 59.42. Systems of accounts.

Language substituted provides for changes to coincide with the general instructions in 18 CFR Part 201, which will ease the administrative burden of maintaining accounts. This is consistent with the Commission's prior adoption of the Uniform System of Accounts.

§ 59.62. Gas sales ban.

As suggested by the Pennsylvania Gas Association, the gas sales ban regulations are no longer necessary in today's gas market and, accordingly, we are proposing that these regulations be rescinded as obsolete.

In proposing these changes, we believe that our efficiency as a regulatory agency will be enhanced. We are eliminating those sections which no longer serve a useful purpose and we are modifying others to promote the ease of application as well as fairness. We encourage those affected by these changes to file comments.

Accordingly, under sections 501, 504, 505, 506, 1301 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 505, 506, 1301 and 1501, and the Commonwealth Documents Law (45 P. S. § 1201 et seq.), and the regulations promulgated thereunder, we shall institute a rulemaking proceeding to accomplish the objectives described in the body of this order. *Therefore,*

It is Ordered that:

1. A rulemaking proceeding is hereby instituted at this docket.

2. The Commission's regulations are hereby proposed to be amended with changes to §§ 59.1, 59.11, 59.15, 59.21, 59.26, 59.29, 59.33, 59.35, 59.38, 59.41 and 59.42, and the rescission of § 59.62.

3. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

4. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

5. The Secretary shall submit this order and Annex A for informal review by the designated standing committees of both houses of the General Assembly, and for informal review and approval by the Independent Regulatory Review Commission (IRRC).

6. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Interested persons may submit written comments, an original and 10 copies, to John G. Alford, Secretary, Commission, and shall have 30 days from the date this order is published to submit comments.

7. A copy of this order shall be served upon all persons who submitted comments in this rulemaking proceeding.

JOHN G. ALFORD,
Secretary

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of these proposed amendments on March 15, 1996, to IRRC and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the amendments, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Committees have objections to any portion of the proposed amendments, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed amendments, it will notify the Commission within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Commission, the General Assembly and the Governor of any objections raised.

Statement of Chairperson John M. Quain

Before us today are two significant rulemakings that, when combined, will delete or rescind 62 obsolete and redundant sections of our regulations and revise another 43 sections. Furthermore, when this Commission again meets on January 11, 1996, we will consider another 58 sections pertaining to Chapters 63, 64 and 56 for possible rescission or revision.

I wish to express my appreciation to all of the staff of the various bureaus, and those public commentators who contributed to this massive undertaking.

Statement of Commissioner John Hanger

Before us for consideration is the Law Bureau's recommendation and Motion of Chairperson John M. Quain regarding regulations appearing in 52 Pa. Code Chapter 59.

While supporting most of the recommendations, the following section should not be modified:

Section 59.11. Accidents. The Bureau of Transportation and Safety correctly recommended that these reporting requirements be retained since the reporting requirements of 49 CFR Part 191.3 do not include telephonic notice to state agencies and only require that written reports be submitted to the states "if the regulations of

that agency require submission of such reports." For this reason, § 59.11 should not be modified.

Fiscal Note: 57-164. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED UTILITY SERVICES
CHAPTER 59. GAS SERVICE
GENERAL PROVISIONS**

§ 59.1. Definitions.

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

* * * * *

Distribution line—A pipeline other than a gathering or transmission line.

* * * * *

Gathering line—A pipeline that transports gas from a current production facility to a transmission line or main.

* * * * *

LNG—Liquified Natural Gas—A natural gas or synthetic gas having methane (CH₄) as its major constituent which has been changed to a liquid or semisolid.

LNG facility—A pipeline facility that is used for liquefying or solidifying natural gas or synthetic gas or transferring, storing or vaporizing liquefied natural gas.

* * * * *

Main—[The pipe of a public utility system, excluding service connection located in a public highway, street, alley or private right-of-way, and used to transport gas] A distribution line that serves as a common source of supply for more than one service line.

* * * * *

Pipeline—All parts of those physical facilities through which gas moves in transportation, including pipe, valves and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies.

* * * * *

Public utility service line—The pipe and appurtenances of the public utility which connect any main with either the point of connection of a service line of the customer if the line is provided by the customer in accordance with the rules and regulations of the public utility, or the meter of the public utility if the utility owns all the pipe and appurtenances between its main and meter.

* * * * *

SMYS—Specified minimum yield strength—One of the following:

(i) For steel pipe manufactured in accordance with a listed specification, the yield strength specified as a minimum in that specification.

(ii) For steel pipe manufactured in accordance with an unknown or unlisted specification, the yield strength determined in accordance with 49 CFR 192.107(b) (relating to yield strength).

* * * * *

Service line—[The pipe and appurtenances of the public utility which connect any main with either the point of connection of a service line of the customer if such line is provided by the customer in accordance with the rules and regulations of the public utility, or the meter of the public utility if the utility owns all the pipe and appurtenances between its main and meter.] A distribution line that transports gas from a common source of supply to a customer meter or the connection to a customer's piping, whichever is further downstream, or the connection to a customer's piping if there is no customer meter. A customer meter is the meter that measures the transfer of gas from an operator to a consumer.

* * * * *

Transmission line—A pipeline, other than a gathering line that does one of the following:

(i) Transports gas from a gathering line or storage facility to a distribution center or storage facility.

(ii) Operates at a hoop stress of 20% or more of SMYS.

(iii) Transports gas within a storage field.

[**Utility system designations**—Utility systems include both of the following:

(i) **Distribution system**—That portion of a public utility system used for the primary purpose of delivering gas to the ultimate consumers.

(ii) **Transmission system**—That portion of a public utility system installed for the primary purpose of transmitting gas from a source or sources of supply to one or more distribution centers or to one or more large volume customers or a pipe installed to interconnect sources of supply.]

SERVICE AND FACILITIES

§ 59.11. Accidents.

* * * * *

(b) **Reportable accidents.** Reportable accidents are those involving utility facilities or operations which result in one or more of the following circumstances:

(1) [The death of a person.

(2) Injury to an employe on duty sufficient to incapacitate him from performing his ordinary duties for a period longer than 3 days.

(3) Injury to a person other than an employe on duty sufficient to incapacitate the injured person from following his customary vocation, or mode of life, for a period of more than 1 day.

(4) An occurrence of an unusual nature, whether or not death or injury of a person results, which may result in a prolonged and serious interruption of normal service.]

An event that involves a release of gas from a pipeline or of LNG or gas from an LNG facility and one of the following:

- (i) A death or personal injury.
- (ii) Estimated property damage, including cost of gas lost, of the operator or others, or both, of \$50,000 or more.
- (2) An event that results in an emergency shut-down of an LNG facility.
- (3) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraph (1) or (2).

* * * * *

§ 59.15. Measurement of gas at higher than standard service pressure.

* * * * *

(c) *Fixed pressure factor measurement.* If the gas metering pressure can be maintained at a constant level so that it will not vary by more than plus or minus 1.0% of the absolute metering pressure, the quantity of gas corrected for pressure for billing purposes may be determined by multiplying the uncorrected volume by the factor of Metering Pressure Plus Atmospheric Pressure Divided by Base Pressure or by a special index with gearing to perform this calculation. The special index shall meet the specifications of ANSI Standard B109.1, § 6.2 (1986) or ANSI Standard B109.1, § 6.9 (1986). The ability of the regulator to maintain the constant pressure shall be verified at or prior to installation. Verification will be established by the use of a verified pressure-indicating gauge (accuracy: ANSI B40.1 Grade 3A), or a pressure-recording gauge, at both high and low flow conditions. When customer load is measured with a meter with a rated capacity of [1500] 1,500 cubic feet per hour or less, with metering pressure less than 3 psig, the performance of the regulator shall be verified in accordance with the test schedule of the downstream meter, established under § 59.21 (relating to meter tests). When customer load is measured with a meter with a capacity of over [1500] 1,500 cubic feet per hour or metering pressure of 3 psig or more, the performance of the regulator shall be verified at least every [2] 5 years.

* * * * *

§ 59.21. Meter tests.

(a) *Test schedule for other than Class A, B and C meters.* Each public utility shall make and record tests of orifice, rotary displacement and turbine type service meters as follows:

* * * * *

(2) Rotary displacement meters shall be tested and calibrated at the factory in accordance with recognized and accepted practices and shall be correct to within 1.0% when passing gas at their rated capacities. A record of the test shall be made available to and retained by the utility for the life of the meter. At least once every 10 years, a differential-rate test shall be made and the results checked against the original test recorded at the time of installation. At least every [2] 5 years, the meter shall be inspected to observe the condition of the meter bearings—noise, vibration, and the like—and the level and condition of the oil in the reservoirs. An observed problem shall be promptly corrected. A record of the results of these [2] 5-year tests shall be maintained by the utility

for [a period of 10] 5 years. In lieu of a differential-rate test, a test method approved by the Commission may be used.

* * * * *

§ 59.26. Refusal to serve applicants or customers.

(a) A public utility may initially decline to serve an applicant if, in the judgment of the utility, any of the following conditions [is] are present:

* * * * *

(b) A public utility may decline to serve an existing customer if, in the judgment of the utility, a hazardous condition exists regarding the piping or gas equipment of the customer.

§ 59.29. Gas pressure requirements for low-pressure distribution systems.

(a) [*Pressure districts.* Each public utility shall divide the territory served by it into pressure districts and shall specify for each district or for the territory as a whole (which shall then be regarded as a single district) the maximum pressure to be maintained within that district.

(b) [*Maximum pressure.* The maximum pressure specified for a [district] low pressure system may not be greater than a pressure which will not cause the unsafe operation of connected and properly adjusted gas utilization equipment or 14 inches of water column (8.1 ounces), whichever is less, at the outlet of the service meter of a low pressure customer.

[(c)] (b) ***

(d) (c) *Changing pressure.* A public utility may change the distribution pressure for any [district] system, but if [any such] a change is made, all appliances of a customer located within the [district] system shall, if necessary, be readjusted by and at the expense of the utility. The utility shall notify the Commission whenever [district] system pressure changes are made which require adjustment of appliances of the customer.

(e) *Exceptions.* Exceptions to the gas pressure requirements of this section may be made as follows:

(1) Higher maximum pressures may be allowed by the Commission in exceptional cases following the presentation of factual data showing that adequate service cannot be supplied with existing facilities at the maximum pressure established in this section, and that it is impracticable to make the necessary changes immediately. In these cases the public utility shall formulate a plan for eliminating the higher pressure conditions as soon as practicable and economically possible.

(2) A public utility supplying gas will not be deemed to have violated the provisions of this section if it is shown that variations from the pressures are due to either of the following:

(i) The use of gas by the customer in violation of contract or rules of the public utility or the Commission.

(ii) Infrequent fluctuations of short duration due to unavoidable conditions of operation.]

[(f)] (d) *Pressure gauges.* A public utility shall maintain and operate on the outlet side of the [district] system regulator station, at least one recording gas pressure gauge of suitable range. If more than one regulator station is used to serve a single pressure [district] system, recording pressure gauges need not be installed for each regulator station. A sufficient number of recording pressure gauges shall be installed and operated in each distribution system to furnish a continuous record of the pressure prevailing in all parts of the system.

§ 59.33. Safety.

* * * * *

(b) *Safety code.* Unless otherwise authorized by the Commission, the minimum safety standards for all gas transmission and distribution facilities in this Commonwealth shall be those issued under the [Natural Gas Pipeline Safety Act of 1968 () pipeline safety laws found at 49 U.S.C.A. §§ [§ 1671—1684] 60101—60503 and as [set forth] implemented in 49 CFR Parts 191, 192 [and], 193 and 199, including all subsequent amendments thereto which have been reviewed by the Commission and ratified by an order published in the *Pennsylvania Bulletin* or alternatively served on all jurisdictional gas utilities. The date the Commission's order is entered, or in the case of publication the date of publication in the *Pennsylvania Bulletin*, shall serve as the effective date of the amendments.

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§ 59.35. Increasing pressure in distribution facilities and transmission facilities.

A significant increase in the normal operating pressure of a distribution or transmission [system] pipeline shall be made in accordance with 49 CFR Part 192, Subpart K (relating to uprating) as of May 1, 1986, and subsequent amendments thereto which have been ratified by the Commission under § 59.33 (relating to safety). A leak survey of mains and services shall be made prior to increasing the pressure initially and also following each incremental increase in pressure. Structures abutting or adjacent to the gas mains shall be inspected to [conform] confirm the utility's records as to the presence or absence of a gas service line on each property.

§ 59.38. Filing of major construction reports.

A public utility shall notify the Commission of proposed major construction, reconstruction or maintenance of plant at least 30 days prior to the commencement of work. Major construction, reconstruction or maintenance is defined for this reporting as a single project involving an expenditure in excess of \$ [200,000] 300,000 or 10% of the cost of the utility's plant in service, whichever is less, production well drilling to be excluded. This notification of proposed construction shall include the following: description and location (city, township, county) of proposed work; type of facility (distribution main, transmission pipeline, compressor station, and the like); estimated starting date; estimated completion date; design pressure; estimated cost; name and address of reporting gas company; name, address and telephone number of person to be contacted regarding the project; and notification to the Commission of the completion date.

ACCOUNTS AND RECORDS

§ 59.41. Classification of gas public utilities.

For accounting and reporting purposes, gas public utilities are classified as follows:

(1) [*Class A. Public Utilities having annual gas operating revenues of \$2,500,000 or more.*]

(2) *Class B. Public utilities having annual gas operating revenues of \$1,000,000 or more but less than \$2,500,000.*

(3) *Class C. Public utilities having annual gas operating revenues of \$100,000 or more but less than \$1,000,000.*

(4) *Class D. Public utilities having annual gas operating revenues of \$25,000 or more but less than \$100,000.*

(5) *Class E. Public utilities having annual gas operating revenues of less than \$25,000.]*

Major. Public utilities having annual gas operating revenues of \$1 million or more.

(2) *Nonmajor. Public utilities having annual gas operating revenues of less than \$1 million.*

§ 59.42. Systems of accounts.

(a) [Each Class A and Class B gas public utility shall keep its accounts in conformity with the "Uniform System of Accounts Prescribed for Natural Gas Companies (Class A and Class B)" by the Federal Power Commission (18 CFR Part 201).]

(b) Each Class C gas public utility shall keep its accounts in conformity with the "Uniform System of Accounts Prescribed for Natural Gas Companies (Class C)" by the Federal Power Commission (18 CFR Part 204).

(c) Each Class D gas public utility shall keep its accounts in conformity with the "Uniform System of Accounts Prescribed for Natural Gas Companies (Class D)" by the Federal Power Commission (18 CFR Part 204).

(d) Each Class E gas public utility, in the absence of a prescribed system of accounts for Class E gas utilities, shall keep the accounts as will be adequately informative for reasonable and foreseeable regulatory purposes.

(e) The provisions of this section apply to manufactured gas public utilities.]

Each major gas public utility shall keep its accounts in conformity with the "Uniform System of Accounts Prescribed for Natural Gas Companies (Major)" by the Federal Energy Regulatory Commission (18 CFR Part 201) (relating to Uniform System of Accounts prescribed for natural gas companies subject to the provisions of the Natural Gas Act).

(b) Each nonmajor gas public utility shall keep its accounts in conformity with the "Uniform System of Accounts Prescribed for Natural Gas Companies (Nonmajor)" by the Federal Energy Regulatory Commission (18 CFR Part 201).

(c) A gas public utility with annual gas operating revenue of less than \$25,000 shall keep the accounts as will be adequately informative for reasonable and foreseeable regulatory purposes.

(d) This section applies to manufactured gas public utilities.

REPORTING AND CURTAILMENT OF SERVICE

§ 59.62. [Gas sales ban] (Reserved).

[(a) No jurisdictional gas distributor shall enter into a contract for serving any gas-burning equipment except under any of the following circumstances:

(1) In the case of major distributors, the most recent reports submitted under § 59.61 (relating to periodic reporting requirements for major gas utilities) show, in each period covered by the reports, that the equipment can be supplied without causing annual or peak-day deliveries to exceed annual or peak-day supplies; and, in the case of distributors not reporting under § 59.61, actual and projected supply exceeds actual and projected requirements.

(2) The contract for service expressly provides that the service may be curtailed, interrupted or terminated upon 24 hours notice.

(3) The gas-burning equipment is a replacement of similar equipment installed prior to February 16, 1972 and is of the same or lesser rated capacity.

(b) [Reserved].

(c) Despite the restrictions of subsection (a) a distributor may make new gas sales to applicants for one- and two-family residential service, although only to the extent that the number of residential accounts remains no greater than the number receiving service or under commitment to receive service at the date that distributor first became subject to sales ban provisions of this section. Jurisdictional natural gas distribution utilities making the new residential sales shall do so in order of priority established by a utility-complied waiting list. Each distributor shall keep an annual record of residential replacement sales and shall report the information to the Commission by May 15 of each year.

(d) Despite the prohibition contained in subsection (a) restricting the establishment of new service during periods of supply deficiency, additional meters may be permitted at existing accounts if the total volume of gas served at the location does not increase by virtue of installing additional meters, the utility does not thereby institute service to new or larger capacity gas-burning equipment in violation of subsection (a)(3) and splitting of the subject account does not result in avoidance of curtailment or reduction of the curtailment base of the utility. The charges under the tariff of the utility incident to installing additional meters shall be assumed by the customer requesting splitting of service. An increase in the total number of meters resulting from the splitting of service shall be reflected as an increase in the number of authorized accounts of the utility, which accounts shall be permitted to be

adjusted upward corresponding to the increase in the number of meters.

(e) Each jurisdictional utility having suspended new sales under subsection (a) shall petition the Commission for express approval prior to commencement of sales to new gas customers—to include the expansion of service or new service to an existing customer. New or expanded sales shall be permitted to all customer classes as defined in § 69.21 (relating to priority of service); except that for Priorities 5 and 6 customers, equivalent alternative fuel capacity installed within 1 year of commencement of service is to be required by the utility as a precondition to new or expanded service. A petition to resume new sales must be in full compliance with provisions of this section and shall contain supporting data including, but not limited to, the following:

(1) Updated PUC Forms 1 and 2 for the current year and the 3 forward years as required at § 59.67 (relating to formats).

(2) A 10-year supply/demand projection indicating sources of all presently available and new supplies which the utility estimates will become available.

(3) A detailed statement of energy efficiency standards which the utility proposes to require, if any, for entitlement to new or expanded service, to be included in the rules and regulations of its tariff.

(4) Projections for the current year and 3 forward years, by priority classification under § 69.21 of the number of new customers and associated consumption in each priority class to be served.

(5) A brief economic impact statement discussing the effects of new or expanded sales, including any effect on unemployment, the demand for alternate fuels and local economic conditions, the estimated cost of future gas supply, and the effects of increased gas prices on various classes of customers and industries within the utility's service area.

(6) Other information as the Commission may, by this title or by special order, require.

(f) When a major jurisdictional gas distribution utility subject to the sales-ban provisions of this section determines in the ordinary course of its business that a customer has connected a gas appliance in violation of this section, the utility shall promptly notify the customer and the Commission, in writing, of a violation. If the customer does not remove the unauthorized gas equipment within 30 days after a notice is served on the customer, the utility shall disconnect gas service until the equipment is removed; however, in the case of residential customers, termination after expiration of the 30-day period shall be Chapter 56, Subchapter E (relating to termination of service), and no disconnections may be required or permitted during the winter heating season, November 1 through March 31. New customers shall be notified in writing of the restrictions against and implications of unauthorized attachments at the time of application for service and shall be informed of the fact that written application to the

utility is re-quired any time the addition of new or larger-capacity gas burning equipment is contemplated.

(g) A report (Form 4, Parts A and B) on new customer attachments and associated volumes shall be submitted prior to the end of the month follow-

ing the termination of each quarter in accordance with the instructions specified on the forms.

(h) [Reserved].]

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