<b>Regulatory Analy</b>	sis Form	This space for use by IRRC		
(1) Agency	anna ann a bha ann an ann ann an Ann Ann Ann Ann Ann			
Pennsylvania Public Utility Commission	1			
(2) I.D. Number (Governor*s Office Use)	·····			
L-00010154/57-225		IRRC Number: 2247-		
(3) Short Title				
Deletion of Obsolete Street Railway Tra	insportation Regulations			
(4) PA Code Cite	(5) Agency Contacts & Telephone N	lumbers		
52 Pa. Code §§35.1-35.44	Primary Contact: David A. Sala Transportation and Safety (Legal Di	-		
	Secondary Contact:			
(6) Type of Rulemaking (check one)	(7) Is a 120-Day Emer	gency Certification Attached?		
<ul> <li>Proposed Rulemaking</li> <li>Final Order Adopting Regulation</li> <li>Final Order, Proposed Rulemaking</li> </ul>	torney General overnor			
(8) Briefly explain the regulation in clear an	nd nontechnical language.			
The proposed rulemaking deletes existing regulations governing street railway transportation in the Commonwealth. The existing regulations are outdated in light of changes in street railway operations in the Commonwealth. The existing regulations govern private companies providing street railway transportation in the Commonwealth. Currently only Southeastern Pennsylvania Transportation Authority and the Port Authority of Allegheny County provide street railway transportation in the Commonwealth. Both these entities are public bodies whose enabliing legislation excludes the Commission from regulating their rates, facilities and service. In addition, since both entities receive federal funds, they are subject to federal regulations governing the safety of their operations.				
(9) State the statutory authority for the regulation and any relevant state or federal court decisions.				
66 Pa. C.S. §501				

Regulatory Analysis Form
(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.
No.
(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?
Since Southeastern Pennsylvania Transportation Authority and Port Authority of Allegheny County are the only entities operating street railway transporation in the Commonwealth and their enabling legislation precludes the Commission from regulating their rates, facilities and sevice, the regulations are not needed.
(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.
None.
<ul><li>(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)</li></ul>
Southeastern Pennsylvania Transportation Authority and the Port Authority of Allegheny County will

Southeastern Pennsylvania Transportation Authority and the Port Authority of Allegheny County will benefit from this rulemakeing because it will remove any ambiguity regarding PUC oversight of their street railway operations and lessen any regulatory burdens resulting from the regulations. Customers of Southeastern Pennsylvania Transportation Authority and Port Authority of Allegheny County will benefit since eliminating the regulations will eliminate any confusion over what rules govern those entities' street railway operations.

·	Regulatory Analysis Form
(14)	Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)
	No person or entity will be adversely affected by this regulation.
(15)	List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)
	None.
(16)	Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.
regu Trar	The Commission contacted representatives of Southeastern Pennsylvania Transportation Authority Port Authority of Allegheny County. Neither entity voiced any objection to eliminating the lations. The Commission also contacted representatives of the Pennsylvania Department of asportation regarding the conditions imposed on federal funds received by Southeastern Pennsylvania asportation Authority and Port Authority of Allegheny County.
	Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.
	None

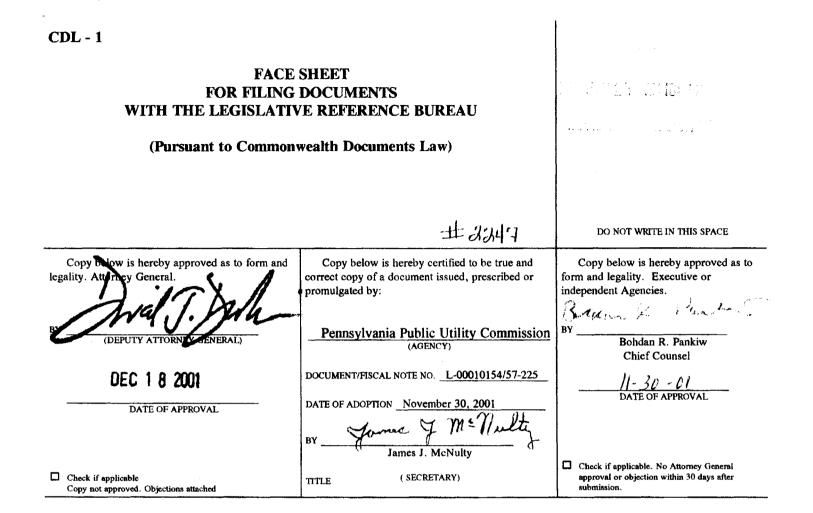
Regulatory Analysis Form
(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.
None
(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.
None

Regulatory Analysis Form						
(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.						
	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						_
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						
(20a) Explain how the cost estimates listed above were derived.						
Not Applicable.						

	Regu	latory Analysis F	orm	
(20b) Provide the past	three year expendit	ure history for progra	ms affected by the 1	regulation.
Program	FY -3	FY -2	FY -1	Current FY
Not Applicable				
			· · · · · · · · · · · · · · · · · · ·	
(21) Using the cost-be outweigh the adv Not Applicable.	enefit information pr erse effects and cost		how the benefits o	f the regulation
(22) Describe the non alternatives. Prov Not Applicable	regulatory alternativ vide the reasons for		costs associated with	th those
(23) Describe alternat Provide the reason	ive regulatory schen ons for their dismiss		e costs associated w	ith those schemes.
Not Applicable.				

Regulatory Analysis Form
(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.
Not Applicable.
(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?
Comparison with other states was not made.
(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.
No.
(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.
No.

Regulatory Analysis Form
(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.
No.
(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.
Not Applicable.
(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?
The regulation will become effective upon publication in the Pennsylvania Bulletin following review by the standing committees and the Independent Regulatory Review Commission.
(31) Provide the schedule for continual review of the regulation.
Not Applicable.



L-00010154/57-225 Proposed Rulemaking Deletion of Obsolete Street Railway Transportation Regulations 52 Pa. Code, Chapter 35

The Pennsylvania Public Utility Commission on November 30, 2001, adopted a proposed rulemaking order which proposes to delete street railway transportation regulations which have become obsolete. The contact person is David Salapa, Bureau of Transportation and Safety, 783-2841.

### **EXECUTIVE SUMMARY**

L-00010154/57-225 Proposed Rulemaking Re: Deletion of Obsolete Street Railway Transportation Regulations 52 Pa. Code Chapter 35

The Commission proposes to delete the existing regulations governing street railway transportation in the Commonwealth. The existing regulations are outdated in light of changes in street railway operations in the Commonwealth.

At one time, street railway companies provided passenger service to many areas of the Commonwealth. Over the years, many of these street railway companies went out of business due to the widespread use of automobiles. In order to preserve street railway passenger service in the Pittsburgh and Philadelphia metropolitan areas, the General Assembly passed legislation authorizing the creation of transportation authorities and empowered those transportation authorities to purchase the assets of the street railway companies operating in those metropolitan areas. These transportation authorities, Southeastern Pennsylvania Transportation Authority (SEPTA) and Port Authority of Allegheny County (PAT) purchased the assets of the street railway companies and began operating street railway systems in the Philadelphia and Pittsburgh metropolitan areas. The Philadelphia and Pittsburgh metropolitan areas are the only places in the Commonwealth where street railway systems still operate.

Both SEPTA's and PAT's enabling legislation provides that those agencies shall determine the facilities they will operate, the services they will provide and the rates they

will charge. The Commission is thus precluded from regulating SEPTA or PAT in these areas. In addition, SEPTA and PAT receive federal funds for their operations. Receipt of the federal funds is conditioned upon the authorities having safety programs in place that are monitored by the Pennsylvania Department of Transportation. Since the Pennsylvania Department of Transportation monitors the safety programs initiated by SEPTA and PAT, the Commission's regulations at 52 Pa. Code §§35.1-35.44 are unnecessary.

The contact person is David A. Salapa (717) 783-2841 in the Bureau of Transportation and Safety, Legal Division.

# PENNSYLVANIA PUBLIC UTILITY COMMISSION Harrisburg, Pa 17105-3265

# Public Meeting held November 30, 2001

Commissioners Present:

Glen R. Thomas, Chairman Robert K. Bloom, Vice-Chairman Aaron Wilson, Jr. Terrance J. Fitzpatrick

Deletion of Street Railway Transportation Regulations at 52 Pa. Code §35.1 through §35.44. Docket No. L-00010154

ORDER

#### BY THE COMMISSION:

The Commission proposes to delete existing regulations governing street railway transportation in the Commonwealth. The current regulations are outdated in light of changes in street railway operations in the Commonwealth.

At one time street railway companies provided passenger service to many areas of the Commonwealth. When automobiles came into widespread use, many street railway companies began to loose money. Over the years many of these street railway companies abandoned service, discontinued operations and liquidated their assets. Finally, the only areas in the Commonwealth where street railway companies continued to operate were in the Pittsburgh and Philadelphia metropolitan areas. As more people used automobiles to commute to work and large numbers of people moved to suburbs, even the street railway companies operating in the Pittsburgh and Philadelphia metropolitan areas began loosing money. In order to preserve street railway passenger service in the Philadelphia and Pittsburgh metropolitan areas, the General Assembly passed legislation authorizing creation of transit authorities and empowered those transit authorities to purchase the assets of the street railway companies. These transit authorities, Southeastern Pennsylvania Transportation Authority (SEPTA) and the Port Authority of Allegheny County (PAT) purchased the assets of the street railway companies and began operating street railway systems in the Philadelphia and Pittsburgh metropolitan areas. See Pittsburgh Railways Company v. Pa PUC, 427 Pa. 562, 237 A.2d 602 (1967) and Pa PUC v. SEPTA, 343 A.2d 371 (Pa. Commw. Ct. 1975). Thus the era of privately owned street railway companies in the Commonwealth came to an end.

At the same time that SEPTA and PAT took over the operations of street railway companies in the Philadelphia and Pittsburgh metropolitan areas, the Federal Government became involved in funding urban mass transit. See 49 U.S.C. §§5301-5338. Congress began providing federal funds for the operations of transit authorities throughout the United States, including SEPTA and PAT. With federal funds came conditions for their use. These conditions required not only that the federal money be spent on certain items, but also required the transit authorities to operate in a certain manner in order to continue receiving federal funds. For instance, the Federal Department of Transportation recently began requiring that local transit agencies operating street railways develop system safety program plans as a condition for receiving federal funds. See 49 C.F.R. §659.1-659.49. Increased federal funds and the conditions imposed on the use of those funds have greatly enlarged the federal oversight of street railway operations by local transit authorities.

In contrast to this increased federal role in the operation of street railways by local transit authorities, the Commission's authority over SEPTA and PAT is limited. PAT's enabling legislation divests the Commission of jurisdiction over the transportation of passengers for hire in Allegheny County except for taxicabs and school buses. See Port Authority of Allegheny County v. Pa. PUC, 494 Pa. 250, 431 A.2d 243 (1981). The Commission is not aware of any PAT street railway operations outside Allegheny County.

SEPTA's enabling legislation provides that SEPTA by itself shall determine the facilities it will operate, services it will make available and the rates it will charge. See 74 Pa. C.S.§1741 (15). The only exception to this in SEPTA's enabling legislation is when SEPTA provides services outside the five county Philadelphia metropolitan area. See 74 PA. C.S.§1711 and §1741 (26). The Commission is not aware of any SEPTA street railway operations outside the five county metropolitan area.

In addition, the Commission has recently held that the Public Utility Code does not grant the Commission authority over crossings between SEPTA's street railway facilities and public highways. <u>See Application of SEPTA</u>, Docket No. A-00116200 (December 17, 1999); <u>Application of SEPTA</u>, Docket No. A-00116334 (March 17, 2000); and <u>Application of SEPTA</u>, Docket No. A-00116121 (March 17, 2000). In those decisions, the Commission held that it only had jurisdiction over SEPTA as a public utility when SEPTA operated regional rail lines formerly owned by certain railroads. <u>See</u> 66 Pa. C.S. §102. That rationale applies not only to crossings involving street railways but also to Commission jurisdiction pursuant to 66 Pa. C.S. §1501, §1505 and §1508, governing safety of services, facilities and accident reports. SEPTA's street railway facilities are not regional rail lines formerly owned or operated by the designated railroads.

Commission staff conferred with Pennsylvania Department of Transportation staff and confirmed that PAT and SEPTA receive federal funds from the Federal Transit Administration (FTA) through the Pennsylvania Department of Transportation. The Pennsylvania Department of Transportation acts as the conduit for federal funds to PAT, SEPTA and other local transportation agencies. The FTA regulations at 49 C.F.R. §659.1-659. 49 require the Pennsylvania Department of Transportation, as the oversight agency, to develop a safety program for street railways operated by local transit authorities. The Pennsylvania Department of Transportation's safety program for local transit authorities is administered by that agency's Bureau of Public Transportation.

The Pennsylvania Department of Transportation, Bureau of Public Transportation is the oversight agency of PAT and SEPTA pursuant to 49 C.F.R. §659.1-659.49. The regulations at 49 C.F.R. §659.31 and §659.32 require SEPTA and PAT to implement system safety program plans consistent with the Pennsylvania Department of Transportation's system safety program standards. Commission staff conferred with Pennsylvania Department of Transportation's staff in the Bureau of Public Transportation and ascertained that SEPTA and PAT have implemented these safety plans. Pennsylvania Department of Transportation staff also reports that the Bureau of Public Transportation receives annual safety audit reports from PAT and SEPTA and performs safety reviews of PAT and SEPTA pursuant to 49 C.F.R. §659.35 and §659.36. In addition, PAT and SEPTA provide accident reports to the Pennsylvania Department of Transportation as required by 49 C.F.R. §659.39. Since the Pennsylvania Department of Transportation, Bureau of Public Transportation, acts as oversight agency of SEPTA and PAT pursuant to 49 C.F.R. §659.1-659.49, the Commission's regulations at 52 Pa. Code §§35.1-35.44 are unnecessary.

The regulation at Section 35.1 is deleted since it is superseded by the definitions set forth at 49 C.F.R. §659.5. Definition of rail fixed guide way system defines the same functions as the definition of street railway in 52 Pa. Code §35.1.

Section 35.2 is deleted as not necessary in the light of the federal regulations at 49 C.F.R. §659.1-659.49.

Section 35.3 is deleted due to the lack of Commission authority over SEPTA and PAT's street railway operations.

Section 35.11 is deleted as unnecessary due to federal regulations at 49 C.F.R. §630.1-630.12 that set forth standards of accounting and reporting for transit agencies receiving federal funds from the Federal Transit Administration. Since only SEPTA and PAT operate street railways in the Commonwealth, they are already governed by the reporting regulations at 49 C.F.R. §630.1-630.12 and the Statue at 49 U.S.C. §5335.

Section 35.12 is deleted as outdated. The reference in this section to 49 C.F.R. §1221 is obsolete. That section of CFR no longer exists. The regulations at 49 C.F.R. §630.1-630.12 set forth the standards of accounting and reporting for transit agencies receiving federal funds from FTA.

Section 35.13 is deleted as unnecessary. The federal regulations at 49 C.F.R. §659.39 set forth accident reporting requirements for transit agencies receiving federal funds.

Section 35.21 is deleted as unnecessary. The federal regulations at 49 C.F.R. §659.1-659.49 set forth the requirements for transit authorities to develop a system safety program plan.

Section 35.22 is deleted as unnecessary. Prior Commission and Pennsylvania appellate court decisions have held that the Commission has no jurisdiction over street railway crossings of either PAT of SEPTA.

Section 35.23 is deleted as unnecessary. The federal regulations at 49 C.F.R. §659.1-659.49 set forth the requirements for transit authorities to develop a system safety program plan.

Section 35.24 is deleted as unnecessary. Prior Commission and Pennsylvania appellate court decisions have held that the Commission has no jurisdiction over SEPTA and PAT street railway facilities and operations.

Section 35.25 is deleted as unnecessary. Prior Commission and Pennsylvania appellate court decisions have held that the Commission has no authority over PAT and SEPTA street railway operations and facilities.

Section 35.26 is deleted as unnecessary. Prior Commission and Pennsylvania appellate court decisions have held that the Commission has no jurisdiction over PAT and SEPTA street railway facilities and operations.

Section 35.31 is deleted as unnecessary. Prior Commission and Pennsylvania appellate court decisions have held that the Commission has no jurisdiction over SEPTA and PAT street railway crossings.

Section 35.32 is deleted as unnecessary. Prior Commission and Pennsylvania appellate court decisions have held that the Commission has no jurisdiction over PAT and SEPTA street railway crossings.

Section 35.33 is deleted as unnecessary. Prior Commission and Pennsylvania appellate court decisions have held that the Commission has no jurisdiction over PAT or SEPTA street railway crossings.

Section 35.34 is deleted as unnecessary. Prior Commission and Pennsylvania appellate court decisions have held that the Commission has no jurisdiction over PAT or SEPTA street railway crossings.

Section 35.35 is deleted as unnecessary. Prior Commission and Pennsylvania appellate court decisions have held that the Commission has no jurisdiction over PAT or SEPTA street railway crossings.

Section 35.36 is deleted as unnecessary. Prior Commission and Pennsylvania appellate court decisions have held that the Commission has no jurisdiction over PAT or SEPTA street railway crossings.

Section 35.41 is deleted as unnecessary. Both SEPTA's and PAT's enabling legislation provide that the Commission has no authority to govern rate making with regard to street railway operations.

Section 35.42 is deleted as unnecessary. Both SEPTA's and PAT's enabling legislation provide that the Commission has no authority over level of service provided on street railway operations.

Section 35.43 is deleted as unnecessary. Prior Commission and Pennsylvania appellate court decisions have held that the Commission has no jurisdiction over the street railway facilities and operations of PAT or SEPTA.

Section 35.44 is deleted as unnecessary. Prior Commission and Pennsylvania appellate court decisions have held that the Commission has no jurisdiction over PAT or SEPTA's street railway operations.

Accordingly, under §§501 and 1501 of the Public Utility Code (66 Pa. C.S. §§501 and 1501) and the Commonwealth Documents Law (45 P.S. §1201, <u>et seq.</u>), and regulations promulgated there under at 1 Pa. Code §§7.1,7.2 and 7.5, we propose to delete the regulations at 52 Pa. Code §§35.1 through 35.44 as noted above and as set forth in Annex A. **THEREFORE**,

IT IS ORDERED:

1. That a proposed rulemaking docket shall be opened to delete the regulations at 52 Pa. Code §§35.1 through 35.44 as set forth in Annex A of this order.

2. That the Secretary shall submit this order and Annex A to the office of the Attorney General for preliminary review as to form and legality.

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

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

5. That the Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the <u>Pennsylvania Bulletin</u>.

6. That, within thirty days of this order's publication in the <u>Pennsylvania</u> <u>Bulletin</u>, an original and 15 copies of any comments concerning this order should be submitted to the Pennsylvania Public Utility Commission, Attn. Secretary, P.O. Box 3265, Harrisburg, Pa. 17105-3265.

7. The contact person is David A. Salapa, Assistant Counsel, Bureau of Transportation and Safety, telephone (717) 783-2841. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

BY THE COMMISSION,

June J Mª Multy

James J. McNulty Secretary

(SEAL)

ORDER ADOPTED: November 30, 2001

ORDER ENTERED: DEC 1 0 2001

# ANNEX A TITLE 52. PUBLIC UTILITIES PART 1 PUBLIC UTILITY COMMISSION Subpart B CARRIERS OF PASSENGERS OR PROPERTY CHAPTER 35. STREET RAILWAY TRANSPORTATION

(Editor's note: As part of this proposal, the Commission is proposing to delete the existing text of Chapter 35, which appears at 52 Pa. Code pages 35-2-35-8, serial pages (239200)-(239206), in its entirety.)

§35.1 - §35.3 (Reserved)

§35.11 - §35.13 (Reserved)

§35.21 - §35.26 (Reserved)

§35.31 - §35.36 (Reserved)

§35.41 - §35.44 (Reserved)



COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA PUBLIC UTILITY COMMISSION HARRISBURG, PENNSYLVANIA

GLEN R. THOMAS CHAIRMAN

# January 24, 2002

The Honorable John R. McGinley, Jr. Chairman Independent Regulatory Review Commission 14th Floor, Harristown II 333 Market Street Harrisburg, PA 17101

> Re: L-00010154/57-225 Proposed Rulemaking Re: Deletion of Obsolete Street Railway Transportation Regulations 52 Pa. Code, Chapter 35

Dear Chairman McGinley:

Enclosed please find one (1) copy of the proposed rulemaking and the Regulatory Analysis Form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." Pursuant to Section 5(a) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission is submitting today a copy of the proposed rulemaking and Regulatory Analysis Form to the Chairman of the House Committee on Consumer Affairs and to the Chairman of the Senate Committee on Consumer Protection and Professional Licensure.

The purpose of this proposal is to delete street railway transportation regulations which have become obsolete. The contact person is David Salapa, Bureau of Transportation and Safety, 783-2841.

The proposal has been deposited for publication with the Legislative Reference Bureau.

Very truly yours,

Glen Thomas

Glen R. Thomas Chairman

Enclosures

cc: The Honorable Clarence D. Bell The Honorable Lisa Boscola The Honorable Dennis M. O'Brien The Honorable Joseph Preston, Jr. Legislative Affairs Director Perry Chief Counsel Pankiw Assistant Counsel Salapa Regulatory Coordinator DelBiondo Ms. Labecki

# TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

ID	Number:	L-00010154/57-225
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Subject: Deletion of Obsolete Street Railway Transportation Regulations

Pennsylvania Public Utility Commission

## TYPE OF REGULATION

X	Proposed Regulation						
	Final Regulation with Notice of Omitted.	Pro	opos	ed	Rulema	king	
	Final Regulation						
	120-day Emergency Certification General	of	the	At	torney		
	120-day Emergency Certification	of	the	Go	vernor		

## FILING OF REPORT

Date	Signature	Designation
1/24/02	Lila Burris	HOUSE COMMITTEE
	$\bigcap$	Consumer Affairs
JAN 2 4 200	2 Mull July	SENATE COMMITTEE
. 1		Consumer Protection and Professional Licensure
1/24/03	Clera Lazan	Independent Regulatory Review Commission
-14:1 it		Attorney General
		Legislative Reference Bureau