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**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
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October 22, 2003

Honorable Allen D. Biehler, P.E., Secretary
Department of Transportation
Keystone Building, 8th Floor
400 North Street
Harrisburg, PA 17120

Re: Regulation #18-374 (IRRC #2346)
Department of Transportation
Physical and Mental Criteria, Including Vision Standards Relating to the
Licensing of Drivers

Dear Secretary Biehler:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

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Enclosure

cc: Honorable Roger A. Madigan, Chairman, Senate Transportation Committee
Honorable J. Barry Stout, Minority Chairman, Senate Transportation Committee
Honorable Richard A. Geist, Majority Chairman, House Transportation Committee
Honorable Keith R. McCall, Democratic Chairman, House Transportation Committee

Comments of the Independent Regulatory Review Commission

on

Department of Transportation Regulation No. 18-374

Physical and Mental Criteria, Including Vision Standards Relating to the Licensing of Drivers

October 22, 2003

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Department of Transportation (Department) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on September 22, 2003. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Section 83.2. Definitions. – Clarity.

“Aura” is defined as “an epileptic seizure which does not alter an individual’s ability to think clearly or interfere with an individual’s mechanical or sensory ability to operate a motor vehicle.” This differs from the description of “aura” in the Preamble. The Preamble describes an “aura” as the physical warning many people experience *prior* to a seizure. The definition of “aura” in the final-form regulation should be amended to rectify the inconsistency between the proposed definition and the description in the Preamble.

2. Section 83.3. Visual standards. – Clarity.

Subsections (a) and (b)

Under Subsection (a)(1) and (b), the phrases “less visual acuity than” should be changed to “visual acuity less than” for consistency with the wording in Subsection (a)(2).

Subsection (c)

Subsection (c)(1)(iii) uses the term “freeway.” The final-form regulation should contain a cross-reference to the definition of “freeway” in the Vehicle Code (75 Pa.C.S.A. § 102).

Subsection (c)(1)(v) states that a person’s driving privilege could be limited to a certain geographic area if “determined by the Department to be appropriate.” Under what circumstances would the Department limit a driver to a specific geographic area? What criteria would be used to establish the boundaries of the geographic area?

3. Section 83.4. Seizure disorder. – Clarity.

The last sentence of Subsection (a) states that a person who has experienced only “an aura” during a six-month period will not be disqualified to drive. A strict reading of this provision would disqualify from driving, a person who experienced more than one aura during the six-

month period. It is our understanding that this is not the Department's intent. Therefore, the phrase "an aura" should be changed to "auras."

4. Section 83.5. Other physical and medical standards. – Clarity.

Subsection (b)

Subsections (b)(2)(i) and (b)(3)(i) both state the following; "The provider shall inform the patient of the prohibition against driving due to the functional impairment." How does the Department intend to enforce this provision against both providers and patients?

In its comments, the Pennsylvania Psychological Association (PPA) suggests that the phrase "examination by the physician" in Subsection (b)(5) be changed to "examination by the provider" since psychologists as well as physicians use the Diagnostic and Statistical Manual of Mental Disorders. PPA's proposed revision would be consistent with the terminology used throughout Subsection (b), and we suggest the Department include this revision in the final-form regulation.

In Subsection (b)(5), the last sentence refers to the "applicant's history as provided by self or *others*." (Emphasis added.) The final-form regulation should clarify who is included in "others."

Subsection (c)

Subsection (c) provides that a person with any of certain conditions "may be required to undergo a special driving examination to determine driving competency." (Emphasis added.) What does a special driving exam entail? Under what circumstances will a special driving examination be required?

5. Miscellaneous clarity issues.

Throughout this rulemaking, the word "physician" and the phrase "licensed physician" are used interchangeably. "Physician" is used in the following Sections: §83.2 (definition of seizure); §83.4(a); §83.4(c); §83.5(b)(5) and §83.6. "Licensed physician" is used in the following Sections: §83.3(c)(1); §83.4(b) and §83.5(b)(6). The term "licensed physician" is defined in Section 83.2. For consistency, the Board should use the defined term, "licensed physician," in the sections noted above.

Facsimile Cover Sheet

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Pages: 4

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INDEPENDENT REGULATORY REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Transportation's regulation #18-374 (IRRC #2346). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: _____

Date: _____