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PENNSYLVANIA BULLETIN

Volume 35

Number 16

Saturday, April 16, 2005 • Harrisburg, Pa.

Pages 2197—2376

Agencies in this issue:

The Governor
The General Assembly
The Courts
Department of Banking
Department of Conservation and Natural Resources
Department of Corrections
Department of Education
Department of Environmental Protection
Department of General Services
Department of Health
Department of Labor and Industry
Department of Revenue
Department of Transportation
Executive Board
Game Commission
Insurance Department
Legislative Reference Bureau
Milk Marketing Board
Pennsylvania Public Utility Commission
Philadelphia Regional Port Authority
Public School Employees' Retirement Board
Securities Commission
State Employees' Retirement Board

Detailed list of contents appears inside.



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**Latest Pennsylvania Code Reporter
(Master Transmittal Sheet):**

No. 365, April 2005

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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 2005.

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THE GOVERNOR

GOVERNOR'S OFFICE

Proclamation of Disaster Emergency

April 3, 2005

Whereas, Investigations made at my direction have disclosed that severe storms occurred on April 2 and 3, 2005, and caused widespread flooding and severe, unseasonable winter storm conditions across large regions of Pennsylvania; and

Whereas, the flooding conditions resulted in extensive damage to roads and streets, private homes, businesses, and caused other adverse impacts upon the general population in Bradford, Bucks, Columbia, Luzerne, Monroe, Northampton, Pike, Wayne, and Wyoming Counties; and

Whereas, severe, unseasonable winter conditions in Erie County caused widespread road closures, stranded motorists, and disrupted public safety services; and

Whereas, the serious impact of these storms on both the immediate and long-term economy of these regions and the state represents a major hardship requiring a comprehensive federal, state, and local partnership for effective recovery; and

Whereas, the emergency situation has been of such magnitude and severity as to render essential the Commonwealth's supplementation of county and municipal efforts and resources and the activation of all applicable state, county, and municipal emergency response plans; and

Now Therefore, pursuant to the provisions of Subsection 7301(c) of the Emergency Management Services Code (35 Pa.C.S. Section 7101 et seq.), I do hereby proclaim the existence of a disaster emergency in the affected areas of Bradford, Bucks, Columbia, Erie, Luzerne, Monroe, Northampton, Pike, Wayne, and Wyoming Counties and, in accordance with the State Emergency Operations Plans, I direct all Commonwealth departments and agencies to utilize all available resources and personnel as is deemed necessary to cope with the magnitude and severity of this emergency situation.

Further, I hereby transfer up to \$1,000,000 in unused appropriated funds to the Pennsylvania Emergency Management Agency. The aforementioned funds shall be used for disaster-related expenses incurred by various state agencies and departments. These funds shall be credited to a special account established by the Office of the Budget. All Commonwealth agencies purchasing supplies or services in response to this emergency are authorized to utilize the emergency procurement procedures set forth in Section 516 of the Commonwealth Procurement Code, Act of May 15, 1998, P. L. 358, No. 57, § 516. This Proclamation shall serve as the written determination of the basis for the emergency under Section 516; and

Further, I hereby authorize the Secretary of Transportation to use all available equipment, resources, and personnel of the Department, in whatever manner that he deems necessary, to ensure that all state highways in the disaster affected areas are cleared of debris and any other obstructions resulting from these severe storms and to ensure that highways, bridges, roadbeds, and related facilities and structures, including federal-aid highways, that have sustained damage in the disaster affected area are immediately repaired, maintained, reconstructed, or replaced or that new construction is undertaken where necessary. In addition, I hereby waive any laws or regulations that would restrict the application and use of the Department's equipment, resources, and personnel to assist local jurisdictions in the repairs and clearing and removal of debris and other types of obstructions from non-state-owned highways. This assistance to local jurisdictions may be provided solely at the discretion of the Secretary

of Transportation. This assistance, however, does not apply to privately owned highways, roads, streets, or other types of real property; and


Further, pursuant to the powers vested in me by the Constitution and laws of this Commonwealth, I hereby authorize the Adjutant General of Pennsylvania to place on state active duty for the duration of the emergency/disaster proclamation, such individuals and units of the Pennsylvania National Guard, as requested by the Pennsylvania Emergency Management Agency, to alleviate the potential danger to public health and safety caused by the aforementioned emergency; and

Further, I hereby authorize the Secretary of Environmental Protection to use all available equipment, resources, and personnel of the Department, in whatever manner that she deems necessary, to protect public health and safety or the environment by ensuring that any possible petroleum spills, hazardous materials, and contaminated debris that may be released into the environment as a result of the flooding be remediated; and

Further, I have directed that the emergency response and recovery aspects of all the Commonwealth departments and agencies and all applicable county, municipal, and other disaster emergency response and recovery plans be activated and that all state, county, and municipal actions taken to implement those plans be coordinated through the Pennsylvania Emergency Management Agency; and

Still Further, I hereby urge the governing bodies and executive officers of all political subdivisions affected by this emergency to act as necessary to meet the current exigencies as legally authorized under this proclamation, namely: by the employment of temporary workers; by the rental of equipment; and by entering into such contracts and agreements as may be required to meet the emergency, all without regard to those time-consuming procedures and formalities normally prescribed by law, mandatory constitutional requirements excepted.

Given under my hand and the Seal of the Governor, in the City of Harrisburg, on this third day of April in the year of our Lord two thousand and five and of the Commonwealth the two hundred and twenty-ninth.



Governor

[Pa.B. Doc. No. 05-689. Filed for public inspection April 15, 2005, 9:00 a.m.]

THE GENERAL ASSEMBLY

COMMISSION ON SENTENCING

Meetings Scheduled

The Commission on Sentencing announces the following public meetings to be held at The Harrisburg Hilton and Towers Hotel, One North Second Street, Harrisburg, PA 17101:

Tuesday, May 10, 2005	7:30 p.m.	Work Session
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Wednesday, May 11, 2005	9 a.m. The Leland Room	Quarterly Commission Meeting
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MARK H. BERGSTROM,
Executive Director

[Pa.B. Doc. No. 05-690. Filed for public inspection April 15, 2005, 9:00 a.m.]

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE OF LAW

[204 PA. CODE CH. 71]

Amendment of Rule 402 of the Pennsylvania Bar
Admission Rules; No. 363 Supreme Court Rules;
Doc. No. 1

Order

Per Curiam:

And Now, this 30th day of March, 2005, Rule 402 of the Pennsylvania Bar Admission Rules is amended to read as follows.

To the extent that notice of proposed rulemaking would be required by Pennsylvania Rule of Judicial Administration No. 103 or otherwise, the immediate amendment of Pa.B.A.R. 402 is hereby found to be required in the interest of justice and efficient administration.

This Order shall be processed in accordance with Pennsylvania Rule of Judicial Administration No. 103(b) and shall be effective immediately.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE OF LAW CHAPTER 71. PENNSYLVANIA BAR ADMISSION RULES

Subchapter D. MISCELLANEOUS PROVISIONS

Rule 402. Confidentiality.

(a) **General Rule.** Except as otherwise prescribed in these rules, the actions and records of the Board are **confidential** and shall not be **disclosed** or open to inspection by the public.

(b) **Permitted Disclosure.** The Board may, however[,]:

(1) publish a list of the names of applicants who successfully completed the bar examination administered by the Board [and may];

[(1)] (2) upon request from the dean of a law school, furnish the law school with the names of applicants from the law school who did not successfully complete the bar examination, provided the law school has agreed to only use such information internally within the law school and not to disclose the names of students who failed the bar examination to any person or organization outside of the law school[, and];

[(2)] (3) upon written request from a state or county bar association located within this commonwealth, furnish such bar association with the names and addresses of those applicants who have successfully completed the bar examination administered by the [board] Board and who have not objected to the release of such information, provided the bar association has agreed to only use such information for purposes of offering applicants membership in and services provided by or through the bar association[.];

(4) release information with respect to an applicant upon a written request from a bar admission authority in another jurisdiction, provided the admission authority agrees to use the information only for bar admission purposes and has a rule or policy that guarantees the confidentiality of bar admission materials and records to the same extent required by this rule;

(5) release information with respect to an applicant upon a written request from the Disciplinary Board of this Commonwealth or from a lawyer disciplinary authority in another jurisdiction, provided the disciplinary authority agrees to use the information only for attorney disciplinary matters and has a rule or policy that guarantees the confidentiality of its disciplinary materials and records to the same extent required by this rule;

(6) release information with respect to an applicant when necessary in defending litigation brought against the Court, the Board, its members or staff arising out of or related to the bar admission process;

(7) release a copy of the bar admission application submitted by an applicant upon receipt of a properly executed written authorization and release from the applicant;

(8) release information with respect to an applicant pursuant to a court order;

(9) release to the National Conference of Bar Examiners, the name and the date of birth of individuals who have applied to take the bar examination or be admitted to the bar of this Commonwealth; and

(10) publish the contents of responses submitted to a question on the bar examination by an applicant as a representative sample of a good answer, provided the identity of the applicant is not disclosed.

(c) **Limitation.** Nothing set forth in this rule shall prohibit the Board from refusing to provide information relating to an applicant, when the writer or provider of the information has requested that the information be kept confidential or when the Board deems it imprudent to disclose such information.

* * * * *

[Pa.B. Doc. No. 05-691. Filed for public inspection April 15, 2005, 9:00 a.m.]

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 83]

Amendment of Pennsylvania Rule of Disciplinary
Enforcement 209; No. 40 Disciplinary Doc. No. 1

Order

Per Curiam:

And Now, this 1st day of April, 2005, it is ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that:

1. Rule 209 of the Pennsylvania Rules of Disciplinary Enforcement is amended as set forth in Annex A.

2. This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration. To the extent that publication of a notice of proposed rulemaking would otherwise be required with respect to the amendments adopted by this Order, such publication is hereby found to be unnecessary because the immediate adoption of this Order is required in the interests of justice.

3. The amendments to the Pennsylvania Rules of Disciplinary Enforcement shall take effect upon publication of this Order in the *Pennsylvania Bulletin*.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 209. Immunity.

* * * * *

(b) Complaints against members of the Board involving alleged violations of the Disciplinary Rules **or these rules** shall be [submitted directly to the Supreme Court] handled in the same manner as other complaints, except that if action is required by the Board the Secretary shall notify the Supreme Court which shall appoint an Ad Hoc Disciplinary Board comprised of five former members of the Board who shall discharge the functions of the Board and have all the powers of the Board with respect to that one matter only.

(c) Complaints against Disciplinary Counsel involving alleged violations of the Disciplinary Rules **or these rules** shall be submitted directly to the Board and assigned to a reviewing member of the Board for disposition.

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[Pa.B. Doc. No. 05-692. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. I]

Order Adopting Revision of Comment to Rule of Evidence 104; No. 362 Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

Now, this 29th day of March, 2005, upon the recommendation of the Committee on Rules of Evidence, this

proposal having been published before adoption at 34 Pa.B. 2689 (May 22, 2004) and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the revision of comment is hereby amended as set forth in Annex A.

This *Order* shall be processed immediately in accordance with Pa.R.J.A. 103(b), and shall be effective May 2, 2005.

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 104. Preliminary Questions.

* * * * *

Comment

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The second sentence of paragraph 104(c) is identical to the second sentence of F.R.E. 104(c). Paragraph 104(c) [indicates] **says** that hearings on other preliminary matters, both criminal and civil, shall be conducted outside the jury's presence when required by the interests of justice. Certainly, the court should conduct [the] a hearing outside the presence of the jury when the court believes that it is necessary to prevent the jury from hearing prejudicial information. [The right of an accused to have his or her testimony on a preliminary matter taken outside the presence of the jury does not appear to have been discussed in Pennsylvania law.]

In *Commonwealth v. Washington*, 722 A.2d 643 (Pa. 1998), a case involving child witnesses, the Supreme Court created a per se error rule requiring competency hearings to be conducted outside the presence of the jury. In *Commonwealth v. Delbridge*, 855 A.2d 27 (Pa. 2003), the Supreme Court held that a competency hearing is the appropriate way to explore an allegation that the testimony of a child has been "impaired" or "tainted" by suggestive interview techniques, and that the burden is on a party alleging testimonial incompetency by reason of taint to prove it by clear and convincing evidence.

The right of an accused to have his or her testimony on a preliminary matter taken outside the presence of the jury, a right that the rule expressly recognizes, does not appear to have been discussed in prior Pennsylvania case law.

FINAL REPORT REVISING

Revising Comment Pa.R.E. 104

COMMENT CHANGES

Some significant changes have occurred in the conduct of child competency hearings. The Comment of Pa.R.E. 104 has been revised to alert the Bench and Bar to these developments. In *Commonwealth v. Washington*, 722 A.2d 643 (Pa. 1998), the Supreme Court created a rule requiring that the competency hearing of a child witness be conducted outside the presence of the jury.

In *Commonwealth v. Delbridge*, 855 A.2d 27 (Pa. 2003), the Supreme Court held that a competency hearing is the appropriate way to explore allegations that the testimony of the child has been "impaired" or "tainted" by suggestive

interview techniques. In such a hearing, the burden is on a party alleging testimonial incompetency by reason of taint to prove it by clear and convincing evidence.

[Pa.B. Doc. No. 05-693. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 2, 4 AND 5]

Order Approving the Revision of the Comments to Rules 100, 200, 400, 430, 431, 455, 456, 520, and 565; No. 317 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the April 1, 2005 revisions to the Comments to Rules of Criminal Procedure 100, 200, 400, 430, 431, 455, 456, 520, and 565. These changes conform the Criminal Rules with the Rules of Juvenile Court Procedure and clarify the interplay between the two sets of rules. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 1st day of April, 2005, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice and efficient administration, and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the revision of the Comments to Rules of Criminal Procedure 100, 200, 400, 430, 431, 455, 456, 520, and 565 are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective October 1, 2005.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

Rule 100. Scope of Rules.

* * * *

Comment

* * * *

These rules apply to proceedings involving juveniles only to the extent that the Juvenile Act does not vest jurisdiction in the Juvenile Court, and as provided in the **Rules of Juvenile Court Procedure**. See, e.g., Juvenile Act [§§ 6302—6303, 6355], 42 Pa.C.S. §§ 6302—6303, 6355 [(1982)]; Vehicle Code, 75 Pa.C.S. § 6303 [(1977)], and **Rules of Juvenile Court Procedure 105 (Search Warrants), 395 (Procedure to Initiate Criminal Information), and 396 (Bail)**.

Official Note: Prior rule suspended effective May 1, 1970. Present Rule 1 adopted January 31, 1970, effective May 1, 1970; amended April 26, 1972, effective immediately; amended June 28, 1974, effective July 1, 1974;

amended January 28, 1983, effective July 1, 1983; Comment revised July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 100 and amended March 1, 2000, effective April 1, 2001; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the April 1, 2005 Comment revision concerning Rules of Juvenile Court Procedure published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

CHAPTER 2. INVESTIGATIONS

PART A. Search Warrant

Rule 200. Who May Issue.

* * * *

Comment

This rule formally authorizes [**district justices**] **magisterial district judges**, Philadelphia bail commissioners, and judges of the Municipal, Common Pleas, Commonwealth, Superior, and Supreme Courts to issue search warrants. This is not a departure from existing practice. See, e.g., Sections 1123(a)(5) and 1515(a)(4) of the Judicial Code, 42 Pa.C.S. §§ 1123(a)(5), 1515(a)(4). **See also the Rules of Juvenile Court Procedure, Rule 105 (Search Warrants).** Any judicial officer who is authorized to issue a search warrant and who issues a warrant is considered an "issuing authority" for purposes of this rule. The authority of a [**district justice**] **magisterial district judge** to issue a search warrant outside of the magisterial district but within the judicial district is recognized in *Commonwealth v. Ryan*, 400 A.2d 1264 (Pa. 1979).

* * * *

Official Note: Prior Rules 2000 and 2001 were suspended by former Rule 323, effective February 3, 1969. Present Rule 2001 adopted March 28, 1973, effective 60 days hence; amended July 1, 1980, effective August 1, 1980; Comment revised September 3, 1993, effective January 1, 1994; renumbered Rule 200 and Comment revised March 1, 2000, effective April 1, 2001; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the April 1, 2005 Comment revision concerning Rules of Juvenile Court Procedure published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART A. Instituting Proceedings

Rule 400. Means of Instituting Proceedings In Summary Cases.

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Comment

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Summary cases are cases in which all the offenses charged are either summary offenses, as defined in the Crimes Code, 18 Pa.C.S. § 106(c), or violations of ordinances for which imprisonment may be imposed upon conviction or upon failure to pay a fine or penalty. See Rule 103. Criminal proceedings in summary cases are to be brought under this chapter of the rules. If one or more of the offenses charged is a misdemeanor, felony, or murder, the case is a court case (see Rule 103) and proceeds under Chapter 5 of the rules. Any summary offenses in such a case, if known at the time, must be charged in the same complaint as the higher offenses and must be disposed of as part of the court case. See Crimes Code § 110, 18 Pa.C.S. § 110, and *Commonwealth v. Campana*, 304 A.2d 432 (Pa. 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 314 A.2d 854 (Pa. 1974). But see *Commonwealth v. Beatty*, 455 A.2d 1194 (Pa. 1983); *Commonwealth v. Taylor*, 522 A.2d 37 (Pa. 1987); and *Commonwealth v. Kresge*, 464 A.2d 384 (Pa. Super. Ct. 1983) (no Section 110 violation when separate prosecutions involve offenses "not within the jurisdiction of a single court"). See also *Commonwealth v. Geyer*, 687 A.2d 815 (Pa. 1996) (Section 110 applies to separate prosecution of two summary offenses within the jurisdiction of a single court).

* * * * *

The Rules of Criminal Procedure generally do not apply to juvenile proceedings[, but these rules]. But see the **Rules of Juvenile Court Procedure 105 (Search Warrants) and 396 (Bail)**. The Criminal Rules do apply to proceedings in summary cases involving defendants under 18 years of age to the extent that the Juvenile Act does not apply to such proceedings. See, e.g., Juvenile Act, 42 Pa.C.S. §§ 6302, 6303, and 6326, Vehicle Code, 75 Pa.C.S. § 6303. See also 42 Pa.C.S. §§ 1515(a)(1) and 6303(a)(5) concerning jurisdiction of summary offenses arising out of the same episode or transaction involving a delinquent act for which a petition alleging delinquency is filed.

* * * * *

Official Note: Previous Rule 51 adopted January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; Comment revised December 15, 1983, effective January 1, 1984; rescinded July 12, 1985, effective January 1, 1986; and replaced by present Rules 3, 51, 52, 55, 60, 65, 70, 75, and 95. Present Rule 51 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised January 31, 1991, effective July 1, 1991; Comment revised January 16, 1996, effective immediately; Comment revised June 6, 1997, effective immediately; renumbered Rule 400 and amended March 1, 2000, effective April 1, 2001; Comment revised February 6, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

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Final Report explaining the April 1, 2005 Comment revision concerning Rules of Juvenile Court

Procedure published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

PART D. Arrest Procedures in Summary Cases

PART D(1). Arrests With a Warrant

Rule 430. Issuance of Arrest Warrant.

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Comment

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If the defendant is under 18 years of age and has not paid the fine and costs, the issuing authority must issue the notice required by paragraph (D) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv). Thereafter, the case will proceed pursuant to **the Rules of Juvenile Court Procedure and the Juvenile Act** instead of these rules.

* * * * *

Official Note: Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

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Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Rule 431. Procedure When Defendant Arrested With Warrant.

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Comment

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In cases in which a defendant who is under 18 years of age has failed to "comply with a lawful sentence" imposed by the issuing authority, the Juvenile Act requires the issuing authority to certify notice of the failure to comply to the court of common pleas. See the definition of "delinquent act," paragraph (2)(iv), in 42 Pa.C.S. § 6302. Following the certification, the case is to proceed pursuant to **the Rules of Juvenile Court Procedure and the Juvenile Act** instead of these rules.

* * * * *

Official Note: Rule 76 adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates

extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; amended August 9, 1994, effective January 1, 1995; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 431 and amended March 1, 2000, effective April 1, 2001; amended August 7, 2003, effective July 1, 2004; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

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Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 15, 2005).

PART E. General Procedures in Summary Cases
Rule 455. Trial in Defendant's Absence.

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Comment

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If the defendant is under 18 years of age, the notice in paragraph (D) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to **the Rules of Juvenile Court Procedure** and the Juvenile Act instead of these rules.

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Official Note: Rule 84 adopted July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; renumbered Rule 455 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

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Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Rule 456. Default Procedures: Restitution, Fines, and Costs.

* * * * *

Comment

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If the defendant is under 18 years of age, the notice in paragraph (B) must inform the defendant and the defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to **the Rules of Juvenile Court Procedure** and the Juvenile Act instead of these rules.

* * * * *

Official Note: Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended March 3, 2004, effective July 1, 2004; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

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Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART C. Bail

Rule 520. Bail Before Verdict.

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Comment

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See Pa.R.J.C.P. 396, which provides that, at the conclusion of a transfer hearing, the juvenile court judge is to determine bail pursuant to these bail rules for a juvenile whose case is ordered transferred to criminal proceedings.

See *Commonwealth v. Truesdale*, 296 A.2d 829 (Pa. 1972), concerning the bail authority's discretion to refuse bail under paragraph (A).

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Official Note: Former Rule 4001 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4002; amended January 28, 1983, effective July 1, 1983; Comment revised September 23, 1985, effective January 1, 1986; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 520. Present Rule 4001 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; Comment revised September 3, 1999, effective immediately; renumbered Rule 520 and Comment revised March 1, 2000, effective April 1, 2001; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the April 1, 2005 Comment revision concerning Rules of Juvenile Court Procedure published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

PART E. Informations**Rule 565. Presentation of Information Without Preliminary Hearing.**

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Comment

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Under the **Rules of Juvenile Court Procedure** and the Juvenile Act, a juvenile is entitled to substantially the same rights at a transfer hearing as a defendant would be at a preliminary hearing. See **Rules of Juvenile Court Procedure 394 and 395** and Juvenile Act, 42 Pa.C.S. § 6355. Therefore, to avoid duplicative proceedings, this rule permits the attorney for the Commonwealth to bypass the preliminary hearing when a juvenile has been transferred for prosecution as an adult.

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Official Note: Rule 231 adopted February 15, 1974, effective immediately; amended April 26, 1979, effective July 1, 1979; amended August 12, 1993, effective September 1, 1993; renumbered Rule 565 and amended March 1, 2000, effective April 1, 2001; Comment revised August 24, 2004, effective August 1, 2005; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

* * * * *

Final Report explaining the April 1, 2005 Comment revision concerning Rules of Juvenile Court Procedure published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

FINAL REPORT¹**Revisions of the Comments to Pa.Rs.Crim.P. 100, 200, 400, 430, 431, 455, 456, 520, and 565****Changes Necessitated by the New Rules of Juvenile Court Procedure**

On April 1, 2005, effective October 1, 2005, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revisions of the Comments to Pa.Rs.Crim.P. 100, 200, 400, 430, 431, 455, 456, 520, and 565.

Introduction

On April 1, 2005, the Court adopted the new Juvenile Court Procedural Rules ("Juvenile Rules"). Included in these new rules are Juvenile Rules 105 (Search Warrants) and 396 (Bail) that defer to the procedures in the Rules of

Criminal Procedure ("Criminal Rules") for search warrant procedures in all juvenile cases and for bail procedures in cases in which a transfer has been ordered. In addition, Juvenile Rule 395 (Procedure to Initiate Criminal Information) includes a cross-reference to the Criminal Rules in general and to Criminal Rule 565 specifically for the procedures following a transfer from Juvenile Court. In view of these new Juvenile Rules, the Committee concluded some minor correlative changes to the Criminal Rules are necessary to conform the Criminal Rules with the Juvenile Rules, clarify the interplay between the two sets of rules, and alert the bench and bar to the two specific "deferrals" to the Criminal Rules and to the cross-reference to the Criminal Rules.

Discussion

The Comments to both Criminal Rule 100 (Scope of Rules) and Criminal Rule 400 (Means of Instituting Proceedings in Summary Cases) currently include provisions that explain that the Criminal Rules only apply to proceedings involving juveniles to the extent that the Juvenile Act does not vest jurisdiction in the Juvenile Court.² With the adoption of the new Juvenile Rules, the Criminal Rules have been made applicable to search warrants in juvenile matters, Juvenile Rule 105, and to the setting of bail at the conclusion of a transfer hearing when transfer to criminal proceedings is ordered, Juvenile Rule 396. To accommodate this expansion, the Comments to Criminal Rules 100 and 400 have been revised to include references to Juvenile Rules 105 and 396. In addition, the Comments to Criminal Rules 200 (Who May Issue) and 520 (Bail Before Verdict) have been revised by the addition of cross-references to Juvenile Rules 105 and 396 respectively. These cross-references are important as additional flags to alert the bench and bar to the application of the Criminal Rules concerning search warrants and bail to proceedings under the Juvenile Rules.

Similarly, the Comment to Criminal Rule 565 (Presentation of Information without Preliminary Hearing) has been revised. Prior to this revision, the second paragraph of the Criminal Rule 565 Comment explained, *inter alia*, that the procedures for a transfer hearing under Section 6355 of the Juvenile Act, 42 Pa.C.S. § 6355, serve the same purpose as the preliminary hearing. New Juvenile Rule 394 (Transfer Hearing), which incorporates much of Section 6355, provides procedures comparable to the preliminary hearing. In addition, the Juvenile Rule 395 Comment makes specific reference to Criminal Rule 565 concerning bypassing the preliminary hearing in these cases when filing an information. The revision of the Criminal Rule 565 Comment adding a cross-reference to the Juvenile Rules to the existing cross-reference to the Juvenile Act makes it clear that both the Rules of Juvenile Court Procedure and the Juvenile Act provide the basis for the preliminary hearing bypass process in the Criminal Rules in transfer cases.

Finally, prior to these 2005 changes, the Comments to Rules 430 (Issuance of Arrest Warrant), 431 (Procedure When Defendant Arrested With Warrant), 455 (Trial in Defendant's Absence), 456 (Default Procedures: Restitution, Fines, and Costs) included the explanation that when a summary case involves a juvenile who has failed to comply with a sentence, the issuing authority is to certify the case to the Juvenile Court and the case is to "proceed pursuant to the Juvenile Act instead of these rules." These references to the Juvenile Act have been

¹ The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

² These proceedings are summary case proceedings and the specific court case proceedings exempted by the Juvenile Act from the definition of "juvenile act," as well as any cases ordered transferred to criminal court.

revised to include a reference to the new Juvenile Rules, since the Juvenile Rules provide the procedures in Juvenile Court.

[Pa.B. Doc. No. 05-694. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1—6 AND 8]

Order Approving the Rules of Juvenile Court Procedure; No. 366 Superior Court Rules; Doc. No. 1

The Supreme Court of Pennsylvania has adopted the Rules of Juvenile Court Procedure. The Rules will secure uniformity and simplicity in procedure throughout juvenile courts in this Commonwealth.

The following explanatory Report highlights the history of the Committee, the process of rule-drafting, and the Committee's considerations in formulating the Rules of Juvenile Court Procedure. Please note that the Committee's Reports should not be confused with the official Committee Comments to the Rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Explanatory Report.

The Juvenile Court Procedural Rules Committee has prepared an Explanatory Report explaining the adoption and promulgation of the Rules of Juvenile Court Procedure. The Explanatory Report follows the Court's Order.

Order

Per Curiam:

Now, this 1st day of April, 2005, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been published before adoption at 33 Pa.B. 1581 (March 29, 2003), and a Explanatory Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective October 1, 2005, with the exception of Chapter 1, Part D, Rules 185, 187, 190, 191, and 192, which shall be effective April 1, 2006.

EXPLANATORY REPORT

History of the Committee

The amendments to the Juvenile Act, 42 Pa.C.S. § 6301, et seq., passed during the 1995 Special Session on Crime and subsequent legislation changed the purpose of the juvenile court. The juvenile court as a result must balance: 1) the needs of the victim, 2) community safety and protection, and 3) the accountability of the juvenile. Because the Juvenile Act now provides for the "automatic" transfer to adult court for prosecution for serious offenses, open proceedings in juvenile court, the extension of juvenile pre-adjudicatory detention, and the Victim's Bill of Rights has been extended to juvenile proceedings, there was an imperative need for the creation and ongoing review of statewide rules of procedure to establish uniformity throughout the Commonwealth.

In response to these statutory changes and specifically the resulting need for procedural rules, the Supreme Court initiated the Juvenile Court Procedural Rules Project in 1998 to undertake a close analysis of national standards, statutory and case law, and local practice.

On the basis of the work completed by the Project and the need to begin the detailed and specialized work of drafting the necessary procedural rules, the Supreme Court of Pennsylvania established the Juvenile Court Procedural Rules Committee (hereinafter "Committee") on January 22, 2001. This nine-member advisory Committee to the Court, drawn from members of the bench and bar across Pennsylvania, was charged with the responsibility for conducting a formal review of procedural practice in juvenile court and with developing a comprehensive set of statewide rules for the Court's consideration.¹

On March 29, 2003, the Committee published its proposed recommendation for public comment.² After receiving comment, the Committee met to discuss the comments and issues raised. The Committee then revised its recommendation that it subsequently sent to the Court.

The following rules were adopted by the Supreme Court of Pennsylvania on April 1, 2005. The Rules will be effective October 1, 2005 with the exception of the Masters' Rules, Chapter One, Part D (Rules 185—192) which will be effective April 1, 2006.

Process of Rule-Drafting

The Committee surveyed local practices across this Commonwealth by speaking with judges, masters, law enforcement officials, juvenile probation officers, court administrators, district attorneys, public defenders, and private defense attorneys in every judicial district. The Committee also examined case law, the Juvenile Act, 42 Pa.C.S. § 6301, et seq., the Pennsylvania Rules of Criminal Procedure, the Juvenile Court Judges' Commission Juvenile Court Standards, and many other sources.

After examining these sources and local practices, the Committee debated and discussed every issue with great detail and thought. As a result of our discussions, the Committee has established a set of procedural rules that: 1) simplifies practice and procedure, 2) provides uniformity, and 3) reflects current practices of the majority of the judicial districts. These uniform rules will enable the statewide practice of law and create fairness in administration and disposition of juveniles.

The new rules also will create uniformity in terminology, which will additionally facilitate the statewide practice of law. For example, we have used the term "written allegation" to describe the document that is completed by a law enforcement officer when an act of delinquency is committed.³ When juvenile courts are automated, common language will be even more important.

The Rules Generally

The Committee has presented the rules in an order that tracks the juvenile system from beginning to end. Chapter One sets forth the general provisions and the provisions related to the business of the courts that apply throughout the juvenile court process. Chapter Two deals with the commencement of proceedings and the proce-

¹ The Court's responsibility for prescribing general rules governing practice and procedure, and the conduct of all courts and magisterial district judges is derived from PA. CONST. art. V § 10(c) and the Judicial Code, 42 Pa.C.S. § 1722.

² 33 Pa.B. 1581 (March 29, 2003).

³ This document has been commonly labeled "probable cause affidavit," "complaint," "police papers," "charge form," or "allegation of delinquency" and is already submitted in most judicial districts.

dures when a juvenile is arrested and detained in a detention facility. Chapter Three provides for the procedures on venue and jurisdiction, intake and informal adjustment, the filing of a petition, discovery, motions, summons and notices, consent decree, preservation of testimony and evidence, and transfer for criminal prosecution. Chapter Four sets forth the adjudicatory hearing procedures. Chapter Five provides for the procedures for the dispositional hearing. Finally, post-dispositional procedures, including modifications, reviews, and appeals are provided for in Chapter Six.

In these rules, the Committee has proposed several terms of general application. We use the term "juvenile" to describe a child in the juvenile court delinquency process. The Committee considered "child," "minor," "delinquent," and "juvenile" as appropriate terms. After careful thought and consideration, the Committee chose "juvenile," reasoning the intent is not to presume the person to be a delinquent or an innocent child, so the least controversial term is "juvenile." In fact, the name of the court is "juvenile court" and the probation officers are called "juvenile probation officers."

The Committee uses the term "attorney for the Commonwealth" instead of district attorney because occasionally, the Attorney General's office is involved in delinquency cases. When the Committee is referring to the elected District Attorney, we use the term "District Attorney," and when referring to the District Attorney's staff or the Attorney General's staff, we use the term "attorney for the Commonwealth."

The Committee uses the term "guardian" throughout the rules to describe "parent," "guardian," "custodian," "foster parent," "temporary guardian," or any other person having custody of the juvenile to simplify what we call the many individuals who serve as this interested adult.

Finally, there are some additional procedural areas the Committee believes may necessitate statewide procedural rules. We have reserved consideration of these areas for later discussion, and possible adoption and promulgation by the Supreme Court. Rules that may be developed at a later date include, for example, Rule 129 (Open Proceedings), Rule 384 (DNA Testing), Rule 520 (Transfer of Disposition and Supervision of Juvenile to Another State), Rule 521 (Disposition and Supervision of a Juvenile Received from Another State), Rule 616 (Post-Dispositional Procedures; Appeals), and Rule 617 (Release of Juvenile Pending Appeal).

The following discussion explains the rationale of the Committee when drafting the Rules, but does not discuss every rule because those rules not discussed have evident meaning or are explained sufficiently in the Comments.

CHAPTER ONE

The general provisions are Rules 100—105. Business of courts is covered in Part A, Rules 120—135. Part B addresses counsel, Rules 150—152. Records are covered in Part C, Rules 160—172. Part D addresses masters in Rules 185—192.

General Provisions

Rule 105—Search Warrants

After careful thought and consideration, the Committee concluded that police officers should follow the same procedure for obtaining and executing search warrants whether the person or place being searched relates to a case that may involve an adult or juvenile offender. To simplify this procedure and keep the standards uniform, and because law enforcement officers are familiar with

these procedures, the Committee has deferred to the Pennsylvania Rules of Criminal Procedure for the search warrant procedures.

Part A—Business of Courts

Rule 121—Local Rules

Rule 121 requires all local rules be vacated on October 1, 2005, the time this rule becomes effective, so the Court and Committee are able to regulate and monitor local rules to ensure the local rules are in compliance with the Pennsylvania Rules of Juvenile Court Procedure (Pa.R.J.C.P.), and to ensure that local practices do not inhibit the statewide practice of law. This does not mean all local rules have to be redrafted in their entirety. After reviewing their local rules for consistency and conformity with the new statewide rules, each judicial district may only need to repromulgate their rules after rekeying the rule numbers. See paragraph (B) & (C)(2) and Comment.

Paragraph (D) requires the adopting court to comply with provisions (1)—(5). Under paragraph (D)(4), the court is to file a copy with the Juvenile Court Procedural Rules Committee. The Committee's mailing address is: Juvenile Court Procedural Rules Committee, Supreme Court of Pennsylvania, 5035 Ritter Road, Suite 700, Mechanicsburg, PA 17055. The insertion of RE: Local Rules would be helpful to the Committee when sorting.

Rule 122—Continuances

The Committee discussed what happens with a summons when a case is continued, and concluded the summons does not have to be reissued if the party is notified of the date, place, and time of the rescheduled hearing. See paragraph (B) and Comment.

Rule 123—Subpoenas

This rule provides for the contents of the subpoena, service of the subpoena, duration of the subpoena and bench warrants. If the court does issue a bench warrant, a contempt hearing should be the next hearing.

A subpoena may be served via first class mail; however, this mailing alone is not prima facie evidence of service of the subpoena. A new subpoena should be sent via registered or certified mail, or in-person delivery.

Rule 124—Summons and Notice

Rule 800 suspends 42 Pa.C.S. § 6335(c) to the extent that it is inconsistent with this rule, which provides that a summoned person shall fail to appear for a hearing and the court finds sufficient notice was given to issue a bench warrant. It is not sufficient to find the juvenile may abscond or may not attend or be brought to a hearing. Detaining a juvenile is restrictive of the juvenile's liberty and it can not be done on conjecture and hearsay.

Rule 126—Defects in Form, Content, or Procedure

A case shall not be dismissed because of a defect. The defect shall be raised prior to the adjudicatory hearing and it may not be prejudicial to the rights of the juvenile. A written allegation or petition may be amended to cure a defect. See Rule 334 for amendment of the petition. A new written allegation or new petition may be filed or process may be reissued to alleviate any defects. See Rule 336.

Rule 127—Recording and Transcribing Juvenile Court Proceedings

The Committee felt it was extremely important to ensure all proceedings are properly recorded, including those proceedings by masters. Some form of record or transcript is necessary to permit meaningful consider-

ation of claims of error and effective appellate review. See, e.g., Pa.R.A.P. Rules 1922, 1923, 1924; *Commonwealth v. Fields*, 387 A.2d 83 (Pa. 1978); *Commonwealth v. Shields*, 383 A.2d 844 (Pa. 1978). At a minimum, there should be a tape recording of the proceeding that can be transcribed, although a court stenographer is the preferred method of recording a proceeding.

Rule 128—Proceedings in Absentia

The issue of whether a juvenile may be adjudicated in absentia generated a great deal of debate. Our surveys of the judicial districts revealed that in most cases, the juvenile is present for the proceedings. There are a few instances in which the juvenile would not be present, such as, fleeing from the courtroom to avoid prosecution. The Committee agreed that there may be times when it is appropriate to adjudicate a juvenile in absentia, but was concerned that, by providing for this, any time a juvenile did not appear at a hearing, the juvenile could be adjudicated in absentia. To safeguard against this possibility, the rule makes it clear that in absentia adjudications may only be conducted in those few cases where the juvenile willfully fails to appear or absconds. The rule also provides for the in absentia adjudication only in the discretion of the juvenile court judge, and that the judge can choose never to adjudicate a juvenile in his or her absence.

Rule 131—Guardian's Presence

Rule 131 provides that the guardian may accompany the juvenile to any proceeding. This rule also permits a guardian's presence to be ordered when the guardian does not accompany the juvenile to the hearing. Under the Juvenile Act, in addition to ordering the guardian's presence, the court may order the guardian to participate in the treatment, supervision, or rehabilitation of the juvenile, including, but not limited to, community service, restitution, counseling, treatment, and education programs. See 42 Pa.C.S. §§ 6310, 6335(b), 6336.1.

Rule 132—Victim's Presence

Section 6336(d) of the Juvenile Act provides for "parties, their counsel, witnesses, the victim and counsel for the victim, other persons accompanying a party or a victim for his or her assistance, and any other person as the court finds have a proper interest in the proceeding." 42 Pa.C.S. § 6336(d). The Victim's Bill of Rights, 18 P.S. § 11.201, provides that victims of crime have the right to be accompanied to all juvenile proceedings by a family member, a victim advocate or other person providing assistance or support. Reading these statutes together, the Committee concluded that the court is to determine who is present for the victim's assistance and who has a proper interest. The court should limit the number of persons attending to those that are there specifically for support.

Part B—Counsel

Rule 150—Attorney—Appearances And Withdrawals

This rule addresses how appearances and withdrawals are entered. The Committee discussed at length the issue of duration of counsel.

From its surveys, the Committee learned that, in some counties, a juvenile does not have an attorney at the dispositional review hearing or the review is continued because counsel is not present.

In re A.M., 766 A.2d 1263 (Pa. Super. Ct. 2001), *In re Gault*, 387 U.S. 1 (1967), and 42 Pa.C.S. § 6337 provide for the right to counsel at any and all delinquency

proceedings. A dispositional review hearing is a delinquency proceeding and the juvenile has the right to counsel at such proceedings. The practice in a minority of counties of not having counsel present is in violation of statutory and case law.

The Committee discussed these divergent practices of no counsel at dispositional review hearings and concluded the interests of the juvenile are better served if the same attorney stays in the case through the dispositional reviews because counsel would be familiar with the juvenile and the history of the case.

In juvenile proceedings, a juvenile is sent to a placement facility with no specific time limits except to finish the program. There are different types of facilities and different expected times of normal completion of a specific type of program. For example, one residential facility program may take a juvenile who is doing well about a year to complete. In that same residential facility, a juvenile who is misbehaving or not performing, may take four years to complete the program. A dispositional review hearing tracks the juvenile performance in the placement and the court makes a decision at that hearing to keep the juvenile in the facility, transfer the juvenile to another placement or send the juvenile home. There are so many variables in this decision and restrictions of a juvenile's liberties that it is absolutely essential for juveniles to be represented at these hearings. When a juvenile is removed from the home, these hearings are required to be held every six months. See Rule 610 (Dispositional and Commitment Review).

Because attorneys are failing to show for such an important hearing, this rule provides a mechanism to put the onus on the attorney to withdraw. It additionally puts the court on notice when withdrawal of counsel is requested. If there is no withdrawal, the attorney is expected to be present for the hearing. The Comment provides that the court may need to appoint counsel if there has been a withdrawal. If the juvenile has not had a dispositional hearing or is in placement, the court will appoint new counsel. If the juvenile is on probation, the court may wait to appoint counsel if and until the juvenile violates probation.

Rule 151—Assignment of Counsel

The Committee discussed in detail whether every juvenile is in fact indigent. Local practices varied across the Commonwealth with a majority of judicial districts assigning counsel in every case. The phrase "without financial resources or otherwise unable to employ counsel" used in this rule covers every juvenile that needs counsel. The Committee understands that in some situations, the guardian and the juvenile would have a conflict of interest, and the guardian should not be relied upon to employ counsel in those situations, or the guardian has not obtained an attorney for the juvenile. If a juvenile needs counsel, the court must assign counsel.

The Public Defender Act was suspended in this rule to anticipate conflict of interest cases or other instances where the Public Defender could not represent the juvenile. For example, if there are two juvenile conspirators who have a conflict of interest, the Public Defender may only represent one juvenile and conflict counsel must be appointed for the other juvenile.

This rule provides that the court is to assign counsel. If the Public Defender decides in a county that it will not represent a juvenile, the court may still assign "private" counsel for the juvenile. This rule does not say that the juvenile is entitled to a Public Defender. As a practical

matter, the county may choose to have all juveniles represented by the Public Defender's Office because it is more cost effective than private counsel.

Rule 152—Waiver of Counsel

From our survey of local practices, we found that in most cases, the juvenile has counsel present although waiver of counsel is permitted. The Committee debated whether waiver of counsel should be permitted. The Committee is concerned about the juvenile's comprehension of the consequences of waiving the right to counsel so an extensive colloquy was built into the Comment. In order for the juvenile to waive the right to counsel knowingly, intelligently, and voluntarily, the court is to look at several factors when conducting this colloquy.

The Committee debated whether an age restriction was appropriate. After discussion, we felt that this was a factor that could not be evenly weighed for every juvenile, but have included it as one factor the court should consider because the court is in the best position to determine what is appropriate in each case with a specific juvenile.

This rule does not mandate the appointment of stand-by counsel, because, in most cases, the court will appoint stand-by counsel when it is appropriate.

Part C—Records

Part (C)(1)—Access to Juvenile Records

Rule 160—Inspection of Juvenile Files/Records

There are two sets of files for every juvenile in the system, the docket file and the probation file. The general public cannot assess either set of files. The docket file is maintained by the clerk of courts with limited filed documents. The probation file records many confidential matters and is maintained by the juvenile probation office. This rule is taken from the Juvenile Act, 42 Pa.C.S. § 6307 and it limits access to both set of files.

In addition to limiting access to these files, the clerk of courts' offices throughout this Commonwealth maintain separate files for juvenile and adults, understanding the confidentiality of juvenile records.

Section 6352.1 of the Juvenile Act allows for treatment records to be released to the court, county agency, or probation upon consent or court order, notwithstanding other provisions of law. This section of the Act authorizes limited access of records to specific parties.

Rule 163—Release of Information to School

Any information received by the school pursuant to this rule shall be kept confidential and used by school officials in the ordinary administration of their duties and school operation. This information shall not be released to the general public or third parties unless the court has entered an order to that effect.

This information shall be kept separately from the juvenile's official school record.

Part (C)(2)—Maintaining Records

Rule 166—Maintaining Records in the Clerk of Courts

This rule provides for the contents and maintenance of records in the clerk of courts' office. Rule 160 governs who may review and copy these records.

Rule 167—Filings and Service of Court Orders and Notices

The Committee tried to anticipate the advances in technology by providing, as one method of service, service

by facsimile transmission or other electronic means, if requested. See paragraph (B)(3).

Part (C)(3)—Expunging or Destroying Records

The Committee considered including provisions on which cases may be expunged but, after extensive discussion, felt 18 Pa.C.S. § 9123 covered this area sufficiently.

Rule 170—Expunging or Destroying Juvenile Court Records

This rule sets forth the minimal contents of a motion to expunge a juvenile record. Although there may be situations when the date of birth is unknown, it is helpful in identifying the individual whose record is sought to be expunged. The motion should contain as much information as possible to help identify the record to be expunged. If the police department, probation office, or another agency does not have the proper information, the record sought to be expunged may not actually be expunged for lack of sufficient identifying information.

Part D—Masters

The Rules of Juvenile Court Procedure were adopted on April 1, 2005. The Rules are effective October 1, 2005, except for Chapter One, Part D (Masters), which is effective April 1, 2006. Because some counties will have to change their practice regarding the use of masters for specific classes of cases, this section was given a later effective date.

Rule 185—Appointment to Cases

The Committee expressed concern about allowing masters to practice in the same judicial district where they preside, noting the practice creates a conflict of interest; therefore, this was made a prohibited practice under paragraph (B).

Rule 187—Authority of Master

A major issue for the Committee concerned whether masters should be limited on the types of cases they should hear. After several discussions, eliciting public comment, reviewing case law and the Juvenile Act, reviewing current court practices and reviewing the Juvenile Court Judges' Commission Juvenile Court Standards, the Committee felt that masters should hear only misdemeanors for preliminary, pre-adjudicatory, adjudicatory or dispositional hearings, and that the juvenile court judge should hear the more serious offenses and all felonies. In misdemeanor and felony cases, masters may hear detention hearings, detention review hearings, shelter-care hearings, uncontested dispositional review hearings or uncontested probation revocation hearings.

This Rule restricts the authority of masters. Section 6305 of the Juvenile Act has been suspended to the extent that masters can hear only certain cases or class of cases under this Rule.

The Committee received a significant number of comments from the bench, bar, and public concerning this rule when this rule was published for Comment on March 29, 2003.⁴ Two major underlying concerns from the Comments were the availability of judicial resources and the experience of the masters.

The Committee additionally received Comments asking the Committee to consider further restricting the master's authority.

The Committee took every Comment received into consideration and finally concluded that judges are

⁴ 33 Pa.B. 1581 (March 29, 2003).

elected by the public to hear cases and set forth “judgments.” Masters were introduced to ease the court docket due to a rapidly increasing number of juvenile cases. Masters were not intended to take over the juvenile system or the judges’ primary responsibilities and duties. In a minority of counties, the judges rarely hear juvenile cases and the master sets forth the “judgments” with the judges’ rubber-stamped order. The additional practice in a few counties of masters issuing orders is in violation of these Rules and statutory and case law. The Committee wanted to prohibit the master-run systems and ensure the judges performed the important duties they were elected to do. The Committee wanted to stress the importance of juvenile cases and the very serious consequences of a juvenile adjudication.

Paragraph (C) provides that at every hearing before the master, the juvenile should be informed of the right to a hearing before the judge. We included this provision here because we thought it made more sense to have a general requirement in one rule that applies across the board rather than including similar language in each rule for a specific hearing. See 42 Pa.C.S. § 6305(b).

Rule 191—Master’s Findings and Recommendation to the Judge

Paragraph (B) requires the master to submit a recommendation to the juvenile court judge within one business day, which reflects the majority of local practices across the Commonwealth. This requirement will assist the attorney for the Commonwealth and the juvenile’s attorney if they appeal the master’s decision under Rule 192.

Because the master only submits a recommendation to the judge, the judge must enter a final order. The findings of the master are not final and binding until there is a court order. Under paragraph (C), the judge may: 1) accept the recommendation and enter an order; 2) reject the recommendation and enter an order with a different disposition of the case; 3) send the recommendation back to the master for more specific findings; or 4) schedule a rehearing on the matter.

When a judge rejects a master’s recommendation by modifying a factual determination, a rehearing is to be scheduled. The judge may reject the master’s findings and enter a new finding or disposition without a rehearing if there is no modification of factual determinations.

Rule 192—Challenge to Master’s Recommendation

A master’s recommendation is subject to approval of the judge. See *supra* Rules 187, 191. Parties may object to the master’s recommendation and ask for a rehearing. This rule sets forth the procedures on how to challenge a recommendation.

A judge does not have to grant a rehearing. If the judge does grant the rehearing, it needs to be done within seven days to ensure the case is processed through the system in a timely manner and to comply with the time restrictions of these rules.

CHAPTER TWO

Part A, Rule 200 provides for the commencement of proceedings. Arrest Procedures are covered in Part B, Rules 210–221. For written allegation procedures, see Part C, Rules 231–233. Part D provides for pre-adjudicatory detention in Rules 240–243.

Part A—Commencing Proceedings

Rule 200—Commencing Proceedings

Rule 200 provides the methods of commencing proceedings in a case involving a juvenile. This rule deviates

from the Juvenile Act in that the submission of a written allegation commences proceedings instead of the filing of a petition. See 42 Pa.C.S. § 6321(a)(3). The Committee developed this new terminology to clarify that commencing a proceeding does not necessarily imply formal court action; there are several steps in the processing of juvenile cases before a petition is ever filed. Thus, the written allegation procedures reflect what occurs in actual practice whereby a case is processed before a petition is ever filed. Under this rule, once a written allegation has been submitted, the juvenile probation officer must determine if the allegations are within the jurisdiction of the juvenile court and if it is appropriate to schedule an intake conference to determine if the case can be resolved by informal court action, such as, informal adjustment, or if formal court action is necessary by the filing of a petition. See Rules 310–312. Under the Juvenile Act, once a petition is filed, informal adjustment is precluded.

The Juvenile Act provides that the taking into custody is a method for commencing proceedings. See 42 Pa.C.S. § 6321(a)(2.1). The Juvenile Act provides five methods of taking into custody. See 42 Pa.C.S. § 6324. This rule incorporates the commencement of proceedings for taking into custody pursuant to the laws of arrest only. See 42 Pa.C.S. § 6324(2). The other provisions of taking into custody under 42 Pa.C.S. § 6324(1), (3), and (4) provide for the taking into custody of dependent children; therefore were omitted from this rule. The Committee understands that these provisions may also apply to delinquent children; however, the taking into custody for those reasons alone should not commence *delinquency* proceedings.

Proceedings have already been commenced for juveniles who have violated their probation; therefore, Rule 605 provides for detaining juveniles for violations of probation under 42 Pa.C.S. § 6324(5).

In addition, proceedings have already been “commenced” for juveniles under this rule in paragraphs (3), (4), and (5); however, this is the method for commencing those proceedings in juvenile court in delinquency proceedings within a judicial district.

Part B—Arrest Procedures in Delinquency Cases

Rules 210–220

The Committee agreed that the requirements for requesting and executing an arrest warrant in cases involving a juvenile should apply in the same manner as they apply for adults except that the guardian of the juvenile should be notified as to the juvenile’s whereabouts. Additionally, because there is no bail in juvenile cases, the juvenile may be released to the care of a guardian, may come before the juvenile court, or may be sent to a juvenile detention facility.

Rule 210—Arrest Warrants

Our surveys revealed that in some judicial districts, the attorney for the Commonwealth has to approve applications for arrest warrants. This practice is often different from the practice for adult offenders because a minor is involved and the attorney for the Commonwealth wants to ensure the allegations warrant detention in the case. This rule provides that the District Attorney may require applications to be approved by an attorney for the Commonwealth if the District Attorney files a certification with the Court pursuant to Rule 231. The certification shall specify which cases or classes of cases shall be submitted by the police officer to an attorney for the Commonwealth.

Rule 212—Duplicate and Alias Warrants of Arrest

The Committee agreed that the courts could assess costs of the warrant; however, we realized that the juvenile might not have the resources to pay this fee. The court will have to evaluate each case independently, and may consider whether there is a court program to allow the juvenile to earn money, whether the juvenile is employed, whether the guardian should be held responsible, and other similar factors in deciding whether and how much of the costs to access.

*Part C—Written Allegation Procedures**Rule 231—Written Allegations*

Submission of a written allegation is not a new procedure. A written allegation is the document submitted to the juvenile probation office by the law enforcement officer, and in a rare case, by a private citizen, which alleges a juvenile has committed an act of delinquency.

In several counties, the District Attorneys are currently requiring the allegation to be approved by their office. To allow this practice to remain and also to keep law enforcement apprised of this requirement, paragraph (B) requires the District Attorney to file a certification, stating which cases should be submitted to their office for prior approval, with the court of common pleas in their judicial district. All law enforcement officials in the judicial district should be notified of this requirement.

The Committee discussed if the juvenile probation office should receive a copy of the written allegation whether or not it was approved. Because there may be instances when it is necessary for the probation office to know about a case, the Committee agreed that the juvenile probation officer should receive a copy of the written allegation, even when there might not be sufficient grounds for the allegation of delinquency because the act could be a violation of the juvenile's probation. See paragraphs (C) and (D).

Rule 232—Contents of Written Allegation

The Committee found from its surveys that several counties transform their written allegation into the delinquency petition. To help facilitate this common practice, the Committee tracked the requirements of the written allegation closely with the contents of the petition. Compare Rule 232 with Rule 330(C). Two additional requirements are mandated for the petition. See Rule 330 (C)(12)-(13).

Rule 233—Approval of Private Written Allegation

Consistent with the provisions of 42 Pa.C.S. § 6334, the rules allow any person to commence a juvenile proceeding by filing a written allegation; however, pursuant to Rule 330(B) only the attorney for the Commonwealth or the juvenile probation officer may file a petition. The Committee believes that when the person filing a document alleging a juvenile committed a delinquent act is a private citizen, they should follow the same process and proceedings as probation officers and law enforcement officers; private citizens should not be afforded additional rights when it comes to adjudicating a juvenile delinquent. The purpose of this change is not to preclude informal court action in cases submitted by private citizens. The purpose of the Juvenile Act is achieved by providing an avenue for the private citizen to submit a written allegation and appeal a disapproval of the written allegation to the court. If the court overrules the disapproval, the court may order the juvenile probation officer or an attorney for the Commonwealth to

proceed with the case in the same manner as any other case. See Comment to this rule.

*Part D—Pre-Adjudicatory Detention**Rule 240—Detention of Juvenile*

If the juvenile is detained and the attorney for the Commonwealth is seeking transfer of the case to criminal proceedings, the attorney for the Commonwealth must file notice of intent to transfer within the ten-day period as provided for in Rules 391 and 404. See *infra* Rule 391.

Rule 242—Detention Hearing

Rule 242 requires that the petition be filed within twenty-four hours of the detention hearing. Although this is a change from the statutory requirement that a petition be filed within twenty-four hours of the juvenile's detention, the Committee believes this change is vital so that informal adjustment or other informal court action will not be precluded. See Comment to this rule.

Rule 243—Detention Rehearings

The Committee has required that a guardian submit an affidavit alleging he or she was not notified of the hearing. Paragraph (A) is designed to limit the number of rehearings by the court but allow the guardian to be heard if requested.

CHAPTER THREE

Chapter Three addresses the pre-adjudicatory procedures. Part A encompasses venue and inter-county transfer in Rules 300—302. Part B addresses intake and informal adjustment, Rules 310—313. The filing of a petition and pertinent procedures surrounding the petition are included in Part C, Rules 330—336. For procedures following the filing of a petition, see Part D, Rules 340—364, including discovery, motions, filing, service, summons, and notice. Consent decree procedures can be found in Part E, Rules 370—373. Part F, Rules 380—384 includes provisions on preservation of testimony and evidence. Finally, Part G addresses procedures for transfer to criminal prosecution from delinquency proceedings in Rules 390—396.

*Part A—Venue**Rule 300—Venue*

There was substantial debate over this rule and whether a proceeding should be commenced in the juvenile's residential county, rather than only the county where the allegation occurred. The Juvenile Act provides for the commencement of proceedings in the county where the allegation occurred or the juvenile's residential county. See 42 Pa.C.S. § 6321(b). Notwithstanding the statutory provisions, our surveys revealed that in most cases, the proceedings are commenced in the county where the allegation occurred. The Committee ultimately decided to follow the statute, but added a procedure that allows a motion for change of venue if there was a hardship on the juvenile recognizing that the court is in the best position to decide this issue and to be able to look at all the pertinent factors, including hardship.

*Part B—Intake and Informal Adjustment**Rules 310—313*

These rules lay out the informal court process. If a case is informally adjusted, no formal court action is sought and the case is dismissed. If it is determined that formal court action would be in the best interest of the public and the juvenile, a petition should be filed.

Rule 311—Intake Conference

During the surveys and Committee discussions, it was noted that the Victim's Bill of Rights does not give victims the right to participate in an intake proceeding; however, it gives the victims the right to comment on "disposition." If cases are being dismissed, informally adjusted or diverted, the victims should have the opportunity to give their opinion on the "disposition" of the case. To ensure compliance with this provision of the Victim's Bill of Rights, this Rule affords the victim the opportunity to offer prior comment to the disposition of the case if informal adjustment or an alternative resolution of the case is being considered. In addition, this rule provides the attorney for the Commonwealth with notice of the outcome of an intake conference, i.e. informal adjustment. If the attorney for the Commonwealth feels the victim is aggrieved by the decision of the juvenile probation officer, the attorney for the Commonwealth may file a motion for review by the court.

Under paragraph (C), the juvenile probation officer is to notify the attorney for the Commonwealth of the decision resulting from the intake conference. If the decision is to file a petition, the filing of the petition qualifies as notice to the attorney for the Commonwealth. In those judicial districts where the District Attorney requires petitions to be filed by an attorney for the Commonwealth, the juvenile probation officer shall forward the necessary information to the attorney for the Commonwealth for processing of the case.

If the juvenile probation officer is recommending informal court action and the attorney for the Commonwealth disagrees with the decision, the attorney for the Commonwealth is to consult with the juvenile probation officer before any motion requesting review by the court is filed.

Rule 312—Informal Adjustment

Informal adjustment is informal court action and an alternative to filing a petition and proceeding with the case in the court process. A victim is to be afforded the opportunity to offer prior comment before the case is informally adjusted. See *supra* Rule 311. See also Comment.

*Part C—Petition**Rule 330—Petition: Filing, Contents, Function*

In the majority of judicial districts, the attorney for the Commonwealth or the juvenile probation officer files the petition. After extensive discussion, the Committee agreed to follow these local practices to the extent that the District Attorney of each county may choose to have the petition filed by an attorney for the Commonwealth by filing a certification with the court of common pleas.

A private citizen may not file a delinquency petition. A petition shall be filed by the attorney for the Commonwealth or the juvenile probation officer. A private citizen may initiate proceedings by the filing of a written allegation. For further discussion, see *supra* Rule 233.

The filing of a petition represents that the case is inappropriate for informal adjustment or other diversionary programs. See paragraph (B) and Comment.

Paragraphs two, three, twelve and thirteen incorporate the provisions of Section 6334 of the Juvenile Act. Paragraphs four through eight set forth the allegations of delinquency with particularity, including names of conspirators. In addition to the Juvenile Act, compliance with due process standards requires that the petition set forth the allegation with particularity. *In re Gault*, 387 U. S. 1

(1967). Paragraphs one, ten and eleven are essential because the petition is the official charging document and must be signed. Paragraph nine encompasses the statutory requirement that the law enforcement officer or the attorney for the Commonwealth note that laboratory services have been requested. 42 Pa.C.S. § 1725.3 This rule closely tracks the contents of the written allegation. See *supra* Rule 232.

Rule 332—Multiple Offenses in Petition

This rule provides for the allowance of one petition for multiple offenses if each offense is set forth with clarity that ensures the juvenile is aware of the offenses alleged. This reflects the current practice in a majority of the counties.

Rule 334—Amendment of Petition

Amendments to a petition may be made if they do not allege a different set of events or offenses, which may implicate double jeopardy issues. This rule allows the Commonwealth to make amendments if they have failed to cross their t's and dot their i's. This is important in juvenile cases because non-attorneys, juvenile probation officers, file most of the petitions in juvenile court.

*Part D—Procedures Following Filing of Petition**Rule 340—Pre-Adjudicatory Discovery and Inspection*

This rule emphasizes that the discovery process should be informal. Each party should disclose the necessary information to the opposing party without the need of filing a formal motion. Only when there is a general dispute as to discovery, should a motion to compel discovery be made.

Rules 344—Motions and Answers

Rule 344 provides for motions and answers to be made either orally or in writing. Because of the time constraints in juvenile court, several motions may be oral. However, if time allows, written motions are preferable.

Rule 352—Separate Adjudicatory Hearings for Offenses or Juveniles

A hearing may be bifurcated if a juvenile is prejudiced.

Rule 353—Motion for Return of Property

This rule provides the procedures for a hearing on a motion for return of property. As noted by the Committee's Comment, nothing prohibits a more appropriate court from hearing this motion. As revealed in our surveys, a few counties have a designated motions' court that hears these types of motions. For judicial economy, a juvenile court judge may incorporate this hearing into another hearing before the court, such as, the dispositional hearing.

*Part E—Consent Decree**Rule 370—Consent Decree*

The Committee discussed whether there should be rule procedures mandating requirements for consent decrees. We looked at whether the juvenile was a first time offender, whether specific charges would be prohibited from a consent decree disposition, whether the juvenile had to accept responsibility for the delinquent acts alleged, and some other minor issues. Ultimately, the Committee decided that the juvenile court is in the best position to look at each case independently and to decide if the case is appropriate for consent decree.

The Committee noted that if a juvenile violates the conditions of the consent decree, double jeopardy does not attach and bar subsequent prosecution. See *Common-*

wealth v. Szebin, 785 A.2d 103 (Pa. Super. Ct. 2001). This is explained in the Comment.

Part F—Preservation of Testimony and Evidence

Rules 380—384

These rules provide for preservation of testimony and evidence. Masters may preside over these cases if they involve only misdemeanors. See Rule 187.

Part G—Transfer for Criminal Prosecution

Rule 390—Notice of Request for Transfer to Criminal Proceedings

The Committee noted and discussed that the Juvenile Act gives the juvenile the right to request transfer to criminal proceedings. For several reasons, the Committee was apprehensive about letting a fourteen year old make an inappropriate decision that could affect the rest of the juvenile's life. Because of this concern, the Committee explains in the Comment that the court should use caution when a juvenile petitions the court for transfer to criminal proceedings. The court should make an inquiry to determine if the request has been knowingly, intelligently, and voluntarily made.

In most cases, a notice for request of transfer to criminal proceedings should be filed prior to the first scheduled adjudicatory hearing. An exception was created in paragraph (B) to allow a continuance of the first scheduled adjudicatory hearing to further investigate and determine, based on new information or circumstances, whether transfer is appropriate. The filing of the request must occur prior to the commencement of the adjudicatory hearing because jeopardy attaches once the hearing is commenced.

Rule 391—Time Restrictions for Detention of Juveniles Scheduled for Transfer Hearing

Local practices revealed that preparing for a transfer hearing can be a lengthy process and should not be handled quickly for the sake of swiftness over the welfare of the public or juvenile. Transfer social studies including psychological reports must be prepared. Taking these points into consideration, the Committee agreed the rule should provide that the juvenile may be detained for ten days and up to or on the tenth day, the attorney for the Commonwealth may file a notice of intent to transfer. The ten days allows the attorney for the Commonwealth to consult with the juvenile probation officer and other pertinent persons regarding transfer of the juvenile. The juvenile should normally have a transfer hearing within ten days of the filing of the notice of intent to transfer. However, the juvenile may be detained for one additional ten-day period if the requirements of paragraph (B)(1) are met. Thus, a juvenile may be detained for up to thirty days for a transfer hearing. If the juvenile requests a continuance under paragraph (B)(2), the juvenile may be detained longer than thirty days in ten-day intervals.

Rule 394—Transfer Hearing

This rule requires a transfer hearing in all cases when a notice of request for transfer is filed.

Under paragraph (A), if the attorney for the Commonwealth does not meet the three-day requirement and the case has to be continued, the continuance would be counted against the Commonwealth.

When the transfer hearing is conducted following the juvenile's request for transfer, the court must make separate findings pursuant to paragraph (B) although the findings may have been conceded by the juvenile when requesting transfer.

Rules 395—396—Procedure to Initiate Criminal Information and Bail

These rules provide that the Rules of Criminal Procedure apply to the transferred juvenile, and set forth the steps necessary to initiate the criminal prosecution.

CHAPTER FOUR

Chapter Four addresses the procedures related to the adjudicatory hearing.

Rule 404—Prompt Adjudicatory Hearing

The Committee discussed whether there should be a time limitation for having a hearing for non-detained juveniles. Our survey found that most juveniles are having hearings within six months. The Committee felt that this practice is reasonable; therefore, set no specific time limitation in the rule, other than a "reasonable time."

Rules 406—409

These rules separate the stages of proceedings heard by the court. These stages may be consolidated into one hearing by the court as long as everyone is clear that the stages are separate and distinct. Rule 406 governs the adjudicatory hearing. Rule 407 provides for admissions. See *infra* Rule 407. After the court has held an adjudicatory hearing or accepted an admission, the court is to rule on the offenses, stating with particularity the gradings and counts of each offense. Once the court has ruled on the offenses or entered its findings, the court is to determine if the juvenile is in need of treatment, supervision or rehabilitation.

Rule 407—Admissions

This rule reflects current local practices. There are procedures in some form in every judicial district that permit the court to allow the juvenile to acknowledge the facts, adjudication, or disposition rather than holding an adjudicatory hearing.

It is important for the court to assess that the juvenile's admission is knowingly, intelligently, and voluntarily made. As stated in the Comment, the court may utilize a written form to ascertain the necessary information. The court then must ask questions on the record to insure the juvenile's understanding of the form and the juvenile's agreement with the statements made.

CHAPTER FIVE

This chapter provides for the procedures of the dispositional proceedings in juvenile court, including the final order of the court. Part A provides for summons and notice in Rule 500. Rules 510—516 are covered in Part B addressing the dispositional hearing, aids in the disposition, and the court order. Part C is reserved for interstate transfer of disposition.

Part B—Dispositional Hearing and Aids

Rule 512—Dispositional Hearing

The "one judge—one juvenile" philosophy that is sweeping our country was discussed by the Committee. We agreed that this is the best-case scenario for all juvenile courts; however, on the practical side of this issue, we felt that this may not be feasible in all the judicial districts. In view of this, the Comment points out that, if and when practicable, the same judge or master should hear all cases involving the same juvenile.

Rule 513—Aids in Disposition

Our survey of local practices revealed that social studies or summaries are being prepared in two-thirds of the

cases. Although the rule leaves the decision whether to have a social study prepared to the discretion of the court, in serious cases, the court should order the preparation of the study.

Rule 515—Dispositional Order

This rule provides the minimal requirements of the dispositional order. It may be necessary to include additional information in the order depending on the type of case or if the court is to receive funding. See Comment.

From the Committee's surveys, we found that the courts' dispositional orders are not always clear concerning restitution. We therefore, included in paragraph (B), specific requirements concerning restitution.

In establishing the appropriate disposition, the court may exercise discretion within the limits of the Juvenile Act. *In re Frey*, 375 A.2d 118 (Pa. Super. Ct. 1977). The Legislature intended to give juvenile courts broad discretion in designing remedies to aid in the reformation of juvenile offenders. *Commonwealth v. Russman*, 378 A.2d 459 (Pa. Super. Ct. 1977). Section 6310 of the Juvenile Act gives the court the power to order the guardians to participate in the disposition of the case for the juvenile through community service, restitution, counseling, treatment and education programs, as well as, other treatments. Paragraph (C) of this rule requires the court to include in its dispositional order any obligation imposed by the court upon the guardian. The guardians should receive a copy of the dispositional order for their obligation. See Rule 516.

CHAPTER SIX

This chapter provides for the post-dispositional procedures, including modifications, reviews, and appeals. Part A, Rule 600 provides for the summons and notice of the commitment review, dispositional review, and probation revocation hearings. Part B provides for modifications of the dispositional order, violation of probation, dispositional and commitment reviews, termination of court supervision, and appeals.

Part B—Modifications, Reviews, and Appeals

Rule 605—Detaining Juvenile for Modification of the Dispositional Order or Violation of Probation

The Committee felt that if a juvenile is detained for modification of the dispositional order or violations of probation, Chapter Two procedures should apply. The Committee's intent is that a hearing should be held within ten days unless the requirements of Rule 240(D) are met. Notice of the detention hearing is to be given to specified persons as provided in Rule 241, the juvenile should be informed of rights under Rule 242(A), the manner of hearing provisions of Rule 242(B) are to be followed, and the court is to find probable cause for modification of the dispositional order or violations of probation and that detention is warranted under Rule 242(C).

Rule 610—Dispositional and Commitment Reviews

With advancement in technology, several judicial districts are now equipped with advanced communication technology. Reviewing cases by this method is widely accepted and has been used often in this Commonwealth. The Committee wanted to allow this technology to be used but ensure that due process of law was afforded to each party. The requirements of paragraph (C) will ensure the juvenile's ability to communicate with counsel as if they were at the same location.

Rule 613—Termination of Court Supervision

The current practice of terminating supervision of the juvenile when restitution, fines, and costs are still outstanding is inconsistent with this rule and the Juvenile Act, 42 Pa.C.S. § 6352. Courts may change *how* they supervise juveniles in these situations but the case must be administratively kept open.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

Chap.

- 1. GENERAL PROVISIONS**
- 2. COMMENCEMENT OF PROCEEDINGS, ARREST PROCEDURES, WRITTEN ALLEGATION, AND PRE-ADJUDICATORY DETENTION**
- 3. PRE-ADJUDICATORY PROCEDURES**
- 4. ADJUDICATORY HEARING**
- 5. DISPOSITIONAL HEARING**
- 6. POST-DISPOSITIONAL PROCEDURES**
- 8. SUSPENSIONS**

CHAPTER 1. GENERAL PROVISIONS

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101. Purpose and Construction.
102. Citing the Juvenile Court Procedural Rules.
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191. Master's Findings and Recommendation to the Judge.
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Rule 100. Scope of Rules.

A. These rules shall govern delinquency proceedings in all courts. Unless otherwise specifically provided, these rules shall not apply to domestic relations proceedings and dependency proceedings.

B. Each of the courts exercising juvenile jurisdiction, as provided in the Juvenile Act, 42 Pa.C.S. § 6301 et seq., may adopt local rules of procedure in accordance with Rule 121.

Comment

These rules govern proceedings when the Juvenile Act vests jurisdiction in the Juvenile Court. See 42 Pa.C.S. §§ 6321 and 6302. These rules do not govern summary offense proceedings unless: 1) the summary offense(s) was committed with a delinquent act, as defined by 42 Pa.C.S. § 6302, during the same episode or transaction, as provided in 42 Pa.C.S. § 6303(a)(5), and has been properly alleged in a delinquency petition; or 2) a juvenile has failed to comply with a lawful sentence imposed for the summary offense(s), as provided in 42 Pa.C.S. § 6302.

The Rules of Criminal Procedure apply in cases involving juveniles in summary and court cases, as defined by Pa.R.Crim.P. 103, to the extent that the Juvenile Act does not apply to these proceedings. See, e.g., Pa.R.Crim.P. 100 and 400. See also 42 Pa.C.S. §§ 6302 and 6303.

Each judicial district may promulgate local rules that follow the requirements of Rule 121 and Pa.R.J.A. 103.

Official Note: Rule 100 adopted April 1, 2005, effective October 1, 2005.

Rule 101. Purpose and Construction.

A. These rules are intended to provide for the just determination of every delinquency proceeding.

B. These rules establish uniform practice and procedure for courts exercising jurisdiction as provided in the Juvenile Act, 42 Pa.C.S. § 6301 et seq., and shall be construed to secure uniformity and simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

C. These rules shall be interpreted and construed to effectuate the purposes stated in the Juvenile Act, 42 Pa.C.S. § 6301(b).

D. To the extent practicable, these rules shall be construed in consonance with the rules of statutory construction.

Official Note: Rule 101 adopted April 1, 2005, effective October 1, 2005.

Rule 102. Citing the Juvenile Court Procedural Rules.

All juvenile court procedural rules adopted by the Supreme Court of Pennsylvania under the authority of Article V § 10(c) of the Constitution of Pennsylvania, adopted April 23, 1968, shall be known as the Pennsylvania Rules of Juvenile Court Procedure and shall be cited as "Pa.R.J.C.P."

Comment

The authority for rule-making is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution, which states in part, "[t]he Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts ... if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions."

Official Note: Rule 102 adopted April 1, 2005, effective October 1, 2005.

Rule 105. Search Warrants.

The Pennsylvania Rules of Criminal Procedure, Rules 200 through 211, shall apply to search warrants in juvenile delinquency matters.

Official Note: Rule 105 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 105 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART A. BUSINESS OF COURTS

Rule 120. Definitions.

AFFIANT is any responsible person, capable of taking an oath, who signs, swears to, affirms, or when permitted by these rules, verifies a written allegation and appreciates the nature and quality of that person's act.

CLERK OF COURTS is that official in each judicial district who has the responsibility and function under state law and local practice to maintain the official juvenile court file and docket, without regard to that person's official title.

COURT is the Court of Common Pleas, a court of record, which is assigned to hear juvenile delinquency matters. Court shall include masters when they are permitted to hear cases under these rules. Juvenile Court shall have the same meaning as Court.

DETENTION FACILITY is any facility, privately or publicly owned and operated, designated by the court and approved by the Department of Public Welfare to detain a juvenile temporarily. The term detention facility, when used in these rules, shall include shelter-care.

GUARDIAN is any parent, custodian, or other person who has legal custody of a juvenile, or person designated by the court to be a temporary guardian for purposes of a proceeding.

INTAKE STAFF is any responsible person taking custody of the juvenile on behalf of the court, detention facility, or medical facility.

ISSUING AUTHORITY is any public official having the power and authority of a magistrate, a Philadelphia bail commissioner, or a Magisterial District Judge.

JUVENILE is a person who has attained ten years of age and is not yet twenty-one years of age who is alleged to have committed a delinquent act before reaching eighteen years of age.

LAW ENFORCEMENT OFFICER is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

MASTER is an attorney with delegated authority to hear and make recommendations for juvenile delinquency matters. Master has the same meaning as hearing officer.

MEDICAL FACILITY is any hospital, urgent care facility, psychiatric or psychological ward, drug and alcohol detoxification or rehabilitation program, or any other similar facility designed to treat a juvenile medically or psychologically.

ORDINANCE is a legislative enactment of a political subdivision.

PARTIES are the juvenile and the Commonwealth.

PENAL LAWS include all statutes and embodiments of the common law, which establish, create, or define crimes or offenses, including any ordinances that may provide for placement in a juvenile facility upon a finding of delinquency or upon failure to pay a fine or penalty.

PETITION is a formal document by which an attorney for the Commonwealth or the juvenile probation officer alleges a juvenile to be delinquent.

PETITIONER is an attorney for the Commonwealth or a juvenile probation officer, who signs, swears to, affirms, or verifies and files a petition.

PLACEMENT FACILITY is any facility, privately or publicly owned and operated, that identifies itself either by charter, articles of incorporation or program description, to receive delinquent juveniles as a case disposition. Placement facilities include, but are not limited to, residential facilities, group homes, after-school programs, and day programs, whether secure or non-secure.

POLICE OFFICER is any person, who is by law given the power to arrest when acting within the scope of the person's employment.

POLITICAL SUBDIVISION shall mean county, city, township, borough, or incorporated town or village having legislative authority.

PROCEEDING is any stage in the juvenile delinquency process occurring once a written allegation has been submitted.

RECORDING is the means to provide a verbatim account of a proceeding through the use of a court stenographer, audio recording, audio-visual recording, or other appropriate means.

WRITTEN ALLEGATION is the document that is completed by a law enforcement officer or other person that is necessary to allege a juvenile has committed an act of delinquency.

Comment

Under the term "court," to determine if masters are permitted to hear cases, see Rule 187.

Neither the definition of "law enforcement officer" nor the definition of "police officer" gives the power of arrest to any person who is not otherwise given that power by law.

A "petition" and a "written allegation" are two separate documents and serve two distinct functions. A "written allegation" is the document that initiates juvenile delinquency proceedings. Usually, the "written allegation" will be filed by a law enforcement officer and will allege that the juvenile has committed a delinquent act that comes within the jurisdiction of the juvenile court. This document may have been formerly known as a "probable cause affidavit," "complaint," "police paper," "charge form," "allegation of delinquency," or the like. Once this document is submitted, a preliminary determination of the juvenile court's jurisdiction is to be made. Informal adjustment and other diversionary programs may be pursued. If the attorney for the Commonwealth or the juvenile probation officer determines that formal juvenile court action is necessary, a petition is then filed.

For definition of "delinquent act," see 42 Pa.C.S. § 6302.

Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005.

Rule 121. Local Rules.

A. For the purpose of this rule, the term, "local rule" shall include every rule, regulation, directive, policy, custom, usage, form, or order of general application, however labeled or promulgated, adopted or enforced by a court of common pleas to govern juvenile delinquency practice and procedure, which requires a party or party's attorney to do or refrain from doing something.

B. All previously promulgated local rules are hereby vacated, effective October 1, 2005.

C. Local rules shall not be inconsistent with any rule of the Supreme Court or any Act of Assembly.

1) Each judicial district may promulgate new local rules that do not conflict with the Rules of Juvenile Court Procedure.

2) Local rules shall be given numbers that are keyed to the number of the Rules of Juvenile Court Procedure to which the local rules correspond.

D. A local rule shall not become effective and enforceable until the adopting court has fully complied with all the following requirements:

1) A local rule shall be in writing.

2) Seven certified copies of the local rule shall be filed by the court promulgating the rule with the Administrative Office of Pennsylvania Courts.

3) Two certified copies of the local rule shall be distributed by the court promulgating the rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4) One certified copy of the local rule shall be filed by the court promulgating the rule with the Juvenile Court Procedural Rules Committee.

5) The local rules shall be kept continuously available for public inspection and copying in the office of the clerk of courts. Upon request and payment of reasonable costs of reproduction and mailing, the clerk shall furnish to any person a copy of any local rule.

E. A local rule shall become effective not less than thirty days after the date of publication of the rule in the *Pennsylvania Bulletin*.

F. No case shall be dismissed nor request for relief granted or denied because of the failure to comply with a local rule. In any case of noncompliance with a local rule, the court shall alert the party to the specific provision at issue and provide a reasonable time for the attorney to comply with the local rule.

G. The Juvenile Court Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule and may suspend that local rule pending action by the Court on that recommendation.

Comment

The purpose of this rule is to further the policy of the Supreme Court to implement the unified judicial system under the Constitution of 1968, to facilitate the statewide practice of law under this Court's general rules, and to promote the further policy that a general rule of juvenile court procedure normally preempts the subject covered. It is intended that local rules should not repeat general rules or statutory provisions verbatim or substantially verbatim nor should local rules make it difficult for attorneys to practice law in several counties.

The caption or other words used as a label or designation shall not determine whether something is or establishes a local rule; if the definition in paragraph (A) of this rule is satisfied, the matter is a local rule regardless of what it may be called. The provisions of this rule also are intended to apply to any amendments to a "local rule." Nothing in this rule is intended to apply to case-specific orders.

Paragraph (B) vacates all current local rules on October 1, 2005, the effective date of this rule. The local rules are to be repromulgated to comply with this rule. This includes rekeying pursuant to paragraph (C)(2) and meeting the appropriate filing requirements under paragraph (D).

To simplify the use of local rules, local juvenile delinquency procedural rules are required to be given numbers that are keyed to the number of the general juvenile delinquency procedural rules to which the local rules correspond. This requirement is not intended to apply to local rules that govern the general business of the court and which do not correspond to a general juvenile delinquency procedural rule.

The purpose of paragraph (D) is to emphasize that the adopting authority shall comply with all the provisions of paragraph (D) before any local rule, or any amendment to local rules, will be effective and enforceable.

Paragraph (D)(5) requires that a separate consolidated set of local rules be maintained in the clerk's office.

The Administrative Office of Pennsylvania Courts maintains a web-page containing the text of local rules. That web-page is located at: <http://www.courts.state.pa.us/judicial-council/local-rules/index.htm>.

Although under paragraph (E) a local rule shall not be effective until at least thirty days after the date of publication in the *Pennsylvania Bulletin*, when a situation arises that requires immediate action, the local court may act by specific orders governing particular cases in the interim before an applicable local rule becomes effective.

The purpose of paragraph (F) is to prevent the dismissal of cases, or the granting or denial of requested relief, because a party has failed to comply with a local rule. In addition, paragraph (F) requires that the party be alerted to the local rule, and be given a reasonable amount of time to comply with the local rule.

After the court has alerted the party to the local rule pursuant to paragraph (F), the court may impose a sanction for subsequent noncompliance either on the attorney or the juvenile if proceeding pro se, but may not dismiss the case, or grant or deny relief because of non-compliance.

Official Note: Rule 121 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 121 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 122. Continuances.

A. *Generally.* In the interests of justice, the court may grant a continuance on its own motion or the motion of either party. On the record, the court shall identify the moving party and state its reasons for granting or denying the continuance.

B. *Notice and rescheduling.* If a continuance is granted, all persons summoned to appear shall be notified of the date, place, and time of the rescheduled hearing.

Comment

A party seeking a continuance should notify the court and opposing counsel as soon as possible. Whenever possible, given the time constraints, notice should be written.

Under paragraph (B), if a person is summoned to appear and the case is continued, the party is presumed to be under the scope of the original summons and a new summons is not necessary.

See Rule 344 and 345 for motion procedures.

Official Note: Rule 122 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 122 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 123. Subpoenas.

A. *Contents.* A subpoena in a delinquency case shall:

- 1) order the witness named to appear before the court at the date, time, and place specified;
- 2) order the witness to bring any items identified or described;
- 3) state on whose behalf the witness is being ordered to testify; and
- 4) state the identity, address, and phone number of the person who applied for the subpoena.

B. *Service.*

1) *Method of Service.* A subpoena shall be served upon a witness by:

- a) in-person delivery;
- b) registered or certified mail, return receipt requested, or
- c) by first class mail.

2) *Proof of Service.* The following shall be prima facie evidence of service of the subpoena:

- a) A completed return receipt;
- b) Hand signed receipt of personal delivery; or
- c) Affidavit of in-person delivery signed by a process server.

C. *Duration.* A subpoena shall remain in force until the end of a proceeding.

D. *Bench Warrant.* If any subpoenaed person fails to appear for the hearing and the court finds that sufficient notice was given, the court may issue a bench warrant.

Comment

For power to compel attendance, see 42 Pa.C.S. § 6333. Nothing in this rule prohibits the court from holding a contempt hearing. See *In re Crawford*, 519 A.2d 978 (Pa. Super. Ct. 1987) for punishing juveniles for contempt.

Official Note: Rule 123 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 123 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 124. Summons and Notice.

A) *Requirements of the summons.* The summons shall:

- 1) be in writing;
- 2) set forth the date, time, and place of the hearing;
- 3) instruct the juvenile about the juvenile's right to counsel, and if the juvenile cannot afford counsel, the right to assigned counsel; and
- 4) give a warning stating that the failure to appear for the hearing may result in arrest.

B) *Method of Service.* Summons or notice shall be served:

- 1) in-person; or
- 2) by first-class mail.

C) *Bench Warrant.* If any summoned person fails to appear for the hearing and the court finds that sufficient notice was given, the court may issue a bench warrant.

Comment

Under Rule 800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under paragraph (C), the court is to find a summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the juvenile may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. This rule, however, does not prohibit probation from recommending detention. The normal rules of procedure in these rules are to be followed if a juvenile is detained. See Chapter Two, Part D.

Official Note: Rule 124 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 124 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 125. Habeas Corpus.

A. The petition for writ of habeas corpus challenging the legality of the juvenile's detention or placement shall be filed with the clerk of courts of the judicial district in which the order directing the juvenile's detention or placement was entered.

B. The clerk of courts shall forward the petition immediately to the presiding juvenile court judge for review and shall identify the petition as time sensitive.

Comment

See Rules 344 and 345 for motion procedures.

See *In re Crouse*, 4 Whart. 9 (Pa. 1839).

Official Note: Rule 125 adopted April 1, 2005, effective October 1, 2005.

Rule 126. Defects in Form, Content, or Procedure.

A juvenile shall not be discharged, nor shall a case be dismissed, because of a defect in the form or content of the petition, written allegation, or warrant, or a defect in the procedures of these rules, unless the juvenile raises the defect prior to the commencement of the adjudicatory hearing, and the defect is prejudicial to the rights of the juvenile.

Comment

Nothing in this rule prevents the amendment of a written allegation or petition or the filing of a new written allegation, a new petition, or the reissuance of process.

See Rule 334 for amendment of a petition.

Official Note: Rule 126 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 126 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 127. Recording and Transcribing Juvenile Court Proceedings.

A. *Recording.* There shall be a recording of all juvenile delinquency proceedings, including proceedings conducted by masters, except as provided in Rule 242(B)(2).

B. *Transcribing.* Upon the motion of any party, upon its own motion, or as required by law, the court shall order the record to be transcribed.

C. *Modifying.* At any time before an appeal is taken, the court may correct or modify the record in the same manner as is provided by Rule 1926 of the Pennsylvania Rules of Appellate Procedure.

Comment

Some form of record or transcript is necessary to permit meaningful consideration of claims of error and effective appellate review. See, e.g., Pa.R.A.P. 1922, 1923, 1924; *Commonwealth v. Fields*, 387 A.2d 83 (Pa. 1978); *Commonwealth v. Shields*, 383 A.2d 844 (Pa. 1978). No substantive change in law is intended by this rule; rather it is intended to provide a mechanism to ensure appropriate recording and transcribing of court proceedings. Under Rule 800, 42 Pa.C.S. § 6336(c) was suspended only to the extent that proceedings are to be recorded, except as provided in Rule 242(B)(2). Full minutes are not recordings. This change was to effectuate effective appellate review.

The rule is intended to apply to all juvenile delinquency proceedings and to ensure all proceedings are recorded, including proceedings before masters, with the exception of detention hearings.

Paragraph (B) of the rule is intended to authorize courts to require transcription of only such portions of the record, if any, as are needed to review claims of error.

Paragraph (C) provides a method for correcting and modifying transcripts before an appeal is taken by incorporating Pa.R.A.P. 1926, which otherwise applies only after an appeal has been taken. It is intended that the same standards and procedures apply both before and after appeal.

Official Note: Rule 127 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 127 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 128. Proceedings in Absentia.

The court may proceed with a hearing in the absence of the juvenile if the court finds that the juvenile was properly subpoenaed or summoned to appear and has willfully failed to attend, and the juvenile's attorney is present.

Comment

The court has discretion whether to proceed if the court finds that the juvenile received proper notice of the hearing and has willfully failed to appear. Requiring the

juvenile's attorney to be present protects the juvenile's interest if the proceeding is conducted in the juvenile's absence.

Cf. Commonwealth v. Ford, 650 A.2d 433 (Pa. 1994); *Commonwealth v. Sullens*, 619 A.2d 1349 (Pa. 1992).

Official Note: Rule 128 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 128 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 129. Open Proceedings (Reserved).

Rule 130. Public Discussion by Court Personnel of Pending Matters.

All court personnel including, among others, juvenile probation officers, court clerks, bailiffs, tipstaffs, sheriffs, and court stenographers, are prohibited from disclosing to any person, without authorization from the court, information relating to a pending juvenile case that is not part of the court record otherwise available to the public or not part of the record in an open proceeding. This rule specifically prohibits the divulgence of information concerning arguments and proceedings that are closed proceedings, held in chambers, or otherwise outside the presence of the public.

Official Note: Rule 130 adopted April 1, 2005, effective October 1, 2005.

Rule 131. Guardian's Presence.

The court may, when the court determines that it is in the best interest of the juvenile, order a guardian of a juvenile to be present at and to bring the juvenile to any proceeding. The court shall insure timely notice of the proceeding to the guardian.

Comment

Nothing in these rules gives the guardian legal standing in the matter being heard by the court or creates a right of a juvenile to have his or her guardian present. See 42 Pa.C.S. §§ 6310, 6335(b), 6336.1.

Official Note: Rule 131 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 131 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 132. Victim's Presence.

The victim, counsel for the victim, and other persons accompanying a victim for his or her assistance shall be permitted to attend the proceedings, except as provided in Rule 311.

Comment

See 42 Pa.C.S. § 6336(d) and 18 P.S. § 11.201 et seq.

The court has discretion to maintain confidentiality of mental health, medical, or juvenile institutional documents or juvenile probation reports. See 42 Pa.C.S. § 6336(f).

Official Note: Rule 132 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 132 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 135. Captions.

All court documents and orders shall contain a caption that includes the following:

- 1) "In the interest of (the juvenile's name);"
- 2) the juvenile's case docket number; and
- 3) the name of the court.

Official Note: Rule 135 adopted April 1, 2005, effective October 1, 2005.

PART B. COUNSEL

Rule 150. Attorneys—Appearances and Withdrawals.

A. Appearances.

1) Counsel for the juvenile shall file an entry of appearance with the clerk of courts promptly after being retained, and serve a copy on the attorney for the Commonwealth and the juvenile probation office.

a) If a firm name is entered, the name of the individual lawyer who is designated as being responsible for the conduct of the case shall be entered.

b) The entry of appearance shall include the attorney's address, phone number, and attorney ID number.

2) When counsel is appointed pursuant to Rule 151 (Assignment of Counsel), the filing of the appointment order shall enter the appearance of appointed counsel.

B. Duration. Once an appearance is entered or the court assigns counsel, counsel shall represent the juvenile until final judgment, including any proceeding upon direct appeal and dispositional review, unless permitted to withdraw pursuant to paragraph (C).

C. Withdrawals.

1) Upon motion, counsel shall be permitted to withdraw only:

- a) by order of the court for good cause shown; or
- b) if new counsel has entered an appearance in accordance with paragraph (A).

2) A motion to withdraw shall be:

a) filed with the clerk of courts, and a copy concurrently served on the attorney for the Commonwealth and the juvenile; or

b) made orally on the record in open court in the presence of the juvenile.

Comment

Under paragraph (C), withdrawal is presumed when a court's jurisdiction is terminated because the juvenile reaches the age of twenty-one. See 42 Pa.C.S. §§ 6302, 6352.

Under paragraph (C)(1)(a), a court can terminate an attorney's representation if there is good cause shown. The court should allow an attorney to withdraw from a case for good cause if the standards for termination of representation are met, as provided for in Pa.R.P.C. 1.16.

Under paragraph (C)(1)(b), because the attorney for the Commonwealth and the juvenile probation officer will be

on notice of the identity of the new attorney, they should comply with the discovery requirements of Rule 340.

Under paragraph (C)(2), counsel is to file a motion to withdraw in all cases. Counsel's obligation to represent the juvenile, whether as retained or appointed counsel, remains until leave to withdraw is granted by the court. See, e.g., *Commonwealth v. Librizzi*, 810 A.2d 692 (Pa. Super. Ct. 2002). The court is to make a determination of the status of the case before permitting counsel to withdraw. Although there are many factors considered by the court in determining whether there is good cause to permit the withdrawal of counsel, when granting leave, the court should determine if new counsel needs to be appointed, and that the change in attorneys will not delay the proceedings or prejudice the juvenile, particularly concerning time limits.

See also Rule 613 for termination of court supervision.

Under Rule 800, the Public Defender Act, 16 P.S. § 9960.1 et seq., was suspended only to the extent that the Public Defender Act conflicts with this rule and that separate counsel is to be appointed for juveniles when there is a conflict of interest. See Pa.R.P.C. Rules 1.7 and 1.9.

Official Note: Rule 150 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 150 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 151. Assignment of Counsel.

A. *General.* If counsel does not enter an appearance for the juvenile, the court shall inform the juvenile of the right to counsel prior to any proceeding. In any case, the court shall assign counsel for the juvenile if the juvenile is without financial resources or otherwise unable to employ counsel.

B. *Time.*

1) If the juvenile is detained and is without counsel and the requirements of paragraph (A) are met, the court shall assign counsel prior to the detention hearing.

2) If the juvenile is not detained and is without counsel and the requirements of paragraph (A) are met, the court shall assign counsel prior to the adjudicatory hearing.

Comment

Counsel may be present at an intake hearing or participate in the decision to place the juvenile on informal adjustment with the probation office.

See also 42 Pa.C.S. § 6337 and *In re A.M.*, 766 A.2d 1263 (Pa. Super. Ct. 2001).

Under Rule 800, the Public Defender Act, 16 P.S. § 9960.1 et seq., was suspended only to the extent that the Public Defender Act conflicts with this rule and that separate counsel is to be appointed to juveniles when there is a conflict of interest. See Pa.R.P.C. Rules 1.7 and 1.9.

Official Note: Rule 151 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 151 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 152. Waiver of Counsel.

A. *Waiver requirements.* A juvenile may not waive the right to counsel unless:

1) the waiver is knowingly, intelligently, and voluntarily made; and

2) the court conducts a colloquy with the juvenile on the record.

B. *Stand-by counsel.* The court may assign stand-by counsel if the juvenile waives counsel at any proceeding or stage of a proceeding.

C. *Notice and revocation of waiver.* If a juvenile waives counsel for any proceeding, the waiver only applies to that proceeding, and the juvenile may revoke the waiver of counsel at any time. At any subsequent proceeding, the juvenile shall be informed of the right to counsel.

Comment

It is recommended that, at a minimum, the court ask questions to elicit the following information in determining a knowing, intelligent, and voluntary waiver of counsel:

1) Whether the juvenile understands the right to be represented by counsel;

2) Whether the juvenile understands the nature of the allegations and the elements of each of those allegations;

3) Whether the juvenile is aware of the dispositions, community service, or fines that may be imposed by the court;

4) Whether the juvenile understands that if he or she waives the right to counsel, he or she will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;

5) Whether the juvenile understands that there are possible defenses to these allegations that counsel might be aware of, and if these defenses are not raised at the adjudicatory hearing, they may be lost permanently;

6) Whether the juvenile understands that, in addition to defenses, the juvenile has many rights that, if not timely asserted, may be lost permanently; and if errors occur and are not timely objected to, or otherwise timely raised by the juvenile, these errors may be lost permanently;

7) Whether the juvenile knows the whereabouts of absent guardians and if they understand they should be present; and

8) Whether the juvenile has had the opportunity to consult with his or her guardian about this decision.

This rule is not meant to preclude the guardian's presence at any hearing. As provided in Rule 131 and the Juvenile Act, 42 Pa.C.S. §§ 6310, 6335(b), and 6336.1, the court can order the guardian's presence if the court determines that it is in the best interests of the juvenile. When conducting the colloquy, the court should also keep in mind the age, maturity, intelligence, and mental condition of the juvenile, as well as, the experience of the juvenile, the juvenile's ability to comprehend, the guardian's presence and consent, and the juvenile's prior record.

This rule requires the juvenile to waive the right to counsel. A guardian may not waive the juvenile's right to counsel. To implement this rule, Rule 800 suspends 42 Pa.C.S. § 6337 only to the extent that the right to waiver of counsel belongs to the juvenile and the guardian may not waive the right for the juvenile.

Official Note: Rule 152 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 152 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART C. RECORDS

PART C(1). ACCESS TO JUVENILE RECORDS

Rule 160. Inspection of Juvenile File/Records.

All files and records of the court in a proceeding, including the juvenile court file as provided in Rule 166, are open to inspection only by:

- 1) the judges, masters, juvenile probation officers, and staff of the court;
- 2) the attorney for the Commonwealth, the juvenile's attorney, and the juvenile, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information, except in the discretion of the court;
- 3) a public or private agency or institution providing supervision or having custody of the juvenile under order of the court;
- 4) a court and its probation officers and other officials or staff and the attorney for the defendant for use in preparing a pre-sentence report in a criminal case in which the defendant is convicted and the defendant previously was adjudicated delinquent;
- 5) a judge or issuing authority for use in determining bail, provided that such inspection is limited to orders of delinquency adjudications and dispositions, orders resulting from dispositional review hearings, and histories of bench warrants and escapes;
- 6) the Administrative Office of Pennsylvania Courts;
- 7) officials of the Department of Corrections or a state correctional institution or other penal institution to which an individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act has been committed, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except in the discretion of the court;
- 8) a parole board, court or county probation official in considering an individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except in the discretion of the court;
- 9) the judges, juvenile probation officers, and staff of courts of other jurisdictions when necessary for the discharge of their official duties; and
- 10) with leave of court, any other person, agency or institution having a legitimate interest in the proceedings or in the work of the unified judicial system.

Comment

See the Juvenile Act, 42 Pa.C.S. § 6307, for the statutory provisions on inspection of the juvenile's file and 42 Pa.C.S. § 6352.1 for disclosure of treatment records.

This rule is meant to include the contents of the juvenile court file as described in Rule 166 and the contents of the juvenile probation records or reports.

Juvenile probation records or reports, include, but are not limited to, social summaries, psychological and psychiatric evaluations, personal histories, school records and reports, mental health histories and reports, drug and alcohol evaluations, and placement facility records and reports.

Official Note: Rule 160 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 160 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 163. Release of Information to School.

A. *Generally.* Upon finding a juvenile to be a delinquent, the court shall, through the juvenile probation office, provide the following information to the building principal or his or her designee of any public, private, or parochial school in which the juvenile is enrolled:

- 1) name and address of the juvenile;
- 2) the delinquent act or acts that the juvenile was found to have committed;
- 3) a brief description of the delinquent act or acts; and
- 4) the disposition of the case.

B. *Additional information.*

1) If the juvenile is adjudicated delinquent of a felony offense, the court, through the juvenile probation office, shall provide to the building principal or his or her designee relevant information regarding the juvenile contained in the juvenile probation or treatment reports pertaining to the adjudication, prior delinquent history, and the supervision plan of the juvenile.

2) The court or the juvenile probation office shall have the authority to share any additional information regarding the juvenile under its jurisdiction with the building principal or his or her designee as deemed necessary to protect public safety or to enable appropriate treatment, supervision, or rehabilitation of the juvenile.

C. *Transfers to other schools.* Any information provided to and maintained by the building principal or his or her designee under this rule shall be transferred to the building principal or his or her designee of any public, private, or parochial school to which the juvenile transfers enrollment.

D. *Maintained separately.* Any information provided to the building principal or his or her designee under this rule shall be maintained separately from the juvenile's official school record.

Comment

The delinquency information in the school record is to be used only by school officials and is not to be released to the general public or third parties unless ordered by the court.

For further dissemination and usage in school, see 42 Pa.C.S. § 6341(b.1).

Official Note: Rule 163 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 163 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART C(2). MAINTAINING RECORDS**Rule 165. Design of Forms.**

The Court Administrator of Pennsylvania, in consultation with the Juvenile Court Procedural Rules Committee, shall design and publish forms necessary to implement these rules.

Comment

The purpose of the unified judicial system can be further achieved by creating uniform forms to implement a particular rule.

Official Note: Rule 165 adopted April 1, 2005, effective October 1, 2005.

Rule 166. Maintaining Records in the Clerk of Courts.

A. *Generally.* The juvenile court file shall contain all original records, papers, and orders filed, copies of all court notices, and docket entries. These records shall be maintained by the clerk of courts and shall not be taken from the custody of the clerk of courts without order of the court.

B. *Docket entries.* The clerk of courts shall maintain a list of docket entries: a chronological list, in electronic or written form, of documents and entries in the juvenile court file and of all proceedings in the case. The clerk of courts shall make docket entries at the time the information is made known to the clerk.

C. *Contents of docket entries.* The docket entries shall include, at a minimum, the following information:

- 1) the juvenile's name, last known address, date of birth, if known;
- 2) the names and addresses of all attorneys who have appeared or entered an appearance, the date of the entry of appearance(s), and the date of any withdrawal of appearance(s);
- 3) notations concerning all papers filed with the clerk, including all court notices, appearances, admissions, motions, orders, findings and adjudications, and dispositions, briefly showing the nature and title, if any, of each paper filed, writ issued, and motion made, and the substance of each order or disposition of the court and of the returns showing execution of process;
- 4) notations concerning motions made orally or orders issued orally in the courtroom when directed by the court;
- 5) a notation of every judicial proceeding, continuance, and disposition;
- 6) the location of exhibits made part of the record during the proceedings; and
- 7) a) the date of receipt in the clerk's office of the order or court notice;
b) the date appearing on the order or court notice; and
c) the date and manner of service of the order or court notice; and
- 8) all other information required by Rule 345.

Comment

This rule sets forth the mandatory contents of the list of docket entries and the juvenile court file. This is not intended to be an exhaustive list of what is required to be recorded in the docket entries. The judicial districts may require additional information to be recorded in a case or in all cases.

The list of docket entries is a running record of all information related to any action in a juvenile case in the court of common pleas of the clerk's county, such as dates of filings, of orders, and of court proceedings, including hearings conducted by masters. Nothing in this rule is intended to preclude the use of automated or other electronic means for time stamping or making docket entries.

This rule applies to all proceedings in the court of common pleas, including hearings conducted by masters, at any stage of the delinquency case.

This rule is not intended to include items contained in the juvenile probation records or reports. See Rule 160 (Inspection of Juvenile File/Records) and its Comment for items contained in juvenile probation records or reports.

The practice in some counties of creating the list of docket entries only if an appeal is taken is inconsistent with this rule.

The requirement of paragraph (C)(2) that all attorneys and their addresses be recorded makes certain there is a record of all attorneys who have appeared for any juvenile in the case. The requirement also ensures that attorneys are served as required by Rules 167 and 345. See also Rule 345(C) concerning certificates of service. In those cases in which the attorney has authorized receiving service by facsimile transmission or electronic means, the docket entry required by paragraph (C)(2) is to include the facsimile number or electronic address. Paragraph (C)(4) recognizes that occasionally disposition of oral motions presented in open court should be reflected in the docket, such as motions and orders related to omnibus motions as provided in Rule 346.

Official Note: Rule 166 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 166 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 167. Filings and Service of Court Orders and Notices.*A. Filings.*

1) All orders and court notices shall be transmitted promptly to the clerk of courts for filing. Upon receipt by the clerk of courts, the order or court notice shall be time stamped promptly with the date of receipt.

2) All orders and court notices shall be filed in the juvenile court file.

B. Service.

1) A copy of any order or court notice shall be served promptly on each party's attorney, and the juvenile, if unrepresented.

2) The clerk of courts shall serve the order or court notice, unless the president judge has promulgated a local rule designating service to be by the court or court administrator.

3) *Methods of service.* Service shall be:

a) in writing by:

i) personal delivery to the party's attorney, and if unrepresented, the juvenile;

ii) mailing a copy to the party's attorney or leaving a copy for the attorney at the attorney's office;

iii) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box;

iv) sending a copy to an unrepresented juvenile by first class mail addressed to the juvenile's place of residence, detention, or placement;

v) sending a copy by facsimile transmission or other electronic means if the party's attorney, and if unrepresented, the juvenile has filed written request for this method of service or has included a facsimile number or an electronic address on a prior legal paper filed in the case; or

vi) delivery to the party's attorney, and if unrepresented, the juvenile by carrier service; or

b) orally in open court on the record.

C. *Unified Practice.* Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a person to file or serve orders or court notices.

Comment

Court notices, as used in this rule, are communications that ordinarily are issued by a judge or the court administrator concerning, for example, calendaring or scheduling, including proceedings requiring the juvenile's presence.

A facsimile number or electronic address set forth on the letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(3)(a)(v). The authorization for service by facsimile transmission or other electronic means under this rule is valid only for the duration of the case. A separate authorization is to be filed in each case by the juvenile, if unrepresented, or by the attorney who wants to receive documents by this method of service.

Nothing in this rule is intended to preclude the use of automated or other electronic means for the transmission of the orders or court notices between the judge, court administrator, and clerk of courts, or for time stamping.

Official Note: Rule 167 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 167 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART C(3). EXPUNGING OR DESTROYING RECORDS

Rule 170. Expunging or Destroying Juvenile Court Records.

A. *Motion.* Juvenile records may be expunged upon motion.

B. *Contents of Motion.* A motion, which shall take the form of a proposed court order, shall contain the following information:

- 1) The name of the juvenile;
- 2) the date of birth of the juvenile, if known;
- 3) the juvenile's case docket number, if any;
- 4) the allegations to which the order pertains;
- 5) the law enforcement agency that initiated the allegations;
- 6) the reference number of the police report or written allegation to be expunged or destroyed;

- 7) the date of arrest;
- 8) the disposition of the written allegation or petition;
- 9) the reasons and statutory authority for expunging or destroying the document; and
- 10) the agencies upon which certified copies of the court order shall be served.

C. *Service of Motion.* In addition to the service required by Rule 345, the movant shall serve the motion on the chief juvenile probation officer.

D. *Answer.* The attorney for the Commonwealth, and any other person upon whom the motion was served, may file an answer to the motion.

E. *Hearing.* Unless the attorney for the Commonwealth consents to expunging the records, the court shall schedule and conduct a hearing, and thereafter grant or deny the motion.

Comment

See 18 Pa.C.S. § 9123 for records that may be expunged and 42 Pa.C.S. § 6341(a) for destruction of fingerprints and photographs.

Under paragraph (B)(6), any number assigned to police papers helpful in tracking the police report or written allegation that would assist the law enforcement agency in expunging or destroying the document is to be listed. A reference number could be an offense tracking number, district control number, crime control number, incident number, Philadelphia identification number, or another number assigned by the law enforcement agency to track the document.

Official Note: Rule 170 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 170 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 172. Order to Expunge or Destroy.

A. *Contents.* Any order to expunge or destroy the juvenile court file, docket entries, law enforcement records, or fingerprints and photographs shall include the following information:

- 1) All items contained in Rule 170(B);
- 2) the printed name and signature of the judge issuing the order; and
- 3) the date of the court order.

B. *Service.* In addition to the service required by Rule 167, the clerk of courts shall serve certified copies of the order on the chief juvenile probation officer and any other person or agency as directed by the court.

Official Note: Rule 172 adopted April 1, 2005, effective October 1, 2005.

PART D. MASTERS

Rule 185. Appointment to Cases.

A. *Appointment.* If necessary to assist the juvenile court judge, the president judge or his or her designee may appoint masters to hear designated juvenile delinquency matters.

B. *Prohibited practice.* Masters shall not engage in practice before the juvenile court in the same judicial district where they preside over juvenile matters.

Official Note: Rule 185 adopted April 1, 2005, effective April 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 185 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 187. Authority of Master.

A. *Cases to be heard by Master.* A master shall have the authority to preside over only the following:

- 1) detention hearings, detention review hearings, or shelter-care hearings;
- 2) discovery, pre-adjudicatory, or preliminary proceedings for misdemeanors;
- 3) any hearing in which the petition alleges only misdemeanors; and
- 4) uncontested dispositional review hearings and uncontested probation revocation hearings.

B. *No authority.* A master shall not have the authority to:

- 1) conduct transfer hearings pursuant to Rule 394;
- 2) issue warrants; and
- 3) hear requests for writs of habeas corpus.

C. *Right to hearing before judge.* Prior to the commencement of any proceeding, the master shall inform the juvenile, the juvenile's guardian(s), if present, the juvenile's attorney, and the attorney for the Commonwealth that the juvenile and the Commonwealth have a right to have the matter heard by a judge. If the juvenile or the Commonwealth objects to having the matter heard by the master, the case shall proceed before the judge.

Comment

A master's authority is limited under paragraph (A) to specifically those types of cases provided. To implement this rule, Rule 800 suspends 42 Pa.C.S. § 6305(b) only to the extent that masters may not hear all classes of cases.

Under paragraph (B)(2), nothing is intended to limit the master's ability, in a proper case before the master, to recommend to the court that a warrant be issued. This includes arrest, bench, and search warrants.

Concerning the provisions of paragraph (C), see 42 Pa.C.S. § 6305(b).

See Rule 127 for recording of proceedings before a master.

Official Note: Rule 187 adopted April 1, 2005, effective April 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 187 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 190. Admissions Before Master.

A. *Types of cases.* A master may accept an admission to any misdemeanor.

B. *Requirements.* The admission requirements of Rule 407 shall be followed.

Official Note: Rule 190 adopted April 1, 2005, effective April 1, 2006.

Rule 191. Master's Findings and Recommendation to the Judge.

A. *Announcement of Findings and Recommendation.* At the conclusion of the hearing, the master shall announce in open court on the record, the master's findings and recommendation to the judge.

B. *Submission of Papers and Contents of Recommendation.* Within one business day, the master shall submit a summary of the recommendation to the juvenile court judge. If requested, a copy of the summary shall be given to the juvenile's attorney, the juvenile, if unrepresented, the attorney for the Commonwealth, and the juvenile probation officer. The summary shall specifically state a recommendation to the judge.

C. *Judicial Action.* The judge shall by order:

- 1) accept the recommendation;
- 2) reject the recommendation and issue an order with a different disposition;
- 3) send the recommendation back to the master for more specific findings; or
- 4) schedule a rehearing under Rule 192 within seven days.

Comment

The juvenile court may promulgate a form for masters to use. The summary of the recommendation may take the form of a court order to be adopted by the court.

If a party contests the master's decision, the copy of the summary may be used as an attachment in a motion for a rehearing in front of the judge.

The master's decision is subject to approval of the judge. When the judge, in rejecting the master's recommendation, modifies a factual determination, a rehearing is to be conducted. The judge may reject the master's findings and enter a new finding or disposition without a rehearing if there is no modification of factual determinations. See *In re Perry*, 459 A.2d 789 (Pa. Super. Ct. 1983). The juvenile waives the right to complain of double jeopardy if the Commonwealth requests a rehearing before the judge. See *In re Stephens*, 419 A.2d 1244 (Pa. Super. Ct. 1980).

Nothing in this rule prohibits the court from modifying conclusions of law made by the master.

Official Note: Rule 191 adopted April 1, 2005, effective April 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 191 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 192. Challenge to Master's Recommendation.

A. *Time limitation.* A party may challenge the master's recommendation by filing a motion with the clerk of courts within three days of receipt of the recommendation. The motion shall request a rehearing by the judge and aver reasons for the challenge.

B. *Rehearing.* The judge shall act on the challenge within seven days of the date of the motion. The detention status of the juvenile will remain the same pending the rehearing unless otherwise ordered by the judge.

Comment

Under paragraph (A), the petition for a rehearing may be oral or written.

Under paragraph (B), the judge does not have to grant a rehearing. A judge may deny the request based on the petition. If the judge does grant a hearing, it should be held within seven days of the date of the challenge.

The juvenile waives the right to complain of double jeopardy if the Commonwealth requests a rehearing before the judge. See *In re Stephens*, 419 A.2d 1244 (Pa. Super. Ct. 1980).

Official Note: Rule 192 adopted April 1, 2005, effective April 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 192 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 2. COMMENCEMENT OF PROCEEDINGS, ARREST PROCEDURES, WRITTEN ALLEGATION, AND PRE-ADJUDICATORY DETENTION

PART A. COMMENCING PROCEEDINGS

Rule 200. Commencing Proceedings.

PART B. ARREST PROCEDURES IN DELINQUENCY CASES

(a) Arrest Warrants

- 210. Arrest Warrants.
- 211. Requirements for Issuance.
- 212. Duplicate and Alias Warrants of Arrest.
- 213. Execution of Arrest Warrant.

(b) Arrests Without Warrant

- 220. Procedure in Cases Commenced by Arrest Without Warrant.
- 221. Temporary Detention in Police Lock-Up.

PART C. WRITTEN ALLEGATION PROCEDURES

- 231. Written Allegation.
- 232. Contents of Written Allegation.
- 233. Approval of Private Written Allegations.

PART D. PRE-ADJUDICATORY DETENTION

- 240. Detention of Juvenile.
- 241. Notice of Detention Hearing.
- 242. Detention Hearing.
- 243. Detention Rehearings.

PART A. COMMENCING PROCEEDINGS

Rule 200. Commencing Proceedings.

Juvenile delinquency proceedings within a judicial district shall be commenced by:

- 1) submitting a written allegation pursuant to Rule 231;
- 2) an arrest without a warrant:
 - a) when the offense is a felony or misdemeanor committed in the presence of the police officer making the arrest; or
 - b) upon probable cause when the offense is a felony; or
 - c) upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when such arrest without a warrant is specifically authorized by statute;
- 3) transfer of a case from a criminal proceeding pursuant to 42 Pa.C.S. § 6322;
- 4) the court accepting jurisdiction of a resident juvenile from another state; or
- 5) the court accepting supervision of juvenile pursuant to another state's order.

Comment

Paragraph (1) allows for commencing delinquency proceedings by submitting a written allegation. This procedure departs from the Juvenile Act, which provides that the filing of a petition commences a proceeding. Rule 800 suspends 42 Pa.C.S. § 6321 only to the extent that it is inconsistent with the procedures of this rule. Petitions filed by any person circumvent the juvenile probation's office ability to divert the case through informal adjustment as provided in 42 Pa.C.S. § 6323. Probation officers may "receive and examine complaints and charges of delinquency . . . of a child for the purpose of considering the commencement of proceedings." 42 Pa.C.S. § 6304(a)(2).

See Rule 231 for procedures on submitting a written allegation.

For the definition of a "written allegation," see Rule 120.

The Juvenile Act provides that "a child may be taken into custody . . . pursuant to the laws of arrest." 42 Pa.C.S. § 6324. Paragraph (2) states the laws of arrest without a warrant in Pennsylvania. See Pa.R.Crim.P. 502.

Paragraph (4) encompasses a juvenile who lives in Pennsylvania and commits a crime in another state and that state wants Pennsylvania to accept the disposition of the juvenile and supervise the juvenile.

Paragraph (5) encompasses a juvenile who lives outside of Pennsylvania, committed a crime outside of Pennsylvania, is moving to Pennsylvania, and the other jurisdiction would like Pennsylvania to accept the disposition of the juvenile and supervise the juvenile.

For procedures for when the juvenile is alleged to have violated probation, see Rule 612.

For inter-county transfer of juveniles, see Rule 302.

See § 6321(a) of the Juvenile Act for commencement of proceedings under the Juvenile Act. 42 Pa.C.S. § 6321(a).

Official Note: Rule 200 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 200 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART B. ARREST PROCEDURES IN DELINQUENCY CASES

(a) Arrest Warrants

Rule 210. Arrest Warrants.

A. Application. An application for an arrest warrant shall be made by filing a written allegation supported by a probable cause affidavit with the president judge or any issuing authority designated by the president judge of each judicial district. The president judge shall ensure twenty-four hour availability of a designated issuing authority.

B. Approval of Commonwealth. When a certification is filed by the District Attorney pursuant to Rule 231, no application for an arrest warrant shall be submitted to the issuing authority unless an attorney for the Commonwealth has approved the application.

C. Arrest procedures. When a juvenile is arrested pursuant to a warrant, the case shall proceed in the same manner as a warrantless arrest in accordance with Rule 220.

Comment

For the contents of a written allegation, see Rule 232. For the requirements of the issuance of an arrest warrant, see Rule 211.

Under paragraph (A), the president judge of each judicial district may designate a juvenile court judge, another common pleas judge, or other issuing authorities to receive applications for arrest warrants. The president judge also is to designate an issuing authority to receive applications after normal business hours and on holidays. For the definition of "issuing authority," see Rule 120.

To implement the procedures of paragraph (A), Rule 800 suspends 42 Pa.C.S. § 6303(b) only to the extent that Magisterial District Judges may detain a juvenile for the limited purposes of this rule if the Magisterial District Judge is so designated by the president judge of the judicial district to receive arrest warrant applications.

Official Note: Rule 210 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 210 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 211. Requirements for Issuance.

A. *Probable Cause.* No arrest warrants shall be issued but upon probable cause, supported by one or more affidavits sworn to before the issuing authority. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.

B. *Evidence.* At any proceeding on a motion challenging an arrest warrant, no evidence shall be admissible to establish probable cause for the arrest warrant, other than the affidavits provided for in paragraph (A).

Comment

This rule does not preclude oral testimony before the issuing authority, but it requires that such testimony be reduced to an affidavit prior to the issuance of a warrant. All affidavits in support of an application for an arrest warrant should be sworn to before the issuing authority prior to the issuance of the warrant.

This rule carries over to the arrest warrant, the requirement that the evidence presented to the issuing authority be reduced to writing and sworn to, and that only the writing is subsequently admissible to establish that there was probable cause. In these respects, the procedure is similar to that applicable to search warrants. See Pa.R.Crim.P. 203.

For a discussion of the requirements of probable cause for the issuance of an arrest warrant, see *Commonwealth v. Flowers*, 369 A.2d 362 (Pa. Super. Ct. 1976).

The affidavit requirements of this rule are not intended to apply when an arrest warrant is to be issued for noncompliance with a citation, with a summons, or with a court order.

Official Note: Rule 211 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Chapter two, Part B published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 212. Duplicate and Alias Warrants of Arrest.

A. *Duplicates.* When a warrant of arrest has been issued and it appears necessary or desirable to issue duplicates for execution, the issuing authority may issue any number of duplicates. Each duplicate shall have the same force and effect as the original. Costs may be assessed only for one such warrant and only one service fee may be charged.

B. *Alias.* After service and execution of an original or duplicate warrant, an alias warrant may be issued if the purpose for which the original or duplicate has been issued has not been accomplished.

Official Note: Rule 212 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 212 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 213. Execution of Arrest Warrant.

A. A warrant of arrest may be executed at any place within the Commonwealth.

B. A police officer shall execute a warrant of arrest.

Comment

For the definition of "police officer," see Rule 120.

Official Note: Rule 213 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Chapter two, Part B published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

(b) Arrests Without Warrant**Rule 220. Procedure in Cases Commenced by Arrest Without Warrant.**

A. The person arresting a juvenile shall promptly:

1) notify the juvenile's guardian of:

- a) the arrest of the juvenile;
 - b) the reason for the arrest; and
 - c) the juvenile's whereabouts; and
- 2) either:

a) release the juvenile to his or her guardian upon the guardian's promise to bring the juvenile before the court when requested by the court, unless detention of the juvenile is warranted; or

b) deliver the juvenile before the court or to a detention facility designated by the court; or

c) deliver the juvenile to a medical facility if the juvenile is believed to be suffering from a physical condition or illness that requires prompt treatment.

B. In all cases, the person arresting the juvenile promptly shall submit the written allegation, as required by Rule 231(A)(2).

Comment

The juvenile probation officer can accept juveniles for the court as described in paragraph (A)(2)(b).

The release of the juvenile does not eliminate the requirement of submission of a written allegation. For the general procedures governing written allegations, see Chapter Two, Part (C).

See 42 Pa.C.S. § 6326.

Official Note: Rule 220 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Chapter two, Part B published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 221. Temporary Detention in Police Lock-Up.

A. *Secure detention.* A juvenile under arrest may be held securely in a police lock-up or other facility that houses an adult lock-up only under the following conditions:

1) the secure holding shall only be for the purpose of identification, investigation, processing, releasing or transferring the juvenile to a guardian, juvenile court, or detention facility;

2) the secure holding shall be limited to the minimum time necessary to complete the procedures listed in paragraph (A)(1), but in no case may such holding exceed six hours; and

3) if so held, the juvenile shall be separated by sight and sound from incarcerated adult offenders and shall be under the continuous visual supervision of law enforcement officials or facility staff.

A juvenile shall be deemed to be held securely only when physically detained, confined in a locked room or cell, or when secured to a cuffing rail or other stationary object within the facility.

B. *Non-secure detention.* Notwithstanding other provisions of law, a juvenile may be held in non-secure custody in a building or facility that houses an adult lock-up only under the following conditions:

1) the area where the juvenile is held is an unlocked multi-purpose area that is not designated or used as a secure detention area or is not part of a secure detention area; or, if the area is a secure booking or similar area, it is used only for processing purposes;

2) the juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;

3) the area is limited to providing non-secure custody only long enough for the purposes of identification, investigation, processing or release to guardians or for arranging transfer to another agency or appropriate facility; and

4) the juvenile shall be under continuous visual supervision by a law enforcement officer or other facility staff during the period of non-secure custody.

Comment

This rule reflects certain provisions of § 6326 of the Juvenile Act. 42 Pa.C.S. § 6326.

Official Note: Rule 221 adopted April 1, 2005, effective October 1, 2005.

PART C. WRITTEN ALLEGATION PROCEDURES

Rule 231. Written Allegation.

A. *Submission.* In every delinquency case, the law enforcement officer shall submit a written allegation to the juvenile probation office.

1) *Juvenile not under arrest.* When a juvenile is not under arrest, a written allegation shall be submitted to the juvenile probation office and a copy shall be forwarded to the attorney for the Commonwealth unless the

District Attorney elects to require initial receipt and approval of the written allegation under paragraph (B).

2) *Juvenile under arrest.* When a juvenile is under arrest, a written allegation shall be submitted promptly to the court or detention facility, and copies shall be immediately forwarded to the juvenile probation office and the attorney for the Commonwealth unless the District Attorney elects to require initial receipt and approval of the written allegation under paragraph (B).

B. *Approval by the District Attorney.* The District Attorney of any county may require initial receipt and approval of written allegations by an attorney for the Commonwealth before a delinquency proceeding is commenced.

1) *Certification.* If the District Attorney elects to require initial receipt and approval of written allegations in his or her county, the District Attorney shall file a certification with the court of common pleas. The certification shall specifically state the classes, grading, or types of cases that the police officer shall submit to the attorney for the Commonwealth.

2) *Timeliness.* All written allegations shall be approved or disapproved without unreasonable delay. An attorney for the Commonwealth shall be available at all times for this purpose unless the District Attorney has specified otherwise in the certification pursuant to (B)(1).

C. *Procedures Following the Attorney for the Commonwealth's Approval.*

1) *Juvenile not under arrest.* If a juvenile is not under arrest and an attorney for the Commonwealth approves the written allegation, notice of the approval and a copy of the written allegation shall be forwarded immediately to the juvenile probation office.

2) *Juvenile under arrest.* If a juvenile is under arrest, the written allegation shall be submitted to the attorney for the Commonwealth and approved prior to taking the juvenile to a detention facility. If the written allegation is approved, it shall be submitted promptly to the court or detention facility. A copy of the notice of the approval and the written allegation shall be forwarded to the juvenile probation office.

D. *Attorney for the Commonwealth's Disapproval.* If the written allegation has been disapproved for prosecution, it shall nevertheless be transmitted to the juvenile probation office with notice of the disapproval. If the juvenile is in custody, the juvenile shall be released immediately unless there are other grounds for the juvenile's detention.

Comment

A "petition" and a "written allegation" are two separate documents and serve two distinct functions. A "written allegation" is the document that initiates juvenile delinquency proceedings. Usually, the "written allegation" will be filed by a law enforcement officer and will allege that the juvenile has committed a delinquent act that comes within the jurisdiction of the juvenile court. Once this document is submitted, a preliminary determination of the juvenile court's jurisdiction is to be made. Informal adjustment and other diversionary programs may be pursued. If the attorney for the Commonwealth or the juvenile probation officer determines that formal juvenile court action is necessary, a petition is then filed.

See Rules 210 (Arrest Warrants) and 220 (Procedures in Cases Commenced by Arrest Without Warrant) for the procedures on submitting written allegations for arrests.

Under paragraphs (A)(2) and (C)(2), the police officer is to submit the written allegation promptly to the intake staff at the court or the detention facility.

As used in this rule, "District Attorney" is the District Attorney of each county. This rule gives the District Attorney of each county the option of requiring that written allegations and/or arrest warrant affidavits filed in that county by police officers have the prior approval of an attorney for the Commonwealth. Under the rule, the District Attorney may elect to require prior approval of written allegation, or arrest warrant affidavits (see Rule 210), or both. In addition, the District Attorney is given the authority to define which offenses or grades of offenses will require such prior approval. For example, the District Attorney may specify that prior approval will be required only if a felony is alleged, or that prior approval will be required for all cases.

Under paragraph (B), the District Attorney decides whether an attorney for the Commonwealth receives initial receipt and approval of written allegations. Once the District Attorney has filed a certification with the court under paragraph (B)(1), any attorney for the Commonwealth may receive and approve written allegations as specified in the certification by the District Attorney. This procedure creates a new option for the District Attorney to decide if written allegations need to be approved by an attorney for the Commonwealth. To implement this procedure, Rule 800 suspends 42 Pa.C.S. § 6304, only to the extent that probation officers may have to seek approval of any attorney for the Commonwealth.

Under paragraph (D), a juvenile should be released from custody unless there are other legally sufficient bases for detaining the juvenile, such as, violation of probation or other pending allegations.

Official Note: Rule 231 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 231 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 232. Contents of Written Allegation.

Every written allegation shall contain:

- 1) the name of the person making the allegations;
- 2) the name, date of birth, and address, if known, of the juvenile, or if unknown, a description of the juvenile;
- 3) a statement that:
 - a) it is in the best interest of the juvenile and the public that the proceedings be brought; and
 - b) the juvenile is in need of treatment, supervision, or rehabilitation;
- 4) the date when the offense is alleged to have been committed; provided, however:
 - a) if the specific date is unknown, or if the offense is a continuing one, it shall be sufficient to state that it was committed on or about any date within the period of limitations; and
 - b) if the date or day of the week is an essential element of the offense alleged, such date or day shall be specifically set forth;
- 5) the place where the offense is alleged to have been committed;

6) a) i) a summary of the facts sufficient to advise the juvenile of the nature of the offense alleged; and

ii) the official or customary citation of the statute and section, or other provision of law which the juvenile is alleged to have violated, but an error in such citation shall not affect the validity or sufficiency of the written allegation; or

b) a certification that the juvenile has not complied with the sentence imposed for a conviction of a summary offense;

7) the name and age of any conspirators, if known;

8) a statement that the acts were against the peace and dignity of the Commonwealth of Pennsylvania or in violation of an ordinance of a political subdivision;

9) a notation if criminal laboratory services are requested in the case;

10) a verification by the person making the allegation that the facts set forth in the written allegation are true and correct to the person's personal knowledge, information, or belief, and that any false statement made is subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; and

11) the signature of the person making the allegation and the date of execution of the written allegation.

Comment

This rule sets forth the required contents of all written allegations whether the person making the allegation is a law enforcement officer, a police officer, or a private citizen.

Official Note: Rule 232 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 232 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 233. Approval of Private Written Allegations.

A. *Submission of written allegation.* When the person making the allegation is not a law enforcement officer, the written allegation shall be submitted to the juvenile probation officer for approval, unless the District Attorney has elected to require initial receipt and approval under Rule 231(B). The juvenile probation officer or the attorney for the Commonwealth shall approve or disapprove the written allegation without unreasonable delay.

B. *Requirements.*

1) *Approval.* If the private written allegation is approved, the case shall proceed as any other written allegation under Rule 231(C) and (D).

2) *Disapproval.* If the written allegation is disapproved, the attorney for the Commonwealth or the juvenile probation officer shall state the reasons on the written allegation form and return it to the person making the allegation. The person making the allegation may file a motion for review of the disapproval by the court.

Comment

For the contents of a written allegation, see Rule 231.

In all cases where the affiant is not a law enforcement officer, the written allegation should be submitted for approval or disapproval by the juvenile probation officer or the attorney for the Commonwealth. Once the allega-

tion is approved, the case should proceed as any other written allegation would proceed. See Rule 231.

When the person filing a document alleging a juvenile committed a delinquent act is a private citizen, he or she should follow the same process and proceedings as probation officers and law enforcement officers. Private citizens are not to be afforded additional rights when it comes to adjudicating a juvenile delinquent. The purpose of the Juvenile Act, 42 Pa.C.S. § 6334, is achieved by providing an avenue for the private citizen to commence a delinquency proceeding by submitting a written allegation. If the written allegation is disapproved, the private citizen has the right to challenge the decision by motion to the court of common pleas. If the court of common pleas overturns the decision of the attorney for the Commonwealth or the juvenile probation officer, the court should direct the attorney for the Commonwealth or the juvenile probation officer to approve the written allegation and proceed with the case in the same manner as any other case. This procedure ensures informal action is not precluded, such as, informal adjustment. Once a petition is filed, informal adjustment is not allowed. See Comment to Rule 312. In addition, Rule 800 suspends 42 Pa.C.S. § 6334 only to the extent that a private citizen may not submit a petition.

For motions and service, see Rules 344 and 345.

Official Note: Rule 233 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 233 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART D. PRE-ADJUDICATORY DETENTION

Rule 240. Detention of Juvenile.

A. *Detention requirements.* If a juvenile is brought before the court or delivered to a detention facility designated by the court, the juvenile probation officer immediately shall:

- 1) examine the written allegation;
- 2) make an investigation, which may include an intake conference with the juvenile, the juvenile's attorney, guardian, or other interested and informed adult; and
- 3) release the juvenile, unless it appears that the juvenile's detention is warranted.

B. *Filing of petition.* The release of the juvenile shall not prevent the subsequent filing of a petition.

C. *Prompt hearing.* If the juvenile is not released, a detention hearing shall be held no later than seventy-two hours after the juvenile is placed in detention.

D. *Time restrictions.* Except as provided in paragraphs (D)(1) and (D)(2), if the adjudicatory hearing is not held or notice of request for transfer is not submitted within the ten-day period as specified in Rules 391 and 404, the juvenile shall be released.

1) A juvenile may be detained for an additional single period not to exceed ten days when the court determines that:

- a) evidence material to the case is unavailable;
- b) due diligence to obtain such evidence has been exercised;
- c) there are reasonable grounds to believe that such evidence will be available at a later date; and

d) the detention of the juvenile would be warranted.

2) A juvenile may be detained for successive ten-day intervals if the delay is caused by the juvenile. The court shall state on the record if failure to hold the hearing resulted from delay caused by the juvenile. Delay caused by the juvenile shall include, but not be limited to:

- a) delay caused by the unavailability of the juvenile or the juvenile's attorney;
- b) delay caused by any continuance granted at the request of the juvenile or the juvenile's attorney; or
- c) delay caused by the unavailability of a witness resulting from conduct by or on behalf of the juvenile.

Comment

If a juvenile is detained, the guardian should be notified immediately. See Rules 220 (Procedures in Cases Commenced by Arrest Without Warrant) and 313(B) (Taking into Custody from Intake) for notification of the guardian.

Under paragraph (D)(2), if the juvenile causes delay, the juvenile may continue to be held in detention. The additional period of detention should not exceed ten days. The court may continue such detention for successive ten-day intervals if the juvenile caused the delay. The time restrictions of paragraph (D) apply to a juvenile who is placed in detention, even if previously released.

For time restrictions on detention for juveniles scheduled for a transfer hearing to criminal proceedings, see Rule 391.

For statutory provisions on detention, see 42 Pa.C.S. §§ 6325, 6331, 6335. For the Juvenile Court Judges Commission's Detention Standards, see 37 Pa. Code § 200.101 et seq. (2003).

Official Note: Rule 240 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 240 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 241. Notice of Detention Hearing.

Notice of the detention hearing, including date, time, place, and purpose, shall be given to:

- 1) the juvenile;
- 2) the juvenile's guardian;
- 3) the juvenile's attorney;
- 4) the juvenile probation officer;
- 5) the attorney for the Commonwealth; and
- 6) any other appropriate persons.

Comment

Notice should be as timely as possible. Because there is a seventy-two hour time restriction, notice may be oral. Every possible attempt should be made to notify all interested persons.

If a guardian has not been notified, a rehearing is to be ordered under Rule 243 upon submission of an affidavit by the guardian.

Official Note: Rule 241 adopted April 1, 2005, effective October 1, 2005.

Rule 242. Detention Hearing.

A. *Informing juvenile of rights.* Upon commencement of the hearing, the court shall:

- 1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present;
- 2) inform the juvenile of the right to counsel and to assigned counsel; and
- 3) inform the juvenile of the right to remain silent with respect to any allegation of delinquency.

B. *Manner of hearing.*

1) *Conduct.* The hearing shall be conducted in an informal but orderly manner.

2) *Recording.* If requested by the juvenile or the Commonwealth, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.

3) *Testimony and evidence.* All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition. The juvenile's attorney, the juvenile, if unrepresented, and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.

4) The juvenile shall be present at the detention hearing and the juvenile's attorney or the juvenile, if unrepresented, may:

- a) cross-examine witnesses offered against the juvenile; and
- b) offer evidence or witnesses, if any, pertinent to the probable cause or detention determination.

C. *Findings.* The court shall determine whether:

- 1) there is probable cause that a delinquent act was committed by the juvenile; and
- 2) detention of the juvenile is warranted.

D. *Filing of petition.* If a juvenile remains detained after the hearing, a petition shall be filed with the clerk of courts within twenty-four hours or the next court business day.

Comment

A detention hearing consists of two stages. The first stage of a detention hearing is a probable cause hearing. If probable cause is not found, the juvenile is to be released. If probable cause is found, then the court is to proceed to the second stage.

The second stage of a detention hearing is a detention determination hearing. The court should hear pertinent evidence concerning the detention status of the juvenile, review and consider all alternatives to secure detention, and determine if the detention of the juvenile is warranted.

The procedures of paragraph (D) deviate from the procedures of the Juvenile Act. See 42 Pa.C.S. § 6331. Under paragraph (D), a petition does not have to be filed within twenty-four hours of the juvenile's detention; rather, the petition should be filed within twenty-four hours of the conclusion of the detention hearing if the juvenile is detained. See Rule 800. If the juvenile is not detained, a petition may be filed at any time prior to the adjudicatory hearing. However, the juvenile's attorney should have sufficient notice of the allegations prior to the adjudicatory hearing to prepare for the defense of the

juvenile. See Rule 363 for time of service. See Rule 331 for service of the petition. See Rule 330 for petition requirements.

See 42 Pa.C.S. §§ 6332, 6336, and 6338 for the statutory provisions concerning informal hearings and other basic rights.

Official Note: Rule 242 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 242 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 243. Detention Rehearings.

A. *Mandatory Rehearing.* If the guardian submits an affidavit to the juvenile probation officer alleging that the guardian was not notified of the detention hearing and that the guardian did not appear or waive appearance at the detention hearing, a rehearing shall be held within seventy-two hours of the submission of the affidavit.

B. *Discretionary Rehearing.* The court may grant a rehearing upon request of the juvenile's attorney, the juvenile, if unrepresented, or the attorney for the Commonwealth, or on its own motion.

C. *Forum.* The judge, who heard the original detention hearing or adopted the findings of the master, shall hold the rehearing, unless the judge assigns the case to a master.

Comment

See 42 Pa.C.S. § 6332(b).

Under paragraph (A), upon receiving an affidavit, the juvenile probation officer is to schedule a rehearing, forward the affidavit to the proper person to schedule a rehearing, or submit the affidavit to the court for rescheduling.

Under paragraph (C), only a judge may hold a rehearing, unless the judge orders a master to hear the case.

Official Note: Rule 243 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 243 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

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PART A. VENUE**Rule 300. Venue.**

A. *Generally.* A delinquency proceeding shall be commenced in:

- 1) the county in which the delinquent act was allegedly committed; or
- 2) the juvenile's county of residence.

B. *Change of venue.* The juvenile may file a motion for change of venue if there is substantial prejudice to the juvenile. The court shall decide the motion.

Official Note: Rule 300 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 300 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 302. Inter-County Transfer.

A. *Adjudication of Delinquency.* When the court proceeds to an adjudicatory hearing for non-resident juveniles, it shall hear evidence on the petition pursuant to Rule 406 or accept an admission pursuant to Rule 407 and shall rule on the offenses in accordance with Rule 408. The court may transfer the case to the juvenile's county of residence for a hearing to determine if the juvenile is in need of treatment, rehabilitation, or supervision pursuant to Rule 409 and if the court finds the juvenile to be in need of treatment, rehabilitation, or supervision, the receiving court shall proceed under Chapter Five.

B. Courtesy Supervision.

1) The court may transfer supervision of the juvenile to the juvenile's county of residence after:

- a) a consent decree is entered; or
- b) a dispositional order is entered; and

2) The county providing courtesy supervision may, with cause, withdraw supervision at any time and return the matter for further action to the county which entered the dispositional order.

C. *Transmission of juvenile court file.* If the case is transferred under paragraph (A) or (B), the transferring court shall order transfer of certified copies of all documents, reports, and summaries in the juvenile's court file.

Comment

The purpose of allowing transfer of disposition and supervision of the juvenile to the juvenile's county of residence is to allow probation to supervise the juvenile closely. Supervision is difficult if the juvenile lives in another county.

Under paragraph (B), this rule also may apply if the juvenile moves to a different county in this Commonwealth at some stage in the proceedings.

When the case is being transferred under paragraph (A), the transferring court should enter a finding of the amount of restitution owed and to whom it should be paid, if ordered. A restitution order should be included in the dispositional order, if applicable, under paragraph (B).

Official Note: Rule 302 adopted April 1, 2005, effective October 1, 2005.

PART B. INTAKE AND INFORMAL ADJUSTMENT**Rule 310. Pre-Intake Duties, Scheduling, and Notice.**

A. *Juvenile probation officer duties.* After a written allegation is submitted, the juvenile probation officer shall gather pertinent information to determine whether:

- 1) the allegations are within the jurisdiction of the juvenile court; and
- 2) it is appropriate to schedule an intake conference.

B. *Scheduling.* Intake conferences shall be scheduled within a reasonable time after submission of the written allegation.

C. *Notice.* The juvenile probation officer shall make all reasonable efforts to provide actual notice of the intake conference to the juvenile and the juvenile's guardian.

Comment

If the juvenile probation officer has exhausted all methods of communication with the juvenile's guardian, the juvenile probation officer may proceed with the intake conference without the presence of the guardian. If the juvenile is detained at the intake conference without the presence of a guardian, the juvenile probation officer is to notify the guardian of the detention of the juvenile immediately. See Rule 313(B).

Official Note: Rule 310 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Chapter three, Part B published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 311. Intake Conference.

A. The juvenile probation officer may conduct an intake conference to determine what further action, if any, should be taken.

B. Before proceeding with an intake conference, the juvenile probation officer shall:

1) provide a copy of the written allegation to the juvenile, the juvenile's guardian, if present, and the juvenile's attorney, if present; and

2) inform the juvenile and the juvenile's guardian, if present, of the juvenile's rights; and

3) afford the victim the opportunity to offer prior comment on the disposition of the case if informal adjustment or an alternative resolution of the case is being considered.

C. The juvenile probation officer shall provide the attorney for the Commonwealth with notice of the decision resulting from the intake conference. Within a reasonable time of receiving the notice, the attorney for the Commonwealth may file a motion requesting review by the court of the juvenile probation officer's action. The court shall conduct a hearing on the motion.

Comment

Under paragraph (A), in making a decision, the juvenile probation officer should balance the interests of the victim and protection of the community, imposition of accountability on the juvenile for offenses committed, and the development of competencies for the juvenile. See 42 Pa.C.S. § 6301. The juvenile probation officer should consult with the victim, the attorney for the Commonwealth, the juvenile, the juvenile's attorney, if present, and the juvenile's guardian to determine how the case should be handled. See Victim's Bill of Rights, 18 P.S. § 11.201 et seq.

For the statutory protections concerning statements made by the juvenile, see 42 Pa.C.S. § 6323(e).

Under paragraph (C), it is anticipated that the attorney for the Commonwealth should consult with the juvenile probation officer before any court action.

Nothing in these rules is intended to confer a right upon any person, not already afforded by law, to attend an intake conference.

Official Note: Rule 311 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 311 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 312. Informal Adjustment.

A. *Participation.* At any time prior to the filing of a petition, the juvenile probation officer may informally adjust the allegation(s) if it appears:

1) an adjudication would not be in the best interest of the public and the juvenile;

2) the juvenile and the juvenile's guardian consent to informal adjustment with knowledge that consent is not obligatory; and

3) the admitted facts bring the case within the jurisdiction of the court.

B. Completion.

1) If the juvenile successfully completes the informal adjustment, the case shall be dismissed and prosecution is barred.

2) If the juvenile does not successfully complete the informal adjustment, a petition shall be filed.

Comment

Informal adjustments may not occur after the filing of a petition. *Commonwealth v. J.H.B.*, 760 A.2d 27 (Pa. Super. Ct. 2000). See 42 Pa.C.S. § 6323(a).

The juvenile probation officer or other agencies may give "counsel and advice" as to the informal adjustment. See 42 Pa.C.S. § 6323(b). "Counsel and advice" may include referral to a social service agency or other conditions as agreed to by the juvenile probation officer and the juvenile.

A juvenile's participation in an informal adjustment may not exceed six months, unless extended by order of the court for an additional period not to exceed three months. See 42 Pa.C.S. § 6323(c). Any incriminating statements made by the juvenile to the juvenile probation officer and in the discussions or conferences incident thereto are not to be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act. See 42 Pa.C.S. § 6323(e).

Prior to informally adjusting the written allegation, the juvenile probation officer is to give the victim an opportunity to comment. In addition, the victim is to be notified of the final outcome of the hearing. See Victim's Bill of Rights, 18 P.S. § 11.201 et seq.

If a petition is filed because the juvenile has not successfully completed the requirements of an informal adjustment, the procedures of Rule 330 are to be followed.

Official Note: Rule 312 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 312 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 313. Detention from Intake.

A. *Detention.* If it is determined at an intake conference that a juvenile should be detained, the matter shall proceed pursuant to Rule 240.

B. *Notice to Guardian.* If a guardian is not present at the intake conference, the juvenile probation officer immediately shall notify the guardian of the juvenile's detention.

Comment

The provision concerning notification of a guardian in Rule 220 is to be followed.

Official Note: Rule 313 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Chapter three, Part B published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART C. PETITION**Rule 330. Petition: Filing, Contents, Function.**

A. *Certification.* The District Attorney of any county may require that an attorney for the Commonwealth shall file all petitions. If the District Attorney elects to

require an attorney for the Commonwealth to file the petition, the District Attorney shall file a certification with the court of common pleas. The certification shall:

1) state that an attorney for the Commonwealth shall file petitions; and

2) specify any limitations on the filing or classes of petitions.

B. *Filings.* In every delinquency proceeding, the attorney for the Commonwealth or the juvenile probation officer shall file a petition with the clerk of courts if it has been determined that informal adjustment or another diversionary program is inappropriate.

C. *Petition contents.* Every petition shall set forth plainly:

1) the name of the petitioner;

2) the name, date of birth, and address, if known, of the juvenile, or if unknown, a description of the juvenile;

3) a statement that:

a) it is in the best interest of the juvenile and the public that the proceedings be brought; and

b) the juvenile is in need of treatment, supervision, or rehabilitation;

4) the date when the offense is alleged to have been committed; provided, however:

a) if the specific date is unknown, or if the offense is a continuing one, it shall be sufficient to state that it was committed on or about any date within the period of limitations; and

b) if the date or day of the week is an essential element of the offense alleged, such date or day shall be specifically set forth;

5) the place where the offense is alleged to have been committed;

6) a) i) a summary of the facts sufficient to advise the juvenile of the nature of the offense alleged; and

ii) the official or customary citation of the statute and section, or other provision of law which the juvenile is alleged to have violated, but an error in such citation shall not affect the validity or sufficiency of the written allegation; or

b) a certification that the juvenile has not complied with the sentence imposed for a conviction of a summary offense.

7) the name and age of any conspirators, if known;

8) a statement that the acts were against the peace and dignity of the Commonwealth of Pennsylvania or in violation of an ordinance of a political subdivision;

9) a notation if criminal laboratory services are requested in the case;

10) a verification by the petitioner that the facts set forth in the petition are true and correct to the petitioner's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;

11) the signature of the petitioner and the date of the execution of the petition;

12) the whereabouts of the juvenile and if taken into custody, the date and time thereof; and

13) the name and address of the juvenile's guardian, or if unknown, the name and address of the nearest adult relative.

Comment

Under paragraph (A), the District Attorney may file a certification with the court of common pleas stating that only an attorney for the Commonwealth may file a petition. If a certification has not been filed, then an attorney for the Commonwealth or a juvenile probation officer may file a petition.

A private citizen has the right to file a written allegation, not a petition. The written allegation commences the proceedings in the juvenile system. See Rule 200. The case should progress in the same manner as any other case in the juvenile system. If the written allegation is disapproved, the private citizen may file a motion challenging the disapproval with the court of common pleas. See Comment to Rule 233.

Informal adjustment or other diversionary programs should be considered before a petition is filed. Once a petition is filed, informal adjustment is not permitted. See *Commonwealth v. J.H.B.*, 760 A.2d 27 (Pa. Super. Ct. 2000).

Petitions should be filed without unreasonable delay. See *Commonwealth v. Dallenbach*, 729 A.2d 1218 (Pa. Super. Ct. 1999).

The contents of a petition are the same as a written allegation except for the additional requirements in paragraphs (C)(12) and (13).

Official Note: Rule 330 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 330 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 331. Service of Petition.

A. *Copy.* Upon the filing of a petition, a copy of the petition shall be served promptly upon the juvenile, the juvenile's guardian, the juvenile's attorney, the attorney for the Commonwealth, and the juvenile probation officer.

B. *Service to juvenile and guardian.* The service of the petition to the juvenile and the juvenile's guardian shall be by first-class mail or delivered in-person.

C. *Service to attorneys and juvenile probation officer.* The service of the petition to the juvenile's attorney, attorney for the Commonwealth, and juvenile probation officer shall be by first-class mail or delivered in-person unless all individuals otherwise agree upon an alternative method.

Comment

The purpose of paragraph (A) is to insure the juvenile and the juvenile's attorney have notice of the allegations to prepare the case adequately. If the juvenile is detained, service is to follow immediately after the filing of the petition. See Rule 242(D) for the twenty-four hour filing requirement.

Alternative methods of service that may be utilized under paragraph (C) could be electronic transmission, facsimile, county agency inter-office mail, and other similar methods.

Official Note: Rule 331 adopted April 1, 2005, effective October 1, 2005.

Rule 332. Multiple Offenses in Petition.

A. *Different incidents.* When more than one offense is alleged to have been committed within a judicial district by a juvenile arising from different delinquent episodes, one petition may be filed. However, each incident shall be described separately in conformity with the requirements of Rule 330(C)(4)–(6).

B. *Same incidents.* When more than one offense is alleged to have been committed within a judicial district by a juvenile arising from the same delinquent episode, a single petition shall be filed.

Comment

The purpose of paragraph (A) is to permit one petition for multiple offenses arising from different delinquent episodes. The offenses are to be stated with particularity to inform the juvenile of the allegations. See Rule 330(C)(4) through (6) for specific requirements.

Under paragraph (B), a single petition is to be submitted for offenses arising from the same delinquent episode.

Official Note: Rule 332 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 332 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 333. Separate Petitions.

When more than one juvenile is alleged to have participated in the commission of an offense, a separate petition for each juvenile shall be filed.

Comment

If there are conspirators to any of the alleged offenses, the names and ages, if known, of all conspirators are to be referenced in the petition. See Rule 330(C)(7).

Hearings on the petitions may be consolidated for such further action as may be required by Rule 351.

Official Note: Rule 333 adopted April 1, 2005, effective October 1, 2005.

Rule 334. Amendment of Petition.A. *Amendment.*

1) The court shall allow a petition to be amended when there is a defect in:

- a) form;
- b) the description of the offense;
- c) the description of any person or property; or
- d) the date alleged.

2) The court shall not allow a petition to be amended if the petition alleges a different set of events or offenses, where the elements or defenses are materially different from the elements or defenses to the offense originally petitioned.

B. *Continuance.* Upon amendment, the court may:

- 1) grant a continuance of the adjudicatory hearing; or
- 2) order other relief as is necessary in the interests of justice.

Comment

For continuances, see Rule 122.

Official Note: Rule 334 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 334 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 335. Withdrawal of Petition.

The attorney for the Commonwealth may withdraw the petition. The withdrawal shall be filed with the clerk of courts.

Comment

See Rule 345 for the procedures on filings and service.

Official Note: Rule 335 adopted April 1, 2005, effective October 1, 2005.

Rule 336. Re-Filing of the Petition After Withdrawal or Dismissal.

A. *Re-filing.* The attorney for the Commonwealth may re-file a petition after the petition has been withdrawn pursuant to Rule 335 or dismissed by the court.

B. *Motion for dismissal.* The court may entertain a motion by the juvenile to dismiss the re-filed petition.

Comment

A juvenile may be rearrested after the allegations have been dismissed prior to jeopardy attaching if the statute of limitations has not expired. *Cf. Commonwealth v. Revtai*, 532 A.2d 1 (Pa. 1987). The petition should be dismissed upon a finding that the attorney for the Commonwealth acted to harass the juvenile, the offenses are beyond the statute of limitations, or there is some other prejudice to the juvenile. See *Commonwealth v. Chermansky*, 552 A.2d 1128 (Pa. Super. Ct. 1989). See also *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997).

If a petition is re-filed, the procedures of Rule 330 are to be followed. It may be necessary to have a detention hearing under the procedures of Rule 240(C).

Official Note: Rule 336 adopted April 1, 2005, effective October 1, 2005.

PART D. PROCEDURES FOLLOWING FILING OF PETITION**Rule 340. Pre-Adjudicatory Discovery and Inspection.**

A. *Informal.* Before either party can seek any disclosure or discovery under these rules, counsel for the parties shall make a good faith effort to resolve all questions of discovery, and to provide information required or requested under these rules as to which there is no dispute. When there are items requested by one party that the other party has refused to disclose, the demanding party may make an appropriate motion to the court. Such motion shall be made as soon as possible prior to the adjudicatory hearing. In such motion, the party shall state that a good faith effort to discuss the requested material has taken place and proved unsuccessful. Nothing in this rule shall delay the disclosure of any items agreed upon by the parties pending resolution of any motion for discovery.

B. *Mandatory disclosure by the Commonwealth.* In all cases, on request by the juvenile's attorney or the juvenile, if unrepresented, and subject to any protective order which the Commonwealth might obtain under this rule, the Commonwealth shall disclose to the juvenile's attorney or the juvenile, if unrepresented, all of the following

requested items or information, provided they are material to the instant case. The Commonwealth shall, when applicable, permit the juvenile's attorney or the juvenile, if unrepresented, to inspect and copy or photograph such items.

1) Any evidence favorable to the juvenile that is material either to adjudication or to disposition, and is within the possession or control of the attorney for the Commonwealth;

2) any written confession or inculpatory statement, or the substance of any oral confession or inculpatory statement, and the identity of the person to whom the confession or inculpatory statement was made that is in the possession or control of the attorney for the Commonwealth;

3) the circumstances and results of any identification of the juvenile by voice, photograph, or in-person identification;

4) any results or reports of scientific tests, expert opinions, and written or recorded reports of polygraph examinations or other physical or mental examinations of the juvenile that are within the possession or control of the attorney for the Commonwealth;

5) any tangible objects, including documents, photographs, fingerprints, or other tangible evidence; and

6) the transcripts and recordings of any electronic surveillance, and the authority by which the said transcripts and recordings were obtained.

C. Discretionary. Upon motion of the attorney for the Commonwealth, the juvenile's attorney, or the juvenile, if unrepresented, for pre-adjudicatory discovery, the court may order, subject to the juvenile's right against self-incrimination, any discovery upon a showing that the evidence is material to the preparation of the case and that the request is reasonable.

D. Continuing Duty to Disclose. If, prior to or during the adjudicatory hearing, either party discovers additional evidence or material previously requested or ordered to be disclosed by it, which is subject to discovery or inspection under this rule, or the identity of an additional witness or witnesses, such party promptly shall notify the opposing party or the court of the additional evidence, material, or witness.

E. Remedy. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit discovery or inspection, may grant a continuance, or may prohibit such party from introducing evidence not disclosed, other than testimony of the juvenile, or it may enter such other order as it deems just under the circumstances.

F. Protective orders. Upon a sufficient showing, the court may, at any time, order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion of any party, the court may permit the showing to be made, in whole or in part, in the form of a written statement to be inspected by the court. If the court enters an order granting relief, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court(s) in the event of an appeal.

G. Work Product. Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions,

theories, or conclusions of the attorney for the Commonwealth or the juvenile's attorney, or members of their legal staffs.

Comment

The purpose of paragraph (A) is to encourage an informal discovery process. Only when the informal process fails and there is a general dispute as to discovery, should a motion to compel discovery be made. Motions may be oral or written, see Rule 344.

For provisions under paragraph (B)(2), see *Commonwealth v. Burke*, 781 A.2d 1136 (Pa. 2001).

Rule 800 suspends § 5720 of the Wiretapping and Electronic Surveillance Control Act, 18 P.S. § 5720 as being inconsistent with this Rule only insofar as the section may delay disclosure to the juvenile seeking discovery under paragraph (B)(6).

Under paragraph (C), the following are examples of evidence that may be material to the preparation of the case: 1) the names and contact information of eyewitnesses; 2) all written or recorded statements, and substantially verbatim oral statements, of eyewitnesses; 3) all written and recorded statements, and substantially verbatim oral statements, made by the juvenile, and by conspirators or accomplices, whether such individuals have been charged or not; and 4) any other evidence specifically identified, provided the requesting party can additionally establish that its disclosure would be in the interests of justice, including any information concerning any person involved in the case who has received either valuable consideration, or an oral or written promise or contract for valuable consideration, for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the person in connection with his or her involvement in the case.

Any evidence or material requested cannot interfere with the juvenile's right against self-incrimination.

Under paragraph (C), the court has discretion, upon motion, to order an expert who is expected to testify at the adjudicatory hearing to prepare a report. However, these provisions are not intended to require a prepared report in every case. The court should determine, on a case-by-case basis, whether a report should be prepared. For example, a prepared report ordinarily would not be necessary when the expert is known to the parties and testifies about the same subject on a regular basis. On the other hand, a report might be necessary if the expert is not known to the parties or is going to testify about a new or controversial technique.

Whenever the rule makes reference to the term "identification," or "in-person identification," it is understood that such terms are intended to refer to all forms of identifying a juvenile by means of the juvenile's person being in some way exhibited to a witness for the purpose of an identification: e.g., a line-up, stand-up, show-up, one-on-one confrontation, one-way mirror, etc. The purpose of this provision is to make possible the assertion of a rational basis for a claim of improper identification based upon *Stovall v. Denno*, 388 U.S. 293 (1967) and *United States v. Wade*, 388 U.S. 218 (1967).

This rule is not intended to affect the admissibility of evidence that is discoverable under this rule or evidence that is the fruits of discovery, nor the standing of the juvenile to seek suppression of such evidence.

It is intended that the remedies provided in paragraph (E) apply equally to the Commonwealth and the juvenile, as the interests of justice require.

The provision for a protective order, paragraph (F), does not confer upon the Commonwealth any right of appeal not presently afforded by law.

It should also be noted that as to material which is discretionary with the court, or which is not enumerated in the rule, if such information contains exculpatory evidence as would come under the *Brady* rule, it is to be disclosed. Nothing in this rule is intended to limit in any way disclosure of evidence constitutionally required to be disclosed.

In addition to information requested under this rule, an attorney has the right to inspect all court records and files, including probation records and reports. See Rule 160.

Official Note: Rule 340 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 340 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 341. Notice of Alibi Defense.

A. *Notice by the juvenile's attorney or juvenile, if unrepresented.* A juvenile who intends to offer the defense of alibi at the adjudicatory hearing shall, at least two days prior to the adjudicatory hearing, give the attorney for the Commonwealth notice of the intention to claim such defense. Such notice shall include specific information as to the place or places where the juvenile claims to have been at the time of the alleged offense and the names and contact information of witnesses whom the juvenile intends to call in support of such claim.

B. *Failure to Give Notice.* If the juvenile fails to give notice of an alibi defense as required by this rule, or omits any witness from such notice, the court at the adjudicatory hearing may exclude the testimony of any omitted witness, or may exclude entirely any evidence offered by the juvenile for the purpose of proving the defense, except testimony by the juvenile, or may grant a continuance to enable the Commonwealth to investigate such evidence, or may make such other order as the interests of justice require.

C. *Impeachment.* A juvenile may testify concerning an alibi notwithstanding that the juvenile has not given notice, but if the juvenile has given notice and testifies concerning his or her presence at the time of the offense at a place or time different from that given in the notice, the juvenile may be cross-examined concerning such notice.

D. *Disclosure of Reciprocal Witnesses.* Prior to the adjudicatory hearing, the attorney for the Commonwealth shall disclose to the juvenile's attorney or the juvenile, if unrepresented, the names and contact information, that have not been previously disclosed, of all persons the Commonwealth intends to call as witnesses to disprove or discredit the juvenile's claim of alibi.

E. *Failure to Supply Reciprocal Notice.* If the attorney for the Commonwealth fails to disclose a list of its witnesses as required by this rule, or omits any witness, the court at the adjudicatory hearing may exclude the testimony of any omitted witness, or may exclude any evidence offered by the Commonwealth for the purpose of disproving the alibi, or may grant a continuance to enable the defense to investigate such evidence, or may make such other order as the interests of justice require.

Official Note: Rule 341 adopted April 1, 2005, effective October 1, 2005.

PART D(1). MOTION PROCEDURES

Rule 344. Motions and Answers.

A. *Generally.* All motions and answers shall be made orally on the record or in writing. An answer to a motion is not required unless ordered by the court or otherwise provided in these rules. Failure to answer shall not constitute an admission of the well-pleaded facts alleged in the motion.

B. *Represented juvenile.* If counsel represents a juvenile, the attorney shall make or file all motions and answers.

C. *Requirements for motions.* All motions shall comply with the following requirements:

1) The person making the motion shall sign a written motion. The signature shall constitute a certification that the motion is made in good faith. An oral motion shall be made on the record and the oral motion shall constitute a certification that the motion is made in good faith.

2) The motion shall state with particularity the grounds for the motion, the facts that support each ground, and the types of relief or order requested.

3) If the motion sets forth facts that do not already appear of record in the case, a verification shall be included or an oral statement shall be given that the facts set forth in the motion are true and correct to the movant's personal knowledge, information, or belief.

4) If the motion is written, a certificate of service as required by Rule 345(C) shall be included.

D. *Requirements for answers.* All answers, including those that are required either by court order or otherwise required by these rules, shall comply with the following requirements:

1) The person making the answer shall sign the answer or shall reply to the motion on the record. The signature or oral answer on the record shall constitute a certification that the answer is being made in good faith.

2) The answer shall meet the allegations of the motion and shall specify the type of relief, order, or other action sought.

3) If the answer sets forth facts that do not already appear of record in the case, a verification shall be included or an oral answer shall include a statement that the facts set forth in the answer are true and correct to the respondent's personal knowledge, information, or belief.

4) If the answer is written, a certificate of service as required by Rule 345(C) shall be included.

E. *Alternative relief.* Any motion may request such alternative relief as may be appropriate.

F. *Waiver of relief.* The failure, in any motion, to state a type of relief or order, or a ground, shall constitute a waiver of such relief, order, or ground.

Comment

Under paragraph (A), oral motions and answers are permitted because of the emphasis on prompt disposition in Juvenile Court. Answers to written motions may be made orally if the answer complies with the requirements of this rule.

Under paragraphs (C)(4) and (D)(4), a certificate of service is required for all written motions and answers. See Rule 345(B) for service of documents and Rule 345(C) for certificates of service.

Official Note: Rule 344 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 344 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 345. Filing and Service.

A. *Filings.*

1) *Generally.* Except as otherwise provided in these rules, all written motions, and any notice or document for which filing is required, shall be filed with the clerk of courts.

2) *Clerk of courts' duties.* Except as provided in paragraph (A)(3), the clerk of courts shall docket a written motion, notice, or document when it is received and record the time of filing in the docket. The clerk of courts promptly shall transmit a copy of these papers to such person as may be designated by the court.

3) *Filings by represented juveniles.* In any case in which a juvenile is represented by an attorney, if the juvenile submits for filing a written motion, notice, or document that has not been signed by the juvenile's attorney, the clerk of courts shall not file the motion, notice, or document in the juvenile court file or make a docket entry, but shall forward it promptly to the juvenile's attorney.

4) *Method of filing.* Filing may be accomplished by:

- a) personal delivery to the clerk of courts; or
- b) mail addressed to the clerk of courts, provided, however, that filing by mail shall be timely only when actually received by the clerk within the time fixed for filing.

B. *Service.*

1) *Generally.* The party filing the document shall serve the other party concurrently with the filing.

2) *Method of service to parties.* Service on the parties shall be by:

- a) personal delivery of a copy to a party's attorney, or, if unrepresented, the party; or
- b) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or
- c) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box; or
- d) sending a copy to an unrepresented juvenile by first class mail addressed to the juvenile's place of residence, detention, or placement.

C. *Proof of service.* All documents that are filed and served pursuant to this rule shall include a certificate of service.

Comment

See Rule 166 for maintaining records in the clerk of courts.

Under paragraph (A)(2), the court is to designate a court official to process motions and other matters for appropriate scheduling and disposition.

Under paragraph (B), the party filing a document is required to serve the other party.

This rule does not affect court orders, which are to be served upon each party's attorney and the juvenile, if unrepresented, by the clerk of courts as provided in Rule 167.

For service of petitions, see Rule 331.

Official Note: Rule 345 adopted April 1, 2005, effective October 1, 2005.

Rule 346. Omnibus Motion for Relief.

Unless otherwise required in the interests of justice, all pre-adjudicatory requests for relief shall be included in one omnibus motion filed prior to the adjudicatory hearing.

Comment

Types of relief appropriate for the omnibus motion include the following requests:

- (1) for continuance;
- (2) for separate or joint adjudicatory hearings;
- (3) for suppression of evidence;
- (4) for psychiatric examination;
- (5) to dismiss a petition;
- (6) to disqualify a judge;
- (7) for appointment of investigator; and
- (8) for pre-adjudicatory hearing conference.

The omnibus motion rule is not intended to limit other types of motions, oral or written, made pre-adjudication or during the adjudicatory hearing, including those traditionally called motions in limine, which may affect the admissibility of evidence or the resolution of other matters. The earliest feasible submissions and rulings on such motions are encouraged.

For instances when the court is to recuse itself, see Code of Judicial Conduct. Recusal is necessary when there is bias, prejudice, improper influence, or appearance of impropriety. *Commonwealth v. Benchoff*, 700 A.2d 1289 (Pa. Super. Ct. 1997).

Official Note: Rule 346 adopted April 1, 2005, effective October 1, 2005.

Rule 347. Time for Omnibus Motion and Service.

A. *Time.* An omnibus motion shall be made as soon as practical but can be made at any time prior to the calling of the first witness at the adjudicatory hearing.

B. *Service.* If the omnibus motion is written, copies shall be served in accordance with Rule 345.

Comment

For general requirements concerning the filing and service of motions and answers, see Rule 345.

Rule 800 suspends § 5720 of the Wiretapping and Electronic Surveillance Control Act, 18 P.S. § 5720 as being inconsistent with this Rule only insofar as the time frame for making a motion to suppress is concerned.

Official Note: Rule 347 adopted April 1, 2005, effective October 1, 2005.

Rule 348. Disposition of Omnibus Motions.

Unless otherwise provided in these rules, all omnibus motions shall be determined before the adjudicatory

hearing. If necessary for the determination of the omnibus motion, the court may postpone the adjudicatory hearing.

Official Note: Rule 348 adopted April 1, 2005, effective October 1, 2005.

Rule 350. Suppression of Evidence.

A. *Motion by attorney or juvenile, if unrepresented.* The juvenile's attorney or the juvenile, if unrepresented, may make a motion to the court to suppress evidence. The motion shall state specifically and with particularity the evidence sought to be suppressed, the grounds for suppression, and the supporting facts and events.

B. *Timeliness.* Unless the opportunity did not previously exist, or the interests of justice otherwise require, a motion to suppress shall be contained in the omnibus motion set forth in Rule 346. If a timely motion is not made, the issue of suppression of such evidence shall be deemed to be waived.

C. *Findings.* At the conclusion of the hearing, the court shall enter on the record a statement of findings of fact and conclusions of law as to whether the evidence was obtained in violation of the juvenile's rights, or in violation of these rules or any statute, and shall make an order granting or denying the relief sought.

D. *Decision final and binding.* If the court determines that the evidence shall not be suppressed, such determination shall be final, conclusive, and binding at the adjudicatory hearing, except upon a showing of evidence that was unavailable, but nothing in this rule shall prevent a juvenile from opposing such evidence at the adjudicatory hearing upon any ground except its suppressibility.

Comment

This rule is designed to provide one single procedure for the suppression of evidence alleged to have been obtained in violation of the juvenile's rights. This rule extends its coverage to specific provisions in violation of the fourth, fifth, and sixth amendments of the Constitution of the United States and Article I, §§ 8 & 9 of the Pennsylvania Constitution. *In re R.H.*, 791 A.2d 331 (Pa. 2002), *Commonwealth v. Scott*, 369 A.2d 809 (Pa. Super. Ct. 1976); *In re Cowell*, 364 A.2d 718 (Pa. Super. Ct. 1976). See *In re Gault*, 387 U.S. 1 (1967).

In all cases, the burden of production is upon the Commonwealth. See *In re Betrand*, 303 A.2d 486 (Pa. 1973); *In re Stoutzenberger*, 344 A.2d 668 (Pa. Super. Ct. 1975), citing *Commonwealth ex rel. Butler v. Rundle*, 239 A.2d 426 (Pa. 1968).

Under paragraph (B), if a motion to suppress is not timely made, it is deemed waived. *In re Cox*, 402 A.2d 534 (Pa. Super. Ct. 1979). See *Commonwealth v. Spriggs*, 344 A.2d 880 (Pa. 1975); *Commonwealth v. Wylie*, 344 A.2d 491 (Pa. 1975).

With regard to the recording and transcribing of the evidence adduced at the proceeding, see Rule 127.

All motions to suppress are to comply with the provisions of Rules 344 and 345.

To join this motion with a motion for return of property, see Comment to Rule 353.

Rule 800 suspends § 5720 of the Wiretapping and Electronic Surveillance Control Act, 18 P.S. § 5720 as being inconsistent with this Rule only insofar as the time frame for making a motion to suppress is concerned.

Official Note: Rule 350 adopted April 1, 2005, effective October 1, 2005.

Rule 351. Adjudicatory Hearing on Separate Petitions.

A. *Standards.* An adjudicatory hearing may be held for:

- 1) offenses alleged in separate petitions if the evidence of each of the offenses would be admissible in a separate adjudicatory hearing for the other;
- 2) offenses alleged in separate petitions if the offenses alleged are based on the same act or transaction;
- 3) juveniles alleged in separate petitions if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions.

B. *Procedure.*

1) Oral or written notice that offenses or juveniles alleged in separate petitions will be heard together shall be given to the juvenile's attorney or the juvenile, if unrepresented, prior to the adjudicatory hearing. If the notice is written, a copy of the notice shall be filed with the clerk of courts.

2) When notice has not been given under paragraph (B)(1), any party may move to consolidate the adjudicatory hearing for separate petitions. The motion ordinarily shall be included in an omnibus motion.

Comment

Under the scheme set forth in this rule, it can be assumed that offenses alleged in the same petition will be heard together. See Rule 332. Similarly, offenses or juveniles will be heard together if notice is given pursuant to (B)(1) of this rule. In these situations, the court may order separate hearings either when the standards in paragraph (A) are not met or pursuant to Rule 352. Absent notice pursuant to paragraph (B)(1), a motion for consolidation is required under paragraph (B)(2). A party may oppose such a motion either on the ground that the standards in paragraph (A) are not met, or pursuant to Rule 352.

Paragraph (A)(1) is based upon statutory and case law that, ordinarily, if all offenses arising from the same episode are not heard together, subsequent prosecution on any such offense not already heard may be barred. *In re Huff*, 582 A.2d 1093 (Pa. Super. Ct. 1990), citing *Commonwealth v. Campana*, 304 A.2d 432, vacated and remanded, 414 U.S. 808 (1973), addendum opinion on remand, 314 A.2d 854 (Pa. 1974).

Official Note: Rule 351 adopted April 1, 2005, effective October 1, 2005.

Rule 352. Separate Adjudicatory Hearings for Offenses or Juveniles.

The court may order separate adjudicatory hearings for offenses or juveniles, or provide other appropriate relief, if it appears that offenses or juveniles being heard together may prejudice any party.

Comment

This rule provides the procedure whereby the court may, because of prejudice to a party, order separate adjudicatory hearings for offenses or juveniles that otherwise would be properly heard together under Rule 351. A juvenile may also request separate adjudicatory hearings for offenses or juveniles on the ground that hearing them together would be improper under Rule 351.

Under Rule 346 (Omnibus Motion for Relief), any request for separate adjudicatory hearings ordinarily is to be made in an omnibus motion or it is considered waived.

Official Note: Rule 352 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 352 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 353. Motion for Return of Property.

A. *Return for lawful possession.* A person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, may move for the return of the property on the ground that he or she is entitled to its lawful possession. Such motion shall be filed in writing and served pursuant to Rule 345.

B. *Hearing.* The court hearing such motion shall receive evidence on any issue of fact necessary for its decision. If the motion is granted, the property shall be restored unless the court determines that such property is contraband, in which case the court may order the property to be forfeited.

C. *Joint motion.* A motion to suppress evidence under Rule 350 may be joined with a motion under this rule.

Comment

A motion for the return of property should not be confused with a motion for the suppression of evidence, governed by Rule 350. However, if the time and effect of a motion brought under the instant rule would be, in the view of the court hearing the motion, substantially the same as a motion for suppression of evidence, the court may dispose of the motion in accordance with Rule 350.

Nothing in this rule is intended to prohibit the court from directing a more appropriate court to hear these motions. For example, a judicial district may have a motions court or specially designed court that hears all motions, including juvenile cases.

Pursuant to Rule 100, only motions for return of property derived from juvenile delinquency cases are appropriate for the juvenile court.

Official Note: Rule 353 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 353 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART D(2). ADJUDICATORY SUMMONS AND NOTICE PROCEDURES

Rule 360. Summons and Notice.

A. *Summons.* The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the adjudicatory hearing.

B. *Notice.* The court shall give notice of the adjudicatory hearing to:

- 1) the attorney for the Commonwealth;
- 2) the juvenile's attorney; and
- 3) the juvenile probation office.

C. *Requirements.* The general summons and notice procedures of Rule 124 shall be followed.

Comment

Section 6335 of the Juvenile Act provides that the court shall direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary for the proceedings. 42 Pa.C.S. § 6335.

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. See Victim's Bill of Rights, 18 P. S. § 11.201.

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

Official Note: Rule 360 adopted April 1, 2005, effective October 1, 2005.

Rule 362. Requirements of the Summons.

The summons shall:

- 1) be in writing;
- 2) set forth the date, time, and place of the adjudicatory hearing;
- 3) instruct the juvenile about the juvenile's right to counsel, and if the juvenile is without financial resources or otherwise unable to employ counsel, the right to assigned counsel;
- 4) give a warning stating that the failure to appear for the hearing may result in arrest; and
- 5) include a copy of the juvenile petition.

Comment

Section 6335(a) of the Juvenile Act requires a copy of the petition to accompany the summons. 42 Pa.C.S. § 6335(a).

Official Note: Rule 362 adopted April 1, 2005, effective October 1, 2005.

Rule 363. Service of Summons and Notice.

A. *Method of Service.* The summons or notice shall be served:

- 1) in-person; or
- 2) by first-class mail.

B. *Time of Service.*

1) *Juvenile detained.* If the juvenile is detained, the summons or notice shall be served no less than seven days prior to the adjudicatory hearing.

2) *Juvenile not detained.* If the juvenile is not detained, the summons or notice shall be served no less than fourteen days prior to the adjudicatory hearing.

Comment

Pursuant to Rule 360, the juvenile and the juvenile's guardian should be served a summons, and the attorney for the Commonwealth, the juvenile's attorney, and the juvenile probation officer should receive notice.

Official Note: Rule 363 adopted April 1, 2005, effective October 1, 2005.

Rule 364. Failure to Appear on the Summons.

If any summoned person fails to appear for the adjudicatory hearing and the court finds that sufficient notice was given, the court may issue a bench warrant.

Official Note: Rule 364 adopted April 1, 2005, effective October 1, 2005.

PART E. CONSENT DECREE

Rule 370. Consent Decree.

A. At any time after the filing of a petition and before the entry of an adjudication order, the court may, upon agreement of the attorney for the Commonwealth and the juvenile's attorney or the juvenile, if unrepresented, suspend the proceedings, and continue the juvenile under supervision in the juvenile's home, under terms and conditions negotiated with the juvenile probation office. The order of the court continuing the juvenile under supervision shall be known as a consent decree.

B. The court shall explain on the record or in writing:

1) the terms, conditions, and duration of the consent decree pursuant to Rule 373; and

2) the consequences for violating the conditions of the consent decree, which include the petition under which the juvenile was continued under supervision may, in the discretion of the attorney for the Commonwealth following consultation with the juvenile probation officer, be reinstated, and the juvenile held accountable as if the consent decree had never been entered if:

a) prior to discharge by the juvenile probation officer or expiration of the consent decree, there is a filing of a new petition against the juvenile; or

b) the juvenile otherwise fails to fulfill express terms and conditions of the decree.

Comment

See 42 Pa.C.S. § 6340.

A consent decree is a device for placing an allegedly delinquent juvenile under supervision of the juvenile probation office prior to, and as an alternative to, adjudication, thus avoiding potential stigma attached to an adjudication of delinquency. *Commonwealth v. Wexler*, 431 A.2d 877 (Pa. 1981).

Before placing the juvenile on consent decree, the victim(s) of the offense should be consulted. See Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

Under this rule, it is expected that the attorney for the Commonwealth should consult with the juvenile probation officer before revoking the consent decree. The consent decree should only be revoked if the juvenile fails to meet the conditions of the program or new allegations have been filed against the juvenile.

If a juvenile violates the conditions of the consent decree, double jeopardy does not attach and bar subsequent prosecution. See *Commonwealth v. Szebin*, 785 A.2d 103 (Pa. Super. Ct. 2001). In *Commonwealth v. Wexler*, 431 A.2d 877 (Pa. 1981), the Supreme Court viewed a consent decree in the same fashion as Accelerated Rehabilitative Disposition. See also *In re John W.*, 446 A.2d 621 (Pa. Super. Ct. 1982).

Official Note: Rule 370 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 370 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 371. Objection to Consent Decree.

When the juvenile or the attorney for the Commonwealth objects to a consent decree, the court shall proceed to findings, adjudication, and disposition.

Comment

A consent decree may not be used unless the attorney for the Commonwealth consents and the juvenile agrees to accept the conditions required by the court. If the attorney for the Commonwealth objects to a consent decree or the juvenile refuses to accept the conditions required by the court, the court is to proceed to findings, adjudication, and disposition. *In re Bosket*, 590 A.2d 774 (Pa. Super. Ct. 1991). See also 42 Pa.C.S. § 6340(b).

See Rule 401 for the findings that are to be made in the juvenile delinquency process.

See also Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

Official Note: Rule 371 adopted April 1, 2005, effective October 1, 2005.

Rule 373. Conditions of Consent Decree.

A. *Terms and conditions.* The court may place upon the juvenile any reasonable conditions that are consistent with the protection of the public interest. The conditions of the consent decree shall provide a balanced attention to:

- 1) the protection of the community;
- 2) the juvenile's accountability for the offenses committed; and
- 3) the development of the juvenile's competencies to enable the juvenile to become a responsible and productive member of the community.

B. *Duration of consent decree.* A consent decree shall remain in force for no more than six months as agreed upon unless the juvenile is discharged sooner upon motion. Upon motion, the court may:

- 1) discharge the juvenile at an earlier time; or
- 2) extend the time period not to exceed an additional six months.

Comment

If the juvenile fails to accept the conditions required by the court pursuant to paragraph (A), the case should proceed to findings, adjudication, and disposition. See Comment to Rule 371.

Nothing in this rule is intended to prevent the juvenile probation officer from being the movant for consent decree. For rule on motions, see Rule 344.

Paragraph (B) departs from the Juvenile Act, 42 Pa.C.S. § 6340(c), in that an agreement for a consent decree of less than six months is allowed. See Rule 800.

Official Note: Rule 373 adopted April 1, 2005, effective October 1, 2005.

PART F. PRESERVATION OF TESTIMONY AND EVIDENCE

Rule 380. Preservation of Testimony After Commencement of Proceedings.

A. *By Court Order.*

1) At any time after the commencement of proceedings, upon motion of any party, and after notice and hearing, the court may order the taking and preserving of the testimony of any witness who may be unavailable for the adjudicatory hearing or for any other proceeding, or when due to exceptional circumstances, it is in the interests of justice that the witness' testimony be preserved.

2) The court shall state on the record the grounds on which the order is based.

3) The court's order shall specify the time and place for the taking of the testimony, the manner in which the testimony shall be recorded and preserved, and the procedures for custody of the recorded testimony.

4) The testimony shall be taken in the presence of the court, the attorney for the Commonwealth, the juvenile, and the juvenile's attorney, unless otherwise ordered.

5) The court shall rule on the admissibility of the preserved testimony if it is offered into evidence at the adjudicatory hearing or other judicial proceeding.

B. By agreement of the parties.

1) At any time after the commencement of proceedings, the testimony of any witness may be taken and preserved upon the express written agreement of the attorney for the Commonwealth, the juvenile, and the juvenile's attorney.

2) The agreement shall specify the time and place for taking the testimony, the manner in which the testimony shall be recorded and preserved, and the procedures for custody of the recorded testimony.

3) The testimony shall be taken in the presence of the attorney for the Commonwealth, the juvenile, and the juvenile's attorney, unless they otherwise agree.

4) The agreement shall be filed with the clerk of courts pursuant to Rule 345(A).

5) The court shall rule on the admissibility of the preserved testimony if it is offered into evidence at the adjudicatory hearing or other judicial proceeding.

Comment

This rule is intended to provide the means by which testimony may be preserved for use at a current or subsequent stage in the proceedings, which includes the taking of a deposition during the adjudicatory hearing to be used at a later stage of the adjudicatory hearing.

When testimony is to be preserved by video recording, see also Rule 381.

Commencement of proceedings includes any action after the submission of a written allegation. See Rule 200 (Commencement of Proceedings).

This rule does not address the admissibility of the preserved testimony. The court is to decide all questions of admissibility. See the Pennsylvania Rules of Evidence. Also see, e.g., Judicial Code § 5917, 42 Pa.C.S. § 5917 (1982); *Commonwealth v. Scarborough*, 421 A.2d 147 (Pa. 1980); *Commonwealth v. Stasko*, 370 A.2d 350 (Pa. 1977).

"May be unavailable," as used in paragraph (A)(1), is intended to include situations in which the court has reason to believe that the witness will be unable to be present or to testify at the adjudicatory hearing or other proceedings, such as when the witness is dying, or will be out of the jurisdiction and therefore cannot be effectively served with a subpoena, or may become incompetent to testify for any legally sufficient reason.

Under paragraph (A)(4), the court should preside over the taking of testimony. The court, however, may order that testimony be taken and preserved without the court's presence when exigent circumstances exist or the location of the witness renders the court's presence impracticable. Furthermore, nothing in this rule is intended to preclude the juvenile's attorney, the juvenile, and the court from agreeing on the record that the court need not be present. Paragraph (B)(3) permits the attorney for the Commonwealth, the juvenile, and the juvenile's attorney to determine among themselves whether the court should be

present during the taking of testimony. That determination should be made a part of the written agreement required by paragraph (B)(1).

Nothing in this rule is intended to preclude the juvenile from waiving his or her presence during the taking of testimony.

The means by which the testimony is recorded and preserved are within the discretion of the court under paragraph (A) and the parties under paragraph (B), and may include the use of electronic or photographic techniques such as videotape or digital video diskette. There are, however, additional procedural requirements for preservation of testimony by video recording mandated by Rule 381.

The party on whose motion testimony is taken should normally have custody of and be responsible for safeguarding the preserved testimony. That party should also promptly provide a copy of the preserved testimony to the other party. Additionally, this rule is not intended to conflict with the requirements of the Pennsylvania Rules of Judicial Administration. For reporting and transcripts by court-employed reporters, see the Pa.R.J.A. Nos. 5000.1—5000.13.

When testimony is taken under this rule, the proceeding should afford the parties full opportunity to examine and cross-examine the witness. Counsel should not reserve objections for time of the adjudicatory hearing.

Paragraphs A(5) and B(5) are intended to guard against pre-adjudicatory hearing disclosure of potentially prejudicial matters.

For the definition of "court," see Rule 120.

Official Note: Rule 380 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Chapter three, Part F published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 381. Preservation of Testimony by Video Recording.

A. When the testimony of a witness is taken and preserved pursuant to Rule 380 by means of video recording, the testimony shall be recorded simultaneously by a stenographer.

B. The following technical requirements shall be made part of the court order required by Rule 380(A) or the written agreement provided in Rule 380(B):

1) The video recording shall begin with a statement on camera that includes:

- a) the operator's name and business address;
- b) the name and address of the operator's employer;
- c) the date, time, and place of the video recording;
- d) the caption of the case;
- e) the name of the witness;
- f) the party on whose behalf the witness is testifying; and
- g) the nature of the judicial proceedings for which the testimony is intended.

2) The court and the persons shall identify themselves on camera.

3) The witness shall be sworn on camera.

4) If the length of the testimony requires the use of more than one video recording, the end of each video recording and the beginning of each succeeding video recording shall be announced on camera.

5) At the conclusion of the witness' testimony, a statement shall be made on camera that the testimony is concluded. A statement shall also be made concerning the custody of the video recording(s).

6) Statements concerning stipulations, exhibits, or other pertinent matters may be made at any time on camera.

7) The video recording shall be timed by a digital clock on camera that continually shows the hour, minute, and second of the testimony.

8) All objections and the reasons for them shall be made on the record. When the court presides over the video recording of testimony, the court's rulings on objections shall also be made on the record.

9) When the court does not preside over the video recording of testimony, the video recording operator shall keep a log of each objection, referenced to the time each objection is made. All rulings on objections shall be made before the video recording is shown at any judicial proceeding.

10) The original video recording shall not be altered.

Comment

This rule provides the basic technical requirements for taking and preserving testimony by video recording under Rule 380. The list of requirements is not intended to be exhaustive. Rather, it is recommended that all recording by video be carefully planned and executed, and that in addition to complying with the basic requirements, each court order or written agreement for the video recording of testimony be tailored to the nature of the case and the needs of the persons.

Generally, the camera should focus on the witness to the extent practicable.

Under paragraph (B)(9), the court may rule on objections by either reviewing pertinent sections of the video recording, aided by the video operator's log, or by reviewing the stenographic transcript required by paragraph (A).

Any editing procedure ordered by the court or agreed upon by the persons may be used as long as it comports with current technology and does not alter the original video recording. Paragraph (B)(10) is intended to insure preservation of the original video, thereby providing for those situations in which a dispute arises over editing procedures.

This rule authorizes the use of video recording devices only for the preservation of testimony under Rule 380. It is not intended to affect other rules governing recording devices.

Official Note: Rule 381 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Chapter three, Part F published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 384. DNA Testing (Reserved).

PART G. TRANSFER FOR CRIMINAL PROSECUTION

Rule 390. Notice of Request for Transfer to Criminal Proceedings.

A. *General rule.* After a petition is filed but before the first scheduled adjudicatory hearing, any notice of a request for transfer to criminal proceedings pursuant to 42 Pa.C.S. § 6355 shall be filed and served on:

- 1) the juvenile;
- 2) the juvenile's guardian;
- 3) the juvenile's attorney;
- 4) the juvenile probation office; and
- 5) the attorney for the Commonwealth.

B. *Exception.* If, after the first scheduled adjudicatory hearing but prior to the commencement of the adjudicatory hearing, there is a change in circumstances, a request for transfer to criminal proceedings may be filed and served in accordance with paragraph (A).

Comment

The Juvenile Act gives the juvenile the opportunity to petition the court for transfer to criminal proceeding as reflected in this rule. See 42 Pa.C.S. § 6355(c). The court should use caution when a juvenile petitions the court for transfer to criminal proceedings. The court should inquire if the petition has been knowingly, intelligently, and voluntarily made.

The allegations requested to be transferred are to be classified as "delinquent acts", pursuant to 42 Pa.C.S. § 6302 (definition of "delinquent acts") and are to comply with the requirements as set forth in 42 Pa.C.S. § 6355 (Transfer to Criminal Proceedings). Any offense excluded from the definition of "delinquent acts," paragraph (2) of the definition of "delinquent act" in 42 Pa.C.S. § 6302, should originate in criminal proceedings and may be transferred to delinquency proceedings, if so determined by the court. See 42 Pa.C.S. § 6322 (Transfer from Criminal Proceedings). For juveniles charged in criminal proceedings, the Rules of Criminal Procedure are applicable. See also Rule 100 on Scope of Rules. Also, any juvenile previously found guilty in criminal proceedings, for any charge other than a summary offense, should be charged in criminal proceedings for all subsequent offenses. See paragraph (2)(v) of the definition of "delinquent act" in 42 Pa.C.S. § 6302 and 42 Pa.C.S. § 6355(d).

The court should conduct a transfer hearing no sooner than three days after the notice of request for transfer to criminal proceedings is served unless the time requirement is waived. See Rule 394(A).

Under paragraph (A), it is anticipated that most notices of requests for transfer will be filed prior to the first scheduled adjudicatory hearing. However, under paragraph (B), it is noted that there may be changed circumstances, in which a notice for request of transfer may be filed at a later date but before the commencement of the adjudicatory hearing.

The attorney for the Commonwealth should notify the victim of any request for transfer. See Victim's Bill of Rights, 18 P. S. § 11.213.

Official Note: Rule 390 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 390 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 391. Time Restrictions for Detention of Juveniles Scheduled for Transfer Hearing.

A. *Generally.* The detention requirements of Rules 240, 241, 242, and 243 shall be followed for juveniles scheduled for a transfer hearing except for the time restrictions provided in paragraph (B) of this rule.

B. *Time Restrictions.* If the transfer hearing is not held within ten days of the filing of the notice of request for transfer to criminal proceedings, the juvenile shall be released except as provided in paragraphs (B)(1) and (B)(2).

1) A juvenile may be detained for an additional single period not to exceed ten days when the court determines:

a) that evidence material to the case is unavailable, including a psychological or psychiatric evaluation;

b) that due diligence to obtain such evidence or evaluation has been exercised;

c) that there are reasonable grounds to believe that such evidence or evaluation will be available at a later date; and

d) that the detention of the juvenile would be warranted.

2) A juvenile may be detained for successive ten-day intervals if the result of delay is caused by the juvenile. The court shall state on the record if failure to hold the hearing resulted from delay caused by the juvenile. Delay caused by the juvenile shall include, but not be limited to:

a) delay caused by the unavailability of the juvenile or the juvenile's attorney;

b) delay caused by any continuance granted at the request of the juvenile or the juvenile's attorney; or

c) delay caused by the unavailability of a witness resulting from conduct by or on behalf of the juvenile.

Comment

The filing of a request for transfer to criminal proceedings resets the ten-day clock for a hearing for the juvenile in detention. The transfer hearing is to be held within ten days of the filing of a request for transfer to criminal proceedings, not ten days from the date of detention for the juvenile. This time requirement is different than the time requirement for the adjudicatory hearing under Rule 240(D). See Rule 800.

Under Paragraph (B)(1), the case may be extended for only one single period of ten days. However, under paragraph (B)(2) when the juvenile causes delay, the case may be extended for successive ten-day intervals.

Official Note: Rule 391 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 391 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 394. Transfer Hearing.

A. *Scheduling.* The court shall conduct a transfer hearing no earlier than three days after the notice of request for transfer to criminal proceedings is served unless this time requirement is waived.

B. *Findings.* At the hearing, if the court finds:

1) the juvenile is fourteen years old or older at the time of the alleged delinquent act;

2) notice has been given pursuant to Rule 390;

3) there is a prima facie showing of evidence that the juvenile committed a felony delinquent act;

4) there are reasonable grounds to believe that transfer of the case for criminal prosecution will serve the public interest by considering all the relevant factors; and

5) there are reasonable grounds to believe that the juvenile is not committable to an institution for the mentally retarded or mentally ill, then the court shall transfer the case to the division or a judge of the court assigned to conduct criminal proceedings for prosecution. Otherwise, the court shall schedule an adjudicatory hearing.

Comment

The transfer hearing ordinarily has two phases. The first phase of the transfer hearing is the "prima facie phase." The court should determine if there is a prima facie showing of evidence that the juvenile committed a delinquent act and if an adult committed the offense, it would be considered a felony. If a prima facie showing of evidence is found, the court proceeds to the second phase, known as the "public interest phase." During the "public interest phase," the court should determine if the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile and what is in the public's interest.

In determining public interest, the court should balance the following factors: 1) the impact of the offense on the victim or victims; 2) the impact of the offense on the community; 3) the threat posed by the juvenile to the safety of the public or any individual; 4) the nature and circumstances of the offense allegedly committed by the juvenile; 5) the degree of the juvenile's culpability; 6) the adequacy and duration of dispositional alternatives available under the Juvenile Act and in the adult criminal justice system; and 7) whether the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile by considering the following factors: a) age; b) mental capacity; c) maturity; d) the degree of criminal sophistication exhibited by the juvenile; e) previous records, if any; f) the nature and extent of any prior delinquent history, including the success or failure of any previous attempt by the juvenile court to rehabilitate the juvenile; g) whether the juvenile can be rehabilitated prior to the expiration of the juvenile court jurisdiction; h) probation or institutional reports, if any; and 8) any other relevant factors.

The burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court and that the juvenile is not amenable to treatment, supervision, or rehabilitation in the juvenile system rests with the Commonwealth unless: 1) a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used and the juvenile was fourteen years of age at the time of the offense; or the juvenile was fifteen years of age or older at the time of the offense and was previously adjudicated delinquent of a crime that would be considered a felony if committed by an adult; and 2) there is a prima facie case that the juvenile committed a delinquent act that, if committed by an adult, would be classified as rape, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii)

or (iii)(relating to robbery), robbery of motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, an attempt, conspiracy, or solicitation to commit any of these crimes or an attempt to commit murder as specified in paragraph (2)(ii) of the definition of "delinquent act" in 42 Pa.C.S. § 6302. If the preceding criteria are met, then the burden of proof rests with the juvenile. See 42 Pa.C.S. § 6355.

For detention time requirements for juveniles scheduled for a transfer hearing, see Rule 391.

Official Note: Rule 394 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 394 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 395. Procedure to Initiate Criminal Information.

After the court orders the case transferred pursuant to Rule 394, these Rules no longer apply and the case shall be governed by the Pennsylvania Rules of Criminal Procedure. The attorney for the Commonwealth may file an information in accordance with Pa.R.Crim.P. 565.

Comment

The transfer hearing serves as the preliminary hearing, therefore, the attorney for the Commonwealth may file the criminal information after the issuance of the transfer order. See Pa.R.Crim.P. 565 for presentation of an information without the preliminary hearing.

For any procedural questions concerning a juvenile whom has been transferred to criminal proceedings, see the Pennsylvania Rules of Criminal Procedure.

Official Note: Rule 395 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 395 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 396. Bail.

If transfer to criminal proceedings is ordered at the conclusion of the transfer hearing, the juvenile court judge shall determine bail for the juvenile. The bail rules in the Pennsylvania Rules of Criminal Procedure shall apply.

Comment

See Pa.R.Crim.P. 520 through 536.

If the juvenile cannot post bail, the judge may issue a commitment order so the juvenile may be detained in a jail or the judge may continue the juvenile's detention as a juvenile pending trial. See 42 Pa.C.S. § 6327(d).

Official Note: Rule 396 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 396 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 4. ADJUDICATORY HEARING

Rule

- 401. Introduction to Chapter Four.
- 404. Prompt Adjudicatory Hearing.
- 406. Adjudicatory Hearing.

- 407. Admissions.
- 408. Ruling on Offenses.
- 409. Adjudication of Delinquency.

Rule 401. Introduction to Chapter Four.

Under these rules and the Juvenile Act, 42 Pa.C.S. § 6301 et seq., a determination for each case requires separate and distinct findings. First, the court is to hold an adjudicatory hearing, governed by Rule 406 or receive an admission from the juvenile of the allegations, governed by Rule 407. Second, after hearing the evidence or receiving an admission, the court is to rule on the offenses pursuant to Rule 408, stating with particularity the grading and counts of each offense. Third, after ruling on the offenses or entering its findings, the court is to determine if the juvenile is in need of treatment, supervision, or rehabilitation pursuant to Rule 409. After the court has made these findings and if the court finds that the juvenile is in need of treatment, supervision, or rehabilitation, the court is to hold a dispositional hearing as provided for in Rule 512 and is to enter a dispositional order pursuant to Rule 515. Nothing in these rules precludes the court from making these determinations at the same proceeding as long as the requirements of Rules 406 through 409 are followed.

Official Note: Rule 401 adopted April 1, 2005, effective October 1, 2005.

Rule 404. Prompt Adjudicatory Hearing.

A. *Detained juvenile.* If the juvenile is detained, an adjudicatory hearing shall be held within ten days of the filing of the petition. If the adjudicatory hearing is not held within ten days, the juvenile shall be released unless the exceptions of Rule 240(D) apply.

B. *Non-detained juvenile.* If the juvenile is not detained, the adjudicatory hearing shall be held within a reasonable time.

Official Note: Rule 404 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 404 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 406. Adjudicatory Hearing.

A. *Manner of hearing.* The court shall conduct the adjudicatory hearing without a jury, in an informal but orderly manner.

B. *Recording.* The adjudicatory hearing shall be recorded. The recording shall be transcribed:

- 1) at the request of a party;
- 2) pursuant to a court order; or
- 3) when there is an appeal.

Comment

Under paragraph (A), the juvenile does not have the right to trial by jury. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

Official Note: Rule 406 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 406 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 407. Admissions.

A. *Admissions.* At any time after a petition is filed, the juvenile may tender an admission to the facts, adjudication of delinquency, and/or disposition.

1) *Requirements.* Before the court can accept an admission, the court shall determine that the admission is made voluntarily and knowingly. The court, at a minimum, shall ask questions to elicit the following information:

a) Does the juvenile understand the nature of the allegations to which he or she is admitting?

b) Is there a factual basis for the admission?

c) Does the juvenile understand that he or she has the right to a hearing before the judge?

d) Does the juvenile understand that he or she is presumed innocent until found delinquent?

e) Is the juvenile aware of the dispositions that could be imposed?

f) Is the juvenile aware that the judge is not bound by the terms of any agreement tendered unless the judge accepts such agreement?

g) Has the juvenile spoken with his or her attorney or waived the right to counsel in accordance with Rule 152?

h) Does the juvenile have any questions about admitting to the facts or delinquency based on the allegations?

i) Has the juvenile had the opportunity to speak with a guardian about his or her decision?

2) *Agreements.* If the parties agree upon the terms of an admission, the tender shall be presented to the court.

3) *Court action.* If the court accepts the tender, the court shall enter an order incorporating any agreement. If the court does not accept the tender, the case shall proceed as if no tender had been made.

4) *Limitations on withdrawals.* An admission cannot be withdrawn after the court enters the dispositional order.

B. *Incriminating statements.* An incriminating statement made by a juvenile in the discussions or conferences incident to an admission that is not ultimately accepted by the court or otherwise permitted to be withdrawn by the court shall not be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act, 42 Pa.C.S. § 6301 et seq.

Comment

Under paragraph (A)(1), the court is to determine if the admission is voluntarily and knowingly made. Nothing in this rule is intended to prevent the court from using a written form to ascertain the necessary information, provided the court asks questions of the juvenile, on the record, to authenticate the juvenile's completion and understanding of the form and the juvenile's agreement with the statements made.

Under paragraph (A)(3), if the disposition agreed upon by the parties is unavailable or the court does not agree with the terms of the tender, the case is to proceed as if no tender had been made.

The court is not to accept a plea of *nolo contendere*. See *In re B.P.Y.*, 712 A.2d 769 (Pa. Super. Ct. 1998).

Official Note: Rule 407 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 407 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 408. Ruling on Offenses.

A. Within seven days of hearing the evidence on the petition or accepting an admission under Rule 407, the court shall enter a finding by specifying which, if any, offenses, including grading and counts, alleged in the petition were committed by the juvenile.

B. If the court finds the juvenile did not commit the alleged delinquent acts, the court shall dismiss the allegations and release the juvenile, if detained, unless there are other grounds for the juvenile's detention.

C. If the court finds that the juvenile committed any delinquent act, the court shall proceed as provided in Rule 409.

Comment

Under paragraph (A), for any offense the court finds that the juvenile committed, the court is to specify the grading and count(s). See 42 Pa.C.S. § 6341(b). It is noted that some offenses have no specific grading, i.e., ungraded felony or misdemeanor of the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-101 et seq., or the ungraded delinquent act of failure to comply with a sentence for a summary offense, 42 Pa.C.S. § 6302 (definition of "delinquent act").

Under paragraph (B), if all the allegations are dismissed, the court is to order the destruction of fingerprints and photographs. See 42 Pa.C.S. § 6341(a).

Official Note: Rule 408 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 408 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 409. Adjudication of Delinquency.

A. *Adjudicating the juvenile delinquent.* Once the court has ruled on the offenses as provided in Rule 408, the court shall conduct a hearing to determine if the juvenile is in need of treatment, supervision, or rehabilitation.

1) If the court determines that the juvenile is not in need of treatment, supervision, or rehabilitation, jurisdiction shall be terminated and the juvenile shall be released, if detained, unless there are other reasons for the juvenile's detention.

2) If the court determines that the juvenile is in need of treatment, supervision, or rehabilitation, the court shall enter an order adjudicating the juvenile delinquent and proceed in determining a proper disposition under Rule 512.

B. Timing.

1) If the juvenile is in detention, the court shall make its finding within twenty days of the ruling on the offenses pursuant to Rule 408.

2) If the juvenile is not in detention, the court shall make its finding within sixty days of the ruling on the offenses pursuant to Rule 408.

C. *Extending Time by Agreement.* The time restrictions under paragraphs (B)(1) and (B)(2) may be extended if there is an agreement by both parties.

Comment

Under paragraph (A), absent evidence to the contrary, evidence of the commission of acts that constitute a felony is sufficient to sustain a finding that the juvenile is in need of treatment, supervision, or rehabilitation. See 42 Pa.C.S. § 6341(b).

This rule addresses adjudicating the juvenile delinquent or releasing the juvenile from the court's jurisdiction. This determination is different from finding the juvenile committed a delinquent act under Rule 408. For dispositional hearing procedures, see Chapter Five.

Official Note: Rule 409 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 409 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 5. DISPOSITIONAL HEARING**PART A. SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING**

Rule

500. Summons and Notice of the Dispositional Hearing.

PART B. DISPOSITIONAL HEARING AND AIDS

510. Prompt Dispositional Hearing.

512. Dispositional Hearing.

513. Aids in Disposition.

515. Dispositional Order.

516. Service of the Dispositional Order.

PART C. INTER-STATE TRANSFER OF DISPOSITION

520. Transfer of Disposition and Supervision of Juvenile to Another State (Reserved).

521. Disposition and Supervision of a Juvenile Received from Another State (Reserved).

PART A. SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING**Rule 500. Summons and Notice of the Dispositional Hearing.**

A. *Summons.* The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the dispositional hearing.

B. *Notice.* The court shall give notice of the dispositional hearing to:

- 1) the attorney for the Commonwealth;
- 2) the juvenile's attorney; and
- 3) the juvenile probation office.

C. *Requirements.* The general summons and notice procedures of Rule 124 shall be followed.

Comment

Section 6335(a) of the Juvenile Act provides that the court shall direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary for the proceedings. 42 Pa.C.S. § 6335(a).

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. See Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

Official Note: Rule 500 adopted April 1, 2005, effective October 1, 2005.

Part B. DISPOSITIONAL HEARING AND AIDS**Rule 510. Prompt Dispositional Hearing.**

A. *General rule.* If the juvenile is detained, the dispositional hearing shall be held no later than twenty days after the ruling on the offenses under Rule 408.

B. *Continuances.* The dispositional hearing may be continued, if necessary. If the juvenile is detained, each continuance shall not exceed twenty days.

Comment

Under paragraph (B), if there is a continuance, the court should review the juvenile's case every twenty days until there is a final dispositional order.

See 42 Pa.C.S. § 6341(b).

Official Note: Rule 510 adopted April 1, 2005, effective October 1, 2005.

Rule 512. Dispositional Hearing.

A. *Manner of hearing.* The court shall conduct the dispositional hearing in an informal but orderly manner.

1) *Evidence.* The court shall receive any oral or written evidence which is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing.

2) *Opportunity to be heard.* Before deciding disposition, the court shall give the juvenile and the victim an opportunity to make a statement.

B. *Recording.* The dispositional hearing shall be recorded. The recording shall be transcribed:

- 1) at the request of a party;
- 2) pursuant to a court order; or
- 3) when there is an appeal.

Comment

Under paragraph (A)(2), for victim's right to be heard, see Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a juvenile should preside over the dispositional hearing for the same juvenile.

Official Note: Rule 512 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 512 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 513. Aids in Disposition.

A. *Social Study.* The court may order the preparation of a social study in any case to aid in the decision for disposition.

B. *Examinations.* The court may order the juvenile to undergo psychological, psychiatric, drug and alcohol, or any other examination, as it deems appropriate to aid in the decision for disposition.

C. *Victim-Impact Statement.* The victim may submit a victim-impact statement to the court. If the victim has submitted a victim-impact statement, the court shall accept and consider the victim-impact statement in determining disposition.

Comment

Section 6341(e) of the Juvenile Act requires the court to receive reports and other evidence bearing on the disposi-

tion or need of treatment, supervision, or rehabilitation. *In re McDonough*, 430 A.2d 308 (Pa. Super. Ct. 1981).

Paragraph (C) addresses a statement submitted by the victim to the court. For the victim's opportunity to be heard, see Rule 512(A)(2). See also Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

Official Note: Rule 513 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 513 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 515. Dispositional Order.

A. *Generally.* When the court enters a disposition, the court shall issue a written order, which provides balanced attention to the protection of the community, accountability for the offenses committed, and development of the juvenile's competencies to enable the juvenile to become a responsible and productive member of the community. The order shall include:

- 1) the terms and conditions of the disposition;
- 2) the name of any agency or institution that is to provide care, treatment, supervision, or rehabilitation of the juvenile;
- 3) the date of the order; and
- 4) the signature and printed name of the judge entering the order.

B. *Restitution.* If restitution is ordered in a case, the dispositional order shall include:

- 1) a specific amount of restitution to be paid by the juvenile;
- 2) to whom the restitution is to be paid; and
- 3) a payment schedule, if so determined by the court.

C. *Guardian participation.* The court shall include any obligation in its dispositional order imposed upon the guardian.

Comment

See 23 Pa.C.S. § 5503 and 42 Pa.C.S. § 6310.

Dispositional orders should comport in substantial form and content to the Juvenile Court Judges' Commission model orders to receive funding under the federal Adoption and Safe Families Act (ASFA) of 1997 (P. L. 105-89). The model forms are also in compliance with Title IV-B and Title IV-E of the Social Security Act. For model orders, see <http://www.jcjc.state.pa.us> or <http://www.dpw.state.pa.us> or request a copy on diskette directly from the Juvenile Court Judges' Commission, Room 401, Finance Building, Harrisburg, PA 17120.

Official Note: Rule 515 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 515 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 516. Service of the Dispositional Order.

Upon entry of the disposition, the court shall issue a dispositional order and the order shall be served promptly upon:

- 1) the juvenile;

- 2) the juvenile's guardian;
- 3) the juvenile's attorney;
- 4) the attorney for the Commonwealth;
- 5) the juvenile probation officer;
- 6) any agency directed to provide treatment; and
- 7) any other person as ordered by the court.

Official Note: Rule 516 adopted April 1, 2005, effective October 1, 2005.

PART C. INTER-STATE TRANSFER OF DISPOSITION

Rule 520. Transfer of Disposition and Supervision of Juvenile to Another State (Reserved).

Rule 521. Disposition and Supervision of a Juvenile Received From Another State (Reserved).

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

PART A. SUMMONS AND NOTICE

Rule

600. Summons and Notice of the Commitment Review, Dispositional Review, and Probation Revocation Hearing.

PART B. MODIFICATIONS, REVIEWS, AND APPEALS

605. Detaining Juvenile for Modification of the Dispositional Order or Violation of Probation.
 610. Dispositional and Commitment Review.
 612. Modification or Revocation of Probation.
 613. Termination of Court Supervision.
 616. Post-Dispositional Procedures; Appeal (Reserved).
 617. Release of Juvenile Pending Appeal (Reserved).

PART A. SUMMONS AND NOTICE

Rule 600. Summons and Notice of the Commitment Review, Dispositional Review, and Probation Revocation Hearing.

A. *Summons.* The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the commitment review, dispositional review, or probation revocation hearing.

B. *Notice.* The court shall give notice of the hearing to:

- 1) the attorney for the Commonwealth;
- 2) the juvenile's attorney;
- 3) the juvenile probation office; and
- 4) the placement facility staff, if the juvenile is in placement.

C. *Requirements.* The general summons and notice procedures of Rule 124 shall be followed.

Comment

Section 6335(a) of the Juvenile Act provides that the court shall direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary for the proceedings. 42 Pa.C.S. § 6335(a).

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. See Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

Official Note: Rule 600 adopted April 1, 2005, effective October 1, 2005.

PART B. MODIFICATIONS, REVIEWS, AND APPEALS

Rule 605. Detaining Juvenile for Modification of the Dispositional Order or Violation of Probation.

A. A juvenile may be detained for a modification of a dispositional order or a violation of probation by:

- 1) the filing of a motion for modification of the dispositional order;
- 2) the anticipated filing of a motion for modification of the dispositional order within twenty-four hours of the juvenile's detention; or
- 3) the filing of a motion alleging probation violations.

B. The court shall adhere to the detention, notice, time, and manner of hearing provisions of Rules 240, 241 and 242.

Official Note: Rule 605 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 605 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 610. Dispositional and Commitment Review.

A. *Dispositional Review Hearing.*

- 1) A court may schedule a review hearing at any time.
- 2) In all cases when the juvenile is removed from the home, the court shall hold dispositional review hearings at least every six months.

B. *Change in dispositional order.* Whenever there is a request for a change in the dispositional order, other than a motion to revoke probation as provided in Rule 612, the court shall give the parties notice of the request and an opportunity to be heard.

- 1) The juvenile may be detained pending a court hearing.
- 2) A detention hearing shall be held within seventy-two hours of the juvenile's detention, if detained.
- 3) The juvenile shall be given a statement of reasons for the discharge from a placement facility or request for change in the dispositional order.
- 4) A review hearing shall be held within twenty days of the discharge from the placement facility or request for change in the dispositional order.

C. *Advanced Communication Technology.* If the parties agree, commitment and dispositional review hearings may be held by teleconferencing, two-way simultaneous audio-visual communication, or another similar method when a juvenile is committed to a placement facility. The juvenile shall be permitted to communicate fully and confidentially with the juvenile's attorney immediately prior to and during the proceeding.

Comment

Under paragraph (A), the court may hold a review hearing at any time; however, if the juvenile is removed from the home, the court is to conduct a hearing at least every six months.

Nothing in this rule is intended to prohibit the emergency transfer of a juvenile from a placement facility to a detention facility pending reconsideration of the dispositional order and this rule is not intended to preclude a motion for modification of a dispositional order after the juvenile has been detained.

Some placement facilities are hours away from the dispositional court. Paragraph (C) allows a hearing, when a juvenile is in a placement facility, to be conducted via teleconferencing, two-way simultaneous audio-visual communication, or similar method. The juvenile is to be afforded all the same rights and privileges as if the hearing was held with all present in the courtroom.

Official Note: Rule 610 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 610 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 612. Modification or Revocation of Probation.

A. *Filing.* A motion to modify or revoke probation shall be filed in accordance with Rule 345.

B. *Time of Hearing on the Motion.*

- 1) If the juvenile is detained, the hearing on the motion shall be held within ten days of the detention hearing.
- 2) If the juvenile is not detained, the hearing on the motion shall be held promptly.

C. *Modification.* If the court modifies the dispositional order, the court shall state the grounds for the modification and shall issue a new dispositional order in accordance with Rule 515.

Comment

A juvenile should be afforded due process before probation can be revoked. *Cf. Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972). A juvenile's probation cannot be revoked simply on the grounds of hearsay evidence. *In re Davis*, 586 A.2d 914 (Pa. 1991).

For detention procedures, see Rules 240 through 243.

For dispositional orders, see Rule 515.

Official Note: Rule 612 adopted April 1, 2005, effective October 1, 2005.

Rule 613. Termination of Court Supervision.

A. *Notice.* When the juvenile has completed the terms of the dispositional order, the juvenile probation officer shall move for the termination of the court's supervision by filing a motion. The motion shall set forth:

- 1) The juvenile has completed the terms of the court's dispositional order;
- 2) Restitution, fines, and costs have been paid in full; and
- 3) The juvenile has not committed any new offenses in which a criminal proceeding or proceeding governed by the Juvenile Act, 42 Pa.C.S. § 6301 et seq., may be commenced.

B. *Objection.* Any party may object to the motion under paragraph (A) and request a hearing. Such objection shall be made within thirty days of receipt of the motion; otherwise, objections are deemed waived.

C. *Hearing.* If objections have been made under paragraph (B), the court shall hold a hearing and give each party an opportunity to be heard before the court enters its final order.

D. *Termination.* When the requirements of paragraphs (A) through (C) have been met and the court is satisfied

that the juvenile has carried out the terms of the dispositional order, the court may discharge the juvenile from its supervision.

Comment

For procedures on motions, see Rule 344 and 345. For procedures on the dispositional order, see Rule 515. See also, 42 Pa.C.S. § 6352.

Under paragraph (A)(2), see 42 Pa.C.S. § 9728 for collection of outstanding restitution.

Official Note: Rule 613 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 613 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 616. Post-Dispositional Procedures; Appeal (Reserved).

Rule 617. Release of Juvenile Pending Appeal (Reserved).

CHAPTER 8. SUSPENSIONS

Rule
800. Suspensions of Acts of Assembly.

Rule 800. Suspensions of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly that apply to delinquency proceedings only:

1) The Act of November 21, 1990, P. L. 588, No. 138, § 1, 42 Pa.C.S. § 8934, which authorizes the sealing or search warrant affidavits, and which is implemented by Pa.R.Crim.P. 211, through Pa.R.J.C.P. 105, is suspended only insofar as the Act is inconsistent with Pa.R.Crim.P. Rules 205, 206, 211.

2) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the juvenile may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rule 124, which requires a summoned person to fail to appear and the court to find that sufficient notice was given.

3) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsistent with Rule 127(A), which requires all proceedings to be recorded, except for detention hearings.

4) The Public Defender Act, Act of December 2, 1968, P. L. 1144, No. 358, § 1 et seq. as amended through Act of December 10, 1974, P. L. 830, No. 277, § 1, 16 P. S. 9960.1 et seq., which requires the Public Defender to represent all juveniles who for lack of sufficient funds are unable to employ counsel is suspended only insofar as the Act is inconsistent with Rules 150 and 151, which requires separate counsel if there is a conflict of interest.

5) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the juvenile, is suspended only insofar as the Act is inconsistent with Rule 152, which does not allow a guardian to waive the juvenile's right to counsel.

6) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may

direct hearings in any case or class or cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 187, which allows masters to hear only specific classes of cases.

7) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6321, which provides for commencement of a proceeding by the filing of a petition, is suspended only insofar as the Act is inconsistent with Rule 200, which provides the submission of a written allegation shall commence a proceeding.

8) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6303(b), which provides that a district judge or judge of the minor judiciary may not detain a juvenile, is suspended only insofar as the Act is inconsistent with Rule 210, which allows Magisterial District Judges to detain in limited circumstances.

9) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 231, 233, and 330, which provide for a person other than a law enforcement officer to submit a private written allegation to the juvenile probation office or an attorney for the Commonwealth, if elected for approval; and that only a juvenile probation officer or attorney for the Commonwealth may file a petition.

10) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6304(a)(2), which provides that probation officers may receive and examine complaints for the purposes of commencing proceedings, is suspended only insofar as the Act is inconsistent with Rules 231 and 330, which provide that the District Attorney may file a certification that requires an attorney for the Commonwealth to initially receive and approve written allegations and petitions.

11) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty four hours or the next business day of the admission of the juvenile to detention or shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the detention hearing if the juvenile is detained under Rule 242.

12) Section 5720 of the Wiretapping and Electronic Surveillance Control Act, Act of October 4, 1978, P. L. 831, No. 164, 18 Pa.C.S. § 5720, is suspended as inconsistent with Rule 340 only insofar as the section may delay disclosure to a juvenile seeking discovery under Rule 340(B)(6); and Section 5721(b) of the Act, 18 Pa.C.S. § 5721(b), is suspended only insofar as the time frame for making a motion to suppress is concerned, as inconsistent with Rules 347 and 350.

13) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides for a hearing within ten days of the juvenile's detention unless the exceptions of (a)(1) & (2) or (f) are met, is suspended only insofar as the Act is inconsistent with Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.

Comment

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. See also Rule 102.

Official Note: Rule 800 adopted April 1, 2005, effective October 1, 2005.

[Pa.B. Doc. No. 05-695. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CHS. 200, 300 AND 500]

Proposed Amendments to Rules 209, 301, 303— 305, 307, 313—315, 318—319, 501—504, and 506—508 of the Rules of Conduct, Office Stan- dards and Civil Procedure for Magisterial District Judges

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 209, 301, 303—305, 307, 313—315, 318—319, 501—504, and 506—508 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges¹ to, among other things, require that the defendant in a civil action file a simplified answer to the plaintiff's complaint before a hearing date is set. The Committee has not yet submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the Committee's Official Notes to the rules. The Supreme Court does not adopt the Committee's Official Notes or the contents of the explanatory reports.

The text of the proposed changes precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit written suggestions, comments, or objections concerning this proposal to the Committee through counsel,

Michael F. Krimmel, Counsel
Supreme Court of Pennsylvania
Minor Court Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

Fax 717-795-2175

or e-mail to: minorrules@pacourts.us

no later than Monday, July 18, 2005.

By the Minor Court Rules Committee

THOMAS E. MARTIN, Jr.,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 200. RULES OF CONSTRUCTION; GENERAL PROVISIONS

Rule 209.² Continuances.

A. Continuances may be granted for cause or by agreement.

¹ The title "district justice" was replaced in these rules by "magisterial district judge" effective January 29, 2005, in accordance with Act 207 of 2004 and Supreme Court of Pennsylvania Order No. 269, Judicial Administration Docket No. 1 (January 6, 2005).

² As amended December 16, 2004, effective July 1, 2005.

B. Continuances shall be to a specific time and date. The magisterial district judge shall note continuances on the docket and shall promptly give or mail to the parties written notice of continuances.

C. Except **as otherwise provided in these rules and for good cause shown**,

(1) not more than one continuance shall be granted to each party, and

(2) the aggregate of all continuances shall not extend the date of the hearing:

(a) beyond [90] 30 days from the **hearing date [of filing the plaintiff's complaint] scheduled in accordance with Rule 319** in proceedings commenced pursuant to Rule 303, or

(b) beyond 30 days from the date of filing the plaintiff's complaint in proceedings commenced pursuant to Rule 502.

D. In all proceedings governed by these rules the following shall constitute cause for granting a continuance:

(1) the scheduling of a party's attorney of record to appear at any proceeding under the Pennsylvania Rules of Disciplinary Enforcement, whether

(a) as counsel for a respondent-attorney before a hearing committee, special master, the Disciplinary Board, or the Supreme Court;

(b) as a special master or member of a hearing committee, or

(c) as a member of the Disciplinary Board.

(2) the scheduling of a party's attorney of record to appear at any proceeding involving the discipline of a justice, judge, or magisterial district judge under Section 18 of Article V of the Constitution of Pennsylvania, whether

(a) as counsel for a justice, judge, or magisterial district judge before the special tribunal provided for in 42 Pa.C.S. § 727, the Court of Judicial Discipline, the Judicial Conduct Board, or any hearing committee or other arm of the Judicial Conduct Board; or

(b) as a member of the Court of Judicial Discipline, the Judicial Conduct Board, or any hearing committee or other arm of the Judicial Conduct Board.

Official Note: This rule was amended in 2005 to consolidate the provisions of former Rules 320 (relating to continuances in civil actions) and 511 (relating to continuances in possessory actions) into one general rule governing continuances. The limitations set forth in subdivision C are intended to ensure that these cases proceed expeditiously. **The operative dates for calculating the limitations on continuances differ in civil actions (commenced pursuant to Rule 303) and landlord and tenant actions (commenced pursuant to Rule 502). In civil actions, the 30 day limitation runs from the hearing date scheduled in accordance with Rule 319; in landlord and tenant actions, the 30 day limitation runs from the date of filing the plaintiff's complaint.** The grounds set forth in subdivision D, of course, are not intended to be the only grounds on which a continuance will be granted.

CHAPTER 300. CIVIL ACTION

Rule 301. Definition. Scope.

A. As used in this chapter, "action" means a civil action brought before a magisterial district judge.

B. Civil action includes any action within the jurisdiction of a magisterial district judge except an action by a landlord against a tenant for the recovery of the possession of real property.

C. [As used in this chapter, "complaint" or Civil Action shall include, where applicable, the attached and completed Civil Action Hearing Notice form.] Rescinded.

Official Note: Civil action includes actions formerly denominated "assumpsit" or "trespass" and civil claims for fines and penalties. See Section 1515(a)(3) of the Judicial Code, 42 Pa.C.S. § 1515(a)(3), prescribing the jurisdiction of magisterial district judges. The rules in this chapter will apply to all civil actions before magisterial district judges except an action by a landlord against a tenant for the recovery of possession of real property, which are governed by Chapter 500 of these rules.

[Statutes authorizing a civil fine or penalty include the following: (1) Section 10.1 of the Act of April 27, 1927, P. L. 465, No. 299, added by section 2 of the Act of December 21, 1988, P. L. 1315, No. 168, 35 P. S. § 1230.1 relating to clean indoor air; and Sections 617.1 and 817-A of the Act of July 31, 1968, P. L. 805, No. 247, as added by sections 62 and 77 of the Act of December 21, 1988, P. L. 1329, No. 170, 53 P. S. §§ 10617.1, 10817-A relating to violation of zoning and joint municipal zoning ordinances.]

Rule 303. Commencement of [the] Action.

An action [shall] may be commenced by [the] filing [of] a written complaint with the magisterial district court.

Official Note: The complaint must be in writing on a form prescribed by the Court Administrator of Pennsylvania. See Rule 212. The use of a standardized complaint form is intended to promote uniformity, simplification of procedure, and better access by the public to the judicial services of magisterial district courts.

This rule does not permit the commencement of an action by a writ of summons.

Rule 304. [Form] Contents of Complaint; Verification.

A. [The complaint shall be made in writing on a form which shall be prescribed by the State Court Administrator.] The complaint must set forth the following:

- (1) The names and addresses of the parties.
- (2) The amount claimed.
- (3) A brief and concise statement of the facts upon which the claim is based including the following:
 - (a) The date, time and place of the occurrence and a brief description of the damages sustained when the claim alleges tortious conduct.
 - (b) The date of the transaction and a brief description of the subject matter when the claim is contractual.
 - (c) The date and a description of the occurrence, and the citation to the statute authorizing the claim, when the claim is for a civil fine or penalty.

(4) Such other information as may be required on the complaint form.

B. The complaint [shall] must be signed by the plaintiff or plaintiff's agent and verified as follows:

The facts set forth in this complaint are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signature _____

[C. The complaint shall set forth:

- (1) The names and addresses of the parties.
- (2) The amount claimed.
- (3) A brief and concise statement of the facts upon which the claim is based including:
 - (a) the date, time and place of the occurrence and a brief description of the damages sustained when the claim alleges tortious conduct; or

Official Note: A civil action in which the claim alleges tortious conduct was formerly called an action in trespass.

(b) the date of the transaction and a brief description of the subject matter when the claim is contractual;

Official Note: A civil action in which the claim is contractual was formerly called an action in assumpsit.

(c) the date and description of the occurrence when the claim is for a civil fine or penalty and the citation to the statute authoring the claim.

(4) Such other information as shall be required on the complaint form.]

Official Note: [Rule 304 is designed to promote uniformity, simplification of procedure and better access by the public to the judicial services of magisterial district judges. The use of a form will help to accomplish this purpose and will also provide easier statistical and other administrative control by the Supreme Court.] A civil action in which the claim alleges tortious conduct was formerly called an action in trespass. A civil action in which the claim is contractual was formerly called an action in assumpsit.

Rule 305. [Setting the Date for Hearing; Delivery for Service] Notice to Defendant; Form.

[The magisterial district judge, at the time the complaint is filed, shall:

- (1) Set a hearing date which shall be not less than 12 or more than 60 days from the date the complaint is filed.
- (2) Insert the hearing time and date and the address of the magisterial district court in the complaint form.
- (3) Deliver a copy of the complaint form with hearing time and date thereon to the plaintiff.
- (4) Deliver a copy of the complaint form with hearing time and date thereon for service on the

defendant as hereinafter set forth, which copy shall contain the following notice:

(a) If you intend to enter a defense to this complaint you should so notify this office immediately.

(b) If you have a claim against the plaintiff which is within magisterial district court jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five days before the date set for the hearing.

(c) **YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT.]**

A. Every complaint filed by a plaintiff must include a notice to defendant in substantially the form set forth in subdivision B. No other notice to plead to a complaint is required.

B.

Notice To Defendant

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE COMPLAINT, YOU MUST TAKE ACTION WITHIN TEN DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY FILING WITH THE MAGISTERIAL DISTRICT COURT A WRITTEN ANSWER ON THE ANSWER/COUNTERCLAIM FORM INCLUDED WITH THIS COMPLAINT AND NOTICE. YOU ARE WARNED THAT IF YOU FAIL TO FILE AN ANSWER A JUDGMENT WILL BE ENTERED AGAINST YOU WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

IF YOU FILE YOUR ANSWER AS REQUIRED AND YOU DENY THE PLAINTIFF'S CLAIMS IN WHOLE OR IN PART, THE MAGISTERIAL DISTRICT COURT WILL NOTIFY YOU BY FIRST CLASS MAIL WHEN YOU MUST APPEAR AT A HEARING TO PRESENT YOUR DEFENSE. IF YOU DO NOT RECEIVE NOTICE OF YOUR HEARING DATE WITHIN SEVEN DAYS AFTER FILING YOUR ANSWER, YOU SHOULD CALL THE MAGISTERIAL DISTRICT COURT AT THE TELEPHONE NUMBER LISTED ON THE COMPLAINT FORM.

If you have a counterclaim against the plaintiff you must file it with your answer on the Answer/Counterclaim form included with this complaint and notice.

If you are disabled and require a reasonable accommodation to gain access to the magisterial district court and its services, please contact the court at the address or telephone number listed on the complaint form. The court is unable to provide transportation.

Official Note: [The 60 day limitation in subdivision (1) of this rule was considered to provide sufficient time in which to effect service under requirement of Rule 307 that service be made at least ten days before the hearing. See Rule 314E as to reinstatement of complaints dismissed because of lack of service. The copies required in subdivisions (3) and (4) are provided by the Magisterial District Judge Automated System. Giving the notice mentioned in subdivision (4)(a) is necessary if the defendant is to obtain judgment under Rule 319A

because of the plaintiff's failure to appear. Subdivision (4)(b) gives notice of the right to file a cross-claim within magisterial district court jurisdiction. The procedure for filing such a claim is set forth in Rule 315, and the Note to that rule indicates possible procedures as to counterclaims not within magisterial district court jurisdiction. Subdivision (4)(c) provides for a warning concerning a default judgment, which may be rendered under Rule 319B.] This rule was amended in 2005 to provide for a more thorough notice to defendant and a written answer. Because rules now require the defendant to file a simplified answer to the complaint before a hearing is scheduled, the former provisions of this rule relating to setting the hearing date and delivering the complaint for service have been either deleted as obsolete or incorporated into other rules.

As to the defendant's answer and counterclaim, see Rules 315 and 318.

Rule 307. Service [of the Complaint] Generally; Service within the Commonwealth; Service by Mail.

[Service shall be made at least ten days before the hearing, in the following manner:] A. The complaint must be served within the Commonwealth within 40 days after the filing or reinstatement of the complaint.

B. Except as otherwise provided in subdivision C, service within the Commonwealth must be made in the following manner:

(1) A copy of the complaint for each defendant shall be delivered by the magisterial district judge for service to the sheriff of, or any certified constable in, the county in which the magisterial district of the magisterial district judge is situated. If this service is not available to the magisterial district judge, service may be made by any certified constable of the Commonwealth. If the complaint is delivered for service to the sheriff and service is to be made in a county other than the one in which the magisterial district of the magisterial district judge is situated, the sheriff shall deputize the sheriff of the county in which service is to be made. A certified constable may serve the complaint anywhere in the Commonwealth.

(2) If service is to be made in a county other than the one in which the magisterial district judge's magisterial district is situated, the magisterial district judge, instead of acting in accordance with [subdivision] subparagraph (1), may:

(a) [send] **Send** the copy of the complaint for service to a magisterial district judge in the county in which service is to be made who shall deliver it for service to the sheriff of, or any certified constable in, that county. If this service is not available to the magisterial district judge, service may be made by any certified constable of the Commonwealth[, or].

(b) [if] **If** service is to be made in Philadelphia, send the copy of the complaint for service to the Court Administrator of the Philadelphia Municipal Court who shall deliver it for service to a writ server of that court or to the sheriff of Philadelphia.

[(3)] C. When service of the complaint by mail is permitted by the rules in this chapter, it shall be at the

option of the plaintiff and shall be made by the magisterial district judge by certified or registered mail. Such service may be made to any place in or outside the Commonwealth.

D. Except as otherwise provided in these rules, all notices and legal papers other than the complaint filed in an action shall be served by first class mail.

E. As used in this rule "complaint" includes the complaint form specified in Rule 303, the notice to defendant specified in Rule 305, and the blank Answer/Counterclaim form specified in Rule 318.

Official Note: This rule was amended in 2005 to conform the service rules to the requirement that the defendant file an answer before a hearing is scheduled. Under the new procedures, service is to be made within a specified time period after the complaint is filed, as opposed to the former procedure of requiring service within a specified time before the hearing date.

This rule provides a number of alternative methods of serving the complaint. [Subdivision] Subparagraph B(1) permits a certified constable to serve the complaint anywhere in the Commonwealth and authorizes deputized service by sheriffs. Subparagraph B(2)(a) permits service out of the county through magisterial district judges in the county in which service is to be made, a method of service which might be preferable to service under [subdivision] subparagraph B(1) by a certified constable of the county where the complaint was filed when that county is a considerable distance from the county of service. Subparagraph B(2)(b) provides for service in Philadelphia by writ servers of the Philadelphia Municipal Court or by the sheriff of Philadelphia, although service may still be made in accordance with [subdivision] subparagraph B(1) if the magisterial district judge so desires. Subdivision [3] C makes service of the complaint by mail, when permitted, at the option of the plaintiff. This was done because service by mail will ordinarily reduce costs.

Rule 313. Service Outside the Commonwealth.

A. The complaint must be served outside the Commonwealth within 60 days after the filing or reinstatement of the complaint.

B. [When service of the complaint is to be made upon a defendant] Service outside the Commonwealth[, it shall] must be made in one of the following ways:

(1) **[by] By** delivery in the manner prescribed by Rule 308, 309, 310 or 311, whichever is applicable, by a Pennsylvania sheriff or constable or by **[any] a competent adult[, other than the plaintiff]** designated by the magisterial district judge **[or]**.

(2) **[by] By** certified or registered mail as provided by Rule 308, 309 or 310, whichever is applicable**;**.

(a) **[if] If** the registered or certified mail is returned with a notation by the postal authorities that receipt was refused, then the magisterial district judge may serve the complaint by sending a copy of the complaint by ordinary mail to the same address with a return address on the envelope. Service by ordinary mail is complete if the mail is not returned to the sender within fifteen days after the mailing**;** **[or]**.

(b) **[if] If** the mail is returned with a notation by the postal authorities that it was unclaimed, the plaintiff **[shall] must** make service by another means pursuant to these rules**;** **[or]**.

(3) **[in] In** the manner provided or prescribed by the law of the place in which service is to be made for service in that place in an action in any of its courts of general jurisdiction.

C. As used in this rule "complaint" includes the complaint form specified in Rule 303, the notice to defendant specified in Rule 305, and the blank Answer/Counterclaim form specified in Rule 318.

Official Note: This rule was amended in 2005 to conform the service rules to the requirement that the defendant file an answer before a hearing is scheduled. Under the new procedures, service is to be made within a specified time period after the complaint is filed, as opposed to the former procedure of requiring service within a specified time before the hearing date.

See **Section 5322** of the Judicial Code, **[§ 5322,]** 42 Pa.C.S. § 5322 **[(as amended by § 10(61) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53) and § 5329(1), 42 Pa.C.S. § 5329(1)]**, as to the basis of personal jurisdiction over persons outside the Commonwealth. The magisterial district judge may designate **[any] a** Pennsylvania sheriff or constable to make service under **[subdivision] subparagraph B(1)**, but **[such] this method of service** should not be attempted if it would be offensive to the jurisdiction in which service is to be made. See **generally** Uniform Interstate and International **[Procedures] Procedure Act, [§ 2.02, Commissioners' Comment, 13 Uniform Laws Annotated 297]** 42 Pa.C.S. §§ 5321 to 5329. Alternatively, the magisterial district judge may designate **[any] a competent adult [other than the plaintiff]** to make service under **[subdivision] subparagraph B(1)**. Although the magisterial district judge may not designate the plaintiff as the person to make **[such] this service**, the plaintiff may suggest to the magisterial district judge the name of a person to make service. If service is made by ordinary mail under **[subdivision] subparagraph B(2)(a)**, the magisterial district judge shall note that fact on the **[original complaint form] docket** with the remark that a sufficient time having elapsed the ordinary mail was not returned, and shall **[attach to the original complaint form]** file the returned certified or registered letter with the notation by the postal authorities that the defendant refused to accept it. If service is to be made under **[subdivision] subparagraph B(3)**, the magisterial district judge may send the service copy of the complaint to an appropriate official of the jurisdiction in which service is to be made. If service is made under **[subdivisions] subparagraphs B(1) or (3)**, proof of service may be made on the form provided under Rule 314A with such alterations as may be necessary or in any manner provided by the law of the jurisdiction in which the service is made for proof of service in an action in any of its courts of general jurisdiction.

Rule 314. Return, Waiver and Failure of Service; Reinstatement.

A. [The person serving the complaint shall, at or before the time of the hearing, make proof] (1) Except when service of the complaint is made by mail, the person making service of the complaint shall make a return of service forthwith.

(2) The return of service [which shall show (1) the] must set forth the following:

(a) The manner of service [, (2) the].

(b) The date, time, and place of service [and, (3) the].

(c) The name and relationship or title, if any, of the person on whom the complaint was served. [The proof of service shall be filed with the original complaint.]

(d) Any other facts necessary for the magisterial district judge to determine whether proper service has been made.

(3) If service has not been made, a return of no service shall be made upon the expiration of the period allowed for service.

B. [When] If service is made by registered or certified mail, the return receipt [shall] must be filed with the original complaint.

C. The appearance of a defendant in person or by representative or the filing by a defendant of [a claim] an answer in the case shall be deemed a waiver of any defect in service but not a waiver of a defect in venue.

D. If [the complaint is not served on the defendant in time to permit holding a hearing within 60 days of the filing of the complaint] service within the Commonwealth is not made within the time prescribed by Rule 307 or outside the Commonwealth within the time prescribed by Rule 313, the magisterial district judge shall dismiss the complaint without prejudice.

E. Upon written request of the plaintiff, a complaint that has been dismissed without prejudice for failure to make service pursuant to subdivision D of this rule may be reinstated at any time and any number of times. The date of reinstatement shall be the date upon which the request for reinstatement is filed.

Official Note: The provision concerning appearance not being a waiver of venue was inserted in subdivision C of this rule to prevent the concentration of business in the office of a favorable magisterial district judge. Also, the public cannot generally be expected to be aware of venue provisions. See Rule 302H regarding improper venue.

Subdivision D is intended to prevent the accumulation of stale claims in the office of the magisterial district judge.

Subdivision E provides for the reinstatement, upon written request of the plaintiff, of a complaint that has been dismissed without prejudice for failure to make service under subdivision D. Compare Pa.R.C.P. No. 401(b). The written request for reinstatement may be in any form and may consist of a notation on the permanent copy of the complaint form, "Reinstatement of complaint requested," subscribed by the plaintiff. The magisterial district judge shall mark all copies of the reinstated

complaint, "Complaint reinstated. Request for reinstatement filed on ____ (date)." If it is necessary to use a new form for the reinstated complaint, the reinstated complaint, except for service portions thereof, shall be an exact copy of the original complaint, although signatures may be typed or printed with the mark "/s/" indicating an actual signature. The language in subdivision E that a complaint may be reinstated "at any time" will permit reinstatement after a faulty service without waiting for further proceedings in the case. Reinstatement must occur within the period of the statute of limitations from the date of the last filing or reinstatement. The cost for reinstating a complaint is specified in Section 1725.1 of the Judicial Code, 42 Pa.C.S. § 1725.1. In addition, there may be additional server costs for service of the reinstated complaint.

Rule 315. Claim by Defendant.

A. The defendant [, by filing a complaint at least five days before the date set for the hearing,] may assert in the case [any claim] a counterclaim against the plaintiff that is within the jurisdiction of a magisterial district judge. [Such a claim] The counterclaim need not arise from the same transaction or occurrence from which the plaintiff's claim arose, nor need it be the same type of claim.

B. [The rules governing the form, processing, and service of a plaintiff's complaint shall apply also to the defendant's complaint. The magisterial district judge shall set a date and time for the hearing of both complaints together that shall not be less than 12 or more than 30 days from the filing of the defendant's complaint.] (1) A counterclaim may be filed only as prescribed by Rule 318.

(2) A counterclaim is deemed denied by the plaintiff and no responsive pleading is required.

C. (1) If the defendant files a counterclaim, the magisterial district judge shall hear both matters together at a consolidated hearing.

(2) If the defendant's counterclaim is properly and timely filed in accordance with this rule and Rule 318, the hearing on the defendant's counterclaim may proceed even if the plaintiff voluntarily withdraws his or her complaint.

(3) Although a separate award on each claim and counterclaim may be rendered, one single consolidated net [A] money judgment for the plaintiff or for the defendant, but not for both, shall be entered with respect to [such cross-complaints] counterclaims, any lesser amount found due on the claim asserted in one being [deducted] set off from the greater amount found due on the claim asserted in the other.

D. [If the defendant files a cross-complaint, the magisterial district judge shall promptly notify the plaintiff of the time and date set for the hearing of both complaints together. If the plaintiff has an attorney of record, the notice shall be given to the attorney of record instead of to the plaintiff.] Rescinded.

Official Note: Subdivision A of this rule permits the defendant to file a [cross-complaint] counterclaim against the plaintiff [at least five days before the date originally set for the hearing,] if it is for a claim cognizable by a magisterial district judge. See Section

1515(a)(3) of the Judicial Code, 42 Pa.C.S. § 1515(a)(3), as to waiver of jurisdictional limits, a defendant filing a [**cross-complaint**] counterclaim being considered a "plaintiff" as to the [**cross-complaint**] counterclaim within the meaning of this statute. [**The requirement that a cross-complaint be filed at least five days before the hearing is intended to give the magisterial district judge time to notify the plaintiff or the plaintiff's attorney, under subdivision D of the rule, of any new hearing time and date. Notice under subdivision D is not a substitute for the service required under subdivision B.]**

The counterclaim must be in writing on the Answer/Counterclaim form prescribed by the Court Administrator of Pennsylvania. See Rules 212, 305, and 318.

If the defendant does not file [**an action at least five days before the hearing**] a claim as prescribed by this rule, the defendant may still file a complaint against the plaintiff but it will not be processed as a [**cross-complaint**] counterclaim.

Subparagraph C(3) makes clear that only one money judgment should be entered for either the plaintiff or the defendant.

No provision has been made for a stay of the magisterial district court proceedings upon notice by the defendant of intention to commence an action in the court of common pleas on a claim against the plaintiff not within magisterial district [**judge**] court jurisdiction. It was thought that no such provision was necessary, for if the plaintiff prevails in the magisterial district [**judge**] court action the defendant may appeal, the appeal operates as an automatic supersedeas of the money judgment, the case is heard de novo, and the defendant may assert a claim in the court of common pleas, possibly as a counterclaim. See Rules 1002, 1007, and 1008.

Since a [**cross-complaint**] counterclaim is in the nature of a responsive pleading, there is no fee for filing it.

No [**cross-complaint**] counterclaim may be filed in a supplementary action filed under Rule 342. See Rule 342 and Note.

Rule 318. [**Informing Plaintiff of Notice of Intention to Defend**] Defendant's Answer and Counterclaim; Time for Filing Answer and Counterclaim; Judgment by Consent and Judgment by Default.

[**If the defendant gives the magisterial district judge notice of his intention to defend under Rule 305(4)(a), the magisterial district judge shall promptly inform the plaintiff in writing that he has received such a notice by mailing to the plaintiff a copy of the completed Notice of Intent to Defend form. If the plaintiff has an attorney of record named in the complaint form, this information shall be given to the attorney of record instead of to the plaintiff.]**

A. (1) The defendant must file an answer with the magisterial district court within ten days after the complaint is served upon the defendant.

(2) The time period for filing the answer may not be extended except by the magisterial district judge for good cause shown.

B. The answer must be in writing on the Answer/Counterclaim form prescribed by the Court Administrator of Pennsylvania and must set forth the following:

(1) The name, address, and telephone number of the defendant.

(2) A statement by the defendant declaring one of the following:

(a) That the defendant does not owe the plaintiff any part of what is claimed, with a brief and concise explanation as to why, and that the defendant requests a hearing before the magisterial district judge.

(b) That the defendant owes the plaintiff only part of what is claimed, with a brief and concise explanation as to how much and why, and that the defendant requests a hearing before the magisterial district judge.

(c) That the defendant owes the plaintiff what is claimed, and that the defendant does not contest the claim or request a hearing before the magisterial district judge.

(3) Any other matter that the defendant may assert in the case.

(4) A counterclaim asserted by the defendant under Rule 315, if any.

(5) Such other information as may be required on the Answer/Counterclaim form.

C. The answer must be signed by the defendant or defendant's attorney.

D. (1) If the defendant files an answer in accordance with subparagraph B(2)(c), the magisterial district judge shall enter judgment by consent forthwith.

(2) If the defendant fails to file a timely answer with the magisterial district court, the magisterial district judge shall enter judgment by default forthwith.

Official Note: [**No specific form of notification is required by this rule, but entries on the complaint form will show that the defendant gave notice of his intention to defend and that the magisterial district judge informed the plaintiff or his attorney of record thereof, when these events have occurred. A notation that a copy of the Notice of Intent to Defend form was sent to the plaintiff or his attorney of record shall be made on the complaint maintained in the magisterial district judge's files.]** This rule was amended in 2005 to require the defendant to file a simplified answer before a hearing date is set. This significant change in magisterial district court practice was intended to give magisterial district judges and parties more certainty in hearing dates and to reduce the number of unnecessarily scheduled hearings that result in default judgments.

Subparagraph A(2) makes clear that the time period for filing the answer may not be extended except by the magisterial district judge for good cause shown. The time period may not be extended merely by agreement of the parties. This restriction is necessary because under these rules a default judgment may be entered against the defendant for

failure to file a timely answer by operation of law without the need for a praecipe by the plaintiff.

The requirement that the defendant file an answer in civil actions governed by the rules in this chapter is not intended to affect the procedures in possessory actions governed by Chapter 500. No answer or notice of intention to defend is required in possessory actions because the plaintiff must appear in every case to present testimony.

The answer must be in writing on the Answer/Counterclaim form prescribed by the Court Administrator of Pennsylvania. See Rules 212 and 305. The use of a standardized Answer/Counterclaim form is intended to promote uniformity, simplification of procedure, and better access by the public to the judicial services of magisterial district courts.

When the magisterial district judge enters judgment under subdivision D, the magisterial district court shall promptly give or mail to the parties written notice of judgment in accordance with Rule 324.

Rule 319. Setting the Date for Hearing; Notice; Failure of a Party to Appear at the Hearing.

A. [If a plaintiff who has been given notice of the defendant's intention to defend does not appear at the hearing, but the defendant does appear, the magisterial district judge shall enter judgment for the defendant or continue the case for cause. If the plaintiff does not appear at the hearing and the defendant does, but the plaintiff has not been given notice of the defendant's intention to defend, the case shall be continued.] Upon the timely filing of an answer by the defendant in which the defendant denies the plaintiff's claim in whole or in part and requests a hearing, or in which the defendant asserts a counterclaim against the plaintiff, the magisterial district court shall:

(1) Set a hearing date and time which must be not less than 12 or more than 30 days from the date of the hearing notice required by subparagraph (2).

(2) Give or mail to all parties not in default written notice of the date, time, and place of the hearing.

(3) Give or mail to the plaintiff a copy of the defendant's answer and the defendant's counterclaim, if any.

B. [If the defendant does not appear at the hearing, the magisterial district judge shall, whether or not the plaintiff appears, enter judgment for the plaintiff or continue the case for cause. If judgment is entered for the plaintiff, the magisterial district judge shall assess damages for the amount to which the plaintiff is entitled if it is for a sum certain or which can be made certain by computation, but if it is not, the damages shall be assessed by the magisterial district judge at a hearing at which the issues shall be limited to the amount of the damages. If such a hearing is to be held, the magisterial district judge shall give the defendant written notice of the time and date of the hearing, which shall be not less than ten (10) days from the date of the notice.] (1) If the plaintiff does not appear at the hearing, but the defendant does

appear, the magisterial district judge shall enter judgment for the defendant or continue the case for good cause shown.

(2) If the defendant does not appear at the hearing, but the plaintiff does appear, the magisterial district judge shall enter judgment for the plaintiff or continue the case for good cause shown.

(3) If neither party appears at the hearing, the magisterial district judge shall dismiss the complaint without prejudice or continue the case for good cause shown.

Official Note: [The first sentence of subdivision A of this rule] Subparagraph B(1) provides for a judgment for the defendant rather than merely a dismissal of the plaintiff's complaint. This provision is intended to prevent the plaintiff from bringing the action again before a magisterial district judge **when the plaintiff fails to appear at the hearing but the defendant does appear**, although [he can] the plaintiff may appeal. [The continuance called for in the second sentence of subdivision A will constitute a form of notice to defend and if the plaintiff does not appear at the second hearing judgment will be entered against him.] A complaint dismissed without prejudice under subparagraph B(3) may not be reinstated. If the plaintiff wishes to refile a complaint dismissed under this rule, the case must begin anew with the filing of a complaint, payment of costs, and proper service.

[As to the provisions concerning assessment of damages in subdivision B, compare Pa.R.C.P. Nos. 1037(b) and 1047(b).]

If the defendant files a counterclaim, the hearing scheduled in accordance with subparagraph A(1) will be a consolidated hearing on both the plaintiff's complaint and the defendant's counterclaim. See Rule 315.

When the magisterial district judge enters judgment or dismisses a complaint under subdivision B, the magisterial district court shall promptly give or mail to the parties written notice of judgment or dismissal in accordance with Rule 324.

CHAPTER 500. ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY

Rule 501. Definition.

A. As used in this chapter, "action" means an action by a landlord against a tenant for the recovery of possession of real property brought before a magisterial district judge.

B. [As used in this chapter, "complaint" shall include, where applicable, the attached and completed Recovery of Real Property Hearing Notice form.] Rescinded.

Official Note: Distress for rent will not be covered in rules of civil procedure for magisterial district judges, for it is not an action or proceeding before a magisterial district judge and any constable carrying out the "landlord's warrant" is acting as an agent of the landlord and not as an officer serving process of a magisterial district judge. See § 302 of the Landlord and Tenant Act of 1951, 68 P. S. § 250.302. Actions for rent (§ 301 of the Act, 68 P. S. § 250.307) are not included in this chapter, for these are actions of assumpsit. See also § 572 of the Act, added

by Act of May 3, 1968, P.L. 107, No. 56, § 1, 68 P.S. § 250.512. A number of trespass actions are also detailed in the Landlord and Tenant Act of 1951 (see §§ 311—313, 68 P.S. §§ 250.311—250.313), and these would be brought under the rules pertaining to trespass actions. Consequently, this chapter will be concerned only with the action for the recovery of possession of real property. But see Rules 503C(8) and 508 as to joinder of actions and **[cross-complaints] counterclaims**.

Rule 502. Venue; Commencement of **[the]** Action.

A. **[The] An** action may be brought in and only in the magisterial district where the whole or part of the real property possession of which is sought to be recovered is located.

B. **[The] An** action **[shall]** may be commenced by **[the]** filing **[of]** a complaint with the magisterial district court.

Official Note: Since only recovery of possession of real property and incidental matters are involved, the reason for the restriction on venue in subdivision A is obvious. Compare Pa.R.C.P. No. 1052.

The complaint must be in writing on a form prescribed by the Court Administrator of Pennsylvania. See Rule 212. The use of a standardized complaint form is intended to promote uniformity, simplification of procedure, and better access by the public to the judicial services of magisterial district courts.

Rule 503. **[Form]** Contents of Complaint, Verification.

A. **[The complaint shall be made in writing on a form which shall be prescribed by the State Court Administrator.]** The complaint must set forth the following:

- (1) The names and addresses of the parties.
- (2) The location and the address, if any, of the real property the possession of which is sought to be recovered.
- (3) That the plaintiff is the landlord of that property.
- (4) That the plaintiff leased or rented the property to the defendant or to some other person under whom the defendant claims.
- (5) That notice to remove was given to the defendant in accordance with law, or that no notice was required under the terms of the lease.
- (6) That the plaintiff alleges one or more of the following:
 - (a) The term for which the property was leased or rented is fully ended.
 - (b) A forfeiture has resulted by reason of a breach of the conditions of the lease.
 - (c) Rent reserved and due has, upon demand, remained unsatisfied.
 - (7) That the defendant retains the real property and refuses to give up possession of the property.
 - (8) The amount of rent, if any, which remains due and unpaid on the date the complaint is filed and whatever additional rent shall remain due and unpaid at the date of the hearing, and the amount

of damages, if any, claimed for injury to or unjust detention of the real property.

B. The complaint **[shall]** must be signed by the plaintiff or plaintiff's agent and verified as follows:

The facts set forth in this complaint are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signature

[C. The complaint shall set forth:

- (1) The names and addresses of the parties.
- (2) The location and the address, if any, of the real property possession of which is sought to be recovered.
- (3) That the plaintiff is the landlord of that property.
- (4) That he leased or rented the property to the defendant or to some other person under whom the defendant claims.
- (5) That notice to remove was given to the defendant in accordance with law, or that no notice was required under the terms of the lease.
- (6) That—
 - (a) the term for which the property was leased or rented is fully ended, or
 - (b) a forfeiture has resulted by reason of a breach of the conditions of the lease, or
 - (c) rent reserved and due has, upon demand, remained unsatisfied.
- (7) That the defendant retains the real property and refuses to give up possession of the property.
- (8) The amount of rent, if any, which remains due and unpaid on the date the complaint is filed and whatever additional rent shall remain due and unpaid at the date of the hearing, and the amount of damages, if any, claimed for injury to or unjust detention of the real property.]

Official Note: [As in the other rules of civil procedure for magisterial district judges, the complaint will be on a printed form.] As to notice to remove, the **[form will]** complaint must simply state that **[such a]** the notice, when required, was given to the defendant in accordance with law. See § 501 of the Landlord and Tenant Act, 68 P.S. § 250.501[, as amended by § 2(a) of the Judiciary Act Repealer Act, Act of April 28, 1978, P.L. 202, No. 53, 42 P.S. § 20002(a)]. **[In subdivision C]** Under subparagraph A(8) the landlord is permitted to claim, in addition to the specific amount of rent due and unpaid at the date of filing, whatever unspecified amount of rent will remain due and unpaid at the date of the hearing. As to claiming damages for injury to property, compare Pa.R.C.P. No. 1055.

See Act of January 24, 1966, P.L. (1965) 1534, § 1, as amended by Act of August 11, 1967, P.L. 204, No. 68, § 1, Act of June 11, 1968, P.L. 159, No. 89, § 2, 35 P.S. § 1700-1, which states that "no tenant shall be evicted for any reason whatsoever while rent is deposited in escrow"

because the dwelling in question has been certified as unfit for human habitation by the appropriate city or county agency. It seems appropriate to leave the matter of evidencing or pleading such a certification or lack thereof to local court of common pleas rules.

[Explanatory Note

The amendment to subdivision c(6)(c) of Rule 503 and the note to the rule deletes the former requirement of pleading, when the action is based on failure to pay rent, that there is not on the premises property subject to distress adequate to satisfy rent in arrears. See also the amendment to Rule 582(1).]

Rule 504. Setting the Date for Hearing; Delivery for Service; Notice to Defendant.

A. The magisterial district judge, at the time the complaint is filed, shall:

(1) Set a hearing date **and time** which [**shall**] **must** be not less than [**seven (7)**] 7 or more than [**fifteen (15)**] 15 days from the date the complaint is filed.

(2) [**Insert the**] **Prepare a hearing notice with the hearing time and date and the address of the magisterial district's [judge's magisterial district in the complaint form] district court.**

(3) Deliver a copy of the complaint [**form with hearing time and date thereon**] **and hearing notice** to the plaintiff or the plaintiff's agent.

(4) Deliver a copy of the complaint [**form with**] **and hearing [time and date thereon] notice** for service as hereinafter set forth[, which copy shall contain the following notice:

(a) If you have a defense to this complaint, you may present it at the hearing.

(b) If you have a claim against the plaintiff arising out of the occupancy of the premises, which is within magisterial district court jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office before the time set for the hearing.

(c) IF YOU DO NOT APPEAR AT THE HEARING, a judgment for possession and costs, and for damages and rent if claimed, may nevertheless be entered against you. A judgment against you for possession may result in YOUR EVICTION from the premises].

B. (1) Every complaint filed by a plaintiff must include a notice to defendant in substantially the form set forth in subparagraph (2). No other notice to plead to a complaint is required.

(2)

Notice To Defendant

YOU HAVE BEEN SUED BY YOUR LANDLORD IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE COMPLAINT, YOU MUST APPEAR AND PRESENT YOUR DEFENSE AT THE HEARING. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT FURTHER NOTICE FOR POSSESSION OF THE LEASED PREMISES AND ANY MONEY CLAIMED IN THE COMPLAINT. A

JUDGMENT AGAINST YOU FOR POSSESSION MAY RESULT IN YOUR EVICTION FROM THE PREMISES, AND YOU MAY ALSO LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

If you have a counterclaim against the plaintiff arising out of the occupancy of the premises you must file it on the Counterclaim form included with this complaint and notice before the time set for the hearing.

If you are disabled and require a reasonable accommodation to gain access to the magisterial district court and its services, please contact the court at the address or telephone number listed on the complaint form. The court is unable to provide transportation.

Official Note: The hearing date in [subdivision] subparagraph A(1) of this rule is required to be set not less than seven days from the filing of the complaint because of the requirement in Rule 506(B) that service be made at least five days before the hearing. It was thought that the requirement that the hearing be held not more than [fifteen] 15 days from the filing of the complaint should provide ample time to make the type of service required in these cases.

This rule was amended in 2005 to provide for a more thorough notice to defendant. The notice [for the defendant], set forth in [subdivision (4)] subparagraph B(2) of this rule, varies somewhat from the notice required in civil actions under Rule 305. There are a number of reasons for this. First, there can be no default judgment in these possessory actions [and, secondly it was thought that cross-complaints of defendants]. In all cases the plaintiff must appear and give testimony to prove the complaint, even when the defendant fails to appear for the hearing. It is not necessary, therefore, for the defendant to file an answer or notice of intention to defend before the hearing date is set. Secondly, because of the expedited nature of these cases, the defendant may file a counterclaim any time before the hearing. Counterclaims in these cases [should be] are limited to those arising out of the occupancy of the premises.

As to the defendant's counterclaim, see Rule 508.

Rule 506. Service [of Complaint] Generally; Failure of Service.

A. (1) The magisterial district judge shall serve the complaint by mailing a copy of it to the defendant by first class mail and by delivering a copy of it for service to the sheriff of, or any certified constable in, the county in which the office of the magisterial district judge is situated. If this service is not available to the magisterial district judge, service may be made by any certified constable of the Commonwealth.

(2) The officer receiving the [copy] complaint shall serve it by handing it to the defendant or to an adult [person] in charge for the time being of the premises possession of which is sought to be recovered or, if none of the above is found, by posting it conspicuously on those premises.

B. (1) The [copy shall] complaint must be served at least five days before the hearing.

(2) If the complaint is not served at least five days before the hearing as required by subpara-

graph (1) and the defendant does not appear in person or by representative or file a claim in the case, the magisterial district judge shall continue the case, set a new hearing date, and serve the complaint in accordance with Rule 504 and this rule.

C. Except as otherwise provided in these rules, all notices and legal papers other than the complaint filed in an action shall be served by first class mail.

D. As used in this rule "complaint" includes the complaint form specified in Rule 502, the hearing notice and notice to defendant specified in Rule 504, and the blank Counterclaim form specified in Rule 508.

Official Note: Under subdivision A of this rule, service must be made both by first class mail and delivery for service in the manner prescribed.

As to subdivision B, see Rule 507B regarding waiver of defect in service. The continuance for lack of service provided for in subparagraph B(2) is solely for the purpose of rescheduling the hearing date and redelivering the complaint for service, which should occur as quickly as practicable. This continuance will not be charged against either party (see Rule 209C(1)), and will not be considered for purposes of the 30 day limitation on continuances (see Rule 209C(2)(b)).

Rule 507. Notation and Return of Service; Waiver of Service.

A. (1) The magisterial district judge shall note on the [complaint form] docket the date on which he or she mailed a service copy of the complaint to the defendant[, and the].

(2) The sheriff or constable serving [a copy of] the complaint shall, at or before the time [of] set for the hearing, make [proof] a return of service [on the form provided, which shall show the manner of service and the day, hour and place thereof].

(3) The return of service must set forth the following:

(a) The manner of service.

(b) The date, time, and place of service.

(c) If the complaint was handed to an adult, the name and relationship to the defendant or title of that adult.

(d) Any other facts necessary for the magisterial district judge to determine whether proper service has been made.

(4) The return of service must be filed with the original complaint.

B. The appearance of a defendant in person or by representative or the filing by [him] a defendant of a claim in the case shall be deemed a waiver of any defect in service but not a waiver of a defect in venue.

Official Note: This rule [parallels] is similar to the provisions of Rule 314A and C of the [trespass and assumpsit] civil action rules.

Rule 508. Claim by Defendant.

A. (1) At any time before the hearing, the defendant may file a [cross-complaint on the form prescribed

for civil complaints,] counterclaim asserting any claim against the plaintiff [which] that arises out of the occupancy of the premises and [which] that is within the jurisdiction of the magisterial district judge.

(2) The counterclaim must be in writing on the Counterclaim form prescribed by the Court Administrator of Pennsylvania.

B. If the defendant files [such] a [cross-complaint] counterclaim, the magisterial district judge shall [set a time and date for the hearing of] hear both complaints together[, which shall not be less than 7 or more than 15 days from the filing of the defendant's complaint] at a consolidated hearing.

C. The magisterial district judge shall serve the defendant's [cross-complaint shall be served] counterclaim on the plaintiff [at least five days before the hearing. At the option of the defendant, the magisterial district judge shall serve the cross-complaint by mailing a copy of it to the plaintiff. If the defendant does not request service by mail, the magisterial district judge shall deliver a copy of the cross-complaint for service to the sheriff of, or any certified constable in, the county in which the office of the magisterial district judge is located. If this service is not available to the magisterial district judge, service may be made by any certified constable of the Commonwealth. The officer receiving the copy shall serve it by handing it to the plaintiff or to an adult person in charge for the time being of the plaintiff's residence or usual place of business] by handing a copy of the counterclaim to the plaintiff or the plaintiff's representative in person at the time of the hearing scheduled in accordance with Rule 504, and shall note on the docket that service was made in this manner.

D. (1) Upon being served with the defendant's counterclaim, the plaintiff may elect to proceed immediately with the consolidated hearing of both complaints or to request a continuance.

(2) If a continuance is granted, the magisterial district court shall give or mail to the parties written notice of the time and date of the continued hearing, which must be not more than ten days from the grant of the continuance.

E. Although a separate award on each claim and counterclaim may be rendered, one single consolidated net money judgment for the plaintiff or for the defendant, but not for both, shall be entered with respect to counterclaims, any lesser amount found due on the claim asserted in one being set off from the greater amount found due on the claim asserted in the other.

Official Note: Because of the expedited nature of these cases, and because there is no requirement that the defendant file an answer or notice of intention to defend before the hearing is scheduled, the defendant may file a counterclaim any time before the hearing. The counterclaim must be in writing on the Counterclaim form prescribed by the Court Administrator of Pennsylvania. See Rules 212 and 504.

As to subdivision A of this rule, see the Note to Rule 504. See also 42 Pa.C.S. § 1515(a)(3), as to waiver of

jurisdictional limits, the defendant filing a [cross-complaint] counterclaim being considered a "plaintiff" as to the [cross complaint] counterclaim within the meaning of this statute.

Subdivision B [sets forth the time limits for setting hearings when a cross-complaint is filed. These limits recognize the need for reasonable expedition in these cases] requires that the magisterial district judge hear the plaintiff's complaint and the defendant's counterclaim together at a consolidated hearing.

This rule was amended in 2005 to provide a more streamlined procedure for service of a defendant's counterclaim. These changes were intended to reduce delay caused by the necessity of continuing the original hearing to allow for service of the counterclaim.

Subdivision C [contains provisions] provides for service of the [cross-complaint. Mail service need not be by certified or registered mail] counterclaim by the magisterial district judge simply handing a copy of the counterclaim to the plaintiff or the plaintiff's representative at the hearing scheduled in accordance with Rule 504. Because the defendant may file the counterclaim any time before the hearing, it may not be practicable to make service of the counterclaim upon the plaintiff before the hearing.

Because the plaintiff may wish to avoid any delay in the recovery of possession of the premises, subdivision D gives the plaintiff the option of proceeding with the scheduled hearing after being served with a counterclaim, or requesting a continuance if needed to prepare a defense. Under these circumstances, it would be highly unusual for the magisterial district judge to deny the continuance request. Because both claims are necessarily related to the occupancy of the premises, however, the plaintiff may be prepared to proceed immediately, and hearing both claims together should not take excessive time.

Subdivision E makes that clear that only one money judgment is to be entered for either the plaintiff or the defendant. Nothing in this subdivision is intended to prevent, however, the entry of a separate judgment for possession in favor of the plaintiff/landlord, even if the plaintiff/landlord is not entitled to a money judgment after the set-off.

Since a [cross-complaint] counterclaim is in the nature of a responsive pleading there is no fee for filing it.

REPORT

Proposed Amendments to Rules 209, 301, 303—305, 307, 313—315, 318—319, 501—504, and 506—508 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

Form and Content of Civil and Landlord/Tenant Complaints; Notice to Defendant and Defendant's Answer and Counterclaim in Civil Action; Notice to Defendant and Defendant's Counterclaim in Landlord Tenant Action; Setting Hearing Date

I. Introduction and Background

The Minor Court Rules Committee (the Committee) is proposing significant amendments to the rules of procedure governing civil and landlord/tenant actions before magisterial district judges that would substantially change practice in the magisterial district courts. Most notably, the Committee is proposing that the rules require the defendant in a civil action to file a simplified answer to the plaintiff's complaint, and to file any counterclaim, before an initial hearing date is set in the case. Existing procedure requires the magisterial district court to set a hearing date immediately upon the filing of the plaintiff's complaint,³ and does not require any responsive pleading or formal notice of intention to defend by the defendant.⁴ In addition, existing counterclaim procedures usually necessitate a continuance of the initial hearing date.⁵ The Committee learned, as will be explained below, that these existing procedures require unnecessarily scheduled hearings and continuances, with the end result often being a default judgment because the defendant does not appear and defend.

The Committee initiated this project partly in response to a survey that it circulated to all magisterial district judges in 2002. The purpose of the Committee's survey was to collect samples of "cover sheets" or instructions that magisterial district judges send to parties at the time of service of civil and landlord/tenant complaints. The Committee had contemplated developing standardized civil and landlord/tenant cover sheets that would provide parties with general information about court procedures and what to expect at a magisterial district court hearing. More than 150 magisterial district judges responded to the Committee's survey, and provided copies of civil and landlord/tenant cover sheet forms used in their district courts. Some cover sheets appear to have been adopted countywide, but most were developed by individual judges and are unique to one district court. Some cover sheets provide only very basic information such as directions to the district court. Other cover sheets are very comprehensive, providing details on the conduct of hearings, court dress codes, continuance policies, and other information. It is apparent that many magisterial district judges use these cover sheets to provide information to litigants and to provide answers to frequently asked questions so as to make the court process run as smoothly as possible.

In reviewing the sample cover sheets, the Committee noticed one practice used by a significant number of district courts that raised concerns with the Committee. As noted above, existing procedures require that the magisterial district court set a hearing date immediately upon the filing of the plaintiff's complaint, and require that the court send a hearing notice along with the complaint when it is served on the defendant.⁶ The Committee noticed that many district courts, while technically complying with the requirement that a hearing date be set immediately, are including instructions on their cover sheets that the hearing date on the hearing

noticed one practice used by a significant number of district courts that raised concerns with the Committee. As noted above, existing procedures require that the magisterial district court set a hearing date immediately upon the filing of the plaintiff's complaint, and require that the court send a hearing notice along with the complaint when it is served on the defendant.⁶ The Committee noticed that many district courts, while technically complying with the requirement that a hearing date be set immediately, are including instructions on their cover sheets that the hearing date on the hearing

³ Pa. R.C.P.M.D.J. No. 305 (Setting the Date for Hearing; Delivery for Service) ("The magisterial district judge, at the time the complaint is filed, shall: (1) Set a hearing date which shall be not less than 12 or more than 60 days from the date the complaint is filed. . . . (4) Deliver a copy of the complaint form with the hearing time and date thereon for service on the defendant.").

⁴ Id. (Rule 305(4)(a) provides an instruction to the defendant that "[i]f you intend to enter a defense to this complaint, you should notify this office immediately." In addition, Pa. R.C.P.M.D.J. No. 318 (Informing Plaintiff of Notice of Intention to Defend) provides for notice to the plaintiff if the defendant gives notice of intention to defend. Neither rule, however, expressly requires the defendant to give the notice, and there is no penalty for the defendant who appears at the scheduled hearing without having given prior notice of intention to defend. In fact, a defendant appearing at the hearing without giving notice builds into the system automatic delay of the proceedings, because doing so often results in a continuance. See Pa. R.C.P.M.D.J. No. 319A (Failure of a Party to Appear at the Hearing).)

⁵ Pa. R.C.P.M.D.J. No. 315 (Claim by Defendant) (Rule 315B provides in part, "[t]he magisterial district judge shall set a date and time for the hearing of both complaints together that shall not be less than 12 or more than 30 days from the filing of the defendant's complaint.").

⁶ Pa. R.C.P.M.D.J. No. 305, supra n. 1.

notice is, in essence, a default date, *and the parties are not to appear on that date*. The cover sheets further provide that the defendant is to inform the court of his or her intention to defend by the date on the hearing notice, and if the defendant does notify the court by the prescribed date that he or she intends to defend, that the court will notify the parties of an actual hearing date on which they are to appear and present their cases. If the defendant fails to notify the court by the prescribed date, however, a default judgment is entered without the plaintiff having to appear in court. Under this procedure, therefore, the hearing date required by Rule 305 becomes a *de facto* fictitious date, and only after the defendant notifies the court of his or her intention to defend, is the "real" hearing date set.

It became obvious to the Committee that many magisterial district judges are using this informal procedure as a case management tool to avoid setting hearing dates in cases that may result in a default judgment. After making inquiries about the use of this informal procedure, the Committee heard reports from judges who claim the procedure works very well, enabling the court to schedule its hearing time with greater certainty, to dispose of cases more efficiently, and to avoid unnecessary court appearances by parties.

The Committee acknowledges that courts should employ all proper means to manage and expedite case flow and enhance the administration of justice. Nonetheless, the Committee has concerns about the use of an informal procedure that is not contemplated by or sanctioned under existing rules. The Committee does not suggest that there is anything inherently improper about this procedure, nor does the Committee suggest that the rules of procedure should be so rigid or inflexible so as to quash the ability of individual judges to adopt practices and policies designed to meet the unique needs of their courts. Rather, the Committee's concerns center on the widespread use of an informal procedure that is arguably inconsistent with the official procedural scheme set forth in the general rules, and the confusion that can occur as a result of using this informal procedure in some, but not all, magisterial district courts.⁷

The Committee's primary concern is that the computer generated hearing notice form that is sent to the plaintiff and served on the defendant along with the complaint states, as to the hearing date entered on the form, that "you must appear at the hearing and present your defense."⁸ Therefore, in courts that use the informal "default date" procedure, the instructions on the official hearing notice form are inconsistent with the instructions on the local court-generated cover sheet, which is likely to cause confusion. To make their cover sheet instructions clear, some courts use brightly colored paper or stickers to inform the parties that they are to disregard the date on the hearing notice form. The Committee is also concerned that many, but not all, courts have adopted this informal procedure, thereby resulting in inconsistent practice from court-to-court. In addition, even those courts that use the informal procedure have inconsistent procedures. For example, some cover sheets reviewed by the Committee require the defendant to notify the court of an intention to defend within a certain number of days, others require

notice only by the prescribed date; some cover sheets require written notice, others provide for notice by telephone. Because these procedures are developed by individual magisterial district judges, the Committee found numerous inconsistencies. The statewide general rules are intended to make practice in the magisterial district courts consistent and predictable. While the rules should allow enough flexibility for individual judges to adopt practices or policies that they find necessary to account for local needs and conditions, "local rules" of this nature are not contemplated by or provided for in the general rules.

Given its concerns about the widespread use of this informal procedure, the Committee considered ways in which the use of the procedure could be discouraged so as to maintain consistency in practice in the district courts and promote compliance with the procedural scheme set forth in the general rules. This effort eventually led to the current proposal that will be described in detail below, and which, as stated above, would result in substantial changes in existing practice.

II. Discussion

The Committee's first inclination was to consider rule changes that would "tighten" the existing procedural scheme so as to prevent the use of informal local procedures that, arguably, circumvent the general rules. In the course of its discussions, however, the Committee was reminded that the judges who employ the informal "default date" procedure do so for good reasons - to avoid unnecessarily scheduled hearings, continuances, and inconvenience to the parties. In addition, the informal procedure - although it interjects into the existing procedure the additional step of waiting for the defendant's notice of intention to defend before scheduling the "real" hearing date - allows courts to schedule their hearing time more efficiently and with more certainty, which is advantageous to the courts, counsel, and litigants. The Committee's discussions, therefore, eventually evolved into a proposal to incorporate the concept of this informal procedure into the general rules so as to take advantage of the benefits of the procedure while promoting system wide consistency of practice.⁹

To implement this, the Committee developed a proposal that would eliminate the requirement (currently in Rule 305) that the court set a hearing date immediately upon the filing of the plaintiff's complaint. Instead, the revised procedural scheme would require service of the complaint and an enhanced "Notice to Defendant" on the defendant, with clear instructions that the defendant must file a simple answer to the complaint if he or she wishes to defend. In keeping with the traditional user-friendly nature of district court proceedings, the answer would be on a short, MDJS-generated form with easy-to-understand instructions and check-off boxes for the defendant to complete the required information. Also, in keeping with the expedited nature of district court proceedings, the rules would require that the answer be

⁷ See Pa. R.C.P.M.D.J. No. 204 (Purpose and Intent of Rules) ("The purpose and intent of these rules is to provide a *complete and exclusive procedure* for every action or proceeding to which they are applicable." (emphasis added)).

⁸ Civil Action Hearing Notice, Form AOPC 308B-05. (This form, like most forms used in the magisterial district courts, is produced by the Magisterial District Judge System (MDJS), the statewide computer system, developed and maintained by the Administrative Office of Pennsylvania Courts, that automates all case processing and accounting functions of the magisterial district courts. This form is used to satisfy the requirements of Pa. R.C.P.M.D.J. No. 305, supra n. 1.)

⁹ The Committee did not adopt this approach lightly. The Committee notes that the current procedural scheme has been in existence, with relatively little change, since 1970. The Committee acknowledges, with great respect and admiration, the original drafters of these rules whose vision and work have withstood the test of time. The Committee believes this new approach to scheduling hearings is a natural progression for the magisterial district courts as jurisdictional limits have increased and practice has become more sophisticated. The new approach is intended, however, to remain true to the original drafters' intent as espoused in their 1970 Explanatory Comment preceding the Chapter 300 Rules: "[i]n drafting these rules, the guiding policy was to provide a framework, insofar as the Pennsylvania constitutional system would permit, for a modern, workable small claims procedure, realizing that many magisterial district judges would not be lawyers and that members of the public using the system would be largely unrepresented by legal counsel. Thus, an attempt was made throughout these rules to achieve simplicity of phraseology, uncomplicated administration and as much standardization in the handling of civil actions by magisterial district judges as is possible." Pa. R.C.P.M.D.J., Ch. 300, Explanatory Comment.

filed within ten days of the date of service. Thereafter, if the defendant answers and gives notice of his or her intention to defend, the court would schedule a hearing date and notify the parties. If the defendant fails to file an answer or indicates that he or she does not intend to defend, the rules would provide for the entry of judgment for the amount claimed in the complaint without the necessity for a hearing. In addition, if the defendant has a counterclaim that he or she wishes to assert in the action, the counterclaim would need to be filed along with the answer, thereby notifying the court and the plaintiff of the counterclaim before the initial hearing date is set.

In addition to the major rule changes discussed above, numerous correlative rule changes would be needed to fully implement the new procedural scheme. For example, the time frames established for service, continuances, and the filing of counterclaims must be altered. The Notice to Defendant must be enhanced to clearly set forth the requirement that the defendant file an answer. And, of course, the procedures for setting the hearing date must be revised. In addition, the Committee has included in this proposal a number of changes to the Chapter 500 landlord/tenant action rules. These changes, which are tangentially related to the new procedural scheme for civil cases, primarily provide for an enhanced Notice to Defendant and a more streamlined procedure for service of a defendant's counterclaim in a landlord/tenant action. *The new requirement that a defendant file an answer in a civil action would not apply to landlord/tenant actions. No answer or other notice of intention to defend is required in landlord/tenant actions because the plaintiff must always appear in these cases and give testimony to prove the claim.*¹⁰ The proposed amendments to the landlord/tenant action rules are intended only to revise and modernize the notice and counterclaim provisions in a way that is consistent with the changes proposed to the civil action rules.

III. Proposed Rule Changes

A. Rule Changes to Implement the Requirement of a Defendant's Answer

1. Rule 305

As discussed above, Rule 305 currently requires, among other things, that a hearing date be set immediately upon the filing of the plaintiff's complaint. Under the proposed new procedural scheme, the setting of the hearing would occur later in the judicial process, only after the defendant properly files an answer and gives notice of his or her intention to defend. Therefore, the existing provisions of Rule 305 would be deleted entirely, and would be replaced with provisions for an enhanced Notice to Defendant that would accompany the complaint when served on the defendant. The title of the rule would be changed to "Notice to Defendant; Form." The enhanced Notice to Defendant would be loosely based on the notice required by Pa.R.C.P. No. 1018.1 for civil actions in the courts of record. The notice would inform the defendant that he or she must file an answer with the magisterial district court within ten days in order to defend against the claim, or else suffer judgment by default, and that the court would set a hearing date if the answer is properly filed. In addition, the notice would provide instructions regarding the filing of a counterclaim, which would need to be filed along with the answer. Finally, the notice

would contain a general statement regarding accommodations under the federal Americans With Disabilities Act.

2. Rule 318

Rule 318 currently provides for informing the plaintiff if the defendant notifies the court of his or her intention to defend. Under the proposed new procedural scheme, these provisions would be unnecessary because the plaintiff would be notified after the complaint is served that either the defendant has filed an answer and a hearing date has been set, or that the defendant has not filed an answer and a default judgment has been entered. Therefore, the existing provisions of Rule 318 would be deleted entirely, and the title of the rule would be changed to "Defendant's Answer and Counterclaim; Time for Filing Answer and Counterclaim; Judgment by Consent and Judgment by Default." Subdivision A of the amended rule would provide that the defendant must file an answer within ten days of service of the complaint, and that "[t]he time period for filing the answer may not be extended except by the magisterial district judge for good cause shown." This latter provision was deemed necessary because of the common practice in the courts of record of attorneys informally agreeing to extensions of the time period for filing responsive pleadings. As the proposed Official Note to Rule 318 points out, however, "[t]his restriction is necessary because under these rules a default judgment may be entered against the defendant for failure to file a timely answer by operation of law without the need for a praecipe by the plaintiff."

Subdivision B of the amended rule would make clear that the answer must be in writing on an official form, and would set forth the contents of the answer. Among the contents of the answer would be a statement by the defendant in which he or she would (1) deny the claim entirely and request a hearing, (2) deny the claim in part and request a hearing, or (3) not contest the claim and not request a hearing. The Committee anticipates that this portion of the answer form would be in an easy-to-understand check-off format.

Subdivision D of the amended rule would provide for the entry of judgment by consent if the defendant files an answer in which he or she does not contest the claim, and judgment by default if the defendant fails to file a timely answer.

3. Rule 319

Rule 319 currently provides only for what action is to be taken when a party fails to appear for the hearing. While failure to appear at the hearing would still be addressed in amended Rule 319, these provisions would be substantially changed to conform to the new procedural scheme. In addition, the rule would be expanded to include provisions for scheduling the hearing date upon the timely filing of an answer by the defendant. Therefore, the existing provisions of Rule 319 would be deleted entirely, and the title of the rule would be changed to "Setting the Date for Hearing; Notice; Failure of a Party to Appear at the Hearing." Subdivision A of the amended rule would provide for the setting of the hearing date within 12 to 30 days. The 30 day outside limit in this provision is shorter than the 60 day limit currently provided for in Rule 305, however under the new procedural scheme many fewer hearings would need to be scheduled because hearings would be scheduled only after the defendant files an answer requesting a hearing. In addition, under the new scheme the hearing notice would be sent by regular mail because service of original process would have already been made. District courts, therefore,

¹⁰ See Pa. R.C.P.M.D.J. No. 512 (Hearings and Evidence) and Official Note ("[T]his rule is intended to make clear that the magisterial district judge may not enter a default judgment in a possessory action, including a judgment for money only. The plaintiff must appear and give testimony to prove the complaint even when the defendant fails to appear for the hearing." Pa. R.C.P.M.D.J. No. 512, Official Note.); Pa. R.C.P.M.D.J. No. 514 (Judgment) and Official Note.

should have no difficulty complying with the shortened time frame for scheduling hearings. Also under subdivision A, the plaintiff would be provided with a copy of the defendant's answer and counterclaim, if any.

Subdivision B of the amended rule would provide for three scenarios in which one or both parties fail to appear at the hearing: (1) where the plaintiff does not appear but the defendant does, judgment would be entered for the defendant; (2) where the defendant does not appear but the plaintiff does, judgment would be entered for the plaintiff, or; (3) where neither party appears, the complaint would be dismissed without prejudice. Under all three scenarios, the magisterial district judge would also have the option to continue the case for good cause shown. These three scenarios provide clearer outcomes than do the current provisions of Rule 319B because the question of whether or not the plaintiff had notice of the defendant's intention to defend is not a concern under the proposed new procedural scheme.

B. Correlative Changes to Rule 315 (Claim by Defendant)

As noted above, under the proposed new procedural scheme, a defendant who intends to assert a counterclaim¹¹ in an action would be required to do so in conjunction with the answer filed pursuant to amended Rule 318. To implement this change, the Committee proposes numerous amendments to Rule 315. Subdivision A of the amended rule would remain substantially the same with only minor editorial changes. The existing provisions of subdivision B would be deleted entirely, and replaced with two new provisions: (1) cross-referencing Rule 318, and (2) providing that "[a] counterclaim is deemed denied by the plaintiff and no responsive pleading is required." The latter provision was added to define a cut-off point for pleadings in district court civil actions in keeping with the simplified and expedited nature of these actions.

Subdivision C of the amended rule would also be significantly altered. New subparagraph C(1) would provide that both the plaintiff's complaint and the defendant's counterclaim would be heard "together at a consolidated hearing." New subparagraph C(2) would provide that a properly filed counterclaim may proceed to hearing even if the plaintiff voluntarily withdraws the original complaint. This provision was added in response to an inquiry from a magisterial district judge who pointed out that the current rules do not provide for such an occurrence. Subparagraph C(3) contains the existing provisions of Rule 315C, but the wording has been enhanced to clarify that only one money judgment, for the plaintiff or the defendant, but no for both, is to be entered in cases involving counterclaims. This provision has created some confusion in district court practice, and the amended wording is intended to clarify the Committee's position that only one judgment should be entered in these cases.

Finally, the existing subdivision D would be deleted entirely as it is no longer necessary under the proposed new procedural scheme.

¹¹ The rules of civil procedure governing actions before magisterial district judges have heretofore used the term "cross-complaint" to describe a complaint filed by the defendant against the plaintiff. With these amendments, the Committee proposes that "cross-complaint" be substituted with the term "counterclaim" in Rule 315 and throughout the rules. The Committee believes that counterclaim more accurately describes "a claim by a defendant against the plaintiff used as an offset against the original claim." Bryan A. Garner, *A Dictionary of Modern Legal Usage* 238 (2d ed. 1995).

C. Correlative Changes to Service Rules 307, 313, and 314

The proposed new procedural scheme requiring the defendant to file an answer before an initial hearing date is scheduled would necessitate fundamental changes to the rules relating to service. Under the current rules, in which the hearing date is set before service is made, the time frame for making service on the defendant is based upon service being made by a specified number of days *before* the scheduled hearing. Under the proposed rules, in which the hearing date would not be set until after service is made and the defendant answers, the time frame for making service would be based upon service being made within a specified number of days after the filing of the plaintiff's complaint.

1. Rule 307

The existing provisions of Rule 307 would remain largely intact with a few notable changes and additions. First, as discussed above, subdivision A would be amended to provide that service within the Commonwealth must be made within 40 days of the filing or reinstatement¹² of the plaintiff's complaint. The 40 day time period is intended to allow sufficient time for either personal service or service by certified or registered mail.

Secondly, a new subdivision D would be added to make clear that "all notices and legal papers other than the complaint filed in an action shall be served by first class mail." This provision merely clarifies and codifies existing practice.

Finally, a new subdivision E would be added to define the term "complaint" as including the complaint form, the notice to defendant, and the blank Answer/Counterclaim form to make clear that all of these documents must be served on the defendant.

2. Rule 313

The service provisions in Rule 313 would remain largely intact, except that a new subdivision A would provide that service outside the Commonwealth must be made within 60 days of the filing or reinstatement of the plaintiff's complaint. The 60 day time frame is intended to allow sufficient time for any of the options for service outside the Commonwealth. In addition, a new subdivision C would be added to define the term "complaint" as including the complaint form, the notice to defendant, and the blank Answer/Counterclaim form to make clear that all of these documents must be served on the defendant.

3. Rule 314

The provisions in Rule 314 would remain largely intact, except that the contents of the return of service would be more specifically defined. In addition, the Committee proposes other minor editorial changes to conform to the proposed new procedural scheme.

D. Other Conforming Amendments—Rules 209, 301, 303, and 304

1. Rule 209

In order to fully implement the proposed new procedural scheme, the provisions of Rule 209 (Continuances)¹³ would require amendment. Under the current rule, which is based on the hearing date being set immediately upon

¹² As to reinstatement, see Pa. R.C.P.M.D.J. No. 314E (Return, Waiver, and Failure of Service; Reinstatement).

¹³ Rule 209 was recently amended by the Supreme Court (Supreme Court of Pennsylvania Order No. 213, Magisterial Docket No. 1, December 16, 2004) effective July 1, 2005. This proposal would amend the Rule as amended by the Court's December 16, 2004 Order.

filing of the plaintiff's complaint, the allowable time frames for continuances in civil actions run from the date of filing the complaint. Under the amended rule, in which the civil action hearing date is set only after the defendant's answer is filed, the allowable time frames for continuances would run from the hearing date. As to civil actions, the amended rule would provide that the aggregate of all continuances shall not extend beyond 30 days from the hearing date. This limitation was thought to be sufficient given the expedited nature of these proceedings and the greater certainty in scheduling that would come with the new scheme.¹⁴ *The existing provisions relating to continuances in landlord/tenant actions would not be affected.*

2. Rules 301, 303, and 304

The Committee proposes only minor editorial amendments to Rules 301, 303, and 304 to conform to the proposed new procedures.

E. Correlative Amendments to the Landlord/Tenant Action Rules

As noted above, the proposed new procedures requiring the defendant to file an answer in a civil action would not apply to landlord/tenant actions under the Chapter 500 rules. The Committee is, however, proposing a number of correlative amendments to these rules to promote consistency between the civil and landlord/tenant rules, and to address other tangentially related issues.

1. Rule 504

The Committee proposes that the Notice to Defendant required by Rule 504 be revised to substantially mirror and be consistent with the notice required by civil action Rule 305.

2. Service Rules 506 and 507

The Committee proposes mostly minor correlative changes to Rules 506 and 507 to make them consistent with their counterparts in the civil action rules. There is, however, one notable new provision. In Rule 506, the Committee proposes a new subparagraph B(2) to provide that if the landlord/tenant complaint is not served at least five days before the hearing date the case shall be continued, a new hearing date shall be set, and proper service would be reattempted. In the course of developing this proposal, the Committee discovered that the rules do not specify what is to occur if service is not made as required by existing Rule 506B.

3. Rule 508

The most significant changes to the landlord/tenant rules under this proposal are found in Rule 508 relating to counterclaims. The Committee has received numerous complaints from magisterial district judges who are dissatisfied with the current rule relating to counterclaims in landlord/tenant proceedings because the rule allows a defendant to file a counterclaim at any time before the hearing. This is necessary, of course, because of the very expedited nature of landlord/tenant proceedings, and because no notice of the defendant's intention to defend is required in these cases.¹⁵ This procedure does, however, often frustrate the prompt disposition of these cases because the filing of a counterclaim invariably results in

a continuance of the hearing. The existing procedure requires service of the defendant's counterclaim in accordance with the service rules for regular civil actions, and such service cannot be accomplished in time for the initial hearing date, especially when the defendant files the counterclaim immediately before the initial hearing. To rectify this problem while maintaining the existing procedures for scheduling hearings, the Committee proposes changes to the manner in which landlord/tenant counterclaims are served on the plaintiff. Specifically, the Committee proposes that service of the counterclaim be accomplished by the magisterial district judge simply handing a copy of the counterclaim to the plaintiff or the plaintiff's representative at the hearing. Thereafter, because the plaintiff may wish to avoid any delay in the recovery of possession of the premises, a new subdivision D would give the plaintiff the option of proceeding with the scheduled hearing after being served with the counterclaim, or requesting a continuance if needed to prepare a defense. Under these circumstances, it would be highly unusual for the magisterial district judge to deny the continuance request. Because both claims are necessarily related to the occupancy of the premises, however, the plaintiff may be prepared to proceed immediately, and hearing both claims together should not take excessive time.

4. Rules 501, 502, and 503

The Committee proposes only minor editorial amendments to Rules 501, 502, and 503 to promote consistency between these rules and their counterparts in the Chapter 300 civil action rules.

[Pa.B. Doc. No. 05-696. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Adoption of Philadelphia Civil Rule *1028.1; President Judge General Court Regulation No. 2005-03

Order

And Now, this 30th day of March, 2005, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held on February 26, 2004 to adopt Philadelphia Civil Rule *1028.1, *It Is Hereby Ordered* that Philadelphia Civil Rule *1028.1 is adopted as follows.

This General Court Regulation is issued in accordance with Pa.R.Civil.P. No. 239 and, as required by Rule 239, the original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, and copies shall be submitted to the Administrative Office of Pennsylvania Courts for publication on its website, and the Civil Procedural Rules Committee. Copies of the Order shall also be submitted to *American Lawyer Media*, *The Legal Intelligencer*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of

¹⁴ In establishing the allowable time frame for continuances in civil cases, the Committee was mindful that, when allowing for service and the defendant's answer under the new scheme, as many as 80-100 days may pass between the filing of the complaint and the initial hearing date. While this may seem substantially longer than the existing time frame for scheduling civil hearings (no more than 60 days after the filing of the complaint), it was considered to be an acceptable trade off for the greater certainty in scheduling and the smaller number of hearings that would actually need to be scheduled under the proposed new procedural scheme.

¹⁵ See *supra* n. 8.

Pennsylvania, and posted on the website of the First Judicial District: <http://courts.phila.gov>.

By the Court

FREDERICA A. MASSIAH-JACKSON,
President Judge,

Adopted by the Board of Judges on February 26, 2004.

Philadelphia Civil Rule *1028.1

Rule *1028.1 Preliminary Objections to Declaration of Taking Pursuant to Section 406 of The Eminent Domain Code or to Petition for Appointment of Viewers Alleging De Facto Taking or Other Compensable Injury Pursuant to Section 502(e) of The Eminent Domain Code

(A) The general provisions of Rule *1028 and Rule *206.1 shall not apply to preliminary objections to a declaration of taking pursuant to Section 406 of the Eminent Domain Code or to a petition for appointment of viewers alleging a de facto taking or other compensable injury pursuant to Section 502(e) of the Eminent Domain Code.

(B) Preliminary objections to a declaration of taking pursuant to Section 406 of the Eminent Domain Code or to a petition for appointment of viewers alleging a de facto taking or other compensable injury pursuant to Section 502(e) of the Eminent Domain Code shall be filed with the Prothonotary and, within 72 hours of filing, shall be served upon all adverse parties. The objections shall state specifically the grounds relied upon and include a statement as to whether the objections raise issues of fact or raise solely issues of law.

(C) Within twenty (20) days after such filing, any party may, but need not, file as response to the preliminary objections. Any response filed shall specifically respond to the statement as to whether preliminary objections raise issues of fact or raise solely issue of law.

(D) The court shall determine whether factual issues must be resolved in order to determine the preliminary objections. If factual issues must be resolved, the court shall establish a schedule and procedure for the taking of discovery and resolution of the factual issues by evidentiary depositions or an evidentiary hearing, and, if necessary, the court shall set a brief schedule and schedule argument.

[Pa.B. Doc. No. 05-697. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 252—ALLEGHENY COUNTY RULES

ALLEGHENY COUNTY

Rules of the Court of Common Pleas; No. 4 of 2005 Rules Doc.

Order of Court

And Now, to-wit, this 29th day of March 2005, pursuant to action of the Board of Judges, the following Amended Local Rule 1301 affecting the Civil Division of

the Court of Common Pleas is adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH M. JAMES,
President Judge

Amended Local Rule 1301

(3) A board of arbitrators may not enter an award in favor of any party in excess of \$25,000.

Note: While a board of arbitrators may hear a lawsuit in which the pleading of a defendant or an additional defendant claims an amount in excess of \$25,000, the award of the board of arbitrators may not exceed \$25,000.

(4) If a party files a counterclaim or a cross-claim seeking an award in excess of \$25,000, any party may file a petition to transfer the entire case to the General Docket.

Existing Local Rule reads as follows:

Local Rule 1301. Scope

(1) The following civil actions, proceedings and appeals or issues therein where the demand is for \$25,000 or less (exclusive of interest and costs) shall first be submitted to and heard by a board of three members of the bar of the Court:

- (a) Assumpsit cases, except;
- (i) Where an accounting is demanded.
- (b) Trespass cases, except:

(i) Where the Commonwealth is a party defendant or an employee of the Commonwealth is a party defendant under the provisions of 42 Pa.C.S., Chapter 85B (relating to action against Commonwealth parties).

(c) Replevin without bond and Replevin with bond once bond has been set by the Court.

(d) Appeals from final judgments of the minor judiciary.

(e) Matters transferred to compulsory arbitration by the Court even though the original demand may have exceeded \$25,000 (exclusive of interest and costs).

(2) Actions, proceedings appeals or matters other than those set forth in *(1) shall not be submitted to, transferred by a Court to, heard or determined by a Board of Arbitrators appointed under 42 Pa.C.S. § 7361.

[Pa.B. Doc. No. 05-698. Filed for public inspection April 15, 2005, 9:00 a.m.]

ALLEGHENY COUNTY

Rules of the Court of Common Pleas; No. 5 of 2005 Rules Doc.

Order of Court

And Now, to-wit, this 29th day of March 2005, pursuant to action of the Board of Judges, the following Amended Local Rule 1304 affecting the Civil Division of the Court of Common Pleas is adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH M. JAMES,
President Judge

Amended Local Rule 1304

(2) A non-jury verdict entered at a hearing held pursuant to Rule 1304(1) shall not exceed \$25,000.

Existing Local Rule reads as follows:

Local Rule 1304. Conduct of Hearing. Failure to Appear for Hearing.

If a party fails to appear for a scheduled arbitration hearing, the matter may, if all present parties agree, be transferred immediately to a Judge of the Court of

Common Pleas for an ex parte hearing on the merits and entry of a non-jury verdict, from which there shall be no right to a trial de novo on appeal.

Note: This local rule results in the loss of the right to a trial de novo on appeal, as described in the local rule. A dismissal or judgment which results from this local rule would be treated as any other final judgment in a civil action, subject to Pa.R.Civ.P. 227.1.

[Pa.B. Doc. No. 05-699. Filed for public inspection April 15, 2005, 9:00 a.m.]

RULES AND REGULATIONS

Title 4—ADMINISTRATION

STATE EMPLOYEES' RETIREMENT BOARD

[4 PA. CODE CHS. 243 AND 249]

Optional Alternate Retirement Plans

The State Employees' Retirement Board (Board) amends §§ 243.3 and 249.58 (relating to optional alternate retirement program). The final-form rulemaking deletes the transitional provisions for electing to participate in an optional alternate retirement program or plan in §§ 243.3 and 249.58. The transitional provisions are no longer needed, read broadly and may conflict with 24 Pa.C.S. Part IV (relating to Public School Employees' Retirement Code) (Retirement Code), because the Retirement Code (Retirement Code) does not allow current members to opt out of the State Employees' Retirement System (SERS).

A. Effective Date

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information, contact Sean Sanderson, Director of Communications, State Employees' Retirement System, 30 North Third Street, P. O. Box 1147, Harrisburg, PA 17108, (717) 787-9657; or M. Catherine Nolan, Assistant Counsel, State Employees' Retirement System, 30 North Third Street, P. O. Box 1147, Harrisburg, PA 17108, (717) 783-7317.

C. Statutory Authority

This final-form rulemaking is being made under the authority of 71 Pa.C.S. § 5902(h) (relating to administrative duties of the board).

D. Background and Purpose

When amended in 1974, the Retirement Code, for the first time, permitted certain school employees to choose an alternate retirement plan. The Retirement Code applies to new employees. The Board promulgated §§ 243.3 and 249.58 to implement this Retirement Code provision. Sections 243.3 and 249.58, among other things, contained transitional provisions, granting to existing employees an opportunity to elect an alternate retirement plan. Section 249.58 provided that vested members make an election on or before November 1, 1975. Active members who had not vested as of November 1, 1975, had 60 days from becoming eligible to vest to elect. The transitional provisions of §§ 243.3 and 249.58 were added because the existing employees never had the opportunity to select an alternate plan. At the time of enactment of §§ 243.3 and 249.58, the only alternate plan allowed was Teachers Insurance and Annuity Association-College Retirement Equities Fund.

The act of June 22, 2001 (P. L. 530, No. 35) allowed the State System of Higher Education (SSHE) to add insurance companies or mutual funds as additional alternate plans for its employees. Sections 243.3 and 249.58, as written, could be interpreted to allow existing employees, who already had a choice under the Retirement Code to elect an alternate retirement plan, to make an additional election and to opt out of SERS each time a new alternate plan is approved by SSHE. The Board, however, has always interpreted §§ 243.3 and 249.58 as providing a

one-time opportunity for these employees, not a continual choice each time a new alternate plan is approved by the employer. Deleting the language clarifies the intent of the Board and eliminates a potential conflict between §§ 243.3 and 249.58 and the Retirement Code, because the Retirement Code does not allow current members to opt out of the system.

The Public School Employees' Retirement System (PSERS) is proposing a similar revision of its regulation that parallels § 249.58. This amendment will harmonize the regulations of the SERS and PSERS with regard to election of alternate retirement plans. SSHE supports the final-form rulemaking.

E. Benefits, Costs and Compliance

Benefits

This final-form rulemaking removes expired transitional provisions, clarifies the Board's intent regarding the election of alternate retirement plans and eliminates a potential conflict between the Retirement Code and the regulations.

Costs

The final-form rulemaking formalizes the Board's long-standing interpretation that the transitional provisions of §§ 243.3 and 249.58 have expired. The final-form rulemaking, therefore, maintains the status quo, and has no associated cost.

Compliance Costs

The final-form rulemaking will not impose any additional compliance costs on State employees or employers.

F. Sunset Review

Not applicable.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 3, 2003, the Board submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 892 (February 15, 2003), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House State Government Committee and the Senate Finance Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

On April 17, 2003, IRRC identified several sentences or phrases that could be deleted or reformatted to improve clarity. The Board has complied with the comments identified by IRRC.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on February 9, 2005, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC on February 10, 2005.

H. Public Comments

The Board received no public comments.

I. Findings

The Board finds that:

(1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments to the rules and procedures herein are necessary and appropriate for the administration of the code.

J. Order

The Board, acting under the Retirement Code and the act of July 31, 1968 (P. L. 769, No. 240) known as the Commonwealth Documents Law, including particularly those sections specified in the several authority sections herein specified with respect to each provision of the rules and procedures of SERS modified by this order, orders:

(a) The regulations of the Board, 4 Pa. Code Chapters 243 and 249, are amended by amending §§ 243.3 and 249.58 to read as set forth in Annex A.

(b) The amendments shall be submitted to the Office of Attorney General for approval as to legality as required by law.

(c) The Secretary of the Board 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 immediately upon publication in the *Pennsylvania Bulletin*.

ERIC HENRY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 1487 (February 26, 2005).)

Fiscal Note: Fiscal Note 31-2 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 4. ADMINISTRATION

PART X. STATE EMPLOYEES' RETIREMENT BOARD

CHAPTER 243. MEMBERSHIP, CREDITED SERVICE, CLASSES OF SERVICE AND ELIGIBILITY FOR BENEFITS

§ 243.3. Optional alternate retirement program.

School employees, limited to certain designated employees and officers of the Pennsylvania State University, Indiana University of Pennsylvania, the State System of Higher Education and the Department of Education, shall be permitted to join an optional alternate retirement program in lieu of membership in the system. The program shall be an independent retirement program approved by the employing agency head, provided that the employer is not contributing at a rate greater than that provided in section 5508(b) of the code (relating to actuarial cost method).

CHAPTER 249. ADMINISTRATION, FUNDS, ACCOUNTS, GENERAL PROVISIONS

Subchapter E. GENERAL PROVISIONS

§ 249.58. Optional Alternate Retirement Program.

Under section 5301 of the code (relating to mandatory and optional membership), certain school employees may elect not to join the System in favor of an optional alternate retirement program approved by the employer.

(1) Every employee, who is eligible for membership in the optional alternate retirement program, shall make the election within 30 days of the first date of active employment. Employees not exercising the option to join the optional alternate retirement program shall be deemed to have chosen to commence active membership in the System, unless they have elected membership in the Public School Employees' Retirement System.

(2) When an eligible employee elected to participate in the optional alternate retirement program in accordance with the provisions of paragraph (2) as it existed on April 15, 2005, or paragraph (4) as it existed on April 15, 2005, or elects to participate in the optional alternate retirement program in accordance with current paragraph (1), the election shall be final and binding so long as the employee remains eligible to remain in the optional alternate retirement program. If the employee later becomes employed by the Commonwealth in a capacity which does not qualify him for membership in the optional alternate retirement program, the employee shall, upon meeting the qualifications for membership in this System, make contributions to the fund, and if eligible, the employee may reinstate former credited service for which contributions had been withdrawn. Remittance of contributions or reinstatement of former credited service shall be made in accordance with the applicable provisions of the code. Service, salary or other compensation paid to an employee while a member of the optional alternate retirement program will not be credited toward membership in or retirement benefit from this System.

(3) Each year, the Board will certify to the Secretary of Education or the governing bodies of employing institutions the percentage rate of the employer normal contribution as determined in accordance with section 5508(b) of the code.

[Pa.B. Doc. No. 05-700. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 22—EDUCATION

PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

[22 PA. CODE CH. 215]

Optional Alternate Retirement Plans

The Public School Employees' Retirement Board (Board) amends Chapter 215 (relating to general administration) to read as set forth in Annex A. The final-form rulemaking deletes the transitional provisions for electing to participate in an optional alternate retirement plan in § 215.36 (relating to optional alternate retirement programs). The transitional provisions are no longer needed, read broadly and may conflict with 24 Pa.C.S. Part IV (relating to Public School Employees' Retirement Code) (Retirement Code), because the Retirement Code does not allow current members to opt out of the system.

A. Effective Date

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information, contact Frank Ryder, Director of Government Relations, Public School Employees' Re-

tirement System, 5 North Fifth Street, P. O. Box 125, Harrisburg, PA 17108, (717) 720-4733; or Charles K. Serine, Deputy Chief Counsel, Public School Employees' Retirement System, 5 North Fifth Street, P. O. Box 125, Harrisburg, PA 17108, (717) 720-4679.

C. *Statutory Authority*

This final-form rulemaking is being made under the authority of 24 Pa.C.S. § 8502(h) (relating to administrative duties of board).

D. *Background and Purpose*

When amended in 1975, the Retirement Code, for the first time, permitted certain school employees to choose an alternate retirement plan. The Retirement Code applies to new employees. The Board promulgated § 215.36 to implement this Retirement Code provision. Section 215.36, among other things, contained a transitional provision granting to existing employees an opportunity to elect an alternate retirement plan. This transitional provision was added because the existing employees never had the opportunity to select an alternate plan. At the time of enactment of § 215.36, the only alternate plan allowed was the Teachers Insurance and Annuity Association—College Retirement Equities Fund.

The act of June 22, 2001 (P. L. 530, No. 35) allowed the State System of Higher Education (SSHE) to add insurance companies or mutual funds as additional alternate plans for its employees. Section 215.36, as written, could be interpreted to allow existing employees, who already had a choice under the Retirement Code to elect an alternate retirement plan, to make an additional election and to opt out of the Public School Employees' Retirement System (PSERS) each time a new alternate plan is approved by SSHE. The Board, however, has always interpreted § 215.36 as providing a one-time opportunity for these employees, not a continual choice each time a new alternate plan is approved by the employer. Deleting the language clarifies the intent of the Board and eliminates a potential conflict between § 215.36 and the Retirement Code, because the Retirement Code does not allow current members to opt out of the system.

The State Employees' Retirement System (SERS) is proposing a similar revision of its regulation that parallels § 215.36. This repeal will harmonize the regulations of PSERS and SERS with regard to election of alternate retirement plans. SSHE supports the amendment of these sections.

E. *Benefits, Costs and Compliance*

Benefits

This final-form rulemaking removes an expired transitional provision, clarifies the Board's intent regarding the election of alternate retirement plans and eliminates a potential conflict between the Retirement Code and § 215.36.

Costs

The final-form rulemaking will formalize the Board's long-standing interpretation that the transitional provisions of § 215.36 have expired. The final-form rulemaking, therefore, maintains the status quo and has no associated cost to the Commonwealth, its citizens, school employers, school employees or PSERS.

Compliance Costs

The final-form rulemaking will not impose any additional compliance costs on school employees or employers.

F. *Sunset Review*

No sunset date has been set.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 31, 2003, the Board submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 882 (February 15, 2003), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Education Committee and the Senate Finance Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

On April 17, 2003, IRRC identified several sentences or phrases that could be deleted or reformatted to improve clarity. The Board has complied with the comments identified by IRRC.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on February 8, 2005, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, the final-form rulemaking was approved by IRRC on February 10, 2005.

H. *Public Comments*

There have been no public comments.

I. *Findings*

The Board finds that:

(1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendment to the rules and procedures are necessary and appropriate for the administration of the code.

J. *Order*

The Board, acting under The Administrative Code of 1929 and the act of July 31, 1968 (P. L. 769, No. 240) known as the Commonwealth Documents Law, including particularly those sections specified in the several authority sections herein specified with respect to each provision of the rules and procedures of PSERS deleted by this order, orders that:

(a) The regulations of the Board, 22 Pa. Code Chapter 215, are amended by amending § 215.36 to read as set forth in Annex A.

(b) The amendment shall be submitted to the Office of Attorney General for approval as to legality as required by law.

(c) The Secretary of the Board 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 immediately upon publication in the *Pennsylvania Bulletin*.

JEFFREY B. CLAY,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 1487 (February 26, 2005).)

Fiscal Note: Fiscal Note 43-9 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 22. EDUCATION

PART XIII. PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

CHAPTER 215. GENERAL ADMINISTRATION

MISCELLANEOUS PROVISIONS

§ 215.36. Optional alternate retirement programs.

(a) Under section 8301(a)(1) of the Retirement Code (relating to mandatory and optional membership), certain school employees may elect not to join the System in favor of an optional alternate retirement program approved by the employer.

(1) Every employee who is eligible for membership in the optional alternate retirement program shall make the election within 30 days of the first date of active employment. Employees not exercising the option to join the optional alternate retirement program shall be deemed to have chosen to commence active membership in this System, unless they have elected membership in the State Employees' Retirement System.

(2) When an eligible employee elected to participate in the optional alternate retirement program in accordance with the provisions of paragraph (2) as it existed on April 15, 2005, or paragraph (4) as it existed on April 15, 2005, or elects to participate in the optional alternate retirement program in accordance with paragraph (1), the election is final and binding so long as the employee remains eligible to remain in the optional alternate retirement program. When an employee later is employed in a capacity which does not qualify for membership in the optional alternate retirement program, the employee shall, upon meeting the qualifications for membership in the System, either make contributions to the fund or reinstate the former credited service for which contributions had been withdrawn. Remittance of contributions or reinstatement of former credited service shall be made in accordance with the applicable provisions of the Retirement Code. Service, salary or other compensation paid to an employee while a member of the optional alternate retirement program will not be credited toward membership in, or retirement benefit from, this System.

(b) Retirement Code reference: Section 8326 of the Retirement Code.

[Pa.B. Doc. No. 05-701. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

DEPARTMENT OF ENVIRONMENTAL PROTECTION

[25 PA. CODE CH. 121]

Corrective Amendment to 25 Pa. Code § 121.1

The Department of Environmental Protection has discovered a discrepancy between the agency text of 25

Pa. Code § 121.1 (relating to definitions) as deposited with the Legislative Reference Bureau and published at 31 Pa.B. 6921 (December 21, 2001) and the official text of 25 Pa. Code § 121.1 as codified in the March 2002 *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 328), and as currently appearing in the *Pennsylvania Code*. When the amendments at 31 Pa.B. 6921 were codified, the definition of the term "solvent" was inadvertently deleted.

Therefore, under 45 Pa.C.S. § 901: The Department of Environmental Protection has deposited with the Legislative Reference Bureau a corrective amendment to 25 Pa. Code § 121.1. The corrective amendment to 25 Pa. Code § 121.1 is effective as of March 2, 2002, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of 25 Pa. Code § 121.1 appears in Annex A, with ellipses referring to the existing text of the regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Solid film lubricant—A very thin coating, applied to aerospace vehicles or components, consisting of a binder system which contains as its chief pigment material one or more of the following:

- (i) Molybdenum.
- (ii) Graphite.
- (iii) Polytetrafluoroethylene (PTFE).

(iv) Other solids that act as a dry lubricant between faying surfaces.

Solvent—Organic compounds which are liquid at standard conditions and which are used as dissolvers, viscosity reducers or cleaning agents.

Solvent/air interface—For a vapor cleaning machine, the location of contact between the concentrated solvent layer and the air. This location of contact is the midline height of the primary condenser coils. For a cold cleaning machine, the location of contact between the liquid solvent and the air.

* * * * *

[Pa.B. Doc. No. 05-702. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 37—LAW

DEPARTMENT OF CORRECTIONS

[37 PA. CODE CHS. 91, 93 AND 94]

Administration, State Correctional Institutions and Facilities and Release and Prerelease Programs

The Department of Corrections (Department) amends Chapters 91, 93 and 94 (relating to administration; State correctional institutions and facilities; and release and prerelease programs). The Department is acting under the authority of section 506 of The Administrative Code of 1929 (71 P. S. § 186). This final-form rulemaking revises outdated material.

Purpose

The final-form rulemaking amends Chapter 91 to update the section on use of force and restraints. The final-form rulemaking amends Chapter 93 to revise the section on inmate correspondence to provide alternative procedures for privileged correspondence. The sections on inmate visiting privileges and religious activities are updated. The section on inmate discipline is revised to change the procedures for inmate hearings. The section on prison medical services is revised to clarify examination procedures and increase medical co-pay fees. The final-form rulemaking amends Chapter 94 to clarify prerelease procedures.

Summary of Comments and Responses on Proposed Rulemaking

1. § 91.6. Use of force and restraints.

The Independent Regulatory Review Commission (IRRC) commented as follows. Subsection (a)(2)(i) allows for the use of deadly force if an inmate attempts to "escape from a correctional facility or while in immediate pursuit of an inmate escaping from a correctional facility." The term "correctional facility" is not defined. The term "facility" is defined in this section as "An institution, motivational boot camp or community corrections center operated or contracted by the Department." The Department has indicated that this provision does not apply to an escape from a community corrections center. For clarity, the final-form rulemaking should define the term "correctional facility" and it should not include the term "community corrections center." Alternatively, the defined term "facility" should be substituted for "correctional facility" and subsection (a)(2)(i) should be amended to specifically exempt community corrections centers.

Response: The Department agrees and has amended subsection (a)(2)(i) to specifically exempt community corrections centers.

IRRC commented that subsection (a)(2)(ii) allows the use of deadly force if an inmate who has been convicted of a forcible felony attempts to "escape from a work detail, transport or other approved temporary absence when deadly force is necessary to prevent the escape. . . ." The term "forcible felony" is not defined in regulation or statute. However, it is defined in Department Policy Statement No. DC-ADM 201—Use of Force as "an offense involving the threat of physical force or violence against any individual." The Department should include this definition in the final-form regulation.

Response: The Department agrees and has added this definition in subsection (a)(2)(ii).

IRRC commented that subsection (c) establishes the procedures for the use of chemical munitions. It requires

staff to follow procedures in Administrative Directives. The Department should include the name and form number of the applicable documents in the final-form rulemaking.

Response: The Department agrees and has added a reference to DC-ADM 201—Use of Force—to this subsection.

The Pennsylvania Institutional Law Project commented that the proposed amendments unnecessarily expand the type of situation in which force can be used to include failure to comply with rules and where other methods are ineffective. The proposed amendments also expand the use of deadly force to include situations in which an inmate is attempting to escape from a facility.

Response: The changes are not an expansion of the existing regulations, which provide for use of force for legitimate penological objectives and for use of deadly force. Department staff has the legal authority to use a reasonable amount of force to bring about compliance with rules. The language in this section has been revised to further clarify when force can be used. The authority to use deadly force to prevent an escape is clearly provided in 18 Pa.C.S. § 508(c) (relating to use of force in law enforcement). The authority to use force to comply with rules is clearly provided in 18 Pa.C.S. § 509(5)(i) (relating to use of force by persons with special responsibility for care, discipline or safety of others).

2. § 93.2. Inmate correspondence.

IRRC commented that subsection (f) relates to the rejection of correspondence. It states, in part, "The letter may be held for at least 7 business days after mailing of the notification to permit reasonable opportunity to protest the decision." The word "may" suggests that this provision is optional. The Department has indicated that they routinely hold letters for 7 business days. The final-form rulemaking should make this provision a requirement by changing the word "may" to "will."

Response: The Department agrees and has made the suggested change.

The Pennsylvania Institutional Law Project commented as follows: "There are situations that were considered legal mail and not subject to search outside the presence of the inmate under the old rules that are not included in this new criteria and as such will now be inspected outside the inmate's presence."

Response: No change to definition of "legal mail" is being made at this time. This comment addresses prior amendments to these regulations.

3. § 93.3. Inmate visiting privileges.

IRRC commented that in subsection (a), regarding the approved list of visitors, the opening sentence is being amended to state "A list of approved visitors may contain at least 20 names or more if permitted by the Department." This change seems to require an inmate to have at least 20 visitors on the list. To avoid this confusion, the Department should retain the existing language that stated, in part, "A list of approved visitors may contain up to 20 names"

Response: The Department agrees and has made the suggested change.

IRRC commented that under the existing regulation, a child under 12 years of age may visit an inmate when accompanied by an adult. The proposed amendment would require a child under 18 years of age to be accompanied by a parent, legal guardian or county

children/youth services agency staff. The Department's current policy statement and handbook are inconsistent with this provision in the proposed rulemaking.

IRRC further commented that section (VI)(A)(2)(f) of Department Policy Statement No. DC-ADM 812—Inmate Visiting Privileges—provides that an immediate family member approved by the parent or legal guardian may accompany a minor when visiting an inmate. In addition, section (VI)(C)(2) of DC-ADM 812 allows a minor to visit only when accompanied by a parent/legal guardian, county children/youth services agency staff or an adult approved by the parent/legal guardian.

IRRC also commented that the *Handbook for the Families and Friends of Pennsylvania Department of Corrections Prison Inmates* permits an adult on an inmate's approved visiting list to accompany a child visiting an inmate. The Department should explain the inconsistencies between the proposed rulemaking and the documents previously noted.

Response: The Department will retain the existing regulation language except to add that an adult that accompanies the child must be approved by the parent or legal guardian. The Department will ensure that both DC-ADM 812 and the *Handbook for the Families and Friends of Pennsylvania Department of Corrections Prison Inmates* are consistent with the final-form rulemaking.

IRRC commented that the provision regarding the removal of visitors from an approved list is being amended by deleting the phrase "for good cause." The Department should retain this phrase, or explain the basis on which the facility manager will remove the name of a visitor.

Response: The Department agrees and will retain this language.

IRRC made the following comments about subsections (b), (c) and (j), regarding visitations by religious advisers, attorneys and media representatives. They all contain the phrase "... the total designated by the Department." The Department has indicated that they do not "designate" lists of visitors. Instead, they approve lists of visitors. These subsections should be amended to read "... the total approved by the Department."

Response: The Department agrees and has made the suggested changes.

IRRC made the following comments on subsection (h)(1) and (2), which provides that visiting days and hours will be "at the discretion of the facility manager." Representative Kathy Manderino, a member of the House Judiciary Committee, is concerned that this new language would make it more difficult for family members to visit inmates who are confined to facilities far from their homes. She suggests the Department establish minimum standards for all facilities that would allow reasonable access for family visits. IRRC agrees that visiting days and hours should reasonably accommodate family members.

Response: The Department agrees and has amended the final-form rulemaking to require that visiting days and hours reasonably accommodate family members.

4. § 93.6. Religious activities.

IRRC and the Pennsylvania Council of Churches made the following comments on subsection (a), which is being amended to delete language which permits inmates to "possess approved religious items" and be granted "reasonable accommodation for dietary restrictions." The Department should explain the reason for deleting this language.

Response: The Department has withdrawn the amendments.

IRRC and the Pennsylvania Council of Churches made the following comments on subsection (b), which relates to religious advisers. The rulemaking is deleting a provision that allows qualified representatives of a faith from the outside community to hold regular services in the correctional facility if the facility contains a sufficient number of inmates of the same faith. This provision is being replaced with the following sentence: "Staff or volunteers will be permitted to hold services that are consistent with the security needs and orderly administration of the facility." The Department has indicated that qualified representatives who have received endorsement from their faith group will still be allowed to hold services. The final-form rulemaking should be amended to reflect this fact.

Response: The Department has amended the final-form rulemaking to retain existing language and to clarify that qualified representatives, staff and volunteers may all hold services.

IRRC and the Pennsylvania Council of Churches made the following comments on subsection (c) in the existing regulation, which specifies how requests for accommodations of faith will be handled. Why is this subsection being deleted?

Response: The subsection in question has been revised to state that accommodation requests will be processed according to DC-ADM 819—Religious Activities, which sets for the process for reviewing the requests.

5. § 93.7. Telephone calls.

IRRC commented on subsection (a), which references 18 Pa.C.S. Chapter 57 (relating to wiretapping and electronic surveillance). The Department has indicated that the applicable provision is 18 Pa.C.S. § 5704 (relating to exceptions to prohibition of interception and disclosure of communications). The final-form rulemaking should be amended to include a reference to 18 Pa.C.S. § 5704.

Response: The Department agrees and has made the suggested change.

6. § 93.9. Inmate complaints.

IRRC and the Pennsylvania Institutional Law Project made a comment on this section, which has been amended to add that an inmate who submits a "frivolous" grievance may be subject to appropriate disciplinary procedures. The definition of "frivolous grievance" is in DC-ADM 804—Inmate Grievance System. The final-form rulemaking should include this definition. Also, the Department should reference DC-ADM 804, which explains who determines if a grievance is frivolous and when that determination is made.

Response: The Department agrees and has made the suggested change.

7. § 93.10. Inmate discipline.

IRRC made a comment on subsection (a) which states, in part, that "Rules which define expectations and prohibitions for inmate behavior will be established by the Department and made available to the inmate population." (Emphasis added.) This sentence implies that rules will be established sometime in the future. However, the Department indicated that rules have been established and are in the *Department of Corrections Inmate Handbook (Handbook)*. The final-form rulemaking should include a reference to that document.

Response: The Department agrees and has edited the final-form rulemaking to state that the rules will be disseminated to the inmate population.

IRRC noted that Representative Manderino has expressed concern over the insertion of the phrase "made available," which replaces the existing term "distributed." The concern is that since inmates will be held responsible for complying with the rules and may be disciplined for infractions, they should receive a complete copy of the rules. We agree.

Additionally, we note that the phrase "made available" or "available" appears in subsection (b)(2), as well as in the proposed definition of "contraband" in § 91.1 (relating to definitions) and proposed §§ 93.2(e)(1), 93.3(h)(6) and 94.3(a)(1) and (6) (relating to inmate correspondence; inmate visiting privileges; and procedures for participation in prerelease programs). The same concern applies to these sections. The final-form rulemaking should specify when the complete *Handbook* will be provided to inmates and how inmates will be informed of updates to the *Handbook* and other Department policy statements.

Response: The Department agrees and has added a definition of the inmate handbook to § 91.1, which explains how it is updated. The language "made available" has been replaced with the word "disseminated."

IRRC and the Pennsylvania Institutional Law Project commented on subsection (b)(2) adding language pertaining to an "informal resolution process" for inmate misconduct charges. The Department should explain how this process will be implemented.

Response: The Department agrees and has added a reference to DC-ADM 801 and a brief description of the process.

IRRC and the Pennsylvania Institutional Law Project commented that under existing subsection (b)(5), written statements of a decision and the reasoning of the hearing body must be based on the "preponderance of the evidence." The Department is proposing to replace "preponderance of the evidence" with "some evidence." However, "some evidence" is not a legal standard for basing a finding of guilt. The Department should explain why it is not substituting another legal standard, such as "substantial evidence," on which a finding of guilt will be based.

Response: The Department has withdrawn this amendment.

8. § 93.12. Prison Medical Services Program.

IRRC commented that subsection (d) lists medical services that will be provided to an inmate without charge. Subsection (d)(8) states that "Infirmity care in a Department facility excluding organ transplantation." Based on discussion with Department staff, IRRC understands that this provision was intended to address organ donation by an inmate. However, this procedure would not take place in a Department facility. Therefore, the exclusion listed in this subsection is unnecessary and should be deleted.

Response: The Department has withdrawn this change.

IRRC, the Pennsylvania Institutional Law Project and two inmates made comments that under subsection (e), the fee for medical services is being increased from \$2 to \$3 with subsequent increases of an additional \$1 on July 1, 2005, and July 1, 2007. The Department should explain the basis for the fee increases.

Response: The basis for the fee increase is that the co-payment has not been adjusted since the implementa-

tion of the co-pay system despite the fact that costs for inmate health care are increasing significantly. The cost increased 16% from 2002 to 2004, from \$152,249,000 to \$176,913,000, or over \$24 million over a 2-year period. The projected co-pay increase will result in an increase of only \$130,000 over a 2-year period. Maintaining a fair co-payment in the face of increasing costs will continue to serve the intended purpose of eliminating unnecessary health care visits by inmates. This purpose would not be achieved if the co-pay remained stagnant in the face of increasing costs. This increase is also consistent with increases in individual co-payment amounts in the private and public sector employee health care contracts, although the increases for inmates are much smaller than those experienced by non-incarcerated individuals.

9. § 94.3. Procedures for participating in prerelease programs.

IRRC commented that subsection (a) establishes the criteria for eligibility for prerelease programs. Subsection (a)(1) is being amended to add that inmates sentenced to "other offenses as specified in State or Federal statutes or specified by the Department in the *Department of Corrections Inmate Handbook*" are not eligible. The final-form rulemaking should include references to the applicable State and Federal statutes.

Response: The Department has amended this section to delete the reference to applicable State and Federal statutes. Because these statutes will be referenced in the Department directive on prerelease, this language has been substituted with a reference to that policy, DC-ADM 805—Policy and Procedures for Obtaining Pre-release.

10. Section 94.5. Notification process.

IRRC commented that subsection (b) establishes the procedures to be followed if a judge or court objects to the prerelease of an inmate. If the Department and the judge or court cannot reach an agreement, the Department will refer the matter to the Board for "a hearing." The existing regulation uses the word "arbitration." Why has "arbitration" been replaced with "a hearing"? Also, what does the arbitration process entail?

Response: The term "arbitration" has been replaced with the term "hearing" because that is the term used in section 2 of the act of July 16, 1968 (P. L. 351, No. 173) (61 P. S. § 1052). A reference to this statute has been included so that the regulated community can be directed to further information about the Board of Pardon's hearing process. Because that process is within the authority of the Board, not the Department, it is not for the Department's regulations to elaborate upon what the process entails.

Fiscal Impact and Paperwork Requirements

Since the Department currently operates the State prison system substantially in accordance with the final-form rulemaking, it does not expect the final-form rulemaking to have a fiscal impact on, or to create new paperwork requirements for, the Commonwealth, its political subdivisions or the private sector.

Effective Date

The rulemaking shall be effective upon final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

No sunset date has been assigned; however, every facet of the final-form rulemaking will be continuously reviewed for effectiveness, clarity and whether it is serving the greater interests of citizens of this Commonwealth.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 2, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 3010 (June 12, 2004), to IRRC and the Chairpersons of the House and Senate Judiciary Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 9, 2005, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 10, 2005, and approved the final-form rulemaking.

Contact Person

Further information is available by contacting John S. Shaffer, Ph.D., Executive Deputy Secretary, 2520 Lisburn Road, P. O. Box 598, Camp Hill, PA 17001-0598.

Findings

The Department finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received were considered.

(3) The modifications that were made to the final-form rulemaking in response to comments received do not enlarge the purpose of the proposed rulemaking published at 34 Pa. B. 3010.

(4) The modifications that were made to the final-form rulemaking in response to additional comments received do not enlarge the purpose of the proposed rulemaking published at 34 Pa.B. 3010.

(5) The adoption of the final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

Order

The Department, acting under authority of the authorizing statute, orders that:

(a) The regulations of the Department, 37 Pa. Code Chapters 91, 93 and 94, are amended by amending §§ 93.303, 93.307 and 94.2 to read as set forth at 34 Pa.B. 3010 and by amending §§ 91.1, 91.6, 93.2, 93.3, 93.6, 93.7, 93.9, 93.10, 93.12, 94.3, 94.5 and 94.6 to read as set forth in Annex A

(b) The Secretary of the Department shall submit this order, 34 Pa.B. 3010 and Annex A to the Office of General Counsel and to the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Secretary of the Department shall certify this order, 34 Pa.B. 3010 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

JEFFREY A. BEARD, Ph.D.,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 1942 (March 26, 2005).)

Fiscal Note: Fiscal Note 19-6 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 37. LAW****PART III. AGENCIES AND OFFICES****Subpart B. DEPARTMENT OF CORRECTIONS****CHAPTER 91 ADMINISTRATION****§ 91.1. Definitions.**

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

Board—Pennsylvania Board of Probation and Parole.

Community corrections center—A minimum-security community-oriented facility operated or contracted by the Department for the purpose of facilitating special programs.

Contraband—Material listed as contraband in 18 Pa.C.S. §§ 5122 and 5123 (relating to weapons or implements for escape; and contraband), the *Department of Corrections Inmate Handbook*, or any Department document that is disseminated to inmates, such as material that an inmate is prohibited from possessing or material that an inmate is permitted to possess that has been altered or is being used for something other than its intended purpose.

Department—The Department of Corrections.

Department of Corrections Inmate Handbook—A document that is to be disseminated to inmates that contains all rules that an inmate shall follow to avoid discipline. It is updated through dissemination of written materials to inmates that describe the rule change when a change is made, or by dissemination of a revised handbook.

Diagnostic and classification center—Facilities designated to receive and classify persons who have been committed to the custody of the Department.

Facility—An institution, motivational boot camp or community corrections center operated or contracted by the Department.

Facility manager—The chief administrator of a facility, that is, the superintendent of an institution, the commander of a motivational boot camp or the director of a community corrections center.

Inmate—A person committed to the custody of or confined by the Department.

Resident—An inmate assigned to a community corrections center.

Secretary—The Secretary of the Department.

§ 91.6. Use of force and restraints.

(a) Force and restraints will be used by corrections personnel only to accomplish legitimate penological and law enforcement objectives.

(1) A staff member may not use any greater force against an inmate than is necessary to protect the staff member or others from bodily harm or to protect property from damage or destruction or to prevent a criminal act or to effect compliance with rules when other methods of control are ineffective.

(2) A staff member may only use deadly force against an inmate when that force is necessary to prevent death, serious bodily harm to the staff member or others, or to prevent one or more of the following:

(i) An escape from a correctional facility other than a community corrections center or while in immediate pursuit of an inmate escaping from a correctional facility other than a community corrections center.

(ii) An escape from a work detail, transport or other approved temporary absence when deadly force is necessary to prevent the escape and the inmate has been convicted of an offense involving the threat of physical force or violence against any individual.

(3) A staff member may use force against an inmate when he reasonably believes that force is necessary to prevent the escape of an inmate or to recapture an escaped inmate.

(4) Instruments of restraint will only be used as a precaution against escape, as protection against an inmate injuring himself or others or on medical grounds at a doctor's direction.

(b) Neither force nor restraints will be used for punishment or revenge.

(c) Use of chemical munitions will be closely controlled. Appropriate medical attention will be provided for any person involved in an incident where chemical munitions were used. Staff will follow the procedures set forth in DC-ADM 201—Use of Force—as to the availability and storage, method of use, training, medical staff role and reporting of the use of chemical munitions.

CHAPTER 93. STATE CORRECTIONAL INSTITUTIONS AND FACILITIES

Subchapter A. RIGHTS AND PRIVILEGES

§ 93.2. Inmate correspondence.

(a) *Permitted correspondence.* Inmates are permitted to correspond with friends, family members, attorneys, news media, legitimate business contacts and public officials. There may be no limit to the number of correspondents.

(b) *Restrictions.* The following restrictions apply:

(1) Correspondence with inmates of other facilities, former inmates, probationers or victims of the criminal acts of the inmate will not be permitted except upon approval of the facility manager or a designee.

(2) Correspondence containing threatening or obscene material, as well as correspondence containing criminal solicitation or furthering a criminal plan or institution misconduct is prohibited.

(3) An inmate shall refrain from writing to persons who have stated in writing that they do not wish to receive mail from the inmate. This will not be interpreted to restrict the right of inmates to correspond with public officials with respect to the official duties of the latter.

(4) Correspondence with prohibited parties through a third party is also prohibited.

(5) Mail addressed to an inmate organization will not be accepted unless the facility manager and Secretary have approved the organization and it is addressed to the staff coordinator of the organization.

(c) *Incoming mail.* Mail sent to a facility will be opened and examined for contraband in the facility's mailroom or designated area except when permitted under paragraph (1).

(1) The Department may permit sealed mail to be opened in the presence of an inmate under the following conditions:

(i) An attorney or authorized representative/designee may hand-deliver a sealed confidential client communication to an inmate if the attorney is unable to communicate through alternative means, if the following conditions are met:

(A) The person making the delivery does so during normal business hours unless granted permission in advance by the Secretary or a designee.

(B) The person making the delivery shall provide valid identification and information sufficient to verify that the person is the inmate's attorney or authorized representative of the attorney.

(C) The person making delivery shall present the documents for inspection for contraband, unsealed and unbound.

(D) Upon inspection, the documents will be sealed and delivered to the inmate where they will be unsealed and searched again for contraband.

(ii) An attorney may obtain a control number from the Department's Office of Chief Counsel if the attorney wishes to have correspondence addressed to an inmate client opened in the presence of the inmate.

(A) An attorney shall submit a written request for a control number to the Office of Chief Counsel. The request shall include the attorney's name, address, telephone and facsimile numbers, State attorney identification number and a verification subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) that all mail sent to inmates using the control number will contain only essential, confidential, attorney-client communication and will contain no contraband.

(B) The attorney shall place the control number on each envelope that the attorney wishes to have opened in an inmate's presence. The number is confidential. It shall only be placed on the outside of the envelope so that it can be obliterated before it is delivered to an inmate client.

(C) If a control number does not appear on the envelope, the mail will be treated as regular mail and opened in the mailroom unless the procedures in subparagraph (i) are followed.

(D) The Department may change the control number for any reason upon notice to the attorney who requested it.

(iii) A court may direct delivery of court documents sealed from public disclosure to an inmate by specific order. The court's representative shall deliver the sealed documents and the specific court order to the facility. Under no circumstances will documents filed in a court of public record be delivered sealed to an inmate.

(2) Contraband in the form of money orders, certified checks, cash or other negotiable instruments will be recorded indicating the nature of the receipt, the sender, the amount received and the date. Personal checks, unless certified, will be returned to the sender. The facility is not responsible for cash sent through the mails. Confiscated coins and currency will be deposited in the Inmate General Welfare Fund. Contraband not specifically addressed in this section will be returned to the sender or destroyed.

(d) *Outgoing mail.* Sealed outgoing mail from an inmate will not be examined except as set forth in subsection (e).

(e) *Scrutiny of correspondence.*

(1) The facility manager or a designee may read incoming or outgoing mail, except mail sealed in accordance with subsection (c)(1), when there is reason to believe that it may reveal or discuss illegal or unauthorized activity or for reasons set forth in any Department document that is disseminated to inmates.

(2) The facility manager or a designee may read mail sealed in accordance with subsection (c)(1), only upon the written order of the facility manager with the written approval of the Secretary when there is reason to believe that there is a threat to facility security or criminal activity.

(f) *Rejection of correspondence.* An item of correspondence which appears to violate subsection (b) may be rejected by facility mailroom staff. The inmate and the sender, in cases when the inmate is not the sender, will be notified when the letter is rejected. The letter will be held for at least 7 business days after mailing of the notification to permit reasonable opportunity to protest the decision. If the letter is rejected, it will be returned to the sender.

(g) *Incoming publications.*

(1) A publication review committee consisting of staff designated by and reporting to the facility manager or a designee shall determine whether an inmate may receive a publication.

(2) Publications shall be received directly from a publisher, bookstore, book club, distributor or department store. Newspapers shall be mailed directly from the publisher.

(3) Publications may not be received by an inmate if they:

(i) Contain information regarding the manufacture of explosives, incendiaries, weapons, escape devices, poisons, drugs or intoxicating beverages or other contraband.

(ii) Advocate, assist or are evidence of criminal activity, inmate misconduct, violence, insurrection or guerrilla warfare against the government.

(iii) Threaten the security of a facility.

(iv) Contain obscene material as defined in 18 Pa.C.S. § 5903 (relating to obscene and other sexual materials and performances).

(v) Constitute a bulk mailing specifically intended for the purpose of advertising or selling merchandise.

(4) An inmate under 18 years of age may not receive explicit sexual materials as defined in 18 Pa.C.S. § 5903.

(5) A publication will not be prohibited solely on the basis that the publication is critical of penal institutions

in general, of a particular facility, staff member, or official of the Department, or of a correctional or penological practice in this or any other jurisdiction.

(6) An inmate may receive only one copy of any publication unless granted permission by the publication review committee.

(7) Small letter sized pamphlets may be received in regular correspondence.

(8) Covers of hardbound publications may be damaged or removed during inspection in the discretion of mailroom staff.

§ 93.3. Inmate visiting privileges.

(a) *Approved list of visitors.* A list of approved visitors may contain up to 20 names or more if permitted by the Department. Inmates who can show that they have more than the number of visitors permitted by the Department may be permitted to add additional names to their approved lists. Except for members of an inmate's immediate family, a minor's name may be placed on the approved list only with permission of the minor's parents or guardian. Children under 18 years of age may visit only when accompanied by an adult approved by his parent or legal guardian and need not be placed separately on the official list. A person may not be on more than one inmate's visiting list except in cases when the person is part of the immediate family of more than one inmate, unless special permission is granted by the facility manager. Changes or additions to the approved list may be made in accordance with established procedures. The name of a visitor may be removed for good cause upon authorization by the facility manager.

(b) *Religious advisor.* Designation by an inmate of a religious advisor as defined in § 93.6 (relating to religious activities) may be made at any time. The designation shall be in addition to the names on the approved list and will not be counted against the total approved by the Department.

(c) *Attorneys.* An inmate may designate attorneys for whom the inmate desires visiting privileges at any time. The designation shall be in addition to the names on the approved list and will not be counted against the total approved by the Department.

(1) The confidentiality of the attorney-client relationship will be honored. Personnel will not be stationed in a manner as to be able to overhear normal conversation.

(2) An attorney who has been designated by an inmate as the inmate's legal advisor may permit persons, such as law students or investigators to visit the inmate to act as the attorney's agents. Each person shall present to the facility at the time of the visit a written statement signed by the attorney on the letterhead of the firm of the attorney identifying each person as the attorney's agent and attesting that the visit is for the purpose of a legal consultation.

(3) Attorneys and their agents are subject to the same rules and regulations as other visitors.

(d) *Former inmates.* A former inmate may visit only with special permission of the facility manager.

(e) *Prerelease inmates.* Inmates in prerelease status may visit other inmates only with the approval of the Secretary or a designee. Application for permission to visit shall be made by both inmates through their respective facility managers.

(g) *Initial visits.* The inmate's first visit after admission should be scheduled following the medical quarantine period and may be held in the presence of a staff caseworker.

(h) *Number, time and place of visits.* Inmates shall be permitted to have visits as often as the situation at the facility will allow.

(1) *Visiting days.* Visits may be permitted every day of the year at the discretion of the facility manager and shall reasonably accommodate family members.

(2) *Visiting hours.* Morning and afternoon visiting hours will be maintained at the discretion of the facility manager. Evening visits may be maintained at the discretion of the facility manager. Visiting hours shall reasonably accommodate family members.

(3) *Length of visits.* Visits should be at least 1 hour in duration. The length of a visit depends on the inmate's program status and available space.

(4) *Frequency of visits.* One visit per inmate per week will be permitted. Additional visits may be permitted.

(5) *Number of visitors at one time.* The number of visitors an inmate may have at any one time may be limited depending upon the available space.

(6) *Place.* Inmates in the general population will be permitted contact visits in a relaxed setting, under official supervision unless otherwise restricted as set forth in the *Department of Corrections Inmate Handbook*, or any Department document that is disseminated to inmates.

(7) *Special visit.* Provisions will be made for the approval of a special visit by persons who may not be on the approved list who have come a substantial distance and of a family visit to a seriously ill or injured inmate. Special visits will be approved only by the facility manager or a designee. Absent this approval, only those persons on the approved visiting list may visit.

(i) *Restriction of visitation privileges.*

(1) If a visit is a threat to the security and order of the facility, the visit may be terminated or disallowed.

(2) Outside visitors are subject to search before and after visiting.

(3) A visitor who cannot produce identification or who falsifies identifying information will not be allowed in the facility.

(4) Visitation may be restricted or suspended or special security precautions imposed for violation of visiting rules or as warranted by the temperament of the inmate involved.

(5) Restriction of visiting privileges will not be used as a disciplinary measure for an unrelated facility rule infraction. However, visiting privileges may be restricted as a result of changes in housing or program status made as a result of unrelated infractions.

(6) Normal visitation will be suspended during a state of emergency.

(j) *Media representatives.* Media representatives will have the same visiting privileges as visitors on an inmate's approved list of visitors as described in Department policy concerning inmate visitation. A media representative will not be in addition to the names on the approved list and will be counted against the total approved by the Department.

(1) Media representatives may obtain a copy of the Department's policy regarding inmate visitation on the Department's website (www.cor.state.pa.us).

(2) Media representatives and inmates will abide by all applicable rules, regulations and policies of the Department while on facility property. Violations of any rules, regulations or policies of the Department may result in the visit being denied, termination of the visit, suspension of visiting privileges or revocation of visiting privileges.

(3) Visits with a media representative shall be subject to the frequency of visit limitations contained in subsection (h)(4).

(4) For inmates under a sentence of death and prior to the Governor's warrant being issued, media representatives will only be permitted to have noncontact visits with the inmate. After the Governor's warrant has been issued, noncontact visits will only be entertained if the media representative has obtained an order of court of competent jurisdiction granting the relief and has properly served the Department with the court documents seeking or requesting the relief prior to obtaining the order.

(5) Media representatives for the purpose of this section include: representatives of general circulation newspapers; magazines of general circulation sold through newsstands or mail subscriptions to the general public; and National/international news services or radio/television stations holding a Federal Communications Commission license.

§ 93.6. Religious activities.

(a) *Department responsibilities.* The Department will permit inmates to possess approved religious items and make reasonable accommodations for dietary restrictions. The Department will provide chapel facilities at each facility and will permit inmates to request religious accommodations not already being permitted.

(b) *Religious advisors.*

(1) If the facility contains a sufficient number of inmates of the same faith, a qualified representative of that faith from the outside community will be appointed and approved by the facility manager. Qualified representative means a person from the outside community who has received endorsement from his faith group authority. Qualified representatives, staff and volunteers will be permitted to hold services that are consistent with the security needs and orderly administration of the facility.

(2) Each inmate will be permitted to select a religious advisor from the outside community subject to security needs and orderly administration of the facility. This person will be permitted to visit the inmate on an individual basis in accordance with general rules governing visitation.

(c) *Accommodation of faiths.* Requests for accommodation of faiths will be made according to DC-ADM 819—Religious Activities—which provides a process for inmates to request accommodations not already being provided and for staff review of the requests.

§ 93.7. Telephone calls.

(a) Inmates in general population may make phone calls in accordance with 66 Pa.C.S. § 2907 (relating to state correctional institutions) and the *Department of Corrections Inmate Handbook*. Phone calls, except confidential communications between attorneys and inmates, will be subject to monitoring in accordance with 18 Pa.C.S. § 5704 (relating to exceptions to prohibition of interception and disclosure of communications).

(b) Phone calls to inmates will be permitted only if approved in advance by the facility manager or a designee.

§ 93.9. Inmate complaints.

(a) The Department will maintain an inmate grievance system which will permit any inmate to seek review of problems which the inmate experiences during the course of confinement. The system will provide for review and resolution of inmate grievances at the most decentralized level possible. It will also provide for review of the initial decision making and for possible appeal to the Central Office of the Department. An inmate will not be disciplined for the good faith use of the grievance systems. However, an inmate who submits a grievance for review which is false, frivolous or malicious may be subject to appropriate disciplinary procedures. A frivolous grievance is one in which the allegations or the relief sought lack any arguable basis in fact as set forth in DC-ADM 804—Inmate Grievance System, which is disseminated to inmates.

(b) Inmates may also pursue available remedies in State and Federal court.

§ 93.10. Inmate discipline.

(a) Rules which define expectations and prohibitions for inmate behavior will be established by the Department and disseminated to the inmate population. There shall be two classes of misconduct charges, Class I and Class II.

(1) Inmates found guilty of Class I misconduct charges may be subjected to one or more of the following sanctions:

(i) Reduction of the classification of the misconduct to a Class II and any sanction permitted for Class II misconducts.

(ii) A sanction permitted for Class II misconducts, without change in class of misconduct.

(iii) Change of cell assignment, including placement in the restricted housing unit or restrictive confinement in a general population cell for a period not to exceed 90 days for any one misconduct charge.

(iv) Change of program level.

(2) Inmates found guilty of Class II misconducts may be subjected to one or more of the following sanctions:

(i) Reprimand.

(ii) Suspension of privileges for a specified period of time.

(iii) Payment of the fair value of property lost or destroyed or for expenses incurred as a result of the misconduct.

(iv) Change of cell assignment excluding placement in the restricted housing unit.

(v) Change, suspension or removal from job.

(b) Written procedures which conform to established principles of law for inmate discipline including the following will be maintained by the Department and disseminated to the inmate population:

(1) Written notice of charges.

(2) Hearing before an impartial hearing examiner or an informal resolution process for charges specified by the Department in the *Department of Corrections Inmate*

Handbook, or any Department document that is disseminated to inmates. The informal resolution process is described in DC-ADM 801—Inmate Discipline. The process gives inmates the option to meet with staff to resolve a misconduct rather than proceed with a hearing.

(3) Opportunity for the inmate to tell his story and to present relevant evidence.

(4) Assistance from an inmate or staff member at the hearing if the inmate is unable to collect and present evidence effectively.

(5) Written statement of the decision and reasoning of the hearing body, based upon the preponderance of the evidence.

(6) Opportunities to appeal the misconduct decision in accordance with procedures in the *Department of Corrections Inmate Handbook*.

§ 93.12. Prison Medical Services Program.

(a) Every institution will establish procedures to permit inmates to have access to health care professionals, prescribed treatment for serious medical needs, appropriate nutrition, exercise and personal hygiene items.

(b) The following words and phrases, when used in this section, have the following meanings unless the context clearly indicates otherwise:

Fee—The portion of the actual cost of a medical service provided to an inmate which the Department has determined shall be charged to the inmate.

Health care professional—

(i) Any physician, physician assistant, nurse, dentist, optometric professional or other person licensed to provide health care under the laws of the Commonwealth.

(ii) The term does not include a corrections health care administrator performing the administrative duties of that position.

Inmate—A person confined to a correctional institution, motivational boot camp, community corrections center or other facility operated by the Department, its agent or contractor.

Medical service—

(i) The diagnosis, evaluation, treatment or preservation of the health of the human body, including its organs, structures and systems.

(ii) The term includes diagnostic testing, prescribing and administering medication, surgical procedures, dental care, eye care, the furnishing of prosthetics and any other type of treatment or preventative care, whether performed on an inpatient or outpatient basis.

(c) The Department will charge a fee to an inmate for any of the following:

(1) Nonemergency medical service provided to an inmate at the inmate's request.

(2) Medical service provided to the inmate as the result of a self-inflicted injury or illness, including emergency medical service provided to the inmate as the result of a self-inflicted injury or illness.

(3) Initial medication prescription except as provided in subsection (d)(2), (14), (16) and (17).

(4) Medical service provided to another inmate as a result of assaultive conduct engaged in by an inmate to be charged the fee.

(5) Medical service provided to an inmate as a result of an injury or illness arising from the inmate's participation in a sport.

(6) Medical service provided to an inmate to determine whether the inmate's physical condition is suitable for participation in a sport unless the medical service is provided as part of an inmate's physical examination scheduled by the Department.

(d) The Department will not charge a fee to an inmate for any of the following:

(1) Physical, dental or mental health screening provided to an inmate upon intake.

(2) Immunization, tuberculosis test, Hepatitis B vaccination or other treatment initiated by the Department for public health reasons.

(3) Institution transfer screening.

(4) Physical and dental examination scheduled by the Department.

(5) Medical service provided to an inmate during a follow-up appointment scheduled by a health care professional employed by the Department or its contractors.

(6) Mental health treatment.

(7) Medical treatment for a chronic or intermittent disease or illness.

(8) Infirmary care in a Department facility.

(9) Hospitalization outside of a Department facility.

(10) Long-term care to an inmate not in need of hospitalization, but whose needs are such that they can only be met on a long-term basis or through personal or skilled care because of age, illness, disease, injury, convalescence or physical or mental infirmity.

(11) Medical referral ordered by a health care professional employed by the Department or its contractors.

(12) Medical service provided to an inmate during a medical emergency unless the medical emergency resulted from a self-inflicted injury or illness as determined by the health care professional providing the medical service.

(13) Laboratory test, electrocardiogram, dressing change or other treatment ordered by a health care professional employed by the Department or its contractors.

(14) Prenatal care.

(15) Medical service provided as a result of an injury or illness arising from an inmate's institutional work assignment.

(16) Medication prescription subsequent to the initial medication prescription provided to an inmate for the same illness or condition.

(17) Social service program including, but not limited to, substance abuse groups and counseling.

(18) Psychotropic medication.

(19) Medication prescribed for an inmate for public health reasons.

(20) Physical, dental and mental health screening performed at the request of the Department.

(21) Medical service provided to an inmate to determine whether his physical condition is suitable for an institutional work assignment.

(22) Eyeglass prescription.

(23) Dentures.

(24) Prosthetic devices excluding customized items.

(e) The fee for any medical service in subsection (c) is \$3. This amount will be increased to \$4 on July 1, 2005, and \$5 on July 1, 2007, except that an inmate is required to pay a fee equivalent to the total cost of medical services provided to another inmate as a result of the inmate's assaultive conduct.

(1) The fee will be assessed each time a medical service in subsection (c) is provided to an inmate, except when multiple services are performed at one visit at the discretion of the health care professional.

(2) Each inmate shall receive 60 days written notice of the implementation of the Prison Medical Services Program.

(3) Each inmate shall receive written notice of any changes in medical service fees and payment procedures at least 60 days after the effective date of a regulation that modifies the fee for medical services and payment procedures.

(f) Payment for any medical service in subsection (c) shall be accomplished according to the following procedures:

(1) At the time any medical service is to be provided to an inmate, the inmate will be informed by the Department or a health care professional contracted by the Department whether a fee will be charged for the medical service and will be provided with an authorization form. The authorization form will describe the medical service to be provided and authorize the institution to deduct the fee from the inmate's account.

(2) An inmate who wishes to receive a medical service after being advised that a fee will be charged for the medical service, shall sign the authorization form acknowledging that his inmate account will be debited for the fee. An inmate who refuses to sign the authorization, who does not sign a refusal of treatment form and who accepts medical treatment will receive the services and his account will be debited. An inmate will not be denied access to medical services because of an inability to pay the required fee. If an inmate lacks sufficient funds to pay a medical service fee, the inmate's account will be debited and the fee recouped as soon as sufficient funds are deposited in the inmate's account.

(3) The Department may seek to recover any amount owed for medical services fees by an inmate upon release under section 5 of the Prisoner Medical Services Act (61 P. S. § 1015).

(g) An inmate who has medical insurance shall pay for his own medical needs through that insurance by cooperating with the Department in submitting the proper paperwork to the insurance carrier.

(h) The Department will include an explanation of the program in the *Department of Corrections Inmate Handbook*.

CHAPTER 94. RELEASE AND PRERELEASE PROGRAMS

§ 94.3. Procedures for participation in prerelease programs.

(a) The criteria for eligibility for prerelease programs are as follows:

(1) Inmates who have been sentenced to death or life imprisonment or other offenses specified by the Department in the *Department of Corrections Inmate Handbook*, DC-ADM 805—Policy and Procedures for Obtaining Pre-release—or any Department document that is disseminated to inmates are not eligible.

(2) Time-served requirements are as follows:

(i) To be time-eligible for placement in a community corrections center or group home, the inmate shall have completed at least one-half of the inmate's minimum sentence, be within 1 year of completing his minimum sentence, have no outstanding detainers, and have served at least 9 months in a facility. Exceptions may be made with written approval of the Secretary or a designee, when early transfer is necessary to assist in the inmate's access to medical or mental health care or to provide longer period of participation for an inmate who has been confined for an unusually long period of time. A contact may not be made with the court until the approval is obtained.

(ii) For other prerelease programs, the inmate is time-eligible after the inmate has completed one-half of the inmate's minimum sentence or one-half of the period ending with anticipated release date of an indeterminate sentence and has served at least 9 months in a facility. The inmate may have no detainers lodged against him for an untried offense or for a sentence with a maximum term in excess of 2 years. Inmates who are otherwise time-eligible who have detainers lodged against them for less than 2 years can be time-eligible for a prerelease program except community corrections center or group home upon written approval of the Secretary or a designee. No contact may be made with the court until the approval is obtained.

(3) The inmate shall have favorable recommendation of the correctional facility staff—for example, counselor, work supervisor, housing officer, education/vocational supervisor and deputy facility managers for treatment and operations.

(4) The inmate may have had no Class I misconduct and no more than one Class II misconduct during the 9 months prior to application, and have sustained no Class I misconduct and no more than one Class II misconduct from the time of application to the time of transfer.

(5) The inmate shall obtain a medical clearance by the facility medical officer.

(6) The inmate's application shall be approved by the facility manager and by the Secretary or regional director of the Department, or both, if an inmate is serving a sentence for an offense specified in the *Department of Corrections Inmate Handbook*, or any Department document that is disseminated to inmates that requires approval.

(7) If the inmate has not completed his minimum sentence, the notice process in § 94.5 (relating to notification process) shall be followed.

(8) Applications for transfer to community corrections require evaluation and concurrence by the staff of the appropriate region of community corrections and approval by the Director of Community Corrections.

(9) The inmate shall execute a written acknowledgment that he is required to abide by the rules and regulations of the prerelease program. In the case of community corrections placement, the written agreement shall be signed prior to transfer.

(10) After transfer into a prerelease program, the inmate may continue to participate in the program only while adequate resources are available to provide care, custody and control for the inmate within the program to which the inmate has been admitted. The inmate's privilege to participate in prerelease programs may be suspended or revoked for administrative or disciplinary reasons. The Department will establish procedures to govern the revocation of prerelease privileges.

(b) The process of obtaining prerelease transfer is initiated when an inmate submits an application to the inmate's counselor for participation in work/educational/vocational release, or for a temporary home furlough or for transfer to a community corrections placement. An inmate will not be granted prerelease transfer for any purpose unless the inmate satisfies all of the criteria in this section. Satisfying the eligibility criteria for prerelease transfer does not mean the inmate will automatically be permitted to participate in prerelease programs. Other considerations such as the staff's evaluation of the inmate's progress, the relevancy of the particular prerelease program to the inmate's reintegration, the safety of the community and the victim of the inmate's crime and the availability of space will be taken into consideration. Approval for participation in one prerelease program does not imply clearance for, or preclude application for participation in any other program. The application must specify a particular prerelease program.

(c) Special exception to subsection (a) or (b), other than subsection (a)(1), (2)(ii) and (6)—(9), may be recommended in writing by a facility manager to the Secretary or a designee.

(d) Inmates serving Federal sentences in facilities shall be eligible for prerelease transfer under rules and regulations established by the United States Department of Justice, Federal Bureau of Prisons, and subject to subsections (a) and (b), and the subsequent approval of Federal and State authorities.

(e) Inmates serving sentences from other jurisdictions under the Interstate Corrections Compact (61 P.S. §§ 1061—1063) are eligible subject to subsections (a) and (b) and the sending state's written approval.

§ 94.5. Notification process.

(a) If the facility manager approves an inmate's application for prerelease transfer, the facility manager shall notify the sentencing judge or if the sentencing judge is unavailable, the sentencing court, and the prosecuting district attorney's office by certified mail, of the inmate's proposed prerelease program. Comments will be considered.

(b) If the inmate has not finished his minimum sentence and an objection is received from the judge, or court, if the judge is unavailable, within 30 days of the receipt of the proposed prerelease plan, representatives of the Department will contact the judge or court and if necessary arrange for a meeting to attempt to resolve the disagreement. If, within 20 days of the Department's receipt of the objections, the judge or court does not withdraw the objection and the Department does not withdraw its proposal for transfer, or the judge and the Department do not agree on an alternate proposal for transfer, the Department will refer the matter to the Board for a hearing in accordance with section 2 of the act of July 16, 1968 (P. L. 351, No. 173) (61 P.S. § 1052).

§ 94.6. Staff responsibilities.

(a) It is the primary responsibility of the inmate's counselor to process the inmate's application for participation in prerelease programs.

(1) The inmate's counselor is responsible for obtaining, integrating and coordinating the information necessary to determine the inmate's eligibility or noneligibility for participation in a prerelease program.

(2) The inmate's counselor will accept and review the inmate's application. If necessary, the counselor may help the inmate initiate this process. The inmate's counselor will also be responsible for having the housing officer, work supervisor and other appropriate staff complete relevant portions of the application and make recommendations concerning prerelease programming.

(3) The inmate's counselor shall verify, with the record officer, the necessary information with respect to the inmate's sentence and detainer status.

(4) The inmate's counselor will review and verify available information relevant to eligibility—for example, presentence investigation report, judge's sentencing notes, classification and reclassification summary records and cumulative adjustment record.

(5) The inmate's counselor will request proper psychological and psychiatric evaluations for those applicants who have a history of mental or emotional disorders, violent crimes or other situations when deemed advisable. The inmate's counselor may contact other persons and agencies to acquire additional information.

(6) When the necessary information has been obtained, the inmate's counselor will refer the application to his supervisors for review.

(b) It is the primary responsibility of the Corrections Classification Program Manager (CCPM) or other staff person designated by the facility manager to coordinate the staff evaluation and recommendation process.

(1) The CCPM or other staff person designated by the facility manager will chair a meeting of designated facility staff who shall make recommendations regarding prerelease programs. The inmate shall be present at this staff meeting for input.

(2) The staff's findings, recommendations and rationale shall be forwarded to the facility manager through both the Office of the Deputy Superintendent for Centralized Services and the Deputy Superintendent for Facilities Management, with comments by both.

(c) It is the responsibility of the facility manager to give final approval or disapproval of recommendations regarding prerelease programs. The inmate will be advised by the unit manager, in the presence of the inmate's counselor, of the final decision and its rationale. The decision and rationale will be documented in the cumulative adjustment record.

(d) Letters to judges and district attorneys shall be signed by the facility manager or a designee.

(e) The inmate's counselor shall discuss with the inmate prior to the commencement of the program, the objectives, rules and regulations of the program and obtain written agreement as provided for in § 94.3(a)(9) (relating to procedures for participation in prerelease programs). The counselor shall review the program objectives on the inmate's cumulative adjustment record.

[Pa.B. Doc. No. 05-703. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 63]

[L-00030165]

Establishing Local Service Provider Abandonment Process for Jurisdictional Telecommunications Companies

The Pennsylvania Public Utility Commission, on January 13, 2005, adopted a final rulemaking order establishing an orderly process to follow when a local service provider abandons local telephone service.

Executive Summary

The advent of competition in the local telephone market in Pennsylvania has created situations that the Commission's current regulations do not address. To comply with certain aspects of the Telecommunications Act of 1996, the Commission implemented a streamlined application process to modify traditional entry procedures applicable to telecommunications carriers. Specifically, the Commission's telecommunication procedures allow new entrants to commence service upon filing and service of the application, which must contain an interim tariff. These entry procedures apply to all carriers whether they are facilities-based, interconnected or reseller competitive local exchange carriers (CLECs). CLECs that are not facilities-based and rely either completely or partially for their underlying service on the incumbent local exchange carrier (ILEC) are considered resellers. If the CLEC fails to pay the underlying ILEC for the service it resells to its end-use customers, the CLEC's wholesale telephone service will be terminated. This results in the termination of dial tone service to the end-use customer—effectively a de facto abandonment of service by the CLEC. Although a public utility must seek prior approval to abandon service, the Commission's rules under Chapters 63 and 64 (relating to telephone service and standards and billing practices for residential telephone service) do not cover abandonment of utility services nor do they address the notification of the end-use customers.

In April 2002, recognizing the need for both short-term and long-run solutions to problems associated with de facto abandonment, the Commission approved Interim Guidelines addressing the issues raised by this regulatory oversight. Later in 2002, the Commission held collaborative sessions that involved telecommunications carriers and other interested parties in discussions of the issues. The collaborative participants addressed proposals for regulations and proposed solutions to the problems created by the changing telecommunications marketplace.

By Order entered on December 23, 2003 at Docket No. L-00030165, the Commission adopted a Proposed Rulemaking Order to amend 52 Pa. Code Chapter 63, consistent with the order and recommendations of the collaborative participants, the Bureau of Consumer Services and the Law Bureau. See 34 Pa.B. 1795 (April 3, 2003). The intent of the proposed rulemaking is to promulgate regulations to establish general rules, procedures, and standards to provide for an orderly process when a local service provider exits the market. By Order entered September 16, 2004, the Commission adopted a Final Rulemaking Order.

Verizon Pennsylvania, Inc. and Verizon North, Inc. (collectively Verizon) submitted comments to IRRC that opposed the Final Rulemaking Order. On November 17,

2004, the Commission notified IRRC that the agency was withdrawing the regulation from consideration. On December 3, 2004, the Commission issued a Secretarial Letter notifying interested parties that the Commission may amend its Final Rulemaking Order to address the comments submitted to IRRC by Verizon and any replies received pursuant to the notice. Replies were received from United Telephone Co. of Pennsylvania d/b/a Sprint and the OSBA. On January 13, 2005, the Commission adopted a Revised Final Rulemaking Order which addressed Verizon's and the parties' concerns.

The final regulations apply to all local service providers (LSPs) and network service providers (NSPs) operating in Pennsylvania. The final regulations will provide for an orderly process when a NSP intends to embargo and terminate service to a LSP, when the Commission has issued an order to revoke a LSP's certificate of public convenience and when a LSP has filed an application to abandon a certificate of public convenience for the provision of local service. In particular, the regulations will ensure that customers do not lose service when their LSP exits the market and customers are provided ample notice and the opportunity to select a new LSP of their choice. Moreover, the regulations will ensure that an abandoning LSP provides sufficient network information so that customers are able to be migrated seamlessly and also that an abandoning LSP coordinates with 9-1-1 service providers and the North American Numbering Plan Administrator. Finally, the regulations apply to a LSP that provides local service to residential or business customers.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 18, 2004, the Commission submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 1795 (April 3, 2004), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on March 9, 2005, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 10, 2005, and approved the final-form rulemaking.

Public Meeting
held January 13, 2005

Commissioners Present: Wendell F. Holland, Chairperson;
Robert K. Bloom, Vice Chairperson; Glen R. Thomas,
Recusing; Kim Pizzingrilli

*Rulemaking Re Establishing Local Service Provider
Abandonment Process for Jurisdictional
Telecommunication Companies; L-00030165*

Revised Final Rulemaking Order

By the Commission:

On December 23, 2003, the Commission entered a Proposed Rulemaking Order to promulgate a regulation

to establish general rules, procedures, and standards to provide for an orderly process when a local service provider exits the market. The proposed regulation applies to all local service providers (LSPs) and network service providers (NSPs) operating in Pennsylvania. The proposed regulation will provide for an orderly process when a NSP intends to terminate service to a LSP, when the Commission has issued an order to revoke a LSP's certificate of public convenience, and when a LSP has filed an application to abandon a certificate of public convenience for the provision of local service.

The December 23, 2003 Order was published April 3, 2004 at 34 Pa. B. 1795. The Commission received written comments from the Independent Regulatory Review Commission (IRRC), MCI WorldCom Network Services, Inc. (MCI), AT&T Communications of Pennsylvania, LLC. (AT&T) and Verizon Pennsylvania Inc. (Verizon). At Public Meeting on September 10, 2004 the Commission adopted the Final Rulemaking Establishing Local Service Provider Abandonment Process for Jurisdictional Telecommunication Companies. The Final Rulemaking Order which was entered September 16, 2004, discussed the comments and set forth, in Annex A, regulations.

On October 15, 2004, the Commission submitted the final rulemaking to the Independent Regulatory Review Commission (IRRC) and legislative standing committees. The regulation was scheduled for consideration and action at IRRC's Public Meeting on November 18, 2004.

Verizon Pennsylvania Inc. and Verizon North Inc. (collectively Verizon) submitted comments to IRRC that opposed the Final Rulemaking Order. Verizon's comments to IRRC were accompanied by proposed language revisions to the regulations. On November 17, 2004, the Commission notified IRRC that the agency was withdrawing the subject regulation from consideration.

On December 3, 2004, the Commission issued a Secretarial Letter notifying interested parties that we may amend our September 16, 2004 Final Rulemaking Order, pursuant to Section 703(g) of the Public Utility Code, to address the comments submitted to IRRC by Verizon and any replies received pursuant to the notice. The Commission received written replies from United Telephone Company of Pennsylvania d/b/a Sprint (Sprint) and the Office of Small Business Advocate (OSBA). The comments of Verizon and replies of Sprint and OSBA will be discussed in the sections pertaining to their subject matter.

General Comments of Feasibility, Implementation Procedures, Economic Impact and Reasonableness

IRRC provided comments about some general aspects of the proposed regulations that were not identified with particular sections. We shall address these comments here. IRRC commented that the proposed regulations require the abandoning LSP to perform multiple functions over a period of several months. They commented that further protection of the end-use customer is needed if that process breaks down and that the final-form regulation should include provisions to reassign functions if the abandoning LSP is unable to, or fails to, perform its required duties.

The final-form regulations address IRRC's concerns by dramatically shortening the required timeframe in which a NSP is required to notify the LSP in advance of the termination date. This timeframe had been shortened from 110 days to 45 days. This shortened timeframe should enable a LSP to perform its required duties more quickly, thus providing for a more feasible process. At the same time, we think that we have struck a reasonable

balance of protections for the LSP through dispute provisions and have maintained a 20-day period for end-user customers to shop for a new LSP.

IRRC's comment to include provisions in the regulations to reassign functions in the event the abandoning carrier is unable to, or fails to, perform its required duties is a more difficult issue to address in formal regulations. The Commission is promulgating these regulations precisely because some LSPs have abandoned service without providing customer notice. The final-form regulations are meant to send the message that such irresponsible actions to exit the market are not acceptable and to lay out a reasonable process to exit the market. All too frequently the Commission, with the assistance of the NSP, has had to serve in the backup role and notify customers when the abandoning LSP failed to do so. We do not view this to be the proper role of the Commission or the NSP. At the same time, the Commission does not believe there exists another entity that should be required to notify customers because the abandoning carrier has failed to do so. Finally, we believe that to incorporate a backup provision into the regulation may inadvertently invite its use which would be in conflict with sending the message that it is the abandoning carrier's responsibility to exit the market in a responsible manner. We have, however, incorporated provisions into the final-form regulations for the NSP to extend the wholesale customer's termination date should the Commission determine that a significant number of end-user customers have yet to select a new LSP by the scheduled abandoning carrier's exit date. We will continue to be vigilant to make sure that customers are notified when a LSP abandons services.

A second general comment from IRRC about the proposed regulations noted that the regulation should address how implementation of the new regulatory requirements will affect existing and future interconnection agreements and whether the regulations supercede existing agreements. In our view, the overlap in interconnection agreement provisions and the content of the final-form regulations occurs in four general areas: payment default provisions, bill dispute provisions, dispute rights with the Commission, and the advance notice time period that is required for a NSP to terminate a LSP's service. Our review of interconnection agreements revealed that the more recent interconnection agreements have payment default notice provisions, bill dispute provisions and provisions for a NSP to seek the Commission's intervention to resolve a dispute. In preparing the final-form regulations, we have strived to strike a balance between incorporating reasonable provisions of interconnection agreements where they exist and making sure that the regulations provide basic provisions for adequate notice of billing disputes and payment defaults, reasonable time periods to resolve the issues, and the timely filing of disputes with the Commission. We reiterate the message contained in the proposed regulations that it is our desire that the entities seek to resolve their differences and incorporate whatever provisions they feel are necessary into their interconnection or other agreements and only seek the Commission's involvement in dispute resolution as a last resort. We have included what we view as basic provisions to resolve differences in the regulations to foster resolution between the entities so that if the Commission is asked to resolve disputes we can facilitate a quick resolution knowing that the basic processes have already taken place.

In our review of the interconnection agreements as to the time period accorded from the NSP notice of termina-

tion to the termination date, we note that the regulations require 45 days advance notice whereas the interconnection agreements typically contain a 30-day notice period. We have developed the 45-day requirement allowing for up to 10 days after NSP notification for the abandoning LSP to develop and file their abandonment plan with the PUC and develop their customer notice, allowing up to five days for the notice of abandonment to reach end-user customers, allowing up to 20 days for end-user customers to shop and choose a new LSP, and allowing up to 10 days for customer migration to the new LSP. As noted above, we have dramatically reduced the overall time period from 110 days to 45 days but do not believe less than 45 days allows adequate time for these necessary events to take place.

In general, we note that where provisions of interconnection or other agreements are inconsistent with the regulatory requirements in the final-form regulations, the provisions of regulations supercede the existing agreements, if such regulations are not inconsistent with the provisions of Telecommunications Act of 1996 (TA-96). 47 U.S.C. section 261(b). Certainly some interconnection agreements have additional provisions that go beyond those contained in the regulations and we view them as accepted upon Commission approval of the agreements.

§ 63.301. Statement of Purpose and Policy

We received comments on this section from IRRC and Verizon. We have also made minor wording revisions to add clarity or to reflect changes made in other parts of the Annex. Under § (a)(1) of the Purpose, we eliminated the reference to embargo consistent with our removal of any reference to embargo in the Annex. In § (a)(2), we adopted IRRC's comment and added the words "any of" to specify that the regulations apply to any of the circumstances noted under (i)(iii). Under § (a)(2)(i), we substituted the word "interconnection" for "service" to clarify that the NSP is intending to terminate a LSP's interconnection agreement rather than a service agreement.

Based on Verizon's comments, we deleted § (3) that read to "Ensure that customers do not lose service when their LSP exits the market." This revision is accompanied by another revision recommended by Verizon to new § (3) whereby we added language stating "and thereby not lose local service when the LSP exits their market." These revisions reflect our approach to abandonment whereby we seek to provide customers advance notice of abandonment and an opportunity to select another LSP. In some cases, customers may receive a second notice if they have not responded to a first notice. However, absent a customer responding to an abandonment notice and selecting a new LSP, we cannot ensure that the abandoning LSP will maintain service indefinitely and that unresponsive end-user customers will never lose local service. Under subsection (b), Application, we have revised (2) to clarify that the subsection applies to wholesale "local" service versus the more generic "telephone" service as recommended by IRRC. We have also eliminated the reference to "embargo" and added clarifying language that the NSP is terminating the LSP's service "for breach of an interconnection agreement."

§ 63.302. Definitions

We have made several changes to this section based on comments by IRRC, Verizon and our own efforts to add clarity to the regulations. IRRC noted that the definition of Local Service Provider included undefined terms such as "unbundled network elements" and recommended that these terms be defined in the final-form regulations. In

response to IRRC's comments we have added definitions for "UNE (unbundled network element), UNE-L (local loop) and UNE-P (UNE-platform)." Based on our own analysis, we have added definitions for the terms "Full Facilities," "Interconnection Agreement," "NANPA," "Preferred Carrier Freeze" and "Resale" to add clarity for terms used in the regulations.

Comments provided by Verizon were the basis for deleting two definitions of terms that were used and defined in the proposed regulations but do not appear in the final-form regulation. We have deleted the definition of "Default LSP" consistent with removing the default LSP provisions and we have deleted the definition of "Embargo" as the embargo provisions that were in the proposed regulations were replaced by "Pre-Termination Provisions" that do not refer to the term embargo.

The definitions that appear in the final-form regulations also contain several revisions based on comments from the parties. IRRC questioned whether the phrase "in a service area" was needed in the definition of abandoning LSP. We concluded that the phrase was not necessary and removed it from the definition. IRRC also commented that the definition of "NSP-Network Service Provider" contains the undefined term "carrier." We have replaced the term "carrier" with "telecommunications provider" in the definition of NSP and removed the term "carrier" from the final-form regulations.

IRRC commented that the terms "NLSP (new local service provider)," and "OLSP (old local service provider)" that appeared under the definition of "LSP-local service provider" should have stand alone definitions. We addressed IRRC's comments by deleting this reference under the definition of LSP. The term "OLSP" was only used in this definition but not elsewhere in the regulation and therefore was unnecessary. We chose to delete the term "NLSP" and replace it with "new LSP," thereby eliminating an abbreviation that could potentially be confused with NSP (network service provider). We believe that the term "new LSP" will be understood in the context of the regulation which generally addresses the need for customers to find another or new LSP to replace their abandoning LSP.

A final comment on the definition of LSP that was provided by IRRC pertained to the term "nonjurisdictional services" being undefined. Upon review, we determined that the entire sentence that contained the term "nonjurisdictional services" was unnecessary and did not add clarity in the context of this regulation and we therefore deleted "§ (ii) A LSP may also provide other telecommunication services, as well as nonjurisdiction services."

Verizon commented that the definition of acquiring LSP should specify that the acquiring LSP "voluntarily" undertakes to provide local service. Therefore we have inserted the word "voluntarily" into the definitions of acquiring LSP as suggested.

Finally, IRRC commented that we should be consistent in the use of "Local Service" which is defined in the regulation. We have adopted their comment and deleted the use of "Telephone Service" and "Telecommunications Service" where local service is appropriate.

§ 63.303 NSP Embargo Process

We received very significant, substantive comments about the NSP Embargo Process in the proposed regulations. These comments led us to re-evaluate the need for,

and form of, the embargo process that was designed to precede the NSP issuing a termination notice to a LSP (wholesale customer).

We realize there are very important issues in this pre-termination process, among them fairness, due process, potential financial exposure for the NSP as well as due consideration for the customers who may ultimately be impacted. Among the significant, substantive comments were those filed by Verizon, AT&T, MCI and IRRC. Verizon commented that we should not require an embargo process per se, but in its place maintain the ability of the Commission to extend the NSP's termination date for the LSP if necessary. AT&T commented that the 10-day embargo notice is too short and the rules should defer to the interconnection agreements for dispute and notice provisions. MCI also noted that the embargo period is too short and that we should require that a 30-day embargo period precede the delivery of a termination notice from the NSP. IRRC also commented that the 10-day embargo period is short. IRRC, in general comments, also noted that the time frames and requirements in the proposed regulations may differ from existing agreements between the LSP and NSP and questioned how implementation of the regulations will affect interconnection agreements.

We examined several interconnection agreements filed with the Commission over the past few years to determine if and how they addressed pre-termination embargo provisions, payment defaults, dispute rights and termination notice periods. Our review determined that embargo provisions were not typically contained in the interconnection agreements. We noted that recent interconnection agreements contain more developed pre-termination billing dispute resolution and NSP payment default provisions including general dispute provisions. However, the provisions lacked the degree of consistency among agreements that would have enabled the Commission to defer to the agreements in lieu of regulatory provisions or to incorporate a set of basic provisions in the regulations that would always be consistent with all existing interconnection agreements. At the same time, we are interested in the NSPs and LSPs having basic, reasonable provisions to identify and potentially resolve differences among themselves prior to seeking the Commission's intervention to resolve disputes or impacting the service provided to customers.

Our resolution to the comments provided about the proposed embargo process and our review of pre-termination processes in interconnection agreements is twofold. First, we will not incorporate an embargo process in the final-form regulations as initially proposed. Doing so may be perceived as adding a whole new set of pre-termination provisions that are not currently an agreed upon part of the process. Second, we will replace the proposed NSP Embargo Process with Pre-Termination Provisions containing Wholesale Customer Billing Dispute Resolution and NSP Payment Default Resolution Processes. These processes should provide reasonable due process provisions for handling the types of circumstances that are likely to give rise to NSPs serving LSPs with termination notices and requests for dispute resolution before the Commission.

While we have deleted the NSP Embargo Process from the final-form regulations, we have maintained many of the specific provisions of the embargo process in the two new pre-termination processes we have replaced the embargo process with. We have also considered many of the comments provided in response to the proposed

embargo process, as well as some of the pertinent comments to § 63.304, NSP Termination process for wholesale customers, as applicable to the new pre-termination processes.

Wholesale Customer Billing Dispute Resolution Process

For the new section § 63.303(a) we accord wholesale customers the opportunity to dispute NSP charges prior to the NSP terminating service. As we noted above, most interconnection agreements contain such provisions. Our new language in § (a) contains the provision that “a wholesale customer is obligated to pay amounts not under complaint or dispute” so that filing a dispute on a portion of charges does not become grounds for not meeting the payment obligation of charges unrelated to the dispute. Provisions (1) and (2) are consistent with language contained in the proposed regulation at §§ (c)(i) and (c)(ii) pertaining to the use of written notices being sent to the NSP’s designee. Provision (3) responds to IRRC’s comment to the proposed regulations at §§ 63.303(c)(2) that a notice should require a breakdown of the amount owed. Provision (4) language requiring the NSP to provide the wholesale customer with a written acknowledgement of the wholesale customer’s written billing dispute responds to IRRC’s comments to the proposed regulations at § 63.304(a) as to how a wholesale customer will be notified of a properly filed dispute with the NSP. Provision (5) responds to comments from IRRC and MCI that 10 days to respond to an embargo notice is too short of a time frame. Therefore we have provided for 30 calendar days to resolve the dispute. We have also provided that the NSP shall not pursue termination during the resolution period for the disputed amounts similar to language contained in the proposed regulations at § 63.304(a)(3). Provision (6) in the billing dispute resolution process accords dispute rights with the Commission after the NSP and wholesale customer have attempted to resolve the dispute. The Commission dispute rights respond to IRRC’s comments to § 63.303(a) in the proposed regulations where IRRC asks what remedy does the wholesale customer have if they disagree with the NSP that the interconnection agreement terms have not been upheld by the wholesale customer.

In their comments to § 63.304(a), IRRC asked how parties are to know if the dispute was properly filed and if not, what opportunities exist to correct the filing. We believe that § (a)(1) requiring a written dispute notice from the wholesale customer and § (a)(4) requiring the NSP to provide the wholesale customer with a written acknowledgement of receipt of the dispute notice accord the parties the opportunity to raise issues about the adequacy of the notices.

New provision (7) in the billing dispute resolution process is included in the final-form regulations so that disputes are timely filed with the Commission. We believe these disputes should generally precede the time when customers receive abandonment notices to prevent potential customer confusion and unnecessary migrations. Provision (8) prohibits the NSP from terminating the wholesale customer’s service for matters contained in a dispute before the Commission. This language is similar to that in the proposed regulations at §§ 63.304(a)(3).

We deleted § 63.303(a), Authorized reasons for a NSP to embargo service, because we are no longer requiring a NSP embargo process. However, much of the content of this section will be transferred to § 63.304(a), Authorized reasons for a NSP to terminate service.

In comments to IRRC, Verizon stated that the dispute provisions need to be changed in order to prevent nonpay-

ing LSPs from gaming the system to avoid collection action being taken against them by an NSP. Verizon comments that since there are no qualifications contained in the language at § 63.303(a), the regulations will encourage LSPs to game the pre-termination/termination process by raising multiple and often baseless disputes on the same invoice. Verizon wants the regulations revised to make it clear that LSPs cannot abuse the process in such a manner. Verizon notes that in compliance with their interconnection agreements, LSPs must raise billing disputes only once and can go through only one thirty-day dispute period for each invoice. Consistent with their comments Verizon recommends that the Commission add language to § 63.303(a) (Wholesale Customer Billing Dispute Resolution Process) stating that: “Accordingly, a wholesale customer must either dispute or pay all charges on an invoice from the NSP by the due date on the invoice.”

Our review of some of the newer Verizon interconnection agreements as well as some of those dating back a few years reveals that the agreements do not contain the specific language that a wholesale customer must either dispute or pay all charges on an invoice by the due date. While the interconnection agreements do contain a section on billing, payment and disputed amounts, the language of the provisions are crafted differently from the language Verizon is proposing. If the Commission were to incorporate the specific language proposed by Verizon into the regulations, the regulations may be viewed as overriding the terms of existing interconnection agreements that would significantly alter the rights of the parties. This is precisely the result that Verizon objects to in their comments to IRRC regarding the pre-termination/termination process elsewhere in the regulations.

We disagree with Verizon that by incorporating a provision that wholesale customers shall have the opportunity to dispute charges for the provision of service with the NSP that the regulations therefore encourage LSPs to game the process by raising multiple and baseless disputes on the same invoice. The dispute process provision is a common and useful provision contained in interconnection agreements, including those between Verizon and numerous LSPs. If Verizon wishes to have qualifications regarding the legitimacy of disputes, the timeframes in which they should be raised and the number of disputes per invoice, then we encourage Verizon to include such specificity in its interconnection agreements.

We wish to emphasize that the Commission and its regulations do not support attempts by LSPs to game the pre-termination/termination process to avoid paying the NSP for services provided and accurately billed. In lieu of adopting the language proposed by Verizon for § 63.303(A), which may go beyond the language in interconnection agreements, we will add clarifying language to the regulation that “Disputes shall be raised by a LSP on a timely basis consistent with the language in applicable interconnection agreements.” We will also revise the wording in 63.303(A) to read that “a wholesale customer is obligated to pay amounts not under dispute” rather than not under “complaint or dispute” consistent with Verizon’s comments to IRRC.

NSP Payment Default Resolution Process

The second pre-termination process we added to the final-form regulations in place of the embargo process is the NSP Payment Default Resolution Process. Our review of several interconnection agreements revealed that most agreements contained such provisions. We included this section to ensure that the parties are aware of payment

defaults and seek to engage in a reasonable process to resolve them prior to the NSP terminating the wholesale customer's service or filing a complaint with the Commission to resolve a payment default dispute. The provisions in § (b)(1—2) are similar to those contained in the proposed regulations in § 63.303(c)(1—2) but we have substituted the words "payment default" or "default notice" for the words "embargo" or "embargo notice." In response to IRRC's question in their comments to § 63.303(a) as to who makes the determination that the wholesale customer has failed to abide by the agreement, we note that the NSP makes that initial determination and communicates that by providing the wholesale customer with a written notice of payment default.

We have revised the language in § (2)(i) to note that the payment default notice shall contain the specific accounts and invoices that are in default consistent with IRRC comments to § 63.303(c) in the proposed regulations pertaining to the embargo notice requiring a breakdown of the amount owed. We have added provisions in § (2)(ii) and (iii) in response to IRRC and MCI's comments that a notice should include the exact reason for the NSP's notification and any possible ways of curing the default. Provision (iv) is the same as that contained in the proposed regulations at § 63.303(c)(2)(iii) with the exception that we deleted the reference to "embargo issuing."

New provision (3) responds to comments from IRRC and MCI that 10 days to respond to an embargo notice is too short of a time frame. Therefore, we have provided for 30 calendar days to resolve the payment default. The language in provision (4) requiring the wholesale customer to provide the NSP with written confirmation of receipt of the NSP's payment default notice is intended to ensure that both parties are aware of the payment default situation and the need to take action to resolve the problem in a timely manner.

Based on our earlier discussion about deleting the embargo process we have eliminated proposed § 63.303(b), Unauthorized reasons for a NSP to embargo service and (c), Embargo notification provisions. The content of these subsections will be transferred, where applicable, to § 63.304(a), Authorized reasons for a NSP to terminate service and § 63.304(c), Termination notice provisions.

§ 63.304 NSP Termination Process for Wholesale Customers

In their comments, MCI noted that they were not clear whether the termination process is different from the embargo process. The embargo process in the proposed regulations was a pre-termination process that after 10 days led into the termination process. In the proposed regulations we advanced § 63.303(a), Authorized reasons for a NSP to embargo service and (b), Unauthorized reasons for a NSP to embargo services as major parts of the overall NSP embargo process. To the extent that the embargo process preceded and led into the termination process, the authorized and unauthorized reasons for embargoing services applied to termination as well. In the final-form regulations we eliminated the embargo process per se and substituted two new pre-termination processes. However, we believe that the authorized and unauthorized reasons that formerly were applied to embargoes should now apply to the NSP termination, and therefore, we have transferred the provisions that appeared in § 63.303(a) and (b) of the proposed regulations into § 63.304 NSP termination process for wholesale customers. In response to MCI's comment, the pre-

termination (formerly embargo) and termination processes should now be distinct.

In § 63.304(a) we adopted language formerly in § 63.303(a). In § 63.304(a)(1) we added language in response to IRRC's comment to § 63.303(a) that we should clarify when the 30-day period begins. We have specified that the period begins 30 days after the "date of the bill." We also respond to IRRC's comment to § 63.305 about not initiating abandonment when a dispute has been filed by adding language restricting termination if the bill has been disputed in accordance with § 63.303(a) or (b).

The provisions in § 63.304(a)(2) were transferred from § 63.303(a)(2) of the proposed regulations with the addition of clarifying language recommended by Verizon about "other governing" agreements provided that such agreements have been approved by the Commission. The remaining provisions in § 63.304(a)(3 & 4) are transferred from § 63.303(a)(3 & 4) of the proposed regulations.

The provisions in § 63.304(b)(1—4) are transferred from § 63.303(b)(1—4) of the proposed regulations with the language in § (b) being revised to apply to unauthorized reasons for a NSP to "terminate" service rather than "embargo" service. We deleted § 63.303(b)(5) because similar language now appears in § 63.303(a).

We have expanded § 63.304 to include new language in § (c), Termination notice provisions, and incorporate language from § 63.304(b), Termination notice from the proposed regulations. In § (c)(1) we have directed that a NSP shall provide a wholesale customer with a written notice at least 45 calendar days prior to the termination date. In subsection (c)(2—4) we have transferred language from § 63.303(c)(i—iii) pertaining to sending an "embargo" notice and modified the language to now pertain to sending the "termination" notice. In subsection (c)(2) we have substituted the words "interconnection or other governing" for "service" agreement based on comments from Verizon. We eliminated the subheading (b), Termination notice from the proposed regulations and renumbered subsection (b)(1) to be (c)(5). We adopted the same language that was in the proposed regulations at § 63.304(b)(1)(i—iv) under the final-form regulations at § 63.304(c)(5)(i—iv) that pertains to the information to be included in a termination notice. The provision that was in § 63.304(b)(2) about the Commission being provided with a copy of the termination notice is now at § 63.304(c)(4).

We deleted proposed § 63.304(a), Termination process initiation, because we have included similar language noting when a NSP is authorized and not authorized to terminate a wholesale customer's service under § 63.304(a)(5) and (8). Language noting that termination cannot proceed if the grounds for the termination are disputed with the NSP or the Commission is contained in § 63.303(a)(5) and (8).

In comments to IRRC, Verizon opposed a provision in the regulations at §§ 63.303(B)(1) which requires a NSP to first issue a payment default notice to a nonpaying LSP at least 30 days before sending a termination notice. As required in § 63.304(C), the termination notice must be provided to the LSP at least 45 calendar days prior to the effective date of the intended termination. Verizon proposed that the requirement for the thirty day payment default resolution period that precedes the 45-day termination period not be mandated in all cases. Instead, Verizon requests the option, where its interconnection

agreements with the LSP permit, to send a single notice specifying a shorter period than the combined 75 days for the default and termination notices. In their comments, Verizon proposed to maintain the minimum 45-day termination period that is consistent with § 63.304(C). Verizon avers that in some cases, the combined default/termination notice process would allow for more effective collection of past due balances. Specific language is offered by Verizon in their comments:

Combined Default/Termination Notice

Notwithstanding any contrary provision in §§ 63.303 and 63.304, where authorized by the provisions of its interconnection or other agreement with a wholesale customer, an NSP may provide the wholesale customer with a single notice of default and of termination that specifies that termination will occur in less than the minimum 75 calendar days provided for in §§ 63.303 and 63.304, provided that such termination will occur in not less than the 45-day termination period provided for in § 63.304.

In replies submitted pursuant to our Secretarial Letter, Sprint supported Verizon's position for a combined default/termination notice. Sprint comments that the instant rulemaking should not mandate two separate notices before the NSP can terminate service to the LSP. In Sprint's view, if the NSP and the LSP have an interconnection agreement that includes a minimum 45-day default/termination period in total, then the notice arrangements agreed to by those contracting parties should apply in lieu of the proposed rules. Sprint also comments that if the NSP and the LSP do not have an interconnection agreement, then the proposed rules should be modified such that a single 45-day minimum default/termination period is required.

We initially incorporated the pre-termination payment default resolution process in the rules so that the parties would use the notice provision to trigger discussion and hopefully resolution of payment defaults prior to the NSP terminating the LSP's wholesale service. Thirty-day payment default provisions were common elements of Verizon interconnection agreements approved by the Commission. In fact, the majority of the Verizon interconnection agreements approved by the Commission over the past few years contained such provisions. Based on the history, we saw no conflicts between the rules and Verizon interconnection agreements.

However, the most recent Verizon interconnection agreements no longer contain the separate payment default notice provisions. Based on past experience, Verizon has revised their interconnection agreement terms in favor of a shorter process when a LSP has defaulted on payment terms. Accordingly, we will revise the regulations as suggested by Verizon and supported by Sprint to allow for a combination default/termination process when applicable interconnection agreements contain such provisions. We will adopt the language proposed by Verizon, with minor changes reflecting proper regulatory language, to accommodate this option and insert it as § 63.304(D).

We will not make further revisions to the rules as proposed by Sprint for cases where the NSP and LSP do not have an interconnection agreement. We will decline to require a single 45-day minimum default/termination period where there is no interconnection agreement stating that the parties agree to such a provision.

§ 63.305 Initiation of Abandonment

We have revised wording in the opening sentence of the section to clarify that the LSP shall initiate abandonment of service when a "LSP receives a notice from the NSP" of a termination of a LSP's service. In response to comments from IRRRC and MCI, we note that the NSP's termination shall be consistent with the dispute provisions contained in § 63.303. We have also added language to address the situation where a LSP has applied to the Commission to abandon "some or all of a LSP's local service customers." This language allows for situations involving a partial abandonment where a LSP may wish to cease serving some customers but not others. AT&T comments that the reference to "some" of its local customers should be deleted because the rules could be construed to apply when the LSP is not abandoning the market, but rather is simply managing its products by terminating certain offerings that may be replaced with improved or newer products. We want to clarify that the rules apply to abandonment as defined in § 63.302 where a LSP will cease to provide local service to existing customers. If AT&T, in managing its products and offerings, will cease to provide local service to some or all of its customers, then these rules apply.

In § 63.305(1)(i), we clarify that the LSP "is a wholesale customer" of the NSP. We have also added language that the NSP notice to the LSP should be provided electronically and by first class mail "unless other methods of delivery have been agreed to as part of the interconnection or other governing agreement between the NSP and LSP" consistent with comments provided by Verizon. We also note that the notice should be provided in not less than "45" calendar days in advance of the scheduled termination consistent with shortening our overall time frame for abandonment. In § 63.305(1)(ii), we clarify language that the Commission may require an extension of the LSP's termination date until the LSP's customers "have been properly notified." We have also revised the time period that a LSP shall file an application with the Commission from 90 days to 35 days consistent with shortening our overall time frame. IRRRC comments that the LSP should file an application to abandon service whether or not "financial or operational data indicates there is a likelihood that the LSP may be unable to provide service to some or all of its customers." In response to IRRRC's comment, we have deleted this qualifying language at the end of § 63.305(3).

§ 63.306. Abandoning LSP Obligations for Abandonment

AT&T comments that this entire section of the regulations should be deleted and instead the Commission should rely on the Federal Communication Commission's (FCC) streamlined process. We disagree with AT&T on the lack of need for the provisions in this section and note that the FCC's streamlined process only pertains to situations in which customers will be transferred to an acquiring LSP. While we are hopeful that abandoning LSP's will seek to make arrangements with an acquiring LSP, we cannot be certain that this will always be the case.

In § 63.306(a) we have substituted "LSP" for the word "carrier" as requested by IRRRC. In subsection (b) we changed the time when an abandoning LSP must file an abandonment plan with the Commission from 90 to 35 calendar days in advance of abandoning service consistent with our overall reduction in the abandonment time frame. We have substituted the word "facilitate" for "ensure" in subsection (b)(3) as an abandoning LSP may

not be able to ensure continuation of service when customers do not respond to abandonment notices and select a new LSP.

In § 63.306(b)(5), we revised the language to provide the Commission a list of customers that will be abandoned rather than a plan to do so at a later date. The revision is consistent with shortening the overall time frame for abandonment. In subsection (b)(6), we deleted references to “a draft of” the notice that is “an initial letter” to be sent to customers thereby leaving the requirement to provide the Commission with “the notice that is to be sent to customers.” With the overall shortened abandonment time frame, the customers will be receiving one termination notice unless the Commission requires a second notice subject to the provisions at new § 63.310(b).

In § 63.306(b)(7) we have deleted language requiring “a plan for follow-up notification arrangements...” for a second notice to be filed with the abandonment plan. However, we do have language in new § 63.310(b) about the LSP sending a second notice after consultation with the Commission if such notice is needed. We have inserted new language in subsection(b)(7) to require the abandoning LSP to include in their abandonment plan to be filed with the Commission “the beginning and ending dates for the period in which customers are to shop and select a new LSP (customer choice period).” We further specify that “customers shall be allowed up to 20 calendar days after receiving a customer notice of abandonment to shop and select a new LSP.” It is important for the Commission to be aware of the customer shopping and selection period in the event customers contact the PUC’s call center with questions about the abandonment. We have also used this section to specify that customers are to have 20 calendar days to shop for a new LSP, consistent with the customer shopping time frame in the proposed regulations.

In § 63.306(b)(8) we added new language requiring the abandoning LSP to include in their abandonment plan “the beginning and ending dates of the customer migration period.” We also included language specifying that the customer migration period falls between the customer choice period and the exit date. The language at subsection (8) enabled us to delete the former (9) from the final-form regulations that required “a date when customers shall select a carrier” because that is contained in (7) as the ending date for the customer shopping period.

We have responded to IRRC’s comments to § 63.306(b)(13) by providing definitions in § 63.302 of UNE, UNE-P, UNE-L, Full Facilities and Resale. We clarified in subsection (b)(14) that we want the abandonment plan to contain a “list” of customer “names and contact information” when the abandoning LSP is the only provider of facilities. “Based on IRRC’s comments” we substituted “LSP” for “carrier.” In subsection (b)(15) we specified that the number of customers impacted refers to impacted by the abandonment. We deleted language in (b)(15) requiring customer service record (CSR) information. As requested in comments by IRRC, we added a reference to the provisions that describe the transfer of assets or control. We also revised the numbering in subsection (b)(16—21) on the final-form regulations.

Based on comments by Verizon and IRRC that are addressed in § 63.310, we deleted the NSP obligations to serve as the default LSP at (b)(22). We also note that IRRC’s comment to § 63.306(b)(22) is no longer applicable with the deletion of (b)(22).

In § 63.306(c)(1) we have used “New LSP” instead of NSLP as discussed in § 63.302 pertaining to the definition of LSP. In response to IRRC’s comments about a more specific reference to NENA standards we have specified that we are referring to “recommended data standards for service providers going out of business.”

In response to comments from IRRC we revised the title of § 63.306(d)(2) to “NANPA abandonment notice” to be consistent with the format of paragraph (1). Verizon provided comments and suggested improved wording for § 63.306(d)(2) which we adopted. The revised wording also negated the need for subsections (d)(2)(i) and (ii). In order to be consistent with our revised overall abandonment time frame we substituted “35” days for “66” days as the minimum time that NANPA shall be provided with notice of number resources to be released.

Consistent with comments from IRRC, we deleted the word “carrier” and substituted “LSP” to refer to the abandoning LSP in § 63.306(e)(1). We also substituted “30 calendar” days prior to the exit date for “60” days as the required time to notify customers about the abandonment. In subsection (e)(2) we specify that the abandoning LSP shall provide customers with a list of “all” services that will no longer be provided as of the exit date. In response to comments by IRRC, customers will be directed to “obtain whatever services they wish to have going forward” rather than “replace the services” that the abandoning LSP has been providing. IRRC points out that the wording should leave customers free to add or delete services from those they have been receiving.

In response to comments from Verizon and our removal of the default provisions at § 63.310, we have removed language at subsection (e)(3) regarding automatically transferring customers to a default carrier. We have inserted new language at (e)(3) to direct the abandoning LSP to “lift all existing preferred carrier freezes on the services to be abandoned” so that customers with freezes do not encounter any barriers to changing their LSP.

We have made several revisions to subsection (e)(4) for clarity. In response to a comment by IRRC, we have replaced the word “teaser” with “message” on the envelope and notice. In subsection (e)(4)(ii) we require that the customer notice “list other services provided by the LSP that will no longer be provided upon abandonment of local service.” In subsection (e)(4)(iv), a statement to customers shall direct customers to select another LSP on or before a specific date 10 calendar days prior to the exit date rather than 30 days prior. The revised period is consistent with our reduction in the overall abandonment time frame.

We have deleted proposed subsection (e)(4)(vii) that required the abandoning LSP to provide customers with a list of alternative LSPs that serve customers in their area. IRRC questioned how such a list could be obtained and noted that in order to be competitively fair the list should be all inclusive. MCI questioned the availability of a current, reliable and accurate list and suggested that the Commission maintain such a data base. Upon review we determined that while the Commission has information about what LSPs have been certificated to serve in Pennsylvania and the areas they are certificated to serve in, we do not have current information as to where they are actually serving or accepting new customers for local service. Therefore we conclude that providing such a list is not feasible. As an alternative to providing a list to customers, we have added language to subsection (4)(v) that customers shall be notified that they can “check their telephone directory...” for information about LSPs serv-

ing their area. In subsection (e)(4)(vii) we have responded to IRRC's comments by adding language that customers can contact the abandoning LSP if they have questions, need more information "or have a problem with changing your services."

We have added new language at subsection (e)(4)(ix) that "customers who have preferred carrier freezes on their accounts shall be directed to contact their new LSP to arrange for new preferred carrier freezes if they wish to have this protection going forward."

§ 63.307 Abandonment Process Management

In § 63.307(b)(3), Verizon commented that we should delete the reference to default LSP. We have adopted that change consistent with removing the NSP obligation to serve as the default LSP at proposed § 63.310. Based on IRRC's comment asking why customers do not appear in the list of the parties that the program manager should be accountable to, we have added "abandoning LSP's customers" to subsection (b)(3).

§ 63.308. Commission Consideration and Action.

IRRC commented that the Commission's website address should be included at § 63.308(a). We accept IRRC's comments and will add the Commission's website address to this section. We also deleted the word "default" from section § 63.308(b) because we eliminated proposed § 63.310 NSP obligations to serve as the default LSP. Therefore, any reference to default LSP will be eliminated in the final-form regulations and annex. For a full explanation of why we eliminated the default LSP provisions, see the discussion under § 63.310, NSP obligations to serve as the default LSP of this order.

§ 63.309. Acquiring LSP Provisions and Obligations.

We received comments from IRRC, AT&T and Verizon regarding the acquiring LSP provisions and obligations. IRRC comments that the Commission should include a provision in the customer notice that would make customers aware of their right to choose either the acquiring LSP or select another LSP of their choice. We have added new language in the final-form regulations at § 63.306(e)(4) which directs the abandoning LSP to include a statement in the customer notice that customers may "select any LSP that serves their area or take no action and their service will be transferred to the acquiring LSP." IRRC also comments that multiple notices may be confusing especially if customers receive the acquiring LSP's notice before receiving the abandoning LSP's notice. IRRC suggests that we combine the two customer notices into one notice and have the abandoning LSP send the notice. We have adopted IRRC's comments and have merged the notice provisions for the acquiring LSP and the abandoning LSP into joint notice provisions in the final-form regulations (See § 63.306(e)(4)(vi)). We believe that a joint notice from the abandoning LSP and the acquiring LSP will decrease customer confusion about the abandonment and transfer of the local service. As a result of these changes, we have eliminated § 63.309(a) and (b) from the final-form regulations.

In regard to § 63.309(c), IRRC comments that the Pennsylvania slamming provisions at 52 Pa Code § 64.23(b) should be cross referenced in this section. We have adopted IRRC's comments and added the following language to this section. "This provision does not relieve the abandoning LSP of any requirements imposed by the Federal Communications Commission's (FCC) anti-slamming rules or state rules at 52 Pa. Code § 64.23(b)." In addition, we have added the words "customer has not selected another LSP during the 20-day customer choice

period" to further clarify what is not considered slamming under the final-form regulations.

AT&T comments that § 63.309(d) pertaining to carrier change charges is contrary to the FCC requirements and that it should be changed to reflect the FCC rules. We agree with AT&T's comments and have eliminated this section in the final-form regulations. With the elimination of § 63.309(d) from the final-form regulations, abandoning LSPs will not be required to pay the carrier change charges. Under the FCC rules,¹ the acquiring LSP is responsible for the carrier change charges associated with the transfer of customers. IRRC asks whether an acquiring LSP can bill customers for carrier change charges if that abandoning LSP refuses or is unable to pay these charges. In response to IRRC's question, the FCC rules are clear that these charges are to be paid by the acquiring carrier (LSP), not customers.

IRRC comments that § 63.309(e) should specify the circumstances under which an acquiring LSP would be permitted to make the determination that it is unable or unwilling to provide service. We wish to clarify that the purpose of this section is to ensure that the Commission has an opportunity to intervene on the customer's behalf before the abandoning LSP's exit date should the migration of customers from the abandoning LSP to the acquiring LSP take longer than anticipated for some unforeseen reason. At this stage of the abandonment process, the acquiring LSP has already agreed to transfer customers, through a business arrangement with the abandoning LSP. However, the transfer of customers from one LSP to another LSP can be difficult depending on the LSP service arrangements. For example, if the abandoning LSP provides service through a resale arrangement, then the acquiring LSP must also have an interconnection agreement with the same NSP so it can transfer the abandoning LSP's customers. This would delay the transfer of customers. The acquiring LSP may also encounter problems with the processing of customers' records which can also impede the migration of an abandoning LSP's customers. The customer's credit history should not affect the migration of customers with this type of business arrangement. We are simply directing the acquiring LSP to make the Commission aware of any migration problems, (processing or technical) early on so the customer or the Commission may address them in a timely manner. For these reasons stated above, we changed the word "migrate" to "provide" for clarity in the final-form regulations.

AT&T objects to the provision in § 63.309(e) that would require the abandoning LSP to continue providing service for an unspecified period of time when customers haven't selected another LSP or the acquiring LSP backs out of providing service. AT&T believes that it is unreasonable to expect a failing LSP to maintain active service indefinitely. The Commission has no interest in requiring an abandoning LSP to maintain active service indefinitely or in prolonging the abandonment process when it is unreasonable. In recognition of the complex nature of migrating local telephone service, the final-form regulation will give the Commission some flexibility to address special situations or circumstances within a reasonable time frame. IRRC asks what happens if the abandoning LSP discontinues service anyway. If the abandoning LSP discontinues services before a customer is able to select a new LSP, then the Commission will attempt to assist the customer with finding a new LSP or suggest alternative arrangements for telephone service.

¹ 47 U.S.C. § 64.1120(3)(iii)

§ 63.310. NSP Obligations to Serve as the Default LSP

Several parties either objected to or questioned the need for the NSP to serve as the default LSP when the abandoning LSP has been serving as a reseller. AT&T comments that this section should be stricken in its entirety and there should be no presumption under which customers are "transferred back" to the ILEC before going to someone else. AT&T notes that all carriers that are active in the market should receive an equal shot at winning the abandoning CLEC's customers. AT&T comments that the ILEC should not obtain an additional marketing benefit through these rules.

Verizon also comments that network service providers such as Verizon should not be default LSPs in abandonment situations. In Verizon's view, to automatically assign a subset of customers to the NSP is antithetical to the workings of a competitive market and the free choice that underlines this market. Verizon also cites financial reasons as to why they and other NSPs do not want to serve as the default LSP. They note that forced transfers deprive the NSPs of any ability to access the creditworthiness of such customers and forces NSPs to accept customers they would otherwise not accept. In Verizon's experience, many of the customers who leave Verizon for CLECs, or who attempt to come back to Verizon from CLECs, often do so because they are payment troubled.

In their comments, IRRIC notes, as we have above, that a NSP and a LSP oppose the default LSP provisions in the proposed regulations. IRRIC notes that the PUC should explain the need for this section in a competitive market. IRRIC also questions that if an acquiring LSP is permitted to reject customers who are not paying their bills, would the NSP serving as the default LSP also be allowed to reject payment-troubled customers.

We are persuaded by the comments of the parties and will delete proposed § 63.310, NSP obligations to serve as the default LSP. It is not our intent to provide any LSP with a competitive advantage over another. However, we are concerned that abandonments do not leave large numbers of customers without local service. To accomplish this objective, we will rely on provisions at § 63.305(1)(ii) that "the Commission may require a NSP to extend a LSP's termination date until the LSP's customers have been properly notified." This provision will be used by the Commission if progress reports from the abandoning LSP, as required by new § 63.310, indicate that a large number of customers have not migrated to a new LSP as the scheduled exit date approaches. We will also rely on the option contained in new § 63.310 for a second abandonment notice to be sent and may use the provision in § 63.305(1)(ii) to extend the termination date to provide time for the second notice to reach customers, enable them to choose another LSP and allow sufficient time for migration prior to the abandoning LSPs exit date so customers do not experience the loss of local service.

Although we did not receive initial comments in this rulemaking from OSBA, they did offer comments pursuant to our Secretarial Letter on subject matter unrelated to Verizon's comments to IRRIC. The OSBA noted the bankruptcy/abandonment of NorVercence Inc, when small business customers had to scramble when NorVercence ceased providing service without providing proper notice to its end-user customers. OSBA fears that there may be more such exits and recommends that the Commission reopen this rulemaking or, in the alternative, initiate a separate proceeding to prevent a LSP from exiting the

market without providing adequate customer notice and time for customers to acquire a new telecommunications provider.

We do not believe that NorVercence Inc. provided any regulated local service in Pennsylvania. However, we are sympathetic to the issue raised by OSBA and any inconvenience that small business customers may experience when a LSP exits the market without properly notifying its customers. This very rulemaking is meant to address this shortcoming by requiring sufficient customer notice, adequate time for customers to shop for another provider and time to have service migrated before their current LSP abandons service. We believe that these rules, when final, will set clear expectations for orderly abandonments. We will monitor the impact this rulemaking has on abandonments and reassess our options in the future if our expectations are not met.

§ 63.311. Abandoning LSP Follow-up Obligations.

Verizon provides suggested language changes for proposed section § 63.311(b) that would delete the words "or default service with a NSP" and replace these words with, "by another LSP." Verizon also suggests that we delete the word "service" and replace it with "second." We accept Verizon's proposed language changes for this section, which is now new § 63.310. We added the word "abandonment" after the word "second" for further clarity. In addition, we substituted the words "after consultation with the Commission" for the words "30 days before the exit date" to give the Commission more flexibility in addressing different circumstances. The resulting language reads "the second abandonment notice shall be sent after consultation with the Commission."

AT&T comments that the provision for a second notice should be deleted because it is unnecessary and costly. The company believes that the requirement for multiple notifications impose a significant burden on the abandoning LSP. We disagree with AT&T's assertion that this provision is unnecessary because we believe that customer notification is critical. Selectively requiring an abandoning LSP to send more than one notice will increase the likelihood of customers choosing a new LSP and avoiding the loss of their local service.

Conclusion

Accordingly, under sections 501, 1501 and 3001—3009 of the Public Utility Code, 66 Pa.C.S. §§ 501, 1501 and 3001—3009; sections 201 and 202 of the act of July 31, 1968, P. L. 769 No. 240, 45 P. S. §§ 1201 and 1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P. S. 732.204(b); section 745.5 of the Regulatory Review Act, 71 P. S. § 745.5; and section 612 of The Administrative Code of 1929, 71 P. S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.251—7.235, we find that the regulations establishing general rules, procedures and standards to provide for an orderly process when a local service provider exits the market at 52 Pa. Code §§ 63.301—63.310 should be approved as set forth in Annex A; *Therefore*,

It Is Ordered That:

1. The regulations, 52 Pa. Code Chapter 63, are amended by adding §§ 63.301—63.310 to read as set forth in Annex A.

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

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

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

5. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by IRRC.

6. A copy of this order and Annex A shall be served upon the Pennsylvania Telephone Association, the Pennsylvania Cable & Telecommunications Association, The North American Numbering Plan Administrator, National Emergency Numbering Association, all jurisdictional telecommunications utilities, the Office of Trial Staff, the Office of Consumer Advocate and the Small Business Advocate.

7. The final regulations in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 1942 (March 26, 2005).)

Fiscal Note: Fiscal Note 57-232 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 63. TELEPHONE SERVICE

Subchapter N. LOCAL SERVICE PROVIDER ABANDONMENT PROCESS

Sec.	
63.301.	Statement of purpose and policy.
63.302.	Definitions.
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63.306.	Abandoning LSP obligations for abandonment.
63.307.	Abandonment process management.
63.308.	Commission consideration and action.
63.309.	Acquiring LSP provisions and obligations.
63.310.	Abandoning LSP follow-up obligations.

§ 63.301. Statement of purpose and policy.

(a) *Purpose.* The purpose of this subchapter is to:

(1) Provide for an orderly process when a NSP intends to terminate service to a LSP.

(2) Provide for an orderly process when a LSP seeks to stop the provision of existing service to residential and business customers under any of the following circumstances:

(i) A NSP that provides part or all of the services necessary to provide local service is intending to terminate a LSP's interconnection agreement.

(ii) The Commission has issued an order to revoke a LSP's certificate of public convenience.

(iii) A LSP has filed an application to abandon a certificate of public convenience for the provision of local service.

(3) Ensure that customers are provided ample notice and the opportunity to select a new LSP of their choice and thereby not lose local service when the LSP exits their market.

(4) Coordinate information flow and activities through a project management team.

(5) Ensure that an abandoning LSP provides sufficient network information so that customers are able to be migrated seamlessly.

(6) Ensure that an abandoning LSP coordinates with 9-1-1 service providers and the North American Numbering Plan Administrator.

(b) *Application.*

(1) This subchapter applies to a LSP that provides local service to residential or business customers.

(2) This subchapter applies to a NSP that provides wholesale local service to a LSP and intends to terminate the LSP's service for breach of an interconnection agreement.

§ 63.302. Definitions.

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

Abandon—To cease providing local service to existing customers. The term does not include discontinuance as a result of a customer's request or a temporary change in the provision of service that may arise from maintenance, repair or failure of a LSP's equipment or facilities.

Abandoning LSP—A LSP that seeks to abandon providing local service to existing customers.

Acquiring LSP—A LSP that voluntarily undertakes to provide local service to customers of the abandoning LSP after the abandoning LSP is permitted to alter or abandon providing local service.

CSR—Customer service record—Documentation indicating the customer's name, address, contact telephone number, quantity of lines, services, features and other information associated with a customer account.

Customer—The end-user recipient of telephone service provided by a LSP.

Exit date—The date upon which an abandoning LSP intends to cease providing telecommunications service.

Full facilities—The term used when the LSP has all the services and equipment (that is, central office switches, local loops, trunk lines, and the like) necessary to provide telephonic communications between telephones connected to it or to other central offices.

Interconnection agreement—An agreement to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.

LSP—Local service provider—A company, such as a local exchange carrier (LEC), that provides local service by resale, by unbundled network elements (with or without platform) or through its own facilities, or by a combination of these methods of providing local service to a customer.

Local service—Telecommunications service within a customer's local calling area.

(i) The term includes the customer's local calling plan, dial tone line, touch-tone and directory assistance calls allowed without additional charge.

(ii) The term also includes services covered by the Federal Line Cost Charge, Pennsylvania Relay Surcharge, Federal Universal Service Fund Surcharge, Local Number Portability Surcharge, Public Safety Emergency Telephone Act (9-1-1) Fee and applicable Federal and State taxes.

Local service reseller—A LSP that resells another company's wholesale telephone services to provide local service to customers.

NANPA—North American Numbering Plan Administration—The organization that holds overall responsibility for the neutral administration of North American telephone numbering resources, subject to directives from regulatory authorities in the countries that share the North American telephone numbering resources. NANPA's responsibilities include assignment of telephone numbering resources, and, in the United States and its territories, coordination of area code relief planning and collection of utilization and forecast data.

NSP—Network service provider—A telecommunications provider that interacts with LSPs and provides the facilities and equipment components needed to make up a customer's telecommunications service. A NSP may be referred to as an underlying carrier, and may also be a LSP.

Preferred carrier freeze—A designation elected by a customer that restricts a third party's ability to change a customer's choice of preferred telecommunication service provider.

Resale—The term used when a LSP does not have its own facilities, but purchases telecommunications services at wholesale rates to sell to the public. Typically, the telecommunications services are purchased from a NSP.

UNE—Unbundled network element—Various physical and functional parts of a NSP's infrastructure that may be leased to another LSP. These components include things such as local switching, local loops, interoffice transmission facilities, signaling and call-related databases, operator services, directory assistance, and the like.

UNE-L—Local Loop—The telephone line (copper or fiber), that runs from the local telephone company to a customer's premise. A LSP may own a local switch and lease the local loop from the NSP.

UNE-P—UNE-Platform—A combination of unbundled network elements that facilitates end-to-end service delivery. A typical arrangement includes at least a local loop and switching.

Wholesale customer—A LSP that provides local service by resale or by unbundled network elements (with or without platform).

§ 63.303. Pretermination provisions.

(a) *Wholesale customer billing dispute resolution process.* Wholesale customers shall have the opportunity to dispute charges for the provision of service with the NSP. A wholesale customer is obligated to pay amounts not under dispute. Disputes shall be raised by a LSP on a timely basis consistent with the language in applicable interconnection agreements.

(1) When disputing NSP charges, the wholesale customer shall provide the NSP with a written dispute notice unless other methods of delivery have been agreed to as part of an interconnection or other governing agreement.

(2) The dispute notice must be addressed to the NSP's designee.

(3) The dispute notice must provide the NSP with the amounts that form the grounds for the dispute as well as the specific accounts and bills that are being disputed.

(4) Within 5 calendar days of receiving a written dispute notice from a wholesale customer, the NSP shall provide written acknowledgement of the receipt of the notice to the wholesale customer's contact.

(5) Upon receiving a dispute notice from a wholesale customer, the NSP and the wholesale customer shall make a good faith effort to resolve the dispute within 30 calendar days unless a longer dispute resolution period is provided for in an interconnection or other governing agreement. During this dispute resolution period, the NSP may not pursue termination of the wholesale customer's service unless it is based on other indebtedness that is not disputed.

(6) If resolution of the dispute is not achieved to the satisfaction of the NSP and the wholesale customer at the conclusion of the dispute resolution period, either party may file a complaint with the Commission to resolve the dispute.

(7) The NSP and the wholesale customer shall seek to file a complaint with the Commission to resolve a billing dispute prior to the time when retail customers are to be notified of the pending abandonment.

(8) The NSP may not pursue termination of the wholesale customer's service while a complaint to resolve the dispute is pending with the Commission unless the termination is based on other indebtedness that is not disputed.

(b) *NSP payment default resolution process.*

(1) Prior to a NSP issuing a termination notice to a wholesale customer for a payment default, the NSP shall:

(i) Provide the wholesale customer with a written notice of payment default.

(ii) Send the default notice by first class mail unless other methods of delivery have been agreed to as a part of the interconnection or other governing agreement or are provided for in an applicable tariff.

(iii) Address the default notice to the wholesale customer's designee.

(iv) Send a copy of the default notice to the Secretary of the Commission and to the Commission's Bureau of Consumer Services.

(2) The default notice to a wholesale customer shall include the following:

(i) The amount owed that forms the grounds for the payment default as well as the specific accounts and invoices that are in default.

(ii) A statement of the terms of the interconnection or other governing agreement that forms the grounds for the NSP's notification of payment default.

(iii) Available methods the wholesale customer may use to cure the payment default.

(iv) The NSP's contact information to be used by the wholesale customer for payment of the NSP's bill.

(3) Allow at least 30 calendar days from the date of the default notice for resolution of the payment default prior to issuing a termination notice. If interconnection or other governing agreements between the NSP and the wholesale customer allow for a longer dispute resolution period

prior to the NSP issuing a termination notice, the time periods in the agreement govern.

(4) Within 5 calendar days of receiving a written notice of payment default, the wholesale customer shall provide written acknowledgement of the receipt of the notice to the NSP's contact.

§ 63.304. NSP termination process for wholesale customers.

(a) *Authorized reasons for a NSP to terminate service.* A NSP may terminate service to a wholesale customer for one or more of the following reasons:

(1) Failure of the wholesale customer to pay an undisputed delinquent amount for services necessary to provide customers with local service when that amount remains unpaid for 30 calendar days or more after the date of the bill unless the bill has been disputed in accordance with the provisions in § 63.303(a) or (b) (relating to pretermination provisions).

(2) Failure of the wholesale customer to abide by the terms and conditions of an interconnection or other governing agreement related to the provision of local service that has been approved by the Commission.

(3) Failure of the wholesale customer to comply with the terms of a payment agreement related to the provision of local service.

(4) Failure of the wholesale customer to comply with a Commission order related to the provision of local service.

(b) *Unauthorized reasons for a NSP to terminate service.* Unless specifically authorized by the Commission, a NSP may not terminate service for the following reasons:

(1) Failure of a wholesale customer to pay a charge unrelated to the provision of local service, for example, a charge for a LSP's own directory advertising in a NSP's yellow pages directory.

(2) Failure of a wholesale customer to pay a charge that was not previously billed prior to the due date of the current bill.

(3) Failure of a wholesale customer to pay a charge that is under a payment agreement prior to the date of payment set forth in the agreement.

(4) Failure of a wholesale customer to pay a charge that is at issue in a complaint before the Commission unless termination is specifically authorized by the Commission.

(c) *Termination notice provisions.*

(1) A NSP shall provide a wholesale customer with a written termination notice at least 45 calendar days prior to the date that the NSP intends to cease providing the service that enables the wholesale customer to serve end-user customers.

(2) A NSP shall send the termination notice by first class mail unless other methods of delivery have been agreed to as part of the interconnection or other governing agreement or are provided for in an applicable tariff.

(3) A NSP shall address the termination notice to the wholesale customer's designee.

(4) A NSP shall send a copy of the termination notice to the Secretary of the Commission, to the Commission's Bureau of Consumer Services and the Law Bureau.

(5) A termination notice from a NSP to a wholesale customer shall include the following:

(i) The date of the notification and reason for termination.

(ii) The date services shall be terminated unless payment is received or other mutually acceptable arrangements are made.

(iii) The amount owed, if applicable.

(iv) A contact telephone number and name for the NSP.

(d) *Combined default/termination notice provisions.* A NSP, when authorized by the provisions of its interconnection or other agreement with a wholesale customer, may provide the wholesale customer with a single notice of default and of termination that specifies that termination shall occur in less than the minimum 75 calendar days provided for in § 63.303 and this section, provided that the termination may not occur in less than the 45-day termination period provided for in subsection (c)(1).

§ 63.305. Initiation of abandonment.

A LSP shall initiate abandonment of service when a LSP receives a notice from the NSP of a termination of a LSP's service consistent with the pretermination dispute provisions in § 63.303 (relating to pretermination provisions), when the Commission issues an order to revoke a LSP's certificate of public convenience or when a LSP has made proper application to the Commission to abandon some or all of a LSP's local service customers.

(1) *NSP initiation.*

(i) A NSP that intends to terminate the service of a LSP that is a wholesale customer and serves residential or business customers shall provide prior notice to the LSP and the Commission electronically and by first class mail unless other methods of delivery have been agreed to as part of the interconnection or other governing agreement between the NSP and the LSP, not less than 45 calendar days in advance of the scheduled termination.

(ii) The Commission may require a NSP to extend a LSP's termination date until the LSP's customers have been properly notified.

(2) *Commission initiation.* The Commission may initiate the abandonment of a LSP's service through the issuance of a Commission order that revokes the LSP's certificate of public convenience.

(3) *LSP initiation.* A LSP may initiate the voluntary abandonment of some or all of its local service customers by filing with the Commission an application to abandon service to some or all of its existing customers. A LSP shall file an application to abandon service at least 35 calendar days prior to the exit date.

§ 63.306. Abandoning LSP obligations for abandonment.

(a) *General.* Upon receiving a termination notice from a NSP, or upon receiving a Commission order notifying a LSP of an effective date for revoking its certificate of public convenience, or upon a LSP's voluntary filing of an application to abandon service, the abandoning LSP shall make a good faith effort to secure an acquiring LSP to serve the customers it plans to abandon.

(b) *Abandonment plan.* The abandoning LSP shall file an abandonment plan with the Commission at least 35 calendar days in advance of abandoning service. The

abandonment plan shall contain the following information:

(1) An identification of the telecommunications services, either facilities-based or through resale, to be abandoned or curtailed in the associated service territory.

(2) An explanation of reasons for the abandonment of service.

(3) A detailed outline of the procedures a LSP shall use to facilitate continuation of service for its affected customers. The abandoning LSP shall demonstrate that the abandonment will not deprive the public of necessary telecommunications services.

(4) The notices required by this section.

(5) A list of current customers that will be abandoned.

(6) The abandonment notice that is to be sent to customers.

(7) The beginning and ending dates for the period in which customers are to shop and select a new LSP (customer choice period). Customers shall be allowed up to 20 calendar days after receiving a customer notice of abandonment to shop and select a new LSP.

(8) The beginning and ending dates for the customer migration period when the business arrangements are to be completed for the transfer of service to the new LSP. The customer migration period shall immediately follow the customer choice period, allow 10 calendar days for migration, and immediately precede the exit date.

(9) A proposed exit date. If the abandonment is initiated by termination by a NSP or by Commission order, the proposed exit date may not be later than the termination date provided by the NSP or the date the certificate of public convenience is to be revoked.

(10) Contact names and telephone numbers for a LSP's program manager, the regulatory contact and other pertinent contacts, for example, the contact for customer service records (CSR) or provisioning contacts.

(11) If applicable, the arrangements made for an acquiring carrier.

(12) The procedures to be taken with NANPA to transfer NXX codes or thousand number blocks (if applicable) while preserving number portability for numbers within the code.

(13) The name of the NSP and the current customer serving arrangements, for example, UNE-P, resale, UNE-L or Full Facilities.

(14) A list of customer names and contact information when the abandoning LSP is the only provider of facilities to a customer or group of customers.

(15) The number of customers to be impacted by the abandonment.

(16) The details of a transfer of assets or control that requires Commission approval under 66 Pa.C.S. § 1102(a)(3) (relating to enumeration of acts requiring certificate).

(17) A request to modify or cancel tariffs.

(18) A plan for processing customer deposits, credits and termination liabilities or penalties.

(19) A plan for unlocking the E-9-1-1 records.

(20) A plan for maintaining toll-free telephone access to an abandoning LSP's call center (including customer

service and billing records) so that a customer is able to contact the LSP to inquire about or dispute final bills and refunds.

(c) *Transfer of customers' 9-1-1/E-9-1-1 records.*

(1) *Transfers to a new LSP.* An abandoning LSP shall unlock all of its telephone numbers in the 9-1-1/E-9-1-1 records to provide a new LSP with access to the abandoning LSP's customers' 9-1-1/E-9-1-1 records. The abandoning LSP shall unlock the 9-1-1/E-9-1-1 records in compliance with the National Emergency Numbering Association's (NENA) recommended data standards for service providers going out of business.

(2) *Transfers after abandonment.* An abandoning LSP shall submit a letter to the appropriate 9-1-1/E-9-1-1 service provider authorizing the 9-1-1/E-9-1-1 service provider to unlock remaining 9-1-1/E-9-1-1 records after the LSP has abandoned the market. The abandoning LSP shall provide this letter at least 30 days prior to abandoning the market.

(d) *Notification to the industry and NANPA.*

(1) *Industry abandonment notice.* An abandoning LSP shall provide written notice to:

(i) Telecommunications corporations providing the abandoning LSP with essential facilities or services or UNEs that affect the abandoning LSP's customers.

(ii) Telecommunications corporations providing the abandoning LSP with resold telecommunications services, if resold service is part of the telecommunications services provided to the abandoning LSP's affected customers.

(2) *NANPA abandonment notice.* An abandoning LSP which has NXX or thousand block number resources from NANPA shall provide written notice to NANPA identifying and authorizing the release of all of its used and unused number resources to an acquiring carrier, other LSPs or NANPA, as applicable. When number resources are to be released to an acquiring carrier, the notice to NANPA shall be provided at least 35 days prior to the abandoning LSP's exit date.

(3) The notice shall include identification of all working telephone numbers assigned to the customers, identification of all unassigned or administrative numbers available for reassignment to other providers and the date the unassigned telephone numbers shall be available for reassignment.

(4) The abandoning LSP shall authorize the release of each individually assigned customer telephone number to the subsequent provider selected by the customer. The abandoning LSP may not abandon NXX codes or thousand block numbers if a number within the relevant range of numbers has not been completely ported.

(e) *Abandoning LSP notification to customers.*

(1) The abandoning LSP (and acquiring LSP if applicable) shall notify customers by letter at least 30 calendar days in advance of the exit date.

(2) The abandoning LSP shall provide customers with a list of all services (for example—local basic, regional toll and long distance toll) that the abandoning LSP is currently providing to the customer that will no longer be provided as of the exit date. The abandoning LSP shall direct customers to choose a new LSP to obtain whatever services they wish to have going forward.

(3) The abandoning LSP shall lift all existing preferred carrier freezes on the services to be abandoned.

(4) The notice of pending abandonment of service to residential and business customers shall contain the following:

(i) A printed message on the envelope and the notice containing the words "Important Notice, Loss of Local Telephone Service" printed in bold letters with a font size of at least 14 points, conspicuously displayed on the front of the envelope to attract the attention of the reader.

(ii) A statement on the notice: "At this time, (LSP name) provides you with local telephone service, (list other services provided by the LSP that will no longer be provided upon abandonment of local service)."

(iii) A statement on the notice: "As of (the exit date) (LSP name) will no longer provide your local telephone service and you must take action."

(iv) A statement on the notice: "To prevent the loss of your local telephone service, you must select another local telephone service provider on or before (list a specific date 10 calendar days prior to the exit date). If you act by this date there will be enough time for the new local service provider you choose to start your new service before your current service ends."

(v) A statement on the notice: "Please remember that customers may choose the provider of their local telephone service. You may select any company that is offering service in your area." Customers shall be notified that they can check their telephone directory yellow pages under "telephone service providers" or in the front of the directory under the heading of "other local phone companies" for information about LSPs serving their area.

(vi) If the abandoning LSP has arranged for an acquiring LSP to serve customers, the abandoning LSP customer notice provisions shall reflect these arrangements. Specifically, the written notice to customers shall be a joint notice from the abandoning and acquiring LSPs. The joint notice shall be sent to customers in an envelope from the abandoning LSP. The joint notice shall inform customers that they may select any LSP that serves their area by (date of the end of customer choice period) or they may take no action and their service will be transferred to the acquiring LSP no later than (exit date). The joint notice shall also include information about the acquiring LSP's rates and terms and conditions of service.

(vii) A statement on the notice: "This is an important notice (the word "important" in bold) about the loss of your local telephone service. If you have any questions, need more information or have problems with changing your services, contact (LSP contact information including a toll-free telephone number)."

(viii) Information to customers outlining the procedure for obtaining refunds of credits and deposits, obtaining final bills and addressing questions or complaints.

(ix) Customers who had preferred carrier freezes on their accounts shall be directed to contact their new LSP to arrange for new preferred carrier freezes if they wish to have this protection going forward.

§ 63.307. Abandonment process management.

(a) The abandoning LSP shall appoint a program manager to coordinate the abandonment process. The program manager shall be selected from the abandoning LSP or, if applicable, the acquiring LSP.

(b) The program manager shall be accountable to each of the parties involved in the abandonment. The individual parties involved in the migration may be:

(1) The abandoning LSP.

(2) The acquiring LSP.

(3) The abandoning LSP's customers.

(4) The Commission.

(c) The parties involved in the abandonment shall appoint a project manager who will work with the program manager to ensure that the abandonment process flows in a seamless manner.

§ 63.308. Commission consideration and action.

(a) The Commission will post information of an impending abandonment on its website at www.puc.state.pa.us under "Local Service Telephone Provider Abandonment Notification."

(b) If necessary, Commission staff may establish an industry conference call to address potential problem areas and procedures with the abandoning LSP, as well as with the acquiring or other LSPs as applicable.

§ 63.309. Acquiring LSP provisions and obligations.

(a) An abandoning LSP and acquiring LSP may change the customer's local service provider without being considered to have engaged in slamming if the customer has not selected another LSP during the 20-day customer choice period and the acquiring LSP does not change a customer's preferred interexchange carrier designation without the customer's authorization. This provision does not relieve the abandoning LSP or the acquiring LSP of any requirements imposed by the Federal Communications Commission's (FCC) antislamming rules or State rules in § 64.23(b) (relating to standardizing LEC responses to customer contacts alleging unauthorized charges added to the customer's bill (cramming) and unauthorized changes to the customer's long distance carrier (slamming)).

(b) If an acquiring LSP determines that it will be unable to migrate service to a customer by the abandoning LSP's exit date, the acquiring LSP shall notify the Commission, the customer and the abandoning LSP within 24 hours of the determination. If the customer is unable to select another available LSP, the abandoning LSP shall continue to provide service until the date on which a LSP is able to provide service or a date ordered by the Commission, whichever is earlier.

§ 63.310. Abandoning LSP follow-up obligations.

(a) An abandoning LSP shall track the progress of migrations and provide Commission staff with progress reports on the number of customers that have and have not migrated to a new LSP. The frequency of the updates will vary with the magnitude of the mass migration and will be determined by the Commission on a case by case basis.

(b) An abandoning LSP shall send a second abandonment notice to a customer who is not subject to acquisition by another LSP and has not taken action to select a new LSP. The second abandonment notice shall be sent after consultation with the Commission. The form of the second notice is left to the discretion of the abandoning LSP and may be the following:

(1) First class mail.

(2) A telephone call.

(3) A bill insert.

(4) Any other means of direct contact with the customer.

[Pa.B. Doc. No. 05-704. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 141]

Use of Cable Restraints for Taking Certain Furbearers

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 25, 2005, meeting, adopted the following rulemaking:

Amend § 141.63 (relating to definitions) to expand the listed definitions and add § 141.66 (relating to cable restraints) to permit the use of cable restraints for taking certain furbearers.

This final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for this final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 34 Pa.B. 6547 (December 11, 2004).

1. Purpose and Authority

Trappers in this Commonwealth have requested that the use of cable restraints be permitted to take certain furbearers, namely coyotes and foxes. The Commission has weighed this public input against wildlife management interests and determined that the use of this additional device for these specific furbearers can be reasonably permitted. To make cable restraints lawful for taking these specific furbearers the Commission expanded the list of definitions found in § 141.63 to include and specifically define "cable restraint" and also added § 141.66 to establish the lawful methods, uses and periods during which cable restraints may be used.

Section 2102(d) of the code (relating to regulations) authorizes the Commission to "promulgate regulations stipulating the size and type of traps, the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used." Section 322(c)(5) of the code (relating to powers and duties of the commission) specifically empowers the commission to "Fix the type and number of devices which may be used to take game or wildlife." Section 2102(b)(1) of the code (relating to regulations) authorizes the commission to "promulgate regulations relating to . . . the number and types of devices and equipment allowed, the identification of devices and the use and possession of devices." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to . . . the ways, manner, methods and means of . . . furtaking . . . in this Commonwealth." The amendments to §§ 141.63 and 141.66 were adopted under this authority.

2. Regulatory Requirements

This final-form rulemaking will specifically define "cable restraint" in § 141.63 and will establish the lawful methods, uses and periods during which cable restraints may be used in § 141.66.

3. Persons Affected

Persons who wish to use cable restraints for the taking of certain furbearers, namely coyotes and foxes, will be affected by this final-form rulemaking.

4. Comment and Response Summary

One-hundred and forty-five official written comments were received regarding this final-form rulemaking. These comments were comprised of 129 comments in favor and 16 comments in opposition of this final-form rulemaking. These 16 comments received in opposition to this rulemaking were primarily comprised of comments challenging the safety of cable restraints for collateral victims such as dogs. The remaining opposition comments received challenged the Commission's allowance of trapping in general.

Specifically, the majority of these comments claim there would be an unacceptable danger of injury or death for dogs inadvertently caught in these traps. Although the Commission recognizes the legitimate concerns of hunting dog owners and standard dog owners alike, it has concluded that if these cable restraints are set in a lawful manner and during the lawful seasons, the collateral risk to hunting dogs or other dogs at large is nominal.

5. Cost and Paperwork Requirements

This final-form rulemaking should not result in additional cost or paperwork.

6. Effective Date

This rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding this final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1202 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending §§ 141.63 and by adding 141.66 to read as set forth at 34 Pa.B. 6547.

(b) The Executive Director of the Commission shall certify this order and 34 Pa.B. 6547 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

[Pa.B. Doc. No. 05-705. Filed for public inspection April 15, 2005, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 147]
Special Permits; Bobcats

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 25, 2005, meeting, adopted an amendment to § 147.701 (relating to general).

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 34 Pa.B. 6549 (December 11, 2004).

1. Introduction

The Commission amended § 147.701 to permit the Executive Director to set application submission period requirements for bobcat hunting-trapping permits to facilitate a more convenient and standardized application process for permit applicants.

2. Purpose and Authority

Formerly, the Commission maintained specific submission and post marking requirements regarding bobcat hunting-trapping permits within its regulations. To make the process of applying for bobcat hunting-trapping permits more convenient for applicants and also standardize the procedures for paper and online applications among different species, the Commission amended § 147.701 to require all applications to be submitted in accordance with periods set by the Executive Director. The final-form rulemaking continues to give applicants the option of applying for bobcat hunting-trapping permits on-line, using the Commission's Outdoor Shop or applying through the mail.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit . . ." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife . . . in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife . . . in this Commonwealth." The amendment to § 147.701 was adopted under this authority.

3. Regulatory Requirements

The final-form rulemaking will require applicants for bobcat hunting-trapping permits to abide by submission requirements established by the Executive Director to facilitate a more convenient and standardized application process for applicants.

4. Persons Affected

Persons who wish to apply for a bobcat hunting-trapping permit will be affected by the final-form rulemaking.

5. Comment and Response Summary

There were no official comments received regarding this final-form rulemaking.

6. Cost and Paperwork Requirements

The final-form rulemaking should not result in additional cost or paperwork.

7. Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. Contact Person

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.701 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-198 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter S. BOBCAT HUNTING-TRAPPING PERMIT

§ 147.701. General.

This section provides for permits to be issued for the hunting and trapping of bobcat during the season established and in areas designated under § 139.4 (relating to seasons and bag limits for the license year).

(1) A permit will only be issued to residents of this Commonwealth who possess a valid resident furtakers license, junior combination license, senior combination license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions) or to persons who qualify under section 2363 of the act (relating to trapping exception for certain persons).

(2) The fee for an application for a permit to take a bobcat is \$5.

(3) Applications shall be submitted on a form supplied by the Commission or by using an electronic application on the Commission's Internet website and shall contain the required information as requested. For the purpose of

having a unique identifier assigned to each individual in the database, permitting a crosscheck for duplicates, applicants shall provide their Social Security number on the application, or hunter ID number. A \$5 application fee shall accompany the application and is nonrefundable. Applications shall be submitted to the Commission's Harrisburg Headquarters.

(4) Applications shall be submitted in accordance with periods set by the Director.

(5) Only one application per person may be submitted. Anyone submitting more than one application for a permit will have all applications rejected.

(6) The selection of applications will be made by random drawing from all eligible applications submitted. Incomplete, illegible or duplicate applications will not be included in the drawing. The drawing will be held at the Commission's Harrisburg Headquarters on the second Friday in September and shall be open to the public.

(7) A special permit authorizing the lawful taking of one bobcat will be delivered to successful applicants by standard first class mail through and by the United States Postal Service. Permits shall be mailed by the first Friday in October. The number of permits issued shall be set by the Executive Director no later than the first day of June.

(8) Tagging requirements are as follows:

(i) A permitted person taking a bobcat shall immediately, before removing the bobcat from the location of the taking, fully complete a temporary carcass tag furnished with the permit, which contains in English the person's name, address, special permit number, date of harvest, county and township of harvest, wildlife management unit of harvest and method of harvest and attach the tag to the bobcat. The bobcat carcass shall remain intact, that is, with entrails, until examined and tagged by a Commission representative. The temporary carcass tag shall remain attached to the animal until it is tagged with a numbered permanent interlocking tag. The person taking the bobcat may remove the pelt provided the pelt is kept with the carcass for examination and tagging.

(ii) A permitted person taking a bobcat shall contact the Commission within 48 hours of the taking by telephoning the number specified on the permit to arrange for carcass examination, data collection and tagging.

(iii) A bobcat taken under authority of a special permit shall be tagged with a numbered permanent interlocking tag no later than 4 p.m. on the 10th day following the closing of the bobcat season.

(iv) The tag shall remain attached to the bobcat until it is mounted, tanned, made into a commercial fur or prepared for consumption.

(9) An applicant issued a bobcat hunting-trapping permit is not permitted to apply for another bobcat hunting-trapping permit the next license year. Applications from current applicants who have applied in the 2003-2004 license year and proceeding years will be included in the drawing until the applicant is successfully drawn and issued a permit.

(10) A bobcat guide permit will be issued as follows:

(i) A person who assists another person to hunt or take bobcats in any manner shall first secure a bobcat guide permit from the Commission.

(ii) The fee for a bobcat guide permit is \$10 for residents and \$25 for nonresidents.

[Pa.B. Doc. No. 05-706. Filed for public inspection April 15, 2005, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 147]

Special Permits; Possession of Deer Accidentally Killed by a Motor Vehicle

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 25, 2005, meeting, adopted an amendment to § 147.142 (relating to possession of deer accidentally killed by a motor vehicle).

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 34 Pa.B. 6549 (December 11, 2004).

1. Introduction

The Commission amended § 147.142 to permit the issuance of permit "numbers" rather than "paper" permits to validate lawful possession of road-killed deer and facilitate cost and personnel timesavings for the Commission.

2. Purpose and Authority

Formerly, any individual who wished to take possession of an accidentally road-killed deer had to apply for a possession permit through their local Commission regional office within 24 hours of taking possession of the deer. After the Commission received an application for a permit, its personnel had to commit time to completing and issuing the "paper" permit and recording its information. The cumulative cost of the time spent executing these tasks in addition to the postage costs for mailing a "paper" permit to each applicant was quite substantial. To promote cost and personnel timesavings, as well as streamline and simplify the permitting process, the Commission amended § 147.142 to allow the issuance of permit "numbers" by phone rather than "paper" permits by mail. This should make it easier for applicants to receive a permit as well as make it less costly and time consuming for the Commission to issue the same.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife...in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife...in this Commonwealth." The amendment to § 147.142 was adopted under this authority.

3. Regulatory Requirements

The final-form rulemaking will require possession permit applicants to obtain a permit "number" rather than a

“paper” permit to validate lawful possession of an accidentally road-killed deer.

4. *Persons Affected*

Persons who wish to take possession of an accidentally road-killed deer will be affected by the final-form rulemaking.

5. *Comment and Response Summary*

One official written comment was received in opposition to this final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should reduce cost and paperwork related to possession permits for accidentally road-killed deer.

7. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.142 to read as set forth at 34 Pa.B. 6549.

(b) The Executive Director of the Commission shall certify this order and 34 Pa.B. 6549 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-197 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 05-707. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 64—SECURITIES

SECURITIES COMMISSION

[64 PA. CODE CHS. 203, 303, 304 AND 404]

Investment Advisors; Exchange Transactions

The Securities Commission (Commission), under sections 203(r), 303(a) and (d), 304(b) and 404 of the

Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-203(r), 1-303(a) and (d), 1-304(b) and 1-404) (act), amends and adopts regulations concerning the subject matter of the act to read as set forth in Annex A.

Publication of Notice of Proposed Rulemaking

The proposed rulemaking was published at 34 Pa.B. 5168 (September 18, 2004).

Public Comments

No public comments were received.

Comments of the Independent Regulatory Review Commission (IRRC)

By letter dated November 17, 2004, IRRC advised that it had no objections, comments or suggestions with respect to the proposed rulemaking.

Changes Made by the Commission on Adoption

The Commission has made no changes to the proposed rulemaking.

Summary and Purpose of Rulemaking

§ 203.203 (relating to certain Rule 144A exchange transactions exempt)

The Commission adopts § 203.203 to provide a self-executing exemption for certain exchange transactions of debt securities in which certain accredited investors receive registered debt securities of the issuer in exchange for the issuer's debt securities that originally were issued in a private transaction under SEC Rule 144A (Rule 144A Exchange Transactions).

§ 303.012 (relating to investment adviser registration procedure)

Since the American Institute of Certified Public Accountants no longer permits its members to issue management responsibility letters, the Commission amends this section to delete use of a management responsibility letter in lieu of an audit report where the investment adviser applicant is a certified public accountant (CPA) or a firm consisting of CPAs. The Commission also deletes the definition of “principal” which was used to define who could sign a management responsibility letter. Also, the Commission deletes the ability of public accountants to render an audit report which is required by changes made to section 609(c) of the act by the act of November 24, 1998 (P. L. 829, No. 109) (Act 109).

§ 303.032 (relating to examination requirements for investment advisers and investment adviser representatives)

The Commission amends this section to require CPAs and attorneys to notify the Commission of their eligibility for a waiver of the examination requirement for investment advisers and investment adviser representatives. Applications for registration as an investment adviser or investment adviser representative are processed electronically through the web based Investment Adviser Registration Depository (IARD). The IARD only recognizes exam waivers for certain uniform designations which do not include attorneys or CPAs. Therefore, the only way the Commission knows that those applicants are eligible for a waiver of the exam requirement is to impose a notification requirement on the applicant.

§ 303.042 (relating to investment adviser capital requirements)

The Commission amends this section to make it clear that an investment adviser will not be deemed to have custody of client's funds or securities and thereby be

subject to a higher net worth requirement solely due to the investment adviser receiving a fee directly from the assets of the client, serving as a general partner of a pooled investment vehicle or serving as a trustee of a family beneficial trust if the investment adviser meets certain conditions.

§ 304.022 (relating to investment adviser required financial reports)

Since the American Institute of Certified Public Accountants no longer permits its members to issue management responsibility letters, the Commission amends this section to delete use of a management responsibility letter in lieu of an audit report when the investment adviser applicant is a CPA or a firm consisting of CPAs. Also, the Commission deletes the ability of public accountants to render an audit report which is required by changes made to section 609(c) of the act by Act 109. The Commission deletes the definition of principal which was used to define who could sign a management responsibility letter. Lastly, the Commission exempts investment advisers with custody of clients' funds or securities from filing an annual audited balance sheet if they only inadvertently held clients' funds or securities and returned them to the client within 3 business days.

§ 404.013 (relating to investment adviser custody or possession of funds or securities of clients)

The Commission amends this section to permit an investment adviser to send itemized client statements to another person authorized by the client or to reasonably rely on a qualified custodian of the client's funds or securities to send an itemized statement to the client.

Persons Affected by the Final-Form Rulemaking

Investment advisers who are required to be registered with the Commission and have custody of clients' funds or securities, which the Commission estimates to be less than ten registrants, will be affected by this final-form rulemaking. Also affected will be issuers that engage in a Rule 144A Exchange Transaction with a holder of debt securities located in this Commonwealth.

Fiscal Impact

The new exemption for Rule 144A Exchange Transactions will eliminate a current requirement that the transactions be registered under section 205 or section 206 of the act (70 P. S. §§ 1-102 and 1-206). The Commission anticipates an annual revenue loss to the General Fund of approximately \$7,500. The amendments applicable to the few investment adviser registrants who have custody of clients' funds or securities will not impose significant additional recordkeeping costs beyond those which currently exist.

Paperwork

The next exemption for Rule 144A Exchange Transactions will eliminate the filing of Commission Form R. The Commission eliminates Form 203-I. The amendments applicable to the few investment adviser registrants who have custody of clients' funds or securities will require some new recordkeeping.

Effective Date

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

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 1, 2004, the Commission submitted a copy of the proposed rulemaking published at 34 Pa.B. 5168 to IRRC and the Chairpersons of the House Commerce Committee and the Senate Committee on Banking and Insurance for comment and review. In addition to submitting the amendments, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis form prepared by the Commission. A copy of this material is available upon request.

By letter dated November 17, 2004, IRRC stated that it did not have any objections, comments or suggestions to offer on the proposed rulemaking. The Commission has made no changes to the proposed rulemaking when preparing the final-form regulations. The final-form rulemaking was submitted on February 1, 2005, to IRRC and the Chairpersons of the Committees. The final-form rulemaking was deemed approved by the Committees on February 23, 2005. The final-form rulemaking was deemed approved by IRRC under section 5(g) of the Regulatory Review Act, effective February 23, 2005.

Availability in Alternative Formats

This final-form rulemaking may be made available in alternative formats upon request. The Commission also will receive comments on the final-form rulemaking in alternative formats. TDD users should use the AT&T Relay Center (800) 854-5984. To make arrangements for alternative formats, contact Sam Dengel, ADA Coordinator (717) 787-6828.

Contact Person

The contact person is Mary E. Peters, Deputy Chief Counsel, Securities Commission, Eastgate Building, 1010 N. Seventh Street, 2nd Floor, Harrisburg, PA 17102-1410, (717) 783-4186.

Order

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 64 Pa. Code Chapters 203, 303, 304 and 404, are amended by amending §§ 303.012, 303.032, 303.042, 304.022 and 404.013 and by adding § 203.203 to read as set forth at 34 Pa.B. 5168.

(b) The Secretary of the Commission shall submit this order and 34 Pa.B. 5168 to the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Commission shall certify this order and 34 Pa.B. 5168 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

JEANNE S. PARSONS,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 35 Pa.B. 1734 (March 12, 2005).)

Fiscal Note: Fiscal Note 50-119 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 05-708. Filed for public inspection April 15, 2005, 9:00 a.m.]

PROPOSED RULEMAKING

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 491]

Administrative Practice and Procedure

The Department of Transportation, Office of Chief Counsel, under the authority in 2 Pa.C.S. §§ 501–508 and 701–704 (relating to the Administrative Agency Law), proposes to amend Chapter 491 (relating to administrative practice and procedure) to read as set forth in Annex A.

Purpose of this Chapter

The purpose of Chapter 491 is to supplement 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) (General Rules). In accordance with 1 Pa. Code § 31.1(c) (relating to scope), Chapter 491 supersedes any inconsistent provisions in the General Rules in proceedings before the Department.

Purpose of this Rulemaking

The purpose of this proposed rulemaking is to clarify the separation of the adjudicatory and adversarial functions performed by Department attorneys and officials in the conduct of administrative hearings. The proposed rulemaking also clarifies that the Secretary of Transportation has discretion to direct that an administrative record be certified to the Secretary for decision without the preparation of a proposed report. The proposed rulemaking also clarifies that proposed orders of any appropriate type are to be forwarded to the Secretary with the record when exceptions to a proposed report are filed.

Persons and Entities Affected

This proposed rulemaking will affect all Department personnel involved in matters brought to administrative hearing as well as any persons, and their counsel, who have occasion to request administrative review of a Department determination.

Fiscal Impact

The proposed rulemaking will not result in any increased costs to individuals, local governments or to the Commonwealth. The proposed rulemaking will not require the development of additional reports or result in other additional paperwork.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 5, 2005, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. A copy of this material is available to the public upon request.

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

the General Assembly and the Governor of comments, recommendations or objections raised.

Sunset Date

The Department is not establishing a sunset date for these regulations, as these regulations are needed to administer provisions under 2 Pa.C.S. §§ 501–508 and 701–704. The Department, however, will continue to closely monitor these regulations for their effectiveness.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Andrew H. Cline, Deputy Chief Counsel, Office of Chief Counsel, 9th Floor, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120 within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

Contact Person

The contact person for this proposed rulemaking is Stephen F. J. Martin, Regulatory Counsel, Office of Chief Counsel, 9th Floor, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, (717) 787 5079.

ALLEN D. BIEHLER, P. E.,

Secretary

Fiscal Note: 18-401. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart B. NONVEHICLE CODE PROVISIONS

ARTICLE V. GENERAL PROCEDURES

CHAPTER 491. ADMINISTRATIVE PRACTICE AND PROCEDURE

§ 491.2a. [Separation of adjudicatory function from representation of the Department] (Reserved).

[(a) Separation of adjudicatory function. The adjudicatory function performed in accordance with this chapter and the General Rules will be separated from the function of representing the Department in administrative hearing matters. This chapter prescribes that an administrative hearing officer will preside over any hearing and, if exceptions are filed by any party, the decision ultimately is made by the Secretary. The Department's Chief Counsel advises the Secretary in his adjudicatory capacity.

(b) Ex parte discussions. Under no circumstances may any Department attorney representing the Department in an administrative hearing matter, or any Department employee involved in such a matter, discuss the case ex parte with the Administrative Hearing Officer, the Chief Counsel or the Secretary.

(c) Prohibited discussions with employees. The Administrative Hearing Officer, the Chief Counsel and the Secretary may not discuss with, or exercise any supervisory responsibility over, any employee with respect to an administrative hearing matter with which that employee is involved.

(d) *Designation by Chief Counsel and Secretary.* If it becomes necessary for the Chief Counsel or the Secretary to become involved on behalf of the Department in any administrative hearing matter, they are prohibited from participating in the adjudication of the case and shall designate appropriate individuals to exercise their adjudicatory functions.]

§ 491.2b. Separation of adjudicatory and adversarial functions.

(a) *Adjudicatory function and officials.* The adjudicatory function in proceedings under this chapter and the General Rules shall be performed by the Secretary, or a designee, and Department hearing officers as may be appointed by the Secretary. The Secretary's review of the actions of subordinate officers, including the proposed reports of Department hearing officers, will be de novo. The Department's Chief Counsel, or a designee, will serve as legal counsel to the Secretary in the performance of the Secretary's adjudicatory function.

(b) *Due process.* The adjudicatory function in a proceeding will be performed in a manner that is fair, impartial and separated from any adversarial function in the proceeding.

(c) *Restrictions on activities and communications.* The following restrictions will be observed in proceedings under this chapter and the General Rules:

(1) A person who has been significantly involved in a matter prior to the initiation of a proceeding may not perform adjudicatory functions with respect to that matter.

(2) Adjudicatory officials may not exercise substantive supervisory responsibility over Department staff or staff counsel with respect to a matter before them.

(3) Ex parte communications between Department staff or staff counsel and adjudicatory officials that may create an appearance of impropriety in a matter shall be avoided.

(d) *Supplementation.* This section supplements 1 Pa. Code § 35.188 (relating to restrictions on duties and activities).

§ 491.11 Proposed report.

(a) *General.* Following the hearing and the timely submission of any posthearing filings, the Department hearing officer, **unless directed by the Secretary to certify the record without a proposed report**, will prepare and file a proposed report with the docket clerk.

* * * * *

§ 491.12 Exceptions.

* * * * *

(c) *Record.* When timely exceptions are filed, the docket clerk will forward the following to the Secretary:

* * * * *

(4) **[A] Any proposed [order] orders to grant or deny the exceptions[, that is prepared for the Secretary's signature] submitted by the parties.**

* * * * *

[Pa.B. Doc. No. 05-709. Filed for public inspection April 15, 2005, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 135]

Lands and Buildings

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 25, 2005, meeting, proposed the following rulemaking:

Amend §§ 135.2, 135.41 and 135.51 (relating to unlawful actions; State game lands; and designated roads on state game lands open to ATVs) to allow the Director to permit another individual to authorize and designate the location of certain uses of lands, waters and buildings owned by the Commission and to improve consistency in the regulations.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the January 25, 2005, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until April 22, 2005.

1. Purpose and Authority

Currently, §§ 135.41 and 135.51 empower the Director to authorize and designate the location of certain uses of lands, waters and buildings owned by the Commission. However, § 135.2 does not provide the same empowerment to the Director and therefore is not consistent with aforementioned sections. The Commission is proposing to amend § 135.2 to eliminate this inconsistency in the regulations. The Commission is also proposing to amend §§ 135.2, 135.41 and 135.51 to allow the Director to permit another individual to authorize and designate the location of certain uses of lands, waters and buildings owned by the Commission to allow the Commission to be more responsive to requests for permission for these restricted uses.

Section 322(c)(10) of the code (relating to powers and duties of the commission) specifically empowers the commission to "Manage and develop its lands and waters and other government or private lands and waters under agreement with the owners as it considers advisable and, by proper action and proceedings, enact and enforce regulations to insure the prudent and proper use of these lands." Section 721(a) of the code (relating to control of property) provides "The administration of all lands and waters owned, leased or otherwise controlled by the commission shall be under the sole control of the Director, and the commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters." Section 2102(a) of the code (relating to regulations) provides that "The Commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat . . . in this Commonwealth." The amendments to §§ 135.2, 135.41 and 135.51 were proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will make the language of § 135.2 more consistent with §§ 135.41 and 135.51 by

empowering the Director to authorize and designate the location of certain uses of lands, waters and buildings owned by the Commission. The proposed rulemaking will also amend §§ 135.2, 135.41 and 135.51 to allow the Director to permit another individual to authorize and designate the location of certain uses of lands, waters and buildings owned by the Commission.

3. *Persons Affected*

Persons using the lands, waters and buildings owned by the Commission will be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

5. *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. *Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-202. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 135. LANDS AND BUILDINGS

Subchapter A. GENERAL PROVISIONS

§ 135.2. Unlawful actions.

In addition to the prohibitions in the act on lands, waters or buildings under Commission ownership, lease or jurisdiction, it is unlawful, except with the permission of the person in charge of the lands, **or the written permission of the Director or a designee** to:

* * * * *

§ 135.41. State game lands.

* * * * *

(c) *Additional prohibitions.* In addition to the prohibitions contained in the act pertaining to State game lands and § 135.2 (relating to unlawful actions), except with the written permission of the Director **or a designee**, it is unlawful to:

* * * * *

§ 135.51. Designated roads on State game lands open to ATVs.

State game lands roads that will be open for use by permitted persons operating ATVs will be designated by the Director **or a designee**. The Commission will make a list of these open roads available to the permittee, and will provide the list by mail to a permitted person that has applied for a towing vehicle placard.

* * * * *

[Pa.B. Doc. No. 05-710. Filed for public inspection April 15, 2005, 9:00 a.m.]

[58 PA. CODE CH. 135]

Middlecreek and Pymatuning Waterfowl Management Areas; Youth Shooting Day

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 25, 2005, meeting, proposed the following rulemaking:

Amend § 135.103 (relating to registration for controlled goose hunting areas) to allow the Commission to designate 1 shooting day at the Middlecreek and Pymatuning Waterfowl Management Areas as a youth-only day.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the January 25, 2005, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until April 22, 2005.

1. *Purpose and Authority*

The Commission is constantly looking for ways to attract the attention of younger hunters to get them involved or keep them involved with the traditional sport of hunting and trapping. One tool that has been largely successful towards this end has been the creation of expanded or youth-only hunting opportunities. In an effort to continue attracting and maintaining younger generations, the Commission is proposing to create a youth-only hunting day at the Middlecreek and Pymatuning Waterfowl Management Areas. Specifically, the proposed rulemaking will allow for a special drawing of junior license holder applicants prior to the regular drawing. After the special drawing is completed, all unsuccessful junior license holder applicants and all other regular applicants will be eligible for the remainder of the scheduled shooting days.

Section 322(c)(6) of the code (relating to powers and duties of the commission) specifically empowers the commission to "Limit the number of hunters or furtakers in any designated area and prescribe the lawful methods of hunting or taking furbearers in these areas." Section 721(a) of the code (relating to control of property) provides "The administration of all lands and waters owned, leased or otherwise controlled by the commission shall be under the sole control of the Director, and the commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking . . ." The amendment to § 135.103 was proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend § 135.103 to allow the Commission to designate 1 shooting day at the Middlecreek and Pymatuning Waterfowl Management Areas as a youth-only day.

3. *Persons Affected*

Persons who wish to hunt waterfowl at the Middlecreek and Pymatuning Waterfowl Management Areas may be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

5. *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. *Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-203. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 135. LANDS AND BUILDINGS

Subchapter F. SPECIAL WILDLIFE MANAGEMENT AREAS

§ 135.103. Registration for controlled goose hunting areas.

The following apply to reservations for controlled goose hunting areas:

* * * * *

(4) Selections of mailed application forms will be made by random drawing from all eligible applications submitted. The Director will establish, no later than 20 days prior to the drawing, the number of applications to be drawn.

* * * * *

(v) The Director may designate 1 shooting day at the Middle Creek and Pymatuning Waterfowl Management Areas as a youth-only day. Adults who accompany a junior hunter on this day may participate in the hunt by calling only. Applications received from junior hunters will be separated and drawn prior to the other applications on the established drawing date for the management area. Unsuccessful applicants for the youth shooting day will then be placed with all other applications and the drawing will proceed until all shooting days are filled.

* * * * *

[Pa.B. Doc. No. 05-711. Filed for public inspection April 15, 2005, 9:00 a.m.]

[58 PA. CODE CH. 139] Seasons and Bag Limits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at

its January 25, 2005, meeting, proposed the following rulemaking:

Amend § 139.2 (relating to definitions) to prevent confusion in the regulations relating to hunting hours by eliminating redundant language.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the January 25, 2005, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until April 22, 2005.

1. *Purpose and Authority*

It has been brought to the attention of Commission staff that certain regulatory language found in § 139.2 is redundant and therefore unnecessary. Section 139.2, in relevant part, provides a one-sentence definition of "hunting hours." However, § 141.4 already establishes when legal hunting hours occur in general and for certain specific seasons. To remove this redundancy and prevent confusion in the regulations the Commission is proposing to remove the redundant language found in § 139.2.

Section 322(c)(1) of the code (relating to powers and duties of the commission) specifically empowers the commission to "fix seasons, daily shooting or taking hours, and any modification thereof..." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment to § 139.2 was proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will eliminate redundant language found in § 139.2.

3. *Persons Affected*

Persons who wish to hunt or trap within this Commonwealth will be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

5. *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. *Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-204. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 139. SEASONS AND BAG LIMITS

§ 139.2. Definitions.

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

* * * * *

[Hunting hours—The period each day of the open season, Sundays excepted, when game and wildlife may be lawfully taken.]

* * * * *

[Pa.B. Doc. No. 05-712. Filed for public inspection April 15, 2005, 9:00 a.m.]

[58 PA. CODE CH. 141]

Big Game Harvest Report Requirement

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 25, 2005, meeting, proposed the following rulemaking:

Amend § 141.41 (relating to definitions) to establish a big game harvest report requirement.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the January 25, 2005, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until April 22, 2005.

1. Purpose and Authority

The Legislature recently amended section 2323 of the code (relating to tagging and reporting big game kills) by eliminating the statutory language setting forth the lawful methods and manners for reporting big game kills. The intent behind this amendment was to shift the authority to establish lawful methods and manners for reporting big game kills to the Commission to promote and facilitate alternative methods and manners for reporting other than the harvest report card. To reestablish the big game harvest report requirement in the regulations, the Commission must amend § 141.41.

Section 322(c)(11) of the code (relating to powers and duties of the commission) specifically empowers the commission to "Collect, classify and preserve such statistics, data and information as in its judgment will tend to promote the object of this title and take charge and keep all reports, books, papers and documents which shall, in the discharge of its duties, come into its possession or under its control." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to

the protection, preservation and management of game or wildlife and game or wildlife habitat . . . in this Commonwealth." The amendment to § 141.41 was proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will establish a big game harvest report requirement in § 141.41.

3. Persons Affected

Persons who wish to harvest big game within this Commonwealth will be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

5. Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. Contact Person

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-205. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter C. BIG GAME

§ 141.41. General.

* * * * *

(b) It is unlawful to:

* * * * *

(5) Within 10 days of the kill, fail to complete the report card supplied with the hunting license for reporting big game killed and mail the report card to the Commission at Harrisburg or by any other method designated by the Director.

(6) Kill deer with a Deer Management Assistance Program (DMAP) permit without reporting in the manner prescribed on the permit.

[Pa.B. Doc. No. 05-713. Filed for public inspection April 15, 2005, 9:00 a.m.]

[58 PA. CODE CH. 143]

Deadline for Purchasing a Bear License

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 25, 2005, meeting, proposed the following rulemaking:

Amend § 143.67 (relating to application) to establish a deadline for purchasing a bear license prior to the opening of regular firearms deer season.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the January 25, 2005, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until April 22, 2005.

1. *Purpose and Authority*

Currently, a hunter can purchase a bear license at the time the hunter purchases a license or at any time up to the close of established bear seasons. This expanded purchasing period, however, has provided certain individuals with the opportunity to abuse the bear license requirement. Specifically, the Commission is aware of certain individuals (without bear licenses) unlawfully shooting bears during the concurrent bear/deer season only to thereafter purchase a bear license to lawfully possess and retain the bear carcass. To prevent this type of abuse in the future, the Commission is proposing to amend § 143.67 to establish a deadline for purchasing bear licenses to a date prior to the opening of regular firearms deer season.

Section 2722(g) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and performance of license issuing activities. Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment of § 143.67 was proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will establish a deadline in § 143.67 for purchasing bear licenses to a date prior to the opening of regular firearms deer season.

3. *Persons Affected*

Persons who wish to purchase a bear license in this Commonwealth will be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

5. *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. *Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-206. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 143. HUNTING AND FURTAKER LICENSES

Subchapter D. BEAR LICENSES

§ 143.67. Application.

* * * * *

(b) Applications for bear licenses may be made [**when purchasing a regular hunting license, or any time thereafter, upon presentation of the regular hunting license**] prior to the opening of the regular firearms deer season by persons who hold a valid regular hunting license.

[Pa.B. Doc. No. 05-714. Filed for public inspection April 15, 2005, 9:00 a.m.]

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Corrections

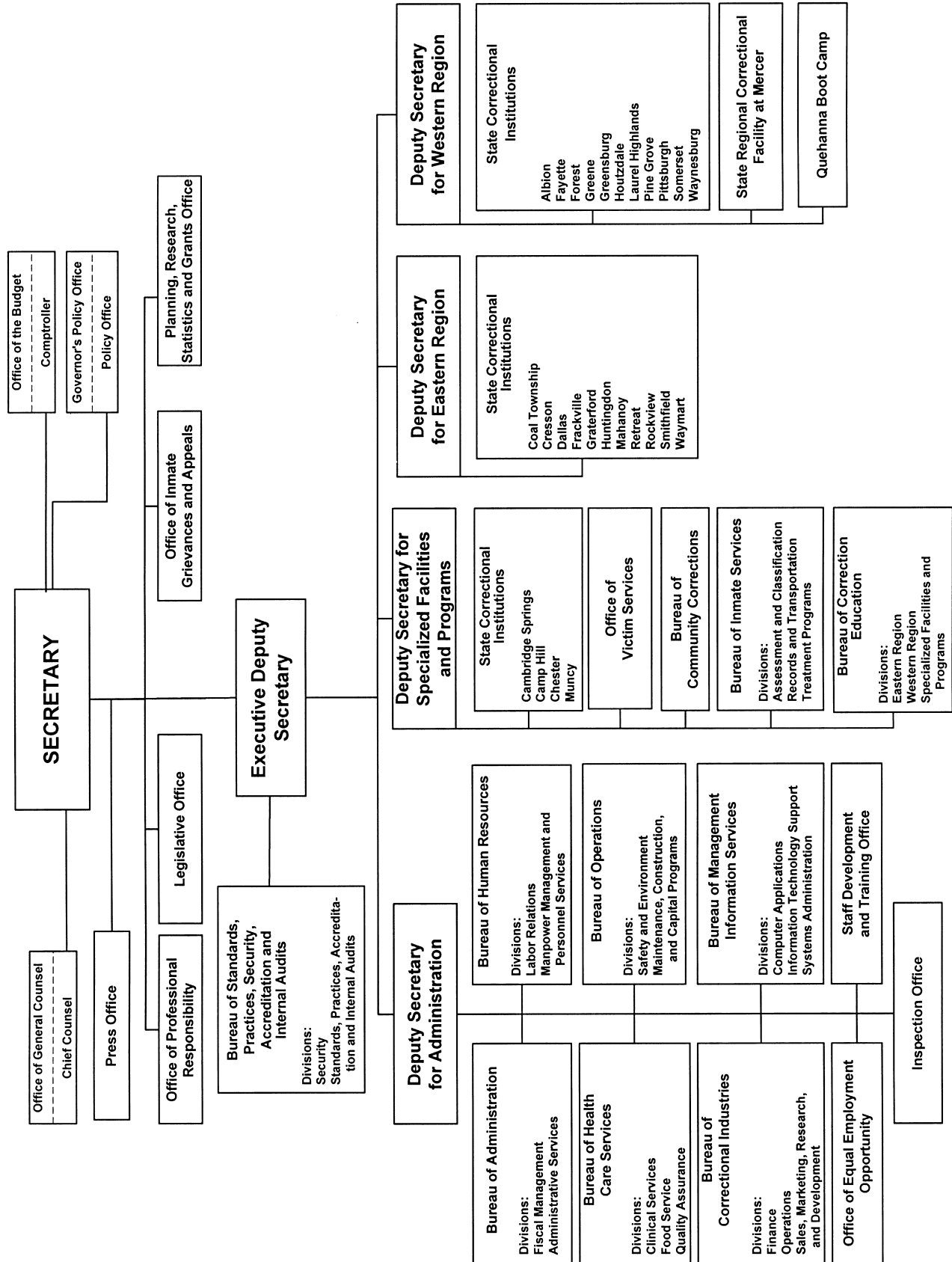
The Executive Board approved a reorganization of the Department of Corrections effective March 23, 2005.

The organization chart at 35 Pa.B. 2316 (April 16, 2005) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 05-715. Filed for public inspection April 15, 2005, 9:00 a.m.]

DEPARTMENT OF CORRECTIONS



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 April 5, 2005.

BANKING INSTITUTIONS

Mutual Holding Company Reorganizations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
3-28-05	North Penn Bank Scranton Lackawanna County	Scranton	Approved

Application represents reorganization into a mutual holding company to be known as North Penn Mutual Holding Company.

Holding Company Acquisitions

<i>Date</i>	<i>Name of Corporation</i>	<i>Location</i>	<i>Action</i>
4-1-05	Gelt Holdings, Inc., to acquire 100% of Public Finance Service, Inc., Willow Grove	Willow Grove	Filed

New Charter Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
3-29-05	Valley Green Bank Philadelphia Philadelphia County <i>Correspondent</i> B. Tyler Lincoln, Esq. Stradley, Ronon, Stevens & Young, LLP 30 Valley Stream Parkway Malvern, PA 19355	7226-34 Germantown Avenue Philadelphia Philadelphia County	Filed

Conversions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
3-31-05	The Marion Center National Bank Marion Center Indiana County <i>To:</i> Marion Center Bank Marion Center Indiana County	Marion Center	Effective

Represents conversion from a National banking association to a State-chartered commercial bank. Marion Center Bank is a wholly-owned banking subsidiary of Community Bankers Corporation, Marion Center, an existing bank holding company.

Branches Acquired by Means of Conversion:

106 West Main Street Dayton Armstrong County	326 East Main Street Big Run Jefferson County
750 Franklin Street Clymer Indiana County	514 West Mahoning Street Punxsutawney Jefferson County
162 Route 119 North Indiana Indiana County	

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS**Consolidations, Mergers and Absorptions**

<i>Date</i>	<i>Name of Credit Union</i>	<i>Location</i>	<i>Action</i>
3-31-05	Atlantic Credit Union, Newton Square, and Citadel Federal Credit Union, Thorndale Surviving Institution— Citadel Federal Credit Union, Thorndale	Newton Square	Effective
4-1-05	Corry Jamestown Credit Union, Corry, and Corry Foam Employees Federal Credit Union, Corry Surviving Institution— Corry Jamestown Credit Union, Corry	Corry	Effective

A. WILLIAM SCHENCK, III,
Secretary

[Pa.B. Doc. No. 05-716. Filed for public inspection April 15, 2005, 9:00 a.m.]

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Conservation and Natural Resources Advisory Council Meeting

The Conservation and Natural Resources Advisory Council to the Department of Conservation and Natural Resources (Department) will hold a meeting on Wednesday, April 27, 2005, at 10 a.m. in the Second Floor Training Room, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Questions concerning this meeting or agenda items should be directed to Kurt Leitholf at (717) 705-0031.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Joan Dupes at (717) 705-0031 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

MICHAEL F. DIBERARDINIS,
Secretary

[Pa.B. Doc. No. 05-717. Filed for public inspection April 15, 2005, 9:00 a.m.]

DEPARTMENT OF EDUCATION

Application of Troy University for Approval to Operate in this Commonwealth and to Offer Graduate Degree Programs and an Undergraduate Certificate Program

Opportunity for Hearing and Invitation to Protest

Under 24 Pa.C.S. § 6503(e) (relating to certification of institutions), the Department of Education (Department) will consider the application of Troy University, formerly

Troy State University, of Troy, AL, for a Certificate of Authority to operate in the area of West Chester, PA, offering graduate degree programs and an undergraduate level certificate program. The graduate offerings are: Master of Science degree program in Management with concentrations in Human Resources Management, Leadership and Organizational Effectiveness, Healthcare Management and Information Systems; Master of Public Administration degree program in Public Administration (with concentrations in Public Management, Government Contracting, Health Care Administration, Public Personnel Management and Justice Administration); Master of Science degree in Human Resources Management; and Master of Science degree program in Criminal Justice. The undergraduate certificate program is Risk Management/Insurance Certification.

In accordance with 24 Pa.C.S. § 6503(e), the Department will act upon the application without hearing, unless within 30 days after the publication of the notice in the *Pennsylvania Bulletin* a written request for public hearing is filed with the Department, along with a notice of intervention, a petition to intervene or protest in accordance with 1 Pa. Code §§ 35.23 and 35.24 (relating to protests) or 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

Petitions to intervene, protests and requests for hearing shall be filed with Carol Gisselquist, Higher Education Specialist, (717) 787-4448 or Paula Fleck, Chief, Division of Program Services, (717) 772-3623, 333 Market Street, Harrisburg, PA 17126-0333 on or before 4 p.m. on the due date prescribed by this notice. Persons wishing to review the application should phone or write to the aforementioned office to schedule a time for an in-office review. Duplicate copies of the application are not available.

Persons with a disability who wish to attend the hearing, if held, and require an auxiliary aid, service or other accommodation to participate should contact Carol Gisselquist at (717) 787-4448 to discuss how the Department may best accommodate their needs.

FRANCIS V. BARNES, Ph.D.,
Secretary

[Pa.B. Doc. No. 05-718. Filed for public inspection April 15, 2005, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a general permit. The applications concern, but are not limited to, discharges related to industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFOs). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal waste; discharge into groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

For NPDES renewal applications 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 applications for new NPDES permits and renewal applications with major changes in Section II, as well as applications for MS4 individual permits and individual stormwater construction permits in Sections IV and VI, the Department, based upon preliminary reviews, has made a tentative determination of proposed effluent limitations and other terms and conditions for the permit applications. 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 proposed NPDES permit actions under the waiver provision in 40 CFR 123.24(d).

Persons wishing to comment on an NPDES application are invited to submit a statement to the regional office noted before an application within 30 days from the date of this public notice. Persons wishing to comment on a WQM permit application are invited to submit a statement to the regional office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the applications. 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 will also accept requests for a public hearing on applications. A public hearing may be held 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 within the relevant geographical area. The Department will postpone its final determination until after a public hearing is held.

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>
PA0064033 Sewage	Pusti Margiya Vashnav Samaj of North America 15 Manor Road Schuylkill Haven, PA 17972	Schuylkill County Wayne Township	UNT to Lower Little Swatara Creek (7D)	Y

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>
PA0053091 (IW)	Giorgio Foods, Inc. P. O. Box 96 Temple, PA 19560	Berks County Maidencreek Township	Willow Creek/3-B	Y
PA0086185 (Sewage)	Washington Township Authority 185 Manors Road Elizabethville, PA 17023	Dauphin County Washington Township	Wiconisco Creek/6-C	Y
PA0033774 (Sewage)	Regent Acres Mobile Home Park 4775 N Sherman St. Ext. Box 1 Mt. Wolf, PA 17347	York County Newberry Township	UNT Fishing Creek/7-E	Y
PA0021695 (Sewage)	Orbisonia-Rockhill Joint Municipal Authority Elliot Street P. O. Box 346 Orbisonia, PA 17243	Huntingdon County Cromwell Township	Backlog Creek/12-C	Y
PA0008541 (Industrial Waste)	York International Corporation P. O. Box 1592-082K York, PA 17405	York County Spring Garden Township	Codorus Creek/7H	Y

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

<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>
PA0100536	Department of Conservation and Natural Resources Chapman Dam State Park R. R. 2, Box 1610 Clarendon, PA. 16313	Pleasant Township Warren County	UNT to West Branch Tionesta Creek 16-F	Y
PA0210668	Perseus House—Andromeda House 1511 Peach Street Erie, PA 16501	Bloomfield Township Crawford County	UNT to Bloomfield Run	Y

II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Applications

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

PA0047252, Sewage, **Pantos Corporation**, 202 Black Matt Road, Douglassville, PA 19518. This existing facility is located in Chadds Ford Township, **Delaware County**.

Description of Proposed Activity: This application is for renewal of an NPDES permit for an existing discharge of treated sewage from the Painters Crossing sewage treatment plant.

The receiving stream, Harvey Run, is in the State Water Plan watershed 3H and is classified for: WWF, MF.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.07 mgd.

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum (mg/l)</i>
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	
CBOD ₅			25		50
Total Suspended Solids			30		60
Ammonia as N					
(5-1 to 10-31)			3.0		6.0
(11-1 to 4-30)			9.0		18
Phosphorus					
(Years 1 and 2)			Monitor and Report 2.0		
(Years 3—5)					4.0
Fecal Coliform			200/100 ml		1,000/100 ml
Dissolved Oxygen			3.0 (min.)		
pH (STD Units)			6.0 (min.)		9.0
Total Residual Chlorine			0.18		0.42

In addition to the effluent limits, the permit contains the following major special conditions:

1. Notification of Designation of Operator.
2. Abandon STP when Municipal Sewers Available.
3. Remedial Measures if Unsatisfactory Effluent.
4. No Stormwater.
5. Acquire Necessary Property Rights.
6. Discharge to Small Stream.
7. Change of Ownership.
8. Sludge Disposal Requirement.
9. Imax Requirements.
10. 2/Month Monitoring Requirements.
11. Total Residual Chlorine Requirement.

PA0023256, Sewage, SIC 59, **Upper Gwynedd Township**, P. O. Box 1, West Point, PA 19486. This proposed facility is located in Upper Gwynedd Township, **Montgomery County**.

Description of Proposed Activity: Renewal of an NPDES permit to discharge treated sanitary sewage from a facility located at Township Line Road, West of Swedesford Road, Upper Gwynedd Township, Montgomery County.

The receiving stream, Wissahickon Creek, is in the State Water Plan watershed 3F (Lower Schuylkill) and is classified for: TSF. The nearest downstream public water supply intake for City of Philadelphia—Queen Lane Intake is located on the Schuylkill River.

The proposed effluent limits for Outfall 001, effective from permit issuance through 36 months, are based on a design flow of 4.5 mgd.

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Average Monthly</i>	<i>Average Weekly</i>	
CBOD ₅					
(5-1 to 10-31)	375	563	10	15	20
(11-1 to 4-30)	750	1,126	20	30	40
Total Suspended Solids	1,126	1,689	30	45	60
Ammonia as N					
(5-1 to 10-31)	68		1.8		4.0
(11-1 to 4-30)	161		4.3		8.0
Phosphorus as P			Monitor and Report		Monitor and Report
Nitrite + Nitrate as N			Monitor and Report		
Iron, Total			Monitor and Report		
Iron, Dissolved			Monitor and Report		
Aluminum, Total			Monitor and Report		
Fecal Coliform			200#/100 ml as a geometric mean		
Dissolved Oxygen			Minimum of 6.0 at all times		
pH			Within limits of 6.0 to 9.0 standard units		
Total Residual Chlorine			0.04		0.13
Dichlorobromomethane			Monitor and Report		
Chlorodibromomethane			Monitor and Report		
Copper, Total			Monitor and Report		

The proposed effluent limits for Outfall 001, effective from 37 months through permit expiration, are based on a design flow of 4.5 mgd.

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Average Monthly</i>	<i>Average Weekly</i>	
CBOD ₅					
(5-1 to 10-31)	188	281	5.0	7.5	10
(11-1 to 4-30)	489	734	10	15	20
Total Suspended Solids	1,126	1,689	30	45	60
Ammonia as N					
(5-1 to 10-31)	28		0.74		1.48
(11-1 to 4-30)	83		2.22		4.44

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Average Monthly</i>	<i>Average Weekly</i>	
Phosphorus as P			Monitor and Report		Monitor and Report
Orthophosphate-P	68		1.82		3.64
Nitrite + Nitrate as N			Monitor and Report		
Iron, Total			Monitor and Report		
Iron, Dissolved			Monitor and Report		
Aluminum, Total			Monitor and Report		
Fecal Coliform		200#/100 ml as a geometric mean			
Dissolved Oxygen		Minimum of 7.0 at all times			
pH		Within limits of 6.0 to 9.0 standard units			
Total Residual Chlorine		0.04			0.13
Dichlorobromomethane			Monitor and Report		
Chlorodibromomethane			Monitor and Report		
Copper, Total			Monitor and Report		
Toxicity, Chronic (TUc)					1.05 Daily Maximum

The proposed effluent limits for Outfall 001, is effective upon completion of expansion to a design flow of 5.7 mgd.

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Average Monthly</i>	<i>Average Weekly</i>	
CBOD ₅					
(5-1 to 10-31)	238	357	5.0	7.5	10
(11-1 to 4-30)	475	713	10	15	20
Total Suspended Solids	1,426	2,139	30	45	60
Ammonia as N					
(5-1 to 10-31)	35		0.74		1.48
(11-1 to 4-30)	106		2.22		4.44
Phosphorus as P			Monitor and Report		Monitor and Report
Orthophosphate-P	87		1.82		3.64
Nitrite + Nitrate as N			Monitor and Report		
Iron			Monitor and Report		
Total Dissolved			Monitor and Report		
Aluminum, Total			Monitor and Report		
Fecal Coliform		200#/100 ml as a geometric mean			
Dissolved Oxygen		Minimum of 7.0 at all times			
pH		Within limits of 6.0 to 9.0 standard units			
Total Residual Chlorine		0.016			0.052
Dichlorobromomethane			Monitor and Report		
Chlorodibromomethane			Monitor and Report		
Copper, Total			Monitor and Report		
Toxicity, Chronic (TUc)					1.05 Daily Maximum

In addition to the effluent limits, the permit contains the following major special conditions:

1. Notification of Designation of Operator.
2. Average Weekly Definition.
3. Remedial Measures.
4. No Stormwater.

5. Acquire Necessary Property Rights.
6. Small Stream Discharge.
7. Analytical Procedures.
8. Change of Ownership.
9. Chlorine Dosages.
10. Sludge Disposal Requirements.
11. TMDL/WLA Analysis.
12. WET Tests Required for Renewal.
13. Chronic Whole Effluent Toxicity (WET) Permit Limit.
14. Instantaneous Maximum Limits.
15. Twice Per Month Sampling.
16. Requirements Applicable to Stormwater Outfalls.
17. Pretreatment Program Requirements.
18. Notification of Completion of Expansion to 5.7 mgd.
19. Operations and Maintenance Plan.
20. Laboratory Certification.
21. Copper/Water Effects Ratio.

EPA waiver is not in effect

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

PA0028461, Sewage, **Mifflinburg Borough**, 333 Chestnut Street, Mifflinburg, PA 17844. This facility is located in Mifflinburg Borough, **Union County**.

Description of Proposed Activity: Renewal of existing NPDES permit. No changes to the facility are being proposed at this time.

The receiving stream, Buffalo Creek, is in the State Water Plan watershed 10C and is classified for: CWF. The nearest downstream public water supply intake for The Municipal Authority of the City of Sunbury is located on the Susquehanna River, 23.6 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 1.4 mgd.

<i>Discharge Parameter</i>	<i>Monthly Average</i>	<i>Weekly Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Dissolved Oxygen			≥ 4 Minimum	
pH			6.0 to 9.0 at all times	
Fecal Coliforms (5-1 to 9-30) (10-1 to 4-30)		200/100ml as a geometric mean 2,000/100ml as a geometric mean		
CBOD ₅ (5-1 to 10-31) (11-1 to 4-30)	16 25	24 40		32 50
NH ₃ N (6-1 to 10-31) (11-1 to 5-31)	3 9	4.5 13.5		6 18
TSS	30	45		60
Total Chlorine Residual	0.06			0.22
Total Nitrogen*		Monitor and Report		
Total Phosphorous		Monitor and Report		

* Total Nitrogen consists of total kjeldahl nitrogen, nitrate-nitrogen, nitrite-nitrogen and ammonia.

PA0228885, Sewage, **Burnside Borough Council**, P. O. Box 208, Burnside, PA 15721. This proposed facility is located in Burnside Borough, **Clearfield County**.

Description of Proposed Activity: Construction of a proposed treatment facility.

The receiving stream, West Branch Susquehanna River, is in the State Water Plan watershed 8B and is classified for: WWW. The nearest downstream public water supply intake for Shawville Power Plant is located on West Branch Susquehanna River, 56.29 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.040 mgd.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	40		50
TSS	30	45		60
Fecal Coliforms			200/100ml as a geometric mean	
pH			6.0 to 9.0 at all times	
Total Nitrogen			Monitor and Report	
Total Phosphorous			Monitor and Report	
Transmissivity			Monitor and Report	

Southwest Regional Office: Regional Manager, Water Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745 (412) 442-4000.

PA0000272, Industrial Waste, SIC, **Pennsylvania-American Water Company**, 800 West Hersheypark Drive, Hershey, PA 17033. This application is for renewal of an NPDES permit to discharge treated process water and stormwater from the Aldrich Plant in Union Township, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, Monongahela River, classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is the Pennsylvania-American Water Company, at 410 Cooke Lane, Pittsburgh, PA 15234, 20.9 miles below the discharge point.

Outfall 001: existing discharge, design flow of 0.712 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		Instantaneous Maximum
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	
Flow	Monitor and Report				
Suspended Solids			30	60	75
Total Residual Chlorine			0.5	1.0	1.25
Aluminum			4.0	8.0	10
Iron			2.0	4.0	5.0
Manganese			1.0	2.0	2.5
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

PA0034282, Sewage, **Maple Grove Modulars, Inc.**, 1536 Roseberry Street, Pittsburgh, PA 15216. This application is for renewal of an NPDES permit to discharge treated sewage from Maple Grove Trailer Court in Robinson Township, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as St. Patrick Run, which are classified as a WWF 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: Midland Borough Water Authority.

Outfall 001: existing discharge, design flow of 0.0075 mgd.

Parameter	Concentration (mg/l)			Instantaneous Maximum
	Average Monthly	Average Weekly	Maximum Daily	
CBOD ₅	25			50
Suspended Solids	30			60
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
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

III. WQM Industrial Waste and Sewerage Applications Under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

WQM Permit No. 1505410, Sewerage, **East Fallowfield Township**, 2264 Strasburg Road, East Fallowfield, PA 19320. This proposed facility is located in East Fallowfield Township, **Chester County**.

Description of Action/Activity: Construction and operation of a sewage pump station and 4-inch force main for 21 single family residents.

WQM Permit No. 1505411, Sewerage, **Uwchlan Township**, 715 North Ship Road, Exton, PA 19341-1940. This proposed facility is located in Uwchlan Township, **Chester County**.

Description of Action/Activity: Construction and operation of a low pressure sanitary sewer system.

WQM Permit No. 1505412, Sewerage, **London Britian Township**, P. O. Box 215, 81 Good Hope Road, Kemblesville, PA 19347-0215. This proposed facility is located in London Britian Township, **Chester County**.

Description of Action/Activity: Construction and operation of a 16 lot residential subdivision.

WQM Permit No. 1503417, Amendment, Sewerage, **East Coventry Township**, 855 Ellis Woods Road, Pottstown, PA 19465. This proposed facility is located in East Coventry Township, **Chester County**.

Description of Action/activity: Redesign of Creekview Pump Station to handle additional subdivision and existing residences located in are tributary to pumping station.

WQM Permit No. 4600414, Amendment, Sewerage, Hatfield Township Municipal Authority, 3200 Advance Lane, Colmar, PA 18915-9766. This proposed facility is located in Hatfield Township, **Montgomery County**.

Description of Action/Activity: Rerate—increase permit maximum monthly organic loading to 22,300 lb/d.

WQM Permit No. 1505413, Sewerage, London Grove Township Municipal Authority, 372 Rosehill Road, Suite 300, West Grove, PA 19390. This proposed facility is located in London Grove Township, **Chester County**.

Description of Action/Activity: Construction and operation of a sewage pump station and force main.

WQM Permit No. 0905407, Sewerage, Warrington Township, 1585 Turk Road, Warrington, PA 18976. This proposed facility is located in Warrington Township, **Bucks County**.

Description of Action/Activity: Construction and operation of a sewage pumping station, force main and gravity main for land development.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

WQM Permit No. 0605402, Sewerage, Muhlenberg Township Authority, 2840 Kutztown Road, Reading, PA 19605. This proposed facility is located in Muhlenberg Township, **Berks County**.

Description of Proposed Action/Activity: Construction/installation of pump station and force main to serve the Laurel Creek Run Subdivision.

WQM Permit No. 0505401, Sewerage, William Bratton, 275 Guyer Road, New Enterprise, PA 16664. This proposed facility is located in South Woodbury Township, **Bedford County**.

Description of Proposed Action/Activity: Construction/operation of Small Flow Sewage Treatment System to serve their single family residence to replace their malfunctioning system.

WQM Permit No. 2893040, Amendment 05-1, Deerwood Homeowners Association, BJC Custom Homes-Deerwood Mountain Estates, 11375 Lafayette Road, Mercersburg, PA 17236. This proposed facility is located in Montgomery Township, **Franklin County**.

Description of Proposed Action/Activity: Construction of Sewage Treatment Plant, new design from original issued permit.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

WQM Permit No. 1705403, Sewage 4952, Ronald Evans, 2900 Strasburg Road, Coatesville, PA 16627. This proposed facility is located in Beccaria Township, **Clearfield County**.

Description of Proposed Action/Activity: The applicant proposes to construct and operate a single residence sewage plant. The sewage plant will be a septic tank, buried filter and chlorination.

WQM Permit No. 1705402, Sewerage 4952, Muddy Run Regional Authority, P. O. Box 474, Madera, PA 16661-0474. This proposed facility is located in Bigler Borough, **Clearfield County**.

Description of Proposed Action/Activity: Applicant has submitted an application for a Water Quality Management Part II permit for the construction of a 0.400 mgd wastewater treatment facility and a sewage collection system. The project will entail the construction of central wastewater treatment facility and collection and conveyance facilities for Ramey Borough, Beccaria, Bigler and Gulich Townships. The wastewater treatment plant will discharge to Clearfield creek, and will utilize an extended aeration activated sludge process.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

WQM Permit No. 0205405, Sewerage, Plum Borough Municipal Authority, 4555 New Texas Road, Pittsburgh, PA 15239-1197. This proposed facility is located in Plum Borough, **Allegheny County**.

Description of Proposed Action/Activity: Application for construction and operation of new treatment facilities, as well as replacement and modifications of existing facilities.

IV. NPDES Applications for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

V. Applications for NPDES Waiver Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

VI. NPDES Individual Permit Applications for Discharges of Stormwater Associated with Construction Activities

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 Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024505008	Ski Shawnee, Inc. P. O. Box 339 Shawnee-on-Delaware, PA 18356	Monroe	Smithfield and Middle Smithfield Townships	Shawnee Creek HQ-CWF

Wayne County Conservation District: Ag Service Center, 470 Sunrise Ave., Honesdale, PA 18431, (570) 253-0930.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI026405002	Stanley M. Petroski 41 Reining Rd. Honesdale, PA 18431	Wayne	Berlin Township	Holbert Creek to Lackawaxen River HQ-CWF, MF

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI034405002	Lowe's of Granville Township	Mifflin	Granville Township	UNT to Juniata River HQ-CWF

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Centre Conservation District: 414 Holmes Ave., Suite 4, Bellefonte, PA 16823, (814) 355-6817.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041405003	Don Franson College Township 1481 E. College Ave. State College, PA 16801	Centre	College Township	Closed depression adjacent to Spring Creek HQ-CWF

Lycoming Conservation District: 542 County Farm Road, Suite 202, Montoursville, PA 17754, (570) 433-3003.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI044105001	Department of Transportation P. O. Box 218 Montoursville, PA 17754	Lycoming	Shrewsbury Township	Fox Run HQ-CWF

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Allegheny County Conservation District: Lexington Technology Park, Building 1, Suite 102, 400 North Lexington Avenue, Pittsburgh, PA 15208, (412) 241-7645.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI050205004	North Versailles Dev., LP 3 Lee Street McDonald, PA 15057	Allegheny	North Versailles Township	Jacks Run (HQ)

VII. List of NOIs for NPDES and/or Other General Permit Types

PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

PUBLIC WATER SUPPLY (PWS) PERMIT

Under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), the following parties have applied for a PWS permit to construct or substantially modify a public water system.

Persons wishing to comment on a 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 the 30-day comment period will be considered in the formulation of the final determinations regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of Environmental Protection (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 per-

mit. 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 are available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability who 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

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Application No. 4805501, Public Water Supply

Applicant	Easton Suburban Water Authority
Township or Borough	City of Easton
County	Northampton
Responsible Official	Roy A. White, Manager Eastern Suburban Water Authority P. O. Box 3819 2414 Butler Street Easton, PA 18043
Type of Facility	PWS
Consulting Engineer	James C. Elliot, P. E. Gannett Fleming, Inc. P. O. Box 67100 Harrisburg, PA 17106-7100
Application Received Date	March 28, 2005
Description of Action	The application requests approval to construct a new 3.0 million gallon per day pumping station, 1.5 million gallon finished water storage tank, meter chamber and install approximately 7,300 linear feet of suction and discharge/distribution mains. The applicant also intends to demolish the existing stand pipes and related appurtenances.

MINOR AMENDMENT**Applications Received Under the Pennsylvania Safe Drinking Water Act**

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Application No. Minor Amendment.

Applicant	Factoryville—Bunker Hill Water Company
Township or Borough	Clinton Township
County	Wyoming
Responsible Official	Loren Dixon, President Factoryville—Bunker Hill Water Company 4 Wilson Street Factoryville, PA 18419
Type of Facility	PWS
Consulting Engineer	Paul B. Milnes, P. E. Milnes Engineering, Inc. 12 Frear Hill Road Tunkhannock, PA 18657
Application Received Date	April 1, 2005
Description of Action	Application for transfer of PWS Permit No. 6674501 issued on July 31, 1974, from the Loren Dixon Water Company to the Factoryville—Bunker Hill Water Company.

WATER ALLOCATIONS**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**

Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

WA-53-554B, Water Allocations, **Austin Borough Waterworks**, Austin Borough, **Potter County**. The Authority has submitted an application for the Foster Street Water Treatment Plant Project Phase II. Allocation Requested: 240,000 gpd - 65,000 gpd (Emergency) = 175,000 gpd. A 30×45 treatment building will be erected to hold two dual water filtration units to treat drinking water for the customers of the water system.

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, 303, 304 and 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 below. 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 of Environmental Protection has received the following Notices of Intent to Remediate:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Atglen Quarry, West Sadsbury Township, **Chester County**. James P. Cinelli, P.E., Liberty Environmental Inc., 10 N. 5th St., Suite 800, Reading, PA 19601 on behalf of Joanne Folgias, Estate of Charles Butera, 313 Brandon Rd., Norristown, PA 19403 has submitted a Notice of Intent to Remediate. Groundwater at the site was impacted with leaded gasoline. The release of leaded gasoline from an unregulated underground storage tank. The intended future use of the property is a quarry or other commercial uses. A summary of the Notice of Intent to Remediate was reported to have been published in the *Daily Local News Company* on November 18, 2004.

Northeast Regional Field Office: Joseph A. Brogna, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

Lisetski Residence, Palmer Township, **Northampton County**. Richard Trimpi, CHMM, P.G., Trimpi Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073 has submitted a Notice of Intent to Remediate (on behalf of his client, Tom Lisetski, Dalton Street, Easton, PA 18045) concerning the remediation of soils found to have been impacted by fuel oil No. 2. The applicant proposes to remediate the site to meet the residential Statewide health soil standard. A summary of the Notice of Intent to Remediate was published in *The Express-Times* on March 16, 2005. A Final Report was simultaneously submitted.

Pugliese Residence, Palmer Township, **Northampton County**. Richard Trimpi, CHMM, P.G., Trimpi Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073 has submitted a Notice of Intent to Remediate (on behalf of his client, Nick Pugliese, Dalton Street, Easton, PA 18045) concerning the remediation of soils found to have been impacted by fuel oil No. 2. The applicant proposes to remediate the site to meet the residential Statewide health soil standard. A summary of the Notice of Intent to Remediate was published in *The Express-Times* on March 16, 2005. A Final Report was simultaneously submitted.

Karp Residence, Palmer Township, **Northampton County**. Richard Trimpi, CHMM, P.G., Trimpi Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073 has submitted a Notice of Intent to Remediate (on behalf of his client, Fred Karp, Dalton Street, Easton, PA 18045) concerning the remediation of soils found to have been impacted by fuel oil No. 2. The applicant proposes to remediate the site to meet the residential Statewide health soil standard. A summary of the Notice of Intent to

Remediate was published in *The Express-Times* on March 16, 2005. A Final Report was simultaneously submitted.

Tamaqua Tax Parcels 65-24-2 and 65-21-1.4, Borough of Tamaqua, **Schuylkill County**. Marguerite Murray, Gilmore & Associates, Inc., 350 E. Butler Avenue, New Britain, PA 18901 has submitted a Notice of Intent to Remediate (on behalf of her client, St. Luke's Miners Memorial Hospital, 360 West Ruddle Street, Coaldale, PA 18218) concerning the characterization of soils and groundwater found to have been impacted by inorganics and PAHs as the result of historic fill. The applicant proposes to remediate the site to meet the Special Industrial Area standard. The proposed future use of the site will remain nonresidential. A summary of the Notice of Intent to Remediate is expected to be published in a local newspaper serving the general area sometime in the near future.

Weisenberg Lutheran Church, Weisenberg Township, **Lehigh County**. Storb Environmental, Inc., 410 North Easton Road, Willow Grove, PA 19090 has submitted a Notice of Intent to Remediate (on behalf of the Weisenberg Lutheran Church Council, 7645 Weisenberg Road, New Tripoli, PA 18066 and Pipeline Petroleum, P.O. Box 159, Shippers Road, Macungie, PA 18062) concerning the remediation of soil found or suspected to have been contaminated by no. 2 fuel oil as the result of an accidental release. The applicant proposes to meet the Statewide health standard. A summary of the Notice of Intent to Remediate will reportedly be published in *The Morning Call* in the near future. The proposed future use of the property is continuation as a church.

Scottsville Site, Meshoppen Township and Windham Township, **Wyoming County**. Thomas Maher, P.G., RETTEW Associates, 3020 Columbia Avenue, Lancaster, PA 17603 has submitted a Notice of Intent to Remediate (on behalf of the property owner, Ken Skuba, Wyoming Land Conservancy, Inc., 66 Allen Lane, Drums, PA 18222) concerning the remediation of soils found or suspected to have been impacted by inorganics and PAHs. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate is expected to be published in a local newspaper serving the general area sometime in the near future.

Luciw Farm Leak Site, Salem Township, **Luzerne County**. Jennifer L. Huha, P.G., Groundwater & Environmental Services, Inc., 410 Eagleview Boulevard, Suite 110, Exton, PA 19341 has submitted a Notice of Intent to Remediate (on behalf of Sunoco Inc., Post Road and Blueball Avenue, Marcus Hook, PA 19061) concerning the remediation of site groundwater found or suspected to have been contaminated with petroleum hydrocarbons. The applicant proposes to meet the residential Statewide Health Standard. A summary of the Notice of Intent to Remediate was published in the *Press Enterprise* on February 25, 2005. The future use of the site will remain as agricultural/residential.

Former Penn Linen & Uniform Services/Cintas Corporation, City of Bethlehem, **Lehigh County**. Marco Odah, EnviroRemedy International, 10100 W. 87th Street, Suite 204, Overland Park, KS 66212 has submitted a Notice of Intent to Remediate (on behalf of his client, Cintas Corporation, 27 Whitney Drive, Milford, OH 45150) concerning the remediation of site groundwater found to be contaminated with tetrachloroethene (PCE). The applicant proposes to meet the nonresidential, nonuse aquifer Statewide health standard. A summary of the NIR was reportedly published in *The Morning Call* on January

3, 2005. Future use of the site will remain nonresidential. A Final Report was simultaneously submitted.

SMJ&J Fuel Oil Release (Aerni and Hitzel Fuel, Inc., 190 Industrial Drive North), Williams Township, Northampton County. John P. Mihalich, P. G., Principal Geologist, MACTEC Engineering and Consulting, 5205 Militia Hill Road, Plymouth Meeting, PA 19462 has submitted a Notice of Intent to Remediate (on behalf of his client, SMJ&J, Inc., c/o Howard Bock, 1810 Columbia Avenue, Building 19, Folcroft, PA 19032) concerning the remediation of soil and/or groundwater found or suspected to have been contaminated by No. 2 fuel oil. The applicant proposes to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reportedly published in *The Express Times* on March 11, 2005. The proposed future use of the property is continuation as a fuel oil business.

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 act of July 13, 1988 (P. L. 525, No. 93) 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

Stericycle, Inc., 1525 Chestnut Hill Road, Morgantown, PA 15443. License No. PA-HC 0196. Received on March 18, 2005.

MUNICIPAL WASTE GENERAL PERMITS

Application 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 Municipal Waste Regulations for a General Permit to Operate Municipal Waste Processing Facilities and the Beneficial Use of Municipal Waste.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 404 Market Street, Harrisburg, PA 17105-8472.

General Permit Application No. WMGM032. Blue Ridge Renewable Energy, LLC., 1300 N. 17th Street, Suite 1600, Arlington, VA 22209.

The Department of Environmental Protection, Bureau of Land Recycling and Waste Management has received an application for General Permit No. WMGM032. The application is for the processing and beneficial use of landfill gas, generated at Blue Ridge Landfill in **Franklin County**, as an alternate fuel for a potential five power generators proposed to be installed at this landfill. The electric produced will be transmitted to the local electric utility grid for consumers use. The Department determined the application to be administratively complete on April 5, 2005.

Comments concerning the application should be directed to Ronald C. Hassinger, Chief, General Permits and Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Land Recycling and Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472. Persons interested in obtaining more information about

the general permit application should contact the Division at (717) 787-7381. TDD users should 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.

AIR QUALITY

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 the 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 a 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. Comments or protests filed with the 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 before the application. 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 (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, Mark Wejkszner, New Source Review Chief, (570) 826-2531.

48-313-094: Polymer Products Co., Inc. (100 Station Avenue, Stockertown, PA 18083) for installation of an air cleaning device (odor elimination) to capture emissions from a plastics compounding operation at their facility in Stockertown Borough, **Northampton County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ronald Davis, New Source Review Chief, (717) 705-4702.

36-03137A: Martin Limestone, Inc. (404 Martindale Road, Ephrata, PA 17522) for addition of a new primary crushing plant circuit at their Burkholder plant in Earl Township, **Lancaster County**.

67-05001C: LWB Refractories Co. (232 East Market Street, P. O. Box 1189, York, PA 17404) for installation of caustic spray systems on Rotary Kilns RK1 and RK2 in their West Manchester Township, **York County** facility. The caustic spray systems will reduce HCl emissions.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, David Aldenderfer, Program Manager, (570) 327-3637.

55-399-007: Kerrico Corp. (R. R. 1, Box 131-H, Selinsgrove, PA 17870) for modification of a cast polymer bathroom and kitchen countertop manufacturing operation in Penn Township, **Snyder County** by increasing its volatile organic compound emissions to a level in excess of 10 tons per year. The predominant VOC emitted is styrene which is also a hazardous air pollutant.

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.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Mark Wejkszner, New Source Review Chief, (570) 826-2531.

45-318-032: Tobyhanna Army Depot (11 Hap Arnold Boulevard, Tobyhanna, PA 18466-5000) for increase of VOC emissions from their facility in Coolbaugh Township, **Monroe County**. The proposed increase will be for the facility to go from 49.9 TPY of VOC to 99.8 TPY of VOC, based on a 12-month rolling sum. The company has proposed no other changes. Tobyhanna Army Depot is subject to Title V permitting requirements. The company currently has a Title V Permit 45-00004. The Operating Permit will include testing, monitoring, recordkeeping and reporting requirements designed to keep the sources operating within all applicable air quality requirements. The Plan Approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into the Title V Operating Permit through an administrative amendment at a later date. For further details, contact Mark J. Wejkszner at (570) 826-2511 within 30 days after publication date.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ronald Davis, New Source Review Chief, (717) 705-4702.

06-03071B: Wolfe Dye and Bleach Works, Inc. (25 Ridge Road, Shoemakersville, PA 19555) for construction of a tenter frame dryer at their Shoemakersville Plant in Perry Township, **Berks County**. The facility is a non-Title V (State only) facility. The approval will include emission restrictions, testing, monitoring, recordkeeping,

work practices and reporting requirements designed to keep the dryer operating within all applicable air quality requirements.

21-05049A: Pennsy Supply, Inc. (1001 Paxton Street, Harrisburg, PA 17104) for installation of an oil-fired hot mix asphalt plant controlled by a fabric filter in Penn Township, **Cumberland County**. The asphalt plant will include recycled asphalt paving and recycled asphalt roofing shingles in the material processed. The asphalt plant is subject to 40 CFR Part 60, Subpart I—Standards of Performance for Hot Mix Asphalt Facilities. The plant includes asphalt and fuel oil storage tanks subject to 40 CFR Part 60, Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels). The estimated annual emissions for the plant are: PM, 10 tons; NOx, 30 tons; SOx, 6 tons; CO, 98 tons. The plan approval and operating permit will include emission limits, testing, monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality requirements.

36-03137A: Martin Limestone, Inc. (404 Martindale Road, Ephrata, PA 17522) for addition of a new primary crushing plant circuit at their Burkholder plant in Earl Township, **Lancaster County**. This is a non-Title V (State-Only) facility. Standard recordkeeping and operating restrictions will be included to keep the facility operating within all applicable air quality requirements.

PUBLIC HEARINGS

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, William Charlton, New Source Review Chief, (412) 442-4174.

PA-30-00150A: Wellington Development—WVDT, LLC (1620 Locust Avenue, Fairmont, WV) for correction to the Public Notice for the Wellington Development—WVDT, LLC Greene Energy Resource Recovery Project in Cumberland Township, **Greene County**.

This publication provides correction to the notice of public hearing for Wellington Development—WVDT, LLC published at 35 Pa.B. 1459 (February 26, 2005) and in the February 23—25, 2005 editions of both the *Observer-Reporter* and the *Herald-Standard*.

The advertisement described a public hearing conducted at 7 p.m. on March 30, 2005, by the Department of Environmental Protection at the United Mine Workers Hall, Local 6290, Nemaquin Road, Nemaquin, PA 15351. A public hearing is a session in which only testimony is taken from registered participants. To engage in a question and answer session with those in attendance, the Department expanded the format to that of a conference. In accordance with 25 Pa. Code § 127.48, the Department may, in its discretion, hold a fact finding conference or hearing.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ronald Davis, New Source Review Chief, (717) 705-4702.

06-05094: Reading Alloys, Inc. (P. O. Box 53, Robeson, PA 19551) for operation of a specialty alloy manufacturing facility controlled by various fabric collectors, a wet scrubber and three venturi scrubber in South

Heidelberg Township, **Berks County**. The facility is a non-Title V (State only) facility. The facility will be required to limit the emissions by limiting the amount of alloy produced during any consecutive 12-month period. The permit will further limit the emissions from the facility to less than the Title V thresholds. Records of the production and emissions will be required monthly and on a 12-month rolling basis. The permit will include monitoring, testing, work practices, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

21-05002: PPG Industries, Inc. (400 Park Drive, Carlisle, PA 17013) for operation of a flat glass manufacturing facility in South Middleton Township, **Cumberland County**. The two glass furnaces account for most of the facility's emissions. All conditions from the Title V operating permit issued in 2000 will be included in this permit renewal.

36-05005: Wellborn Holdings, Inc.—Luxury Custom Cabinetry Group Plant (215 Diller Avenue, New Holland, PA 17557) for operation of their custom cabinetry plant in Earl Township, **Lancaster County**. This action is a renewal of the Title V Operating Permit issued in 2000. This facility is a Title V facility due to its potential to emit VOCs from its finishing operations. The Title V operating permit contains restrictions, monitoring, testing, work practice standards, recordkeeping and reporting conditions designed to keep the facility operating within all applicable air quality requirements.

Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428, Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

23-00092: Abbonizio Recycling Corp.—Chester (2900 West Front Street, Chester, PA 19013) in Chester City, **Delaware County**. The permit is for a non-Title V (State Only—Natural Minor) facility. The facility's sources include a portable crusher and various process equipment associated with a stone crushing plant. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ronald Davis, New Source Review Chief, (717) 705-4702.

36-03076: Martin Limestone, Inc. (P. O. Box 550, Blue Ball, PA 17506) for operation of the company's Weaverland limestone crushing plant in East Earl Township, **Lancaster County**. The crushing plant is subject to 40 CFR Part 60, Subpart OOO—Standards of Performance for Nonmetallic Mineral Processing Plants. This is a renewal of the facility's State-only permit and will include all of the provisions from the previous permit to ensure the facility complies with the applicable requirements.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, David Aldenderfer, Program Manager, (570) 327-3637.

49-00046: Kurt Weiss Greenhouses of Pennsylvania, Inc. (10 Arcos Road, Mt. Carmel, PA 17851) for operation of a greenhouse facility at 10 Arcos Road in Mt. Carmel Township, **Northumberland County**.

The facility incorporates five natural gas/No. 2 fuel oil fired boilers, two of which are equipped with low nitrogen oxides burners. The applicant has proposed to restrict the operation of each of these five boilers to a maximum of 180 hours in any 12 consecutive month period to ensure that the facility is a synthetic minor with respect to its air contaminant emissions. Based on this restriction, the facility is not expected to emit more than 4.43 tons of SO_x, 1.10 tons of NO_x, .22 ton of CO, .08 ton of particulate matter (including PM₁₀) and .01 ton of VOCs in any 12 consecutive month period.

The Department of Environmental Protection (Department) proposes to incorporate into the operating permit to be issued conditions requiring compliance with all applicable regulatory requirements pertaining to the emission of air contaminants as well as the conditions previously established in Plan Approvals 49-302-051 and 49-302-051A and Operating Permit 49-302-051. These previously-established conditions include a condition limiting the fuel used in all five boilers to natural gas and No. 2 fuel oil with a maximum sulfur content of .5% (by weight) and to which no reclaimed or waste oil or other waste materials have been added, a condition requiring the use of low nitrogen oxides burners on two of the five boilers as well as a condition restricting the nitrogen oxides emissions from the same two boilers to 31 parts per million when burning natural gas and 76 parts per million when burning No. 2 fuel oil (parts per million on a dry volume basis, corrected to 3% oxygen).

The Department additionally proposes to incorporate into the operating permit to be issued a condition limiting the operation of each of the five boilers to 180 hours in any 12 consecutive month period and a condition requiring the maintenance of records of the number of hours each of the boilers is operated each month.

COAL AND NONCOAL 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); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to 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 an application is available for inspection at the district mining office indicated before an 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, 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 district mining office indicated before an application 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.

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 identified in this notice for the respective coal and noncoal applications. In addition, 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 who have requested review of 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 the requirements.

Written comments or objections should contain the

name, address and telephone number of the person submitting comments or objections; the 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; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor wishes to have the conference conducted in the locality of the proposed mining activities.

Coal Applications Received

Effluent Limits

The following coal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

<i>Parameter</i>	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
suspended solids	35 mg/l	70 mg/l	90 mg/l
pH ¹		greater than 6.0; less than 9.0	

alkalinity greater than acidity¹

¹The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: (1) surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas; active areas disturbed by coal refuse disposal activities; and mined areas backfilled and revegetated; and (2) drainage (resulting from a precipitation event of less than or equal to a 1-year 24-hour event) from coal refuse disposal piles.

California District Mining Office: 25 Technology Drive, Coal Center, PA 15423, (724) 769-1100.

30841317. NPDES Permit No. PA0213527, Consol Pennsylvania Coal Company, (1525 Pleasant Grove Road, P. O. Box J, Claysville, PA 15323), to renew the permit and related NPDES permit and revise the permit for the Enlow Form Mine in Richhill and Morris Townships, **Greene County** and East Finley, West Finley and Morris Townships, **Washington County** to delete 18,494.67 acres from the subsidence control plan area. No additional discharges. Application received February 1, 2005.

32743710. NPDES Permit No. PA0214884, Helvetia Coal Company, (P. O. Box 219, 400 Overview Drive, Shelocta, PA 15774), to renew the permit for the Refuse Disposal Area No. 1 in Center Township, **Indiana County** and related NPDES permit for reclamation only. No additional discharges. Application received March 28, 2005.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, Pa 15931, (814) 472-1900.

32890109 and NPDES Permit No. PA0598640. Keystone Coal Mining Corporation, P. O. Box 219, 400 Overview Drive, Shelocta, PA 15774, permit renewal for reclamation only of a bituminous surface mine in Blacklick Township, **Indiana County**, affecting 18.4 acres. Receiving stream: Aultmans Run classified for the

following use: TSF. There are no potable water supply intakes within 10 miles downstream. Application received March 24, 2005.

56050102 and NPDES Permit No. PA0249751. Sherpa Mining Contractors, Inc., 337 Benny Road, Hooversville, PA 15936, commencement, operation and restoration of a bituminous surface and auger mine in Shade Township, **Somerset County**, affecting 54.4 acres. Receiving streams: UNT to Oven Run and UNT to Stonycreek River classified for the following use: CWF. The first downstream potable water supply intake from the point of discharge is Hooversville Borough Municipal Authority. Mine site is within 1/2 mile of Wilbur Community Water Company. Application received March 23, 2005.

Greensburg District Mining Office: R. R. 2, Box 603-C, Greensburg, PA 15601, (724) 925-5500.

02743004 and NPDES Permit No. PA126756. Deep Valley Coal & Disposal, Inc. (7111 Steubenville Pike, Oakdale, PA 15071). Renewal application for an existing bituminous surface mine, located in North Fayette Township, **Allegheny County**, affecting 35 acres. Receiving stream: Pinkerton Run, classified for the following use: CWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Renewal application received: March 29, 2005.

63050101 and NPDES Permit No. PA0250694. Muligan Mining, Inc. (5945 Pudding Stone Lane, Bethel Park, PA 15102). Application for commencement, operation and reclamation of a bituminous surface mine, located in Smith Township, **Washington County**, affecting 46.7 acres. Receiving streams: Raccoon Creek and UNTs to Little Raccoon Run and Raccoon Creek, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Application received: March 24, 2005.

02-04-05 and NPDES Permit No. PA0250708. Newgate Development Corp. (2201 Quicksilver Road, McDonald, PA 15057). Government Financed Construction Contract to eliminate existing highwalls and to daylight portions of deep mined areas, located in North Fayette Township, **Allegheny County**, affecting 28 acres. Receiving stream: UNT to North Branch Robinson Run, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the pint of discharge. Application received: March 28, 2005.

03020108 and NPDES Permit No. 0250198. Seven Sisters Mining Co., Inc. (P. O. Box 300, US Route 22, Delmont, PA 15626-0300). Revision application for erosion and sedimentation controls and stream variance for an existing bituminous surface mine, located in South Bend Township, **Armstrong County**, affecting 183.5 acres. Receiving stream: UNT to Crooked Creek, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Revision application received: March 30, 2005.

Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191.

10-05-01 and NPDES Permit No. PA 0242667. Dennis Tiche (222 Goff Station Road, Boyers, PA 16020). Proposal to enter into a Government Financed Reclamation Construction Contract on a 11.25 acre site in Marion and Venango Townships, **Butler County**. The proposal includes total reclamation of 5.0 acres of abandoned mine lands as well as 2.9 acres of coal removal incidental and necessary to the reclamation activities. Receiving streams: Seaton Creek, classified for the following uses: CWF. Application received: March 25, 2005.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 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) 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. Persons objecting to approval of a request for certification under section 401 of the FWPCA or to the issuance of a Dam Permit, Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment must submit comments, suggestions or objections within 30 days of the date of this notice, as well as questions, to the regional 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. Individuals 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 8 a.m. and 4 p.m. on each working day at the regional office noted before the application.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users should 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 FWPCA (33 U.S.C.A. § 1341(a)).

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

E40-648. William Elko, Jr., 732 Suscon Road, Pittston, PA 18640, in Pittston Township, **Luzerne County**, United States Army Corps of Engineers, Baltimore District.

To maintain fill that was placed in a de minimus area of PFO wetlands less than or equal to 0.05 acre for the purpose of creating a front lawn at a private residence. The project is located on the west side of Suscon Road (SR 2035), approximately 0.9 mile southeast of the intersection of SR 0315 and SR 2035. (Avoca, PA Quadrangle N: 11.0 inches; W: 15.7 inches).

E64-253. Great Valley Nature Center, Route 29 and Hollow Road, P. O. Box 82, Devault, PA 19432, in Dreher Township, **Wayne County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain a dry hydrant in-take structure along the northern shoreline of an existing man-made pond along a tributary to Mill Creek (HQ-CWF); and to modify an existing road crossing of a tributary to Mill Creek (HQ-CWF), with work including minor grading in the floodway for the purpose of widening the roadway. The activities are part of the development of a residential environmental education center known as Great Valley Nature Center—North. The project is located on the north side of SR 0507, approximately 0.5 mile west of the intersection of SR 0507 and SR 0196. (Sterling, PA Quadrangle N: 4.7 inches; W: 0.2 inch).

E45-474. Stroudsburg Municipal Authority, 410 Stokes Avenue, East Stroudsburg, PA 18301, in Stroud Township, **Monroe County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain a wellhouse in the 100-year floodplain of McMichael Creek (HQ-CWF) and five water-line stream crossings and two minor road crossings in wetlands. The work is associated with the proposed well no. 3 public water supply project and is generally located 900 feet southwest of SR 2004 (Glenbrook Road) bridge across McMichael Creek. (Stroudsburg, PA-NJ Quadrangle N: 17.0 inches; W: 12.5 inches).

E48-359. Strausser Enterprises, Inc., 1104 Van Buren Road, Easton, PA 18045, in Forks Township, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain a 2,100 LF channel change in a tributary to the Delaware River (CWF) for the purpose of stabilizing the eroded streambed and banks. Work also includes approximately 800 LF of streambank stabilization and a 42-inch diameter stormwater outfall structure and associated energy dissipater. The project is located on the north side of SR 2038 (Frost Hollow Road),

approximately 0.5 mile west of SR 0611. (Easton, PA-NJ Quadrangle N: 18.0 inches; W: 10.0 inches).

E45-476. Big Ridge Developers, LLP, 130 Buck Road, Holland, PA 18337, in Middle Smithfield Township, **Monroe County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain nine roadcrossings for subdivision access road and various utility line crossings in and across tributaries to Pond Creek (HQ-CWF) in Buskill Creek (HQ-CWF) and in approximately 0.21 acre of adjacent PFO wetlands. This work is associated with the Country Club of the Poconos planned residential development and 18-hole golf course located north of US Route 209 between SR 1016 and Township Road T-540. (Bushkill, PA-NJ Quadrangle N: 13.3 inches; W: 13.6 inches).

E58-262. Department of Transportation, Engineering District 4-0, 55 Keystone Industrial Park, Dunmore, PA 18512, in Herrick Township, **Susquehanna County**, United States Army Corps of Engineers, Baltimore District.

To remove the existing structure and to construct and maintain a single-span reinforced concrete spread box beam bridge, having a span of 65.0 feet and an underclearance of 8.2 feet, across Each Branch Lackawanna River (HQ-CWF). The project includes placement of fill in a de minimis area of wetlands equal to 0.02 acre, associated with the SR 0371 roadway embankment. The project also includes a temporary roadway, including a single-span bridge and temporary impact to 0.31 acre of wetlands. The project is located along SR 0371, Section 570, Segment 0010, Offset 0386, immediately east of Herrick Corner (intersection of SR 0371 and SR 0171). (Forest City, PA Quadrangle N: 20.9 inches; W: 14.3 inches).

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

E06-590: Greenbriar Founders LLC, 56 Ledgerock Road, Mohnton, PA 19540 in Cumru Township, **Berks County**, ACOE Philadelphia District.

To impact a total of 0.14 acre of wetland to construct and maintain golf cart crossings of the proposed Ledgerock Golf Club located just southwest of Angelica Village on the north side of PA 625 (Reading, PA Quadrangle N: 1.1 inches; W: 12.6 inches) in Cumru Township, Berks County. The applicant will provide 0.14 acre of replacement wetland.

E67-745: Stephen Adlon, 870 Lisburn Road, Wellsville, PA 17365 in York Haven Borough, **York County**, ACOE Baltimore District.

To construct and maintain: (1) four timber footbridges, two 35-foot by 5-foot, one 20-foot by 5-foot and one 25-foot by 5-foot; (2) a 20-foot by 20-foot shed in the floodway; (3) 85 square feet of fill in the floodway associated with Lot 2; (4) one 30-inch by 80-foot long corrugated pipe culvert with a 6-inch depression; (5) one 18-inch by 10-foot corrugated metal pipe culvert; (6) two 4-inch sanitary sewer crossings; (7) one 4-inch conduit for water and telephone attached to the footbridge for Lot 1; and (8) two aerial utility line crossings all associated with UNTs to the Susquehanna River (WWF) in York Haven Borough, York County (York Haven, PA Quadrangle N: 20 inches; W: 13.0 inches).

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.

E08-423: Columbia Natural Resources, 900 Pennsylvania Avenue, P. O. Box 6070, Charleston, WV 25362. Water Obstruction and Encroachments, Athens Township, **Bradford County**, United States Army Corps of Engineers, Baltimore District. (Sayre, PA. 7.5' Quadrangle N: 11" W: 11").

To excavate and maintain fill in approximately 1.5 acres of palustrine emergent wetland system for the purpose of constructing a gas well drilling pad (330 feet by 200 feet) and ~2,800 feet of access road. The site is located approximately 1.8 miles northwest of the intersection of SR 4018 (Wolcott Hollow Road) and T-817 (Sunnyfield Road).

E53-407. Dominion Transmission, Inc., 445 West Main Street, Clarksburg, WV 26301. Dominion Northeast Storage Project, Sharon Township and Shinglehouse Borough, **Clearfield County**, ACOE Pittsburgh District (Oswayo, PA Quadrangle N: 19.67 inches; W: 13.77 inches).

To construct, operate and maintain 5.84 miles of new TL-527 pipeline within a 75 foot right-of-way for the transmission of natural gas; to construct, operate and maintain 0.94 mile of new LN-2471S pipeline to gather and convey natural gas to LN-257S; and to construct, operate and maintain 0.11 mile of new LN-15 (Change 1) to convey natural gas to LN-257S. LN-527 shall be constructed as a 20-inch diameter pipeline, LN-2471S shall be constructed as an 8-inch diameter pipeline, and LN-15 (Change 1) shall be constructed as an 8-inch diameter pipeline. Construction of the new pipelines require 24 wetland and 14 stream crossings that are as follows:

<i>Stream/Wetland</i>	<i>Stream Classification</i>	<i>Latitude</i>	<i>Longitude</i>
Butter Creek	HQ-CWF	41° 59' 00.29"	78° 05' 20.64"
UNT-Butter Creek	HQ-CWF	41° 58' 59.21"	78° 05' 22.30"
UNT-Butter Creek	HQ-CWF	41° 58' 56.00"	78° 05' 33.88"
Plank Creek	CWF	41° 58' 19.05"	78° 08' 28.94"
UNT-Honeoye Creek	CWF	41° 58' 20.25"	78° 08' 52.25"
UNT-Honeoye Creek	CWF	41° 58' 19.65"	78° 09' 02.18"
UNT-Honeoye Creek	CWF	41° 58' 18.18"	78° 09' 42.37"
Honeoye	CWF	41° 58' 19.59"	78° 09' 53.77"
Seely Hollow	CWF	41° 58' 25.93"	78° 10' 28.51"
Karr Hollow	CWF	41° 58' 13.73"	78° 11' 29.74"
UNT-Honeoye Creek	CWF	41° 58' 12.51"	78° 11' 23.15"
UNT-Honeoye Creek	CWF	41° 58' 12.23"	78° 11' 23.77"
Karr Hollow	CWF	41° 58' 11.39"	78° 11' 25.71"

<i>Stream/Wetland</i>	<i>Stream Classification</i>	<i>Latitude</i>	<i>Longitude</i>
UNT-Oswayo Creek	CWF	41° 58' 13.10"	78° 11' 47.98"
Wetland WJW050	HQ-CWF	41° 59' 00.26"	78° 05' 20.62"
Wetland WJW061	HQ-CWF	41° 59' 03.20"	78° 05' 57.34"
Wetland WDLC001	CWF	41° 58' 18.99"	78° 08' 29.81"
Wetland WDLC002	CWF	41° 58' 18.26"	78° 08' 35.95"
Wetland WDLC003	CWF	41° 58' 20.04"	78° 08' 49.30"
Wetland WDLC004	CWF	41° 58' 20.25"	78° 08' 52.69"
Wetland WDLC005	CWF	41° 58' 19.09"	78° 09' 04.18"
Wetland WDLC006	CWF	41° 58' 17.68"	78° 09' 46.36"
Wetland WDLC007	CWF	41° 58' 17.98"	78° 09' 49.98"
Wetland WDLC008	CWF	41° 58' 18.66"	78° 09' 52.20"
Wetland WDLC009	CWF	41° 58' 21.18"	78° 09' 56.40"
Wetland WDLC010	CWF	41° 58' 25.09"	78° 10' 20.46"
Wetland WDLC011	CWF	41° 58' 25.77"	78° 10' 28.40"
Wetland WDLC012	CWF	41° 58' 26.31"	78° 10' 31.67"
Wetland WDLC013	CWF	41° 58' 26.78"	78° 10' 35.10"
Wetland WDLC014	CWF	41° 58' 13.48"	78° 11' 20.91"
Wetland WJW059	CWF	41° 58' 11.75"	78° 11' 24.90"
Wetland WJW062	CWF	41° 58' 15.30"	78° 11' 26.74"
Wetland WJW060	CWF	41° 58' 11.55"	78° 11' 39.61"
Wetland WJW066	CWF	41° 58' 12.56"	78° 11' 43.34"
Wetland WJW067	CWF	41° 58' 13.07"	78° 11' 45.31"
Wetland WJW068	CWF	41° 58' 13.10"	78° 11' 47.82"
Wetland WJW069	CWF	41° 58' 18.98"	78° 12' 12.06"
Wetland WJW049	CWF	41° 58' 18.67"	78° 12' 15.36"

All gas transmission lines shall be replaced beneath streambeds so there will be a minimum of 3 feet of cover between the top of the pipe and the lowest point in the streambed. Trench plugs or clay dikes shall be used at every waterway and wetland crossing to ensure the existing hydrology is not altered. As proposed, the project temporarily impacts 5.45 acres of wetland while permanently impacting 1.02 acres of wetland and 163 linear feet of waterways. The project is located along the northern right-of-way of SR 4014 approximately 2.4 miles east of SR 4021 and SR 4014 intersection.

E60-169. Kelly Meadow View Association, 183 East Main Street, Rochester, NY 14604. Project is a sewer line extension adjacent to Ziegler Road in Kelly Township, **Union County**, ACOE Baltimore District (Lewisburg, PA Quadrangle N: 22.0 inches; W: 1.0 inch).

The applicant proposes to extend a sewer line to service a 50 unit proposed residential development. Proposed impact includes filling 0.05 acre of a 0.11 acre emergent wetland. The affected wetland is classified as "other wetlands" by the Department of Environmental Protection and is located on the headwaters of a UNT to the West Branch Susquehanna River. Permanent wetland fill is necessary because the crossing is above the wetland elevation to maintain gravity flow. The applicant proposes to replace the affected wetland through contribution to the Pennsylvania Replacement Project.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E02-1492. Encore Real Estate Services, LLC, 2208 South Villa Drive, Gibsonia, PA 15044. To place fill in wetlands and construct a stream enclosure in Township of McCandless, **Allegheny County**, Pittsburgh ACOE District. (Emsworth, PA Quadrangle N: 14.58 inches; W: 1.00 inch and Latitude: 40° 34' 49"—Longitude: 80° 0' 26"). The applicant proposes to place and maintain fill in a de minimis area of wetlands (0.05 acre) adjacent to a UNT to Pine Creek (TSF) and to construct and maintain a 350.0 foot long stream enclosure in a UNT to Pine Creek and adjacent wetlands for the purpose of construct-

ing the Grace Manor Assisted Living Facility located on the north side of Babcock Boulevard and Kummer Road. The project will impact 350 linear feet of stream channel and 0.05 acre of wetlands.

E02-1494. Plum Borough Municipal Authority, 4555 New Texas Road, Pittsburgh, PA 15239-1197. To construct a bridge in Plum Borough, **Allegheny County**, Pittsburgh ACOE District. (Murrysville, PA Quadrangle N: 13.4 inches; W: 12.2 inches and Latitude: 40° 26' 56"—Longitude: 79° 42' 47"). The applicant proposes to construct and maintain a bridge having a span of 40.0 feet with an under clearance of 12.5 feet across the channel of Abers Creek (TSF) for the purpose of providing access to the Holiday Park Sewage Treatment Plant located approximately 650 feet west from the intersection of Kane Road and New Texas Road and will impact approximately 15 feet of stream channel.

ENVIRONMENTAL ASSESSMENTS

Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Third Floor, 400 Market Street, Harrisburg, PA 17105.

D21-070EA. William S. Carey, 1781 Main Street, Lisburn, PA 17055. Lower Allen and Fairview Townships, **Cumberland and York Counties**, ACOE Baltimore District.

Project proposes to breach and remove Hoffman Dam located across Yellow Breeches Creek (CWF) for the purpose of restoring the stream to a free flowing condition and eliminating a threat to public safety. The dam is located approximately 1,100 feet southwest of the intersection of SR 114 and Mountain Road (SR 4031) (Lemoyne, PA Quadrangle N: 7.4 inches; W: 4.7 inches).

EA21-003CO. Scott Hench, 251 Scheaffer Road, Carlisle, PA 17013 Middlesex Township, **Cumberland County**, ACOE Baltimore District.

Project proposes to operate and maintain an existing non-jurisdictional dam across a tributary to Spring Run (WWF) impacting approximately 475 linear feet of stream

channel. The dam is located approximately 1,400 feet southeast of the intersection of SR 944 and Sheaffer Road (T506) in Middlesex Township, Cumberland County. (Shermans Dale, PA Quadrangle N: 3.5 inches; W: 7.0 inches)

D11-002EA and D11-003EA. Highland Sewer and Water Authority, 120 Tank Drive, Johnstown, PA 15904, Washington Township, **Cambria County**, ACOE Pittsburgh District.

Project proposes to breach and remove Bear Rock No.1 Dam and Bear Rock No. 2 Dam across Bear Rock Run (CWF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The project will restore approximately 1,600 feet of stream channel. The dams are located approximately 2.1

miles Southeast of the town of Lily (Cresson, PA Quadrangle, N: 6.35 inches, W: 11.5 inches) (Cresson, PA Quadrangle, N: 6.8 inches, W: 11.6 inches).

D43-005EA. Grove City Borough, P. O. Box 110, Grove City, PA 16127. Grove City Borough, **Mercer County**, ACOE Pittsburgh District.

Project proposes to breach and remove Cunningham Memorial Dam across Wolf Creek (CWF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The project will restore approximately 1,200 feet of stream channel. The dam is located approximately 250 feet northeast of the intersection of SR 173 and Main Street (SR58) (Grove City, PA Quadrangle at N: 5.5 inches W: 11.7 inches).

ACTIONS

THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOI) for coverage under general permits. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal wastes; discharges to groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOIs for coverage under general NPDES permits. The approval for coverage under general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit 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. Permits 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 before the action.

Persons aggrieved by an action 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 should 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 decision law.

For individuals who wish to challenge an 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.

I. NPDES Renewal Permit Actions

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-0060411	Little Washington Wastewater Company d/b/a Suburban Wastewater Company 762 West Lancaster Avenue Bryn Mawr, PA 19010	Lackawanna County Thornhurst Township	Pond Creek (2A)	Y
PA-0033529	The Pennsylvania State University Penn State Wilkes-Barre 101P Physical Plant Building University Park, PA 16802-1118	Luzerne County Lehman Township	Harvey Creek (5B)	Y
PA-0060691	Luzerne County Parks Department Luzerne County Courthouse 200 West River Street Wilkes-Barre, PA 18711	Luzerne County Plymouth Township	UNT to Hunlock Creek 5B	Y

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>
PA0228214 Industrial Waste	CCDA Waters LLC 1 Aqua Penn Dr. P. O. Box 938 Milesburg, PA 16853	Centre County Boggs Township	Bald Eagle Creek 9C	Y
PA0228168	William J. Tolan 802 Meeks Lane Port Matilda, PA 16870	Centre County Patton Township	UNT to Buffalo Run 9C	Y
PA0209155 Sewerage	Sandro Sorge 344 College Hill Road Bloomsburg, PA 17815	Madison Township Columbia County	Fishing Creek 5-C	Y

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

<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>
PA0103446	Onyx Greentree Landfill, LLC 635 Toby Road Kersey, PA 15846	Fox Township Elk County	Little Toby Creek UNT to Little Toby Creek Sawmill Run UNT to Bear Run 17-A	Y

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

NPDES Permit No. 0064386, Industrial Waste, **Pittsburg Terminals Corporation**, P. O. Box 2621, Harrisburg, PA 17105. This proposed facility is located in City of Allentown, **Lehigh County**.

Description of Proposed Action/Activity: Issuance of NPDES Permit.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

NPDES Permit No. PA0247529, Industrial Waste, **Scott Welsh, Penn-Mar Ethanol, LLC**, 140 Roosevelt Avenue, Suite 208, York, PA 17404. This proposed facility is located in Conoy Township, **Lancaster County**.

Description of Proposed Action/Activity: Permit Application Withdrawn by Applicant.

III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

WQM Permit No. 4601411, Amendment, Sewerage, **Rivercrest Community Association, Inc.**, 3103 Philmont Avenue, Huntingdon Valley, PA 19006. This proposed facility is located in Upper Providence Township, **Montgomery County**.

Description of Action/Activity: Increasing the flow of Rivercrest pump station No. 4 from 85,675 gpd to 111,800 gpd.

WQM Permit No. 4604202, Sewerage, **Sunoco, Inc. R & M**, 2010 Penn Center, 1801 Market Street, Philadelphia, PA 19103. This proposed facility is located in Limerick Township, **Montgomery County**.

Description of Action/Activity: Construction and operation of a groundwater remediation system.

WQM Permit No. 2304405, Sewerage, **Middletown Township Sewer Authority**, P. O. Box 9, Lima, PA 19037. This proposed facility is located in Middletown Township, **Delaware County**.

Description of Action/Activity: Subdivision of a 4.98 acre tract into four single family residential lots.

WQM Permit No. 1503204, Sewerage, **Hanover Land Corporation**, 614 East Barnard Street, West Chester, PA 19382. This proposed facility is located in North Coventry Township, **Chester County**.

Description of Action/Activity: Groundwater remediation system.

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

WQM Permit No. 4005401, Sewerage, **Dallas Area Municipal Authority**, 530 South Memorial Highway, Shavertown, PA 18708. This proposed facility is located in Kingston Township, **Luzerne County**.

Description of Proposed Action/Activity: Issuance of Water Quality Management Permit.

WQM Permit No. 4504402, **Alpine Rose Resorts Development**, 100 Ivy Hill Circle, Reading, PA 19606-9450. This proposed facility is located in Eldred Township, **Monroe County**.

Description of Proposed Action/Activity: This project consists of the construction of a .012 mgd wastewater treatment facility and spray irrigation system to serve the Alpine Rose Resorts Development.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

WQM Permit No. 3805401, Sewerage, **South Annville Township Authority**, 829 South Spruce Street, Annville, PA 17003. This proposed facility is located in Annville Township, **Lebanon County**.

Description of Proposed Action/Activity: Construction/operation of public sewer system which will consist of approximately 44,000 feet of gravity collection system, two pumping stations and 18,000 feet of force main pipe.

WQM Permit No. 0105401, Sewerage, **Straban Township**, 1745 Granite Station Road, Gettysburg, PA 17325-8232. This proposed facility is located in Straban Township, **Adams County**.

Description of Proposed Action/Activity: Construction of the Granite Station Road Low Pressure Sewer Extension.

WQM Permit No. 3605201, CAFO, **Rohrer Dairy, LLC**, 124 Charlestown Road, Washington Borough, PA 17582. This proposed facility is located in Manor Township, **Lancaster County**.

Description of Proposed Action/Activity: Expansion of existing operation by building a 114.5 × 420 building.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

WQM Permit No. 1704403, Sewerage 4952, **Clearfield Borough**, 6 South Front Street, Clearfield, PA 16830. This proposed facility is located in Clearfield Borough, **Clearfield County**.

Description of Proposed Action/Activity: Replacement of approximately 75,719 lineal feet of sanitary sewers, manholes and appurtenances throughout Clearfield Borough.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

WQM Permit No. 6305401, Sewerage, **North Strabane Township Municipal Authority**, 1929B, Route 519 South, Canonsburg, PA 15317. This proposed facility is located in North Strabane Township, **Washington County**.

Description of Proposed Action/Activity: Pump Station, Force Main and Sanitary Sewers to serve Fifeshire and Canterbury areas.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WQM Permit No. 2705401, Sewerage, **Tionesta Municipal Authority**, P. O. Box 408, Tionesta, PA 16353. This proposed facility is located in Tionesta Township, **Forest County**.

Description of Proposed Action/Activity: This project is for the construction of a pump station and sewer extension on Lighthouse Island to serve a proposed Pennsylvania Hunting and Fishing Museum and future residential dwellings plus a lighthouse.

IV. NPDES Stormwater Discharges from MS4 Permit Actions

V. NPDES Waiver Stormwater Discharges from MS4 Actions

VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

NPDES Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI024804027	Haldan P. Ballek R. D. 1, Box 360 Riegelsville, PA 18077-9606	Northampton	Williams Township	Frya Run HQ-CWF, MF

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024804038	Red Rock Land Corporation 149 Treeline Drive Pen Argyl, PA 18072	Northampton	Forks Township	Bushkill Creek HQ-CWF

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Allegheny County Conservation District: Lexington Technology Park, Building 1, Suite 102, 400 North Lexington Avenue, Pittsburgh, PA 15208, (412) 241-7645.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI050205001	Allegheny Country Club Country Club Lane Sewickley, PA 15143	Allegheny	Sewickley Heights Borough	Little Sewickley Creek (HQ-TSF)

Cambria County Conservation District: 401 Candlelight Drive, Suite 221, Ebensburg, PA 15931, (814) 472-2120.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI051104004	Brian Chirillo c/o John Hill Real Estate 231 Market Street Johnstown, PA 15901 and Randy Straw Straw Construction Co., Inc. 429 Fetterolf Road Boswell, PA 15531	Cambria	Upper Yoder Township	Mill Creek (HQ-CWF)

Washington County Conservation District: 602 Courthouse Square, Washington, PA 15301, (724) 228-6774.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI056304006	Robert Kipp North Strabane Township Municipal Authority 1929 Route 519 South Canonsburg, PA 15317	Washington	North Strabane Township	Little Chartiers Creek (HQ-WWF)

VII. Approvals to Use NPDES and/or Other General Permits

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).

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 Plants
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
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 Residential Septage 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	CAFOs
PAG-13	Stormwater Discharges from MS4

*General Permit Type—PAG-2**Facility Location:
Municipality &
County**Permit No.**Applicant Name &
Address**Receiving
Water/Use**Contact Office &
Phone No.*

Smithfield
Township
Monroe County

PAG2004505001

Storage Masters of East
Stroudsburg
c/o Jeff Smith
HC 8, Box 8350
Hawley, PA 18428

UNT to Sambo Creek
CWF, MF

Monroe Co.
Cons. Dist.
(570) 629-3060

Weisenberg
Township
Lehigh County

PAG2003904024

Barry Follweiler
3372 Jordan Rd.
Orefield, PA 18069

Mill Creek
CWF, MF

Lehigh Co.
Cons. Dist.
(610) 391-9583

Washington
Township
Lehigh County

PAG2003905001

Karl Schmidt
Lehigh Land & Loft Enterprises
2579 Woodbine St.
Slatington, PA 18080

Lehigh River
TSF

Lehigh Co.
Cons. Dist.
(610) 391-9583

Whitehall
Township
Lehigh County

PAG2003905006

Grace Worship Center
3600 Mauchchunk Rd.
Whitehall, PA 18052

Jordan Creek
TSF, MF

Lehigh Co.
Cons. Dist.
(610) 391-9583

Oley Township
Berks County

PAG2000605016

Tony Forino
Forino Company LP
555 Mountain Home Road
Sinking Spring, PA 19608

Little Manatawny
Creek/CWF

Berks County
Conservation District
1238 County Welfare
Road
P. O. Box 520
Leesport, PA
19533-0520
(610) 372-4657, Ext.
201

Muhlenberg
Township
Berks County

PAG2000605020

Keith Zielaskowski
Quest Land Development LLC
711 Spring Street
Wyomissing, PA 19610

Bernhart Creek/CWF

Berks County
Conservation District
1238 County Welfare
Road
P. O. Box 520
Leesport, PA
19533-0520
(610) 372-4657, Ext.
201

S. Heidelberg
Township
Berks County

PAG2000605028

Del Markward
Caracor, LLC
5926 Tilghman St
Suite 600
Allentown, PA 18104

Cacoosing Creek/
WWF

Berks County
Conservation District
1238 County Welfare
Road
P. O. Box 520
Leesport, PA
19533-0520
(610) 372-4657, Ext.
201

U. Bern Township
Berks County

PAG2000605023

Nathan Eby
Mt. View Contractors
51E Texter Mission Road
Robesonia, PA 19551

Wolf Creek/CWF

Berks County
Conservation District
1238 County Welfare
Road
P. O. Box 520
Leesport, PA
19533-0520
(610) 372-4657, Ext.
201

Walker Township,
Juniata County

PAG2033405002

Weis Markets
1000 South Street
P. O. Box 471
Sunbury, PA 17801

Juniata River/WWF

Juniata County
Conservation District
R. R. 2, Box 302,
Mifflintown, PA 17059
(717) 436-8953, Ext. 5

Shippensburg
Borough,
Cumberland
County

PAG2002105013

Turkey Hill Minit Markets
William Weisser
20 East Burd Street
Shippensburg, PA 17257

Middle Spring
Creek/CWF

Cumberland County
Conservation District
43 Brookwood Avenue
Carlisle, PA 17013
(727) 240-7812

*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

*Receiving
Water/Use*

*Contact Office &
Phone No.*

Middlesex Township, Cumberland County	PAG2-0021-05-005	Braam Hattingh 5130 East Trindle Road Mechanicsburg, PA 17055	Hogestown Run/CWF	Cumberland County Conservation District 43 Brookwood Avenue Carlisle, PA 17013 (717) 240-7812
North Lebanon Township Lebanon County	PAG2003804034	John M. Sensenig Conestoga Log Cabin Leasing 987 Valley View Road New Holland, PA 17557-9792	Quittapahilla Creek/TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 (717) 272-3908, Ext. 4
North Cornwall Township Lebanon County	PAG2003805008	United Methodist Church of the Good Shepherd 1500 Quentin Road Lebanon, PA 17042	Snitz Creek/TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 (717) 272-3908, Ext. 4
Tioga County Tioga Township	PAG2005905002	Department of Transportation Engineering Dist. 3-0 715 Jordan Ave. Montoursville, PA 17754	Tioga River/Bentley Creek WWF	Tioga County Conservation District 50 Plaza Lane Wellsboro, PA 16901 (570) 724-1801, Ext. 101
Union County Kelly Township	PAG2006052	Kelly Associates, A Pa. Partnership P. O. Box 46 Lewisburg, PA 17837	West Branch Susquehanna River WWF	Union County Conservation District 88 Bull Run Crossing Suite 5 Lewisburg, PA 17837 (570) 523-8782
Cambria County Cambria Township	PAG2001105005	Department of Transportation District 9-0 1620 North Juniata St. Hollidaysburg, PA 16648	South Branch of Blacklick Creek (CWF)	Cambria County CD (814) 472-2120
Greene County Franklin Township	PAG2053005001	RDR Properties, LLC Dave Biafore 325 Willey Street Morgantown, WV 26505	UNT to to SF Tine Mile Creek (WWF)	Greene County CD (724) 852-5278
Indiana County White Township	PAG2003204018	Larry Garner White Township Municipal Authority 950 Indian Springs Rd. Indiana, PA 15701	Stoney Run (CWF)	Indiana County CD (724) 463-8547
Washington County Robinson Township	PAG2006304042	Imperial Land Corp. 200 Neville Road Pittsburgh, PA 15225	Robinson Run (WWF)	Washington County CD (724) 228-6774

General Permit Type—PAG-3

*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

*Receiving
Water/Use*

*Contact Office &
Phone No.*

Dimock Township Susquehanna County	PAR212232	Delaware Valley Landscape Stone P. O. Box 778 6603 Route 202 New Hope, PA 18938	Meshoppen Creek, CWF	DEP—NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511
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*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

*Receiving
Water/Use*

*Contact Office &
Phone No.*

North Manheim
Township
Schuylkill County

PAR402203

U.S.S. Achey, Inc.
355 E. Second Mountain Road
Schuylkill Haven, PA 17972

Mahonne Creek,
CWF

DEP—NERO
Water Mgmt. Program
2 Public Square
Wilkes-Barre, PA
18711-0790
(570) 826-2511

Harmony
Township
Susquehanna
County

PAR212230

Edward Greene & Sons, Inc.
P. O. Box 275
R. D. 3, Box 217A-3
Susquehanna, PA 18847-0275

South Branch
Canawacta Creek

DEP—NERO
Water Mgmt. Program
2 Public Square
Wilkes-Barre, PA
18711-0790
(570) 826-2511

West Hazleton
Borough
Luzerne County

PAR142202

Bemis Co., Inc.
20 Jaycee Drive
Valmont Industrial Park
W. Hazleton, PA 18202

Black Creek, CWF

DEP—NERO
Water Mgmt. Program
2 Public Square
Wilkes-Barre, PA
18711-0790
(570) 826-2511

Old Lycoming
Township

PAR124812

Pepsi Bottling Group, LLC
1450 Dewey Avenue
Williamsport, PA 17701

Lycoming Creek
(WWF)

NorthCentral Regional
Office
208 West Third Street
Williamsport, PA
17701-6448
(570) 327-3664

General Permit Type—PAG-4

*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

*Receiving
Water/Use*

*Contact Office &
Phone No.*

Concord Township
Delaware County

PAG040028

Mr. and Mrs. Mel Drukin
55 Mill Race Place
Glen Mill, PA 19342

UNT to West Brach
Chester Creek

Southeast Regional
Office
2 East Main Street
Norristown, PA 19401

Lancaster County
Elizabeth
Township

PAG043528

Donal P. Markey
P. O. Box 252
Lititz, PA 17543

Hammer Creek/TSF

DEP—SCRO
909 Elmerton Avenue
Harrisburg, PA 17110
(717) 705-4707

Somerset County
Black Township
OLD

PAG046211

Harold Henning
P. O. Box 67
Somerset, PA 15501-0067

Dempsey Run

Southwest Regional
Office:
Water Management
Program Manager
400 Waterfront Drive
Pittsburgh, PA
15222-4745
(412) 442-4000

Cussewago
Township
Crawford County

PAG048669

Shelley A. Wykoff
19376 Irish Road
Edinboro, PA 16412

UNT to Boles Run

DEP—NWRO
Water Management
230 Chestnut Street
Meadville, PA
16335-3481
(814) 332-6942

Keating Township
McKean County

PAG048680

C. David Lerch
466 Irish Hollow Road
Smethport, PA 16749-4112

UNT to Potato Creek

DEP—NWRO
Water Management
230 Chestnut Street
Meadville, PA
16335-3481
(814) 332-6942

*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

*Receiving
Water/Use*

*Contact Office &
Phone No.*

Porter Township
Clarion County

PAG048357

John L. Crawford, Jr.
2117 Route 66
New Bethlehem, PA 16242

UNT to Leisure Run

DEP—NWRO
Water Management
230 Chestnut Street
Meadville, PA
16335-3481
(814) 332-6942

General Permit Type—PAG-5

*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

*Receiving
Water/Use*

*Contact Office &
Phone No.*

West Goshen
Township
Chester County

PAG050053

Sunoco Inc.
Automotive Laboratory
P. O. Box 1135
Post Road and Blueball Avenue
Marcus Hook, PA 19061

UNT to East Branch
Chester Creek

Southeast Regional
Office
2 East Main Street
Norristown, PA 19401

Douglass Township
Montgomery
County

PAG050066

The SICO Company
15 Mount Joy Street
P. O. Box 657
Mount Joy, PA 17552

Minister Creek
3E Perkiomen
Watershed

Southeast Regional
Office
2 East Main Street
Norristown, PA 19401

PUBLIC WATER SUPPLY (PWS) PERMITS

The Department of Environmental Protection has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action 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 should 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 decision law.

For individuals who wish to challenge an 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.

Permit No. 5204502, Public Water Supply.

Applicant

**Pennsylvania-American
Water**

800 West Hersheypark Drive
Hershey, PA 17033

**Borough or Township
County**

Lehman Township

Pike

Type of Facility

PWS

Consulting Engineer

Richard B. Kresge, P. E.
Quad Three Group
37 North Washington Avenue
Wilkes-Barre, PA 18701

**Permit to Construct
Issued**

March 31, 2005

Operations Permit issued to: **Whitehall Township Authority**, 1901 Schadt Avenue, Whitehall, PA 18052-3728 (PWSID 3390081) Whitehall Township, **Lehigh County** on March 23, 2005, for the operation of facilities approved under Construction Permit No. 3985502, Minor Amendment.

Permit No. Minor Amendment. Public Water Supply.

Applicant

City of Bethlehem

**Borough or Township
County**

Lower Saucon Township

Lehigh

Type of Facility

PWS

Consulting Engineer

John E. Spitko, Jr., P. E.
1456 Ferry Road, Bldg. 500
Doylestown, PA 18901

**Permit to Construct
Issued**

March 31, 2005

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Operations Permit issued to: **Trough Creek Youth Forestry Camp No. 3**, 4310014, Todd Township,

Huntingdon County on 3/28/2005 for the operation of facilities approved under Construction Permit No. 3105501.

Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Permit No. Minor Amendment—Construction and Operation Public Water Supply.

Applicant	Borough of Shinglehouse
Township or Borough	Shinglehouse Borough
County	Potter
Responsible Official	Deb Resig, Secretary Borough of Shinglehouse P. O. Box 156 Shinglehouse, PA 16748
Type of Facility	Public Water Supply—Construction and Operation
Consulting Engineer	Herman Rossi, P. E. Northwest Engineering, Inc. P. O. Box Q Tidioute, PA 16351
Permit Issued Date	3/31/2005
Description of Action	Rehabilitation and operation of Well Nos. 2 and 3.

Permit No. 1404501—Construction Public Water Supply.

Applicant	Orchard Creek Partnership
[Township or Borough]	Benner Township
County	Centre
Responsible Official	Louis Glantz, President Orchard Creek Partnership 1901 East College Avenue State College, PA 16801
Type of Facility	Public Water Supply—Construction
Consulting Engineer	Brooks D Harris, P. E. ELA Group, Inc. 2013 Sandy Drive, Suite 103 State College, PA 16803
Permit Issued Date	3/31/2005
Description of Action	Construction of a new source of supply, Opequon Well No. 1 and distribution system to serve the Opequon Hill Subdivision. Disinfection, sequestration and finished water storage will be provided through the existing Hampton Hills Subdivision Public Water Supply.

Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Operations Permit issued to: **Erie Water Works**, 340 West Bayfront Parkway, Erie, PA 16507, PWSID 6250028, Harborscreek Township, **Erie County**, on March 31, 2005, for the operation of the Iroquois Avenue 1.5 MG Water Storage Tank, as approved under Construction Permit No. 2592503-MA5.

Operations Permit issued to: **Erie Water Works**, 340 West Bayfront Parkway, Erie, PA 16507, PWSID 6250028, Lawrence Park Township, **Erie County**, on March 31,

2005, for the operation of East Lake Road Pump Station upgrades, as approved under Construction Permit No. 2592503-MA6.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20a)

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Warriors Mark Township	P. O. Box 114 Warriors Mark, PA 16877	Huntingdon

Plan Description: The approved plan provides for the subdivision of two commercial lots at Durbin Farms (Arnold Stott) using on-lot sewage disposal and a public water supply. 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 or authority as appropriate.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Warriors Mark Township	P. O. Box 114 Warriors Mark, PA 16877	Huntingdon

Plan Description: The approved plan provides for the development of Elizabeth Acres Subdivision into 15 single family residential lots with on-lot sewage disposal systems and public water supply. 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 or authority as appropriate.

**LAND RECYCLING AND
ENVIRONMENTAL REMEDIATION**

UNDER ACT 2, 1995

PREAMBLE 2

The following plans and 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 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 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. Submission of plans and reports, other than the final report, shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. 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. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the Environmental Cleanup Program manager in the Department regional office after which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Former Yarway Corporation, Whitpain Township, **Montgomery County**. Richard D. Trimpi, Trimpi Associates, Inc., 1635 Old Plains Rd., Pennsburg, PA 18073 on behalf of Christine Hirschbuhl, BET Investments, 2600 Philmont Ave., Suite 212, Huntingdon Valley, PA has submitted a Final Report concerning remediation of site soil and groundwater contaminated with chlorinated solvents, other organics. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Atglen Quarry, West Sadsbury Township, **Chester County**. James P. Cinelli, P. E., Liberty Environmental Inc., 10 N. 5th St., Suite 800, Reading, PA 19601 on behalf of Joanne Folgias, Estate of Charles Butera, 313 Brandon Rd., Norristown, PA 19403 has submitted a Final Report concerning remediation of site groundwater contaminated with leaded gasoline. 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.

Lisetski Residence, Palmer Township, **Northampton County**. Richard Trimpi, CHMM, P. G., Trimpi Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073 has submitted a Final Report (on behalf of his client, Tom Lisetski, Dalton Street, Easton, PA 18045) concerning the remediation of soils found to have been impacted by fuel oil No. 2. The report was submitted to document attainment of the residential Statewide health soil standard. A Notice of Intent to Remediate was simultaneously submitted.

Pugliese Residence, Palmer Township, **Northampton County**. Richard Trimpi, CHMM, P. G., Trimpi Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073 has submitted a Final Report (on behalf of his client, Nick Pugliese, Dalton Street, Easton, PA 18045) concerning the remediation of soils found to have been impacted by fuel oil No. 2. The report was submitted to

document attainment of the residential Statewide health soil standard. A Notice of Intent to Remediate was simultaneously submitted.

Karp Residence, Palmer Township, **Northampton County**. Richard Trimpi, CHMM, P. G., Trimpi Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073 has submitted a Final Report (on behalf of his client, Fred Karp, Dalton Street, Easton, PA 18045) concerning the remediation of soils found to have been impacted by fuel oil No. 2. The report was submitted to document attainment of the residential Statewide health soil standard. A Notice of Intent to Remediate was simultaneously submitted.

Oakum Residence, Borough of Girardville, **Schuylkill County**. Natalie Hsueh, Project Engineer, React Environmental Services, Inc., 6901 Kingsessing Avenue, Philadelphia, PA 19142 has submitted a Final Report (on behalf of her client, Thomas Oakum, South John Street, Girardville, PA 17935) concerning the remediation of soil and/or groundwater found or suspected to have been contaminated by No. 2 fuel oil. The report was submitted to document attainment of the Statewide health standard.

SMJ&J Fuel Oil Release (Aerni and Hitzel Fuel, Inc., 190 Industrial Drive North), Williams Township, **Northampton County**. John P. Mihalich, P. G., Principal Geologist, MACTEC Engineering and Consulting, 5205 Militia Hill Road, Plymouth Meeting, PA 19462 has submitted a Final Report (on behalf of his client, SMJ&J, Inc., c/o Howard Bock, 1810 Columbia Avenue, Building 19, Folcroft, PA 19032) concerning the remediation of soil and/or groundwater found or suspected to have been contaminated by No. 2 fuel oil. The report was submitted to document attainment of the Statewide health standard.

Stroudsburg Industrial Park—Northeast Corner, Borough of Stroudsburg, **Monroe County**. Joseph McNally, GeoServices, Ltd., 1525 Cedar Cliff Drive, Camp Hill, PA 17011 has submitted a combined Remedial Investigation Report and Final Report (on behalf of his client, Marc Taub, Stroudsburg Park Associates, LP, 14 Springhill Rd., Randolph, NJ 17869) concerning the remediation of soils found to have been impacted by chlorinated solvents as the result of historic operations. The report was submitted to document attainment of a site-specific soil standard.

Former Penn Linen & Uniform Services/Cintas Corporation, City of Bethlehem, **Lehigh County**. Marco Odah, EnviroRemedy International, 10100 W. 87th Street, Suite 204, Overland Park, KS 66212 has submitted a Final Report (on behalf of his client, Cintas Corporation, 27 Whitney Drive, Milford, OH 45150) concerning the remediation of site groundwater found to be contaminated with tetrachloroethene. The report was submitted to document attainment of the nonresidential, nonuse aquifer Statewide health standard. A Notice of Intent to Remediate was simultaneously submitted.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.

McCloskey Residence, City of Lock Haven, **Clinton County**. Chambers Environmental Group, Inc., 629 East Rolling Ridge Drive, Bellefonte, PA 16823 has submitted a Final Report concerning soil contaminated with Fuel Oil No. 1. This Final Report is intended to demonstrate attainment of the Statewide Health Standard for soils.

Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Stackpole Center Industrial Site Northeast Area, City of St. Marys, **Elk County**. Joshua D. Marvil,

Emsource St. Marys LLC, 111 Commercial St., Suite 400, Portland, ME 04101 has submitted a Final Report concerning remediation of site Soil and Groundwater contaminated with Trichlorethene, 1,2-dichlorethene and 1,2-dichlorethane and vinyl chloride, Cadmium, Nickel and Lead. The report is intended to document remediation of the site to meet the Site-Specific Standards. This is a correction of the notice published at 35 Pa.B. 2167 (April 19, 2005).

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), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of 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. 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. 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. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. 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 before 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. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Eastern Generator Sales and Svc., City of Chester, Delaware County. Samuel Kucia, Environmental Consulting, Inc., 500 E. Washington St., Norristown, PA 19401 on behalf of David Mattocks, Eastern Generator Sales and Svc., 304 Baltimore Ave., Folcroft, PA 19032 has submitted a Final Report concerning the remediation of site soil contaminated with no. 4, no. 5 and no. 6 fuel oil. The Final report demonstrated attainment of the Statewide Health Standard and was approved by the Department on March 28, 2005.

1042 Washington Crossing Road Site, Upper Makefield Township, Bucks County. Richard Werner, Environmental Consulting, Inc., 500 E. Washington St. Suite 375, Norristown, PA 19401 has submitted a Final Report concerning the remediation of site soil contaminated with No. 2 fuel oil. The report was submitted within 90 days of the release and is intended to demonstrate attainment of the Statewide Health Standard and was approved by the Department on March 22, 2005.

225-300 Washington St., Prop., Conshohocken Borough, Montgomery County. Michael Gonshor, P. G., Roux Assoc. on behalf of Scott Backer, Washington St. Assoc., II, LP has submitted a Final Report concerning the remediation of site soil contaminated with PAH, PB and VOCs. The Final report demonstrated attainment of the Special Industrial Area Standard and was approved by the Department on March 28, 2005.

Chen Prop., Limerick Township, Montgomery County. Greg Van Hook, INTEX Env. Group, Inc., 6205 Easton Rd., Pipersville, PA 19468 on behalf of Wu Chen, 26 W. Ridge Pike Limerick, PA 19468 has submitted a Final Report concerning the remediation of site groundwater contaminated with MTBE. The Final report demonstrated attainment of the Background Standard and was approved by the Department on March 31, 2005.

Northeast Region: Joseph A. Brogna, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

The Preserve at College Hill, Forks Township, Northampton County. David Farrington, P. G., W.B. Satterthwaite Associates, Inc. 720 Old Fern Hill Road, West Chester, PA 19380 submitted a Final Report (on behalf of his client, Jack Calahan, Jack Calahan, Inc., P. O. Box 1511, Bethlehem, PA 18016-1511) concerning the remediation of soils on Lots 1, 2 and 4 found or suspected to have been impacted by inorganic arsenic and lead as the result of historic orchard farming. The report documented attainment of the residential statewide health soil standard and was approved on March 28, 2005.

Former Penn Linen & Uniform Services/Cintas Corporation, City of Bethlehem, Lehigh County. Marco Odah, EnviroRemedy International, 10100 W. 87th Street, Suite 204, Overland Park, KS 66212 submitted a Final Report (on behalf of his client, Cintas Corporation, 27 Whitney Drive, Milford, OH 45150) concerning the remediation of site groundwater found to be contaminated with tetrachloroethene. The report documented attainment of the nonresidential, nonuse aquifer Statewide Health Standard and was approved on March 21, 2005.

Former Rossville Chromatex, Borough of West Hazleton, Luzerne County. Thomas Hippensteal, P. G.,

Mid-Atlantic Associates, P. O. Box 1128, North Wales, PA 19454, submitted a Final Report (on behalf of his client, Kenneth Ludwig, Vice President, Culp, Inc., P. O. Box 2686, High Point, NC 27261) concerning the remediation of site soil and/or groundwater found or suspected to have been contaminated with No. 2 fuel oil constituents. The report demonstrated attainment of the Statewide Health Standard and was approved on March 11, 2005.

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

Sanford Motors, Inc., 1307 S. Pennsylvania Avenue, Morrisville, PA 19067. License No. PA-AH S178. Effective March 1, 2005.

Nortru, Inc., 1701 E. Matzinger Road, Toledo, OH 43612. License No. PA-AH 0451. Effective March 17, 2005.

Republic Environmental Systems, 21 Church Road, Hatfield, PA 19440. License No. PA-AH 0317. Effective March 21, 2005.

Hukill Chemical Corporation, 7013 Krick Road, Bedford, OH 44146. License No. PA-AH 0625. Effective March 22, 2005.

Select Transportation, Inc., 5055 Nike Drive, Hilliar, OH 43026. License No. PA-AH 0469. Effective March 25, 2005.

Hazardous Waste Transporter License Voluntarily Terminated

First Choice Logistics, Inc., 2320 West 167 Street, Markham, IL 60426. License No. PA-AH 0433. Effective March 01, 2005.

INFECTIOUS AND CHEMOTHERAPEUTIC WASTE TRANSPORTER LICENSE

Actions on applications for Infectious and Chemotherapeutic Waste Transporter License received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the act of July 13, 1988 (P. L. 525, No. 93) (35 P. S. §§ 6019.1—6019.6) 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.

Infectious and Chemotherapeutic Waste Transporter License Renewed

Stericycle, Inc., 1525 Chestnut Hill Road, Morgantown, PA 19543. License No. PA-HC 0196. Effective March 25, 2005.

DETERMINATION OF APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

Determination of Applicability for General Permit 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 Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and/or 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.

General Permit No. WMGR065D001. Lehigh Valley Industrial Park Inc., Suite 160, 100 Brodhead Road, Bethlehem, PA 18017. General Permit No. WMGR065D001 for beneficial use, in the Northeast Region, of various wastes from steelmaking and foundry operations taken from a remediation site owned by the permittee as construction fill at an adjacent Act 2 remediation site, also owned by the permittee. Only beneficial use of the following types of residual wastes is authorized under General Permit No. WMGR065D001: refractories, foundry sands, slags, air emission control solids and the media associated with their excavation. The permit was reissued by Central Office on April 1, 2005.

Persons interested in reviewing the general permit 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.

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.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

GP1-21-05044: Dairy Farmers of America (4825 Gettysburg Road, Mechanicsburg, PA 17055) on March 30, 2005, to operate a small gas and No. 2 oil fired combustion units under GP1 in Lower Allen Township, Cumberland County.

GP4-67-03088: Tekgard, Inc. (1760 Toronita Street, York, PA 17402) on March 31, 2005, to operate natural gas-fired burn off oven under the BAQ-GPA/GP-4 in Manchester Township, York 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, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.

15-0041A: Eastern Shore Natural Gas Co. (604 St. Road, Cochranville, PA 19330) on March 29, 2005, to operate a natural gas compressor station in Londonberry Township, Chester County.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejksznier, New Source Review Chief, (570) 826-2531.

40-320-025: Prime Time Rewind, Inc. (R. R. 1, Box 350 D, Harvey's Lake, PA 18618) on March 22, 2005, to construct a heat-set web offset printing press and dryer and the associated air cleaning device at their facility in Hanover Township, **Luzerne County**.

48-313-093: Polymer Products Co., Inc. (100 Station Avenue, P. O. Box 98, Stockertown, PA 18083) on March 29, 2005, to install an air cleaning device to collect emissions from an existing plastic compounding process at their facility in Stockertown Borough, **Northampton County**.

66-315-045: The Procter and Gamble Paper Products Co. (P. O. Box 32, Mehoopany, PA 18629) on March 28, 2005, to modify the Building 11 East baghouse for the baby care processes at their facility in Washington Township, **Wyoming County**.

40-318-053: Certainteed Corp. (1220 Oak Hill Road, Crestwood Industrial Park, Mountaintop, PA 18707) on March 23, 2005, to modify the marking ink process at their facility in Wright Township, **Luzerne County**.

66-303-007: Wyoming Asphalt—Reading Materials (P. O. Box 1467, Skippack, PA 19474) on March 23, 2005, to modify the batch asphalt plant to utilize recycled asphalt pavement in the mix at their facility in Eaton Township, **Wyoming County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

38-05031A: Supreme Mid Atlantic Corp. (P. O. Box 779, 411 Jonestown Road, Jonestown, PA 17038) on March 31, 2005, to install additional parts coating lines at a newly acquired adjacent and contiguous building within Plant No. 1 in Union Township, **Lebanon County**.

67-05007A: Adhesives Research, Inc. (P. O. Box 100, Glen Rock, PA 17327) on March 31, 2005, to modify their adhesive coating facility in Springfield Township, **York County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.

41-00010E: Andritz, Inc. (35 Sherman Street, Muncy, PA 17756) on March 15, 2005, to construct two 1,000 pound capacity iron and steel foundry electric induction melting furnaces and associated air cleaning device (a fabric collector) in Muncy Borough and Muncy Creek Township, **Lycoming County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; William Charlton, New Source Review Chief, (412) 442-4174.

63-00922A: Robinson Power Co., LLC (P. O. Box 127, 563 Route 18, Burgettstown, PA 15021) on April 1, 2005, to construct a 272 mW Electric Generating Station in Burgettstown Borough, **Washington County**. Robinson Power will use circulating fluidized bed boiler technology and will burn bituminous waste coal from the adjacent Champion Processing, Inc. refuse pile. The proposed facility will be equipped with state-of-the-art pollution control equipment as determined through a Best Available Control Technology analysis and Lowest Achievable Emission Rate analysis. Robinson Power will employ Selective Non-Catalytic Reduction to reduce NOx emissions by approximately 75%. Sulfur Dioxide emissions will be controlled with Limestone Injection and be reduced by at least 97%. Particulate Matter emissions and

Metals will be controlled by a baghouse and are expected to be reduced by as much as 99.9%.

11-00513A: Cambria Coke Co. (1111 Northshore Drive, Landmark Tower N-600, Knoxville, TN 37919) on April 4, 2005, to construct the Cambria Coke Plant in Cambria Township, **Cambria County**. Using a nonrecovery coke battery design, the facility is designed to process 2.55 million tons of wet (6%) coal into 1.7 tons of metallurgical coke, and generate a peak of 165 mW of electricity from the waste gases. On a 12-month rolling average basis, allowable emissions are established 535.7 tons PM, 390 tons PM10 (filterable only), 3,661.0 tons SO₂, 3,74.2 tons CO, 48.5 tons VOC, 8.4 tons total HAPs, 0.37 tons lead and 0.0235 ton mercury.

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, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.

15-0090A: National Service Industries (1420 Peachtree Steet NE, Atlanta, GA 30309) on March 30, 2005, to operate a flexographic and offset press in Uwchlan Township, **Chester County**.

23-0063A: Department of Corrections (500 East 4th Street, Chester, PA 19013) on March 31, 2005, to operate a boiler in City of Chester, **Delaware County**.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejksner, New Source Review Chief, (570) 826-2531.

35-399-038: Flexible Foam Products, Inc. (P. O. Box 124, Spencerville, OH 45887) on March 30, 2005, to construct polyurethane foam production lines at their facility in Archbald Borough, **Lackawanna County**. The Plan Approval has been extended.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

29-03007A: Mellott Wood Preserving Company, Inc. (1398 Sawmill Road, P. O. Box 209, Needmore, PA 17238) on April 1, 2005, to install a wood-fired boiler at their facility in Belfast Township, **Fulton County**. This facility is subject to 40 CFR Part 60, Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Stream Generating Units. This plan approval was extended.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.

55-318-010: Schreck's Painting (P. O. Box 6, Mt. Pleasant Mills, PA 17853) on March 29, 2005, to authorize the emission of 5.6 tons of volatile organic compounds per 12 consecutive month period from a modular/mobile home wood parts surface coating operation, rather than 5.0 tons, and the usage of 260 gallons of acetone per 12 consecutive month period, rather than 65 gallons, in Perry Township, **Snyder County**.

18-301-009: Moriarty-Dutcavich Funeral Home (112 East Church Street, Lock Haven, PA 17745) on March 29, 2005, to operate a human remains crematory incinerator in the City of Lock Haven, **Clinton County**. The plan approval has been extended.

60-310-006A: Eastern Industries, Inc. (P. O. Box 177, Winfield, PA 17889) on March 31, 2005, to operate a drum mix asphalt plant and associated air cleaning device (a fabric collector) on a temporary basis until July 29, 2005, in Buffalo Township, **Union County**. The plan approval has been extended.

17-305-020A: Junior Coal Contracting, Inc. (2330 Six Mile Road, Philipsburg, PA 16866) on April 1, 2005, to operate a coal processing plant on a temporary basis to July 30, 2005, at the Leslie Tipple in Decatur Township, **Clearfield County**. This plan approval has been extended.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; William Charlton, New Source Review Chief, (412) 442-4174.

11-00051A: Quaker Sales Corp. (P. O. Box 880, Johnstown, PA 15907) on April 1, 2005, to complete the approved plant modifications and complete stack testing at their Johnstown Plant in West Taylor Township, **Cambria County**. This plan approval was extended.

11-506A: Ebensburg Power Co. (P. O. Box 845, 2840 New Germany Road, Ebensburg, PA 15931) on March 30, 2005, to complete construction of their site at the Nanty Glo West Refuse Site in Nanty Glo Borough, **Cambria County**. This plan approval was extended.

65-302-071: Koppers Industries, Inc. (436 Seventh Avenue, Pittsburgh, PA 15219) on April 1, 2005, at the Monessen Coke Works Facility in Monessen, **Westmoreland County**. This plan approval was extended.

11-00508A: Johnstown Crematory (146 Chandler Avenue, Johnstown, PA 15906) on April 4, 2005, to complete initial operating permit inspection at their human crematory in Lower Yoder Township, **Cambria County**. This plan approval was extended.

Title V Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

67-05022: Leisters Furniture, Inc. (433 Ridge Avenue, Hanover, PA 17331-9512) on April 4, 2005, to operate a wood furniture manufacturing facility in Hanover Borough, **York County**. This is a renewal of the Title V Operating Permit.

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, 2 East Main Street, Norristown, PA 19401; Edward Jurdon Brown, Facilities Permitting Chief, (484) 250-5920.

09-00034: Penn Protective Coatings Corp. (474-C Pike Road, Huntingdon Valley, PA 19006) on March 30, 2005, to operate a Synthetic Minor Operating Permit in Lower Southampton Township, **Bucks County**.

15-00044: Sunoco Partners Marketing and Terminal L.P. (1801 Market Street 15/10 PC, Philadelphia, PA 19103) on March 30, 2005, to operate a Synthetic Minor Operating Permit in West Whiteland Township, **Chester County**.

46-00056: Hale Prod Inc. (700 Spring Mill Avenue, Conshohocken, PA 19428) on March 4, 2005, to operate a Synthetic Minor Operating Permit in Conshohocken Borough, **Montgomery County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

07-05021: Albermarle Corp. (2 Adams Avenue, Tyrone, PA 16686) on March 30, 2005, for their specialty chemical plant in Tyrone Borough, **Blair County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.

41-00027: Muncy Valley Hospital (Divine Providence Hospital, 1100 Grampian Boulevard, Williamsport, PA 17701) on March 1, 2005, to operate a hospital in Muncy Creek Township, **Lycoming County**.

41-00024: Divine Providence Hospital (1100 Grampian Boulevard, Williamsport, PA 17701) on March 29, 2005, to operate their hospital in the City of Williamsport, **Lycoming County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, (412) 442-4174.

63-00909: GE Ionics, Inc. (P. O. Box 99, Bridgeville, PA, 15017) on March 29, 2005, to operate a sandblasting and surface coating operation of metal parts and associated equipment at their Canonsburg Plant located in **Washington County**.

30-00086: Golden Eagle Construction Co. (P. O. Box 945, Uniontown, PA, 15401) on February 25, 2005, to include major sources of emissions which are a rotary dryer, a batch mix asphalt plant and an asphalt cement storage tank at their Carmichaels Plant in Franklin Township, **Green County**.

65-00601: Marsh Asphalt, Inc. (P. O. Box 1125, Uniontown, PA, 15401) on March 30, 2005, to include the facility's major sources of emissions, a rotary dryer, a batch mix asphalt plant, an asphalt cement storage tank and aggregate handling at their Belle Vernon Plant in Rostraver Township, **Westmoreland County**.

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.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdon Brown, Facilities Permitting Chief, (484) 250-5920.

15-0104: Tasty Baking Oxford, Inc. (700 Lincoln Ave, Oxford, PA 19363) on March 4, 2005, to amend the VOC/NOx RACT in Oxford Borough, **Chester County**.

09-00046: RJM Manufacturing, Inc. d/b/a Taratape (250 Canal Road, Fairless Hills, PA 19030) on March 30, 2005, for an Administrative Amendment to Title V Operating Permit No. TVOP-09-00046 in Falls Township, **Bucks County**. The previously issued Title V Operating Permit has been amended to correct a typographical error in the expiration date. The amended Title V Operating Permit reflects the following changes:

The expiration date has been changed from January 31, 2005, to January 31, 2006.

The permit contact person has been changed to Tom J. Dodd, President, (215) 736-3644.

The Department telephone number at which to report a malfunction, as indicated in Condition No. 021, Section C, of the Title V Operating Permit, has been changed to (484) 250-5920.

Condition No. 031, Section C, of the Title V Operating Permit, has been moved to paragraph (a), Section G, of the Title V Operating Permit. As a result, Conditions Nos. 032 and 033, Section C, of the Title V Operating Permit, have been renumbered as Conditions Nos. 031 and 032, Section C, of the Title V Operating Permit, respectively.

Administrative amendment of Title V Operating Permit No. TVOP-09-00046 is issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code § 127.450.

46-00027: Johnson and Johnson Pharmaceutical Research and Development, LLC (Welsh and McKean Roads, Spring House, PA 19477) on March 30, 2005, to amend the operation of a facility Title V Operating Permit in Lower Gwynedd Township, **Montgomery County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, (412) 442-4174.

63-00886: All-Clad Metalcrafters LLC (424 Morganza Road, Canonsburg, PA 15317-5707) on March 24, 2005, to allow for an entity status change at Cannonsburg Plant in Cannonsburg Borough, **Washington 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); and 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

California District Mining Office: 25 Technology Drive, Coal Center, PA 15423, (724) 769-7100.

32971302. NPDES Permit No. PA0215040, Rosebud Mining Company (301 Market Street, Kittanning, PA 16201-9642), to revise the permit for the Dutch Run Mine in Washington and Armstrong Township, **Indiana County** to add underground permit and subsidence control plan area acres. Underground Acres Proposed 1229.0, SCP Acres Proposed 1229.9. No additional discharges. Permit issued April 1, 2005.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

56970105 and NPDES Permit No. PA0234630. Sherpa Mining Contractors, Inc., 337 Benny Road, Hooversville, PA 15936, surface mine permit renewal to conduct surface mining, coal refuse reprocessing and coal refuse disposal in Paint Township, **Somerset County**, affecting 171.0 acres. Receiving streams: UNT to/and Stonycreek River classified for the following uses: CWF for UNTs and TSF for Stonycreek. There are no potable water supply intakes within 10 miles downstream. Application received January 20, 2005. Permit issued: March 25, 2005.

Greensburg District Mining Office: R. R. 2, Box 603-C, Greensburg, PA 15601, (724) 925-5500.

63813210 and NPDES Permit No. PA0615129. Pennsylvania Coal Reclamation, Inc. (P. O. Box 136, 619 Millers Run Road, Cuddy, PA 15031). Renewal of a bituminous surface mine for continued mining and reclamation, located in Deemston Borough, **Washington County**, affecting 51.3 acres. Receiving stream: UNT to Ten Mile Creek. Renewal application received: January 6, 2005. Permit issued: March 29, 2005.

26980104. Gary Gioia Coal Company (319 Karen Drive, Elizabeth, PA 15037). Renewal of a bituminous surface mine for commencement, operation and reclamation, located in Wharton Township, **Fayette County**, affecting 133.6 acres. Receiving stream: none. Renewal application received: February 7, 2005. Renewal permit issued: April 1, 2005.

04000101. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001). Renewal of a bituminous surface mine for reclamation only, located in Darlington Township, **Beaver County**, affecting 102.2 acres. Receiving stream: State Line Creek and UNT to North Fork of Little Beaver Creek. Renewal application received: January 7, 2005. Renewal permit issued: April 1, 2005.

Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191.

33030110 and NPDES Permit No. PA0242454. Hepburnia Coal Company (P. O. Box I, Grampian, PA 16838). Commencement, operation and restoration of a bituminous strip operation in Snyder Township, **Jefferson County** affecting 122.5 acres. Receiving streams: UNT to Little Toby Creek. Application received: December 3, 2003. Permit Issued: March 30, 2005.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

17930124 and NPDES Permit No. PA 0219649. Sky Haven Coal, Inc. (5510 State Park Road, Penfield, PA 15849), renewal of an existing bituminous surface mine-auger permit in Woodward and Decatur Townships, **Clearfield County** affecting 346 acres. Receiving streams: North Branch to Upper Organ Run, Upper Morgan Run to Clearfield Creek, Clearfield Creek to West Branch Susquehanna River; and Little Beaver Run to Beaver Run, Beaver Run to Moshannon Creek, Moshannon Creek to West Branch Susquehanna River. Application received: October 15, 2004. Permit issued: March 11, 2005.

17860135 and NPDES Permit No. PA 0115622. Strishock Coal Company (220 Hillcrest Drive, DuBois, PA 15801), renewal of an existing bituminous surface mine permit in Union, Brady and Sandy Townships, **Clearfield County** affecting 361.4 acres. Receiving streams: Laborde Branch, Sugarcamp Run to Luthersburg Branch to Laborde Branch, tributaries to Stony Run and Stony Run to Laborde Branch to Sandy

Lick Creek to Redbank Creek to the Allegheny River. Application received: November 18, 2004. Permit issued: March 7, 2005.

17940116 and NPDES Permit No. PA 0219908. AMFIRE Mining Company, LLC (One Energy Place, Latrobe, PA 15650), renewal of an existing bituminous surface mine permit in Penn Township, **Clearfield County** affecting 247 acres. Receiving stream: Poplar Run. Application received: November 17, 2004. Permit issued: March 7, 2005.

17040902 and NPDES Permit No. PA 0243752. Larry Fahr Coal Company (2062 Ashland Road, Osceola Mills, PA 16666). Commencement, operation and restoration of a bituminous surface mine permit in Decatur Township, **Clearfield County** affecting 11.9 acres. Receiving stream: Morgan Run. Application received: May 18, 2004. Permit issued: March 16, 2005.

17990104 and NPDES Permit No. PA 0238252. Sky Haven Coal, Inc. (5510 State Park Road, Penfield, PA 15849), renewal of an existing bituminous surface mine permit in Covington Township, **Clearfield County** affecting 66.1 acres. Receiving streams: UNT to Grimes Run, to Grimes Run. Application received: November 4, 2004. Permit issued: March 29, 2005.

Noncoal Permits Actions

Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191.

10030302 and PA0242462. Allegheny Mineral Corporation (P. O. Box 1022, Kittanning, PA 16201-5022). Revision to an existing limestone, sandstone and shale operation to include incidental coal extraction in Brady Township, **Butler County**. Receiving streams: UNTs to Big Run and Big Run. Application received: February 3, 2005. Permit issued: March 21, 2005.

16030302 and NPDES No. PA0242365. Quality Aggregates, Inc. (200 Neville Road, Neville Island, PA 15225-0347). Transfer of an existing bituminous strip operation from IA Construction Corporation in Richland Township, **Clarion County** affecting 129.5 acres. Receiving streams: Two UNTs to Turkey Run and Turkey Run, and two UNTs to the Clarion River. Application received: January 13, 2005. Permit issued: March 25, 2005.

Pottsville District Mining Office: 5 W. Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.

40040301. Airport Sand & Gravel Company, Inc. (500 Swetland Lane, West Wyoming, PA 18644), commencement, operation and restoration of a quarry operation in Duryea Borough, **Luzerne County** affecting 75.0 acres, receiving stream: none. Application received: July 23, 2004. Permit issued March 31, 2005.

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. 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.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

31054001. Stone Valley Construction, Inc., P. O. Box 369, Pine Grove Mills, PA 16868. Construction blasting. Excavation for Chicken Barn—Mike Yoder property, Jack-

son Township, **Huntingdon County**. Duration of blasting—90 days. Permit issued March 29, 2005.

Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191, (814) 797-1191.

33054002. Glenn O. Hawbaker, Inc. (P. O. Box 135, State College, PA 16803). Blasting activity permit to blast for road construction in Washington Township, **Jefferson County**. This blasting activity permit will expire March 28, 2006. Application received: March 14, 2005. Application Issued: March 28, 2005.

Pottsville District Mining Office: 5 W. Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.

21054115. Brubacher Excavating, Inc. (P. O. Box 528, Bowmansville, PA 17507), construction blasting for Carlisle Elementary School in North Middleton Township, **Cumberland County** with an expiration date of March 18, 2006. Permit issued March 25, 2005.

46054106. Brubacher Excavating, Inc. (P. O. Box 528, Bowmansville, PA 17507), construction blasting for Belmont Estates in Franconia Township, **Montgomery County** with an expiration date of March 31, 2006. Permit issued March 25, 2005.

21054003. Warren's Excavating & Drilling, Inc. (P. O. Box 189, Bowmansville, PA 17507-0189), construction blasting at Southfield Crossing in Silver Spring Township, **Cumberland County** with an expiration date of March 31, 2006. Permit issued March 28, 2005.

21054004. Warren's Excavating & Drilling, Inc. (P. O. Box 189, Bowmansville, PA 17507-1089), construction blasting at Farmington in South Middleton Township, **Cumberland County** with an expiration date of March 31, 2006. Permit issued March 28, 2005.

67054007. Warren's Excavating & Drilling, Inc. (P. O. Box 189, Bowmansville, PA 17507-0189), construction blasting at Glenbrook in Fairview Township, **York County** with an expiration date of March 31, 2006. Permit issued March 28, 2005.

67054008. ABEL Construction Co., Inc. (3925 Columbia Avenue, Mountville, PA 17554) and **J. Roy's, Inc.,** (935 Stone Hill Road, Denver, PA 17517), construction blasting at Ashley Farms Phase 3 in Dover Township, **York County** with an expiration date of October 31, 2005. Permit issued March 28, 2005.

21054117. Douglas Explosives, Inc. (P. O. Box 77, Philipsburg, PA 16866), construction blasting for Logisticenter at Carlisle in North Middleton Township, **Cumberland County** with an expiration date of April 4, 2006. Permit issued March 30, 2005.

36054007. Warren's Excavating & Drilling, Inc. (P. O. Box 189, Bowmansville, PA 17507-0189), construction blasting at The Crossings at Rocky Springs in West Lampeter Township, **Lancaster County** with an expiration date of April 30, 2006. Permit issued March 30, 2005.

15054106. Brubacher Excavating, Inc. (P. O. Box 528, Bowmansville, PA 17507), construction blasting for Morris Farms in Sadsbury Township, **Chester County** with an expiration date of April 1, 2006. Permit issued March 31, 2005.

39054003. AMROC (7531 Chestnut Street, Zionsville, PA 18092), construction blasting at Scheidy's Estates in Whitehall Township, **Lehigh County** with an expiration date of April 30, 2006. Permit issued March 31, 2005.

67054104. TJ Angelozzi, Inc. (7845 Kabik Court, Woodbine, MD 21797), construction blasting for Kendale

Heights in Red Lion Borough, **York County** with an expiration date of March 25, 2006. Permit issued April 1, 2005.

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).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation 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.

Persons aggrieved by an action 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 should 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 decision law.

For individuals who wish to challenge an 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 §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).

Permits, Environmental Assessments and 401 Water Quality Certifications Issued

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes Barre, PA 18711-0790.

E58-259. Great Bend Township, P.O. Box 781, Great Bend, PA 18821. Great Bend Township, **Susquehanna County**, Army Corps of Engineers Baltimore District.

To construct and maintain approximately 70 linear feet of rock bank protection along the right bank of a tributary to Salt Lick Creek (HQ-CWF), for the purpose of

stabilizing the adjoining roadway. The bank protection consists of stacked derrick stones at the base (height of approximately 10 feet) and riprap for the upper portion (at a slope of 1.5 H: 1V). The project is located along T-747 (Graham Hollow Road), approximately 0.5 mile west of the intersection of T-747 and T-821 (Great Bend, PA-NY Quadrangle N: 8.95 inches; W: 16.2 inches). (Subbasin: 04E)

E64-251. John and Mary Ann Sorrentino, 85-76 87th Street, Woodhaven, NY 11421. Lake Township, **Wayne County**, Army Corps of Engineers Philadelphia District.

To maintain fill that was placed in 0.11 acre of (PSS, PFO) wetlands for the purpose of constructing a residential driveway, garage and walkway. The permittee is required to provide 0.22 acre of replacement wetlands. The project is located on the west side of Beyea Pond, along Chivers Road (T-372) (Lake Ariel, PA Quadrangle N: 12.4 inches; W: 5.2 inches). (Subbasin: 01C).

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

E14-469. Department of Transportation, Engineering District 2-0, 1924-30 Daisy Street Extension, P.O. Box 342, Clearfield, PA 16830, Bridge Replacement in Gregg Township, **Centre County**, ACOE Baltimore District (Spring Mills, PA Quadrangle N: 16.90 inches; W: 4.38 inches).

To: 1) remove the existing single span steel I-beam structure which has a timber deck and masonry stone abutments. The existing bridge has a normal clear span of 8 feet, 6 inches, a roadway width of 24 feet, a maximum underclearance of 2 feet 8.5 inches; 2) construct and maintain a precast concrete box culvert with 6 feet 8 inch long fish baffles depressed 1 foot in the streambed with a clear span of 10.64 feet on a skew of 70 degrees with a minimum underclearance of 4 feet with maximum side slopes of 1 to 1 and a waterway opening of about 30 square feet with inlet concrete wingwalls and about 100 square feet of inlet and outlet protection rip-rap; and 3) construct and maintain a R-5 riprap outlet lined stream channel about 140 feet long by 3 feet wide and a temporary stream diversion pipe 48 inch diameter minimum by 120 lineal feet. The project is located on SR 2012 about 3 miles from the intersection of SR 45 with SR 2012 in Gregg Township, Centre County. The project will not impact wetlands while impacting about 190 feet of stream. Spruce Run is a CWF Stream. This permit was issued under Section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E17-406. Huston Township, P.O. Box 38, Penfield, PA 15849-0038, Munn Road Bridge Replacement in Huston Township, **Clearfield County**, ACOE Baltimore District (Penfield, PA Quadrangle N: 12.8 inches; W: 12.1 inches).

To remove the existing structure and construct, operate and maintain a single span prestressed concrete box beam bridge to carry Munn Road (T-786) across Bennetts Branch, Sinnemahoning Creek for improved public access on Munn Road. The Munn Road Bridge shall be constructed with a minimum clear span of 45 feet, underclearance of 13 feet and a skew of 75 degrees. All construction and future repair work shall be conducted during stream low flow, and dry work conditions by dams and pumping or diverting stream flow around the work area. Since Bennetts Branch is a stock trout stream, no construction or future repair work shall be done in or along the stream channel between March 1 and June 15

without the prior written approval of the Fish and Boat Commission. The project is located along the eastern right-of-way of SR 0255 approximately 300 feet east of Woodward Road (T-407) and Munn Road (T-786) intersection. This permit also authorizes construction, operation, maintenance and removal of a temporary road crossing, stream diversions and cofferdams.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E02-1486. Penneco Oil Company, Inc., P. O. Box 300, 200 US Route 22, Delmont, PA 15626. To construct a bridge in Plum Borough, **Allegheny County**, Pittsburgh ACOE District. (New Kensington West, PA Quadrangle N: 0.5 inch; W: 1.77 inches and Latitude: 40° 30' 15"—Longitude: 79° 45' 30"). To construct and maintain a bridge having a span of 60.0 feet with an underclearance of 12.75 feet across the channel of an unnamed tributary to Little Plum Creek (WWF) for the purpose of providing

access to existing gas wells for maintenance purposes. The project is located on the east side of New Texas Road approximately 1,100 feet southeast from the intersection of Ross Hollow Road and New Texas Road and will impact 13.0 feet of stream channel.

ENVIRONMENTAL ASSESSMENTS

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

EA-06-006: Peter Yonavick, 98 Ridgeway Road, Birdsboro, PA 19508.

To regrade and stabilize 240 lineal feet of stream channel located within a previously breached impoundment area. The project consists of channel relocation; floodway grading; and rock toe protection within an UNT to the Schuylkill River (WWF) immediately east of Ridgeway Road (Reading, PA Quadrangle N: 8.0 inches; W: 3.5 inches) in Cumru Township, Berks County.

STORAGE TANKS

SITE-SPECIFIC INSTALLATION PERMITS

The following Storage Tank Site-Specific Installation Permits, under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 6021.504, 6021.1101—6021.1102) and under 25 Pa. Code Chapter 245, Subchapter C, have been issued by the Bureau of Land Recycling and Waste Management, Director, P. O. Box 8763, Harrisburg, PA 17105-8763.

SSIP

Permit No.	Applicant Name & Address	County	Municipality	Tank Type	Tank Capacity
05-67-05	Michael Salvo Pennsylvania-American Water West Shore Regional Water Treatment Plant 852 Wesley Drive Mechanicsburg, PA 17055-4475	York	Fairview Township	14 ASTs storing regulated substances	77,455 gallons

SPECIAL NOTICES

Certification to Perform Radon-Related Activities in this Commonwealth

During March 2005, the Department of Environmental Protection, under the Radon Certification Act (63 P. S. §§ 2001—2014) and regulations promulgated thereunder in 25 Pa. Code Chapter 240, has certified the following persons to perform radon-related activities in this Commonwealth. The period of certification is 2 years. For a complete list of persons currently certified to perform radon-related activities in this Commonwealth and for information as to the specific testing devices that persons certified for testing or laboratory are certified to use, contact the Bureau of Radiation Protection, Radon Division, P. O. Box 8469, Harrisburg, PA 17105-8469, (800) 23RADON.

Name	Address	Type of Certification
James Andrews	353 Loveville Road Warriors Mark, PA 16877	Mitigation
Willis Bortmas, III	301 Holyoke Road Butler, PA 16001	Mitigation
Jeffrey Calta	P. O. Box T Chicora, PA 16025	Mitigation
Keith Carpenter	124 Old Colony Drive Johnstown, PA 15904	Testing
Matthew Cooper	R. R. 2, Box 528 Athens, PA 18810	Testing
Curt DeWolf	1261 Surrey Road West Chester, PA 19382	Testing
Scott Fraunfelter	225 Brodt Road Bangor, PA 18013	Testing
Scott Hagan	78 Hamilton Drive Abbottstown, PA 17301	Testing

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
George Hart	21 Deerfield Drive Pequea, PA 17565	Testing
James Hetrick	766 Magaro Road Enola, PA 17025	Mitigation
Robert Hewlett	521 Hamilton Boulevard Freedom, PA 15042	Testing and Mitigation
Robert Hoffman	P. O. Box 91 Akron, PA 17501	Mitigation
Housing Inspection Services, Inc.	P. O. Box 373 Murrysville, PA 15668	Testing
Ludwig Kubli	1090 Aerie Drive North Huntingdon, PA 15642	Testing
Thomas Laurito	6006 Forest Drive Monaca, PA 15061	Testing
Randy Martin	P. O. Box 255 Mifflinburg, PA 17844	Testing
Daniel McGaffin	1218 Arrowood Drive Pittsburgh, PA 15243	Testing
Peter Weber	6 Boor Cove Lane West Grove, PA 19390	Testing
Jon Melvin	1024 Ledgeview Lane West Pittston, PA 18643	Testing
Anthony Mowrer	6107 Martin Road West Salem, OH 44287	Mitigation
Tuan Nguyen American Radon Solutions, Inc.	125 Brindle Road Mechanicsburg, PA 17055	Mitigation
Michael Nowicki	414 Manordale Road Pittsburgh, PA 15241	Mitigation
Thomas Previte, Jr.	R. D. 2, Box 17 Landisburg, PA 17040	Testing
Michele Raab Home Star Inspection Services, Inc.	1234 Herbert Road Meadowbrook, PA 19046	Testing
Steven Roscioli	263 Birch Drive Lafayette Hill, PA 19444	Testing
James Ruggles	R. R. 4, Box 4944 Honesdale, PA 18431	Testing
Keith Rutherford	5701 Cricket Lane Harrisburg, PA 17112	Testing
Sam Sain	248 East Lake Road Acme, PA 15610	Testing
Chris Willig	4 Theresa Drive Conestoga, PA 17516	Testing

SEWAGE FACILITIES ACT PLAN DISAPPROVAL

Plan Disapprovals Granted Under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20a)

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Woodward Township	101 Riverside Terrace Lock Haven, PA 17745	Clinton

Plan Description: On March 31, 2005, the Department of Environmental Protection (Department) issued an Administrative Order to Woodward Township Sewer Author-

ity (Authority), Woodward Township, Clinton County. The order was issued as a result of overflows of untreated sewage from manholes in the Authority's collection system. The order requires submission of a Corrective Action Plan to the Department under 25 Pa. Code § 94.21(a)(3) (relating to existing overload) and imposes a ban on new connections in accordance with 25 Pa. Code § 94.31 (relating to organic or hydraulic overload).

Concentrated Animal Feeding Operation NPDES Permit Public Hearing

Wide Awake Farms Inc., Bedford County

Southcentral Regional Office: Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.

PAS-10-0420. Wide Awake Farms Inc., 488 Jay Road in Monroe Township, **Bedford County.** Wide Awake Farms Inc. has submitted an application for an individual NPDES permit for a Concentrated Animal Feeding Operation (CAFO). The CAFO is situated near West Branch Sideling Hill Creek in Watershed 13-B, which is classified as Exceptional Value Waters.

The Department of Environmental Protection (Department) has conducted administrative and initial technical reviews of the application. The project has been developed to a point in which a final technical review can be completed in conjunction with comments received from the public.

The Department has scheduled a public hearing to receive testimony and comments on the proposed CAFO NPDES permit. The hearing will be held on Wednesday, May 25, 2005, at 7 p.m. at the Monroe Township Municipal Building, 247 Rock Hill Church Road, Clearville, PA 15535.

Persons intending to testify at the hearing should register by Friday, May 20, 2005, by calling John Repetz, (717) 705-4904. Persons wishing to submit testimony who cannot attend the hearing may do so in writing by Wednesday, June 1, 2005. Written comments should be sent to Brian Bailey, Project Manager, Water Management Program, Soils and Waterways Section, Department of Environmental Protection, Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.

All testimony should be to the point. Each individual will have up to 10 minutes for a presentation. To ensure that all speakers have a fair and equal opportunity to present their testimony, relinquishing of time will be prohibited. Further details relating to the procedures to be followed at the hearing will be outlined at the beginning of the proceedings.

The permit application is on file at the Bedford County Conservation District, 702 West Pitt Street, Fairlawn Court, Suite 4, Bedford, PA. An appointment to review the files may be scheduled by calling Jennifer Kovacs at (814) 623-6706, Ext. 4 between 9 a.m. and 4 p.m., Monday through Friday.

All comments received will be considered in formulating the Department's final determination regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the basis of the comment and the relevant facts upon which it is based.

Following the 30-day comment period and careful review of all comments received, the 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 the determination may be appealed to the Environmental Hearing Board.

[Pa.B. Doc. No. 05-719. Filed for public inspection April 15, 2005, 9:00 a.m.]

Availability of Technical Guidance

Technical guidance documents are on the Department of Environmental Protection's (Department) website: www.dep.state.pa.us (DEP Keyword: Participate). The "Current Inventory" heading is the Governor's list of nonregulatory guidance documents. The "Final Documents" heading is the link to a menu of the various

Department bureaus and from there to each bureau's final technical guidance documents. The "Draft Technical Guidance" heading is the link to the Department's draft technical guidance documents.

The Department will continue to revise its nonregulatory documents, as necessary, throughout 2005.

Ordering Paper Copies of Department Technical Guidance

The Department encourages the use of the Internet to view guidance documents. When this option is not available, persons can order a bound paper copy of the latest inventory or an unbound paper copy of any of the final documents listed on the inventory by calling the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. Check with the appropriate bureau for more information about the availability of a particular document as a publication.

Changes to Technical Guidance Documents

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number is listed with each document.

Draft Guidance—Substantive Revision

DEP ID: 361-0100-003. Title: Toxics Management Strategy. Description: This guidance provides for a coordinated and consistent Statewide process for dealing with the United States Environmental Protection Agency priority pollutants with known or suspected toxic impacts. Written Comments: Interested persons may submit written comments on draft technical guidance document #361-0100-003 by May 16, 2005. Comments submitted by facsimile will not be accepted. The Department will accept comments submitted by e-mail. A return name and address must be included in each e-mail transmission. Written comments should be submitted to Roger Musselman, Bureau of Water Supply and Wastewater Management, Rachel Carson State Office Building, 11th Floor, Harrisburg, PA 17105-8774, gmusselman@state.pa.us. Questions regarding the draft technical guidance document should be directed to Roger Musselman (717) 783-7416, gmusselman@state.pa.us. Contact: Roger Musselman, Bureau of Water Supply and Wastewater Management, (717) 783-7416.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 05-720. Filed for public inspection April 15, 2005, 9:00 a.m.]

Extension of Pennsylvania General NPDES Permit for Concentrated Animal Feeding Operations (PAG-12)

Under the authority of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and 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 1-year time extension of the terms of its current General NPDES Permit for Concentrated Animal Feeding Operations (PAG-12). The current general permit is scheduled to expire June 16, 2005. The terms of the current permit are extended until June 16, 2006. The extension will be effective on June 17, 2005, and shall expire June 16,

2006. The Department will continue to grant coverage under the existing general permit and enforce permit compliance in accordance with existing requirements until the general permit is reissued following the public review process.

The Department will redate and post on or before June 16, 2005, the current permit and associated documents (the Notice of Intent, instructions and Fact Sheet) on its website: www.dep.state.pa.us.

The extension permit documents package will continue to be available from the Department's Central Office and regional offices until it is replaced or updated.

The permit document package is on file at the Central Office of the Bureau of Watershed Management, Department of Environmental Protection, Bureau of Watershed Management, Rachel Carson State Office Building, 11th Floor, P. O. Box 8465, Harrisburg, PA 17105-8465, (717) 783-7577, tjuengst@state.pa.us. Copies of the packet are also available on the Department's website.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 05-721. Filed for public inspection April 15, 2005, 9:00 a.m.]

State Water Plan; Public Meetings and Hearings Schedule for May and August 2005

The Department of Environmental Protection (Department) announces the following series of combined public meetings and hearings scheduled for the six regional water resources committees as part of the development of the State Water Plan in accordance with the act of December 16, 2002 (P. L. 1776, No. 220). The purpose of the combined public meetings and hearings is to solicit input on water resources management and planning issues in each region prior to the drafting of the regional components of the State Water Plan. Notice is being given in accordance with 65 Pa.C.S. §§ 701—716 (relating to Sunshine Act).

Registration for the public meetings and hearing will begin at 5:30 p.m. Background information and presentations will be provided at 6 p.m. followed by an informal comments, questions and answers period and a formal hearing at 7:30 p.m., unless otherwise noted. The meeting dates and locations are as follows:

May 9, 2005
Ohio Regional Water Resources Committee
Seven Fields Community Center
380 Castle Creek Drive
Seven Fields, PA 16046

Questions concerning this meeting should be directed to Lori Mohr, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 787-4628, laumohr@state.pa.us.

May 10, 2005
Great Lakes Regional Water Resources Committee & Ohio Regional Water Resources Committee
Erie County Conservation District
1927 Wager Road
Erie, PA 16509

Questions concerning this meeting should be directed to Lori Mohr, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 787-4628, laumohr@state.pa.us.

May 12, 2005
Delaware Regional Water Resources Committee
Hearing begins at 8 p.m.
Montgomery County Community College Hall Student Cafeteria
Room 106
340 DeKalb Pike
Blue Bell, PA 19422

Questions concerning this meeting should be directed to Leslie Sarvis, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 772-5634, lsarvis@state.pa.us.

May 16, 2005
Lower Susquehanna Regional Water Resources Committee
Radisson Penn Harris Hotel & Convention Center
1150 Camp Hill Bypass
Camp Hill, PA 17011

Questions concerning this meeting should be directed to Leslie Sarvis, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 772-5634, lsarvis@state.pa.us.

May 19, 2005
Potomac Regional Water Resources Committee
Penn State Mont Alto Campus—Multi-Purpose Center
One Campus Drive
Mont Alto, PA 17237

Questions concerning this meeting should be directed to Lori Mohr, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 787-4628, laumohr@state.pa.us.

May 26, 2005
Upper/Middle Susquehanna Regional Water Resources Committee
Days Inn, Penn State
240 South Pugh Street
(College Avenue and Pugh Street)
State College, PA 16801

Questions concerning this meeting should be directed to Leslie Sarvis, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 772-5634, lsarvis@state.pa.us.

August 11, 2005
Delaware Regional Water Resources Committee
Hearing begins at 8 p.m.
PPL Wallenpaupack Environmental Learning Center
Route 6, 1/4 mile east of Route 590 Intersection
Hawley, PA 18428

Questions concerning this meeting should be directed to Leslie Sarvis, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 772-5634, lsarvis@state.pa.us.

August 18, 2005
Upper/Middle Susquehanna Regional Water Resources Committee
East Mountain Inn & Suites
2400 East End Boulevard—Route 115 (Exit 170A off I-81)
Wilkes-Barre, PA 18702

Questions concerning this meeting should be directed to Leslie Sarvis, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 772-5634, lsarvis@state.pa.us.

These schedules and an agenda for each meeting, including meeting materials, will be available, prior to the meeting, through the Public Participation Center on the Department's website at www.dep.state.pa.us (DEP Keyword: Participate).

Persons interested in providing oral testimony during the public hearing portion of the meeting to the regional committees pertaining to water resources planning issues in the basin may sign up in advance by contacting Karen Price (717) 787-4628, Kprice@state.pa.us. Persons giving oral testimony at the meeting must provide a written copy of their testimony to the Department by June 30, 2005.

Written testimony will be accepted from persons who do not wish to give oral testimony at the meeting. Written testimony must be submitted by June 30, 2005, to Leslie Sarvis, Department of Environmental Protection, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063.

Persons with a disability who require accommodations to attend a meeting should contact the Department at (717) 772-4785 or through the Pennsylvania AT&T Relay Services at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 05-722. Filed for public inspection April 15, 2005, 9:00 a.m.]

DEPARTMENT OF HEALTH

Application of Altoona Surgery Center, LLC for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Altoona Surgery Center, LLC has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards) which requires compliance with minimum standards contained in *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exemption from the following standard contained in this publication: 9.5.F3(c) (relating to recovery stations in major procedure rooms).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 listed previously.

Comments received by the Department within 10 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 the request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT: (717) 783-6154, for speech and/or hearing impaired

persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-723. Filed for public inspection April 15, 2005, 9:00 a.m.]

Application of Brookville Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Brookville Hospital has requested an exception to the requirements of 28 Pa. Code § 51.23 (relating to positron emission tomography).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 listed previously.

Comments received by the Department within 10 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 the Division at the previously listed address or phone number, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-724. Filed for public inspection April 15, 2005, 9:00 a.m.]

Application of Central Montgomery Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Central Montgomery Medical Center has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards) which requires compliance with minimum standards contained in *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exemption from the following standard contained in this publication: 10.15.D1 (relating to toilet room).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 listed previously.

Comments received by the Department within 10 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 the request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT: (717) 783-6154, for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-725. Filed for public inspection April 15, 2005, 9:00 a.m.]

Application of Frick Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Frick Hospital has requested an exception to the requirements of 28 Pa. Code § 127.32 (relating to written orders).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 listed previously.

Comments received by the Department within 10 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 the Division at the previously listed address or phone number, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-726. Filed for public inspection April 15, 2005, 9:00 a.m.]

Application of HealthSouth Rehabilitation Hospital of Greater Pittsburgh for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that HealthSouth Rehabilitation Hospital of Greater Pittsburgh has requested an exception to the requirements of 28 Pa. Code § 107.2 (relating to medical staff membership).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 listed previously.

Comments received by the Department within 10 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 the Division at the previously listed address or phone number, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-727. Filed for public inspection April 15, 2005, 9:00 a.m.]

Application of Latrobe Area Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Latrobe Area Hospital has requested an exception to the requirements of 28 Pa. Code § 127.32 (relating to written orders).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 listed previously.

Comments received by the Department within 10 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 the Division at the previously listed address or phone number, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-728. Filed for public inspection April 15, 2005, 9:00 a.m.]

Application of Millcreek Community Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Millcreek Community Hospital has requested an exception to the requirements of 28 Pa. Code § 107.32 (relating to meetings and attendance).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of

Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 listed previously.

Comments received by the Department within 10 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 the Division at the previously listed address or phone number, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-729. Filed for public inspection April 15, 2005, 9:00 a.m.]

Application of Milton S. Hershey Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Milton S. Hershey Medical Center has requested an exception to the requirements of 28 Pa. Code § 51.23 (relating to positron emission tomography).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 listed previously.

Comments received by the Department within 10 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 the Division at the previously listed address or phone number, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-730. Filed for public inspection April 15, 2005, 9:00 a.m.]

Application of Pocono Ambulatory Surgery Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives

notice that Pocono Ambulatory Surgery Center has requested an exception to the requirements of 28 Pa. Code § 551.21(d) (relating to criteria for ambulatory surgery).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 listed previously.

Comments received by the Department within 10 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 the Division at the previously listed address or phone number, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-731. Filed for public inspection April 15, 2005, 9:00 a.m.]

Application of Schuylkill Endoscopy Center, LLC for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Schuylkill Endoscopy Center, LLC has requested an exception to the requirements of 28 Pa. Code § 551.3 (relating to definitions).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 listed previously.

Comments received by the Department within 10 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 the Division at the previously listed address or phone number, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-732. Filed for public inspection April 15, 2005, 9:00 a.m.]

Application of UPMC Passavant for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that UPMC Passavant has requested an exception to the requirements of 28 Pa. Code § 51.23 (relating to positron emission tomography).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 listed previously.

Comments received by the Department within 10 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 the Division at the previously listed address or phone number, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-733. Filed for public inspection April 15, 2005, 9:00 a.m.]

Application of Westmoreland Regional Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Westmoreland Regional Hospital has requested an exception to the requirements of 28 Pa. Code § 127.32 (relating to written orders).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 listed previously.

Comments received by the Department within 10 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 the Division at the previously listed address or phone number, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-734. Filed for public inspection April 15, 2005, 9:00 a.m.]

Requests for Exception; Long-Term Care Nursing Facilities

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 201.3 (relating to definitions):

Colonial Manor Nursing Home
970 Colonial Avenue
York, PA 17403
FAC ID 033402

The following long-term care nursing facility is seeking an exception to 28 Pa. Code §§ 201.17 and 205.6(a) (relating to location; and function of building):

HealthSouth Transitional Rehabilitation Center
4950 Wilson Avenue
Mechanicsburg, PA 17055

The following long-term care nursing facility is seeking a temporary exception to 28 Pa. Code § 201.18(e) (relating to management):

Community Medical Center Transitional Care Unit
1800 Mulberry Street
Scranton, PA 18510
DSI # 0371

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.6(a):

Sugar Creek Station Skilled Nursing & Rehabilitation Complex
351 Causeway Drive
Franklin, PA 16323

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.10(b) (relating to doors):

Lackawanna County Health Care Center
Sturges Road
Olyphant, PA 18447
DSI # 1349

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 the Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 listed previously.

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 require an alternative format of this document or who wish to comment in an alternative format (for example, large print, audiotape or Braille) should contact the Division of Nursing Care Facilities at the address listed previously or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-735. Filed for public inspection April 15, 2005, 9:00 a.m.]

Requests for Exception to 28 Pa. Code § 551.21(i) to Perform Ambulatory Surgical Procedures Included on the List of Medicare Approved ASC Procedures

Under 28 Pa. Code § 51.33 (relating to requests for exception), the Department of Health (Department) gives notice that the following ambulatory surgical facilities are seeking an exception to 28 Pa. Code § 551.21(d) (relating to criteria for ambulatory surgery) to perform ambulatory surgical procedures included on the List of Medicare Approved ASC Procedures:

North East Surgery Center
Lebanon Outpatient Surgical Center
Childrens Hospital of Philadelphia ASC at Exton
Ambulatory Surgery Center at Bucks County
Evangelical Ambulatory Surgery Center
Surgical Center of York
Huntington Valley Surgery Center
Endoscopy Center of PA
Northwood Surgery Center
Village SurgiCenter
Carlisle Regional Surgery Center
Valley Surgery Center
Grandview Surgery and Laser Center
Hershey Outpatient Surgery Center
Healthsouth Surgery Center of Lancaster
Surgery Center of Pennsylvania, LLC

These requests are on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons with a disability who wish to obtain a copy of the request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the division at the previously listed address or phone number or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-736. Filed for public inspection April 15, 2005, 9:00 a.m.]

DEPARTMENT OF LABOR AND INDUSTRY

Application for Plan Approval and Permit for a Liquefied Petroleum Gas Facility

The Department of Labor and Industry (Department) publishes this notice of application under section 10 of the Propane and Liquefied Petroleum Gas Act (35 P.S. § 1329.10). The Department received an application for plan approval and permit from the following liquefied petroleum gas (LPG) facility: Duke Energy Field Services Inc., Midland Terminal, State Route 68, Industry, PA 15052.

The application is for a new LPG facility that is a truck shipping terminal, receiving LPG by pipeline from an existing pipeline. The facility will have 24 90,000-gallon

tanks used for storing 2.142 million gallons of propane. Two additional 90,000-gallon tanks will be used for interface fluids. According to the application, the facility will have loading docks for three transports and one unloading station. The facility will be available for loading 24 hours a day.

The due date for protests or comments concerning this application is 45 days after the date of publication. A party that fails to file a timely protest will be barred from any participation in the application process. However, a municipality or county may submit written comments within 45 days after the date of publication of this notice.

Written protests or written comments should be sent to Charles J. Sludden, Jr., Director, Bureau of Occupational and Industrial Safety, Department of Labor and Industry, 1629 Labor and Industry Building, Harrisburg, PA 17120.

STEPHEN M. SCHMERIN,
Secretary

[Pa.B. Doc. No. 05-737. Filed for public inspection April 15, 2005, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania Gold Rush '05 Instant Lottery Game

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Gold Rush '05.

2. *Price:* The price of a Pennsylvania Gold Rush '05 instant lottery game ticket is \$2.

3. *Play Symbols:* Each Pennsylvania Gold Rush '05 instant lottery game ticket will contain one play area featuring a "WINNING NUMBERS" area and a "YOUR NUMBERS" area. The play symbols and their captions located in the "WINNING NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN) and 16 (SIXTN). The play symbols and their captions located in the "YOUR NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN) and Gold Bar Symbol (GOLD BAR).

4. *Prize Symbols:* The prize symbols and their captions located in the "YOUR NUMBERS" area are: \$1.⁰⁰ (ONE DOL), \$2.⁰⁰ (TWO DOL), \$4.⁰⁰ (FOR DOL), \$5.⁰⁰ (FIV DOL), \$10.⁰⁰ (TEN DOL), \$20\$ (TWENTY), \$40\$ (FORTY), \$100 (ONE HUN), \$400 (FOR HUN), \$2,000 (TWO THO), \$10,000 (TEN THO) and \$20,000 (TWY THO).

5. *Prizes:* The prizes that can be won in this game are \$1, \$2, \$4, \$5, \$10, \$20, \$40, \$100, \$400, \$2,000, \$10,000 and \$20,000. A player can win up to 8 times on a ticket.

6. *Approximate Number of Tickets Printed for the Game:* Approximately 4,800,000 tickets will be printed for the Pennsylvania Gold Rush '05 instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the

"WINNING NUMBERS" play symbols and a prize symbol of \$20,000 (TWY THO) appears to the right of the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$20,000.

(b) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$10,000 (TEN THO) appears to the right of the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$10,000.

(c) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar Symbol (GOLD BAR), and a prize symbol of \$10,000 (TEN THO) appears to the right of the Gold Bar Symbol (GOLD BAR) on a single ticket, shall be entitled to a prize of \$10,000.

(d) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$2,000 (TWO THO) appears to the right of the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$2,000.

(e) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar Symbol (GOLD BAR), and a prize symbol of \$2,000 (TWO THO) appears to the right of the Gold Bar Symbol (GOLD BAR) on a single ticket, shall be entitled to a prize of \$2,000.

(f) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$400 (FOR HUN) appears to the right of the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$400.

(g) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar Symbol (GOLD BAR), and a prize symbol of \$400 (FOR HUN) appears to the right of the Gold Bar Symbol (GOLD BAR) on a single ticket, shall be entitled to a prize of \$400.

(h) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$100 (ONE HUN) appears to the right of the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100.

(i) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar Symbol (GOLD BAR), and a prize symbol of \$100 (ONE HUN) appears to the right of the Gold Bar Symbol (GOLD BAR) on a single ticket, shall be entitled to a prize of \$100.

(j) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$40 (FORTY) appears to the right of the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$40.

(k) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar Symbol (GOLD BAR), and a prize symbol of \$40 (FORTY) appears to the right of the Gold Bar Symbol (GOLD BAR) on a single ticket, shall be entitled to a prize of \$40.

(l) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of

\$20 (TWENTY) appears to the right of the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$20.

(m) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar Symbol (GOLD BAR), and a prize symbol of \$20 (TWENTY) appears to the right of the Gold Bar Symbol (GOLD BAR) on a single ticket, shall be entitled to a prize of \$20.

(n) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$10 (TEN DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$10.

(o) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar Symbol (GOLD BAR), and a prize symbol of \$10 (TEN DOL) appears to the right of the Gold Bar Symbol (GOLD BAR) on a single ticket, shall be entitled to a prize of \$10.

(p) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$5 (FIV DOL) appears to the right of the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$5.

(q) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar Symbol (GOLD BAR), and a prize symbol of \$5 (FIV DOL) appears to the right of the Gold Bar Symbol (GOLD BAR) on a single ticket, shall be entitled to a prize of \$5.

(r) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$4 (FOR DOL) appears to the right of the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$4.

(s) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar Symbol (GOLD BAR), and a prize symbol of \$4 (FOR DOL) appears to the right of the Gold Bar Symbol (GOLD BAR) on a single ticket, shall be entitled to a prize of \$4.

(t) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$2 (TWO DOL) appears to the right of the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$2.

(u) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar Symbol (GOLD BAR), and a prize symbol of \$2 (TWO DOL) appears to the right of the Gold Bar Symbol (GOLD BAR) on a single ticket, shall be entitled to a prize of \$2.

(v) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches either of the "WINNING NUMBERS" play symbols and a prize symbol of \$1 (ONE DOL) appears to the right of the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

<i>When Any of Your Numbers Match Either Winning Number; Win With Prize(s) of:</i>	<i>Win:</i>	<i>Approximate Odds of 1 In:</i>	<i>Approximate No. of Winners Per 4,800,000 Tickets</i>
\$1 × 2	\$2	37.5	128,000
\$2	\$2	37.5	128,000

<i>When Any of Your Numbers Match Either Winning Number; Win With Prize(s) of:</i>	<i>Win:</i>	<i>Approximate Odds of 1 In:</i>	<i>Approximate No. of Winners Per 4,800,000 Tickets</i>
\$2 w/GOLD BAR	\$2	18.75	256,000
\$1 × 4	\$4	37.5	128,000
\$4	\$4	37.5	128,000
\$4 w/GOLD BAR	\$4	37.5	128,000
\$1 × 5	\$5	150	32,000
\$5	\$5	150	32,000
\$5 w/GOLD BAR	\$5	150	32,000
\$2 × 5	\$10	500	9,600
\$5 × 2	\$10	500	9,600
\$10	\$10	500	9,600
\$10 w/GOLD BAR	\$10	136.36	35,200
\$5 × 4	\$20	500	9,600
\$20	\$20	500	9,600
\$20 w/GOLD BAR	\$20	375	12,800
\$5 × 8	\$40	1,500	3,200
\$10 × 4	\$40	1,500	3,200
\$20 × 2	\$40	1,500	3,200
\$40	\$40	1,500	3,200
\$40 w/GOLD BAR	\$40	1,500	3,200
\$10 × 6 + \$20 × 2	\$100	6,000	800
\$20 × 5	\$100	6,000	800
\$40 × 2 + \$5 × 4	\$100	6,000	800
\$100	\$100	3,636	1,320
\$100 w/GOLD BAR	\$100	6,000	800
\$100 × 4	\$400	30,000	160
\$400	\$400	30,000	160
\$400 w/GOLD BAR	\$400	30,000	160
\$400 × 4 + \$100 × 4	\$2,000	120,000	40
\$2,000	\$2,000	120,000	40
\$2,000 w/GOLD BAR	\$2,000	120,000	40
\$10,000	\$10,000	960,000	5
\$10,000 w/GOLD BAR	\$10,000	960,000	5
\$20,000	\$20,000	480,000	10

GOLD BAR = Win prize shown automatically

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Gold Rush '05 instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Gold Rush '05, prize money from winning Pennsylvania Gold Rush '05 instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Gold Rush '05 instant lottery game, the

right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law, 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be

disseminated through media used to advertise or promote Pennsylvania Gold Rush '05 or through normal communications methods.

GREGORY C. FAJT,
Secretary

[Pa.B. Doc. No. 05-738. Filed for public inspection April 15, 2005, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Ground Penetrating Radar Bridge Inspections; Notice to Bidders

The Department of Transportation (Department) will be accepting sealed bids for ground penetrating radar bridge inspections for SR 0081 Section FY5. Bids will be received in the District 4-0 Office, Department of Transportation, 55 Keystone Industrial Park, Dunmore, PA 18512 until 1 p.m. on May 2, 2005. Bids will be publicly opened at 1 p.m. on May 2, 2005, in the District Office.

Bids must be enclosed in a sealed envelope and clearly marked "BID DOCUMENTS: GROUND PENETRATING RADAR, BRIDGE DECK INSPECTION CONTRACT FOR SR 0081 Section FY5 Bridge Preservation, Lackawanna County and Luzerne County, To be Opened: May 2, 2005, At 1:00 PM." Work will include, but is not limited to, the ground penetrating radar bridge inspection of eight reinforced concrete bridge decks and the corresponding reports.

Specifications and contract documents can be secured by applying to McTish, Kunkel & Associates, Attention Timothy S. Benner, P. E., 2402 Sunshine Road, Allentown, PA 18103.

Proposals must be accompanied by a bid bond or certified check in an amount not less than 10% of the total amount bid.

The Department, in accordance with Title VI of the United States Civil Rights Act of 1964 and 49 CFR Parts 21 and 23 (relating to nondiscrimination in federally-assisted programs of the Department of Transportation—effectuation of Title VI of the Civil Rights Act of 1964; and participation by disadvantaged business enterprise in airport concessions), notifies all bidders that it will affirmatively insure that disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and that no person will be discriminated against on the grounds of race, color, sex or national origin in consideration for an award.

Persons with questions regarding this contract should contact Timothy S. Benner, P. E., McTish, Kunkel & Associates at (610) 791-2700.

ALLEN D. BIEHLER, P. E.,
Secretary

[Pa.B. Doc. No. 05-739. Filed for public inspection April 15, 2005, 9:00 a.m.]

INSURANCE DEPARTMENT

Blue Cross of Northeastern Pennsylvania; Non-Group Basic Conversion and Direct Enrollment Program; Rate Filing

On April 1, 2005, Blue Cross of Northeastern Pennsylvania submitted Filing No. 946-BCNGBASE-10/1/05 requesting the Insurance Department's (Department) approval to increase the current monthly rates for the Blue Cross Non-Group Basic Conversion and Direct Enrollment Rated Program. In this filing, Blue Cross of Northeastern Pennsylvania has proposed to replace the current benefit plan with two new plans. The proposed rate changes are 25.37% for the 80% coinsurance benefit option (Option No. 1) and 14.65% for the 70% coinsurance benefit option (Option No. 2).

Blue Cross of Northeastern Pennsylvania also proposes to make the following benefit changes in both the options: increasing Inpatient Copay/Admission from \$100 to \$500, eliminating the \$25/day (15-day maximum) copay and adding a maximum out-of-pocket of \$10,000.

The projected number of contracts per month during the October 1, 2005, to December 31, 2006, period is approximately 8,275. If all the contracts were to enroll in Option No. 1, the 25.37% increase will generate approximately \$4.6 million of additional annual revenue. If all the contracts were to enroll in Option No. 2, the 14.65% increase will generate approximately \$2.6 million of additional annual revenue. An effective date of October 1, 2005 is requested.

A copy of the filing is available on the Department's website at www.ins.state.pa.us. Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Rashmi Mathur, Actuary, Bureau of Accident and Health Insurance, Insurance Department, 1311 Strawberry Square, Harrisburg, PA 17120 within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 05-740. Filed for public inspection April 15, 2005, 9:00 a.m.]

Blue Cross of Northeastern Pennsylvania; Non-Group Medigap Hospitalization Program (65 Special); Rate Filing

Blue Cross of Northeastern Pennsylvania submitted Filing No. 950-BCSEC65-10/1/05 for approval of revised rates for its non-group Medigap 65 Special hospitalization program. The requested effective date of the revised rates is October 1, 2005. The most recent prior rate adjustment for this program took effect on January 1, 2003. The current and requested rates for new entrants 65-69 years of age and the requested rate adjustments are as follows:

	<i>Current Rate</i>	<i>Proposed Rate</i>	<i>Rate Adjustment</i>
Security 65 Package A	\$35.62	\$34.12	-4.21%
Security 65 Package B	\$56.54	\$56.69	0.26%
Security 65 Package C	\$69.89	\$71.48	2.28%
Security 65 Package H with Rx	\$114.95	\$128.31	11.62%

The composite impact of these proposed rate adjustments is approximately 4%. These changes would impact approximately 43,790 subscribers and would produce approximately \$1.9 million in additional premium through December 31, 2006.

Effective January 1, 2006, Package H participants will have the option of eliminating the Rx benefit from their coverage. Those choosing to do so would receive the following reduction in rates (new entry rate for 65-69 years of age shown):

	<i>Proposed Package H Rate With Rx Benefit Effective October 1, 2005</i>	<i>Proposed Package H Rate Without Rx Benefit Effective January 1, 2006</i>	<i>Rate Adjustment Due to Elimination of Rx Benefit</i>
Security 65 Package H without Rx	\$128.31	\$70.93	-44.72%

Unless formal administrative action is taken prior to June 30, 2005, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website at www.ins.state.pa.us. Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional offices in Harrisburg, Philadelphia and Pittsburgh.

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 05-741. Filed for public inspection April 15, 2005, 9:00 a.m.]

Blue Cross of Northeastern Pennsylvania; Blue Cross Non-Group Special Care Hospital Program; Rate Filing

On April 1, 2005, Blue Cross of Northeastern Pennsylvania submitted Filing No. 947-BCSP-10/1/05 requesting the Insurance Department's (Department) approval to increase the monthly rates by 24.61% for the Blue Cross Non-Group Special Care Hospital Program for an effective date of October 1, 2005. Proposed benefit changes include the introduction of an annual deductible of \$250 for all services and a hospital copayment per admission of \$250. The estimated additional annual revenue generated from this increase is \$0.8 million. The projected average number of contracts per month during the October 1, 2005, to December 31, 2006, period is 4,517 subscribers.

A copy of the filing is available on the Department's website at www.ins.state.pa.us. Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 05-742. Filed for public inspection April 15, 2005, 9:00 a.m.]

Highmark Blue Shield; Formulaic Approach for Small Group Base Rate and Factor Development; Rate Filing

On March 28, 2005, Highmark, Inc. submitted Filing No. 1-BASRAT/SG-05-HBS for approval for adopting a formulaic approach for deriving small group base rates and factors in the central (21-county) region.

A copy of the filing is available on the Insurance Department's (Department) website at www.ins.state.pa.us. Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 05-743. Filed for public inspection April 15, 2005, 9:00 a.m.]

LEGISLATIVE REFERENCE BUREAU

Documents Filed But Not Published

The Legislative Reference Bureau (Bureau) accepted the following documents during the preceding calendar month for filing without publication under 1 Pa. Code § 3.13(b) (relating to contents of Bulletin). The Bureau will continue to publish on a monthly basis either a summary table identifying the documents accepted during

the preceding calendar month under this subsection or a statement that no documents have been received. For questions concerning or copies of documents filed, but not published, call (717) 783-1530.

Executive Board

Resolution #CB-05-041, Dated March 1, 2005. Authorizes the Memorandum of Understanding entered into between the Commonwealth and the United Government Security Officers of America effective September 1, 2003, through August 31, 2007.

Resolution #CB-05-042, Dated March 1, 2005. Authorizes the Collective Bargaining Agreement between the Commonwealth and the United Government Security Officers of America effective September 1, 2003, through August 31, 2007.

Governor's Office

Management Directive No. 230.10—Travel and Subsistence Allowances, Revision No. 7, Dated March 4, 2005.

Management Directive No. 315.1—Calculation and Payment of Statutory Salaries, Amended March 4, 2005.

Management Directive No. 505.26—HIV/AIDS and Other Bloodborne Infections/Diseases in the Workplace, Amended March 18, 2005.

Administrative Circular No. 05-04—Closing Instruction No. 1, Fiscal Year 2004-2005 Submission of Purchasing Documents, Dated March 4, 2005.

Administrative Circular No. 05-05—Conversion to SAP Account Codes, Dated March 8, 2005.

MARY JANE PHELPS,
Director
Pennsylvania Bulletin

[Pa.B. Doc. No. 05-744. Filed for public inspection April 15, 2005, 9:00 a.m.]

MILK MARKETING BOARD

Hearing and Presubmission Schedule for All Milk Marketing Areas; Over-Order Premium

Under the Milk Marketing Law (31 P. S. §§ 700j-101—700j-1302), the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing Areas 1—6 on May 19, 2005, at 10 a.m. in Skybox No. 3, Farm Show Building, 2300 North Cameron Street, Harrisburg, PA.

The purpose of the hearing is to receive testimony and exhibits concerning the continuation of the Class I over-order premium that is scheduled to expire on June 30, 2005, and whether an adjustment should be made to the level of the over-order premium.

The staff of the Board is deemed to be a party to this hearing, and the attorney representing staff is deemed to have entered his appearance. Other persons who wish to present evidence may be included on the Board's list of parties by: (1) having their attorney file with the Board on or before 4 p.m. on May 5, 2005, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25 (relating to form of notice of appearance); or (2) if unrepresented by counsel, filing with the Board on or before 4 p.m. on May 5, 2005, notification of their desire to be included as a party.

By 4 p.m. on May 12, 2005, each party shall file with the Board seven copies and ensure receipt by all other parties of one copy of:

1. A list of witnesses who will testify for the party, along with a statement of the subjects concerning which each witness will testify. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise.

2. Each exhibit to be presented, including testimony to be offered in written form.

The Board may exclude witnesses or exhibits of a party that fails to comply with the previous requirements. In addition, the parties shall have available in the hearing room at least 20 additional copies made available for the use of nonparties attending the hearing.

Parties that wish to offer in evidence documents on file with the Board, public documents or records in other proceedings before the Board or wish the Board to take official notice of facts shall comply with, respectively, 1 Pa. Code § 35.164, § 35.165, § 35.167 or § 35.173. Whenever these rules require production of a document as an exhibit, copies shall be provided to each Board member and to all other parties; in addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office by 4 p.m. on May 5, 2005.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons who require this information in an alternate format should call (717) 787-4194 or (800) 654-5984 (Pennsylvania Relay Service for TDD users).

KEITH BIERLY,
Secretary

[Pa.B. Doc. No. 05-745. Filed for public inspection April 15, 2005, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Aqua Pennsylvania, Inc. for a Statement of Policy on Water and Wastewater System Acquisitions; Doc. No. P-00052155

On March 11, 2005, Aqua Pennsylvania, Inc. (Aqua) filed the following petition for a statement of policy on water and wastewater system acquisitions. By this petition, Aqua urges the Pennsylvania Public Utility Commission (Commission) to adopt a policy statement that establishes clear guidance regarding the Commission's expectations on water and wastewater system acquisitions.

In support of its petition, Aqua first notes that the regionalization foresight of the Commission and the Department of Environmental Protection (Department) has made the Commonwealth a National leader on water and wastewater issues. To further support the Commission's and the Department's continued goal of regionalization, Aqua suggests that the adoption of a statement of policy would provide a workable system under which acquiring

companies could continue acquisitions and, concomitantly, ensure fair treatment of customers.

Persons wishing to file comments to the Aqua petition should do so by May 6, 2005. Replies to the comments must be filed by May 13, 2005. An original and three copies of the comments and replies must be filed with the Office of the Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265 and one copy should be served on the following contact person at the same address.

The contact person is Assistant Counsel Stanley E. Brown, (717) 783-3968, stabrown@state.pa.us.

Petition for Statement of Policy on Water and Wastewater System Acquisitions

Aqua Pennsylvania Inc. ("AQUA"), by and through its counsel, Saul Ewing LLP, hereby petitions the Pennsylvania Public Utility Commission ("Commission") for the issuance of a "Statement of Policy" on water and wastewater system acquisitions. A copy of the proposed Statement of Policy is Appendix "A."

Background

1. The Commission and the Department of Environmental Protection ("DEP") have successfully promoted the needed regionalization of water and wastewater systems in the Commonwealth through mergers and acquisitions. See 52 Pa. Code § 69.711 (regarding acquisition incentives); see also Memorandum of Understanding between the Commission and the DEP, dated December 2, 1993 ("MOU"). The foresight of the Commission and DEP on regionalization has made the Commonwealth a national leader on water and wastewater issues.

2. The merger and acquisition of small non-viable water and wastewater systems into larger and more-sophisticated private water and wastewater companies has improved the health and welfare of Pennsylvania's citizens, promoted needed infrastructure and water quality improvements, and spurred economic growth.

3. Pennsylvania Class A utilities historically have assisted the Commission's efforts to consolidate the numerous water and wastewater companies by acquiring investor-owned companies and municipal operations—including small, troubled water and wastewater systems. For example, since 1996, AQUA has acquired approximately 75 water systems and 15 wastewater systems in the Commonwealth, many of which were small and/or troubled. AQUA acquired these systems in line with the Commission policy and regulations.

4. The larger, more viable, water companies in Pennsylvania wish to continue to acquire water and wastewater systems in Pennsylvania; however, confusion surrounding recent Commission staff actions and informal policies has made the process increasingly cumbersome. See, e.g., *Application of Pennsylvania Suburban Water Company and Eagle Rock Utility Corp.*, Docket No. A-210104F0023 (Motion of Chairman Holland adopted Jan. 13, 2005) (Order entered Mar. 4, 2005) (rescinding, on reconsideration, language that set dollar amounts for plant-in-service, contributions in aid of construction ("CIAC"), and depreciation).

5. AQUA has met with Commission staff on numerous occasions over the past two years in order to address acquisition-related issues. While total agreement on all issues was not achieved, most issues were, in fact, amicably resolved. The proposed Statement of Policy represents AQUA's best efforts to memorialize existing understandings with Commission staff and to resolve the remaining issues. The proposed Statement of Policy sets

forth clear guidance regarding the Commission's expectations on water and wastewater system acquisitions. It would further the Commission's goal of regionalization by providing a workable system under which acquiring companies could continue acquisitions and by ensuring fair treatment of customers.

Summary of Proposed Policy Statement

6. Subparagraph (b)(1) addresses an acquiring utility's duty to prepare an original cost study within six months of acquisition closing. The acquisition would not be included in a rate filing, unless the original cost study is submitted prior to or along with the rate filing (with limited exceptions, such as acquisitions made at the request of the Commission). This timing guidance would ensure that all parties to a rate proceeding would have a meaningful opportunity to review and advocate original cost issues in a rate proceeding—which is the appropriate forum for resolution of original cost issues.

7. Subparagraph (b)(2) describes the acquiring utility's duty to request specific cost-related records from the seller. This provision addresses the concern that relevant records often become unavailable once a system is sold.

8. Subparagraph (b)(3) would permit the acquisition of a system, even if the seller is unable to provide the requested cost-related records. This provision is necessary to allow for the acquisition of the many poorly-run systems now in existence. Based on experience to date, the seller is often remiss in its maintenance of records and unable or unwilling to provide the records. Moreover, the records available at the application stage are not always complete or accurate. As such, subparagraph (b)(3) allows the acquiring utility to deviate from the records—provided that an explanation for discrepancies is included in the original cost study or rate case testimony.

9. Subparagraph (b)(4) would direct the acquiring utility to attempt to ascertain the actual CIAC. However, it would not impose a duty upon the acquiring utility to estimate and impute CIAC if there were no evidence that such CIAC existed. Subparagraph (b)(4) also states that the Commission will not attempt to set an original cost or impute CIAC during the application proceeding. Rate issues, including the determination of original cost, are properly considered in the context of a rate proceeding. See *Pennsylvania Suburban and Eagle Rock*, supra.

10. Subparagraph (b)(5) addresses the acquiring utility's responsibility to track plant retirements and identify plant not booked because of contributions or dedications.

11. Subparagraph (b)(6) sets forth the Commission's expectation that the acquiring utility reconcile its original cost study with the original cost shown in Commission records.

12. Paragraph (c) describes the acquiring utility's statutory right to earn on original cost if the purchase price is less than original cost.

13. Paragraph (d) re-affirms the Commission's long-standing policy to allow an acquisition premium if the purchase price was higher than original cost—provided that: (1) the acquisition is in the public interest and supportive of the Commission's goal of regionalization to promote environmental, operational and economic benefits; or (2) the acquired system was troubled or non-viable. This policy has proved to be an effective incentive that has accelerated the acquisition of small or non-viable systems and should continue in effect.

14. Paragraph (e) recognizes that calculation of an accurate original cost is not always possible. It suggests

that the purchase price per customer in relation to the acquiring utility's existing rate base per customer is a relevant benchmark in assessing the reasonableness of the purchase price of a system. It provides an alternative method of valuation if records are not available or accurate and would be in the best interest of the seller's and acquiring company's customers.

Conclusion

Wherefore, Aqua Pennsylvania Inc. petitions this Honorable Commission to issue the Statement of Policy in order to promote the regionalization of water and wastewater systems by providing clear guidance to acquiring utilities.

Respectfully submitted,

David P. Zambito
Attorney ID No. 80017
SAUL EWING LLP
Penn National Insurance Plaza
2 North Second Street, 7th Floor
Harrisburg, PA 17101
Phone: (717) 257-7526
Fax: (717) 257-7597
E-mail: dzambito@saul.com

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-746. Filed for public inspection April 15, 2005, 9:00 a.m.]

Purchase of Stock

A-212840F5000 and A-213550F0018. The York Water Company and Spring Grove Water Company. Application of The York Water Company and Spring Grove Water Company for approval of: 1) the right of The York Water Company to acquire, through purchase of the stock of Spring Grove Water Company, title to and the possession of all tangible and intangible property used and useful in the public service.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before May 2, 2005. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicants: The York Water Company and Spring Grove Water Company

Through and By Counsel:

For The York Water Company

Michael W. Gang, Esquire, Michael W. Hassell, Esquire, Morgan, Lewis & Bockius, LLP, One Commerce Square, 417 Walnut Street, Harrisburg, PA 17101-1904

and

For Spring Grove Water Company

Kenneth Zielonis, Esquire, Stevens and Lee, 4750 Lindle Road, P. O. Box 11670, Harrisburg, PA 17108-1670

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-747. Filed for public inspection April 15, 2005, 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. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant by May 9, 2005. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

Applications of the following for approval to *begin* operating as *common carriers* for transportation of *persons* as described under each application.

A-00121627. Nazareth Volunteer Ambulance Corps (P. O. Box 326, Nazareth, Northampton County, PA 18064), a corporation of the Commonwealth—persons in paratransit service, between points in the Counties of Northampton, Lehigh, Bucks, Carbon and Monroe, and from points in said counties, to points in Pennsylvania, and return. *Attorney:* Alfred S. Pierce, 124 Belvidere Street, Nazareth, PA 18064.

A-00121628. Steel City Limo, LLC (506 Freeport Road, Pittsburgh, Allegheny County, PA 15238), a limited liability company of the Commonwealth—persons, in limousine service, between points in the County of Allegheny, and from points in said county, to points in the Counties of Butler, Washington, Armstrong and Westmoreland, 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-00118692, F. 1, Am-A. Todd W. Callahan t/d/b/a Interstate Airport Shuttle (405 North Wade Avenue, Washington, Washington County, PA 15301)—discontinuance of service—persons, in airport transfer service, from points in the Borough of Canonsburg and the City of Washington, Washington County, to the Pittsburgh International Airport, located in the Township of Moon, Allegheny County.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-748. Filed for public inspection April 15, 2005, 9:00 a.m.]

Transfer of Interest in Stock and Assets

A-230280F5000. Mesco, Inc. Application of Mesco, Inc. for approval, nunc pro tunc, of the transfer of all of the interest in stock and assets to Jane M. and Halvard Alexander.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before May 2, 2005. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: Mesco, Inc.

Through and By Counsel: Edmund Berger, Berger Law Firm, P. C., 2104 Market Street, Camp Hill, PA 17011
JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-749. Filed for public inspection April 15, 2005, 9:00 a.m.]

Water Service

A-213550F0019. The York Water Company. Application of The York Water Company for approval of the right of The York Water Company to enter into a municipal contract to acquire certain public water facilities from the Borough of Spring Grove and to offer or furnish water service to the public in the Borough of Spring Grove, York County.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before May 2, 2005. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: The York Water Company and Borough of Spring Grove

Through and By Counsel: Michael W. Gang, Esquire, and Michael W. Hassell, Esquire, Morgan, Lewis & Bockius, LLP, One Commerce Square, 417 Walnut Street, Harrisburg, PA 17101-1904

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-750. Filed for public inspection April 15, 2005, 9:00 a.m.]

PHILADELPHIA REGIONAL PORT AUTHORITY

Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project #05-035.4, Second Floor

Lighting Rehabilitation Project at Pier 80 South until 2 p.m. on Thursday, May 12, 2005. The bid documents can be obtained from the Director of Procurement, PRPA, 3460 N. Delaware Ave., 2nd Floor, Philadelphia, PA 19134, (215) 426-2600 and will be available April 26, 2005. Additional information and project listings can be found at www.philaport.com. The cost of the bid document is \$35 (includes 7% Pennsylvania Sales Tax). The cost is nonrefundable. PRPA is an equal opportunity employer. Contractors must comply with all applicable equal opportunity laws and regulations. Bidders must provide to the Procurement Department, in writing, the names of individuals that will be attending prebid meetings. This information is needed 24 hours prior to the meeting. Fax to (215) 426-6800, ATTN: Procurement Department.

A mandatory prebid job site meeting will be held on May 5, 2005, at 10 a.m. at Pier 80 South Guardhouse, 300 feet north of Snyder Avenue and Columbus Blvd., Philadelphia, PA.

JAMES T. MCDERMOTT, Jr.,
Executive Director

[Pa.B. Doc. No. 05-751. Filed for public inspection April 15, 2005, 9:00 a.m.]

PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

Hearing Scheduled

A hearing has been scheduled, as authorized by 24 Pa.C.S. Part IV (relating to Public School Employees' Retirement Code), in connection with the Public School Employees' Retirement System's (System) denial of claimant's request concerning the indicated account.

The hearing will be held before a hearing examiner at the Public School Employees' Retirement System, 5 North Fifth Street, Harrisburg, PA 17101:

June 8, 2005	Judith T. Wagner	2:30 p.m.
	(Frozen Annuity)	

Persons with a disability who wish to attend the listed hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact Marilyn Fuller-Smith, Assistant to the Executive Director, (717) 720-4921 to discuss how the System may best accommodate their needs.

Parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The hearing will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Under 22 Pa. Code § 201.1 (relating to applicability of general rules), procedural matters will be in conformance with 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) unless specific exemption is granted.

JEFFREY B. CLAY,
Executive Director

[Pa.B. Doc. No. 05-752. Filed for public inspection April 15, 2005, 9:00 a.m.]

Hearings Scheduled

Hearings have been scheduled, as authorized by 24 Pa.C.S. Part IV (relating to Public School Employees' Retirement Code), in connection with the Public School Employees' Retirement System's (System) denial of claimants' requests concerning the indicated accounts.

The hearings will be held before a hearing examiner at the Public School Employees' Retirement System, 5 North Fifth Street, Harrisburg, PA 17101:

May 18, 2005	Edna McClintock (Membership Eligibility)	2:30 p.m.
June 22, 2005	Jeffrey Pelberg (Membership Eligibility)	1 p.m.

Persons with a disability who wish to attend the listed hearings and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact Marilyn Fuller-Smith, Assistant to the Executive Director, at (717) 720-4921 to discuss how the System may best accommodate their needs.

Parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The hearings will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Under 22 Pa. Code § 201.1 (relating to applicability of general rules), procedural matters will be in conformance with 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) unless specific exemption is granted.

JEFFREY B. CLAY,
Executive Director

[Pa.B. Doc. No. 05-753. Filed for public inspection April 15, 2005, 9:00 a.m.]

STATE EMPLOYEES' RETIREMENT BOARD

Hearings Scheduled

Hearings have been scheduled, as authorized by 71 Pa.C.S. Part XXV (relating to State Employees' Retirement Code), in connection with the State Employees' Retirement System's denial of Claimants' requests concerning the indicated accounts.

The hearings will be held before a hearing examiner at the State Employees' Retirement System, 30 North Third Street, Fifth Floor, Harrisburg, PA 17101:

May 3, 2005	Ronald E. Helman (Change Effective Date of Disability Retirement)	1 p.m.
May 17, 2005	Michael Sullivan (D) (Death Benefit)	1 p.m.
May 25, 2005	Martin R. Levan III (Pension Forfeiture)	10 a.m.

Parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The hearings will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Under 4 Pa. Code § 250.1 (relating to applicability of general rules), procedural matters will be in conformance with 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) unless specific exemption is granted.

ERIC HENRY,
Secretary

[Pa.B. Doc. No. 05-754. Filed for public inspection April 15, 2005, 9:00 a.m.]

STATE CONTRACTS INFORMATION

DEPARTMENT OF GENERAL SERVICES

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.

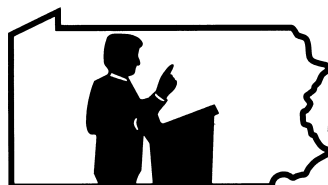
30 days after the later of the receipt of a proper invoice or receipt of goods or services.

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

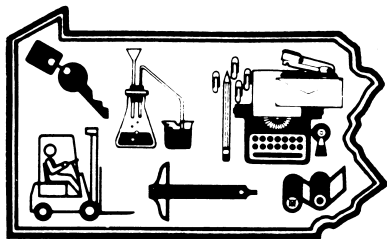
PA TREASURY BUSINESS OUTLET—PLUG INTO IT!

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. Services are free except for the cost of photocopying contracts (15 cents per page); postage; redaction, and certified copies. The bureau may assess reasonable fees for labor and other expenses necessary to comply with the request. A free brochure explains how to take advantage of available services.

Contact: **Bureau of Contracts and Public Records**

Pennsylvania State Treasury
Room 201 Finance Building
Harrisburg, PA 17120
717-787-4586
1-800-252-4700
BizOutlet@patreasury.org

ROBERT P. CASEY, Jr.,
State Treasurer



Commodities

HUN-RECORDERS Honeywell TVMU-60 paperless recorders 6 input for boiler units and Honeywell start up assistance, software and training needed to maintain accurate records as required by the PADEP for the filing of reports for PA state purposes. Honeywell TVMU-80 paperless recorder 8 input for plant units and Honeywell start up assistance. Vendor to also remove the existing recorders, wiring and programming to be included.

Department: Corrections

Location: State Correctional Institution at Huntingdon, 1100 Pike St., Huntingdon, PA 16654

Duration: 4/8/05 to 12/30/05

Contact: Robert Jessell, Pur. Agt., (814) 643-2400 x 304

SU-04-25 Shippensburg University is seeking vendors interested in providing "Serta" brand name or equal mattresses for student dorm rooms. Vendors interested in receiving a bid package must fax a request to Mona Holtry, Shippensburg University, 1871 Old Main Drive, Shippensburg, PA 17257; Fax (717) 477-1350 or email a request to mmholt@ship.edu. Bids are due 4:00 PM on May 5, 2005. All responsible bidders are invited to participate including MBE/WBE firms.

Department: State System of Higher Education

Location: Shippensburg University, 1871 Old Main Drive, Shippensburg, PA 17257

Duration: Delivery date and time will be specified in the solicitation package.

Contact: Mona M. Holtry, (717) 477-1386

HUN-Heaters Vendor to supply horizontal hydronic unit heaters for use with low pressure steam. The agency is also requiring associated aluminum propeller venturi exhaust fans. Specifications available from the agency. Vendor to supply materials only.

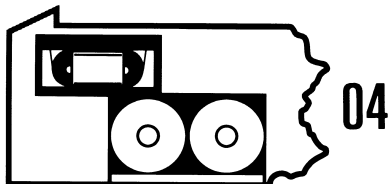
Department: Corrections

Location: State Correctional Institution at Huntingdon, 1100 Pike St., Huntingdon, PA 16654

Duration: 4/02/05 to 8/30/05

Contact: Robert Jessell, Pur. Agt., (814) 643-2400 x 304

SERVICES



Audio/Video

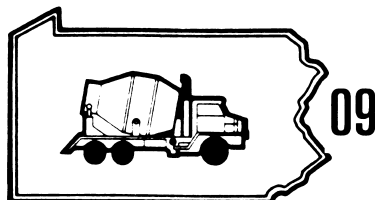
SU-04-26 Furnish and Install Sound Systems. Shippensburg University is seeking experienced vendors interested in providing all labor and material necessary to furnish, install, and maintain the sound and video systems for the new Performing Arts Center at Shippensburg University. Proposal packages and specifications are available for a non-refundable fee of \$40.00, check made payable to "Shippensburg University" by contacting, Deborah K. Martin, Shippensburg University, 1871 Old Main Drive, Shippensburg, PA 17257, Telephone: 717-477-1121, FAX: 717-477-4004. Proposals are due no later than 4:00 PM, on May 10, 2005.

Department: State System of Higher Education

Location: Shippensburg University, Shippensburg, PA

Duration: Completion within 120 days after receipt of award

Contact: Deborah K. Martin, (717) 477-1121



Construction & Construction Maintenance

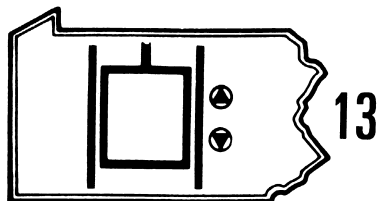
IN-870 Construct Replacement Old Main The Work consists of the demolition of existing structures and site improvements on the Indiana University of Pennsylvania's Punxsutawney Campus and the construction of a two-story classroom, dining and student activities building and associated site improvements. Project consists of General, Heating, Ventilating and Air Conditioning, Plumbing and Electrical work. Coordination with all successful Prime Contractors awarded this Contract and that of the Residence Hall Project is mandatory. Work includes furnishing all labor, superintendence, materials, tools, equipment and performing all work necessary to complete the work identified on the Contract Documents at the satisfaction of the Architect and the State System of Higher Education. See IUP Website at www.iup.edu/engconstruction/list.shtml for complete Notice to Contractors for this project - IN-870.

Department: State System of Higher Education

Location: Winslow Street, Punxsutawney, PA

Duration: Bids Due April 22, 2005 at 2:00 p.m., IUP anticipates issuance of NTP on or about July 18, 2005. Completion of project is August 14, 2006.

Contact: Robert L. Marx, (724) 357-2289



13

Elevator Maintenance

8905 Furnish all labor, materials, and equipment to provide a complete service and preventive maintenance program for one (1) passenger elevator. Services shall include monthly scheduled preventive maintenance and servicing on the unit including all necessary additional service calls that are required.

Department: State Police

Location: Troop F, Montoursville Headquarters, 899 Cherry Street, Montoursville, PA 17754

Duration: 7/1/05 through 6/30/08

Contact: Helen Fuhrman, (717) 705-5952

8913 Furnish all labor, materials, and equipment to provide a complete service and preventive maintenance program for one (1) passenger elevator. Services shall include monthly scheduled preventive maintenance and servicing on each unit including all necessary additional service calls that are required.

Department: State Police

Location: Troop M, Trevoise Station, 3501 Neshaminy Blvd., Bensalem, PA 19020

Duration: 7/1/05 through 6/30/08

Contact: Helen Fuhrman, (717) 705-5952

8908 Furnish all labor, materials, and equipment to provide a complete service and preventive maintenance program for one (1) passenger elevator. Services shall include monthly scheduled preventive maintenance and servicing on the unit including all necessary additional service calls that are required.

Department: State Police

Location: Troop N, Hazleton Headquarters, 250 Dessen Drive, West Hazleton, PA 18202

Duration: 7/1/05 through 6/30/08

Contact: Helen Fuhrman, (717) 705-5952

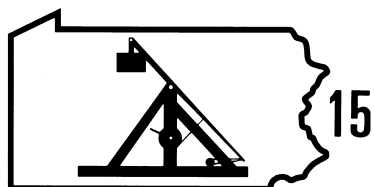
8911 Furnish all labor, materials, and equipment to provide a complete service and preventive maintenance program for three (3) dover passenger elevators and one (1) dover service elevator. Services shall include monthly scheduled preventive maintenance and servicing on each unit including all necessary additional service calls that are required.

Department: State Police

Location: Department Headquarters, Facility Management Division, 1800 Elmerton Avenue, Harrisburg, PA 17110

Duration: 7/1/05 through 6/30/08

Contact: Helen Fuhrman, (717) 705-5952



15

Environmental Maintenance Service

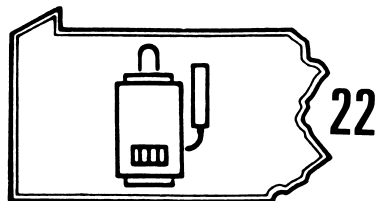
OSM 04(1261)101.1 Abandoned Mine Reclamation Project, Freedom - Phase 1. The principal items of work and approximate quantities include Site Preparation and Restoration, 250 linear feet of Fencing, Grading that includes the following: 2,120 square yards of Zone A Topsoil, 1,675 square yards of Zone B Topsoil, 840 cubic yards of Subsoil and 570 cubic yards of Embankment Material, Seeding that includes the following: 2 acres of Seed Bed Preparation, 6 tons of Agricultural Limestone, 200 pounds of Seed, 2 acres of Mulching, Commercial Fertilizer that includes 200 pounds of Nitrogen, 400 pounds of Phosphate and 400 pounds of Potash. This project issues on April 15, 2005 and bids will be opened on May 5, 2005 at 2:00 p.m. Bid documents cost \$10.00 per set and will not be mailed until payment has been received. This project is financed by the Federal Government under the authority given it by P.L. 95-87 dated August 3, 1977, "The Surface Mining Control and Reclamation Act of 1977," and is subject to that Law, and to the Federal Grant for this project.

Department: Environmental Protection

Location: New Sewickley Township, Beaver County

Duration: 60 calendar days after the official starting date.

Contact: Construction Contracts Section, (717) 787-7820



22

HVAC Services

8912 Provide emergency and routine repair work for the heating, air-conditioning, electrical, and plumbing systems. Contractor to respond to call within four (4) hours of receipt, either directly or via a recording device. Replacement parts must be as originally installed or of equal quality and function. The contractor must agree to redeem manufacturer's warranty of parts, where applicable, and further agree to guarantee workmanship and replacement parts provided by their firm for ninety (90) days. Materials and parts are to be billed at cost. Remarks: Bidding to be done on labor rate per hour for Mechanic and Helper plus travel.

Department: State Police

Location: Troop M, Trevoise Station, 3501 Neshaminy Blvd., Bensalem, PA 19020

Duration: 7/1/05 through 6/30/08

Contact: Helen Fuhrman, (717) 705-5952

8904 Provide emergency and routine repair work for the heating, air-conditioning, electrical, and plumbing systems. Contractor to respond to call within four (4) hours of receipt, either directly or via a recording device. Replacement parts must be as originally installed or of equal quality and function. The contractor must agree to redeem manufacturer's warranty of parts, where applicable, and further agree to guarantee workmanship and replacement parts provided by their firm for ninety (90) days. Materials and parts are to be billed at cost. Remarks: Bidding to be done on labor rate per hour for Mechanic and Helper plus travel.

Department: State Police

Location: Troop D, Butler Station, 200 Barracks Road, Butler, PA 16001-2689

Duration: 7/1/05 through 6/30/08

Contact: Helen Fuhrman, (717) 705-5952



23

Janitorial Services

8879 Furnish all labor, materials and equipment to perform janitorial services three (3) days per week at the PA State Police, Northeast Training Center. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police

Location: Northeast Training Center, 1989 Wyoming Avenue, Forty-Fort, PA 18704, phone #570-288-3659

Duration: 07/01/05 to 06/30/08

Contact: Sandy Wolfe, (717) 705-5951

8875 Furnish all labor, materials and equipment to perform janitorial services three (3) days per week at the PA State Police, Blooming Grove Station. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police

Location: Troop R, Blooming Grove Station, HC 6, Box 6810, Hawley, PA 18428, phone #570-226-5720

Duration: 07/01/05 to 06/30/08

Contact: Sandy Wolfe, (717) 705-5951

8872 Furnish all labor, materials and equipment to perform janitorial services two (2) days per week at the PA State Police, Hazleton P&S. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police

Location: Hazleton P&S, 180 Dessen Drive, West Hazleton, PA 18202, phone #570-459-3890

Duration: 07/01/05 to 06/30/08

Contact: Sandy Wolfe, (717) 705-5951

8871 Furnish all labor, materials and equipment to perform janitorial services three (3) days per week at the PA State Police, Ephrata Station. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police

Location: Troop J, Ephrata Station, 21 Springhouse Road, Ephrata, PA 17522, phone #717-721-7667

Duration: 07/01/05 to 06/30/08

Contact: Sandy Wolfe, (717) 705-5951

8874 Furnish all labor, materials and equipment to perform janitorial services three (3) days per week at the PA State Police, Swiftwater Station. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police

Location: Troop P, Laporte Station, P.O. Box 70, Laporte, PA 18626, phone #570-946-4610

Duration: 07/01/05 to 06/30/08

Contact: Sandy Wolfe, (717) 705-5951

8873 Furnish all labor, materials and equipment to perform janitorial services three (3) days per week at the PA State Police, Swiftwater Station. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police

Location: Troop N, Swiftwater Station, HCI Box 121, Swiftwater, PA 18370, phone #570-839-7701

Duration: 07/01/05 to 06/30/08

Contact: Sandy Wolfe, (717) 705-5951

8876 Furnish all labor, materials and equipment to perform janitorial services three (3) days per week at the PA State Police, Gibson Station. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police

Location: Troop R, Gibson Station, R. D. #1, Box 227B, New Milford, PA 18834, phone #570-465-3154

Duration: 07/01/05 to 06/30/08

Contact: Sandy Wolfe, (717) 705-5951

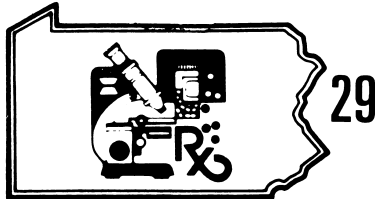
8878 Furnish all labor, materials and equipment to perform janitorial services two (2) days per week at the PA State Police, Reading Aviation Patrol Unit. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police

Location: Reading Aviation Patrol Unit, Building 406, Reading Regional Airport, Reading, PA 19605 phone #610-378-4450

Duration: 07/01/05 to 06/30/08

Contact: Sandy Wolfe, (717) 705-5951



Medical Services

CN00014296 The contractor shall furnish Dental Prosthetic Appliances such as denture, full or partial, cast frames and acrylic attachments, and various related attachments to the inmate population at the State Correctional Institution at Forest. For additional information, please contact Joan Delie, Corrections Health Care Administrator at (814) 621-2110.

Department: Corrections

Location: State Correctional Institution at Forest, One Woodland Drive, PO Box 307, Marienville, PA 16239-0307

Duration: 07/01/2005 to 06/30/2008

Contact: Carol Schaeffer/Purchasing Agent, (412) 732-2115



Personnel, Temporary

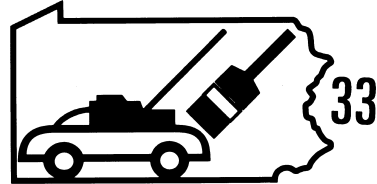
SU-04-21 Shippensburg University is seeking proposals for a vendor to provide temporary personnel services for the Learning Resource Center for the period July 1, 2005 through June 30, 2006, with the option to renew for 4 additional one year periods. The Contractor will employ and pay the staff. Duties include payment of salaries, mailing checks, withholding of all lawful deductions, provide worker's compensation, liability insurances, handle unemployment claims, prepare earnings records, tax reports, etc. Request for RFP should be faxed to Deborah K. Martin at FAX: (717) 477-4004, or email DKMART@wharf.ship.edu. Proposals are due no later than 4:00 PM on May 10, 2005. The University encourages responses from small, minority and women owned firms.

Department: State System of Higher Education

Location: Shippensburg University, Shippensburg, PA

Duration: One year, with 4 optional renewals

Contact: Deborah K. Martin, (717) 477-1121



Property Maintenance

CL-616, Facade Restoration, Givan & Nair Clarion University of Pennsylvania is soliciting bids for facade restoration at Givan Hall, a 4 floor, including partially exposed basement, residence hall, and the upper 2 floors at Nair Hall, a 8 floor, including partially exposed basement, residence hall. Work includes facade restoration for wall areas on all four sides of the facilities which will require repointing, brick removal and replacement in selected areas caulking and water repellent. Work also includes plaster patching and repainting at interior window heads and jams where indicated. Plans Cost: \$30.00, non-refundable, for one complete set of plans and specifications, by check payable to Clarion University, Clarion, PA 16214. Pre-Bid meeting: 10:00 A.M., April 19, 2005. Bids Due: May 3, 2005.

Department: State System of Higher Education

Location: Clarion University, Clarion, PA

Duration: 90 Days from Notice to Proceed

Contact: Judy McAninch, Contract Specialist, (814) 393-2240



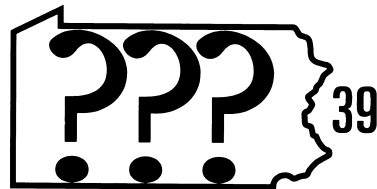
Real Estate Services

93829 Lease office space to the Commonwealth of PA. Proposals are invited to provide the PA Gaming Control Board with 2,000 - 2,300 useable square feet of office space in Montgomery County, PA. The space is to be located within Conshohocken/West Conshohocken, Pennsylvania. Downtown locations will be considered. For more information on SFP #93829 which is due on April 18, 2005 visit www.dgs.state.pa.us and click on Real Estate to download an SFP document or call (717) 787-4396.

Department: PA Gaming Control Board

Location: 505 North Office Building, Harrisburg, PA 17125

Contact: John Hocker, (717) 787-4396



Miscellaneous

12802 Rental of buses and drivers to transport the students at Scotland School for Veterans' Children to various interscholastic sporting events, parades and other recreational events throughout the school year. Service will be required on an as needed basis. We will attempt to give 24 hour notice when buses are needed but less notice may be given in emergency situations. This contract will have a four-year renewal option to renew by mutual agreement and any increases in cost to be negotiated.

Department: Military Affairs

Location: Scotland School for Veterans' Children, 3583 Scotland Rd., Scotland, PA 17254-0900

Duration: July 1, 2005 - June 30, 2006 with a four-year renewal option

Contact: Marion Jones, (717) 264-7187, Ext. 661

GIRFP-2005-3 The Governor's Institutes for Educators are intended to promote continuing professional education among educators. These programs are rich in opportunities to deepen subject area knowledge and will include real-world experiences as tools that help educators make the link to the Pennsylvania Academic Standards, new classroom assessments and technology. The 2005-3 Request for Proposal provides intermediate units, institutions of higher education, and not-for-profit entities with information that enables them to prepare and submit proposals for consideration to serve in a partnership capacity with the Pennsylvania Department of Education as a facilitator for site management for one of the Governor's Institutes for Educators.

Department: Education
Location: Various locations throughout the Commonwealth
Duration: July-August 2005
Contact: Lois Novak, (717) 772-3817

CN00014281 Provide Food Service / Management Services to the Scranton State School for the Deaf. A 10% bid security is required and a \$50,000 performance security may be required. Do not call for information. All information is in the bid package that will be provided at a required prebid conference on April 25, 2005 at 8:15 am. Reservations to the prebid conference are required. Email your intentions to attend the prebid for CN00014281 prior to April 22, 2005. Email address is mmayensche@state.pa.us show CN00014281 as the subject. You will receive your invitation, via email, by 3 p.m. April 22. Bid Opening is 9 am May 9, 2005. The effective date of the contract will be 7/1/05 or later.

Department: Education
Location: Scranton State School for the Deaf, Lobby: Primary Building, 1800 North Washington Avenue, Scranton, PA 18509-1799
Duration: July 2005 through June 30, 2010
Contact: Merrill Mayenschein, FAX: 570-963-4544

[Pa.B. Doc. No. 05-755. Filed for public inspection April 15, 2005, 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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DONALD T. CUNNINGHAM, Jr.
Secretary