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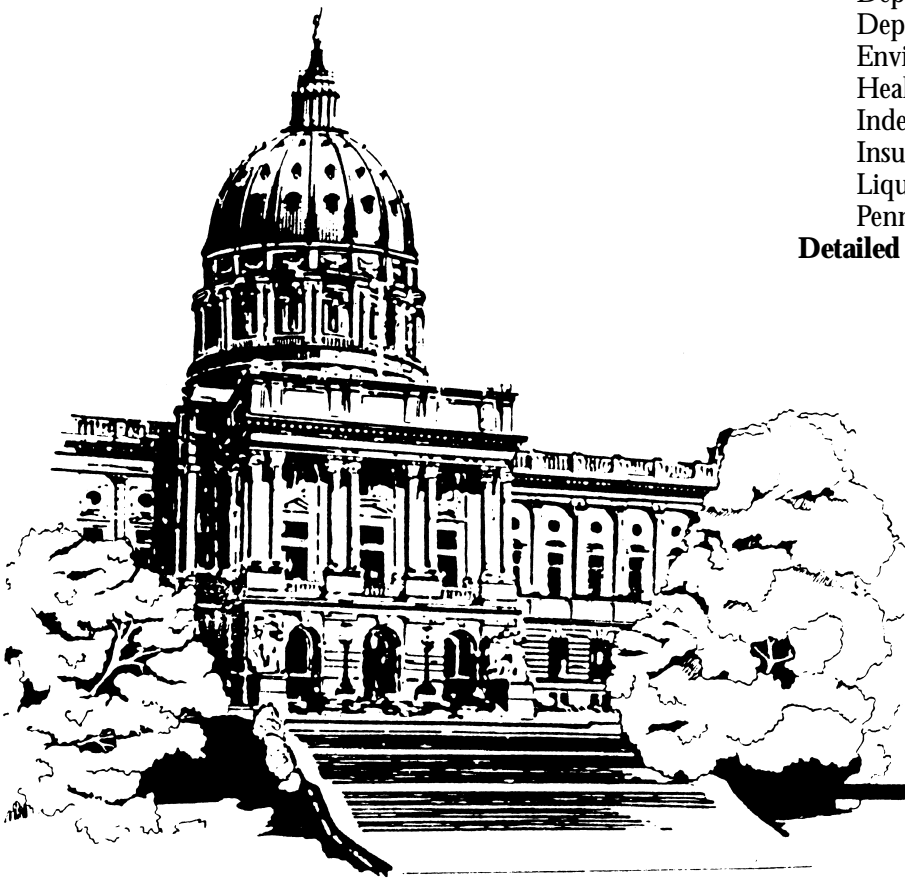
PENNSYLVANIA BULLETIN

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Agencies in this issue:

The Courts
Department of Agriculture
Department of Banking
Department of Conservation and Natural
Resources
Department of Environmental Protection
Department of General Services
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Department of Public Welfare
Department of Transportation
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Health Care Cost Containment Council
Independent Regulatory Review Commission
Insurance Department
Liquor Control Board
Pennsylvania Public Utility Commission

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No. 327, February 2002

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READER'S GUIDE TO THE PENNSYLVANIA BULLETIN AND PENNSYLVANIA CODE

Pennsylvania Bulletin

The *Pennsylvania Bulletin* is the official gazette of the Commonwealth of Pennsylvania. It is published every week and includes a table of contents. A cumulative subject matter index is published quarterly.

The *Pennsylvania Bulletin* serves several purposes. First, it is the temporary supplement to the *Pennsylvania Code*, which is the official codification of agency rules and regulations and other statutorily authorized documents. Changes in the codified text, whether by adoption, amendment, repeal or emergency action must be published in the *Pennsylvania Bulletin*. Further, agencies proposing changes to the codified text do so in the *Pennsylvania Bulletin*.

Second, the *Pennsylvania Bulletin* also publishes: Governor's Executive Orders; State Contract Notices; Summaries of Enacted Statutes; Statewide and Local Court Rules; Attorney General Opinions; Motor Carrier Applications before the Public Utility Commission; Applications and Actions before the Department of Environmental Protection; Orders of the Independent Regulatory Review Commission; and other documents authorized by law.

The text of certain documents published in the *Pennsylvania Bulletin* is the only valid and enforceable text. Courts are required to take judicial notice of the *Pennsylvania Bulletin*.

Adoption, Amendment or Repeal of Regulations

Generally an agency wishing to adopt, amend or repeal regulations must first publish in the *Pennsylvania Bulletin* a Notice of Proposed Rulemaking. There are limited instances where the agency may omit the proposal step; they still must publish the adopted version.

The Notice of Proposed Rulemaking contains the full text of the change, the agency contact person, a fiscal note required by law and background for the action.

The agency then allows sufficient time for public comment before taking final action. An adopted proposal must be published in the *Pennsylvania*

Bulletin before it can take effect. If the agency wishes to adopt changes to the Notice of Proposed Rulemaking to enlarge the scope, they must re-propose.

Citation to the *Pennsylvania Bulletin*

Cite material in the *Pennsylvania Bulletin* by volume number and page number. Example: Volume 1, *Pennsylvania Bulletin*, page 801 (short form: 1 Pa.B. 801).

Pennsylvania Code

The *Pennsylvania Code* is the official codification of rules and regulations issued by Commonwealth agencies and other statutorily authorized documents. The *Pennsylvania Bulletin* is the temporary supplement to the *Pennsylvania Code*, printing changes as soon as they occur. These changes are then permanently codified by the *Pennsylvania Code Reporter*, a monthly, loose-leaf supplement.

The *Pennsylvania Code* is cited by title number and section number. Example: Title 10 *Pennsylvania Code*, § 1.1 (short form: 10 Pa.Code § 1.1).

Under the *Pennsylvania Code* codification system, each regulation is assigned a unique number by title and section. Titles roughly parallel the organization of Commonwealth government. Title 1 *Pennsylvania Code* lists every agency and its corresponding *Code* title location.

How to Find Documents

Search for your area of interest in the *Pennsylvania Code*.

The *Pennsylvania Code* contains, as Finding Aids, subject indexes for the complete *Code* and for each individual title, a list of Statutes Used As Authority for Adopting Rules and a list of annotated cases. Source Notes give you the history of the documents. To see if there have been recent changes, not yet codified, check the List of *Pennsylvania Code* Chapters Affected in the most recent issue of the *Pennsylvania Bulletin*.

The *Pennsylvania Bulletin* also publishes a quarterly List of Pennsylvania Code Sections Affected which lists the regulations in numerical order, followed by the citation to the *Pennsylvania Bulletin* in which the change occurred.

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Printing Format

Material proposed to be added to an existing rule or regulation is printed in **bold face** and material proposed to be deleted from such a rule or regulation is enclosed in brackets [] and printed in **bold face**. Asterisks indicate ellipsis of *Pennsylvania Code* text retained without change. Proposed new or additional regulations are printed in ordinary style face.

Fiscal Notes

Section 612 of The Administrative Code of 1929 (71 P. S. § 232) requires that the Office of Budget prepare a fiscal note for regulatory actions and administrative procedures of the administrative departments, boards, commissions or authorities receiving money from the State Treasury stating whether the proposed action or procedure causes a loss of revenue or an increase in the cost of programs for the Commonwealth or its political subdivisions; that the fiscal note be published in the *Pennsylvania Bulletin* at the same time as the proposed change is advertised; and that the fiscal note shall provide the following information: (1) the designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made; (2) the probable cost for the fiscal year the program is implemented; (3) projected cost estimate of the program for each of the five succeeding fiscal years; (4) fiscal history of the program for which expenditures are to be made; (5) probable loss of revenue for the fiscal year of its implementation; (6) projected loss of revenue from the program for each of the five succeeding fiscal years; (7) line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds shall occur as a result of the action or procedures; (8) recommendation, if any, of the Secretary of the Budget and the reasons therefor.

The required information is published in the foregoing order immediately following the proposed change to which it relates; the omission of an item indicates that the agency text of the fiscal note states that there is no information available with respect thereto. In items (3) and (6) information is set forth for the first through fifth fiscal years; in that order, following the year the program is implemented, which is stated. In item (4) information is set forth for the current and two immediately preceding years, in that order. In item (8) the recommendation, if any, made by the Secretary of Budget is published with the fiscal note. See 4 Pa. Code § 7.231 *et seq.* Where “no fiscal impact” is published, the statement means no additional cost or revenue loss to the Commonwealth or its local political subdivision is intended.

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List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2002.

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THE COURTS

Title 207—JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

[207 PA. CODE CH. 4]

Amendment to the Rules of Procedure; Doc. No. 1
JD 94

Order

Per Curiam:

And Now, this 24th day of January, 2002, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, adopted an amendment to Rule of Procedure No. 411(A), as more specifically hereinafter set forth, *It Is Hereby Ordered*:

That Rule of Procedure No. 411(A) shall become effective immediately.

Annex A

TITLE 207. JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMAL CHARGES

CHAPTER 4. PRE-TRIAL PROCEEDINGS

OMNIBUS MOTION FOR RELIEF; REPLY; ANSWER

Rule 411. Omnibus Motion.

(A) All motions, challenges, and applications or requests for an order or relief on behalf of the Judicial Officer shall be consolidated in one written motion, except as otherwise provided in these rules, or as permitted by the Conference Judge. The omnibus motion shall be filed no later than 30 days of the service of the Board Complaint, and shall be served on the Board.

* * * * *

[Pa.B. Doc. No. 02-210. Filed for public inspection February 8, 2002, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONTGOMERY COUNTY

Amendment to Local Rule of Civil Procedure
1018.1*; No. 2002-00001

Order

And Now, this 7th day of January, 2002, the Court hereby amends Montgomery County Local Rule of Civil Procedure, Rule 1018.1*. Notice to Defend—Office to be Contacted. This Rule shall become effective thirty (30) days from the date of publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in the *Legal Intelligencer*. In conformity with Pa.R.C.P. 239, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Civil Procedural Rules Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, (1) copy with the Court Administrator of Montgomery County, one (1) copy with the Law Library of Montgomery County and one (1) copy with each Judge of this Court.

By the Court

S. GERALD CORSO,
President Judge

Rule 1018.1*. Notice To Defend—Office to be Contacted.

As provided by Pennsylvania Rule of Civil Procedure 1018.1, the following office is designated to be named in the Notice to Defend prescribed by that rule as the office from which advice on where to get legal help can be obtained.

Lawyer Reference Service
100 West Airy Street (Rear)
Norristown, Pennsylvania 19404-0268
(610) 279-9660, Extension 201

[Pa.B. Doc. No. 02-211. Filed for public inspection February 8, 2002, 9:00 a.m.]

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1187]

Nursing Facility Services; Payment Methodology for Movable Property and Exceptional Payments

The Department of Public Welfare (Department) by this order adopts amendments to Chapter 1187 (relating to nursing facility services), to read as set forth in Annex A. These amendments are adopted under sections 201 and 443.1 of the Public Welfare Code (act) (62 P. S. §§ 201 and 443.1) and sections 1396a and 1396r of the Social Security Act (42 U.S.C.A. §§ 1396a and 1396r).

Omission of Proposed Rulemaking

The Department is omitting notice of proposed rulemaking in accordance with section 204(1)(iv) and (3) of the act of July 31, 1968 (P. L. 769, No. 240) (CDL) (45 P. S. § 1204(1)(iv) and (3)) and 1 Pa. Code § 7.4(1)(iv) and (3) because:

- The Department finds that publication of these amendments as proposed rulemaking is contrary to the public interest. The primary purpose of these amendments is to change the case-mix payment methodology to remove perceived disincentives for nursing facilities to purchase unusual or expensive movable property items necessary to serve their Medical Assistance (MA) residents. These amendments permit additional grant payments to those MA nursing facilities that provide nursing facility services to MA residents who require certain extraordinary and expensive medical equipment to receive care and treatment in accordance with their individual care plans. These amendments also revise the case-mix payment methodology relating to movable property in a way that is anticipated to result in overall increases in case-mix per diem rates, and therefore provide additional reimbursement to the vast majority of MA nursing facilities. Adopting these amendments by final rulemaking will enable the Department to make the additional grants and reimbursement available as quickly as possible, and thereby better ensure that MA nursing facility residents receive the necessary care and services required by law.
- These amendments relate to reimbursement for nursing facility services under the MA Program, which is a Commonwealth grant or benefit.

Purpose of Amendments

These amendments revise the Department's case-mix regulations to incorporate and expand existing exceptional payment policies to permit the Department to pay additional reimbursement to nursing facilities for nursing facility services provided to certain MA residents who require medically necessary exceptional durable medical equipment (DME). These amendments also revise the Department's case-mix regulations to change the payment methodology as it relates to the costs of movable property that is used by nursing facilities to provide services to their residents. In addition, these amendments revise the Department's case-mix regulations to clarify existing payment policies and methodology.

Background

A. Medicaid and the MA Program

In 1965, Congress authorized the Medicaid Program by adding Title XIX to the Social Security Act. See 42 U.S.C.A. §§ 1396—1396r Medicaid is a grant-in-aid program in which the Federal government provides financial assistance to participating states to aid them in furnishing various health care services to poor and needy persons. State participation in the Medicaid Program is voluntary. If a state chooses to participate in the Medicaid Program, however, it must comply with Title XIX and implementing Federal regulations.

Under Title XIX, a participating state must designate a single state agency responsible for the administration of the state's Medicaid Program. The single state agency must prepare a state plan for MA (State Plan) and submit it to the Centers for Medicare and Medicaid Services (CMS) (formerly the Health Care Financing Administration (HCFA)) of the United States Department of Health and Human Services for approval. See 42 U.S.C.A. § 1396. Among other things, a State Plan must provide coverage of certain medical services, including nursing facility services, and at the state's option may provide coverage of other services. Upon approval by CMS, the state becomes eligible for Federal financial participation in the costs of the medical care and services specified in its State Plan. See 42 U.S.C.A. § 1396(a).

The Commonwealth participates in the Title XIX Medicaid Program. The Department is the designated single State agency responsible for administration of the Commonwealth's Medicaid Program, which is known as the MA Program. The MA Program provides coverage of a wide array of medical services, including nursing facility services, to this Commonwealth's poor and needy citizens.

B. MA Nursing Facility Services

1. Conditions of Participation

To lawfully provide nursing facility services in this Commonwealth, a person or entity must first obtain a license to do so from the Department of Health (DOH). See section 806(a) of the Health Care Facilities Act (35 P. S. § 448.806(a)). The person or entity is not required to participate in the MA Program to obtain a license. See section 808 of the Health Care Facilities Act (35 P. S. § 448.808) and 28 Pa. Code Chapter 201 (relating to applicability, definitions, ownership and general operation of long-term care nursing facilities). Rather, a licensee of a nursing facility chooses to seek enrollment and to participate in the MA Program as a provider of MA nursing facility services. Thus, participation by nursing facility providers in the MA Program is voluntary.

Federal law, 42 U.S.C.A. § 1396a(a)(27), requires that a nursing facility that wishes to participate in the MA Program must sign an enrollment form called a "Provider Agreement" to enroll as a provider. The provider agreement does not create a contractual relationship between the Department and the provider. Rather, because the MA Program is a grant program, the obligations and duties of both the provider and the Department are derived from and governed by law and regulation. The provider agreement merely signifies the provider's voluntary enrollment in the MA Program.

A nursing facility that is not enrolled in the MA Program may not receive reimbursement from the De-

partment for any nursing facility services that the facility may provide to MA-eligible residents. See section 443.1(3) of the act (62 P. S. § 443.1(3)) and § 1187.101(c) (relating to general payment policy).

As a condition of enrollment and continued participation in the MA Program, a nursing facility shall comply with the requirements for participation imposed by Federal and state statutes and regulations, including the Nursing Home Reform Law, 42 U.S.C.A. § 1396r, and implementing Federal regulations. See § 1187.21(3) (relating to nursing facility participation requirements). These requirements impose various duties on MA participating nursing facilities such as:

- The duty to provide services and activities that permit each resident to attain or maintain his highest practicable physical, mental and psychosocial well-being. See 42 U.S.C.A. § 1396r(b)(2) and (4)(A)(i) and (ii) and (d)(1)(A); and 42 CFR 483.25 and 483.75 (relating to quality of care; and administration).
- The duty to accommodate resident needs and preferences. See 42 U.S.C.A. § 1396r(c)(1)(v)(I); 42 CFR 483.15(e)(1) (relating to quality of life).
- The duties to promote, maintain and enhance the quality of life of each resident. See 42 U.S.C.A. § 1396r(b)(1)(A).
- The duty to properly equip the nursing facility and the rooms and otherwise provide a suitable environment. See 42 U.S.C.A. § 1396r(c)(4)(B)(ii); 42 CFR 483.15(h) and 483.70(d)(2)(iv) (relating to physical environment).
- The duty to provide equal access to quality care. See 42 U.S.C.A. § 1396r(c)(4)(B)(ii).
- The duty to ensure that residents do not experience any avoidable diminution of the ability to ambulate and transfer. See 42 CFR 483.25(a)(1)(ii).
- The duty to ensure that residents do not experience any avoidable diminution of the ability to use speech, language, or other functional communications systems. See 42 CFR 483.25(a)(1)(v).
- The duty to provide appropriate treatment and services to maintain or improve a resident's abilities in activities of daily living, including ambulation and communication. See 42 CFR 483.25(a)(2).
- The duty to prevent avoidable decreases in a resident's social interactions. See 42 CFR 483.25(f)(2).
- The duty to provide nursing facility services to a resident in accordance with that resident's written plan of care. See 42 U.S.C.A. § 1396r(b)(2) and (b)(4)(A)(i) and (ii).
- The duty to provide nursing facility services in accordance with instructions of the physician who is responsible for supervising the health care being provided to a resident. See 42 U.S.C.A. § 1396r(b)(6)(A).

A nursing facility that fails to comply with applicable program requirements, including the aforementioned duties, is subject to the imposition of various remedies by both CMS and the Department, including termination of the facility's participation in the MA Program.

2. Items and Services Covered by the MA Case-mix Per Diem Rate

Under Federal law, the Department may specify the items and services included in its MA case-mix per diem rate. See 42 U.S.C.A. § 1396r(c)(1)(B)(iii) and (4)(B)(ii).

See also 42 U.S.C.A. § 1396r(f)(7). The Department has specified that the MA rate covers payment for routine services and items. See § 1187.51(c) (relating to scope). Routine services and items include, among other things: "services required to meet certification standards, . . . the use of equipment and facilities, . . . [r]eusable items furnished to residents, such as . . . wheelchairs . . . and other durable medical equipment[,] . . . [and] special medical services of a rehabilitative, restorative or maintenance nature, designed to restore or maintain the resident's physical and social capabilities." See § 1187.51(c)(1), (5) and (10).

The Department has also included provisions in the Commonwealth's Title XIX State Plan that authorize the Department, under certain limited circumstances, to make exceptional payments to nursing facilities. During the period January 1, 1996, through October 31, 1999, the State Plan restricted exceptional payments to nursing facilities providing services to "high technology dependent residents, such as ventilator dependent and head and/or spinal cord injured individuals." Under these State Plan provisions, the only additional costs that could be paid through the exceptional payments were costs for the rental of equipment and the supplies necessary to care for high technology-dependent residents. Before the Department would enter into an exceptional payment agreement, the Department had to be satisfied that the nursing facility's per diem rate did not cover the additional exceptional costs related to the care of the high technology-dependent resident and that the resident could not otherwise obtain appropriate care.

3. Payment in Full for Covered Services and Items

An MA nursing facility must accept payment at the MA case-mix per diem rate as payment in full for the covered services and items specified by the Department. See sections 444.1 and 1406(a) of the act (62 P. S. §§ 444.1 and 1406(a)); and § 1101.63(a) (relating to payment in full). An MA nursing facility may not seek or accept any other payment to provide a covered item or service to an MA resident, even though the cost of the particular item or service required to meet the resident's individual needs exceeds the facility's MA payment rate. In those instances in which the Department has entered into an exceptional payment agreement with an MA nursing facility, the facility must accept the MA per diem rate and any additional payments made under the exceptional payment agreement as payment in full for covered services and items provided to the resident specified in the agreement.

C. Overview of the Existing Case-Mix Rate Calculation

The MA Program pays for nursing facility services provided to eligible recipients by enrolled nursing facility providers based upon prospective per diem rates calculated in accordance with the Department's case-mix payment methodology. See §§ 1187.1(c), 1187.2 (definition of "per diem rate"), 1187.96(e) and 1187.101. A nursing facility's prospective per diem rate is comprised of one "capital" rate component and three "net operating" rate components. See § 1187.96(e) (relating to price and rate setting computations). The capital component is based upon the nursing facility's fair rental value (FRV). The three net operating components are based upon peer group prices. See § 1187.96(a)—(e).

As specified in the Department's regulations, the Department computes "peer group prices" annually, using the nursing facility information system (NIS) database. See §§ 1187.2, 1187.52(a) and 1187.91 (relating to policy; definitions; and database). Generally, for any given fiscal year, the NIS database compiles costs from the three

most recent audited cost reports for each MA nursing facility on file as of March 31.¹ See § 1187.91. Applying a complex formula to these compiled costs, the Department calculates the peer group price for the three net operating cost centers for each of the 14 nursing facility peer groups. See §§ 1187.91 and 1187.94—1187.96. The resulting peer group prices are then used by the Department to set the net operating rate components for each nursing facility. See § 1187.96(a)—(c) (relating to price and rate setting computations).

The net operating cost components of the nursing facility's prospective payment rate are limited by or based upon the facility's peer group prices. The Department adjusts the resident care component of each nursing facility's prospective rate every quarter of the rate-setting year to reflect the resource usage of the facility's MA residents. The nursing facility's prospective rate, as adjusted each quarter, remains in effect during the rate-setting period. See §§ 1187.95 and 1187.96. When combined with the capital rate component, these net operating components comprise the nursing facility's case-mix per diem rate.

Under the case-mix regulations, the Department uses capital costs in computing the capital component of nursing facilities' per diem rates by means of an FRV methodology. Instead of recognizing depreciation and interest costs, however, the FRV methodology establishes an imputed rental cost for equipment, housing and shelter that the nursing facility uses to render services to its residents. A nursing facility's FRV is based upon the appraised depreciated replacement value of the facility's fixed and movable property as determined by the most recent appraisal of the facility conducted by the Department or its contractor.

For purposes of the case-mix system, the DME is considered movable property. See §§ 1187.2 (definitions of "movable property" and "appraisal of nursing facilities") and 1187.96(d)(1). The DME includes: bedrails, ice bags, canes, crutches, walkers, wheelchairs, traction equipment and hospital beds. See § 1187.51(c)(5). Because DME is a type of movable property, an MA nursing facility's capital rate component is computed by, among other things, including the appraised depreciated replacement value of that equipment in the total appraised value of the facility, which is then used to derive the facility's overall FRV. See § 1187.96(d)(1) and (2).

D. Purpose of the New Case-Mix Payment Policies

Nursing facilities have repeatedly objected to the Department's decision to include movable property in the FRV methodology and to the way in which the Department determines the value of that equipment in computing the overall FRV. Consumers have also expressed concerns about the way in which the Department recognizes movable property costs. Consumers have contended that the reimbursement methodology creates disincentives to nursing facilities obtaining equipment that is expensive or unusual, or both, in that the methodology does not pay, only partially pays or does not promptly pay equipment costs.

While the Department believes that its case-mix payment methodology provides fair and adequate reimbursement for nursing facility services, the Department recog-

¹ Although the Department audits nursing facilities' allowable costs for each fiscal period, unlike the process used by the prior, retrospective payment system, the Department does not reconcile each facility's prospective payments based upon the facility's final audited costs for the rate-setting period. Rather, the Department uses the audit to set the nursing facility's future payment rates. See § 1187.108(a) (relating to gross adjustments to nursing facility payments). Moreover, in some situations, the Department may use data from less than three audit reports or from unaudited cost.

nizes that, in some situations, a nursing facility's obligation to provide appropriate and necessary services to an MA resident requires that the facility obtain certain DME that is unusual, expensive and otherwise extraordinary. Under current Department regulations, the DME is considered a routine service or item that is covered under the nursing facility's MA per diem rate. Therefore, the nursing facility must accept payment at the MA case-mix per diem rate as payment in full for covered services and items provided to the MA resident, including any medically necessary DME. See § 1101.63(a) (relating to payment in full).

Notwithstanding the nursing facility's obligation to accept payment at the MA per diem rate as payment in full, the Department also recognizes that, because case-mix per diem rates are based upon average costs, adjusted in part by the average acuity of MA residents, some facilities may be reluctant to obtain DME that, although medically necessary, is also unusual and expensive. The reluctance may translate into either delay in the provision of medically necessary DME or, in extreme cases, the outright failure to provide the equipment. In either situation, the likely outcomes are that the resident's needs are not being met and that the nursing facility provider is out of compliance with both State and Federal requirements. These outcomes are unacceptable.

To prevent these unacceptable outcomes and to further encourage nursing facilities to meet their legal obligations to provide necessary care and services, including equipment to improve the resident's ability to self-ambulate and otherwise maximize his independence, the Department is promulgating the amendments set forth in Annex A. The primary purpose of these amendments is to change the case-mix payment methodology to remove perceived disincentives for nursing facilities to purchase unusual or expensive movable property items necessary to serve their MA residents. These changes are part of the Department's continuing efforts to assure that MA nursing facility residents receive care and services allowing them to attain and maintain their highest practicable physical, mental and psychosocial well being in accordance with applicable law, including the Nursing Home Reform Law and Title II of the Americans with Disabilities Act (42 U.S.C.A. §§ 12131—12134).

E. Public Process

Prior to the publication of these amendments, the Department published an advance notice at 29 Pa.B. 5657 (October 30, 1999), announcing its intent to amend its State Plan and nursing facility payment policies to expand its exceptional payment provisions. The Department subsequently published a notice at 29 Pa.B. 5957 (November 20, 1999), announcing that it had drafted provisions to incorporate this policy change into its nursing facility payment methods and standards and that the proposed revisions were available for public review and comment. The Department also discussed and solicited comments on the proposed changes at meetings of the Medical Assistance Advisory Committee (MAAC) on October 27, 1999, December 9, 1999, January 27, 2000, and March 23, 2000; the Long Term Care Subcommittee meetings of the MAAC on October 13, 1999, December 15, 1999, February 9, 2000, and April 12, 2000; the Consumer Subcommittee meetings of the MAAC on October 27, 1999, and March 22, 2000; and the Fee for Service Subcommittee meeting of the MAAC on October 28, 1999. The meetings were open to the public.

The Department received a total of 94 written comments on its draft policy changes from consumers, con-

sumer representatives, industry representatives and other interested parties. In November 2000, the Department released a second draft of its revised case-mix regulations to the members of the MAAC, and the Long Term Care and Consumer Subcommittees of the MAAC. A summary of the significant changes between the November 1999 and the November 2000 draft follows:

“Eligible facility”—In the November 1999 draft, the Department limited the availability of exceptional DME grants to “eligible facilities.” The definition of “eligible facility” excluded special rehabilitation and hospital-based nursing facilities. The Department received comments objecting to the exclusion of these types of nursing facilities from receiving exceptional payments. Upon consideration of these comments, the Department eliminated the definition of “eligible facility” from the draft regulatory language. The effect of the elimination of this definition is that all MA nursing facility providers may receive an exceptional DME grant, subject to the conditions and limitations set forth in §§ 1187.151—1187.158.

“Reasonableness determinations”—In the November 1999 draft, the Department specified that the issuance of an exceptional DME grant would be conditioned upon, among other things, the Department’s determination that “it [was] reasonable for the MA Program to pay for the exceptional DME.” The Department further specified that one circumstance in which it would be unreasonable for the MA Program to pay was when the Department determined that “[t]he expense of the Exceptional DME [was] clearly disproportionate to the therapeutic or rehabilitative benefits that are expected to be derived from the use of the equipment.” The Department received comments objecting to the provisions requiring “reasonableness determinations,” and in particular, to the above-quoted provision which the commentators characterized as imposing an inappropriate “cost/benefit” analysis in the exceptional payment decision-making process. Upon consideration of these comments, the Department eliminated the provisions relating to “reasonableness determinations” from the draft regulatory revisions. The Department notes, however, that the amendments in Annex A specify that the Department must determine that the exceptional DME is medically necessary before the Department will issue an exceptional DME grant to a nursing facility. In making medical necessity determinations, the Department will continue to consider whether the resident’s needs can be met with less costly, medically appropriate alternatives, or with equipment and services that are already available to the resident.

“Prior authorization”—In the November 1999 draft, the Department specified that “[t]he facility’s request must be submitted to and approved by the Department before the facility purchases or rents the DME for which the facility is requesting [an Exceptional DME] grant.” The Department received comments objecting to this “prior authorization” provision. Upon consideration of these comments, the Department eliminated the requirement that the nursing facility request and receive the Department’s approval before purchasing or renting the exceptional DME. The amendments set forth in Annex A allow a nursing facility to request an exceptional DME grant up to 30 days after it purchases or rents the equipment.

“Scope of the draft changes”—The November 1999 draft incorporated and expanded the Department’s existing exceptional payment policies into the case-mix regulations. While the comments that the Department received were generally very supportive of the Department’s proposal to make these changes, the comments also sug-

gested that the changes did not go far enough. A number of commentators requested, for example, that the Department expand the list of exceptional DME to include standard motorized wheelchairs. Other commentators noted that the changes did not address overall concerns with the adequacy of FRV methodology. Upon consideration of these comments, the Department was not convinced that standard motorized wheelchairs should be considered exceptional DME. The Department did determine, however, that other changes could also serve to encourage nursing facilities to purchase movable property items necessary to serve their MA residents, and that the Department would revise the underlying case-mix payment methodology for movable property to further promote that objective. The Department included these additional revisions in the draft regulatory provisions. The amendments set forth in Annex A both revise the basic case-mix payment methodology for movable property and add Chapter 1187, Subchapter K (relating to exceptional payment for nursing facility services) setting forth the exceptional DME payment policies.

“Notice of rule change”—When it first announced its intent to change its exceptional payment policies, the Department also stated that it intended to make the changes by publishing a notice of rule change (NORC). See 29 Pa.B. 5957. The Department received comments objecting to the use of a NORC. After consideration of these comments, the Department announced that it would adopt the changes by promulgating final-form regulations. The Department has received no comments objecting to the publication of final-form regulations or to the omission of proposed rulemaking. For the reasons set forth in this Preamble, the Department is proceeding with the adoption of the regulations in Annex A by final-form rulemaking, notice of proposed rulemaking omitted.

Following distribution of the November 2000 draft, the Department received an additional 80 comments on the draft changes to its reimbursement methodology. The Department has considered all comments received in drafting the amendments set forth in Annex A. An overview of the changes being made by the amendments as well as a detailed explanation of each revision follows.

F. Overview of the New Case-Mix Payment Policies

1. Movable Property Payment Methodology

Currently the Department pays MA nursing facility providers on a per diem rate basis for nursing facility services provided to MA residents. These per diem rates include a capital component that is based upon the FRV of the nursing facilities’ allowable fixed and movable property. The nursing facilities’ FRV is subject to the capital component payment limitation contained in § 1187.113 (relating to capital component payment limitation) commonly known as “the moratorium.”

The amendments to Chapter 1187 set forth in Annex A remove allowable movable property costs from the FRV calculation. Under the revised payment methodology, movable property is divided into two classes based on acquisition cost: minor movable property (items with an acquisition cost of less than \$500) and major movable property (items with an acquisition cost of \$500 or more). Allowable minor movable property costs are included in the appropriate cost center of the net operating portion of the nursing facilities’ per diem rates. Allowable major movable property costs are included in a new movable property component in the capital portion of the nursing facilities’ per diem rates. In addition, allowable movable property costs are no longer subject to the capital compo-

ment payment limitation contained in § 1187.113. Nursing facilities' movable property capital rate components are based upon their most recent audited cost report in the NIS database for cost reporting periods beginning on or after January 1, 2001.

The amendments also include provisions that allow for a transition during the period until the new movable property payment becomes fully effective. See, §§ 1187.51(e), 1187.91(1)(iv)(D) and (2)(ii)(A) and 1187.96(d)(2). The transition period begins on January 1, 2001, and at that time the revised rules for preparing cost reports and determining allowable costs become effective. The transition period does not end on any particular date. Rather, it ends individually for each nursing facility. The end of a nursing facility's transition period for the net operating component occurs when, for purposes of setting annual peer group prices and quarterly per diem rates, the facility no longer has any audited cost reports in the NIS database for a cost reporting period beginning before January 1, 2001.

During the transition period, the Department will determine peer group prices and net operating per diem rate components using information set forth on the audited cost reports in the NIS database. Initially, this means that the peer group prices and rates will be based upon the audited costs as set forth in the audited cost reports prepared under Chapter 1181 (relating to nursing facility care), for cost reporting periods ending on or before December 31, 1995, and under Chapter 1187, for cost reporting periods that began on or after January 1, 1996, but before January 1, 2001. The Department will continue to compute the 3-year average per diem rate based upon the three most recent audited cost reports. In making this computation, the Department will use the audited costs set forth in earlier audited cost reports used without any modification or adjustment except as follows: Effective with July 1, 2001, price and rate setting, the Department will reverse audit adjustments disallowing or reclassifying minor movable property or linen costs that reduce audited allowable net operating costs in the NIS database for fiscal periods beginning prior to January 1, 2001. See § 1187.91(1)(iv)(D).

Thus, for example, if a nursing facility has one audited cost report in the NIS database for a cost reporting period beginning on January 1, 2001, and the facility's other two audited cost reports are for periods beginning on January 1, 1999 and 2000, the costs and adjustments set forth in those two audited cost reports will not be adjusted or modified so as to reflect the changes in the amendments in Annex A pertaining to the allowability or nonallowability of costs. As a result, although under the amendments "depreciation on transportation equipment" is no longer an allowable net operating cost, the Department will not adjust the nursing facility's audited costs for the periods in the earlier reports to eliminate the facility's audited allowable depreciation on transportation equipment. In like manner, the Department will not adjust or modify the nursing facility's audited costs for these earlier periods to include previously nonallowable costs, such as the rental cost of major movable property. To the extent that the nursing facility reported costs relating to linens and minor movable property as net operating costs on the cost reports for these earlier periods, the Department will reverse audit adjustments that disallowed or reclassified the reported costs for linens or minor movable property for these earlier periods.

During the public process, the Department received recommendations to fully implement the new movable

property payment methodology in setting capital component rates effective July 1, 2001, and therefore eliminate the need for transition provisions. The Department finds this proposal impracticable, as it would require that the nursing facilities submit amended cost reports, and that the Department audit those cost reports. Therefore, pending implementation of the revised methodology, the Department will continue to include movable property costs in computing nursing facilities' fair rental. During the transition period, the Department will continue to include movable property in the FRV determination in computing a nursing facility's capital component rate until the facility has an audited cost report in the database for a fiscal period beginning on or after January 1, 2001. In determining the facility's FRV, however, the Department will no longer apply the moratorium limitation in § 1187.113 to movable property costs for rates effective on or after July 1, 2001. Once the nursing facility has an audited cost report in the database for a fiscal period beginning on or after January 1, 2001, the Department will calculate the facility's movable property component of its capital rate in accordance with § 1187.96(d)(2)(ii).

The Department also received a comment during the public process recommending that it use costs reported on the most recently "filed" cost reports for rate-setting purposes during the transition. The Department notes that, in its initial discussions with the associations representing the nursing facility industry, the associations recommended only that the Department reverse audit disallowances involving certain net operating costs of minor movable property in transitioning from the existing to the new payment methodology. The Department accepted this recommendation, and as described above, included provisions in the amendments in Annex A that authorize these revisions to the audited costs. In addition, the Department also determined to eliminate the application of the moratorium regulations to movable property costs, among other things. The Department believes that these measures provide for an adequate and fair transition. The issue of using audited versus reported costs was resolved by the Department as part of its promulgation of Chapter 1187.

2. *Exceptional Payment Provisions*

Prior to November 1, 1999, the Department's approved State Plan authorized the Department to make exceptional payments to cover the costs associated with the rental of equipment and supplies necessary to provide services to "high technology-dependent residents." In promulgating these amendments to Chapter 1187, the Department is expanding these exceptional payment policies in its regulations. With the amendments set forth in Subchapter K (which take effect retroactive to November 1, 1999), the Department regulations now allow additional payments for nursing facility services that involve the provision of exceptional DME. The additional payments are not limited to cases involving MA residents who are ventilator-dependent or who have suffered head or spinal cord injuries, but are available, subject to the conditions in Subchapter K, in all cases in which exceptional DME is medically necessary. The additional payments are not limited to the cost of rent and supplies, but are based upon the reasonable and prudent costs incurred by the nursing facility to purchase or rent the exceptional DME and to obtain related services and items necessary for the effective use of that equipment, including accessories and supplies, and resident and staff training.

Although the exceptional payments authorized under these amendments are based upon the costs incurred by a

nursing facility to obtain the necessary DME and related services and supplies, the Department notes that the exceptional payments constitute additional reimbursement to the MA nursing facility for nursing facility services provided to a particular resident. They are not intended as a direct payment for the DME or other related services or supplies. Because the Department considers the exceptional payments as payment for nursing facility services, the Department will only authorize the payments to enrolled nursing facility providers.

The Department also notes that the exceptional payments authorized under Subchapter K are not intended to cover situations when a nursing facility incurs a higher cost of providing services to a resident because of costs associated with something other than the use of exceptional DME. Example, exceptional payments are not available to cover situations in which an MA resident may require a higher-than-usual number of nursing hours. The risk that these costs may be necessary is a risk that a nursing facility voluntarily assumes when it elects to participate (or to continue to participate) in the MA Program. See § 1101.63. Moreover, these situations are adequately addressed by the existing case-mix regulations, including the case-mix index (CMI) computations and adjustments.

Although the amendments permit an eligible nursing facility to receive additional reimbursement, no nursing facility has an obligation to request or an automatic right to obtain the reimbursement. Rather, a nursing facility makes the choice to request an exceptional DME grant and may obtain additional grant payments only if it complies with Subchapter K. Among other things, Subchapter K requires that: (i) the facility must submit a proper written request for an exceptional DME grant; (ii) the identified resident must be MA-eligible; (iii) the DME must be exceptional; and (iv) the DME must be medically necessary.

The submission of a request for a grant does not stay or otherwise affect a nursing facility's obligation to provide proper nursing facility services, including exceptional or other DME. Indeed, the amendments expressly permit the nursing facility to immediately obtain all medically necessary DME and to request an exceptional DME grant afterwards.

3. Enforcement Activities

A nursing facility that is enrolled in the MA Program has numerous obligations under Federal law, including the obligation to provide its MA residents with any DME that is medically necessary. Failure to provide medically necessary DME is a violation of state and Federal law and constitutes a "deficiency" for purposes of §§ 1187.121 and 1187.122 (relating to applicability; and requirements).

By promulgating these amendments, the Department is changing the case-mix payment methodology relating to movable property costs. The Department anticipates that these changes will result in increases in the case-mix per diem rates of the vast majority of MA nursing facilities. The Department is also providing MA nursing facilities with the option to obtain additional payments when they serve MA residents who need exceptional DME. All of these changes are intended to eliminate purported disincentives to providing unusual or expensive equipment in serving MA residents. In addition, however, to ensure that nursing facilities are providing legally sufficient nursing facility services to their MA residents, the Department, in cooperation with the DOH and the Depart-

ment of Aging (PDA), is increasing its focus upon instances of reported noncompliance. This increase in focus is being effectuated by various means.

First, the Department has established a hotline for use by residents and their representatives. The number of that hotline is (877) 299-2918. When the Department receives a complaint that the nursing facility services being provided to a resident do not include medically necessary DME, the Department will respond by contacting the nursing facility and requesting information, or by sending a Utilization Management Review (UMR) team or requesting the DOH to send out a survey team to determine whether the facility should be cited for a deficiency.

Second, the Department is taking proactive measures to identify persons who may require exceptional DME, to determine whether these persons are receiving services and items necessary to meet their individual needs. Initially, the Department will review services being provided to paraplegic and quadriplegic residents. Thereafter, the Department intends to focus on other subsets of the MA population.

Third, the Department has met and will continue to meet with Ombudsman and Options staff to inform them of the availability of exceptional DME grants, the Department's interest in identifying residents who may benefit from additional or different DME, including exceptional DME, and how the Options staff and Ombudsman may report to the Department or DOH when they believe that a resident's needs are not being adequately met.

When, as a result of these activities or otherwise, the Department determines that a nursing facility has failed to provide necessary standard or exceptional DME, the Department will impose remedies. These remedies may include termination of the nursing facility's participation in the MA Program, fines, and the recovery of payments.

G. Explanation of Specific Changes to Chapter 1187

§ 1187.2. Definitions

Appraisal. As originally promulgated, § 1187.2 sets forth a definition of "appraisal of nursing facilities." The Department has revised that definition to use the terms "fixed property," "movable property" and "depreciated replacement cost." The requirement that an appraisal be made "by qualified personnel of an independent appraisal firm under contract with the Department" was moved from § 1187.57(b).

Depreciated replacement cost. The term "depreciated replacement cost" replaces "replacement costs." As originally promulgated, Chapter 1187 included "replacement costs" as a defined term. Among other things, that definition specified that the amount required to replace the entire nursing facility was to be reduced by "an allowance for accrued depreciation," that is, although the word "depreciation" did not appear in the defined term, the concept was incorporated in the definition. See § 1187.2. Thus, the new term more fully describes the underlying concept. In addition, the revised term replaces two undefined terms that were synonymous with "replacement cost": "depreciated replacement cost" and "depreciated replacement value," which appeared in §§ 1187.57(b) and 1187.96(d) and were synonyms for the previous defined term. Finally, the original definition has been amended so that it now applies only to a nursing facility's fixed property, while a new, alternative definition sets forth the meaning of "depreciated replacement cost" in the context of "movable property."

DME—Durable medical equipment. The amendments add a new term to those in § 1187.2: “durable medical equipment or DME.” The definition of “DME” has four significant features:

1. *Movable property.* For an item to come within the definition of “DME,” it must meet the definition of “movable property.” The latter is a residual definition, it encompasses any tangible item used in the course of providing nursing facility services that does not qualify as fixed property or a supply. Thus, for example, a whirlpool bath that is affixed to the building would be an item of fixed property and, consequently, would not qualify as an item of DME.

2. *Connection to the Federal definition.* The definition of “DME” is based in part upon the first three parts of the Federal definition as set forth at 42 CFR 414.202 (relating to definitions): “Durable medical equipment means equipment . . . that (1) [c]an withstand repeated use; (2) [i]s primarily and customarily used to serve a medical purpose; (3) [g]enerally is not useful to an individual in the absence of an illness or injury[.]” However, because the Department’s definition is applicable only for DME used in a nursing facility, the Department has not included the fourth specification of the Federal definition, that the DME must be “appropriate for use in the home.” To the contrary, because circumstances in a nursing facility can be very different from circumstances in a person’s home, that part of the Federal definition is inapplicable.

3. *Standard DME.* The definition of “DME” recognizes two classes of DME: “exceptional DME” and “standard DME.” The latter is a residual class, that is any item of DME that does not qualify as “exceptional DME” must be “standard DME.” There is no third class.

4. *Exceptional DME.* All DME necessary to provide nursing facility services to residents is an item or service covered by the MA case-mix per diem rate and the allowable costs of DME are used to compute nursing facility case-mix per diem rates. The purpose of defining “exceptional DME” is to specify those types of DME that, when needed in the course of providing nursing facility services to an MA resident, give rise to the opportunity of the nursing facility to request an exceptional DME grant. An exceptional DME grant authorizes a nursing facility to receive payment in addition to its MA case-mix per diem rate payment. By authorizing exceptional DME grants, the Department is able to recognize the extraordinary costs associated with small subsets of the nursing facility population whose medical needs are so extensive and complex that they cannot be adequately served without highly customized or specialized DME. For an item of DME to qualify as “exceptional DME” it must satisfy two conditions: Its acquisition cost (determined in accordance with § 1187.61) must meet or exceed the minimum acquisition cost threshold set by the Department in its annual notice pertaining to exceptional DME, and it must be either “specially adapted DME” (as that term is defined in § 1187.2), or it must be a type of DME identified in the annual notice.

a. *Minimum acquisition cost.* The Department’s per diem rates pay for nursing facility services provided to residents having various and varied needs for DME, including types of DME that are used with a fairly low frequency (such as, ventilators). However, even when these types of DME are used infrequently, their cost is reflected in the overall rate. For this reason, the Department has determined that a minimum acquisition cost is an appropriate threshold for defining what items of DME

should be considered “exceptional.” During the public process, the Department received a comment recommending that equipment that costs more than \$2,000 or \$3,000 should be considered “exceptional DME.” In considering what an appropriate threshold would be, the Department notes that CMS recently increased its capitalization threshold to \$5,000. See CMS Pub. 15-1 § 108.1. Because the Department found this threshold to be reasonable and consistent with the current inventory of movable property in nursing facilities, the current minimum acquisition cost as set forth at 31 Pa.B 1422 (March 10, 2001) is \$5,000. By setting the specific amount of this threshold in the annual notice, however, the Department has retained the ability to make simple and expeditious adjustments in this amount, as DME acquisition costs fluctuate over time.

b. *The annual list of exceptional DME.* To put nursing facilities on notice as to what types of DME can qualify as “exceptional DME,” and to simplify the process of handling exceptional DME grant applications, the Department believes that a list of that DME is useful and desirable. To provide full public disclosure and information, the Department will publish an annual list of types of DME whereby, if the acquisition cost of an item on the list meets the minimum acquisition cost threshold, that item is deemed to be an item of exceptional DME. The Department intends to review recommended additions to the list on an annual basis, and intends to publish this annual list by means of a public notice set forth in July of each year in the *Pennsylvania Bulletin*. Persons who wish to have an item considered by the Department should submit a written request to the Department. All requests received on or before December 31 will be considered in developing the list effective the following July. Any requests received after December 31 will be considered during the next annual review cycle. To provide interested persons with clear instructions regarding the submittal of these requests, the Department has removed the words “at least” from the draft definition of “exceptional DME.” Consequently, all recommended changes to the list will be considered together, and not on an ad hoc basis. Moreover, because changes to the list will be considered through this process, the submittal of a request to add an unlisted type of DME to the annual list is intended to be an administrative remedy that must be exhausted before other relief may be sought.

During the course of the public process, the Department received comments recommending that the Department identify standard motorized wheelchairs as “exceptional DME.” The Department has not included the wheelchairs in either the definition of “exceptional DME” or in its public notice (31 Pa.B. 1422) designating the particular equipment it considers “exceptional.” The Department disagrees that power wheelchairs should be labeled “exceptional.” To the contrary, it is the Department’s position that the equipment should be part of the standard array of DME routinely available in nursing facilities. To address concerns that the expense of that equipment makes its acquisition cost-prohibitive for nursing facilities, the Department notes that the amendments in addition to permitting exceptional grant payments under certain circumstances, substantially revise the case-mix payment methodology relating to movable property costs to eliminate purported disincentives for nursing facilities to provide equipment, like standard motorized wheelchairs, that may be somewhat more costly than other equipment routinely found in nursing facilities.

Fair rental value. The original definition of “FRV” has been amended to reflect changes in the regulations. The

Department has modified the draft revised definition so that it also pertains to movable property because, in some instances, the Department will use the FRV of that movable property. See § 1187.96(d)(2)(i).

Fixed property. The Department has amended the original definition by eliminating the various examples of “land improvements” and “detached buildings” and by making other changes intended to clarify the original definition. However, no change in the scope of the definition is intended. During the public process the Department received a comment recommending that the Department retain the examples in the definition of “fixed property.” While the Department does not accept this recommendation, the Department notes that the examples of fixed equipment included in the original definition continue to be examples of fixed equipment under the revised regulation.

Initial appraisal. As originally promulgated, Chapter 1187 provides that each enrolled nursing facility “will be appraised at its depreciated replacement cost.” See § 1187.57(b). Thus, for each nursing facility, there must be a first or original (that is, initial) appraisal. By adding the term “initial appraisal” to § 1187.2, the Department is codifying the current colloquialism and establishing a basis for making clear reference to refer to all of the appraisals. The term stands in contrast to the terms “updated appraisal,” “reappraisal” and “limited appraisal.”

Interest. As originally promulgated, § 1187.2 set forth a definition of “interest—capital indebtedness” and “interest—administrative.” The amendments merge both concepts under the general term “interest” and rename the terms, “capital interest” and “other interest.” In addition, the definition of “capital interest” has been changed to replace the term “capital purposes” with the more specific “fixed property, major movable property or minor movable property.” Likewise, the definition of “other interest” has been changed so that “the acquisition of supplies” is expressly included within the meaning of “day-to-day operational activities.” These changes do not alter the former meanings of these terms, but are intended to clarify possible ambiguities in the original version.

Limited appraisal. As originally promulgated, a limited appraisal could be conducted as a result of additions or deletions to capital, regardless of whether the capital was fixed or movable property. Under the amendments, limited appraisals are no longer necessary for additions or deletions involving movable property. The Department has committed to performing annual inventories in appraising movable property in instances where a capital rate component is computed using the FRV of movable property. Therefore, limited appraisals are used only to account for changes involving fixed property. The definition has been further modified to make clear that, for a limited appraisal to be conducted, it first must be requested by the nursing facility. If no request is made, the Department has no obligation to direct the independent appraisal firm under contract with the Department to conduct any appraisal. The Department also amended the definition to expressly set forth the function and effect of a limited appraisal, it “results in the modification of the depreciated replacement cost set forth in an initial appraisal, a reappraisal or an updated appraisal.” A modification is solely prospective in nature: a limited appraisal cannot serve as a basis for revising a nursing facility’s capital rate component for a rate year in effect on or before the date that the limited appraisal is conducted.

Movable property. As originally promulgated, Chapter 1187 set forth a definition of “movable property” in

§ 1187.2, then used the term “movable equipment” in §§ 1187.2, 1187.96(d)(1) and 1187.112. Although these terms were synonymous, the amendments eliminate the latter, to eliminate possible ambiguities. In reworking the definition of movable property, the Department makes reference to tangible items. That term excludes “intangible items” such as annuities, stocks, shares, patents, copyrights, trade or service marks, choses in action, notes, bonds, insurance policies, goodwill, contract rights, options, legal rights, receivables and other evidences of debt, documents, and cash. No change in the scope of “movable property” or “fixed property” is intended by the inclusion of “tangible items” and the exclusion of “intangible items” from the revised definitions. In addition to these changes, the definition of “movable property” has been rewritten to reflect the revisions being made to the case-mix payment system. “Movable property” is a residual term: any tangible item that does not qualify as either fixed property or a supply is deemed to be an item of movable property.

During the public process, the Department received a comment recommending that language regarding transportation costs should be added to the movable property definition. While the Department does not accept this recommendation, the Department notes that transportation equipment used in a nursing facility in the course of providing nursing facility services to residents is “movable property” as defined in § 1187.2.

Major and minor movable property. The definition of “movable property” divides that class of tangible items into two subclasses: “major” and “minor” movable property. Taken together, these classes are exclusive. There is no third classification; any item of movable property must fall into one or the other subclass. The factor that determines this classification is the “acquisition cost” of the item. The rules for establishing an item’s acquisition cost are set forth in § 1187.61.

Movable property appraisal. An appraisal conducted to determine the depreciated replacement cost of some or all of the movable property of a nursing facility. So long as necessary, the Department will conduct these appraisals on an annual basis. During the public process, the Department received a comment questioning the need for this definition. The definition is needed because movable property appraisals will be used during the transition period, and in some instances, for new nursing facilities.

Real estate tax cost. As originally promulgated, Chapter 1187 made repeated reference to “real estate taxes or reasonable payment made in lieu of real estate taxes.” See §§ 1187.51(e)(4)(ii), 1187.57(a), 1187.71(a)(4)(iii), 1187.91(2)(ii), 1187.96(d)(3) and 1187.97(1)(ii). To simplify references to this category of cost, the Department has added the definition of “real estate tax cost” to § 1187.2. In setting forth that definition, the Department does not intend that it result in any change in the treatment of these costs.

Reappraisal. As originally promulgated, Chapter 1187 did not require annual appraisals. Instead, it merely required that nursing facilities be “reappraised” every 5 years after the implementation of the case-mix payment system. See § 1187.57(b)(2). In practice, however, the Department contracted with an independent appraisal firm to provide the Department with updated appraisals on an annual basis. In addition, during 1998, the Department required that the firm inspect all enrolled nursing facilities and provide the Department with new appraisals. The latter are referred to as “reappraisals.” The Department has revised this term to reflect that meaning.

Related services and items. As set forth in Subchapter K, which is promulgated by these amendments, the Department will under certain conditions make payments under "exceptional DME grants." Those payments are intended to pay the nursing facility for the necessary, reasonable and prudent costs incurred in acquiring and using exceptional DME when that equipment is needed by an MA resident. In various situations, the cost of using that equipment will also entail substantial additional costs. As set forth in § 1187.154(a)(1), an exceptional DME grant authorizes payment of the necessary, reasonable and prudent costs of the exceptional DME and of "related services and items." The purpose of the definition of that term is to specify what is encompassed by that term.

Specially adapted DME. Generally, an item of DME qualifies as "exceptional DME" if its acquisition cost meets or exceeds the minimum acquisition cost threshold and if it is of a particular type set forth on the Department's annual list. However, even if DME does not fall into any of the types listed in the notice, it still can qualify as "exceptional" if its acquisition cost meets or exceeds the minimum acquisition cost threshold and it is "specially adapted." The Department has made allowance for "specially adapted DME" to provide nursing facilities with the opportunity of receiving additional payments in those situations when a particular resident requires an expensive and unique item of DME and when there is no reasonable expectation that, when that resident has ceased to use the item, it might then be used by some other actual or potential resident of the facility, or would be usable by another person only if substantial modifications were made to it. An example of a device is a motorized wheelchair equipped with a palate drive device that is fabricated to meet the particular needs of a specific quadriplegic resident. The definition of "specially adapted DME" has three significant features, of which "contemporaneous use" is by far the most important:

1. *Unique construction.* An item of DME is "uniquely constructed" if it is originally fabricated or assembled to suit the particular physical or medical circumstances of the intended user. For example, if a motorized wheelchair is ordered for a particular resident, that item of DME would typically be assembled from various off-the-shelf components, and the choice of those components depends upon the physical circumstances of the intended user. Under these circumstances, the fabrication of the wheelchair might (depending on circumstances) qualify as "unique construction." Even if it did, however, that circumstance would not be sufficient to cause the wheelchair to be an item of specially adapted DME.

2. *Substantial adaptation or modification.* An item of DME is "substantially adapted or modified" if, in its original or earlier configuration, it was not suitable for use by the current intended user but, as a result of subsequent modifications, has become suitable. These modifications must be substantial. For example, merely switching a joystick from the left to the right side of a chair and altering the height and depth of the seat would not, by itself, constitute "substantial adaptation." On the other hand, if the joystick on an existing wheelchair were replaced with a palate drive control system that could not only drive the wheelchair but also control features such as "tilt in space" adjustments, the change would constitute a substantial adaptation. The mere fact that an item of DME has undergone a "substantial adaptation" does not, in itself, cause the item to be specially adapted DME. For instance, if the palate drive controls were removed from the wheelchair and replaced with a joystick control,

this change might well cause the wheelchair to be suitable for contemporaneous use by numerous other persons, in which case it would not qualify as "specially adapted DME."

3. *Contemporaneous use by another resident.* By defining "specially adapted DME" to be DME that is unsuitable for contemporaneous use by another resident, the Department intends to exclude from this classification all DME that could be used by another actual or potential resident, either without any adaptation or modification or without any substantial adaptation or modification. If an item of DME is susceptible to that use, that item cannot qualify as an item of specially adapted DME, regardless of whether it was "uniquely constructed" or "substantially adapted or modified" to suit the needs of a particular resident.

The allowance for specially adapted DME is intended to address those rare situations where an expensive item of DME is so uniquely configured to the needs of a particular resident that, once that resident has ceased to use the item, it could not be used by any other resident, or could not be used by another resident unless substantial adaptations or modifications were made to it. In these situations, a nursing facility may be extremely reluctant to expend a substantial sum to obtain the item, since any further use would be impracticable. It is only in these situations that the Department intends that exceptional DME grants be given to permit additional payment to the nursing facility.

The "contemporaneous use" criterion is not intended to be applied to the particular residents of the nursing facility. Thus, for instance, in reviewing an application for an exceptional DME grant, the Department does not intend to review the medical or other records of the nursing facility's other residents before making a determination. Instead, the "contemporaneous use" criterion is intended to apply to the expected range of nursing facility residents, who come in a wide variety of sizes, shapes, conditions and capabilities. For these persons, the Department expects nursing facilities to obtain and use DME that satisfies the needs of persons within these ranges. Thus, for instance, the Department expects that nursing facilities will obtain and make available a variety of manual and motorized wheelchairs for the use of existing or potential residents, and a wheelchair does not become "specially adapted" merely because it is constructed to accommodate a person who is taller than average, shorter than average, heavier than average, or lighter than average, or because that person requires a differently-positioned control device.

An example of an item of DME that is not suitable for contemporaneous use is a motorized wheelchair that uses a palate drive fabricated to suit the needs of a particular quadriplegic resident. Another example of a wheelchair that is not suitable for contemporaneous use would be a wheelchair designed to the requirements of a resident with severe skeletal deformities related to a disease process, such as cerebral palsy or multiple sclerosis. An example of a wheelchair that is suitable for contemporaneous use is a wheelchair with larger-than-normal components, intended to accommodate a larger-than-average resident. Mere changes in size and strength are insufficient to cause a wheelchair to be "specially adapted." Rather, the wheelchair must have some additional, medically necessary feature that prevents the foreseeable contemporaneous use by some other person without substantial adaptation or modification of the item.

During the public process, the Department received a comment recommending that the Department clarify the definition of "specially adapted" to provide that, in cases when a resident needs a wheelchair that must be fitted for specifications by a professional or which consists of numerous component parts, the wheelchair would be both "exceptional" and "specially adapted." Because the Department does not believe that the definition needs to be clarified, the Department has not revised the definition as recommended in the comment. Under the definition of specially adapted equipment set forth in Annex A, a wheelchair is exceptional if it is both specially adapted and its cost equals or exceeds the minimum acquisition cost specified by the Department. The mere fact that a wheelchair is fitted to a resident under the instructions of a professional does not, in itself, cause the wheelchair to qualify as "specially adapted DME." Although a wheelchair may not be exceptional or specially adapted, the Department notes that a wheelchair is standard DME that is covered by the case-mix per diem rate.

Supply. Supplies are a class of tangible item. Examples of supplies include: resident care personal hygiene items such as soap, toothpaste, toothbrushes and shampoo; resident activity items such as games and craft materials; medical supplies, including wound dressings, disposable tubing and syringes, incontinence care supplies, including catheters and disposable diapers; dietary supplies such as foodstuffs and disposable table ware and implements; laundry supplies such as detergents and bleaches; house-keeping and maintenance supplies, such as cleaners, toilet paper, paper towels, and light bulbs; and administrative supplies, such as forms, paper, pens, pencils, and ink or toner for printers and copiers. Any tangible item that is identified on the AHA Guidelines as having an original estimated useful life of 1 year or greater is not a "supply" even though a nursing facility intends to use, or only uses, the item for less than 12 months.

In response to a comment received during the public process, the Department deleted the terms "relatively small in size" and "inexpensive," which were contained in the November 2000 draft, from the definition of "supply" in Annex A. The Department agrees that the life of an item is the key factor in determining whether an item is a supply or movable property. The Department will use American Hospital Association Uniform Chart of Accounts and Definitions for Hospitals (AHA Guidelines) to determine the item's expected useful life in deciding whether an item is a supply or movable property. Thus, for example, an item that is identified in AHA Guidelines as having an estimated useful life of 1 year or more is not a supply within the meaning of this definition.

Transportation equipment. Under the amendments, transportation equipment is a form of movable property. (Depending on its acquisition cost, an item of transportation equipment will be either major or minor movable property.) Because, under the amendments, this equipment is treated in the same manner as all other movable property, the definition of "transportation equipment" has been removed from Chapter 1187.

Updated appraisal. As originally promulgated, Chapter 1187 only required that nursing facilities be reappraised once every 5 years. See § 1187.57(b)(2). Nonetheless, for each year in which an "initial appraisal" or "reappraisal" was not performed, the Department contracted with its independent appraisal firm to update the previous appraisals to account for reported changes in the value of land, changes in the cost of factors affecting the replacement of the entire nursing facility, and expected deprecia-

tion. These appraisals are known as "updated appraisals." The Department has included this term in § 1187.2 to formally establish it as a term of art.

§ 1187.22. Ongoing Responsibilities of Nursing Facilities

The Department's focus on movable property has two distinct aspects. First, the Department has revised the manner in which per diem rates are computed and in which nursing facilities are otherwise reimbursed. Second, the Department will increase its scrutiny of nursing facility conduct involving the provision of DME to residents. To make that oversight more efficient and effective, the Department has added two new paragraphs to § 1187.22, which sets forth additional conditions of participation for MA nursing facility providers.

Under paragraph (16), a nursing facility must maintain a separate written record identifying all requests for, and all physician orders for exceptional DME or DME as is designated by the Department. This new requirement is intended to give the Department flexibility in monitoring the provision of various types of standard DME, like standard motorized wheelchairs, while, at the same time avoiding the situation when the nursing facility is required to maintain a record of all types of DME.

During the public process, the Department received a comment expressing concern that residents may be vulnerable to coercion and influence by the nursing facility to "refuse" DME that is costly to the facility. The comment suggested that the Department require nursing facilities to obtain an informed, written waiver from the resident, and to provide to the resident a written notice of their right to receive the DME and contact information for the PDA Ombudsman and DOH Division of Long-Term Care.

The Department is also concerned about situations when a nursing facility applies for an exceptional DME grant and the Department determines that, although the item is medically necessary, it does not qualify as exceptional DME. Unless the resident refuses the DME, the nursing facility must provide the equipment to the resident. Because these situations have the potential for substantial abuse to the detriment of residents, the Department has added paragraph (17), which requires the nursing facility to notify the Department of any such refusal. The purpose of this requirement is to give the Department notice that a purported refusal has been made, thus allowing the Department to investigate the matter on a timely basis. In these situations, the Department intends to have one or more persons contact the resident in person. If the Department finds that a nursing facility has improperly pressured the resident to refuse an item of DME, the Department will treat that conduct as a significant instance of noncompliance with State and Federal law and regulation.

The Department also received a comment recommending that the Department require nursing facilities to issue a notice whenever a request by a resident or resident's representative for DME is denied by the facility. The comment suggested that a requirement would be consistent with notice requirements of MA participating Managed Care Organizations (MCO) when they refuse to authorize services. While the Department agrees that monitoring is necessary to insure that the amendments achieve their intended purpose, the Department is not convinced that the functions performed by nursing facilities are analogous to those performed by MCOs, and therefore, it has not amended the regulations as suggested in the comment. The Department believes that

nursing facility providers perform functions similar to other direct care providers, like physicians, hospitals, or other inpatient or outpatient providers. The Department does not require the providers to issue written notices when, in the course of providing treatment, they decline to provide a service or item requested by an MA recipient.

§ 1187.51. Scope.

§ 1187.51(c)(5).

As originally drafted, the amendments treated all costs of exceptional DME as nonallowable costs. Consistent with that treatment, the Department proposed to modify § 1187.51(c)(5) to provide that the case-mix per diem rate is only computed using costs associated with "standard DME." However, after reviewing the comments, the Department has changed the treatment of exceptional DME costs and has decided to retain the original language.

During the public process, the Department was asked several questions regarding recognition and treatment of costs associated with DME approved or disapproved through the exceptional DME grant process. In response to these questions, the Department notes that, under § 1187.51(c)(5), which is unaffected by the amendments the costs incurred for both standard and exceptional DME may be reported on a nursing facility's cost report and, to the extent otherwise allowable, will be used to set a facility's prospective per diem rate. Costs related to DME which is not medically necessary or which is furnished for the convenience of a nursing facility or a resident are not allowable.

§ 1187.51(e).

A fundamental change effectuated by the amendments is to shift the costs of minor movable property from the capital cost component to the three net operating cost components. That change raises the question of how to determine the appropriate net operating cost center to which a particular cost should be assigned. The changes in § 1187.51(e) are intended to resolve that question. In addition, the Department has modified the introductory part of subsection (e) to include the words "for purposes of cost reporting." This modification is intended to establish the timetable for the transition period, and to ensure that the amendments are not misunderstood. In particular, this revision makes clear that, during the transition period, the changes in Subchapter E (relating to allowable program costs and policies) will only have an effect upon the cost reporting requirements, and not upon the Department's price setting or rate setting decisions. Regardless of which cost center is appropriate, therefore, the revised rules only apply to those cost reporting periods that begin on or after January 1, 2001, except as specified in § 1187.91(1)(iv)(D).

§ 1187.51(e)(1)

As originally promulgated, § 1187.51(e)(1) identified 14 categories of costs that, for purposes of the Case-mix Payment System, may be both "resident care costs" and "allowable costs." The amendments add a 15th category: "supplies and minor movable property . . . used in a nursing facility in the course of providing a service or engaging in an activity identified in subsection (e)(1)." For example, if game and craft items are used in the course of providing resident activities services, the cost of those items is properly included as an allowable resident care cost.

§ 1187.51(e)(2)

As originally promulgated, § 1187.51(e)(2) identified four categories of costs that, for purposes of the case-mix

payment system, may be both "other resident related costs" and "allowable costs." The amendments add a fifth category: "supplies and minor movable property . . . used in a nursing facility in the course of providing a service or engaging in an activity identified in subsection (e)(2)." For example, laundry soaps and bleaches, floor cleaners, toilet paper, paper towels and light bulbs are properly included as allowable other resident related costs. In addition, changes to § 1187.51(e)(2)(i) also set forth the Department's determination that the costs of supplies and minor movable property associated with "food, food preparation, food service, and kitchen and dining supplies" are and should be treated as "other resident related costs," while § 1187.51(e)(2)(ii) sets forth the Department's determination that linen costs be treated in like manner.

§ 1187.51(e)(3).

As originally promulgated, § 1187.51(e)(3) identified 20 categories of costs that, for purposes of the case-mix payment system, may be both "administrative costs" and "allowable costs." The amendments delete two of these categories and add one new one. The two deleted categories are "transportation equipment depreciation" and "transportation equipment interest." Under the revised Chapter 1187, all transportation equipment directly used by the nursing facility is "movable property," and the costs of this equipment are treated in the same manner as the costs of all other movable property. Thus, if an item of transportation equipment costs \$500 or more, it is an item of major movable property. Otherwise, it is an item of minor movable property. In the latter instance, the cost of that item is an allowable cost within the administrative cost center. The new category encompasses "supplies and minor movable property . . . used in a nursing facility in connection with an activity identified in subsection (e)(3)." Thus, for example, the acquisition cost of office supplies is properly included as an allowable administrative cost.

§ 1187.51(e)(4).

As originally promulgated, § 1187.51(e)(4) provided that "FRV" was an allowable cost. That provision pertained to the FRV of all items, including fixed and movable property. The amendments change this provision. While the FRV of fixed property remains an allowable cost, for purposes of price and rate setting the FRV of movable property is only an allowable cost until an audited cost report for a cost report period beginning on or after January 1, 2001, has been submitted to the NIS database for the nursing facility. Once that condition is met, the draft amendments provided that the allowable cost would be "the audited acquisition cost of the major movable property" for the most recent audited cost report. The Department has clarified that provision to make reference to the audited "acquisition" cost. In addition, the Department revised the "real estate tax cost" provision so that it uses the defined term. See § 1187.96(d)(3).

§ 1187.56. Selected Administrative Cost Policies.

§ 1187.56(1)(ii)(D).

As originally promulgated, § 1187.56(1)(ii)(D) provided that "[h]ome office allocations, including administratively allowable depreciation and interest costs relating to transportation equipment, shall be reported in the general administration line of the cost report." The Department has removed the references to transportation equipment to be consistent with the revisions to other provisions of the regulations that remove specific references to transportation equipment. In making this change, the Department does not intend to alter the

treatment of home office costs or home office allocations. Thus, home office costs and allocations continue to include both direct and indirect allowable home office costs, including depreciation and interest relating to home office fixed and movable property. All home office costs continue to be recognized as general and administrative costs.

§ 1187.56(2) and (3).

The amendments have changed the term “interest—administrative” to “other interest” and modified the associated definition. The changes in paragraphs (2) and (3) reflect the new terminology. In addition, they clarify that this cost is allowable only if “necessary and proper.” Additionally, the provision formerly in § 1187.56(2)(vii), which pertained to “interest expense on funds borrowed for transportation equipment purchases,” has been eliminated because, under the amendments, that interest is capital interest and, as such, is no longer an allowable cost.

§ 1187.56(4).

The provision formerly § 1187.56(4) has been removed in its entirety. That provision provided that certain costs associated with the acquisition and ownership of transportation equipment (namely interest and depreciation) were allowable costs to be included in a nursing facility’s “administrative cost center.” Under the amendments, transportation equipment is an undifferentiated type of movable property. Thus, under the amendments, the acquisition cost of this movable property is an allowable capital cost if the acquisition cost is \$500 or more; or an allowable administrative cost if the acquisition cost is less than \$500.

§ 1187.56(7).

As originally promulgated, § 1187.56(7) provided that “[r]ental expense for plant, property and equipment is not recognized as a separate allowable cost. It is included in the FRV.” Because, under the amendments, the rental cost of movable property is an allowable cost, the original provision is no longer completely correct. Therefore, it has been deleted and, in its place, § 1187.59(a) has been amended to provide that rental expense for fixed property is not an allowable cost.

§ 1187.57. Selected Capital Cost Policies.

Former § 1187.57(a).

Under Chapter 1187 as originally promulgated, a nursing facility’s capital rate component was comprised of two parts: an “FRV” element that pertained to all fixed and movable property, and a “real estate tax cost” element. Former subsection (a) summarized this arrangement. However, as a result of the amendments, the capital rate component is now comprised of three parts: the fixed property component; the movable property component; and the real estate tax cost component. Thus, former subsection (a) has been removed, and the introductory part of § 1187.57 now summarizes the composition of the capital cost component.

Former § 1187.57(b)(1)—(4).

As originally promulgated, paragraphs (1)—(4) set forth various provisions pertaining to the appraisal of nursing facilities. Those provisions have been incorporated in modified form into the new version in revised subparagraphs (ii), (v), (vii) and (viii). Changes in wording reflect the updated terminology, clarifications and changes in the overall system.

Former § 1187.57(b)(5).

As originally promulgated, paragraph (5) stated: “The original cost of a nursing facility will not be a factor in the determination of the appraised depreciated replacement cost.” In the amended version, this provision has been omitted as unnecessary: The definition of “depreciated replacement cost” is clear that the appraisal considers “the amount required to replace” fixed or movable property, not the amount required to obtain it in the first place.

Former § 1187.57(c) and (d).

In the draft version of the amendments disseminated to the public, the Department erroneously indicated that it intended to remove these subsections. The Department has no such intention. However, those provisions have been modified to conform to the revised system and terminology. Thus, the substance of former § 1187.57(c) is in §§ 1187.57(1)(x) and (2)(i)(D), while the substance of former § 1187.57(d) is in § 1187.57(1)(viii).

§ 1187.57(1)

This paragraph specifies that the new “fixed property component” of a nursing facility’s capital rate is based upon the depreciated replacement cost of the facility’s fixed property and the associated financial yield rate. In addition, it provides detail on how and when the underlying appraisals will be performed and used. In particular:

Under Chapter 1187 as originally promulgated, the Department was not required to obtain an annual appraisal for each nursing facility but, rather, was only required to reappraise the facility once every 5 years. The revised version specifies that the Department will not only make an annual determination of the depreciated replacement cost of each nursing facility’s fixed property but, in addition, specifies that when an initial appraisal or reappraisal has not been done within the preceding 12-month period, the Department will use an “updated appraisal.”

The revisions expressly recognize the various types of appraisals currently used by the Department, that is, “initial appraisals,” “limited appraisals,” “updated appraisals” and “reappraisals.” In addition, the revisions set forth the Department’s prior and current practice regarding the use of these appraisals, including the requirement that, for the results of a limited appraisal to be included in the Department’s determination of a nursing facility’s capital rate for a rate year, the facility must request the limited appraisal by January 31 of the preceding rate year.

§ 1187.57(2)

One of the principal changes made by these amendments is the removal of movable property from the FRV system of determining capital costs. In effectuating that change, the audited acquisition costs of minor movable property are treated as net operating costs, and are included in the computation of peer group prices. The audited acquisition costs of major movable property, however, are treated as capital costs. To implement this change, the Department needs audited cost reports that set forth the audited costs of major movable property. The information is only available starting with cost reporting periods beginning on January 1, 2001. For this reason, paragraph (2) is divided into two subparagraphs. Until the required audited costs are in the database, the Department will continue to use the FRV system to include movable property costs in the capital rate component. Once the audited costs are in the database, the Department will begin using the audited acquisition costs for movable property.

§ 1187.57(3)

As originally promulgated, § 1187.57(a) provided that a nursing facility's capital rate component would be computed using, among other things, "the nursing facility's real estate taxes or reasonable payment made in lieu of real estate taxes." Paragraph (3) sets forth the same thought using the revised terminology.

§ 1187.5. *Costs of related parties.*

The wording of this section has been revised to clarify that it applies to movable property and supplies furnished by a related party. No change in the substance of this provision is intended. Thus, for instance, home office costs and management service costs involving a related party continue to be administrative costs. See §§ 1187.51(e)(3) and 1187.56.

§ 1187.59. *Nonallowable costs.*

§ 1187.59(a)(24).

As originally promulgated, § 1187.59(a)(24) stated that the Department would not recognize as an allowable cost "[d]epreciation and interest on indebtedness for capital plant facilities not included in the FRV payment." The amendments substitute the following list: "Depreciation on fixed or movable property, capital interest, amortization—capital costs and rental expense for fixed property." As revised, this provision encompasses not only those costs originally declared to be nonallowable, but also relocates the rules pertaining to rental expense (as it applies to fixed property) and "amortization—capital costs." See §§ 1187.51(e)(4) and 1187.71(a)(4)(v) (although nursing facility's must report amortization—capital costs, these costs are not included in the listing of allowable costs and, consequently, under § 1187.51(e), are nonallowable).

§ 1187.60. *Prudent buyer concept.*

The Department revised the wording of this section to conform it to the revised terminology pertaining to movable property and supplies. No change is intended to the substance of this section.

§ 1187.61. *Movable Property Cost Policies.*

In general.

§ 1187.61 is a new section. The purpose of this section is to set forth the rules on how the allowable acquisition cost of an item of movable property shall be determined, and to specify offsets against those costs. For the cost of movable property to be allowable under this provision, the cost to acquire the movable property must be incurred by the nursing facility, that is, the facility must purchase or rent the movable property. Thus, for example, a nursing facility may use DME (such as, a wheelchair) that is owned by a resident in rendering services to the resident in accordance with his care plan. In these instances, the nursing facility has not incurred an acquisition cost.

In addition, for the cost of movable property to be allowable, the Department has added language to this provision that requires that the nursing facility must place the movable property in service during the cost reporting period in which the facility reports the cost. This requirement is intended to protect against the situation when a nursing facility contracts to purchase or rent movable property, with delivery and payment to be made later. Especially when the nursing facility would retain the ability to cancel the order, this situation would permit abusive cost reporting practices.

§ 1187.61(a).

Subsection (a) makes clear that the related party and prudent buyer rules in §§ 1187.58 and 1187.60 are applicable and shall limit the actual acquisition cost of movable property.

§ 1187.61(b)(1).

Paragraph (1) provides that "acquisition cost is determined on a per-unit basis." Thus, for instance, if a nursing facility pays \$600 for three identical television sets, the acquisition cost is \$200 per set, even if purchased under a "buy 2, get 1 free" arrangement. On the other hand, if the nursing facility purchases three non-identical television sets that are individually priced at \$100, \$200 and \$300, the acquisition cost of each is the individual amount paid.

§ 1187.61(b)(2).

Chapter 1187 specifies that nursing facility cost reports shall be prepared using the accrual basis of accounting. See §§ 1187.71(d) and 1187.73(b). Consistent with this requirement, when a nursing facility contracts to purchase an item of movable property, the full purchase price of the item generally is capitalized, including that portion of the purchase price that has not yet been paid as of the close of the cost reporting year. Thus, for instance, if the nursing facility purchases a motor vehicle on a 4-year installment sales contract, the full acquisition cost of that item is recognized in a single cost reporting period. Also, capital interest is a nonallowable cost. See § 1187.59(a)(24). Therefore, in computing the acquisition cost of an item purchased under an installment sales agreement, all interest costs must be excluded. Moreover, if the nursing facility has contracted to purchase an item, but has not received the item and has not paid the full purchase price, then under § 1187.61(a), there is no allowable acquisition cost for that period. Thus, for instance, if the motor vehicle is contracted for in one cost reporting period, but not received and put into service until the subsequent cost reporting period, the cost is only considered to have accrued as of the second cost reporting.

§ 1187.61(b)(3).

Under Chapter 1187 as originally promulgated, the rental cost of fixed and movable property was a nonallowable cost. Under the amendments, the rental cost of fixed property continues to be a nonallowable cost. However, when an item of movable property is acquired by renting or leasing it, the acquisition cost of that item is an allowable cost: If the total acquisition cost is \$500 or more, that cost is an allowable capital cost; if it is less than \$500, it is an allowable net operating cost. Assume, for instance, that an item is rented for a 24-month period, at \$100 per month, when the first month of the rental period is the last month of the cost reporting period, with the result that, for the initial cost reporting period, the nursing facility only paid \$100 in rent. For that cost reporting period, the nursing facility would report \$100 in rental acquisition costs. However, although the rent for that period was less than \$500, the total rent for the item is \$2,400. Therefore (and assuming that the imputed purchase price also is \$500 or more), the acquisition cost of this item should be reported as a capital cost, rather than a net operating cost.

With regard to the specifics of § 1187.61(b)(3):

- "*Renting*" versus "*Leasing*." As used in the amendments, the words "rent" and "lease" are considered synonyms. They pertain to any situation when the

owner or rightful possessor of an item of property (the lessor) grants to another person (the lessee) the right to possess, use and enjoy that item for a specified period of time, in exchange for payment of a stipulated consideration, that is, rent. If a nursing facility enters into a contract whereby it leases an item for a period of time and, at the end of that time, obtains title to it (or has the option of purchasing it), that item is considered to be leased or rented except that, at the end of the period, if an additional payment is required to obtain title to the item, that payment is treated as the purchase price of the item, for purposes of computing its acquisition cost.

- *Annual acquisition costs.* If a nursing facility purchases an item of movable property, the entire acquisition cost of that item is reported in the cost reporting period during which the item was first placed into service. By contrast, if the nursing facility leases that item, the acquisition cost of that item is reported on an annual basis, for each cost reporting period in which the item is leased.
- *Computation of the acquisition cost.* The annual acquisition cost of a rented or leased item of movable property is limited by the "imputed purchase price" of that item. For purposes of making this comparison, the latter is annualized on a straight-line basis over its useful life. If the item is only in use for a portion of a cost reporting period, both the rent and the imputed purchase price are pro rated for that portion. For example, for an item with a purchase price of \$3,600 and an expected useful life of 3 years, the annualized purchase price is \$1,200 per year. If the monthly lease payment is \$150 (that is, an annual cost of \$1,800), the "acquisition cost" of this item would be limited to \$1,200 per year ($\100×12 months), assuming that no other lower amount would qualify as the "imputed purchase price."

§ 1187.61(b)(4).

The case-mix payment system is a prospective payment system that uses annual per diem rates (adjusted quarterly) to compensate nursing facilities for providing nursing facility services. In setting these rates, the system looks at the reasonable allowable costs incurred in the past. However, there is no correlation between the rates in effect for a given rate year and the costs by the nursing facility during that same 12-month period. Rather, the rates are set using audited costs of previous periods (adjusted for inflation and the nursing facilities "case-mix") as a basis for determining what a reasonable rate would be for the period in question. Consistent with that methodology, the amendments provide for the inclusion of the imputed "cost" of an item acquired as a gift or donation. The assumption is that, if the nursing facility had not acquired the item at no cost, it would have had to have purchased the same or similar item and, thus, would have incurred an allowable cost, and the cost would be included in the NIS database. Thus, for the NIS database to reflect the imputed cost of the donated item, the amendments provide that the nursing facility receiving the item shall report the appraised depreciated replacement cost of the item. Assuming that the item is related to the provision of nursing facility services, that cost is an allowable cost. The amendments also place the burden on the nursing facility of obtaining the necessary appraisal. This arrangement is wholly appropriate, since the nursing facility is in the position of knowing when these items are donated and, further, bears the consequences that arise from failure to obtain that appraisal.

§ 1187.61(b)(5).

In a trade-in situation, an old item is used to pay some or the entire purchase price of the new item. Thus, for instance, if a nursing facility "trades-in" an old lawnmower as part of the purchase of a new lawnmower, the acquisition cost of the new lawnmower is the amount the facility is paying (that is, the amount of money (exclusive of interest) being paid) plus the trade-in value of the old lawnmower. The trade-in value of the old lawnmower is determined by depreciating its acquisition cost on a straight-line basis over its useful life as determined by the specified "Uniform Chart." The draft version of this provision was modified to eliminate possibly ambiguous or confusing phrasings.

§ 1187.61(c).

The purpose of the offsets is to prevent nursing facilities from "gaming" the case-mix payment system by, for instance, acquiring items of movable property solely to increase their reported costs, then selling or otherwise conveying the movable property to another person. The Department finds these rules appropriate, as nursing facilities do not typically resell items of movable property to other entities but, instead, are themselves the end-users of the items. Moreover, these rules encourage nursing facilities to fully consume items of major movable property.

During the public process, the Department was asked why the term "pay" was used in the draft of this section, while "liquidate" was used in § 1187.52. The Department has revised the wording of § 1187.61(c) to eliminate the perceived inconsistencies.

During the public process, the Department received a recommendation that the Department amend its regulations to specify how a nursing facility's status as a debtor in bankruptcy might affect that facility's allowable costs, including short-term liabilities that are not liquidated within 1 year. The Department has already provided nursing facilities with guidance on this issue: When a nursing facility has not liquidated its short-term liabilities, the facility may, under 1 Pa.Code § 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations), submit a petition to the Secretary of the Department seeking a waiver of the application of the regulations to those costs. The Department finds that this response adequately addresses the commentator's concern.

§ 1187.61(d).

Under the amendments, the acquisition cost of movable property is an allowable cost and, if a nursing facility trades-in, conveys, transfers or removes an item from service, an offset is taken. Under these circumstances, it would be inconsistent for losses on those transactions to be considered an allowable cost. Consequently, they are expressly declared to be nonallowable.

§ 1187.61(e).

The purpose of this provision is to ensure that, when an item of movable property is rented or leased by the nursing facility, the nursing facility obtains adequate documentation of the terms and conditions of the transaction. Failure to secure the documentation at the time of the transaction results in the acquisition costs being deemed nonallowable. When an item of movable property is rented, and if the rental agreement also covers maintenance, services or supplies, only that portion of the rent that relates to the item of movable property is considered in determining the annual acquisition cost that may be

reported as an allowable minor or major movable property cost. Maintenance, services or supplies covered by the rental agreement would be reported in the appropriate net operating cost center.

§ 1187.71. Cost Reporting.

§ 1187.71(a).

This section identifies those costs that a nursing facility includes in its annual cost report. Included costs are not necessarily "allowable costs." See, § 1187.71(a)(4), which requires that facilities report depreciation, interest on capital indebtedness, the cost of renting the nursing facility, and "amortization—capital costs." The principal changes made in this subsection are: (1) the inclusion of a provision for minor movable property in each of the three net operating cost centers; and (2) the inclusion of supplies in each of those cost centers. Aside from those changes: (a) because the "resident care costs" now includes a minor movable property provision, the DME provision was removed as superfluous; (b) in the "other resident related costs", the dietary provision was amended so that all kitchen, food service and dining supplies are expressly encompassed within this category; and the "laundry" provision was amended so that the linen costs are expressly encompassed within that category; (c) in the "administrative costs," because costs associated with transportation equipment are now treated as costs of movable property, and equipment rental is a form of acquisition cost, the separate provisions for those costs have been eliminated as obsolete and duplicative. Also, although the draft version of the amendments proposed to eliminate "officers' life insurance" as a reportable cost, that proposal was in error and has been reversed. The changes to the "capital costs" reflect the changes in terminology and the need to have the costs of "major movable property" reported separately.

§ 1187.71(c).

Subsection (c) was modified so that it uses the same terminology as other sections, while retaining the same meaning as the original version.

§ 1187.71(f).

The terminology of subsection (f) was modified to clarify that the financial records that enrolled nursing facilities must maintain include lease agreements and rental agreements involving either fixed or movable property. In addition, because "supplies" is now a defined term, "requirements for supplies" has been removed to avoid possible confusion.

§ 1187.80. Failure to file a cost report.

§ 1187.80. In general.

A function of § 1187.80 is to establish an incentive for nursing facilities to file timely and acceptable cost reports. Because, under the amendments, a nursing facility's movable property component of the capital rate will be computed using information from a single audited cost report, the revised system may motivate some facilities to attempt to "game" the system by withholding cost reports. For instance, a nursing facility that purchased voluminous quantities of major movable property in 1 year, and little or none in the following year, might consider withholding the cost report for the latter year, in hopes that the costs from the first year would be used in 2 separate rate years. Because of this concern, the Department originally proposed that late or nonfilers would receive \$0 for their capital component. During the public process, the Department received a comment questioning the severity of this proposed change. Upon consideration

of this comment, the Department concluded that a less severe incentive should suffice. Therefore, in addition to changes intended to more clearly state the rule, it has changed the proposed regulation as noted in this Preamble.

§ 1187.80(b).

As originally drafted, if a nursing facility failed to file a timely cost report, the amendments would have reduced the facility's net operating components by 5%, but would have reduced the facility's capital rate component to \$0. However, in response to comments, the Department revisited the capital portion of this provision. Because the Department is concerned with attempts to manipulate the movable property costs, the Department revised this provision so that, for cost reporting periods beginning on or after January 1, 2001, the failure to file a timely cost report will cause the movable property component of the capital rate to default to \$0.

In subsection (b), the meaning of the introductory language has been clarified. As noted in this Preamble, nursing facility payments are computed using a prospective comprehensive per diem rate. Thus, regardless of the particular mix of items and services used to provide care to a particular MA resident, the payment for that resident is computed using the entire rate. Consequently, although Chapter 1187 speaks at various places of "rates" for the various cost centers, those "rates" are not "payment rates" but, rather, are more accurately and properly understood to be components of the comprehensive per diem rate. In like manner, it is inaccurate to speak of "payment to the nursing facility for net operating costs for cost reporting periods involved." Therefore, the phrasing of this subsection has been amended to eliminate possible ambiguities and to more accurately describe the functioning of the case-mix payment system.

§ 1187.91. Database.

§ 1187.91(1)(iv)(D).

The Department has included various provisions in the amendments that provide for a transition from the existing movable property payment methodology to the new methodology set forth in the amendments. The Department has added this new subsection to implement one aspect of the transition. Specifically, the new subsection authorizes the Department to disregard audit adjustments that disallow or reclassify costs for linens and minor movable property reported as net operating costs on cost reports for fiscal periods beginning prior to January 1, 2001. This new subsection only applies to price and rate-setting effective on or after July 1, 2001; it does not authorize modification of audit adjustments for any other price and rate-setting period. Moreover, this new subsection only authorizes the disregard of adjustments that reduce costs already reported. It does not permit modification of audit reports to include costs that were not previously reported on cost reports or to increase costs beyond those reported on cost reports. The new subsection specifies that the Department will not adjust the audited statistics when revising the nursing facility audited Resident Care, Other Resident Care and Administrative allowable costs as a result of the application of this section. However, the new subsection does specifically authorize the Department to recalculate the maximum allowable administrative cost, and to disallow administrative costs in excess of the 12% limitation as specified in § 1187.56(1)(i).

§ 1187.91(2).

As originally promulgated, Chapter 1187 provided that the capital rate would consist of two components. One component involves what is now called “real estate tax costs.” Although changes in wording have been made in § 1187.91, no change in meaning is intended with regard to the “real estate tax cost” component. Rather, the revised version reflects the Department’s interpretation of the original wording. However, the amendments do alter the other originally promulgated part which dealt with FRV.

As originally promulgated, the FRV component of the capital rate pertained to all fixed and movable property. The amendments remove “movable equipment” from that formulation: The acquisition costs of “minor movable property” are included in net operating cost centers, while the acquisition costs of “major movable property” are used to compute a new component of the capital rate component. To implement this change, the Department is issuing revised MA-11 cost reporting forms and schedules. These will first be used for the cost reporting periods that begin on January 1, 2001. Cost reports for earlier periods will use old versions of the MA-11 and will not set forth the required information. As explained elsewhere, the Department finds it impracticable to have the nursing facilities revise the cost reports for these periods, and it is impracticable for the Department to reaudit those cost reports. Therefore, there will be a transition period during which the new cost report will be submitted and audited, but during which the movable property component will be computed using the FRV system. However, as soon as a new MA-11 has been audited and the verified costs have been submitted and input into the NIS database, the Department will begin using the contents of that audited cost report (and its successors) in the next rate setting.

§ 1187.96—Price and rate setting.

As originally promulgated, Chapter 1187 provided that each nursing facility’s capital rate had two parts, the “FRV” (which encompassed both fixed and movable property) and the “real estate tax cost.” The amendments revise the system so that a nursing facility’s capital rate now has three components: (1) The fixed property component still uses the FRV system; (2) a new component is established for movable property; and (3) the real estate tax cost component remains unchanged.

§ 1187.96(d)

The 90% adjustment. To encourage nursing facility efficiency and economy associated with nursing facility occupancy levels, the Department makes minimum occupancy adjustments. Thus, if a nursing facility’s overall occupancy level is below 90% of total available bed days, the Department makes an adjustment to the total facility resident days as though the nursing facility were at 90% occupancy. See § 1187.23(a). This adjustment is made to the administrative and capital cost components. *Id.*; § 1187.96(c) and (d). However, it is not applied to a newly constructed nursing facility until that facility has been enrolled in the MA Program for one full annual price setting period. See § 1187.97(1)(iv). The amendments retain the 90% adjustment.

§ 1187.96(d)(1).

As originally promulgated, § 1187.96(d)(1) provided that the determination of the “FRV” included all fixed and movable property of the nursing facility. As amended, this paragraph provides that only the FRV of the fixed property will be used for purposes of computing the

capital rate. Although the wording has been modified, the process for determining that amount remains unchanged.

§ 1187.96(d)(2).

Immediate conversion to the revised system is impracticable and, consequently, there must be a transition period. During the transition period, the movable property component will be computed in accordance with § 1187.96(d)(2)(i), which reproduces the result of Chapter 1187 as originally promulgated. Afterwards, it will be computed in accordance with subparagraph (ii), which sets forth the new method.

§ 1187.97. Rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities, and former prospective payment nursing facilities.

§ 1187.97(1)(ii).

This section defines “new nursing facility” as a “newly constructed, licensed and certified nursing facility; or an existing nursing facility that has never participated in the MA Program or an existing nursing facility that has not participated in the MA Program during the past 2 years.” As originally promulgated, § 1187.97(1)(ii) specified how the capital rate component for a new nursing facility would be calculated. Because, under the amendments, the capital rate component now consists of three parts, rather than two, this paragraph has been amended to reflect that change.

In addition, a distinction is made between nursing facilities that are certified for participation in the MA Program prior to January 1, 2001, and those that are certified for participation on or after that date. As set forth in subparagraph (ii), the earlier “new nursing facilities” will transition from the original to the revised case-mix system in the same manner as all other nursing facilities. However, because the Department has no movable property appraisals for the later “new nursing facilities,” the transition for these facilities will be based upon the acquisition cost of their new movable property, plus the depreciated replacement cost of any other movable property, amortized over 3 years. Except when the new nursing facility lacks a depreciation schedule for its used movable property, the latter method will eliminate the use of appraisals as a basis for the costs used to set the movable property component of the new nursing facilities’ capital rate components.

The Department has modified the treatment of real estate taxes in setting per diem rates for new nursing facilities. The purpose of this change is to ensure that, until audited costs are available in the NIS database, the new nursing facility’s capital rate component is computed using current real estate tax costs.

§ 1187.97(2)(iii).

Under Chapter 1187 as originally promulgated, the acquisition cost of fixed and movable property had no effect upon the rates, because the allowable costs for those items were determined using the FRV system. The amendments, however, modify that system so that the acquisition costs of movable property are an allowable cost. The purpose of this subparagraph (iii) is to clarify that, when a nursing facility changes owners, that transaction has no effect upon the reported or allowable movable property costs.

§ 1187.112.

To conform this section to the revised terminology, the term “movable equipment” is being replaced with “movable property.”

§ 1187.113.

Under Chapter 1187 as originally promulgated, § 1187.113 imposed a limitation on the computation of the capital component of a nursing facility's per diem rate. That limitation, known as the "bed moratorium" (§ 1187.96(d)(1)), applied to both fixed and movable property. However, in addition to moving minor movable property costs to the net operating cost centers, the amendments also eliminate the application of the moratorium to major movable property costs. Thus, under the amended Chapter 1187, the allowable acquisition costs of movable property will be included in the computation of the nursing facilities per diem rate. The moratorium continues to be applicable to fixed property.

Subchapter K: Exceptional payment for nursing facility services.

As originally promulgated in Chapter 1187 when a nursing facility provided nursing facility services to an MA eligible resident, payment made by the Department at the per diem rate constituted payment in full for those services, including the use of any and all DME. See §§ 1187.51 and 1101.63. "Durable medical equipment" or "DME" is a form of movable property. See § 1187.2. However, under provisions of the State Medicaid plan, the Department also is authorized to make additional payments, if requested by a nursing facility and if the resident in question requires certain high-technology DME. By promulgating Subchapter K, the Department is establishing this option as a part of its regulations.

As set forth in Subchapter K, when certain requirements are met, the Department will make "exceptional payments" to enrolled nursing facilities. Those payments are made in addition to any payments made under a nursing facility's per diem rate, and are made only to nursing facilities. They are not made to residents, DME vendors, physicians, or other persons and entities.

To receive an exceptional payment, a nursing facility must request and the Department must approve an "exceptional DME grant." Whether a nursing facility submits a request is optional.

When it initially disseminated its draft regulations, the Department intended to continue its current practice of requiring grant agreements whenever it approved a nursing facility's exceptional grant request. The Department has determined that this practice is unnecessary. Because the requirements relating to exceptional DME grants are now included in the Department's regulations, the Department will no longer use grant agreements for grants issued on or after July 1, 2001. The Department has deleted all references to grant agreements from Subchapter K. Due to the optional, exceptional and individual nature of these grants, however, the Department will specify the particular terms of each grant in writing, and nursing facilities will be required to certify to the Department, on a form designated by the Department, that they have read and understand the terms of the grant, as a condition of receiving the grant.

Although there is a direct correlation between the amount of an exceptional payment and the necessary, reasonable and prudent cost of the associated DME, the payment is not made for the purpose of reimbursing the nursing facility for its costs of obtaining the exceptional DME. Under the prospective payment system set forth in Chapter 1187, the Department pays for nursing facility services provided to MA residents. See § 1187.51. Consistent with this approach, an exceptional payment consti-

tutes additional payment for nursing facility services provided to the resident identified in the exceptional DME grant.

During the public process, the Department received a comment recommending that the Department require nursing facilities to notify residents of the availability of exceptional DME upon admission to a nursing facility and to assess residents as to their need for the equipment as part of the annual resident assessment. The Department has not included these requirements in Subchapter K because nursing facilities are already required to notify residents of services and items that are covered by Medicare and Medicaid payments and to periodically perform assessments of their residents' needs and to develop comprehensive care plans based upon those assessments. See 42 CFR 483.10(b)(5) and (6) and 483.20 (relating to resident rights; and resident assessment).

§ 1187.151. *Definitions.*

In general.

The definitions in § 1187.151 pertain to the provisions in Subchapter K. A "resident" as defined therein is not only a resident of a nursing facility, but rather, is an MA eligible resident of a nursing facility enrolled in the MA Program as a provider of nursing facility services, and is identified in a request for an exceptional DME grant as needing exceptional DME.

Exceptional DME grant. An exceptional DME grant is not money or other consideration. Rather, it is a conditional authorization given by the Department. That authorization sets forth the Department's permission for a particular nursing facility to submit invoices to the Department for additional payments, above and beyond any payments made at the facility's case-mix per diem rate, for nursing facility services provided to an identified MA resident. In the absence of a grant, a nursing facility may not present the Department with an invoice or other demand for any payment.

§ 1187.152. *Additional reimbursement of nursing facility services related to exceptional DME.*

§ 1187.152(a).

For an item of DME to qualify as "exceptional DME," the acquisition cost of that item must meet or exceed the minimum acquisition cost threshold in the Department's annual notice. Because, at the present time, that threshold is \$5,000, any item of exceptional DME is and must be an item of major movable property. See § 1187.2 (definition of "movable property"). Although the Department is using the annual list to specify the amount of the threshold to permit ready adjustment of it, the Department expects that the adjustments will track changes in the cost of DME and, consequently, that "exceptional DME" will always qualify as "major movable property." As set forth in § 1187.52(e)(4)(ii)(B), the acquisition costs of major movable property are (subject to various conditions) allowable costs. Thus, because all items of exceptional DME are movable property, the cost of exceptional DME is (generally) an allowable cost. Like other allowable nursing facility costs, the cost of an item of exceptional DME is limited by the requirement that it be necessary, reasonable and prudent. See § 1187.152(a).

When DME and related services and items are approved by a grant, subsection (a) specifies the mechanism for conclusively determining the amount of exceptional DME costs that is "necessary, reasonable and prudent": It is the amount of the costs "identified in the nursing facility's grant." Consequently, "[a]ny costs incurred in

excess of the costs identified in the grant are not allowable costs. . . .” For cost reporting and auditing purposes, this provision is conclusive. However, when the DME or related services and items are not approved by a grant, these provisions do not apply.

§ 1187.152(b).

Subsection (b) provides that, if a nursing facility provides nursing facility services to an MA eligible resident, and if those services involve the use of “exceptional DME,” the nursing facility may seek additional reimbursement by requesting a grant from the Department. This phrasing is intended to indicate that the nursing facility is not required to make a request. If no request is made, the nursing facility still may receive payment through the submission of invoices, based upon its per diem rate. However, in the absence of a grant request, the Department will not issue a grant and, consequently, there will be no authorization of an additional payment.

During the public process, the Department received comments suggesting that, in addition to permitting nursing facilities to apply for exceptional DME grants, the Department should also permit requests to be submitted by residents and their outside physicians, and that residents should have the right to request independent assessments to determine their need for DME. These suggestions were prompted by the concern that, because the decision to request a grant lies in the hands of the nursing facility, facilities may decline to make requests unless they are reasonably confident that the requests will be granted. While the Department agrees that the resident, the resident’s family and the resident’s physician should be active participants in developing the resident’s care plan, the Department is not willing to reduce or limit the obligation that a nursing facility provider has to make all medically necessary DME available to its residents, as part of its responsibility to provide care and services, including DME, under the residents’ individual plans of care. For this reason, the Department has not accepted the suggestion to allow persons other than nursing facilities to submit exceptional DME grant requests. Nonetheless, to address the concern that nursing facilities may not make exceptional DME requests in order to avoid their obligation to provide necessary care to their residents, the Department has amended § 1187.22 to provide that the nursing facility must maintain a separate written record identifying all requests or physicians’ orders received by the facility for exceptional DME, and for other DME the Department may specify. The purpose of this amendment is to provide the Department with a means of effectively and efficiently determining whether the requests are incorrectly ignored or rejected.

In addition, the Department and the DOH monitor nursing facilities to ensure that they provide services in compliance with law. If a resident or the resident’s family, representative or physician believe that the nursing facility is not allowing them to participate in the care planning process or that the facility is not meeting the residents needs, the Department urges the resident, or the resident’s family member, representative or physician to contact the local Area Agency on Aging (AAA) ombudsman, the DOH complaint hotline at (800) 254-5164, or the Department’s DME hotline at (877) 299-2918. In addition, the resident or resident representative may consider consulting his attorney or the local legal services organization. The telephone number of the local AAA and legal services organizations are listed in the blue pages of the telephone book.

§ 1187.152(c).

Subsection (c) sets forth the conditions that must be met for the Department to issue a grant to a nursing facility. Among other things, this subsection specifies that the grant is not effective until the nursing facility certifies to the Department that it has read and understands the terms of the grant.

§ 1187.152(c)(1).

The Department has developed forms for use in applying for a grant. In addition, the Department will be developing and publishing guidelines for the preparation and submittal of grant requests. This paragraph requires that the nursing facility comply with all instructions in effect at the time the request is made.

§ 1187.152(c)(2).

The definition of “DME—durable medical equipment” specifies that DME is movable property that, among other things, “is primarily and customarily used to serve a medical purpose” and “generally is not useful to an individual in the absence of illness or injury.” Thus, DME is movable property that serves a medical purpose. Consistent with this purpose, the Department will not authorize exceptional payments for exceptional DME unless that DME is medically necessary.

In its original draft version of the amendments, the Department proposed to set forth a definition of “medical necessity.” However, after receiving comments during the public process suggesting that the Department use the definition already in § 1101.21, the Department revised its draft to incorporate that definition. The Department also received comments during the public process that, for purposes of the exceptional DME provisions, the Department should modify that definition in § 1101.21. The Department, however, finds that consistency is desirable and, consequently, has not revised the definition in this context.

In addition, during the public process, the Department received a comment suggesting that, in determining whether an item of DME is medically necessary, the Department should consider alternative, less-expensive items, and should consider the resident’s independent ability to operate both the proposed and the alternative items. The Department does, and will continue to, consider these factors in determining whether an item of DME is medically necessary.

§ 1187.152(c)(3).

“Durable medical equipment” and “exceptional DME” are defined in § 1187.2 and the Department’s annual notice. Thus, an item of DME is “exceptional DME” if it meets the definitions and conditions set forth therein.

§ 1187.152(c)(4).

Paragraph (4) permits the Department to refuse a grant if the Department finds that the requesting nursing facility’s physical plant, equipment, staff, program and policies are not sufficient to insure the safe, appropriate and effective use of the exceptional DME. As an example, if the circumstances of a nursing facility are such that a ventilator cannot be used in conformity with these requirements, the grant may be refused. In this case, the nursing facility should make alternative arrangements for the resident in question. Typically, those arrangements would involve the transfer of the resident to a different nursing facility that does have the requisite capacity.

§ 1187.152(c)(5).

As originally drafted, this provision required that the nursing facility execute a grant agreement as a condition of receiving a grant. For reasons specified, the Department has determined that grant agreements are no longer necessary, and has eliminated references to grant agreements from the amendments. The Department has included new language in this section that requires a nursing facility to certify to the Department that it has read and understands the terms of its grant as a condition of issuance of the grant.

§ 1187.153. Exceptional DME grants—process.

§ 1187.153(a).

Section 1187.152(c)(1) provides that the Department will issue a grant if, among other things, “[t]he nursing facility’s request for a grant complies with all applicable Department instructions.” Section 1187.153(a)(1) sets forth the fundamental parameters of those instructions. Thus, all those requests must be “in writing,” “on forms designated by the Department,” “completed in accordance with all applicable instructions,” “be accompanied by all necessary supporting documentation specified in the Department’s instructions” and “submitted . . . no later than 30 days from the date on which the nursing facility purchases or rents the DME.”

The draft version of paragraph (2) has been revised to eliminate possibly ambiguous provisions. As revised, paragraph (2) requires that a notice be provided to a resident’s “authorized representative” whenever that person has been designated. In addition, regardless whether an “authorized representative” has been designated or not, notice must also be provided to the resident. The purpose of this notice is two-fold. First, it informs the resident or authorized representative, or both, of the nursing facility’s request. Second, it informs those persons that the nursing facility believes that the identified DME is medically necessary. The nursing facility must provide this notice to the resident at the same time the facility submits its request to the Department.

As used in this paragraph, the term “authorized representative” means a person who is not an employee of the nursing facility and is responsible for making decisions on behalf of the resident. The person shall be so designated by the resident or a court, and documentation shall be available on the resident’s clinical record to this effect. An employee of the nursing facility will be permitted to be a responsible person only if appointed by the resident’s legal guardian or by a court. If an incompetent resident has no authorized representative, the nursing facility should immediately make arrangements for a person to serve in that capacity.

§ 1187.153(b).

Subsection (b) describes the notice that the Department will give of its decision to approve or deny a request for a grant. The Department will send notices to the nursing facility that filed the request and to the resident and the resident’s authorized representative.

During the public process, the Department received comments recommending that the regulations should require the Department to respond to a nursing facility’s request for an exceptional DME grant within a specific time frame, or provide that a request for an exceptional DME grant would be deemed approved if the Department does not act on it within 21 days. While the Department has not revised the regulation as suggested, the Department will endeavor to respond to each request within 21

days. If, however, the Department does not act within that time frame, the request is not automatically approved. The Department notes that the exceptional payment policies give nursing facility providers the option to request and obtain additional payment under certain circumstances. The policies are not intended to, and do not, alter a nursing facility’s obligation to provide care and services to its residents in accordance with all applicable State and Federal requirements. Among other things, a nursing facility must ensure that its residents receive necessary services and items as specified in their care plans, including DME, regardless of whether the facility has submitted a request for, or received an exceptional DME grant. The Department also notes that it has amended the regulations to allow nursing facilities to submit requests for exceptional DME grants within 30 days after purchasing or renting the DME.

§ 1187.154. Exceptional DME grants—general conditions and limitations.

§ 1187.154(a).

Subsection (a) states the scope and effect of an exceptional DME grant. A grant is not a payment. Rather, it is a conditional authorization given to a nursing facility to receive a limited and specified amount as an exceptional payment subject to certain specified terms. To receive such a payment, the nursing facility must comply with the Department’s billing requirements in § 1101.68.

§ 1187.154(a)(2).

Paragraph (2) states that a grant does not “limit costs that are, or must be, incurred by a nursing facility to provide services to any of its residents” including the resident identified in a grant or an application for a grant. By electing to enroll in the MA Program as a provider of nursing facility services, the nursing facility has voluntarily assumed the responsibility to provide services “in accordance with applicable law and regulations.” Some of the applicable laws and regulations are identified in this preamble. However, nursing facilities are deemed to have notice of the laws and regulations and, therefore, must comply with all laws and regulations, whether identified herein or not.

§ 1187.153(c)(1).

An item of exceptional DME is, by definition, an item of movable property having an acquisition cost that meets or exceeds the minimum acquisition cost threshold. Because that threshold presently is \$5,000, any item of exceptional DME is, by definition, classified as an item of major movable property. As originally promulgated, Chapter 1187 included all items in the FRV system used to compute the capital rate. Under the amendments, however, major movable property has been removed from the FRV system and, instead, the acquisition cost of major movable property is now an allowable cost. As set forth in § 1187.152(a), for purposes of determining the necessary, reasonable and prudent cost of an item of DME that is subject to a grant, that cost is limited to and deemed to be the amount specified in the grant. Paragraph (1) specifies how these costs shall be reported by the nursing facility.

During the public process, the Department was asked whether a nursing facility whose request for an exceptional DME grant is approved, but for an amount less than the cost incurred by the facility, may report the difference on its cost report. The Department has revised § 1187.154 to specify that the amount of the exceptional payments authorized by a grant is based upon the necessary, reasonable and prudent cost of the exceptional

DME and the related services and items identified in the grant. In identifying its allowable costs on its cost report, therefore, the nursing facility must adjust those reported costs to the necessary, reasonable and prudent cost amounts identified in the nursing facility's grant. See § 1187.154(a) and (c).

Another comment questioned whether the Department will take the position that a nursing facility that reports costs on its cost report related to equipment for which an exceptional DME grant has been denied, has committed program fraud or abuse. The Department will evaluate each situation and determine on a case-by-case basis whether there is reason to believe that fraud or abuse has occurred based on the specific circumstances.

§ 1187.154(c)(2).

Section 1187.60(c) identifies types of income that reduce allowable costs. The Department has amended that subsection to provide that payments received by a nursing facility under an exceptional DME grant shall offset costs. Paragraph (2) specifies how those offsets are to be made by the nursing facilities on their cost reports. Because the acquisition cost of exceptional DME must be reported as a major movable property cost, that portion of an associated payment that pertains to the DME must be used as an offset to the nursing facility's major movable property costs. Likewise, a payment associated with "related services and items" must be used as an offset against costs in the cost center where the costs of those services and items were reported. If a nursing facility receives a payment under an exceptional DME grant that was approved after the period in which the acquisition costs were reported and that payment was unable to be accrued, the facility may not revise or amend the earlier costs but, instead, the payment shall offset costs in the more-recent period. Thus, for instance, if a nursing facility purchases a specially adapted wheelchair at the end of cost reporting period No. 1, it would report that cost on the cost report for that period. If, however, that period ends before the request for a grant is made, the payment made by the Department might not be received by the nursing facility until the cost report has already been submitted. In this situation, the nursing facility would not amend its cost report. Rather, it would report the payment as an offset to major movable property costs on the cost report for the subsequent cost reporting period.

§ 1187.154(d).

Federal and State laws require that a provider participating in the MA Program must accept as payment in full the amounts paid by the Department. This subsection explains the meaning of this requirement in the context of a payment made under an exceptional DME grant.

§ 1187.154(f).

As originally drafted, this subsection included the following additional text: "If a nursing facility timely appeals an adverse Department determination relating to its grant, the Department's determination is not final until the Department issues a final adjudication on the nursing facility's appeal. The Department's adjudication of any such dispute shall be final, except as it may be reviewed by an appellate court pursuant to the Administrative Agency Law (2 Pa.C.S. § 101 et seq.). Any dispute which is not timely presented to the Bureau of Hearings and Appeals for adjudication shall be deemed waived and released and may not thereafter be the subject of any claim, proceeding or cause of action against the Commonwealth of Pennsylvania, the Department or its officials

and employees." These sentences were redundant and unnecessary, as they merely repeated the content and effect of provisions in § 1187.141 (relating to nursing facility's right to appeal and to a hearing), which is made applicable to Subchapter K by § 1187.158(a)(4).

§ 1187.154(i).

Compliance with the conditions and limitations in subsection (i) is a condition of receiving a grant. A nursing facility is not required to request an exceptional DME grant. Therefore, if a nursing facility concludes that some or all of these conditions and limitations are unacceptable, the facility can avoid their effect by declining to request a grant and, in that instance, these provisions do not apply. However, if the nursing facility requests and receives a grant, these provisions are applicable. Under the revised amendments, costs associated with exceptional DME are (generally, and subject to various limitations) allowable costs. When the Department makes additional payments to a nursing facility pursuant to an exceptional DME grant, the amounts of those payments will be treated as an offset to the allowable costs in accordance with § 1187.154(c). Further, because it is a condition of participation that a nursing facility provider must accept case-mix per diem rate payments and any additional payment under a grant as payment in full, the facility will have been fully paid for the nursing facility services it provided to the MA resident named in the grant. Therefore, if a nursing facility were to purchase a wheelchair that met the definition of "specially adapted DME," and the facility requested and received a grant, and if the resident was thereafter discharged into the community and the Department directed that title to the wheelchair be transferred to the resident, the facility would be required under this subsection to transfer title without receiving further compensation for the transferred item. In that case the offset provisions contained in § 1187.61(c)(1) (relating to movable property cost policies) would not apply.

§ 1187.155. Exceptional DME grants—payment conditions and limitations.

§ 1187.155(a).

An exceptional DME grant constitutes authorization given by the Department for a nursing facility to submit invoices to the Department for payment related to the provision of nursing facility services related to the use of exceptional DME. There are two types of grants. One type authorizes the nursing facility to bill for and receive a single lump sum payment. The other type authorizes multiple payments to be billed for and received on a periodic basis. These are referred to as "monthly payments." In rare cases, however, the Department may vary the period, to account for differing payment schedules.

§ 1187.155 Draft subsection (b).

As originally drafted, costs of exceptional DME identified in a grant agreement would have been nonallowable costs and, to ensure that all costs associated with those items would be excluded, the Department proposed that the cost of maintenance, repairs and supplies not included in "related services and items" would also be encompassed by the grants. However, as explained in this Preamble, the Department has decided that exceptional DME costs will (subject to various limitations) be treated as allowable costs. Consequently, there no longer is a need to make special provision to include the cost of maintenance, repairs and supplies within the scope of the exceptional DME grant. Therefore, the Department has removed draft subsection (b) in its entirety. This change

will simplify the administration of the exceptional DME grant process, as well as the recordkeeping duties of the nursing facilities.

Revised subsection (b) (former subsection (c)).

As originally proposed, this subsection specified that the maximum allowable exceptional payment authorized by a grant was limited to the lowest of four criteria: (1) the nursing facility's actual acquisition cost; (2) the applicable MA outpatient fee schedule amount, if any; (3) 80% of the amount that would be approved by Medicare if the DME were a Medicare Part B covered service or item; and (4) the maximum approved amount specified in the nursing facility's grant agreement. Because grant agreements will no longer be used, the latter criterion has been deleted and the amount specified in a grant will be determined by applying the first three criteria.

During the public process, the Department received a comment suggesting that the Department must ensure that the maximum allowable payment authorized by the subsection is sufficient to meet the resident's need. The Department believes that the comment misapprehends the nature of the payment system. The exceptional payment authorized under a grant is in addition to the payment that the nursing facility receives to provide care and services to its MA residents. It is the rate as a whole, and not any component or the additional payment authorized by a grant that should be considered in determining the adequacy of reimbursement. Moreover, by electing to participate in the MA Program, a nursing facility assumes the responsibility to provide appropriate nursing facility services to its MA residents. Included in this is the responsibility to make all medically necessary DME available to its residents. Further, by enrolling in the MA Program, the facility agrees to accept payment made at the case-mix per diem rate as payment in full for covered services and items, including DME. If a nursing facility receives an exceptional payment, that payment is made to the facility (not the resident), as additional payment for services provided to that resident. However, the nursing facility's obligation to provide the services exists regardless whether the facility requests or receives an exceptional DME grant.

Subsection (c) (former subsection (d)).

§ 1187.155(c)(1).

Exceptional payments made under a grant will be subject to the conditions and limitations in Chapter 1101, including § 1101.64 (relating to third-party medical resources). The purpose of exceptional DME grants is to provide nursing facilities with additional payments in situations when they provide nursing facility services to certain residents who require certain unusual and expensive DME. In situations when a third-party payer has already paid for that DME, no grant is necessary. As explained in this Preamble, the issuance of a grant constitutes authorization from the Department to the nursing facility to submit invoices for payments pertaining to nursing facility services involving the use of exceptional DME. The submittal of these invoices is governed by § 1101.68.

Because exceptional DME grants are only issued infrequently and in extraordinary circumstances, the Department has determined that each grant should be treated individually, and that the terms and conditions should vary in accordance with the particular needs and circumstances of the MA eligible resident, the capabilities of the nursing facility, and the changing technology of DME. Consequently, the Department has determined that the

use of individual written grants is appropriate. Each grant will specify: (i) the resident who needs the exceptional DME; (ii) the exceptional DME and related services and items needed by the resident; (iii) whether the nursing facility is authorized to request a lump-sum payment or periodic payment under the grant; (iv) the amount of additional payments and, if periodic payments are authorized, payment intervals at which the additional payment amounts may be requested; and (v) the effective date of the grant. Section 1187.154(c)(2) ensures that the imposition of those terms is specifically contemplated by the Department's regulations.

§ 1187.156. Exceptional DME notification and reporting requirements.

Section 1187.156 sets forth previously proposed provisions pertaining to the various notices and status reports be given to the Department. Until the Department provides different guidance, all reports and notices shall be sent to the Bureau of Long Term Care Programs, attention Division of LTC Provider Services, P. O. Box 8025, Attn: Exceptional Payment Section, Harrisburg, PA 17105.

§ 1187.157. Termination or suspension of exceptional DME grants and recovery of exceptional payments.

§ 1187.157(a).

Section 1187.157 was originally proposed as § 1187.156. As originally drafted, this section spoke of the "revocation" of an exceptional DME grant. That term suggested that a grant would only come to an end as a result of some affirmative act by the Department. That suggestion was incorrect. Generally, a grant ends as a result of some extrinsic event or condition. Therefore, the Department has modified the section to speak of "termination."

As set forth in subparagraph (5)(i), when a grant is terminated, the nursing facility no longer has authorization to obtain payments for services provided "after the termination date." Thus, for example, if a grant is terminated because the nursing facility is advised by the resident's attending physician that the exceptional DME is no longer medically necessary (§ 1187.157(a)(1)(iv)), the termination date is the date specified by the physician and, while the facility can receive exceptional payments for services provided up through that date, it no longer has authorization to receive payments for services provided thereafter. This limitation is in keeping with the principle that exceptional DME grant payments are intended as payment for nursing facility services.

In addition, the Department has modified this subsection to allow for the suspension of payments under a grant. In all or most instances, these new provisions will only apply when the grant in question authorizes periodic or monthly payments. The Department has included these provisions as an intermediate measure, to be used when termination appears unnecessary but when an interruption of payments also seems appropriate.

During the public process, the Department received a comment suggesting that it was not clear whether, in situations when the Department discontinues payment because the need for the exceptional DME no longer exists, the Department would issue advance notices. The Department agrees that advance notice should be given in some instances and has accordingly revised § 1187.157(a)(2).

§ 1187.157(b).

Subsection (b) makes explicit the Department's right to recover payments made for services provided during a

period of suspension or after the termination date of a grant. In addition, it provides that, if a nursing facility that has received payments pursuant to an exceptional DME grant has violated Subchapter K or the terms of its grant (such as, by submitting a request for payment in excess of the amount authorized, or for costs incurred for services and items not identified in the grant), the Department can recover some or all of the exceptional payments made under that grant in addition to or instead of terminating the nursing facility's grant. Under the latter option, the nursing facility would still be bound by the terms of this subchapter and its grant, even though the payments have been recovered.

§ 1187.157(c).

Subsection (c) makes clear that the rights and remedies available to the Department under § 1187.156 do not supersede or replace any rights, remedies or sanctions that are otherwise available to the Department under other laws and regulations.

During the public process, the Department was asked whether the exceptional DME grant process would have to be started over again if the Department revokes a grant due to a resident being temporarily discharged or transferred to a hospital or other health care provider. Another comment noted that some chronic conditions require repeated admissions to a hospital and that it was not prudent to subject residents and nursing facilities to repeated applications for exceptional DME for this reason. The Department agrees that, on occasion, suspension of a grant may be preferable to termination of the grant. Consequently, it has revised the regulations to permit suspensions in certain circumstances.

§ 1187.158. Appeals.

Section 1187.158 is new. The section sets forth provisions originally addressed in draft § 1187.152(d) and (e).

§ 1187.158(a).

With one exception, the changes in Subchapter K involve changes in the manner that nursing facilities are reimbursed for nursing facility services provided to certain MA residents. Thus, with one exception, the nursing facility is the only party who can be aggrieved by the denial of a request for a DME grant, or by the termination or suspension of a grant. Consequently, in the original version of Subchapter K, the Department proposed that, with one exception, only the nursing facility would have the right to appeal the decision of the Department made under this subchapter.

The one exception involves determinations of medical necessity. As discussed in this Preamble, regardless of whether a particular item of DME qualifies as "exceptional DME," if the circumstances of a resident cause that item to be medically necessary, the nursing facility has a positive duty under State and Federal law to use that DME in providing the resident with nursing facility services. However, if an item of DME is not medically necessary, the nursing facility is not required to use it, although it may elect to do so. Moreover, if the DME is not medically necessary and is not part of the routine items and services provided by the nursing facility, but the resident nonetheless wants it, the facility is entitled to charge the resident for that item.

As set forth in § 1187.152(c)(2), one criterion that must be met for a grant request to be approved is that the associated DME is "medically necessary." When a nursing facility submits a request for an exceptional DME grant it must, among other things, provide documentation and

representation in support of the proposition that the identified DME is medically necessary. In considering the request, the Department reviews this information. If the Department concludes that the DME is not medically necessary, this is a ground for denying the request. *Id.* Thus, in the event that a request is denied for lack of medical necessity, not only has the Department determined that no exceptional payment will be made to the nursing facility but, in addition, the Department has determined that the facility has no legal obligation to use that DME in providing services to the resident. Only in this way does a Departmental decision adversely affect the resident. As originally drafted, the resident would only have been allowed to appeal a Departmental decision if it were based, in whole or in part, upon a finding of no medical necessity. Consistent with this position, when a request was denied for lack of medical necessity, the Department originally proposed that nursing facilities would not be able to appeal that determination.

Commentators, and in particular those representing consumers' interests, were critical of the manner in which the Department described the limited appeal rights of the residents. In part, this criticism seems to reflect the idea that, by issuing a grant, the Department is purchasing the DME for the resident. That conception is mistaken. When the Department approves a grant, it gives its authorization for the nursing facility to bill for and receive an additional payment for nursing facility services. Nonetheless, the Department does recognize that residents or their authorized representatives, or both, may find this rule and the contemplated limitation on appeals to be confusing. In addition, the Department recognizes that, on a regular basis, nursing facilities commence appeals in the names of their residents. To simplify the process, the Department has revised the regulations so that residents (acting directly or through their authorized representatives) and nursing facilities can appeal all types of decisions relating to exceptional DME grants.

The Department's original position was based upon its determination that, except in situations involving medical necessity, residents lacked standing because they were not aggrieved. Although the Department has modified its regulations to permit residents to maintain appeals in other instances, this change is not based upon a change in the Department's conclusion that the residents are not aggrieved.

§ 1187.158(b)

As originally drafted, subsection (b)(1) was located in § 1187.153 and provided as follows: "If, within the time limits set by subsection (d), the resident or the nursing facility fails to timely appeal the Department's decision to deny a grant as provided in subsection (d), the Department's decision is final. Any dispute regarding or arising from the Department's decision which is not timely presented by the resident or the nursing facility to the Department for adjudication shall be deemed waived and released and may not thereafter be the subject of any appeal, claim, proceeding or cause of action against the Commonwealth, the Department or its officials and employees. If the resident or the nursing facility timely appeals the Department's decision to deny a grant, the Department's denial is not final until the Department issues a final adjudication on the appeal. The Department's adjudication of an appeal shall be final, except as it may be reviewed by an appellate court pursuant to the Administrative Agency Law (2 Pa.C.S. § 101 et seq.)." That provision was deleted as redundant. In

§ 1187.158(a)(5), all appeals must be filed with the Bureau of Hearings and Appeals (BHA) within 30 days of the date of the Department's written notice and, as set forth in § 1187.158(a)(3), if a nursing facility appeals the denial, termination or suspension of a grant, § 1187.141(b), (d) and (e) apply. Those provisions already establish that, if a nursing facility fails to timely appeal an adverse decision of the Department, the Department's decision is final, and that any dispute regarding or arising out of that decision that has not been timely presented to BHA is deemed waived and released and may not thereafter be the subject of any appeal, action or proceeding. Those provisions further establish that, if a timely appeal is filed, the Department's denial is not final until the Department issues a final adjudication of that appeal. The final decisions are, of course, reviewable by an appellate court under the Administrative Agency Law.

Section 1187.158(b)(2)(i) and (ii) indicates some of the implications when the Department denies a grant request. Subparagraphs (iii) and (iv) indicate some of the effects of a termination or suspension of a grant. In all cases, these provisions are intended to ensure that nursing facilities and residents have clear notice of the conduct required and expected by the Department in these circumstances.

During the public process, the Department received a comment objecting to the requirement that, as a condition of receiving an exceptional DME grant, a nursing facility bring disputes relating to the grant initially and exclusively to the BHA. The commentator suggested that this provision eliminates providers' right to appeal to the Board of Claims. The Department does not agree that the regulation eliminates any provider rights. A payment made to a nursing facility for nursing facility services to MA recipients—regardless whether the payment is made pursuant to per diem rates or an exceptional DME grant—is “assistance” for purposes of section 402 of the act (62 P. S. § 402), and, as such, is a “grant.” See 62 Pa.C.S. § 102(f) (relating to application of part) and 25 Pa.B. 4477, (October 14, 1995). The Board of Claims does not have jurisdiction over disputes involving grants, nor does it have jurisdiction over disputes involving MA provider agreements. See 62 Pa.C.S. § 106(f) and (e) (relating to public access to procurement information). Further, an MA provider's relationship with the Department is not contractual in nature. Rather, the obligations and duties of both the provider and the Department are derived from and governed by law and regulation, not any contract. The exceptional payment policies in Annex A do not create a contractual relationship or contractual rights or impose contractual obligations. The policies allow a nursing facility the option to request additional payments for services provided to MA residents when those services require the use of exceptional DME, and authorize the Department to issue a grant to the nursing facility when certain regulatory conditions are met. The policies also set forth the applicable terms and conditions for the grants. In addition, the Department notes that the regulatory language to which the commentator objects is a continuation of longstanding policy and practice. The provision is based upon analogous terms that have been included in all of the Department's exceptional payment grant agreements with nursing facilities since 1988.

The Department received a comment suggesting that appeals brought before the BHA should be expedited and decisions rendered within 30 days of filing. Except in situations when the Department determines that an item of DME is not medically necessary, the Department notes that the dispute underlying an appeal from the denial or

termination of an exceptional DME grant is whether the Department's payments will be limited to those made under the per diem rates or, in addition, will include payments made under a grant. The dispute involves a question of reimbursement, which does not affect the nursing facility's obligation to provide necessary care to the resident. Nonetheless, if a nursing facility or resident desire an expedited hearing, they may ask BHA to expedite their appeals. BHA considers these requests on a case-by-case basis. The Department also notes that, regardless of whether an appeal is filed, nursing facilities are responsible to provide necessary care and services to residents.

The Department received a comment suggesting that the draft appeal provisions appeared to produce decisions that would be forever binding, regardless of a possible change in medical condition. The Department believes that the commentator's concern relates to language that appeared in the prior drafts of the regulation, which stated: “If, within the time limits set by subsection (d), the resident or the nursing facility fails to timely appeal the Department's decision to deny a grant as provided in subsection (d), the Department's decision is final. Any dispute regarding or arising from the Department's decision which is not timely presented by the resident or the nursing facility to the Department for adjudication shall be deemed waived and released and may not thereafter be the subject of any appeal, claim, proceeding or cause of action against the Commonwealth, the Department or its officials and employees. If the resident or the nursing facility timely appeals the Department's decision to deny a grant, the Department's denial is not final until the Department issues a final adjudication on the appeal. The Department's adjudication of any such appeal shall be final, except as it may be reviewed by an appellate court under the Administrative Agency Law.” The Department has deleted this language from the amendments because the Department has determined that it merely restates what the existing law, including § 1187.141(b), (d) and (e), already provide. The Department has, however, included a new paragraph, § 1187.158(b)(1), to make clear that the denial or termination of a grant does not prohibit a nursing facility from submitting a new request for an exceptional DME grant for the same resident who was the subject of a prior denied request or terminated grant if the facility reasonably believes that there has been a change in the resident's condition since the denial or termination.

The Department received a comment noting that, if the Department denies an exceptional DME grant on the grounds that the identified DME is not medically necessary, the draft amendments would permit the nursing facility to provide DME and charge the resident. So long as the resident requests that the DME be provided, and so long as the nursing facility complies with applicable State and Federal requirements, the nursing facility may do so. The commentator's concern was that, in that situation, the resident's entire personal needs account could be depleted to cover the expense of costly DME. The commentator recommended that if exceptional DME is in use during an appeal process, the nursing facility should assume the cost until an appropriate alternative can be secured. The Department notes that, if as a result of the appeal, the DME is found to be medically necessary, then regardless whether it is exceptional or not, the nursing facility is required to provide it and refund any amount paid by the resident. If, on the other hand, the DME is

found to be not medically necessary, the nursing facility is entitled to retain the money, since the resident requested that the DME be provided.

The Department received a comment recommending that, instead of requiring a nursing facility to issue a refund to the resident "immediately" in the event an appeal is sustained, the regulation should be revised to permit the nursing facility 60 days from the date the appeal is sustained to issue the refund. The commentator suggested that a revision would be consistent with the regulation governing refunds of resident personal funds. The Department accepts the recommendation and has revised the regulation to allow nursing facilities 60 days to refund payments made by residents.

Fiscal Impact

A. *Public Sector*

1. *Commonwealth*

Currently, the Department pays MA nursing facility providers on a per diem rate basis for services provided to MA residents. These nursing facility per diem rates include a capital component that provides a fair rental payment for use of the facilities' allowable movable property. In addition to the per diem payment rates, the Department also makes exceptional payments to nursing facilities in certain limited circumstances. Prior to November 1, 1999, exceptional payments were limited to the rental of equipment and supplies necessary to care for the high technology-dependent residents, such as ventilator dependent or head or spinal cord, or both, injured individuals.

The amendments revise the Department's case-mix regulations to incorporate and expand existing exceptional payment policies to permit the Department to make additional payments to nursing facilities for nursing facility services provided to certain MA residents who require medically necessary exceptional DME. As a result of these amendments, exceptional payments will no longer be limited to the rental of equipment and supplies, but will be based upon the costs to purchase and rent exceptional DME and certain services and items necessary to the effective use of those exceptional items, including staff and resident training.

These amendments also revise the Department's case-mix regulations to change the payment methodology as it relates to the costs of movable property that is used by nursing facilities to provide services to their residents by: (i) removing movable property from the FRV calculation; (ii) recognizing minor movable property costs as net operating costs; (iii) using actual audited major movable property acquisition costs to compute the capital component of nursing facilities' case-mix per diem rates; and, (iv) eliminating the application of the moratorium in determining allowable movable property costs.

The amendments will increase Departmental expenditures by \$26.633 million (\$12.147 million in State funds) for Fiscal Year 2001-2002.

2. *Political Subdivisions*

There will be a fiscal impact on individual political subdivisions to the extent that county nursing facilities receive additional exceptional payments and increased case-mix per diem rates as a result of the amendments in Annex A.

B. *Private Sector*

1. *General Public*

Although the amendments provide for enhanced payments to nursing facilities for certain medically necessary exceptional DME and otherwise revise the case-mix payment methodology in a way that is likely to result in an increase in payment rates for the majority of MA nursing facility providers, there will be no fiscal impact on the general public as a result of the amendments in Annex A. The additional and increased payment rates authorized by these amendments will help to better ensure that MA nursing facility providers provide services in conformity with law and that MA residents of those providers receive necessary care and services in conformity with their care plans.

2. *Private Nursing Facilities*

There will be a fiscal impact on individual private nursing facilities to the extent that those facilities receive additional exceptional payments and increased case-mix per diem rates as a result of the amendments.

Paperwork Requirements

These amendments have increased the paperwork requirements for the Commonwealth and for those nursing facilities requesting exceptional payment for DME in accordance with conditions in these amendments. The nursing facilities are required to submit a request for exceptional payment, which includes documentation to support their request, and obtain the Department's written response to that request. In addition, nursing facilities are required to maintain a separate written log identifying requests for exceptional DME and provide notification to the Department if an MA eligible resident refuses medically necessary DME.

Effective Date

The following amendments are effective November 1, 1999: Subchapter K, the definitions of "DME—durable medical equipment," "related services and items" and "specially adapted DME" as contained in § 1187.2 and § 1187.59(c)(5). The remaining amendments take effect July 1, 2001, and, except to the limited extent specified in § 1187.91(iv)(D), apply to cost reports for fiscal periods starting on or after January 1, 2001.

Sunset Date

There is no sunset date for these final-omitted regulations.

Public Comment Period

Although these final-omitted regulations are being adopted without being published as proposed, interested persons are invited to submit their written comments within 30 days from the date of this publication for consideration by the Department as to whether the regulations should be revised. The comments should be sent to the Department of Public Welfare, Office of Medical Assistance Programs, Attn: Regulations Coordinator, Room 515 Health and Welfare Building, Harrisburg, PA 17105.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (Voice users). Person who require another alternative, please contact the Office of Legal Counsel at (717) 782-2209.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on December 12, 2001, the Department

submitted a copy of these final-omitted regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Welfare and the Senate Committee on Public Health and Welfare. On the same date, the regulations were submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, these regulations were deemed approved by the Committees on December 2, 2002. Under section 5.1(e) of the Regulatory Review Act, on January 1, 2002, IRRC met and approved by IRRC.

Findings

The Department finds that:

(1) Notice of proposed rulemaking is contrary to public interest under section 204(3) of the CDL and the regulations thereunder, 1 Pa. Code § 7.4(3).

(2) Notice of proposed rulemaking is omitted because these amendments relate to a Commonwealth grant or benefit in accordance with section 204(1)(iv) of the CDL and 1 Pa. Code § 7.4(1)(iv).

(3) The adoption of the amendments in the manner provided in this order is necessary and appropriate for the administration and enforcement of section 443.1(2) and (3) of the act.

Order

The Department, acting under the authority of the act, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 1187, are amended by amending §§ 1187.2, 1187.22, 1187.51, 1187.56—1187.60, 1187.71, 1187.80, 1187.91, 1187.96, 1187.97, 1187.112 and 1187.113; and by adding §§ 1187.61 and 1187.151—1187.158 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Secretary of the Department shall submit this order and Annex A to the Attorney General and General Counsel for approval as to the legality and form as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication and apply retroactively November 1, 1999; for Subchapter K, the definitions of "DME—durable medical equipment", "related services and items" and "specially adapted DME" as contained in § 1187.2 and § 1187.59(c)(5). The remaining amendments take effect July 1, 2001, and, except to the limited extent specified in § 1187.91(iv)(D), apply to cost reports for fiscal periods starting on or after January 1, 2001.

FEATHER O. HOUSTON,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 477 (January 26, 2002).)

Fiscal Note: 14-473. (1) General Fund; (2) Implement Year 2001-02 is \$12,147,000; (3) 1st Succeeding Year 2002-03 is \$12,317,000; 2nd Succeeding Year 2003-04 is \$18,454,000; 3rd Succeeding Year 2004-05 is \$28,771,000; 4th Succeeding Year 2005-06 is \$29,641,000; 5th Succeeding Year 2006-07 is \$29,641,000; (4) 2000-01 Program—\$722,565,000; 1999-00 Program—\$693,625,000; 1998-99

Program—\$721,631,000; (7) Long-Term Care; (8) recommends adoption. Funds have been included in the Long-Term Care appropriation of these costs.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1187. NURSING FACILITY SERVICES

Subchapter A. GENERAL PROVISIONS

§ 1187.2. Definitions.

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

* * * * *

Appraisal—A determination of the depreciated replacement cost of fixed or movable property, made by qualified personnel of an independent appraisal firm under contract with the Department.

* * * * *

DME—Durable medical equipment—

(i) Movable property that:

(A) Can withstand repeated use.

(B) Is primarily and customarily used to serve a medical purpose.

(C) Generally is not useful to an individual in the absence of illness or injury.

(ii) Any item of DME is an item of movable property. There are two classes of DME:

(A) *Exceptional DME.* DME that has a minimum acquisition cost that is equal to or greater than an amount specified by the Department by notice in the *Pennsylvania Bulletin* and is either specially adapted DME or other DME that is designated as exceptional DME by the Department by notice in the *Pennsylvania Bulletin*.

(B) *Standard DME.* Any DME, other than exceptional DME, that is used to furnish care and services to a nursing facility's residents.

* * * * *

Depreciated replacement cost—

(i) As used in conjunction with fixed property, depreciated replacement cost is the amount required to replace the fixed property with new and modern fixed property using the most current technology, code requirements/standards and construction materials that will duplicate the production capacity and utility of the existing fixed property at current market prices for labor and materials, less an allowance for accrued depreciation.

(ii) As used in conjunction with movable property, depreciated replacement cost is the amount required to replace the movable property with new and modern movable property, less an allowance for accrued depreciation.

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*FRV—Fair rental value—*The imputed rent for the fixed or movable property used at a nursing facility to provide nursing facility services to its MA residents.

* * * * *

*Fixed property—*Land, land improvements, buildings including detached buildings and their structural components, building improvements, and fixed equipment lo-

cated at the site of the licensed nursing facility that is used by the nursing facility in the course of providing nursing facility services to residents. Included within this term are heating, ventilating, and air-conditioning systems and any equipment that is either affixed to a building or structural component or connected to a utility by direct hook-up.

* * * * *

Initial appraisal—An appraisal of the fixed property of a new nursing facility, made for the purpose of computing the fixed property component of that nursing facility's initial capital rate. An initial appraisal will be based, in part, upon an onsite inspection of the new nursing facility's fixed property conducted by qualified personnel of an independent appraisal firm under contract with the Department.

Interest—

(i) *Capital interest.* The direct actual cost incurred for funds borrowed to obtain fixed property, major movable property, or minor movable property.

(ii) *Other interest.* The direct actual cost incurred for funds borrowed on a short-term basis to finance the day-to-day operational activities of the nursing facility, including the acquisition of supplies.

* * * * *

Limited appraisal—An appraisal requested by a nursing facility and conducted to determine the effect of changes in the fixed property of a nursing facility, where the cost of the changes to the nursing facility was more than \$200,000 or 10% of the most recent appraised depreciated replacement cost of the nursing facility's fixed property, whichever is lower. A limited appraisal results in the modification of the depreciated replacement cost set forth in an initial appraisal, a reappraisal or an updated appraisal.

* * * * *

Movable property—A tangible item that is used in a nursing facility in the course of providing nursing facility services to residents and that is not fixed property or a supply. There are two classes of movable property:

(i) *Major movable property.* Any movable property that has an acquisition cost of \$500 or more.

(ii) *Minor movable property.* Any movable property that has an acquisition cost of less than \$500.

Movable property appraisal—An appraisal of some or all of the movable property of a nursing facility. Depending upon circumstances, this appraisal may pertain to all movable property or only to major movable property. Movable property appraisals are conducted by qualified personnel of an independent appraisal firm under contract with the Department.

* * * * *

Real estate tax cost—The cost of real estate taxes assessed against a nursing facility for a 12-month period, except that, if the nursing facility is contractually or otherwise required to make a payment in lieu of real estate taxes, that nursing facility's "cost of real estate taxes" is deemed to be the amount it is required to pay for a 12-month period.

Reappraisal—An appraisal of the fixed property of a nursing facility, made for the purpose of computing the fixed property component of that nursing facility's capital rate. A reappraisal will be based, in part, upon an onsite inspection of the nursing facility's fixed property con-

ducted by qualified personnel of an independent appraisal firm under contract with the Department.

* * * * *

Related services and items—Services and items necessary for the effective use of exceptional DME. The term is limited to:

- (i) Delivery, set up and pick up of the equipment.
- (ii) Service, maintenance and repairs of the equipment to the extent covered by an agreement to rent the equipment.
- (iii) Extended warranties.
- (iv) Accessories and supplies necessary for the effective use of the equipment.
- (v) Periodic assessments and evaluations of the resident.
- (vi) Training of appropriate nursing facility staff and the resident in the use of the equipment.

Reorganized nursing facility—An MA participating nursing facility that changes ownership as a result of the reorganization of related parties or a transfer of ownership between related parties.

Resident assessment—A comprehensive, standardized evaluation of each resident's physical, mental, psychosocial and functional status conducted within 14 days of admission to a nursing facility, promptly after a significant change in a resident's status and on an annual basis.

* * * * *

Specially adapted DME—DME that is uniquely constructed or substantially adapted or modified in accordance with the written orders of a physician for the particular use of one resident, making its contemporaneous use by another resident unsuitable.

Supply—

- (i) A tangible item that is used in a nursing facility in the course of providing nursing facility services to residents and is normally consumed either in a single use or within a single 12-month period.
- (ii) Examples of supplies include:
 - (A) Resident care personal hygiene items such as soap, toothpaste, toothbrushes and shampoo.
 - (B) Resident activity supplies such as game and craft items.
 - (C) Medical supplies such as surgical and wound dressings, disposable tubing and syringes, and supplies for incontinence care such as catheters and disposable diapers.
 - (D) Dietary supplies such as disposable tableware and implements and foodstuffs.
 - (E) Laundry supplies such as soaps and bleaches
 - (F) Housekeeping and maintenance supplies such as cleaners, toilet paper, paper towels and light bulbs.
 - (G) Administrative supplies such as forms, paper, pens and pencils, copier and computer supplies.

* * * * *

Total facility CMI—The arithmetic mean CMI of all residents regardless of the residents' sources of funding.

UMR—*Utilization Management Review*—An audit conducted by the Department's medical and other profes-

sional personnel to monitor the accuracy and appropriateness of payments to nursing facilities and to determine the necessity for continued stay of residents.

Updated appraisal—An appraisal of a nursing facility's fixed property that is based upon the depreciated replacement cost set forth in the nursing facility's initial appraisal or most recent reappraisal and brought forward to a new date. An updated appraisal does not involve an additional onsite inspection of the nursing facility's fixed property. The depreciated replacement costs set forth in an updated appraisal are determined through the application of factors to allow for appreciation and depreciation estimated to have taken place between the two appraisal dates.

* * * * *

§ 1187.22. Ongoing responsibilities of nursing facilities.

In addition to meeting the ongoing responsibilities established in Chapter 1101 (relating to general provisions), a nursing facility shall, as a condition of participation:

(1) Assure that every individual applying for admission to the facility is prescreened by the Department as required by section 1919 of the Social Security Act (42 U.S.C.A. § 1396r(e)(7)) and 42 CFR Part 483, Subpart C (relating to preadmission screening and annual review of mentally ill and mentally retarded individuals).

(2) Assure that every individual who receives MA, who is eligible for MA or who is applying for MA, is reviewed and assessed by the Department or an independent assessor and found to need nursing facility services prior to admission to the nursing facility, or in the case of a resident, before authorization for MA payment.

(3) Assure immediate access to a resident by the following individuals:

(i) The resident's physician.

(ii) A representative of the Secretary of the United States Department of Health and Human Services.

(iii) A representative of the Commonwealth who is involved in the administration of the MA Program.

(iv) An ombudsman authorized by the Department of Aging, including those employed by a local area agency on aging.

(v) A representative of Pennsylvania Protection and Advocacy, the agency designated under Subchapter III of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C.A. §§ 6041—6043) and the Protection and Advisory for Mentally Ill Individuals Act of 1986 (42 U.S.C.A. §§ 10801—10851).

(4) Assure that it is necessary for each resident to remain in the nursing facility.

(5) Assure that each resident's assessment data are complete and accurate in accordance with Federal regulations and the *Health Care Financing Administration Resident Assessment Instrument Manual*.

(6) Assure that the resident assessment data and the resident verification report are valid for the picture date and are submitted within the time limits specified in § 1187.33(a)(5)(relating to resident data reporting requirements).

(7) Assure that each invoice for nursing facility services provided to each MA resident is accurate.

(8) Have in operation a system for managing residents' funds that, at a minimum, fully complies with the requirements established by Federal law and Federal and State regulations in accordance with § 1187.78 (relating to accountability requirements related to resident personal fund management).

(9) Cooperate with reviews and audits conducted by the Department and furnish the residents' clinical and fiscal records to the Department upon request.

(10) Provide written responses to the Department for UMR reports requiring corrective action.

(11) Take corrective action within acceptable time frames as described in UMR reports.

(12) File an acceptable cost report with the Department within the time limit specified in § 1187.73 or § 1187.75 (relating to annual reporting; and final reporting).

(13) In addition to meeting the reporting requirements of § 1101.43 (relating to enrollment and ownership reporting requirements), notify the Department in writing within 30 days of a change in the name or address of corporate officers.

(14) Submit a written request for MA nursing facility participation to the Department if the nursing facility changes ownership and the new owner wishes the nursing facility to participate in the MA Program. The agreement in effect at the time of the ownership change will be assigned to the new owner subject to applicable statutes and regulations and the terms and conditions under which it was originally issued.

(15) Assure that individual resident information collected in accordance with this chapter is kept confidential and released only for purposes directly connected to the administration of the MA Program.

(16) Maintain a separate written record in accordance with instructions by the Department, identifying the requests or physician's orders received by the facility for exceptional DME or other DME as specified by the Department.

(17) Notify the Department in writing within 15 days if an MA eligible resident refuses DME that the Department has determined is medically necessary.

Subchapter E. ALLOWABLE PROGRAM COSTS AND POLICIES

§ 1187.51. Scope.

(a) This subchapter sets forth principles for determining the allowable costs of nursing facilities.

(b) The *Medicare Provider Reimbursement Manual* (HCFA Pub. 15-1) and the Federal regulations at 42 CFR Part 489 (relating to provider and supplier agreements) appropriate to the reimbursement for nursing facility services under the Medicare Program are a supplement to this chapter. If a cost is included in this subchapter as allowable, the HCFA Pub. 15-1 and applicable Federal regulations may be used as a source for more detailed information on that cost. The HCFA Pub. 15-1 and applicable Federal regulations will not be used for a cost that is nonallowable either by a statement to that effect in this chapter or because the cost is not addressed in this chapter or in the MA-11. The HCFA Pub. 15-1 or applicable Federal regulations will not be used to alter the treatment of a cost provided for in this subchapter or the MA-11.

(c) The Department's payment rate for nursing facility services to eligible residents in participating nursing

facilities includes allowable costs for routine services. Routine services may include the following:

(1) Regular room, dietary and nursing services, social services and other services required to meet certification standards, medical and surgical supplies and the use of equipment and facilities.

(2) General nursing services, including administration of oxygen and related medications, hand feeding, incontinency care, tray service and enemas.

(3) Items furnished routinely and uniformly to residents, such as resident gowns, water pitchers, basins and bedpans.

(4) Items furnished, distributed to residents or used individually by residents in small quantities such as alcohol, applicators, cotton balls, bandaids, antacids, aspirin (and other nonlegend drugs ordinarily kept on hand), suppositories and tongue depressors.

(5) Reusable items furnished to residents, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment and other durable medical equipment.

(6) Special dietary supplements used for tube feeding or oral feeding, such as elemental high nitrogen diet, even if written as a prescription item by a physician.

(7) Basic laundry services.

(8) Nonemergency transportation.

(9) Beauty and barber services.

(10) Other special medical services of a rehabilitative, restorative or maintenance nature, designed to restore or maintain the resident's physical and social capacities.

(d) Nursing facilities will receive payment for allowable costs in four general cost centers:

(1) Resident care costs.

(2) Other resident related costs.

(3) Administrative costs.

(4) Capital costs.

(e) Within the limits of this subchapter, allowable costs for purposes of cost reporting include those costs necessary to provide nursing facility services. These may include costs related to the following:

(1) *Resident care costs.*

(i) Nursing.

(ii) Director of nursing.

(iii) Related clerical staff.

(iv) Practitioners.

(v) Medical director.

(vi) Utilization and medical review.

(vii) Social services.

(viii) Resident activities.

(ix) Volunteer services.

(x) Over-the-counter drugs.

(xi) Medical supplies.

(xii) Physical, occupational and speech therapy.

(xiii) Oxygen.

(xiv) Beauty and barber.

(xv) Supplies and minor movable property acquired during cost report periods beginning on or after January

1, 2001, used in a nursing facility in the course of providing a service or engaging in an activity identified in this paragraph.

(2) *Other resident related costs.*

(i) Dietary, including food, food preparation, food service, and kitchen and dining supplies.

(ii) Laundry and linens.

(iii) Housekeeping.

(iv) Plant operation and maintenance, including the repair, maintenance and service of movable property.

(v) Supplies and minor movable property acquired during cost report periods beginning on or after January 1, 2001, used in a nursing facility in the course of providing a service or engaging in an activity identified in this paragraph.

(3) *Administrative costs.*

(i) Administrator.

(ii) Office personnel.

(iii) Management fees.

(iv) Home office costs.

(v) Professional services.

(vi) Determination of eligibility.

(vii) Advertising.

(viii) Travel/entertainment.

(ix) Telephone.

(x) Insurance.

(xi) Interest other than that disallowed under § 1187.59(a)(24) (relating to nonallowable costs).

(xii) Legal fees.

(xiii) Amortization—administrative costs.

(xiv) Supplies and minor movable property acquired during cost report periods beginning on or after January 1, 2001, used in a nursing facility in connection with an activity identified in this paragraph.

(4) *Capital costs.*

(i) Fair rental value of fixed property.

(ii) Movable property.

(A) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning prior to January 1, 2001, the fair rental value of major and minor movable property.

(B) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning on or after January 1, 2001, the audited acquisition cost of major movable property.

(iii) Real estate tax cost.

§ 1187.56. Selected administrative cost policies.

Policies for selected administrative costs are as follows:

(1) *Administrative allowance.*

(i) The allowable administrative costs incurred by a nursing facility to provide services are subject to the following limitation: the allowable administrative costs will be determined so that all other allowable costs, excluding capital costs, equal no less than 88% of the allowable net operating costs.

(ii) Home office cost allocations and management fees are subject to the following conditions and limitations:

(A) Home office cost allocations and management fees between related parties shall be reported without markup by the nursing facility.

(B) Costs which are not allowable, such as those related to nonworking officers or officers' life insurance, may not be included in home office allocations or management fees.

(C) Documentation relating to home office and management costs shall be provided to the Department's auditors upon request.

(D) Home office allocations, including administratively allowable depreciation and interest costs shall be reported on the administrative line in the MA-11.

(iii) A nursing facility providing nursing, residential and other services shall allocate the total administrative cost to nursing, residential and other services on the basis of a percentage of these costs to the total net operating costs.

(2) *Other interest allowance.*

(i) Other interest is an allowable administrative cost if it is necessary and proper. To be considered allowable, necessary and proper, the interest expense shall be incurred and paid within 90 days of the close of the cost reporting period on a loan made to satisfy a financial need of the nursing facility and for a purpose related to resident care. Interest incurred to pay interest is nonallowable.

(ii) Other interest may not exceed that amount which a prudent borrower would pay as described in the *Medicare Provider Reimbursement Manual* (CMS Pub. 15-1).

(iii) Other interest is allowable if paid on loans from the nursing facility's donor-restricted funds, the funded depreciation account or the nursing facility's qualified pension fund.

(iv) Moneys borrowed for the purchase or redemption of capital stock will be considered a loan for investment purposes. The interest paid on these borrowed funds is a nonallowable cost. The use of funds by the nursing facility for the redemption of capital stock will be considered as an investment of available funds.

(3) *Investment income.*

(i) Investment income is used to reduce allowable other interest unless the investment income is from one of the following:

(A) Gifts or grants of which the corpus and interest are restricted by the donor.

(B) Funded depreciation maintained in accordance with Federal regulations.

(C) The nursing facility's qualified pension fund, if the interest earned remains in the fund.

(D) Issuer specified designated capital bond funds or debt service reserve funds.

(ii) Investment income on funds found to be used for purposes other than their designated purpose or commingled with other funds will be used to reduce allowable administrative interest expense.

(4) *General administration expenses.*

(i) Salaries of the nursing facility's administrator, comptroller, purchasing agent, personnel director, phar-

macy consultant and other persons performing general supervision or management duties are allowable as general administrative costs.

(ii) The salary or compensation costs of owners, operators or persons other than nursing facility employees shall be included as allowable costs only to the extent of their documented time and involvement in the required management of a nursing facility. These costs mean actual payment made during the cost reporting period on a current basis of salary or benefits for services rendered to the nursing facility.

(iii) If a person performs work customarily performed by different or several types of employees, the cost of the salary and other compensation allowable for the person shall be determined by the prorated customary salary and other compensation paid to employees for performing the same types of work. This cost is allowable only if adequate documentation verifying the cost is supplied by the nursing facility.

(iv) The allowable cost for a person performing necessary duties may not exceed the customary compensation and fringe benefits that an employee would normally receive while performing that work.

(5) *Contracted management services.*

(i) In lieu of home office allocations or management fees, a nursing facility may contract with a nonrelated management service. The cost of this contract shall be shown as an administrative cost and may not be allocated among other cost centers.

(ii) Management services contracted with a related party shall be treated as home office allocations.

§ 1187.57. Selected capital cost policies.

The Department will establish a prospective facility-specific capital rate annually for each nursing facility. That rate will consist of three components: the fixed property component, the movable property component and the real estate tax component.

(1) *Fixed property component.*

(i) The Department will base the nursing facility's fixed property component on the depreciated replacement cost of the nursing facility's fixed property and the associated financial yield rate.

(ii) On an annual basis, the Department will determine the depreciated replacement cost of each nursing facility's fixed property as of March 31, and will use that determination in setting the fixed property component for the rate year beginning on the following July 1.

(iii) The basis for the Department's determination of the depreciated replacement cost of the nursing facility's fixed property will be the most recent of the following appraisals, as modified by any limited appraisals, as of March 31:

(A) An initial appraisal.

(B) A reappraisal.

(C) An updated appraisal.

(iv) An initial appraisal of the nursing facility's fixed property will be conducted for any new nursing facility.

(v) A reappraisal of the nursing facility's fixed property will be conducted at least every 5 years.

(vi) In situations where neither an initial appraisal nor a reappraisal has been done within the 12-month period

preceding March 31, the depreciated replacement cost will be based upon an updated appraisal.

(vii) A limited appraisal will be conducted if the nursing facility notifies the Department that a limited appraisal is needed. For the results of a limited appraisal to be included in the determination of a nursing facility's fixed property component for the next rate year, a limited appraisal must be requested by the nursing facility by January 31 of the preceding rate year.

(viii) The depreciated replacement cost of the nursing facility's fixed property is subject to the cost per bed limitation in § 1187.112 (relating to cost per bed limitation adjustment) and, if applicable, the bed moratorium limitation in § 1187.113 (relating to capital component payment limitation).

(ix) The cost to purchase, construct or renovate the fixed property of the nursing facility will not be a factor in determining the appraised depreciated replacement cost.

(x) When there is a change in nursing facility ownership, the new nursing facility owner is deemed to have the same appraised depreciated replacement cost as the former owner.

(xi) The appraisals of fixed property will be performed by qualified personnel from an independent appraisal firm under contract with the Department.

(2) *Movable property component.*

(i) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning prior to January 1, 2001, the Department will determine the movable property component of each nursing facility's capital rate as follows:

(A) The Department will base the nursing facility's movable property component on the depreciated replacement cost of the nursing facility's major and minor movable property and the associated financial yield rate.

(B) On an annual basis, the Department will determine the depreciated replacement cost of each nursing facility's movable property as of March 31, and will use that determination in setting the movable property component for the rate year beginning on the following July 1.

(C) The Department will base the determination of the depreciated replacement cost of each nursing facility's movable property on a movable property appraisal.

(D) When there is a change in nursing facility ownership, the new nursing facility owner is deemed to have the same appraised depreciated replacement cost as the former owner.

(ii) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning on or after January 1, 2001, the Department will determine the movable property component of each nursing facility's capital rate as follows:

(A) The Department will base the nursing facility's movable property component on the nursing facility's audited cost of major movable property, as set forth in that MA-11.

(B) Each nursing facility shall report the acquisition cost of all major movable property on the major movable property line of its MA-11 and shall report the cost of minor movable property and the cost of supplies as net

operating costs in accordance with § 1187.51 (relating to scope) and instructions for the MA-11.

(3) *Real estate tax cost component.* A nursing facility's real estate tax component will be based solely upon the audited cost of that nursing facility's 12-month real estate tax cost, as set forth on the most recent audited MA-11 cost report available in the NIS database.

§ 1187.58. Costs of related parties.

Costs applicable to services, movable property and supplies, furnished to the nursing facility by organizations related to the nursing facility by common ownership or control shall be included as an allowable cost of the nursing facility at the cost to the related organization. This cost may not exceed the price of comparable services, movable property or supplies that could be purchased elsewhere.

§ 1187.59. Nonallowable costs.

(a) *Nonallowable costs related to expenses and revenues.* The Department will not recognize as allowable costs the expenses or revenues of a nursing facility related to:

- (1) Nonworking officers' or owners' salaries.
- (2) Fundraising expenses for capital and replacement items exceeding 5% of the amount raised and, for operating expenses and cash flow, fundraising expenses exceeding 10% of the amount raised.
- (3) Free care or discounted services.
- (4) Parties and social activities not related to resident care.
- (5) Organizational memberships not necessary to resident care.
- (6) Personal telephone service.
- (7) Personal television service.
- (8) The direct and indirect costs related to nonallowable cost centers, including gift, flower and coffee shops, homes for administrators or pastors, convent areas and nurses' quarters, except as provided in § 1187.55(3) (relating to selected resident care and other resident related cost policies).
- (9) Vending machines.
- (10) Charitable contributions.
- (11) Employee and guest meals.
- (12) Pennsylvania Capital Stock and Franchise Tax.
- (13) Income tax.
- (14) Ambulance costs.
- (15) Promotional advertising, including a yellow page listing larger than a minimum insert.
- (16) Late payment penalties.
- (17) Taxes based upon net income.
- (18) Officers' and directors' life insurance, including life insurance premiums necessary to obtain mortgages and other loans.
- (19) Bad debts or contractual adjustments.
- (20) Collection expenses associated with bad debts.
- (21) Losses on the sale of fixed and movable assets.
- (22) Remuneration of any kind for any purpose, including travel expenses for members of the Board of Directors.

(23) Dry cleaning, mending or other specialty laundry services.

(24) Depreciation on fixed or movable property, capital interest, amortization—capital costs and rental expense for fixed property.

(25) Expenses or revenues not necessary to resident care.

(26) Costs, including legal fees, accounting and administrative costs, travel costs and the costs of feasibility studies, attributable to the negotiation or settlement of the sale or purchase of a capital asset—by acquisition or merger—for which payment has previously been made under Title XVIII of the Social Security Act (42 U.S.C.A. §§ 1395—1395yy) if the sale or purchase was made on or after July 18, 1984.

(27) Letter of credit costs.

(28) Legal expenses related to an appeal or action challenging a payment determination under this chapter until a final adjudication is issued sustaining the nursing facility's appeal. If the nursing facility prevails on some but not all issues raised in the appeal or action, a percentage of the reasonable legal expenses is allowable based upon the proportion of additional reimbursement received to the total additional reimbursement sought on appeal.

(29) Nonstandard or nonuniform fringe benefits.

(30) Return on net equity and net worth.

(b) *Nonallowable costs related to revenue producing items.* In determining the operating costs of a nursing facility, the Department will not allow costs related to:

(1) The sale of laundry and linen service.

(2) The sale of drugs to nonresidents.

(3) The sale of medical and surgical supplies to nonresidents.

(4) The sale of clinical records and abstracts.

(5) The rental of quarters to employees and others.

(6) The rental of space within the nursing facility.

(7) The payments received from clinical specialists.

(8) Discounts on purchases which include trade, quantity and time.

(9) Rebates and refunds of expenses.

(c) *Income that reduces allowable costs.*

(1) Except as provided in § 1187.56(3)(i) (relating to selected administrative cost policies), any form of investment income shall be used to reduce the allowable administrative interest expense.

(2) Grants, gifts and income designated by the donor for specific operating expenses are used to reduce the allowable costs relating to the specific operating expense.

(3) Recovery of insured loss shall be used to reduce the allowable costs relating to the insured loss.

(4) Applicable revenue producing items, other than room and board, shall be used to reduce the related allowable costs.

(5) Payments received under an exceptional DME grant reduce the allowable cost of the major movable property and related services and items in the cost centers where the costs were originally reported in the MA-11.

(d) *Nonallowable direct nursing facility payments.* Costs for prescription drugs, physician services, dental

services, dentures, podiatry services, eyeglasses, appliances, X-rays, laboratory services and other materials or services covered by payments, other than MA or Medicare Part A, made directly to nursing facilities, including Medicare Part B, Champus, Blue Cross, Blue Shield or other insurers or third parties, are not allowable in determining net operating costs.

§ 1187.60. Prudent buyer concept.

The purchase or rental by a nursing facility of services, movable property and supplies, including pharmaceuticals, may not exceed the cost that a prudent buyer would pay in the open market to obtain these items, as described in the *Medicare Provider Reimbursement Manual* (CMS Pub. 15-1).

§ 1187.61. Movable property cost policies.

(a) *Actual acquisition cost during cost report period.* Except as otherwise specified in this section and subject to §§ 1187.58 and 1187.60 (relating to costs of related parties; and prudent buyer concept), a nursing facility's allowable movable property shall be limited to the nursing facility's actual acquisition cost of movable property placed in service during the cost report period.

(b) *Determination of acquisition cost.* Except in situations where an item of movable property is obtained from a related party, the acquisition cost of that item shall be determined as follows:

(1) Acquisition cost is determined on a per-unit basis.

(2) When an item is purchased, the acquisition cost of that item is equal to the total actual purchase price of the item, regardless of whether the total price is paid in full at the time of purchase or over a period of time, plus the following: any required sales tax, shipping charges and installation charges.

(3) When an item of movable property is leased or rented, the acquisition cost is limited to the lower of: the actual annual lease or rental payments made by the nursing facility; or the imputed purchase price of the item, pro-rated on a straight-line basis over the useful life of the item, as identified in the most recent Uniform Chart of Accounts and Definitions for Hospitals published by the American Hospital Association at the time the item is leased or rented. For purposes of this section, the imputed purchase price of a leased or rented item is the lesser of:

(i) The suggested list price from the manufacturer of the item.

(ii) The actual discounted price of the item available at the time of lease or rental.

(iii) The purchase price for the item set forth in the lease or rental agreement.

(iv) If the lessor is a related party, the related party's acquisition cost as determined in accordance with paragraph (2).

(4) When an item is acquired as the result of a gift or donation, the acquisition cost of that item is deemed to be the appraised depreciated replacement cost of the item provided that, on a date prior to the submission of the MA-11 for the period in which the item is acquired, the nursing facility obtains an appraisal of the item's depreciated replacement cost from a licensed appraiser and submits a copy of the written report of the appraisal to the Department with its MA-11. If the nursing facility fails to obtain an appraisal of the item's depreciated replacement cost from a licensed appraiser within the time period set forth in this section or if the nursing

facility fails to submit a copy of the written report of the appraisal to the Department with its MA-11, the acquisition cost of the donated item or gift is deemed to be \$0.

(5) When an item is acquired by a trade-in, the acquisition cost of the item shall be the sum of the remaining book value of the item traded-in plus any acquisition cost of the newly acquired item, computed in accordance with paragraphs 2, 3 and 4. The remaining book value of the item shall be determined based upon the useful life of the item, using the Uniform Chart of Accounts and Definitions for Hospitals published by the American Hospital Association, and depreciation computed on a straight-line basis.

(6) When an item is loaned to the nursing facility without charge, the acquisition cost of that item is deemed to be \$0.

(7) When an item is covered by a standard express warranty, the cost of that warranty is included in the acquisition cost of the item. The cost of any extended warranty is not included in the acquisition cost of the item.

(8) When an item is acquired from a related party, the acquisition cost of the item shall be determined under § 1187.58 (relating to costs of related parties).

(c) *Offsets to reported cost of movable property.*

(1) If a nursing facility conveys or otherwise transfers movable property acquired during a cost report period beginning on or after January 1, 2001, to any other person as the result of a sale, trade-in, gift, assignment or other transaction, an offset will be made against the nursing facility's allowable movable property costs in the year in which the conveyance or transfer occurs. The amount of the offset will be the greater of the amount paid or credited to the nursing facility for the item by the person to whom the item is conveyed or transferred or the remaining book value of the item on the date the item is conveyed or transferred, as determined based upon the useful life of the item, using the *Uniform Chart of Accounts and Definitions for Hospitals* published by the American Hospital Association, and depreciation computed on a straight-line basis.

(2) If a nursing facility removes from service an item acquired during a cost report period beginning on or after January 1, 2001, before the expiration of the useful life of the item, determined using the Uniform Chart of Accounts and Definitions for Hospitals published by the American Hospital Association, an offset will be made against the nursing facility's allowable movable property costs in the year in which the item is removed from service. The amount of the offset will be the remaining book value of the item, as determined based upon the *Uniform Chart of Accounts and Definitions for Hospitals* published by the American Hospital Association, and depreciation computed on a straight-line basis.

(3) If, for movable property acquired during a cost report period beginning on or after January 1, 2001, a nursing facility receives a refund, money or credit under a lease or rental agreement; or money or credit as a result of a trade-in; or money, including insurance proceeds or damages, as the result of recovery of a loss related to that movable property, the amount received by the nursing facility will be offset against the nursing facility's allowable movable property costs in the year in which the refund money or credit is received.

(4) If a nursing facility fails to liquidate all or part of the acquisition cost of an item reported on the MA-11

during a cost report period beginning on or after January 1, 2001 in accordance with § 1187.52(b) (relating to allowable cost policies) the unliquidated amount will be offset against the nursing facility's allowable movable property cost in a subsequent fiscal period.

(5) If a nursing facility receives a rebate on an item acquired during a cost report period beginning on or after January 1, 2001, the rebate amount received by the nursing facility will be offset against the nursing facility's allowable movable property costs in the year in which the refund money or credit is received.

(d) Losses incurred on the sale, transfer or disposal of movable property are not allowable costs.

(e) The acquisition cost of movable property that is rented or leased is an allowable cost only if the following requirements are met:

(1) The agreement to rent or lease the movable property shall be in writing, identify each item of movable property that is being rented or leased, identify any other services or supplies that are being provided under the agreement, identify the term of the agreement, the payment intervals, and the amount of the periodic payments and total payments due under the agreement.

(2) The agreement to rent or lease the movable property shall set forth a suggested purchase price for each item of movable property rented or leased.

Subchapter F. COST REPORTING AND AUDIT REQUIREMENTS

§ 1187.71. Cost reporting.

(a) A nursing facility shall report costs to the MA Program by filing an acceptable MA-11 with the Department. Costs in the MA-11 are:

- (1) *Resident care costs.*
 - (i) Nursing.
 - (ii) Director of nursing.
 - (iii) Related clerical staff.
 - (iv) Practitioners.
 - (v) Medical director.
 - (vi) Utilization and medical review.
 - (vii) Social services.
 - (viii) Resident activities.
 - (ix) Volunteer services.
 - (x) Pharmacy-prescription drugs.
 - (xi) Over-the-counter drugs.
 - (xii) Medical supplies.
 - (xiii) Laboratory and X-rays.
 - (xiv) Physical, occupational and speech therapy.
 - (xv) Oxygen.
 - (xvi) Beauty and barber services.
 - (xvii) Minor movable property.
 - (xviii) Other supplies and other resident care costs.

(2) *Other resident related costs.*

- (i) Dietary, including food, food preparation, food service, and kitchen and dining supplies.
- (ii) Laundry and linens.
- (iii) Housekeeping.
- (iv) Plant operation and maintenance.
- (v) Minor movable property.
- (vi) Other supplies and other resident related costs.

- (3) *Administrative costs.*
- (i) Administrator.
 - (ii) Office personnel.
 - (iii) Management fees.
 - (iv) Home office costs.
 - (v) Professional services.
 - (vi) Determination of eligibility.
 - (vii) Gift shop.
 - (viii) Advertising.
 - (ix) Travel/entertainment.
 - (x) Telephone.
 - (xi) Insurance.
 - (xii) Other interest.
 - (xiii) Legal fees.
 - (xiv) Federal/State Corporate/Capital Stock Tax.
 - (xv) Officers' life insurance.
 - (xvi) Amortization-administrative costs.
 - (xvii) Office supplies
 - (xviii) Minor movable property.
 - (xix) Other supplies and other administrative costs.
- (4) *Capital costs.*
- (i) Real estate tax cost.
 - (ii) Major movable property.
 - (iii) Depreciation.
 - (iv) Capital interest.
 - (v) Rent of nursing facility.
 - (vi) Amortization—capital costs.
- (b) The MA-11 shall identify allowable direct, indirect, ancillary, labor and related party costs for the nursing facility and residential or other facility.
- (c) The MA-11 shall identify costs of services, movable property and supplies furnished to the nursing facility by a related party and the rental of the nursing facility from a related party.
- (d) The MA-11 shall be based on accrual basis financial and statistical records maintained by the nursing facility. The cost information contained in the cost report and in the nursing facility's records shall be current, accurate and in sufficient detail to support the reported costs.
- (e) An acceptable cost report is one that meets the following requirements:
- (1) Applicable items are fully completed in accordance with the instructions incorporated in the MA-11, including the necessary original signatures on the required number of copies.
 - (2) Computations carried out on the MA-11 are accurate and consistent with other related computations.
 - (3) The treatment of costs conforms to the applicable requirements of this chapter.
 - (4) Required documentation is included.
 - (5) The MA-11 is filed with the Department within the time limits in §§ 1187.73, 1187.75 and 1187.76 (relating to annual reporting; final reporting; and reporting for new nursing facilities).

(f) The nursing facility shall maintain adequate financial records and statistical data for proper determination of costs under the MA Program. The financial records shall include lease agreements, rental agreements, ledgers, books, records and original evidence of cost—purchase requisitions, purchase orders, vouchers, vendor invoices, inventories, time cards, payrolls, bases for apportioning costs and the like—which pertain to the determination of reasonable costs.

(g) Records and other information described in subsection (d) are subject to periodic verification and audit. Costs which are adequately documented are allowable.

(h) The nursing facility shall maintain the records pertaining to each cost report for at least 4 years following the date the nursing facility submits the MA-11 to the Department.

§ 1187.80. Failure to file an MA-11.

(a) Failure by the nursing facility to file a timely MA-11, other than a final MA-11 and annual MA-11s due along with a final MA-11, may result in termination of the nursing facility's provider agreement and will result in adjustment of the nursing facility's per diem rate as provided in this subsection. An MA-11 is considered timely filed if the MA-11 is received within 120 days following the June 30 or December 31 close of each fiscal year as designated by the nursing facility, or if an extension has been granted, within the additional time allowed by the extension. The Department may also seek injunctive relief to require proper filing, as the Department may deem is in the best interest of the efficient and economic administration of the MA program.

(1) Cost report periods prior to January 1, 2001.

(i) If an MA-11 is not timely filed, the nursing facility's per diem rate will be adjusted downward by 5% beginning the first day of the next month and will remain in effect until the date that an acceptable MA-11 is filed with the Department.

(ii) If an MA-11 is timely filed and is unacceptable, the Department will return the MA-11 to the nursing facility for correction. If an acceptable MA-11 is not filed by the end of the 30th day from the date of the letter returning the unacceptable MA-11 from the Department, the nursing facility's per diem rate will be adjusted downward by 5% beginning the first day of the next month and will remain in effect until the date that an acceptable MA-11 is filed with the Department.

(2) Cost report periods beginning January 1, 2001, and thereafter.

(i) If an MA-11 is not timely filed, the net operating components of the nursing facility's per diem rate will be adjusted downward by 5% and the movable property component of the nursing facility's capital per diem rate will be reduced to \$0. This per diem rate reduction will begin the first day of the next month and remain in effect until the date that an acceptable MA-11 is filed with the Department.

(ii) If an MA-11 is timely filed and is unacceptable, the Department will return the MA-11 to the nursing facility for correction. If an acceptable MA-11 is not filed by the end of the 30th day from the date of the letter returning the unacceptable MA-11 from the Department, the net operating components of the nursing facility's per diem rate will be adjusted downward by 5% and the movable property component of the nursing facility's capital per diem rate will be reduced to \$0. This per diem rate

reduction will begin the first day of the next month and remain in effect until an acceptable MA-11 is filed with the Department.

(b) If a nursing facility fails to file a timely final MA-11 and outstanding annual MA-11s:

(1) The net operating components of the nursing facility's per diem rate will be determined on the basis of the nursing facility's peer group medians, prior to the percent of median adjustment in accordance with § 1187.96 (relating to price and rate setting computations), for the last fiscal period for which the nursing facility has an acceptable MA-11 on file.

(2) The capital component of the nursing facility's per diem rate will be set at \$0.

Subchapter G. RATE SETTING

§ 1187.91. Database.

The Department will set rates for the case-mix payment system based on the following data:

(1) *Net operating costs.*

(i) The net operating prices for year 1 of implementation will be established based on the most recent audited nursing facility cost report adjusted for inflation, for those nursing facilities receiving audit reports issued by the Department on or before March 31, 1995.

(ii) If an Intergovernmental Transfer Agreement has been executed on or before January 15, 1996, and the State Plan Amendment with sufficient funds to carry out the terms of this subparagraph has been approved by the Health Care Financing Administration (HCFA), the net operating prices for year 2 of implementation will be established based on the following:

(A) Audited nursing facility costs for the 2 most recent years available in the NIS database adjusted for inflation. This database includes audited MA-11 cost reports that are issued by the Department on or before March 31, 1996, of the July 1 price setting period.

(B) If a nursing facility that has participated in the MA Program for 3 or more consecutive years has fewer than two audited cost reports in the NIS database that are issued by the Department on or before March 31, 1996, of the July 1 price setting period, the Department will use reported costs, as adjusted to conform to this title, for those years not audited within 15 months of the date of acceptance, until audits have been completed and are available in the NIS database for price setting.

(C) If a nursing facility, that has not participated in the MA Program for 2 consecutive years, has fewer than two audited cost reports in the NIS database that are issued by the Department on or before March 31, 1996, of the July 1 price setting period, the Department will use all available audited cost reports in the NIS database.

(iii) If an Intergovernmental Transfer Agreement has not been executed on or before January 15, 1996, and the State Plan Amendment with sufficient funds to carry out the terms of subparagraph (ii) has not been approved by HCFA, the net operating prices in year 2 of implementation will be established based on the provisions contained in subparagraph (iv).

(iv) The net operating prices for year 3 of implementation and thereafter will be established based on the following:

(A) Audited nursing facility costs for the 3 most recent years available in the NIS database adjusted for inflation. This database includes audited MA-11 cost reports that

are issued by the Department on or before March 31 of each July 1 price setting period.

(B) If a nursing facility that has participated in the MA Program for 3 or more consecutive years has fewer than three audited cost reports in the NIS database that are issued by the Department on or before March 31 of each July 1 price setting period, the Department will use reported costs, as adjusted to conform to Department regulations, for those years not audited within 15 months of the date of acceptance, until audits have been completed and are available in the NIS database for price setting.

(C) If a nursing facility, that has not participated in the MA Program for 3 or more consecutive years, has fewer than three audited cost reports in the NIS database that are issued by the Department on or before March 31 of each July 1 price setting period, the Department will use all available audited cost reports in the NIS database.

(D) For net operating prices effective on or after July 1, 2001, the Department will revise the audited costs specified in clauses (A)—(C) by disregarding audit adjustments disallowing or reclassifying to capital costs, the costs of minor movable property (as defined in § 1187.2 (relating to definitions), effective on July 1, 2001) or linens reported as net operating costs on cost reports for fiscal periods beginning prior to January 1, 2001. The Department will not adjust the audited statistics when revising the nursing facility audited Resident Care, Other Resident Care and Administrative allowable costs to disregard the adjustments relating to minor movable property and linen costs. After revising the audited costs to disregard these adjustments, the Department will recalculate the maximum allowable administrative cost, and will disallow administrative costs in excess of the 12% limitation as specified in § 1187.56(1)(i) (relating to selected administrative cost policies).

(v) Subparagraphs (ii)(B), (iii) and (iv)(B) do not apply, if a nursing facility is under investigation by the Office of Attorney General. In these situations, the Department will use a maximum of the three most recent available audited cost reports in the NIS database used for price setting.

(vi) A cost report for a period of less than 12 months will not be included in the NIS database used for each price setting year.

(vii) During the second calendar quarter of each year, prior to price setting, cost report information will be indexed forward to the 6th month of the 12-month period for which the prices are set. The index used is the most current HCFA Nursing Home Without Capital Market Basket Index.

(viii) Resident data as reported on the Federally approved PA specific MDS will be used to determine case-mix adjustments for each price setting and rate setting period. The resident data requirements are specified in § 1187.33(a) (relating to resident data reporting requirements).

(2) *Capital costs.*

(i) *Fixed property component.* The fixed property component of a nursing facility's capital rate will be based upon the fair rental value of the nursing facility's fixed property.

(ii) *Movable property component.*

(A) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate

setting is for a cost report period beginning prior to January 1, 2001, the movable property component of a nursing facility's capital rate will be based upon the fair rental value of the nursing facility's major and minor movable property.

(B) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning on or after January 1, 2001, the movable property component of a nursing facility's capital rate will be based upon the audited costs of the nursing facility's major movable property as set forth in the nursing facility's most recent audited MA-11 cost report available in the NIS database.

(iii) *Real estate tax cost component.* The real estate tax component of a nursing facility's capital rate will be based upon the nursing facility's actual audited real estate tax costs as set forth in the nursing facility's most recent audited MA-11 cost report available in the NIS database.

§ 1187.96. Price and rate setting computations.

(a) Using the NIS database in accordance with this subsection and § 1187.91 (relating to database), the Department will set prices for the resident care cost category.

(1) The Department will use each nursing facility's cost reports in the NIS database to make the following computations:

(i) The total resident care cost for each cost report will be divided by the total facility CMI from the available February 1 picture date closest to the midpoint of the cost report period to obtain case-mix neutral total resident care cost for the cost report year.

(ii) The case-mix neutral total resident care cost for each cost report will be divided by the total actual resident days for the cost report year to obtain the case-mix neutral resident care cost per diem for the cost report year.

(iii) For year 2 of implementation, using the NIS database in accordance with § 1187.91(1)(ii), the Department will calculate the 2-year arithmetic mean of the case-mix neutral resident care cost per diem for each nursing facility to obtain the average case-mix neutral resident care cost per diem of each nursing facility. Using the NIS database in accordance with § 1187.91(1)(iii), subparagraph (iv) applies.

(iv) For year 3 of implementation and thereafter, the Department will calculate the 3-year arithmetic mean of the case-mix neutral resident care cost per diem for each nursing facility to obtain the average case-mix neutral resident care cost per diem of each nursing facility.

(2) The average case-mix neutral resident care cost per diem for each nursing facility will be arrayed within the respective peer groups, and a median determined for each peer group.

(3) The median of each peer group will be multiplied by 1.17, and the resultant peer group price assigned to each nursing facility in the peer group.

(4) The price derived in paragraph (3) for each nursing facility will be limited by § 1187.107 (relating to limitations on resident care and other resident related cost centers) and the amount will be multiplied each quarter by the respective nursing facility MA CMI to determine the nursing facility resident care rate. The MA CMI picture date data used in the rate determination are as follows: July 1 rate—February 1 picture date; October 1

rate—May 1 picture date; January 1 rate—August 1 picture date; and April 1 rate—November 1 picture date.

(b) Using the NIS database in accordance with this subsection and § 1187.91, the Department will set prices for the other resident related cost category.

(1) The Department will use each nursing facility's cost reports in the NIS database to make the following computations:

(i) The total other resident related cost for each cost report will be divided by the total actual resident days for the cost report year to obtain the other resident related cost per diem for the cost report year.

(ii) For year 2 of implementation, using the NIS database in accordance with § 1187.91(1)(ii), the Department will calculate the 2-year arithmetic mean of the other resident related cost for each nursing facility to obtain the average other resident related cost per diem of each nursing facility. Using the NIS database in accordance with § 1187.91(1)(iii), subparagraph (iii) applies.

(iii) For year 3 of implementation and thereafter, the Department will calculate the 3-year arithmetic mean of the other resident related cost for each nursing facility to obtain the average other resident related cost per diem of each nursing facility.

(2) The average other resident related cost per diem for each nursing facility will be arrayed within the respective peer groups and a median determined for each peer group.

(3) The median of each peer group will be multiplied by 1.12, and the resultant peer group price assigned to each nursing facility in the peer group. This price for each nursing facility will be limited by § 1187.107 to determine the nursing facility other resident related rate.

(c) Using the NIS database in accordance with this subsection and § 1187.91, the Department will set prices for the administrative cost category.

(1) The Department will use each nursing facility's cost reports in the NIS database to make the following computations:

(i) The total actual resident days for each cost report will be adjusted to a minimum 90% occupancy, if applicable, in accordance with § 1187.23 (relating to nursing facility incentives and adjustments).

(ii) The total allowable administrative cost for each cost report will be divided by the total actual resident days, adjusted to 90% occupancy, if applicable, to obtain the administrative cost per diem for the cost report year.

(iii) For year 2 of implementation, using the NIS database in accordance with § 1187.91(1)(ii), the Department will calculate the 2-year arithmetic mean of the administrative cost for each nursing facility to obtain the average administrative cost per diem of each nursing facility. Using the NIS database in accordance with § 1187.91(1)(iii), subparagraph (iv) applies.

(iv) For year 3 of implementation and thereafter, the Department will calculate the 3-year arithmetic mean of the administrative cost for each nursing facility to obtain the average administrative cost per diem of each nursing facility.

(2) The average administrative cost per diem for each nursing facility will be arrayed within the respective peer groups and a median price determined for each peer group.

(3) The median of each peer group will be multiplied by 1.04, and the resultant peer group price will be assigned to each nursing facility in the peer group to determine the nursing facility's administrative rate.

(d) Using the NIS database in accordance with this subsection and § 1187.91 (relating to database), the Department will set a rate for the capital cost category for each nursing facility by adding the nursing facility's fixed property component, movable property component and real estate tax component and dividing the sum of the three components by the nursing facility's total actual resident days, adjusted to 90% occupancy, if applicable.

(1) The Department will determine the fixed property component of each nursing facility's capital rate as follows:

(i) The Department will adjust the appraised depreciated replacement cost of the nursing facility's fixed property to account for the per bed limitation in § 1187.112 (relating to cost per bed limitation adjustment) and the bed moratorium addressed in § 1187.113 (relating to capital component payment limitation).

(ii) The Department will multiply the adjusted depreciated replacement costs of the fixed property by the financial yield rate to determine the fair rental value for the nursing facility's fixed property.

(iii) The nursing facility's fixed property component will equal the fair rental value of its fixed property.

(2) The Department will determine the movable property component of each nursing facility's capital rate as follows:

(i) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning prior to January 1, 2001:

(A) The Department will multiply the depreciated replacement costs of the movable property by the financial yield rate to determine the fair rental value for the nursing facility's movable property.

(B) The nursing facility's movable property component will equal the fair rental value of its movable property.

(ii) When the nursing facility's most recent audited MA-11 cost report available in the NIS database for rate setting is for a cost report period beginning on or after January 1, 2001, the amount of the movable property component will be based upon the audited actual costs of major movable property as set forth in the most recent audited MA-11 cost report available in the NIS database. This amount is referred to as the nursing facility's most recent movable property cost.

(3) The Department will determine the real estate tax cost component of each nursing facility's capital rate based on the audited actual real estate tax cost as set forth in the most recent audited MA-11 cost report available in the NIS database.

(e) The nursing facility per diem rate will be computed by adding the resident care rate, the other resident related rate, the administrative rate and the capital rate for the nursing facility.

§ 1187.97. Rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities, and former prospective payment nursing facilities.

The Department will establish rates for new nursing facilities, nursing facilities with a change of ownership,

reorganized nursing facilities and former prospective payment nursing facilities as follows:

(1) *New nursing facilities.*

(i) The net operating portion of the case-mix rate is determined as follows:

(A) A new nursing facility will be assigned the State-wide average MA CMI until assessment data submitted by the nursing facility under § 1187.33 (relating to resident data reporting requirements) is used in a rate determination under § 1187.96(a)(4) (relating to price and rate setting computations).

(B) The nursing facility will be assigned to the appropriate peer group. The peer group price for resident care, other resident related and administrative costs will be assigned to the nursing facility until there is at least one audited nursing facility cost report used in the rebasing process.

(ii) For nursing facilities enrolled in the MA Program prior to January 1, 2001, the three components of the capital portion of the case-mix rate are determined as follows:

(A) The fixed property component will be determined in accordance with § 1187.96 (d)(1) (relating to price and rate setting computations).

(B) The movable property component will be determined in accordance with § 1187.96 (d)(2).

(C) The real estate tax cost component will be determined based on the audited actual real estate tax cost.

(iii) For nursing facilities enrolled in the MA Program on or after January 1, 2001, the three components of the capital portion of the case-mix rate are determined as follows:

(A) *Fixed property component.* The fixed property component will be determined in accordance with § 1187.96 (d)(1).

(B) *Movable property component.* The movable property component will be determined as follows:

(I) The nursing facility's acquisition cost, as determined in accordance with § 1187.61(b) (relating to movable property cost policies), for any new items of movable property acquired on or before the date of enrollment in the MA program, will be added to the nursing facility's remaining book value for any used movable property as of the date of enrollment in the MA program to arrive at the nursing facility's movable property cost. If the nursing facility does not have a depreciation schedule for its used movable property, the allowable cost for those items will be the depreciated replacement cost as determined by qualified personnel of the Department's independent appraisal contractor.

(II) The nursing facility's movable property cost will then be amortized equally over the first 3 rate years that the nursing facility is enrolled in the MA program to determine the nursing facility's movable property component of the capital rate.

(III) After the first 3 rate years the nursing facility's movable property component will be based on the most recent audited MA-11 cost report available in the NIS database. If no MA-11 is available in the NIS database, the nursing facility will not receive the movable property component of the capital rate.

(C) *Real estate tax component.*

(I) For the first 3 rate years, the new nursing facility real estate tax component will be the nursing facility's annual real estate tax cost as of the date of enrollment in the MA program.

(II) After the first 3 rate years, the real estate tax component will be based on the audited MA-11 cost report available in the NIS database. If no audited MA-11 cost report is available in the NIS database, the nursing facility will not receive the real estate tax component of the capital rate.

(iv) Newly constructed nursing facilities are exempt from the adjustment to 90% occupancy until the nursing facility has participated in the MA Program for one full annual price setting period as described in § 1187.95 (relating to general principles for rate and price setting).

(2) *Nursing facilities with a change of ownership and reorganized nursing facilities.*

(i) *New provider.* The new nursing facility provider will be paid exactly as the old nursing facility provider. Net operating and capital rates for the old nursing facility provider will be assigned to the new nursing facility provider.

(ii) *Transfer of data.* Resident assessment data will be transferred from the old nursing facility provider number to the new nursing facility provider number. The old nursing facility's MA CMI will be transferred to the new nursing facility provider.

(iii) *Movable property cost policies.*

(A) The acquisition costs of items acquired by the old nursing facility provider on or before the date of sale are costs of the old nursing facility provider, and not the new nursing facility provider.

(B) Regardless of the provisions of any contract of sale, the amount paid by the new nursing facility provider to acquire or obtain any rights to items in the possession of the old nursing facility provider is not an allowable cost.

(C) If the new nursing facility provider purchases an item from the old nursing facility provider, the cost of that item is not an allowable cost for cost reporting or rate setting purposes.

(D) If the new nursing facility provider rents or leases an item from the old nursing facility provider, the cost of renting or leasing that item is not an allowable cost for cost reporting or rate setting purposes.

(3) *Former prospective payment nursing facilities.* A nursing facility that received a prospective rate prior to the implementation of the case-mix payment system will be treated as a new nursing facility under paragraph (1) for the purpose of establishing a per deim rate.

§ 1187.112. Cost per bed limitation adjustment.

(a) For year 1 of implementation the following cost per bed limitation adjustment will be made:

(1) The allowable capital costs will be limited to a maximum participation allowance cost per bed of \$22,000. The cost per bed will be based on the capitalized cost of fixed property. The cost of movable property will not be included in the \$22,000 per bed limit.

(2) When the appraisal value exceeds the cost per bed limitation, adjustment for the \$22,000 per bed limitation will be made. The full appraisal value will not be recognized.

(b) For year 2 of implementation and year 3 of implementation and thereafter the following cost per bed limitation adjustment will be made:

(1) The allowable capital costs will be limited to a maximum participation allowance cost per bed of \$26,000. The cost per bed will be based on the capitalized cost of fixed property. The cost of movable property will not be included in the \$26,000 per bed limit.

(2) When the appraisal value exceeds the cost per bed limitation, adjustment for the \$26,000 per bed limitation will be made. The full appraisal value will not be recognized.

§ 1187.113. Capital component payment limitation.

(a) *Conditions.* The capital component payment for fixed property is subject to the following conditions:

(1) The Department will make the capital component payment for fixed property on new or additional beds only if one of the following applies:

(i) The nursing facility was issued either a Section 1122 approval or letter of nonreviewability under 28 Pa. Code Chapter 301 (relating to limitation on Federal participation for capital expenditures) or a Certificate of Need or letter of nonreviewability under 28 Pa. Code Chapter 401 (relating to Certificate of Need Program) for the project by the Department of Health by August 31, 1982.

(ii) The nursing facility was issued a Certificate of Need or letter of nonreviewability under 28 Pa. Code Chapter 401 for the construction of a nursing facility and there was no nursing facility located within the county.

(2) The Department will not make the capital component payment unless the nursing facility substantially implements the project under 28 Pa. Code Chapter 401 within the effective period of the original Section 1122 approval or the original Certificate of Need.

(3) The capital component payment for replacement beds is allowed only if the nursing facility was issued a Certificate of Need or a letter of nonreviewability for the project by the Department of Health.

(4) The Department will not make the capital component payment unless written approval was received from the Department prior to the construction of the new beds.

(b) *Capital cost reimbursement waivers.* The Department may grant waivers of subsection (a) to permit capital cost reimbursement as the Department in its sole discretion determines necessary and appropriate. The Department will publish a statement of policy under § 9.12 (relating to statements of policy) specifying the criteria that it will apply to evaluate and approve applications for capital cost reimbursement waivers.

Subchapter K. EXCEPTIONAL PAYMENT FOR NURSING FACILITY SERVICES

Sec.

1187.151. Definitions.

1187.152. Additional reimbursement of nursing facility services related to exceptional DME.

1187.153. Exceptional DME grants—process.

1187.154. Exceptional DME grants—general conditions and limitations.

1187.155. Exceptional DME grants—payments conditions and limitations.

1187.156. Exceptional DME notification and reporting requirements.

1187.157. Termination or suspension of exceptional DME grants and recovery of exceptional payments.

1187.158. Appeals.

§ 1187.151. Definitions.

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

Exceptional DME grant or grant—Authorization permitting exceptional payments under specified terms to a nursing facility, in addition to the nursing facility's case-mix per diem rate, for nursing facility services that are provided to a specified resident and that involve the use of certain exceptional DME. The amount of the additional payment authorized by a grant is based upon the necessary, reasonable and prudent cost of the exceptional DME and the related services and items specified in the grant.

Resident—An MA eligible resident of a nursing facility enrolled in the MA Program who, in a request for an exceptional DME grant, is identified as needing exceptional DME.

§ 1187.152. Additional reimbursement of nursing facility services related to exceptional DME.

(a) The necessary, reasonable and prudent costs incurred by a nursing facility related to the purchase or rental, and the use of DME in providing nursing facility services to residents are allowable costs and included in the calculation of the case-mix per diem rates subject to this chapter. Any costs incurred in excess of the costs identified in a grant are not allowable costs under this chapter.

(b) When a nursing facility provides nursing facility services involving exceptional DME to an MA eligible resident, the nursing facility may, in addition to the submission of invoices for payment based upon the nursing facility's case-mix per diem rate, seek authorization for additional payment by requesting a grant from the Department in accordance with § 1187.153(a) (relating to exceptional DME grants—process).

(c) The Department will issue a grant to a nursing facility if the Department determines that all of the following conditions are met:

(1) The nursing facility's request for the grant complies with all applicable Department instructions.

(2) The specified DME is medically necessary as defined in § 1101.21 (relating to definitions).

(3) The DME specified in the nursing facility's request is exceptional DME as defined in § 1187.2 (relating to definitions).

(4) The nursing facility's physical plant, equipment, staff, program and policies are sufficient to insure the safe, appropriate and effective use of the exceptional DME.

(5) The nursing facility certifies to the Department in writing, on a form designated by the Department, that it has read and understands the terms of the grant.

§ 1187.153. Exceptional DME grants—process.

(a) *Requests for exceptional DME grants.*

(1) A nursing facility shall request a grant in writing on forms designated by the Department and completed in accordance with all applicable Department instructions. The request shall be accompanied by the necessary supporting documentation specified in the Department's instructions and submitted to the Department within 30 days from the date on which the nursing facility purchases or rents the DME for which the nursing facility is requesting the grant.

(2) The nursing facility shall provide copies of the nursing facility's request to the resident and the resident's authorized representative, if any, when the nursing facility submits the request to the Department.

(b) *Notification by the Department.* The Department will send written notice of the Department's decision to approve or deny a nursing facility's request for a grant to the nursing facility, the resident and the resident's authorized representative, if any.

§ 1187.154. Exceptional DME grants—general conditions and limitations.

(a) *Scope and effect of an exceptional DME grant.*

(1) A grant authorizes exceptional payments to a nursing facility in addition to the nursing facility's case-mix per diem payment rate for nursing facility services provided to the resident. The amount of the exceptional payments authorized by the grant is deemed to be the necessary, reasonable and prudent cost of the exceptional DME and the related services and items identified in the nursing facility's grant.

(2) A grant does not authorize exceptional payments for nursing facility services that are provided to MA residents other than the resident, nor does it limit costs that are, or must be, incurred by a nursing facility to provide services to any of the nursing facility's residents (including the resident) in accordance with applicable law and regulations.

(b) *Applicability of laws.* Nursing facility services provided by a nursing facility receiving a grant, including services paid by the grant, remain subject to applicable Federal and State laws and regulations, including the laws and regulations governing the MA Program.

(c) *Reporting of exceptional DME costs and grant payments.*

(1) The nursing facility shall report on the MA-11, the costs related to the acquisition of exceptional DME and related services and items paid by a grant. In identifying the nursing facility's allowable costs, the nursing facility shall adjust those reported costs to the necessary, reasonable and prudent cost amounts identified in the nursing facility's grant.

(2) The nursing facility shall offset all payments made by the Department under a grant against the allowable cost of the exceptional DME and related services and items paid by the grant.

(3) The nursing facility shall identify and report in the MA-11, the costs related to the acquisition of exceptional DME and related services and items, the adjustment to the amount identified in the grant, and the offset of the payment made by the Department under the grant using the accrual basis of accounting.

(d) *Payment in full.* A grant does not waive the preclusion on supplementation established by law. Payment made by the Department under a grant is payment in full for nursing facility services involving the exceptional DME and any related services and items. The entire payment for all MA nursing facility services provided to the resident, including the exceptional DME and any related services and items shall include both of the following:

(1) The nursing facility's case-mix per diem rate.

(2) The exceptional payments authorized by the grant.

(e) *Utilization review.* Nursing facility services paid by a grant are subject to utilization review by the Department, including assessments of the resident's continuing need for the exceptional DME.

(f) *Dispute resolution.* A dispute relating to a grant, including a dispute relating to payments which the

nursing facility believes are authorized by the grant and a dispute arising from the termination, suspension or recovery actions taken under § 1187.157 (relating to termination or suspension of exceptional DME grants and recovery of exceptional payments), shall be brought initially and exclusively for adjudication to the Department's Bureau of Hearings and Appeals.

(g) *Records.* In addition to the nursing facility's existing obligations to maintain and provide documents and records, a nursing facility receiving a grant shall maintain and, upon request, provide to the Department additional documents and records as may be necessary for the Department to determine the nursing facility's compliance with this subchapter and the terms of the nursing facility's grant, including documents and records as may be necessary for the Department to determine the maximum allowable cost of the exceptional DME as specified in § 1187.155(b) (relating to exceptional DME grants—payment conditions and limitations).

(h) *Term of the grant.* A grant is effective on the date specified in the nursing facility's grant and ends on the date the grant is terminated under § 1187.157.

(i) *Acquisition, maintenance, use and disposal of exceptional DME.*

(1) A nursing facility shall obtain exceptional DME and related services and items paid by a grant at the lowest practicable cost and shall purchase by means of competitive bidding whenever required by law.

(2) Unless otherwise approved in writing by the Department, a nursing facility may use exceptional DME paid by a grant only as specified by the nursing facility's grant.

(3) Except as specified otherwise in paragraph (5), a nursing facility has title to any exceptional DME and related items purchased by the nursing facility under the grant.

(4) If an item of exceptional DME purchased under a grant is no longer necessary to provide care and services to the resident, and subject to paragraph (2), the nursing facility shall make the item available for the use, as necessary, in the care and treatment of other MA residents of the nursing facility unless directed by the Department to transfer the exceptional DME in accordance with paragraph (5).

(5) Upon termination of a grant, the Department may direct that the nursing facility transfer the exceptional DME and related items to another provider designated by the Department or to the resident. Title to the transferred exceptional DME and related items shall then vest in the designated provider or the resident. If a transfer is required under this paragraph, § 1187.61(c)(1) (relating to movable property cost policies) does not apply.

(6) A nursing facility shall, in accordance with sound business practice, maintain and administer a program for the maintenance, repair, protection, preservation and insurance of exceptional DME paid by a grant.

(7) If a nursing facility is indemnified, reimbursed or otherwise compensated for any loss, destruction or damage to exceptional DME paid by a grant, the nursing facility shall, at the Department's direction, use the proceeds to replace, repair or renovate the property involved.

§ 1187.155. Exceptional DME grants—payment conditions and limitations.

(a) *Authorization of exceptional payments.* Exceptional payments authorized by an exceptional DME grant will be paid as follows:

(1) *Periodic payments.* Unless the grant authorizes a lump sum payment under paragraph (2), the grant will authorize exceptional payments to the nursing facility on a specified periodic basis. Authorization for periodic payments will continue during the term of the nursing facility's grant except during a period of suspension as specified in § 1187.157 (relating to termination or suspension of exceptional DME grants and recovery of exceptional payments).

(2) *Lump sum payment.* The grant may authorize a lump sum exceptional payment to the nursing facility if the Department determines that a lump sum payment is in the best interest of the MA Program. The amount of this payment will be based upon and limited by the necessary, reasonable and prudent costs incurred by the nursing facility to purchase exceptional DME and related items.

(b) *Maximum allowable payment.* The maximum allowable exceptional payment authorized by an exceptional DME grant is limited to the lowest of the following:

(1) The lower of the nursing facility's costs to acquire the exceptional DME and related services and items; or, in the event the nursing facility is acquiring the exceptional DME or related services and items from a related party as defined in § 1187.2 (relating to definitions), the related party's cost to furnish the exceptional DME and related services and items to the nursing facility.

(2) The applicable MA outpatient fee schedule amount, if any.

(3) Eighty percent of the amount, if any, that would be approved by Medicare if the DME or service or item were a Medicare Part B covered service or item.

(c) *Additional conditions and limitations.* Exceptional payments made by the Department to a nursing facility under a grant are subject to the following:

(1) The conditions and limitations set forth in Chapter 1101 (relating to general provisions), including §§ 1101.64 and 1101.68 (relating to third-party medical resources; and invoicing for services).

(2) The terms of the nursing facility's grant.

§ 1187.156. Exceptional DME notification and reporting requirements.

(a) *Status reports.* A nursing facility receiving a grant shall submit periodic status reports to the Department as specified in the nursing facility's grant.

(b) *Notices.* A nursing facility receiving a grant shall notify the Department in writing within 5 days of any of the following occurrences:

(1) The resident dies.

(2) The resident ceases to be MA eligible.

(3) The resident is transferred or discharged from the nursing facility, whether or not there is intent to return.

(4) The nursing facility determines, or is advised by the resident's attending physician, that the exceptional DME is no longer medically necessary.

(5) The resident notifies the nursing facility in writing that he exercises his right to refuse use of the exceptional DME.

(6) The nursing facility ceases to use the exceptional DME or make that DME available to the resident in the course of providing nursing facility services to the resident.

§ 1187.157. Termination or suspension of exceptional DME grants and recovery of exceptional payments.

(a) *Termination or suspension of an exceptional DME grant.*

(1) *Automatic termination.* Any of the following conditions shall cause termination of a nursing facility's grant without further notice or action by the Department:

- (i) The resident dies.
- (ii) The resident ceases to be MA eligible.
- (iii) The resident is transferred or discharged from the nursing facility with no intent to return.
- (iv) The resident's attending physician notifies the nursing facility that the exceptional DME is no longer medically necessary.
- (v) The resident notifies the Department or the nursing facility in writing that he exercises his right to refuse use of the exceptional DME.
- (vi) The nursing facility is no longer enrolled in the MA Program.

(2) *Termination upon notice.* The Department may terminate a grant upon written notice to the nursing facility if any one or more of the conditions in subparagraphs (i)—(vi) occur. The Department will simultaneously provide a copy of the written notice to the resident and the resident's authorized representative, if any.

- (i) The Department determines that the exceptional DME is no longer medically necessary.
- (ii) The resident is temporarily discharged or transferred to a hospital or other health care provider.
- (iii) There is a change in state or federal law or regulations governing payments to MA providers of nursing facility services.
- (iv) Exceptional DME payments are no longer authorized under the Commonwealth's approved Medicaid State Plan.
- (v) The nursing facility has violated the terms of the grant.
- (vi) The nursing facility changes ownership.

(3) *Suspension of grant payments.* The Department may suspend payments under a grant upon written notice to the nursing facility if one or more of the conditions in subparagraphs (i) and (ii) occur. The Department will simultaneously provide a copy of the written notice to the resident and the resident's authorized representative, if any.

- (i) The resident is temporarily discharged or transferred to a hospital or other health care provider.
 - (ii) The resident is absent from the nursing facility because of therapeutic leave.
- (4) *Termination or suspension date.* A termination under paragraph (1) is effective as of the date on which the condition giving rise to the automatic termination first arises. A termination under paragraph (2) is effective on

the date specified in the Department's written notice to the nursing facility. A suspension under paragraph (3) is effective on the date and for the period specified in the Department's written notice to the nursing facility.

(5) *Effect of termination.*

(i) Termination of an exceptional DME grant, whether automatic or by written notice, terminates the nursing facility's authorization to obtain exceptional payments for nursing facility services provided to the resident after the termination date.

(ii) Termination of the grant ends the nursing facility's grant and the nursing facility's duty and obligation to comply with the terms of the grant or the requirements of this subchapter, except as may be otherwise specified in the grant or in this subchapter.

(iii) Termination of a grant does not relieve the nursing facility of any of the nursing facility's duties and obligations relating to services provided to the resident or any other resident of the nursing facility.

(6) *Effect of suspension.*

(i) Suspension of payments under a grant terminates the nursing facility's authorization to obtain exceptional payments for nursing facility services provided to the resident for the period specified in the notice of suspension.

(ii) Suspension of payments under a grant does not terminate the nursing facility's grant or the nursing facility's duty and obligation to comply with the terms of the grant or the requirements of this subchapter.

(iii) Suspension of payments under a grant does not relieve the nursing facility of any of the nursing facility's duties and obligations relating to services provided to the resident or any other resident of the nursing facility.

(b) *Recovery of exceptional DME grant payments.*

(1) If a grant is terminated or if payments under a grant are suspended, the Department will recover any exceptional payments made to the nursing facility for services provided after the termination date or during the period of suspension.

(2) If the nursing facility violates this subchapter or the terms of its grant, the Department may recover exceptional payments made to the nursing facility in addition to or instead of terminating the nursing facility's grant.

(c) *Rights and remedies.* The rights and remedies available to the Department under this section are in addition to any rights, remedies and sanctions otherwise available to the Department under law and regulation.

§ 1187.158. Appeals.

(a) *Appeals.* An appeal may be filed by the resident or the resident's authorized representative, by the nursing facility, or by both, from the Department's decision to deny, terminate or suspend a grant, subject to the following:

- (1) If the Department denies a grant because the DME is not exceptional DME, an appeal of the denial may be filed solely on the basis that the DME is exceptional DME as defined in § 1187.2 (relating to definitions).
- (2) If the Department automatically terminates a grant under § 1187.157(a)(1) (relating to termination or suspension of exceptional DME grants and recovery of exceptional payments), an appeal of the termination may be

filed solely on the basis that none of the conditions specified in § 1187.157(a)(1)(i)—(vi) has occurred.

(3) If a resident appeals the denial, termination or suspension of a grant, Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) applies.

(4) If a nursing facility appeals the denial, termination or suspension of a grant, § 1187.141(b), (d) and (e) (relating to nursing facility's right to appeal and to a hearing) apply.

(5) An appeal from the Department's decision denying a request for a grant shall be received in the Department's Bureau of Hearings and Appeals within 30 days of the date of the Department's written notice.

(6) If the resident or the nursing facility timely appeals the Department's decision to deny, suspend or terminate a grant, the Department's decision is not final until the Department issues a final adjudication on the appeal.

(b) *Effect of decisions.*

(1) *Effect on subsequent grant requests.* The denial or termination of a grant, does not prohibit a nursing facility from submitting a new request for an exceptional DME grant for the same resident, if the nursing facility determines that there has been a change in the resident's condition since the denial or termination.

(2) *Effect on services.*

(i) If the Department determines that DME specified in the nursing facility's request is medically necessary but denies the request because the DME is not exceptional DME, the nursing facility shall, as a part of the nursing facility services that it provides to the resident, provide the DME to the resident, unless the resident refuses the DME, regardless of whether the nursing facility or resident appeals the Department's decision. If the resident refuses the DME, the nursing facility shall notify the Department in accordance with § 1187.22(17) (relating to ongoing responsibilities of nursing facilities).

(ii) If the Department determines that the DME specified in the nursing facility's request is exceptional DME

but denies the request because the DME is not medically necessary, the nursing facility may provide the DME and charge the resident in accordance with and subject to applicable Federal and state requirements, including 42 CFR 483.10(c)(8) (relating to resident rights) and § 1101.63(a) (relating to payment in full), if, after receiving actual notice of the Department's denial, the resident requests that the nursing facility provide the DME. If the resident or nursing facility appeals the Department's determination to deny the exceptional DME grant and the appeal is sustained, the nursing facility shall refund any payment made by the resident within 60 days from the date of the Department's final adjudication sustaining the appeal.

(iii) If the Department terminates a grant or suspends payment under a grant under § 1187.157(a)(2) and (3) (relating to termination or suspension of exceptional DME grants and recovery of exceptional payments), and the resident or the resident's authorized representative appeals the termination or suspension within 10-calendar days of the date on which the Department's notice was mailed, the Department will continue to make payments under the grant pending the outcome of the hearing on the resident's appeal. If, after the hearing, the Department denies the resident's appeal, the Department will recover any payments made under the grant on or after the termination date or during the period of suspension specified in the Department's notice.

(iv) If the Department terminates a grant or suspends payment under a grant under § 1187.157(a)(2) and (3), and the resident or the resident's authorized representative does not appeal the termination or suspension, or appeals more than 10-calendar days from the date on which the Department's notice was mailed, the Department will cease payments under the grant on the termination date or during the period of suspension specified in the Department's notice.

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PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CHS. 138, 138e AND 138l]

Agricultural Area Security Program; Agricultural Conservation Easement Purchase Program; Agricultural Security Area Program

The Department of Agriculture (Department) proposes to delete Chapter 138 (relating to agricultural area security program), amend Chapter 138e (relating to agricultural conservation easement purchase program) and add Chapter 138l (relating to agricultural security area program) to read as set forth in Annex A.

Statutory Authority

The Agricultural Area Security Law (act) (3 P. S. §§ 901—915) provides the legal authority for this proposed rulemaking. In particular, section 15 of the act (3 P. S. § 915) requires the Department to promulgate regulations necessary to promote the efficient, uniform and Statewide administration of the act.

Purpose

The proposed rulemaking would accomplish the following regulatory objectives:

1. Replace the outdated regulations in Chapter 138 with an entirely new regulatory chapter (Chapter 138l) that: (a) more accurately tracks with the act; (b) reflects the experience the Department has gained in administering the provisions of Chapter 138 over many years; (c) implements the numerous amendments that have been made to the act over the years; and (d) provides the regulated community with a more user-friendly set of standards and procedures with respect to agricultural security areas.
2. Revise the regulations in Chapter 138e to: (a) reflect various amendments of the act—most recently by the act of May 30 2001 (P. L. 103, No. 14) (Act 14); and (b) reflect the experience the Department has gained in administering the Agricultural Conservation Easement Purchase Program and Chapter 138e since that chapter was last revised.

Background

The act addresses two critical prongs of the Commonwealth's farmland preservation effort: agricultural security areas and agricultural conservation easements. The act provides definitions, standards and procedures for each, and makes it the responsibility of the Department to implement the act through regulations.

In summary, an agricultural security area is an area of 250 acres or more of farmland so designated by a local government unit. This designation affords landowners limited protections against nuisance suits based upon agricultural activities conducted on the land, limited protections against condemnation of the land and other limited benefits. It also makes an owner of farmland located in agricultural security areas comprised of 500 or more acres eligible to sell an agricultural conservation easement with respect to that farmland. An agricultural conservation easement restricts the subject land to agricultural production.

The Department's regulations relating to agricultural security areas have not been revised since 1982—the year in which they were originally promulgated. The provisions of the act relating to agricultural security areas have been revised numerous times since 1982—most recently by Act 14. Given the extensive regulatory revisions that would be necessary to bring the current agricultural security area regulations into conformity with the act, the Department proposes to delete Chapter 138 and replace that chapter with an entirely new Chapter 138l.

The Department's regulations relating to agricultural conservation easements also need to be revised to reflect amendments to the act. This proposed rulemaking would implement these necessary revisions. In addition, a number of the revisions offered in the proposed rulemaking would fine-tune current provisions to make for the more effective and efficient administration of the Commonwealth's agricultural conservation easement purchase program. More often than not, these revisions simply formalize informal procedures that have evolved over the course of the Department's administration of this program, or that appear in the technical guidebook the Department was required to develop under section 14.1(a)(3)(xv) of the act (3 P. S. § 914.1(a)(3)(xv)).

Need for the Proposed Rulemaking

The proposed rulemaking is driven by the need to implement various revisions to the act that have occurred since the agricultural security area and agricultural conservation easement regulations were last amended. In addition, the proposed rulemaking contains provisions intended to resolve questions and "gray areas" encountered by the Department in its administration of these regulations over the years. It would also formally implement a number of effective informal procedures that have evolved over the years.

The Department is satisfied of the need for the proposed rulemaking, and believes the document is consistent with the principles outlined in Executive Order 1996-1, "Regulatory Review and Promulgation."

Overview of the Major Provisions of the Proposed Rulemaking

Proposed § 138e.3 (relating to definitions) would revise the definitions of several terms to reflect statutory revisions.

The act was revised by the act of December 21, 1998 (P. L. 1056, No. 138) (Act 138) to allow for local government units to participate in the agricultural conservation easement purchase process. A number of the provisions of this proposed rulemaking would reflect and implement this statutory change. These include §§ 138e.11, 138e.67(g) and (i), 138e.201 and 138e.204.

Act 14 amended the act to describe a narrow set of circumstances under which an agricultural conservation easement may be purchased with respect to a parcel of farmland that straddles a county or local government unit boundary line, with part of the parcel being within an agricultural security area and the remainder outside of the agricultural security area. A number of the provisions of the proposed rulemaking would reflect and implement this statutory change. Proposed § 138e.16(a) (relating to minimum criteria for applications) would revise the eligibility criteria for agricultural conservation easement purchases to allow for this type of acquisition. Proposed

§ 138e.61(b) (relating to application) would revise the application form to require the basic information necessary to determine whether a proposed agricultural conservation easement purchase meets the revised eligibility criteria.

Proposed §§ 138e.65(b) and 138e.66 (relating to easement value and purchase price; and offer of purchase by county board) would reflect that the former \$10,000-per-acre cap on the expenditure of State funds in an agricultural conservation easement purchase transaction has been rescinded (by Act 14).

Proposed § 138e.73 (relating to survey requirements) would be an entirely new section. This section is not driven by revisions to the act but, instead, by the need to have a uniform Statewide set of minimum criteria for a survey of a proposed agricultural conservation easement purchase. This section would provide needed guidance to county agricultural conservation easement purchase programs, and would provide the Department the data it needs to maintain an accurate computerized record of the location and the metes and bounds of agricultural conservation easements purchased under authority of the act. The technical requirements of this section are consistent with modern survey practices and reflect the typical quality of surveys the Department has accepted over the years. Since this section would formalize an informal standard that has been in effect for some time, the Department believes it will have minimal impact on the regulated community.

Proposed § 138e.93 (relating to postsettlement recording and reporting procedures) would be an entirely new section. There was some initial inconsistency and confusion within both the regulated community and the Department as to the appropriate documentation and post settlement follow-through that should be attendant to each agricultural conservation easement purchase under the act. Over years of administering the Statewide agricultural conservation easement purchase program, though, the basic recordkeeping, recording and reporting procedure in this proposed section evolved. The proposed section would formalize this procedure and provide a step-by-step explanation of the necessary record retention, recording and reporting requirements.

Proposed § 138e.104 (relating to installment sales) would add new language to address long-term installment purchases of agricultural conservation easements that defer the payment of principal for up to 30 years. The Department is currently involved in an effort to encourage the purchase of agricultural conservation easements by a method that allows for the purchaser to leverage purchase funds and allows the seller to gain favorable tax consequences (such as, favorable capital gains tax treatment). The proposed language addresses this effort. This long-term installment purchase effort has been facilitated by an allocation of up to \$500,000 for this purpose by Act 14.

The proposed rulemaking would place increased emphasis on the importance of a conservation plan to the Statewide agricultural conservation easement purchase effort. In summary, a conservation plan is a written description of land management practices which, when implemented, will improve and maintain the soil, water and related plant and animal resources of the land. Although the current regulation requires that a conservation plan exist with respect to a parcel of farmland before an agricultural conservation easement is sold with respect to the parcel, the Department believes it necessary to place greater regulatory emphasis on the requirement

a landowner actually implement the conservation plan. To this end, proposed § 138e.222 (relating to conservation plan) would revise that section to require a landowner to execute a "conservation plan agreement" acknowledging the need to implement the conservation plan. The conservation plan agreement would also acknowledge that failure to implement and follow-through on the requirements of a conservation plan would constitute a violation of the terms of the deed of agricultural conservation easement.

The proposed rulemaking would add several new sections describing the Land Trust Reimbursement Grant Program. This program was originally authorized under section 1716 of The Administrative Code of 1929 (71 P. S. § 456(a)(3)), which took effect in 1999. The procedures and standards for the program were established by a notice published at 29 Pa.B. 6342 (December 18, 1999), and were revised by a notice published at 30 Pa.B. 5546 (October 28, 2000). Act 14 continued this program under its authority (3 P. S. § 914.5), and required the program be formalized through regulation. Proposed §§ 138e.251—138e.256 essentially restate the procedures and standards of this ongoing program.

Proposed § 138e.253 (relating to registration of eligible land trust) would describe the documentation and procedures necessary to the registration of a land trust with the Department. The application process described in subsequent sections is rather straightforward. One of the few substantive differences between the standards and procedures for the Land Trust Reimbursement Grant Program established earlier by notice and the standards and procedures that would be established by this proposed rulemaking is found in § 138e.255(b)(3)(i)(B) (relating to State Board review of applications). That provision would allow reimbursement with respect to an agricultural conservation easement purchase involving as few as 25 acres of land, when the previous standards required at least 50 acres of land.

Proposed Chapter 138l would supplant the current regulation in Chapter 138.

Proposed § 138l.1 (relating to definitions) would repeat definitions from the act and also repeats a number of definitions from § 138e.3 (relating to definitions) of the agricultural conservation easement purchase program regulations. This section would also allow for the use of "ASA" as an abbreviation for the term "agricultural security area."

Proposed § 138l.11 (relating to agricultural security area advisory committee) would provide guidance to a local government unit on the necessity of establishing an agricultural security area (ASA) advisory committee. Although the act does not require the formation of this committee until an application for the formation of an ASA is received by the local government unit, a local government unit is free to form an ASA advisory committee at any time.

Proposed § 138l.12 (relating to eligibility to propose the creation of an ASA) would set forth the eligibility criteria for the inclusion of land within an ASA. Paragraph (1) of that section would acknowledge that some portion of land within an ASA might not be farmland or viable farmland and should not have to be surveyed-out and excluded from the ASA. This is suggested in section 3 of the act (3 P. S. § 903), under the definition of "description of the proposed area."

Prior to Act 14, an ASA could not be located in more than one local government unit unless each affected local

government unit approved its participation in that ASA. Act 14 added three other scenarios under which land might be included in the ASA of another local government unit without the consent of the local government unit in which the land is located. Proposed § 1381.15 (relating to ASA located in more than one local government unit) would summarize all four scenarios under which an ASA might include land in more than one local government unit.

Proposed § 1381.16 (relating to submitting an ASA proposal form to the local government unit) would emphasize that the only acceptable way by which to deliver an ASA proposal form to a local government unit is by certified mail, with return receipt requested. The local government unit's receipt of this notice triggers the commencement of the 180-day period within which review of the ASA proposal must be completed. The "official date of receipt" used in this section is referenced in several other sections of the chapter.

Proposed §§ 1381.17 and 1381.18 (relating to local government unit action upon receipt of an ASA proposal; and public hearing by local government unit on ASA proposal) provide step-by-step explanations of the actions a local government unit must take after receiving an ASA proposal.

The effective date of an ASA or a modification to an ASA can vary—depending on the particular circumstances involved. Proposed § 1381.21 (relating to effective date of the creation or modification of an ASA) would identify each set of circumstances and the appropriate effective date. For example, if land is added to an ASA by virtue of its being part of an agricultural conservation easement purchase, the land becomes part of the ASA as of the sale of the agricultural conservation easement. If land becomes part of an ASA because of the failure of a local government unit to approve or reject the ASA proposal within 180 days of receipt, the ASA becomes effective as of the expiration of this 180-day period. Proposed § 1381.21 would address each set of circumstances under which an ASA can be formed or modified, and assign the appropriate effective date for each ASA creation or modification.

Proposed § 1381.22 (relating to filing of ASA description by governing body; recording of ASA description) would clarify the obligation of a governing body of a local government unit to file a description of an ASA, or any modification thereof, with the county recorder of deeds, the county planning commission and the planning commission of the local government unit. In addition, it would clarify the obligation of a county recorder of deeds to properly record this information.

Proposed §§ 1381.24 and 1381.25 (relating to planning commission action with respect to an ASA proposal; and advisory committee action with respect to an ASA proposal) would describe the roles of the entities referenced in their respective titles. In summary, each of these entities must record the date of receipt of an ASA proposal or proposed modification, review the proposal within a 45-day review period, apply the same review criteria as are applied by the local government unit and report its conclusions to the local government unit. Failure to act within this 45-day review period is deemed to be a recommendation the local government unit approve the ASA proposal or proposed modification.

Proposed § 1381.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) would restate review criteria prescribed by the act.

Proposed Subchapter C (relating to adding land to an existing ASA) would describe all of the various circumstances under which land may be incorporated into an existing ASA. Act 14 added several new methods by which land can be automatically incorporated into an existing ASA, and these new methods are set forth in the referenced sections.

Proposed §§ 1381.41 and 1381.42 (relating to removing land that has been in an ASA for 7 years or more; and removing land in the course of the 7-year review or interim review) would describe the two procedures by which land can be removed from an ASA. The first allows an owner of land that has been in an ASA for 7 or more years to simply notify the governing body of the land to be withdrawn from the ASA. This notice would be by certified mail, return receipt requested. Although the withdrawal would be effective upon receipt of this notice, the governing body would have the option to wait until its next review of the ASA (whether a regular 7-year review or an interim review) to record the withdrawal.

Proposed § 1381.51 (relating to 7-year review) would describe the process by which the act requires an ASA be reviewed at regular intervals. Proposed § 1381.52 (relating to interim review) would describe the process to be exercised by a local government unit that opts to review an ASA before review would ordinarily be required.

Affected Individuals and Organizations

This proposed rulemaking would have some effect upon county agricultural conservation easement purchase programs, local government units, owners of land who have land in an ASA or who seek to include land in an ASA and owners of land who seek to sell agricultural conservation easements under authority of the act. Since many of the new provisions of this proposed rulemaking simply implement statutory requirements, though, the impact of these provisions is more the product of the underlying legislation than of the regulations itself.

Fiscal Impact

Commonwealth: This proposed rulemaking would impose no costs and have no fiscal impact on the Commonwealth.

Political Subdivisions: The proposed rulemaking is not expected to impose appreciable costs upon political subdivisions. Although local government units are required to absorb the costs associated with the formation and recording of an ASA, this requirement is imposed by the act, rather than the proposed rulemaking.

Private Sector: This proposed rulemaking would impose no costs and have no fiscal impact upon the private sector.

General Public: This proposed rulemaking would impose no costs and have no fiscal impact upon the general public.

Paperwork Requirements

The proposed rulemaking would not appreciably increase the paperwork burden of the Department, local government units, county agricultural land preservation programs or other affected entities.

Effective Date

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

Sunset Date

There is no sunset date for this proposed rulemaking. The Department will review the efficacy of these regulations on an ongoing basis.

Public Comment Period/Contact Person

Interested persons are invited to submit written comments regarding this proposed rulemaking within 30 days following publication in the *Pennsylvania Bulletin*. Comments are to be submitted to the Department of Agriculture, Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Sandra Robison.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 29, 2002, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees on Agriculture and Rural Affairs. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of objections raised.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-138. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

CHAPTER 138. AGRICULTURAL AREA SECURITY PROGRAM

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 138.1—138.14 and Appendix A which currently appears in 7 Pa. Code pages 138-1—138-7, serial pages (276945)—(276951).)

§§ 138.1—138.14. (Reserved).

CHAPTER 138e. AGRICULTURAL CONSERVATION EASEMENT PURCHASE PROGRAM

GENERAL

§ 138e.3. Definitions.

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

* * * * *

Agricultural conservation easement or easement—An interest in land, less than fee simple, which interest represents the right to prevent the development or im-

provement of [**the land**] a parcel for a purpose other than agricultural production. The easement may be granted by the owner of the fee simple to a third party or to the Commonwealth, to a county governing body or to a unit of local government. It shall be granted in perpetuity, as the equivalent of covenants running with the land. The exercise or failure to exercise any right granted by the easement will not be deemed to be management or control of activities at the site for purposes of enforcement of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305).

Agricultural production—The production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of the crops, livestock or livestock products if more than 50% of the processed or merchandised products are produced by the farm operator. **The term includes use of land which is devoted to and meets the requirements of and qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.**

* * * * *

County planning commission—A planning commission or agency which has been designated by the county governing body to establish and foster a comprehensive plan for land management and development within the county.

* * * * *

Local government unit—Any city, borough, township or town or any home rule municipality, optional plan municipality, optional charter municipality or similar general purpose unit of government which may be created or authorized by statute.

Mansion house—The primary residential structure located upon a parcel.

* * * * *

Parcel—A tract of land in its entirety which is assessed for tax purposes by one county, including any portion of that tract that may be located in a neighboring county. The county responsible for assessing an entire tract, on its own or in conjunction with the Commonwealth or a local government unit, or both, shall be eligible to purchase agricultural conservation easements covering the entire tract.

* * * * *

REQUIREMENTS FOR CERTIFICATION OF COUNTY PROGRAM

§ 138e.11. General requirements.

* * * * *

(d) A county program shall contain provisions for the participation of local government units in the preservation of farmland through the purchase of agricultural conservation easements. These provisions shall address the following:

(1) Local government unit recommendations for joint county-local government unit purchases.

(2) Local government unit recommendations for joint Commonwealth-local government unit purchases.

(3) Local government unit recommendations for joint Commonwealth-county-local government unit purchases.

(4) Local government unit agricultural conservation easement purchases authorized under section 14.1(b.1)(4) of the act (3 P. S. § 914.1(b.1)(4)).

§ 138e.16. Minimum criteria for applications.

(a) The county program shall consider the quality of the farmland tract, including the USDA soil classification and productivity. The farmland tract shall:

(1) Be [located] one or more of the following:

(i) Located in an agricultural security area consisting of 500 acres or more.

(ii) Bisected by the dividing line between two local government units, having the majority of its viable agricultural land within an agricultural security area of 500 acres or more and the remainder in another local government unit outside of an agricultural security area.

(iii) Bisected by the dividing line between the purchasing county and an adjoining county, having the land located in the purchasing county within an agricultural security area of 500 acres or more and the remainder in another county outside of an agricultural security area, and with respect to which one of the following applies:

(A) A mansion house is on the tract and located within the purchasing county.

(B) When the mansion house on the tract is bisected by the dividing line between the two counties, the landowner has chosen the purchasing county as the situs of assessment for tax purposes.

(C) When there is no mansion house on the farmland tract, the majority of the tract's viable agricultural land is located within the purchasing county.

(2) Be [contiguous] one or more of the following:

(i) Contiguous acreage of at least 50 acres in size [unless the tract is].

(ii) Contiguous acreage of at least 10 acres in size and [is either] utilized for a crop unique to the area [or is].

(iii) Contiguous acreage of at least 10 acres in size and contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. § 170(h)(3)).

* * * * *

STATE BOARD REVIEW OF COUNTY PROGRAM

§ 138e.41. Application for review of county program.

A county board seeking State Board review, certification and approval of its county program shall submit one copy of its county program and its bylaws to the State Board at the following address: Director, Bureau of Farmland [Protection] Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

§ 138e.42. Review, certification and approval of a county program.

* * * * *

(c) A decision of the State Board to disapprove a county program shall be an adjudication subject to 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). An appeal from a decision of the State Board to disapprove a county program may be made by the county board to the Secretary [of Agriculture] and shall be filed in writing with the Secretary within 30 days of the State Board's action. An appeal from a decision of the State Board [will] will be governed by 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

§ 138e.43. Revision of county program.

* * * * *

(b) A county board seeking review of a proposed revision to its county program shall submit one copy of the proposed revision to the State Board at the following address: Director, Bureau of Farmland [Protection] Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

* * * * *

PROCEDURE FOR PURCHASING AN EASEMENT

§ 138e.61. Application.

(a) A separate application shall be required for each farmland tract offered for easement purchase. The application shall consist of a completed application form, locational maps and a soils report form. A copy of a soils report form is in Appendix B (relating to Form C Soils Report). If the county program contains minimum criteria for easement purchase that vary from those in § 138e.16 (relating to minimum criteria for applications), the application shall also include documentation [(such as a production report form contained in a guidebook authorized by the State Board under section 14.1(a)(3)(xv) of the act (3 P. S. § 914.1(a)(3)(xv))] to demonstrate the farmland tract meets these minimum criteria.

(b) The county board shall develop and make available to a county resident an application form which requires the following information:

* * * * *

(2) [The] One of the following, as applicable:

(i) If the farmland tract is eligible to be considered for easement purchase under § 138e.16(a)(1)(i), the county, [municipality] local government unit and agricultural security area in which the farmland tract is located.

(ii) If the farmland tract is bisected by a dividing line between two units of local government and is eligible to be considered for easement purchase under § 138e.16(a)(1)(ii), the county and local government units in which the farmland tract is located, the agricultural security area in which a portion of that farmland tract is located, a breakdown of the acreage proposed for easement purchase in each local government unit and a breakdown of the number of acres of viable agricultural land in the acreage proposed for easement purchase in each local government unit.

(iii) If the farmland tract is bisected by the dividing line between two or more counties and is eligible to be considered for easement purchase under § 138e.16(a)(1)(iii), the counties and local government units in which the farmland tract is located, the agricultural security area in which a portion of that farmland tract is located, and one of the following:

(A) If there is a mansion house on the farmland tract, an acknowledgement of this fact and a designation of the county in which the mansion house is located.

(B) If there is a mansion house on the farmland tract, and the mansion house is bisected by the dividing line between two or more counties, an acknowledgement of this fact and a designation of the county the landowner has chosen as the situs of assessment for tax purposes.

(C) If there is no mansion house on the farmland tract, an acknowledgement of this fact and a breakdown of the acreage proposed for easement purchase in each county and a breakdown of the number of acres of viable agricultural land in the acreage proposed for easement purchase in each county.

* * * * *

§ 138e.65. Easement value and purchase price.

* * * * *

(b) *Maximum purchase price.* The purchase price offered for the purchase of an easement under § 138e.66(b) may not exceed, but may be less than, the value of the easement. [Regardless of the easement value, the State funds paid toward the purchase price of an easement will not exceed \$10,000 per acre.]

§ 138e.66. Offer of purchase by county board.

* * * * *

(c) Within 30 days of receipt of the written offer from the county board, an applicant may do one of the following:

* * * * *

(3) Advise the county board that the applicant is retaining, at the applicant's expense, an independent State-certified general real estate appraiser to determine the easement value. The appraiser shall be qualified, and the appraisal shall be completed in accordance with the procedure in § 138e.64 (relating to appraisal). The appraisal shall be submitted to the county board within 120 days of receipt of the county board's offer to purchase. The county board may extend the time within which this appraisal shall be submitted. This extension shall be in writing and shall extend the 120-day deadline by no more than 60 days. Upon completion, three copies of the applicant's appraisal shall be submitted to the county board. The applicant's decision to obtain an independent appraisal under this paragraph does not constitute a rejection of the county board's offer. The county board's offer shall remain open unless increased by the county board under subparagraph [(ii)] (iv) or rejected by the applicant under subparagraph [(iii) or (iv)] (v).

* * * * *

(iii) Regardless of the easement value, the purchase price may not exceed [\$10,000 per acre of State

funds] any overall purchase price limits established by the county in its county program.

* * * * *

(v) The applicant shall, within 15 days of receipt of the county board's written offer under subparagraph [(ii)(A)] (iv)(A) or receipt of the county board's written notice under subparagraph [(ii)(B)] (iv)(B), notify the county board in writing that the applicant does one of the following:

* * * * *

§ 138e.67. Requirements of the agricultural conservation easement deed.

* * * * *

(d) The farmland tract on which an easement is to be purchased shall be surveyed unless the legal description contained in the deed recorded in the land records of the county in which the farmland tract is located satisfies the requirements of subsections (b) and (c). A survey required by this paragraph shall [comply with the boundary survey measurement standards for a Class A-2 survey as published by the Pennsylvania Society of Land Surveyors] meet the requirements of § 138e.73 (relating to survey requirements).

* * * * *

(g) [A copy of the proposed deed shall be submitted to the State Board for approval prior to execution and delivery.] For purchases made using a combination of State, county and local municipality funds, the grantees shall be the Commonwealth, the county and the local municipality providing the funds under joint ownership as defined in the act.

(h) For purchases made entirely with county funds, the county shall be the sole grantee.

(i) For purchases made entirely with local municipal funds, the municipality shall be the sole grantee.

§ 138e.68. Title insurance.

(a) The county board shall provide [a title report] the following to the State Board upon submission of its recommendation for the purchase of an easement [.]:

(1) A title insurance commitment.

(2) Copies of all recorded or unrecorded documents listed on the title insurance commitment as exceptions to the title insurance policy.

* * * * *

§ 138e.71. Notification of owners of land adjoining proposed easement purchase.

* * * * *

(d) *Correction of notice.* If the date or time of the meeting at which an easement purchase recommendation is to be considered changes after the adjoining landowners receive the notice described in this section, the county board shall provide these landowners a corrective notice, providing notice of the changes, in the manner described in subsection (b) or (c).

§ 138e.73. Survey requirements.

(a) *General requirement.* If a survey of land being considered for agricultural conservation easement purchase is required under § 138e.67(d) (relating to

requirements of the agricultural conservation easement deed) or is otherwise required to determine metes and bounds of any right-of-way or other interests in the land, the survey shall indicate that it has a closure error of not greater than 1 foot per 10,000 linear feet in the survey, and shall otherwise comply with the most current boundary survey measurement standards published by the Pennsylvania Society of Land Surveyors.

(b) *Other requirements.* A survey described in subsection (a) shall also contain the following:

(1) A recordable legal description setting forth the metes and bounds of the farmland tract or other subject of the survey.

(2) A copy of the survey for each traverse in digital electronic format that complies with the conservation easement Geographic Information System (GIS) technical standards maintained in the guidebook prepared by the Department in accordance with section 14.1(a)(3)(xv) of the act (3 P. S. § 914.1(a)(3)(xv)).

(3) Geographic coordinates of at least two ground control points located sequentially along a traverse, with latitude and longitude expressed in decimal degrees. These geographic coordinates shall be based on the North American Datum of 1983 and shall be accurate to within 2 meters horizontally.

(4) A hardcopy of the plotted survey map from the digital file showing the course bearings and distances and other annotations and symbols as maintained in the guidebook prepared by the Department in accordance with section 14.1(a)(3)(xv) of the act.

(c) *Monumentation.* If a survey of land being considered for agricultural conservation easement purchase is required under § 138e.67(d) or is otherwise required to determine metes and bounds of any right-of-way or other interests in the land, the surveyor shall establish monumentation for at least the two ground control points referenced in subsection (b)(3). One point shall be a permanent, unmovable monument established with a concrete shaft, 5/8 inch steel reinforcing bar as a core with an alloy disk embedded with a stamped identification number. The second ground control point shall be a standard 5/8 inch rebar or similar concrete monument.

STATE BOARD REVIEW OF A PURCHASE RECOMMENDATION

§ 138e.91. Recommendation for purchase.

A county board shall make its recommendation for purchase of an easement by submitting the following documents to the Director, Bureau of Farmland [Protection] Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408:

(1) [Twenty-two] Twenty-five copies of the summary report prepared in accordance with § 138e.70 (relating to summary report), including the following items:

* * * * *

(x) The [22] 25 copies submitted shall be individually collated and three-hole punched, but not stapled.

* * * * *

(8) A copy of the approved soil conservation plan that is required to be in place with respect to the land under § 138e.241(2) (relating to deed clauses), and a fully-executed conservation plan agreement form as described in § 138e.222(a) (relating to conservation plan).

* * * * *

§ 138e.93. Postsettlement recording and reporting procedures.

(a) *Retaining copies of essential documents.* The county board shall make and retain photocopies of the following documents after settlement is held with respect to an agricultural conservation easement purchase, and prior to the recording of the deed of agricultural conservation easement in the appropriate recorder of deeds' office:

(1) The complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement.

(2) A marked-up title insurance commitment document, reflecting that all listed title insurance exceptions have been addressed and resolved prior to the purchase of the agricultural conservation easement.

(3) Mortgage satisfaction pieces, subordination agreements and other documents to be recorded in connection with the agricultural conservation easement purchase.

(b) *Prompt recording of the deed of agricultural conservation easement and other documents.* The county board shall record the deed of agricultural conservation easement and any other documents (such as subordination documents, satisfaction pieces and releases) at the appropriate recorder of deeds' office promptly after settlement is held with respect to the easement purchase.

(c) *Prompt recording of agricultural security area; reporting to the State Board.* If the settlement triggers the automatic inclusion into an agricultural security area of some portion of the land subject to the agricultural conservation easement under section 14.1(b)(2)(i)(B) or (C) of the act (3 P. S. § 914.1(b)(2)(i)(B) or (C)), the governing body that created the agricultural security area into which the land is automatically included shall promptly record the addition of this land into the agricultural security area in accordance with the filing, recording and notification procedures in section 8(d) and (g) of the act (3 P. S. § 914.8(d) and (g)). The governing body shall then promptly transmit to the county board written confirmation that this recording, filing and notification has been accomplished. The county board shall mail or deliver a copy of that written confirmation to the State Board within 10 days of receipt.

(d) *Reporting the agricultural conservation easement purchase to the State Board.*

(1) *General.* The county board shall mail or deliver the following documents to the Department within 10 days following the date upon which settlement is held with respect to an agricultural conservation easement purchase:

(i) A complete notification of settlement, on a form available from the Department upon request, containing the following:

- (A) The name of the landowners.
- (B) The county in which the land is located.
- (C) The date of settlement.
- (D) A statement identifying any additional incidental costs.
- (E) An indication (by check-off or other designation) of the other documents the county board is submitting to the Department along with the Notification of Settlement Form.
- (F) The signature of the administrator or chief executive of the county board.
- (ii) Copies of all of the documents described in subsection (b).
- (iii) A copy of the settlement sheet.
- (iv) A marked-up title insurance commitment document, reflecting that all listed title insurance exceptions have been addressed and resolved prior to the purchase of the agricultural conservation easement.
- (v) A complete verification, executed by the settlement agent at settlement, on a form available from the Department upon request, containing the following:

(A) A statement reading substantively as follows:

As Settlement Agent for _____ County, I hereby verify that I have submitted (or will take responsibility for submitting) the appropriate IRS 1099-S form(s) for the agricultural conservation easement identified below in accordance with the Internal Revenue Code, section 6045. I further verify that I have reported (or will report) the gross proceeds in the case of a joint purchase by the Commonwealth and the county. If this verification is not submitted to the Commonwealth within 30 days of closing, I further verify that the 1099-S form(s) will be sent to the IRS and the transferor by the deadline established by the IRS.

(B) The name and Federal taxpayer I.D. number of each person who sold an interest in the agricultural conservation easement.

(vi) An invoice from the county for any additional incidental costs related to the agricultural conservation easement purchase, on a form available from the Department upon request, containing the following:

(A) The name, address and Federal taxpayer I.D. number of the county.

(B) The date of the application.

(C) The name, address and telephone number of the person designated by the county to act as a contact person if the Department requires further information.

(D) The name of the farm owner, address of the farm and the number of acres under agricultural conservation easement.

(E) A breakdown of the purposes for which reimbursement of additional incidental expenses is requested, and the amount of each expense.

(vii) A revised statement of costs, as described in § 138e.69 (relating to statement of costs), if the incidental costs are higher or lower than originally reported.

(2) *Exception for agricultural conservation easements purchased by a local government unit solely.* Paragraph (1) notwithstanding, if an agricultural conservation easement is purchased by a local government unit solely, the county board shall mail or deliver the following documents to the Department within 30 days after recording the deed of agricultural conservation easement:

(i) A copy of the complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement.

(ii) A current United States Geological Survey (USGS) topographical map that clearly and legibly shows the subject property location and boundaries, location of neighboring easements and exclusions withheld from the subject property.

(iii) An invoice as described in paragraph (1)(vi).

(e) *Certified copies of filed documents.* The county board shall mail or deliver certified copies of the recorded documents described in subsection (b) to the Department within 30 days following the date upon which these documents are recorded at the appropriate recorder of deeds' office. The appropriate recorder of deeds' office shall issue this certification.

(f) *Title insurance policy.* The title insurance policy should be mailed or delivered to the State Board within a reasonable time after settlement—preferably within 60 days of settlement.

ALLOCATION OF FUNDS

§ 138e.102. Allocation of funds to counties.

* * * * *

(h) If an eligible county seeks to encumber State matching funds for an agricultural conservation easement purchase to be made by the county alone, the State matching funds shall be considered encumbered when the county board has submitted to the Department a signed agreement of sale and the written certification of the county governing body that the specific amount of county matching funds necessary for the purchase of the agricultural conservation easement by the county is available and intended for this purchase.

(i) * * *

[(i)] (j) * * *

§ 138e.103. Expenditure of matching funds.

* * * * *

(d) An easement purchased using solely county funds will be considered an expenditure of county matching funds under [sections] section 14.1(h)(3), (4) and (5)(i) of the act (3 P. S. [§]§ 914.1(h)(3), (4) and (5)(i) if:

* * * * *

(2) Upon settlement of the purchase of an easement, the county board submits the following to the State Board:

(i) A copy of the [signed] complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement.

* * * * *

(iv) The date of approval of the conservation plan, a copy of the conservation plan and a copy of the executed conservation plan agreement as described in § 138e.222 (relating to conservation plan).

(v) A completed Soil Report Form "C" (a form provided by the Department), both pages. See Appendix B (relating to Form C Soils Report).

(vi) A current United States Geological Survey (USGS) topographical map that clearly and legibly shows the subject property location and boundaries, location of neighboring easements and exclusions withheld from the subject property.

(vii) A statement of costs, as described in § 138e.69 (relating to statement of costs).

(viii) An invoice as described in § 138e.93(d)(1) (vi) (relating to postsettlement recording and reporting procedures).

* * * * *

§ 138e.104. Installment sales.

* * * * *

(c) *Installment sales with a payment period of more than 5 years.* Installment sales, other than those installment sales described in subsection (d), in which the final payment for the easement purchase is to be made more than 5 years from the date the contract of sale is fully executed are subject to the following provisions:

* * * * *

(d) *Installment sales deferring the payment of principal for up to 30 years.* Installment sales in which payment of principal is deferred to the end of a specific period of up to 30 years from the date the contract of sale is fully executed are subject to the following provisions:

(1) Purchases may be made in the name of the Commonwealth, an eligible county or jointly by the Commonwealth and an eligible county.

(2) Notwithstanding the requirement of § 138e.66(d), the county board may, subject to approval by the Department, provide the agreement of sale for purchases made under this subsection.

(3) The agreement of sale and the deed of easement shall meet the same requirements and be subject to the same conditions as set forth in §§ 138e.66(c) and 138e.67.

(4) The installment payment terms shall be negotiated between the landowner and the county board. These terms shall include the amount of cash (if any) to be received at closing, the interest rate, the period over which interest is to be paid and the point at which principal is to be paid.

(5) If landowner is responsible for the transaction costs associated with the type of purchase described in this subsection unless the county program provides otherwise.

PROCEDURE FOR INSPECTING AND ENFORCING AN EASEMENT

§ 138e.201. Responsibility.

(a) The county board shall have the primary responsibility for inspecting restricted land and enforcing [an easement] the following [.]:

(1) Agricultural conservation easements within the county.

(2) Agricultural conservation easements which were acquired under authority of section 14.1(b)(2) (i) of the act (3 P. S. § 914.1(b)(2)(i)), including any portion extending into an adjoining county.

* * * * *

§ 138e.202. Inspections.

(a) The county board shall inspect all restricted land within the county at least annually to determine compliance with the applicable deed of easement. The first inspection shall be completed within 1 year of the date of easement sale, and in sufficient time to be included in the annual report described in § 138e.203 (relating to annual report).

* * * * *

(d) Within 10 days of conducting an inspection under subsection (a), the county board shall prepare a written inspection report setting forth the following information:

* * * * *

(6) A statement indicating whether a structure permitted under section 14.1(c)(6)(iv) of the act (3 P. S. § 914.1(c)(6)(iv)) has been constructed on the restricted land and, if such a structure has been constructed, the month and year construction was completed and a description of the structure and its location on the land.

* * * * *

§ 138e.203. Annual report.

The county board shall file the following with the State [board a] Board by March 1 of each year:

(1) A copy of inspection reports for inspections conducted during the prior year[, and compile an] .

(2) An annual report which summarizes the number of inspections, violations detected, violations resolved and the circumstances surrounding unresolved violations.

§ 138e.204. Enforcement.

(a) The county board shall enforce the terms of each easement purchased within the county under the act, whether it be a local government unit, county, State or joint purchase.

* * * * *

RESPONSIBILITY OF OWNER

§ 138e.222. Conservation plan.

(a) [To preserve the agricultural viability of the restricted land, the county board shall require, and the owner of the restricted land shall implement, a conservation plan approved by the county conservation district or the county board.] The county board shall require the owner of land being considered for agricultural conservation easement purchase to do the following before the county board recommends approval of the easement purchase to the State Board:

(1) Obtain a conservation plan approved by the county conservation district or the county board for the land that would be subject to the agricultural conservation easement.

(2) Execute a conservation plan agreement containing the following:

(i) The name, address and telephone number of the landowners.

- (ii) The location of the land.
- (iii) The acreage of the land.
- (iv) An acknowledgement that the deed of agricultural conservation easement requires that all agricultural production on the subject land be conducted in accordance with the conservation plan.
- (v) An acknowledgement that a conservation plan exists with respect to the land, together with the following:
 - (A) The source of the conservation plan (typically, the county conservation district).
 - (B) An identifying number given the conservation plan.
 - (C) The date of the conservation plan.
- (vi) An acknowledgement that the landowners agree to comply with the conservation practices and implementation schedule in the conservation plan, and an acknowledgement that failure to so comply would be a violation of the terms of the deed of agricultural conservation easement.
- (vii) The signature of the landowners.

* * * * *

LAND TRUST REIMBURSEMENT GRANT PROGRAM

§ 138e.251. Program in general.

Section 14.5(a)(3) of the act (3 P. S. § 914.5(a)(3)) authorizes the expenditure of up to \$500,000 from the Supplemental Agricultural Conservation Easement Purchase Account to reimburse eligible land trusts for expenses incurred in the acquisition of agricultural conservation easements in this Commonwealth. Sections 138e.252—138e.256 describe the procedures and standards under which this reimbursement shall occur under the Land Trust Reimbursement Grant Program.

§ 138e.252. Eligibility of a land trust to register for reimbursement grants.

To be eligible to register with the State Board in accordance with § 138e.253 (relating to registration of eligible land trust) and to receive reimbursement grants under the Land Trust Reimbursement Grant Program, a land trust shall be a tax-exempt institution under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3)) and include the acquisition of agricultural conservation easements or other conservation easements in its stated purpose.

§ 138e.253. Registration of eligible land trust.

(a) *Registration required.* An eligible land trust seeking reimbursement grants under the Land Trust Reimbursement Grant Program shall register with the State Board. Registration shall be accomplished by delivering a registration letter to the following address: Pennsylvania Department of Agriculture, ATTN: Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

(b) *Contents of registration letter.* A registration letter shall:

(1) Set forth a request that the eligible land trust be registered with the State Board for the purpose

of receiving reimbursement grants under the Land Trust Reimbursement Grant Program.

(2) Be signed by the president or other appropriate authorized officer of the eligible land trust.

(3) Have the following documentation enclosed:

(i) A copy of the section 501(c)(3) tax-exempt certification issued to the land trust by the Internal Revenue Service, or any other documentation demonstrating the section 501(c)(3) tax-exempt status of the land trust.

(ii) Documentation, such as a certified copy of the corporate bylaws, demonstrating that the land trust has the acquisition of agricultural conservation easements or other conservation easements as its stated purpose.

(4) If the eligible land trust seeks to be registered to receive reimbursement grants with respect to agricultural conservation easements it acquires in a county that is an eligible county (as that term is defined in § 138e.3 (relating to definitions)), have enclosed a letter from either the director or the chairperson of the county board of the eligible county, verifying that the land trust coordinates its farmland preservation activities with the farmland preservation activities of the county.

(5) If an eligible land trust seeks to be registered to receive reimbursement grants with respect to agricultural conservation easements it acquires in a county that is not an eligible county (as that term is defined in § 138e.3), have enclosed a written explanation of the procedures it will follow to coordinate with the State Board on the easement acquisitions.

(c) *Acknowledgement of registration.* The Department will promptly provide an eligible land trust that delivers a complete registration letter as described in subsection (b) with written confirmation that the eligible land trust is registered to receive reimbursement grants under the Land Trust Reimbursement Grant Program, together with an application for reimbursement grant form as described in § 138e.254 (relating to applying for a reimbursement grant).

§ 138e.254. Applying for a reimbursement grant.

(a) *Application for reimbursement grant; timing.* If an eligible land trust is registered in accordance with § 138e.253 (relating to registration of eligible land trust), and seeks a reimbursement grant with respect to the acquisition of an agricultural conservation easement, it shall do the following:

(1) Complete an application for reimbursement grant form as described in subsection (b).

(2) Deliver the completed application to the State Board, at the address in § 138e.253(a), within 60 days of closing on the acquisition of the agricultural conservation easement with respect to which the reimbursement grant is sought.

(b) *Obtaining an application for reimbursement grant form.* Reimbursement grant application forms may be downloaded from the Department's website address: www.pda.state.pa.us. The Department will also provide reimbursement grant application forms upon written request to the address in § 138e.253(a), or upon requests telephoned to the Department, at (717) 783-3167. The Department will

also enclose a reimbursement grant application form with any acknowledgement of registration it issues under § 138e.253(c).

(c) *Content of a complete application for a reimbursement grant.* A complete application for a reimbursement grant shall contain the following:

(1) A request for reimbursement of costs incidental to the acquisition of an agricultural conservation easement.

(2) A statement of the costs (such as, costs of appraisals, legal services, title searches, document preparation, title insurance, closing fees and surveys) incidental to the acquisition of the agricultural conservation easement.

(3) A true and correct copy of the recorded deed of agricultural conservation easement.

(4) The Soil Report Form "C" (a form provided by the Department), both pages. See Appendix B (relating to Form C Soils Report).

§ 138e.255. State Board review of applications.

(a) *Department's responsibility.* The Department will stamp or otherwise identify every complete reimbursement grant application form to record the date it is received and the relative order in which these applications are received.

(b) *State Board review.* The State Board will consider reimbursement grant applications in the order in which the Department received them. The State Board will review any complete, timely application within 60 days of receipt. The State Board may not approve a reimbursement grant application unless all of the following criteria are met:

(1) The application meets the requirements of section 14.5(a)(3) of the act (3 P. S. § 914.5(a)(3)).

(2) The land use restrictions imposed under the deed of agricultural conservation easement are comparable to restrictions imposed under a deed of agricultural conservation easement acquired in accordance with the act, as described in § 138e.241 (relating to deed clauses).

(3) One of the following applies:

(i) The land subject to the agricultural conservation easement meets the following criteria:

(A) The land is in an agricultural security area consisting of 500 acres or more.

(B) The land is contiguous acreage of at least 25 acres in size unless the tract is at least 10 acres in size and is either utilized for a crop unique to the area or is contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. § 170(h)(3)).

(C) The land contains at least 50% of soils which are both available for agricultural production and of land capability classes I-IV, as defined by the USDA-NRCS.

(D) The land contains the greater of 50% or 10 acres of harvested cropland, pasture or grazing land.

(ii) The land subject to the agricultural conservation easement meets the following criteria:

(A) The land is in an agricultural security area consisting of 500 acres or more.

(B) The land is of any acreage but adjoins land that is either currently subject to an agricultural conservation easement purchased under authority of the act or adjoins land that has been approved by the State Board for agricultural conservation easement purchase under authority of the act, so that—in the aggregate—the land and the restricted land it adjoins comprise at least 50 contiguous acres.

(4) There are sufficient unencumbered funds available to fund the reimbursement grant amount sought in the reimbursement grant application.

§ 138e.256. Decision of the State Board.

The State Board will, within 10 days of completing its review, mail a reimbursement grant applicant written notice as to whether the reimbursement grant application is approved. If the application is not approved, the written notice will specify the basis for disapproval.

(*Editor's Note:* The following chapter is new. It has been printed in regular type to enhance readability.)

CHAPTER 138I. AGRICULTURAL SECURITY AREA PROGRAM

Subchap.

- A. PRELIMINARY PROVISIONS
- B. FORMATION OF AN AGRICULTURAL SECURITY AREA
- C. ADDING LAND TO AN EXISTING ASA
- D. REMOVING LAND FROM AN EXISTING ASA
- E. SEVEN-YEAR REVIEW AND INTERIM REVIEW

Subchapter A. PRELIMINARY PROVISIONS

Sec.

- 138I.1. Definitions.
- 138I.2. Purpose.
- 138I.3. Contacting the Department.

§ 138I.1. Definitions.

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

ALCAB—The Agricultural Lands Condemnation Approval Board of the Commonwealth.

ASA—*Agricultural security area*—A unit of 250 or more acres used for the agricultural production of crops, livestock or livestock products under the ownership of one or more persons and one of the following applies:

(i) The land has been designated as such by the procedures in the act.

(ii) The land has been designated as such under the act of January 19, 1968 (1967 P. L. 992, No. 442) (32 P. S. §§ 5001—5012), entitled "An act authorizing the Commonwealth of Pennsylvania and the counties thereof to preserve, acquire or hold land for open space uses," prior to February 12, 1989, by the governing body of the county or governing body of the municipality in which the agricultural land is located on the basis of criteria and procedures which predate February 12, 1989, and which was not withdrawn from the ASA by August 10, 1989, by the owner providing written notice of withdrawal to the county governing body or governing body of the municipality in which the land is located.

ASA landowner—An owner of land located within an ASA.

ASA proposal form—A Proposal for the Creation or Modification of an Agricultural Security Area form created by the Department.

Act—The Agricultural Area Security Law (3 P. S. §§ 901—915).

Advisory committee—An Agricultural Security Area Advisory Committee.

Agricultural conservation easement—An interest in land, less than fee simple, which interest represents the right to prevent the development or improvement of a parcel for any purpose other than agricultural production.

(i) The easement may be granted by the owner of the fee simple to any third party or to the Commonwealth, to a county governing body or a unit of local government.

(ii) It shall be granted in perpetuity as the equivalent of covenants running with the land.

(iii) The exercise or failure to exercise any right granted by the easement will not be deemed to be management or control of activities at the site for purposes of enforcement of the Hazardous Sites Cleanup Act (35 P. S. § 6020.101—6020.1305).

Agricultural production—

(i) The production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of the crops, livestock or livestock products if more than 50% of the processed or merchandised products are produced by the farm operator.

(ii) The term includes use of land which is devoted to and meets the requirements of and qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.

Applicant—A landowner proposing the establishment or modification of an ASA in accordance with the requirements of the act and this chapter.

Contiguous acreage—

(i) All portions of one operational unit as described in the deed whether or not the portions are divided by streams, public roads, bridges, and whether or not described as multiple tax parcels, tracts, purparts, or other property identifiers.

(ii) The term includes supportive lands such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds and streams, or as otherwise defined in § 138e.3 (relating to definitions).

County board—The county agricultural land preservation board as appointed by the county governing body under the act.

County fiscal year—The period from January 1 through December 31 of a particular calendar year.

County governing body—The county board of commissioners or, under home rule charters, another designated council of representatives.

County planning commission—A planning commission or agency which has been designated by the county governing body to establish and foster a comprehensive plan for land management and development within the county.

Crops, livestock and livestock products—The term includes:

(i) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry-beans.

(ii) Fruits, including apples, peaches, grapes, cherries and berries.

(iii) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms.

(iv) Horticultural specialties, including nursery stock and ornamental shrubs, ornamental trees and flowers.

(v) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

(vi) Timber, wood and other wood products derived from trees.

(vii) Aquatic plants and animals and their byproducts.

Curtilage—The area surrounding a residential structure used for a yard, driveway, onlot sewerage system or other nonagricultural purposes.

Department—The Department of Agriculture of the Commonwealth.

Description of the proposed area—A complete and accurate list of the names of the owners of each parcel of land to be included in the proposed ASA, the tax parcel number or account number of each parcel and the number or account number of acres (including partial acres, to the nearest thousandth) contained in each parcel. The description shall use county tax map references for determining boundaries of each parcel, and no survey of parcels shall be required, except that an individual parcel included in the ASA shall represent less than the entire amount of contiguous land contained in the property of an owner.

Economic viability of farmland for agricultural production—The capability of a particular tract of restricted land, other than a tract of 2 acres or less upon which construction and use of the landowner's principal residence or housing for seasonal or full-time farm employees is permitted under section 14.1(c)(6)(iv) of the act (3 P. S. § 914.1(c)(6)(iv)), to meet the criteria in § 138e.16(a) (relating to minimum criteria for applications).

Eligible counties—Counties whose county programs have been approved by the State Board. For the purpose of annual allocations, an eligible county shall have its county program approved by the State Board by January 1 of the year in which the annual allocation is made. Counties of the first class are not eligible under any circumstances.

Farm—Land in this Commonwealth which is being used for agricultural production as defined in the act.

Farmland tract or tract—Land constituting all or part of a farm with respect to which easement purchase is proposed. A farmland tract may consist of multiple tracts of land that are identifiable by separate tax parcel numbers, separate deeds or other methods of property identification.

Governing body—The governing body of a local government unit.

Grazing or pasture land—Land, other than land enrolled in the USDA Conservation Reserve Program, used primarily for the growing of grasses and legumes which are consumed by livestock in the field and at least 90% of which is clear of trees, shrubs, vines or other woody growth not consumed by livestock.

Harm the economic viability of the farmland for agricultural production—To cause a particular tract of restricted land to fail to meet the criteria in § 138e.16(a) or to create, through subdivision, a tract of restricted land, other than a tract of 2 acres or less upon which construction and use of the landowner's principal residence or housing for seasonal or full-time farm employees is permitted under section 14.1(c)(6)(iv) of the act, that would fail to meet the criteria in § 138e.16(a).

Harvested cropland—

(i) Land, other than land enrolled in the USDA Conservation Reserve Program, used for the commercial production of field crops, fruit crops, vegetables and horticultural specialties, such as Christmas trees, flowers, nursery stock, ornamentals, greenhouse products and sod.

(ii) The term does not include land devoted to production of timber and wood products.

Interim review—The interim review of an existing ASA in accordance with the requirements of section 9(b) of the act (3 P. S. § 909(b)).

Land Capability Class—A group of soils designated by either the county soil survey, as published by USDA-NRCS in cooperation with the Pennsylvania State University and the Department, or the *Soil and Water Conservation Technical Guide* maintained and updated by USDA-NRCS.

Landowner—The person holding legal title to a particular farmland tract.

Land which has been devoted primarily to agricultural use—

(i) Acreage which is a part of restricted land and is harvested cropland, grazing or pasture land, land used for the production of timber and wood products, land containing nonresidential structures used for agricultural production, or other acreage immediately available for agricultural production.

(ii) The term does not include: any acreage upon which immediate agricultural production is impracticable due to residential structures and their curtilages, wetlands, soil quality, topography or other natural or manmade features.

(iii) The term does not include: any tract of 2 acres or less designated as the site upon which the landowner's principal residence or housing for seasonal or full-time employees is permitted under section 14.1(c)(6)(iv) of the act.

Local government unit—A city, borough, township or town or any home rule municipality, optional plan municipality, optional charter municipality or similar general purpose unit of government which may be created or authorized by statute.

Mansion house—The primary residential structure located upon a parcel.

Nonprofit land conservation organization—A nonprofit organization dedicated to land conservation purposes recognized by the Internal Revenue Service as a tax-exempt organization under the Internal Revenue Code of 1986 (26 U.S.C. §§ 1—7872).

Normal farming operation—

(i) The customary and generally accepted activities, practices and procedures that farmers engage in year after year in the production and preparation for market of crops, livestock and livestock products and in the produc-

tion and harvesting of agricultural, agronomic, horticultural, silvicultural, and aquacultural crops and commodities.

(ii) The term includes the storage and utilization of agricultural and food processing wastes for animal feed and the disposal of manure, other agricultural waste and food processing waste on land where the materials will improve the condition of the soil or the growth of crops or will aid in the restoration of the land for the same purposes.

Nutrient management plan—A written site-specific plan which incorporates best management practices to manage the use of plant nutrients for crop production and water quality protection consistent with the Nutrient Management Act (3 P. S. §§ 1701—1718).

Parcel—A tract of land in its entirety which is assessed for tax purposes by one county, including any portion of that tract that may be located in a neighboring county. The county responsible for assessing an entire tract, on its own or in conjunction with either the Commonwealth or a local government unit, or both, shall be eligible to purchase agricultural conservation easements covering the entire tract.

Pennsylvania Municipalities Planning Code—53 P. S. §§ 10101—11201.

Person—A corporation, partnership, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

Planning commission—A local government planning commission or agency which has been designated by the governing body to establish and foster a comprehensive plan for land management and development within the local government unit.

Restricted land—Land which is subject to the terms of an agricultural conservation easement acquired under the act.

Secretary—The Secretary of Agriculture.

7-year review—The periodic review of an existing ASA in accordance with the requirements of section 9(a) of the act (3 P. S. § 909(a)).

Soils available for agricultural production—Soils on land that is harvested cropland, pasture or grazing land, or land upon which no structure, easement, roadway, curtilage or natural or manmade feature would impede the use of that soil for agricultural production.

Soils report—A report which identifies and sets forth the amount of each land capability class found on a farm land tract.

State Board—The State Agricultural Land Preservation Board.

State-certified general real estate appraiser—A person who holds a current general appraiser's certificate issued under the Real Estate Appraisers Certification Act (63 P. S. §§ 457.1—457.19).

Subdivision—The division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development, or as otherwise defined in § 138e.3.

Title report—

(i) A report prepared by a person authorized by the Insurance Department to engage in the sale of title insurance or an attorney setting forth the existence of any liens, restrictions or other encumbrances on a farmland tract.

(ii) The term does not include the title search, but does include the title binder or the title commitment, or both.

USDA—The United States Department of Agriculture.

USDA-NRCS—The Natural Resources Conservation Service of the USDA. This entity was formerly known as the Soil Conservation Service.

Viable agricultural land—Land suitable for agricultural production and which will continue to be economically feasible for that use if real estate taxes, farm use restrictions and speculative activities are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of urban and related nonagricultural development.

§ 1381.2. Purpose.

This chapter provides regulatory guidance with respect to the benefits of having land in an ASA, the application and review process under which an ASA is formed, the procedures involved in recording an ASA, the addition of land to an existing ASA and the removal of land from an existing ASA, and to otherwise further the purposes of the act.

§ 1381.3. Contacting the Department.

(a) The forms referenced in this chapter may be obtained from the Department, by contacting the following: Director, Bureau of Farmland Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408, (717) 783-3167.

(b) These forms shall also be available and may be downloaded from the Department's website, at the following internet website address: www.pda.state.pa.us.

Subchapter B. FORMATION OF AN AGRICULTURAL SECURITY AREA

Sec.

- 1381.11. Agricultural security area advisory committee.
- 1381.12. Eligibility to propose the creation of an ASA.
- 1381.13. ASA proposal form.
- 1381.14. Fees.
- 1381.15. ASA located in more than one local government unit.
- 1381.16. Submitting an ASA proposal form to the local government unit.
- 1381.17. Local government unit action upon receipt of an ASA proposal.
- 1381.18. Public hearing by local government unit on ASA proposal.
- 1381.19. Decision of local government unit.
- 1381.20. Notice of decision of the local government unit.
- 1381.21. Effective date of the creation or modification of an ASA.
- 1381.22. Filing of ASA description by governing body; recording of the ASA description.
- 1381.23. Notification of Secretary by governing body.
- 1381.24. Planning commission action with respect to an ASA proposal.
- 1381.25. Advisory committee action with respect to an ASA proposal.
- 1381.26. Factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee.

§ 1381.11. Agricultural security area advisory committee.

(a) *Time for formation of an advisory committee.* A governing body may establish an advisory committee at any time. When a proposal for the creation of an ASA is received by a governing body, though, the governing body shall establish an advisory committee if it has not already done so.

(b) *Appointment and composition of an advisory committee.* An advisory committee shall be appointed by the

chairperson of the governing body of the local government unit in which the ASA is located, or is to be located. The members of the advisory committee shall serve at the pleasure of that chairperson. An advisory committee shall be composed of five members, as follows:

(1) A member of the governing body of the local government unit, who shall be chairperson of the advisory committee.

(2) One citizen residing within the local government unit.

(3) Three active farmers, each representing a different private or corporate farm situated, at least in part, within the local government unit.

(c) *Functions of an advisory committee.* An advisory committee shall advise the governing body and work with the planning commission in relation to the proposed establishment, modification, review and termination of an ASA. An advisory committee shall render expert advice as to the nature and desirability of these actions, including advice as to the nature of farming and farm resources within the proposed or existing ASA and the relationship of farming in the ASA to the local government unit as a whole.

§ 1381.12. Eligibility to propose the creation of an ASA.

An owner or a group of owners of land are eligible to propose the creation of an ASA if the following conditions are met:

(1) The land described in the proposal is used for agricultural production (although a reasonable amount of nonviable farm land and nonfarm land may be included if it is not feasible to exclude it).

(2) Some portion of the land described in the proposal lies within the local government unit to which the proposal is submitted.

(3) The total acreage described within the proposal comprises at least 250 acres of viable agricultural land.

(4) If tax parcel numbers or accounts reflect that a parcel is not contiguous to other land included in the proposal, that tax parcel or account is at least one of the following:

(i) Comprised of 10 or more acres.

(ii) Has anticipated yearly gross income of at least \$2,000 from agricultural production.

§ 1381.13. ASA proposal form.

(a) *Governing body has discretion.* The governing body may prescribe the manner and form of the process under which it will receive and consider proposals for the formation of an ASA, to the extent the exercise of that discretion does not violate any provision of the act or this chapter. A governing body may require the use of its own ASA proposal form meeting the requirements of subsection (b), or may use the Department's ASA proposal form as described in subsection (c).

(b) *Minimum requirements for a proposal.* An ASA proposal shall, at a minimum, contain the following:

(1) The name of the township, borough, city or other local government unit to which the ASA proposal is submitted.

(2) The county of the local government unit to which the ASA proposal is submitted.

(3) A description of the boundaries of the proposed ASA.

(4) With respect to each farmland parcel listed on the ASA proposal:

(i) The printed name and address of each person owning land proposed for inclusion in the ASA.

(ii) The signature of each person described in subparagraph (i).

(iii) The county tax parcel number or account number identifying the parcel.

(iv) The acreage of the parcel.

(5) Other information as might be reasonably required to establish the boundaries of the proposed ASA, the owners of the parcels of farmland described in the ASA and compliance with the act and this chapter.

(c) *ASA proposal form available from the Department.* The Department will provide any person or local government unit, upon request, copies of an ASA proposal form created by the Department. A request for an ASA proposal form may be directed to the Department in accordance with § 1381.3 (relating to contacting the Department) or the local government unit in which the ASA proposal form would be filed.

§ 1381.14. Fees.

(a) *General prohibition.* Except as provided in subsection (b), the governing body may not charge a landowner any fee for the filing of an ASA proposal or for any action the governing body is required to take under the act or this chapter.

(b) *Exception.* A governing body may, by resolution, impose reasonable filing fees for the administration and review of an ASA proposal if all of the following apply:

(1) The proposal includes substantially the same lands as proposed in a previously-submitted application.

(2) The governing body had rejected that previously-submitted application within 36 months preceding the date the proposal was submitted.

(3) The previous rejection was based upon the recommendations of the advisory committee and the planning commission.

§ 1381.15. ASA located in more than one local government unit.

There are four ways in which an ASA may be created or modified to contain land located in more than one local government unit as follows:

(1) The ASA proposal may be directed to the governing bodies of each of the affected local government units and approved in accordance with the process described in § 1381.31(b) and (c) (relating to adding land to an existing ASA).

(2) A parcel of farmland that straddles the boundary line between two local government units shall be automatically included in the ASA of one of those local government units if the other local government unit has not approved an ASA and the majority of the parcel's viable agricultural land is within the local government unit seeking to create an ASA or add the parcel to an existing ASA, as described in § 1381.32 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units).

(3) A parcel of farmland that straddles the boundary line between two local government units shall be auto-

matically included in the ASA if the majority of the parcel's viable agricultural land is already in the ASA and an agricultural conservation easement is purchased with respect to the parcel, as described in § 1381.33 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units upon purchase of an agricultural conservation easement by certain entities).

(4) A parcel of farmland that straddles the boundary line between two counties shall be automatically included in the ASA of one of those counties if an agricultural conservation easement is purchased with respect to the parcel, as described in § 1381.34 (relating to automatic inclusion of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain entities).

§ 1381.16. Submitting an ASA proposal form to the local government unit.

(a) *Form submitted by certified mail, return receipt requested.* A person shall submit an ASA proposal form to the governing body of the local government unit in which the ASA is situated. The form shall only be submitted by certified mail, with return receipt requested.

(b) *Date of receipt.* The return receipt shall be official notice that the local government unit has received the ASA proposal form, and the date reflected on that receipt shall constitute the official date of receipt for purposes of calculating the period within which review must occur.

§ 1381.17. Local government unit action upon receipt of an ASA proposal.

(a) *Acknowledgement of receipt.* If a local government unit receives an ASA proposal form by certified mail with return receipt requested, the governing body shall acknowledge receipt of the ASA proposal at its next regular or special meeting. The acknowledgement shall be reflected in the minutes of that meeting.

(b) *Providing notice.* Within 15 days of the date of receipt of an ASA proposal, the local government unit shall provide notice of the ASA proposal by doing both of the following:

(1) Publishing a notice that meets the requirements of subsection (c) in a newspaper having general circulation within the proposed ASA.

(2) Posting a notice that meets the requirements of subsection (c) in at least five conspicuous places within, adjacent to or near the proposed ASA.

(c) *Contents of notice.* The notices described in subsection (b) shall contain the following information:

(1) A statement that an ASA proposal has been filed with the governing body under the act.

(2) A statement that the ASA proposal will be on file for public inspection in the office of the local government unit.

(3) A statement that the following persons or entities may propose modifications of the proposed ASA:

(i) Any local government unit having land within or adjacent to the proposed ASA.

(ii) Any landowner who owns land proposed to be included within the ASA.

(iii) Any landowner with lands adjacent to or near the proposed ASA.

(4) A statement that objections to the proposed ASA or proposed modifications to the proposed ASA shall be filed

with the governing body and the planning commission within 15 days of the date of publication of the notice, with an explanation of the filing procedure prescribed by the governing body.

(5) A statement that at the termination of the 15-day period described in paragraph (4), the ASA proposal and all proposed modifications will be submitted to the planning commission and the advisory committee, and that thereafter a public hearing will be held on the proposal, proposed modifications and the recommendations of the planning commission and advisory committee.

(d) *Window for receipt of objections or proposed modifications.* The governing body shall receive and consider any proposed modifications of a proposed ASA from the entities described in subsection (c)(3) until no more than 7 days prior to the advertisement of the public hearing described in § 1381.18 (relating to public hearing by local government unit on ASA proposal).

(e) *Submitting documents to the planning commission and the advisory committee.* Upon the termination of the 15-day period described in subsection (c)(4) and (5), the governing body shall submit the ASA proposal and all proposed modifications to the planning commission and the advisory committee for review. The governing body shall retain a record of the date upon which the referenced materials are submitted to these reviewing bodies.

§ 1381.18. Public hearing by local government unit on ASA proposal.

(a) *Public hearing required.* The governing body shall hold a public hearing on an ASA proposal or proposed modification of an ASA. The public hearing shall be scheduled promptly after the earlier of the following:

(1) Receipt of both the report of the planning commission, as described in § 1381.24 (relating to relating to planning commission action with respect to an ASA proposal) and the report of the advisory committee, as described in § 1381.25 (relating to advisory committee action with respect to an ASA proposal).

(2) The expiration of the 45-day review periods afforded the planning commission under § 1381.24(b) and the advisory committee under § 1381.25(b).

(b) *Hearing notice required.* The governing body shall provide notice of the public hearing described in subsection (a) by doing the following:

(i) Publishing a hearing notice in a newspaper having general circulation in the proposed ASA.

(ii) Providing a written hearing notice to the following:

(A) Any person who proposed a modification to the ASA.

(B) Any person owning land included in the proposed modifications to an existing ASA.

(C) Any person owning land included within the proposed ASA.

(iii) Posting a written hearing notice in at least five conspicuous places within, adjacent to or near the proposed ASA or the proposed modifications.

(c) *Contents of hearing notice.* The hearing notice described in subsection (b) shall contain the following:

(i) A statement of the time, date and location of the public hearing.

(ii) A description of the proposed ASA, and any proposed additions or deletions.

(iii) A summary of the recommendations contained in the reports of the planning commission and the advisory committee. If the planning commission did not render its report within the 45-day period described in § 1381.24(b), or the advisory committee did not render its report within the 45-day period described in § 1381.25(b), the notice shall report this fact and indicate that the reviewing body is deemed to have given its approval to the proposed ASA or proposed modifications.

(iv) A statement that the public hearing will be held concerning the following:

(A) The original ASA proposal.

(B) Any written amendments proposed during the review period.

(C) Any recommendations proposed by the planning commission or the advisory committee.

(d) *Location of public hearing.* The public hearing described in subsection (a) shall be held at a place either within the proposed ASA or at a location readily accessible to the proposed ASA—such as a nearby municipal building.

§ 1381.19. Decision of local government unit.

(a) *180-day deadline.* A governing body shall act to adopt or reject an ASA proposal, or any modification of a proposal, within 180 days of the official date of receipt of the ASA proposal, as this date is described in § 1381.16(b) (relating to submitting an ASA proposal form to the local government unit). If the governing body fails to act within this 180-day period, the ASA proposal shall be deemed adopted by the governing body, and any proposed modifications to the ASA proposal shall be deemed rejected by the governing body.

(b) *Factors to be considered in reaching decision.* The governing body shall consider the following in reaching its decision with respect to an ASA proposal or proposed modifications:

(1) The factors in § 1381.26(a) (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee).

(2) The inclusion, to the extent feasible, of adjacent viable farmland where the landowner has applied to have the land included.

(3) The exclusion, to the extent feasible, of nonviable farmland and nonfarm land. It is not ordinarily feasible to require the exclusion or surveying-out of the incidental nonviable farm land and nonfarm land that is typically present on a parcel of viable agricultural land.

(i) This nonviable farm land or nonfarm land might include hedgerows, driveways and farm roads, lands containing soils in Land Capability Classes V–VIII, and land upon which farm buildings or residential structures and their curtilages are located.

(ii) The exclusion of nonviable farm land and nonfarm land becomes more feasible as the percentage of these types of land—as a proportion of a parcel's total acreage—increases and the percentage of viable agricultural land within the parcel decreases.

§ 1381.20. Notice of decision of the local government unit.

(a) *Rejection or modification.* If a governing body rejects or modifies an ASA proposal, it shall provide each landowner affected by the rejection or modification with a written decision as described in subsection (c). This

decision shall be provided by mail, and shall be mailed to each affected landowner within 10 days of the decision.

(b) *Approval.* If a governing body approves an ASA proposal, it shall provide each landowner affected by the approval with written notification of this approval and the effective date of the ASA or ASA modifications. This notification shall be provided by mail, and shall be mailed to each affected landowner within 10 days of the decision.

(c) *Contents of written decision.* The written decision described in subsection (a) shall contain the following:

(1) Findings of fact.

(2) A review of the evaluation criteria in § 1381.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee).

(3) A discussion of the reasons for rejection or modification of the proposal.

§ 1381.21. Effective date of the creation or modification of an ASA.

(a) *ASA proposal or modification covering land in a single local government unit.* If an ASA proposal or proposed modification involves land located entirely within a single local government unit, the ASA shall become effective upon the date the governing body of the local government unit approves the ASA. If proposed modifications to an ASA proposal are made, and the modifications involve land located entirely within the same single local government unit as the proposed ASA, the modifications shall become effective as of the date the governing body of the local government unit approves the modifications.

(b) *ASA proposal or modification covering land in more than one local government unit.* If an ASA proposal or proposed modification involves land located in more than one local government unit, the ASA shall become effective upon the date a local government unit, or a combination of local government units, approves a portion of the ASA proposal that meets the minimum acreage and other requirements for an ASA in § 1381.12 (relating to eligibility to propose the creation of an ASA), or as otherwise prescribed by the act. The remaining portions of the ASA proposal shall become effective upon the date of local government unit approval.

(c) *Deemed approval date.* If a governing body fails to approve, reject or modify an ASA proposal within 180-days of the official date of receipt of the ASA proposal, as described in §§ 1381.16(b) and 1381.19(a) (relating to submitting an ASA proposal form to the local government unit; and decision of local government unit), the ASA proposal shall be deemed to have been adopted without modification, and the ASA shall become effective as of the expiration of that 180-day period.

(d) *Automatic inclusion: certain parcels transected by the dividing line between local government units.* If a portion of a parcel is located within a local government unit that does not have an ASA established within its borders, that portion may—without the approval of the governing body of that local government unit—be included in the ASA of an adjoining local government unit in accordance with the procedure described in § 1381.32 (relating to automatic inclusion of certain parcels transected by the dividing line between local government units). The ASA shall become effective upon the date the governing body of the adjoining local government unit approves the ASA.

(e) *Automatic inclusion: certain agricultural conservation easement purchases involving land in more than one local government unit.* If a portion of a parcel is not located within an ASA, but an agricultural conservation easement is purchased with respect to the parcel in accordance with § 1381.33 (relating to automatic inclusion of portions of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement), the portion shall become part of an ASA upon the purchase of the agricultural conservation easement.

(f) *Automatic inclusion: cross-county agricultural conservation easement purchases.* If a portion of a parcel is not located within an ASA, but an agricultural conservation easement is purchased with respect to the parcel in accordance with § 1381.34 (relating to automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement), the portion shall become part of an ASA upon the purchase of the agricultural conservation easement.

§ 1381.22. Filing of ASA description by governing body; recording of the ASA description.

(a) *Responsibility of governing body.* Within 10 days of the effective date of the creation of an ASA, as described in § 1381.21 (relating to effective date of the creation or modification of an ASA), the governing body shall file a description of the ASA with the following:

(1) The recorder of deeds of any county within which the ASA is located.

(2) The county planning commission.

(3) The planning commission of the local government unit.

(b) *Responsibility of the recorder.* A recorder of deeds receiving an ASA description from a governing body as described in subsection (a) shall record the description in a manner sufficient to give notice to all persons who have an interest in land within the ASA or in lands adjoining the ASA.

§ 1381.23. Notification of secretary by governing body.

(a) *Responsibility of the governing body.* Within 10 days of the recording of the ASA, as described in § 1381.22 (relating to filing of ASA description by governing body; recording of the ASA description), the governing body shall notify the Secretary that the ASA has been approved, modified or terminated. This notification shall be accomplished by mailing written notification to the address in § 1381.3 (relating to contacting the Department).

(b) *Contents of notice.* The written notice described in subsection (a) shall include the following information:

(1) The number of landowners whose land is in the ASA. The notification shall include only one landowner when land is under multiple ownership or is comprised of multiple parcels or accounts.

(2) The total acreage of the ASA.

(3) The effective date of the approval, modification or termination.

(4) The date upon which the approval, modification or termination was recorded in accordance with § 1381.22.

§ 1381.24. Planning commission action with respect to an ASA proposal.

(a) *Record of the date of receipt.* If a governing body submits an ASA proposal and all proposed modifications

to a planning commission in accordance with § 138l.17(e) (relating to local government unit action upon receipt of an ASA proposal), the planning commission shall retain a record of the date upon which the referenced materials are received. This may be accomplished by time-stamping the documents, providing the governing body written confirmation of the date of receipt or other reasonable means of creating a record of the date upon which the documents were received.

(b) *45-day review period.* A planning commission shall have up to 45 days from receipt of an ASA proposal and any proposed modifications from the governing body within which to submit a report to that governing body. If the planning commission fails to submit this report to the governing body within the 45-day review period, this failure to act shall be deemed to constitute the planning commission's approval of the ASA proposal. A report is considered "submitted" when it is delivered to the governing body.

(c) *Factors to be considered.* The planning commission shall consider the factors in § 138l.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) in reaching its recommendation concerning the ASA proposal and proposed modifications.

(d) *Contents of report.*

(1) *Report by a county planning commission.* If the planning commission described in subsection (b) is a county planning commission, its report shall contain that body's recommendations concerning the proposal and proposed modifications.

(2) *Report by a planning commission that is not a county planning commission.* If the planning commission described in subsection (b) is not a county planning commission, its report shall relate the potential effect of the proposal and proposed modifications upon the local government's planning policies and objectives.

§ 138l.25. Advisory committee action with respect to an ASA proposal.

(a) *Record of the date of receipt.* If a governing body submits an ASA proposal and all proposed modifications to an advisory committee in accordance with § 138l.17(e) (relating to local government unit action upon receipt of an ASA proposal), the advisory committee shall retain a record of the date upon which the referenced materials are received. This may be accomplished by time-stamping the documents, providing the governing body written confirmation of the date of receipt or other reasonable means of creating a record of the date upon which the documents were received.

(b) *45-day review period.* An advisory committee shall have up to 45 days from receipt of an ASA proposal and any proposed modifications from the governing body within which to submit a report to that governing body. If the advisory committee fails to submit this report to the governing body within the 45-day review period, this failure to act shall be deemed to constitute the advisory committee's approval of the ASA proposal. A report is considered "submitted" when it is delivered to the governing body.

(c) *Factors to be considered.* The planning commission shall consider the factors in § 138l.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) in reaching its recommendation concerning the ASA proposal and proposed modifications.

(d) *Contents of report.* The report of an advisory committee shall contain that body's recommendations concerning the proposal and proposed modifications.

§ 138l.26. Factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee.

(a) *Factors.* The governing body of the local government unit, the planning commission and the advisory committee shall consider the following factors in their respective reviews of an ASA proposal and proposed modifications:

(1) *Soil quality.* Land proposed for inclusion in an ASA shall have soils which are conducive to agriculture. This factor will have been satisfied without further consideration if the land to be included in the ASA meets one or more of the following standards:

(i) At least 50% of the land contains soils classified in Land Capability Classes I—IV.

(ii) At least 50% of the land falls within the Land Capability Class for "unique farmland."

(iii) At least 50% of the land contains soils that do not meet Land Capability Classes I—IV, but the land is in current active farm use and is being maintained in accordance with a soil erosion and sedimentation plan applicable to that land.

(2) *Consistency with comprehensive plans.* The use of land proposed for inclusion in an ASA shall be compatible with local government unit comprehensive plans.

(3) *Zoning.* If the land is subject to zoning requirements, it shall be zoned so as to permit agricultural use. The land need not be zoned to exclude other uses. A landowner may propose to include any land in an ASA, but the land must meet the zoning requirements of this paragraph.

(4) *Viable agricultural land.* Land proposed for inclusion in an ASA shall be viable agricultural land.

(5) *Extent and nature of farm improvements.* The extent and nature of farm improvements shall be considered.

(6) *Trends in agricultural economics.* Anticipated trends in agricultural conditions shall be considered.

(7) *Trends in agricultural technology.* Anticipated trends in agricultural technology shall be considered.

(8) *Other factors.* The governing body of the local government unit, the planning commission and the advisory committee may consider any other matter that may be relevant to its review and decision.

(b) *Resource materials.* The following are among the resource materials that may be used in reviewing an ASA proposal and proposed modifications:

(1) Soil surveys of the Pennsylvania State University.

(2) Soil surveys and other information provided by the National Cooperative Soil Survey.

(3) Soil survey maps prepared by USDA-NRCS.

(4) The United States census of agricultural categories of land use classes.

(5) Any other relevant published data, maps, charts, or results of soil or land use surveys made by any county, State or Federal agency.

Subchapter C. ADDING LAND TO AN EXISTING ASA

Sec.

- 138L.31. Adding land to an existing ASA.
- 138L.32. Automatic inclusion of certain parcels bisected by the dividing line between local government units.
- 138L.33. Automatic inclusion of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement by certain entities.
- 138L.34. Automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain parties.

§ 138L.31. Adding land to an existing ASA.

(a) *Adding land to an ASA located entirely within the same local government unit as the land proposed for inclusion.* If an ASA is entirely contained within a single local government unit, land that is located within that same local government unit may be added to the ASA at any time, using the same process and procedure that is followed for the initial creation of an ASA, as set forth in this chapter.

(b) *Adding land to an ASA located within two or more local government units, where the land proposed for inclusion lies entirely within the local government units in which the existing ASA is located.* If an ASA is contained within two or more local government units, land that is located entirely within the local government units in which the ASA is located may be added to the ASA at any time, using the same process and procedure that is followed for the initial creation of an ASA, as set forth in this chapter.

(c) *Adding land to an ASA where the land proposed for inclusion lies entirely outside the local government units in which the ASA is located.* If an ASA is contained within one or more local government units, land that is located in a local government unit outside of a local government unit within which the ASA is located may be added to an ASA at any time, if the following apply:

(1) Prior to the submission of the proposal, the local government unit in which the land proposed for inclusion is located and each local government unit in which the existing ASA is located have adopted an ordinance or resolution allowing all of the land (including, at a minimum, both the land in the existing ASA and the land proposed for inclusion) to be part of a single ASA located within all of the local government units.

(2) The addition is made using the same process and procedure that is followed for the initial creation of an ASA, as set forth in this chapter.

(d) *Minimum acreage requirement is inapplicable.* Where land is proposed for inclusion into an existing ASA, it need not meet the minimum 250-acres-of-viable-agricultural-land requirement that is applicable to the initial formation of an ASA.

Example: Three parcels of farmland, totaling 120 acres of viable agricultural land, are proposed for inclusion into an existing ASA. The total acreage of the parcels proposed for inclusion does not have to meet the same 250-acres-of-viable-agricultural-land standard that was applicable to the initial formation of the ASA.

(e) *Effect of addition of land to an existing ASA on the required 7-year review of the ASA.* If land is added to an existing ASA, the added land shall be reviewed at the same time the original land undergoes its 7-year review as described in § 138L.51 (relating to 7-year review) or an interim review as described in § 138L.52 (relating to interim review).

§ 138L.32. Automatic inclusion of certain parcels bisected by the dividing line between local government units.

If a parcel of farmland is bisected by the dividing line between two local government units, the entire parcel shall be automatically included in an ASA—whether in the initial creation of the ASA or by modification of an existing ASA—if the following apply:

(1) The two local government units are in the same county.

(2) The parcel meets the eligibility requirements for inclusion in an ASA.

(3) A proposal for creation or modification of an ASA has been submitted to the governing body of one of the local government units in which the parcel is located, as set forth in this chapter seeking the following:

(i) In the case of a proposal for the creation of an ASA: the inclusion of the entire parcel in the ASA.

(ii) In the case of a proposal for the modification of an existing ASA, where no portion of the parcel is within that existing ASA: the inclusion of the entire parcel within the ASA.

(iii) In the case of a proposal for the modification of an existing ASA, where a portion of the parcel is part of the existing ASA: the inclusion of the remainder of the parcel within the ASA.

(4) A majority of the parcel's viable agricultural land lies within the local government unit to which the proposal for creation or modification of an ASA has been submitted.

(5) The local government unit in which the minority of the parcel's viable agricultural land is located has not approved the creation of an ASA within its borders.

(6) The governing body of the local government unit adopts a proposal for creation or modification of an ASA that includes—at a minimum—that portion of the parcel located within that government unit.

§ 138L.33. Automatic inclusion of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement by certain entities.

(a) *General.* If a parcel of farmland is bisected by the dividing line between two local government units, and the portion of the parcel in one local government unit is within an ASA and the portion of the parcel in the other local government unit is not, the portion of the parcel that is not within an ASA shall be automatically included in the ASA if the following apply:

(1) A majority of the parcel's viable agricultural land lies within the local government unit in which the ASA is located.

(2) An agricultural conservation easement is purchased by any of the following with respect to the parcel:

(i) The county.

(ii) The county and the Commonwealth, jointly.

(iii) The county and a local government unit, jointly.

(iv) The county, the Commonwealth and a local government unit, jointly.

Example 1: A 100-acre parcel of farmland is comprised of 80 acres in Township A and 20 acres in Township B. The 80-acre portion of the parcel is within an ASA established by Township A. The

majority of the parcel's viable agricultural land is in Township A. The county purchases an agricultural conservation easement with respect to the parcel. Under these facts, as of the purchase of the agricultural conservation easement the 20-acre portion of the parcel located in Township B becomes part of the ASA covering the 80-acre portion of the parcel.

(b) *Exception.* Subsection (a) does not apply with respect to agricultural conservation easement purchases made solely by the Commonwealth.

§ 138L.34. Automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain parties.

(a) *General.* If a parcel of farmland is bisected by the dividing line between two counties, and the portion of the parcel in one county is within an ASA and the portion of the parcel in the other county is not, the portion of the parcel that is not within an ASA shall be automatically included in the ASA if the following apply:

(1) One of the following applies:

(i) There is a mansion house on the parcel of farmland, and it is located in the county within which the existing ASA is located.

(ii) There is a mansion house on the parcel of farmland, and the mansion house is bisected by the dividing line between the two counties. The landowner has designated the county within which the ASA is located as the situs of assessment for tax purposes.

(iii) There is no mansion house on the parcel of farmland, but the majority of the parcel's viable agricultural land lies within the existing ASA.

(2) An agricultural conservation easement is purchased by any of the following with respect to the parcel:

(i) The county.

(ii) The county and the Commonwealth, jointly.

(iii) The county and a local government unit, jointly.

(iv) The county, the Commonwealth and a local government unit, jointly.

Example 1: A parcel of farmland straddles the boundary line between County A and County B. The portion of the parcel in County A is in an ASA. There is no mansion house on the parcel. The majority of the parcel's viable agricultural land is in County A. County A purchases an agricultural conservation easement with respect to the entire parcel. Under these facts, as of the purchase of the agricultural conservation easement the portion of the parcel in County B becomes part of the ASA in which the remainder of the parcel is located.

Example 2: A parcel of farmland straddles the boundary line between County A and County B. There is a mansion house on the parcel, and it is located in County A. County A purchases an agricultural conservation easement with respect to the entire parcel. Under these facts, as of the purchase of the agricultural conservation easement the portion of the parcel in County B becomes part of the ASA in which the remainder of the parcel is located.

Example 3: A parcel of farmland straddles the boundary line between County A and County B. There is a mansion house on the parcel, and it straddles the dividing line between County A and County B. County A is the situs of the mansion house for tax

purposes. County A purchases an agricultural conservation easement with respect to the entire parcel. Under these facts, as of the purchase of the agricultural conservation easement the portion of the parcel in County B becomes part of the ASA in which the remainder of the parcel is located.

(b) *Exception.* Subsection (a) does not apply with respect to agricultural conservation easement purchases made solely by the Commonwealth.

Subchapter D. REMOVING LAND FROM AN EXISTING ASA

Sec.

138L.41. Removing land that has been in an ASA for 7 years or more.

138L.42. Removing land in the course of the 7-year review or an interim review.

§ 138L.41. Removing land that has been in an ASA for 7 years or more.

(a) *Removal permitted.* If land has been in an ASA for seven years or more, it may be removed from the ASA at the landowner's discretion, if both of the following apply:

(1) The landowner submits to the governing body of the local government unit in which the ASA is situated a written notification to have the land deleted from the ASA. The written notification shall contain information sufficient to identify the land to be removed, and shall include the acreage of the land to be removed.

(2) The written notification is submitted by certified mail, with return receipt requested.

(b) *Limitation on authority.* The governing body does not have the authority to deny a landowner's notification to remove land from an ASA.

(c) *Effective date of removal.* The removal of land from an ASA shall take effect upon receipt of this written notification by the governing body in accordance with subsection (a)(2).

(d) *Recording the removal of land from an ASA.* The governing body may wait until the next 7-year review or interim review to record deletions of land from the ASA accomplished by the written notification described in this section.

(e) *Failure of remaining land to meet ASA eligibility requirements.* If the removal of land from an ASA in response to a landowner's written notification causes the remaining lands of the ASA to fail to meet the minimum standards for an ASA, as set forth in § 138L.12 (relating to eligibility to propose the creation of an ASA), the ASA shall terminate. The governing body shall be responsible to record this termination with the offices or entities described in § 138L.22(a)(1)—(3) (relating to filing of ASA description by governing body; recording of the ASA description).

§ 138L.42. Removing land in the course of the 7-year review or an interim review.

(a) *Removal permitted.* The landowner shall have the discretion to remove the land from the ASA in which it is located, if this removal is done in the course of the 7-year review process described in § 138L.51 (relating to 7-year review), or the interim review process described in § 138L.52 (relating to interim review), and the following apply:

(1) The landowner submits to the governing body of the local government unit in which the ASA is situated a written notification to have the land deleted from the ASA. The written notification shall contain information

sufficient to identify the land to be removed, and shall include the acreage of the land to be removed.

(2) The written notification is submitted by certified mail, with return receipt requested.

(b) *Limitation on authority.* The governing body does not have the authority to deny a landowner's notification to remove land from an ASA.

(c) *Effective date of removal.* The removal of land from an ASA shall take effect upon receipt of this written notification by the governing body in accordance with subsection (a)(2).

(d) *Recording the removal of land from an ASA.* The governing body shall record the removal of land from an ASA under this section as it would any other addition or deletion of land in the course of the 7-year review or interim review.

(e) *Failure of remaining land to meet ASA eligibility requirements.* If the removal of land from an ASA in response to a landowner's written notification causes the remaining lands of the ASA to fail to meet the minimum standards for an ASA, as set forth in § 1381.12 (relating to eligibility to propose the creation of an ASA), the ASA shall terminate. The governing body shall be responsible to record this termination with the offices or entities described in § 1381.22(a)(1)—(3) (relating to filing of ASA description by governing body; recording of the ASA description).

Subchapter E. SEVEN-YEAR REVIEW AND INTERIM REVIEW

Sec.
1381.51. Seven-year review.
1381.52. Interim review.

§ 1381.51. Seven-year review.

(a) *General.* The governing body of the local government unit shall review an ASA 7 years from the date of its creation and every 7 years thereafter, in accordance with the procedure in this section.

(b) *Advisory bodies to be consulted.* The governing body conducting a 7-year review shall request the recommendations of the planning commission, the county planning commission and the advisory committee with respect to the ASA that is being reviewed. The governing body shall seek and obtain these recommendations on its own timetable, but sufficiently in advance of the end of the 7th year to allow a summary of the recommendations of these advisory bodies to be included in the notice described in subsections (c)—(e).

(c) *Notice required 210 days or more before the end of the 7th year.* The governing body conducting a 7-year review shall, at least 210 days prior to the end of the 7th year, provide notice of the 7-year review of the ASA and the public hearing to be held as part of that review.

(d) *Notice procedure.* The notice described in subsection (c) shall be accomplished by doing the following:

- (1) Publishing a hearing notice in a newspaper having general circulation in the area in which the ASA is located.
 - (2) Providing a written hearing notice to any person owning land within the ASA.
 - (3) Posting a written hearing notice in at least five conspicuous places within, adjacent to or near the ASA.
- (e) *Contents of hearing notice.* The hearing notice described in subsection (d) shall contain the following:

(1) A statement of the time, date and location of the public hearing.

(2) A general description of the ASA being reviewed.

(3) A general description of the recommendations of the planning commission, the county planning commission and the advisory committee.

(4) Notification that interested persons may, within 30 days of the date of the notice, submit proposed modifications to the ASA to the governing body.

(f) *Public hearing required between 120 and 180 days before the end of the 7th year.* The governing body conducting a 7-year review shall, at least 120 days prior to the end of the 7th year and no more than 180 days prior to the end of the 7th year, conduct a public hearing to review the ASA.

(g) *Location of public hearing.* The public hearing described in subsection (e) shall be held at a place either within the ASA or at a location readily accessible to the ASA—such as a nearby municipal building.

(h) *Factors to be considered by governing body.* The governing body shall consider the factors in § 1381.19(b) (relating to decision of local government unit) in reaching its decision to approve the ASA without change, modify the ASA or terminate the ASA.

(i) *Decision of governing body.* The governing body conducting a 7-year review shall, following the public hearing, approve the ASA without change, modify the ASA or terminate the ASA.

(j) *Notice of decision.* The governing body conducting a 7-year review shall provide notice of its decision in accordance with § 1381.20 (relating to notice of decision of local government unit).

(k) *Failure to act is deemed to be approval of the ASA without modification.* If the governing body fails to complete the steps set forth in subsections (a)—(i) prior to the end of the 7th year, or if a proposed modification to the ASA is rejected, the ASA shall be deemed to be readopted without modification for another 7 years.

(l) *Recording a modification of an ASA or a termination of an ASA.* If the governing body modifies an ASA or terminates an ASA it shall, within 10 days of its decision, file a notice of termination or modification with the following:

- (1) The recorder of deeds of any county within which the ASA is located.
- (2) The county planning commission.
- (3) The planning commission of the local government unit.

(m) *Responsibility of the recorder.* A recorder of deeds receiving a notice of termination or modification of an ASA from a governing body as described in subsection (l) shall record the description in a manner sufficient to give notice to all persons who have an interest in land within the ASA or in lands adjoining the ASA.

§ 1381.52. Interim review.

(a) *Discretion.* If 10% or more of the land within an ASA is diverted to residential or nonagricultural commercial development at any time prior to a 7-year review of the ASA, the governing body may review the ASA and consider modifying or terminating the ASA, in accordance with the procedure in this section.

(b) *Advisory bodies to be consulted.* If the governing body elects to pursue the interim review described in

subsection (a), it shall request, in writing, that the planning commission, the county planning commission and the advisory committee review the ASA and make recommendations with respect to modification or termination of the ASA within 30 days of receiving the written request.

(c) *Responsibility of advisory bodies.* The advisory bodies referenced in subsection (b) shall issue written recommendations within 30 days of receiving a request for recommendations from the governing body.

(d) *Public hearing requirements.* If the governing body elects to pursue the interim review described in subsection (a), it shall conduct a public hearing no sooner than 45 days after it submits its request for recommendations to the planning commission, the county planning commission and the advisory committee. The governing body shall provide the same notice for the public hearing as is described in § 1381.18(b) and (c) (relating to public hearing by local government unit on ASA proposal).

(e) *Location of public hearing.* The public hearing described in subsection (d) shall be held at a place either within the proposed ASA or at a location readily accessible to the proposed ASA—such as a nearby municipal building.

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DEPARTMENT OF HEALTH

[28 PA. CODE CH. 6]

Drugs Which May be Used by Certain Optometrists

The Secretary of Health (Secretary) proposes to amend the list of drugs which may be used by certain optometrists in § 6.1 (relating to approved drugs), to read as set forth in Annex A.

A. Purpose of the Amendment

Under section 2 of the Optometric Practice and Licensure Act (act) (63 P.S. § 244.2), optometrists may use pharmaceutical agents for diagnostic purposes, and for certain therapeutic purposes, only as approved by the Secretary. The pharmaceutical agents, and the purposes for which they may be used by optometrists are in § 6.1. The drugs included on the list must be approved by the Secretary. The State Board of Optometry (Board) requested that the Secretary approve certain additional therapeutic drugs. In its request to the Secretary, the Board identified the drugs by brand name and generic name, which are listed in this paragraph with the generic name in parentheses. Currently, the regulations identify drugs only by the generic name. It is proposed that any added drugs will also be listed by the generic name only. The Secretary has approved a request from the Board to add antibacterial agent Quixin (levofloxacin); oral analgesic Ultram (tramadol); and topical analgesics Alamast (pemirolast potassium), Emadine (emedastine difumarate), Optivar (azelastine hydrochloride) and Zaditor (ketotifen fumerate) to the list of approved drugs. Antibacterial agents destroy bacteria. Analgesic drugs are used as pain relievers.

The Board also requested that certain oral antibiotics [Cipro (ciprofloxacin), Lenzolid (zyvox) and Levaquin (levofloxacin)] be added to the list. The Secretary declined the request to add these agents. As broad-spectrum oral

antibiotics, Cipro, zyvox and Levaquin should be limited to treating resistant or serious infections only. Further, the Federal Food and Drug Administration (FDA) has expressed concerns about inappropriate use of antibiotics leading to increase in resistant organisms; thereby recommending that alternatives should be considered before initiating treatment with antibiotics such as zyvox in the outpatient setting.

Using broad-spectrum antibiotics also creates a higher risk of certain side effects, such as the development of pseudomembranous colitis and superinfections. Also, due to the pharmacological profile of these antibiotics, periodic assessment of organ system functions, including renal, hepatic and hematopoietic functions, is advisable during prolonged therapy.

For these reasons, the antibiotic drugs rejected for inclusion in the list of drugs that optometrists may use in their practice should only be prescribed by a licensed health professional with extended pharmacological, diagnostic and treatment education.

B. Requirements of the Amendment

The Secretary proposes to add the following pharmaceutical agents to the approved drug products listed in § 6.1(b):

1. Levofloxacin
2. Tramadol
3. Pemirolast potassium
4. Emedastine difumarate
5. Azelastine hydrochloride
6. Ketotifen fumerate

C. Affected Persons

Optometrists will be able to use, administer and prescribe additional pharmaceutical agents and their patients will be able to receive them for therapeutic purposes. The patients would potentially benefit in that they would have a wider range of agents available to them, thus potentially enhancing their care and treatment.

D. Fiscal Impact

This proposed rulemaking will have no measurable fiscal impact on the Commonwealth, local government, the private sector or the general public. This proposed rulemaking merely enhances the availability of therapeutic agents to patients of certain optometrists.

E. Paperwork Requirements

The addition of these agents to the list of approved drugs will not result in additional costs or paperwork.

F. Effective Date/Sunset Date

This proposed rulemaking will become effective immediately upon publication as a final-form regulation. This regulation is continually monitored and updated as needed. There is no sunset date.

G. Statutory Authority

The proposed amendment to the list of drugs which optometrists may use in the course of their practice is made under section 2 of the act which defines the "practice of optometry" to include the administration and prescription of legend and nonlegend drugs as approved by the Secretary for treatment. Treatment may include the prescription or administration of pharmaceutical agents for therapeutic purposes. The proposed amendment is also authorized under section 2101 of The

Administrative Code of 1929 (71 P. S. § 532(g)), which provides the Department with general authority to adopt its regulations.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 31, 2002, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has any objections to any portion of the proposed rulemaking, it will notify the Department by March 11, 2002. The notification shall specify the regulatory review criteria which have not been met by the portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendment, by the Department, the General Assembly and the Governor, of objections raised.

I. Contact Person

Interested persons are invited to submit all questions, comments, suggestions or objections regarding the proposal to John C. Hair, Director, Bureau of Community Program Licensure and Certification, Department of Health, 132 Kline Plaza, Suite A, Harrisburg, PA 17104, (717) 783-8665, within 30 days after publication of this notice in the Pennsylvania Bulletin. Persons with a disability who wish to submit comments, suggestions or objections regarding the proposed rulemaking may do so by using V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT]. Persons who require an alternative format of this document may contact John Hair so that necessary arrangements may be made.

ROBERT S. ZIMMERMAN, Jr., Secretary

Fiscal Note: 10-167. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART I. GENERAL HEALTH

CHAPTER 6. DRUGS WHICH MAY BE USED BY CERTAIN OPTOMETRISTS

§ 6.1. Approved drugs.

* * * * *

(b) Allowable pharmaceutical products. Optometrists may prescribe and administer the following pharmaceutical products or the A-rated generic therapeutically equivalent drug:

* * * * *

(7) Antimicrobial agents.

(i) Antibacterial—topical use only.

* * * * *

(D) DNA synthesis inhibitors.

* * * * *

(IV) Levofloxacin.

* * * * *

(8) Analgesic drugs—oral and topical.

(i) Analgesic drugs—oral.

* * * * *

(E) Tramadol.

(ii) Antihistamines and mast cell stabilizers—topical only.

* * * * *

(I) Pemirolast potassium.

(J) Emedastine difumarate.

(K) Azelastine hydrochloride.

(L) Ketotifen fumerate.

[Pa.B. Doc. No. 02-214. Filed for public inspection February 8, 2002, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 35]

[L-00010154]

Street Railway Transportation

The Pennsylvania Public Utility Commission (Commission) on November 30, 2001, adopted a proposed rulemaking order which proposes to delete railway transportation regulations which have become obsolete. The contact person is David A. Salapa, (717) 783-2841 in the Bureau of Transportation and Safety, Legal Division.

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

At one time, street railway companies provided passenger service to many areas of this 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 this 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 Department of Transportation (Department). Since the Department monitors the safety programs initiated by SEPTA and PAT, the Commission's regulations in Chapter 35 (relating to street railway transportation) are unnecessary.

Commissioners Present: Glen R. Thomas, Chairperson; Robert K. Bloom, Vice-Chairperson; Aaron Wilson, Jr.; Terrance J. Fitzpatrick

Public Meeting held
November 30, 2001

Order

By the Commission:

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

At one time street railway companies provided passenger service to many areas of this Commonwealth. When automobiles came into widespread use, many street railway companies began to lose money. Over the years many of these street railway companies abandoned service, discontinued operations and liquidated their assets. Finally, the only areas in this 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 losing 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, SEPTA and 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. Cmwlth. 1975). Thus the era of privately owned street railway companies in this 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.A. §§ 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 CFR 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) (relating to general powers). 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 (relating to creation of metropolitan transportation authorities) 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. See *Application of SEPTA*, Docket No. A-00116200 (December 17, 1999); *Application of SEPTA*, Docket No. A-00116334 (March 17, 2000); and *Application of SEPTA*, 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. See 66 Pa.C.S. § 102 (relating to definitions). 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 (relating to character of service and facilities; proper service established on complaint; authority to order conservation and load management programs; and reports of accidents), 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 Department staff and confirmed that PAT and SEPTA receive Federal funds from the Federal Transit Administration (FTA) through the Department. The Department acts as the conduit for Federal funds to PAT, SEPTA and other local transportation agencies. The FTA regulations at 49 CFR 659.1—659.49 require the Department, as the oversight agency, to develop a safety program for street railways operated by local transit authorities. The Department's safety program for local transit authorities is administered by that agency's Bureau of Public Transportation.

The Department, Bureau of Public Transportation is the oversight agency of PAT and SEPTA pursuant to 49 CFR 659.1—659.49. The regulations at 49 CFR 659.31 and 659.32 require SEPTA and PAT to implement system safety program plans consistent with the Department's system safety program standards. Commission staff conferred with Department's staff in the Bureau of Public Transportation and ascertained that SEPTA and PAT have implemented these safety plans. Department 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 CFR 659.35 and 659.36. In addition, PAT and SEPTA provide accident reports to the Department as required by 49 CFR 659.39. Since the Department, Bureau of Public Transportation, acts as oversight agency of SEPTA and PAT pursuant to 49 CFR 659.1—659.49, the Commission's regulations in Chapter 35 are unnecessary.

Section 35.1 (relating to definitions) is deleted since it is superseded by the definitions set forth at 49 CFR 659.5. Definition of "rail fixed guide way system" defines the same functions as the definition of "street railway" in § 35.1.

Section 35.2 (relating to applicability) is deleted as not necessary in light of the Federal regulations at 49 CFR 659.1—659.49.

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

Section 35.11 (relating to accounts) is deleted as unnecessary due to Federal regulations at 49 CFR 630.1—630.12 that set forth standards of accounting and reporting for transit agencies receiving Federal funds from the FTA. Since only SEPTA and PAT operate street railways in this Commonwealth, they are already governed by the reporting regulations at 49 CFR 630.1—630.12 and the Statute at 49 U.S.C. § 5335.

Section 35.12 (relating to records) is deleted as outdated. The reference in this section to 49 CFR 1221 is obsolete. That section of the CFR no longer exists. The regulations at 49 CFR 630.1—630.12 set forth the standards of accounting and reporting for transit agencies receiving Federal funds from FTA.

Section 35.13 (relating to accident reports) is deleted as unnecessary. The Federal regulations at 49 CFR 659.39 set forth accident reporting requirements for transit agencies receiving Federal funds.

Section 35.21 (relating to equipment and facilities) is deleted as unnecessary. The Federal regulations at 49 CFR 659.1—659.49 set forth the requirements for transit authorities to develop a system safety program plan.

Sections 35.22 and 35.31—35.36 are 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 or SEPTA.

Section 35.23 (relating to interference with operators) is deleted as unnecessary. The Federal regulations at 49 CFR 659.1—659.49 set forth the requirements for transit authorities to develop a system safety program plan.

Sections 35.24—35.26, 35.31—35.36, 35.43 and 35.44 are 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 35.41 (relating to rate schedules) 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 (relating to interruptions of service) 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.

Accordingly, under sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501 and the Com-

monwealth Documents Law (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5, we propose to delete the regulations in Chapter 35 as noted and as set forth in Annex A. *Therefore, It Is Ordered That:*

1. A proposed rulemaking docket shall be opened to delete the regulations in Chapter 35 as set forth in Annex A of this order.

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

3. 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. 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. 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. Within 30 days of this order's publication in the *Pennsylvania Bulletin*, 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. 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.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-225. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

CHAPTER 35. (Reserved)

(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 35-1—35-8, serial pages (239199)—(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).

[Pa.B. Doc. No. 02-215. Filed for public inspection February 8, 2002, 9:00 a.m.]

NOTICES

DEPARTMENT OF BANKING

Action on Applications

The Department of Banking, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending January 29, 2002.

BANKING INSTITUTIONS

Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
12-31-01	Earthstar Bank Southampton Bucks County Purchase of assets/assumption of liabilities of Cornerstone Savings Association, Glenside <i>Branch Acquired:</i> 4800 Richmond Street Philadelphia Philadelphia County	Southampton	Effective
1-24-02	Parkvale Savings Bank, Monroeville, and The Second National Bank of Masontown, Masontown Surviving institution— Parkvale Savings Bank, Monroeville	Monroeville	Approved

Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
1-23-02	Northwest Savings Bank Warren Warren County	1700 Roosevelt Ave. York York County	Approved
1-23-02	Parkvale Savings Bank Monroeville Allegheny County	6298 Steubenville Pike Robinson Township Allegheny County	Filed
1-24-02	Commonwealth Bank Norristown Montgomery County	ShopRite Supermarket 3745 Aramingo Avenue Philadelphia Philadelphia County	Approved
1-24-02	First Penn Bank Philadelphia Philadelphia County	1032 Arch Street Philadelphia Philadelphia County	Filed
1-25-02	Community Bank and Trust Company Clarks Summit Lackawanna County	Corner of Seventh and Lackawanna Avenues Scranton Lackawanna County	Filed

Branch Relocations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
1-24-02	Community Bank and Trust Company Clarks Summit Lackawanna County	<i>To:</i> 60 Main Street Clifford Susquehanna County <i>From:</i> Route 106 Clifford Susquehanna County	Filed

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS

No activity.

JAMES B. KAUFFMAN, Jr.,
Secretary

[Pa.B. Doc. No. 02-216. Filed for public inspection February 8, 2002, 9:00 a.m.]

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Chester Creek Conservation Plan

The Department of Conservation and Natural Resources (DCNR), Bureau of Recreation and Conservation has approved the "Chester Creek Conservation Plan" (Plan) and is placing the Chester Creek, the watershed and all tributaries covered in the Plan in Chester and Delaware Counties, on the Pennsylvania Rivers Conservation Registry (Registry).

The Pennsylvania Environmental Council submitted the Plan and other required information to gain Registry status.

After review of the Plan and other information, the DCNR has determined that the Pennsylvania Rivers Conservation Program (Program) requirements have been satisfied and places the following on the Registry:

1. The watershed area of Chester Creek (Chester and

Delaware Counties) from the headwaters to its confluence with the Delaware River—67.2 square miles.

2. All tributary streams within the Chester Creek Watershed.

This action becomes effective February 9, 2002. Projects identified in the Plan become eligible for implementation, development or acquisition grant funding through the Program.

A copy of the Final Plan is available for review at: Pennsylvania Environmental Council, 117 South 17th Street, Suite 2300, Philadelphia, PA 19103, (215) 563-0250 and Department of Conservation and Natural Resources, Rachel Carson State Office Building, 400 Market Street, 6th floor, Harrisburg, PA 17101, (717) 787-2316.

Maps and supporting data are on file at the Pennsylvania Environmental Council.

JOHN C. OLIVER, III,
Secretary

[Pa.B. Doc. No. 02-217. Filed for public inspection February 8, 2002, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS

NPDES APPLICATIONS

PART I PERMITS

Under the Federal Clean Water Act and The Clean Streams Law, the following parties have applied for an NPDES permit or to renew their current permit to discharge controlled wastewaters into the waters of this Commonwealth or to conduct other activities required by the NPDES permit. For renewal applications listed in Section I, the Department of Environmental Protection (Department) has made a tentative determination to reissue these permits for 5 years subject to effluent limitations and monitoring and reporting requirements in their current permits, with appropriate and necessary updated requirements to reflect new and changed regulations and other requirements. For all new permit applications, renewal application with major changes or applications for permits not waived by the EPA, the Department, based upon preliminary reviews, also made a tentative determination of proposed effluent limitations and other terms and conditions for the permit applications listed in Section II. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the EPA Region III Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement, to the office noted before the application within 30 days from the date of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding this application. The comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the responsible office considers the public response significant. Following the comment period, the Department's Water Management Program

Manager will make a final determination regarding these applications. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The renewal application, including proposed effluent limitations and special conditions, is available on file. For new permit applications, information submitted with the applications is available on file. The information may be inspected and arrangements made for copying at the office indicated before the application.

Persons with a disability, who require an auxiliary aid, service, including TDD users or other accommodations to seek additional information, should contact the Department through the Pennsylvania AT&T Relay service at (800) 654-5984.

I. NPDES Renewal Applications

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA-0021199 Sewage Municipal	Beaver Meadows Borough P. O. Box 215 Beaver Meadows, PA 18216	Carbon County Banks Township	Beaver Creek (Watershed #2B)	Yes

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0087840	JMH, Inc. Premium Beverage Packagers 1090 Spring Street Wyomissing, PA 19610	Berks County Muhlenberg Township	3C	Yes
PA0029335	Pennsylvania Lions Beacon Lodge Camp 114 SR 103 South Mount Union, PA 17066	Mifflin County Wayne Township	12A/Sugar Valley Road	Yes
PA0031861	Zerbe Sisters Nursing Center Inc. 2499 Zerbe Road Narvon, PA 17555	Caernarvon Township Lancaster County	7J—UNT Conestoga River	Yes
PA0087343	Broad Top Township Langondale STP 187 Municipal Road P. O. Box 57 Defiance, PA 16633-0057	Bedford County Broad Top Township	11-D/Sandy Run	Yes
PA0087335	Broad Top Township Kearney Village STP 187 Municipal Road P. O. Box 57 Defiance, PA 16633-0057	Bedford County Broad Top Township	11-D/Longs Run	Yes
PA0087467	Oasis of Love Church R. D. 1, Box 251-A1 Saxton, PA 16678	Huntingdon County Carbon Township	11-D/House Run	Yes
PA0031631	Twin Valley School District 4851 N. Twin Valley Road Elverson, PA 19520	Berks County Caernarvon Township	7-J/East Branch Conestoga River	Yes
PA0085669	Centerport Borough Municipal Authority P. O. Box 248 Centerport, PA 19516	Berks County Centre Township	3-B/Irish Creek	Yes
PA0085006	Conoy Township—Bainbridge 211 Falmouth Road Bainbridge, PA 17502-9428	Lancaster County Conoy Township	7-G/Conoy Creek	Yes
PA0085022	Conoy Township—Falmouth 211 Falmouth Road Bainbridge, PA 17502-9428	Lancaster County Conoy Township	7-G/UNT Susquehanna River	Yes

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0082953	Boyd E. Diller, Inc. Diller Waste Transfer Station 6820 Wertzville Road Enola, PA 17025	Cumberland County Silver Spring Town- ship	7-B/UNT Sears Run	Yes
PA0086878	Hamburg Municipal Authority 61 North 3rd Street Hamburg, PA 19526	Berks County Windsor Township	3-B/Furnace Creek	Yes
PA0084166	City of Lebanon Authority 400 S. 8th St. Lebanon, PA 17042	Lebanon County Swatara Township	7-D/UNT Swatara Creek	Yes
PA0054852	Western Berks Refuse Authority 455 Poplar Neck Road Birdsboro, PA 19508	Berks County Cumru Township	3-C/Schuylkill River	Yes

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0009385 Industrial Waste	Con Agra Grocery Products Company 30 Marr Street Milton, PA 17847	Northumberland Milton Borough	Storm Sewer to West Branch Susquehanna River 10D	Y
PA0039144 Industrial Waste	Fish and Boat Commission 96 State Route 244 East Coudersport, PA 16915-9646	Potter Oswayo Township	Oswayo 16-C	Y

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

PA0048326, Industrial Waste, **United Erie Division of Interstate Chemical Company**, 438 Huron Street, Erie, PA 16502. This proposed facility is located in the City of Erie, **Erie County**.

Description of Proposed Activity: renewal for discharge of noncontact cooling water and boiler blowdown from a foundry resin and grease producer.

The receiving stream, Myrtle Street storm sewer, is in the Lake Erie watershed and classified for: warm water fishery, aquatic life, water supply and recreation. There is no potable water supply affected by this discharge.

The proposed effluent limits for Outfall 101 based on a design flow of 0.060 MGD.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum</i>
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	
Flow (MGD)				Monitor only	
Temperature				Monitor only	
Oil and Grease			15		30
pH	Within limits of 6.0 to 9.0 standard units at all times.				

Outfalls 001, 002 and 003 (stormwater only)

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum</i>
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	
Flow (MGD)				Monitor only	
Total Suspended Solids				Monitor only	
Aluminum				Monitor only	
Phosphorus				Monitor only	

The EPA Waiver is in effect.

PA0002020, Industrial Waste, **Motion Control Ind., Inc.—Carlisle Corporation**, Gillis Avenue, Ridgway, PA 15853. This proposed facility is located in Ridgway Borough, **Elk County**.

Description of Proposed discharge of noncontact cooling water and stormwater, is in watershed 17-A and classified for: cold water fishery, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for

TDS, NO₂—NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the West Penn Water Company, Clarion District on the Clarion River located at Clarion Borough approximately 58.5 miles below point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.078 MGD.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Flow	XX				
Temperature (°F)			XX		
pH	Within limits of 6.0 to 9.0 standard units at all times.				

The proposed effluent limits for Outfall 002 are based on a design flow of 0.078 MGD.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Flow	XX				
Temperature (°F)			XX		
pH	Within limits of 6.0 to 9.0 standard units at all times.				

The proposed effluent limits for Outfall 003 are based on a design flow of 0.0785 MGD.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Flow	XX				
Temperature (°F)			XX		
pH	Within limits of 6.0 to 9.0 standard units at all times.				

The proposed effluent limits for Outfall 004 are based on a design flow of 0.162 MGD.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Flow	XX				
Temperature (°F)			XX		
pH	Within limits of 6.0 to 9.0 standard units at all times.				

The proposed effluent limits for Outfall 005 are based on a design flow of 0.029 MGD.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Flow	XX				
pH			XX		

XX—Monitor and report.

In addition to the effluent limits, the permit contains the following major special conditions.

The EPA Waiver is in effect.

II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Applications

Southeast Region: Water Management Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

PA0013021, Industrial Waste, **PQ Corporation**, 1201 West Front Street, Chester, PA 19013. This application is for renewal of an NPDES permit to discharge industrial wastewater and stormwater from the PQ Corporation in the City of Chester, **Delaware County**.

The receiving streams are classified for the following uses: warm water fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 0.025 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅		Monitor/Report
COD		Monitor/Report
Oil and Grease		Monitor/Report
pH		Monitor/Report

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids		Monitor/Report
Total Kjeldahl Nitrogen		Monitor/Report
Total Phosphorus (as P)		Monitor/Report
Iron, Dissolved		Monitor/Report
Temperature		110°F

The proposed effluent limits for Monitoring Point 101, based on an average flow of 0.001 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids	30	60	75
Total Dissolved Solids	1,000	1,750	2,500
Oil and Grease	15		30
pH (standard units)	6.0 (I-Min)		9.0

The proposed effluent limits for Monitoring Point 201, based on an average flow of 0.024 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids	30	60	75
Total Dissolved Solids	1,000	1,750	2,500
Oil and Grease	15		30
pH (standard units)	6.0 (I-Min)		9.0

The proposed effluent limits for Outfall 003, 004, 006 and 007, based on an average storm event are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅		Monitor/Report
COD		Monitor/Report
Oil and Grease		Monitor/Report
pH		Monitor/Report
Total Suspended Solids		Monitor/Report
Total Kjeldahl Nitrogen		Monitor/Report
Total Phosphorus (as P)		Monitor/Report
Iron, Dissolved		Monitor/Report

The EPA Waiver is in effect.

No. PA0058441, Sewage, **Christian and Melanie Derstine**, 2700 Old Bethlehem Road, Sellersville, PA 18960. This application is for issuance of an NPDES permit to discharge treated sewage from Derstine SRSTP in West Rockhill Township, **Bucks County**. This is a new discharge to an unnamed tributary to Tohickon Creek.

The first downstream potable water supply intake from the point of discharge is NWRA proposed intake in Plumstead Township.

The receiving stream is classified for the following uses: trout stocking fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 400 gpd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	10	20
Total Suspended Solids	20	40
Total Residual Chlorine	Monitor/Report	Monitor/Report
Fecal Coliform	200 colonies/100 ml as a geometric average	
pH	Within limits of 6.0—9.0 Standard Units at all times	

Other Conditions:

The EPA Waiver is in effect.

No. PA0036374, Sewage, **Eaglepointe Development Associates**, 55 Country Club Drive, Suite 200, Downingtown, PA 19335-3062. This application is for renewal of an NPDES permit to discharge treated sewage from a nonmunicipal sewage treatment plant in Upper Uwchlan Township, **Chester County**. This is an existing discharge to an unnamed tributary to Marsh Creek.

The receiving stream is classified for the following uses: high quality trout stocking fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 0.015 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅		
(5-1 to 10-31)	10	20
(11-1 to 4-30)	20	40
Suspended Solids	30	60
Ammonia (as N)		
(5-1 to 10-31)	0.5	1.0
(11-1 to 4-30)	1.5	3.0
Phosphorus (as P)	0.5	1.0
Total Residual Chlorine	0.14	0.34
Fecal Coliform	200 colonies/100 ml as a geometric average	
Dissolved Oxygen	minimum of 5 mg/l at all times	
pH	Within limits of 6.0—9.0 Standard Units at all times	

Other Conditions:

The EPA Waiver is in effect.

No. PA0020303, Sewage, **Schwenksville Borough Authority**, P. O. Box 458, 298 Main at Church Street, Schwenksville, PA 19473. This application is for renewal of an NPDES permit to discharge treated sewage from an existing sewage treatment plant in Schwenksville Borough, **Montgomery County**. This is an existing discharge to Perkiomen Creek.

The receiving stream is classified for the following uses: warm water fishery and migratory fishery.

The proposed effluent limits for Outfall 001, based on an average flow of 0.300 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅			
(5-1 to 10-31)	20	30	40
(11-1 to 4-30)	25	40	50
Suspended Solids	30	45	60
Ammonia (as N)			
(5-1 to 10-31)	3.0		6.0
(11-1 to 4-30)	9.0		18.0
Phosphorus (as P)			
(4-1 to 10-31)	2.0		4.0
Total Residual Chlorine	0.5		1.2
Fecal Coliform	200 colonies/100 ml as a geometric average		
Dissolved Oxygen	Monitor		Monitor
pH	Within limits of 6.0—9.0 Standard Units at all times		

The EPA Waiver is in effect.

Northeast Region: Water Management Program Manager; 2 Public Square, Wilkes-Barre, PA 18711-0790.

PA#0044270, Sewage, **Keystone Mobile Home Park**, P. O. Box 295, Birdsboro, PA 19508. This proposed facility is located in North Whitehall Township, **Lehigh County**. Description of Proposed Activity: renewal of NPDES permit.

The receiving stream, Lehigh River, is in the State Water Plan watershed #2C and is classified for: trout stocking fishery. The nearest downstream public water supply is the intake for Northampton Water Supply, located on the Lehigh River is approximately 20 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of .0375 MGD.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	50
Total Suspended Solids	30	60
NH ₃ -N		
(5-1 to 10-31)	20	40
Dissolved Oxygen	A minimum of 5.0 mg/l at all times.	
Fecal Coliform	200/100 ml as a geometric mean	
pH	6.0 to 9.0 standard units at all times.	
Total Residual Chlorine	1.2	2.8

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

Application No. PA 0086703, Industrial Waste, **NGK Metals Corporation**, 150 Tuckerton Road, Reading, PA 19612. This facility is located in Muhlenberg Township, **Berks County**.

Description of activity: The application is for an amendment of an NPDES permit for an existing discharge of treated industrial waste.

The receiving stream, Laurel Run, is in Watershed 3-C and classified for warm water fishes, water supply and recreation and fish consumption. The nearest downstream public water supply intake for Pottstown Borough is located on the Schuylkill River. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 based on a design flow of 0.36 MGD are:

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
pH	XXX	XXX	6.0 to 9.0 S.U. at all times		
Total Suspended Solids	90	80	30	60	75
Total Dissolved Solids	6,004	12,008	2,000	4,000	5,000
Osmotic Pressure	XXX	XXX	XXX	129 mos/kg	XXX
Total Fluoride	Monitor and Report	Monitor and Report	Monitor and Report	Monitor and Report	XXX
Total Beryllium	0.081	0.162	0.027	0.054	0.067
Total Cadmium	0.009	0.018	0.003	0.006	0.007
Total Copper	0.039	0.078	0.013	0.026	0.032
Chromium, VI	0.099	0.198	0.033	0.066	0.082
1,1-Dichloroethylene	Monitor and Report	Monitor and Report	Monitor and Report	Monitor and Report	XXX
1,1-Dichloroethylene	Monitor and Report	Monitor and Report	0.0008	0.002	0.002
1,1,1-Trichloroethane	Monitor and Report	Monitor and Report	Monitor and Report	XXX	XXX

Individuals may make an appointment to review the Department files on this case by calling the File Review Coordinator at (717) 705-4732.

The EPA waiver is in effect.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

PA0228214, Industrial Waste SIC 2086, **Danone Waters of North America**, 1 Aqua Penn Drive, P. O. Box 938, Milesburg, PA 16853. This proposed facility is located in Boggs Township, **Centre County**.

Description of Proposed Activity: This proposed action is for an amendment of an NPDES permit for a new discharge of industrial wastewater.

The receiving stream, Bald Eagle Creek, is in the State Water Plan watershed 9C and classified for: Trout Stocking (TSF). The nearest downstream public water supply intake for PA American Water Company is located on West Branch Susquehanna River is 66 miles below the point of discharge.

The proposed effluent limits for the existing Bottle Rinse Outfall 101 based on a design flow of 0.03 MGD.

Parameter	Mass (lbs/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
BOD ₅	5.5	12	22	49	61
TSS	9.0	29	36	117	146
Oil and Grease	3.8	7.5	15		30
pH	Within the Range of 9.0 to 6.0				

The proposed effluent limits for the new Reverse Osmosis Concentrate Outfall 102 based on a design flow of 0.027 MGD.

Parameter	Mass (lbs/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
TSS	6.8	23	30	100	125
Oil and Grease	3.4	4.5	15	20	30
TDS			Report	Report	
pH	Within the Range of 9.0 to 6.0				

Southwest Regional Office: Regional Manager, Water Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; (412) 442-4000.

PA0204897, Industrial Waste, SIC 4111, **Port Authority of Allegheny County, Transit Division**, 345 Sixth Avenue, 3rd Floor, Pittsburgh, PA 15222-2527. This application is for issuance of an NPDES permit to discharge treated stormwater from Collier Garage in Collier Township, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, Chartiers Creek, classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply (PWS) is the West View Municipal Authority, located at Mile 4.9—Ohio River, 16.85 miles below the discharge point.

Outfall 001: existing discharge, design flow varies.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow	Monitor and Report				
Total Suspended Solids			30		60
Oil and Grease			15		30
Iron			3.5		7.0

The EPA waiver is in effect.

PA0205443, Industrial Waste, SIC 1442, **Hanson Aggregates PMA, Inc.**, 400 Industrial Boulevard, New Kensington, PA 15068. This application is for renewal of an NPDES permit to discharge treated process water and stormwater from the Lower Burrell Land Plant in Lower Burrell Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, Allegheny River, classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply (PWS) is Oakmont Borough, located at Oakmont, PA, 4.6 miles below the discharge point.

Outfall 001: existing discharge, design flow of 0.008 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (MGD)	Monitor and Report				
Total Suspended Solids			60	110	
Oil and Grease			15	30	
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

PA0026841, Sewage, **Borough of Oakmont**, Fifth Street and Virginia Avenue, P. O. Box 206, Oakmont, PA 15139-0206. This application is for renewal of an NPDES permit to discharge treated sewage from Oakmont Wastewater Treatment Plant in Oakmont Borough, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Allegheny River, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Fox Chapel Water Authority.

Outfall 001: existing discharge, design flow of 1.2 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD ₅	25	37.5		50
Suspended Solids	30	45		60
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	100,000/100 ml as a geometric mean			
Total Residual Chlorine				
(1st month to 36th month)	1			3.3
(37th month to expiration)	0.5			1.6
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is not in effect.

PA0030082, Sewage, **Brownsville General Hospital**, 125 Simpson Road, Brownsville, PA 15417. This application is for renewal of an NPDES permit to discharge treated sewage from Brownsville General Hospital STP in Redstone Township, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as unnamed tributary to Dunlap Creek, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Washington Township Municipal Authority.

Outfall 001: existing discharge, design flow of 0.045 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	10			20
Suspended Solids	25			50
Ammonia Nitrogen				
(5-1 to 10-31)	1.5			3.0
(11-1 to 4-30)	3.0			6.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	1.4			3.3
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0090018, Sewage, **North Strabane Municipal Authority**, 1929B Route 519 South, Canonsburg, PA 15317. This application is for Renewal of an NPDES permit to discharge treated sewage from Willowlake Sewage Treatment Plant in North Strabane Township, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as unnamed tributary of Chartiers Creek, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the West View Municipal Authority located on the Ohio River.

Outfall 001: existing discharge, design flow of 0.07 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	10			20
Suspended Solids	25			50
Ammonia Nitrogen				
(5-1 to 10-31)	2.0			4.0
(11-1 to 4-30)	4.5			9.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	0.09			0.22
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			
Other Conditions:	The following effluent limitations will apply if/when the treatment plant receives flows exceeding 0.07 mgd but not exceeding 0.14 mgd.			

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	10	15		20
Suspended Solids	25	37.5		50
Ammonia Nitrogen				
(5-1 to 10-31)	2.0	3.0		4.0
(11-1 to 4-30)	3.5	5.3		7.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	0.04			0.12
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0217581, Sewage, **Louis Yemc**, 350 Arona Road, New Stanton, PA 15672. This application is for Renewal of an NPDES permit to discharge treated sewage from Yemc New Stanton Mack Truck Dealership STP in South Huntingdon Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as unnamed tributary of Hunters Run, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Westmoreland County—McKeesport Municipal Authority.

Outfall 001: existing discharge, design flow of 0.0004 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	10			20
Suspended Solids	10			20
Ammonia Nitrogen				
(5-1 to 10-31)	3.0			6.0
(11-1 to 4-30)	9.0			18.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	Monitor and Report			
Dissolved Oxygen	not less than 3 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

PA0238716, Sewage, **Brett M. and Tricia M. Peterson**, 9841 Mark Road, Erie, PA 16509. This proposed facility is located at 11438 Scotland Avenue in North East Township, **Erie County**.

Description of Proposed Activity: Treatment of sanitary waste from a single family dwelling using an Ecoflow ST-650 Biofilter.

The receiving stream, unnamed tributary to Lake Erie, is in watershed 15 (Lake Erie) and classified for: CWF; MF.

For the purpose of evaluating effluent requirements for TDS, NO₂—NO₃, fluoride and phenolics, there is no downstream potable water supply located below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.0005 MGD:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	10		20
Total Suspended Solids	20		40
Total Residual Chlorine	1.4		3.2
Fecal Coliform		200/100 ml as a geometric average	
pH		6.0 to 9.0 standard units at all times	

The EPA Waiver is in effect.

PA0221503, Sewage, **Louis J. Tracy III**, 10234 Sharp Road, Waterford, PA 16441. This proposed facility is located in Waterford Township, **Erie County**.

Description of Proposed Activity: treatment of sanitary waste from a golf course clubhouse and restaurant.

The receiving stream, unnamed tributary to LeBoeuf Creek, is in the French Creek watershed and classified for: WWF. For the purpose of evaluating effluent requirements for TDS, NO₂—NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply (stream and public water supplier) considered during the evaluation is Cambridge Springs, located approximately 24 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.0015 MGD.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	10		20
Total Suspended Solids	10		20
NH ₃ -N	3		6
Total Residual Chlorine	1.4		4.3
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a geometric average		
(10-1 to 4-30)	2,000/100 ml as a geometric average		
pH	6.0 to 9.0 standard units at all times		

The EPA Waiver is in effect.

**WATER QUALITY MANAGEMENT PERMITS
CONTROLLED INDUSTRIAL WASTE AND SEWAGE
WASTEWATER**

**APPLICATIONS UNDER THE CLEAN STREAMS
LAW**

PART II PERMITS

The following permit applications or requests for plan approval have been received by the Department of Environmental Protection (Department).

Persons wishing to comment on any of the applications are invited to submit a statement to the office noted before the application within 15 days from the date of this public notice. Comments received within this 15-day comment period will be considered in making the final decision regarding the application. The comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department reserves the right to hold a public hearing if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation of the area. If no hearing is held, the Department's Water Management Program Manager will make a final determination regarding the applications after a complete review. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

A copy of the permit application or proposed plan is on file in the office indicated and is open to public inspection. Appointments to review the application may be made by contacting Records Management at the indicated telephone number.

I. Industrial Waste and Sewerage Applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

WQM Permit No. 1502201, Industrial Waste, **Sunoco Inc (R & M)**, 20 Ten Penn Center, 1801 Market Street, Philadelphia, PA 19103. This proposed facility is located in East Marlborough Township, **Chester County**.

Description of Proposed Action/Activity: Construction and operation of a wastewater treatment facility for reinjection of treated groundwater from groundwater remediation system.

WQM Permit No. 0984422 Amendment No. 2, Sewerage, **Upper Makefield Township**, 1076 Eagle Road, Newtown, PA 18940. This proposed facility is located in Upper Makefield Township, **Bucks County**.

Description of Proposed Action/Activity: Construction to upgrade and expand Heritage Hills WWTF.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

WQM Permit No. 4101409, Sewerage SIC 4952, **Lycoming County Water and Sewer Authority**, 216 Old Cement Road, Montoursville, PA 17754. This proposed facility is located in Fairfield, Muncy and Muncy Creek Townships, **Lycoming County**.

Description of Proposed Action/Activity: Construction and operation of a sewer extension serving Halls Station, Lycoming Mall, Pennsdale and a portion of Muncy Creek Township.

The application was received on December 14, 2001.

WQM Permit No. 5902401, Sewerage, SIC 4952, **Westfield Township Municipal Authority**, P. O. Box 77, Cowanesque, PA 16918. This proposed facility is located in Westfield Township, **Tioga County**.

Description of Proposed Action/Activity: The applicant proposes to construct sewers in three separate areas of the Township contiguous to Westfield Borough along Routes 49 and 349. Treatment will be provided at the Westfield Borough wastewater treatment plant.

The permit application was received on January 4, 2002.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Application No. 3092201-A1, Industrial Waste, **Southwestern Pennsylvania Water Authority**, P. O. Box 187, Jefferson, PA 15344. Application for the Construction and Operation of the Water Treatment Plant to serve the Southwestern Pennsylvania Water Authority located in Cumberland Township, **Greene County**.

Application No. 0202402, Sewerage, **Terence Jackovic**, 611 Parliament Drive, Coraopolis, PA 15108. Application for the construction and operation of a small flow sewage treatment plant to serve the Jackovic Residence located in Sewickley Heights Borough, **Allegheny County**.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WQM Permit No. 1000201, Industrial Waste, **AK Steel—Butler Works**, P. O. Box 832, Route 8 South, Butler, PA 16003-0832. This proposed facility is located in Butler Township, **Butler County**.

Description of Proposed Action/Activity: This project is for the addition of Calcium Chloride and Aluminum Chloride System for fluoride removal and post neutralization system for pH control.

WQM Permit No. 1001202, Industrial Waste, **AK Steel—Butler Works**, P. O. Box 832, Route 8 South, Butler, PA 16003-0832. This proposed facility is located in Butler Township, **Butler County**.

Description of Proposed Action/Activity: This project is for the addition of Calcium Chloride and Aluminum Chloride System for fluoride removal.

WQM Permit No. 4202402, Sewerage, **Chris and Dianna Chapman**, R. R. 3, Box 121, Smethport, PA 16749. This proposed facility is located in Keating Township, **McKean County**.

Description of Proposed Action/Activity: This project is for a Single Residence Sewage Treatment Plant.

WQM Permit No. 2502401, Sewerage, **Rob Kurczewski**, 2142 N. Manor Drive, Erie, PA 16505. This proposed facility is located in Summit Township, **Erie County**.

Description of Proposed Action/Activity: This project is for a Single Residence Sewage Treatment Plant.

NPDES Stormwater Individual Permit

The following parties have applied for an NPDES permit to discharge stormwater associated with a con-

struction activity into waters of this Commonwealth. Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain limitations set forth in the permit conditions. These proposed determinations are tentative. Limitations are provided as erosion and sediment control best management practices which restrict the rate and quantity of sediment discharged.

Where indicated, the EPA Region III Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the appropriate Department Regional Office noted before the application within 30 days from the date of this public notice. Comments reviewed within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and relevant facts upon which it is based. A public hearing may be held after consideration of

comments received by the appropriate Department Regional Office during the 30-day public comment period.

Following the 30-day comment period, the appropriate Regional Office Water Management Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, including the erosion and sediment control plan for the earth disturbance activity, are on file and may be inspected at the office identified in this notice.

Persons with a disability that require an auxiliary aid, service or other accommodation to participate during the 30-day public comment period should contact the specified Regional Office. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Monroe County Conservation District: 8050 Running Valley Road, Stroudsburg, PA 18360, (570) 629-3060.

<i>NPDES No.</i>	<i>Applicant Name & Address</i>	<i>County & Municipality</i>	<i>Receiving Water/Use</i>
PAS10S108	Fern Partners 257 Rimrock Rd. Stroudsburg, PA 18360	Monroe County Hamilton Township	McMichael Creek HQ-CWF

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Fayette County Conservation District: 10 Nickman Plaza, Lemont Furnace, PA 15456, (724) 438-4497.

NPDES Permit PAS10L026, Stormwater, **NWL Company**, 1001 Lafayette Drive, Farmington, PA 15437 has applied to discharge stormwater associated with a construction activity located in Wharton Township, **Fayette County** to Deadman Run, HQ-CWF.

<i>NPDES No.</i>	<i>Applicant Name & Address</i>	<i>County & Municipality</i>	<i>Receiving Water/Use</i>
PAS10L026	NWL Company 1001 Lafayette Drive Farmington, PA 15437	Fayette County Wharton Township	Deadman Run/ HQ-CWF

Washington County Conservation District: 100 West Beau Street, Suite 602, Washington, PA 15301-4402, (724) 223-6774.

NPDES Permit PAS10W086, Stormwater, **Scott Biers**, Washington Road, Canonsburg, PA 15317 has applied to discharge stormwater associated with a construction activity located in North Strabane Township, **Washington County** to Little Chartiers Creek/HQ-TSF.

<i>NPDES No.</i>	<i>Applicant Name & Address</i>	<i>County & Municipality</i>	<i>Receiving Water/Use</i>
PAS10W086	Scott Biers Washington Road Canonsburg, PA 15317	Washington County North Strabane Township	Little Chartiers Creek/HQ-TSF

PUBLIC WATER SUPPLY (PWS) PERMIT

Under the Pennsylvania Safe Drinking Water Act, the following parties have applied for a PWS permit to construct or substantially modify a public water system.

Persons wishing to comment on the permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding this application. Comment responses

should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and any related documents are on file at the office listed before the application and available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability that require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

SAFE DRINKING WATER

Applications Received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Permit No. 6401503, Public Water Supply.

Applicant **Cobb's Lake Preserve P. O.A., Inc.**
9 Cobb's Lake
Lake Ariel, PA 18436

Township or Borough Lake Township, **Wayne County**

Responsible Official Barbara Giguere, President

Type of Facility Existing Public Water System

Consulting Engineer Frederick C. Spott, P.E.
403 N. South Road
Scranton, PA 18504

Application Received Date December 19, 2001

Description of Action Permitting an existing public water system including 4 wells, wellhouses, hydropneumatic tanks and hypochlorinators.

Permit No. 1398502, Public Water Supply.

Applicant **Joan Birdsall d/b/a Four Seasons Village**
R. R. 1, Box 153-B
New Ringgold, PA 17960

Township or Borough Mahoning Township, **Carbon County**

Type of Facility PWS serving four apartment buildings

Consulting Engineer Bruce Steigerwalt
102 Manor Lane
Lehighton, PA 18235

Application Received Date January 9, 2002

Description of Action Modification of existing PWS System including the treatment for iron and manganese, addition of disinfection for a PWS System serving 40 residents.

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 0102501, Public Water Supply.

Applicant **Pine Run Mobile Home Park**

Municipality Hamilton Township

County **Adams**

Responsible Official Saleta Stewart, Manager
1880 Pine Run Road
Abbottstown, PA 17301-9723

Type of Facility Public Water Supply

Consulting Engineer Max E. Stoner, P.E.
Glance Associates, Inc.
3705 Trindle Rd
Camp Hill, PA 17011

Application Received Date January 3, 2002

Description of Action Addition of a second source of supply, Well No. 2. The Construction Permit Application seeks a permitted withdrawal rate of 75 gpm for the new well. Treatment will be provided at existing disinfection facilities.

Permit No. 0602501, Public Water Supply.

Applicant **Lazy K Campsites Inc.**

Municipality Colebrook Township, Washington Township

County **Berks**

Responsible Official Dawn A. Kelsch, Owner Operator
102 Township Line Road
Bechtelsville, PA 19505

Type of Facility Public Water Supply

Consulting Engineer Joseph H. Body, P.E.
Box 188
Virginsville, PA 19564

Application Received Date January 14, 2002

Description of Action Addition of 60 campsites, pump station and poly phosphate injection system.

Permit No. 2102502, Public Water Supply.

Applicant **Dickinson Township Municipal Authority**

Municipality Dickinson Township

County **Cumberland**

Responsible Official Gregory P. Lambert, P.E.
219 Mountain View Road
Mt. Holly Springs, PA 17065

Type of Facility Public Water Supply

Consulting Engineer Dennis E. Black, P.E.
Dennis E. Black Engineering, Inc.
2400 Philadelphia Ave.
Chambersburg, PA 17201

Application Received Date January 11, 2002

Description of Action New community public water system.

Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Permit No. 4902501, Public Water Supply.

Applicant **Merck & Co., Inc.**

Borough Riverside

Responsible Official John M. Hinson
Director of Site Services
Merck & Co. Inc.
P. O. Box 600
Danville, PA 17821

Type of Facility Public Water Supply

Consulting Engineer Helen K. Fahy
Water Quality Management Consultants
4076 Penns Valley Rd.
Spring Mills, PA 16875

Application Received Date January 14, 2002

Description of Action Replace sand filter #2 and clarifier #2 with in-kind equipment. Relocate chlorine injection point in clarifier #2.

MINOR AMENDMENT

Applications Received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Application No. Minor Amendment.

Applicant **Pennsylvania Suburban Water Company**

Township or Borough Lackawaxen Township

Responsible Official Richard Subasic
Vice President/General Manager
Pennsylvania Suburban Water Company
204 East Sunbury Street
Shamokin, PA 17872

Type of Facility PWS

Consulting Engineer Douglas Berg, P.E.
Entech Engineering, Inc.
P. O. Box 32
Reading, PA 19603

Application Received Date January 9, 2002

Description of Action Approval is requested to construct a 12-inch main extension to interconnect Fawn Lake Forest, Woodloch Pines and Woodloch Springs water systems and construct a 0.5 million gallon elevated water storage tank.

Application No. Minor Amendment.

Applicant **Pennsylvania Suburban Water Company**

Township or Borough Canaan Township

Responsible Official Richard Subasic
Vice President/General Manager
Pennsylvania Suburban Water Company
204 East Sunbury Street
Shamokin, PA 17872

Type of Facility PWS

Consulting Engineer Michael J. Daschbach, P.E.
Entech Engineering, Inc.
P. O. Box 32
Reading, PA 19603

Application Received Date January 9, 2002

Description of Action For approval of the installation of 16" ductile iron water transmission line to provide potable water conveyance from the Pennsylvania Suburban Water Company's water supply wells to the SCI-Waymart and FBOP-Canaan prisons. PSW is in the process of acquiring SCI water system..

Application No. Minor Amendment.

Applicant **Tulpehocken Spring Water, Inc.**

Township or Borough Foster Township

Responsible Official Gary Troutman, Vice President
Tulpehocken Spring Water, Inc.
R. R. 1, Box 114T
Northumberland, PA 17857

Type of Facility Bulk Water Hauling

Consulting Engineer Thomas G. Pullar, P.E.
EarthRES Group, Inc.
P. O. Box 468
Pipersville, PA 18947

Application Received Date January 16, 2002

Description of Action Approval for the addition of seven tank trucks to the Tulpehocken Spring Water, Inc. Public Water Supply/Bulk Water Hauling Permit (PWS-2406498) located in Foster Township, Luzerne County.

Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Application No. 2594501-MA7, Minor Amendment.

Applicant **Erie City Water Authority**
340 West Bayfront Parkway
Erie, PA 16507.

Township or Borough City of Erie, **Erie County**

Responsible Official James Rudy, Chief Operating Officer

Type of Facility PWS

Consulting Engineer KLH Engineers, Inc.
5173 Campbells Run Road
Pittsburgh, PA 15205.

Application Received Date January 24, 2002

Description of Action Replace water main along south side of West 19th Street and replace water line north side of West 19th Street from Cherry Street east to Peach Street.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 1

Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (Act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the background standard, Statewide health standard, the site-specific standard or who intend to remediate a site as a special industrial area, must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one or a combination of the cleanup standards or who receives approval of a special industrial area remediation identified under the Act, will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the Act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific standard, in whole or in part and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified, proposed for remediation to a site-specific standard or as a special industrial area, the municipality, within which the site is located, may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period the municipality may request that the person identified, as the remediator of the site, develop and implement a public involvement plan. Requests to be involved and comments, should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the Environmental Cleanup Program Manager in the Department Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

Southeast Region: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

Realen Homes, L.P. (Groundwater), Falls Township, **Bucks County**. Joseph W. Standen, Jr., Leggette, Brashears & Graham, Inc., 426 Brandywine Parkway, West Chester, PA 19380, on behalf of H.C. Price Co., 15660 N. Dallas Parkway, Suite 300, Dallas, TX, has submitted a Notice of Intent to Remediate groundwater contaminated with SVOCs. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Bucks County Courier Times* on December 21, 2001.

Alfa Laval Inc., Warminster Township, **Bucks County**. Patrick M. Hennessy, Alfa Laval Inc., 9201 Wilmot Rd., Kenosha, WI 53141-0840, has submitted a Notice of Intent to Remediate soil contaminated with PCBs, lead, heavy metals, BTEX, polycyclic aromatic hydrocarbons, solvents and pesticides. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Bucks County Courier Times* on November 21, 2001.

Richard Valerio Property, East Coventry Township, **Chester County**. Robert Carey, Lewis Environmental Group, P. O. Box 639, Royersford, PA 19468, on behalf of Richard Valerio, 1894 Old Schuylkill Rd., Spring City, PA 19475, has submitted a Notice of Intent to Remediate soil contaminated with lead. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Pottstown Mercury* on February 21, 2001.

Sunoco, Former #3 Tank Farm, Former Tank 220 Area Only (Tk220), Bethel Township, **Delaware County**. James H. Mulry, Mulry & Cresswell Environmental, Inc., 1691 Horseshoe Pike, Suite 1, Glenmoore, PA 19343, on behalf of Sunoco, Inc., 1801 Market St., Philadelphia, PA 19103-1699, Attn: James Oppenheim, has submitted a Notice of Intent to Remediate soil and groundwater contaminated with BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Delaware County Times* on October 20, 1999.

Sun PipeLine, Aston Township, **Delaware County**. Lisa Holderbach, GES, Inc., 410 Eagleview Blvd., Suite 110, Exton, PA 19341, on behalf of Sun Pipe Line Co., Bradford Fish, P.G., Sunoco, Inc. Automotive Lab, P. O. Box 1135, Post Rd. and Blue Ball Ave., Marcus Hook, PA 19061, has submitted a Notice of Intent to Remediate soil contaminated with BTEX and polycyclic aromatic hydrocarbons. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Daily Local* on December 19, 2001.

Hull Corporation Site, Upper Moreland Township, **Montgomery County**. Darryl D. Borrelli, Manko, Gold & Katcher, LLP, 401 City Ave., Suite 500, Bala Cynwyd, PA 19004, on behalf of Hull Corp., 21 Bonair Dr., Warminster, PA 18974, has submitted a Notice of Intent to Remediate soil contaminated with solvents and groundwater contaminated with solvents and VOCs. The applicant proposes to remediate the site to meet Statewide Health and Site-Specific Standards. A summary of the

Notice of Intent to Remediate was reported to have been published in *The Record* on December 26, 2001.

Triad Building, Upper Merion Township, **Montgomery County**. William A. Kovach, Environmental Waste Management Associates, 51 Everett Dr., Suite A-10, on behalf of Triad Realty Associates, LP, c/o Gale & Wentworth, Director of Environmental Safety, 300 Campus Dr., Florham Park, NJ 07932, has submitted a Notice of Intent to Remediate soil contaminated with ethylene glycol. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in *The Times Herald* on December 21, 2001.

Former Bridgestone/Firestone Retail Store and Western Metal Bed Co. Site, City of Philadelphia, **Philadelphia County**. Peter A. Malik, RT Environmental Services, Inc., 215 W. Church Rd., King of Prussia, PA 19406, on behalf of B.D.F. Corp., B. Featherman, D. Featherman, F. Featherman and Bridgestone/Firestone, 4035-4045 Torresdale Ave., Philadelphia, PA, has submitted a Notice of Intent to Remediate soil and groundwater contaminated with solvents. The applicant proposes to remediate the site to meet Statewide Health and Site-Specific Standards. A summary of the Notice of Intent to Remediate was reported to have been published in *The Philadelphia Inquirer* on January 3, 2002.

Eastman Chemical Company, City of Philadelphia, **Philadelphia County**. Douglas E. Kier, P.G., URS Corporation, 1400 Union Meeting Road, Suite 202, Blue Bell, PA 19422-1972, on behalf of Eastman Chemical Co., 7600 State Rd., Philadelphia, PA 19136, has submitted a Notice of Intent to Remediate soil contaminated with BTEX and polycyclic aromatic hydrocarbons; and groundwater contaminated with BTEX, polycyclic aromatic hydrocarbons and chlorinated solvents. The applicant proposes to remediate the site to meet Statewide Health, Background and Site-Specific Standards. A summary of the Notice of Intent to Remediate was reported to have been published in *The Philadelphia Daily News* on December 15, 2001.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

United States Postal Service, Armagh Township, **Mifflin County**. SAIC, 6310 Allentown Boulevard, Harrisburg, PA 17112-3377 (on behalf of United States Postal Service, 90 South Main Street, Milroy, PA 17063) has submitted a Notice of Intent to Remediate site soils and groundwater contaminated with BTEX and PHCs. The applicant proposes to remediate the site to meet a combination of Site-Specific and Statewide Health standard requirements. A summary of the Notice of Intent to Remediate was reported to have been published in the *Lewistown Sentinel* during the week of January 21, 2002.

INFECTIOUS AND CHEMOTHERAPEUTIC WASTE TRANSPORTER LICENSES

Applications received or withdrawn under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6026.101—6026.908) and regulations to transport infectious and chemotherapeutic waste.

Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.

RENEWAL APPLICATIONS RECEIVED

Incendere, Inc., 6175 NW 153 Street, Suite 304, Miami Lakes, FL 33014. License No. **PA-HC 0058**. Received on January 25, 2002.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Applications Received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Southeast Region: Regional Solid Waste Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

Permit Application No. 300176. Bethlehem Steel Corporation, 139 Modena Road, P. O. Box 3001, Coatesville, PA 19320. East Fallowfield Township, **Chester County**. The application is for a radiation action protection plan. Application was received in the Southeast Regional Office on January 17, 2002.

Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit Application No. 101509. New Morgan Landfill Co., Inc., P. O. Box 128, Morgantown, PA 19543-0128, New Morgan Borough, **Berks County**. Major permit modification for the Conestoga Landfill for Increase in Average Daily Volume. The application was determined to be administratively complete by the Southcentral Regional Office on January 14, 2002.

Comments concerning the application should be directed to Keith Kerns, Program Manager, Waste Management Program, Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA 17110. Persons interested in obtaining more information about the general permit application may contact the Waste Management Program, (717) 705-4706. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to and approval or denial of the application.

Permit Application No. 301194. Process Recovery Corporation, 2909 Windmill Road, Sinking Spring, PA 19608, Cumru Township, **Berks County**. Application received for Radiation Protection Plan for PRC Residual Waste Landfill. The application was determined to be administratively complete by the Southcentral Regional Office on January 23, 2002.

Comments concerning the application should be directed to Keith Kerns, Program Manager, Waste Management Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Persons interested in obtaining more information about the general permit application may contact the Waste Management Program, (717) 705-4706. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to and approval or denial of the application.

Permit Application No. 100945. Community Refuse Service, Inc., P. O. Box 176, Newville, PA 17240, Hopewell and North Newton Townships, **Cumberland County**. Application received for major permit modification for Cumberland County Landfill for increase in average daily volume. The application was determined to

be administratively complete by the Southcentral Regional Office on January 23, 2002.

Comments concerning the application should be directed to Keith Kerns, Program Manager, Waste Management Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Persons interested in obtaining more information about the general permit application may contact the Waste Management Program, (717) 705-4706. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to and approval or denial of the application.

Permit Application No. 362194. GemChem, Inc., P. O. Box 384, Lititz, PA 17543-0384, Lititz Borough, **Lancaster County**. Application received for radiation protection plan for the residual waste processing facility. The application was determined to be administratively complete by Southcentral Regional Office on January 24, 2002.

Comments concerning the application should be directed to Keith Kerns, Program Manager, Waste Management Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Persons interested in obtaining more information about the general permit application may contact the Waste Management Program, (717) 705-4706. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to and approval or denial of the application.

Northwest Region: Regional Solid Waste Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Permit Application No. 101602. Seneca Landfill Transfer Station, P. O. Box 1080, Mars, PA 16046, Jackson Township, **Butler County**. Renewal of the transfer station's operating permit for a period not to exceed 10 years. The application was received by the Northwest Regional Office on January 22, 2002.

Permit Application No. 101592. Tri County Landfill Transfer Station, 159 TCI Park Drive, Grove City, PA 16127, Pine Township, **Mercer County**. Renewal of the transfer station's operating permit for a period not to exceed 10 years. The application was received by the Northwest Regional Office on January 22, 2002.

Comments concerning the application should be directed to A. Patrick Boyle, Program Manager, Northwest Regional Office, 230 Chestnut Street, Meadville, PA 16335-3481. Persons interested in obtaining more information about the general permit application may contact the Northwest Regional Office, (814) 332-6848. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984.

AIR QUALITY

NOTICE OF PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS NEW SOURCES AND MODIFICATIONS

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State Operating Permit and Title V Operating Permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one

time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the Regional Office identified in this notice. Persons interested in reviewing the application files should contact the appropriate Regional Office to schedule an appointment.

Persons wishing to receive a copy of the proposed Plan Approval or Operating Permit must indicate their interest to the Department Regional Office within 30 days of the date of this notice and must file protests or comments on a Proposed Plan Approval or Operating Permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Any comments or protests filed with Department Regional Offices must include a concise statement of the objections to the issuance of the plan approval or operating permit and relevant facts, which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the Regional Office identified. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121-143, the Federal Clean Air Act and regulations adopted under the Act.

PLAN APPROVALS

Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001-4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: James Parette, New Source Review Chief, (570) 826-2531.

40-312-041: Eldorado Properties Corp. (Petroleum Products Corp., P. O. Box 2621, Harrisburg, PA 17105) for modification of two storage tanks (to store gasoline) at the Dupont Terminal in Pittston Township, **Luzerne County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Ronald Davis, New Source Review Chief, (717) 705-4702.

22-05013A: MI Metals, Inc. (1517 Route 209, Millersburg, PA 17061) for an increase of the allowable VOC emissions from its aluminum window and door manufacturing facility in Millersburg Borough, **Dauphin County**.

36-03135A: KAR Printing, Inc. (72 Industrial Circle, Leola, PA 17540-0129) for construction of sources at its

printing facility in Upper Leacock Township, **Lancaster County**. KAR Printing proposes to remove one coldset press and install two heatset lithographic web presses and an oxidizer.

38-3036A: Cargill, Inc. (320 North 16th Street, Lebanon, PA 17406) for construction of a baghouse aspiration system for grain cleaning at its Animal Nutrition Plant in Lebanon City, **Lebanon County**.

Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Thomas McGinley, New Source Review Chief, (610) 832-6242.

46-0005S: Merck and Co., Inc. (770 Summeytown Pike, P. O. Box 4, West Point, PA 19486-0004) for installation of a 150 kW natural gas fired emergency generator in Upper Gwynedd Township, **Montgomery County**. The facility is a major (Title V) facility. The installation of the 150 kW emergency generator will result in emissions of: 250 pounds per year of nitrogen oxides; 250 pounds per year of carbon monoxide; and, 25 pounds per year of volatile organic compounds (VOC). The Plan Approval and Operating Permit will contain additional record keeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

09-0048A: Haines and Kibblehouse, Inc. (P. O. Box 196, Skippack, PA, 19474) for modification of a batch asphalt plant in Hilltown Township, **Bucks County**. This modification allows the asphalt plant to use "on-specification" waste derived liquid fuel (WDLF) with a production limitation of 300,000 tons per year. An additional amount of production not to exceed 195,000 tons per year is allowed with the use of LPG as fuel. This installation will not result in any increase in emissions of VOCs or oxides of nitrogen (NOx). The Plan Approval will require the company to perform stack tests within 180 days of using WDLF. Every shipment of WDLF will be analyzed and it must meet the "on-specification" requirement.

09-0109: Bucks County S.P.C.A. (1665 Street Road, Lahaska, PA 18931) for installation of an animal crematorium in Buckingham and Solebury Townships, **Bucks County**. This installation will result in the emissions of 0.78 ton per year of nitrogen oxides, 0.11 ton per year of carbon monoxide, 0.38 ton per year of particulate matter. The Plan Approval and Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

09-0074A: PCR Enterprises, Inc. (401 Fairview Avenue, Quakertown, PA 18951) for modification of its reinforced fiberglass plastic process in Quakertown, **Bucks County**. This facility is a non-Title V (State-only) facility. This modification will result in total VOCs of less than 25 tons per year (tpy) including styrene and methanol emissions of less than 10 tons per pollutant per year to be emitted. The Plan Approval and Operating Permit will contain recordkeeping requirements and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

09-0073: Leonard Kunkin Associates (Cherry Lane, Souderton, PA 18964) for installation of two spray booths

in Hilltown Township, **Bucks County**. This facility is a Title V facility. Emission increase from this source are 24.9 tons of VOCs per year. The Plan approval will contain recordkeeping and operating restriction designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

46-0202A: Elan Pharmaceutical Research Corp. (3000 Horizon Drive, King of Prussia, PA 19406) for installation of a 750 kW, No. 2 fuel oil fired emergency generator in Upper Merion Township, **Montgomery County**. This facility is a non-Title V facility. The installation will result in emissions of 4.38 ton per year of nitrogen oxides and 0.15 ton per year of VOCs. The Plan Approval will contain recordkeeping and operating restrictions designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

23-0006D: Foamex, L.P. (1500 East Second Street, Eddystone, PA 19002) for modification of a polyurethane foam thermal reticulation/Bun Zapper No. 2 Unit in Eddystone Borough, **Delaware County**. This facility is a Title V facility. Emissions from this source are 18.14 tons of VOCs per year. The Plan approval will contain record keeping and operating restriction designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

15-0039: Highway Materials, Inc. (P. O. Box 1667, Blue Bell, PA, 19422) for modification of a batch asphalt plant in East Caln Township, **Chester County**. This modification allows the asphalt plant to use No. 2 fuel oil, No. 4 fuel oil, No. 5 fuel oil and "on-specification" WDLF. This installation will not result in any increase in emissions of VOCs or NOx. The facility is a minor facility and shall remain so. The Plan Approval will require the company to perform stack tests with all the fuels approved under this proposal within 180 days of issuance of the Plan Approval. Every shipment of WDLF will be analyzed and it must meet the "on-specification" requirement.

15-0054A: Highway Materials, Inc. (P. O. Box 1667, Blue Bell, PA 19422) for modification of a batch asphalt plant in East Whiteland Township, **Chester County**. This modification allows the asphalt plant to use No. 2 fuel oil, No. 4 fuel oil, No. 5 fuel oil, propane and "on-specification" WDLF. This installation will not result in any increase in emissions of VOCs or NOx. The facility is a minor facility and shall remain so. The Plan Approval will require the company to perform stack tests with WDLF and No. 5 fuel approved under this proposal within 180 days of issuance of the Plan Approval. Every shipment of WDLF will be analyzed and it must meet the "on-specification" requirement.

46-0210A: Cellco Partnership, d/b/a Verizon Wireless (Plymouth Meeting Switch Facility, 5175 Campus Drive, Plymouth Meeting, PA 19462) for installation of two 800 kW diesel/#2 fuel emergency generators in Plymouth Meeting, **Montgomery County**. This installation of the two emergency generators will result in the emissions of 7.09 tons per year of NOx, 0.30 ton per year of carbon monoxide, 0.16 ton per year of VOCs, 2.60 tons per year of sulfur oxides and 0.10 ton per year of particulate matter. The Plan Approval and Operating Permit will contain additional record keeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Ronald Davis, New Source Review Chief, (717) 705-4702.

06-5087A: Haines and Kibblehouse, Inc. (P. O. Box 196, Skippack, PA 19474) for installation of a fabric collector to control the particulate emissions from the batch asphalt concrete plant at the Martin Stone Quarry in Colebrookdale Township, **Berks County**. The plant is a non-Title V (synthetic minor-State only) facility. The plant will be limited in the amount of product that can be made to 585,000 tons per year. The source is subject to 40 CFR Part 60, Subpart I—Standards of Performance for Hot Mix Asphalt Facilities. The source will have potential annual emissions of 11.7 tons of particulate, 20.2 tons of carbon monoxide, 49.7 tons of nitrogen oxides, 70.2 tons of sulfur dioxide and 10.2 tons of VOCs. The applicant will be required to record the production and emissions monthly. The approval will include monitoring, recordkeeping and reporting requirements designed to keep the source operating within all applicable air quality requirements.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.

55-00001A: Sunbury Generation, LLC (1088 Springhurst Drive, Green Bay, WI 54304-5495) for installation of air cleaning devices (low NOx retrofits consisting of low NOx burners, over-fire air and boundary air) on four 38 megawatt, anthracite coal, arch fired utility boilers (Units 1A, 1B, 2A and 2B) at their facility in Shamokin Dam Borough, **Snyder County**.

Sunbury Generation is a major facility for which a Title V operating permit (55-00001) has been issued.

The information provided by the applicant, as well as the Department's own analysis, indicates that the installation of the subject retrofits will decrease the NOx emissions from each boiler to a level as low as 0.5 pound per million Btu of heat input. The Department has determined that the respective low NOx retrofits do not qualify as Reasonably Available Control Technology (RACT) and does not therefore propose any reduction in the RACT emission limitations previously established for the respective boilers. The applicable RACT limitations are 1.10 pounds of NOx per million Btu of heat input for Units 1A and 1B and 1.16 pounds of NOx per million Btu of heat input for Units 2A and 2B.

A preliminary review of the information submitted by the applicant indicates that the proposed installation will meet all applicable air quality requirements. Based on this finding, the Department proposes to approve the application and issue plan approval.

In order to ensure compliance with all applicable standards, the Department proposes to place the following conditions in the respective plan approval:

- All conditions contained in Title V Operating Permit 55-00001, including those conditions specifying NOx emission limitations, remain unchanged and in effect unless specifically modified or superseded by a condition contained herein.

Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Michael Safko, Facilities Permitting Chief, (570) 826-2531.

48-309-105: Keystone Cement Co. (P. O. Box A, Bath, PA 18014-0058) for operation of a materials additive

system and associated air cleaning device in East Allen Township, **Northampton County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

01-03010: Dal-Tile Corp. (211 North Fourth Street, Gettysburg, PA, 17325-1694) for operation of its ceramic floor and wall tile products facility in Gettysburg Borough, **Adams County**. The facility has the potential to emit around 3 tons per year of particulate matter, 2 tons of VOCs, 1 ton per year of NO_x, less than 1 ton per year of CO and an insignificant amount SO_x (all after control). The Natural Minor operating permit shall contain additional testing, monitoring, record keeping and reporting requirements, emission restrictions and work practice standards designed to keep the facility operating within all applicable air quality requirements.

21-05039: Land O'Lakes, Inc. (405 Park Drive, Carlisle, PA 17013) for operation of the Carlisle milk drying and packaging plant in South Middleton Township, **Cumberland County**. The plant has the potential to emit more than 100 tons of SO_x annually. The Synthetic Minor operating permit will contain emission limits, monitoring, recordkeeping and reporting requirements to ensure the plant operates within all applicable air quality requirements.

28-03001: Ametek Specialty Motors (1051 Sheffler Drive, Chambersburg, PA 17201) for operation of the Chambersburg electric motor manufacturing plant in Chambersburg Borough, **Franklin County**. The plant has the potential to emit several tons of styrene annually. The Natural Minor operating permit will contain monitoring, recordkeeping and reporting requirements to ensure the plant operates within all applicable air quality requirements.

36-03013: Burnham Corp. (1135 Dillerville Road, Lancaster, PA 17603) for operation of the Dillerville Road Boiler Plant located at Manheim Township, **Lancaster County**. The primary emissions from the sources are NOx and VOCs and the actual emissions are about 3 tons per year and 8 tpy respectively. Natural Minor Operating Permit shall contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

67-05092: Starbucks Coffee Co. (3000 Espresso Way, York, PA 17402) for operation of its York Roasting Plant in East Manchester Township, **York County**. The plant has the following potential annual emissions: 155 tons of NOx; 41 tons of PM-10; 32 tons of CO; 3 tons of VOCs. The Synthetic Minor operating permit shall contain testing, monitoring, record keeping and reporting requirements, emission restrictions and work practice standards designed to keep the facility operating within all applicable air quality requirements.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.

59-301-020: Jacquelyn A. Buckheit Funeral Chapel, Crematory and Monuments, P.C. (637 South Main Street, Mansfield, PA 16933) for operation of a crematory incinerator equipped with a secondary combustion chamber in Richmond Township, **Tioga County**.

The crematory incinerator will be used to cremate human remains and will result in a minimal emission of particulate matter, NOx, carbon monoxide, VOCs and SOx.

The Department of Environmental Protection (Department) has determined that the crematory incinerator has been constructed and is operating, in conformance with all conditions of Plan Approval 59-301-020 as well as with all applicable regulatory requirements pertaining to air contamination sources and the emission of air contaminants including the best available technology requirements of 25 Pa. Code §§ 127.1 and 127.12. The Department consequently intends to issue an operating permit for the operation of the respective crematory incinerator.

The Department intends to place conditions in the operating permit to be issued which are intended to ensure continued compliance with all applicable requirements. The following is a summary of these conditions:

1. This incinerator shall not be used to incinerate hospital waste, infectious waste or any type of waste other than human remains and associated containers for holding the remains.

2. The particulate matter emissions shall not exceed .08 grain per dry standard cubic foot corrected to 7% oxygen and the visible air contaminant emissions shall not equal or exceed 10% opacity for a period or periods aggregating more than 3 minutes in any 1 hour or equal or exceed 30% opacity at any time.

3. A secondary combustion chamber temperature of at least 1,800°F shall be maintained at any time cremation is occurring.

4. The incinerator shall be equipped with continuous secondary combustion chamber temperature monitoring and recording instrumentation. All records generated by this instrumentation shall be retained for at least 5 years and shall be made available to the Department upon request.

MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of the application is available for inspection at the District Mining Office indicated before each application. Where a 401 Water Quality Certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for certification.

Written comments or objections or requests for informal conferences on applications, may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the same address within 30 days of this publication or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34 (relating to public

notices of filing of permit applications, opportunity for comment and informal conferences).

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. NPDES permits will contain, at a minimum, technology-based effluent limitations (as described in the Department's regulations—25 Pa. Code §§ 77.522, 87.102, 88.92, 88.187, 88.242, 89.52 and 90.102) for iron, manganese, suspended solids, settleable solids, alkalinity and pH. In addition to the previous, more restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit, when necessary, for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies which have requested review of the NPDES permit requirements for a particular mining activity within the previously-mentioned public comment period will be provided with a 30-day period to review and submit comments on those requirements.

Written comments or objections should contain the name, address and telephone number of persons submitting comments or objections; application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

Coal Applications Received

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.

54960201R. Northeastern Power Co. (P. O. Box 7, McAdoo, PA 18237), renewal of an existing coal refuse reprocessing operation in Kline, Hazle and Banks Townships, **Schuylkill, Luzerne and Carbon Counties** affecting 429.7 acres, receiving stream—none. Application received: January 18, 2002.

Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.

03970103. Marquise Mining Corp. (3889 Menoher Blvd., Johnstown, PA 15905). Renewal application for reclamation only of a bituminous surface mine located in Kiskiminetas Township, **Armstrong County**, affecting 184 acres. Receiving streams: unnamed tributary to Sulphur Run, classified for the following use: warm water fishery and unnamed tributary to Long Run, classified for the following use: cold water fishery. There is no potable water supply intake within 10 miles downstream from the point of discharge. Renewal application received: January 22, 2002.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

56823143 and NPDES Permit No. PA0605841. Croner, Inc., P. O. Box 260, Friedens, PA 15541. Permit renewal for continued operation of a bituminous surface mine and for existing discharge of treated mine drainage in Quemahoning Township, **Somerset County**, affecting 202.0 acres. Receiving streams: unnamed tributaries to Beaverdam Creek and Beaverdam Creek classified for the

following uses: High Quality Cold Water Fishery. The first downstream potable water supply intake from the point of discharge is Cambria-Somerset Water Authority—Border Dam. Application received: January 18, 2002.

56850109 and NPDES Permit No. PA0597350. Croner, Inc., P. O. Box 260, Friedens, PA 15541. Permit Renewal for continued operation of a bituminous surface and auger mine and for existing discharge of treated mine drainage in Brothersvalley Township, **Somerset County**, affecting 81.2 acres. Receiving streams: an unnamed tributary of Buffalo Creek classified for the following uses: Cold Water Fishery. There are no potable water supply intakes within 10 miles downstream. Application received: January 18, 2002.

Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.

33910110. MSM Coal Company, Inc. (P. O. Box 243, DuBois, PA 15801). Renewal of an existing bituminous surface and auger operation in Oliver Township, **Jefferson County** affecting 74.6 acres. Receiving streams: two unnamed tributaries to Little Sandy Creek, classified for the following uses: Statewide water uses: CWF. No public water supplies are within 10 miles downstream of this proposed operation. Application for reclamation only. Application received: January 18, 2002.

16960106. MSM Coal Company, Inc. (P. O. Box 243, DuBois, PA 15801). Renewal of an existing bituminous surface and auger operation in Redbank Township, **Clarion County** affecting 38.6 acres. Receiving streams: two unnamed tributaries to Pine Creek, classified for the following uses: Statewide water uses: CWF. The first downstream potable water supply intake from the point of discharge is Hawthorn Area Municipal Authority. Application for reclamation only. Application received: January 18, 2002.

16960109. Milestone Crushed, Inc. (521 South Street, P. O. Box 644, Clarion, PA 16214). Renewal of an existing bituminous surface strip operation in Perry Township, **Clarion County** affecting 52.6 acres. Receiving streams: unnamed tributary to Dunlap Creek, classified for the following uses: Statewide water uses: WWF. No public water supplies are within 10 miles downstream of this proposed operation. Application for reclamation only. Application received: January 23, 2002.

16020901. Lester C. Henry (1555 Route 208, Emlenton, PA 16373). Commencement, operation and restoration of an incidental coal extraction operation in Ashland Township, **Clarion County** affecting 10.5 acres. Receiving streams: One unnamed tributary to Pine Run, classified for the following uses: Statewide water uses: CWF. No public water supplies are within 10 miles downstream of this proposed operation. Application received: January 18, 2002.

33900111. P. and N. Coal Co., Inc. (P. O. Box 332, Punxsutawney, PA 15767). Renewal of an existing bituminous surface strip and auger operation in Gaskill Township, **Jefferson County** affecting 168.6 acres. Receiving streams: Lost Run to Clover Run, East Branch Mahoning Creek to Mahoning Creek, classified for the following uses: Statewide water uses: CWF. The first downstream potable water supply intake from the point of discharge is Pennsylvania American Water Company and Big Run Treatment Plant. Application for reclamation only. Application received: January 24, 2002.

Noncoal Applications Received

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.

52970301C. G. F. Edwards, Inc. (Box 174, Elmhurst, PA 18416), renewal of NPDES Permit #PA0223751 in Greene Township, **Pike County**, receiving stream: Wallenpaupack Creek, classified for the following use: high quality cold water fishery. Application received: January 22, 2002.

Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.

65900402. Hanson Aggregates PMA, Inc. (400 Industrial Boulevard, New Kensington, PA 15068). Application received to revise permit for the addition of a haul road and stream crossing at a large noncoal surface mine (limestone quarry) located in Derry and Fairfield Townships, **Westmoreland County**, affecting 1,303 acres. Receiving streams: unnamed tributary to Tannery Hollow to McGee Run to Conemaugh River and unnamed tributary to Harbridge Run to McGee Run to Conemaugh River, classified for the following uses: cold water fishery. The first downstream potable water supply intake from the point of discharge is the Torrance and Blairsville reservoirs. Application received: January 18, 2002.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

11020301 and NPDES Permit No. PA0249131. Cambria Minerals, Inc., 320 Sanrue Drive, Johnstown, PA 15904, commencement, operation and restoration of a noncoal surface mine and for discharge of treated mine drainage in East Taylor Township and City of Johnstown, **Cambria County**, affecting 49.7 acres. Receiving streams: Hinckston Run classified for the following uses: warm water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: January 17, 2002.

Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.

37910305. G. L. McKnight, Inc. (P. O. Box 773, Slippery Rock, PA 16057). Renewal of NPDES Permit No. PA 0208485, Plain Grove Township, **Lawrence County**. Receiving streams: Taylor Run and unnamed tributary to Taylor Run, classified for the following uses: Statewide water uses: CWF. No public water supplies are within 10 miles downstream of this proposed operation. NPDES Renewal application received: January 23, 2002.

ABANDONED MINE RECLAMATION

Under Act 181 of 1984, the Department of Environmental Protection solicits letters of interest from the landowners and/or licensed mine operators for the reclamation of the following abandoned strip mine project: BF 438-101.1, Beech Creek Township, Clinton County, 40 acres.

Letters of interest must be received by Roderick A. Fletcher, P.E., Director, Bureau of Abandoned Mine Reclamation, Department of Environmental Protection, 400 Market Street, P. O. Box 8476, Harrisburg, PA, 17105-8476, no later than 4 p.m., March 11, 2002, to be considered.

Telephone inquiries shall be directed to Robert A. Deardorff, Division of Mine Hazards, at (717) 787-9893.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications and requests for Environmental Assessment approval and requests for Water Quality Certification have been received by the Department of Environmental Protection (Department).

Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341(a)), requires the State to certify that the involved projects will not violate the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Initial requests for 401 Water Quality Certification will be published concurrently with the permit application. Persons objecting to approval of a request for certification under section 401 or to the issuance of a Dam Permit or Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment must submit any comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Each individual will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between the hours of 8 a.m. and 4 p.m. on each working day at the office noted before the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications Received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and Requests for Certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

WATER OBSTRUCTIONS AND ENCROACHMENTS

Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

E46-904. The Rosen Organization I, Inc., 3625 Welsh Road, Willow Grove, PA 19090, Abington Township, **Montgomery County**, ACOE Philadelphia District.

To remove an existing single span bridge crossing the Meadow Brook tributary to the Pennypack Creek (TSF, MF) and to construct and maintain a continuous triple precast concrete box culvert in its place, composed of three continuous cells, each 10-foot wide, 6-foot high and 37 feet long. The project site includes a sanitary sewer utility line crossing previously authorized as GP054601323 and also proposes the construction of gas and water utility line crossings to serve the proposed five lot residential subdivision situated on a 6.8-acre tract. The project site is located 500-feet west of the intersection of Valley Road and Washington Lane (Frankford, PA Quadrangle; 19.8 inches north and 14.75 inches west).

E46-905. Upper Gwynedd Township, Parkside Place, Box 1, West Point, PA 19486, Upper Gwynedd Township, **Montgomery County**, ACOE Philadelphia District.

To remove an existing simple span steel I-beam bridge and to construct and maintain, in its place, a single span prestressed concrete spread box beam bridge carrying Wissahickon Avenue across Wissahickon Creek (TSF). This structure has a clear span of approximately 43.50 feet and an average under clearance of approximately 9.12 feet. The project will include the placement of approximately 110 linear feet of riprap stream bank protection along the watercourse in the immediate work area, temporary cofferdams, stormwater outfall structures and approach roadway replacement. The work also includes a General Permit No. 5 for the attachment of an 8-inch sanitary sewer line to the structure and the relocation of a 12-inch water main previously approved as GP054601304. The site is located approximately 50 feet southeast of the intersection of Wissahickon Avenue and Church Road (Lansdale, PA USGS Quadrangle N: 17.7 inches; W: 4.4 inches).

E46-906. Pennsylvania Department of Transportation, 7000 Geerdes Boulevard, King of Prussia, PA 19406-1525, Upper Frederick Township, **Montgomery County**, ACOE Philadelphia District.

To maintain and rehabilitate an existing three span stone masonry arch bridge over West Swamp Creek (TSF, MF) on Faglesville Road (S.R. 4023, Section 96S). Work also includes minor approach roadway work and installation of a temporary causeway. This work is located (Sassamsville, PA Quadrangle N: 6 inches; W: 6 inches).

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

E01-230. Larry Fetter, Lake Meade Owners Assoc., Inc., 4 Forrest Drive, East Berlin, PA 17316 in Reading Township, **Adams County**, ACOE Baltimore District.

To repair an existing concrete apron which was designed to prevent undermining of the nearby bridge abutment along Mud Run (WWF) (Hampton, PA Quadrangle N: 18.5 inches; W: 7.75 inches) in Reading Township, Adams County.

E05-299. Joseph Kilcoin, 6495 Milligans Cove Road, Manns Choice, PA 15550 in Harrison Township, **Bedford County**, ACOE Baltimore District.

To replace an existing bridge with a crossing consisting of two 4-foot culverts in the channel of a tributary to the Raystown Branch of the Juniata River (WWF) at a point approximately 1,000 feet upstream of Route 31 (Bedford, PA Quadrangle N: 1.9 inches; W: 11.9 inches) in Harrison Township, Bedford County.

E05-300. James Ross, Department of Conservation and Natural Resources, Forestry Bureau District 2-0, 435 State Park Road, Schellsburg, PA 15559 in Union Township, **Bedford County**, ACOE Baltimore District.

To remove and replace a 48-inch corrugated metal pipe culvert and a 60-inch by 46-inch corrugated metal pipe arch culvert at two locations in Pavia Run (HQ-CWF) at a point on Forest Road (Blue Knob, PA Quadrangle N: 3.0 inches; W: 11.75 inches and N: 3.5 inches; W: 11.85 inches) in Union Township, Bedford County.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.

E08-387. Pennsylvania Department of Transportation, District 3-0, P. O. Box 218, Montoursville, PA 17754-0218. Bridge Replacement, in Canton Township, **Bradford County**, ACOE Baltimore District (Canton, PA Quadrangle N: 16.4 inches; W: 14.4 inches).

To remove the existing reinforced concrete I-beam bridge which has a normal opening of 20 feet and an underclearance of 10 feet and a curb-to-curb width of 27.9 feet; and to construct and maintain a precast reinforced concrete box culvert with a hydraulic opening of approximately 221 square feet and a 30 foot wide roadway over the culvert with 5 foot wide sidewalks over Mill Creek on SR 0014, Section 065 in Canton Borough, Bradford County. The project will not impact wetlands while impacting approximately 80 feet of waterway. Mill Creek is a Cold Water fisheries stream.

E14-408. Houtzdale Municipal Authority, 731-1 Kirk St., Houtzdale, PA 16651. Water Intakes, in Rush Township, **Centre County**, ACOE Baltimore District (Houtzdale, PA Quadrangle N: 7.0 inches; W: 11.0 inches).

To: 1) remove two existing water intakes from Mountain Branch; 2) construct and maintain two 12-inch PVC pipe intakes in Mountain Branch located 6,800 ft SE of Trim Root Run's confluence with Mountain Branch and two 12-inch PVC pipe intakes located 3,000 ft NW of Trim Root Run's confluence with Mountain Branch; and 3) construct and maintain a 65-foot wide reinforced concrete flow monitoring weir located 3,020 ft NW of Trim Root Run's confluence with Mountain Branch. The upper intake is located in a High Quality-Cold Water Fishery section of Mountain Branch and the lower intake/weir are located in a Cold Water Fishery section of Mountain Branch.

E14-409. Pennsylvania State University, Physical Plant Building, University Park, PA 16802-1119. Duck Pond Bridge, in College Township, **Centre County**, ACOE Baltimore District (State College, PA Quadrangle N: 5.3 inches; W: 3.4 inches).

To: 1) construct and maintain a steel I-beam and concrete deck; and 2) maintain the existing concrete abutments of a single span bridge with a 15-foot clear span and a minimum under clearance of 5-foot across an unnamed tributary to Slab Cabin Run (Thompson Run). This project proposes to presently impact 25 feet of an unnamed tributary to Slab Cabin Run. Thompson Run is classified as CWF.

E14-410. Department of Conservation and Natural Resources, Bureau of Facility Design and Construction, P. O. Box 8451, Harrisburg, PA 17105-8451. Water Obstruction and Encroachment Joint Permit Application, in Gregg Township, **Center County**, ACOE Susquehanna River Basin District (Spring Mills, PA Quadrangle N: 9.3 inches; W: 10.2 inches).

To remove existing culvert and construct and maintain a 64-inch by 43-inch by 25-foot long aluminum arch culvert in Laurel Run, which is located 1.5 miles south of the intersection of SR 0144 and Synagogue Gap Road along Synagogue Gap Road. This project proposes to have a minimal impact on Laurel Run, which is, designated a Cold Water Fishery and does propose to have a minimal impact on adjacent jurisdictional wetlands.

E18-329. Department of Conservation and Natural Resources, P. O. Box 8451, Harrisburg, PA 17105-8451. Bridge 7-0054 Replacement, in Green Township, **Clinton County**, ACOE Baltimore District (Loganton, PA Quadrangle N: 11.2 inches; W: 14.3 inches).

To construct and maintain a concrete single span prestressed spread box beam bridge with a 22-foot 9-inch normal opening, 7.5 underclearance and associated R-4 choked R-7 riprap to cross Long Run located 1,200 feet south on Rainsares Road from S.R. 477. The applicant

proposes to permanently impact 120 linear feet of Long Run, which is a Cold Water Fishery.

E19-221. Pennsylvania Department of Transportation, District 3-0, P. O. Box 218, Montoursville, PA 17754-0218. Bridge Replacement, in Benton Township, **Columbia County**, ACOE Baltimore District (Benton, PA Quadrangle N: 18.1 inches; W: 1.7 inches).

To remove the existing single span open steel deck I-beam bridge which has a string length of 53 feet and a clear span of approximately 50 feet, a minimum underclearance of 6 feet and a hydraulic opening of 354 feet; and to construct and maintain a single-span concrete box beam bridge with a 90 degree skew, a normal opening of 52 feet, a curb-to-curb width of 33.5 feet and an out-to-out width of approximately 36 feet, a hydraulic opening of 392 square feet and a minimum underclearance of approximately 8.5 feet over West Creek on SR 0239, Section 013 at the intersection of SR 0239 and T-719. The project will not impact wetlands while impacting approximately 55 feet of waterway. West Creek is a High Quality Cold Water fisheries stream.

E41-497. Consolidated Sportsman Muncy Creeks, Inc., 921 Ellis Artley Road, Pennsdale, PA 17756. Water Obstruction and Encroachment Joint Permit Application, in Shrewsbury Township, **Lycoming County**, ACOE Susquehanna River Basin District (Picture Rocks, PA Quadrangle N: 7.68 inches; W: 11.6 inches).

To construct and maintain 20 foot long underground conveyance channel lined with geotextile and #4 limestone as well as maintain a 15 foot long ditch connected to an existing 4 foot diameter cistern all of which is located along Roaring Run. This project proposes to have a minimal impact on Roaring Run, which is, designated a High Quality—Cold Water Fishery and does not propose to impact any jurisdictional wetlands.

E53-368. Department of Conservation and Natural Resources, Bureau of Facility Design and Construction, P. O. Box 8451, Harrisburg, PA 17105-8451. Hungry Hollow Road Bridge over Cross Fork Creek, in Stewardson Township, **Clearfield County**, ACOE Baltimore District (Short Run, PA Quadrangle N: 6.3 inches; W: 5.3 inches).

To remove an existing bridge and construct, operate and maintain a single span bridge to carry Hungry Hollow Road across Cross Fork Creek. The single span bridge shall be constructed with reinforced concrete spread box beams that provide a minimum normal span of 52-feet, clear width of 22-feet and underclearance of 8.8-feet. Bridge construction shall be conducted in stream low flow conditions. All in-stream abutment and wingwall construction shall be completed in dry work conditions through dam and pumping or fluming stream flow around work areas. Construction work also includes the installation of R-8 rock for footing scour protection. All rock scour protection shall have openings or voids choked with small, clean stone materials to avoid stream flow loss. The bridge is located long the eastern right-of-way of Township Road No. 419 approximately 200-feet east of Hungry Hollow Road and Township Road No. 419 intersection. This permit authorizes the construction, operation, maintenance and removal of temporary stream diversions, cofferdams, road crossings and causeways. All temporary structures shall be constructed with clean rock, clear of fines; upon completion of the bridge, all structures removed with disturbed areas being restored to original contours and elevations. Cross Fork Creek is classified as Exceptional Value (EV).

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E04-281. City of Aliquippa, 581 Franklin Avenue, Aliquippa, PA 15001-3727. City of Aliquippa, **Beaver County**, ACOE Pittsburgh District.

To operate and maintain an existing 60 inch culvert and to construct and maintain endwalls to the culvert in a tributary to Logtown Run (WWF). The culvert is located along Spring Street approximately 1,000 feet south of its intersection with Franklin Avenue. To remove an existing structure and to construct and maintain a 60 inch culvert in a tributary to Logtown Run. The culvert is located along Spring Street approximately 2,400 feet south of its intersection with Franklin Avenue. To remove an existing culvert and restore the stream channel in a tributary to Logtown Run. The culvert is located next to Spring Street approximately 2,900 feet south of its intersection with Franklin Avenue. To reconstruct and maintain approximately 2,600 feet south of stream channel in a tributary to Logtown Run (Aliquippa, PA Quadrangle N: 19.2 inches; W: 0.5 inch).

E11-293. Greater Johnstown School District, 1091 Broad Street, Johnstown, PA 15906. City of Johnstown, **Cambria County**, ACOE Pittsburgh District.

To construct and maintain four 24 inch diameter pipe stormwater outfalls in a concrete flood protection wall along Stony Creek (WWF) as part of the construction of the new Greater Johnstown Area High School. The project is located off of Route 403, approximately 3 miles north of its intersection with Route 56 (Johnstown, PA Quadrangle N: 10.0 inches; W: 5.0 inches).

E63-406 A1. Washington County Commissioners, Courthouse Square, 100 West Beau Street, Washington, PA 15301. Canton Township, **Washington County**, ACOE Pittsburgh District.

To reissue, extend the time and amend Permit No. E63-406 to remove the existing Weirich Avenue Bridge (County Bridge No. 63) and to construct and maintain a new single span bridge having a span of 56.6 feet with an underclearance of 7.6 feet across Chartiers Creek (WWF) for the purpose of improving highway safety. The bridge is located on Weirich/Caldwell Avenue, approximately 1,000 feet west from the intersection of Interstate Route 70 and Weirich/Caldwell Avenue (Washington West, PA Quadrangle N: 8.3 inches; W: 3.7 inches) in Canton Township, Washington County.

ENVIRONMENTAL ASSESSMENTS

Northcentral Region: Program Manager, Water Management Program, 208 West Third Street, Williamsport, PA 17701.

EA17-004NC. Bureau of Abandoned Mine Reclamation, P. O. Box 8476, Harrisburg, PA 17105-8476 Mine Reclamation project in Gulich Township, **Clearfield County**, ACOE Baltimore District (Ramey, PA Quadrangle N: 3.2 inches; W: 6.6 inches).

To eliminate a health and safety hazard by reclaiming a 38.1-acre abandoned mine site along Little Muddy Run in Gulich Township, 2,900 feet of exposed high wall will be backfilled while 24-acres of spoil will be regarded and the site revegetated. About 1 acre of palustrine emergent wetland will be filled during the course of the project, which will be replaced through onsite mitigation. The project is Federally funded by the Office of Surface Mining.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

EA10-018NW, Stream Restoration Incorporated, 3016 Unionville Road, Cranberry Township, PA 16066. SR 96 Restoration Project, in Washington Township, **Butler County**, ACOE Pittsburgh District (Hilliard, PA Quadrangle N: 0.17 inch; W: 13.5 inches).

To fill approximately 0.18 acre of severely degraded wetland and to create approximately 0.14 acre of wetland for the reclamation of an abandoned mine discharge that currently impacts nearby wetlands and Slippery Rock Creek (CWF) to the north. Reclamation involves the construction of a passive treatment system consisting of an Anoxic Limestone Drain, a Settling Pond and a Treatment Wetland capable of treating a flow of 45 gpm. The project is located in State Game Lands No. 95 approximately 1.0 mile northwest of Hilliard.

ACTIONS

FINAL ACTIONS TAKEN UNDER THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT—NPDES AND WQM PART II PERMITS

INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications and requests for plan approval.

Any person aggrieved by these actions may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge this action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board (717) 787-3483 for more information.

I. Municipal and Industrial Permit Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

NPDES Permit No. 0701405, Sewage, **Northern Blair County Regional Sewer Authority**, R. R. 4, Box 236A, Tyrone, PA 16686. This proposed facility is located in Antis Township, **Blair County**.

Description of Proposed Action/Activity: Construction/Operation of Sewers, Appurtenances and Pump Stations (Ardie J. Dillen Industrial Park II).

NPDES Permit No. 0695413, Transfer 1, Sewage, **Mr. and Mrs. Fred Savage**, Eight Hessian Boulevard, Shillington, PA 19607-4839. This proposed facility is located in Cumru Township, **Berks County**.

Description of Proposed Action/Activity: Transfer of Ownership.

NPDES Permit No. PAS603503, Stormwater, **Jonathon Simon**, President, **Royal Green Corporation**, P. O. Box 9, Temple, PA 19560. This proposed facility is located in Ontelaunee Township, **Berks County**.

Description of Proposed Action/Activity: Authorization to discharge to Schuylkill River in Watershed 3-C

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

NPDES Permit No. PA0004472, Amendment No. 1, Industrial Waste, **United States Steel Corporation**, 400 State Street, Clairton, PA 15025 is authorized to discharge from a facility located at Clairton Works, Clairton, **Allegheny County** to receiving waters named Monongahela River and Peters Creek.

NPDES Permit No. PA0098035, Industrial, **Kinder Morgan Transmix Company, LLC**, 2010 William Pitt Way, Pittsburgh, PA 15238 is authorized to discharge from a facility located at Indianola Facility, Indiana Township, **Allegheny County** to receiving waters named Deer Creek.

Permit No. 0286468-T1-A1, Sewerage, **Gregory C. Steinsdoerfer**, 319 Cedar Run Boulevard, Allison Park, PA 15101. Construction of a Sewage Treatment Facility located in Indiana Township, **Allegheny County** to serve Steinsdoerfer Single Residence.

Permit No. 0401404, Sewerage, **Center Township Sewer Authority**, 224 Center Grange Road, Aliquippa, PA 15001. Construction of Collector Sewers and Pump Station located in Center Township, **Beaver County** to serve Spruce Drive.

Permit No. 1100402, Sewerage, **Sankertown Borough Sewer Authority**. Construction of Sanitary Sewers, Pump Station located in Sankertown Borough, **Cambria County** to serve Sankertown Borough.

Permit No. 6501412, Sewerage, **Dennis J. Gill**, Box 206 Slack Road, Boquet, PA 15644. Construction of Single Resident Sewage Treatment Plant located in Penn Township, **Westmoreland County** to serve Gill Residence.

Permit No. 6579402-A1, Sewerage, **Hempfield Suburban MHC, LLC, C/O The Carlyle Group, Inc.**, 9073 Nemo Street, West Hollywood, CA 90069. Construction of Sewage Treatment Plant located in Hempfield Township, **Westmoreland County** to serve Hempfield Highlands Mobile Home Park and Suburban Acres Mobile Home Park.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

NPDES Permit No. PA0238651, Industrial Waste, **Unimold A G Industries Inc.**, 671 Colbert Avenue, Oil City, PA 16301. This proposed facility is located in City of Oil City, **Venango County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to the Allegheny River.

NPDES Permit No. PA0001449, Industrial Waste, **Barnsteel Abrasives**, 681 East Butler Road, Butler, PA 16001. This proposed facility is located in City of Butler, **Butler County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to Connoquenessing Creek.

NPDES Permit No. PA0046418, Sewage, **Municipal Authority of Middleboro**, Middleboro Municipal Building, P. O. Box 189, McKean, PA 16426. This proposed facility is located in McKean Borough, **Erie County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to Elk Creek.

NPDES Permit No. PA0103373, Sewage, **Foxburg Area Water and Sewer Authority**, P. O. Box 2, Foxburg, PA 16036-0002. This proposed facility is located in Foxburg Borough, **Clarion County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to the Allegheny River.

NPDES Permit No. PA0238678, Sewage, **Arnold L. Becker**, 16944 State Route 18, Conneautville, PA 16406. This proposed facility is located in Summerhill Township, **Crawford County**.

Description of Proposed Action/Activity: This project is for a Single Residence.

WQM Permit No. 2001416, Sewerage, **Arnold L. Becker**, 16944 State Route 18, Conneautville, PA 16406. This proposed facility is located in Summerhill Township, **Crawford County**.

Description of Proposed Action/Activity: This project is for a Single Residence.

WQM Permit No. 2001422, Sewerage, **Gary Galford**, 16019 State Highway 86, Meadville, PA 16335. This proposed facility is located in Woodcock Township, **Crawford County**.

Description of Proposed Action/Activity: This project is for a Single Residence.

WQM Permit No. 2001417, Sewerage, **Mayhlon R. and Virginia E. Troutman**, P. O. Box 192, Cambridge Springs, PA 16403. This proposed facility is located in Cambridge Township, **Crawford County**.

Description of Proposed Action/Activity: This project is for a Single Residence.

WQM Permit No. 2001421, Sewerage, **Carol Ann Scott**, 217 Fourth Street, Aspinwall, PA 15215. This proposed facility is located in Summerhill Township, **Crawford County**.

Description of Proposed Action/Activity: This project is for a Single Residence.

WQM Permit No. 2501428, Sewerage, **John A. and Lisa M. Cacchione**, 11041 Lay Road, Edinboro, PA 16412. This proposed facility is located in Washington Township, **Erie County**.

Description of Proposed Action/Activity: This project is for a Single Residence.

APPROVALS TO USE NPDES AND/OR OTHER GENERAL PERMITS

The following parties have submitted: (1) Notices of Intent for Coverage under (1) General NPDES Permits to Discharge Wastewater into the Waters of the Commonwealth. The approval for coverage under these general

NPDES permits is subject to applicable effluent limitations. Monitoring, reporting requirements and other conditions set forth in the general permit: (2) General Permits for Beneficial Use of Sewage Sludge or Residential Septage by Land Application in Pennsylvania; (3) General NPDES Permit Authorizing the Discharge of Stormwater Associated with Construction Activities to Waters of the Commonwealth; (4) Notification for First Use Application of Sewage Sludge.

The approval of coverage for land application of sewage sludge or residential septage under these general permits is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards,

general requirements, management practices and other conditions set forth in the respective permit. The Department of Environmental Protection approves the following coverage under the specific General Permit.

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

The application and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted.

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From Single Residence Sewage Treatment Plant
PAG-5	General Permit for Discharges From Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges From Combined Sewer Systems (CSO)
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	Concentrated Animal Feeding Operations (CAFOs)

General Permit Type—PAG-2

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Telephone No.</i>
Schuylkill County Orwigsburg Borough	PAR105831	Blue Mt. School District Jeffrey Restshel P. O. Box 188 Orwigsburg, PA 17961	Mahannon Creek CWF	Schuylkill County Conservation District (570) 622-3742
Schuylkill County West Brunswick Township	PAR105834	Kimmel's Evangelical Free Church Jeffrey C. Hill R. D. 1, Box 1132 Orwigsburg, PA 17960	Pine Creek CWF	Schuylkill County Conservation District (570) 622-3742
Carbon County Kidder Township	PAR101330	Borough of Jim Thorpe 421 North St. Jim Thorpe, PA 18229	Mauch Chunk Creek, CWF Silk Mill Run, CWF	Carbon County Conservation District (610) 377-4894
Luzerne County Pittston Township	PAR10R243	Pittston Area Industrial Development Kennedy Blvd. William Street Pittston, PA 18640	Collins Creek CWF	Luzerne County Conservation District (570) 674-7991
Walker Township Centre County	PAR10F149	Forest Heights Subdivi- sion DBW Partnership 1042 W. Springfield Dr. Bellefonte, PA 16823	Nittany Creek CWF	Centre County Conservation District 414 Holmes Ave., Suite 4 Bellefonte, PA 16823 (814) 355-6817

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Telephone No.</i>
Jefferson County Beaver Township	PAR103342	Bureau of Abandoned Mine Reclamation P. O. Box 8476 Harrisburg, PA 17105-8476	Tarklin Run (CWF)	Jefferson Conservation District (814) 849-7463
<i>General Permit Type—PAG-3</i>				
<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Telephone No.</i>
Lancaster County Clay Township	PAR203568	Paul B. Zimmerman, Inc. P. O. Box 300 Ephrata, PA 17522	Groundwater	DEP SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
East Taylor Township Cambria County	PAR606176	Wm. Penn Auto Inc. 837 Wm. Penn Highway Johnstown, PA 15906	Stoney Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
South Bend Township Armstrong County	PAR706123	Armstrong Energy Limited Partnership LLLP R. D. 3 Box 196 Shelocta, PA 15774-9114	Crooked Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Young Township Jefferson County	PAR118337	Femco Machine Company R. R. 6, Box 17 Punxsutawney, PA 15767	Unnamed tributary to Mahoning Creek	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
<i>General Permit Type—PAG-4</i>				
<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Telephone No.</i>
Huntingdon County Shirley Township	PAG043537	Department of Conservation and Natural Resources— Bureau of Forestry/ Tuscarora District 3 Juniata House R. R. 1, Box 486 Blain, PA 17006	Juniata River/WWF	DEP SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Penn Township Westmoreland County	PAG046245	Dennis J. Gill Box 206 Slack Road Boquet, PA 15644	Boquet Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Woodcock Township Crawford County	PAG048776	Gary Galford 16019 State Highway 86 Meadville, PA 16335	Unnamed tributary of Woodcock Creek	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Telephone No.</i>
Cambridge Township Crawford County	PAG048769	Mayhlon R. and Virginia E. Troutman P. O. Box 192 Cambridge Springs, PA 16403	Unnamed tributary to Gravel Run	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Shenango Township Mercer County	PAG048418	Gary Blakley 354 Sieg Hill Road West Middlesex, PA 16159	Unnamed tributary to Shenango River	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Adams Township Butler County	PAG048447	Richard A. Winner 103 Ramblewood Lane Mars, PA 16046	Tributary to Breakneck Creek	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Summerhill Township Crawford County	PAG048774	Carol Ann Scott 217 Fourth Street Aspinwall, PA 15215	Unnamed tributary to Conneaut Creek	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Washington Township Erie County	PAG048780	John A. and Lisa M. Cacchione 11041 Lay Road Edinboro, PA 16412	Unnamed tributary to Conneauttee Creek	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Knox Township Clarion County	PAG048430	Carl J. Ochs 847 Sunset Drive Lucinda, PA 16235	Step Creek	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

PUBLIC WATER SUPPLY PERMITS

The Department of Environmental Protection (Department) has taken the following actions on applications received under the Safe Drinking Water Act for the construction, substantial modification or operation of a public water system.

Any person aggrieved by these actions may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge this action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Operations Permit issued to: **Jean Corson, d/b/a Colony Park Mobile Home Park**, 5 Wild Way, Lake Hopatcong, NJ 07849, Texas Township, **Wayne County** on December 27, 2001.

Operations Permit issued to: **Glen Summit Springs Water Co., Inc.**, P. O. Box 129, Mountain Top, PA 18707, Wright Township, **Luzerne County** on December 19, 2001.

Operations Permit issued to: **Lehigh County Authority—Central Division**, 1053 Spruce Street, P. O.

Box 3348, Allentown, PA 18106-0248, Upper Macungie Township, **Lehigh County** on December 27, 2001.

Operations Permit issued to: **Lehigh Water Authority**, P. O. Box 29, Municipal Building, Lehigh, PA 18235, Lehigh Borough, **Carbon County** on December 21, 2001.

Operations Permit issued to: **Mary-D Community Association**, 34-36 Forest Lane, Mary-D, PA 17952, Schuylkill Township, **Schuylkill County** on January 8, 2002.

Operations Permit issued to: **MC Resource Development, Inc.**, R. R. 2, Pine Valley Road, New Ringgold, PA 17960, East Brunswick Township, **Schuylkill County** on January 16, 2002.

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 4401501 MA, Minor Amendment, Public Water Supply.

Applicant	Municipal Authority of the Borough of Lewistown
Municipality	Derry Township
County	Mifflin
Type of Facility	Construction of a 250,000 gallon finished water storage tank and 8,400 feet of pipe.
Consulting Engineer	Eric A. Casanave, P.E. Gwin Dobson & Foreman Inc. 3121 Fairway Drive Altoona, PA 16602-4475
Permit to Construct Issued:	January 28, 2002

Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Operations Permit No. 4999502, issued to: **Merck & Company, Inc.—Cherokee Plant**, P. O. Box 600, Danville, PA 17821, Riverside Borough, **Northumberland County** on January 22, 2002.

Operations Permit No. Minor Amendment, issued to: **Allenwood Federal Prison Camp**, 1049 Allenwood Camp Lane, Montgomery, PA 17752-9718, Brady Township, **Lycoming County** on January 29, 2002.

Permit No. 1801501. Public Water Supply.

Applicant	Borough of Loganton
Township	Greene
County	Clinton
Type of Facility	Public Water Supply
Consulting Engineer	Kerry A. Uhler Kerry A. Uhler & Associates 140 West High Street Bellefonte, PA 16823
Permit to Construct Issued:	January 25, 2002

Permit Minor Amendment. Public Water Supply.

Applicant	Consumers Pennsylvania Water Company—Roaring Creek Division 204 East Sunbury Street Shamokin, PA 17872-4859
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Township	Coal
County	Northumberland
Type of Facility	Public Water Supply
Consulting Engineer	CET Engineering Services 1240 North Mountain Rd Harrisburg, PA 17112-1788
Permit to Construct Issued:	January 25, 2002

WATER ALLOCATIONS

Actions taken on applications received under the Act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of the Commonwealth.

Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WA 16-1001, Water Allocations. PA American Water Company—Clarion, Clarion Township, **Clarion County**. Rights granted for the increase of withdrawal of water from the Clarion River from 2 MGD to 4 MGD. Increase is necessary for the anticipated growth of the service area.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted under the Pennsylvania Sewage Facilities Act of January 24, 1966, P. L. 1535, as amended (35 P. S. §§ 750.1—750.20a).

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Bethlehem Township	4225 Easton Avenue Bethlehem, PA 18020	Northampton

Plan Description: The approved plan provides for construction of a 12-inch sanitary sewer extension along Route 191 north of U. S. Route 22 to approximately the Bethlehem Township/Lower Nazareth Township line. In addition, an 8-inch sewer main is planned for the intersection of Brodhead Road and Orchard Lane to the intersection of Route 191 and Brodhead Road. The purpose of the sewer extensions is to provide public sewer to "neighborhood" commercial properties along Route 191 that have malfunctioning onlot sewage systems or holding tanks and to provide service to the existing properties along Brodhead Road of Phase 1 (existing) of Brodhead Manor Subdivision. This extension will also provide for the relocation of a proposed pump station that would serve the Brodhead Manor Phase 2 (proposed) subdivision.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Broad Top Township	187 Municipal Road P. O. Box 57 Defiance, PA 16633	Bedford County

Plan Description: The approved plan of January 22, 2002, for the Hess Trailer Park provides for approval of a revision to the Official Sewage Plan of Broad Top Town-

ship, Bedford County. Project involves construction of a centralized community facility to serve nine single-family dwellings and is located on the north and south sides of SR 1020 1/4 mile west of SR 915. Treated effluent is to be discharged to an unnamed tributary of Sherman Valley Run. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality as appropriate.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following final reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (Act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of final reports. A final report is submitted to document cleanup of a release of a regulated substance at a site where one of the Act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected.

For further information concerning the final report, contact the Environmental Cleanup Program Manager in the Department Regional Office under which the notice of receipt of a final report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following final reports:

Southeast Region: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

Alfa Laval, Inc., Warminster Township, **Bucks County**. Patrick M. Hennessy, Alfa Laval Inc., 9201 Wilmot Rd., Kenosha, WI 531-0840, has submitted a Final Report concerning remediation of site soil contaminated with PCBs, lead, heavy metals, BTEX, polycyclic aromatic hydrocarbons, solvents and pesticides. The report is intended to document remediation of the site to meet the Statewide Health Standard.

World Savings Property, Bensalem Township, **Bucks County**. Andrew K. Markowski, P.G., Onesky Engineering, Inc., 210 Carter Dr., Suite 8, West Chester, PA 19382 on behalf of World Savings, 198 Washington Valley Rd., Warren, NJ 07059, has submitted a Final Report concerning remediation of site soil contaminated with BTEX and polycyclic aromatic hydrocarbons. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Triad Building, Upper Merion Township, **Montgomery County**. William A. Kovach, Environmental Waste Management Associates, 51 Everett Dr., Suite A-10, West Windsor, NJ 08550, on behalf of Triad Realty Associates LP, c/o Gale & Wentworth, Director of Environmental Safety, 300 Campus Dr., Florham Park, NJ 07932, has submitted a Final Report concerning remediation of site soil contaminated with ethylene glycol. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Binder Residence, Lower Moreland Township, **Montgomery County**. Andrew Dzedzic, Brinkerhoff Environmental Services, Inc., 133 Jackson Rd., Suite D, Medford, PA, on behalf of Lucy Binder, Huntingdon Valley, PA, has submitted a Final Report concerning remediation of site soil and groundwater contaminated with BTEX. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Northeast Regional Field Office, Joseph A. Brogna, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

PPL—Former Tamaqua Manufactured Gas Plant Facility, Tamaqua Borough, **Schuylkill County**. James F. Villaume, P.G., Environmental Supervisor, PPL Electric Utilities, 2 North Ninth Street, Allentown, PA, 18101 submitted a Remedial Investigation Report concerning the characterization of site soils and groundwater found or suspected to have been contaminated with polycyclic aromatic hydrocarbons, petroleum hydrocarbons and BTEX (benzene, toluene, ethylbenzene and xylenes) constituents. The report was submitted in partial fulfillment of the site-specific standard.

Proposed Allentown Towers (former Union Carbide/Linde Gases property), City of Allentown, **Lehigh County**. William F. Schmidt, P.E., Pennoni Associates, One Drexel Plaza, 3001 Market Street, Suite 200, Philadelphia, PA 19104-2897 has submitted a combined Remedial Investigation Report and Final Report (on behalf of Trainer Enterprises, Inc., Investments in Real Estate, 219 North 9th Street, Allentown, PA) concerning the characterization and remediation of site soils found or suspected to have been contaminated with lead and site groundwater found or suspected of being contaminated with selenium. The reports were submitted in fulfillment of the site-specific standard.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Mobil Pipeline Fahnestock Property, Rapho Township, **Lancaster County**. IT Corporation, 1160 McDermott Drive, Suite 102, West Chester, PA 19380 (on behalf of ExxonMobil Refining & Supply Company, P. O. Box 728, Linden, NJ 07036) submitted a Final Report concerning remediation of site soils contaminated with BTEX and PAHs. The report is intended to document remediation of the site to the Statewide Health standard.

Madison Square Furniture, Hanover Borough, **York County**. Alliance Environmental Services, Inc., 1414 North Cameron Street, Harrisburg, PA 17103 (on behalf of Madison Square Furniture, West Elm Avenue, Hanover, PA 17331) submitted a combined remedial investigation and final report concerning remediation of site soils and groundwater contaminated with PCBs, solvents, BTEX, PHCs and PAHs. The combined report is intended to document remediation of the site to a combination of the Statewide Health and Site Specific standards.

Capital City Airport Harrisburg Jet Center, Fairview Township, **York County**. Marshall Miller and Asso-

ciates, 3913 Hartzdale Drive, Camp Hill, PA 17011 (on behalf of Harrisburg International Airport, 113 Airport Drive, New Cumberland, PA 17070) resubmitted a Final Report concerning remediation of site soils contaminated with BTEX and PAHs. The report is intended to document remediation of the site to the Statewide Health standard.

Heritage Metal Finishing, Inc., Borough of Elizabethtown, **Lancaster County**. Heritage Metal Finishing, Inc., 800 South Market Street, Elizabethtown, PA has submitted a Final Report concerning remediation of site soils contaminated with heavy metals. The applicant proposes to remediate the site to meet the Statewide Health standard requirements. The report is intended to document remediation of the site to the Statewide Health standard.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of 25 Pa. Code § 250.8, Administration of the Land Recycling and Environmental Remediation Standards Act (Act) requires the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the Act. Plans and reports required by provisions of the Act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media; benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. A cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program Manager in the Department Regional Office under which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following final reports:

Northeast Region: Joseph A. Brogna, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

Former Horwath Property, Chestnuthill Township, **Monroe County**. Kevin P. Van Kuren, P.G., President, Hydrocon Services, Inc., 2945 South Pike Avenue, Allentown, PA 18103 submitted a Final Report concerning the remediation of groundwater found to have been contaminated with no. 2 fuel oil constituents. The report did not demonstrate attainment of the Statewide health standard and was disapproved on January 18, 2002.

John Peters Property, Archbald Borough, **Lackawanna County**. Martin Gilgallon, P.G., Pennsylvania Tectonics, Inc., 333 Enterprise Street, Dickson City, PA 18519 submitted a Final Report (on behalf of John Peters, Pike Street, Archbald, PA 18403) concerning the remediation of soils found or suspected to have been contaminated with no. 2 fuel oil constituents. The report was submitted within 90 days of an accidental release of the fuel oil to soils on the subject property. The report demonstrated attainment of remediation of the site under the Statewide health standard and was approved on January 18, 2002.

HAZARDOUS WASTE TRANSPORTER LICENSE

Actions on applications for Hazardous Waste Transporter License received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to transport hazardous waste.

Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.

HAZARDOUS WASTE TRANSPORTER LICENSE RENEWED

JMT Environmental Technologies, Inc., P. O. Box 22044, Lehigh Valley, PA 18002. License No. **PA-AH 0648**. Effective January 25, 2002.

Northern A-1 Sanitation Services, Inc., P. O. Box 40, Kalkaska, MI 49646. License No. **PA-AH 0526**. Effective January 23, 2002.

RESIDUAL WASTE GENERAL PERMITS

Permits Amended under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and the Beneficial Use of Residual Waste other than Coal Ash.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.

Waste Oil General Permits. The Department unilaterally amended the following general permits involving the transfer or processing of waste oil to reflect changes due to the June 2, 2001, rulemaking on waste oil: General Permit Number WMGR023; General Permit Number

WMGR026; General Permit Number WMGR029; General Permit Number WMGR039; General Permit Number WMGR040; and General Permit Number WMGR066.

The modifications involve mixtures of hazardous waste and waste oil, storage requirements, limits to facilities applying for determination of applicability and other aspects. These general permits were amended by Central Office on January 25, 2002.

Persons interested in reviewing the general permits may contact Ronald C. Hassinger, Chief, General Permits/Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Land Recycling and Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Permits issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Permit No. 602758. A-Septic Tank Service, 1406 Rolling Acres Road, Latrobe, PA 15650. The solid waste permit for agricultural utilization of sewage sludge in Hempfield Township, **Westmoreland County** has been terminated by the Department of Environmental Protection on January 18, 2002, at the request of the operator, Larry W. Smith. This facility is now covered under General Permit PAG096102.

AIR QUALITY

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: James Parette, New Source Review Chief, (570) 826-2531.

64-302-007GP: United States Department of Justice (Federal Bureau of Prisons, 1100 Liberty Avenue, Pittsburgh, PA 15222) for construction and operation of Boiler #1 (natural gas/#2 oil fired) at the Waymart facility in Waymart Borough, **Wayne County**.

64-302-008GP: United States Department of Justice (Federal Bureau of Prisons, 1100 Liberty Avenue, Pittsburgh, PA 15222) for construction and operation of Boiler #2 (natural gas/#2 oil fired) at the Waymart facility in Waymart Borough, **Wayne County**.

64-302-009GP: United States Department of Justice (Federal Bureau of Prisons, 1100 Liberty Avenue, Pittsburgh, PA 15222) for construction and operation of Boiler #3 (natural gas/ #2 oil fired) at the Waymart facility in Waymart Borough, **Wayne County**.

Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Thomas McGinley, New Source Review Chief, (610) 832-6242.

23-0063A: Department of Corrections—SCI Chester (2520 Lisburn Road, P. O. Box 598, Camp Hill, PA 17001-0598) on January 18, 2002, for three boilers and three diesel generators in City of Chester, **Delaware County**.

23-0077: County of Delaware (340 North Middletown Road, Lima, PA 19037-0048) on January 18, 2002, for natural gas fired cogeneration process in Middletown Township, **Delaware County**.

09-0015C: Rohm and Haas Co. (Route 413 and State Road, Bristol, PA 19007) on January 23, 2002, for operation of a thermal oxidizer in Bristol Township, **Bucks County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Ronald Davis, New Source Review Chief, (717) 705-4702.

22-03048: Reiff and Nestor Co. (P. O. Box 147, Lykens, PA 17048) on January 22, 2002, for installation of two chrome electroplating tanks controlled by a composite mesh pad scrubber system in Lykens Borough, **Dauphin County**. This facility is subject to 40 CFR Part 63, Subpart N—National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: William Charlton, New Source Review Chief, (412) 442-4174.

63-00893C: Master Woodcraft, Inc. (200 Stationvue, Washington, PA 15301) for installation of a surface coating spray booth with air cleaning overspray filters and airless spray guns in Chartiers Township, **Washington County**.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Thomas McGinley, New Source Review Chief, (610) 832-6242.

15-0099: Heckett MultiServ (South First Avenue, Coatesville, PA 19320) on January 4, 2002, for operation of a scrap-cutting torch with baghouses in South Coatesville Borough, **Chester County**.

09-0090: Messer Griesheim Industries, Inc. (One Steel Road East, Morrisville, PA 19067) on January 9, 2002, for operation of a residual cylinder gases in Bristol Township, **Bucks County**.

09-0105A: Naceville Materials (Springfield Street and Route 309, Coopersburg, PA 19474) on January 3, 2002, for operation of an asphalt batch plant in Springfield Township, **Bucks County**.

09-0035B: Coltec Industries (23 Friends Lane, Newtown, PA 18940) on January 7, 2002, for operation of a PTFE manufacturing line lubricant in Newtown Township, **Bucks County**.

09-0063A: New Hope Crushed Stone Co. (6970 Phillips Mill Road, New Hope, PA 18938) on January 9, 2002, for operation of a stone crushing plant in Solebury Township, **Bucks County**.

46-0155A: Sermatech International, Inc. (155 South Limerick Road, Limerick, PA 19468) on January 9, 2002, for operation of two ATR CEW spray booths in Limerick Township, **Montgomery County**.

46-0155C: Sermatech International, Inc. (155 South Limerick Road, Limerick, PA 19468) on January 9, 2002, for operation of a binder mix tank in Limerick Township, **Montgomery County**.

46-0155B: Sermatech International, Inc. (155 South Limerick Road, Limerick, PA 19468) on January 9, 2002, for operation of a thermal spray unit in Limerick Township, **Montgomery County**.

23-0009A: Boeing MACAM System Group—Philadelphia (Stewart Avenue and Route 291, Eddystone, PA 19013) on January 4, 2002, for operation of four gas turbine generators in Ridley Township, **Delaware County**.

23-0024A: Hanson Aggregates PA, Inc. (523 West Forge Road, Glen Mills, PA 19342) on January 15, 2002, for operation of an aero pulse baghouse in Middletown Township, **Delaware County**.

09-0110: Riverside Construction Materials, Inc. (7900 Radcliffe Street, Bristol, PA 19007) on January 16, 2002, for operation of a cement handling in Bristol Township, **Bucks County**.

46-0182: Rotoflex Technology Inc. (92B County Line Road, Colmar, PA 18915) on January 15, 2002, for operation of a chrome plating process in Hatfield Township, **Montgomery County**.

46-313-093B: SmithKline Beecham Research Company (1250 South Collegeville Road, Collegeville, PA 19486) on January 10, 2002, for operation of a chemical development Facility in Upper Providence Township, **Montgomery County**.

46-313-093C: SmithKline Beecham Research Co. (1250 South Collegeville Road, Collegeville, PA 19486) on January 10, 2002, for operation of a hydrogenation facility in Upper Providence Township, **Montgomery County**.

46-0190: Dickson Investment Hardware, Inc. (404 East Church Road, King of Prussia, PA 19406) on January 18, 2002, for operation of a gas fired thermal oxidizer in Upper Merion Township, **Montgomery County**.

46-0032A: SPS Technologies, Inc. (Highland Avenue, Jenkintown, PA 19046) on January 16, 2002, for operation of a coating and mixing room in Abington Township, **Montgomery County**.

23-0001L: Sunoco, Inc. (Delaware Avenue and Green Street, Marcus Hook, PA 19061) on January 15, 2002, for operation of two racing fuel storage tanks in Marcus Hook Borough, **Delaware County**.

09-0053: Greif Bros. Corp. (695 Louis Drive, Warminster, PA 18974) on January 23, 2002, for operation of a lining surface coating booth in Warminster Township, **Bucks County**.

15-0027D: Johnson Matthey (434 Devon Park Drive, Wayne, PA 19087) on January 16, 2002, for operation of Coating Line 7 and SCR in Tredyffrin Township, **Chester County**.

46-313-146: Penn Color, Inc. (2755 Bergey Road, Hatfield, PA 19440) on January 18, 2002, for operation of a base pigment dispersion facility in Hatfield Township, **Montgomery County**.

15-0108: Refractory Minerals Co., Inc. (150 South Jennersville Road, West Grove, PA 19390) on January 16, 2002, for operation of a gas fired dryer in Penn Township, **Chester County**.

46-0144: USDA Eastern Regional Research Center (600 East Mermaid Lane, Wyndmoor, PA 19038) on January 18, 2002, for operation of a steam boiler in Springfield Township, **Montgomery County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Ronald Davis, New Source Review Chief, (717) 705-4702.

38-05017A: Greater Lebanon Refuse Authority (1610 Russell Road, Lebanon, PA 17046) on January 20, 2002, for installation of a ground flare to control landfill emissions in North Lebanon Township, **Lebanon County**. This source is subject to 40 CFR Part 60, Subpart Cc—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. This plan approval was extended.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.

18-313-019D: Croda, Inc. (P. O. Box 178, Mill Hall, PA 17751-9601) on January 14, 2002, to extend the authorization to operate various batch reaction vessels used to produce quaternary ammonium compounds and associated air cleaning devices (a thermal oxidizer and a packed bed scrubber) on a temporary basis until May 14, 2002, in Bald Eagle Township, **Clinton County**.

55-0005B: Wood-Mode, Inc. (1 Second Street, Kreamer, PA 17833) on January 17, 2002, to extend the authorization to operate a wood cabinet molding/rail finishing operation on a temporary basis until May 17, 2002, as well as to extend the deadline for the performance of stack testing on the respective operation and associated air cleaning device (a regenerative thermal oxidizer) until May 17, 2002, in Middlecreek Township, **Snyder County**.

19-303-004C: HRI, Inc. (P. O. Box 155, State College, PA 16804) on January 23, 2002, to extend the authorization to operate a reprocessed oil-fired batch asphalt plant and associated air cleaning device (a fabric collector) on a temporary basis until May 23, 2002, in Hemlock Township, **Columbia County**. The asphalt plant is subject to Subpart I of the Federal Standards of Performance for New Stationary Sources.

47-303-003A: HRI, Inc. (P. O. Box 155, State College, PA 16804) on January 23, 2002, to extend the authorization to operate a reprocessed oil-fired drum mix asphalt plant and associated air cleaning device (a fabric collector) on a temporary basis until May 23, 2002, in Liberty Township, **Montour County**. The asphalt plant is subject to Subpart I of the Federal Standards of Performance for New Stationary Sources.

59-399-013: Truck-Lite Co., Inc. (R. R. 7, Box 942, Wellsboro, PA 16901) on January 22, 2002, to authorize the use of solder with a maximum lead content of 37%,

rather than 35%, in two wave soldering machines in Charleston Township, **Tioga County**.

49-309-002A: Watsontown Brick Co. (P. O. Box 68, Watsontown, PA 17777) on January 22, 2002, to extend the authorization to operate a natural gas-fired brick kiln and associated air cleaning devices (a two stage lime/sodium bicarbonate injection/reaction system and a fabric collector), as well as various pieces of mixing, grinding, etc. equipment and associated air cleaning devices (cartridge collectors), on a temporary basis until May 22, 2002, in Delaware Township, **Northumberland County**.

19-302-031: Dillon Floral Corp. (P. O. Box 180, Bloomsburg, PA 17815-0180) on January 22, 2002, to correct an error in a calculation method to be used for determining compliance with an oil sulfur content limitation for two #4 fuel oil, #6 fuel oil, reprocessed oil and natural gas-fired boilers in the Town of Bloomsburg, **Columbia County**.

Title V Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Edward Brown, Facilities Permitting Chief, (610) 832-6242.

46-00033: Waste Management Disposal Service of PA (1425 Sell Road, Pottstown, PA 19464) on January 18, 2002, for operation of a Facility Title V Operating Permit in West Pottsgrove Township, **Montgomery County**.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Michael Safko, Facilities Permitting Chief, (570) 826-2531.

13-00001: Horsehead Resource Development Co. (900 Delaware Avenue, Palmerton, PA 18071) on April 24, 2000, for operation of a Facility Title V Operating Permit in Palmerton Borough, **Carbon County**.

35-00010: MACtac (P. O. Box 1106, Scranton, PA 18501) on June 26, 2000, for operation of a Facility Title V Operating Permit in Moosic Borough, **Lackawanna County**.

35-00011: Alliance Sanitary Landfill (398 South Keyser Avenue, Taylor, PA 18517) on March 30, 1999, for operation of a Facility Title V Operating Permit in Taylor Borough, **Lackawanna County**.

39-00003: Apollo Metals Ltd. (1001 14th Avenue, Bethlehem, PA 18018-0045) on May 26, 2000, for operation of a Facility Title V Operating Permit in the City of Bethlehem, **Lehigh County**.

39-00019: Buckeye Pipe Line Co., L.P. (P. O. Box 368, Emmaus, PA 18049) on February 12, 1998, for operation of a Facility Title V Operating Permit in Lower Macungie and Upper Mt. Bethel Townships, **Lehigh County**.

40-00004: White Cap, Inc. (Valmont Industrial Park, 350 Jaycee Drive, West Hazleton, PA 18201) on June 29, 2000, for operation of a Facility Title V Operating Permit in Hazle Township, **Luzerne County**.

40-00005: UGI Utilities, Inc.—Electric Division (P. O. Box 3200, Wilkes-Barre, PA 18773-3200) on February 12, 1998, for operation of a Facility Title V Operating Permit in Hunlock Township, **Luzerne County**.

40-00007: Bemis Corp. (Valmont Industrial Park, P. O. Box 557, West Hazleton, PA 18201) on April 5, 2000,

for operation of a Facility Title V Operating Permit in Hazle Township, **Luzerne County**.

40-00009: Techneglas, Inc. (140 Industrial Drive, Pittston, PA 18640) on October 31, 2000, for operation of a Facility Title V Operating Permit in Jenkins Township, **Luzerne County**.

40-00021: Williams Generation Co. (1 Williams Center, Tulsa, OK 74101) on January 18, 2000, for operation of a Facility Title V Operating Permit in Hazle Township, **Luzerne County**.

40-00025: Sun Co., Inc.—Refining & Marketing Kingston Terminal (1801 Market Street, 26/10 PC, Philadelphia, PA 19103-1699) on January 15, 1998, for operation of a Facility Title V Operating Permit in Edwardsville Borough, **Luzerne County**.

45-00005: Aventis Pasteur (P. O. Box 187, Swiftwater, PA 18370) on April 3, 2000, for operation of a Facility Title V Operating Permit in Pocono Township, **Monroe County**.

48-00006: Reliant Energy Holdings LLC Portland (P. O. Box 1050, Johnstown, PA 15907-1050) on January 5, 2000, for operation of a Facility Title V Operating Permit in Upper Mt. Bethel Township, **Northampton County**.

48-00016: Lehigh University (461 Webster Street, Bethlehem, PA 18015-1755) on February 1, 1999, for operation of a Facility Title V Operating Permit in the City of Bethlehem, **Northampton County**.

48-00018: Elementis Pigments, Inc. (1525 Wood Street, Easton, PA 18042) on December 26, 2000, for operation of a Facility Title V Operating Permit in the City of Easton, **Northampton County**.

48-00037: Chrin Brothers Sanitary Landfill (635 Industrial Drive, Easton, PA 18042) on March 30, 1999, for operation of a Facility Title V Operating Permit in Williams Township, **Northampton County**.

54-00042: The Commodore Corp. (P. O. Box 169, Pine Grove, PA 17963) on October 31, 2000, for operation of a Facility Title V Operating Permit in Pine Grove Township, **Schuylkill County**.

58-00001: Tennessee Gas Pipeline Station #321 (P. O. Box 2511, Houston, TX 77252) on April 15, 1999, for operation of a Facility Title V Operating Permit in Clifford Township, **Susquehanna County**.

64-00001: Department of Corrections—Waymart (P. O. Box 598, Camp Hill, PA 17001-0598) on February 12, 1998, for operation of a Facility Title V Operating Permit in Canaan Township, **Wayne County**.

40-0017: Pennsylvania Power & Light Co. (2 North Ninth Street, Allentown, PA, 18101) on July 24, 1997, for operation of a Facility Title V Operating Permit in Laflin Borough, **Luzerne County**.

40-0002: Transcontinental Gas Pipeline Corp. (P. O. Box 1396, Houston, TX 77251) on March 26, 1998, for operation of a Facility Title V Operating Permit in Buck Township, **Luzerne County**.

54-0004: Gilberton Power Co. (P. O. Box 7, Frackville, PA 17931) on March 27, 1998, for operation of a Facility Title V Operating Permit in West Mahanoy Township, **Schuylkill County**.

52-0001: Columbia Gas Transmission Corp. (1700 MacCorkle Avenue S.E., Charleston, WV 25325) on October 22, 1997, for operation of a Facility Title V Operating Permit in Milford Township, **Pike County**.

54-0002: Allied Signal Inc. (P. O. Box 697, Westwood Road, Pottsville, PA 17901) on June 16, 2000, for operation of a Facility Title V Operating Permit in Norwegian Township, **Schuylkill County**.

40-0014: Stroehmann Bakeries, Inc. (Kiwanis Boulevard, West Hazleton, PA 18201) on April 17, 1998, for operation of a Facility Title V Operating Permit in Hazleton Township, **Luzerne County**.

54-0009: Reneer Films/Gen Corp Inc. (P. O. Box 429, Hickory Drive, Auburn, PA 17922) on January 31, 2000, for operation of a Facility Title V Operating Permit in West Brunswick Township, **Schuylkill County**.

40-0010: CertainTeed Corp. (Crestwood Industrial Park, 1220 Oak Hill Road, Mountaintop, PA 18707) on February 15, 2000, for operation of a Facility Title V Operating Permit in Wright Township, **Luzerne County**.

39-0004: Mack Trucks, Inc. (Box M, 2100 Mack Boulevard, Allentown, PA 18105-5000) on May 1, 2000, for operation of a Facility Title V Operating Permit in Lower Macungie Township, **Lehigh County**.

35-0013: Thompson Consumer Electronics (200 Keystone Industrial Park, Dunmore, PA 18512) on June 22, 2000, for operation of a Facility Title V Operating Permit in Dunmore Borough, **Lackawanna County**.

48-0032: Grand Central Sanitary Landfill, Inc. (1963 Pen Argyl Road, Pen Argyl, PA 18072) on December 29, 2000, for operation of a Facility Title V Operating Permit in Plainfield Township, **Northampton County**.

40-0028: Eldorado Properties Corp. (3020 Columbia Avenue, Lancaster, PA 17603) on June 12, 1998, for operation of a Facility Title V Operating Permit in Pittston Township, **Luzerne County**.

54-0021: Pine Grove Landfill Inc. (R. D. 4, Box 447, Shultz Road, Pine Grove, PA 17963) on December 21, 2000, for operation of a Facility Title V Operating Permit in Pine Grove Township, **Schuylkill County**.

54-0022: Alumax Extrusions, Inc. (53 Pottsville Street, P. O. Box 129, Cressona, PA 17929-0129) on August 16, 2000, for operation of a Facility Title V Operating Permit in Cressona Borough, **Schuylkill County**.

58-0006: Barnes and Kasson County Hospital (400 Turnpike Street, Susquehanna, PA 18847) on March 7, 2001, for operation of a Facility Title V Operating Permit in Susquehanna Borough, **Susquehanna County**.

48-0057: Encor Coatings, Inc. (P. O. Box 26, Route 248, Bath, PA 18014) on February 22, 2001, for operation of a Facility Title V Operating Permit in Upper Nazareth Township, **Northampton County**.

39-0016: Farm and Home Oil Co. (P. O. Box 175, Duncansville, PA 16635) on June 12, 1998, for operation of a Facility Title V Operating Permit in Lower Macungie Township, **Lehigh County**.

48-0043: Formica Corp. (Route 512, P. O. Box 176, Mount Bethel, PA 18343) on March 1, 2000, for operation of a Facility Title V Operating Permit in Upper Mt. Bethel Township, **Northampton County**.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Edward Brown, Facilities Permitting Chief, (610) 832-6242.

09-0153: Legendary Cars, Inc. (2065 Bunnell Road, Warrington, PA 18976) on January 28, 2002, for operation of a gel coat spray booth in Warrington Township, **Bucks County**.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Michael Saffo, Facilities Permitting Chief, (570) 826-2531.

13-00010: AMETEK Westchester Plastics (Route 54, P. O. Box 9, Green Acres Industrial Park, Nesquehoning, PA 18240) on December 28, 2001, for operation of a facility Synthetic Minor Permit in Nesquehoning, **Carbon County**.

13-00013: AMPLE, Inc. (2125 Little Gap Road, LR 13013, Palmerton, PA 18071) on December 19, 2001, for operation of a facility Synthetic Minor Permit in Palmerton, **Carbon County**.

35-00022: McKinney Products Co. (820 Davis Street, Scranton, PA 18505) on December 27, 2001, for operation of a facility Synthetic Minor Permit in Moosic, **Lackawanna County**.

35-00023: United Gilsonite Laboratories (P. O. Box 70, Scranton, PA, 18501) on December 13, 2001, for operation of a facility Natural Minor Permit in Dunmore, **Lackawanna County**.

39-00026: Air Products and Chemical, Inc. (Trexlerstown Campus, 7201 Hamilton Boulevard, Allentown, PA 18195) on January 3, 2002, for operation of a facility Synthetic Minor Permit in Upper Macungie Township, **Lehigh County**.

39-00027: Carlos R. Leffler, Inc. (625 Lindon Street, Richland, PA 17087) on June 12, 1998, for operation of a facility Synthetic Minor Permit in Lower Macungie Township, **Lehigh County**.

39-00028: Agway Petroleum Corp. (Macungie Terminal, P. O. Box 4852, Syracuse, NY 13221) on June 12, 1998, for operation of a facility Synthetic Minor Permit in Emmaus, **Lehigh County**.

39-00037: Friskies Pet Care Co. (2050 Pope Road, Allentown, PA 18104) on December 27, 2001, for operation of a facility Synthetic Minor Permit in South Whitehall Township, **Lehigh County**.

40-00037: T. P. Corp. (620 Foote Avenue, P. O. Box 97, Duryea, PA 18643) on December 27, 2001, for operation of a facility Synthetic Minor Permit in Duryea, **Luzerne County**.

40-00049: Slusser Brothers Trucking and Excavating Co. (Small Mountain Stone Crushing/Screening, 1001 Paxton Street, Harrisburg, PA 17104) on December 28, 2001, for operation of a facility Synthetic Minor Permit in Dorrance Township, **Luzerne County**.

40-00055: National Starch and Chemical Co. (504 White Birch Road, Hazleton, PA 18201) on December 17, 2001, for operation of a facility Synthetic Minor Permit in Hazleton, **Luzerne County**.

40-00059: Reilly Finishing Technologies (130 Alden Road, Nanticoke, PA 18634) on December 17, 2001, for operation of a facility Synthetic Minor Permit in Nanticoke, **Luzerne County**.

40-00061: Inland Paperboard Packaging, Inc. (P. O. Box G, Hazleton, PA 18201) on December 19, 2001, for operation of a facility Synthetic Minor Permit in Hazleton, **Luzerne County**.

40-00066: Hazleton Pumps, Inc. (225 N. Cedar Street, Hazleton, PA 18201) on December 27, 2001, for operation of a facility Synthetic Minor Permit in Hazleton, **Luzerne County**.

45-00009: Heico Chemical (Route 611, P. O. Box 730, Delaware Water Gap, PA 18327) on December 19, 2001, for operation of a facility Natural Minor Permit in Delaware Water Gap Borough, **Monroe County**.

48-00028: The Waylite Co. (Easton Road, R. R. 5, Bethlehem, PA 18015) on December 17, 2001, for operation of a facility Synthetic Minor Permit in Bethlehem Township, **Northampton County**.

48-00053: Lifetime Doors, Inc. (National Administrative Office, 30700 Northwestern Highway, Farmington Hills, MI 48334) on December 19, 2001, for operation of a facility Synthetic Minor Permit in Easton, **Northampton County**.

48-00060: Ashland, Inc. (P. O. Box 2219 EHS, Columbus, OH 43216) on December 28, 2001, for operation of a facility Synthetic Minor Permit in Glendon Township, **Northampton County**.

54-00017: Lehigh Asphalt Paving and Construction Co. (Andreas Crushing Plant, P. O. Box 549, Tamaqua, PA 18252) on December 28, 2001, for operation of a facility Natural Minor Permit in West Penn Township, **Schuylkill County**.

54-00027: Titanium Wire Corp. (235 Industrial Park Road, Frackville, PA 17931) on December 27, 2001, for operation of a facility Synthetic Minor Permit in West Mahanoy, **Schuylkill County**.

58-00002: Donald Dean and Sons, Inc. (P. O. Box 246, Montrose, PA 18801) on December 14, 2001, for operation of a facility Natural Minor Permit in Bridgewater Township, **Susquehanna County**.

58-00003: Mountain View School District (R. R. 1, Box 339A, Kingsley, PA 18826) on December 13, 2001, for operation of a facility Natural Minor Permit in Harford Township, **Susquehanna County**.

58-00004: Envirocycle, Inc. (P. O. Box 899, Hallstead, PA 18822) on December 14, 2001, for operation of a facility Synthetic Minor Permit in Hallstead, **Susquehanna County**.

40-00057: Slusser Bros. Trucking and Excavating Co., Inc. (125 North Warren Street, Hazleton, PA 18201) on December 4, 2001, for operation of a Facility Synthetic Minor Operating Permit in Dorrance Township, **Luzerne County**.

40-00056: Slusser Bros. Trucking and Excavating Co., Inc. (125 North Warren Street, Hazleton, PA 18201) on December 3, 2001, for operation of a Facility Synthetic Minor Operating Permit in Hanover Township, **Luzerne County**.

35-00045: Eureka Stone Quarry, Inc. (P. O. Box 247, Chalfont, PA 18914) on December 4, 2001, for operation of a Facility Synthetic Minor Operating Permit in Covington Township, **Lackawanna County**.

39-00052: Eastern Industries, Inc. (4401 Camp Hearing Road, Suite 200, Center Valley, PA 18034) on November 28, 2001, for operation of a Facility Synthetic Minor Operating Permit in North Whitehall Township, **Lehigh County**.

45-00010: H. G. Smith Crematory (2120 North Fifth Street, Stroudsburg, PA 18360) on December 4, 2001, for operation of a Facility Natural Minor Operating Permit in Stroudsburg Borough, **Monroe County**.

39-00051: Jaindl's Turkey Farm (3150 Coffeetown Road, Orefield, PA 18069) on December 4, 2001, for operation of a Facility Synthetic Minor Operating Permit in North Whitehall Township, **Lehigh County**.

54-00043: Gould Pumps ITT Ind. (500 East Centre Street, Ashland, PA 17921) on December 4, 2001, for operation of a Facility Synthetic Minor Operating Permit in Ashland Borough, **Schuylkill County**.

54-00047: Pennsy Supply Co., Inc.—Summit Station Stone Crushing and Screening (P. O. Box 3331, Harrisburg, PA 17105) on December 4, 2001, for operation of a Facility Synthetic Minor Operating Permit in Wayne Township, **Schuylkill County**.

40-00048: Pike's Creek Sand and Stone—Lehman Township Plant 1 (P. O. Box 196, Lucon Road, Skippack, PA 19474) on December 4, 2001, for operation of a Facility Natural Minor Operating Permit in Lehman Township, **Luzerne County**.

54-00025: Leiby's Restaurant, Inc. (Routes 309 and 443, South Tamaqua, PA 18252) on December 27, 2001, for operation of a Facility Natural Minor Operating Permit in West Penn Township, **Schuylkill County**.

35-00039: Community Medical Center (1800 Mulberry Street, Scranton, PA 18510) on December 27, 2001, for operation of a Facility Synthetic Minor Operating Permit in City of Scranton, **Lackawanna County**.

66-00003: Deer Park Lumber, Inc. (R. D. 4, Box 280, Tunkhannock, PA 18657) on December 27, 2001, for operation of a Facility Synthetic Minor Operating Permit in Tunkhannock Township, **Wyoming County**.

35-00017: Art Print Co. (6 Stauffer Industrial Park, Taylor, PA 18517) on December 27, 2001, for operation of a Facility Synthetic Minor Operating Permit in Taylor Borough, **Lackawanna County**.

64-00002: Western Wayne School District—R. D. Wilson Elementary Center (P. O. Box 316, Waymart, PA 18472) on December 27, 2001, for operation of a Facility Synthetic Minor Operating Permit in Canaan Township, **Wayne County**.

45-00014: Mack Printing Co. (34 North Crystal Street, East Stroudsburg, PA 18301) on December 28, 2001, for operation of a Facility Synthetic Minor Operating Permit in East Stroudsburg Borough, **Monroe County**.

48-00008: Mack Printing Co. (1991 Northampton Street, Easton, PA 18042-3189) on December 28, 2001, for operation of a Facility Synthetic Minor Operating Permit in Wilson Borough, **Northampton County**.

54-00036: Ginther Coal Co.—Lucanna Prep. Plant (P. O. Box 989, Pottsville, PA 17901) on December 27, 2001, for operation of a Facility Natural Minor Operating Permit in East Norwegian Township, **Schuylkill County**.

35-00048: Simpson Stone Quarry (202 Main Street, Laflin, PA 18702) on December 27, 2001, for operation of a Facility Natural Minor Operating Permit in Fell Township, **Lackawanna County**.

48-00045: Tolino's Fuel Service (Box 8, Flickville, PA 18050) on December 27, 2001, for operation of a Facility Natural Minor Operating Permit in Washington Township, **Northampton County**.

45-00013: All American Olympic Division (140 2nd Street, Stroudsburg, PA 18360) on March 9, 2001, for operation of a Facility Synthetic Minor Operating Permit in Stroudsburg Borough, **Monroe County**.

45-00003: Reliant Energy—Middle Smithfield Station, Shawnee CT Facility (1001 Broad Street, Johnstown, PA 15907-1050) on February 23, 2001, for operation of a Facility Synthetic Minor Operating Permit in Middle Smithfield Township, **Monroe County**.

39-00023: Mobil Oil Corp. (1134 N. Quebec Street, Allentown, PA 18103) on June 12, 1998, for operation of a Facility Synthetic Minor Operating Permit in the City of Allentown, **Lehigh County**.

40-00029: Scranton Altoona Terminal (P. O. Box 2621, Harrisburg, PA 17105) on June 12, 1998, for operation of a Facility Synthetic Minor Operating Permit in Pittston Township, **Luzerne County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

36-03014: Burnham Corp. (1237 Harrisburg Pike, Lancaster, PA 17603) on January 22, 2002, for operation of its Fruitville Pike Boiler Plant in Manheim Township, **Lancaster County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: Mark Wayner, Facilities Permitting Chief, (412) 442-4174.

03-00050: Creekside Mushrooms, Ltd. (One Moonlight Drive, Worthington, PA 16262) for operation of mushroom cultivation at Worthington Plant in West Franklin Township, **Armstrong County**. The facility submitted a renewal application for an operating permit.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.

12-399-014A: GKN Sinter Metals Inc. (R. R. 2, Box 47, Emporium, PA 15834-9797) on January 17, 2002, to incorporate conditions established in Plan Approval 12-399-014C for a sintered metal parts oil impregnation system (PK #1), eight associated heated oil tanks and an associated air cleaning device (an electrostatic precipitator) at Plant #6 in Emporium Borough, **Cameron County**.

08-399-031: OSRAM SYLVANIA Products, Inc. (Hawes Street, Towanda, PA 18848) on January 22, 2002, to incorporate conditions established in Plan Approval 08-399-031A for a "hard metal grade powders" operation consisting of a spray dryer, associated blending, milling, etc. equipment and associated air cleaning devices (a cyclone, three fabric collectors and two HEPA filters) in North Towanda Township, **Bradford County**.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes; the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

Coal Permits Actions

Hawk Run District Mining Office: Empire Road, P. O. Box 209, Hawk Run, PA 16840-0209, (814) 342-8200.

17930120 and NPDES Permit No. PA 0219614. Al Hamilton Contracting Company, R. D. 1, Box 87, Woodland, PA 16881. Renewal of and revision to an existing bituminous surface mine permit for a Change in Permit Acreage from 116.0 to 88.8 acres, located in Lawrence Township, **Clearfield County**. Receiving streams: unnamed tributaries of Wallace Run to Wallace Run, Wallace Run to Little Clearfield Creek and Laurel Run to Little Clearfield Creek, Little Clearfield Creek to Clearfield Creek, Clearfield Creek to West Branch Susquehanna River. Application received: September 5, 2001. Permit issued: January 9, 2002.

Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.

33830117. Gurosik Coal Company, Inc. (800 Brandy Camp Road, Kersey, PA 15864) Renewal of an existing bituminous strip operation in Pine Creek Township, **Jefferson County** affecting 31.2 acres. The renewal is issued for reclamation only. Receiving streams: unnamed tributary to Five Mile Run. Application received: January 13, 2000. Permit Issued: January 17, 2002.

33970111. Falls Creek Energy Co., Inc. (R. D. 6, Box 231, Kittanning, PA 16201) Revision to an existing bituminous strip operation to change the post-mining land use from forestland to unmanaged natural habitat on the Falls Creek Energy Co., Inc. property in McCalmont and Winslow Townships, **Jefferson County**. Receiving streams: Laurel Run and Big Run. Application received: October 9, 2001. Permit Issued: January 22, 2002.

Noncoal Permits Actions

Hawk Run District Mining Office: Empire Road, P. O. Box 209, Hawk Run, PA 16840-0209, (814) 342-8200.

59010801. Gra-Hil Construction, Inc., R. R. 5, Box 302, Wellsboro, PA 16901, commencement, operation and reclamation of a small industrial minerals (sand and gravel) permit in Delmar Township, **Tioga County** affecting 2 acres. Receiving streams: unnamed tributary, tributary to Marsh Creek. Application received: July 10 2001. Permit issued: January 10, 2002.

Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.

20910306. R. Hunter, Incorporated (29780 Hickory Corners Road, Guys Mills, PA 16327) Transfer of an existing sand and gravel operation from Ralph L. Hunter in Richmond Township, **Crawford County** affecting 8.3 acres. Receiving streams: unnamed tributary to Woodcock Creek. Application received: February 14, 2001. Permit Issued: January 17, 2002.

20890304. R. Hunter, Incorporated (29780 Hickory Corners Road, Guys Mills, PA 16327) Transfer of an existing sand and gravel operation from Ralph L. Hunter in Hayfield Township, **Crawford County** affecting 22.0 acres. Receiving streams: French Creek. Application received: February 14, 2001. Permit Issued: January 17, 2002.

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 (43 P.S. §§ 151—161); and 25 Pa. Code § 211.124 (relating to blasting activity permits). Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

Blasting Permits Actions

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.

15024001. Schlouch, Inc. (P. O. Box 69, Blandon, PA 19510), construction blasting in East Bedford Township, **Chester County** with an expiration date of October 22, 2002. Permit issued: January 23, 2002.

39024001. Schlouch, Inc. (P. O. Box 69, Blandon, PA 19510), construction blasting in South Whitehall Township, **Lehigh County** with an expiration date of October 22, 2002. Permit issued: January 23, 2002.

45024002. Labrador Construction (P. O. Box 1379, Marshalls Creek, PA 18335), construction blasting in Mt. Pocono Township, **Monroe County** with an expiration date of April 3, 2002. Permit issued: January 23, 2002.

45024003. Labrador Construction (P. O. Box 1379, Marshalls Creek, PA 18335), construction blasting in Smithfield Township, **Monroe County** with an expiration date of February 24, 2002. Permit issued: January 23, 2002.

15024002. Explo-Service, Inc. (P. O. Box 164, 1315 Sheep Hill Road, East Earl, PA 17519), construction blasting in West Goshen Township, **Chester County** with an expiration date of December 25, 2002. Permit issued: January 24, 2002.

23024002. Allan A. Myers, Inc. (P. O. Box 98, Worchester, PA 19490), construction blasting in Newton Township, **Delaware County** with an expiration date of March 1, 2002. Permit issued: January 24, 2002.

45024004. Hayduk Enterprises, Inc. (P. O. Box 554, Dalton, PA 18414), construction blasting for Twin Lakes Estates Project in Smithfield Township, **Monroe County** with an expiration date of January 31, 2006. Permit issued: January 24, 2002.

45024005. Leeward Construction, Inc. (R. R. 6 Box 6825, Honesdale, PA 18431), construction blasting in Stroudsburg Borough, **Monroe County** with an expiration date of May 23, 2002. Permit issued: January 24, 2002.

46024004. Explo-Tech/AEEI (401 W. Main Street, Suite 102, Pottstown, PA 19464), construction blasting for TH Properties in Skippack Township, **Montgomery County** with an expiration date of March 14, 2002. Permit issued: January 24, 2002.

46024005. Eastern Blasting Co., Inc. (1292 Street Road, New Hope, PA 18938), construction blasting in Montgomery Township, **Montgomery County** with an expiration date of May 25, 2002. Permit issued: January 24, 2002.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341(a)).

Except as otherwise noted, the Department certifies that the construction and operation herein described will comply with the applicable provisions of sections 301—303, 306 and 307 of the FWPCA 33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State Water Quality Standards.

Any person aggrieved by these actions may appeal, under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge this action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and The Clean Streams Law (35 P. S. §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)). (Note: Water Obstruction and Encroachment Permits issued for Small Projects do not include 401 Certification, unless specifically stated in the description).

Permits Issued and Actions on 401 Certifications:

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

E64-220. Pennsylvania Department of Transportation, Engineering District 4-0, P. O. Box 111, Scranton, PA 18501, Lake Township, **Wayne County**, Army Corps of Engineers Philadelphia District.

To remove the existing structure and to construct and maintain a road crossing of Ariel Creek, consisting of a 14.0-foot x 4.0-foot concrete box culvert with its invert depressed 1.0 foot below streambed elevation. The project includes riprap bank stabilization along approximately 100 feet of the left channel bank at a location approximately 250 feet upstream of the culvert. The project will impact a de minimus area of wetlands less than 0.01 acre. The project is located along S.R. 3040, between Wildwood Lake and Roamingwood Lake (Lakeville, PA Quadrangle N: 12.2 inches; W: 13.4 inches).

E54-284. East Brunswick Township, R. R. 3, Box 102, New Ringgold, PA 17960. East Brunswick Township, **Schuylkill County**, Army Corps of Engineers Philadelphia District.

To remove the existing structure and to construct and maintain a concrete spread box beam bridge having a single span of 30 feet and underclearance of 7.5 feet across Indian Run. The project also includes approximately 70 L.F. of R-6 riprap bank protection along the upstream northern streambank and is located along Township Road T753 (Wild Turkey Lane), approximately 170 feet east of its intersection with T755 (New Ringgold, PA Quadrangle N: 7.7 inches; W: 15.1 inches).

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

E21-321. South Middleton Township, 520 Park Drive, Municipal Building, Boiling Springs, PA 17007 in South Middleton Township, **Cumberland County**, ACOE Baltimore District.

To construct and maintain a 12-foot wide pedestrian foot bridge having a clear span of 87-feet and a minimum underclearance of 6.7 feet across the Yellow Breeches Creek (HQ-CWF) for the purpose of connecting South Middleton Trail System to the Township's Park located 1,800 feet downstream of the bridge on SR 2003 that crosses the Yellow Breeches Creek (Carlisle, PA Quadrangle N: 2.12 inches; W: 3.03 inches) in South Middleton Township, Cumberland County.

E50-204. Sun Pipeline Company, 1824 Horsepike, Honeybrook, PA 19344 in Jackson Township, **Perry County**, ACOE Baltimore District.

To excavate about a 100-foot long trench across the stream channel to a depth of about 5.0 feet for the purpose of exposing an existing 8-inch diameter high

pressure petroleum pipeline in Laurel Run (EV) to facilitate the inspection and repair of a section of the pipe located about 750 feet upstream of the confluence of Laurel Run and the South Branch of Laurel Run (Andersonburg, PA Quadrangle N: 2.30 inches; W: 16.30 inches) in Jackson Township, Perry County.

E67-699. Felton Borough, 88 Main Street, Felton, PA 17322 in Felton Borough, **York County**, ACOE Baltimore District.

To construct and maintain two sanitary pump stations and associated electrical lines located within the 100-year floodplain of the North Branch Muddy Creek as part of the Felton Borough sanitary sewer system connected to a proposed wastewater treatment plant to be located on Water Street. The Beaver Street pump station is located on the west side of Beaver Street and the Water Street pump station along the east side of Water Street (Stewartstown, PA Quadrangle N: 18.65 inches; W: 8.8 inches) in Felton Borough, York County.

E67-710. Pennsylvania Department of Transportation, Engineering District 8-0, 2140 Herr Street, Harrisburg, PA 17103 in Carroll Township, **York County**, ACOE Baltimore District.

To remove the existing concrete arch bridge and to construct and maintain a new concrete bridge with a single span of 82 feet on a 70 degree skew with a minimum underclearance of 10.8 feet across Stony Run (CWF) on SR 4028, Section 001 (Siddonburg Road). The new bridge will be constructed about 75 feet upstream of the old bridge in order to realign Siddonburg Road located about 1.3 miles east from its intersection with US 15 (Mechanicsburg, PA Quadrangle N: 1.9 inches; W: 0.05 inch) in Carroll Township, York County. The amount of wetland impact is considered a de minimis impact of 0.05 acre and wetland mitigation is not required.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E02-1254. Urban Redevelopment Authority of Pittsburgh, 200 Ross Street, Pittsburgh, PA 15219. City of Pittsburgh, **Allegheny County**, ACOE Pittsburgh District.

To amend permit No. E02-1254 to include the construction and maintenance of a 36" and 60" diameter pipe stormwater outfall along the left bank of the Monongahela River for the purpose of developing a 115 acre site for proposed retail and residential, retail entertainment and office research development facilities. The site is located on the South Side of Carson Street between 25th Street and 34th Street near River Mile 3.5 (Pittsburgh East, Quadrangle N: 8.4 inches; W: 11.4 inches).

ENVIRONMENTAL ASSESSMENTS

Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105.

D04-061EA. Bruce Mansfield Power Station, P. O. Box 128, Shippingport, PA 15077. Shippingport Borough, **Beaver County**, ACOE Pittsburgh District.

To breach and remove the East High Dissolved Solids Dam located in the watershed of the Ohio River (WWF) for the purpose of reclaiming the area for future plant expansion. The dam is located at the Bruce Mansfield Power Station. (Midland, PA Quadrangle N: 1.85 inches; W: 5.00 inches).

SPECIAL NOTICES

Submission Date for Grant Applications under the Solid Waste—Resource Recovery Development

Act 198 of 1974

The Department of Environmental Protection (Department) announces that it is accepting Resource Recovery Demonstration Grant applications from counties, municipalities and municipal authorities within Pennsylvania under the Pennsylvania Solid Waste-Resource Recovery Development Act of 1974, Act 198. Projects must be capable of demonstrating, for a minimum of 2 years, the production of energy or the recovery of materials from solid waste (except sewage sludge). Grant applications must meet the terms and conditions established in 25 Pa. Code Chapter 76 adopted under Act 198.

Priority in selecting successful applicants during this application solicitation will be given to unique and innovative resource recovery projects not previously demonstrated or currently being demonstrated in Pennsylvania. Priority in selecting successful applicants during this application solicitation will also be given to unique and innovative resource recovery demonstration projects involving regional cooperative projects involving more than one county or municipality. Other types of resource recovery projects may also be considered. All projects must be capable of being replicated in other areas of Pennsylvania.

All applicants must provide a business plan and market commitments for energy or materials produced by the demonstration project. All projects should be capable of reaching full scale production within 12 months of notice of a grant award.

A lead municipality or county serving as the development agency for regional projects must have resolutions from other participating counties or municipalities in support of the project. Counties and municipalities may sponsor cooperative projects with private sector entities provided that a minimum of 5% equity in the project is maintained by the development agency for the term of the demonstration period.

The Department will award no more than three grants from applications received during this grant solicitation period. The Department will award no more than \$100,000 for any demonstration project selected for funding.

The deadline for submission of grant applications is 3 p.m., March 21, 2002. Applications must be on forms provided by the Department. Applications received by the Department or post marked after the deadline will not be considered during this application solicitation.

Counties and municipalities must contact the appropriate Department Planning and Recycling Coordinator to obtain a grant application. A preapplication conference with the Department Regional Planning and Recycling Coordinator is required. Inquiries concerning this notice should be directed to John Lundsted, Recycling Technical Assistance Coordinator, Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Division of Waste Minimization and Planning, Rachel Carson State Office Building, P. O. Box 8472, Harrisburg, PA 17105-8472.

Announcement of Resource Recovery Demonstration Grants under the Solid Waste-Resource Recovery Development Act

In accordance with 25 Pa. Code §§ 76.13 and 76.82(c) of the Solid Waste-Resource Recovery Development Act Rules and Regulations, the Department of Environmental Protection (Department) has approved grants to the following application sponsors under the Pennsylvania Solid Waste-Resource Recovery Development Act (Act 198).

The grant offering is subject to completion of a contract with the Department in accordance with the Scope of Work approved by the Bureau of Land Recycling and Waste Management. Grants are limited to no more than the maximum amount provided in the grant offering, up to 75% of the total eligible demonstration project costs.

Inquiries concerning this notice should be directed to John Lundsted, Recycling Technical Assistance Coordinator, Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Rachel Carson State Office Building, P. O. Box 8472, Harrisburg, PA 17105-8472.

2001 Act 198 Demonstration Grants

<i>Development Agency</i>	<i>Description of Project</i>	<i>Amount</i>
Lycoming County Solid Waste Authority	Testing and evaluation of the use of anaerobic digestion for the biological extraction of energy from various waste streams.	\$158,175

[Pa.B. Doc. No. 02-218. Filed for public inspection February 8, 2002, 9:00 a.m.]

Extension of Pennsylvania General NPDES Permit for Discharges from Gasoline Contaminated Groundwater Remediation Systems (PAG-5)

Under the authority of The Clean Streams Law (35 P. S. §§ 691.1—691.1001), sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-5, 510-17 and 510-20), the Department of Environmental Protection (Department), by this notice, issues a 4 month time extension of its current General NPDES Permit for discharges from gasoline contaminated groundwater remediation systems (PAG-5) and related permit documents.

The current general permit is scheduled to expire February 12, 2002. The proposed extension will extend the current permit, as is in its entirety, until June 12, 2002. The extension will be effective on February 13, 2002, and shall expire on June 12, 2002. By February 12, 2002, the Department will redate and post the current permit and related documents (the Notice of Intent, and the Instructions, Fact Sheet and DMRs) on the Department website as amendment #2. No other changes will be made to the documents under amendment #2. All of the current permit documents, as updated for amendment #2, will continue to be in use until they are revised after subsequent rulemaking.

The extension permit documents package will continue to be available from the Department's Regional and Central Offices until it is replaced or updated.

The permit document package is on file in the Department's central office of the Bureau of Water Supply and Wastewater Management at the following location. It is also available on the Department's website at <http://www.dep.state.pa.us/dep/deputate/watermgt/Wqp/Forms/FM-WQ0171a.doc>. The package can also be obtained by contacting the Department of Environmental Protection, Bureau of Water Supply and Wastewater Management, 11th Floor, Rachel Carson State Office Building, P. O. 8467, Harrisburg, PA 17105-8467, (717) 783-3795 or e-mail to trutrouma@state.pa.us.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

DAVID E. HESS,
Secretary

[Pa.B. Doc. No. 02-219. Filed for public inspection February 8, 2002, 9:00 a.m.]

DEPARTMENT OF HEALTH

Requests for Exception; Long-Term Care Nursing Facilities

The following long-term care nursing facilities are seeking an exception to 28 Pa. Code § 205.6(a) (relating to function of building):

Beverly Health Care Fayetteville
3301 Lincoln Way East
Fayetteville, PA 17222

Charles M. Morris Nursing & Rehabilitation Center
200 JFK Drive
Pittsburgh, PA 15217

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 211.9(g) (relating to pharmacy services):

Butler Memorial Hospital Transitional Care Facility
911 East Brady Street
Butler, PA 16001-4697

These requests are on file with the Department of Health (Department). Persons may receive a copy of a request for exception by requesting a copy from Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax: (717) 772-2163, e-mail address: PAEXCEPT@HEALTH.STATE.PA.US.

Those persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the division and address previously listed.

Comments received by the Department within 15 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so, should contact V/TT: (717) 783-6514 for speech

and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].

ROBERT S. ZIMMERMAN, Jr.,
Secretary

[Pa.B. Doc. No. 02-220. Filed for public inspection February 8, 2002, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

Inpatient Rehabilitation Hospital Services

The purpose of this announcement is to provide final public notice of the Department of Public Welfare's (Department) payment methodology for the period July 1, 2001, through December 31, 2003. The payment methodology affects rehabilitation hospitals and rehabilitation units of general hospitals.

The Department published a public notice at 31 Pa.B. 2853 (June 2, 2001) which stated that the Department would negotiate with representatives of the hospital industry, the possibility of renewing the existing Hospital Payment Rate Agreement (Agreement), which governs the payment methods and standards applicable to hospitals participating in the Medical Assistance Fee-for-Service Program. The Agreement was effective July 1, 1999, and expired on June 30, 2001, with regard to disproportionate share and medical education payments. The payment rates under the Agreement are in effect through December 31, 2001.

Although the Department did not receive any formal comments, the Department has met extensively with representatives of the hospital industry. These negotiation sessions provided a forum for the representatives of the hospital industry to voice their comments and together, the interested parties have reached a consensus on the terms of an agreement.

As part of this consensus, the parties agreed that effective January 1, 2002, the Department will convert rehabilitation hospitals/units from a retrospective payment system to a prospective payment system.

Fiscal Impact

This change will have no fiscal impact.

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-NOT-317. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 02-221. Filed for public inspection February 8, 2002, 9:00 a.m.]

Payments to Nursing Facilities; January 1, 2002 Proposed Rates

The purpose of this notice is to announce the proposed changes in nursing facility per diem payment rates reflecting case-mix index (CMI) adjustments only, for nursing facility services provided on or after January 1, 2002, and to identify the methodology and justification for

these proposed rates. Under 42 U.S.C.A. § 1902(a)(13)(A), as amended by section 4711 of the Balanced Budget Act of 1997 (Pub. L. No. 105-33), a state must use a public process when it proposes to make changes in payment rates or payment methodologies for nursing facility services under its approved Title XIX State Plan.

The Department of Public Welfare (Department) has submitted a State Plan Amendment which will, if approved by the Centers for Medicare and Medicaid Services (CMS; formerly the Health Care Financing Administration), change the methods and standards for setting payment rates for nursing facility services relating to movable property. These proposed rates are contingent upon approval of the State Plan Amendment by CMS and the promulgation of implementing regulations.

Rates

The proposed rates are available through the local County Assistance Offices throughout this Commonwealth, on the Office of Medical Assistance Programs' website at www.dpw.state.pa.us/omap or by contacting Tom Jayson in the Policy Section of the Bureau of Long Term Care Programs at (717) 705-3705.

Methodology

The methodology that the Department used to set the proposed rates based on CMI adjustments is contained in 55 Pa. Code Chapter 1187, Subchapter G (relating to rate setting), in final-omit regulations published at 32 Pa.B. 734 (February 9, 2002)) and in the Commonwealth's pending Title XIX State Plan which was submitted to CMS on September 21, 2001.

Justification

The rate-setting methodology requires that per diem rates be adjusted for the second, third and fourth quarters of each rate year.

The estimated increase in annual aggregate expenditures for Medical Assistance nursing facility services for FY 2001-2002 is \$4.221 million (\$1.925 million in State funds).

Interested persons are invited to submit written comments only concerning CMI adjustments to the proposed rates to the Department within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Comments should be addressed to Department of Public Welfare, Attention: Suzanne Love, P. O. Box 2675, Harrisburg, PA 17105.

Persons with a disability may use the AT&T Relay Services by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). Persons who require another alternative should contact Thomas Vracarich in the Office of Legal Counsel at (717) 783-2209.

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-NOT-316. (1) General Fund; (2) Implementing Year 2001-02 is \$1,925,000; (3) 1st Succeeding Year 2002-03 is \$4,620,000; 2nd Succeeding Year 2003-04 is \$4,620,000; 3rd Succeeding Year 2004-05 is \$4,620,000; 4th Succeeding Year 2005-06 is \$4,620,000; 5th Succeeding Year 2006-07 is \$4,620,000; (4) 2000-01 Program—\$722,565,000; 1999-00 Program—\$693,625,000;

1997-98—\$712,631,000; (7) Medical Assistance—Long Term Care; (8) recommends adoption. Funds are included in the budget for this purpose.

[Pa.B. Doc. No. 02-222. Filed for public inspection February 8, 2002, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Application for Lease of Right-of-Way

The Department of Transportation (Department), under the authority contained in section 2002(c) of The Administrative Code (71 P. S. § 512(c)) and 67 Pa. Code § 495.4 (relating to application procedure), gives notice that an application to lease highway right-of-way has been submitted to the Department by Wright Pontiac of Beaver, LLC, seeking to lease highway right-of-way located along State Route 0051 in the Borough of Bridgewater, Beaver County, containing 10,450± square feet or 0.24± acre, adjacent to SR 0051, for the display of motor vehicles (car inventory).

Interested persons are invited to submit, within 30 days from the publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestions and/or objections regarding the approval of this application to Ray S. Hack, P.E., District Engineer, Engineering District 11-0, 45 Thoms Run Road, Bridgeville, PA 15017.

Questions regarding this application or the proposed use may be directed to Michael Sudar, District Property Manager, 45 Thoms Run Road, Bridgeville, PA 15017, (412) 429-4835.

BRADLEY L. MALLORY,
Secretary

[Pa.B. Doc. No. 02-223. Filed for public inspection February 8, 2002, 9:00 a.m.]

ENVIRONMENTAL HEARING BOARD

Stephen and Frank Ferino v. DEP; EHB Doc. No. 2000-284-K

The Department of Environmental Protection (Department) and appellants Stephen and Frank Ferino (Ferinos) have agreed to a settlement of the previous matter. The Department had ordered the Ferinos, under date of November 22, 2000, to: cease operation of their Wrightstown Township, Bucks County retail gasoline station (facility) and empty the facility's storage tanks, pending certain testing and provision to the Department of certain documentation relating to leak prevention, monitoring and detection; submit to the Department a site characterization plan, in accordance with 25 Pa. Code § 245.309 (relating to site characterization); submit to the Department, and implement as approved, a remedial action plan relating to abatement and/or prevention of potential and/or existing groundwater contamination in accordance with 25 Pa. Code § 245.311 (relating to remedial action plan); monitor nearby water wells, and where appropriate, provide alternative water supplies;

and provide status reports to the Department. The same document also assessed against the Ferinos a civil penalty under the Storage Tank and Spill Prevention Act (Storage Tank Act) (35 P. S. §§ 6021.101—6021.2104).

The parties have agreed to a settlement, the major provisions of which include: the Ferinos agree not to contest the findings in the November 22, 2000, order and penalty assessment; the Ferinos will carry out the approved remedial action plan; the Ferinos will conduct monitoring of nearby water wells, and where appropriate, provide alternative water supplies; the Ferinos will provide status reports to the Department on an agreed schedule; the appeal is withdrawn without prejudice; and the Storage Tank Act civil penalty assessment is withdrawn without prejudice to the Department's ability to reassess a penalty for the violations in the order and assessment at some future date.

Copies of the full agreement are in the hands of Mary Lou Delahanty, Esquire, Szaferman, LaKind, Blumstein, Watter & Blader, 101 Grovers Mill Road, Suite 104, Lawrenceville, NJ 08648, (609) 275-0400; and Kenneth A. Gelburd, Assistant Regional Counsel, Department of Environmental Protection, Office of Chief Counsel—Southeast Region, Lee Park, 555 North Lane, Suite 6015, Conshohocken, PA 19428-2233, (610) 832-6300 and at the office of the Environmental Hearing Board, and may be reviewed by any interested party on request during normal business hours.

GEORGE J. MILLER,
Chairperson

[Pa.B. Doc. No. 02-224. Filed for public inspection February 8, 2002, 9:00 a.m.]

HEALTH CARE COST CONTAINMENT COUNCIL

Special Reports and Request for Data

The Health Care Cost Containment Council (Council), according to Act 89 as amended by Act 34, is required to publish a list of all special reports and data that have been prepared during the previous calendar year. The following represents a summary of the reports and requests for data generated by the Council in calendar year 2001. Questions about procedures for obtaining access to Council data should be addressed to Jill Wiest, Special Requests Unit, Health Care Cost Containment Council, 225 Market Street, Suite 400, Harrisburg, PA 17101, (717) 232-6786, www.phc4.org.

MARC P. VOLAVKA,
Executive Director

PA Health Care Cost Containment Council—2001 PA Bulletin Listing of Data Releases

<i>Applicant</i>	<i>Project Description</i>
Agency for Health Care Policy & Research	A custom Statewide 1999 ambulatory procedure data set to be used for research purposes in the <i>Healthcare Cost and Utilization Project (HCUP)</i> .
Agency for Health Care Policy & Research	A custom Statewide 2000 inpatient discharge and ambulatory procedure data set to be used for research purposes in the HCUP.
Allegheny Healthchoices, Inc.	A custom 1999 and 1st quarter 2000 inpatient discharge data set of psychiatric patients in Region 1 and facility profile and revenue code data to be used for internal reporting, analysis and trending.
Altoona Hospital	A custom report of 2000 inpatient CABG statistics to be used for internal purposes.
AmeriNet Central	A standard Statewide 2nd through 4th quarter 2000 and 1st quarter 2001 inpatient discharge and ambulatory procedure data set to be used in a commercial software product.
Ashland Regional Medical Center	A custom report of 3rd and 4th quarter 1999 and 1st and 2nd quarter 2000 inpatient discharge and ambulatory procedure data by Zip code to be used for strategic planning.
<i>Beaver County Times</i>	A custom report of 3rd and 4th quarter 1999 and 1st and 2nd quarter 2000 inpatient discharge and ambulatory procedure data by facility to be used as research for an upcoming <i>Beaver County Times</i> Newspaper story on people using area hospitals.
Capital Blue Cross	A custom financial data set of 2000, 1999, 1998 and 1997 data for select hospitals in select regions to be used in monitoring or developing agreements with hospitals within the Capitol Blue Cross region.
Cardinal Information Corporation	A standard Statewide 2nd through 4th quarter 2000, and 1st quarter 2001 inpatient discharge and ambulatory procedure data set to be used in a commercial software product.
Chestnut Hill Hospital	A custom report of 4th quarter 1999 through 3rd quarter 2000 inpatient discharge and ambulatory procedure data for seven facilities to be used for internal planning.
Chestnut Hill Hospital	A custom report using 2000 inpatient discharge and ambulatory procedure data by Zip code and identified procedures for specific facilities to be used for internal program planning and analysis.

<i>Applicant</i>	<i>Project Description</i>
Children's Hospital of Philadelphia	A custom 1991—1999 inpatient discharge data set by ICD-9 codes for injury to be used to determine the variation in operative management in children with solid organ injury by hospital type in Pennsylvania.
Children's Hospital of Philadelphia	This is an amendment to 99-070 requesting additional 1996, 1997 and 1998 inpatient discharge linkage data elements to be used to calculate the daily pediatric census at each hospital.
Children's Hospital of Philadelphia	A custom 2000 inpatient discharge data set for patients less than 19 years of age and select diagnoses of injuries to be used to determine the variation in operative management in children with solid organ injury.
CHS Berwick Hospital Center	A custom 2000 inpatient discharge and ambulatory procedure data set by county and Zip code to be used for a market share study.
Cooper Health System	A standard 1999 and 2000 inpatient discharge data set for regions 8 and 9 to be used for research.
Easton Hospital	A custom 1999 inpatient discharge data set by specific Zip codes excluding Easton Hospital, and all discharges from Easton Hospital regardless of Zip code to be used for internal market share analysis and strategic market planning.
Epstein, Becker & Green	A standard Statewide 2000 and 1st quarter 2001 inpatient discharge data set, and all of 2000 and 1st quarter 2001 ambulatory procedure data for regions 4, 5, and 6 to be used for analysis for pending litigation.
Frankford Hospital	A custom report using 1996 and 2nd quarter 2000 through 1st quarter 2001 inpatient data by select DRGs and facilities to be used in market share analysis.
Fred Hyde & Associates, Inc.	A custom 1989, 1994, 1999 inpatient discharge data set by Zip code to be used for consulting purposes.
Gnaden Huetten Memorial Hospital	A standard 1997 and 1999 inpatient discharge data set for Regions 6 and 7 to be used to perform a market analysis for strategic planning purposes.
Gnaden Huetten Memorial Hospital	A standard 2000 inpatient discharge data set for Region 6 and 7 to be used for market share study.
Good Shepherd Rehabilitation Hospital	A standard 4th quarter 1999 and 1st quarter 2000 inpatient discharge data set for several facilities to be used for internal market research.
Good Shepherd Rehabilitation Hospital	A standard inpatient discharge data set for the 2nd through 4th quarters 2000 for Region 7 and select facilities to be used for internal planning purposes.
Good Shepherd Rehabilitation Hospital	A custom 2000 financial data set for specific facilities to be used for internal analysis.
Greater Hazleton Area Health Alliance	A custom report of 3rd and 4th quarter 1999 and 1st and 2nd quarter 2000 inpatient discharge and ambulatory procedure data by specific DRGs, displayed by ICD-9 code and Zip code to be used in recruiting a neurosurgeon to the Hazleton area.
Green County Memorial Hospital	A custom report of 3rd and 4th quarters 1999, and 1st and 2nd quarter 2000 inpatient discharge and ambulatory procedure data by select Zip codes and procedures to be used to determine where patients are going for cardiac catheterizations and feasibility of starting a hospital cardiac catheterization unit.
High Associates, Inc.	A report of hospitals that have closed from 1990 to present to be used for consulting purposes.
Hospital & Healthsystem Association of PA	A standard Statewide 2000 financial data set to be used to supplement financial and utilization data that HAP currently collects on a voluntary basis from member hospitals to be used to model the potential effect of policy changes and to support HAP's representation and advocacy initiatives in support of member hospitals and the communities they serve.
Joint State Government Commission	A custom 1992 through 2000 inpatient discharge and ambulatory procedure data set for stroke and nonheart vascular disorders and operations to be used in analysis of stroke prevention.
Laura Jansen	A custom report of 1998, 1999, and 2000 inpatient discharge data for select ICD-9-CM codes to be used to conduct a needs assessment of Pennsylvania chronically ill children to determine the feasibility of a residential summer camp for chronically ill kids.

<i>Applicant</i>	<i>Project Description</i>
Legislative Budget and Finance Committee	A standard Statewide 1996 through 1999 financial data set to be used to perform an economic study of Medical Assistance hospital payment levels in response to House Resolution 586.
Lehigh Valley Hospital	A standard Statewide 2nd through 4th quarter 2000, and 1st quarter 2001 inpatient discharge and ambulatory procedure data set to be used for internal market and clinical research.
Lewistown Hospital	A custom 2nd, 3rd and 4th quarters 2000, and 1st quarter 2001 financial data set by specific facility to be used to assess a recent decline in business.
Memorial Hospital of York	A custom report of 2000 inpatient discharge data for Region 5 by specific procedure and diagnoses codes to be used to compare rates with other hospitals.
Milliman & Robertson, Inc.	A standard Statewide 1999 inpatient discharge data set to be used to produce the <i>Hospital Efficiency Index Analysis</i> browser and in the development of the <i>Health Cost Guidelines and Volume I of the Healthcare Management Guidelines</i> .
Milliman USA	A standard Statewide 2000 inpatient discharge data set to be used in a commercial software product.
New Solutions, Inc.	A custom 1999 inpatient discharge data set of all patients from New Jersey receiving care in Pennsylvania to be used in a commercial software product and for consulting purposes.
New Solutions, Inc.	A custom 2000 inpatient discharge data set of all New Jersey patients receiving care in Pennsylvania hospitals to be used for consulting purposes.
Nexus Associates, Inc.	A standard 2000 inpatient discharge and ambulatory procedure data set to be used to analyze the potential effects of power outages on hospital revenues.
North Philadelphia Health System	A standard 1st and 2nd quarter 2000 inpatient discharge data set for Region 9 to perform comparisons between facilities.
OxyHeal Health Group	A custom 3rd, 4th quarters 1998 and 1st, 2nd quarters 1999 inpatient discharge and ambulatory procedure data set of Region 1, by specific ICD-9 codes to be used to determine the feasibility of the establishment of a hyperbaric treatment chamber in Pittsburgh.
PA Department of Aging/PACE	A custom 1999 data set of PACE enrollee admissions to Pennsylvania hospitals to be used for the <i>Polypharmacy Study</i> , the <i>Medication Safety Project</i> and the <i>Prescribing Practices Project</i> .
PA Department of Health	A custom 1997, 1998, 1999 inpatient discharge data set for select counties and select DRGs to be used to develop the ambulatory case sensitivity index and pediatric ambulatory care sensitivity index for each county.
PA Department of Health	A custom 2000-2002 inpatient discharge data set to be used for creating a Commonwealth birth defect registry.
PA Department of Health	A custom report of 1996 through 1999 inpatient discharge and ambulatory data to be used to identify reimbursement sources associated with the hospitalization charges published in the Council's <i>Issue Brief—Breast Cancer Surgery Facts and Figures—1996-1999</i> .
PA Department of Health	A custom 1999 inpatient discharge data set to be used to improve the ability of health officials and injury prevention practitioners to use injury morbidity data for planning and evaluation of programs and policies.
PA Department of Health	A custom 1999 inpatient discharge data set of hip fracture hospitalizations to be used for the State Health Improvement Plan (SHIP).
PA Department of Health	A custom 2nd through 4th quarter 2000, and 1st quarter 2001 inpatient discharge and ambulatory data set of sample records from each hospital to be used in the DOH licensing and quality assurance process.
PA Department of Health	A custom 3rd and 4th quarters 1999 and 1st and 2nd quarters 2000 data set of asthma admissions to be used as a component in the development of an asthma surveillance model and to respond to requests for aggregate data at the local or State level.
PA Department of Health	Standard Statewide 1999 inpatient discharge data to be used for the CODES Project.

<i>Applicant</i>	<i>Project Description</i>
PA Department of Health	A custom 1997, 1998 and 1999 inpatient discharge data set by ICD-9 code on Ambulatory Care Sensitive Conditions and race/ethnicity groups. The data is to be used for a special report on minority health as part of the DOH SHIP process.
PA Department of Health	A custom 1997, 1998 and 1999 inpatient discharge data set by ICD-9 code and race/ethnicity to analyze cases hospitalized for conditions which might be treated by a CABG and actually receive the procedure. The data is to be used for a special report on minority health as part of the DOH SHIP process.
PA Department of Health	Custom 1999 inpatient discharge data of MDC 14 and all newborn and infants less than 1 year of age at admission to be used to provide a baseline assessment of perinatal care in Pennsylvania.
PA Department of Health	A request for a custom 1996 through 2000 inpatient discharge report of select ICD-9-CM codes to be used as part of a series of DOH web pages.
PA Department of Health	Custom 1st quarter 2001 inpatient discharge and ambulatory data to be used to profile discharge patterns to develop and evaluate algorithms for sampling discharges, to be used by the DOH Div. of Acute and Ambulatory Care to carry out its quality assurance and licensing functions.
PA Department of Health	A request for a Statewide 2000 inpatient discharge data set to be used in the <i>Crash Outcome Data Evaluation System (CODES)</i> .
PA Department of Public Welfare	A custom 2000 financial data set of net patient revenue by payor and uncompensated care broken down by bad debt expenses and charity care costs to be used for the tobacco settlement legislation.
PA Department of Public Welfare	A custom FY 1999-2000 and FY 2000-2001 inpatient discharge data set of DRG and claims data for all hospitals to be used as part of the tobacco settlement legislation.
PA Department of the Auditor General	Custom report of 1999 inpatient and ambulatory data broken down by Zip code to be used for research on surgical treatment of breast cancer.
PA Office of the Attorney General	Standard Statewide 2000 inpatient discharge data to be used to analyze the effect of the University of Pittsburgh Medical Center merger with Children's Hospital and other hospital mergers which will occur over the next year.
Pennsylvania State Data Center	A custom 1999 financial data set to be used in the 2001 <i>Pennsylvania Abstract</i> .
Pitts Management Associates, Inc.	A custom 1998 through 2000 inpatient discharge data set by specific facility broken down by county and ICD-9 codes to be used for consulting.
Rural Health Consultants	A request for a standard 2000 inpatient discharge and ambulatory procedure data set for two specific facilities to be used by a consultant.
Solucient	A standard Statewide 2nd through 4th quarter 2000, and 1st quarter 2001 inpatient discharge and ambulatory procedure data to be used in a commercial software product.
South Hills Health System	Standard 2nd through 4th quarter 2000, and 1st quarter 2001 inpatient discharge and ambulatory procedure data for region 1 to be used for a market share study.
Southern Chester County Medical Center	A custom 3rd/4th quarter 1999 and 1st/2nd quarter 2000 inpatient discharge and ambulatory procedure data set for Chester County. Data to be used to analyze market share and ascertain where Chester County residents are receiving care.
Superior Consultant Holdings Corporation	A custom report using 1999 inpatient discharge data for New Jersey residents, by county, receiving open heart procedures in Pennsylvania. The client will use the report to determine the total use rate of open-heart procedures for New Jersey residents, outmigration and help predict future trends.
Teamster Local 773	A 4th Qtr 2000 Inpatient Statewide market share report to compare hospitals for a health care fund being set up for union participants.
The MEDSTAT Group	A standard Statewide 2nd through 4th quarter 2000 and 1st quarter 2001 inpatient discharge and ambulatory procedure data set to be used in a commercial software product.
The Philadelphia Inquirer	A standard 1999 inpatient discharge and ambulatory procedure data set for regions 8 and 9 to be used as research for a story to published.

<i>Applicant</i>	<i>Project Description</i>
Thomas Jefferson University Hospital	A custom 2000 inpatient discharge data set for Philadelphia residents admitted with asthma to be used for a research project.
Tyler Memorial Hospital	A custom report of 2000 inpatient discharge and ambulatory procedure data for select Zip codes to be used for a market share study.
University of Pittsburgh	A custom data set of 1999 heart failure admissions with a calculated field for the number of days between the initial admission and subsequent admissions. This data is to be used in a study to develop a severity of illness rule.
University of Pittsburgh	A standard 2000 inpatient discharge data set to be used in a classroom situation as a teaching tool for the health information management students at the University of Pittsburgh to learn how to manipulate and analyze health data.
University of Pittsburgh	A custom 1995 through 2000 inpatient discharge data set for Region 1 to be used to explore the association of various air pollutants with the exacerbation of cardio respiratory disease.
University of Pittsburgh, Dept of Emergency	A custom 1999 inpatient discharge data set by select ICD-9 code, matched and appended to select Atlas™ data elements to be used for research.
US Environmental Protection Agency	A custom 1999 inpatient discharge data set of all ICD-9 codes 390-519 as the primary diagnosis for Region 9 to be used as part of its risk analysis in support of the review of the national ambient air quality standards.
Warren County Health Department	A custom 1996, 1997 and 1998 inpatient discharge and ambulatory procedure data set by select Zip codes to be used to identify top health status indicators and assess health promotion needs as well as health education programs and public health services in Warren County, New Jersey.
Warren General Hospital	A custom report of 2000 inpatient discharge and ambulatory procedure data by MDC for Warren County to assess market share and develop a marketing plan for FY 2002.
West Virginia Health Care Authority	A custom 1997—1999 inpatient discharge data set of all patients from West Virginia receiving care in Pennsylvania to be used to analyze West Virginia residents going out-of-State for health care.
West Virginia United Health System	A custom report of 1998, 1999 and 2000 inpatient discharge and ambulatory procedure data of West Virginia Residents to be used for market analysis.
West Virginia University	A custom data set of 4th quarter 1997 through 3rd quarter 2000 inpatient discharge data for West Virginia residents to be used for strategic planning purposes.
William M. Mercer, Inc.	A standard 1996 through 2000 inpatient discharge and financial data set for 3 facilities to be used for consulting purposes.
ZA Consulting	A custom report of 1999 and 1st quarter 2000 inpatient discharge data by DRGs sorted by Zip code and age, for 4 hospitals in Pennsylvania to be used for consulting services to evaluate the Sharon Medical Center Behavioral Health Services Department and make recommendations of ways to improve service both operationally and fiscally.
ZA Consulting	A standard 2000 inpatient data set for Abington Memorial Hospital to be used for consulting purposes.

[Pa.B. Doc. No. 02-225. Filed for public inspection February 8, 2002, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Actions Taken by the Commission

The Independent Regulatory Review Commission met publicly at 10:30 a.m., Thursday, January 24, 2002, and took the following action:

Regulation Approved:

Department of Aging #1-17: Protective Services for Older Adults (amends 6 Pa. Code Chapter 15)

Approval Order

Public Meeting held
January 24, 2002

Commissioners Voting: John R. McGinley, Jr., Chairperson, by phone; Alvin C. Bush, Vice Chairperson; Arthur Coccodrilli, dissenting; Robert J. Harbison, III; John F. Mizner

Department of Aging—Protective Services for Older Adults; Regulation No. 1-17

On November 15, 1999, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Aging (Department). This rulemaking amends 6 Pa. Code Chapter 15. The proposed regulation was published in the November 27, 1999, *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on December 27, 2001.

This regulation updates regulatory language to reflect changes in program terminology; clarifies definitions and text; implements criminal record checks for applicants; and mandates the reporting of suspected abuse at care-providing facilities. The final-form rulemaking is mandated by the Older Adults Protective Services Act, as amended by Acts 169 of 1996 and 13 of 1997.

We have determined this regulation is consistent with the statutory authority of the Department (35 P.S. §§ 10225.101—10225.5102) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 02-226. Filed for public inspection February 8, 2002, 9:00 a.m.]

Notice of Comments Issued

Section 5(d) of the Regulatory Review Act (71 P.S. § 745.5(d)) provides that the designated standing committees may issue comments within 20 days of the close of the public comment period, and the Independent Regulatory Review Commission (Commission) may issue comments within 10 days of the close of the committees' comment period. The Commission's Comments are based

upon the criteria contained in section 5.1(h) and (i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)).

The Commission issued comments on the following proposed regulation. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted by the date indicated.

Reg. No.	Agency/Title	Final-Form Submission	
		Issued	Deadline
#16A-497	State Board of Medicine Sexual Misconduct	1/24/02	12/24/03
(31 Pa.B. 6453 (November 22, 2001))			

State Board of Medicine Regulation No. 16A-497 Sexual Misconduct January 24, 2002

We submit for consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The State Board of Medicine (Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by December 24, 2003, the regulation will be deemed withdrawn.

1. Section 16.110. Sexual Misconduct.—Clarity.

General

As proposed, § 16.110 contains both definitions and substantive regulatory provisions. In order to be consistent with regulatory framework existing in Chapter 16, the Board should create two separate sections. The definitions should remain in § 16.110. The substantive provisions should be placed in a separate section following the definitions.

Subsection (a)

This subsection defines "immediate family member." It is unclear if the phrase "other family member" contained in the definition includes a relationship by blood and by marriage or law. In addition, the inclusion of the phrase, "with whom a patient resides" in the definition limits the scope of this regulation. Finally, the definition does not address a patient's relationships with nonfamily members such as "significant others."

Subsection (b)

This subsection refers to "Board regulated practitioner." The Board should define "Board regulated practitioner" by adding the term to the definitions section and referencing section 422.2 of the Medical Practice Act (63 P.S. § 422.2).

Subsections (b), (c) and (d)

These subsections include the phrase "and subjects the practitioner to disciplinary action." Where can the disciplinary action be found? A crossreference to the appropriate citation for disciplinary action should be provided in the subsections.

Subsection (d)

The Board uses the phrase "mental health disorder" in this subsection. The meaning of this phrase is vague. The regulation should either define or reference the categories of mental health disorders. For instance, the Board could refer to patients who are diagnosed under the Diagnostic and Statistical Manual of Mental Disorders—IV (DSM-IV) or subsequent publications.

2. Behavioral examples.—Clarity.

A commentator noted that the proposed regulation is too vague and provided several scenarios in which innocent behavior would be in violation of the regulation. Given this possibility, has the Board considered providing examples of the type of behavior it considers inappropriate?

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 02-227. Filed for public inspection February 8, 2002, 9:00 a.m.]

number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Cressinda Bybee, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120; fax (717) 787-8557; e-mail cbybee@state.pa.us.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 02-229. Filed for public inspection February 8, 2002, 9:00 a.m.]

Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulations on the dates indicated. To obtain the date and time of the meeting at which the Commission will consider these regulations, contact the Commission at (717) 783-5417 or visit its website at www.irrc.state.pa.us. To obtain a copy of the regulation, contact the promulgating agency.

Final-Form

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
#6-272	State Board of Private Licensed Schools Definitions; Fees	1/24/02
#57-222	Pennsylvania Public Utility Commission Financial Reporting Requirements for All Telecommunications Carriers	1/24/02

Final-Omit

#18-370	Department of Transportation Service, Acceptance, and Use of Legal Process and Legal Proceedings	1/30/02
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JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 02-228. Filed for public inspection February 8, 2002, 9:00 a.m.]

Children's Health Insurance Program; Advisory Council Meeting

The Insurance Department (Department) has scheduled a meeting of the Children's Health Insurance Advisory Council (Council) at 10 a.m. on Wednesday, February 13, 2002, in Room 105, Rachel Carson State Office Building, Harrisburg, PA 17120. The Children's Health Care Act (Act 68 of 1998) charges the Council with the responsibilities of overseeing outreach activities and evaluating access and quality of services provided to children enrolled in the Children's Health Insurance Program (program). The purpose of this meeting is to solicit input from the public regarding the development of the new Request for Proposal for contracting purposes and to generally discuss improvements to the program within the scope of Act 68 of 1998. The public is invited to attend. Persons who need accommodations due to a disability and want to attend the meeting should contact Tracey Pontius, Insurance Department, 1300 Strawberry Square, Harrisburg, PA 17120, (717) 787-4298 at least 24 in advance so that arrangements can be made.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 02-230. Filed for public inspection February 8, 2002, 9:00 a.m.]

INSURANCE DEPARTMENT**Application for Merger**

An application has been received requesting approval of the merger of Pioneer Insurance Company, an admitted foreign stock casualty insurance company organized under the laws of the State of Ohio, with and into Atlantic States Insurance Company, an admitted domestic stock casualty insurance company organized under the laws of the Commonwealth. The initial filing was received on January 17, 2002, and was made under the requirements set forth under the Business Corporation Law of 1988, 15 Pa.C.S. §§ 1921—1932 and 15 P.S. §§ 21205—21207. Persons wishing to comment on the grounds of public or private interest in this merger are invited to submit a written statement to the Insurance Department (Department) within 15 days from the date of publication of this notice in the *Pennsylvania Bulletin*. Each written statement must include the name, address and telephone

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insureds have requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68), in connection with the termination of the insured's automobile policy. The hearing will be held in accordance with the requirements of the act; 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearings will be held in the Insurance Department's regional offices in Harrisburg and Philadelphia, PA. Failure by the appellants to appear at the scheduled hearing may result in dismissal with prejudice.

The following hearings will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 N. Seventh Street, Harrisburg, PA 17102.

Appeal of Sok N. Lun; file no. 01-182-08835; American Horizon Property and Casualty; doc. no. P02-01-028; March 20, 2002, at 10 a.m.

Appeal of Michael D'Italia; file no. 01-181-08623; Great American Insurance Company; doc. no. P02-01-023; March 21, 2002, at 1:30 p.m.

The following hearings will be held in the Philadelphia Regional Office, Room 1701 State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130.

Appeal of Shawn Durnin; file no. 01-210-06081; Allstate Insurance Company; doc. no. PH02-01-025; March 28, 2002, at 9:30 a.m.

Appeal of Jose Rios; file no. 01-215-06550; AAA Mid-Atlantic Insurance Company; doc. no. PH02-01-024; March 28, 2002, at 11 a.m.

Parties may appear with or without counsel and offer relevant testimony or evidence. Each party must bring documents, photographs, drawings, claims files, witnesses and the like necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing, should contact Tracey Pontius, Agency Coordinator, at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 02-231. Filed for public inspection February 8, 2002, 9:00 a.m.]

LIQUOR CONTROL BOARD

Expiration of Leases

The following Liquor Control Board leases will expire:
Philadelphia County, Wine & Spirits Shoppe #5149, 4049 Market Street, Philadelphia, PA 19104.

Lease Expiration Date: June 30, 2002

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 4,000 net useable square feet of new or existing retail commercial space within 3/4 of a mile of the intersection of 40th and Market Streets, Philadelphia.

Proposals due: March 1, 2002, at 12 noon

Department: Liquor Control Board
Location: Real Estate Division, 8305 Ridge Avenue, Philadelphia, PA 19128-2113.
Contact: James M. Bradley, (215) 482-9671

Dauphin County, Procurement Division Warehouse #8771, 3525 North Sixth Street, Harrisburg, PA 17110.

Lease Expiration Date: December 31, 2003

Lease commercial warehouse space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 18,720 net useable square feet of new or existing commercial warehouse space within 1 block of the intersection of Montrose and North Sixth Street, Susquehanna Township.

Proposals due: February 22, 2002, at 12 noon

Department: Liquor Control Board
Location: Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110.
Contact: Willard J. Rhodes, (717) 657-4228

Allegheny County, Wine & Spirits Shoppe #0207, One Oxford Centre, 320 Smithfield Street, Pittsburgh, PA 15222.

Lease Expiration Date: February 28, 2003

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 3,800 to 4,800 net useable square feet of new or existing retail commercial space in the City of Pittsburgh bounded by Wood Street, Grant Street, Boulevard of the Allies and Sixth Street, Pittsburgh.

Proposals due: March 1, 2002, at 12 noon

Department: Liquor Control Board
Location: Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222.
Contact: Joseph Molhoek, (412) 565-5130

Allegheny County, Wine & Spirits Shoppe #0229, 7415 Irvine Street, Pittsburgh, PA 15218.

Lease Expiration Date: February 28, 2003

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 3,600 net useable square feet of new or existing retail commercial space in a shopping center environment serving Swissvale. Site must have rear tractor-trailer delivery.

Proposals due: March 1, 2002, at 12 noon

Department: Liquor Control Board
Location: Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222.
Contact: Bruce VanDyke, (412) 565-5130.

Beaver County, Wine & Spirits Shoppe #0410, 2719 Brodhead Road, Aliquippa, PA 15001.

Lease Expiration Date: February 28, 2003

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 5,000 net useable square feet of new or existing retail commercial space in a shopping center environment within 1 mile of the intersection of Brodhead Road and Kennedy Boulevard.

Proposals due: March 1, 2002, at 12 noon

Department: Liquor Control Board
Location: Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222.
Contact: George Danis, (412) 565-5130

Erie County, Wine & Spirits Shoppe #2504, 10720 West Main Street, North East, PA 16428.

Lease Expiration Date: August 31, 2002

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 2,200 net useable square feet of new or existing retail commercial space fronting U.S. Route 20 West of State Route 89 serving the North East area. Site must have free, off-street paved parking and rear tractor-trailer access.

Proposals due: March 1, 2002, at 12 noon

Department: Liquor Control Board
Location: Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222.
Contact: Bruce VanDyke, (412) 565-5130

Westmoreland County, Wine & Spirits Shoppe #6503, 925 Donner Avenue, Monessen, PA 15062.

Lease Expiration Date: January 31, 2003

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 2,000 net useable square feet of new or existing retail commercial space in the Monessen Central Business District, Monessen.

Proposals due: March 1, 2002, at 12 noon

Department: Liquor Control Board
Location: Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222.
Contact: George Danis, (412) 565-5130

JOHN E. JONES, III,
Chairperson

[Pa.B. Doc. No. 02-232. Filed for public inspection February 8, 2002, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Gas Service Without Hearing

A-120700F2007. Columbia Gas of Pennsylvania, Inc. Application of Columbia Gas of Pennsylvania, Inc., for approval of the abandonment of service to seven residential customers located in Brookville, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before February 25, 2002, under 52 Pa. Code (relating to public utilities).

Applicant: Columbia Gas of Pennsylvania, Inc.

Through and by Counsel: Kenneth W. Christman, Esquire, 650 Washington Road, Pittsburgh, PA 15228-2703;

and Theodore J. Gallagher, Esquire, Bricker and Eckler, LLP, 100 South Third Street, Columbus, OH 43215-4291.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 02-233. Filed for public inspection February 8, 2002, 9:00 a.m.]

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission (Commission). Publication of this notice shall be considered as sufficient notice to all carriers holding authority from this Commission. Applications will be considered without hearing in the absence of protests to the application. Protests to the applications published herein are due on or before March 4, 2002, as set forth at 52 Pa. Code § 3.381 (relating to applications for transportation of property and persons). The protest shall also indicate whether it applies to the temporary authority application or the permanent application or both.

Application of the following for *amendment* to the certificate of public convenience approving the operation of motor vehicles as *common carriers* for transportation of *persons* as described under the application.

A-00111913, Folder 1, Am-C. Bucks County Services, Inc. (1167 Newport Mews Drive, Bensalem, Bucks County, PA 19020), a corporation of the Commonwealth of Pennsylvania, inter alia—persons upon call or demand in Solebury Township and New Hope Borough, and that portion of Bucks County, located south and east of Pennsylvania Route 232, and that portion of Bryn Athyn Borough and Lower Moreland Township south and east of Pennsylvania Route 232 in Montgomery County, to the Pennypack Creek, thence south and east along the Pennypack Creek in the city and county of Philadelphia, to the Delaware River, thence north along the Delaware River to the Bucks County Line in Bensalem Township, Bucks County; subject to the following condition: That no right, power or privilege is granted to provide transportation between points in or to (except as presently authorized) or from the township of Upper Southampton, Bucks County, and that portion of the borough of Bryn Athyn and the township of Lower Moreland south and east of Pennsylvania Route 232 in the county of Montgomery: *So as to Permit* the transportation of persons upon call or demand, in that portion of the township of Abbington, the borough of Rockledge, both in Montgomery County and the city and county of Philadelphia, bounded as follows: Beginning at the point where Pennypack Creek meets the Delaware River, thence south along the Delaware River to its confluence with Frankford Creek, thence northwest along Frankford Creek to its confluence with Tookany Creek, thence north along Tookany Creek to the Philadelphia/Montgomery County Line, thence northeast along said line to Pennsylvania Route 232, thence north along Pennsylvania Route 232 to the Pennypack Creek, thence east along the Pennypack Creek to the place of beginning. *Attorney:* William H. R. Casey, 99 East Court Street, Doylestown, PA 18901.

Application of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of persons by transfer of rights as described under the application.

A-00112108, F. 3. C.A.T.S. Enterprises, Inc. (1524 Waimea Drive, Downingtown, Chester County, PA 19335), a corporation of the Commonwealth of Pennsylvania—persons in paratransit service: (1) between points in the city and county of Philadelphia bounded on the north by a line extending along Market Street in a westerly direction to the city limits, and in an easterly and southerly direction by the Delaware River; and (2) from points originating south of Market Street to destination points north of Market Street; and to transport said persons on a same-day return round-trip basis from said destination points north of Market Street to the points of origin south of Market Street; all in the city and county of Philadelphia; which is to be a transfer of all of the rights authorized under the certificate issued at A-00107975, F. 1, Am-A to Frederick Colella, t/d/b/a Tri-State Transportation Enterprises, subject to the same limitations and conditions. *Attorney:* Herbert E. Squires, 1601 Market Street, Suite 2330, Philadelphia, PA 19103.

Application of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of persons as described under the application.

A-00108299, F. 2. J.E.T. Enterprises, Inc., t/d/b/a Londonderry Limousines, Inc. (320 Plaza Drive, Palmyra, Lebanon County, PA 17078), a corporation of the Commonwealth of Pennsylvania—persons in group and party service, in vehicles seating 15 passengers or less, including the driver, between points in the counties of Lancaster, Lebanon, Dauphin and Cumberland, and from points in said counties, to points in Pennsylvania, and return.

Application of the following for amendment to the certificate of public convenience approval of the right and privilege to discontinue/abandon operating as common carriers by motor vehicle and for cancellation of the certificate of public convenience as described under the application.

A-00097169, F. 2, Am-A. Norman Ray Peachey, t/d/b/a K.V. Bus Line (88 Shawnee Drive, Belleville, Mifflin County, PA 17004)—discontinuance of service—persons for Juniata Valley Tri-County MH/MR Program, between points in Pennsylvania.

Complaint

RONALD E ORT
T/D/B/A ORT TRUCKING CO
3040 SOLAR DRIVE
DOVER PA 17315-4595

In re: A-00116716C0101
A-00116716

Dear Respondent:

On March 9, 2001, the Bureau of Transportation and Safety instituted a complaint against Ronald E. Ort, t/d/b/a Ort Trucking Co., respondent, alleging failure to maintain proper evidence of current insurance in violation of the Public Utility Code. The respondent was duly notified that if acceptable evidence of insurance or an answer was not filed, the Bureau would request that the

Secretary of the Commission revoke the certificate of public convenience issued to the respondent at A-00116716.

The complaint and notice were published in the December 22, 2001 issue of the *Pennsylvania Bulletin*; to date, more than twenty (20) days later, neither evidence of insurance nor an answer to the complaint has been filed. Therefore, the allegation in the complaint is deemed to be admitted.

The complaint at A-00116716C0101 is hereby sustained and the right(s) and the certificate of public convenience issued to the respondent at A-00116716 be and are hereby revoked; and the respondent has no other operating authority. The respondent is hereby notified to cease and desist from providing service previously authorized under the certificate of public convenience.

James J. McNulty,
Secretary

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 02-234. Filed for public inspection February 8, 2002, 9:00 a.m.]

**Site Construction
Without Hearing**

P-00011935. West Penn Company, d/b/a Allegheny Power. Application of West Penn Power Company, d/b/a Allegheny Power, for finding of necessity under section 619 of the Municipalities Planning Code for a building on a site in College Township, Centre County, PA, containing 10.56 acres, located near Decibel Road.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before February 25, 2002, under 52 Pa. Code (relating to public utilities).

Applicant: West Penn Power Company.

Through and By Counsel: John L. Munsch, David L. Williams, James T. Boggs, 800 Cabin Hill Drive, Greensburg, PA 15601.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 02-235. Filed for public inspection February 8, 2002, 9:00 a.m.]

Telecommunications

A-311148F7001. Network Services, LLC Verizon North Inc. and Metrocall, Inc. Joint Petition for approval of Network Services, LLC's adoption of the interconnection agreement between Verizon North Inc. and Metrocall, Inc. under section 252(e) of The Telecommunications Act of 1996.

Verizon North Inc. and Network Services, LLC filed on January 16, 2002, at the Pennsylvania Public Utility Commission (Commission), a Joint Petition for approval of Network Services, LLC's adoption of the interconnec-

tion agreement between Verizon North Inc. and Metrocall, Inc. under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon North Inc. and Network Services, LLC Joint Petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 02-236. Filed for public inspection February 8, 2002, 9:00 a.m.]

Telecommunications

A-310130F7001. Verizon North Inc. and National Telephone Exchange, Inc. Joint Petition of Verizon North Inc. and National Telephone Exchange, Inc. for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon North Inc. and National Telephone Exchange, Inc. filed on January 18, 2002, at the Pennsylvania Public Utility Commission (Commission), a Joint Petition for approval of an Interconnection Agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon North Inc. and National Telephone Exchange, Inc. Joint Petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 02-237. Filed for public inspection February 8, 2002, 9:00 a.m.]

Telecommunications

A-310892F7000. Verizon Pennsylvania Inc. and American Fiber Network, Inc. Joint Petition of Verizon Pennsylvania Inc. and American Fiber Network, Inc. for approval of a resale agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and American Fiber Network, Inc. filed on January 25, 2002, at the Pennsylvania Public Utility Commission (Commission), a Joint Petition for approval of a resale agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. and American Fiber Network,

Inc. Joint Petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 02-238. Filed for public inspection February 8, 2002, 9:00 a.m.]

Telecommunications

A-310999F7000. Verizon Pennsylvania Inc. and IDS Telcom, LLC. Joint Petition of Verizon Pennsylvania Inc. and IDS Telcom, LLC for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and IDS Telcom, LLC filed on January 10, 2002, at the Pennsylvania Public Utility Commission (Commission), a Joint Petition for approval of an Interconnection Agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. and IDS Telcom, LLC Joint Petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 02-239. Filed for public inspection February 8, 2002, 9:00 a.m.]

Telecommunications

A-310130F7000. Verizon Pennsylvania Inc. and National Telephone Exchange, Inc. Joint Petition of Verizon Pennsylvania Inc. and National Telephone Exchange, Inc. for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and National Telephone Exchange, Inc. filed on January 11, 2002, at the Pennsylvania Public Utility Commission (Commission), a Joint Petition for approval of an Interconnection Agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. and National Telephone Exchange, Inc. Joint Petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director,
Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 02-240. Filed for public inspection February 8, 2002, 9:00 a.m.]

**Transfer by Sale
Without Hearing**

A-110150F0025. Duquesne Light Company. Application of Duquesne Light Company for approval of the transfer by sale of any property and rights of Duquesne Light Company to Pittsburgh Allegheny County Thermal, LTD.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before February 25, 2002, under 52 Pa. Code (relating to public utilities).

Applicant: Duquesne Light Company.

Through and by Counsel: Valerie L. Lord, Esquire, Cherrington Corporate Center, Mail Drop C4-4-3, 400 Fairway Drive, Moon Township, PA 15108.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 02-241. Filed for public inspection February 8, 2002, 9:00 a.m.]

**Water
Without Hearing**

A-210111 and A-210111F0002. Artesian Water Pennsylvania, Inc. Application of Artesian Water Pennsylvania, Inc. for approval to offer, render, furnish or supply water service to the public in a portion of New Garden Township, Chester County, PA, and to acquire a water distribution system.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before February 25, 2002, under 52 Pa. Code (relating to public utilities).

Applicant: Artesian Water Pennsylvania, Inc.

Through and by Counsel: Anthony D. Kanagy, Morgan, Lewis and Bockius, LLP, One Commerce Square, 417 Walnut Street, Harrisburg, PA 17101-1904; and Thomas P. Gadsden, Morgan, Lewis and Bockius, LLP, 1701 Market Street, Philadelphia, PA 19103-2921.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 02-242. Filed for public inspection February 8, 2002, 9:00 a.m.]

**Water
Without Hearing**

A-210104F0010. Pennsylvania Suburban Water Company. Application of Pennsylvania Suburban Water Company for approval to begin to offer, render, furnish or supply water service to the public in a portion of Jenks Township, Forest County, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before February 25, 2002, under 52 Pa. Code (relating to public utilities).

Applicant: Pennsylvania Suburban Water Company.

Through and by Counsel: Mark J. Kropilak, Esquire, 762 West Lancaster Avenue, Bryn Mawr, PA 19010-3489.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 02-243. Filed for public inspection February 8, 2002, 9:00 a.m.]

**Water
Without Hearing**

A-210104F0011. Pennsylvania Suburban Water Company. Application of Pennsylvania Suburban Water Company for approval of: 1) the acquisition by Pennsylvania Suburban Water Company of the water supply system assets of Shickshinny Lake Property Owner's Association, Inc.; and 2) the right of Pennsylvania Suburban Water Company to begin to offer, render, furnish or supply water service to the public in a portion of Union Township in Luzerne County, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before February 25, 2002, under 52 Pa. Code (relating to public utilities).

Applicant: Pennsylvania Suburban Water Company.

Through and by Counsel: Mark J. Kropilak, Esquire, 762 West Lancaster Avenue, Bryn Mawr, PA 19010.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 02-244. Filed for public inspection February 8, 2002, 9:00 a.m.]

STATE CONTRACTS INFORMATION

DEPARTMENT OF GENERAL SERVICES

Notices of invitations for bids and requests for proposals on State contracts for services and commodities for which the bid amount is reasonably expected to be over \$10,000, are published in the State Contracts Information Section of the *Pennsylvania Bulletin* prior to bid opening date. Information in this publication is intended only as notification to its subscribers of available bidding and contracting opportunities, and is furnished through the Department of General Services, Vendor Information and Support Division. No action can be taken by any subscriber or any other person, and the Commonwealth of Pennsylvania is not liable to any subscriber or any other person, for any damages or any other costs incurred in connection with the utilization of, or any other reliance upon, any information in the State Contracts Information Section of the *Pennsylvania Bulletin*. Interested persons are encouraged to call the contact telephone number listed for the particular solicitation for current, more detailed information.

EFFECTIVE JULY 1, 1985, A VENDOR'S FEDERAL IDENTIFICATION NUMBER (NUMBER ASSIGNED WHEN FILING INCOME TAX DOCUMENTS) OR SOCIAL SECURITY NUMBER IF VENDOR IS AN INDIVIDUAL, MUST BE ON ALL CONTRACTS, DOCUMENTS AND INVOICES SUBMITTED TO THE COMMONWEALTH.

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter.

Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:

The payment date specified in the contract.

30 days after the later of the receipt of a proper invoice or receipt of goods or services.

The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center

PA Department of Community and Economic Development
 374 Forum Building
 Harrisburg, PA 17120
 800-280-3801 or (717) 783-5700

Reader's Guide



Legal Services & Consultation

① Service Code Identification Number

② Commodity/Supply or Contract Identification No.

B-54137. Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services
 Location: Harrisburg, Pa.
 Duration: 12/1/93-12/30/93
 Contact: Procurement Division
 787-0000

③ Contract Information

④ Department

⑤ Location

⑥ Duration

⑦

(For Commodities: Contact:)
 Vendor Services Section
 717-787-2199 or 717-787-4705

REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

GET A STEP AHEAD IN COMPETING FOR A STATE CONTRACT!

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. Our efforts focus on guiding the business community through the maze of state government offices. The bureau is, by law, the central repository for all state contracts over \$5,000. Bureau personnel can supply descriptions of contracts, names of previous bidders, pricing breakdowns and other information to help you submit a successful bid on a contract. We will direct you to the appropriate person and agency looking for your product or service to get you "A Step Ahead." Services are free except the cost of photocopying contracts or dubbing a computer diskette with a list of current contracts on the database. A free brochure, "Frequently Asked Questions About State Contracts," explains how to take advantage of the bureau's services.

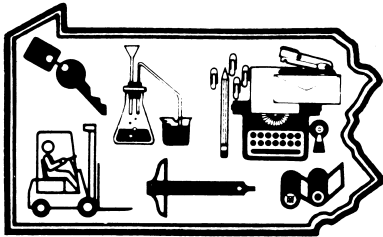
Contact: **Bureau of Contracts and Public Records**
 Pennsylvania State Treasury
 Room G13 Finance Building
 Harrisburg, PA 17120
 717-787-2990
 1-800-252-4700

BARBARA HAFER,
State Treasurer

Beginning February 6, 2002, the Department of General Services' Bureau of Purchases will only accept hand-carried bids if the individual delivering the bid:

1. shows picture identification, such as a driver's license, which identifies the individual delivering the bid and
2. provides written authorization, signed by the bidder, of the individual's authority to deliver the bid on behalf of the bidder.

These same procedural requirements apply for modifications or withdrawals of bids in person.



Commodities

X22786 Provide 1,000 Thermos-brand, 16 quart capacity. (Manufacturer's Item # 7916) with DEP logo printing due no later than April 15, 2002.

Description: Environmental Protection
Location: Harrisburg, PA
Duration: To be delivered no later than April 15, 2001
Contact: Lisa Sitlinger (717) 783-4885

461674 Department of Transportation wishes to procure engine parts to rebuild a Caterpillar 3306 Engine. List of parts and numbers are included in bid package. Requests for bid package must be faxed to (717) 783-8528 by Thursday, February 21, 2002.

Description: Transportation
Contact: Patti Miller, Purchasing Agent (717) 787-3959

X22022 To provide KjeldaLift 40-place block nitrogen digestion system plus accessories. ViscoAlpha Corp. Item # G-KBL40S. No substitute.

Description: Environmental Protection
Location: Harrisburg, PA
Duration: To be delivered no later than April 15, 2002
Contact: Lisa Sitlinger (717) 783-4885

0400TDC Assorted Toner cartridges and drum cartridges (if required) for various types and manufacturers of printers and laptops located at the PennDot District 4-0 office building. Printers are, but may not be limited to, HP Deskjet, Designjet and Laserjet models. Cartridges for various IBM/Lexmark, Xerox, Memorex/Telex, Okidata, Epson and Canon model printers may also be included. All quantities are estimated.

Description: Transportation
Location: PA Dept. of Transportation, Engineering District 4-0, O'Neill Highway, Dunmore, PA 18512
Duration: December 31, 2002.
Contact: Gerald Pronko (570) 963-4039

01-23 State Correctional Institution at Waymart is seeking bids for a CNC wood lathe. For a detailed specification, please send fax request to (570) 488-2557 or e-mail request to abooths@state.pa.us.

Description: Corrections
Location: State Correctional Institution, Route 6 East, P. O. Box 256, Waymart, Pa. 18472
Contact: Andrew J. Booths, PA (570) 488-2516

1235201 Rebid Furnish & Install Radio/Avionics Equipment in Aircraft. If you have problems downloading a bid, please call our Fax Back System at (717) 705-6001.

Description: State Police
Location: New Cumberland, PA
Duration: FY 2001-02
Contact: Vendor Services (717) 787-2199

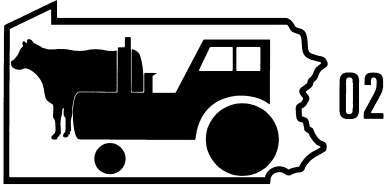
8172060 Bituminous Material, Complete in Place.

Description: Transportation
Location: Pennsylvania
Duration: FY 2001-02
Contact: Vendor Services (717) 787-2199

8251560 Rebid Sprayer, Herbicide, Special Purpose, Truck Mounted. If you have problems downloading a bid, please call our Fax Back System at (717) 705-6001.

Description: Transportation
Location: Harrisburg, PA
Duration: FY 2001-02
Contact: Vendor Services (717) 787-2199

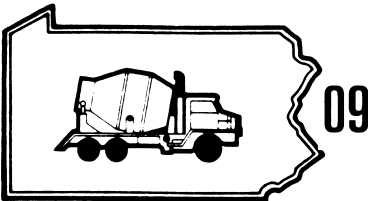
SERVICES



Agricultural Services

4/1 Provide fish food used in a statewide fish culture program during the period April 1, 2002—June 30, 2002. Fish feed products purchased in bulk and bagged quantities only from vendors who have had their products tested and accepted by the Fish and Boat Commission.

Description: Fish and Boat Commission
Location: Statewide to various fish culture stations as requested.
Duration: April 1, 2002—June 30, 2002
Contact: James E. Harvey (814) 359-5141



Construction & Construction Maintenance

401-BL-617 Replace Running Track at Redman Stadium—Provide all labor, superintendence, materials, tools and equipment necessary to perform all necessary work to complete the resurfacing of the running track at Redman Stadium, Bloomsburg University. To obtain a copy of the bid package, submit a \$100.00 non-refundable deposit to: Reilly Associates, 222 Wyoming Avenue, West Pittston, PA 18643—Phone (570) 654-2473. All information regarding the project to include pre-bid and bid due info will be included in the package. They will be only one prime - GENERAL CONTRACTOR on this project.

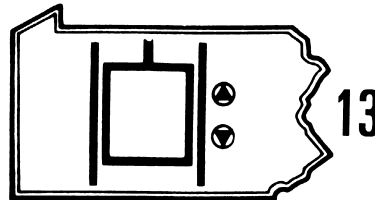
Description: State System of Higher Education
Location: Bloomsburg University, Bloomsburg, PA
Duration: 75 Calendar Days
Contact: Joseph C. Quinn (570) 389-4311

DGS 700-41CP1,2,3,4,5 PROJECT TITLE: Pennsylvania Farm Show Complex Chiller Plant Package. BRIEF DESCRIPTION: Work generally include foundations, structural steel, metal siding, slab-on-grade concrete, slab-on-deck concrete, masonry, interior finishes, roofing, supply & return chilled water lines within the existing Farm Show Complex, chiller units, cooling towers, associated piping, storm, sanitary, gas & domestic water lines, transformers, motor control centers, 4160V substation, 480V substation, variable frequency drives, starters, disconnects, lighting, fire protection sprinkler system in the proposed Chiller Plant & connection to fire protection system within the existing Farm Show Complex. ESTIMATED RANGE: \$2,000,000.00 to \$4,000,000.00. General, HVAC, Plumbing, Electrical and Fire Protection Construction. PLANS DEPOSIT: \$125.00 per set payable to: REYNOLDS CONSTRUCTION MANAGEMENT, INC. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. Bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail a separate check for \$75.00 per set or provide your express mail account number to the office listed below. Mail requests to: Reynolds Construction Management, Inc., 3300 N. 3rd St., Harrisburg, PA 17110, Tel: (717) 221-9917. Bid Date: WEDNESDAY, February 27, 2002 at 2 p.m. Questions and comments must be submitted to Matt McCoy, via FAX: (717) 221-9920, Tel: (717) 221-9917 EXT. 19, Reynolds Construction Management, Inc. The final date for all questions will be 12 p.m. on February 15, 2002.

Description: General Services
Location: PA Farm Show Complex, Harrisburg, Dauphin, PA
Duration: 207 CALENDAR DAYS FROM DATE OF INITIAL JOB CONFERENCE
Contact: Contract and Bidding Unit 717/787-6556

KUCC-0034 KUCC-0034: Kutztown University is seeking qualified general, mechanical, plumbing, and electrical contractors for the work associated with the Renovations to the President's Residence at Kutztown University. Bid packages are available for a non-refundable fee of \$40.00 from: Virginia Stoudt, STV Architects, 205 West Welsh Drive, Douglassville, PA 19508, (610) 385-8325. Bid packages are available February 11, 2002 through Pre-Bid. A pre-bid meeting has been scheduled for February 21, 2002 at 10 a.m. in Room OM-26, Old Main Building. Bids are to be received no later than March 14, 2002 at 3 p.m. in the conference room of the Office of Planning and Construction. Nondiscrimination and Equal Opportunity are the policies of the Commonwealth and the State System of Higher Education.

Description: State System of Higher Education
Location: Kutztown University, Kutztown, PA 19530
Duration: Work to begin on July 1, 2002 and to be completed on or before January 1, 2003
Contact: Barbara Barish (610) 683-4602



Elevator Maintenance

APR #304-800 The awarded contractor to provide a full service elevator maintenance program on the elevator equipment which are (2) hydraulic gearless passenger units and (1) ash gearless service elevator manufactured by Dover. Said service shall include labor, supervision, materials, equipment, and tools necessary to maintain the elevators in a first class operating condition at all times. Service shall also include vandalism and emergency repairs.

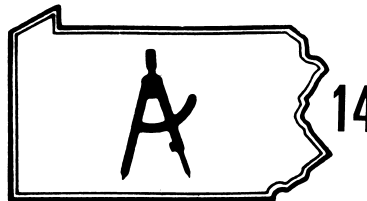
Description: General Services
Location: Dept. of General Services, Bur. of Facilities Management, Reading State Office Building, 625 Cherry Street, Reading, PA 19602
Duration: July 1, 2002 thru June 30, 2005
Contact: Thomas D. Marnell (610) 378-4185

407052 The Awarded Contractor must provide a "full service" elevator maintenance program on the elevator equipment for the Capitol Complex and Outlying Buildings. These services shall include labor, supervision, materials, equipment, and tools necessary to maintain the elevators in first class operating condition at all times.

Description: General Services
Location: Capitol Complex and Outlying Buildings.
Duration: July 1, 2002 through June 30, 2005.
Contact: Marc Waxman (717) 787-2155

APR #304-120 Contractor to provide all materials, labor, supervision, tools and equipment necessary to provide for repairs, adjustments, emergency services, preventive maintain and inspection of all elevators in the Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222. All work to be done in accordance with attached specifications.

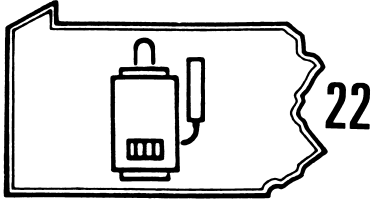
Description: General Services
Location: Pittsburgh State Office Building, 300 Liberty Avenue, Room 219, Pittsburgh, PA 15222
Duration: July 1, 2002 thru June 30, 2005
Contact: Joe Ehrenberger (412) 565-5373



Engineering Services

PennDOT-ECMS The Pennsylvania Department of Transportation has established a website advertising for the retention of engineering firms. You can view these business opportunities by going to the Department of Transportation's Engineering and Construction Management System at www.dot2.state.pa.us.

Description: Transportation
Location: Various
Contact: www.dot2.state.pa.us



HVAC Services

CL-553 - Replace Condenser & Coil, Suhr Library Clarion University of Pennsylvania is soliciting bids for removal of an existing chiller and remote condenser and installation of new chiller consisting of a condensing unit and remote evaporator in Suhr Library at Venango Campus, Oil City, PA. Pre-Bid Conference: February 19 at 10 am in Suhr Library, Oil City. Bids Due: 2 p.m., March 7, 2002. Bid packages available by mailing \$20 non-refundable check payable to the university to Judy McAninch, Clarion University, 218 Carrier Hall, Clarion, PA 16214.

Description: State System of Higher Education
Location: Clarion University, Venango County, Oil City, PA
Duration: 90 Days from Notice to Proceed
Contact: Judy McAninch, Contract Specialist (814) 393-2240

021-0780-01-0018 Refrigeration preventative maintenance and repair services. Interested vendors are to fax request for bid package #021-0780-01-0018 to (570) 443-4177. Please include company name, address and phone number.

Description: Public Welfare
Location: White Have Center, R. R. 2, Box 2195, White Haven, PA 18661
Duration: 7-01-02 through 6-30-07
Contact: Sandra A. Repak, PA (570) 443-7333



Janitorial Services

FM-8372 Furnish all materials, equipment, and labor to perform janitorial services three (3) visits per week at the Troop D, Beaver Station. Detailed work schedule and bid specifications must be obtained from the Facility Management Division.

Description: State Police
Location: PA State Police, Troop D, Beaver Station, 1400 Brighton Road, Beaver, PA 15009
Duration: July 1, 2002, through June 30, 2005
Contact: Stacey Logan-Kent (717) 705-5952

FM-8374 Furnish materials, equipment, and labor to perform janitorial services three (3) visits per week at the Troop H, Carlisle Station. Detailed work schedule and bid specifications must be obtained from the Facility Management Division.

Description: State Police
Location: PA State Police, Troop H, Carlisle Station, 1538 Commerce Avenue, Carlisle, PA 17013
Duration: July 1, 2002, through June 30, 2005
Contact: Stacey Logan-Kent (717) 705-5952

FM-8375 Furnish materials, equipment, and labor to perform janitorial services four (4) visits per week at the Troop B, Findlay Station. Detailed work schedule and bid specifications must be obtained from the Facility Management Division.

Description: State Police
Location: Troop B, Findlay Station, 190 Industry Drive, Pittsburgh, PA 15275
Duration: July 1, 2002, through June 30, 2005
Contact: Stacey Logan-Kent (717) 705-5952

FM-8376 Furnish materials, equipment, and labor to perform janitorial services three (3) visits per week at the Troop C, Kane Station. Detailed work schedule and bid specifications must be obtained from the Facility Management Division.

Description: State Police
Location: Troop C, Kane Station, 3178 Route 219, Kane, PA 16735
Duration: July 1, 2002, through June 30, 2005
Contact: Stacey Logan-Kent (717) 705-5952

Bid #8390 Furnish materials, equipment & labor to perform janitorial services THREE (3) visits per week at the PA State Police, Northeast Training Center. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Northeast Training Center, 1989 Wyoming Avenue, Forty-Fort, PA 18704-4336
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8391 Furnish materials, equipment & labor to perform janitorial services FIVE (5) visits per week at the PA State Police, Williamsport Liquor Control Enforcement facility. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Williamsport Liquor Control Enforcement, 150 Choate Circle, Montoursville, PA 17754
Duration: 7/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

FM-8373 Furnish materials, equipment, and labor to perform janitorial services three (3) visits per week, at the Troop H, Gettysburg Station. Detailed work schedule and bid specifications must be obtained from the Facility Management Division.

Description: State Police
Location: Troop H, Gettysburg Station, 3033 Old Harrisburg Pike, Gettysburg, PA 17325
Duration: July 1, 2002, through June 30, 2005
Contact: Stacey Logan-Kent (717) 705-5952

044802 Provide janitorial services for Department of Transportation (Maintenance) office. Office consists of 5 small rooms, foyer, hallway, 3 lavatories and one lunchroom.

Description: Transportation
Location: 101 Bennett Ave, Milford, PA. (Pike County)
Duration: 3/1/02 To 2/28/04
Contact: Gene Donahue (570) 296-7193

Bid #8398 Furnish all materials, equipment & labor to perform janitorial services TWO (2) times per week at the PA State Police, Reading Aviation Patrol Unit, Bldg. 406, Reading Regional Airport, Reading, PA 19605. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Reading Aviation Patrol Unit, Bldg. 406, Reading Regional Airport, Reading, PA 19605
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8400 Furnish all materials, equipment & labor to perform janitorial services TWO (2) times per week at the PA State Police, Hazleton P&S facility. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Hazleton P&S Facility, 230 Dessen Drive, Hazleton, PA 18201
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8392 Furnish materials, equipment & labor to perform janitorial services THREE (3) visits per week at the PA State Police, Embreeville Station. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Embreeville Station, 1818 W. Strasburg Road, Coatesville, PA 19320
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8397 Furnish all materials, equipment & labor to perform janitorial services TWO (2) times per week at the Troop M TNT Unit. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Troop M TNT Unit, 1600 Hanover Avenue, Ritter Bldg., Allentown State Hospital, Allentown, PA 18103
Duration: 7/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8399 Furnish all materials, equipment & labor to perform janitorial services THREE (3) times per week at the PA State Police, Ephrata Station. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Ephrata Station, 21 Springhouse Road, Ephrata, PA 17522
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8393 Furnish materials, equipment & labor to perform janitorial services TWO (2) visits per week at the PA State Police, Aviation Patrol Unit—Harrisburg, Fixed Wing Area to be included. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Aviation Patrol Unit - Harrisburg, Capital City Airport, New Cumberland, PA 17070
Duration: 7/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8395 Furnish all materials, equipment & labor to perform janitorial services TWO (2) times per week at the Southeast Training Center. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

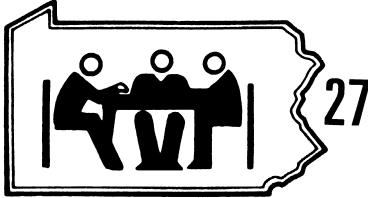
Description: State Police
Location: Southeast Training Center, 2047-B Bridge Road, Schwenksville, PA 19473
Duration: 7/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8394 Furnish all materials, equipment & labor to perform janitorial services TWO (2) times per week at the Harrisburg Tactical Narcotics Team III building. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Harrisburg Tactical Narcotics Unit Team III, Water Works Building, 614 N. Front Street, Harrisburg, PA 17101
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8396 Furnish all materials, equipment & labor to perform janitorial services THREE (3) times per week at the Altoona Liquor Control Enforcement facility. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

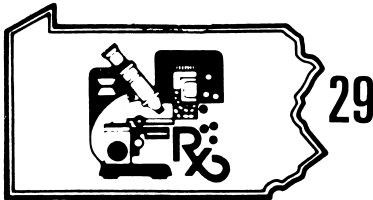
Description: State Police
Location: Altoona Liquor Control Enforcement, 930 Route 22 East, Duncansville, PA 16635
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951



Lodging/Meeting Facilities

01-E-02 Department of Labor and Industry is soliciting bids for WIA FY 2002 Subsequent Eligibility Training. Wednesday or Thursday during the months of May or June 2002, except during the week of May 27, 2002. Facility must be located in Dauphin or Cumberland counties. Estimated 350 attendees.

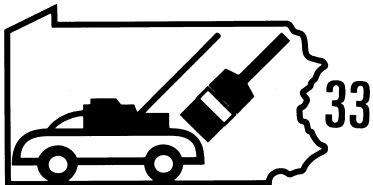
Description: Labor and Industry
Location: Department of Labor and Industry, Bureau of Workforce Investment, 12th Floor, Labor and Industry Building, Seventh and Forester Streets, Harrisburg, PA 17120
Duration: One day training session
Contact: Cherianita Thomas/BF (717) 787-2877



Medical Services

SP 20781002 Contractor to provide service of oral surgery. For detailed specifications, contact the Purchasing Department at Wernersville State Hospital.

Description: Public Welfare
Location: Wernersville State Hospital, Route 422, P. O. Box 300, Wernersville, PA 19565-0300
Duration: Anticipated Start Date: July 1, 2002
Contact: Nancy Deininger, Purchasing Agent (610) 670-4129



Property Maintenance

Bid #8368 Furnish all labor, materials & equipment to remove snow, salting & cindering from the driveways and parking areas, as required at the PA State Police, Lancaster Headquarters. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Lancaster Headquarters, 2099 Lincoln Highway, Lancaster, PA 17602-3384
Duration: 11/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8379 Furnish all labor, materials and equipment to remove snow, salting & cindering from the sidewalks, driveways and parking areas, as required at the PA State Police, Franklin Station. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Franklin Station, 6724 US 322, Franklin, PA 16323
Duration: 11/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8380 Furnish all labor, materials and equipment to remove snow, salting & cindering from the driveways and parking areas, as required at the PA State Police, Butler Headquarters. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Butler Headquarters, 200 Barracks Road, Butler, PA 16001-2689
Duration: 11/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8370 Furnish all labor, materials and equipment to remove snow, salting & cindering from the driveways and parking areas, as required at the PA State Police, Hazleton Aviation facility. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Hazleton Aviation Patrol Unit II, Hazleton Municipal Airport, Hazleton, PA 18201
Duration: 11/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8372 Furnish all labor, materials and equipment to remove snow, salting & cindering from the sidewalks, driveways and parking areas, as required at the PA State Police, Punxsutawney Liquor Control Enforcement facility. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Punxsutawney Liquor Control Enforcement, 305 Sutton Street, Punxsutawney, PA 15767-0497
Duration: 11/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8373 Furnish all labor, materials and equipment to remove snow, salting & cindering from the sidewalks, driveways and parking areas, as required at the PA State Police, Honesdale Station. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Honesdale Station, RR #6, Box 6822, Honesdale, PA 18431-9681
Duration: 11/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8374 Furnish all labor, materials and equipment to remove snow, salting & cindering from the driveways and parking areas, as required at the PA State Police, Philipsburg Station. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Philipsburg Station, 3104 Port Matilda Highway, Philipsburg, PA 16866
Duration: 11/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8375 Furnish all labor, materials and equipment to remove snow, salting & cindering from the sidewalks, driveways and parking areas, as required at the PA State Police, Rockview Station. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Rockview Station, 745 South Eagle Valley Road, Bellefonte, PA 16823
Duration: 11/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8376 Furnish all labor, materials and equipment to remove snow, salting & cindering from the driveways and parking areas, as required at the PA State Police, Montoursville Headquarters. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Montoursville Headquarters, 899 Cherry Street, Montoursville, PA 17754-0068
Duration: 11/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8377 Furnish all labor, materials and equipment to remove snow, salting & cindering from the sidewalks, driveways and parking areas, as required at the PA State Police, Coudersport Station. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Coudersport Station, 3140 East Second Street, Coudersport, PA 16915
Duration: 11/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8378 Furnish all labor, materials and equipment to remove snow, salting & cindering from the driveways and parking areas, as required at the PA State Police, Warren Station. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Warren Station, 2875 Pennsylvania Avenue, West Extension, Warren, PA 16365
Duration: 11/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8385 Furnish all labor, materials and equipment to remove snow, salting & cindering from the driveways and parking areas, as required at the PA State Police, Gettysburg Station. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Gettysburg Station, 3033 Old Harrisburg Pike, Gettysburg, PA 17325
Duration: 11/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8386 Furnish all labor, materials and equipment to remove snow, salting & cindering from the sidewalks, driveways and parking areas, as required at the PA State Police, Newport Station. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Newport Station, 52 Red Hill Court, Newport, PA 17074
Duration: 11/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8389 Furnish all labor, materials and equipment to remove snow, salting & cindering from the sidewalks, driveways and parking areas, as required at the PA State Police, Lewistown Station. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Lewistown Station, 13225 Ferguson Valley Road, Yeagertown, PA 17099
Duration: 11/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8371 Furnish all labor, materials and equipment to remove snow, salting & cindering from the sidewalks, driveways and parking areas, as required at the PA State Police, Williamsport Liquor Control Enforcement facility. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Williamsport Liquor Control Enforcement, 150 Choate Circle, Montoursville, PA 17754
Duration: 11/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8383 Furnish all labor, materials and equipment to remove snow, salting & cindering from the sidewalks, driveways and parking areas, as required at the PA State Police, Findlay Station. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Findlay Station, 190 Industry Drive, Pittsburgh, PA 15275
Duration: 11/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8387 Furnish all labor, materials and equipment to remove snow, salting & cindering from the sidewalks, driveways and parking areas, as required at the PA State Police, Troop H Headquarters. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Troop H Headquarters, 8000 Bretz Drive, West Hanover Twp., Harrisburg, PA 17112
Duration: 11/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8388 Furnish all labor, materials and equipment for snow removal services from driveways and parking areas on an "ON CALL" basis at the PA State Police, Department Headquarters, Harrisburg, PA 17110. The awarded vendor will provide backup and/or additional snow removal equipment and manpower as needed. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Department Headquarters, 1800 Elmerton Avenue, Harrisburg, PA 17110
Duration: 11/1/02 to 6/30/03
Contact: Donna Enders (717) 705-5951

Bid #8417 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the PA State Police, Lancaster Headquarters, THREE (3) cuttings per month. Trim shrubs TWO (2) times a year, to include edging along sidewalks & driveways. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Lancaster Headquarters, 2099 Lincoln Highway East, Lancaster, PA 17602-3384
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8418 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the PA State Police, Schuylkill Haven Station, THREE (3) cuttings per month. Trim shrubs TWICE (2) a year (SPRING/FALL). Trim to include edging along sidewalks & driveways. Fertilization/vegetation ONCE (1) a year (SPRING). Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Schuylkill Haven Station, 23 Meadowbrook Drive, Schuylkill Haven, PA 17972
Duration: 4/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8419 Furnish all labor, materials and equipment to cut, trim, bag & maintain the grass area at the PA State Police, Aviation Patrol Unit #1, Reading, PA, ONCE (1) cutting per week. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Aviation Patrol Unit #1, 124 West Apron Drive, Reading, PA 19605
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8420 Furnish all labor, materials and equipment to cut, trim and maintain the grass area at the PA State Police, Indiana Station, FOUR (4) cuttings per month. Trim shrubs TWICE (2) a year. Fertilization ONCE (1) a year. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Indiana Station, 4221 Route 286, Highway West, Indiana, PA 15701
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8423 Furnish all labor, maintenance and equipment to cut, trim and maintain grass area at the PA State Police, Coudersport Station, THREE (3) cuttings per month. Fertilize/vegetation control TWICE (2) per year. Trim shrubs ONCE (1) time each year (FALL). Pull weeds around shrubs. Trim grass along sidewalks. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Coudersport Station, 3140 East Second Street, Coudersport, PA 16915
Duration: 7/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8425 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the PA State Police, Tionesta Station, THREE (3) cuttings per month. Fertilization/vegetation control of grass area ONE (1) time a year. Trim shrubs ONE (1) time per year. Replace as needed, shrubby bed material. Trim to include edging along sidewalks, shrubby beds and driveways. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Tionesta Station R. D. 1, Box 43DD Tionesta, PA 16353-9502
Duration: 7/1/02 to 6/30/03
Contact: Donna Enders (717) 705-5951

Bid #8426 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the PA State Police, Warren Station, THREE (3) cuttings per month. Fertilization/vegetation control of grass area TWICE (2) per year (SPRING & FALL). Trim shrubs TWICE (2) each year (APRING & FALL). Trim to include edging along sidewalks and driveways. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Warren Station, 2875 Pennsylvania Avenue, West Ext., Warren, PA 16365
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8427 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the PA State Police, Chambersburg Station, THREE (3) cuttings per month. Trim shrubs TWICE (2) a year (SPRING/FALL). Trim to include edging along sidewalks and driveways. Mulching ONCE (1) a year (SPRING). Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Chambersburg Station, 679 Franklin Farms Lane, Chambersburg, PA 17201
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8428 Furnish all labor, materials and equipment to cut, trim and maintain grass area, weed whacker and/or clipper in area where mower cannot reach, at the PA State Police, Belle Vernon Station, THREE (3) cuttings per month. Trim shrubs ONCE (1) a month. Fertilize ONCE (1) a fiscal year. Weeding shall be provided THREE (3) times per month. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Belle Vernon Station, 560 Circle Drive, Belle Vernon, PA 15012-9654
Duration: 7/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8429 Furnish all labor, materials and equipment to cut, trim and maintain grass area, at the PA State Police, Kane Station, THREE (3) cuttings per month. Fertilize/vegetation control of grass area ONCE (1) per year. Trim shrubs ONCE (1) a year, to include edging along sidewalks and driveways. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Kane Station, 3178 Route 219, Kane, PA 16735
Duration: 7/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8412 Furnish all labor, materials & equipment to cut, trim and maintain grass area at the Jonestown Station, THREE (3) cuttings per month. Fertilize/vegetation ONCE (1) per year (SPRING). Trim shrubs TWICE (2) per year (SPRING/FALL), to include edging along sidewalks and driveways. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Jonestown Station, R. D. 2, Box 4070, Jonestown, PA 17038-9574
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8413 Furnish all labor, materials & equipment to cut, trim and maintain grass area at the Hamburg Station, THREE (3) cuttings per month. Fertilize/vegetation TWICE (2) per year. Trim to include edging along sidewalks & driveways. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Hamburg Station, 90 Industrial Drive, Hamburg, PA 19526
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8414 Furnish all labor, materials & equipment to provide for fertilization, insect, weed and crown vetch control, at the PA State Police, Department Headquarters. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Department Headquarters, 1800 Elmerton Avenue, Harrisburg, PA 17110
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8415 Furnish all labor, materials & equipment to cut, trim and maintain grass area at the PA State Police, Gettysburg Station, THREE (3) cuttings per month. Sand mound to be mowed when grass is mowed. Weeding to be done ONCE (1) a month. Mulching of bushes ONCE (1) a year. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Gettysburg Station, 3033 Old Harrisburg Pike, Gettysburg, PA 17325
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8430 Furnish all labor, materials and equipment to cut, trim and maintain grass area, at the PA State Police, Lykens Station, FOUR (4) cuttings per month. Fertilize/vegetation control of grass area ONCE (1) per year. Trim shrubs ONCE (1) a year, to include edging along sidewalks and driveways. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Lykens Station, 301 State Road, Elizabethtown, PA 17023
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8416 Furnish all labor, materials & equipment to cut, trim and maintain grass area at the PA State Police, Municipal Police Officers' Education & Training Commission, THREE (3) cuttings per month. Trim shrubs TWICE (1) a year (SPRING/FALL). Fertilization/vegetation of grass ONCE (1) a year. Rake leaves ONCE (1) a year. Spring Cleanup to be done ONCE (1) a year. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Municipal Police Officers' Education & Training Commission, 75 East Derry Road, Hershey, PA 17033
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

00703-211-01-AS-5 Project Name: Exterior Painting & Repairs—Sharpe House. Project Scope: Exterior carpentry repairs and painting of large wood sided house at Eckley Miners' Village, Weatherly, PA, Luzerne County. A pre-bid meeting will be held on February 20, 2002 at 10 a.m. at Eckley Miners' Village, Sharpe House, Weatherly, PA for all firms interested in submitting bids for the project. For directions contact the Project Manager, Joe Lauver at (717) 787-6242 or the site at (570) 636-2070. All interested bidders should submit a \$25.00 (non-refundable) check and a request for a bid package in writing to: PA Historical & Museum Commission, Division of Architecture, Room N118, Plaza Level, 400 North Street, Harrisburg, PA 17120-0053 —ATTENTION: Judi Yingling (717) 772-2401 OR - FAX - (717) 214-2988. All proposals are due on Friday, March 8, 2002 at 11:45 a.m. Bid opening will be held in The Commonwealth Keystone Building, Division of Architecture, Room N118, Plaza Level, 400 North Street, Harrisburg, PA 17120-0053.

Description: Historical and Museum Commission
Location: Eckley Miners' Village, Rural Route 2, Weatherly, PA 18255
Duration: May 1, 2002 to October 31, 2002
Contact: Judi Yingling (717) 772-2401

00701-000-01-AS-2 Project Name: Electrical Renovations. Project Scope: Upgrade electrical circuits and devices in various buildings at Ephrata Cloister, Ephrata, PA, Lancaster County. A pre-bid meeting will be held on February 21, 2002 at 11 a.m. at Ephrata Cloister, Associates Barn, Ephrata, PA for all firms interested in submitting bids for the project. For directions contact the Project Manager, Joe Lauver at (717) 787-6242 or the site at (717) 733-6600. All interested bidders should submit a \$25.00 (non-refundable) check and a request for a bid package in writing to: PA Historical & Museum Commission, Division of Architecture, Room N118, Plaza Level, 400 North Street, Harrisburg, PA 17120-0053—ATTENTION: Judi Yingling (717) 772-2401 OR - FAX - (717) 214-2988. All proposals are due on Friday, March 8, 2002 at 11:45 a.m. Bid opening will be held in The Commonwealth Keystone Building, Division of Architecture, Room N118, Plaza Level, 400 North Street, Harrisburg, PA 17120-0053.

Description: Historical and Museum Commission
Location: Ephrata Cloister, 629 West Main Street, Ephrata, PA 17522
Duration: May 1, 2002 to October 31, 2002
Contact: Judi Yingling (717) 772-2401

Bid #8406 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Bloomsburg Station, THREE (3) cuttings per month. Trim shrubs ONCE (1) per year, to include edging along sidewalks & driveways. Fertilize/vegetation control of grass area ONCE (1) per year. Mulching ONCE (1) per year. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Bloomsburg Station, 6850 Hilday Church Road, Bloomsburg, PA 17815
Duration: 7/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8407 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Tunkhannock Station, FOUR (4) cuttings per month. Trim shrubs TWICE (2) per year (SPRING & FALL), to include edging along sidewalks & driveways. Fertilize/vegetation control of grass area ONCE (1) per year. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Tunkhannock Station, 915 SR6W, Tunkhannock, PA 18657-6148
Duration: 7/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8408 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Towanda Station, THREE (3) cuttings per month. Trim shrubs TWICE (2) per year (SPRING & FALL). Trim to include edging along sidewalks & driveways. Fertilize/vegetation control of grass area ONCE (1) per year. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Towanda Station, R. D. 1, Towanda, PA 18848
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8409 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Honesdale Station, TWO (2) cuttings per month. Trim shrubs TWICE (2) per year (SPRING & FALL). Fertilization TWICE (2) a year. Weeding to be done TWO (2) times per month. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Honesdale Station, R. R. 6, Box 6822, Honesdale, PA 18431-9681
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8424 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the PA State Police, Punxsutawney Liquor Control Enforcement facility, THREE (3) cuttings per month. Fertilization/vegetation control of grass area ONE (1) time a year (SPRING). Trim shrubs ONE (1) time per year (FALL). Replace as needed, shrubby bed material. Trim to include edging along sidewalks, shrubby beds and driveways. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Punxsutawney Liquor Control Enforcement, 305 Sutton Street, Punxsutawney, PA 15767-0497
Duration: 7/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8381 Furnish all labor, materials and equipment to remove snow, salting & cindering from the sidewalks, driveways and parking areas, as required at the PA State Police, Kittanning Station. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Kittanning Station, R. D. #8, Box 49, Kittanning, PA 16201-8880
Duration: 11/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8382 Furnish all labor, materials and equipment to remove snow, salting & cindering from the sidewalks, driveways and parking areas, as required at the PA State Police, Washington Headquarters. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Washington Headquarters, 83 Murtland Avenue, Washington, PA 15301
Duration: 11/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8384 Furnish all labor, materials and equipment to remove snow, salting & cindering from the sidewalks, driveways and parking areas, as required at the PA State Police, Newport Station. Detailed Work Schedule and Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Newport Station, 110 North Street, York, PA 17403
Duration: 11/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

00703-001-01-AS-1 Project Name: Roof Replacement- Visitor Center. Project Scope: Replace existing built up roof (approximately 50 Sq.) with new membrane roof at Eckley Miners' Village, Weatherly, PA, Luzerne County. A pre-bid meeting will be held on February 20, 2002 at 1:30 pm at Eckley Miners' Village, Visitor Center, Weatherly, PA for all firms interested in submitting bids for the project. For directions contact the Project Manager, Joe Lauver at (717) 787-6242 or the site at (570) 636-2070. All interested bidders should submit a \$25.00 (non-refundable) check and a request for a bid package in writing to: PA Historical & Museum Commission, Division of Architecture, Room N118, Plaza Level, 400 North Street, Harrisburg, PA 17120-0053 —ATTENTION: Judi Yingling (717) 772-2401 OR - FAX - (717) 214-2988. All proposals are due on Friday, March 8, 2002 at 11:45 a.m. Bid opening will be held in The Commonwealth Keystone Building, Division of Architecture, Room N118, Plaza Level, 400 North Street, Harrisburg, PA 17120-0053.

Description: Historical and Museum Commission
Location: Eckley Miners' Village, Rural Route 2, Weatherly, PA 18255
Duration: May 1, 2002 to October 31, 2002
Contact: Judi Yingling (717) 772-2401

Bid #8401 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Meadville Station, THREE (3) cuttings per month. Trim shrubs ONCE (1) a year, to include edging along sidewalks and driveways. Vegetation/fertilize ONCE (1) a year. Rake leaves TWICE (2) a year. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Meadville Station, 11176 Murray Road, Meadville, PA 16335-0479
Duration: 7/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8402 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Philipsburg Station, THREE (3) cuttings per month. Trim shrubs TWICE (2) a year (SPRING/FALL). Vegetation/fertilize ONCE (1) a year (SPRING). Trim to include edging along sidewalks & driveways. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Philipsburg Station, 3104 Port Matilda Highway, Philipsburg, PA 16866
Duration: 7/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8403 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Stonington Station, THREE (3) cuttings per month. Trim shrubs ONCE (1) per year. Vegetation/fertilization control of grass area ONCE (1) per year. Trim to include edging along sidewalks & driveways. Weed whacker and/or clippers in areas where necessary. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Stonington Station, R. D. 2, Box 83, Sunbury, PA 17801
Duration: 7/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8404 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Rockview Station, THREE (3) cuttings per month. Cuttings will be done weekly during the Spring and Fall grass growing seasons. Bi-monthly during the mid-Summer. Trim grass along sidewalks, building, etc. Weed whacker or clippers, as required. (See other requirements & specifications). Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Rockview Station, 745 South Eagle Valley Road, Bellefonte, PA 16823
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8405 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Total Automation Office, FOUR (4) cuttings per month. Trim hedges ONCE (1) every other month. Fertilization TWICE (2) a year. Weeding FOUR (4) times per month. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

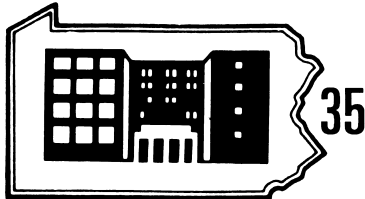
Description: State Police
Location: Total Automation Office, 2629 Market Place, Harrisburg, PA 17110-9362
Duration: 7/1/02 to 6/30/05
Contact: Donna Enders (717) 705-5951

Bid #8421 Furnish all labor, materials and equipment to cut, trim and maintain the grass area at the PA State Police, Altoona Liquor Control Enforcement facility, THREE (3) cuttings per month. Trim shrubs ONE (1) time each year (FALL). Fertilize/vegetation control ONE (1) time per year (SPRING). Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Altoona Liquor Control Enforcement, 930 Route 22 East, Duncansville, PA 16635
Duration: 7/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951

Bid #8422 Furnish all labor, maintenance and equipment to cut, trim and maintain grass area at the PA State Police, Mansfield Station, THREE (3) cuttings per month. Fertilize/vegetation control ONCE (1) time per year (SPRING). Trim shrubs ONCE (1) time each year (FALL). Replace as needed shrubbery bed material. Trim to include edging along sidewalks, shrubbery beds & driveways. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 705-5951.

Description: State Police
Location: Mansfield Station, 1745 Valley Road, Mansfield, PA 16933-0230
Duration: 7/1/02 to 6/30/04
Contact: Donna Enders (717) 705-5951



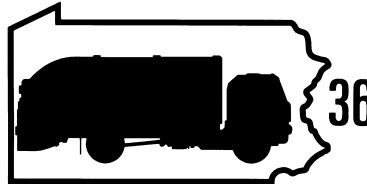
Real Estate Services

93371 LEASE OFFICE AND RESIDENTIAL HOUSING SPACE TO THE COMMONWEALTH OF PA. Proposals are invited to provide the Department of Corrections with 8,160 useable square feet of office and residential housing space in Lackawanna County, PA, with a minimum parking for 12 vehicles, within Scranton City Limits. Downtown locations will be considered. For more information on SFP #93371 which is due on 03/25/02 visit www.dgs.state.pa.us or call (717) 787-4394.

Description: Corrections
Location: 505 North Office Building Harrisburg, PA 17125
Contact: Jennings Ward (717) 787-7412

93374 LEASE OFFICE/BARRACKS SPACE TO THE COMMONWEALTH OF PA. Proposals are invited to provide the Pennsylvania State Police with 9890 useable square feet of office/barracks space in Bedford County, PA, with minimum parking for 74 vehicles. The offered space must be located within the following boundaries: (1) within a two (2) mile radius of the intersection of SR 30 & SR 1003; OR (2) within a two(2) mile radius of the intersection of SR 56 & I-99. For more information on SFP #93374 which is due on April 1, 2002 visit www.dgs.state.pa.us or call (717) 787-4394.

Description: State Police
Location: 505 North Office Building Harrisburg, PA 17125
Contact: John Hocker (717) 787-4396



Sanitation

062015 Placement of three (3) 20 cu.yd. dumpsters at various locations in Chester County. Pickup of said dumpsters on demand up to twelve (12) times per annum (total 36 pickups). Roadside Litter may include but is not limited to glass and plastic, steel and aluminum, paper products, rubber (pieces of tires and tubes, not whole tires), scrap metal, lumber, concrete & construction debris, auto parts and brush. Interested vendors may obtain bidding packages by faxing in your name, address and phone number to: Lillian Frank, Purchasing Agent at (610) 430-4361 or e-mail your name, address & phone No. to Lillian Frank at LFrank@state.pa.us. The bids will be opened in the Chester County Maintenance office. Anticipated date for the release of bid packages is Feb. 9, 2002 with a bid opening approx. in 2 wks of that date.

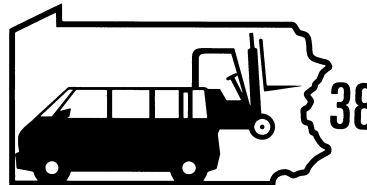
Description: Transportation
Location: Stockpile 07-Rt. 1 By-Pass near Kennett Sq., Stockpile 08-Rt 30 near Parkersburg, Stockpile 28-Rt 282 near Little Jackson.
Duration: One (1) year, with two (2) two year renewals.
Contact: Lillian Frank (610) 436-1914

APR #304-801 Contractor to furnish labor and equipment for the removal of rubbish, ashes, other waste paper, and all recyclable material at the Reading State Office Building, 625 Cherry Street, Reading, PA 19602. In accordance with the attached specifications, all work to be performed in a first class manner, in accordance with the standards of the trade.

Description: General Services
Location: Dept. of General Services, Bur. of Facilities Management, Reading State Office Building, 625 Cherry Street, Reading, PA 19602
Duration: July 1, 2002 thru June 30, 2005
Contact: Thomas D. Marnell (610) 378-4185

304-07545 Contractor will supply solid waste containers where required by the Contracting Officer. Awarded Contractor will be responsible for transporting the loading container to the City of Harrisburg Waste Energy Facility.

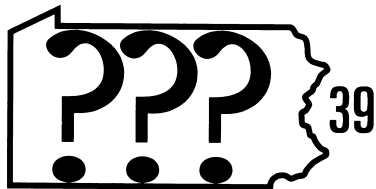
Description: General Services
Location: Capitol Complex, loading dock area of the 18th & Herr Streets Complex, 22nd & Forester Streets Building, and any other location in the Harrisburg vicinity deemed necessary by Contracting Officer.
Duration: July 1, 2002 through June 30, 2005.
Contact: Carlos Ramos (717) 787-2155



Vehicle, Heavy Equipment and Powered Machinery Services

2-2-00050 Provide (1) Truck Mounted Attenuator (TMA). This unit shall be furnished complete in all details including attaching brackets and support structure to attach to the rear of existing Department truck.

Description: Transportation
Location: Washington Ave & Hall Street, P. O. Box 245, Hyde, PA 16843-0245
Duration: 05/01/02 thru 04/30/03
Contact: Debbie Swank (814) 765-0524

**Miscellaneous**

38-64110002 Supply and install interior magnetic storm windows in the Center Office at the Nolde Forest Environmental Education Center.

Description: Conservation and Natural Resources

Location: Nolde Forest Environmental Education Center, 2910 New Holland Road, Reading, PA 19607

Duration: June 30, 2002

Contact: Daniel Hewko (610) 796-3699

[Pa.B. Doc. No. 02-245. Filed for public inspection February 8, 2002, 9:00 a.m.]

DESCRIPTION OF LEGEND

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| <p>1 Advertising, Public Relations, Promotional Materials</p> <p>2 Agricultural Services, Livestock, Equipment, Supplies & Repairs: Farming Equipment Rental & Repair, Crop Harvesting & Dusting, Animal Feed, etc.</p> <p>3 Auctioneer Services</p> <p>4 Audio/Video, Telecommunications Services, Equipment Rental & Repair</p> <p>5 Barber/Cosmetology Services & Equipment</p> <p>6 Cartography Services</p> <p>7 Child Care</p> <p>8 Computer Related Services & Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p>9 Construction & Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p>10 Court Reporting & Stenography Services</p> <p>11 Demolition—Structural Only</p> <p>12 Drafting & Design Services</p> <p>13 Elevator Maintenance</p> <p>14 Engineering Services & Consultation: Geologic, Civil, Mechanical, Electrical, Solar & Surveying</p> <p>15 Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core & Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p>16 Extermination Services</p> <p>17 Financial & Insurance Consulting & Services</p> <p>18 Firefighting Services</p> <p>19 Food</p> <p>20 Fuel Related Services, Equipment & Maintenance to Include Weighing Station Equipment, Underground & Above Storage Tanks</p> <p>21 Hazardous Material Services: Abatement, Disposal, Removal, Transportation & Consultation</p> | <p>22 Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental & Repair</p> <p>23 Janitorial Services & Supply Rental: Interior</p> <p>24 Laboratory Services, Maintenance & Consulting</p> <p>25 Laundry/Dry Cleaning & Linen/Uniform Rental</p> <p>26 Legal Services & Consultation</p> <p>27 Lodging/Meeting Facilities</p> <p>28 Mailing Services</p> <p>29 Medical Services, Equipment Rental and Repairs & Consultation</p> <p>30 Moving Services</p> <p>31 Personnel, Temporary</p> <p>32 Photography Services (includes aerial)</p> <p>33 Property Maintenance & Renovation—Interior & Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning & Planting, etc.)</p> <p>34 Railroad/Airline Related Services, Equipment & Repair</p> <p>35 Real Estate Services—Appraisals & Rentals</p> <p>36 Sanitation—Non-Hazardous Removal, Disposal & Transportation (Includes Chemical Toilets)</p> <p>37 Security Services & Equipment—Armed Guards, Investigative Services & Security Systems</p> <p>38 Vehicle, Heavy Equipment & Powered Machinery Services, Maintenance, Rental, Repair & Renovation (Includes ADA Improvements)</p> <p>39 Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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KELLY LOGAN,
Secretary

Contract Awards

The following awards have been made by the Department of General Services, Bureau of Purchases:

Requisition or Contract No.	PR Award Date or Contract Effective Date	To	In the Amount Of
1189111-01	01/28/02	Weiss Brothers Paper	21,000.00
1218111-01	01/28/02	Tri State Electronics/ Supply	19,967.00

KELLY P. LOGAN,
Secretary

[Pa.B. Doc. No. 02-246. Filed for public inspection February 8, 2002, 9:00 a.m.]

