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# PENNSYLVANIA BULLETIN

Volume 29

Number 30

Saturday, July 24, 1999 • Harrisburg, Pa.

Pages 3823—4034

See Part II page 3999 for the  
Department of Health's  
Long-Term Care Nursing Facilities

## **Part I**

### **Agencies in this issue:**

The Courts  
Delaware River Basin Commission  
Department of Banking  
Department of Environmental Protection  
Department of General Services  
Department of Health  
Department of Public Welfare  
Department of Transportation  
Game Commission  
Human Relations Commission  
Independent Regulatory Review Commission  
Insurance Department  
Liquor Control Board  
Lobbying Disclosure Committee  
Milk Marketing Board  
Pennsylvania Commission for Women  
Pennsylvania Public Utility Commission  
Securities Commission

**Detailed list of contents appears inside.**

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# Contents

## THE COURTS

### CRIMINAL PROCEDURAL RULES

- Order adopting amendments to Rule 1410; no. 247  
criminal procedural rules doc. no. 2 ..... 3835

### JUDICIAL SYSTEM GENERAL PROVISIONS

- Promulgation of Consumer Price Index pursuant  
to 15 Pa.C.S.A. § 153(a)(8)(vii), 42 Pa.C.S.A.  
§§ 1725.1(f) and 3571(c)(4); no. 211 judicial ad-  
ministration doc. no. 1 ..... 3834
- Promulgation of financial regulation pursuant to 42  
Pa.C.S.A. § 3502(a); no. 210 judicial administra-  
tion doc. no. 1 ..... 3833

### SUPREME COURT

- Accreditation of the American Board of Certification  
as a certifying organization; no. 536 disciplinary  
doc. no. 3 ..... 3838
- Accreditation of the National Elder Law Foundation  
as a certifying organization; no. 537 disciplinary  
doc. no. 3 ..... 3838

## EXECUTIVE AGENCIES

### DELAWARE RIVER BASIN COMMISSION

#### Rules and Regulations

- Amendments to the Delaware River Basin Commis-  
sion's ground water protected area regulations for  
Southeastern Pennsylvania ..... 3839

### DEPARTMENT OF BANKING

#### Notices

- Action on applications ..... 3925

### DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### Notices

- Air Quality Technical Advisory Committee meeting;  
cancellation notice ..... 3959
- Alternative Fuels Incentive Grant Program (AFIG)  
opportunity notice ..... 3959
- Applications, actions and special notices ..... 3927
- Availability of guidance ..... 3959
- Revised biological metric availability ..... 3960

### DEPARTMENT OF GENERAL SERVICES

#### Notices

- Contract awards ..... 3996
- State contracts information ..... 3987

### DEPARTMENT OF HEALTH

#### Rules and Regulations

- Long-term care nursing facilities (Part II) ..... 3999
- Supplemental Nutrition Program for Women, In-  
fants and Children (WIC Program) ..... 3841

#### Notices

- Application for exception to 28 Pa. Code § 153.1(b):  
Frankford Hospital—Torresdale Division, Phila-  
delphia, PA ..... 3960
- Moss Rehabilitation Hospital ..... 3961

- Availability of Draft Preventive Health and Health  
Services Block Grant application for Federal Fis-  
cal Year 2000 ..... 3961
- Laboratories approved to perform blood lead and/or  
erythrocyte protoporphyrin determinations under  
the Clinical Laboratory Act ..... 3961
- Special Supplemental Nutrition Program for Wom-  
en, Infants and Children (WIC Program) ..... 3964

### DEPARTMENT OF PUBLIC WELFARE

#### Proposed Rulemaking

- Medical Assistance estate recovery program ..... 3888

#### Notices

- Public hearing on declining resident population at  
Mayview Mental Retardation Unit ..... 3965

### DEPARTMENT OF TRANSPORTATION

#### Proposed Rulemaking

- Notice of intent to promulgate regulation and re-  
quest for public participation:  
Authorization to verify identification number ..... 3894
- Vehicle equipment and inspection ..... 3894

#### Notices

- Clearfield County—finding ..... 3965
- Retention of engineering firms ..... 3966

### GAME COMMISSION

#### Rules and Regulations

- Hunting hours ..... 3886

### HUMAN RELATIONS COMMISSION

#### Proposed Rulemaking

- Housing accommodations/commercial property ..... 3895

### INDEPENDENT REGULATORY REVIEW COMMISSION

#### Notices

- Actions taken by the Commission ..... 3978
- Notice of comments issued ..... 3979
- Notice of filing of final rulemakings ..... 3982

### INSURANCE DEPARTMENT

#### Notices

- Application for approval to acquire control of  
Conestoga Life Assurance Company ..... 3982
- Application for merger of United General Life Insur-  
ance Company (UGL) with and into Conseco  
Senior Health Insurance Company (Conseco Se-  
nior) ..... 3982
- Craig Edward Schmoll; order to show cause; doc. no.  
SC99-04-020 ..... 3983
- Hrvinak Motor Company; prehearing/settlement  
telephone conference ..... 3983
- Independence Blue Cross; Blue Cross community  
rated group rate increase; filing no. 19-P-99 ..... 3983
- Review procedure hearings; cancellation or refusal  
of insurance ..... 3984

### LIQUOR CONTROL BOARD

#### Notices

- Expiration of leases ..... 3984

---

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**LOBBYING DISCLOSURE COMMITTEE**  
**Rules and Regulations**  
Lobbying disclosure ..... 3868

**MILK MARKETING BOARD**  
**Notices**  
Hearing and presubmission schedule; milk market-  
ing area no. 1 ..... 3984

**PENNSYLVANIA COMMISSION FOR WOMEN**  
**Notices**  
Meeting notice..... 3985

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Notices**  
Service of notice of motor carrier applications..... 3985  
Water service:  
    Millheim Borough..... 3986  
    Pennsylvania-American Water Company ..... 3986

**SECURITIES COMMISSION**  
**Proposed Rulemaking**  
National Securities Market Improvement Act of  
1996 amendments ..... 3898

# 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 1999.

## 1 Pa. Code (General Provisions)

### Adopted Rules

101	3349
201	3349
301	3349
303	3349
305	3349
307	3349
309	3349
311	3349
313	3349
315	3349

### Proposed Rulemaking

101	980
201	980
301	980
303	980
305	980
307	980
309	980
311	980
313	980
315	980

## 4 Pa. Code (Administration)

### Adopted Rules

5	2570, 2762
6	2572
7	806, 3066
116	3201
117	3205

### Proposed Rulemaking

120b	1719
120c	1721
120d	1717

### Statements of Policy

9	207, 457, 574, 1230, 2034, 2302, 2681, 3216, 3633
---	---

## 7 Pa. Code (Agriculture)

### Proposed Rulemaking

130c	1496
130d	1496
151	3215

### Statements of Policy

137a	3072
------	------

## 10 Pa. Code (Banks and Banking)

### Statements of Policy

21	3000
----	------

## 12 Pa. Code (Community and Economic Development)

### Proposed Statements of Policy

31	1725
----	------

### Statements of Policy

31	2859
----	------

## 16 Pa. Code (Community Affairs)

### Proposed Rulemaking

45	3895
----	------

## 22 Pa. Code (Education)

### Adopted Rules

3	399
4	399
5	399
6	399

### Proposed Rulemaking

354	3363
-----	------

## 25 Pa. Code (Environmental Protection)

### Adopted Rules

93	3720
95	3720
109	2231
121	1879
129	1879, 1889
260	2367
260a (with correction)	2367, 2576
261	2367
261a	2367
262	2367
262a	2367
263	2367
263a	2367
264	2367
264a	2367
265	2367
265a	2367
266	2367
266a	2367
266b	2367
267	2367
268a	2367
269	2367
269a	2367
270	2367
270a	2367
901	3839

### Proposed Rulemaking

72	979
86	548
91	2145
92	455
93	455
95	455
97	2145
101	2145
121	1214, 1299
123	1214, 1319
129	1299
139	1299
145	1319
261	1975
266	1975
287	1975
298	1975
901	647
1021	1074, 1214, 1612



**28 Pa. Code (Health and Safety)****Adopted Rules**

8	3841
201	3999
203	3999
205	3999
207	3999
209	3999
211	3999
1101	3841
1103	3841
1105	3841
1107	3841
1109	3841
1111	3841
1113	3841

**Proposed Rulemaking**

4	2671
18	820
911	332
912	332
1001	903
1003	903
1005	903
1007	903
1009	903
1011	903
1013	903
1015	903

**31 Pa. Code (Insurance)****Adopted Rules**

84	3208
89	172
125	3209

**Proposed Rulemaking**

62	655
89	650

**Statements of Policy**

38	3085
----	------

**34 Pa. Code (Labor & Industry)****Adopted Rules**

121	2649
-----	------

**Proposed Rulemaking**

123	3161
125	3161
129	3161

**37 Pa. Code (Law)****Proposed Rulemaking**

93	1513
95	1504

**49 Pa. Code (Professional and Vocational Standards)****Adopted Rules**

5	2294
15	2295
31	1392
36	1393, 1610
37	2857
41	2296

**Proposed Rulemaking**

11	1613
21	2299
23	2300

25	1613
27	1088
31	1897
33	1895
35	565
37	1897
39	662, 2582
40	1615
41	2145
42	1896, 3070
47	1897

**Statements of Policy**

39	1617
----	------

**51 Pa. Code (Public Officers)****Adopted Rules**

31	3868
33	3868
35	3868
37	3868
39	3868
41	3868
43	3868
45	3868

**Proposed Rulemaking**

31	548
33	548
35	548
37	548
39	548
41	548
43	548
45	548

**52 Pa. Code (Public Utilities)****Adopted Rules**

57	2667
59	2667

**Proposed Rulemaking**

57	2025
59	1515
64	2779
Unclassified	1895

**Statements of Policy**

69	2034, 2147, 2495
----	------------------

**Proposed Statements of Policy**

41	1617
69	1617

**55 Pa. Code (Public Welfare)****Adopted Rules**

165	271
168	271
183	271
3040	271
3130	3295
3480	3513
3490	3513
3680	3295
3710	3295
3800	3295
3810	3295
5310	3295
6400	3295

**Proposed Rulemaking**

258 ..... 3888

**Statements of Policy**

1187 ..... 3218

**58 Pa. Code (Recreation)****Adopted Rules**

51 ..... 3210  
 53 ..... 1068  
 61 ..... 819, 3626  
 63 ..... 2298, 3211, 3212, 3629  
 65 ..... 1069, 3210, 3212, 3626  
 75 ..... 819, 3210  
 91 (correction) ..... 3213, 3362  
 93 ..... 1068  
 109 ..... 1068  
 111 ..... 1070, 3210  
 133 ..... 1071  
 135 ..... 3734  
 139 (with correction) ..... 2454, 2576, 2999  
 141 ..... 2458, 3886  
 143 (with correction) ..... 2458, 2577  
 145 ..... 1071  
 147 ..... 1071, 1072

**Proposed Rulemaking**

51 ..... 1224  
 61 ..... 1085  
 63 ..... 205, 822, 823, 1397  
 65 ..... 823, 1224, 3631  
 69 ..... 3369  
 75 ..... 1087, 1515  
 99 ..... 2680  
 111 ..... 1224, 3370  
 115 ..... 3370  
 117 ..... 2678  
 131 ..... 2578  
 135 ..... 2578, 2581  
 139 ..... 1225, 1397  
 141 ..... 1398, 2580  
 143 ..... 1398

**61 Pa. Code (Revenue)****Proposed Rulemaking**

31 ..... 3738  
 55 ..... 3736  
 60 ..... 3736

**Statements of Policy**

94 ..... 2037  
 125 ..... 2037

**64 Pa. Code (Securities)****Adopted Rules**

202 (with correction) ..... 202, 547  
 206 (with correction) ..... 202, 547  
 302 (with correction) ..... 202, 547  
 606 (with correction) ..... 202, 547  
 609 (with correction) ..... 202, 547  
 610 (with correction) ..... 202, 547

**Proposed Rulemaking**

202 ..... 3898  
 203 ..... 3898  
 204 ..... 3898  
 205 ..... 3898  
 207 ..... 3898  
 209 ..... 3898  
 211 ..... 3898  
 504 ..... 3898

603 ..... 3898  
 606 ..... 3898  
 609 ..... 3898

**67 Pa. Code (Transportation)****Adopted Rules**

175 ..... 2460, 2577

**Proposed Rulemaking**

17 ..... 3894  
 173 ..... 1612  
 175 ..... 1612, 3894

**70 Pa. Code (Weights, Measures and Standard)**

1 ..... 2460  
 2 ..... 2460  
 3 ..... 2460  
 4 ..... 2460  
 5 ..... 2460  
 6 ..... 2460  
 7 ..... 2460  
 8 ..... 2460  
 9 ..... 2460  
 10 ..... 2460  
 21 ..... 2460  
 35 ..... 2460

**Statement of Policy**

39 ..... 2460

**201 Pa. Code (Rules of Judicial Administration)****Adopted Rules**

3 ..... 3713  
 5 ..... 3189  
 7 ..... 2766  
 50 ..... 1709

**204 Pa. Code (Judicial System General Provisions)****Adopted Rules**

29 ..... 3833  
 71 ..... 2143, 2855  
 82 ..... 809  
 91 ..... 2021  
 211 ..... 3834  
 215 ..... 977

**Proposed Rulemaking**

83 ..... 2663

**207 Pa. Code (Judicial Conduct)****Adopted Rules**

5 ..... 1487  
 21 ..... 645

**210 Pa. Code (Appellate Procedure)****Adopted Rules**

21 ..... 544  
 35 ..... 544  
 39 ..... 1487  
 67 ..... 1360

**Proposed Rulemaking**

3 ..... 1709, 2766  
 5 ..... 2441  
 9 ..... 2441  
 15 ..... 2441  
 21 (with correction) ..... 2441, 2767

**225 Pa. Code (Rules of Evidence)****Adopted Rules**

Unclassified ..... 1712

**Proposed Rulemaking**

Article I.....	2262
Article IV.....	2263
Article VI.....	2262, 2264
Article VIII.....	2265

**231 Pa. Code (Rules of Civil Procedure)****Adopted Rules**

100.....	2266, 2767
200.....	449, 2266, 2767, 3189
400.....	2767, 3189, 3191
1000.....	2266, 2767, 3191
1300.....	2266, 3191
1500.....	2274
1600.....	2274
1650.....	2274
1700.....	2274
1910 (with correction).....	16, 645, 2767, 3191
1930.....	2767
2000.....	2274
2020.....	2274
2054.....	2767
2120.....	2274
2200.....	2274
2220.....	2274
2250.....	2274
2300.....	2274, 3191
2320.....	2274
2350.....	2274
2950.....	2767, 3191
2970.....	1715, 2767, 3191
2980.....	2274
3000.....	2281, 2767, 3191
4000.....	1715, 2281, 2767
Part II.....	327, 329, 1494

**Proposed Rulemaking**

200.....	15, 168, 169
400.....	169
1000.....	3714
1910.....	1487
Part II.....	1709, 2766

**234 Pa. Code (Rules of Criminal Procedure)****Adopted Rules**

50.....	2774, 2776, 3716
350.....	3069
1100.....	2289, 2777
1400.....	3835

**Proposed Rulemaking**

1.....	1360
2.....	1360
3.....	1360
4.....	1360
5.....	1360
6.....	1360
7.....	1360
8.....	1360
9.....	1360
10.....	1360
11.....	1360
20.....	1360, 2664
30.....	1360
50.....	1360, 1385, 2770
100.....	1360, 2444
200.....	1360, 2444
300.....	1360, 2444
1100.....	1360, 2444
1400.....	1360
1500.....	1360
1600.....	1360
1700.....	1360
2000.....	1360
4000.....	1360
6000.....	1360, 2444
9000.....	1360

**237 Pa. Code (Juvenile Rules)****Statements of Policy**

201.....	3633
----------	------

**246 Pa. Code (Minor Court Civil Rules)****Adopted Rules**

100.....	3198
300.....	3198

**249 Pa. Code (Philadelphia Rules)**

Unclassified.....	544, 545, 2964
-------------------	----------------

**252 Pa. Code (Allegheny County Rules)**

Unclassified.....	17, 1387
-------------------	----------

**255 Pa. Code (Local Court Rules)**

Unclassified.....	19, 24, 171, 330, 449, 453, 454, 809, 977, 978, 1067, 1388, 1389, 1390, 1495, 1853, 1873, 2143, 2575, 2855, 2995, 2996, 2997, 3069, 3199, 3348, 3622, 3719
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# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART II. GENERAL ADMINISTRATION

#### [204 PA. CODE CH. 29]

#### Promulgation of Financial Regulation Pursuant to 42 Pa.C.S.A. § 3502(a); No. 210 Judicial Admin- istration Doc. No. 1

#### Order

*Per Curiam:*

And now, this 7th day of July, 1999, it is *Ordered* pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S.A. § 3502(a), that the Court Administrator of Pennsylvania is authorized to promulgate the following Financial Regulation. The fees outlined in the Financial Regulations are effective as of January 1, 2000.

To the extent that notice of proposed rulemaking may be required by Pa.R.J.A. 103, the immediate promulgation of the regulation is hereby found to be in the interests of efficient administration.

This Order is to be processed in accordance with Pa.R.J.A. 103(b) and is effective immediately.

#### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART II. GENERAL ADMINISTRATION

#### CHAPTER 29. MISCELLANEOUS PROVISIONS

##### Subchapter K. COSTS, FINES AND FEES

#### TITLE 15. CORPORATIONS AND UNINCORPORATED ASSOCIATIONS

#### PART I. PROVISIONS

#### CHAPTER 1. GENERAL PROVISIONS

#### TITLE 42. JUDICIARY AND JUDICIAL PROCEDURE

#### PART IV. FINANCIAL MATTERS

#### CHAPTER 17. GOVERNANCE OF THE SYSTEM

#### CHAPTER 35. BUDGET AND FINANCE

##### Subchapter A. GENERAL PROVISIONS

The Pennsylvania Supreme Court, pursuant to Art. V, § 10 of the Pennsylvania Constitution, and 42 Pa.C.S.A. § 1721, has authorized the Court Administrator of Pennsylvania to promulgate regulations relating to the accounting methods to be utilized in connection with the collection of fees and costs charged and collected by prothonotaries, clerks of courts of all courts of common pleas and recorders of deeds, or by any officials designated to perform the functions thereof, as well as by the minor judiciary, including district justices, Philadelphia Municipal Court, Philadelphia Traffic Court and Pittsburgh Magistrates Court.

Under authority of said Administrative Order and pursuant to the authority vested in the governing author-

ity under Section 3502(a) of the Judicial Code, 42 Pa.C.S.A. § 3502(a), the following regulations are adopted to implement Act 167 of 1992, 15 Pa.C.S.A. § 153(a)(8)(vii), 42 Pa.C.S.A. §§ 1725.1(f) and 3571(c)(4) (as amended).

(*Editor's Note:* The following sections replace the text found in 204 Pa. Code serial pages 29-33—29-35).

#### § 29.402. Costs under 42 Pa.C.S.A. § 1725.1.

(a) *Civil cases.*—In calendar year 2000, the costs to be charged by district justices in every civil case, except as otherwise provided in this section, shall be as follows:

(1) Actions involving \$500 or less .....	\$36.00
(2) Actions involving more than \$500 but not more than \$2,000 .....	\$48.00
(3) Actions involving more than \$2,000 but not more than \$4,000 .....	\$59.50
(4) Actions involving more than \$4,000 but not more than \$8,000 .....	\$89.50
(5) Landlord-tenant actions involving less than \$2,000 .....	\$53.50
(6) Landlord-tenant actions involving more than \$2,000 but not more than \$4,000 .....	\$65.50
(7) Landlord-tenant actions involving more than \$4,000 but not more than \$8,000 .....	\$89.50
(8) Order of execution .....	\$27.00
(9) Objection to levy .....	\$12.00
(10) Reinstatement of complaint .....	\$6.00
(11) Entering Transcript on Appeal or Certiorari .....	\$3.00

(b) *Criminal cases.*—In calendar year 2000, the costs to be charged by the minor judiciary or by the court of common pleas where appropriate in every criminal case, except as otherwise provided in this section, shall be as follows:

(1) Summary conviction, except motor vehicle cases .....	\$34.00
(2) Summary conviction, motor vehicle cases, other than paragraph (3) .....	\$27.00
(3) Summary conviction, motor vehicle cases, hearing demanded .....	\$33.00
(4) Misdemeanor .....	\$39.00
(5) Felony .....	\$45.00

(c) *Unclassified costs or charges.*—In calendar year 2000, the costs to be charged by the minor judiciary in the following instances not readily classifiable shall be as follows:

(1) Entering transcript of judgment from another member of the minor judiciary .....	\$6.00
(2) Marrying each couple, making record thereof, and certificate to the parties .....	\$30.00
(3) Granting emergency relief pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse) .....	\$12.00
(4) Issuing a search warrant (except as provided in subsection (d)) .....	\$12.00

(1) Entering transcript of judgment from another member of the minor judiciary . . . . . \$6.00

(5) Any other issuance not otherwise provided in this subsection . . . . . \$12.00

**§ 29.403. Fines under 42 Pa.C.S.A. § 3571.**

In calendar year 2000, Commonwealth portion of fines, etc.

\* \* \* \* \*

(2) Amounts payable to the Commonwealth:

(i) Summary conviction, except motor vehicle cases . . . . . \$11.92

(ii) Summary conviction, motor vehicle cases other than subparagraph (iii) . . . . . \$11.92

(iii) Summary conviction, motor vehicle cases, hearing demanded . . . . . \$11.92

(iv) Misdemeanor . . . . . \$15.60

(v) Felony . . . . . \$24.00

(vi) Assumpsit or trespass involving:

(A) \$500 or less . . . . . \$15.00

(B) More than \$500 but not more than \$2,000 . . . . . \$24.00

(C) More than \$2,000 but not more than \$4,000 . . . . . \$35.70

(D) More than \$4,000 but not more than \$8,000 . . . . . \$59.67

(vii) Landlord-tenant proceeding involving:

(A) \$2,000 or less . . . . . \$23.78

(B) More than \$2,000 but not more than \$4,000 . . . . . \$29.75

(C) More than \$4,000 but not more than \$8,000 . . . . . \$41.77

(viii) Objection to levy . . . . . \$6.00

(ix) Order of execution . . . . . \$18.00

(x) Issuing a search warrant (except as provided in section 1725.1(d)(relating to costs)) . . . . . \$8.40

(Editor's Note: Ellipses refer to the text of 42 Pa.C.S.A. § 3571.)

**§ 29.404. Fee schedule under 15 Pa.C.S.A. § 153.**

(a) *General rule.*—In calendar year 2000, the fees of the Corporation Bureau of the Department of State, including fees for the public acts and transactions of the Secretary of the Commonwealth administered through the bureau, and of county filing officers under Title 13 (relating to commercial code), shall be as follows:

\* \* \* \* \*

(8) Uniform Commercial Code:

(i) Financing statement—per debtor name:

(A) Fee charged by Dept. of State . . . . . \$12.00

(B) Fee charged by County . . . . . \$57.50

Amount payable to Commonwealth \$43.15

Amount payable to county . . . . . \$14.35

(ii) Each ancillary transaction:

(A) Fee charged by Dept. of State . . . . . \$12.00

(B) Fee charged by County . . . . . \$57.50

Amount payable to Commonwealth \$43.15

Amount payable to county . . . . . \$14.35

(iii) Search—per debtor name:

(A) Fee charged by Dept. of State . . . . . \$12.00

(B) Fee charged by County . . . . . \$57.50

Amount payable to Commonwealth \$43.15

Amount payable to county . . . . . \$14.35

(iv) Additional fee for each financing statement found and for each statement of assignment reported therein:

(A) Fee charged by Dept. of State . . . . . \$1.00

(B) Fee charged by County . . . . . \$5.00

Amount payable to Commonwealth \$3.75

Amount payable to county . . . . . \$1.25

(v) For each financing statement or ancillary transaction not filed on standard forms approved by the Department of State, in addition to the fee provided above, there shall be charged a per filing fee of:

(A) Fee charged by Dept. of State . . . . . \$28.00

(B) Fee charged by County . . . . . \$133.50

Amount payable to Commonwealth \$100.10

Amount payable to county . . . . . \$33.40

\* \* \* \* \*

(Editor's Note: Ellipses refer to the text of 15 Pa.C.S.A. § 153.)

[Pa.B. Doc. No. 99-1170. Filed for public inspection July 23, 1999, 9:00 a.m.]

**PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS**

**[204 PA. CODE CH. 211]**

**Promulgation of Consumer Price Index Pursuant to 15 Pa.C.S.A. § 153(a)(8)(vii), 42 Pa.C.S.A. §§ 1725.1(f) and 3571(c)(4); No. 211 Judicial Administration Doc. No. 1**

**Order**

*Per Curiam:*

And now, this 7th day of July, 1999, it is *Ordered* pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S.A. § 3502(a), that the Court Administrator of Pennsylvania is authorized to obtain and publish in the *Pennsylvania Bulletin* on or before November 30 the percentage increase in the Consumer Price Index for the immediately preceding calendar year as required by Act 167 of 1992, 15 Pa.C.S.A. § 153(a)(8)(vii), 42 Pa.C.S.A. §§ 1725.1(f) and 3571(c)(4)(as amended).

## Annex A

## TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

## PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

## CHAPTER 211. CONSUMER PRICE INDEX

## § 211.1. Consumer Price Index.

Pursuant to Article V, Section 10 of the Pennsylvania Constitution, and 42 Pa.C.S.A. § 1721, the Supreme Court has authorized the Court Administrator of Pennsylvania to obtain and publish in the *Pennsylvania Bulletin* on or before November 30 the percentage increase in the Consumer Price Index for the immediate preceding calendar year as required by Act 167 of 1992, 15 Pa.C.S.A. § 153(a)(8)(vii), 42 Pa.C.S.A. §§ 1725.1(f) and 3571(c)(4) (as amended). See, No. \_\_\_\_\_ Judicial Administrative Docket No. \_\_\_\_\_.

The Court Administrator of Pennsylvania reports that the percentage increase in the Consumer Price Index, All Urban Consumers, U. S. City Average, for calendar year 1998, was 1.6% percent. (See, U. S. Department of Labor, Bureau of Labor Statistics, Series CUUROOOSAO, February 16, 1999.)

[Pa.B. Doc. No. 99-1171. Filed for public inspection July 23, 1999, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

## PART I. GENERAL

## [234 PA. CODE CH. 1400]

## Order Adopting Amendments to Rule 1410; No. 247 Criminal Procedural Rules Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the July 9, 1999 amendments to Rule 1410 (Post-Sentence Procedures; Appeal). These changes (1) fill a gap in the rule by addressing, inter alia, the time for appeal following a withdrawal of a post-sentence motion; (2) clarify that Rule 1410 does not address Pa.R.C.P. 1925(b) nor waiver of appellate issues once an appeal is filed; and (3) add a citation to *Commonwealth v. Lord*, 719 A.2d 306 (Pa. 1998). The Final Report follows the Court's Order.

## Order

*Per Curiam:*

Now, this 9th day of July, 1999, upon the recommendation of the Criminal Procedural Rules Committee; this proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3), 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 Pa.R.Crim.P. 1410 is hereby amended as follows.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2000.

## Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE  
CHAPTER 1400. SENTENCING

## Rule 1410. Post-Sentence Procedures; Appeal.

(A) *Timing.*

\* \* \* \* \*

(2) If the defendant files a timely post-sentence motion, the notice of appeal shall be filed:

(a) within 30 days of the entry of the order deciding the motion; [ , or, ]

(b) [ if the judge fails to decide the motion, ] within 30 days of the entry of the order denying the motion by operation of law in cases in which the judge fails to decide the motion; or [ . ]

(c) within 30 days of the entry of the order memorializing the withdrawal in cases in which the defendant withdraws the motion.

(3) If the defendant does not file a post-sentence motion, the defendant's notice of appeal shall be filed within 30 days of imposition of sentence, except as provided in subsection (A)(4).

(4) If the Commonwealth files a motion to modify sentence pursuant to Rule 1411, the defendant's notice of appeal shall be filed within 30 days of the entry of the order disposing of the Commonwealth's motion.

(B) *Optional Post-Sentence Motion.*

\* \* \* \* \*

(3) *Time Limits for Decision on Motion.*

The judge shall not vacate sentence pending decision on the post-sentence motion, but shall decide the motion as provided in this subsection.

\* \* \* \* \*

(c) When a post-sentence motion is denied by operation of law, the clerk of courts shall forthwith enter an order on behalf of the court, and shall forthwith furnish a copy of the order by mail or personal delivery to the attorney for the Commonwealth, the defendant(s), and defense counsel that the post-sentence motion is deemed denied. This order is not subject to reconsideration.

(d) If the defendant withdraws a post-sentence motion, the judge promptly shall enter an order memorializing the withdrawal. The order shall include the information required by paragraph (B)(4).

(4) *Contents of Order.*

An order denying a post-sentence motion, whether signed by the judge or entered by the clerk of courts, or an order entered following a defendant's withdrawal of the post-sentence motion, shall include notice to the defendant of the following:

\* \* \* \* \*

**Official Note:** Previous Rule 1410, adopted May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; rescinded March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994, and replaced by present Rule 1410. Present Rule 1410 adopted March 22, 1993 and amended December 17, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective



date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996. Comment revised September 26, 1996, effective January 1, 1997; amended August 22, 1997, effective January 1, 1998; Comment revised October 15, 1997, effective January 1, 1998; **amended July 9, 1999, effective January 1, 2000.**

#### Comment

This rule is derived from previous Rules 321, 1123, and 1410. See also Rules 1122, 1124, and 1125.

For post-sentence procedures after a sentence of death has been imposed, see Rule 360.

The purpose of this rule is to promote the fair and prompt disposition of all issues relating to guilty pleas, trial, and sentence by consolidating all possible motions to be submitted for trial court review, and by setting reasonable but firm time limits within which the motion must be decided. Because the post-sentence motion is optional, the defendant may choose to raise any or all properly preserved issues in the trial court, in the appellate court, or both.

#### Timing

\* \* \* \* \*

When a defendant files a timely post-sentence motion, the 30-day period for the defendant's direct appeal on all matters in that case—including all issues related to any informations and any charges consolidated against the defendant for trial—is triggered by the trial judge's decision on the post-sentence motion, **[or] the denial of the motion by operation of law, or the withdrawal of the post-sentence motion.** The appeal period runs from the entry of the order. As to the date of entry of orders, see Pa.R.A.P. 108. **See also *Commonwealth v. Miller*, 715 A.2d 1203 (Pa. Super. 1998), concerning the time for appeal following the withdrawal of a post-sentence motion.** No direct appeal may be taken by a defendant while his or her post-sentence motion is pending. See subsection (A)(2).

\* \* \* \* \*

#### Optional Post-Sentence Motion

\* \* \* \* \*

Under subsection (B)(1)(c), any issue raised before or during trial is deemed preserved for appeal whether or not the defendant chooses to raise the issue in a post-sentence motion. It follows that the failure to brief or argue an issue in the post-sentence motion would not waive that issue on appeal as long as the issue was properly preserved, in the first instance, before or during trial. **Nothing in this rule, however, is intended to address Pa.R.A.P. 1925(b) or the preservation of appellate issues once an appeal is filed. See *Commonwealth v. Lord*, 719 A.2d 306 (Pa. 1998) (any issues not raised in a 1925(b) statement will be deemed waived).**

\* \* \* \* \*

#### Contents of Order

Subsection (B)(4) protects the defendant's right to appeal by requiring that the judge's order denying the motion, **[or] the clerk of courts' order denying the motion by operation of law, or the order entered memorializing a defendant's withdrawal of a post-sentence motion,** contain written notice of the defendant's appeal rights. This requirement insures adequate notice to the defendant, which is important given the potential time lapse between the notice provided at

sentencing and the resolution of the post-sentence motion. See Rule 1405.C(3). **See also *Commonwealth v. Miller*, 715 A.2d 1203 (Pa. Super. 1998), concerning the contents of the order memorializing the withdrawal of a post-sentence motion.**

**When a defendant withdraws a post-sentence motion in open court and on the record, the judge should orally enter an order memorializing the withdrawal for the record, and give the defendant notice of the information required by paragraph (B)(4). See *Commonwealth v. Miller*, supra.**

\* \* \* \* \*

#### Committee Explanatory Reports:

\* \* \* \* \*

**Final Report explaining the July 9, 1999 amendments to subsections (A)(2) and (B)(4) concerning time for appeal and contents of the order entered following withdrawal of post-sentence motion, and revision of the Comment adding the citation to *Commonwealth v. Lord*, published with the Court's Order at 29 Pa.B. 3836 (July 24, 1999).**

#### FINAL REPORT<sup>1</sup>

##### Amendments to Pa.R.Crim.P. 1410

##### Withdrawal of Post-Sentence Motions; *Commonwealth v. Lord*

On July 9, 1999, effective January 1, 2000, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 1410 (Post-Sentence Procedures; Appeal) to fill a gap in the rule by addressing, inter alia, the time for appeal following a withdrawal of a post-sentence motion. In addition, the Court approved the revision of the Comment (1) to clarify that Rule 1410 does not address Pa.R.A.P. 1925(b) nor waiver of appellate issues once an appeal is filed, and (2) by adding a citation to *Commonwealth v. Lord*, 719 A.2d 306 (Pa. 1998).

#### Discussion

##### 1. Withdrawal of Post-Sentence Motions

As part of the Committee's review of cases addressing Rule 1410 and post-sentence procedures, the Committee considered *Commonwealth v. Miller*, 715 A.2d 1203 (Pa. Super. 1998), in which the Superior Court applied the procedures of Rule 1410 to cases in which the defendant withdraws a post-sentence motion. Because Rule 1410 did not cover withdrawals of post-sentence motions, the Superior Court held that

the withdrawal of a post-sentence motion is the equivalent of a denial of that motion either by the trial court or by operation of law for purposes of the requirements for filing a timely notice of appeal under Pa.R.Crim.P. 1410.

The court also determined that

if the defendant withdraws a post-sentence motion, the court shall issue an order memorializing the withdrawal and notifying the defendant of his or her appellate rights pursuant to Rule 1410(B)(4). Consistent with our earlier conclusion, this notice should state that the appeal period expires thirty days following the date of the withdrawal of the post-sentence motion.

<sup>1</sup> 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.

The Committee reviewed the Committee history of the development of Rule 1410 and found that the issue of waivers had not been addressed at that time. Although some members noted that the *Miller* case was the first time the issue of withdrawals of post-sentence motions has come before the Committee, and questioned whether any rule changes were necessary, after discussing this matter in more detail, the Committee agreed that, although it is apparent that withdrawal issues do not arise frequently, this was a gap in post-sentence procedures that should be closed in Rule 1410 to avoid further confusion.

Using the process for proceeding following a waiver set forth by the Superior Court in *Miller* as the starting point for the development of the changes, the Committee drafted amendments to paragraphs (A)(2) and (B)(3) and (4) that clarify the time for appeal following a withdrawal, and require the trial judge to issue an order memorializing the withdrawal. We also proposed correlative changes to other parts of Rule 1410 and the Comment. These changes are more fully explained in the Rule 1410 annotations as follows. (The annotations are indicated in italics preceding the changes.)

*Rule 1410. Post-Sentence Procedures; Appeal.*

(A) Timing.

(1) Except as provided in Section D, a written post-sentence motion shall be filed no later than 10 days after imposition of sentence.

*The Committee added the withdrawal provision to paragraph (A)(2). With the addition of the withdrawal provision, the Committee thought that paragraph (2) should be reorganized to make the three provisions more distinct, and that the wording of the provisions should be reorganized so each one begins with the 30-day time period.*

*The Committee used "entry of the order" for two reasons. First, the entry of the order is consistent with the other two provisions in paragraph (A)(2). Second, it seemed to us that the date that an order is entered is more likely to be a date certain than the date of a withdrawal.*

(2) If the defendant files a timely post-sentence motion, the notice of appeal shall be filed:

(a) within 30 days of the entry of the order deciding the motion; [ , or; ]

(b) [ if the judge fails to decide the motion, ] within 30 days of the entry of the order denying the motion by operation of law in cases in which the judge fails to decide the motion; or [ . ]

(c) within 30 days of the entry of the order memorializing the withdrawal in cases in which the defendant withdraws the motion.

(3) If the defendant does not file a post-sentence motion, the defendant's notice of appeal shall be filed within 30 days of imposition of sentence, except as provided in subsection (A)(4).

(4) If the Commonwealth files a motion to modify sentence pursuant to Rule 1411, the defendant's notice of appeal shall be filed within 30 days of the entry of the order disposing of the Commonwealth's motion.

(B) Optional Post-Sentence Motion.

*The Committee agreed that "file" more accurately describes what a defendant does with a post-sentence motion, and paragraph (1)(a) has been amended accordingly.*

(1) Generally.

(a) The defendant in a court case shall have the right to [ make ] file a post-sentence motion. All requests for relief from the trial court shall be stated with specificity and particularity, and shall be consolidated in the post-sentence motion, which may include:

\* \* \* \* \*

*The Superior Court in Commonwealth v. Miller held that the trial court must issue an order memorializing the withdrawal and notifying the defendant of the appellate rights set forth in Rule 1410(B)(4). The Committee has included the requirement in this section because the section applies to court action following the filing of the post-sentence motion. Again, for purposes of consistency with other Rule 1410 provisions, we have used "enter" instead of "issue" with regard to the court's order.*

*(B)(3)(d) In cases in which the defendant withdraws a post-sentence motion, the judge promptly shall enter an order memorializing the withdrawal. The order shall include the information required by paragraph (B)(4).*

*As noted above, the Superior Court held that the order memorializing the withdrawal must also include a notice to the defendant of the requirements of Rule 1410(B)(4). In view of this holding, the Committee has added the requirement to paragraph (B)(4).*

(4) Contents of Order.

An order denying a post-sentence motion, whether signed by the judge or entered by the clerk of courts, or an order entered following a defendant's withdrawal of the post-sentence motion, shall include notice to the defendant of the following:

**Comment**

\* \* \* \* \*

Timing

Section (A) contains the timing requirements for filing the optional post-sentence motion and taking an appeal. Under subsection (A)(1), the post-sentence motion must be filed within 10 days of imposition of sentence.

*The following paragraph has been revised to add the withdrawal provision to the triggering mechanisms, and includes the citation to the Miller case.*

When a defendant files a timely post-sentence motion, the 30-day period for the defendant's direct appeal on all matters in that case—including all issues related to any informations and any charges consolidated against the defendant for trial—is triggered by the trial judge's decision on the post-sentence motion, [ or ] the denial of the motion by operation of law, or the withdrawal of the post-sentence motion. The appeal period runs from the entry of the order. As to the date of entry of orders, see Pa.R.A.P. 108. *See also Commonwealth v. Miller, 715 A.2d 1203 (Pa. Super. 1998), concerning the time for appeal following the withdrawal of a post-sentence motion.* No direct appeal may be taken by a defendant while his or her post-sentence motion is pending. See subsection (A)(2).

\* \* \* \* \*

Contents of Order

*The following paragraph has been revised to add the withdrawal order to the list of orders, and to include another citation to the Miller case.*

Subsection (B)(4) protects the defendant's right to appeal by requiring that the judge's order denying the motion, [or] the clerk of courts' order denying the motion by operation of law, or the order entered memorializing a defendant's withdrawal of a post-sentence motion, contain written notice of the defendant's appeal rights. This requirement insures adequate notice to the defendant, which is important given the potential time lapse between the notice provided at sentencing and the resolution of the post-sentence motion. See Rule 1405.C(3). See also *Commonwealth v. Miller*, 715 A.2d 1203 (Pa. Super. 1998), concerning the contents of the order memorializing the withdrawal of a post-sentence motion.

The Superior Court also held that, when the defendant withdraws the motion in open court on the record, the court need not issue a written order; and that it is sufficient to explain the provisions of paragraph (B)(4) on the record. The Committee added this concept to the Comment rather than the rule because we thought it was more a gloss on the procedure the court was establishing than an actual requirement.

When a defendant withdraws a post-sentence motion in open court and on the record, the judge should orally enter an order memorializing the withdrawal for the record, and give the defendant notice of the information required by paragraph (B)(4). See *Commonwealth v. Miller*, supra.

2. *Pa.R.Crim.P. 1410 Comment Revision—Commonwealth v. Lord*

Another part of our ongoing review of post-sentence practice since the implementation of the procedures in 1994 has been to follow the development of the case law related to the courts' interpretation of the interplay between Criminal Rule 1410 and Pa.R.A.P. 1925. We noted that there was concern about the possible incompatibility between Criminal Rule 1410, which eliminated the "double waiver" rule at the trial level, and Appellate Rule 1925(b), which permitted an appellate court to find waiver of issues not included in a 1925(b) statement of matters complained of on appeal. After an extensive review of the Committee's history on the development of Rule 1410 and the case law decided after 1994, the Committee did not think that an amendment to the text of Rule 1410 or Rule 1925(b) was necessary. However, because the issue continues to come up in case law, indicating that there is still some confusion, the Committee agreed that a clarifying statement should be added to the Rule 1410 Comment as an aid to the bench and bar.

As the Committee was developing this Comment revision, the Supreme Court handed down its decision in *Commonwealth v. Lord*, supra., and directed that this decision be referenced in the rules. Accordingly, the Rule 1410 Comment has been revised, as follows, to make it clear that Rule 1410 does not address the preservation of issues in a 1925(b) statement, and to include the Court-requested reference to *Commonwealth v. Lord*.

Under subsection (B)(1)(c), any issue raised before or during trial is deemed preserved for appeal whether or not the defendant chooses to raise the issue in a post-sentence motion. It follows that the failure to brief or argue an issue in the post-sentence motion would not waive that issue on appeal as long as the issue was properly preserved, in the first instance, before or during trial. *Nothing in this rule, however, is intended to address Pa.R.A.P. 1925(b) or the preservation of appellate issues once an appeal is filed. See Commonwealth v. Lord*, 719 A.2d 306 (Pa. 1998), (any issues not raised in a 1925(b) statement will be deemed waived).

[Pa.B. Doc. No. 99-1172. Filed for public inspection July 23, 1999, 9:00 a.m.]

## SUPREME COURT

### Accreditation of the American Board of Certification as a Certifying Organization; No. 536 Disciplinary Doc. No. 3

#### Order

*Per Curiam:*

And Now, this 7th day of July, 1999, upon consideration of the recommendation of the Pennsylvania Bar Association Review and Certifying Board, the American Board of Certification is hereby accredited as a certifying organization in the areas of business bankruptcy and consumer bankruptcy for a period of five calendar years.

[Pa.B. Doc. No. 99-1173. Filed for public inspection July 23, 1999, 9:00 a.m.]

### Accreditation of the National Elder Law Foundation as a Certifying Organization; No. 537 Disciplinary Doc. No. 3

#### Order

*Per Curiam:*

And Now, this 7th day of July, 1999, upon consideration of the recommendation of the Pennsylvania Bar Association Review and Certifying Board, the National Elder Law Foundation is hereby accredited as a certifying organization in the area of elder law for a period of five calendar years.

[Pa.B. Doc. No. 99-1174. Filed for public inspection July 23, 1999, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### PART V. DELAWARE RIVER BASIN COMMISSION [25 PA. CODE CH. 901]

#### Amendments to the Delaware River Basin Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania

At its June 23, 1999, business meeting, the Delaware River Basin Commission (Commission) amended its Ground Water Protected Area Regulations for Southeastern Pennsylvania by the establishment of numerical withdrawal limits for 62 subbasins which are entirely or partially within the Protected Area.

##### *Effective Date*

The effective date is June 23, 1999.

##### *Address*

Copies of the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania are available from the Delaware River Basin Commission, P. O. Box 7360, West Trenton, New Jersey 08628.

##### *For Further Information Contact*

Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, (609) 883-9500 ext. 203.

##### *Supplementary Information*

On March 9, 1999, the Commission held public hearings on proposed amendments to its Ground Water Protected Area Regulations for Southeastern Pennsylvania as noticed in the *Pennsylvania Bulletin* issues of February 6, 1999, and March 6, 1999. The Commission has considered the extensive testimony and comments from interested parties and has prepared a "Response Document on Proposed Amendments to the Ground Water Protected Area Regulations for Southeastern Pennsylvania: May 1999" which is available upon request to Susan Weisman at the number provided above.

The Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania are hereby amended as follows in the following Resolution.

A Resolution to amend the Ground Water Protected Area Regulations for Southeastern Pennsylvania by the establishment of numerical withdrawal limits for 62 subbasins which are entirely or partially within the Protected Area.

*Whereas*, the Ground Water Protected Area (GWPA) Regulations for Southeastern Pennsylvania were adopted in 1980 to prevent the depletion of ground water, protect the interests and rights of existing water users, and balance and reconcile alternative and conflicting uses of the limited water resources in the area; and

*Whereas*, while the GWPA Regulations have successfully addressed most ground water problems, certain provisions, particularly those pertaining to the protection of low streamflows, have been difficult to administer on a project-by-project basis; and

*Whereas*, the United States Geological Survey (U.S.G.S.) conducted a water-use analysis for the Neshaminy Creek Basin and the Commission's Ground

Water Advisory Committee developed proposed amendments to the GWPA Regulations to establish numerical ground water withdrawal limits on a subbasin level based upon baseflow frequency analyses prepared as part of the U.S.G.S. study; and

*Whereas*, on January 28, 1998, the Commission adopted amendments to its GWPA Regulations which established a two-tiered system of withdrawal limits for the 14 subbasins in the Neshaminy Creek Basin in the Protected Area; and

*Whereas*, the U.S.G.S. prepared a similar study which investigated the withdrawal limits for the remaining subbasins in the Protected Area and formed the basis of proposed amendments to the GWPA Regulations; and

*Whereas*, the Commission held public hearings on March 9, 1999, in Conshohocken, Pennsylvania, to receive testimony and comments on the proposed amendments; and

*Whereas*, a total of 33 comments were received on the proposed amendments; and

*Whereas*, the Commission has considered the testimony and comments from interested parties; now therefore

*Be It Resolved* by the Delaware River Basin Commission:

1. The Ground Water Protected Area Regulations for Southeastern Pennsylvania are hereby amended as follows:

Subsection 6.I.3. is hereby revised to read as follows:

3. The potentially stressed levels and withdrawal limits for all delineated basins and subbasins are set forth below:

<i>Neshaminy Creek Basin</i>		
<i>Subbasin</i>	<i>Potentially Stressed (mgly)*</i>	<i>Withdrawal Limit (mgly)</i>
West Branch Neshaminy Creek Basin	1,054	1,405
Pine Run Basin	596	795
North Branch Neshaminy Creek	853	1,131
Doylestown Subbasin Neshaminy Creek	710	946
Warwick Subbasin Neshaminy Creek	889	1,185
Warrington Subbasin Little Neshaminy Creek	505	673
Park Creek Basin	582	776
Warminster Subbasin Little Neshaminy Creek	1,016	1,355
Mill Creek Basin	1,174	1,565
Northampton Subbasin Neshaminy Creek	596	794
Newtown Creek	298	397
Core Creek Basin	494	658
Ironworks Creek Basin	326	434
Lower Section Subbasin Neshaminy Creek	3,026	4,034

\*mgly means million gallons per year

Schuylkill River Basin			Delaware River Basin		
Subbasin	Potentially Stressed (mg/y)	Withdrawal Limit (mg/y)	Subbasin	Potentially Stressed (mg/y)	Withdrawal Limit (mg/y)
Hay Creek	974	1,299	Upper Reach Darby Creek	1,625	2,167
Lower Reach Manatawny-Ironstone Creek	1,811	2,414	Upper Reach East Branch Chester Creek	1,865	2,487
Pigeon Creek	611	815	Upper Reach Frankford Creek	1,414	1,886
Schuylkill-Crow Creek	1,157	1,543	Upper Reach Poquessing Creek	1,008	1,344
Schuylkill-Mingo Creek	671	895	Upper Reach Ridley Creek	1,707	2,275
Schuylkill-Plymouth-Mill Creeks	4,446	5,929	Tohickon Subbasin		
Schuylkill-Sixpenny Creek	1,490	1,987	Potentially Stressed Limit (mg/y)		
Schuylkill-Sprogels Run	1,091	1,455	Subbasin		
Schuylkill-Stony Creek	687	916	Tohickon-Beaver-Morgan Creeks	1,156	1,541
Schuylkill-Trout Creek	1,082	1,443	Tohickon-Deep Run	956	1,274
Stony Creek	1,242	1,655	Tohickon-Geddes-Cabin Runs	602	803
Valley Creek	1,865	2,486	Tohickon-Lake Nockamixon	556	741
French and Pickering Creek Subbasins			Tohickon-Three Mile Run	726	968
Subbasin	Potentially Stressed (mg/y)	Withdrawal Limit (mg/y)	Pennypack and Wissahickon Subbasins		
Lower Reach French Creek	634	845	Potentially Stressed Limit (mg/y)		
Lower Reach Pickering Creek	1,716	2,288	Subbasin		
Middle Reach French Creek	1,608	2,145	Lower Reach Wissahickon Creek	2,750	3,666
South Branch French Creek	1,044	1,393	Upper Reach Wissahickon Creek	1,302	1,736
Upper Reach French Creek	1,295	1,726	Middle Reach Pennypack Creek	1,295	1,727
Upper Reach Pickering Creek	1,358	1,811	Upper Reach Pennypack Creek	1,358	1,811
Perkiomen and Skippack Creek Subbasins			Brandywine Creek Subbasin		
Subbasin	Potentially Stressed (mg/y)	Withdrawal Limit (mg/y)	Potentially Stressed Limit (mg/y)		
East Branch Perkiomen-Indian Creeks	633	844	Subbasin		
East Branch Perkiomen-Mill Creeks	720	961	East Branch Brandywine-Taylor Run	1,054	1,405
East Branch Perkiomen-Morris Run	1,214	1,619	Middle Reach Brandywine Creek	823	1,098
Hosensack-Indian Creeks	1,257	1,676	Upper Reach Brandywine Creek	1,614	2,153
Lower Reach Skippack Creek	1,069	1,426	West Branch Brandywine-Beaver Run	2,110	2,813
Perkiomen-Deep Creeks	1,047	1,396	West Branch Brandywine-Broad Run	2,380	3,173
Perkiomen-Lodal Creeks	1,200	1,600	West Valley Creek	1,673	2,231
Perkiomen-Macoby Creek	1,252	1,669	Lehigh Subbasin		
Swamp-Middle Creeks	1,423	1,898	Potentially Stressed Limit (mg/y)		
Swamp-Minister Creeks	547	730	Subbasin		
Swamp-Scioto Creeks	746	994	Upper Reach Saucon Creek	946	1,262
Towamencin Creek	466	622	Subject to public notice and hearing, this section may be updated or revised based upon new and evolving information on hydrology and streamflow and ground water monitoring or in accordance with 2.		
Unami-Licking Creeks	992	1,322	2. This resolution shall become effective immediately.		
Unami-Ridge Valley Creeks	1,068	1,424	SUSAN M. WEISMAN, Secretary		
Upper Reach Perkiomen Creek	1,223	1,631	Fiscal Note: Fiscal Note 68-39 remains valid for the		
Upper Reach Skippack Creek	813	1,084			
West Branch Perkiomen Creek	1,566	2,088			
Delaware River Basin					
Subbasin	Potentially Stressed (mg/y)	Withdrawal Limit (mg/y)			
Jericho Creek	421	562			
Mill Creek	1,600	2,134			
Paunacussing Creek	513	684			
Pidcock Creek	563	751			
Upper Reach Cobbs Creek	871	1,161			
Upper Reach Crum Creek	1,290	1,721			

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**

**PART V. DELAWARE RIVER BASIN COMMISSION**

**CHAPTER 901. GENERAL PROVISIONS**

**§ 901.5. Groundwater protection area, Southeastern Pennsylvania.**

The Basin Regulations, Groundwater Protection, Southeastern Pennsylvania, as set forth at 18 CFR Part 430 (1999), are hereby incorporated by reference and made part of this title.

[Pa.B. Doc. No. 99-1175. Filed for public inspection July 23, 1999, 9:00 a.m.]

# **Title 28—HEALTH AND SAFETY**

**DEPARTMENT OF HEALTH**

**[28 PA. CODE CHS. 8 AND 1101—1113]**

**Supplemental Nutrition Program for Women, Infants and Children (WIC Program)**

*A. Introduction*

The Department of Health (Department), Bureau of Family Health, Division of WIC (WIC Program), submits as final rulemaking with proposed rulemaking omitted, regulations governing the authorization and management of stores participating in the WIC Program and regulations governing the procedures for administrative appeals of WIC applicants and participants, and local agencies and stores, in compliance with Federal regulations governing the WIC Program in 7 CFR Part 246 (relating to special supplemental nutrition program for women, infants and children). These State regulations add a new Part VIII (relating to supplemental nutrition program for women, infants and children). This rulemaking also deletes §§ 8.41—8.43, 8.51—8.62 and 8.71—8.74, the Department's current regulations pertaining to the WIC Program's administrative appeals. These additions and deletions are set forth in Annex A. The final-form State regulations have been submitted to the United States Department of Agriculture, Food and Nutrition Services (USDA-FNS), for review and approval for compliance with the Federal regulations. The USDA-FNS approved the regulations by letters dated April 5, 1999, April 12, 1999, and April 27, 1999. Copies of the letters are available to the public upon request.

Under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL), the Department is dispensing with notice of proposed rulemaking and the procedures for adopting final-form regulations, as specified in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202). The Department finds that those procedures are contrary to the public interest and impracticable.

As a result of the Commonwealth Court decision in *Giant Food Stores, Inc. v. Commonwealth of Pennsylvania, Department of Health*, 713 A.2d 177 (1998), the Department was required to promulgate regulations governing the selection and management of grocery stores to participate in the WIC Program.

The Department has mandates imposed by Federal regulations which require that at least once every 2 years

the Department review the qualifications of all authorized food vendors participating in the WIC Program and make appropriate adjustments among participating food vendors. See 7 CFR 246.12(g) (relating to food delivery systems). These reviews must be completed by September 30, 1999, to stay compliant with Federal regulations. If the Department fails to do so, it faces audit exceptions and possible loss of Federal funding for the operation of the WIC Program until it complies with the Federal regulatory requirements. Loss or even suspension for a short period of time of Federal funding for the WIC Program would render the program inoperable, as 100% of the program's funds are Federal, or would place a difficult, if not impossible, financial burden upon the Commonwealth, shall the Commonwealth continue to operate the program in the absence of Federal funding.

The WIC Program provides food benefits to approximately 260,000 women, infants and children who redeem, on an average daily basis, \$500,000 worth of WIC checks at retail grocery stores located within this Commonwealth. An interruption in the funding of the Program would affect the receipt of necessary food benefits for the participants of the WIC Program, and interfere with the retail grocery business and the employment of personnel at the 25 local WIC agencies.

The store reviews referenced previously were the subject of the *Giant* Commonwealth Court case wherein the Court found the criteria used to conduct the reviews shall be promulgated as regulations. Until the criteria are promulgated as regulations, the Department is unable to conduct further reviews. The Department will conduct approximately 1,400 reviews of stores before September 30, 1999. To require the Department to engage in the customary regulatory process, is impracticable and contrary to the public interest in ensuring proper nutrition for women, infants and children during critical periods of growth.

*B. Summary*

The regulations are presented in seven chapters: Chapter 1101 (relating to general provisions), Chapter 1103 (relating to authorization of stores), Chapter 1105 (relating to requirements of WIC authorized stores), Chapter 1107 (relating to sanctions), Chapter 1109 (relating to administrative appeals), Chapter 1111 (relating to applicant and participant appeals) and Chapter 1113 (relating to local agency and store appeals). Unless otherwise noted, the provisions of these regulations set forth in a regulatory format standards for the administration of the WIC Program, as they relate to design and operation requirements of the food delivery system, which have been in effect since 1986.

*Chapter 1101. General Provisions.*

This chapter explains the general purpose of the WIC Program, defines terms used in the regulations, and provides information relating to the administration of the WIC Program by the Department and the local agencies with which the Department contracts to help it administer the WIC Program.

Section 1101.1 (relating to background and scope) provides information on the Federal legislation authorizing the WIC Program and the purpose of that legislation. Through an amendment to the Child Nutrition Act of 1966 (42 U.S.C.A. §§ 1171—1791) (Federal act), Congress authorized the Supplemental Nutrition Program for Women, Infants and Children for the purpose of providing supplemental foods and nutrition education to pregnant, postpartum and breastfeeding women, infants and young

children, from families with inadequate income, who are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. This section sets forth the purpose of the WIC Program, identifies the criteria persons need to satisfy to qualify as participants and the services that the WIC Program provides to participants.

Subsection (b) sets forth the scope of the regulations contained in Part VIII. The regulations specify the design and operational requirements for the WIC Program's food delivery system, and prescribe procedures to be used by applicants, participants, local agencies and stores to appeal actions of the Department and local agencies that may adversely impact upon them. These procedures supplement or supersede 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

Section 1101.2 (relating to definitions) provides definitions that are consistent with the Federal regulations governing the WIC Program found in 7 CFR Part 246. The section also provides definitions for some terms which are not defined or used in Federal regulations. Federal regulations governing the WIC Program found in 7 CFR 246.3(b) (relating to administration) delegate responsibilities for the effective and efficient administration of the WIC Program at the state level to state agencies. A "state agency," as defined under Federal regulation, is the health department or comparable agency of each state. In this Commonwealth, the USDA-FNS contracts with the Department to carry out the responsibilities of the WIC Program.

Section 1101.3 (relating to administration) sets forth, in general terms, the responsibilities of the Department in administering the WIC Program, as well as the responsibilities of the local agencies with which the Department contracts to carry out the WIC Program at the local level. The Department sets forth the requirements imposed upon local agencies, in greater detail, in its biennial contracts with the local agencies. Responsibilities of both the Department and the local agencies may also change as required by Federal statute or regulations.

#### *Chapter 1103. Authorization of Stores.*

In accordance with the duties delegated to it by the Federal regulations, the Department is responsible for the fiscal management of and accountability for the WIC Program food delivery systems under its jurisdiction. See 7 CFR 246.12(a)(1) (relating to food delivery system). The Department has the option, under Federal regulations, to operate up to three different types of food delivery systems in this Commonwealth: a retail purchase system, a home delivery system or a direct distribution system. See 7 CFR 246.12(b). With the exception of special infant formulas for which the Department has chosen to use a direct distribution system, the Department has elected to use a retail purchase system for the delivery of food benefits to WIC participants.

This chapter explains the procedures the Department has established to select and authorize retail grocery stores to participate in the retail food delivery system of the WIC Program.

Section 1103.1 (relating to certification and recertification reviews) establishes objective criteria for the selection of stores to participate in the WIC Program. As required by 7 CFR 246.12(e)(1), there shall be an onsite visit prior to, or at the time of, initial authorization of a new vendor. The procedures in the section are used to determine, through onsite reviews of stores, which stores meet the criteria to be authorized to participate in the

WIC Program. The criteria used are found in § 1103.4 (relating to selection and limitation criteria; authorization process). The criteria ensure that each store is able to minimally meet the needs of participants who may choose to shop at the store for their WIC purchases.

Subsection (a) sets forth an exception to the requirements that stores shall satisfy certain qualifications to be authorized. It permits an exception if the Department finds that there would be participant hardship if the store were not to receive authorization to participate in the WIC Program. This exception allows the Department to balance the needs of the participants against the shortcomings of the stores in meeting the criteria. It furthers the purpose of the Federal act, which is to provide supplemental food benefits to women, infants and children during critical periods of growth. This exception does not relieve the store from meeting its responsibilities. It requires corrective action by the store to ensure the criteria are met. This exception is discussed further in the discussion of § 1103.7 (relating to participant hardship).

The Department's authorization of stores is not perpetual. Subsection (c) sets forth the duration of certification. Consistent with 7 CFR 246.12(f)(2)(xvi), it puts the store on notice that neither the Department nor the store have an obligation to renew the vendor agreement. At least once every 2 years, the Commonwealth is required, under 7 CFR 246.12(g), to review the qualifications of all authorized vendors in its jurisdiction. The Department's agreements with stores which have been selected to participate in the WIC Program are for no longer than 2 years duration. Based upon the results of the reviews, which are labeled in these regulations as certification or recertification reviews, the Department decides which stores are to be selected to participate in WIC Program and provides authorization. This procedure provides an equitable opportunity for all stores to compete for limited store authorizations, at least once every 2 years, and allows the Commonwealth to select and authorize stores which provide the best value to the Commonwealth. This, in turn, provides for the most efficient use of Federal grant funds and allows the Commonwealth to serve more participants.

The Pennsylvania Food Merchants Association (PFMA) provided comment on the contract duration issue. The PFMA wants vendor agreements to be of indefinite length but subject to ongoing monitoring by the Department. The PFMA would have a contract endure until a store violates conditions of participation and does not correct problems following notice of the violations. The Department provided all of the PFMA's comments to the USDA. The USDA's response to the suggestion by PFMA was:

We believe that fixed period agreements enable the State to manage its vendor population on a periodic basis more easily and allows it to be more responsive to changing Program conditions and needs than is the case with open-ended agreements. The majority of geographic State agencies contract with vendors for 3 years or less, making fixed-period contracts and agreements the norm Nationwide.

Subsection (d) establishes the Commonwealth procedures for the certification/recertification reviews and provides that these reviews shall be conducted at least once every 2 years. The establishment of these standards is mandated by 7 CFR 246.12(g).

Section 1103.2 (relating to probationary certification) establishes procedures to authorize stores, on a probationary basis, which have not opened and do not have the frozen or dairy food sections stocked at the time of the

certification review. This benefits both the stores and the WIC participants. It allows stores to be reviewed prior to opening and allows the participants to select these stores to make their WIC purchases as soon as the store is open for business.

This section also establishes procedures for the Department to authorize stores that do not meet the selection and limitation criteria to participate in the WIC Program, on a probationary basis, if the denial or removal of the store's authorization would cause participant hardship. This section furthers the purpose of the Federal act by weighing the need of the participants and the Department in having stores to serve the participants in a particular area, against the problems demonstrated by that store in failing to meet such requirements or failing monitoring or compliance reviews which have been established to ensure the provision of WIC Program benefits to participants.

Section 1103.3 (relating to authorization of store slots) establishes a formula for determining how many stores the Department will authorize to participate in the WIC Program. The number is based upon a participant to store ratio. This furthers the purpose of the Federal act by assuring an appropriate number and distribution of authorized stores for adequate participant access as required by 7 CFR 246.12(e)(1).

Federal regulations permit a state to establish criteria to limit the number of stores it will authorize to participate in the WIC Program so that the state can effectively and efficiently manage review of all stores under its jurisdiction. See 7 CFR 246.12(e)(1). Under this section, the Department authorizes one store slot for every 160 participants in the area, except in Philadelphia. Because of the WIC population density in Philadelphia and the geographic density of grocery stores, one store slot is authorized for every 260 participants in Philadelphia.

Pennsylvania's standard is more liberal than many other states in the Mid-Atlantic region. The regional average is one store slot authorized for every 192 participants, with some states/districts having averages as high as one store for every 548 participants. Only two states have lower ratios than the Commonwealth: West Virginia and Virginia. The demographics of those states differ quite significantly from this Commonwealth. For example, the number of WIC participants served by the states, 52,700 and 137,655 respectively, compare to Commonwealth's 242,551 participants. (Statistics are based upon figures provided for the First Quarter of FFY 1999.)

The PFMA advised the Department that it opposes criteria to limit the number of stores to participate in the WIC Program; it wants the Department to eliminate the vendor to participant ratio and replace it with a "WIC participant freedom to shop" policy. The PFMA would have the Department allow any store interested in participating in the WIC Program to be approved so long as the store maintains proper health standards and adequate product inventory. The USDA's response to this was:

It is important to understand that the establishment of vendor limitation criteria can be a critical element in providing quality services to participants and promoting efficient use of the State agency's food grant. Furthermore, if the State agency reduced its selection criteria to the two suggested by the PFMA, all vendors meeting these criteria would be authorized regardless of the prices they charge. Since WIC is not an entitlement program, such as Food Stamps,

with funding available to serve all eligible applicants, higher food costs result in lower number of participants served. We do not believe this would result in the best value possible for the Program.

Section 1103.4 (relating to selection and limitation criteria; authorization process) sets forth the criteria the Department will use to select stores to participate in the WIC Program. The Department has established criteria which will ensure that the Department authorizes to participate in the WIC Program only those stores which are able to provide participants with the foods that meet Federal nutritional standards in 7 CFR 246.10 (relating to supplemental foods) and which are authorized by the Department. At the same time, the criteria ensures that the stores charge the Commonwealth reasonable prices for the foods which are purchased by the participants with WIC checks.

Subsection (a) sets forth 12 criteria the Department will use to determine which stores to authorize for participation in the WIC Program. Subsection (a)(2) requires that a store serve a minimum of 25 participants. This number permits small stores to participate in the WIC Program, while ensuring that the expenditure of Federal dollars for administration and monitoring is not wasted on stores that conduct so little WIC business that their participation in the WIC Program would yield a poor return for the cost.

Other criteria in this subsection have been developed to ensure that stores which are selected to participate in the WIC Program are:

- (1) Able to properly maintain foods (subsection (a)(3)).
- (2) Have minimum inventory of WIC authorized foods available at all times (subsection (a)(5)).
- (3) Be open and available a reasonable number of hours and days for participants to shop (subsection (a)(7)).
- (4) Not have stale dated foods on the sales floor (subsection (a)(4)).
- (5) Have shelf prices of WIC authorized foods at less than the maximum allowable cost established for the two food packages most prescribed for WIC participants (subsection (a)(6)).

To fulfill its responsibilities to exercise sound fiscal management over the operation of the State WIC Program (7 CFR 246.12(a)(1)), the Department has established pricing criteria as part of the process for selecting retail grocery stores (subsection (a)(6)). Stores shall have prices of WIC authorized food packages which are less than the maximum prices established by the Department. The maximum prices for WIC authorized food packages are no more than three standard deviations above the Statewide averages of food prices. These prices will be revised annually based upon changes in industry prices for the most widely used WIC food packages. Maximum allowable prices are necessary to ensure responsible administration of the WIC Program. By only authorizing stores that satisfy criteria for maximum prices, the Department is ensuring that there is no extreme markup in the prices of WIC authorized foods and that the Department is acting in a fiscally responsible manner. This will provide a savings to the Commonwealth which, in turn, will ensure that the greatest number of qualified women, infants and children will receive food benefits from the WIC Program.

The PFMA has argued that any retail grocery store be authorized as a WIC vendor, irrespective of the prices it



charges, as long as the store meets State health and food safety inspection standards and is willing to stock the full line of WIC allowable foods.

The USDA's response to this comment was:

Although current Federal regulations do not include specific selection criteria State agencies must use in selecting stores for WIC authorization, this will soon change. The WIC Reauthorization Act of 1998 requires the Secretary of Agriculture to promulgate final regulations not later than March 1, 2000, which include the following mandate "... a state agency shall, in selecting a retail store for participation in the Program, take into consideration the prices that the store charges for food under the Program compared to the prices that other stores charge for the foods."

With respect to the subsection (a)(4) requirement that the store not have stale dated allowable foods on its sales floor, this is particularly important as it relates to infant formula products when the infant's sole source of nutrition is infant formula. Out of date formula may present a potentially serious health threat to an infant.

The PFMA believes that the selection and limitation criteria are arbitrary; that they are unrelated to participant need, quality of stores or the ability of stores to serve WIC customers, and that they are anticompetitive.

The USDA's response to the PFMA's comment on this issue was:

Selection criteria are standards established by the State agency to ensure the systematic selection of the most qualified vendors for authorization. Although selection and limitation criteria may restrict the ability of particular stores to secure or retain WIC authorization, they are utilized to secure participant access and are a critical element in providing quality service to participants.

The USDA further stated:

The WIC Program's role is to select vendors to service clients, not to set or ensure profit margins for participating vendors. Although vendors benefit from the considerable volume of food purchases made through WIC, as well as other foods purchased at the time of WIC redemption, it is of the utmost importance to remember that participants, not vendors, are the Program's clients.

Subsection (b) delineates criteria which the Department will use to determine which stores should be authorized in areas when more stores meeting selection criteria are applying for authorization than the Department has determined it needs through the assignment of store slots based upon participant population for the area. This criteria will only be used when more stores are applying than the Department has determined it can effectively and efficiently monitor. The underlying policy for limitation of stores was articulated in the discussion of § 1103.3 (relating to authorization of store slots).

The USDA provided the following general comment:

We fully support the State agency's decision to utilize limitation criteria as a means of ensuring the provision of quality services to participants; reducing the possibility of vendor fraud; and promoting the efficient use of the State agency's food grant.

Section 1103.5 (relating to minimum inventory) establishes minimum standards of WIC approved foods that each authorized store shall maintain. This criteria is

necessary to ensure that WIC authorized foods are available to participants when they shop at the store for WIC purchases. In accordance with 7 CFR 246.12(e)(3), the Department considered the impact of authorization decisions on small businesses. To help small businesses, the Department has established minimum inventory standards that are sufficient to serve the needs of one to three participants. The inventory identified in this section meets the nutritional requirements in 7 CFR 246.10.

Minor changes have been made to the minimum inventory requirements from those that the Department is currently using in its administration of the WIC Program. The change in the minimum inventory requirements corresponds to changes in the quantities of foods prescribed for WIC participants to purchase. Specifically, the changes increase the requirements of milk and soy based powdered formula from five to six cans, and increase the requirements of evaporated milk from ten to twelve cans.

Subsection (c) provides that the WIC Program will publish annually in the *Pennsylvania Bulletin* the list of authorized foods and acceptable brand name products. This complies with the mandates of 7 CFR 246.12(h)(2) which requires that the State provide grocery stores with pertinent WIC Program information, including a list of acceptable brand name products. Revision of the list annually permits the Department to review new products, including store brands, and add them to the list if found to meet acceptable nutritional standards established by Federal regulation. This differs from how the program currently operates.

Subsection (c) also provides that the Department will publish in the *Pennsylvania Bulletin* notice of the authorized foods and brand names by September 15 of each year. Currently, notice is provided annually by sending a copy of the WIC food list to each authorized store. It is the intent of the Department to continue the practice of sending the information to the stores. It will do this in addition to publishing the information in a notice in the *Pennsylvania Bulletin*.

Subsections (d)—(f) identify the conditions under which the Department will grant to a store a waiver of the minimum inventory requirements (subsection (d)), the foods for which waivers may be granted (subsection (e)) and when the waivers will no longer be valid (subsection (f)). Waivers will be granted only for certain foods for which the Department has no documented WIC purchases at the store. A waiver granted to the store by the Department will no longer be valid when the store is presented a WIC check by a participant for the purchase of a WIC food for which a waiver was granted. In that event, the WIC authorized store will be required to provide the food item within 72 hours after presentation of a WIC check. This policy excuses a store from stocking foods that have not been purchased at the store, while safeguarding participants by requiring the store to make the prescribed food item available to the participant promptly after it is sought. The granting of waivers benefits a store by relieving the store from the unnecessary burden of maintaining inventory of certain WIC authorized foods when the Department has no documented purchases of the foods.

Section 1103.6 (relating to waiting list) establishes a procedure which allows for the effective administration and management of stores seeking authorization to participate in the WIC Program. This procedure requires that the Department maintain a waiting list of stores seeking authorization when no store slots are available. When a store slot becomes available, the Department will

be cognizant of the stores interested in being authorized and will be able to send authorization information to all on the list, thus ensuring that the Department provides a fair and equitable opportunity for all stores interested in seeking authorization.

Section 1103.7 (relating to participant hardship) establishes criteria the Department will consider to justify authorizing a store in lieu of denying certification or recertification when the store fails to meet selection and limitation criteria. This criteria requires that there be a demonstration of hardship to participants if the store is denied certification or recertification by the Department. By authorizing a noncompliant store to participate in the WIC Program when there is a determination of participant hardship, the Department is furthering the purpose of the Federal act by ensuring that participants have reasonable access to stores. Additionally, this section allows the Department to provide for continuity of services to participants when the store changes ownership, if there is a finding of participant hardship as defined in subsection (b).

Subsection (b)(1) permits the Department to make exceptions for stores that fail to meet selection and limitation criteria if they serve participants whose nationality, ethnicity or religious dietary needs cannot be properly served by another WIC authorized store within a certain and defined distance. For example, if a kosher grocery did not have the minimum inventory of whole milk available at the time a recertification review was conducted, and the next closest kosher grocery was more than 3 miles (for Philadelphia, the distance is 1 mile), the store would be placed on probation if ten or more participants who shop at the store require kosher products. The exception allows the Department to consider one type of the special need of WIC participants.

Subsection (b)(5)—(7) identifies reasonable travel distances to an authorized store and declares that participant hardship exists when a specified number of participants would need to exceed that distance to travel to another WIC authorized store should the store they have selected be removed from the WIC Program. The distances vary according to the number of WIC participants who may be affected if the store were not authorized. As the number of participants affected increase, the distance to the next authorized store decreases for the purpose of determining participant hardship.

This regulation reflects two changes from the current administration of the WIC Program. The first is the addition of 3/10 of 1 mile distance for determining participant hardship for stores serving 300 or more participants. Previously there was no delineated travel distance for stores serving 300 or more participants. The second change is the provision for the temporary authorization of a store which had changed ownership. Temporary authorization would be permitted when the Department has not received sufficient notice to arrange for alternate shopping accommodations for WIC participants. As stated earlier, Federal regulations specifically provide that authorizations of stores are null and void when operation of the store ceases or ownership changes. See 7 CFR 246.12(f)(2)(xix). Administratively, the provision for temporary authorization permits the Department to be responsive to the immediate needs of the participants for supplemental foods. It also enables the Department to remain compliant with Federal regulations, by providing for a temporary authorization of stores which have changed ownership rather than permitting continued WIC purchases to a store no longer certified. This tempo-

rary authorization is valid only until the WIC Program is able to conduct a complete certification review of that store, and any other store which may be seeking certification in that area.

*Chapter 1105. Requirements of WIC authorized stores.*

Section 1105.1 (relating to training) establishes the type and frequency of training that the Department needs to provide to authorized vendors to satisfy the Federal regulations for training of authorized grocery stores. The training is intended to prevent WIC Program errors and abuse, and to improve WIC Program service as required by 7 CFR 246.12(h). Federal regulations require as a part of the vendor agreement, that the manager of a store or an authorized representative of a store accept training on program procedures and be responsible for training cashiers and other staff. The Federal regulations do not specifically mandate how this is to be accomplished. See 7 CFR 246.12(f)(2)(vii)—(ix).

The Federal regulations do require, however, that food vendors be provided with pertinent program information and guidance. See 7 CFR 246.12(h). Subsection (a) pertains to initial training. It mandates that newly authorized stores receive training on WIC Program policies and procedures prior to actually accepting WIC checks. This ensures that management and cashiers understand their responsibilities related to the store's participation in the WIC Program before they participate in WIC transactions. This subsection requires that the local agency responsible for the area in which the store is located conduct the initial training within 30 days of the date of authorization to ensure that, once a store is authorized, it will be able to participate in the program as soon as administratively feasible. Requiring store personnel to be trained prior to the store accepting checks prevents WIC Program errors.

Subsection (b) pertains to annual training. It provides for continued education, in recognition that retail food sales occur in an employment environment that experiences high turnover rates. The Department requires annual training of at least one person from each store who is responsible for training store personnel on WIC Program procedures. For the convenience of store personnel, the Department provides each store with two opportunities for it to have a satisfactory person attend the annual training. This subsection further provides for training within the county where the store is located or in an adjoining county so that the store representative will not be burdened by traveling long distances to attend the annual training. Annual training is designed to prevent WIC Program errors and improve WIC Program service by ensuring that authorized stores are provided continued education on the WIC Program and kept abreast of pertinent changes in the WIC Program operation. Annual training programs facilitate communication between authorized stores and WIC Program staff and allow the WIC Program staff to be responsive to issues affecting stores.

Subsection (c) pertains to corrective training. It provides a means for the Department to aid stores in correcting violations identified during onsite reviews. Corrective training allows WIC Program staff to be responsive to problems documented during onsite visits to authorized stores. Corrective training ensures that the WIC Program has provided all possible assistance to stores in correcting problems prior to imposing sanctions against them as provided in § 1107.1 (relating to sanctions).

Section 1105.2 (relating to overcharge recovery system) establishes procedures for the Department to detect overcharges on WIC participant purchases by stores redeeming WIC checks and provides for reimbursement to the WIC Program of overcharges, if found.

Federal regulations require that the Department establish procedures to ensure the propriety of food instruments, which includes designing a system to review food instruments to detect suspected overcharges. See 7 CFR 246.12(r)(5). This section complies with that requirement. Subsection (a) requires authorized stores to submit to the Department, on a quarterly basis, prices for WIC authorized foods the Department designates. The store is required to provide the information on a "Quarterly Price Report" form provided by the Department. The regulation also permits vendors to file these forms by fax.

Subsection (b) provides that the Department will compare the prices submitted by the store, against the actual prices charged by the store on redeemed food instruments, to determine if there have been overcharges. This system detects only the most egregious overcharges, because it uses the highest prices charged by the store during the reporting period. Therefore, notwithstanding that the store's prices may have fluctuated during the review period, the Department will be able to detect only those charges which exceed the maximum price that a store could have charged for a food package based upon the prices provided by the store.

Federal regulations require the Department to seek reimbursement from the store for overcharges and require notice of the Department's intent to do so as part of the agreement between the Department and authorized store. See 7 CFR 246.12(f)(2)(iv). Subsection (f) requires the store to submit reimbursement to the Department within 20 days if the store if the store does not dispute the claim. This time period allows the store a reasonable opportunity to investigate the propriety of the overcharges claimed by the Department and arrange for payment.

Subsection (g) provides a mechanism for vendors to dispute claims for overcharges if the store questions the propriety of the overcharges, if the store notifies the Department within 15 days of the date of the billing notice. Requiring that stores provide notice of a dispute within a defined time, provides for administrative efficiency by the Department and ensures prompt action by the store to identify and correct problems which may have caused the overcharges. Failure to reimburse the Department for overcharges when due will result in the imposition of a sanction under § 1107.1.

Recovery of overcharges is not only required by Federal regulations, it also benefits the WIC Program by recapturing funds which the Department may recycle to provide food benefits to additional WIC participants.

Section 1105.3 (relating to terms and conditions of participation) sets forth the terms and conditions under which stores will be authorized to participate in the WIC Program. Subsection (a) sets forth the responsibilities of stores generally, subsection (b) sets forth the responsibilities of stores with regard to participants and subsection (c) sets forth the terms and conditions of participation with regard to processing and redemption of WIC checks. Many of the requirements found in this section are specifically set forth in the Federal regulations. Other provisions have been added by the Department to ensure that the Department is able to carry out its responsibilities mandated by the Federal regulations and to carry out the purpose of the WIC Program.

For instance, subsection (a)(4) require stores to maintain minimum inventory of allowable foods and subsection (a)(5) requires them to ensure that foods are properly stored and refrigerated. This ensures that authorized stores are maintaining minimum levels of WIC authorized foods so that the foods are available for participants to make their WIC purchases when shopping at the store, and that foods are fresh and their nutritional content is not compromised. These provisions permit the Department to carry out its responsibility of providing nutritious, supplemental foods to participants of the WIC Program.

Subsection (c), which pertains to the processing and redemption of WIC checks, establishes procedures for the stores to follow which protect the integrity of the WIC data and the integrity of the fiscal operation of the program.

The only change to the terms and conditions of participation set forth in this section from the way the program has previously operated is to require stores to display current shelf prices of WIC authorized foods. This change will ensure that accurate food prices are collected during compliance and monitoring reviews and will help participants to shop wisely and utilize their benefits in a cost effective manner. The change takes into consideration the effect on small stores, by allowing stores the option of displaying the prices on a food list, easily located and clearly visible to participants.

Section 1105.4(d) (relating to change of ownership of a WIC authorized store) puts stores on notice that the Department will not accept an application from a new owner if it appears that the change of ownership is a sham transaction used as a method of avoiding a sanction or disqualification.

Section 1105.5 (relating to changes in availability or location of WIC authorized stores) sets forth Department notification requirements for stores which temporarily or permanently close or relocate. It further provides Department procedures for dealing with each circumstance. The purpose of the section is to ensure that the WIC Program will have sufficient time to notify participants when stores at which the participants are making WIC purchases will not be open or are relocating. Requiring the stores which are going to close or relocate to provide the Department with prior notification enables the Department to make alternate arrangements for participant shopping so that there will be as little inconvenience as possible for participants.

Subsection (b) identifies relevant factors under which the Department may permit a store to temporarily close without imposing sanctions as required by § 1107.1.

The regulations identify three situations in which the store will not lose its authorization or be sanctioned for temporary closings or minimal relocations. These exceptions were not previously granted.

The first exception allows for a continued authorization of a store that temporarily closes due to natural disaster or death in the immediate family. This exception particularly benefits small business owners since many times those businesses are family owned and operated, and the loss of an immediate family member impacts upon the operation of the business.

The second exception allows for temporary closing for remodeling up to 3 days without the loss of the store's authorization, if the owner notifies the Department 15 days in advance of the date the store is scheduled to close for remodeling. This temporary closing may inconvenience

participants who shop at the store. However, if the Department is apprised of the temporary closure at least 15 days in advance, the Department will have sufficient opportunity to notify the participants so that temporary, alternate arrangements can be made for WIC participant shopping. The change also allows the Department to provide continuity in WIC services. Participants will be able to resume making WIC purchases at the store that temporarily closes when the store reopens, in lieu of having to permanently change stores, had the store lost its authorization to participate in the WIC Program and not be reauthorized when it reopens.

The third exception allows for the continued authorization for stores which relocate less than 1 mile and are open for business at their new location less than 3-calendar days from the date the store closes at the prior location. The 3-day time limitation ensures that the closing is for a reasonable period of time and causes minimal inconvenience for participants. The limitation of 1 mile distance for relocation was selected because the store is anticipated to attract the same participants if it relocates this distance or less from its prior location. A relocation of greater distance may cause participants to choose other stores located closer to the store's prior location because of travel distance and inconvenience.

Section 1105.6 (relating to monitoring of WIC authorized stores) sets forth the procedures the Department has developed to meet the mandates of Federal regulations for monitoring authorized stores. The purpose of monitoring authorized stores is to ensure compliance with applicable Federal and State regulations, to provide a mechanism to identify problems and assist stores in correcting these problems, and to provide the Department with the ability to take action against stores which fail to correct problems or which may be engaging in fraudulent or abusive activity. Monitoring of stores protects the financial integrity of the program and ensures effective and efficient program service to WIC participants.

The Department is mandated by 7 CFR 246.12(i) to monitor food vendors within its jurisdiction. The Federal regulations require that the Department develop a system which identifies high-risk vendors and ensures onsite monitoring of WIC authorized stores. See 7 CFR 246.12(i)(1). The Department is responsible for designing a system to conduct onsite monitoring of at least 10% of authorized stores per year, to survey the types and levels of abuse and errors among authorized stores and to take corrective action as appropriate. See 7 CFR 246.12(i)(2). Furthermore, the Federal regulations provide the Department with the authority to conduct compliance purchases to collect evidence of improper vendor practices. See 7 CFR 246.12(i)(5).

The Department has established three methods for conducting onsite monitoring reviews of WIC authorized stores: high-risk reviews, routine reviews and training buys. Each of the three types of review have distinct purposes. The types of problems suspected at the stores determine which type of monitoring the Department will conduct.

Subsection (b) establishes procedures for monitoring high-risk stores. By definition, a "high-risk store" is one which is identified as a possible perpetrator of fraud or abuse. The Department will make the preliminary determination that a store is a high risk store based upon an analysis of redemption patterns of WIC checks or sales, through compliance buy violations or by participant or WIC Program staff complaint. Once a store has been identified as a high-risk store, the Department will use

one of two methods for monitoring it to determine whether or not the store is, in fact, a perpetrator of fraud or abuse. The Department will either conduct a compliance investigation or an inventory audit of the store.

A compliance investigation involves a series of at least two investigations of the store by an undercover investigator posing as a WIC participant or person authorized by the WIC Program to act on behalf of a WIC participant. The purpose of the investigation is to ensure compliance with WIC Program requirements. By authorizing a person to pose as a WIC participant, the Department is able to ascertain if store personnel are following WIC Program requirements in conducting WIC transactions. A report is completed following each review and the store will be notified by letter of any deficiencies noted during the review. This notice provides the store the opportunity to take corrective action. If compliance investigations indicate on two consecutive occasions problems in conducting WIC transactions, the Department will conduct mandatory corrective training for store personnel to assist the store in correcting problems identified during the compliance investigation and to provide every possible means to ensure the store's continued participation in the WIC Program. This section further provides that the Department will disqualify a store from further participation in the WIC Program if deficiencies are found during a third investigation following the mandatory corrective training.

The Department will also use inventory audits to monitor high-risk stores. This procedure allows the Department to compare, over a specific period of time, the inventory levels of WIC authorized foods against the actual WIC sales of those same products during the same specific period of time. The Department will use inventory records to determine whether a store had adequate product inventory sufficient to satisfy claims made for WIC reimbursement. This method is a particularly useful tool for determining whether a store is trafficking in WIC checks.

Under 7 CFR 246.12(i)(2), the Department has developed a procedure for monitoring at least 10% of authorized food vendors per year. This procedure is in subsection (c). The purpose of these types of reviews are to determine whether or not authorized stores remain in compliance with the selection and limitation criteria in § 1103.4(a) and (b) (relating to selection and limitation criteria; authorization process). This type of review is also used to determine whether stores continue to comply with the terms and conditions for participation in § 1105.3 (relating to terms and conditions of participation). The Department will provide corrective training for a store which fails two consecutive routine reviews. This is done in an effort to assist stores in correcting problems. If problems are identified during the third routine review of the store, the Department will proceed to impose sanctions against the store under § 1107.1.

Subsection (d) establishes a procedure to monitor a store's check redemption practices. These reviews are conducted by Federal, State or local agency personnel. The same standards for routine monitoring reviews apply regarding mandatory corrective training following two consecutive reviews identifying problems in the check redemption procedure. Also provision is made for the imposition of sanctions against the store following problems noted during a third training buy.

Subsection (e) puts stores on notice that the Department may utilize law enforcement agencies in the investigation of stores suspected of trafficking in WIC checks or suspected of other fraud or abuse of the WIC Program.

Subsection (f) provides for the Department to seek reimbursement from a WIC authorized store that received funds improperly due to any violation of regulations governing the store's participation in the program which were discovered during monitoring reviews.

After reviewing the Department's draft regulations, the PFMA requested that all references to high-risk reviews be eliminated. The PFMA also suggested that the regulations be amended so that retailers always have an opportunity to review and correct identified problems before any sanction is implemented.

The USDA's comment to PFMA's request was:

High-risk review as described in Pennsylvania's regulation include compliance investigations and inventory audits. Such activities are required by Federal regulation 246.12(i) and therefore may not be eliminated.

An interpretation of Federal regulations 246.12(i) which we received from Supplemental Food Programs Division indicated that the opportunity to correct deficiencies was referring to deficiencies detected during onsite monitoring visits and not for more serious violations detected during covert compliance investigations or inventory audits.

The PFMA suggested that regulators develop a distinction between willful violators and human error committed by well meaning employees.

The USDA's response to this comment was:

It is our position that vendors should be held accountable for noncompliance and Program violations, whether they be deliberate attempts to abuse the Program or a chronic repetition of inadvertent errors, since both ultimately result in increased food costs and fewer participants being served. Not only is it extremely difficult for State agencies to ascertain the intent behind an action, whether inadvertent or deliberate such action has the same negative effect on the Program. Furthermore, we believe that the fact that errors were performed by nonmanagement employees does not relieve the vendor of the responsibility for that employee's actions. Removing an abusive employee does not mitigate the effects of chronic vendor error and mismanagement on Program costs and does not lessen the vendor's responsibility to provide effective oversight and appropriate employee training.

#### *Chapter 1107. Sanctions.*

Section 1107.1 (relating to sanctions) establishes the types of sanction, duration of sanctions and the standards the Department will use in imposing a sanction against a WIC authorized store.

Federal regulations mandate that the Department establish policies and procedures which determine the type and level of sanctions to be applied against food vendors, based upon the nature and severity of the WIC Program violations observed, and other factors such as the Department determines are appropriate. See 7 CFR 246.12(k)(1). The regulations mandate that the period of disqualification from the WIC Program be reasonable and not exceed 3 years. The maximum period of disqualification shall only be imposed for the most serious of offenses. See 7 CFR 246.12(k)(1)(ii).

There are three categories of sanctions. Conduct warranting each type of sanction have been grouped together based upon the nature and severity of the violation.

Subsection (h)(1), pertaining to Class A abuses, identifies the type of conduct that carries the sanction of 1 year disqualification from the program. The prohibited conduct generally relates to violations in the provision of food benefits to WIC participants.

Subsection (h)(2), pertaining to Class B abuses, provides for the disqualification for the store from participation in the WIC Program for 2 years. The WIC Program violations specified in this paragraph generally relate to abuse of program funds by authorized stores.

Subsection (h)(3), pertaining to Class C abuses, provides for the imposition of a 3-year disqualification upon stores for the most egregious program violations. These are WIC Program violations committed with the intent to defraud the WIC Program. These violations are considered the most severe, and therefore carry the stiffest penalty permitted by the Federal regulations.

For any program violations not specifically in subsections (h)(1)–(3), the regulations provide that the Department will determine the sanction based upon the nature and severity of the violation.

This regulation presents five minor differences from how the WIC Program is currently administered. The five changes are reflected in the length of sanctions imposed upon a store for violations of statutes and regulations governing the store's participation in the WIC Program. The majority of the changes have decreased the time for the specific violations.

Previously, if an authorized store had the participant sign the check before completing the "Pay Exactly" box on the check, the Department imposed a 2-year sanction. The regulation changes the sanction to 1 year. Previously, if an authorized store overcharged the WIC Program by charging Sales Tax or providing more food than the quantity specified on the check, the Department imposed a 2-year sanction. The regulation changes the sanction to 1 year. Previously, if an authorized store provided rainchecks to a participant because WIC authorized food was unavailable, the Department imposed a 2-year disqualification. The regulation now provides that the Department shall determine the length of the sanction. Previously, if an authorized store demanded that a participant pay for authorized foods with the participant's own money or with another WIC check, the Department imposed a 3-year sanction. The regulation changes the sanction to 1 year.

Section 1107.2 (relating to civil money penalties) establishes when the Department will offer a store the option of paying a civil money penalty in lieu of denial of recertification or in lieu of disqualification. This option is only available when the Department finds that disqualification or the denial of recertification for the store would cause hardship, as defined in § 1103.7 (relating to participant hardship), for the WIC participants currently making their WIC purchases at the store.

The calculation of the civil money penalty is based upon the formula in subsection (b). This formula is similar to that used by the Food Stamp Program for calculation of civil money penalties with one exception: the Department multiplies 5% of the average monthly total value of WIC checks the store negotiated by the number of months the store would have been disqualified, while the Food Stamp Program multiplies 10% of the average monthly sales by the number of months the store would have been disqualified. Current Federal regulations do not have a provision for offering civil money penalties in lieu of disqualification, but new Federal regulations are antici-

pated to require that this option be available under limited circumstances. Those circumstances are similar to those in this regulation.

*Chapter 1109. Administrative Appeals.*

Section 1109.1 (relating to applicability of general rules) establishes that 1 Pa. Code Part II is applies to proceedings conducted under the WIC regulations except as otherwise provided in these regulations.

Section 1109.2 (relating to scope and purpose) clarifies that Chapters 1111 and 1113 prescribe the administrative procedures to be followed for hearings relating to the WIC Program and required by the Federal statute and regulations in 7 CFR 246.9 and 246.18 (relating to fair hearing procedures for participants; and administrative appeal of state agency decisions). Because certain procedures are required by Federal law, this section further indicates that specific procedures contained in Chapters 1111 and 1113 supplement or supersede the general rules.

Section 1109.3 (relating to time limits for action) relates that time limits for issuance of decisions by the hearing examiner under § 1111.10(d) (relating to hearing examiner decisions) for applicant and participants appeals, and adjudication and orders issued by hearing examiners § 1113.3(b) (relating to adjudication and order) for local agency and store appeals, are directory. The Department may provide time frames for the issuance of the decision, but has no ability to ensure that the hearing examiner's decision will be issued within the time frames provided for by these regulations. Furthermore, other factors may impact upon the timely issuance of a hearing decision, such as whether the matter was continued and whether posthearing briefs were requested by the hearing examiner or the parties.

*Chapter 1111. Applicant and Participant Appeals.*

This chapter establishes procedures for applicants and participants of the WIC Program to appeal certain decisions which adversely impact upon their participation in the WIC Program. The Federal regulations regarding the appeals may be found in 7 CFR Part 246. The purpose for establishing special procedures for participants and applicants is to encourage participants and applicants to appeal decisions with which they do not agree. The regulations achieve this by presenting them with a forum to pursue appeals which is not unduly complex or legalistic.

Section 1111.1 (relating to applicant and participant appeal rights) provides that the scope of this chapter is to address appeal rights of applicants and participants. Federal regulations have established hearing procedures which are intended to provide an opportunity for applicants and participants to challenge certain WIC Program decisions which may adversely impact upon the person. See 7 CFR 246.9(a).

Section 1111.2 (relating to notification of appeal rights) sets forth the WIC Program decisions which may be appealed. It further provides for the provision of notice to applicants and participants of their right to appeal decisions covered under the scope of this chapter.

Subsection (a) requires that the local agency advise an adult applicant or the parent or guardian of an infant applicant of the right to appeal decisions which deny benefits. This subsection further requires the local agency to provide notice to an adult participant or the parent or guardian of an infant participant, of the right to appeal a decision which results in a claim against the individual for improperly issued benefits or that person's disqualifi-

cation from the WIC Program. This section explicitly provides that the expiration of benefits is not appealable. This subsection complies with the requirements in 7 CFR 246.9(c).

Subsection (b) requires the local agency to provide the notice required under subsection (a) in writing, on forms provided by the Department. The purpose of this requirement is to ensure that the WIC Program has documentation that it has complied with the notice requirements in subsection (a) and to ensure that the participant understands that the participant has the right to appeal the decisions. The Department has developed standard forms, readable at an eighth grade level, to ensure that the adult applicants and participants, or the parent or guardian of infant applicants or participants, understand their rights.

Section 1111.3 (relating to appeal of a local agency decision) defines how an adult applicant or participant, or the parent or guardian of an infant applicant or participant, may appeal a local agency decision.

Subsection (a) defines an appeal as a clear expression that the person wishes to present the case to a higher authority. The appeal need not be in writing. This is consistent with the Federal requirements in 7 CFR 246.9(d). If the clear expression of the desire to appeal has not been put in writing by the participant, this subsection places the burden upon the Department or local agency to reduce the appeal to writing. This is required to document that the appeal was made and the date on which the appeal was made.

Subsection (b) establishes the standard for determining a docketing date for an oral appeal. The appeal shall be docketed as being filed when the local agency receives the communication. This date is important to ensure that the appeal was made within the required time for appeal in § 1111.4 (relating to time for appeal of a local agency decision).

Section 1111.4 requires the applicant, participant or authorized representative of the applicant or participant to appeal a WIC Program decision within 90 days after the date the local agency mails or delivers the decision. This standard is more liberal than the minimum standard in 7 CFR 246.9(e). Federal regulations require that the individual be provided a reasonable period of time to request a hearing to appeal the adverse decision, if the time limit is at least 60 days.

Section 1111.5 (relating to scheduling the hearing) requires that the local agency appoint as a hearing examiner an individual who has not participated in the decision being appealed and who does not have a personal stake or involvement in the decision. This requirement ensures that the hearings are conducted by a fair and impartial hearing examiner, as mandated by 7 CFR 246.9(i).

Subsection (b) provides that the local agency advise the hearing examiner of the date on which the appeal is docketed. This is to ensure that the hearing examiner has the information available to the examiner to comply with the requirements for scheduling the hearing in subsection (c).

Subsection (c) sets forth the time frame for scheduling the hearing. In compliance with 7 CFR 246.9(j), the hearing shall be held within 3 weeks of the docketed date of the appeal. Further, the hearing examiner is required to provide the applicant or participant or authorized representative of the applicant or participant a minimum of 10 days advance written notice of the time and place

for the hearing. The purpose of these requirements is to ensure that hearings are held promptly. If the decision of the local agency is overturned, an applicant may receive, as soon as possible, supplemental nutrition benefits that have been denied. If the decision of the local agency is overturned, the participant may resume receiving benefits from the WIC Program as soon as possible. The 10-day advance notice is sufficient to allow the applicant or participant or authorized representative to arrange that person's schedule to ensure attendance at the hearing requested.

Subsection (d) establishes standards for scheduling hearings in compliance with the mandate of 7 CFR 246.9(h) for the development of uniform rules of procedure. These standards require:

- (1) That the forum for the hearing be convenient for the applicant or participant.
- (2) Provide the method for requesting continuances.
- (3) set forth the circumstances under which an appeal may be withdrawn.
- (4) Provide the circumstances under which an appeal shall be discontinued.

Subsection (e) provides the hearing examiner, under 7 CFR 246.9(i)(5), the authority to order, when relevant and necessary, an independent medical assessment. When a medical condition is contested, this subsection provides the means for an impartial opinion.

Section 1111.6 (relating to denial or dismissal of appeal) prescribes the three instances when the hearing examiner may deny or dismiss the appeal of an applicant, participant or authorized representative of an applicant or participant. The appeal may be denied or dismissed when it is not timely received, when the appeal has been withdrawn or when the person's authorized representative fails without good cause to attend. These standards provide administrative management for the resolution of appeals.

Section 1111.7 (relating to continuation of benefits) provides for a continuation of benefits if the participant timely files an appeal of a local agency decision that renders the participant ineligible to continue receiving benefits. This complies with 7 CFR 246.9(g). The purpose of this section is to ensure that an individual receiving benefits who timely appeals the local agency decision continues to receive the WIC Program foods until the local agency decision to terminate benefits is addressed by the hearing examiner. The costs of WIC Program benefits in the interim between the appeal and the decision is minimal when weighed against the possible loss of nutritional benefits to the participant if the local agency decision to terminate benefits is found to have been inappropriate.

Section 1111.8 (relating to rights of the appellant) prescribes the rights of the appellant during the appeals process. The rights in this section are under the Federal regulatory mandate that the State establish rules of procedure. These rules of procedure include the rules of conduct at the hearing and the rights of the appellant during the appeals process. See 7 CFR 246.9(h). In particular, subsection (b) sets forth 12 rights of the appellant. Three of the rights supplement or supersede sections of 1 Pa. Code Part II. The appellant has the right to appear in person at the hearing. This provision supplements 1 Pa. Code § 31.21 (relating to appearance in person). The appellant has the right to be represented by an authorized representative at the hearing who need

not necessarily be an attorney. This provision supersedes 1 Pa. Code §§ 31.22 and 31.23 (relating to appearance by attorney; and other representation prohibited at hearings). This right complies with 7 CFR 246.9(j)(2), which provides that the appellant be permitted to be assisted or represented by an attorney or other person at the hearing. The purpose of this subsection is to ensure that procedures are not unduly legalistic or complex. The intent is to encourage applicants and participants to appeal a decision, if they believe the decision was inappropriate, without requiring them to engage the service of an attorney. The applicant, participant or authorized representative may request from the hearing examiner a subpoena for the production of evidence. This provision supplements 1 Pa. Code § 35.142 (relating to subpoenas) by providing authority to the hearing examiner to issue a subpoena upon request.

Section 1111.9(a) (relating to hearing record) prescribes the contents of the hearing record. Subsection (b) requires that hearing records be retained for 3 years. This is required under the Federal record retention requirements in 7 CFR 246.25(a)(1)–(2) (relating to records and repeats).

Subsection (c) provides that hearing records shall be available for public inspection and copying provided that names and addresses are kept confidential.

Section 1111.10 (relating to hearing examiner decisions) prescribes the standards for the hearing examiner to follow in issuing a decision.

Section 1111.11 (relating appeal to the Secretary) establishes procedures for appeals of hearing examiner decisions to the Secretary and prescribes the form of the appeal.

Section 1111.12 (relating to adjudication and order procedures) prescribes how the Secretary may reach a decision on an appeal from the local agency decision. The Secretary may reconsider the decision on the basis of the evidence in the record, admit additional evidence or order a new hearing. Subsection (b) further provides that, upon the filing of an appeal to the Secretary, there is no automatic stay of the enforcement of the local agency decision to terminate benefits which was upheld by the hearing examiner.

Section 1111.13 (relating to judicial review) provides that the applicant or participant has the right to appeal the Secretary's adjudication and order to the Commonwealth Court if the adjudication and order is adverse to the interest of the applicant or participant. This section further provides that the appeal be filed within 30 days after the mailing date of the adjudication and order.

#### *Chapter 1113. Local Agency and Store Appeals.*

This chapter establishes procedures for a store or local agency to appeal decisions which adversely impact upon their participation in the WIC Program. The Federal regulations regarding the appeals may be found in 7 CFR 246.18 (relating to administrative appeals of State agency decisions). There is no requirement for local agency and store appeals, as there is for participant and applicant appeals, that the procedures the Department established not be unduly complex or legalistic. The Department has chosen to continue with that practice, to encourage local agencies and stores to participate in the appeals process if they believe that the decisions are incorrect.

Section 1113.1 (relating to right to appeal) establishes which decisions may be appealed by a store or local agency. Not all decisions are appealable. For example, the

expiration of a WIC authorization is not subject to appeal, but the denial of a new authorization is appealable.

Section 1113.2 (relating to appeal procedures) establishes standards for notification by the Division of WIC of its adverse action against a store or local agency, provides for the form of the appeal and provides that any appeal made under this chapter shall be filed with the Director of the Division of WIC within 30 days after any final decision by the Division of WIC. This section further provides for scheduling the hearing and the appointment of the hearing examiner by the Secretary. Subsection (f) sets forth the standards for conducting a hearing.

Section 1113.3 (relating to adjudication and order) establishes the contents of the adjudication and order, the time frames (which are directory) for issuing the order, and the contents of the record the hearing examiner is required to maintain.

Section 1113.4 (relating to continuing responsibilities) mandates that a store or local agency continue to comply with any written agreement between the Department and the store or local agency during an appeal.

Section 1113.5 (relating to judicial review) provides that the store or local agency has the right to appeal the Secretary's adjudication and order to the Commonwealth Court if the adjudication and order is adverse to the interest of the store or local agency. This section further provides that the appeal shall be filed within 30 days after the mailing date of the adjudication and order.

#### C. Fiscal Impact

The WIC Program is 100% funded by the Federal government. No State dollars are involved in the operation of the WIC Program, including compensation of State employees. There will be no fiscal impact on the State government or other political subdivision as a result of these regulations.

With few minor exceptions, as noted in the Section B "Summary," the provisions of these regulations set forth, in a regulatory format, how the Department has administered the WIC Program since approximately 1986. Therefore, these regulations will have no significant fiscal impact on the general public or on the stores that voluntarily choose to participate in the WIC Program.

#### D. Paperwork Requirements

The only change relating to paperwork these regulations will require is the maintenance by authorized stores of price and inventory records for 6 months. See § 1105.3(a)(21).

Although there was not previously a regulatory requirement that WIC authorized stores maintain price and inventory records for a stated period of time, authorized stores have been required to provide the Department with the highest prices of authorized foods on a quarterly basis since the calendar quarter ending December 1991. Therefore, authorized stores have had to maintain price and inventory records for at least a 3-month period to comply with this obligation. The new regulation, requiring authorized stores to maintain the price and inventory records for 6 months, will not represent a significant impact on authorized stores. New Federal regulations governing the food delivery systems of state agencies are anticipated in the near future. The new Federal regulations are expected to mandate that states require authorized stores to maintain price and inventory records for the same period of time as the businesses are required to maintain the records for Federal tax purposes. The Commonwealth's requirement is significantly less burdensome.

#### E. Effective Date

The regulations are effective upon publication in the *Pennsylvania Bulletin*. These regulations will be monitored continually and will be updated as required by changes in Federal statute or Federal regulations governing the WIC Program.

#### F. Statutory Authority

The WIC Program is a Federal program authorized by an amendment to the Federal Act (42 U.S.C.A. § 1786). Congress has authorized the USDA-FNS to contract with state agencies for the establishment of the WIC Program. The act and regulations governing the WIC Program require that the state agency responsible for the administration of the WIC Program submit on an annual basis a state agency plan of operations (42 U.S.C.A. § 1786(f)(1)(A); 7 CFR 246.4). The Federal statute and regulations require that the state agency establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan, which the Department does by annually publishing notices in the *Pennsylvania Bulletin* and newspapers of general circulation, as well as sending notices to interested parties. All state agency plans of operations, as well as any changes thereto, must be approved by the Secretary of the USDA. The state agency may not deviate from the plan without USDA approval. There is, however, no Federal requirement for the establishment of state regulations.

#### G. Regulatory Review

These regulations are being promulgated under the decision of the *Commonwealth Court in Giant Food Stores, Inc. v. Commonwealth of Pennsylvania, Department of Health*, 713 A.2d 177 (Pa. Cmwlth. 1998), wherein the Court found the criteria that the Department used to authorize grocery stores to participate in the food delivery system of the WIC Program were invalid because they were not promulgated as a regulation. The court did not address the propriety of the criteria; it found only that the criteria needed to be published as a regulation under sections 1102—1602 of the CDL (45 P. S. §§ 1102—1602), and submitted to the Office of Attorney General under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). The Court further found the Regulatory Review Act (71 P. S. §§ 745.1—745.17) was inapplicable to the criteria the Department uses to authorize grocery stores, because the criteria were developed by the Department as a result of a delegation of authority based solely upon Federal statute and regulation, and thus, are outside the scope of the Regulatory Review Act.

The Department, nevertheless, has elected to submit these regulations to the Independent Regulatory Review Commission (IRRC) and the standing committees of the Pennsylvania House and Senate for review and to follow the Regulatory Review Act procedures for service upon and cooperation with IRRC and the standing committees.

Because the regulations relate to the administration of the WIC Program by the Department, the Department was required to submit them to the USDA-FNS for approval as part of the state agency annual plan of operations. Following revisions required by the USDA-FNS, by letter dated April 12, 1999, the regulations were approved. These regulations may not be changed without the review and approval of the USDA-FNS.



### H. Regulatory Review

Consistent with section 5.1(a) of the Regulatory Department Review Act (71 P. S. § 745.5a(a)), on April 24, 1999, the Department submitted a copy of the final-form regulations with proposed rulemaking omitted to IRRC and the Chairpersons of the House Health and Human Services Committee and the Senate Public Health and Welfare Committee. On the same date, the final-form regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act. In addition to submitting the final-form regulations, the Department has provided IRRC and the Committees with a detailed Regulatory Analysis Form prepared by the Department in Compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

In accordance with section 5.1(d) of the Regulatory Review Act, the final-form regulations were deemed approved by the House Health and Human Services Committee on May 19, 1999, and deemed approved by the Senate Public Health and Welfare Committee on May 19, 1999. IRRC met on May 20, 1999, and approved the final-form regulations. The Office of Attorney General approved the final-form regulations for form and legality on July 14, 1999.

### I. Contact Person

Persons with questions regarding the final-form regulations may contact Greg Landis, Chief of the Grants and Retail Store Section, Division of WIC, Department of Health, P. O. Box 90, Room 604, Health and Welfare Building, Harrisburg, PA 17108, (717) 783-1289. Persons with a disability, who have questions regarding the final-form regulations may also be submitted to Mr. Landis in alternative formats, such as by audio tape, braille or by using V/TT 783-6514 for speech or hearing impaired persons or the Pennsylvania AT&T Relay services at (800) 654-5984 [TT]. Persons with a disability who require an alternative format of this document (such as, large print, audio tape, braille) please contact Mr. Landis so that he may make the necessary arrangements.

### J. Findings

The Department for good cause finds that:

(1) The promulgation of these final-form regulations is necessary under the Commonwealth Court decision in *Giant Food Stores, Inc. v. Commonwealth of Pennsylvania, Department of Health*, 713 A.2d 177 (Pa. Cmwlth. 1998).

(2) The WIC Program must carry out the purposes of the Federal act for which Federal funds have been provided to the Department.

(3) To carry out the purposes of the Federal act, the Department must authorize and review stores to participate in the WIC Program as part of the delivery of supplemental food benefits to WIC participants through the retail system which the Department has elected to use.

(4) The Department will comply with the requirements of the Federal regulations governing the WIC Program found in 7 CFR 246, and particularly with respect to these regulations, the Federal regulations governing the food delivery system of the WIC Program, 7 CFR 246.12(g), which requires that the Department conduct reviews of stores at least once every 2 years.

(5) Reviews of at least 1,400 retail grocery stores and numerous other stores seeking authorization must be

completed by September 30, 1999, to stay compliant with the Federal regulations governing the WIC Program. See 7 CFR 246.12(g).

(6) Failure to have State regulations promulgated in the most expeditious manner possible will render the Department unable to conduct the reviews of the 1,400 retail grocery stores, and will place the Department out of compliance with Federal regulations.

(7) If the Department is not compliant with Federal regulations, the Commonwealth will face audit exceptions and a loss of Federal funding to operate the WIC Program.

(8) Because the WIC Program is 100% Federally funded, loss of \$170 million in Federal funding would place a difficult, if not impossible, burden upon the Commonwealth to provide funds to continue to operate the WIC Program, which provides benefits to approximately 243,000 women, infants and children.

(9) The regulations contained in Annex A set forth in a regulatory format standards for the administration of the WIC Program, as they relate to design and operational requirements of the food delivery system which have been in effect since 1986.

(10) Dispensing with proposed rulemaking is necessary to meet Federal regulatory requirements and the procedures specified in 45 P. S. §§ 1201 and 1202 are in the circumstances impracticable to comply with if the Department is to comply with Federal regulations.

(11) Dispensing with proposed rulemaking advances the public interest by ensuring that provision of supplemental food benefits to the participants of the WIC Program.

(12) Dispensing with proposed rulemaking advances the public interest in protecting Commonwealth funds by ensuring that there will be no loss of Federal funding which would require that the Commonwealth provide state funding to operate the WIC Program in the absence of Federal funding.

### K. Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 28 Pa. Code §§ 8.41—8.43, 8.51—8.62 and 8.71—8.74 are hereby deleted.

(b) The regulations of the Department are hereby amended by adding Chapters 1101, 1103, 1105, 1107, 1109, 1111 and 1113: by adding §§ 1101.1—1101.3, 1103.1—1103.7, 1105.1—1105.6, 1107.1, 1107.2, 1109.1—1109.3, 1111.1—1111.13 and 1113.1—1113.5, to read as set forth in Annex A.

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

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

(5) The regulations shall take effect upon publication in the *Pennsylvania Bulletin*.

ROBERT S. ZIMMERMAN, Jr.,  
Secretary

(Editor's Note: For the text of a notice relating to this final rulemaking, see 29 Pa.B. 3964 (July 24, 1999). For

the text of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 2933 (June 5, 1999).)

**Fiscal Note:** 10-158. No fiscal impact; (8) recommends adoption.

# Annex A

## TITLE 28. HEALTH AND SAFETY

### PART I. GENERAL HEALTH

#### CHAPTER 8. PRACTICE AND PROCEDURE

§§ 8.41—8.43. (Reserved).

§§ 8.51—8.62. (Reserved).

§§ 8.71—8.74. (Reserved).

### PART VIII. SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC PROGRAM)

#### CHAPTER 1101. GENERAL PROVISIONS

Sec.

1101.1. Background and scope.

1101.2. Definitions.

1101.3. Administration.

##### § 1101.1. Background and scope.

(a) *Background.* Through an amendment to the Child Nutrition Act of 1966 (42 U.S.C.A. § 1786), Congress has authorized the USDA-FNS to contract with state agencies for the establishment of the WIC Program. The USDA-FNS contracts with and makes funds available to the Department to administer the WIC Program in this Commonwealth.

(1) The purpose of the WIC Program is to provide allowable foods to income eligible pregnant, breast-feeding or postpartum women, infants, and children up to 5 years of age, who are at nutritional risk because of medical problems or poor diets. The WIC Program provides these individuals with nutritious foods to supplement their diets during critical stages of growth and development. These foods are chosen to correct, prevent or minimize health and nutritional problems. The foods are not intended to be a complete diet, but, rather, to supplement other foods available to the participants.

(2) In addition to providing supplemental foods, the WIC Program refers applicants and participants to health services and offers nutrition education so that the food will be properly used and will improve the dietary and health habits of the entire family. The Department uses a retail purchase system to provide the majority of food benefits to participants.

(b) *Scope.* This part establishes design and operational requirements for the food delivery system for the WIC Program, and prescribes procedures to be used by applicants, participants, local agencies and stores to appeal actions of the Department and local agencies that may adversely impact upon them.

##### § 1101.2. Definitions.

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

*Allowable foods*—Foods and infant formula on the WIC food list. These products meet nutritional standards established by the USDA-FNS and are authorized by the Department for purchase with WIC checks.

*Applicant*—An individual applying to become a participant.

*Authorized representative*—For an applicant or participant, an adult applicant or participant, a parent or guardian of an applicant or participant who is an infant or child or an individual designated by that person to represent the applicant or participant in administrative proceedings involving the WIC Program. For a local agency or store, an individual designated by the local agency or store to represent it in administrative proceedings involving the WIC Program.

*Breast-feeding woman*—A woman, during 1 year postpartum, who is breast-feeding her infant.

*Certification*—For purposes of Chapters 1101—1109 and 1113, the term means the Department's acceptance of a store, not currently authorized to participate in the WIC Program, as a WIC authorized store. For purposes of Chapter 1111 (relating to applicant and participant appeal), the term means the Department's acceptance of an applicant to participate in the WIC Program as a participant.

*Child*—A person 1 year of age or older but under 5 years of age.

*Clinic*—A facility where applicants apply for and participants receive WIC Program services other than food benefits.

*Compliance buy*—A covert purchase at a WIC authorized store, with a WIC check, conducted to enable the Department to evaluate adherence by a WIC authorized store with this part governing the store's participation in the WIC Program.

*Compliance investigation*—A series of at least two compliance buys conducted at the same WIC authorized store.

*Competent professional authority*—An individual on the staff of the local agency authorized to determine nutritional risk and prescribe supplemental foods. The following persons are the only persons the Department will authorize to serve as a competent professional authority: physicians, nutritionists (Bachelor's or Master's Degree in Nutritional Sciences, Community Nutrition, Clinical Nutrition, Dietetics, Public Health Nutrition or Home Economics with emphasis on nutrition), dieticians, registered nurses, physician's assistants (certified by the National Committee on Certification of Physician's Assistants or certified by the State medical certifying authority), or State or local medically trained health officials. The term also applies to an individual who is not on staff at the local agency but who is qualified to provide data upon which nutritional risk determinations are made by a competent professional authority on staff of the local agency.

*Department*—The Department of Health of the Commonwealth.

*Disqualification*—For the purposes of Chapters 1101—1109 and 1113 of this part, the term means the action by the Department to end participation of a WIC authorized store in the WIC Program for reasons of fraud, abuse or other violations of this part governing the store's participation in the WIC Program. For purposes of Chapter 1111 (relating to applicant and participant appeals), the term means action by the Department or local agency to end participation of a participant who no longer meets the qualifications necessary to participate in the WIC Program or for reasons of fraud, abuse or violation of standards governing the participant's enrollment in the WIC Program.

*Division of WIC*—Division of WIC in the Department.

*Endorser*—The parent or guardian of an infant or child participant who is authorized to use and sign the WIC checks of the infant or child for purchase of allowable foods.

*Filing date*—The date on which the local agency or the Department receives an appeal.

*Food prescription*—A designation by a competent professional authority of allowable foods in specified quantities to meet a participant's nutritional needs based upon a determination of nutritional risk.

*Health services*—Routine pediatric and obstetric care (such as infant and child care and prenatal and postpartum examinations) or referral for treatment.

*High risk store*—A store identified as a possible perpetrator of fraud or abuse through analysis of redemption patterns of WIC checks or WIC sales, through compliance violations, or by complaints of participants or WIC Program staff.

*Infant*—A person under 1 year of age.

*Inventory audits*—A comparison of a WIC authorized store's inventory levels and purchases of a particular WIC product over a specific period of time, to actual WIC purchases of the same product during the same period of time, to determine if the store had adequate product quantities available to satisfy claims made for WIC reimbursement of the product during the same period of time.

*Limitation criteria*—Criteria in § 1103.4(b) (relating to selection and limitation criteria; authorization process) which the Department has established to limit the number of WIC authorized stores in a particular area to assure that State and local officials can effectively manage, review and monitor WIC authorized stores.

*Local agency*—A public or private nonprofit health or human service agency with which the Department contracts to provide WIC Program services for a specific geographic area.

*Nutritional risk*—A determination that one of the following exists:

- (i) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements.
- (ii) Other documented nutritionally related medical conditions.
- (iii) Dietary deficiencies that impair or endanger health.
- (iv) Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

*Onsite review*—An overt visit to a store by Federal, Department or local agency personnel to determine if the store meets the selection criteria necessary to be certified or recertified as a WIC authorized store, or a visit to a WIC authorized store after certification or recertification, to determine whether the store is complying with this part governing the store's participation in the WIC Program.

*Participant*—A pregnant woman, breast-feeding woman, postpartum woman, infant or child enrolled in the WIC Program.

*Participant certification period*—The period of time during which an individual is authorized to participate in the WIC Program.

*Postpartum woman*—A woman, during 6 months after termination of pregnancy.

*Pregnant woman*—A woman determined to have one or more embryos or fetuses in utero.

*Proxy*—A person authorized by the local agency and the participant, or by the participant's parent or guardian if the participant is an infant or child, to pick up or use WIC checks to make purchases for that participant.

*Recertification*—The Department's authorization of a WIC authorized store, following a review process, to continue as a WIC authorized store.

*Redeem*—A WIC authorized store submitting a WIC check to its bank for the purpose of securing a money payment for the amount appearing in the "Pay Exactly" box on the WIC check.

*Sales floor*—The display shelving, the floor in the area normally used for retail trade and the area behind the customer service desk, excluding other areas not accessible to the general public.

*Sanction*—A penalty imposed by the Department upon a WIC authorized store for violation of this part governing the store's participation in the WIC Program. The term does not include a decision to deny certification or recertification following a certification or recertification onsite review process.

*Secretary*—The Secretary of Health of the Commonwealth.

*Selection criteria*—Criteria in § 1103.4(a) which the Department has established which a store seeking to be certified or recertified is required to satisfy.

*Standard formula*—Infant formula products that do the following:

- (i) Meet the Federal WIC regulatory definition of an iron-fortified formula (7 CFR 246.10 (c)(1)(I) (relating to supplemental foods)).
- (ii) Comply with the Infant Formula Act of 1980, the act of September 26, 1980 (Pub.L. No. 96-359, 94 Stat. 1190), which amended the Food and Drug Act.
- (iii) Meet the requirements of an "infant formula" as opposed to an "exempt infant formula" or "medical food" as determined by the Food and Drug Administration (FDA), United States Department of Health and Human Services.

*Stale-dated*—After the date imprinted on the product as the recommended last date for sale or use.

*Store slot*—A slot established by the Department for a WIC authorized store in a particular geographic area. The number of store slots the Department authorizes for a geographic area assigned to a local agency is based on the expected participant population of that area.

*Trade area*—A designated geographic area within the geographical area assigned to a local agency, which is organized to serve the participant populations in that designated area through an assigned number of store slots.

*Training buy*—The presentation of a WIC check by a Federal, Department or local agency representative to purchase foods at a WIC authorized store, which does not result in the actual tender of the WIC check or the purchase of the foods, to evaluate adherence by a WIC authorized store with this part governing the store's participation in the WIC Program.

*USDA-FNS*—The United States Department of Agriculture, Food and Nutrition Service.

*WIC authorized store*—A retail food store which is authorized through certification or recertification to provide allowable foods to participants by accepting WIC checks.

*WIC check*—A negotiable instrument issued to participants to purchase allowable foods at WIC authorized stores.

*WIC food list*—A list published by the Department in the *Pennsylvania Bulletin* of foods and infant formula which may be purchased with WIC checks.

*WIC identification card*—A document issued by the Department to a participant, which is used for identification purposes, signature verification and authorization to purchase allowable foods with WIC checks at a WIC authorized store.

*WIC Program*—The Special Supplemental Nutrition Program for Women, Infants and Children.

*WIC Program benefits*—Supplemental foods, nutrition education and referral to health services.

### § 1101.3. Administration.

(a) *Department responsibilities.* The Department will develop policies and procedures for the operation of the WIC Program, distribute funds to local agencies to assist the Department in operating the WIC Program, authorize stores to participate in the WIC Program, monitor and evaluate WIC Program services provided by WIC authorized stores, maintain fiscal records, submit reports and carry out all other responsibilities delegated to it by the USDA-FNS for the operation of the WIC Program.

(b) *Local agency responsibilities.* Local agencies shall determine whether participants meet eligibility criteria developed by the Department, develop food prescriptions for participants, provide nutrition education to participants, provide referral information regarding ongoing health services, issue WIC checks to participants to purchase allowable foods and ensure that all participants are served without discrimination. Local agencies shall function as representatives of the Department in conducting certification and recertification reviews, and in monitoring the activities of WIC authorized stores.

## CHAPTER 1103. AUTHORIZATION OF STORES

Sec.

- 1103.1. Certification and recertification reviews.
- 1103.2. Probationary certification.
- 1103.3. Authorization of store slots.
- 1103.4. Selection and limitation criteria; authorization process.
- 1103.5. Minimum inventory.
- 1103.6. Waiting list.
- 1103.7. Participant hardship.

### § 1103.1. Certification and recertification reviews.

(a) *Qualifying for certification or recertification.* To be certified or recertified as a WIC authorized store, a store shall meet the selection criteria in § 1103.4(a) (relating to selection and limitation criteria; authorization process) at the time of the onsite review. If the number of applicants satisfying the selection criteria exceeds the number of stores the Department permits to participate in the WIC Program in a trade area under the limitation criteria in § 1103.4(b), the Department will determine which store to certify or recertify under the process in § 1103.4(c). The Department will exempt a store from satisfying the selection and limitation criteria only if there is a finding of participant hardship, as set forth in § 1103.7 (relating to participant hardship).

(b) *Certification or recertification review process.* The certification or recertification review process is as follows:

(1) A person authorized on behalf of a store to make an application for certification or recertification shall contact the local agency responsible for the county in which the store is located to request an application.

(2) The local agency shall determine if a store slot is available in the trade area in which the store seeking certification or recertification is located.

(3) If a store slot is available, the local agency shall send the WIC Program information and an application to the store.

(4) A store that is not certified shall complete the application in accordance with the instructions therein and return it to the local agency. If the local agency is apprised by a certified store that it wants to be recertified, the local agency shall collect the application from the store at the time of the onsite review. The Department will not accept an application for certification or recertification from a store that has been provided notice of disqualification or is disqualified from the WIC Program. The WIC Program disqualification period shall be completed before an application will be accepted by the Department. The Department may deny an application for certification from a new owner of a recently purchased store if the Department determines that the purpose of the sale of the business was a sham transaction to avoid a WIC disqualification.

(5) A person authorized on behalf of a chain of stores to make an application for certification or recertification shall complete a separate application for each store in the chain that seeks certification or recertification.

(6) The local agency shall schedule an onsite review of the store for the purpose of determining if the store meets the selection and limitation criteria in § 1103.4(a) and (b). The local agency will notify the store of the approximate date of the review.

(7) The local agency shall conduct the onsite review and forward the results to the Department for a decision on the store's application for certification or recertification.

(8) The Department will notify the store of its decision on the store's application for certification or recertification.

(c) *Duration of certification or recertification.* The certification or recertification of a store shall remain in effect until the store is disqualified, changes ownership, withdraws from the WIC Program, its application for recertification is denied or its certification expires if it fails to apply for recertification. The Department will provide 15 days written notice to the store prior to expiration of WIC authorization for any store failing to apply for recertification. Either the Department or the WIC authorized store may terminate the authorization for cause after providing at least 15 days advance written notice.

(d) *Periodic reviews.* At least once every 2 years, the Department will conduct contemporaneous certification and recertification reviews in a trade area for the purpose of filling store slots in that trade area with WIC authorized stores. Both stores that are certified, and stores that are not certified but want to become WIC authorized stores, shall make an application for certification or recertification. The Department will send a notification of the contemporaneous certification/recertification review process to each WIC authorized store and each store on the waiting list. The notice shall include information

advising the store of the procedure for being reviewed for the purpose of receiving certification or recertification. The Department will notify a store which fails to seek recertification or is denied recertification under this subsection of the date the store's current certification expires. Expiration of the certification will not be less than 30 days after the mailing date of the notice.

(e) *Moratorium on applications.* The Department will not accept applications, or schedule or conduct certification reviews in a trade area 90 days or less prior to the scheduled start date of the contemporaneous certification/recertification reviews in that trade area. The Department will grant an exception to this moratorium only if the Department finds that there would be participant hardship, as set forth in § 1103.7, if it does not consider the application. A store granted certification under this exception shall be exempt from the contemporaneous certification/recertification review if it has been certified for less than 60 days prior to the date the contemporaneous reviews begin in the trade area.

(f) *No opportunity to correct problems.* When the Department is making a decision on an application for certification or recertification, it will deny the application if the criteria for certification or recertification set forth in § 1103.4(a) and (b) are not satisfied. The Department will make its decision on the application without providing a warning or an opportunity to correct problems identified during the certification or recertification review.

(g) *Eligibility for stores denied certification or recertification.* A store which has been denied certification or recertification shall wait 6 months from the date of the Department's decision to reapply, except a store denied certification or recertification under § 1103.4(c)(2) will be placed on a waiting list and will be considered immediately for certification if a store slot becomes open.

### § 1103.2. Probationary certification.

(a) *Criteria for probationary certification.* If during the certification or recertification review, the store fails to meet one or more of the qualifications in § 1103.4(a) and (b) (relating to selection and limitation criteria; authorization process), the Department may grant probationary certification to the store for a period not to exceed 6 months when either of the following applies:

(1) Participant hardship would occur if the store is not certified or recertified.

(2) A store is reviewed prior to opening to the public and the store has not stocked its dairy section or its frozen juice section at the time of the review.

#### (b) *Probationary certification reviews.*

(1) If a store receives probationary certification, except in situations of participant hardship identified in § 1103.7(b)(8) (relating to participant hardship), the Department will conduct an unannounced onsite review during the probationary certification period to determine if regular status should be granted to the store. The Department may rescind probationary certification and deny the store's application to serve as a WIC authorized store if the store fails to meet one or more of the selection criteria during this review.

(2) If a store receives probationary certification due to participant hardship as identified in § 1103.7(b)(8), the Department will conduct a certification review of the store and any other stores on the waiting list within the store's trade area. The Department may rescind probationary certification and deny the store's application to

serve as a WIC authorized store if the store fails to meet one or more of the selection or limitation criteria during this review.

(c) *Extension of probationary certification.* If the store fails the review conducted during the probationary certification period, and participant hardship exists as determined by the Department, the Department may extend probationary certification for an additional 3 months during which time at least one representative of the store who is responsible for training store personnel on the WIC Program shall attend corrective training.

(d) *Extended probationary certification reviews.* The Department will conduct an unannounced onsite review during the extended probationary certification period after the store representative has attended corrective training, to determine if certification should be granted to the store. The Department will rescind probationary certification and deny the store's application to serve as a WIC authorized store if the store fails to meet one or more of the selection criteria during this review.

(e) *Rescission of probationary certification.* If the Department rescinds the probationary or extended probationary certification of a store, the store is not eligible to reapply for certification for 6 months from the date of the Department's rescission of the certification.

### § 1103.3. Authorization of store slots.

The Department will assign one store slot for every 160 participants anticipated by the Department to participate in the WIC Program, except in Philadelphia, where the Department will assign one store slot for every 260 participants anticipated by the Department to participate in the WIC Program.

### § 1103.4. Selection and limitation criteria; authorization process.

(a) *Selection criteria.* The Department will use the following selection criteria to identify stores that meet the operational criteria to serve as a WIC authorized store:

(1) The store shall be located within this Commonwealth.

(2) A store shall serve or reasonably expect to serve at least 25 participants per month.

(i) The Department will provide a store seeking certification which has not been certified previously, an 8-month period to determine if the store is serving 25 participants. The Department may disqualify a store for a period of no less than 6 months in accordance with § 1107.1(i) (relating to sanctions) if it is not serving 25 participants at the end of the 8-month period.

(ii) The Department may deny recertification if the store is not serving 25 participants per month in the most recent month for which the Department has participant data at the time the recertification review is conducted.

(3) The store shall have allowable foods properly stored and refrigerated.

(4) The store may not have stale-dated allowable foods on its sales floor.

(5) The store shall have available on the sales floor at all times the minimum inventory requirements in § 1103.5 (relating to minimum inventory) of allowable foods.

(6) The store shall have shelf prices less than the maximum allowable cost established by the Department for Food Prescription One and Food Prescription Two. The highest price of each allowable food available at the store,

regardless of brand, shall be recorded to determine if the store's prices are within the maximum allowable prices established by the Department. The Department will publish in the *Pennsylvania Bulletin*, no later than September 15 of each year, the maximum allowable prices for Food Prescription One and Food Prescription Two. Revisions to the maximum allowable prices will be published in the same manner. Food Prescription One and Food Prescription Two are as follows:

- (i) Food Prescription One consists of the following:
  - (A) Eighteen quarts or 9 1/2 gallons of milk.
  - (B) One pound of cheese.
  - (C) One dozen eggs.
  - (D) One 15 to 18 ounce container of peanut butter.
  - (E) One pound of dried beans or peas.
  - (F) Four 11.5 to 12 ounce containers of frozen concentrated juice or four 46 ounce cans of single strength juice.
  - (G) Thirty ounces of cereal.
- (ii) Food Prescription Two consists of: 24 13 ounce cans of concentrated contract brand milk or soy based infant formula.
- (7) The store shall be open for business at least 8 hours per day, 6 days per week.
- (8) The store shall be sanitary. There may not be evidence of unremoved rubbish, vermin or general lack of cleanliness.
- (9) The store shall operate in a permanent fixed location where participants may purchase allowable foods with their WIC checks.
- (10) The store may not be currently disqualified from participation in the Food Stamp Program or have had a sanction imposed by the USDA-FNS for Food Stamp Program violations within 2 years prior to the application to participate in the WIC Program.
- (11) The store may not be currently disqualified from the WIC Program or have been denied certification or recertification by the WIC Program within the past 6 months unless the conditions of § 1103.6(a)(2) (relating to waiting list) are met.
- (12) The store shall have implemented all required corrective actions resulting from monitoring by the Department, including repayment of any overcharges to the WIC Program, and shall be in compliance with all applicable Federal and State regulations.

(b) *Limitation criteria.* The Department will use the following criteria to limit the number of WIC authorized stores in a trade area:

- (1) A store slot shall be available in the trade area in which the store is located.
- (2) The store may not be located within 1 mile of another WIC authorized store unless the Department determines that there is sufficient WIC participant shopping within the 1 mile area to support an additional WIC authorized store. For the purpose of this section, in order to support the authorization of each additional WIC authorized store within the 1-mile radius, sufficient WIC participant shopping shall mean that the Department has documentation that at least 160 WIC participants per store slot authorized are currently making WIC purchases within the 1-mile radius, except in Philadelphia where sufficient WIC participant shopping shall mean that the Department has documentation that at least 260

participants per store slot authorized are currently making WIC purchases within the 1-mile radius.

(c) *Authorization process.*

(1) If the total number of stores meeting all selection criteria are less than or equal to the total number of store slots assigned to the trade area, all stores meeting the selection criteria shall be authorized to participate in the WIC Program.

(2) If the total number of stores meeting all selection criteria are greater than the total number of store slots assigned to the trade area, the Department will certify or recertify the stores having the lowest weighted prices for the two food prescriptions, until the store slots in the trade area have been filled. For determining the weighted food prices for the two food prescriptions, the Department will add 80% of the total of the store's highest price for Food Prescription One to 20% of the store's highest price for Food Prescription Two.

(3) The criteria in paragraph (2) also apply when more than one store applies for certification or recertification within 1 mile and there is not a sufficient number of participants in the area to support an additional WIC authorized store or stores.

#### § 1103.5. Minimum inventory.

(a) A store shall have available on the sales floor at the time of the certification or recertification onsite review, and maintain at all times thereafter while participating as a WIC authorized store, minimum inventory requirements of allowable foods.

(b) Minimum inventory requirements of allowable foods are as follows:

- (1) *Formula.*
  - (i) Contract milk-based formula with iron:
    - (A) Sixty-two 13 ounce cans of liquid concentrate.
    - (B) Twenty-five 32 ounce cans of ready-to-feed.
    - (C) Six 14.1 ounce cans of powdered.
  - (ii) Contract soy-based formula:
    - (A) Thirty-one 13 ounce cans of liquid concentrate.
    - (B) Twenty-five 32 ounce cans of ready-to-feed.
    - (C) Six 14 ounce cans of powdered.
  - (iii) Other standard formulas specified on the WIC check are not minimum inventory requirements. The store shall be able to provide these within 72 hours after a participant makes a request for the formula.
- (2) *Milk.*
  - (i) Fluid whole, vitamin D fortified, fourteen 1/2 gallons or quart equivalent.
  - (ii) Fluid skim or low fat, vitamin A and D fortified, four 1/2 gallons or quart equivalent.
  - (iii) Nonfat dry, 2 pounds, in 1 or 2 pound containers.
  - (iv) Evaporated, twelve 12 ounce cans.
- (3) *Natural domestic cheese.* One pound each of three varieties prepacked in 8 or 16 ounce packages.
- (4) *Grade "A" eggs.* Five, 1 dozen containers.
- (5) *Juices.*
  - (i) Canned, three varieties with a total of nine 46 ounce cans.
  - (ii) Frozen concentrated, two varieties with a total of nine 11.5 to 12 ounce containers.

(iii) Infant, three varieties with a total of fifteen 4 ounce individual containers.

(6) *Cereal*.

(i) Adult, five varieties in eight ounce or larger packages totaling at least 72 ounces.

(ii) Infant, two varieties, totaling at least 32 ounces.

(7) *Peanut butter*. Five 15 to 18 ounce containers.

(8) *Dried peas and beans*. Two varieties, 1 pound each.

(9) *Tuna*. Four 6 to 6.5 ounce cans, chunk, light, packed in water.

(10) *Carrots*. Two pounds of whole, unpeeled fresh carrots in 1 or 2 pound cello pack, or two cans of sliced carrots in 14 to 20 ounce cans.

(c) *Annual publication of WIC food list*. The Department will publish in the *Pennsylvania Bulletin*, no later than September 15 of each year, the name of the contract brand of formula and, if applicable, the names of allowable brands of foods, and the maximum price permitted for those allowable foods for which the Department establishes a maximum price.

(d) *Waivers*. The Department may grant minimum inventory waivers for allowable foods listed in subsection (e) under the following circumstances:

(1) For a WIC authorized store, the Department has no current reported purchases of the allowable foods based upon WIC checks redeemed by the store.

(2) For a store seeking certification, the Department has no current reported purchases of the allowable foods based upon WIC checks redeemed by the WIC authorized store closest to the store applying for certification.

(3) The store occupies the same physical location as a prior WIC authorized store, the waiver was granted to the prior WIC authorized store, and the application for certification from the new owner is received by the Department within 3 months after the date the prior WIC authorized store's certification to participate in the WIC Program terminated.

(e) *Waiverable allowable foods*. These foods are:

(1) Contract milk based with iron ready-to-feed infant formula.

(2) Contract milk based with iron powdered infant formula.

(3) Contract soy based ready-to-feed infant formula.

(4) Contract soy based powdered infant formula.

(5) Nonfat dry milk.

(6) Evaporated milk.

(7) Carrots.

(8) Tuna.

(f) *Expiration of waivers*. A minimum inventory waiver of an allowable food granted by the Department shall expire upon the presentation to the store, on behalf of a participant, of a WIC check for the purchase of that allowable food. The WIC authorized store shall provide the food item within 72 hours after presentation of the WIC check.

#### § 1103.6. Waiting list.

(a) *Placement of stores on the waiting list*. The Department will place on a waiting list eligible stores as follows:

(1) A store that seeks to become a WIC authorized store if no store slots are open in the trade area where the store is located.

(2) When the total number of stores seeking certification or recertification is greater than the total number of store slots available for the trade area, and the store meets all selection criteria and has prices within the maximum allowable costs of Food Prescription One and Food Prescription Two, but is denied authorization because its weighted price is higher than other stores meeting all selection and limitation criteria.

(3) A store that seeks to apply during a moratorium as set forth in § 1103.1(c) (relating to certification and recertification reviews).

(b) *Certification review of stores on waiting list*. The Department will ensure that all stores on the waiting list in a trade area will be reviewed when a store slot becomes available in the trade area, or when stores in the trade area are reviewed during the next contemporaneous certification/recertification review process. The only exception to reviewing all stores on the waiting list is when a store slot opens as a result of a change of ownership of a store and the store, under new ownership, applies for certification under § 1105.4(c) (relating to change of ownership of a WIC authorized store). The Department will review the store under its new ownership to determine if the store should receive certification.

#### § 1103.7. Participant hardship.

(a) The Department will consider whether there is participant hardship when considering whether to place a store on probation, rather than deny certification or recertification, for failure to meet selection and limitation criteria in § 1103.4(a) and (b) (relating to selection and limitation criteria; authorization process) during certification and recertification reviews or change of ownership reviews.

(b) Participant hardship is any of the following:

(1) Ten or more participants whose specific nationality, ethnicity or religious dietary needs can not be served properly by another WIC authorized store located within 3 miles of the store, except in Philadelphia, where the distance of 1 mile to the next closest WIC authorized store will be used for the determination.

(2) Ten or more participants will be required to travel 3 or more miles to the next closest WIC authorized store, except in Philadelphia, where the distance of 1 mile to the next closest WIC authorized store will be used for the determination.

(3) Ten or more people are affected by physical barriers or conditions which make normal travel to another WIC authorized store impractical.

(4) A participant has a physical disability that cannot be accommodated by another WIC authorized store within 3 miles, except in Philadelphia, where the distance of 1 mile to the next closest WIC authorized store will be used for the determination.

(5) One hundred or more participants but less than 200 participants use WIC checks to purchase allowable foods at the store and the distance to the next closest WIC authorized store exceeds 2 miles.

(6) Two hundred or more participants but less than 300 participants use WIC checks to purchase allowable foods at the store and the distance to the next closest WIC authorized store exceeds 1 mile.

(7) Three hundred or more participants use WIC checks to purchase allowable foods at the store and the distance to the next closest WIC authorized store exceeds 3/10 of a mile.

(8) A WIC authorized store changes ownership without the Department receiving prior notice sufficient to arrange other accommodations for participants.

#### CHAPTER 1105. REQUIREMENTS OF WIC AUTHORIZED STORES

Sec.

- 1105.1. Training.
- 1105.2. Overcharge recovery system.
- 1105.3. Terms and conditions of participation.
- 1105.4. Change of ownership of a WIC authorized store.
- 1105.5. Changes in availability or location of WIC authorized stores.
- 1105.6. Monitoring of WIC authorized stores.

##### § 1105.1. Training.

(a) *Initial training.* Following certification, the local agency shall provide initial training for the personnel a certified store designates. The training shall be mandatory and shall occur within 30 days after the date of certification. A store receiving certification may not accept WIC checks prior to having its designated personnel attend the initial mandatory training.

(b) *Annual training.* The Department will provide for WIC authorized stores annual training which is designed to prevent WIC Program errors and abuses and to improve WIC Program services. The following apply to annual training:

(1) A WIC authorized store shall ensure that at least one representative from the store who is responsible for training store personnel on the WIC Program shall attend.

(2) Attendance is mandatory.

(3) The Department will offer each WIC authorized store two opportunities to attend.

(4) The Department will ensure that annual training is offered to a WIC authorized store either within the county in which it is located or in an adjoining county within the appropriate local agency's jurisdiction.

(5) Failure to have at least one representative attend training shall result in the Department imposing sanctions against the WIC authorized store as in § 1107.1 (relating to sanctions).

(c) *Corrective training.* The Department will provide corrective training as set forth in §§ 1103.2 and 1105.6 (relating to probationary certification; and monitoring of WIC authorized stores). Attendance is mandatory.

##### § 1105.2. Overcharge recovery system.

(a) *Quarterly price reports.* A WIC authorized store shall provide to the Department, in a format prescribed by the Department, the highest prices the store charged for allowable foods during the previous quarter for which the Department collects prices. The report shall be known as the Quarterly Price Report. A store may submit its Quarterly Price Report by mail or fax. If submitted by mail, the Quarterly Price Report shall be postmarked no later than the 15th of the month following the end of the calendar quarter. If submitted by fax, the Quarterly Price Report must be received by the Department by the 15th of the month following the end of the calendar quarter.

(b) *Department review.* The Department will review WIC check amounts redeemed by a WIC authorized store against the prices reported on the store's Quarterly Price Report to determine and collect overcharges owed to the Department.

(c) *Determination of maximum redemption amount of each WIC check.* For each WIC check redeemed for which the store was reimbursed for the sale of foods for which the Department collects prices, the Department will determine the maximum amount for which the WIC authorized store could have redeemed the check based upon prices provided in the Quarterly Price Reports supplied by the store.

(d) *Determination of overcharges.* The Department will compare the maximum amount for which a WIC authorized store could have redeemed a WIC check based upon the prices in the store's Quarterly Price Report, against the actual amount for which each WIC check accepted by the store during a reporting quarter was redeemed, to determine any overcharge owed to the Department.

(e) *Pursuit of reimbursement.* The Department will seek reimbursements from a WIC authorized store for the store's overcharges totaling \$10 or more for a calendar quarter.

(f) *Reimbursement of overcharges.* A WIC authorized store shall submit reimbursement of overcharges to the Department within 20-calendar days of the date on the Department's billing notice for the overcharge, unless the WIC authorized store disputes the overcharge determination.

(g) *Overcharge disputes.* A WIC authorized store that disputes an overcharge billing shall submit the basis for its dispute in writing to the Department, postmarked within 15-calendar days of the date on the Department's billing notice. Upon resolution of an overcharge dispute, any overcharge the Department determines to be owing shall be due within 15-calendar days of the mailing date on the Department's notification of its resolution of the dispute.

(h) *Sanctions.* The Department will impose a sanction against a WIC authorized store under § 1107.1 (relating to sanctions) if the store fails to pay overcharges due within the time required under subsections (f) and (g).

(i) *Disqualification.* The Department may disqualify a WIC authorized store if the store's reported prices on the Quarterly Price Report exceed the current maximum allowable cost as published by the Department for Food Prescription One or Food Prescription Two, set forth in § 1103.4(a)(6)(i) and (ii) (relating to selection and limitation criteria; authorization process).

##### § 1105.3. Terms and conditions of participation.

(a) *General terms and conditions.* A WIC authorized store shall adhere to this subsection. Failure to do so shall result in the imposition of sanctions as set forth in § 1107.1 (relating to sanctions). A WIC authorized store shall:

(1) Adhere to all applicable statutes and State and Federal regulations regulating the WIC Program, including the nondiscrimination provisions of 7 CFR Parts 15, 15a, 15b and 246, and this part.

(2) Inform the public of its participation in the WIC Program by displaying at least one WIC decal supplied by the Department in a place conspicuously visible to the general public.



(3) Monitor, supervise and be accountable for the actions of employees in the handling of WIC checks, the selling of allowable foods, and the performance of other conduct related to the WIC Program.

(4) Maintain the minimum inventory of allowable foods.

(5) Ensure that allowable foods are properly stored and refrigerated.

(6) Ensure that there are no stale dated allowable foods on the sales floor.

(7) Provide the Department, on the Quarterly Price Report form provided by the Department, the highest prices of allowable foods specified on the report form.

(8) Maintain a clean and sanitary store.

(9) Provide orientation and training to employees regarding applicable regulations governing the WIC Program.

(10) Maintain a copy of the current WIC food list at each check-out aisle.

(11) Send at least one representative who is responsible for training store personnel on the WIC Program to WIC Program training annually, or more often if required by the Department under § 1105.1(c) (relating to training).

(12) Immediately notify the Department when store ownership changes, when store operations cease on a permanent or temporary basis, or when any other circumstance impacting service to participants occurs.

(13) Allow Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, to visit the store to observe its procedures for accepting and handling WIC checks and to conduct announced or unannounced onsite reviews to determine compliance with applicable Federal and State regulations.

(14) Provide Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, access to a WIC checks accepted by the store and on its premises at the time of an onsite review.

(15) Provide Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, access to price and inventory records during an onsite review.

(16) Agree that neither the Department nor the WIC authorized store has an obligation to renew the store's authorization to participate in the WIC Program.

(17) Agree that the store's authorization to participate in the WIC Program shall become null and void when ownership of the store changes.

(18) Display the current shelf price of each allowable food either on the allowable food on the shelf immediately above or below the allowable food or prominently on an allowable food price list easily located by participants and clearly visible to them.

(19) Not transfer or assign its WIC certification or recertification to another person or entity.

(20) Reimburse the Department for funds received through transactions involving WIC checks which were not conducted in accordance with this part.

(21) Maintain price and inventory records for allowable foods for a minimum period of 6 months from the date of receipt of the inventory.

(b) *Terms and conditions of participation with regard to participants.* A WIC authorized store shall serve participants as set forth in this subsection. The Department will impose sanctions against a WIC authorized store that fails to do so, as set forth in § 1107.1. A WIC authorized store shall:

(1) Provide allowable foods to participants only as authorized on the WIC food list and as specified on the WIC check.

(2) Not encourage or discourage a participant from purchasing allowable food specified on the WIC check.

(3) Provide allowable foods to participants at or below the current price the store charges other customers.

(4) Not seek restitution or payment from participants for WIC checks not reimbursed by the Department, or contact participants concerning WIC transactions that occur in the store.

(5) Not seek restitution or payment from participants for allowable foods when the price the store charges for the allowable foods exceeds the "Not to Exceed" amount on the WIC check.

(6) Not request personal addresses, telephone numbers or other personal identification of participants.

(7) Offer participants the same courtesies offered other customers, and not distinguish or identify participants from other customers.

(8) Provide services to participants without regard to race, color, age, sex, religion, national origin or disability.

(9) Give trading stamps to participants for purchases made with WIC checks if trading stamps are given for cash purchases.

(10) Accept cents-off coupons, a store discount card or other discounts from participants for allowable foods, and deduct the savings in calculating the total purchase price entered into the "Pay Exactly" amount on WIC checks.

(11) Accept "buy one get one free" coupons and manufacturers' promotional free product offers from participants.

(c) *Terms and conditions of participation with regard to WIC check processing and redemption.* A WIC authorized store shall adhere to the requirements of this subsection with regard to WIC check processing and redemption. The Department will impose sanctions against a WIC authorized store that fails to do so, as set forth in § 1107.1. A WIC authorized store shall:

(1) Treat the acceptance of a WIC check as a financial transaction between only the Department and the WIC authorized store, not the participant

(2) Accept a WIC check only if the WIC check is made payable to that specific WIC authorized store, unless the Department has provided written authorization otherwise to the store.

(3) Accept a WIC check only if the participant, endorser or proxy presents the WIC check on or between the "First Day to Use" and the "Last Day to Use" designations on the WIC check.

(4) Accept a WIC check only if a valid WIC identification card is presented at the time of redemption.

(5) Accept a WIC check only if the signature of the participant, endorser or proxy is obtained, at the time of purchase, on the WIC check, and the signature on the WIC check matches the signature on the WIC identification card.

(6) Accept a WIC check only if there is no visible alteration on the WIC check.

(7) Charge the WIC Program only for the types and quantities of allowable foods specified on the WIC check and selected for purchase by the participant, endorser or the participant's proxy.

(8) Record in ink, on each WIC check immediately after completion of the WIC transaction and prior to the participant, endorser or proxy signing the WIC check, the actual purchase amount of the transaction net of any cents-off coupons or other discounts.

(9) Properly correct an error made in recording the "Pay Exactly" amount of a WIC check by drawing a single line through the incorrect amount and writing the correct amount above or below the error and having the participant, endorser or proxy initial next to the corrected amount. No other corrections are permissible.

(10) Not alter any information on the WIC check as presented by the participant, endorser or proxy.

(11) Not provide substitute items, rainchecks or cash reimbursement for allowable foods that are unavailable.

(12) Not provide cash or credit for a WIC check.

(13) Not provide change for the difference between the "Not to Exceed" and the "Pay Exactly" amounts on the WIC check nor for any coupons tendered during the WIC transaction.

(14) Not refund money or provide exchanges to replace allowable foods returned by participants, endorsers or proxies.

(15) Not accept a WIC check as payment for items other than allowable foods specified on the WIC check.

(16) Not charge the WIC Program for allowable foods not received by the WIC participant or for allowable foods provided in excess of those listed on the WIC check.

(17) Not charge the WIC Program for the sale of an amount of an allowable food which exceeds the store's documented inventory of that food item covering the period of time under review and in which the sale was made.

(18) Deposit WIC checks accepted by it directly to its bank account no later than 45 days after the "First Day to Use" date on the WIC check.

(19) Not receive, transact, redeem or otherwise dispose of a WIC check outside of check redemption procedures set forth in this section.

(20) Not use a WIC check for the purchase of any commodity or the payment of any debt.

(21) Not collect sales tax on allowable food purchases.

(22) Reimburse the Department for payments the store has received for improperly executed WIC checks.

(d) The Department will deny payment to a WIC authorized store for WIC checks which the store did not process under subsection (c).

**§ 1105.4. Change of ownership of a WIC authorized store.**

(a) A certification or recertification is null and void when a change of ownership of a WIC authorized store occurs.

(b) To allow uninterrupted service to participants subsequent to a change of ownership, the Department may accept an application for certification from the prospective new owner of a WIC authorized store prior to a change of ownership.

(c) When a change of ownership occurs and participant hardship as defined in § 1103.7 (relating to participant hardship) would result, the store under the new ownership may receive probationary certification for a period not to exceed 6 months if the State conducts an immediate onsite visit followed by a complete certification visit at the store. Until the immediate onsite visit is conducted, the new owner may not accept WIC checks. As soon as possible within the 6 month probationary period or during the next recertification process, whichever occurs first, the store under the new ownership shall compete with stores on the waiting list in the trade area for the store slot.

(d) The Department will not accept an application for certification from a store that has been provided notice of disqualification or is serving a disqualification if an individual who had at least a 10% ownership interest in the store has at least a 10% ownership interest in the applicant or the ownership interest has been transferred or sold to immediate family members of the individual.

**§ 1105.5. Changes in availability or location of WIC authorized stores.**

(a) *Notification of store closing.* A WIC authorized store shall notify the Department at least 15 days prior to a temporary or permanent closing of the store, and of the reason for closing and the expected duration of a temporary closing, if it has at least 15 days prior knowledge. Otherwise, it shall provide this information to the Department immediately after it acquires the information.

(b) *Temporary store closing.* The Department may permit a WIC authorized store to temporarily close for reasons such as a natural disaster, death in immediate family or personal illness, without imposing a sanction against the store. In making a determination to permit a temporary closure, as well as the length of time of the closure, the Department will consider circumstances such as the nature of the disaster, number of WIC authorized stores affected by the disaster, nature and expected duration of illness, length of closing anticipated by the WIC authorized store, number of and distance to other WIC authorized stores, number of participants served by the store, number of stores on the waiting list or any other information that the Department may determine to be relevant.

(c) *Store closing for remodeling.*

(1) A WIC authorized store that closes for more than 24 hours but less than 3 days for remodeling will not lose its certification, provided it notifies the Department at least 15-calendar days prior to the day the store closes for remodeling.

(2) A WIC authorized store that closes in excess of 3 store operation days for remodeling, shall lose its WIC authorization and shall reapply for and secure certification before it may again serve as a WIC authorized store.

(d) *Store relocations.*

(1) A WIC authorized store that relocates 1 mile or less from its current location, and reopens within 3-calendar days at its new location, shall provide the Department with written notification of its new address. The store will not lose its certification, provided it notifies the Department at least 15-calendar days prior to the day the store closes for relocating.

(2) A WIC authorized store relocating in excess of 1 mile of its current location shall lose its WIC authorization and shall reapply for certification at its new location.

(3) A WIC authorized store that closes in excess of 3 store operation days for relocating, without applying for and securing permission from the Department to do so, shall lose its WIC authorization and shall reapply for certification.

(e) *Temporary authorization to accept WIC checks redeemable at other stores.* The Department will temporarily authorize alternate WIC authorized stores to accept WIC checks designated on the face of the check to be used at another WIC authorized store, to provide participants with access to allowable foods when a WIC authorized store has permanently or temporarily closed, the store's authorization has been terminated, or the store has been disqualified as a WIC authorized store.

#### **§ 1105.6. Monitoring of WIC authorized stores.**

(a) *Purpose and types of monitoring of WIC authorized stores.* Federal, State or local representatives will conduct announced and unannounced onsite reviews of WIC authorized stores to determine compliance with applicable Federal and State regulations, and to investigate complaints regarding a store. The types of onsite reviews that may be conducted for monitoring purposes are high risk reviews, routine reviews and training buys.

(b) *High risk reviews.* The Department will monitor all high risk stores. The Department will use either compliance investigations or inventory audits as methods to monitor high risk stores. The Department also may conduct compliance buys and inventory audits on stores that have not been identified as high risk stores.

(1) *Compliance investigations.* The following standards shall apply:

(i) The Department will conduct at least two compliance buys during a compliance investigation.

(ii) The Department will not notify the WIC authorized store that a compliance buy is scheduled.

(iii) The Department will provide written notification to the WIC authorized store of the results of each compliance buy, including the store's violation of a statute or regulation governing its participation in the WIC Program, unless subparagraph (viii) applies.

(iv) The Department will provide to the personnel of the WIC authorized store mandatory corrective training after two compliance buys detect violations of statutes or regulations governing the store's participation in the WIC Program.

(v) The Department will conduct a third compliance buy at the WIC authorized store after store personnel have attended mandatory corrective training.

(vi) The Department will disqualify the store if three compliance buys detect violations of statutes or regulations governing the store's participation in the WIC Program. The Department will determine the term of disqualification by the violation found during the compliance investigation, in accordance with § 1107.1 (relating to sanctions). If multiple violations are found during the compliance investigation, the Department will disqualify the store for the term corresponding to the most serious violation.

(vii) The Department will close the compliance investigation on a WIC authorized store if no violations of a

statute or regulation governing the store's participation in the WIC Program are discovered after two consecutive compliance buys.

(viii) The Department may withhold notification of compliance buy results, and may withhold providing training or conducting further compliance investigations, when fraudulent activities by the WIC authorized store are indicated during a compliance investigation or by local agency or participant complaint.

(2) *Inventory audits.* The Department will disqualify the WIC authorized store when an inventory audit establishes the claim of reimbursement for authorized food in excess of documented inventory. No warning letters will be issued.

(c) *Routine reviews.* The Department will use reviews as follows to determine whether a WIC authorized store is in compliance with the selection and limitation criteria in § 1103.4(a) and (b) (relating to selection and limitation criteria; authorization process) and terms and conditions of participation in § 1105.3 (relating to terms and conditions of participation):

(1) The Department will not notify the WIC authorized store that a routine review is scheduled.

(2) The Department will provide written notification to the WIC authorized store of the results of each routine review, including violation of a statute or regulation governing the store's participation in the WIC Program.

(3) The Department will conduct a second routine review of the WIC authorized store if the first routine review detects violations of a statute or regulation governing the store's participation in the WIC Program.

(4) The Department will provide to the personnel of the WIC authorized store mandatory corrective training after two routine reviews detect violations of a statute or regulation governing the store's participation in the WIC Program.

(5) The Department will conduct a third routine review of a WIC authorized store after store personnel have attended mandatory corrective training.

(6) The Department may disqualify a store if a third routine review detects violations of a statute or regulation governing the store's participation in the WIC Program. The Department will determine the term of disqualification by the violation found during the routine reviews, in accordance with § 1107.1. If multiple violations are found during the routine reviews, the Department will disqualify the store for the term corresponding to the most serious violation.

(d) *Training buys.* The Department will use training buys to monitor WIC check transaction procedures and compliance with statutes and regulations governing the store's participation in the WIC Program. The following standards apply:

(1) The Department will not notify the WIC authorized store that a training buy is scheduled.

(2) The Department will provide written notification to the WIC authorized store of the results of each training buy, including violations of a statute or regulation governing the store's participation in the WIC Program.

(3) The Department will conduct a second training buy at the WIC authorized store if the first training buy detects violations of a statute or regulation governing the store's participation in the WIC Program.

(4) The Department will provide the personnel of the WIC authorized store mandatory corrective training after two training buys detect violations of a statute or regulation governing the store's participation in the WIC Program.

(5) The Department will conduct a third training buy at the WIC authorized store after store personnel have attended the mandatory corrective training.

(6) The Department may disqualify a store if a third training buy detects violations of a statute or regulation governing the store's participation in the WIC Program. The Department will determine the term of disqualification by the violation found during the training buys, in accordance with § 1107.1. If multiple violations are found during the training buys, the Department will disqualify the store for the terms corresponding with the most serious violation.

(e) *Use of law enforcement agency.* The Department may utilize a law enforcement agency in the investigation of a WIC authorized store or other store suspected of trafficking WIC checks or other fraud or abuse of the WIC Program.

(f) *Reimbursement.* The Department will seek reimbursement from a WIC authorized store that received funds improperly due to a violation of regulations governing the store's participation in the WIC Program discovered during monitoring reviews. The Department will send notice to the store of the amount of money to be reimbursed to the WIC Program. The store shall make payment within 20 days from the date of the notice.

#### CHAPTER 1107. SANCTIONS

Sec.

1107.1. Sanctions.

1107.2. Civil money penalties.

##### § 1107.1. Sanctions.

(a) The Department will impose a sanction against a store based upon the severity and nature of the violation of the statute or regulation governing the store's participation in the WIC Program.

(b) In addition to imposing a sanction against a WIC authorized store that commits fraud or abuse of the WIC Program, the Department may prosecute or make a referral for prosecution of the WIC authorized store to a criminal prosecution agency for prosecution under applicable Federal, State or local laws.

(c) A WIC authorized store that has a sanction imposed against it by the Department for accepting a WIC check for items other than those specified on the WIC check shall also reimburse the Department for moneys received for the purchase of the items with the WIC check.

(d) The Department may impose a sanction against a WIC authorized store for failing to remit any amount demanded due to violations of statutes or regulations governing its participation in the WIC Program within the time frame in § 1105.2(f) and (g) (relating to overcharge recovery system) or the notice given by the Department under § 1105.6(f) (relating to monitoring of WIC authorized stores).

(e) Upon receiving notification that a WIC authorized store has been disqualified from another USDA-FNS program, such as the USDA Food Stamp Program, the Department will disqualify the WIC authorized store for an equivalent period of up to 3 years.

(f) The Department may disqualify from participation in the WIC Program a WIC authorized store if the store

incurs a civil money penalty in lieu of disqualification from another USDA-FNS program, such as the USDA Food Stamp Program. If the Department finds that participant hardship would result from the disqualification of the store from the WIC Program, the Department may, at its option, offer the store the option of paying a civil money penalty in lieu of disqualification.

(g) The Department will notify the USDA-FNS of a store's disqualification from the WIC Program. Disqualification from the WIC Program may result in the store's disqualification from the USDA Food Stamp Program.

(h) *Specific sanctions.* The Department will determine the type and level of sanction to be imposed against a WIC authorized store for a violation of a statute or regulation governing the store's participation in the WIC Program.

(1) *Class A abuses.* The Department will disqualify a WIC authorized store from participation in the WIC Program for 1 year for the following violations:

(i) Redeeming a WIC check for an item that is in a food category authorized by the WIC Program but is not an allowable food or is not specified on the WIC check.

(ii) Having stale-dated allowable food on the sales floor.

(iii) Failing to maintain minimum inventory requirements of an allowable food.

(iv) Failing to request the participant's WIC identification card prior to accepting a WIC check.

(v) Accepting a WIC check made payable to another store without prior written approval from the Department.

(vi) Failing to maintain a clean and sanitary store.

(vii) Failing to properly store and refrigerate allowable foods.

(viii) Closure of the store by a city, local or county health department.

(ix) Charging or demanding that a participant pay for an allowable food with the participant's own money or with another WIC check for purchases made with a WIC check.

(x) Securing the signature of the participant, endorser or proxy prior to completing the "Pay Exactly" box on the WIC check.

(xi) Overcharging the WIC Program by charging sales tax or allowing the purchase with a WIC check of more of an allowable food than authorized on the WIC check.

(xii) Having or charging prices which exceed the current maximum allowable costs established by the Department and published in the *Pennsylvania Bulletin* for either Food Prescription One or Food Prescription Two set forth in § 1103.4(a)(6)(i) and (ii) (relating to selection and limitation criteria; authorization process).

(2) *Class B abuses.* The Department will disqualify a WIC authorized store from participation in the WIC Program for 2 years for the following violations:

(i) Redeeming a WIC check for food that is not in a food category authorized to be purchased with a WIC check.

(ii) Charging the WIC Program more for an allowable food than a customer who is not a participant is charged for the same item.

(iii) Charging the WIC Program more than the current price for an allowable food.

(iv) Giving monetary change to an authorized individual who tenders a WIC check.

(v) Failing to remit payment for an overcharge within the specified time frame.

(vi) Charging the WIC Program for an allowable food which was not purchased with a WIC check.

(vii) A repeated Class A violation.

(3) *Class C abuses.* The Department will disqualify a WIC authorized store from participation in the WIC Program for 3 years for the following violations:

(i) Accepting a WIC check for cash, credit or a nonfood item.

(ii) Physically altering or changing on the face of a WIC check the store name, food type or quantity, participant information, date or printed dollar amount.

(iii) Redeeming WIC checks for the sale of an amount of an allowable food over a period of time which exceeds the WIC authorized store's documented inventory for the same allowable food for the same period of time.

(iv) A repeated Class B violation.

(i) For a violation of a statute or regulation governing the store's participation in the WIC Program which is not specifically classified as a Class A, Class B or Class C sanction as provided for in subsection (h), the Department will determine the appropriate type and level of sanction to be imposed upon the store based upon the nature and severity of the violation.

(j) The Department will provide a WIC authorized store at least a 15 day advance notice of the effective date of any disqualifications and an opportunity to appeal the disqualification in accordance with § 1113.1 (relating to right to appeal).

(k) A store which has been disqualified from the WIC Program may apply for certification following expiration of the disqualification period. If the store chooses to apply for certification after expiration of the disqualification, the Department will not consider the prior disqualification from the WIC Program when determining eligibility, and the store will be considered in accordance with § 1103.4 if a store slot is available, or placed on a waiting list in accordance with § 1103.6 (relating to waiting list) if no store slot is available.

#### **§ 1107.2. Civil money penalties.**

(a) *Option available in lieu of a disqualification.* The Department may offer to a store the option of paying a civil money penalty in lieu of a denial of recertification or a disqualification required under § 1107.1 (relating to sanctions), only if the Department finds participant hardship as set forth in § 1103.7 (relating to participant hardship).

(b) *Calculation of civil money penalty.* The Department will calculate the civil money penalty the store shall pay by multiplying 5% of the average monthly total value of WIC checks redeemed for the most recent 6-month period by the number of months the store would be disqualified under § 1107.1. For stores which are denied recertification for which this option is available, the Department will multiply 5% of the average monthly total value of WIC checks for the most recent 6-month period by 6 months to determine the civil money penalty to be paid. If 6 months of information relating to the monthly value of WIC checks redeemed is not available, the Department

will calculate the monthly average based upon the number of months for which information is available.

(c) *Written agreement.* If the Department offers and the store agrees to pay a civil money penalty in lieu of disqualification, the Department and store shall set forth the terms of the agreement in writing. The terms may include a probationary period during which the Department may conduct monitoring to ensure action has been taken by the store to correct problems. The agreement shall be effective upon the signature of the Director of the Division of WIC or the Director's designee.

(d) *Payment of the civil money penalty.* The store shall pay the civil money no later than 30 days from the effective date of the penalty agreement, as set forth in subsection (c). Failure of the store to pay the civil money penalty when due shall be grounds for the Department to rescind the agreement and shall result in reinstatement of the disqualification.

(e) *Continued compliance with regulations.* A store which pays a civil money penalty is required to continue to comply with regulations governing the store's participation in the WIC Program. If the store commits additional violations of the regulations governing the store's participation in the WIC Program, the Department will consider the violations for which the store paid the civil money penalty in determining the type and magnitude of sanction to be imposed against the store.

(f) *Outstanding financial liabilities.* Payment of the civil money penalty, unless specifically provided for in a written agreement between the Department and the store, does not relieve the store of any other past or future financial liability incurred by the store by reason of its participation in the WIC Program. This includes, by way of example, payment of outstanding overcharges or payments owed the Department for the unauthorized sale of foods.

### **CHAPTER 1109. ADMINISTRATIVE APPEALS**

Sec.

1109.1. Applicability of general rules.

1109.2. Scope and purpose.

1109.3. Time limits for action.

#### **§ 1109.1. Applicability of general rules.**

1 Pa. Code Part II (relating to general rules of administrative practice and procedure) applies to proceedings under this part, except as otherwise provided in this part.

#### **§ 1109.2. Scope and purpose.**

Chapters 1111 and 1113 (relating to applicant and participant appeals; and local agency and store appeals) apply to hearings held under 42 U.S.C.A. § 1786(f)(9), relating to the WIC Program. Those chapters supplement the Federal regulations, 7 CFR Part 246 (relating to special supplemental nutrition program for women, infants, and children) governing hearings afforded under this part to applicants, participants, stores denied certification or recertification and local agencies, and supplement or supersede regulations in 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) when their application would be inappropriate or inadequate.

#### **§ 1109.3. Time limits for action.**

Time limits in §§ 1111.10(d) and 1113.3(b) (relating to hearing examiner decisions; and adjudication and order) are directory.

# CHAPTER 1111. APPLICANT AND PARTICIPANT APPEALS

Sec.	
1111.1.	Applicant and participant appeal rights.
1111.2.	Notification of appeal rights.
1111.3.	Appeal of a local agency decision.
1111.4.	Time for appeal of a local agency decision.
1111.5.	Scheduling the hearing.
1111.6.	Denial or dismissal of appeal.
1111.7.	Continuation of benefits.
1111.8.	Rights of the appellant.
1111.9.	Hearing record.
1111.10.	Hearing examiner decisions.
1111.11.	Appeal to the Secretary.
1111.12.	Adjudication and order procedures.
1111.13.	Judicial review.

## § 1111.1. Applicant and participant appeal rights.

This chapter applies to applicants, participants and their authorized representatives, in pursuing appeals from decisions that adversely impact upon the participation of applicants and participants in the WIC Program.

## § 1111.2. Notification of appeal rights.

(a) At the time of the denial of an application to become a participant, removal from the WIC Program as a participant, or placement on a waiting list to become a participant, the local agency shall inform in writing the adult applicant or participant, or the parent or guardian of a child or infant applicant or participant, of the right to appeal the decision, of the method by which an appeal may be filed, and that any positions or arguments on behalf of the applicant or participant may be presented personally or by an authorized representative, such as a relative, friend, legal counsel or other spokesperson. The expiration of the participant's certification period occurs automatically and is not appealable.

(b) The local agency shall use forms provided by the Department to provide notice of appeal rights to the adult applicant or participant, or the parent or guardian of an infant or child applicant or participant.

## § 1111.3. Appeal of a local agency decision.

(a) An appeal is any clear expression by the applicant, participant or authorized representative, that the decision of the local agency is contested and that an opportunity to challenge the decision and to present the case of the applicant or participant to a higher authority is desired. The Department or local agency will not limit or interfere with the freedom of the applicant, participant or authorized representative to appeal the decision and will provide whatever assistance is necessary to reduce an oral appeal to writing.

(b) When an appeal is made orally, the local agency shall docket it as being filed when the local agency receives the oral communication.

## § 1111.4. Time for appeal of a local agency decision.

The applicant, participant or authorized representative shall appeal within 90 days after the date the local agency mails or delivers to the adult applicant or participant, or parent or guardian of an infant or child applicant or participant, written notice of the action to deny or terminate benefits under the WIC Program. An appeal is timely filed if it is received by the local agency within the 90-day period.

## § 1111.5. Scheduling the hearing.

(a) *Appointment of a hearing examiner.* The local agency shall appoint a hearing examiner to preside over the appeal. The hearing examiner shall be an impartial official who does not have a personal stake or involve-

ment in the decision, and who was not directly involved in the action being contested.

(b) *Notification of the appeal.* The local agency shall notify the hearing examiner of the appeal and the date on which it was docketed.

(c) *Time frame for scheduling a hearing.* The hearing examiner shall schedule the hearing within 3 weeks from the docketed date of the appeal. The hearing examiner shall provide the appellant participant or authorized representative with a minimum of 10 days advance written notice of the time and place of the hearing.

(d) *Standards for scheduling the hearing.* The hearing examiner shall use the following standards in scheduling a hearing:

(1) The place of the hearing may not be further from the residence of the applicant or participant than the county seat of the county in which the applicant or participant resides. If the county seat is unsuitable due to the health of the applicant or participant, transportation problems, convenience of witnesses or for other legitimate reasons, an alternative place of hearing shall be a location convenient to the home of the applicant or participant.

(2) If the applicant, participant or authorized representative wants to postpone the hearing, that individual shall contact the hearing examiner, and the local agency and provide them with a reason for postponement. If the hearing is postponed by the hearing examiner, the hearing examiner shall reschedule it as soon as possible.

(3) An applicant, participant or authorized representative may withdraw the appeal at any time before a decision is issued by the hearing examiner. This withdrawal shall be in writing and directed to the hearing examiner.

(4) If the applicant or participant fails to appear at the scheduled hearing in person or by authorized representative, without good cause as determined by the hearing examiner, the appeal shall be considered abandoned and shall be discontinued.

(e) *Independent assessment.* The hearing examiner shall order, when relevant and necessary, an independent medical assessment or professional evaluation of the applicant or participant from a source mutually satisfactory to the applicant or participant or its authorized representative, and the local agency.

(f) *Supersession.* Subsection (d)(3) supersedes 1 Pa. Code § 35.51 (relating to withdrawal of pleadings).

## § 1111.6. Denial or dismissal of appeal.

The hearing examiner may not deny or dismiss an appeal unless one of the following occurs:

(1) The appeal is not received by the local agency within the time limit in § 1111.4 (relating to time for appeal of a local agency decision).

(2) The appeal is withdrawn in writing by the applicant, participant or authorized representative.

(3) The applicant, participant or authorized representative fails, without good cause, to appear at the scheduled hearing.

## § 1111.7. Continuation of benefits.

(a) If at any time during a participant's certification period, the local agency finds the participant to be ineligible to continue enrollment in the WIC Program, the local agency shall advise the participant in writing not

less than 15 days before termination of the reason for ineligibility and of the right to appeal. If an appeal is received within 15 days after service of the notice of ineligibility, benefits shall continue until the hearing examiner reaches a decision or the certification period expires, whichever occurs first.

(b) An applicant denied initial enrollment, or an authorized representative of the applicant, may appeal the denial, but the applicant may not receive benefits while awaiting disposition of the appeal.

#### **§ 1111.8. Rights of the appellant.**

(a) When an appeal is filed, the local agency shall inform the applicant or participant denied benefits, or an authorized representative, of the rights set forth in subsection (b).

(b) An applicant or participant who files an appeal, or on whose behalf the appeal is filed, has the following rights:

- (1) To appear in person at the hearing.
- (2) To represent himself, or to be represented by an authorized representative such as an attorney, friend or other person at the hearing.
- (3) To receive an explanation that he may contact the local bar association for assistance in locating legal services.
- (4) To present oral or documentary evidence, witnesses and arguments to support the position of the applicant or participant in accordance with procedures established by the hearing examiner.
- (5) To request a subpoena from the hearing examiner for the production of evidence or witnesses that the applicant, participant or authorized representative, determines are important to establish necessary facts
- (6) To request that the local agency provide an interpreter at the hearing if an adult applicant or participant, or the parent or guardian of an infant or child applicant or participant, does not understand English or is hearing impaired.
- (7) To examine upon request, both before and during the hearing, the materials which the Department or local agency has on file relative to the case which are not confidential.
- (8) To be provided with the names of the local agency staff members and witnesses who will be present at the hearing.
- (9) To question or refute any testimony or other evidence presented against the applicant or participant and to confront and cross-examine adverse witnesses.
- (10) To examine, prior to and during the hearing, documents and records that will be presented to support the decision under appeal.
- (11) To further appeal the final decision of the hearing examiner to the Secretary within 15 days of the mailing date of the hearing examiner's decision.
- (12) To appeal the adjudication and order of the Secretary or agency head designated by the Secretary to the Commonwealth Court within 30 days of the mailing date of the adjudication and order.

(c) *Supersession.* Subsection (b)(1) supplements 1 Pa. Code § 31.21 (relating to appearance in person). Subsection (b)(2) supersedes 1 Pa. Code §§ 31.22 and 31.23 (relating to appearance by attorney; and other

representation prohibited at hearings). Subsection (b)(5) supplements 1 Pa. Code § 35.142 (relating to subpoenas).

#### **§ 1111.9. Hearing record.**

(a) *Contents of the record.* The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall constitute the hearing record. This record shall be available to the applicant, participant or authorized representative, for copying and inspection at any reasonable time

(b) *Retention of the record.* This record shall be retained for 3 years.

(c) *Public inspection of the record.* Department and local agency hearing records and decisions shall be available for public inspection and copying, provided the names and addresses of participants and other members of the public are kept confidential.

(d) *Supersession.* Subsection (a) supersedes 1 Pa. Code § 35.131 (relating to recording of proceedings).

#### **§ 1111.10. Hearing examiner decisions.**

(a) The hearing examiner shall render a decision based exclusively on the evidence contained in the hearing record.

(b) The decision of the hearing examiner shall comply with applicable Federal law, and Federal and State regulations.

(c) A decision by the hearing examiner shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy. The decision shall become a part of the record. A decision adverse to the position of the local agency shall be binding on the local agency.

(d) Within 45 days after the filing date of the appeal, the hearing examiner shall provide the applicant, participant, or authorized representative, and the local agency, a copy of the hearing examiner's decision.

(e) If the decision of the hearing examiner is in favor of the applicant or participant and benefits had been denied or discontinued, the local agency shall begin or resume providing benefits immediately upon the mailing date of the decision.

(f) If the decision is in favor of the local agency, the notice accompanying the decision of the hearing examiner to the applicant, participant or authorized representative shall include notice of the right to appeal to the Secretary. Immediately upon the date of the hearing examiner's decision, the local agency shall discontinue providing any benefits which had been continued pending issuance of the hearing examiner's decision.

(g) Subsection (a) supersedes 1 Pa. Code § 35.201 (relating to certification of record without proposed report).

#### **§ 1111.11. Appeal to the Secretary.**

If the applicant, participant or authorized representative, chooses to appeal the decision of the hearing examiner, that individual shall file a written appeal with the Secretary within 15 days of the mailing date of the decision of the hearing examiner. The appeal shall contain a statement of reasons for reversing the decision of the hearing examiner. If the appeal asks for permission to present additional evidence, it shall:

- (1) Identify the additional evidence.
- (2) Explain why it was not previously introduced.

(3) Explain its materiality unless it is obvious.

**§ 1111.12. Adjudication and order procedures.**

(a) In reaching a decision on the appeal, the Secretary or an agency head designated by the Secretary may:

(1) Reconsider the decision on the basis of the evidence in the record.

(2) Admit additional evidence.

(3) Order a new hearing.

(b) In cases in which the hearing examiner's decision has resulted in a termination of benefits to the participant, there shall be no reinstatement of benefits upon filing of an appeal to the Secretary. The reinstatement of benefits, if granted, shall be solely as a result of the adjudication and order of the Secretary or designated agency head.

**§ 1111.13. Judicial review.**

The Secretary or designated agency head will issue an adjudication and order after considering the appeal. If the adjudication and order is adverse to the interest of the applicant or participant, the adjudication and order shall state, or be accompanied by a notice stating, that the applicant or participant has the right to appeal the adjudication and order to Commonwealth Court within 30 days after the mailing of the adjudication and order.

**CHAPTER 1113. LOCAL AGENCY AND STORE APPEALS.**

Sec.	
1113.1.	Right to appeal.
1113.2.	Appeal procedures.
1113.3.	Adjudication and order.
1113.4.	Continuing responsibilities.
1113.5.	Judicial review.

**§ 1113.1. Right to appeal.**

A store or local agency adversely affected by a Division of WIC action has the right to appeal. The right of appeal shall be granted when a local agency's or store's application to participate in the WIC Program is denied; or during the course of an agreement or period of authorization, when a local agency or store is disqualified; or when any other adverse action which affects participation is taken against the store or local agency by the Division of WIC. The expiration of a WIC authorization is not subject to appeal. The appeal process is designed to secure and protect the interest of both the store or local agency and the Division of WIC and to ensure equitable treatment for all involved. The adverse action shall be postponed until the hearing examiner issues an adjudication and order.

**§ 1113.2. Appeal procedures.**

(a) *Notification.* At the time the Division of WIC takes an adverse action against a local agency or store, the Division of WIC will notify the local agency or store of its right to an administrative appeal.

(b) *Form of appeal.* The appeal shall be made by the local agency or store or its authorized representative, in writing, stating the reasons for the appeal.

(c) *Time for filing an appeal.* The appeal shall be filed with the Director of the Division of WIC within 30 days after any final decision by the Division of WIC.

(d) *Scheduling the hearing.*

(1) The Director of the Division of WIC shall forward the appeal to the office of the hearing examiner.

(2) The hearing examiner shall set a time, date and place for the hearing.

(3) The hearing examiner shall send notice to the local agency or store, or its authorized representative, at least 10 days in advance of the date of the hearing.

(4) The hearing examiner shall schedule the hearing to be held within 21 days after the date of receipt by the Division of WIC of the local agency or store appeal.

(5) The Department or the appellant may request in writing that the hearing be rescheduled for another time or date and the hearing examiner shall consider the request.

(e) *Hearing examiner.* The Secretary will appoint a hearing examiner to preside over the appeal. The person shall be an impartial decision-maker, whose decision as to the validity of the Department's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the program, and who may not have participated in the decision made by the Division of WIC or have a personal stake in the outcome.

(f) *Hearing procedures.*

(1) The local agency or store may be assisted or represented by an attorney or other authorized representative.

(2) The local agency or store, or its authorized representative, may examine, prior to and during the hearing, the documents and records considered by the Division of WIC in reaching its decision under appeal.

(3) The hearing shall be open to the public.

(4) Each party shall have the opportunity to present and cross-examine witnesses.

(5) Each party may present oral or documentary evidence and arguments to support its position in narrative form.

(6) Each party may object to or attempt to refute any testimony or other evidence presented by the other party.

(g) *Supersession.* Subsection (d) supersedes 1 Pa. Code § 35.105 (relating to notice of nonrulemaking procedures). Subsection (e) supersedes 1 Pa. Code § 35.185 (relating to designation of presiding officers). Subsection (f)(1) supplements 1 Pa. Code § 31.21 (relating to appearance in person) and supersedes 1 Pa. Code §§ 31.22 and 31.23 (relating to appearance by attorney; and other representation prohibited at hearings).

**§ 1113.3. Adjudication and order.**

(a) The adjudication and order shall include findings of fact and conclusions of law. The findings of fact shall be based only on the oral and documentary evidence in the hearing record.

(b) The hearing examiner shall provide the Director of the Division of WIC and the local agency or store, or its authorized representative, with the adjudication and order within 60 days after the date of the receipt by the Division of WIC of the appeal, adjusted for any continuance of the hearing that causes it to be held more than 21 days after the date the appeal was filed.

(c) The hearing examiner shall maintain a written record of the hearing. The record shall include a docket number and caption for the appeal, any documentary evidence submitted, the transcript of the testimony presented at the hearing, the adjudication and order of the hearing examiner, and a copy of the document transmitting the adjudication and order to the local agency or store, or its authorized representative.



(d) Paragraphs (a)—(c) supersede 1 Pa. Code §§ 35.131, 35.201, 35.202 and 35.205.

#### § 1113.4. Continuing responsibilities.

Appealing an action does not relieve the local agency or store from the responsibility of continued compliance with the terms of any written agreement or contract with the Department or certification or recertification by the Department.

#### § 1113.5. Judicial review.

If the adjudication and order of the hearing examiner is rendered against the local agency or store, the hearing examiner will inform the local agency or store within the adjudication and order, or by notice accompanying the adjudication and order, of the right to pursue judicial review of the adjudication and order.

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## Title 51—PUBLIC OFFICERS

### LOBBYING DISCLOSURE COMMITTEE

[51 PA. CODE CHS. 31, 33, 35, 37, 39, 41, 43 AND 45]

#### Lobbying Disclosure

The Lobbying Disclosure Committee (Committee) statutorily created to promulgate regulations necessary to carry out 65 Pa.C.S. Chapter 13 (act) (relating to Lobbying Disclosure Act), comprised of the Secretary of the Senate, the Chief Clerk of the House of Representatives, the Chairperson of the State Ethics Commission, the Attorney General, the Secretary of the Commonwealth, the Auditor General and the General Counsel, or their designees, adds Chapters 31, 33, 35, 37, 39, 41, 43 and 45 under the authority of 65 Pa.C.S. §§ 1305(b)(3)(iii) and 1310(c) (relating to reporting; and filing fees; fund established; regulations).

#### *Purpose*

The regulations implement the act and also impact upon section 1105(b)(6) and (7) of the Public Official and Employee Ethics Act (Ethics Act), 65 Pa.C.S. § 1105(b)(6) and (7) (relating to statements of financial interests).

The regulations are generally procedural in nature and implement the requirements of the act concerning: definitions; registration and reporting by principals and lobbyists; the maintenance of records of lobbying activity; the issuance of opinions and advices of counsel; compliance audits; investigations and hearings; referrals; the imposition of civil penalties; and the imposition of prohibitions against lobbying as a sanction.

The regulations have been drafted to be thorough and comprehensive, and to be easily understood by the regulated community and the general public.

#### *Fiscal Impact and Paperwork Requirements*

Since the regulations are under a new act, the fiscal impact cannot be discerned. Paperwork will be as dictated by the act.

#### *Summary of Public Comments and Changes*

The regulations were published as proposed at 29 Pa.B. 548 (January 30, 1999), with an invitation to submit written comments within 30 days.

Comments were received from the public; the House Judiciary Committee; the Senate Rules and Executive Nominations Committee; and the Independent Regulatory Review Commission (IRRC). A summary of the comments, the Committee's responses to those comments, and related changes to the proposed regulations are set forth in "The Lobbying Disclosure Committee's Comment and Response Document for Final Form Regulation (63-06)" which is incorporated herein by reference.

All comments were considered by the Committee, and at a public meeting on May 19, 1999, there was review and a vote by the Committee to then adopt the final-form regulations and to submit them to IRRC, the aforesaid Standing Committees and the Office of Attorney General for approval. The final-form regulations were disapproved by the House Judiciary Committee and IRRC, and were subsequently submitted with revisions or modifications, or both, under section 7(c) of the Regulatory Review Act (71 P. S. § 745.7(c)).

The final-form regulations as revised/modified reflect numerous and substantial changes to the proposed regulations. The following are some of the more noteworthy changes:

- (1) The use of calendar year quarters for reporting.
- (2) The clarification that the contents of communications and the identity of those with whom the communications take place need not be reported, recorded or maintained.
- (3) The inclusion of a provision allowing a parent corporation and its subsidiaries to register and report on a consolidated basis if they meet the eligibility standards of the Internal Revenue Service for filing a consolidated corporate tax return.
- (4) Clarifications as to the burden of proof and the number of Commission members required for the Commission to find a violation, impose a civil penalty or impose a prohibition against lobbying.
- (5) Clarifications as to certain definitions.
- (6) Clarifications as to access to computerized/electronic records.
- (7) The maintenance of books and records on the same basis used by the registrant for Federal tax purposes, or, for those who do not file tax returns, on a cash basis.
- (8) The clarification of what a principal must do when unable to secure a lobbyist's signature for a report.
- (9) The inclusion of an additional valuation method that may be used where more than one individual is benefited incident to an occasion or transaction.

With regard to the latter point, the regulations recognize several different valuation methods as acceptable. Depending upon the method chosen, the valuation will likely vary. Moreover, the fact that a registrant chooses a given method for valuing an item under the act does not compel the recipient to use the same method for valuing it when reporting it under the Ethics Act, 65 Pa.C.S. §§ 1101—1113. Thus, variations between the respective reports are to be expected and do not necessarily indicate that either report is erroneous.

*Effective Date*

The regulations will take effect on August 1, 1999.

*Sunset Date*

The effectiveness of these regulations will be reviewed by the Committee periodically. Thus, no sunset date is necessary.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 20, 1999, the Committee submitted a copy of the proposed regulations to IRRC and to the Chairpersons of the House Judiciary Committee and Senate Committee on Rules and Executive Nominations. In addition to submitting the proposed regulations, the Committee provided IRRC and the Standing Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

In compliance with section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), the Committee submitted a copy of the final-form regulations to IRRC and the aforesaid Standing Committees on May 26, 1999. In addition, the Committee provided IRRC and the Standing Committees with information pertaining to commentators and a copy of a detailed Regulatory Analysis Form prepared by the Committee. A copy of this material is available to the public upon request.

In preparing the final-form regulations, the Committee considered all comments received from IRRC, the Standing Committees and the public.

The final-form regulations were deemed approved by the Senate Committee on Rules and Executive Nominations on June 15, 1999. The final-form regulations were disapproved by the House Judiciary Committee on June 15, 1999, and were disapproved by IRRC on June 17, 1999. Under section 7(c) of the Regulatory Review Act (71 P. S. § 745.7(c)), the regulations were submitted with revisions or modifications to the Standing Committees and IRRC on June 24, 1999. The revised/modified regulations were deemed approved by the Senate Committee on Rules and Executive Nominations and the House Judiciary Committee on July 6, 1999, and approved by IRRC on July 8, 1999.

*Contact Person*

Questions regarding these regulations may be submitted to: John J. Contino, Executive Director, or Vincent J. Dopko, Chief Counsel, State Ethics Commission, P. O. Box 11470, Room 309, Finance Building, Harrisburg, PA 17108-1470 (717) 783-1610.

*Findings*

The Committee finds that:

(1) Public notice of intention to adopt the regulations 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) A public comment period was provided as required by law and all comments were considered.

(3) The adoption of regulations in the manner provided by this order is necessary and appropriate for the administration of the authorizing statute.

*Order*

The Committee, acting under the act, orders that:

(a) The regulations of the Commission, 51 Pa. Code, are amended by adding §§ 31.1—31.14, 33.1—33.5, 35.1, 35.2, 37.1, 37.2, 39.1—39.3, 41.1—41.5, 43.1—43.7, 45.1 and 45.2 to read as set forth in Annex A.

(b) The Chief Counsel of the State Ethics Commission shall submit this order and Annex A to the Office of Attorney General for approval as required by law.

(c) The Chief Counsel of the State Ethics Commission shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, the Senate Committee on Rules and Executive Nominations and the House Judiciary Committee for their review and action as required by law.

(d) The Chairperson of the Committee shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect on August 1, 1999.

AUSTIN M. LEE,  
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 3978 (July 24, 1999).)

**Fiscal Note:** 63-6. (1) General Fund; (2) Implementing Year 1998-99 is \$165,000; (3) 1st Succeeding Year 1999-00 is \$280,275; 2nd Succeeding Year 2000-01 is \$294,849; 3rd Succeeding Year 2001-02 is \$310,181; 4th Succeeding Year 2002-03 is \$326,310; 5th Succeeding Year 2003-04 is \$343,279; (4) 1997-98 New Program—Not Applicable; 1996-97 New Program—Not Applicable; 1995-96 New Program—Not Applicable; (7) State Ethics Commission; (8) recommends adoption. Fees and revenues deposited in the Lobbying Disclosure Fund should offset, to some extent, the cost of running this program.

**Annex A**

**TITLE 51. PUBLIC OFFICERS**

**PART II. LOBBYING DISCLOSURE COMMITTEE**

**CHAPTER 31. GENERAL PROVISIONS**

Sec.	
31.1.	Definitions.
31.2.	Application to Ethics Act regulations.
31.3.	Filing deadlines to fall on Commonwealth working days.
31.4.	Registration periods and reporting periods.
31.5.	Delinquency.
31.6.	Deficiency.
31.7.	Biennial review of exemption threshold and reporting threshold.
31.8.	Forms, records and Commission publications.
31.9.	Amended filings.
31.10.	Filings to be originals signed under oath or affirmation.
31.11.	Electronic filing.
31.12.	Faxed filings.
31.13.	Enforcement of Commission orders.
31.14.	Parent corporations and subsidiaries.

**§ 31.1. Definitions.**

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

*Act*—The Lobbying Disclosure Act, 65 Pa.C.S. Chapter 13.

*Administrative action*—The term includes one or more of the following:

(i) An agency's proposal, consideration, promulgation or rescission of a regulation; development or modification of a guideline or a statement of policy as defined in 1 Pa. Code § 1.4 (relating to definitions); or approval or rejection of a regulation.

(ii) The review, revision, approval or disapproval of a regulation under the Regulatory Review Act.

- (iii) The Governor's approval or veto of legislation.
- (iv) The nomination or appointment of an individual as an officer or employee of the Commonwealth.
- (v) The proposal, consideration, promulgation or rescission of an executive order.

*Affiliated political action committee*—A "political action committee" as defined in section 1621(l) of the Election Code (25 P.S. § 3241(l)), which has a chairperson, a treasurer or another officer who is a principal, an employee of a principal, a lobbyist or an employee of a lobbyist. If an employee of a registrant serves as the officer of a political action committee in what is clearly a personal capacity, and the goals and mission of that political action committee clearly have no relationship to the goals and mission of the registrant, the political action committee will not be considered an affiliated political action committee.

*Agency*—A State agency, board, commission, authority or department.

*Anything of value*—

(i) For the limited purpose of reporting gifts, transportation, lodging or hospitality under section 1304 or 1305 of the act (relating to registration; and reporting), or under section 1105(b)(6) or (7) of the Ethics Act (relating to statement of financial interests), these terms mean anything of any nature whatsoever which is not or would not ordinarily be obtainable in the marketplace without consideration, including, but not limited to:

(A) A pecuniary or negotiable item such as money; a bank bill or note; a stock, bond, note or other investment interest in an entity; a promissory note, bill of exchange, order, draft, warrant, check or bond given for the payment of money.

(B) A discount or rebate not extended to the public generally.

(C) A conveyance, or a contract, agreement, promise, or other obligation for a conveyance.

(D) A deposit, distribution, payment, pledge, or transfer of money, or a contract, agreement, promise or other obligation for these.

(E) An advance or loan, or a contract, agreement, promise, or other obligation for an advance or loan.

(F) A forgiveness of indebtedness, or a contract, agreement, promise or other obligation for a forgiveness of indebtedness.

(G) Personalty or an interest in personalty, such as works of art, antiques or collectibles.

(H) Real property or an interest in real property.

(I) A service not extended free of charge to the general public.

(J) The use of real property, personal property or services belonging to other persons or entities.

(K) Entertainment and recreation not extended free of charge to the general public, or the payment of fees or charges incident thereto.

(L) A complimentary ticket/pass, or the purchase of a ticket/pass, to an event such as a reception, rally, fundraiser, sporting event, theater, opera, concert, exhibition, or the like.

(M) Food, beverage or lodging.

(N) Rewards or prizes from any contest, event or drawing not open to the general public.

(O) An automobile or other means of transportation not extended free of charge to the general public.

(ii) The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment.

(iii) For the purpose of reporting the amount of gifts, transportation, lodging and hospitality, see § 35.1(k) (relating to quarterly expense reports).

*Association*—An "association" as defined in the Association Code in 15 Pa.C.S. § 102 (relating to definitions). The term includes a corporation, a partnership, a limited liability company, a business trust or two or more persons associated in a common enterprise or undertaking. The term does not include a testamentary trust or an inter vivos trust as defined in 20 Pa.C.S. § 711(3) (relating to mandatory exercise of jurisdiction through orphans' court division in general).

*Audit*—A review of registration statements or disclosure reports, or both, and related information to determine compliance with the act and to review methods of recordkeeping and reporting.

*Candidate's political committee*—A "candidate's political committee" as defined in the Election Code. The words "candidate's political committee" mean any political committee formed on behalf of a specified candidate and authorized by the candidate.

*Child*—The term includes adopted and biological children.

*Commission*—The State Ethics Commission of the Commonwealth.

*Compensation*—Anything of value, including benefits, received or to be received from a principal by one acting as a lobbyist.

*Complaint*—A complaint on a form prescribed by the Commission, or the equivalent of the form, which is signed and sworn under penalty of perjury and which otherwise meets, to the extent applicable, the criteria for complaints under §§ 11.1 (relating to definition of "sworn complaint") and 21.1 (relating to complaints).

*De minimis*—Insignificant.

*Docket (noun)*—The official listing of entries to the record of a matter before the Commission.

*Docket (verb)*—The initial, official assignment of a file number to a matter before the Commission; or the entry of an item on the docket of a matter before the Commission.

*Direct communication*—An effort, whether written, oral or by another medium, made by a lobbyist or principal, directed to a State official or employee, the purpose or foreseeable effect of which is to influence legislative action or administrative action.

*Economic consideration*—Anything of value offered or received.

*Effort to influence legislative action or administrative action*—An effort to initiate, support, promote, modify, oppose, delay or advance a legislative action or administrative action. The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment.

*Election Code*—25 P. S. §§ 2600—3591.

*Employee*—For the limited purpose of determining exemption under section 1306(6) of the act, the term “employee” means an individual from whose wages an employer is required under the Internal Revenue Code (26 U.S.C.A.) to withhold Federal income tax.

*Engaging a lobbyist*—Engaging means making an arrangement, and “engagement” means an arrangement, whereby a lobbyist is employed or otherwise hired or retained to lobby on behalf of a principal for economic consideration.

*Ethics Act*—The Public Official and Employee Ethics Act, 65 Pa.C.S. §§ 1101—1113.

*Fax*—Facsimile transmission.

*Filed*—Registration statements, reports, and other official statements or papers are filed on the date they are physically received at the Commission office whether filed electronically or delivered by United States mail, express carrier, hand delivery or by fax. See § 31.12 (relating to faxed filings) for additional requirements when filing by fax.

*Fund*—The Lobbying Disclosure Fund established in section 1310(b) of the act (relating to filing fees; fund established; regulations).

*Gift*—Anything which is received without consideration of equal or greater value.

(i) The term does not include a political contribution which is otherwise reported as required by law or a commercially reasonable loan made in the ordinary course of business.

(ii) For the purpose of categorizing a reportable item under section 1304 or 1305 of the act, or under section 1105(b)(6) or (7) of the Ethics Act, the term does not include “transportation and lodging or hospitality received in connection with public office or employment” as defined in this section, which is otherwise reported as required by law.

(iii) The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment.

(iv) The term does not include information received by a legislator or other State official or employee within the scope of such office or employment, except to the extent that such has a fair market value beyond the actual information contained therein.

*Hospitality*—Includes the following:

- (i) Meals.
- (ii) Beverages.
- (iii) Recreation and entertainment.

*Immediate family*—An individual’s spouse, child, parent, brother, sister, mother-in-law, father-in-law, brother-in-law or sister-in-law.

*Indirect communication*—An effort, whether written, oral or by another medium, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action. The term includes, but is not limited to, letter-writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues. The term does not include regularly pub-

lished periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation.

*Investigative Division*—The Investigative Division of the Commission.

*Intentional*—The term has the meaning set forth in 18 Pa.C.S. § 302(b) (relating to general requirements of culpability).

*Legislation*—Bills, resolutions, amendments and nominations pending or proposed in either the Senate or the House of Representatives. The term includes any other matter which may become the subject of action by either chamber of the General Assembly.

*Legislative action*—An action taken by a State official or employee involving the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of legislation; legislative motions; overriding or sustaining a veto by the Governor; or confirmation of appointments by the Governor or of appointments to public boards or commissions by a member of the General Assembly.

*Lobbying*—An effort to influence legislative action or administrative action. The term includes the following:

- (i) Providing any gift, entertainment, meal, transportation or lodging to a State official or employee for the purpose of advancing the interest of the lobbyist or principal.
- (ii) Direct or indirect communication.

*Lobbyist*—An individual, firm, association, corporation, partnership, business trust or business entity that engages in lobbying on behalf of a principal for economic consideration. The term includes an attorney who engages in lobbying. The term does not include an individual who receives economic consideration which is de minimis. Membership in an association alone is not sufficient to make an association member a lobbyist.

*Negligence*—Conduct, whether of action or omission, which violates or fails to comply with the act, and which is occasioned by a failure to exercise such care as a reasonably prudent and careful principal or lobbyist would exercise in satisfying the requirements of the act, and is characterized by inadvertence, thoughtlessness, inattention, or the like.

*Political subdivision*—A “political subdivision” as defined in section 1102 of the Ethics Act (relating to definitions).

*Principal*—

(i) An individual, firm, association, corporation, partnership, business trust or business entity on whose behalf a lobbyist influences or attempts to influence an administrative action or a legislative action; or that engages in lobbying on the principal’s own behalf.

(ii) Membership in an association alone is not sufficient to make an association member a principal.

*Registrant*—A registered lobbyist or a registered principal.

*Regulatory Review Act*—71 P. S. §§ 745.1—745.14.

*Regulation*—Any rule, regulation or order in the nature of a rule or regulation, including formal and informal opinions of the Attorney General, of general application and future effect, promulgated by an agency under statutory authority in the administration of a statute adminis-

tered by or relating to the agency, or prescribing the practice or procedure before the agency.

*Respondent*—The subject of an audit, complaint, notice of noncompliance, investigation or formal proceeding before the Commission.

*Service (of official papers)*—Official papers are deemed served by the Commission, or by a Division thereof, on the date of mailing if delivered by United States mail; the pickup date if delivered by express carrier; or the date received from the Commission if hand delivered or transmitted by fax.

*Staff*—The Executive Director, the Chief Counsel, investigators and other personnel as may be employed by or assigned to assist the Commission.

*State official or employee*—An individual elected or appointed to a position in State government or employed by State government, whether compensated or uncompensated, who is involved in legislative action or administrative action.

*Transportation and lodging or hospitality received in connection with public office or employment*—Transportation, lodging or hospitality received in the course of, or incident to, the performance of official duties or responsibilities, or received on the basis of the status of the recipient as a public official or employee or State official or employee as those terms are defined under the Ethics Act or the act, respectively.

### **§ 31.2. Application to Ethics Act regulations.**

(a) The definitions of "gift" and "transportation and lodging or hospitality received in connection with public office or employment" in § 31.1 (relating to definitions) apply to administration of the act and section 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

(b) Section 35.1(k) (relating to quarterly expense reports) applies to reporting the amount of gifts or transportation, lodging or hospitality to be disclosed under section 1304 or 1305 of the act (relating to registration; and reporting) or under section 1105(b)(6) or (7) of the Ethics Act.

### **§ 31.3. Filing deadlines to fall on Commonwealth working days.**

When the deadline for filing a registration statement, report, answer, brief or other official paper with the Commission falls on a weekend or holiday, or on another day that Commission offices are closed or close early, the deadline for the filing shall be extended to the following Commonwealth working day.

### **§ 31.4. Registration periods and reporting periods.**

(a) Registration under section 1304 of the act (relating to registration) shall be within biennial registration periods that coincide with the terms of the members of the House of Representatives (December 1 of each even-numbered year to November 30 of the following even-numbered year), except that the first registration period shall commence August 1, 1999, and continue through November 30, 2000.

(b) Reporting under section 1305 of the act (relating to reporting) shall be quarterly within each calendar year, specifically, for January through March; April through June; July through September; and October through December, except that the first quarterly reporting period shall commence August 1, 1999, and shall continue through September 30, 1999.

### **§ 31.5. Delinquency.**

(a) A registration statement or report required to be filed under section 1304 or 1305 of the act (relating to registration; and reporting) is delinquent if not received by the Commission on the date due as follows:

- (1) Hard copy filings must be received by 5 p.m.
- (2) Faxed or electronic filings may be filed until 11:59 p.m.

(b) A failure to timely file a registration statement constitutes a failure to register as required by the act.

(c) A failure to timely file a report constitutes a failure to report as required by the act.

(d) A delinquent registration statement or report continues to be delinquent until received in proper form as required by the act and this part.

### **§ 31.6. Deficiency.**

(a) A registration statement, report or notice of termination required to be filed under section 1304 or 1305 of the act (relating to registration; and reporting) is deficient if one or more of the following exist:

- (1) It does not fully and accurately include and disclose all that is required by the act and this part.
- (2) It includes a false statement.
- (3) It is illegible.

(4) The filer fails to use the appropriate form prescribed by the Commission.

(5) The filer fails to date the registration statement, report or notice of termination.

(6) The filer fails to sign the registration statement, report or notice of termination under oath or affirmation as set forth in § 31.10 (relating to filings to be originals signed under oath or affirmation).

(b) The filing of a deficient registration statement constitutes a failure to register as required by the act.

(c) The filing of a deficient report constitutes a failure to report as required by the act.

(d) The filing of a deficient notice of termination shall be ineffective.

(e) A deficient registration statement, report or notice of termination continues to be deficient until it is amended to fully and accurately disclose all of the information that is required to be disclosed by the act and this part.

### **§ 31.7. Biennial review of exemption threshold and reporting threshold.**

(a) On a biennial basis commencing in January 2002, the Commission will review the threshold for reporting under section 1305(d) of the act (relating to reporting) and the threshold for exemption under section 1306(3)(ii)—(iv) of the act (relating to exemption from registration and reporting), using, to the extent applicable, the procedures within § 19.5 (relating to reporting threshold adjustments) for reviewing the threshold dollar amounts in section 1105(b) of the Ethics Act (relating to statement of financial interests).

(b) The Commission may increase the exemption threshold and reporting threshold amounts to rates deemed reasonable for assuring appropriate disclosure. Changes to the thresholds made under this section will become effective as determined by the Commission.

(c) The Commission will publish adjusted threshold amounts in the *Pennsylvania Bulletin* by June 1, 2002, and every 2 years thereafter, as necessary.

**§ 31.8. Forms, records and Commission publications.**

(a) Blank forms for filing or amending registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, notices of termination, termination reports or separate termination reports under the act may be obtained by contacting the Commission at: State Ethics Commission, Post Office Box 11470, Harrisburg, Pennsylvania 17108-1470, (717) 783-1610 or (800) 932-0936, or by visiting any Commission office during business hours on Commonwealth working days. Forms are also available at the Commission's web address: <http://www.ethics.state.pa.us>

(b) Additional sheets of equal size may be attached to any hard copy form filed under the act, if more space is required.

(c) Completed registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, notices of termination, termination reports and separate termination reports filed with the Commission shall remain on file for 4 years and shall be available for public inspection at the office of the Commission in Harrisburg, Pennsylvania during business hours on Commonwealth working days. The Commission will provide copies of these documents for the cost of the copying. Documents that are maintained and reproducible in an electronic format are available in that format upon request, at cost.

(d) Payments to the Commission for charges under subsection (c) shall be deposited into the Fund established by section 1310(b) of the act (relating to filing fees; fund established; regulations).

(e) Under section 1308 of the act (relating to administration and enforcement), the Commission will prepare and publish the following:

(1) An annual report of lobbying activities in this Commonwealth.

(2) An annual listing of principals, which shall identify affiliated political action committees and lobbyists.

(3) An annual listing of lobbyists, which shall identify affiliated political action committees and principals.

(4) A biennial directory of all registered lobbyists, which shall include photographs.

(i) The directory will be produced and distributed on or before May 1 of each odd-numbered year.

(ii) Copies of the directory will be made available to the public at a price not to exceed the actual cost of production.

(iii) Revenue received by the Commission from sales of this directory will be deposited into the Fund established by section 1310(b) of the act.

(5) One or all of the items in paragraphs (1)–(3) may, at the discretion of the Commission, be supplemented or be combined in a single publication or combined with the annual report prepared and published by the Commission under the Ethics Act.

**§ 31.9. Amended filings.**

(a) Filings under the act may be amended.

(b) Amended registration statements shall conform to the additional requirements detailed in § 33.4 (relating to amended registration statements).

(c) Amended filings will not affect the Commission's authority to conduct investigations, hearings or other proceedings under the act.

**§ 31.10. Filings to be originals signed under oath or affirmation.**

(a) Registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, notices of termination, termination reports, separate termination reports and amendments to these forms filed with the Commission shall be signed originals bearing the signature of the filer. See §§ 31.11 and 31.12 (relating to electronic filing; and faxed filings) for requirements when filing electronically or by fax.

(1) A document shall be deemed to be a signed original if it is filed electronically under § 31.11 or if it bears an original manual signature in ink.

(2) A principal who is an individual shall sign his own filings.

(3) Filings by a principal that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf.

(4) A lobbyist who is an individual shall sign his own filings.

(5) Filings by a lobbyist that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf.

(6) The signature shall appear on the line indicated on the form as prescribed by the Commission.

(b) Registration statements, notices of termination and amendments to these filed under the act shall include an affirmation subject to 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities) that the information provided therein is true and correct to the best of the filer's knowledge, information and belief.

(c) Quarterly expense reports, separate quarterly expense reports, termination reports, separate termination reports and amendments to these, filed under the act, shall be filed under oath or affirmation.

(d) A lobbyist who signs a principal's quarterly expense report, termination report or amendment to these, shall do so under an affirmation subject to 18 Pa.C.S. § 4904 that the information provided therein is true and correct to the best of the lobbyist's knowledge, information and belief.

(e) A lobbyist attaching a statement to a principal's quarterly expense report, termination report or amendment to these, describing the limits of the lobbyist's knowledge concerning the expenditures contained therein, shall do so under an affirmation subject to 18 Pa.C.S. § 4904 that the information provided in the statement is true and correct to the best of the lobbyist's knowledge, information and belief.

**§ 31.11. Electronic filing.**

(a) Electronic filing shall be available when notice of its availability is announced in the *Pennsylvania Bulletin* by the Commission.

(b) Upon the availability of electronic filing, forms that are required to be filed under the act may be filed electronically. The use of a digital signature assigned by the Commission shall have the same force and effect as a manual signature upon acceptance by the filer. The digital signature assigned shall be: unique to the person to whom it is assigned; capable of verification; under the sole control and authority of the person to whom it is assigned; and linked to the data in a manner so that if the data are changed, the digital signature is invalidated.

(1) A digital signature shall be assigned to a lobbyist or principal that submits to the Commission, in proper form as required by this section, an application to file electronically.

(2) The application to file electronically shall be on a form prescribed by the Commission.

(3) In submitting an application to file electronically, the applicant shall agree to all of the following:

(i) For any registration statement, notice of termination or amendment to these that the applicant files with the Commission electronically, the digital signature assigned to the applicant shall constitute the applicant's signature under affirmation as set forth in § 31.10(b) (relating to filings to be originals signed under oath or affirmation).

(ii) For any quarterly expense report, separate quarterly expense report, termination report, separate termination report or amendment to these that the applicant files with the Commission electronically, the digital signature assigned to the applicant shall constitute the applicant's signature under oath or affirmation as set forth in § 31.10(c).

(iii) The use of the digital signature assigned to the applicant to "sign" a quarterly expense report, termination report or amendment to these filed by another shall constitute the applicant's affirmation as set forth in § 31.10(d).

(iv) The use of the digital signature assigned to the applicant to attach a statement to a quarterly expense report, termination report or amendment to these filed by another shall constitute the applicant's affirmation as set forth in § 31.10(e).

(4) An application to file electronically may be rejected if the application is illegible, incomplete or unsigned.

(c) A registration statement or amendment that is submitted to the Commission electronically is filed on the date the Commission receives the document electronically if the Commission receives the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days thereafter.

(1) If the Commission does not receive the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days from the date of receiving the document electronically, the registration statement or amendment is filed on the date the Commission receives all the required items.

(2) The failure to submit a photograph or to pay a biennial filing fee as required by the act and this part constitutes a failure to register as required by the act.

#### **§ 31.12. Faxed filings.**

(a) A registration statement or amendment sent by fax is filed on the date the Commission receives the faxed copy if the Commission receives the signed original, together with the required photograph (in the case of a

lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days thereafter. A registration statement or amendment shall be deemed to be a signed original if it is filed electronically under § 31.11 (relating to electronic filing) or if it bears an original manual signature in ink.

(1) If the Commission does not receive the signed original, together with the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days from the date of receiving the faxed copy, the registration statement or amendment is filed on the date the Commission receives all the required items.

(2) The failure to submit a photograph or to pay a biennial filing fee as required by the act and this part constitutes a failure to register as required by the act.

(b) A quarterly expense report, separate quarterly expense report, lobbyist's statement of limitations of knowledge, notice of termination, termination report, separate termination report or amendment to these sent by fax transmission is filed on the date the Commission receives the faxed copy if the Commission receives the signed original within 5 business days thereafter. The document shall be deemed to be a signed original if it is filed electronically under § 31.11 or if it bears an original manual signature in ink. If the Commission does not receive the signed original within 5 business days from the date of receiving the faxed copy, the document is filed on the date the Commission receives the signed original.

#### **§ 31.13. Enforcement of Commission orders.**

The Commission through its staff may take appropriate action to enforce its orders.

#### **§ 31.14. Parent corporations and subsidiaries.**

(a) Subject to the requirements of subsection (b), a parent corporation and its subsidiaries may register and report under the act on a consolidated basis if they meet the eligibility standards of the Internal Revenue Service for filing a consolidated corporate tax return.

(b) When registration and reporting is on a consolidated basis, the registration statements, quarterly expense reports, separate quarterly expense reports, notices of termination, termination reports and separate termination reports shall disclose with particularity all of the required information as to the parent corporation and the subsidiaries.

### **CHAPTER 33. REGISTRATION AND TERMINATION**

Sec.	
33.1.	Biennial filing fee.
33.2.	Principal registration.
33.3.	Lobbyist registration.
33.4.	Amended registration statements.
33.5.	Termination.

#### **§ 33.1. Biennial filing fee.**

(a) Under section 1310(a) of the act (relating to filing fees; fund established; regulations), a principal or lobbyist required to be registered under the act shall pay a biennial filing fee of \$100 to the Commission.

(1) The biennial filing fee shall be tendered to the Commission with the filing of the principal's or lobbyist's first registration statement in each registration period.

(2) The biennial filing fee shall be a flat fee for the registration period in which paid. A registrant shall not be required to pay more than one biennial filing fee in any given biennial registration period.

(3) A separate biennial filing fee shall be paid for each principal or lobbyist required to be registered, even if employed by a firm, association, corporation, partnership, business trust or business entity that is also required to register and that has paid or will pay the fee. A principal also acting as a lobbyist shall pay no more than one fee in a registration period.

(4) The biennial filing fee is nonrefundable and nontransferrable.

(5) Filing fees shall expire at the end of each registration period, regardless of when paid.

(b) The failure to pay a biennial filing fee as required by the act and this section shall constitute a failure to register as required by the act.

(c) Money received from biennial filing fees shall be deposited in the Fund.

### **§ 33.2. Principal registration.**

(a) Unless exempt under section 1306 of the act (relating to exemption from registration and reporting), a principal shall register with the Commission within 10 days of acting in any capacity as a principal.

(1) Engaging a lobbyist for lobbying purposes constitutes acting in the capacity of a principal.

(2) Lobbying by a principal on the principal's own behalf constitutes acting in the capacity of a principal.

(i) A principal that is required to register and that engages in lobbying on its own behalf need only register with the Commission as a principal.

(ii) Unless exempt under section 1306 of the act, members or employees of a principal who engage in lobbying on behalf of the principal shall register as lobbyists with the Commission under § 33.3 (relating to lobbyist registration).

(b) A principal shall register by filing a registration statement with the Commission, on a form prescribed by the Commission, which shall disclose the following information:

(1) The name, permanent address, daytime telephone number, and name and nature of business of the principal.

(2) The name, registration number and acronyms of "affiliated political action committees" as defined in section 1303 of the act (relating to definitions), as to the principal or the principal's employees, or both.

(3) The name and permanent business address of each individual, registered or unregistered, who will for economic consideration engage in lobbying on the principal's behalf, whether as an individual or as a member, employee, or agent of a firm, association, corporation, partnership, business trust or business entity.

(4) If the principal is an organization or association, the number of its dues-paying members in the past calendar year.

(c) For each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer's option, include the street address, if different. If no street address is supplied, the registrant shall be deemed to have waived personal service where such service is required by law. The filer may, at the filer's option, also include a fax number or electronic mail address.

(d) The registration statement shall include the principal's consent to receive service of notices, other official

mailings or process at addresses listed in the registration statement on file with the Commission.

(e) The registration statement shall include a statement that the principal has received, read and understands the requirements and prohibitions of sections 1304, 1305 and 1307 of the act (relating to registration; reporting; and prohibited activities) and section 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

(f) A principal will not be considered registered until the completed registration statement, in proper form as required by the act and this section, is received by the Commission.

(g) Unless terminated, each registration statement filed under the act shall be effective from the date of filing through the final day of the registration period then in effect. The principal shall file new registration statements after that date, to the extent the principal is required to be registered under the act and this section.

### **§ 33.3. Lobbyist registration.**

(a) Unless exempt under section 1306 of the act (relating to exemption from registration and reporting), a lobbyist shall register with the Commission within 10 days of acting in any capacity as a lobbyist.

(1) Accepting an engagement to lobby constitutes acting in the capacity of a lobbyist.

(2) Engaging in lobbying constitutes acting in the capacity of a lobbyist.

(3) When a firm, association, corporation, partnership, business trust or business entity is engaged as a lobbyist, it and each of its members or employees that engage in lobbying on behalf of the principal shall register with the Commission, unless exempt under section 1306 of the act.

(b) A lobbyist shall register by filing a "registration statement" with the Commission on a form prescribed by the Commission which shall include and disclose the following information:

(1) The name, permanent business address and daytime telephone number of the lobbyist.

(2) A passport-sized (approximately 2 inches × 2 inches) photograph of the lobbyist which photograph shall be of reasonable clarity and shall have been taken within 2 years of the date of registration, except that if the lobbyist is not an individual, a photograph is not required.

(3) The name, permanent business address and daytime telephone number of the principal the lobbyist represents.

(4) The name, registration number and acronyms of "affiliated political action committees," as defined in section 1303 of the act (relating to definitions) as to the lobbyist or the lobbyist's employees, or both.

(c) For each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer's option, include the street address, if different. If no street address is supplied, the registrant shall be deemed to have waived personal service where such service is required by law. The filer may, at the filer's option, also include a fax number or electronic mail address.

(d) The registration statement shall include the lobbyist's consent to receive service of notices, other official mailings or process at addresses listed in the registration statement on file with the Commission.



(e) The registration statement shall include a statement that the lobbyist has received, read and understands the requirements and prohibitions of sections 1304, 1305 and 1307 of the act (relating to registration; reporting; and prohibited activities) and section 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

(f) A lobbyist required to be registered under the act shall file a separate registration statement for each principal represented. A lobbyist registering on behalf of an association shall not be required to register on behalf of each individual member of that association, except as to such members of the association whom the lobbyist represents in an individual capacity.

(g) A lobbyist will not be considered registered until the completed registration statement, in proper form as required by the act and this section, is received by the Commission.

(h) Unless terminated, each registration statement filed under the act shall be effective from the date of filing through the final day of the registration period then in effect. The lobbyist shall file new registration statements after that date, to the extent the lobbyist is required to be registered under the act and this section.

#### **§ 33.4. Amended registration statements.**

(a) A principal required to be registered under the act shall file an amended registration statement whenever there is a change of or in the information required to be disclosed on the principal's registration statement. The amended registration statement shall be filed with the Commission within 14 days after the change occurs, except that if the change is solely as to the number of dues-paying members in the past calendar year, the amended registration statement shall be filed with the Commission within 14 days of the end of the year in which the change occurs.

(b) A lobbyist required to be registered under the act shall file an amended registration statement whenever there is a change of or in the information required to be disclosed on the lobbyist's registration statement.

(1) The amended registration statement shall be filed with the Commission within 14 days after the change occurs.

(2) A change to the identity or name of the principal represented shall require a new registration statement.

(c) The filing of amended registration statements shall be subject to the additional requirements detailed in § 31.9 (relating to amended filings).

#### **§ 33.5. Termination.**

(a) A lobbyist or a principal may terminate registration by filing a completed notice of termination with the Commission.

(1) The notice of termination shall be on a form prescribed by the Commission.

(2) A lobbyist may file notices of termination solely as to registration statements which the lobbyist has filed.

(3) A principal may file notices of termination solely as to registration statements which the principal has filed.

(b) A separate notice of termination shall be required for each registration statement.

(c) A notice of termination shall identify the applicable registration statement by the date filed, the name and

address of the principal, and the names and addresses of the lobbyists.

(d) A notice of termination may be amended, but cannot be withdrawn.

(e) A registration statement cannot be revived or otherwise made effective after a notice of termination as to the registration statement has been filed.

(f) No lobbying may occur after the filing of a notice of termination unless the lobbying is under a separate registration statement which has already been filed with the Commission and which, at the time of the lobbying, has not been terminated.

(g) A lobbyist or principal filing a notice of termination shall, within 30 days thereafter, file a termination report with the Commission.

(1) Termination reports shall be filed on the quarterly expense report form prescribed by the Commission. The filer shall check the appropriate block on the form to indicate that it is a termination report.

(2) A termination report shall identify the applicable notice of termination by the date filed, the name and address of the principal, and the names and addresses of the lobbyists.

(3) For purposes of determining whether the reporting threshold has been met, expenses shall be accounted for as set forth in § 35.1(c) (relating to quarterly expense reports).

(4) If the total lobbying expenses of the registered principal or registered lobbyist, lobbying on the principal's behalf, or both, from the end of the previous quarterly reporting period through the final day of lobbying are \$500 or less, the termination report may substantively be limited to a statement to that effect, by checking the appropriate block on the form.

(5) If the total lobbying expenses of the registered principal or registered lobbyist, lobbying on the principal's behalf, or both, from the end of the previous quarterly reporting period through the final day of lobbying are in excess of \$500, a termination report by the principal shall include all information required by section 1305(b)(1)—(3), (5) and (7) of the act (relating to reporting), and a termination report by a lobbyist shall include all information required by section 1305(b)(2) and (3) of the act, through the final day of lobbying activity.

(6) The filer of the termination report shall give written notice to each public official or employee of the public official's or employee's inclusion in the termination report within 7 days of the submission of the termination report to the Commission. The notice shall include the information which will enable the public official or employee to comply with section 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

(h) A lobbyist required to be registered under the act shall sign the termination reports and amended termination reports submitted by the principal represented to attest to the validity and accuracy of the reports to the best of the lobbyist's knowledge.

(1) A lobbyist may attach a statement to the report of any principal, describing the limits of the lobbyist's knowledge concerning the expenditures contained in the report.

(2) Lobbyists' statements as to limitations of knowledge shall describe the limitations and the reasons for the limitations with specificity.

(i) If the principal fails to file a termination report, or if, during the period covered by the principal's termination report or amended termination report, the lobbyist engaged in lobbying on behalf of the principal which was not contained in the report, a lobbyist required to be registered under the act shall file a separate termination report or a separate amended termination report.

(1) When more than one lobbyist would be required to file a separate report, they shall have the option of filing the reports jointly.

(i) The joint filing of a separate report does not excuse the various lobbyists involved from the duty to fully comply with the act and this section as to the separate reports.

(ii) The lobbyists joining in a joint report shall sign the report as provided in § 31.10 (relating to filings to be originals signed under oath or affirmation).

(2) The deadline for filing a separate report shall be the 30th day after the date the principal's related report was filed.

(3) Separate reports shall be filed on a form prescribed by the Commission.

(4) A separate termination report or separate amended termination report shall contain the identity of the principal for whom the lobbying was performed.

(5) A separate termination report or separate amended termination report shall include all information required by section 1305(b)(2), (3) and (7) of the act.

(6) A separate termination report or separate amended termination report may include a statement which sets forth, with specificity, the limitations of the lobbyist's knowledge and the reasons for the limitations.

(7) A lobbyist filing a separate termination report or separate amended termination report shall promptly serve it upon the principal.

(8) A lobbyist filing a separate termination report or separate amended termination report shall give written notice to each public official or employee of the public official's or employee's inclusion in the report within 7 days of the submission of the report to the Commission. The notice shall include the information which will enable the public official or employee to comply with section 1105(b)(6) and (7) of the Ethics Act.

(j) If the principal is unable to secure the signature of the lobbyist as to a termination report or amended termination report, the principal shall attach an affidavit to such report, setting forth the attempts made and the reasons for the inability to obtain the lobbyist's signature. Such affidavit shall be on a form prescribed by the Commission.

(k) After a reasonable review of the termination report, the Commission will issue to the lobbyist or principal who filed the notice of termination a letter stating that the registrant has terminated registration. The letter shall be issued within 90 days after the Commission's receipt of the notice of termination except that the filing of a defective or delinquent termination report shall automatically and correspondingly extend the Commission's deadline for issuing the letter.

(l) The filing of a notice of termination or a termination report, or the issuance of a Commission letter stating that the registrant has terminated registration, does not affect the Commission's authority to conduct audits, investigations, hearings or other proceedings under the act and this part.

## CHAPTER 35. REPORTING

Sec.

35.1. Quarterly expense reports.

35.2. Records maintenance, retention and availability.

### § 35.1. Quarterly expense reports.

(a) A quarterly expense report is required to be filed as set forth in this section when the total lobbying expenses of a registered principal or registered lobbyist lobbying on the principal's behalf, or both, exceed \$500 in a quarterly reporting period.

(b) For a quarterly reporting period in which the total lobbying expenses of a registered principal or registered lobbyist lobbying on the principal's behalf, or both, are \$500 or less, a statement to that effect shall be filed with the Commission by checking the appropriate block on the quarterly expense report form.

(c) For purposes of determining whether the reporting threshold has been met, and for filing reports required under sections 1304 and 1305 of the act (relating to registration; and reporting), books and records shall be kept on the same basis the registrant uses for Federal tax purposes. For those registrants who do not file tax returns, books and records shall be kept on a cash basis.

(d) The principal shall file a quarterly expense report or statement of failure to meet the reporting threshold on or before the 30th day after the quarterly reporting period ends.

(e) Pursuant to subsection (n), a lobbyist required to be registered under the act shall file a separate quarterly expense report or a separate amended quarterly expense report if the principal fails to file in accordance with subsection (d) or if, during the reporting period, the lobbyist engaged in lobbying which was not contained in the report filed by the principal represented by the lobbyist. The deadline for filing a separate report shall be the 30th day after the date the principal's related report was filed or due.

(f) Quarterly expense reports, statements of failure to meet the reporting threshold, separate quarterly expense reports by lobbyists and amendments to these shall be filed on forms prescribed by the Commission.

(g) A quarterly expense report of a principal required to be registered under the act shall include the following information:

(1) The name, permanent business address and daytime telephone number of any individual, firm, association, corporation, partnership, business trust or business entity which contributed more than 10% of the total resources received by the principal during the reporting period. "Total resources" do not include the purchase, transfer, or ownership of stock in a publicly held corporation.

(2) The names of all lobbyists, registered or unregistered, by whom the lobbying is conducted. If a lobbyist is a firm, association, corporation, partnership, business trust or business entity, its name and the names of the individuals who lobby on behalf of the principal shall be included.

(3) The general subject matter or issue being lobbied, which shall be indicated by checking the appropriate block on the form or completing the category designated "other." The following need not be reported:

(i) A listing indicating which lobbyists are lobbying on which matters.

(ii) The specific bill numbers for which the lobbying is being done.

(iii) The specific contents of any communication or the identity of those with whom the communications take place.

(iv) The contents of privileged communications, such as those between attorney and client or doctor and patient.

(4) A single aggregate good faith estimate of the total amount spent for personnel and office expenses related to lobbying, to be calculated as prescribed by subsection (i).

(5) A single aggregate good faith estimate of the total amount spent for direct communication. In calculating this good faith estimate, any reasonable accounting method may be used.

(6) The total costs for gifts, entertainment, meals, transportation, lodging and receptions, given to or provided to State officials or employees or their immediate families, except that any cost under this paragraph which is of a value not exceeding \$10 need not be reported under section 1305(b)(3) of the act. If the same or similar gift, hospitality or transportation or lodging is provided to more than one State official or employee, the aggregate economic value of which is \$10 or more, such value shall be included in the appropriate totals reported under section 1305(b)(2) of the act.

(7) A single aggregate good faith estimate of the total amount spent for indirect communication. In calculating this good faith estimate, any reasonable accounting method may be used.

(8) The information required to be disclosed by section 1305(b)(3) of the act, as detailed by subsections (g)(6), (j) and (k).

(h) A registered principal or registered lobbyist that attempts to influence an agency's preparing, bidding, entering into or approving a contract shall ensure that the related expenses are included in calculating the totals referenced by subsection (g)(4)–(7).

(i) The single aggregate good faith estimate of the total amount spent for personnel and office expenses related to lobbying shall include salaries and other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses for those involved in lobbying, and costs for offices, equipment and supplies utilized for lobbying.

(1) In calculating the single aggregate good faith estimate of the total amount spent for personnel and office expenses related to lobbying, any reasonable accounting method may be used.

(2) Reportable personnel costs include costs for lobbying staff, research and monitoring staff, consultants, lawyers, lobbyists, publications and public relations staff, and technical staff, as well as clerical and administrative support staff who engage in lobbying but who are exempt from reporting under section 1306(6) of the act (relating to exemption from registration and reporting).

(3) Compensation, benefits and expenses of any nature shall be included if paid in furtherance of lobbying.

(4) If compensation is to be reported by or for an individual or entity whose lobbying is incidental to regular employment, it shall be sufficient to report a good faith prorated estimate based on the value of the time devoted to lobbying. The time devoted to lobbying shall include:

(i) Research time spent in preparation for lobbying.

(ii) Time spent in direct communication or indirect communication.

(iii) Other time consumed in furtherance of lobbying for which the individual or entity is compensated or reimbursed.

(5) Office expenses shall include, but not be limited to: the rental value of the physical facilities of an office during the period of time used for lobbying, together with additional charges for utilities, telephone usage, fax, insurance, services, furnishings, computers, printers, systems, copiers, fax machines, office supplies, postage and other costs related to the physical facilities and operation of an office during the period of time used for lobbying.

(j) A quarterly expense report shall also identify, by name, position and each occurrence, the State officials or employees, or both, who received from a principal or lobbyist anything of value which must be included in the statement of financial interests under section 1105(b)(6) or (7) of the Ethics Act (relating to statement of financial interests) as implemented by section 1105(d) of the Ethics Act.

(1) For purposes of the act, the amount referred to in section 1105(b)(7) of the Ethics Act shall be considered an aggregate amount per calendar year.

(2) The reporting of the provision of a gift to a State official or employee shall identify:

(i) The name and position of the State official or employee.

(ii) The name and address of the source of the gift.

(iii) The value of the gift.

(iv) The circumstances of the gift, including the nature of the gift.

(3) The reporting of the provision of transportation/lodging/hospitality to a State official or employee in connection with public office or employment shall identify the following:

(i) The name and position of the State official or employee.

(ii) The name and address of the source of the payment.

(iii) The value of the transportation, lodging or hospitality.

(k) For purposes of reporting the value of gifts or transportation, lodging or hospitality to be disclosed under section 1304 or 1305 of the act, or under section 1105(b)(6) or (7) of the Ethics Act:

(1) Gifts and hospitality items that are returned unused to the donor within 30 days of the date of receipt need not be reported.

(2) The valuation of a complimentary ticket to a fundraiser shall be based upon the reasonable amount of the goods or services received by the donee. Such valuation shall not include a political contribution which is otherwise reported as required by law.

(3) The value of gifts, transportation, lodging or hospitality shall equal the costs to the registrant if the items or services to be valued were in fact obtained by the registrant in marketplace transactions.

(4) When paragraph (3) is not applicable, the value of the gifts, transportation, lodging or hospitality shall equal the fair market values as determined by the replacement

costs, that is, the costs of purchasing the same or similar items or services in marketplace transactions.

(5) When paragraphs (3) and (4) are not applicable, the registrant may use any reasonable method to determine the value of gifts, transportation, lodging or hospitality, but shall include a detailed explanation of the specific method used.

(6) When more than one individual is benefited incident to an occasion or transaction, the registrant may calculate the value of the gifts, transportation, lodging or hospitality provided to a particular individual by one of the following:

(i) Calculating the actual benefit provided to that individual.

(ii) Dividing the totals of expenditures common to more than one beneficiary including that individual by the number of recipients, and adding the resulting figures (quotients) together with the value of all other gifts, transportation, lodging or hospitality provided to that particular individual.

(iii) Allocating a portion of the total expenditures common to more than one beneficiary to each individual based upon each individual's participation and adding that value to the value of all other gifts, transportation, lodging or hospitality provided to that individual.

(l) The filer of the quarterly expense report or amended quarterly expense report shall give written notice to each public official or employee of the public official's or employee's inclusion in the report within 7 days of the submission of the report to the Commission. The notice shall include the information which will enable the public official or employee to comply with section 1105(b)(6) and (7) of the Ethics Act.

(m) A lobbyist required to be registered under the act shall sign the quarterly expense reports or amended quarterly expense reports submitted by the principals represented to attest to the validity and accuracy of the reports to the best of the lobbyist's knowledge. If the principal is unable to secure the signature of the lobbyist, the principal shall attach an affidavit to such report, setting forth the attempts made and the reasons for the inability to obtain the lobbyist's signature. Such affidavit shall be on a form prescribed by the Commission.

(1) A lobbyist may attach a statement to the quarterly expense report or amended quarterly expense report of any principal, describing the limits of the lobbyist's knowledge concerning the expenditures contained in the report.

(2) Lobbyists' statements as to limitations of knowledge shall be on a form prescribed by the Commission and shall describe the limitations and the reasons for the limitations with specificity.

(n) When a lobbyist is required to file a separate report under subsection (e), the following shall apply:

(1) When more than one lobbyist would be required to file a separate report, they shall have the option of filing the reports jointly.

(i) The joint filing of a separate report does not excuse the various lobbyists involved from the duty to fully comply with the act and this section as to the separate reports.

(ii) All lobbyists joining in a joint report shall sign the report as provided in § 31.10 (relating to filings to be under oath or affirmation).

(2) The deadline for filing any separate quarterly expense report or separate amended quarterly expense report shall be the 30th day after the date the principal's related report was filed.

(3) Separate quarterly expense reports and separate amended quarterly expense reports shall be filed on a form prescribed by the Commission.

(4) A separate quarterly expense report or separate amended quarterly expense report shall contain the identity of the principal for whom the lobbying was performed.

(5) A separate quarterly expense report or separate amended quarterly expense report shall include all information required by section 1305(b)(2), (3) and (7) of the act.

(6) A separate quarterly expense report or separate amended quarterly expense report may include a statement which sets forth, with specificity, the limitations of the lobbyist's knowledge and the reasons for the limitations.

(7) A lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall promptly provide it to the principal.

(8) A lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall give written notice to each public official or employee of the public official's or employee's inclusion in the report within 7 days of the submission of the report to the Commission. The notice shall include the information which will enable the public official or employee to comply with section 1105(b)(6) and (7) of the Ethics Act.

### **§ 35.2. Records maintenance, retention and availability.**

(a) A registrant shall maintain records of all lobbying activity.

(1) The Commission may prescribe standardized forms for the records, in which case the forms prescribed by the Commission may be used by all principals and lobbyists required to be registered under the act.

(2) Records of lobbying activity shall be maintained in sufficient detail to enable the registrant to fully comply with the act and this part.

(3) The records shall identify the general subject matter or issue being lobbied. The specific contents of a particular communication, or the identity of those with whom the communications take place, need not be recorded or maintained.

(b) A registrant may keep records of all lobbying activity separate from records of the registrant's non-lobbying activity. A registrant may keep records related to registering and reporting under the act separate from other records relating to lobbying.

(1) Records which integrate both lobbying and non-lobbying activities shall be retained and made available for inspection or audit under this section and Chapter 41 (relating to compliance audits).

(2) An expenditure incurred partially in connection with lobbying may be prorated by any reasonable accounting method, but the method used shall be described in detail in the records maintained as to the expenditure.

(c) A registrant shall retain all documents reasonably necessary to substantiate the reports to be made under

section 1304 or 1305 of the act (relating to registration; and reporting) for 4 years from the date of filing of the subject report.

(1) The documents shall include, but not be limited to: books, journals, ledgers, accounts, statements, invoices, bills, vouchers, receipts, charge slips, cancelled checks, payroll check stubs, time sheets, tax returns and related forms, contracts, subcontracts, business diaries and calendars, and other related written or computerized records.

(2) Original source records received by the registrant shall be retained in their original form.

(3) Records prepared by the registrant under this section may be in written or computerized/electronic formats.

(4) Computerized/electronic records shall be maintained to enable the Commission or Office of Attorney General to access in readable form all of the information reasonably necessary to substantiate the registration statements or reports.

(5) Affidavits may be used if actual records are lost, stolen or destroyed through no fault of the registrant, or are otherwise unavailable, and cannot be recreated from other sources. An affidavit shall be as complete and detailed as is reasonably possible, and shall include the specific reasons for the unavailability of the actual records.

(d) Reportable expenditures shall be supported by original source documents to the extent they are available. If an original source document is not available to support a reportable expenditure, the registrant shall upon payment of the expenditure promptly prepare a written voucher, journal entry, or other written or electronic form of record to document the expenditure, which record shall include a notation of the reason an original source document was not available.

(e) The documents and records maintained and retained to substantiate expenditures shall reflect for each reportable item, the following information:

(1) The full names of the payor and payee.

(2) The date of the transaction.

(3) The dates and forms of payments.

(4) The full name and official position of each State official or employee who was a beneficiary, and the amount of the expenditure reasonably attributable to each of them.

(5) The number of immediate family members of a State official or employee, who were beneficiaries, and the amount of the expenditures reasonably attributable to them.

(6) A description of the goods or services or other consideration for which the expenditure was made or incurred.

(f) Contributions of resources which are reportable under section 1305(b)(5) of the act shall upon receipt be promptly documented by the registered principal through the preparation of a written receipt, an entry in a journal maintained by the principal, or other written or electronic form of record.

(g) Documents and records maintained and retained to substantiate contributions of resources reportable under section 1305(b)(5) of the act shall reflect for each reportable item, the following information:

(1) The full names of the donor and donee.

(2) The amount or value and date of the contribution.

(3) In the case of a nonmonetary contribution, a description of the goods, services or other forms of resources provided.

(4) Instructions, directions, conditions, restrictions, limitations or controls provided or imposed by the donor as to the use or disposition of the contribution.

(h) Upon written request by the Office of Attorney General or the Commission, all documents reasonably necessary to substantiate reports made under section 1305 of the act shall be made available for inspection and copying within 30 days.

(1) Either the Office of Attorney General or the Commission may extend this 30-day deadline in connection with its own requests, when circumstances compelling an extended deadline are established.

(2) Computerized/electronic records shall be provided in readable form.

## **CHAPTER 37. EXEMPTION FROM REGISTRATION AND REPORTING**

Sec.

37.1. Qualifications for exemption.

37.2. Exempt status.

### **§ 37.1. Qualifications for exemption.**

The following individuals and activities shall be exempt from registration under section 1304 of the act (relating to registration) and reporting under section 1305 of the act (relating to reporting):

(1) An individual whose lobbying activities are limited to preparing testimony and testifying before a committee of the General Assembly or participating in an agency administrative proceeding.

(2) An individual who is an employee of an entity engaged in the business of publishing, broadcasting or televising while engaged in the gathering and dissemination of news and comment thereon to the general public in the ordinary course of business.

(3) An individual who does not receive any compensation for lobbying, other than travel expenses. For the limited purpose of determining exemption under section 1306(3)(i) of the act (relating to exemption from registration and reporting), the term "travel expenses" means reasonable and necessary expenses for transportation, meals, beverages and lodging.

(4) An individual whose compensation for lobbying, from all principals represented, does not exceed \$2,500 in the aggregate during any reporting period.

(5) An individual who engages in lobbying on behalf of the individual's employer when the lobbying activity represents less than the equivalent of \$2,500 of the employee's time during any reporting period, based on an hourly proration of the employee's compensation.

(6) A principal whose total expenses for lobbying purposes do not exceed \$2,500 during any reporting period.

(7) An elected State officer acting in an official capacity.

(8) A State executive officer appointed by the Governor acting in an official capacity.

(9) An elected or appointed official or employee of a political subdivision acting in an official capacity.

(10) An employee of the Commonwealth or an employee or official of an independent agency of the Commonwealth acting in an official capacity.

(11) An individual representing a bona fide church of which the individual is a member and the purpose of the lobbying is solely for the purpose of protecting the constitutional right to the free exercise of religion.

(12) An employee, who is not a registered lobbyist, of a corporation which is registered as a principal under section 1304 of the act; has one or more registered lobbyists; and includes in its reports under section 1305 of the act all of the employee's expenses related to lobbying.

**§ 37.2. Exempt status.**

(a) As long as a principal or lobbyist qualifies for exemption under section 1306 of the act (relating to exemption from registration and reporting), the principal or lobbyist is not required to register or report under the act, even if total lobbying expenses for a quarterly reporting period exceed \$500.

(b) Upon losing exempt status, a principal or lobbyist is immediately subject to the registration and reporting requirements of the act.

(c) A principal is not required to retroactively file reports for quarterly reporting periods prior to the loss of exempt status.

(d) A lobbyist is not required to retroactively sign or file reports for quarterly reporting periods prior to the loss of exempt status.

**CHAPTER 39. OPINIONS AND ADVICES OF COUNSEL**

Sec.	
39.1.	Ethics Act regulations in Part I as to opinions and advices of counsel.
39.2.	Standing requirements.
39.3.	Prospective conduct to be reviewed.

**§ 39.1. Ethics Act regulations in Part I as to opinions and advices of counsel.**

The Commission shall provide advices of counsel and opinions in accordance with the procedures in section 1107 of the Ethics Act (relating to powers and duties of commission) and Chapter 13 (relating to opinions and advices of counsel). A principal, lobbyist or State official or employee who acts in good faith based upon a written advice or opinion of the Commission issued to him shall not be held liable for a related violation of the act.

**§ 39.2. Standing requirements.**

(a) An advice or opinion may be requested by a lobbyist, principal, State official or employee, or by his authorized representative, as to his own conduct, or by a lobbyist, principal, State official or employee regarding the conduct of employees responsible to him.

(b) An unauthorized request for an advice or opinion as to the conduct of another shall be considered a "third-party request" and will not be entertained.

**§ 39.3. Prospective conduct to be reviewed.**

An advice or opinion will only be issued as to prospective-future-conduct.

**CHAPTER 41. COMPLIANCE AUDITS**

Sec.	
41.1.	Lotteries.
41.2.	Number and scope of compliance audits.
41.3.	Audit procedures.
41.4.	Audit report.
41.5.	Confidentiality.

**§ 41.1. Lotteries.**

(a) Each year, the Commission will initiate, by lottery, random audits of registration statements and disclosure reports required to be filed under the act.

(b) The Commission may hold up to four lotteries per year. The number of lotteries held in a given year will be a matter within the Commission's discretion.

(c) No lobbyist or principal will be subject to a random audit more than once in any 12-month period.

**§ 41.2. Number and scope of compliance audits.**

(a) The purpose of conducting the audits shall be to ensure compliance with the act.

(b) Each year, the number of audits to be conducted will be determined by the Commission through resolutions adopted at public meetings. The number of audits conducted in a given year will depend upon various factors, including the complexity, results and time required to complete the audits.

(c) An audit shall include registration statements and disclosure reports, as well as other relevant information to verify, explain, clarify, support or contravene the registration statements and disclosure reports.

(d) An audit shall be limited in time to the previous 4 calendar years, except that lobbying activities performed prior to August 1, 1999, will not be audited under the act.

**§ 41.3. Audit procedures.**

The following general procedures will be employed by the Commission for audits conducted under section 1308(g) of the act (relating to administration and enforcement):

(1) At least 30 days prior to the initiation of the audit, each audit subject will be advised by letter that it was randomly selected for audit and further advised of the time, date, place and general scope as well as a tentative time frame for completion of the audit. The letter will contain a request for documents deemed necessary for conduct of the audit.

(2) Prior to the initiation of the audit, a review of the subject's reports on file with the Commission for a period not to exceed 4 years will be conducted.

(3) The audit will be initiated by way of conference with the audit subject or in the case of a firm, the designated representative thereof.

(i) The audit will include a detailed field examination of the financial records of the audit subject relating to lobbying activities.

(ii) The audit may include independent verification of some or all of the information reported.

(A) The audit may include related records from other sources, in which case the subject of the audit shall cooperate fully and shall execute all waivers, releases or authorizations to allow the Commission to obtain the records.

(B) Registrants shall have an affirmative duty to cooperate fully in any audit of themselves.

(3) The audit may include interviews of lobbyists, principals, representatives and employees thereof and other individuals necessary to the completion of the audit.

(4) A post audit conference will be conducted with the subject of the audit, or in the case of an entity, with the designated representative thereof.

(5) Post audit preparation of a report describes the result of the audit.

#### **§ 41.4. Audit report.**

(a) The Division of the Commission that is responsible for performing compliance audits will, at the conclusion of each audit, prepare an audit report which will include findings.

(b) An audit report may include recommendations as to recordkeeping, reporting and other related practices arising from the audit.

(c) Upon completion, an audit report will be served upon the principal or lobbyist that is the subject of the audit.

(1) Service of the audit report shall be complete upon mailing.

(2) Within 30 days of service of the audit report, the subject of the audit may file with the Commission a statement setting forth the subject's position as to the audit report.

(d) Audit reports and any related responses shall be submitted to the Executive Director of the Commission for review, and may form the basis for further proceedings under the act or the Ethics Act.

#### **§ 41.5. Confidentiality.**

An audit report and findings will be confidential, except that the Commission will include the relevant portion of an audit as part of its findings of fact in a Commission order which results from an investigation arising out of an audit.

### **CHAPTER 43. INVESTIGATIONS, HEARINGS AND REFERRALS**

Sec.	
43.1.	Intentional violations.
43.2.	Commission proceedings under section 1307 of the act.
43.3.	Late or deficient filings—Commission proceedings under section 1304 or 1305 of the act.
43.4.	Noninvestigative process for late or deficient filings.
43.5.	Investigative process for late or deficient filings.
43.6.	Civil penalties for late or deficient filings.
43.7.	Commission decisions as to late or deficient filings.

#### **§ 43.1. Intentional violations.**

(a) If the Commission after investigation believes an intentional violation of the act has been committed, it will refer all relevant documents and other information to the Office of Attorney General.

(b) Under section 1309(b) of the act (relating to penalties) and § 43.4(16) (relating to noninvestigative process for late or deficient filings), if the Commission finds that a failure to register or report was intentional, it will refer the matter to the Attorney General for investigation and prosecution.

(c) Nothing contained in the act or regulations promulgated thereunder shall prohibit the Office of Attorney General from initiating an investigation or prosecution under the act pursuant to its authority by law, and the Office of Attorney General need not await a referral from the Commission before initiating such an investigation or prosecution.

#### **§ 43.2. Commission proceedings under section 1307 of the act.**

(a) Upon receipt of a complaint as defined in § 31.1 (relating to definitions), the Commission, through its Executive Director, will conduct a preliminary inquiry into an alleged negligent violation of section 1307 of the act (relating to prohibited activities).

(b) Upon the motion of the Executive Director of the Commission, the Commission, through its Executive Director, may conduct a preliminary inquiry into an alleged negligent violation of section 1307 of the act.

(c) Preliminary inquiries will be conducted in accordance with the procedures for preliminary inquiries set forth within § 21.3 (relating to preliminary inquiries), to the extent applicable.

(d) The Commission, through its Executive Director, may initiate an investigation and hold a hearing concerning alleged negligent violations of section 1307 of the act by a lobbyist or principal, in accordance with sections 1107 and 1108 of the Ethics Act (relating to powers and duties of commission; and investigations by commission) and, to the extent applicable, the related provisions in §§ 21.1—21.3, 21.5 and 21.21—21.27.

(1) If the respondent does not submit a timely request for a hearing, the Investigative Division shall have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(2) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve any contested facts to make a final determination.

(e) The Commission will decide cases, issue orders and rule upon requests for reconsideration concerning alleged negligent violations of section 1307 of the act, in accordance with sections 1107 and 1108 of the Ethics Act and, to the extent applicable, the related provisions in §§ 21.28—21.30 (relating to decision; finality; reconsideration; and effect of order).

(f) At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

#### **§ 43.3. Late or deficient filings—Commission proceedings under section 1304 or 1305 of the act.**

(a) Commission proceedings under section 1304 or 1305 of the act (relating to registration; and reporting) may be initiated based upon one or more of the following:

(1) Receipt of a complaint.

(2) An audit or related audit conducted by the Commission under Chapter 41 (relating to compliance audits).

(3) Reviews of filings conducted by Commission staff.

(4) The motion of the Executive Director of the Commission, which is based upon a reasonable belief that a violation of the act may have occurred.

(b) The Commission, through its Executive Director, will initiate proceedings involving section 1304 or 1305 of the act (relating to registration; and reporting) under either the noninvestigative procedures set forth in § 43.4 (relating to noninvestigative process for late or deficient filings) or under the investigative procedures in § 43.5 (relating to investigative process for late or deficient filings).

(1) In each case, the Executive Director of the Commission will elect which process will be followed, which election may be based upon factors, including but not limited to, the following:

(i) The complexity of the matter.

(ii) Whether an investigation is needed to fully review the matter.

(iii) Whether the filer has had prior notice of the requirements of the act.

(iv) Whether the filer has in the past complied with the act.

(2) The election of the process to be followed will not be controlled by the manner in which the alleged negligent violation or noncompliance comes to the attention of the Commission.

(3) If a formal complaint is received alleging a failure to register or report as required by the act, or the filing of a report containing a false statement, the Commission through its Executive Director may elect to proceed in the matter under the noninvestigative procedures of § 43.4 rather than through the investigative procedures of § 43.5.

(i) A complainant will be notified of the Executive Director's election of the process to be followed.

(ii) A complainant will also be notified of the final resolution of the matter.

(4) Information received under subsection (a) may form the basis for proceedings under either the noninvestigative procedures of § 43.4, or, upon the motion of the Executive Director, the investigative procedures of § 43.5.

**§ 43.4. Noninvestigative process for late or deficient filings.**

The noninvestigative process for matters under section 1304 or 1305 of the act (relating to registration; and reporting) will include the following procedures:

(1) The Executive Director of the Commission will issue a notice of noncompliance to the lobbyist, principal or individual that has failed to register or report as required by the act. A notice of noncompliance may encompass multiple failures to comply with the act.

(2) The notice of noncompliance will state the nature of the alleged noncompliance and the civil and criminal penalties for failing to register, failing to file a report or filing a report containing a false statement. A notice of noncompliance will also advise of the right to a hearing before the Commission and the time and manner in which to request a hearing.

(3) The notice recipient shall have 20 days from the mailing date of the notice of noncompliance in which to cure the noncompliance. If the noncompliance is not cured within that time, the Investigative Division may file with the Commission a petition for civil penalties, which petition shall be served upon the respondent by the Investigative Division.

(4) The petition for civil penalties shall set forth the pertinent factual averments in numbered paragraph form, and shall notify the respondent of the opportunity to file a written answer and to request a hearing in the matter.

(5) An answer to the petition for civil penalties shall be filed (received at the Commission) within 30 days of service of the petition upon the respondent.

(6) An answer to the petition for civil penalties shall specifically admit or deny each of the allegations made in the petition, and shall set forth the facts and state concisely the matters of law upon which the respondent relies. Matters not specifically denied shall be deemed admitted.

(7) Failure to file an answer within the 30-day period or the filing of general denials will be deemed an admission of the averments of the petition for civil penalties.

(8) A request by the respondent for a hearing shall be in writing and be received at the Commission within 30 days of service of the petition for civil penalties upon the respondent.

(i) A request for a hearing may be set forth within an answer to the petition or it may be submitted separately.

(ii) Failure to submit a timely request for a hearing shall be deemed a waiver of a hearing, so that a final order may be entered against the respondent without a hearing.

(9) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(10) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve contested facts to make a final determination.

(11) The respondent will be given access to evidence intended to be used by the Investigative Division at the hearing, as well as exculpatory evidence obtained by the Investigative Division.

(12) Access to evidence does not include an original complaint or the name of a complainant, information which is otherwise privileged, or information not within paragraph (11).

(13) A hearing under section 1309 of the act (relating to penalties) will be public and will be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of commission; and investigations by commission), and to the extent applicable, the related provisions of Part I (relating to State Ethics Commission). The Investigative Division bears the burden of proof.

(14) The hearing officer or the parties may request that briefs be presented. The filing of briefs shall be in accordance with the procedures for filing briefs under § 21.27 (relating to briefs) to the extent applicable.

(15) After the opportunity for a hearing has been provided, and following the submission of any briefs, the Commission will determine, based upon the record before it, whether the respondent was required to register or report under the act; whether the failure to register or report was negligent; and if the failure was negligent, the amount of the civil penalty to be imposed. At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

(16) If the Commission finds that the failure to register or report was intentional, it will refer the matter to the Attorney General for investigation and prosecution.

(17) The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

(18) Requests for reconsideration may be submitted to the Commission. The Commission will consider and rule upon requests for reconsideration under the procedures set forth in § 21.29(b) and (d)—(f) (relating to finality; reconsideration) to the extent applicable.

(19) The official record of the case before the Commission will be publicly available.

(20) The files of the Investigative Division will not be publicly available.



### **§ 43.5. Investigative process for late or deficient filings.**

The investigative process for matters under section 1304 or 1305 of the act (relating to registration; and reporting) shall include the following procedures:

(1) The Commission, through its Executive Director, may conduct a preliminary inquiry into any alleged negligent violation of section 1304 or 1305 of the act. Preliminary inquiries will be conducted under the procedures for preliminary inquiries in § 21.3 (relating to preliminary inquiries), to the extent applicable.

(2) The Commission, through its Executive Director, may initiate an investigation and hold a hearing concerning alleged negligent violations of section 1304 or 1305 of the act, in accordance with sections 1107 and 1108 of the Ethics Act (relating to powers and duties of commission; and investigations by commission) and, to the extent applicable, the related provisions of §§ 21.1—21.3, 21.5 and 21.21—21.27.

(i) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(ii) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve any contested facts to make a final determination.

(3) The Commission will decide cases, issue orders and rule upon requests for reconsideration concerning alleged negligent violations of section 1304 or 1305 of the act, in accordance with sections 1107 and 1108 of the Ethics Act and, to the extent applicable, the related provisions in §§ 21.28—21.30 (relating to decision; finality; reconsideration; and effect of order). At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

### **§ 43.6. Civil penalties for late or deficient filings.**

Following a noninvestigative process under § 43.4 (relating to noninvestigative process for late or deficient filings), or an investigative process under § 43.5 (relating to investigative process for late or deficient filings), if the Commission finds negligent failures to register or report as required by the act, the Commission may, upon the vote of at least four of its members present, levy one or more civil penalties as provided for in this section.

(1) Each negligent failure to register or report as required by the act is punishable by a civil penalty of up to \$50-per-day for each day the registration statement or report is delinquent or deficient.

(2) A civil penalty shall be calculated from the first day the registration statement or report is delinquent or deficient, through the date a complete and accurate registration statement or report is filed or the Commission decides the matter, whichever first occurs.

(3) In determining whether to impose a civil penalty that is less than \$50-per-day, the Commission may consider factors including the following:

(i) Whether the respondent contacted the Commission or took any meaningful measures to attempt to remedy the delinquency, deficiency or falsehood.

(ii) Whether the respondent has raised any justifiable excuse such as, for example, the following:

(A) The unavailability of records due to loss, theft or destruction through no fault of the respondent.

(B) Incapacitating physical or mental illness, hospitalization, accident involvement, or death of a person required to register or report, a person whose participation is essential to the filing, or a member of the immediate family of the persons.

(iii) Whether the record establishes that the matter involved the first instance that the respondent was subject to the registration/reporting requirements of the act.

(iv) Whether Commission records indicate that the Commission has previously notified the respondent, in writing, of other delinquent, deficient, or false registration statements or reports.

(v) Whether proceedings have previously been initiated against the respondent under the act, either by the Commission or by the Office of Attorney General.

(vi) Whether there are any other factors which should be considered as aggravating or mitigating factors in the case.

(4) The imposition of a civil penalty by the Commission shall not preclude a criminal prosecution for intentional violation of the act.

### **§ 43.7. Commission decisions as to late or deficient filings.**

The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

## **CHAPTER 45. PROHIBITION AGAINST LOBBYING AS A SANCTION**

Sec.

45.1. Basis for prohibition against lobbying.

45.2. Procedures for imposing prohibition against lobbying.

### **§ 45.1. Basis for prohibition against lobbying.**

(a) Under section 1309 of the act (relating to penalties), the Commission may prohibit a lobbyist or principal from lobbying for up to 5 years when the lobbyist or principal has done one or more of the following:

(1) Intentionally failed to register or report as required by the act.

(2) Filed a report under the act with knowledge that the report contained a false statement.

(3) Otherwise intentionally violated the act.

(4) Failed to comply with section 1304, 1305 or 1307 of the act (relating to registration; reporting; and prohibited activities) after notice of noncompliance and after a hearing, if requested.

(b) For the limited purpose of the imposition of a prohibition against lobbying, the respondent shall be deemed to have been notified of noncompliance when served with both of the following:

(1) A findings report, notice of noncompliance or other form of process which meets the requirements of section 1309(a) of the act.

(2) A Commission order or court order finding the respondent in noncompliance with, or in violation of, the act.

(c) For the limited purpose of the imposition of a prohibition against lobbying, the respondent shall be deemed to have failed to comply after notice of noncompliance if the respondent has not satisfied the requirements of the act within 30 days of the issuance of a Commission order or court order finding the respondent in

noncompliance/violation, or within another time for compliance as specified by the order.

(d) The prohibition against lobbying will not be imposed unless the defendant/respondent has been afforded the opportunity for a hearing as to whether the prohibition should be imposed.

(1) A hearing, if requested, will be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission) and, to the extent applicable, Chapter 21 (relating to investigations).

(2) The record of the underlying proceeding on violation/noncompliance, as well as relevant evidence of mitigating or aggravating factors, shall be admissible.

**§ 45.2. Procedures for imposing prohibition against lobbying.**

(a) Giving consideration to the factors set forth in subsection (b)(14), the Commission, through its Executive Director, may institute proceedings to seek the imposition of a prohibition against lobbying.

(b) The procedures for the imposition of a prohibition against lobbying shall be as follows:

(1) The proceedings shall be initiated with the Commission through the filing of a petition by the Investigative Division, which petition shall be served upon the respondent by the Investigative Division.

(2) The petition shall set forth the pertinent factual averments in numbered paragraph form, and shall notify the respondent of the opportunity to file a written answer and to request a hearing in the matter. If the basis for the petition is the failure to comply with a Commission order, the petition shall be docketed to the same number as the base case before the Commission. If the basis for the petition is the failure to comply with a court order, the petition shall be docketed to the same number as the base case before the Commission if there was one, and if not, to a new number.

(3) An answer to the petition shall be filed (received at the Commission) within 30 days of service of the petition upon the respondent.

(4) An answer to the Investigative Division's petition shall specifically admit or deny each of the allegations made in the petition, and shall set forth the facts and state concisely the matters of law upon which the respondent relies. Matters not specifically denied shall be deemed admitted.

(5) Failure to file an answer within the 30-day period or the filing of general denials will be deemed an admission of the averments of the petition seeking the prohibition.

(6) A request by the respondent for a hearing shall be in writing and be received at the Commission within 30 days of service of the petition upon the respondent.

(i) A request for a hearing may be set forth within an answer to the petition or it may be submitted separately.

(ii) Failure to submit a timely request for a hearing will be deemed a waiver of a hearing, so that a final order may be entered against the respondent without a hearing.

(7) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(8) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve contested facts to make a final determination.

(9) The respondent will be given access to evidence intended to be used by the Investigative Division at the hearing, as well as exculpatory evidence obtained by the Investigative Division.

(10) Access to evidence does not include an original complaint or the name of a complainant, information which is otherwise privileged or information not within paragraph (9).

(11) A hearing under this chapter will be public and be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission), and to the extent applicable, the related provisions of Part I (relating to State Ethics Commission). The Investigative Division bears the burden of proof.

(12) The hearing officer or the parties may request that briefs be presented. The filing of briefs shall be in accordance with the procedures for filing briefs under § 21.27 (relating to briefs), to the extent applicable.

(13) After the opportunity for a hearing has been provided, and following the submission of briefs, the Commission will determine, based upon the record before it, whether and for how long a prohibition against lobbying is to be imposed against the respondent.

(i) If a lobbyist or principal has been found to be in noncompliance or in violation of the act in a proceeding before the Commission, for which noncompliance or violation the penalty of prohibition of lobbying may be imposed, such finding of noncompliance or violation shall be res judicata, and the Commission's further determination shall be limited to the amount of time, if any, that the lobbyist or principal shall be prohibited from lobbying.

(ii) To the extent any factual matters remain to be proven, such shall be proven by clear and convincing evidence.

(iii) A prohibition against lobbying may only be imposed by a vote of at least four members of the Commission present at a meeting.

(14) In determining whether and for how long a prohibition against lobbying is to be imposed against a respondent, the Commission may consider factors including the following:

(i) Whether the respondent contacted the Commission or took any meaningful measures to attempt to remedy the violation or failure to comply.

(ii) Whether the respondent has raised a justifiable excuse.

(iii) Whether the record establishes that the matter involved the first instance that the respondent was subject to the requirements of the act.

(iv) Whether other proceedings have been initiated against the respondent under the act, either by the Commission or by the Office of Attorney General.

(v) Whether there are other factors which should be considered as aggravating or mitigating factors in the case.

(15) The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

(16) Requests for reconsideration may be submitted to the Commission. The Commission will consider and rule upon requests for reconsideration under the procedures set forth in § 21.29(b) and (d)—(f) (relating to finality; reconsideration), to the extent applicable.

(17) The official record of the case before the Commission will be publicly available.

(18) The files of the Investigative Division will not be publicly available.

(c) If a lobbyist or principal is convicted in a criminal proceeding for a violation of the act for which the penalty of prohibition of lobbying may be imposed, such conviction shall be res judicata, and the Commission's determination shall be limited to the amount of time, if any, that the lobbyist or principal shall be prohibited from lobbying.

[Pa.B. Doc. No. 99-1177. Filed for public inspection July 23, 1999, 9:00 a.m.]

## Title 58—RECREATION

### GAME COMMISSION

#### [58 PA. CODE CH. 141]

#### Hunting Hours

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its June 8, 1999, meeting, adopted the following changes:

Amend § 141.4 (relating to hunting hours) to allow the hunting of mourning doves the entire day during the 1999-2000 hunting season; and § 141.26 (relating to early Canada goose hunting season on Middle Creek Wildlife Management Area) to allow the controlled area at Middle Creek to be open during both an early and regular season.

These amendments are adopted under the authority of 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

#### *Amendment to § 141.4*

##### 1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its meeting held on April 9, 1999, proposed and at its June 8, 1999, meeting finally adopted a change to § 141.4 to expand the hunting hours for mourning doves. This change was adopted under the provisions of sections 322(c)(1) and 2102(a) of the code (relating to powers and duties of the Commission; and regulations).

##### 2. *Purpose and Authority*

The current provision of § 141.4(1) provides that mourning doves may be hunted from noon to sunset during the first season. It appears that mourning dove populations are sufficient to permit full hunting days during the first season. The adopted change will allow this.

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

##### 3. *Regulatory Requirements*

The adopted change does not result in any additional regulatory requirements but rather relaxes current requirements.

##### 4. *Persons Affected*

Individuals wishing to hunt mourning doves will be affected by the adopted change.

#### *Amendment to § 141.26*

##### 1. *Introduction*

To effectively manage the wildlife resources of this Commonwealth, the Commission at its April 9, 1999, meeting proposed and at its June 8, 1999, meeting finally adopted changing § 141.26 to provide for goose hunting in both the early and regular seasons in the controlled area of Middle Creek Wildlife Management Area (MCWMA). This change was adopted under sections 322(c)(1) and 2102(b)(1) of the code.

##### 2. *Purpose and Authority*

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

Because of concerns about the migratory populations of Canada geese, the United States Fish and Wildlife Service will probably approve a very short regular Canada goose season in this Commonwealth. At the same time, the population of resident Canada geese has dramatically increased, resulting in numerous nuisance geese complaints. Authorizing goose hunting during both the regular and early seasons in the controlled goose hunting area of MCWMA should help to resolve this dilemma.

##### 3. *Regulatory Requirements*

The change relaxes current regulatory requirements.

##### 4. *Comment and Paperwork Requirements*

Persons wishing to hunt geese at MCWMA will be affected by the change.

##### 5. *Comment and Response Summary*

No official comments were received with regard to the adopted change.

##### 6. *Cost and Paperwork Requirements*

The adopted change should not result in any additional cost or paperwork.

##### 7. *Effective Date*

This change will be effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

##### 8. *Contact Person*

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

#### *Findings*

The Commission finds that:

(1) The 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. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these 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 authorizing statute, orders that:

(a) The regulations of the Game Commission, 58 Pa. Code Chapter 141, are amended by amending §§ 141.4 and 141.26 to read as set forth at 29 Pa.B. 2580 (May 15, 1999).

(b) The Executive Director of the Game Commission shall submit this order and 29 Pa.B. 2580 and deposit

them with the Legislative Reference Bureau as required by law.

(c) This order amending §§ 141.4 and 141.26 shall become effective upon final publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-111 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 99-1178. Filed for public inspection July 23, 1999, 9:00 a.m.]

# PROPOSED RULEMAKING

## DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 258]

### Medical Assistance Estate Recovery Program

#### *Statutory Authority*

The Department of Public Welfare (Department), Office of Administration, proposes to add Chapter 258 (relating to MA estate recovery program) to read as set forth in Annex A.

The Department is proposing this new chapter under the authority of sections 201(2), 1410 and 1412 of the Public Welfare Code (62 P. S. §§ 201(2), 1410 and 1412).

#### *Need for the Proposed Regulations*

The purpose of these proposed regulations is to interpret and implement section 1412 of the Public Welfare Code (62 P. S. § 1412) which requires the Department to establish and implement a Medical Assistance (MA) estate recovery program. The proposed regulations will implement requirements of the Federal Medicaid Program (42 U.S.C.A. § 1396p(b)(1)), which mandate that each state operate an estate recovery program.

Title XIX of the Social Security Act (42 U.S.C.A. §§ 1396—1396u) established the Medicaid program in 1965 as a cooperative Federal-state program through which various health care services are provided to poor and needy individuals. Under Title XIX, a participating state must designate a single state agency to administer or supervise the administration of the state Medicaid program. 42 U.S.C.A. § 1396a(a)(5). The designated state agency must prepare an MA plan consistent with Federal law and regulations and submit it to the Health Care Financing Administration (HCFA) of the United States Department of Health and Human Services (DHHS), for approval. Upon approval of its plan by HCFA, the state becomes eligible for Federal matching funds for reimbursement of the cost of specific types of medical care and services. 42 U.S.C.A. § 1396a.

The Commonwealth participates in the Title XIX Medicaid program. The Department is designated the single State agency responsible for administration of the Commonwealth's Medicaid program which is known as the MA program.

Pub. L. No. 103-66 amended Title XIX to add a requirement that participating states establish and implement a program to recover MA payments from the probate estates of certain individuals. (42 U.S.C.A. § 1396p(b)(1)). To comply with this Federal mandate, the Legislature amended the Public Welfare Code in 1994 to authorize creation and implementation of the estate recovery program. (62 P. S. § 1412) (act of June 16, 1994 (P. L. 319, No. 49) as amended by the act of June 30, 1995 (P. L. 129, No. 20)). The estate recovery program has been in operation in this Commonwealth since August 15, 1994. Notice of rule change was published in the *Pennsylvania Bulletin* at 25 Pa.B. 1916 (May 13, 1995). During the period of its operation, many questions have arisen as to interpretation and procedures under the statute. These proposed regulations are needed to supply guidance with respect to issues not directly addressed by the Federal and State statute, and to resolve ambiguities in the

statutory language. Conforming changes to §§ 178.1(h) and 257.21(b) (relating to general policy on MA resources common to all categories of MA; policy) will be made when those chapters are revised.

#### *Significant Provisions*

The scope of the proposed regulations is established by § 258.1 (relating to policy). Although the Legislature has authorized the Governor to adopt a broad estate recovery program, the Department has generally elected to establish the minimum program required by Federal law consistent with the policy of Executive Order 1996-1. The Department will recover only from the estates of persons aged 55 years or older at the time assistance was received. The Department will restrict its recovery efforts to obtaining reimbursement for the following types of medical assistance: nursing facility services, home and community based services, and related hospital and prescription drug services and will not seek reimbursement for other services. The Department will also restrict its recovery efforts to property which passes through a decedent's estate. Accordingly, property held jointly with a right of survivorship, Totten trust bank accounts and property held in trust at time of death will generally not be subject to estate recovery.

Section 1412 of the Public Welfare Code uses the term "probate estate" to define the scope of estate recovery, and in this Commonwealth, the term "probate" generally refers to a proceeding involving a will. See 20 Pa.C.S. § 3131 (relating to place of probate). However, the Federal statute requires the Commonwealth to include all assets included in an estate as defined for purposes of State probate law. Nationally, the term "probate" has a much broader meaning. See for example, *Black's Law Dictionary* (4th Ed. 1968). We believe it is clear from the Federal statute, as well as from Federal interpretative materials, that intestate estates are subject to the estate recovery program. The Legislature's intent was to conform to Federal law and accordingly, the Department has adopted an interpretation which includes property passing by intestacy in its definition of "estate property." (§ 258.2. Definitions).

The Department has not included permanently institutionalized persons under the age of 55 within the estate recovery program. In Regional Medicaid Letter 95-42, the Federal government clarified that recovery from these persons is not required unless a state has a process for determining that persons under age 55 are permanently institutionalized. The Department does not have such a process. The services provided to these persons upon reaching age 55 and thereafter will be subject to the estate recovery program.

Property which is not included in a decedent's estate is generally not subject to the estate recovery program. It is not improper or illegal for individuals to structure their financial affairs to avoid application of the estate recovery program. However, 12 Pa.C.S. §§ 5101—5110 (relating to Pennsylvania Uniform Fraudulent Transfer Act) limits the ability of individuals to transfer property for less than reasonably equivalent value. Section 258.3(f) (relating to property liable to repay the Department) provides that property which can be recovered for the benefit of an estate under the Pennsylvania Uniform Fraudulent Transfer Act is subject to the Department's estate recovery claim. Additionally, § 258.3(f) establishes a rebuttable presumption that property which is transferred for less

than reasonably equivalent value within 1 year prior to death is subject to recovery under the Pennsylvania Uniform Fraudulent Transfer Act.

Commonwealth law authorizes the direct transfer of wages, small bank accounts, certain life insurance proceeds and patient care account balances directly to family members or funeral directors. (20 Pa.C.S. § 3101 (relating to payments to family and funeral directors)). The Department will not object to the direct transfer of funds to funeral directors to pay for burial expense. However, the Department's claim to these assets is ahead of that of family members. Section 258.3(e) provides that family members who receive this money remain answerable to the Department.

Section 1412 of the Public Welfare Code places the burden of insuring payment of the Department's claim upon the personal representative. The Department has provided instructions to the personal representative in § 258.4 (relating to request for statement of claim). Section 258.5 (relating to computation of claim) outlines how the Department's claim is computed.

Section 1412 of the Public Welfare Code adopts the priority scheme of 20 Pa.C.S. § 3392 (relating to classification and order of payment). This priority scheme is mirrored in § 258.6 (relating to priority of the Department's claim). The proposed regulation also clarifies that the Department's claim against assets subject to 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors) is superior to that of family members but inferior to certain funeral expenses.

Federal law requires that the Department postpone the collection of reimbursement whenever the decedent has a surviving spouse, minor child or blind or disabled child. In § 258.7 (relating to postponement of collection), the Department has attempted to balance the statutory right of these surviving relatives to use property during the postponement period with the Department's right to eventual collection once the postponement period expires. The proposed regulation generally provides that certain property will be preserved and protected during the postponement period and that eligible survivors may use the property. In the case of cash and cash equivalents, the eligible survivors may consume income, pay medical bills, and with court approval, consume principal. Additionally, the Department has decided that it would not be cost-effective to attempt to protect certain property during the postponement period. Thus, for example, where an estate contains less than \$50,000 dollars in cash or cash equivalents, the Department will not attempt to protect those assets. Lesser amounts of cash and cash equivalents do not generally produce significant amounts of income and any attempt by the Department to protect these assets would result in a burdensome number of requests for access to the principal to pay the living expenses of eligible survivors. No interest will be charged on the Department's claim during the postponement period.

Section 1412 of the Public Welfare Code imposes personal liability upon both personal representatives and transferees when the Department's claim is not paid. The proposed regulations in §§ 258.8 and 258.9 (relating to liability of personal representative; and liability of transferees) explain the conditions upon which personal liability will be imposed upon personal representatives and transferees. If specified procedures are followed, the court order approving distribution of estate assets will usually discharge the personal representative from potential liability to the Department. In addition, to protect purchasers and to insure the marketability of real estate title, a

special provision in the proposed regulations provides that real estate, which is sold in the normal course of estate administration, will pass free from any claim by the Department (§ 258.9(c)).

Federal law requires that the Department make provisions for undue hardship waivers in accordance with standards set by the Federal government (42 U.S.C.A. § 1396p(b)(3)). The Department has adopted hardship criteria suggested in HCFA's State Medicaid Manual. (§ 258.10). Additionally, the Department has given itself discretion to waive claims, compromise claims and postpone collection under other circumstances.

Occasionally, the Department learns of significant estates where no administrator has been appointed. In these cases, the Department may authorize one of its employees to be appointed as administrator (§ 258.11). Additionally, the Department may make available lists of unadministered estates to encourage attorneys and others to administer these estates.

Appeals regarding the estate recovery program will generally be adjudicated by the Department's Bureau of Hearings and Appeals (§ 258.12). Common pleas courts will have concurrent jurisdiction to adjudicate disputes regarding the amount of the Department's claim. Common pleas courts may not determine undue hardship or otherwise exercise discretion vested in the Department.

#### *Affected Individuals, Groups and Organizations*

Affected persons include attorneys administering estates, courts and heirs of decedents.

#### *Accomplishments/Benefits*

These proposed regulations will increase compliance by estates with the Federally mandated estate recovery requirements and will decrease confusion regarding those requirements.

#### *Fiscal Impact*

##### *Public Sector*

##### *Commonwealth*

The estate recovery program has generated in excess of \$25.3 million since its inception in August 1994. The Department anticipates that these proposed regulations will slightly increase revenues due to better compliance with estate recovery requirements.

##### *Local Government*

These proposed regulations may impact the process of estate administration in the courts of common pleas. However, no significant impact is expected.

##### *Private Sector*

##### *General Public*

The estate recovery program results in an increase of revenue to the Commonwealth and helps to ensure continued financing of long-term care services under MA at the expense of heirs and beneficiaries of deceased individuals. Additionally, the costs of administering estates are increased. This increase in cost is not believed to be significant.

#### *Paperwork Requirements*

The estate recovery program affects the paperwork requirements for the Commonwealth and the general public because additional paperwork is required to obtain and provide statements of claim. However, there is no reasonable alternative to the increased paperwork. These

proposed regulations do not increase paperwork beyond that required since August 15, 1994.

#### *Effective Date*

Immediately upon publication of a final rulemaking.

#### *Sunset Date*

A sunset date is not anticipated because the underlying statute is permanent.

#### *Public Hearings*

Public hearings concerning these proposed regulations are not planned.

#### *Public Comment Period*

Interested persons are invited to submit written comments, suggestions or objections, regarding the proposed regulations to the Department of Public Welfare, Charles Jones, Acting Chief, Third Party Liability Section, P. O. Box 8486, Harrisburg, PA 17105, (717) 772-6247 within 30 days of the date of publication of this notice in the *Pennsylvania Bulletin*. All comments received within 30-calendar days will be reviewed and considered in the preparation of the final-form regulations. Comments after the 30-day comment period will be considered for any subsequent revisions of these regulations.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (Voice users).

#### *Regulatory Review Act*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 8, 1999, the Department submitted a copy of these proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Department within 10 days of the expiration of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the review of objections raised, prior to final publication of the regulations, by the Department, the General Assembly and the Governor.

FEATHER O. HOUSTOUN,  
*Secretary*

**Fiscal Note:** 14-445. No fiscal impact; (8) recommends adoption.

### **Annex A**

## **TITLE 55. PUBLIC WELFARE**

### **PART II. PUBLIC ASSISTANCE MANUAL**

## **CHAPTER 258. MA ESTATE RECOVERY PROGRAM**

### **Subpart G. RESTITUTION AND REIMBURSEMENT**

Sec.	
258.1.	Policy.
258.2.	Definitions.
258.3.	Property liable to repay the Department.
258.4.	Request for statement of claim.
258.5.	Computation of claim.

258.6.	Priority of the Department's claim.
258.7.	Postponement of collection.
258.8.	Liability of personal representative.
258.9.	Liability of transferees.
258.10.	Undue hardship waivers.
258.11.	Unadministered estates.
258.12.	Administrative enforcement.
258.13.	Appeals and jurisdiction.
258.14.	Service on the Department.

#### **§ 258.1. Policy.**

(a) This chapter applies to the estates of MA clients who were 55 years of age or older at the time that MA was received and who died on or after August 15, 1994, and who received MA on or after August 15, 1994. It does not apply to individuals who received MA before they reached 55 years of age, and whose MA eligibility terminated before reaching age 55.

(b) The estate of an MA client who was 55 years of age or older at the time that MA was received is liable to repay the Department for the amount of MA paid for all nursing facility services, home and community based services and related hospital and prescription drug services provided upon reaching 55 years of age. Only MA services provided on or after August 15, 1994, are subject to the Program. Services provided prior to August 15, 1994, are not subject to the Program.

#### **§ 258.2. Definitions.**

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

*Cash equivalent assets*—Stocks, bonds, notes, bank accounts, mutual fund shares and other financial instruments convertible into cash.

*Decedent*—A deceased MA client who was 55 years of age or older at the time that MA was received.

*Decree of distribution*—An instrument by which heirs receive property of a deceased. It is the final determination of the parties to a proceeding.

*Department's claim*—The claim of the Department computed and made under this chapter.

*Estate property*—All real and personal property of a decedent which is subject to administration by a decedent's personal representative, whether actually administered or not.

*Facility of payment clause*—A provision which authorizes the direct payment to an individual.

*Family exemption*—The exemption provided by 20 Pa.C.S. § 3121 (relating to when allowable).

*Home and community based services*—A broad array of Medicaid services provided to an individual to avoid institutionalization under the waiver authority of section 1915(c) of the Social Security Act (42 U.S.C.A. § 1396n(c)).

*Immediate family member*—Spouse, child, parent or sibling.

*Income producing asset*—Property which is used in a trade or business such as a family farm, family business or rental property. The term excludes cash, stocks and bonds, mutual fund shares or other marketable financial instruments.

*Nursing facility services*—General, hospital based, and county nursing facility services and services provided in an intermediate care facility for the mentally retarded.

*Perfected liens*—A claim or charge on a property for payment of a debt, for which the person owed the debt

has taken the necessary legal steps required to secure his interest in the subject property.

*Personal representative*—An executor or administrator of any description.

*Postponement period*—The period during which the Department will defer collection of its claim.

*Primary residence*—The principal home of the decedent at the time of death or prior to admission to a nursing facility.

*Program*—The Estate Recovery Program.

*Protectable asset*—An asset which shall be preserved and protected for eventual payment of the Department's claim after the postponement period. The term includes:

- (i) Real estate and all improvements thereto.
- (ii) Items of personal property with a fair market value in excess of \$10,000.
- (iii) Cash and cash equivalent assets of an estate with an aggregate value in excess of \$50,000 dollars.
- (iv) Other property with a fair market value in excess of \$10,000.

*Related hospital and prescription drug services*—Hospital and prescription drug services received by a decedent as follows:

- (i) While the client was a resident in a nursing facility or was receiving home and community based services.
- (ii) While the client was on temporary leave from a nursing facility.
- (iii) Subsequent to a transfer from a nursing facility to a hospital.

*Response period*—The period during which the Department will respond to a notice requesting a statement of claim. The response period is 45-calendar days unless extended in accordance with this chapter.

*Surviving spouse or child*—The surviving spouse of a decedent or a child who is blind or totally and permanently disabled, as determined under the standards of the Supplemental Security Income (SSI) program operated under Title XVI of the Social Security Act (42 U.S.C.A. §§ 1381—1383f).

*Testamentary trust*—Trust created by the will of a decedent.

*Transferee*—An individual or entity, other than a personal representative, possessing or receiving property subject to the Department's claim. Both initial and subsequent recipients of property are transferees.

### **§ 258.3. Property liable to repay the Department.**

- (a) All estate property is subject to the Department's claim.
- (b) Property held by a decedent and another at the time of death as joint tenants with rights of survivorship, or as tenants by the entireties, is not subject to the Department's claim.
- (c) The proceeds of life insurance on the decedent which are directly payable to a third party are not subject to the Department's claim. However, life insurance which is payable to the decedent's estate is subject to the Department's claim even if the life insurance policy contains a facility of payment clause.
- (d) Assets placed in trust prior to the death of the decedent, including irrevocable burial reserves, are not subject to the Department's claim so long as the assets

are not payable to the decedent's estate. Trust assets and burial reserve proceeds which are or become payable to the decedent's estate are subject to the Department's claim. Assets designated for a testamentary trust are subject to the Department's claim.

(e) Property within the scope of 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors), including unpaid wages, certain bank accounts, certain life insurance and patient care accounts, are subject to the Department's claim.

(f) Notwithstanding subsections (b)—(d), a property which a personal representative could recover for the benefit of the estate under 12 Pa.C.S. Chapter 51 (relating to the Uniform Fraudulent Transfers Act) is subject to the Department's claim. For purposes of this chapter, the Department will presume that any transfer of assets which a decedent made within 1 year of death for less than reasonably equivalent value is recoverable for the estate.

### **§ 258.4. Request for statement of claim.**

(a) The personal representative of the estate of any decedent who was 55 years of age or older at the time of death has a duty to ascertain whether the decedent received MA services during the 5 years preceding death and, if so, shall give notice to the Department requesting a statement of claim. The 5-year time frame is for notification purposes only and does not limit the Department's claim. Effective August 15, 1994, the amount of MA paid for services rendered after August 15, 1994, to an individual 55 years of age or older is subject to the Department's claim. The notice shall be mailed by certified mail return receipt to the address of the Department specified by § 258.14 (relating to service on the Department). The notice shall include, at a minimum, the following information:

- (1) A statement that the personal representative is requesting a statement of claim against the estate of the decedent.
- (2) The decedent's name.
- (3) The decedent's last address.
- (4) The decedent's date of birth.
- (5) The decedent's date of death.
- (6) The decedent's Social Security Number.
- (7) The personal representative's name, address and telephone number.

(b) The Department will submit a statement of claim to the personal representative within the response period. If the notice from the personal representative is mailed to the incorrect address, or does not otherwise fully comply with subsection (a), the response period shall be suspended until a fully complying notice is received. If the Department fails to submit a statement of claim to the personal representative within the response period, the Department's claim will be forfeited.

(c) The Department's Third Party Liability Section will date stamp all notices from personal representatives when received. The date stamp conclusively establishes the date of the Department's receipt of the notice. The Department will also date all statements of claim. The date on the statement of claim conclusively establishes the Department's submission date for the statement of claim, regardless of any postmark date.

(d) A personal representative may extend the Department's response period. Additionally, if the last date of



the response period falls on a weekend, State holiday or other day that the offices of the Third Party Liability Section are closed, the response period will be extended until the next business day.

(e) The Department may issue a statement of claim based upon information received by telephone, fax machine or electronic mail. However, use by the personal representative of the alternative forms of communication will not cause the Department's response period to commence.

(f) The Department may amend a statement of claim after the response period has elapsed. The amended claim shall relate back to the date of the original statement of claim.

#### **§ 258.5. Computation of claim.**

(a) The Department's claim with respect to a decedent will consist of the total of all MA payments made with respect to the decedent for nursing facility services, home and community based services and related hospital and prescription drug services rendered on or after August 15, 1994.

(b) Premium payments and cost-sharing for decedents who were qualified Medicare beneficiaries shall be included in the statement of claim for the time the decedent received nursing facility services, home and community based services or related hospital and prescription drug services rendered on or after August 15, 1994.

(c) If the decedent was a surviving spouse or child, the Department's statement of claim will include the Department's claim against a previously deceased spouse or parent deferred by the Department during the postponement period.

(d) With respect to claims against third parties for the costs of MA services delivered through a Managed Care Organization (MCO) contract, the Department will recover the actual payment to the hospital or other medical provider for the service. If no specific payment is earmarked by the MCO for the service, such as in the example of a capitated payment to physicians, the Department will recover its fee schedule amount for the service.

(e) If the MCO fails to provide the Department with information necessary to compute the statement of claim within contractual deadlines, the Department will use the amount of the capitation payments made to the MCO since the date of the injury as its claim against the third party until sufficient information is provided to compute a statement of claim in accordance with subsection (d). If the Department is forced to use the capitation payment to compute its statement of claim, the MCO will be liable to the Department for the amount of the Department's diminished recovery in accordance with the terms of the MCO's contract with the Department.

(f) There shall be a rebuttable presumption that the Department's statement of claim is correct. The burden of proof is upon the personal representative to show that the Department's statement of claim is incorrect by a preponderance of evidence.

(g) The Department will not reduce its claim on account of attorneys' fees or other costs incurred by the estate to obtain or liquidate assets. These costs may be treated as expenses of administration of the estate.

#### **§ 258.6. Priority of the Department's claim.**

(a) The Department's claim is entitled to priority under 20 Pa.C.S. § 3392(3) (relating to classification and order

of payment) to the extent it includes payment for services rendered within 6 months of death. Otherwise, the Department's claim shall be paid under 20 Pa.C.S. § 3392(6).

(b) The Department's claim against deposit accounts and patient care accounts subject to 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors) shall be subordinate to reasonable funeral expenses and to those claims having priority over the Department under 20 Pa.C.S. § 3392.

(c) The Department's claim against assets subject to 20 Pa.C.S. § 3101 is superior to that of family members and any person receiving money under these provisions of law shall be answerable to the Department.

(d) The Department's claim is subordinate to the family exemption and to perfected liens on specific property.

#### **§ 258.7. Postponement of collection.**

(a) The Department will postpone collection of its claim until the later of one of the following:

(1) The death of any surviving spouse.

(2) The death of any child who is blind or totally and permanently disabled, as determined under the standards of the Supplemental Security Income (SSI) Program.

(3) The date any surviving child attains 21 years of age.

(b) The personal representative has a duty to insure protection of the Department's claim during the postponement period.

(c) The personal representative will be deemed to have complied with his responsibilities to protect the Department's claim during the postponement period if, after liquidating the assets as is appropriate and paying all expenses of administration and claims against the estate, the personal representative takes one or more of the following actions until the Department's claim is fully protected, or until all protectable assets are protected.

(1) If the decedent's estate contains real estate, the personal representative shall cause a mortgage or other recorded encumbrance to be placed against the real estate in favor of the Department.

(2) If the decedent's estate contains individual items of personal property with an aggregate fair market value in excess of \$10,000, the personal representative shall cause a properly perfected security interest to be placed against the items of personal property in favor of the Department.

(3) If the estate contains cash or cash-equivalents in an aggregate amount in excess of \$50,000, the personal representative shall cause the money to be placed in trust, with terms and trustees approved by the Department. The trust shall name the Department as remainderman and shall allow the spouse or child, or both, as appropriate, to consume income without court approval, shall allow the consumption of principal to pay reasonable medical expenses of the spouse or child, or both, and shall allow the consumption of principal for the benefit of the spouse or child, or both, with court approval. The personal representative may serve as trustee and a reasonable trustee fee may be provided by the trust document.

(4) If the decedent's estate contains protectable assets which are not adequately protected by the procedures

provided in paragraphs (1)—(3), the personal representative shall request and follow the directions of the Department.

(d) No interest is charged on the Department's claim during the postponement period.

(e) Postponement of collection may be waived by a spouse, adult child or legal representative of a child under 18 years of age.

**§ 258.8. Liability of personal representative.**

(a) The personal representative has a duty to insure that the Department's claim is adequately presented to the Court and, unless the Department's claim is postponed, to pay the Department's claim after payment of all superior claims.

(b) The personal representative is personally liable to pay the Department's claim if property subject to the Department's claim, and not subject to postponement of collection, is transferred without valuable and adequate consideration to an heir or other person having a lower priority claim, without satisfaction of the Department's claim.

(c) When the Department's claim is postponed, the personal representative is personally liable if property subject to the Department's claim is transferred without valuable and adequate consideration to an heir or other person having a lower priority claim, without protecting the Department's claim.

(d) A decree of distribution will discharge the liability of the personal representative to the Department only if the following conditions are met:

(1) The Department is served with a copy of the proposed distribution at least 30 days in advance of court approval.

(2) The court records show that the personal representative made the inquiry required by § 258.4 (relating to request for statement of claims) and obtained a statement of claim, if appropriate.

(3) The court records show that any claim of the Department was presented to the court and paid, or that there were insufficient assets to pay the Department's claim.

(4) The Department is served with a copy of the final distribution order and paid all amounts that it is due.

(e) Notwithstanding subsection (d), a decree of distribution will not discharge the liability of the personal representative to the Department if the petition for distribution fails to disclose the existence of property subject to the Department's claim, or if the personal representative refuses to present and pay the Department's claim.

**§ 258.9. Liability of transferees.**

(a) A transferee is liable to pay the Department's claim when it receives property subject to the Department's claim for which it did not pay valuable and adequate consideration—that is, fair market value—for the property. The transferee's liability is limited to the fair market value of the property received.

(b) When the Department's claim is postponed, any transferee is personally liable to pay the Department's claim if the transferee receives property subject to the Department's claim and the transferee fails to protect the Department's claim during the postponement period.

(c) The arm's length sale of the decedent's real property at fair market value by the personal representative to a party unrelated to the decedent or the personal representative shall be deemed to be supported by valuable and adequate consideration.

**§ 258.10. Undue hardship waivers.**

(a) The Department will waive its claim in cases of undue hardship.

(b) The Department may find undue hardship and may waive its claim with respect to the real and personal property constituting the primary residence of a decedent and an immediate family member of the decedent, if they have:

(1) Continuously resided in the residence for at least 2 years immediately preceding the decedent's receipt of nursing facility services.

(2) No other alternative permanent residence.

(3) Annual gross family income that does not exceed 100% of the Federal poverty guidelines.

(c) The Department may find undue hardship and may waive its claim with respect to an income-producing asset if an immediate family member of the decedent meets one of the following conditions:

(1) Utilizes the asset to generate the primary source of income for the household.

(2) Would have a gross family income of less than 100% of the Federal poverty guidelines without use of the asset.

(d) The Department may find undue hardship and may postpone collection of its claim until one of the following:

(1) The death of a sibling who has an equity interest in the property and has been living in the house for at least 2 years prior to the death of the decedent.

(2) Upon the disposition of the property by the sibling living in the house.

(e) The Department has exclusive authority to waive its claim, compromise its claim or postpone collection, in other circumstances when undue hardship exists, or when collection is not cost effective, as determined by the Department on an individual case-by-case basis.

(f) Waiver requests shall be submitted to the following address: Estate Recovery Program, Post Office Box 8486, Harrisburg, Pennsylvania 17105-8486.

**§ 258.11. Unadministered estates.**

(a) The Department may cause one of its employees to administer an estate if no administrator has been appointed and assets may exist to pay the Department's claim.

(b) The Department's Office of Legal Counsel may provide legal services to an estate if a Departmental employee has been designated to administer the estate. Alternatively, the administrator may employ private counsel.

(c) The Department will charge the estate a reasonable fee, as an expense of administration, if administration services and attorney services are provided to the estate by Commonwealth employees.

(d) The Department may periodically develop lists of unadministered estates which may have assets. The lists will be made available to any attorney or member of the public who may desire to seek appointment as administrator. The Department may also refer unadministered estates to local private counsel to administer the estate.

**§ 258.12. Administrative enforcement.**

(a) In addition to any other remedies allowed by law, the Department may administratively assess liability upon a personal representative or transferee in accordance with §§ 258.8 and 258.9 (relating to liability of personal representative; and liability of transferees). This assessment may be appealed under § 258.13 (relating to appeals and jurisdiction).

(b) A final administrative order in any proceeding to assess liability against a personal representative or transferee shall be binding upon the parties in any subsequent judicial proceeding to enforce the administrative order.

**§ 258.13. Appeals and jurisdiction.**

(a) A personal representative, transferee or family member adversely affected by a decision of the Department under this chapter may appeal to the Department's Bureau of Hearing and Appeals within 30 days of the date the affected person is notified of the decision.

(b) An appeal shall be mailed to the Bureau of Hearings and Appeals, Department of Public Welfare, Post Office Box 2675, Harrisburg, Pennsylvania 17105.

(c) The Bureau of Hearings and Appeals has exclusive jurisdiction over disputes involving a request for waiver, compromise or postponement of collection. Appeals will be reviewed by the Bureau under an abuse of discretion standard. The Bureau's decision is binding on all parties, subject to the Secretary's reconsideration and appellate review.

(d) The Bureau of Hearings and Appeals has concurrent jurisdiction with the courts of common pleas over disputes involving the computation of the Department's claim or assessment of liability against a personal representative or transferee. If the personal representative or transferee files an appeal with the Bureau of Hearings and Appeals, the filing will be deemed to be an irrevocable election to proceed exclusively before the Bureau. The Bureau's decision is binding upon all parties, subject to the Secretary's reconsideration and appellate review.

**§ 258.14. Service on the Department.**

The address for requesting a statement of claim, or for serving legal papers on the Department is: Third Party Liability Section, Department of Public Welfare, Estate Recovery Program, Post Office Box 8486, Harrisburg, Pennsylvania 17105-8486.

[Pa.B. Doc. No. 99-1179. Filed for public inspection July 23, 1999, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 17]

### Authorization to Verify Identification Number; Notice of Intent to Promulgate Regulation and Request for Public Participation

The Department of Transportation, Bureau of Motor Vehicles, under the authority contained in sections 1103.1 and 6103 of the Vehicle Code (75 Pa.C.S. §§ 1103.1 and 6103), and consistent with the goals of Executive Order 1996-1, February 6, 1996, Regulatory Review and Promulgation, announces its intention to amend Title 67 of the

*Pennsylvania Code* by amending Chapter 17, Authorization to Verify Identification Number.

The purpose of this rulemaking is to allow for authorized employees of the Department of Transportation to inspect and verify that the vehicle identification number conforms with the description provided on the vehicle title application submitted to the Department.

The Department anticipates that this rulemaking will affect owners of vehicles for which an application for title is being made that also requires the verification of the vehicle identification number as part of the application process.

Accordingly, the Department is requesting that within 30 days of the publication of this notice in the *Pennsylvania Bulletin*, all interested persons desiring to participate in the development of this rulemaking or that have questions, suggestions or comments, please contact Thomas Zamboni, at 1101 South Front Street, Third Floor, Riverfront Office Center, Harrisburg, PA 17104, or by calling (717) 787-2895.

BRADLEY L. MALLORY,  
Secretary

[Pa.B. Doc. No. 99-1180. Filed for public inspection July 23, 1999, 9:00 a.m.]

### [67 PA. CODE CH. 175]

### Vehicle Equipment and Inspection; Notice of Intent to Promulgate Regulation and Request for Public Participation

The Department of Transportation, Bureau of Motor Vehicles, under the authority contained in sections 4303 and 6103 of the Vehicle Code as amended (75 Pa.C.S. §§ 4303 and 6103), and consistent with the goals of Executive Order 1996-1, February 6, 1996, Regulatory Review and Promulgation, announces its intention to amend Title 67 of the *Pennsylvania Code* by amending Chapter 175, Vehicle Equipment and Inspection.

The purpose of this rulemaking is to bring Chapter 175 into compliance with act of July 6, 1995, P. L. 246, No. 30, which amended section 4703 of the Vehicle Code (75 Pa.C.S. § 4703) (relating to operation of vehicle without official certificate of inspection). This rulemaking will establish equipment and inspection criteria for farm vehicles with a gross weight or gross vehicle weight rating of greater than 17,000 pounds and for which a Type I biennial certificate of exemption has been issued. Interim equipment and inspection criteria were published at 25 Pa.B. 3540 (August 26, 1995), effective October 2, 1995, which were to continue in effect until regulations governing equipment standards and inspection criteria for the subject vehicles were promulgated by the Department.

The Department anticipates that this rulemaking will affect owners of farm vehicles with a gross weight or gross vehicle weight rating of greater than 17,000 pounds and for which a Type I biennial certificate of exemption has been issued.

Accordingly, the Department is requesting that within 30 days of the publication of this notice in the *Pennsylvania Bulletin*, all interested persons desiring to participate in the development of this rulemaking or that have questions, suggestions or comments, please contact Tho-

mas Zamboni, at 1101 South Front Street, Third Floor, Riverfront Office Center, Harrisburg, PA, 17104, or by calling (717) 787-2895.

BRADLEY L. MALLORY,  
*Secretary*

[Pa.B. Doc. No. 99-1181. Filed for public inspection July 23, 1999, 9:00 a.m.]

## HUMAN RELATIONS COMMISSION

[16 PA. CODE CH. 45]

### Housing Accommodations/Commercial Property

The Pennsylvania Human Relations Commission (Commission), which earlier adopted the guidelines and a statement of policy relating to advertising, now presents those guidelines and statement of policy in the form of proposed rulemaking. The guidelines and a statement of policy were published at 27 Pa.B. 5485 (October 18, 1997). An amendment to the guidelines and a statement of policy was published at 28 Pa.B. 5578 (November 7, 1998). In compliance with and under the authority of the act of June 25, 1997 (P.L. 326, No. 34) (Act 34), the guidelines and statement of policy were not subject to review under section 205 of the act of July 31, 1968 (P.L. 469, No. 240) (45 P.S. § 1205) and are effective for a period not to exceed 2 years from the effective date of Act 34, which was August 24, 1997. The guidelines and statement of policy as amended were to serve as proposed rulemaking. On or before the expiration of the 2-year period, the advertising guidelines and statement of policy as amended expire and are to be replaced by regulations which shall have been promulgated, adopted and published as provided by law.

Under the publication of the guidelines and statement of policy as amended, the Commission sought input from interested and affected groups and requested comments from the readers. The guidelines and statement of policy as amended have been published in numerous newsletters and widely circulated by the Commission. They have been favorably received by the affected organizations and groups. Since publication, the Commission has received many inquiries regarding advertisements and has successfully developed and followed the procedures spelled out in the guidelines and statement of policy as amended.

The purpose of this proposed rulemaking is to inform the public of words, phrases, symbols and the like, which are unlawful, when used in housing advertisements. In addition, they are a guide to advertisers and publishers in their efforts to insure that any housing advertisements published or caused to be published by them do not violate Act 34. This proposed rulemaking also contains rules which if followed will constitute reasonable efforts to comply with the advertising provisions of Act 34 so that a finding of knowing and willful violation of those portions of Act 34 is precluded.

#### *Fiscal Impact*

The Commission believes that the regulations will result in no additional cost to the Commission or to the general public. Any additional costs which arise were created by the Act 34 and not this proposed rulemaking.

#### *Paperwork Requirements*

No additional, routine paperwork will be required by the new regulations.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 13, 1999, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on State Government and the Senate Committee on Labor and Industry. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the closing of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the amendments, by the Department, the General Assembly and the Governor.

#### *Effective Date*

This proposed rulemaking shall take effect upon final publication in the *Pennsylvania Bulletin*.

#### *Contact Person/Public Comments*

Interested persons are invited to submit written comments regarding this proposed rulemaking in writing to Nancy L. Gippert, Assistant Chief Counsel, Human Relations Commission, 101 South Second Street, Suite 300, P.O. Box 3145, Harrisburg, PA 17101. The comments should be submitted within 60 days of publication.

HOMER C. FLOYD,  
*Executive Director*

**Fiscal Note:** 52-10. No fiscal impact; (8) recommends adoption.

#### **Annex A**

#### **TITLE 16. COMMUNITY AFFAIRS**

#### **PART II. GOVERNOR'S OFFICE**

#### **Subpart A. HUMAN RELATIONS COMMISSION**

#### **CHAPTER 45. HOUSING ACCOMMODATIONS/COMMERCIAL PROPERTY**

(*Editor's Note:* As part of this proposal, the Commission is proposing to delete the existing text of the statement of policy in 16 Pa. Code Chapter 45, Subchapter B, and replace it with the regulations as proposed in Annex A.)

§§ 45.101—45.103. (Reserved).

§§ 45.121—45.126. (Reserved).

§ 45.141. (Reserved).

§ 45.142. (Reserved).

§§ 45.151—45.154. (Reserved).

#### **GENERAL**

Sec.	
45.161.	Purpose.
45.162.	Definitions.
45.163.	General rules.

**PROHIBITED USAGES**

- 45.171. Race/color/national origin.
- 45.172. Familial status/age.
- 45.173. Disability.
- 45.174. Religion.
- 45.175. Sex.

**LIST OF WORDS OR PHRASES TO AVOID**

- 45.181. List.
- 45.182. Words to be avoided.

**ADDITIONAL REQUIREMENTS**

- 45.191. Advertisements.
- 45.192. Affirmative defenses.
- 45.193. Good faith efforts.
- 45.194. Federal regulations.

**GENERAL****§§ 45.161. Purpose.**

(a) The purpose of this subchapter is to insure that advertisements for housing and commercial property do not include words, phrases, symbols, and the like, which violate the advertising provisions of the act.

(b) Section 45.192 (relating to affirmative defenses) contains affirmative defenses which will preclude a finding of a willful and knowing violation of the advertising provisions of the act.

(c) This subchapter implements the statutory mandate of section 9.1(b) of the act (43 P. S. § 959.1(b)).

**§ 45.162. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, which are identical to those found in section 4 of the act (43 P. S. § 954):

*Act*—The Pennsylvania Human Relations Act (43 P. S. §§ 951—963).

*Advertisement or advertising*—See 43 P. S. § 954(3).

*Advertiser*—See 43 P. S. § 954(aa).

*Housing accommodation*—See 43 P. S. § 954(i).

*Housing for older persons*—See 43 P. S. § 954(w).

*Person*—See 43 P. S. § 954(a).

*Personal residence*—See 43 P. S. § 954(k). This term applies to any "person" as defined in this section.

**§ 45.163. General rules.**

The prohibited words and phrases in § 45.182 (relating to words to be avoided) are unlawful when used in housing advertisements. In addition to those words and phrases, any word or phrase that is commonly understood to be offensive to a group of people in a protected class also violates the act.

**PROHIBITED USAGES****§ 45.171. Race/color/national origin.**

It is unlawful to advertise a limitation, preference or discrimination on account of race, color or national origin. Examples include the use of:

(1) Any color to describe a group of people—for example, white, brown, red, black or yellow.

(2) Any nationality or race to describe a group of people—for example, Caucasian, Negroid, Chinese, Asian Immigrant, French Hawaiian, Arab, Oriental, African-American, Irish, and the like.

(3) Landmarks or organizational locations which are indicative of a particular nationality or race, unless all of the landmarks in the area are noted—for example, if proximity to a specific place associated with a particular

ethnic group is noted as a directional landmark, reference should be made to all other nearby comparable facilities of interest to other groups.

(4) Code words which are recognizable in a particular neighborhood as connoting neighborhoods that restrict certain races or ethnic groups.

**§ 45.172. Familial status/age.**

(a) It is unlawful to advertise a preference, limitation or discrimination against families with children in the household or against persons 40 years of age or older. Examples include, the following:

(1) The use of any phrase which notes a preference, limitation or discrimination for adults, couples or singles or families without children—for example, "adult atmosphere," "mature adults preferred," "great for retired couple or couple just starting out," "adult/family sections," "no kids/pets okay," "couples only," "ideal for singles," "adult community" or "suitable for one or two adults."

(2) The use of any colloquialisms which imply the same as those in paragraph—for example, paragraph (1) "empty nesters," "honeymooners" or "swinging singles."

(3) The listing the number of children allowed.

(b) Notwithstanding the prohibitions in subsection (a), It is not unlawful to:

(1) List the size and number of rooms or bedrooms.

(2) Indicate that the housing meets the requirements for "housing for older persons" as defined in section 4 of the act (43 P. S. § 954). A publisher may rely on the advertisers written representations of such, unless the publisher has reason to believe otherwise.

(3) To advertise a preference against children and advertise age restrictions when the housing accommodations qualifies as "housing for older persons" as defined in section 4 of the act.

**§ 45.173. Disability.**

(a) It is unlawful to advertise a preference, limitation or discrimination against persons with disabilities or to advertise that the property is not accessible.

(b) It is not unlawful to describe housing as accessible to persons with disabilities.

**§ 45.174. Religion.**

(a) It is unlawful to advertise a preference, limitation or discrimination on the basis of religion. Examples include:

(1) The use of any religious denomination—for example, Christian, Jew, Muslim or Buddhist.

(2) Phrases such as "surround yourself with Christians."

(3) The use of a particular landmark or location which is indicative of a particular religion.

(b) Notwithstanding the prohibitions in subsection (a), it is not unlawful for any religious or denominational institution or organization or any charitable or educational organization which is operated, supervised or controlled by or in connection with a religious organization or any bona fide private or fraternal organization to:

(1) Advertise a preference to persons of the same religion or denomination or to members of the private or fraternal organization.

(2) Advertise that the making of the selection is calculated by the organization to promote the religious princi-

ples or the aims, purposes or fraternal principles for which it is established or maintained.

**§ 45.175. Sex.**

(a) It is unlawful to advertise any preference, limitation or discrimination on the basis of sex. Examples include "males only need apply," "professional male preferred" or "perfect for single female."

(b) Notwithstanding the prohibitions in subsection (a), it is not unlawful to:

(1) Advertise a preference based on sex in the rental or leasing of housing accommodations in single-sex dormitory.

(2) Advertise a preference based on sex in the rental or leasing of housing accommodations for rooms in one's personal residence in which common living areas are shared.

**LIST OF WORDS OR PHRASES TO AVOID**

**§ 45.181. List.**

The list of words in § 45.182 (relating to words to be avoided) does not contain every possible word and phrase that may violate the act. Its purpose is to provide as complete a list as possible. For example, while many nationalities, types of disabilities and races are mentioned, the list is not inclusive. Any word indicating ancestry, race, color, religion or disability is equally prohibited in the context of real estate advertisements. The list will provide guidance on how to recognize the type of language that may be violative of the act. When the context of the word or phrase is key to its possible unlawful meaning that will be noted.

**§ 45.182. Words to be avoided.**

(a) It is unlawful to use the following words or phrases in housing advertisements unless used in a clearly non-discriminatory context such as "white cabinets" or "french doors." The list is neither intended nor reasonably able to be all inclusive. It is also unlawful to use words or phrases not appearing on the list, but which are used in a context which may reasonably be interpreted as indicating an unlawful discriminatory intent.

Able-bodied

Adult—If the housing is "housing for older persons" as defined by the Federal Fair Housing Act (42 U.S.C.A. §§ 3601—3619 and 3631) and the act, it is appropriate to say so.

(i) A newspaper/publisher may publish an advertisement for housing, and be held harmless for liability for an advertisement which uses the terms "senior housing," "senior community," "retirement community," if the advertiser provides a statement formally, in writing, to the newspaper/publisher that the property being advertised meets the requirements for housing for older persons as defined in the act.

(ii) Equivalent phrases referring to persons 55 and 62 and older such as "adult community, 55 and over," "adult community, 62 and over," "adult 55+," "adult 62+" to describe housing for older persons, will also be acceptable.

(iii) The term "adult" alone or with terms that do not meet housing for older persons requirements will remain unlawful terms as a description of housing for older persons.

African-American  
Asian  
American

Ancestry (any)

Black

Blind

Buddhist

Catholic

Caucasian

Chicano/Chicana

Child/children—Restrictions, unless "housing for older persons."

Chinese

Christian

Church, near

Color (any when used to describe persons)

Colored

Couple

Crippled

Deaf

Disability (any)—It is acceptable to describe housing as accessible to persons with disabilities. It is not acceptable to attempt to limit the housing to certain persons by stating that it is not accessible.

Disabled

Empty nester

Ethnic neighborhood

Ethnic group (any)

Foreigners

Handicapped

Hindi

Hispanic

Ideal for. . . (a type of person)

Immigrants

Independently, capable of living

Indian

Integrated

Interracial

Irish

Jew/Jewish

Latino/Latina

Mentally handicapped, ill, retarded

Mexican-American

Middle Eastern(er)

Minority

Mixed community

Mormon

Moslem

Mosque, near

Muslim

Nationality (any)

Newlyweds

Parish, near

Perfect for (a type of person)

Polish

Prefer

Protestant

Puerto Rican

Race (any, when used to describe a person)

Religion (any, when used to describe persons)

Retarded

Retired persons, retirees—If it is "housing for older persons," use that phrase, as many people who are retired may not qualify for housing for older persons while many people still working may in fact be eligible for housing for older persons.

Segregated

Senior—Use “housing for older persons”. See note under adult and retired persons. Many people who do not consider themselves senior may be eligible for housing for older persons.

Suitable for  
Synagogue, near

Temple, near

White

Young  
Youthful

(b) Any of the words in subsection (a) may be used if they are part of an address. For example, Poplar Church Road, Lutheran Street, Churchville, Black Ridge or Indian Hills, and the like, are permissible.

#### ADDITIONAL REQUIREMENTS

##### § 45.191. Advertisements.

It is unlawful to advertise any discriminatory preference or limitation, even if the property is otherwise exempt from coverage under the act.

##### § 45.192. Affirmative defenses.

It shall be an affirmative defense precluding a finding that a housing advertiser has knowingly and wilfully violated the act and this subchapter if the housing advertiser has complied with one of the following:

(1) Attempted, in good faith, to comply with the list and specific examples of impermissible housing advertisements described in this subchapter.

(2) Complied with a written advisory of the Commission concerning what constitutes appropriate housing advertisements. The Commission will maintain the written advisory on file and provide a copy of the advisory to the advertiser.

(3) Made reasonable efforts in good faith to comply with the act.

##### § 45.193. Good faith efforts.

An advertiser will be deemed to have acted in good faith if the advertiser complies with one or more of the following:

(1) As to an advertisement for “housing for older persons,” if the advertiser produces a signed written statement by a housing provider which states that the facility or community complies with the requirements of the housing for older persons exemption and the advertiser has no actual knowledge that the facility or community is not actually eligible for the exemption.

(2) If the word or phrase complained of is in compliance with the list in § 45.182 (relating to words to be avoided) and is not, on its face, discriminatory within the context of the advertisement.

(3) If the advertiser produces a written Commission advisory that the language complained of is legal, within the same context in which the advertiser requested the opinion from the Commission.

##### § 45.194. Federal regulations.

Federal regulations published by the Department of Housing and Urban Development, regarding housing ad-

vertisements in areas of concurrent jurisdiction, shall preempt anything to the contrary in this subchapter.

[Pa.B. Doc. No. 99-1182. Filed for public inspection July 23, 1999, 9:00 a.m.]

## SECURITIES COMMISSION

[64 PA. CODE CHS. 202—205, 207, 209, 211, 504, 603, 606 AND 609]

### National Securities Market Improvement Act of 1996 Amendments

#### Statutory Authority

The Securities Commission (Commission), under the authority contained in sections 202(g) and (i), 203(d), (i.1), (j) and (n)—(t), 204(a), 205(b), 207(g), (j.1) and (n), 209(b), 211(a) and (b), 504(d), 513, 603(a), 606(d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-202(g) and (i), 1-203(d), (i.1), (j) and (n)—(t), 1-204(a), 1-205(b), 1-207(g), (j.1) and (n), 1-209(b), 1-211(a) and (b), 1-504(d), 1-513, 1-606(d) and 1-609(a)) (act), proposes to amend and adopt regulations concerning the subject matter of the act to read as set forth in Annex A to this notice and further described under the Summary and Purpose of Proposed Amendments.

#### Summary and Purpose of Proposed Amendments

- § 202.070. Proposed changes would delete the requirement to file Form 202-G.
- § 202.091. Proposed changes would update legal citations in this regulation.
- § 202.093. Proposed changes would clarify use of advertising in connection with the solicitation of charitable pooled income funds.
- § 202.095. This proposed amendment would exempt certain charitable gift annuities from registration under the act.
- § 203.041. Proposed changes would adopt a new filing form to claim this exemption on Commission Form E and delete Commission Form 203-D and Commission Form D Supplement.
- § 203.091. Proposed changes would conform the prospectus filing requirement with amendments made to the act by the act of November 24, 1998 (P. L. 829, No.109) (Act 109).
- § 203.101. Proposed changes would conform the availability of this exemption to amendments made to the act by Act 109 prohibiting use of general solicitation and payment of sales compensation in connection with offers and sales of securities under section 203(j) of the act.
- § 203.141. Proposed changes would delete the requirement to file Form 203-N.
- § 203.151. Proposed changes would conform the regulation governing intra-State mergers, acquisitions, reorganizations and reclassifications with amendments made to section 203(o) of the act by Act 109.

- § 203.161. Proposed changes would revise Commission Form 203-P used by nonprofit organizations selling debt securities that are secured by a first lien mortgage and would remove obsolete language.
- § 203.171. Proposed changes would delete the requirement to file Form 203-Q.
- § 203.183. Proposed changes would correct typographical errors and remove obsolete language.
- § 203.184. Proposed changes would add "son-in-law" and "daughter-in-law" to the list of relatives of a principal to whom securities could be sold under this exemption.
- § 203.185. Proposed changes would remove obsolete language.
- § 203.186. Proposed changes would delete requirement for filing of Form 203R-6.
- § 203.187. Proposed changes would incorporate integration provisions adopted by Act 109.
- § 203.189. Proposed changes would incorporate integration provisions adopted by Act 109.
- § 203.191. The Commission proposes to adopt a regulation requiring the filing of Commission Form E to claim the exemption in section 203(s) of the act as required by section 203(s)(i) of the act. Section 203(s) of the act was added by Act 109.
- § 203.201. The Commission proposes to adopt a regulation requiring the filing of Commission Form E to claim the exemption in section 203(t) of the act as required by section 203(t)(i) of the act. Section 203(t) of the act was added by Act 109.
- § 204.010. Proposed changes would delete references to offerings made under United States Securities and Exchange Commission (SEC) Rule 505 or 506, which now are addressed in sections 203(s) and 211(b) of the act, respectively.
- § 204.011. Proposed changes would provide clarifying language as to when waivers under this section are available.
- § 204.012. Proposed changes would delete, due to a new exemption in section 203(t) of the act, current language addressing offerings made solely to accredited investors. New language would be inserted to waive the requirement to file a registration statement with the Commission prior to making offers (but not sales) in this Commonwealth when the issuer had filed a registration statement with the SEC.
- § 205.040. It is proposed to delete the current language in that Act 109 rendered it obsolete.
- § 207.071. Proposed changes would conform with regulation with the new scope of authority granted the Commission under Act 109 for escrow of promotional shares.
- § 207.072. The Commission proposes to adopt a regulation concerning the escrow of use of proceeds as permitted by amendments to section 207(g) of the act by Act 109.
- § 207.101. Proposed changes would revise the total period of effectiveness permitted under section 207(j) of the act to make it consistent with amendments adopted in Act 109.
- § 207.130. Proposed changes would revise this section to make it consistent with statutory changes made by enactment of the act of Act 126.
- § 207.140. The Commission proposes to delete the current language as Act 109 rendered it obsolete. New language would be inserted to waive the requirement of a manual signature and permit issuers making notice filings with the Commission through electronic means to type their signatures on electronic forms.
- § 209.010. Proposed changes would clarify language in Form 209.
- § 211.010. The Commission proposes to adopt a regulation concerning the notice filing requirements for Federally covered securities and which documents filed with the SEC also must be filed with the Commission.
- § 504.060. Proposed changes would clarify the type of communication to purchasers and sellers in connection with a rescission offer made under section 504(d) or (e) of the act.
- § 513.010. This regulation would provide that the requirements of § 504.060 for rescission offers would apply to any rescission offer ordered by the Commission under this section unless otherwise specified by order of the Commission.
- § 603.011. Proposed changes would update filing addresses and authorize electronic filing with the Commission.
- § 606.041. Proposed changes would delete various delegations with respect to items affected by passage of Act 109. The Commission proposes to delegate authority to the Director of the Division of Corporation Finance to register an offering filed under section 206 which has met the requirements for registration under the Mid-Atlantic Regional Review Protocol of Small Corporate Offering Registrations.
- § 609.031. The proposed amendments change legal citations to conform to Act 109.
- § 609.034. The proposed amendments change legal citations to conform to Act 109.

#### *Persons Affected by these Amendments*

These proposed regulatory actions generally are required to effectuate statutory changes made to the act by Act 109. The regulatory proposals primarily affect companies seeking to raise capital through the offer and sale of securities in this Commonwealth.

#### *Fiscal Impact*

None of the proposed regulatory actions increase costs on the regulated community or the Commonwealth. The Commonwealth will not incur any revenue loss as a result of the proposed regulatory actions. The proposed regulatory actions will decrease regulatory costs to issuers by eliminating certain filing requirements.



*Paperwork*

The Commission proposes to adopt new Commission Form E for making certain notice filings with the Commission required under the act. New sections 203(s) and 203(t) of the act, enacted by Act 109, require a notice filing on a form prescribed by the Commission. The Commission also proposes to repeal current Form 203-D and Form D Supplement and replace it with Form E. Form E, therefore, would become a multipurpose form which issuers could use to claim any of the three private placement exemptions under the act which require a notice filing.

The proposed regulatory actions also would repeal Form 202-G, Form 203-N and Form 203-Q. Act 109 relieved issuers of the statutory responsibility to make notice filings with the Commission. Lastly, the Commission proposes to amend Form 203-P to reduce the amount of information required to be filed, revise Form 209 to clarify the type of information requested and repeal Form 203R-6. Therefore, these regulatory proposals will reduce substantially the current paperwork requirements for issuers offering and selling securities in this Commonwealth.

*Effective Date*

The proposed amendments will become effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 1, 1999, the Commission submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance for comment and review. In addition to submitting the proposed amendments, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Commission within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the final-form regulations by the Commission, the General Assembly and the Governor of objections raised.

*Availability in Alternative Formats*

This proposed rulemaking may be made available in alternative formats upon request. The Commission also will receive comments on this proposed rulemaking in alternative formats. TDD users should use the AT&T Relay Center (800) 854-5984. To make arrangements for alternative formats, contact Joseph Shepherd, ADA Coordinator, at (717) 787-6828.

*Contact Person*

Interested persons are invited to send comments concerning the proposed amendments within 30 days of publication of this notice to G. Philip Rutledge, Deputy Chief Counsel, Securities Commission, Eastgate Building, 1010 N. Seventh Street, 2nd Floor, Harrisburg, PA 17102-

1410, (717) 783-5130. Mr. Rutledge also is the contact person for an explanation of the proposed amendments.

M. JOANNA CUMMINGS,  
*Secretary*

**Fiscal Note:** 50-113. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 64. SECURITIES****PART I. SECURITIES COMMISSION****Subpart B. REGISTRATION OF SECURITIES****CHAPTER 202. EXEMPT SECURITIES**

§ 202.070. [Employee] Securities issued in connection with employee benefit plans.

(a) [Both the participation by an employee in a benefit plan which is qualified under the Internal Revenue Code of 1986 §§ 401, 421, 422, 422A and 423, and securities sold, issued or credited to an employee under such a plan shall be deemed to be exempted from the registration requirement of section 201 of the act (70 P. S. § 1-201) by section 202(g) of the act (70 P. S. § 1-202(g)).] An issuer may rely on the exemption in section 202(g) of the act if one of the following applies:

(1) The securities are being issued in good faith reliance that the transaction would qualify for an exemption under Securities and Exchange Commission Rule 701 (17 CFR 230.701) (relating to exemption for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation).

(2) The securities have been registered under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa).

(b) [Notice shall be given to the Commission with respect to the form and terms of employee benefit plans not covered by subsection (a) at least 15 days prior to the commencement of operation of the plan in this Commonwealth and sale of securities thereunder. The notice shall be on the following form, designated by the Commission as Form 202-G.]

(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of Form 202-G as it currently appears in 64 Pa. Code pages 202-7—202-9, serial pages (234879)—(234881).)

[Unless the Commission revokes the exemption referred to in this section, or notifies the issuer that the exemption is denied, the plan shall be treated in the same manner as qualified plans described in subsection (a).]

The exemption contained in section 202(g) of the act (70 P. S. § 1-202(g)) may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P. S. § 1-201) or a transaction made in violation of the antifraud provision of Part IV of the act (70 P. S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

\* \* \* \* \*

§ 202.091. Shares of professional corporations.

\* \* \* \* \*

(b) The meaning of "professional corporation" for this section shall be as follows:

(1) Except as provided in paragraph (2) [of this subsection], the term "professional corporation," [for the purposes of this section, shall mean] means one of the following:

(i) [a] A corporation incorporated under [the Professional Corporation Law (15 P.S. §§ 2901—2914)] 15 Pa.C.S. Subpart B (relating to Business Corporation Law of 1988) or a corporation included within the scope of [such] the act by virtue of [section 4 of such act (15 P.S. § 2904); or] 15 Pa.C.S. § 2904 or 2905 (relating to election of an existing business corporation to become a professional corporation; and election of professional associations to become professional corporations).

(ii) [a] A professional association organized under [the Professional Association Act (15 P.S. §§ 12601—12619)] 15 Pa.C.S. Chapter 93 (relating to Professional Association Act of 1988). The reference in this section to "shares" shall include the interest of an associate in a professional association.

\* \* \* \* \*

(c) [The provisions of § 209.010(b) (relating to required records; report on sales of securities and use of proceeds) and § 606.011 (relating to financial reports to security holders) may not be applicable to a professional corporation which has heretofore offered or sold its shares in transactions exempt from the registration requirements of section 201 of the act (70 P.S. § 1-201) by virtue of the provisions of section 203(d) of the act (70 P.S. § 1-203(d)) or an order of the Commission issued under section 203(r) of the act (70 P.S. § 1-203(r)).] The exemption contained in this section may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P.S. § 1-201) or a transaction made in violation of the antifraud provisions of the act (70 P.S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

§ 202.093. Charitable contributions to pooled income funds.

\* \* \* \* \*

(b) [The fund will not be in violation of § 606.031 (relating to advertising literature) if advertising literature, as defined in § 606.031(a), concerning the Fund and its charitable purposes is disseminated to potential contributors by direct mail (but not by means of mass media advertising other than that contained in regular publications of the organization which established the Fund).] Advertising literature [need not be filed with the Commission; however, advertising literature], as defined in § 606.031 (relating to advertising literature), may be used by the Fund in connection with the solicitation of contributions but is subject to the [anti-fraud] antifraud provisions of sections 401—[407] 409 of the act (70 P.S. §§ 1-401—[1-407] 1-409) and Subpart D (relating to fraudulent and prohibited practices).

§ 202.095. Charitable gift annuities.

(a) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the Commission

finds that it is not in the public interest nor necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) of securities issued or created in connection with the offer or sale of charitable gift annuities if the following conditions are met:

(1) The charitable gift annuity meets the terms and conditions of being exempt from the laws of this Commonwealth regulating insurance under the Charitable Gift Annuity Exemption Act (10 P.S. §§ 361—364) (annuity).

(2) Each prospective annuitant is provided written disclosure which fully and fairly describes the consequences of a contribution or transfer of property to the qualified charity, as that term is defined in the Charitable Gift Annuity Exemption Act (qualified charity).

(3) None of the persons responsible for solicitation of purchasers of annuities will receive commissions or other special compensation based upon the amount of the annuity purchased.

(4) A person who, for compensation, advises the qualified charity as to the advisability of investing in, purchasing or selling securities, including annuities, or otherwise performs as an investment adviser is either an investment adviser registered with the Commission under section 301 of the act (70 P.S. § 1-301) or is a Federally covered adviser that is in compliance with section 303(a) of the act (70 P.S. § 1-303(a)).

(b) Advertising literature, as defined in § 606.031(a) (relating to advertising literature), may be used by the qualified charity in connection with the solicitation of contributions but is subject to the antifraud provisions of sections 401—409 of the act (70 P.S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

#### CHAPTER 203. EXEMPT TRANSACTIONS

§ 203.041. Limited offerings.

[ (a) The notice required in section 203(d) of the act (70 P.S. § 1-203(d)) shall be filled with the Commission on the following form, designated by the Commission as Form 203-D: ]

*(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of Form 203-D as it appears in 64 Pa. Code pages 203-3—203-7, serial pages (200011)—(200015).)*

(b) Issuers that have filed or will be timely filing with the United States Securities and Exchange Commission (SEC) Form D, as defined in § 204.010(d)(4) (relating to increasing number of purchasers and offerees), may, in lieu of complying with subsection (a), file with the Commission a copy of SEC Form D and the following form designated by the Commission as Form D Supplement: ]

*(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of Form D Supplement as it appears in 64 Pa. Code pages 203-8—203-13, serial pages (200016)—(200021).)*

(a) The notice required by section 203(d) of the act (70 P.S. § 1-203(d)) shall be filed with the Commission within the time period specified by that section on the following form, designated by the Commission as Form E:

PSC FORM E  
Eff: 1/25/99  
Instruction Sheet

TDD/AT&T Relay Center: 1-800-654-5984

**PENNSYLVANIA SECURITIES COMMISSION**  
Eastgate Office Building, 2nd Floor,  
1010 N. 7th Street  
Harrisburg, PA 17102-1410  
(717) 787-8061  
(1-800-600-0007 in PA)

**NOTICE FILING UNDER THE PENNSYLVANIA SECURITIES ACT OF 1972 TO CLAIM AN EXEMPTION UNDER:**

**SECTION 203(d) "LIMITED OFFERING EXEMPTION"**  
**SECTION 203(s) "SEC RULE 505 EXEMPTION"**  
**SECTION 203(t) "ACCREDITED INVESTOR EXEMPTION"**

Under Regulation 603.011, a document is not deemed filed with the Pennsylvania Securities Commission ("Commission") unless complete and properly executed in all material respects.

**WHO MUST FILE:** Issuers making sales of securities in Pennsylvania in reliance upon Section 203(d) (including Regulation 204.010) of the Pennsylvania Securities Act of 1972 ("Act") and issuers making offers and sales of securities under Section 203(s) or (t) of the Act.

**WHEN AND WHERE TO FILE:** Form E must be filed at the Commission's Harrisburg Office at the address above not later than the day on which the issuer receives from any person in Pennsylvania (i) an executed subscription agreement or other contract to purchase the securities being offered or (ii) consideration for such securities, whichever is earlier.

**NOTE:** Under 64 Pa. Code § 604.011, a facsimile transmission of any materials to the Commission does not constitute a filing with the Commission.

**General Instructions**

1. One manually signed copy, and one photocopy of this Form, each with all attachments, shall be filed with the Commission. If mailed, it is advisable to send it by registered or certified mail, postage prepaid, return receipt requested.
2. Typewrite or print all answers in the space provided. Answer each item completely. An answer of "not applicable" is inappropriate. If the space is insufficient, attach a schedule to the Form and make reference to each item included in the schedule.
3. **INCORPORATION BY REFERENCE TO FORM D OF THE U. S. SECURITIES & EXCHANGE COMMISSION ("SEC FORM D"). IF THE ISSUER FILES A COMPLETE AND EXECUTED COPY OF SEC FORM D WITH THIS FORM, THE ISSUER MAY RESPOND TO ITEMS 3, 7, 8, AND 9 ON THIS FORM BY CROSS-REFERENCING TO ITEMS 1, C.1-4, C.5 AND B.1-4 OF SEC FORM D.**
4. This Form must be manually signed by the issuer. If the issuer is a corporation, it should be signed in the name of the corporation by an executive officer duly authorized; if a partnership, it should be signed in the name of the partnership by a general partner; and if an unincorporated association or other organization not a partnership, this Form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.
5. In the event that, at any time from the date of the filing of the Form with the Commission until the conclusion of the offering, any material statement made in the Form or in any attachment thereto becomes incorrect or inaccurate in any material respect, the issuer shall file an amendment with the Commission within 5 business days of the occurrence of the event which required the filing of such amendment.
6. In addition to Instruction 3, an issuer may incorporate by reference information contained in any document attached hereto or previously filed with the Commission. Any such reference should be to the page and paragraph number or other specified portion of the document where the information is located.
7. Attach a copy of any offering circular, prospectus, memorandum, brochure, subscription agreement or other document which has been or is proposed to be used in connection with the sale of the securities which are the subject of this filing. **IF THE ISSUER DOES NOT PROPOSE TO USE ANY SUCH DOCUMENT, SUBMIT A WRITTEN EXPLANATION DETAILING THE MANNER IN WHICH THE ISSUER PROPOSES TO DISCLOSE ALL MATERIAL FACTS TO PROSPECTIVE INVESTORS IN PENNSYLVANIA.**
8. The appropriate filing fee required in Section 602(b.1)(viii) or (ix) shall accompany the filing of this Form and is a condition of the availability of the exemption (see 70 P. S. § 1-203(d)(iv), 203(s)(ii) and 203(t)(iii)). Checks are to be payable to the "Commonwealth of Pennsylvania." There is no provision for a refund of a filing fee (see 70 P. S. § 1-602(b.2)).

**FILING FEE FOR SECTION 203(d) AND 203(s):**

Offering in Pennsylvania is less than \$1 million:	\$150
Offering in Pennsylvania is \$1 million or more:	\$400

<b>FILING FEE FOR SECTION 203(t):</b>	<b>\$500</b>
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**9. Please remove this instruction sheet before filing this Form.**

**EACH PERSON COMPLETING THIS FORM OR PROVIDING INFORMATION TO BE INCLUDED IN THIS FORM SHOULD BE FAMILIAR WITH THE PENALTIES CONTAINED IN THE ACT, AND ALL REGULATIONS ADOPTED THEREUNDER FOR MAKING FALSE OR INCOMPLETE STATEMENTS IN CONNECTION WITH THE SALE OF A SECURITY OR IN ANY FILING WITH THE COMMISSION.**

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA SECURITIES COMMISSION**

**NOTICE FILING UNDER THE PENNSYLVANIA SECURITIES ACT OF 1972 ("ACT") TO CLAIM AN  
EXEMPTION UNDER:  
(CHECK ONE)**

**SECTION 203(d)—"LIMITED OFFERING EXEMPTION"**

☐ **(Complete Parts I, II & V)**

**SECTION 203(s)—"SEC RULE 505 EXEMPTION"**

☐ **(Complete Parts I, III & V)**

**SECTION 203(t)—"ACCREDITED INVESTOR EXEMPTION"**

☐ **(Complete Parts I, IV & V)**

**PART I. Information about the Issuer ("Issuer")**

**1. Legal Status of the Issuer**

(A) **Exact Name of Issuer:** \_\_\_\_\_

(B) **State and Date of incorporation or formation:** \_\_\_\_\_  
State Date

**2. Addresses**

(A) **Address of principal office of Issuer:** \_\_\_\_\_  
Number and Street

City State Zip Code Telephone No.

(B) **Address of Issuer's primary place of business in Pennsylvania (if other than listed in (A)):**

Number and Street

City State Zip Code Telephone No.

(C) **Name and address of person to whom correspondence regarding this filing should be sent:**

Name Title Number and Street

City State Zip Code Telephone No.

(D) **Name and address of counsel to Issuer (if other than listed in (C)):**

Name Number and Street

City State Zip Code Telephone No.

**3. Briefly describe the business of the Issuer. \_\_\_\_\_ Check here if responding to this item by incorporating Item 1 of completed SEC Form D attached hereto.**

**4. State the names and addresses of persons holding any of the following positions with the Issuer:**

(A) **General partner**

(B) **Promoter (as defined in Section 102(o) of the Act)**

(C) **Manager (if a limited liability company)**

(D) **President**

(E) **Chief executive officer**

(F) **Chief operating officer**

(G) **Chief financial officer**

(H) **Director who owns 5% or more of any class of voting equity securities of the Issuer (exclusive of any beneficial interest in a voting shareholder which is an institutional investor as defined in Section 102(k) of the Act and Regulation 102.111).**

**5. Indicate if any person described in Item 4 currently is registered as an agent under Section 301 of the Act or as a principal of a broker-dealer registered under Section 301 of the Act.**

NO\_\_ YES\_\_

**If YES, provide the individual's name, employer and Central Registration Depository number.**

6. Indicate if any person described in Item 4 has been the subject of a Commission order issued under Section 512 (Statutory Bars) or Section 513 (Rescission Orders) of the Act or an order of a court of competent jurisdiction under Section 509(c) of the Act (Civil Contempt).

NO\_\_\_ YES\_\_\_

If YES, describe fully.

7. Description of Securities to be Sold

Describe type and amount of securities proposed to be sold, price per unit and expected net proceeds to the Issuer. \_\_\_ Check here if responding to this item by incorporating Items C.1-4 of completed SEC Form D attached hereto. Price Per Unit must be shown here or on SEC Form D.

8. Use of Proceeds

Describe in detail the intended use of proceeds from the offering, stating the amounts to be used for each purpose and in order of priority of uses. \_\_\_ Check here if responding to this item by incorporating Item C.5 of completed SEC Form D attached hereto.

9. Sales Commissions

(A) List amounts proposed to be paid for any underwriting fee or sales commission. Identify all persons who will receive any such fee and the basis on which it will be paid. \_\_\_ Check here if responding to this item by incorporating Items B.1-4 of completed SEC Form D attached hereto.

(B) With respect to any person receiving compensation who is not a broker-dealer registered under Section 301 of the Act, explain why the person is not a promoter as that term is defined in Section 102(o) of the Act.

10. Previous Sales of Securities in Pennsylvania

(A) By the Issuer.

Describe all sales of securities made in Pennsylvania during the past two years that directly or indirectly benefitted the Issuer. Include securities issued in exchange for property, services, or other securities and new securities resulting from modification of outstanding securities. In each case, state:

- (i) The date of sale and description of the securities sold;
- (ii) Underwriting or selling fees or commissions paid and to whom paid;
- (iii) Section of the Act or regulation relied upon for the offer and sale of securities.

(B) By a person related to the Issuer.

Within the period of two years prior to the date of this Notice, did any person described in Item 4(A)—(H) hold, with respect to another person (who is not the Issuer), a position as a general partner, promoter (as defined in Section 102(o) of the Act), manager (if a limited liability company), president, chief executive officer, chief operating officer, chief financial officer or a director with a 5% or more ownership of any class of voting equity securities (exclusive of any beneficial interest in a voting shareholder which is an institutional investor as defined in Section 102(k) of the Act and Regulation 102.111) at the time when that other person sold securities in Pennsylvania for which a filing with the Commission was required?

NO\_\_\_ YES\_\_\_

If YES, provide the following information:

- (i) Name of that other person which sold the securities;
- (ii) The position held with that other person;
- (iii) Section of the Act or regulation relied upon for the offer and sale of securities;
- (iv) If the proceeds from the sale were paid directly or indirectly to, or used directly or indirectly for, the benefit of the Issuer, please describe in detail.

## PART II. Section 203(d)—“LIMITED OFFERING EXEMPTION”

☐ Check this box if the Issuer is relying on Section 203(d) of the Act (including Regulation 204.010) for sales of securities in Pennsylvania in connection with the offering for which this Notice is being filed.

11. The Issuer, by executing this Notice, agrees, as a condition of the availability of the exemption in Section 203(d), to:

(A) Provide WRITTEN NOTICE to all purchasers of the two business day right of withdrawal contained in Section 207(m)(2) of the Act. The notice should appear prominently by underlining or capitalization in materials to be given to investors, which materials must be FILED with this Form. Section 207(m)(2) is reproduced below:

Section 207(m)(2). “Each person who accepts an offer to purchase securities exempted from registration by Section 203(d), directly from the issuer or affiliate of the issuer, shall have the right to withdraw his acceptance without incurring any liability to the seller, underwriter (if any) or any other person within 2 business days from the date of receipt by the issuer of his written binding contract of purchase or, in the case of a transaction in which there is no binding contract of purchase, within 2 business days after he makes the initial payment for the securities being offered.”

(B) Obtain the written agreement of each purchaser not to sell, except in accordance with Regulation 204.011, the security within 12 months after the date of purchase and FILE with this Form a copy of the proposed agreement that investors will be asked to sign.

12. As a condition of the availability of the exemption in Section 203(d), the Issuer, by executing this Notice, represents to the Commission that:

(A) No public media advertisement will be used or mass mailing made in connection with soliciting sales of securities.

(B) No cash or securities will be given or paid, directly or indirectly, to any promoter as compensation in connection with a sale of securities unless such compensation is given or paid in connection with a sale made by a broker-dealer registered under Section 301 of the Act and any person receiving such compensation is either that broker-dealer or an agent of that broker-dealer who is registered under Section 301 of the Act.

13. Has any person described in Item 9(B) been convicted of any crime or made the subject of any sanction described in Section 305(a)(ii)—(ix) of the Act.

NO \_\_\_\_\_ YES \_\_\_\_\_

If YES, describe fully. Be advised that an affirmative answer may disqualify the issuer from relying upon Regulation 204.010(a)(1)(i) and (ii).

### PART III. Section 203(s)—“SEC RULE 505 EXEMPTION”

☐ Check this box if the Issuer is relying on Section 203(s) of the Act for offers and sales of securities in Pennsylvania in connection with the offering for which this Notice is being filed.

14. As a condition of the availability of the exemption in Section 203(s), the Issuer, by executing this Notice, represents to the Commission that:

(A) The offer and sale of the securities which are the subject of this Notice are exempt from registration under Section 5 of the Securities Act of 1933 (“1933 Act”) pursuant to Rule 505 SEC Regulation D adopted under Section 3(b) of the 1933 Act (17 C.F.R. § 230.505).

(B) No mass mailing will be used, public media advertising made, or other form of general solicitation utilized in connection with offers and sales of securities in Pennsylvania which are the subject of this Notice.

(C) No compensation will be given or paid, directly or indirectly, to any person in connection with a sale of securities in Pennsylvania (except for compensation given or paid in connection with a sale made by a broker-dealer registered under Section 301 of the Act) which is the subject of this Notice.

(D) Neither the Issuer nor a predecessor of the Issuer; affiliate of the Issuer; officer, director or general partner of the Issuer; promoter of the Issuer presently connected with the Issuer in any capacity; beneficial owner of ten per cent or more of any class of equity securities of the Issuer; underwriter of the securities to be offered or any partner, director or officer of the underwriter is subject to the disqualification provisions in Section 203(s)(v) of the Act.

### Part IV. Section 203(t)—“ACCREDITED INVESTOR EXEMPTION”

☐ Check this box if the Issuer is relying on Section 203(t) of the Act for offers and sales of securities in Pennsylvania in connection with the offering for which this Notice is being filed.

15. As a condition of the availability of the exemption in Section 203(t), the Issuer, by executing this Notice, represents to the Commission that:

(A) The offer and sale of the securities which are the subject of this Notice are exempt from registration under Section 5 of the 1933 Act pursuant to Section 3(a)(11) of the 1933 Act, SEC Regulation A adopted under Section 3(b) of the 1933 Act (17 C.F.R. §§ 230.251—263), or Rule 504 of SEC Regulation D adopted under Section 3(b) of the 1933 Act (17 C.F.R. § 230.540).

(B) It will specify in any advertisement, communication, sales literature, or other information being publicly disseminated in connection with the offering of securities which is the subject of this Notice (including by means of electronic transmission) that the securities will be sold only to Accredited Investors as that term is defined in Rule 501 of SEC Regulation D (17 C.F.R. § 230.501).

(C) It will not engage in any solicitation of prospective purchasers by telephone until the Issuer has reasonable grounds to believe that the person being solicited is an Accredited Investor.

(D) It will place a legend on the cover page of any disclosure document proposed to be used in connection with the offering or on the cover page of the subscription agreement stating that the securities described in the disclosure document or subscription agreement will be sold only to Accredited Investors.

(E) No compensation will be given or paid, directly or indirectly, to any person in connection with a sale of securities in Pennsylvania (except for compensation given or paid in connection with a sale made by a broker-dealer registered under Section 301 of the Act) which is the subject of this Notice.

(F) It is not an investment company as defined in the federal Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.).

(G) It is not a development stage company with no specific business plan or purpose or a development stage company that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person.

(H) Neither the Issuer nor a predecessor of the Issuer; affiliate of the Issuer; officer, director or general partner of the Issuer; promoter of the Issuer presently connected with the Issuer in any capacity; beneficial owner of 10% or more of any class of equity securities of the Issuer; underwriter of the securities to be offered or any partner, director or officer of the underwriter is subject to the disqualification provisions in Section 203(t)(v) of the Act.

**PART V. Affirmations (to be completed by all Issuers)****16. By executing this Form on behalf of the Issuer, the signatory affirms that:**

(A) The undersigned is familiar with the provisions of Section 203(d), (s), or (t) of the Act and all regulations adopted thereunder, including Regulation 204.010.

(B) The statements made herein, including all attachments hereto, are not incomplete in any material respect or false or misleading with respect to any material fact.

IN WITNESS WHEREOF, this Notice has been duly executed on \_\_\_\_\_

(Insert Date)

(NAME OF ISSUER)

BY: \_\_\_\_\_

Title

[ (c) ] (b) \* \* \*

\* \* \* \*

[ (d) ] (c) \* \* \*

[ (e) ] (d) During the period of the offering, the issuer shall take steps necessary to ensure that the material information contained in its notice remains current and accurate in all material respects. If a material statement made in the notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file **an amendment** with the Commission [ **an amendment on Form AM** ] in accordance with § 609.011 (relating to amendments to filings with Commission) within 5 business days of the occurrence of the event which required the filing of the amendment.

**§ 203.091. Equity securities issued by reporting company.**

\* \* \* \*

(c) For purposes of this section and the availability of the exemption contained in section 203(i.1) of the act (70 P.S. § 1-203(i.1), the term "equity security" includes:

(1) Common stock, preferred stock and nondebt securities convertible into common or preferred stock.

(2) Nontransferable warrants to purchase any of the foregoing.

(3) Transferable warrants exercisable within not more than 90 days of issuance to purchase any of the foregoing.

FORM 203-I

(Instruction Sheet)

PENNSYLVANIA SECURITIES COMMISSION

\* \* \* \*

Notice under Section 203(i) of the  
Pennsylvania Securities Act of 1972

NOTE: Under Regulation 603.011, a document is not deemed filed with the Commission unless complete and properly executed in all material respects.

**Who May File:** Only issuers meeting the following requirements may file Form 203-I: (1) the issuer is a reporting company as defined in Section 102(q) of the Pennsylvania Securities Act of 1972 (Act); (2) the issuer is NOT an open-end or closed-end investment company, face amount certificate company or unit investment trust as

those persons are classified in the Investment Company Act of 1940; (3) the issuer's securities are proposed to be registered under section 5 of the Securities Act of 1933 or exempt from registration under Regulation A promulgated under section 3(b) and, in fact, become so registered or exempted; (4) the issuer's securities are equity securities as defined in § 203.091(c) which are listed on a national securities exchange registered under the Securities Exchange Act of 1934 or quoted on the National Association of Securities Dealers Automated Quotation System; (5) the issuer has not received, as of the date of filing Form 203-I with the Commission, an auditor's report for the immediately preceding fiscal year expressing substantial doubt about the issuer's ability to continue as a going concern where the securities to be sold in reliance upon the exemption in Section 203(i.1) are not being underwritten on a firm commitment basis by a broker-dealer registered under Section 301 of the Act; (6) the issuer is not subject to an effective stop order or refusal order and no public proceeding or investigation looking toward such an order is pending under the Act or the Securities Act of 1933 and (7) the issuer [ **undertakes to mail** ] **files** two copies of the final prospectus [ **within two business days after filing same with the U. S. Securities and Exchange Commission** ] with Form 203-I.

\* \* \* \*

GENERAL INSTRUCTIONS

\* \* \* \*

4. During the period of the offering, copies of a post-effective amendment or sticker to the prospectus or offering circular shall be [ **mailed to** ] **filed with** the Commission within two business days after it is filed with the U. S. Securities and Exchange Commission.

5. In the event that, at any time from the date of filing of the Form with the Commission until the conclusion of the offering, any material statement made in the Form or in any attachment thereto becomes incorrect or inaccurate in any material respect, the issuer shall file an amendment with the Commission [ **on Form AM** ] **in accordance with § 609.011 (relating to amendments to filings with Commission)** within 5 business days of the occurrence of the event which required the filing of such amendment.

\* \* \* \*

File No. \_\_\_\_\_ FORM 203-I

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA SECURITIES COMMISSION  
Notice Under Section 203(i.1) of the  
Pennsylvania Securities Act of 1972

\* \* \* \* \*

**PART II** Answer YES or NO to questions 6 through 11 and question 12 if applicable. The exemption is NOT available to an Issuer which answers NO to any of the following questions:

\* \* \* \* \*

YES NO

9. Does the Issuer hereby undertake to [ ] [ ] [ ]  
[ **mail** ] file two copies of the final  
prospectus or offering circular [ **to** ] with the  
Commission [ **within 2 business days after**  
**the prospectus or offering circular is**  
**filed with the Securities and Exchange**  
**Commission** ]?

\* \* \* \* \*

**PART III** Affirmation

\* \* \* \* \*

IN WITNESS WHEREOF, This statement has been  
duly executed [ **this** \_\_\_\_\_ **day of** \_\_\_\_\_,  
**19** \_\_\_\_ ] \_\_\_\_\_.

(Insert Date)

\* \* \* \* \*

[ (c) For purposes of this section and the availability of the exemption contained in section 203(i.1) of the act (70 P. S. § 1-203(i.1), the term "equity security" includes common stock, preferred stock and nondebt securities convertible into common or preferred stock; nontransferable warrants to purchase any of the foregoing; and transferable warrants exercisable within not more than 90 days of issuance to purchase any of the foregoing. ]

**§ 203.101. Mortgages.**

(a) For the purpose of section 203(j) of the act (70 P. S. § 1-203(j)), the exemption shall be available [ **where** ] **only if:**

(1) The entire **bond or other** evidence of indebtedness, together with the **real or chattel** mortgage, deed of trust, agreement of sale or other instrument securing the same is **offered and sold** as one unit.

\* \* \* \* \*

(3) The outstanding principal amount of all bonds or other evidences of indebtedness that are secured by the real or chattel mortgage, deed of trust or agreement of sale on the same property (including bonds and other evidences of indebtedness issued in the transaction) does not exceed the fair market value of the property at the time of the transaction.

(4) No public media advertisement is used, mass mailing made or other form of general solicitation is utilized in connection with soliciting the transaction.

(5) No compensation is paid or given directly or indirectly for soliciting any person in this Commonwealth in connection with the transaction.

(6) The issuer, at the time of the transaction, is in compliance with any applicable licensing requirements of the Department of Banking.

[ **Provided, that the** ]

(b) The exemption [ **contained** ] in section 203(j) [ **of the act (70 P. S. § 1-203(j))** ] may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P. S. § 1-201) or a transaction made in violation of the [ **anti-fraud** ] **anti-fraud** provisions of **Part IV** of the act [ **(70 P. S. § 1-407)** ] (70 P. S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

[ (b) No public media advertisement or mass mailing may be made in connection with soliciting offers or sales of such mortgage units; provided, that nothing herein shall limit mailings to institutional investors or registered broker-dealers, as those terms are defined in the act and the regulations adopted thereunder. ]

**§ 203.141. Sales to existing security holders.**

(a) [ **Notice shall be given to the Commission of any proposed offers and sales of securities by an issuer to its existing equity security holders under the exemption contained in section 203(n) of the act (70 P. S. § 1-203(n)) on the following form, designated by the Commission as Form 203-N:** ]

(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of FORM 203-N as it appears in 64 Pa. Code pages 203-22—203-26 and serial pages (209004) and (200031)—(200034).)

[ (b) ] \* \* \*

\* \* \* \* \*

[ (c) ] (b) \* \* \*

\* \* \* \* \*

[ (d) ] (c) For purposes of subsection [ (b) ] (a)(2), an offer will be deemed to have been made pro rata when the following [ **exists** ] exist:

\* \* \* \* \*

[ (e) ] (d) \* \* \*

[ (f) ] (e) \* \* \*

[ (g) ] (f) \* \* \*

(g) For purposes of this section, the term "pro rata" means the offering will be made in this Commonwealth proportionately on the basis of the number of shares owned by the existing security holder or the security holder's percentage ownership interest in the issuer. By way of illustration, an offering will be deemed to have been made on a pro rata basis where the issuer offers its existing security holder an opportunity to purchase one new share of stock for each five shares owned as of a record date or when the issuer offers an existing security holder owning 3% of the issuer's stock as of a record date, the opportunity to purchase 3% of the issuer's current offering.

**§ 203.151. Proxy [ **statements** ] materials.**

(a) Except as provided in subsection (b), in a transaction requiring the filing of proxy materials with the



Commission for review under section 203(o) [ (ii) ] of the act (70 P. S. § 1-203(o) [ (ii) ]), the materials shall conform to SEC Rule 14A, 17 CFR 240.14a-1—240.14b-1 (relating to solicitation of proxies) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk).

(b) In a transaction subject to the filing requirements of section 203(o) [ (ii) ] of the act [ (70 P. S. § 1-203(o)(ii)) ], filing is not required if the number of persons to whom securities are offered and sold in this Commonwealth does not exceed 25, exclusive of principals—as that term is defined in § 203.184 (relating to offers and sales to principals)—of the entities whose security holders are voting or providing written consent.

(c) Except for transactions described in subsection (b), notice shall be given to the Commission for a transaction requiring the filing of proxy materials with the Commission under section 203(o) [ (ii) ] of the act [ (70 P. S. § 1-203(o)(ii)) ] by filing the following form designated by the Commission as Form 203- [ o-(ii) ] O together with the exemption filing fee specified in section [ 602(b)(v) of the act (70 P. S. § 1-602(b)(v)) ] 602(b.1)(v) of the act (70 P. S. § 1-602(b.1)(v)):

FORM 203- [ o(ii) ] O  
(Instruction Sheet)

PENNSYLVANIA SECURITIES COMMISSION  
[ 333 Market Street, Harrisburg, Pennsylvania  
17101 ]  
THE EASTGATE OFFICE BUILDING  
1010 NORTH SEVENTH STREET, 2ND FLOOR  
HARRISBURG, PENNSYLVANIA 17102-1410  
TELEPHONE: (717) 787-8059

\* \* \* \* \*

[ Notice under Section 203(o)(ii) of the  
Pennsylvania Securities Act of 1972 ] NOTICE  
UNDER SECTION 203(o) OF THE  
PENNSYLVANIA SECURITIES ACT OF 1972

NOTE: Under regulation 603.011, a document is not deemed filed with the Commission unless complete and properly executed in all material respects.

WHO MUST FILE: Issuers of securities meeting the following requirements must file Form 203-O:

(1) The proposed transaction is incident to a vote by security holders or written consent of some or all security holders in lieu of such vote;

(2) No proxy materials are required or permitted to be filed with the Securities and Exchange Commission by either party to the transaction;

(3) More than twenty-five percent of the security holders of either party to the transaction are residents of this Commonwealth; and

(4) The number of persons to whom securities are offered and sold in this Commonwealth exceeds 25, exclusive of principals (as that term is defined in § 203.184 (relating to offers and sales to principals)) of the entities whose security holders are voting or providing written consent.

WHERE AND WHEN TO FILE: At the Commission's Harrisburg office prior to the vote or solicitation of written consent. Materials prepared in connection with a proposed transaction under Section

**203(o) must be filed AND reviewed by the Commission prior to distribution to the security holders of each party to the proposed transaction.**

General Instructions

1. [ Two copies of this Form and all exhibits or schedules should be filed with the Commission at the above address. ] One manually signed copy and one photocopy of the Form and two copies of all attachments must be filed with the Pennsylvania Securities Commission. If mailed, it is advisable to send registered or certified mail, postage prepaid, return receipt requested.
2. Typewrite or print all answers in the space provided. Answer each item completely. An answer of "not applicable" is inappropriate. If the space is insufficient, attach a schedule to the Form and make reference to each item included in the schedule.
3. [ Do not abbreviate names or use initials. All questions should be answered fully.
4. Each copy of the ] The Form filed with the Commission [ should ] must be manually signed by the issuer. If the issuer is a corporation, it should be signed in the name of the corporation by [ a principal ] an executive officer duly authorized [ and the corporate seal affixed, duly attested ]; if a partnership, it should be signed in the name of the partnership by a general partner; if an unincorporated association or other organization, not a partnership, this Form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.
- [ 5 ] 4. [ During the period of the offering described in the Form, the issuer shall be required to file necessary amendments thereto to correct or update any information contained therein to take account of any material change. ] In the event that, at any time from the date of filing of the Form with the Commission until the conclusion of the offering, any material statement made in the Form or in any attachment thereto becomes incorrect or inaccurate in any material respect, the issuer shall file any amendment with the Commission in accordance with § 609.011 (relating to amendment filings with Commission) within 5 business days of the occurrence of the event which required the filing of the amendment.
- [ 6. All checks should be made payable to the Commonwealth of Pennsylvania.
- 7 ] 5. In lieu of answering any specific question in the Form, the issuer may incorporate by reference information contained in any documents attached thereto or previously [ on file ] filed with the Commission. Any [ such ] reference should be [ in ] to the page and paragraph number [ of ] or other specified portion of the document where the information is located.

6. Attach copies of any offering circular, prospectus, memorandum, subscription agreement or other document or brochure which has been or is proposed to be used in connection with the offering of the securities which are the subject of this filing.
- [ 8. The Form should only be used for situations which arise under Section 203(o)(ii). If any question arises as to the necessity for filing this Form or the applicability of this section, call or write to the Commission at the address listed above.
9. Please remove the instruction sheet before filing this Form. ]
7. The appropriate filing fee required by Section 602(b.1)(v) of the Act must accompany the filing of this Form and is a condition of availability of the exemption (see 70 P. S. § 1-203(o)). Checks are to be payable to the "Commonwealth of Pennsylvania."
- [ 10. Persons are advised to review thoroughly the anti-fraud provisions of Part IV of the Act, as well as those contained in the Federal Securities Laws. No offering

should be made by means of any document or documents which are false or misleading in any respect or fail or omit to state any material fact. Further, no offering should be made without offering literature, if such literature is necessary to ensure that offerees are fully apprised of all facts and circumstances necessary to permit a person to make an informed investment decision about the securities being offered. Your attention is also directed to recent court decisions and actions taken by the United States Securities and Exchange Commission regarding the necessity of giving complete information to investors in securities offerings. ]

8. Please remove this instruction sheet before filing this Form.

EACH PERSON COMPLETING THIS FORM OR PROVIDING INFORMATION TO BE INCLUDED IN THIS FORM SHOULD BE FAMILIAR WITH THE PENALTIES CONTAINED IN THE ACT, AND ALL REGULATIONS ADOPTED THEREUNDER, FOR MAKING FALSE OR INCOMPLETE STATEMENTS IN CONNECTION WITH THE SALE OF A SECURITY OR IN ANY FILING WITH THE COMMISSION.

FORM 203-[ o(ii)Pg. 2 ]O

[ File No. \_\_\_\_\_  
 Fee Paid: \$ \_\_\_\_\_  
 Deficiency Letters \_\_\_\_\_  
 Effect Date: \_\_\_\_\_  
 (For Commission Use Only) ]

COMMONWEALTH OF PENNSYLVANIA  
 PENNSYLVANIA SECURITIES COMMISSION

APPLICATION UNDER SECTION 203(o) [ (ii) ] OF THE PENNSYLVANIA SECURITIES ACT OF 1972

\* \* \* \* \*

4. (A) Legal Form of Issuer (Corporation, Partnership, etc.): \_\_\_\_\_  
 \_\_\_\_\_
- (B) State and Date of Incorporation or formation: \_\_\_\_\_  
 State Date
- (C) [ Name of any Predecessor of Issuer: \_\_\_\_\_
- (D) ] Describe briefly the nature of Issuer's business.

\* \* \* \* \*

8. Describe all sales of securities directly or indirectly for the benefit of the Issuer made in this Commonwealth during the past three years. Include securities issued in exchange for property, services or other securities and new securities resulting from the modification of outstanding securities. In each case, state:  
 [ (a) the ] (A) The date of sale and title and amount of securities sold;  
 [ (b) class ] (B) Class of persons to whom securities were sold;  
 [ (c) per ] (C) Per unit and aggregate offering price or nature of consideration paid;  
 [ (d) underwriting ] (D) Underwriting or selling fees or commissions;  
 [ (e) the ] (E) The exemption or other provision of the Pennsylvania Securities Act relied upon and the facts upon which such reliance is based [ ; ].  
 [ (f) the date of receipt of a certificate of exemption or the date of any filing with the Commission with respect to such sale.

(g) Does issuer believe that in each instance described above full compliance was had with all provisions of the Act, including all statements made in filings with the Commission with respect to such sales? ]

9. **Affirmation.**

By executing this Form on behalf of the issuer, the signatory affirms that:

(A) [ Issuer affirms that a ] A copy of the proxy or other materials referred to in Item 6 has been or will be mailed to all affected security holders in accordance with applicable state laws.

[ 10. ] (B) [ Issuer hereby affirms that there ] There is no stop order in effect and no public proceeding pending under any Federal or State securities or other law governing any party with respect to the transaction described in the materials submitted under Item 6.

(C) The undersigned is familiar with the provisions of Section 203(o) and all regulations adopted thereunder.

(D) The statements made herein, including all attachments hereto, are not incomplete in any material respect or false or misleading with respect to any material fact.

[ 11. Each of the persons executing this Notice on behalf of the issuer hereby affirms that he is familiar with Section 203(o) and all regulations adopted thereunder. Each of the persons executing this Notice on behalf of the Issuer hereby further affirms that the statements made herein, including all attachments hereto, taken individually or collectively, are not incomplete in any material respect or false or misleading with respect to any material fact. Each of such persons further affirms that he is familiar with the penalties contained in the Pennsylvania Securities Act of 1972, and all regulations adopted thereunder for making any false or incomplete statements in connection with the sale of a security or in any filing with the Commission. ]

IN WITNESS WHEREOF, [ Issuer has caused ] this Application [ to be ] has been duly executed [ on its behalf by the undersigned thereunto duly authorized ] \_\_\_\_\_ .  
(Insert Date)

(Name of Issuer)

By: \_\_\_\_\_

[ Affix corporate seal  
if Issuer is a  
corporation.) ]

\_\_\_\_\_  
(Title)

[ By: \_\_\_\_\_

\_\_\_\_\_  
(Title)

**AFFIDAVIT**

STATE OF \_\_\_\_\_:

COUNTY OF \_\_\_\_\_:

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, a personally appeared \_\_\_\_\_ and \_\_\_\_\_ who, duly being sworn, according to law, do depose and say that, to the best of \_\_\_\_\_ knowledge and belief the statements contained in the foregoing notice are true and correct and that complete answers have been given to each of the items contained herein, and that they are \_\_\_\_\_ and \_\_\_\_\_ respectively of \_\_\_\_\_ corporation and are duly authorized to execute papers on behalf thereof.

\_\_\_\_\_  
My Commission Expires: ]

**§ 203.161. Debt securities of nonprofit organizations.**

(a) A person proposing to offer debt securities under section 203(p) of the act (70 P. S. § 1-203(p)) shall complete and file with the Commission two copies of the following notice, designated by the Commission as Form 203-P.

FORM 203-P  
(Instruction Sheet)

**PENNSYLVANIA SECURITIES COMMISSION**  
**[ 471 Education Building, Harrisburg,**  
**Pa. 17120 ]**  
**THE EASTGATE OFFICE BUILDING**  
**1010 NORTH SEVENTH STREET, 2ND FLOOR**  
**HARRISBURG, PENNSYLVANIA 17102-1410**  
**TELEPHONE: (717) 787-8059**

\* \* \* \* \*

**NOTICE UNDER SECTION 203(p) OF THE  
PENNSYLVANIA SECURITIES ACT OF 1972**

**NOTE: Under regulation 603.011, a document is not deemed filed with the Commission unless complete and properly executed in all material respects.**

**WHO MUST FILE: Issuers offering or selling securities in this Commonwealth in reliance upon Section 203(p) of the Act.**

**WHERE TO FILE: At the Commission's Harrisburg office at least ten days before any of the securities are sold in this Commonwealth.**

GENERAL INSTRUCTIONS

1. **[ Two copies of this Form and all exhibits or schedules should be filed with the Commission at the above address. ]** One manually signed copy and one photocopy of the Form and two copies of all attachments must be filed with the Pennsylvania Securities Commission. If mailed, it is advisable to send registered or certified mail, postage prepaid, return receipt requested.
  2. Typewrite or print all answers in the space provided. **Answer each item completely. An answer of "not applicable" is inappropriate.** If the space is insufficient, attach a schedule to the Form and make reference to each item included in the schedule.
  3. **[ Do not abbreviate names or use initials. All questions should be answered fully.**
  4. **Each copy of the ]** The Form filed with the Commission **[ should ]** must be manually signed by the issuer. If the issuer is a corporation, it should be signed in the name of the corporation by **[ a principal ]** an executive officer duly authorized **[ and the corporate seal affixed, duly attested ]**; if a partnership, it should be signed in the name of the partnership by a general partner; if an unincorporated association or other organization, not a partnership, this Form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.
- [ 5. ] 4. [ During the period of the offering described in the Form, the issuer shall be required to file necessary amendments thereto to correct or update any information contained therein to take account of**

any material change. ] In the event that, at any time from the date of filing of the Form with the Commission until the conclusion of the offering, any material statement made in the Form or in any attachment thereto becomes incorrect or inaccurate in any material respect, the issuer shall file an amendment with the Commission in accordance with § 609.011 (relating to amendment filings with Commission) within 5 business days of the occurrence of the event which required the filing of the amendment.

- [ 6. ] 5.** In lieu of answering any specific question in the Form, the issuer may incorporate by reference information contained in any document attached thereto or previously **[ on file ]** filed with the Commission. Any **[ such ]** reference should be to the page and paragraph number or other specified portion of the document where the information is located.

- 6.** All purchasers must be informed of the two business day right of withdrawal contained in Section 207(m)(2) of the Act and disclosure of such a notice should appear prominently by underlining or capitalization in materials to be given to investors. Section 207(m)(2) is reproduced below:

Section 207(m)(2). "Each person who accepts an offer to purchase securities exempted from registration by Section 203(p) directly from the issuer or affiliate of the issuer, shall have the right to withdraw his acceptance without incurring any liability to the seller, underwriter (if any) or any other person within 2 business days from the date of receipt by the issuer of his written binding contract of purchase or, in the case of a transaction in which there is no binding contract of purchase, within 2 business days after he makes the initial payment for the securities being offered."

- 7.** **[ The Form should only be used for situations which arise under Section 203(p). If any question arises as to the necessity for filing this Form or the applicability of this section, call or write to the Commission at the address listed above.**
- 8.** **Please remove this instruction sheet before filing this Form. ]**

Attach copies of any offering circular, prospectus, memorandum, subscription agreement or other document or brochure which has been or is proposed to be used in connection with the offering of the securities which are the subject of this filing.

- 8.** The issuer will be required to maintain the books and records required by Section 209 and the regulations thereunder and, if applicable, will be required to make the reports required by Sections 209 and 606(a) and the regulations adopted thereunder.

9. [ Persons are advised to review thoroughly the anti-fraud provisions of Part IV of the Act, as well as those contained in the Federal Securities Laws. No offering should be made by means of any document or documents which are false or misleading in any respect or fail or omit to state any material fact. Further, no offering should be made without offering literature, if such literature is necessary to ensure that offerees are fully apprised of all facts and circumstances necessary to permit a person to make an informed investment decision about the securities being offered. Your attention is also directed to recent court decisions and actions taken by the United States Securities and Exchange Commission regarding the necessity of giving complete information to investors in securities offerings.
10. Your attention is further directed to the provisions of Section 207(m) and the regulations adopted thereunder with respect to withdrawal of acceptance by an offeree, and Section 209 and the regulations

adopted thereunder with respect to the required records and reports. ]

The appropriate filing fee required in Section 602(b.1)(v) of the Act must accompany the filing of this Form and is a condition of the availability of the exemption (see 70 P. S. § 1-203(p). Checks are to be payable to the "Commonwealth of Pennsylvania." There is no provision for a refund of a filing fee (see 70 P. S. § 1-602(b.2)).

10. Please remove this instruction sheet before filing this Form.

EACH PERSON COMPLETING THIS FORM OR PROVIDING INFORMATION TO BE INCLUDED IN THIS FORM SHOULD BE FAMILIAR WITH THE PENALTIES CONTAINED IN THE ACT, AND ALL REGULATIONS ADOPTED THEREUNDER, FOR MAKING FALSE OR INCOMPLETE STATEMENTS IN CONNECTION WITH THE SALE OF A SECURITY OR IN ANY FILING WITH THE COMMISSION.

FORM 203-P

[ File No. \_\_\_\_\_  
Action Taken: \_\_\_\_\_  
(For Commission Use Only) ]

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA SECURITIES COMMISSION**

**NOTICE UNDER SECTION 203(p) OF THE  
PENNSYLVANIA SECURITIES ACT OF 1972**

\* \* \* \* \*

4. (A) Legal Form of Issuer (corporation, partnership, association etc.) \_\_\_\_\_

- (B) State and Date of Incorporation [ or formation and Act under which formed ]:

State Date [ Act and Citation ]

\* \* \* \* \*

5. (E) Describe the terms of any escrow being created to satisfy the requirements of [ Subsection ] Section 203(p)(iii).

\* \* \* \* \*

7. State the [ subsection of Section 501(c) of the Internal Revenue Code of 1954 ] Section of the Internal Revenue Code under which Issuer claims tax exempt status, if any. \_\_\_\_\_  
Has any such tax exemption ever been challenged? \_\_\_\_\_ (YES or NO)  
If yes, describe fully all surrounding facts and circumstances and state the result of such challenge.

8. [ (A) Are any security holders (of record) of Issuer residents of Pennsylvania?

YES ☐ NO ☐

- (B) Has the Issuer, within the previous two years, sold securities in Pennsylvania?

YES ☐ NO ☐

If [ the answer to (B) above is "yes", ] YES, describe the circumstances under which sales were made, including: (i) offering prices; (ii) the dates, classes and amounts of securities sold; (iii) the exemption or other provision of the [ applicable Pennsylvania securities law ] Act or regulations of the Commission relied upon in each [ such ] instance [ and the dates of any filing with this Commission with respect to such sale ].

9. [ The issuer hereby undertakes to keep and maintain the books and records and to file the reports required by Section 209 and the regulations adopted thereunder and will authorize the person having custody of such books and records to make them available to the Commission.
10. Attach a copy of any offering circular, prospectus, memorandum or other document or brochure which has been or is proposed to be used in connection with the sale of securities which are the subject of this Notice.
11. Each of the persons who has executed this Notice on behalf of the Issuer affirms that all conditions contained in Section 203(p) of the Pennsylvania Securities Act of 1972 have been, or will be, met with respect to the securities offering which is the subject of this Notice.
12. Each of the persons executing this Notice on behalf of the Issuer hereby affirms that the statements made in this Notice, including all attachments hereto, taken individually or collectively, are not incomplete in any material respect or false or misleading with respect to any material fact. Each of such persons further affirms that he is familiar with the provisions of Section 203(p) and all regulations adopted thereunder, and with the penalties provided for making any false or incomplete statement in any application or other filing submitted to the Commission. ]

**Affirmation.** By executing this Form on behalf of the issuer, the signatory affirms that:

- (A) The undersigned is familiar with the provisions of Section 203(p) and all regulations adopted thereunder.
- (B) The statements made in this Notice, including all attachments hereto, taken individually or collectively, are not incomplete in any material respect or false or misleading with respect to any material fact.

IN WITNESS WHEREOF, this Notice has been duly executed [ this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_ ]

(Insert Date)

\_\_\_\_\_  
(NAME OF ISSUER)

By:\_\_\_\_\_

\_\_\_\_\_  
(Title)

[ By:\_\_\_\_\_

\_\_\_\_\_  
(Title) ]

[ AFFIDAVIT

STATE OF \_\_\_\_\_

SS.

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ , before me, a Notary Public, \_\_\_\_\_ who, duly being sworn, according to law, do \_\_\_\_\_ depose and say that, to the best of \_\_\_\_\_ knowledge and belief the statements contained in the foregoing notice are true and correct and that complete answers have been given to each of the items contained herein, and (if Issuer is a corporation or association the following) that they are \_\_\_\_\_ and \_\_\_\_\_ respectively of \_\_\_\_\_ corporation/association and are duly authorized to execute papers on behalf thereof.

\_\_\_\_\_  
My Commission Expires:\_\_\_\_\_ ]

(b) Except in cases where the delivery of a complete offering circular, before or concurrently with any offer of securities, is not required by order of the Commission as a condition of qualification under section 203(p) of the act (70 P. S. § 1-203(p)), every offering of debt securities pursuant to [such] this section shall be made by an offering circular containing complete information about the securities and the issuer, including the following:

\* \* \* \* \*

(15) A notice describing the provisions of section 207(m)(2) (70 P. S. § 1-207(m)(2)) and informing an offeree or purchaser of the method of exercising the rights created by that section and the regulations promulgated thereunder[ ; ].

\* \* \* \* \*

#### § 203.171. Liquidations, dividends and distributions.

[ (a) ] The phrase “bona fide distribution” as used in section 203(q) of the act (70 P. S. § 1-203(q)) does not include a dividend or other distribution made for the purpose of avoiding the registration provisions of section 201 of the act (70 P. S. § 1-201) or made in violation of [ sections 401—407, ] the [ anti-fraud ] antifraud provisions of the act [ (70 P. S. §§ 1-401—1-407), or both ] (70 P. S. §§ 1-401—1-409) or Subpart D (relating to fraudulent and prohibited practices).

[ (b) The notice of distributions or dividends required in section 203(q) of the act shall be filed with the Commission by the Distributor on the Form, designated as Commission Form 203-Q. ]

(Editor's Note: As part of this proposal, the Commission is proposing to delete FORM 203-Q as it appears in 64 Pa. Code pages 203-41—203-45, serial pages (200049)—(200053).)

#### § 203.183. Agricultural cooperative associations.

\* \* \* \* \*

(b) The following words and terms [ shall ], have, for the purposes of this section, the following meanings:

\* \* \* \* \*

(2) [ **MembersFor** ] **Members—For** purposes of subsection (a)(2) only, includes patrons to the extent that the organic law or another law to which the agricultural cooperative association is subject requires the patrons to be treated as members.

(3) [ **Securitiesmembership** ] **Securities—Membership** agreements, capital stock, membership certificates and an instrument or form of advice which evidences:

\* \* \* \* \*

(4) [ **Engaged in agriculturePersons** ] **Engaged in agriculture—Persons** engaged in farming, dairying, livestock raising, poultry raising, floriculture, mushroom growing, beekeeping, horticulture and allied occupations shall be deemed to be engaged in agriculture.

[ (c) The provisions of § 209.010(b) (relating to required records; report on sales of securities and use of proceeds) and of § 606.011 (relating to financial reports to security holders) may not be applicable to the offer and sale of securities without registration in conformity with this section. ]

#### § 203.184. Offers and sales to principals.

\* \* \* \* \*

(b) For purposes of this section, the term “principal,” means the following:

\* \* \* \* \*

(5) A relative of a person specified in paragraphs (1)—(4). For purposes of this subsection, the term “relative” means one of the following:

\* \* \* \* \*

(iv) An aunt, uncle, child, child of a spouse, sibling, mother-in-law, father-in-law, brother-in-law [ or ], sister-in-law, **son-in-law or daughter-in-law**.

\* \* \* \* \*

[ (e) Section 209.010 (relating to required records; report on sales of securities and use of proceeds) is not applicable to offers and sales of securities under this section. ]

#### § 203.185. Offers prior to effectiveness of registration by qualification exempt.

\* \* \* \* \*

(b) [ Section 209.010(b) (relating to required records; report on sales of securities and use of proceeds) is not applicable to offers made without registration under this section ] The exemption contained in this section may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P. S. § 1-201) or a transaction made in violation of the antifraud provisions of the act (70 P. S. §§ 1-401—1-409) or Subpart D (relating to fraudulent and prohibited practices).

#### § 203.186. Employee takeovers.

(a) Under section 203(r) of the act (70 P. S. § 1-203(r)), the Commission finds that it is not in the public interest nor necessary for the protection of investors to require the registration under section 201 of the act (70 P. S. § 1-201) of securities issued under an investment plan for employees of an existing person designed to purchase securities of a newly created person in transactions:

\* \* \* \* \*

(3) [ Where both of the following conditions are met:

(i) Notice shall be given to the Commission with respect to form and terms of the investment plan at least 15 days prior to the commencement of the operation of the plan in this Commonwealth and the sale of securities thereunder. Such notice shall be on the following form, designated by the Commission as Form 203-R-6: ]

(Editor's Note: As part of this proposal, the Commission is proposing to delete the FORM 203-R-6 as it appears in 64 Pa. Code pages 203-52—203-54, serial pages (200060)—(200062).)

[ (ii) Compulsory ] When compulsory participation in the investment plan by the employee as a condition of employment is not required.

(4) When employees being solicited to purchase securities under the investment plan receive, at least 7 days prior to entering into a binding obligation to purchase or subscribe for the purchase of

securities issued or to be issued under the investment plan, written offering materials that fully and adequately disclose all material facts about the investment plan, including detailed risk factors explaining the potential loss of their investment, and an opinion of counsel that the security when sold will be legally issued, fully paid and nonassessable and, if a debt security, a binding obligation of the issuer.

(5) When any prospective financial statements, as that term is defined in § 609.010 (relating to use of prospective financial statements), used in connection with soliciting the purchase of securities under the investment plan comply with § 609.010(d).

(b) [ All employees being solicited to purchase securities under such plans shall receive in the written disclosure document required by item 9 of Commission's Form 203-R-6 full and adequate disclosure of all material facts as required by section 401(b) of the act (70 P.S. § 1-401(b)), including detailed risk factors relating to any material potential loss of investment. ] The exemption contained in this section may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P.S. § 1-201) or a transaction made in violation of the antifraud provisions of Part IV the act (70 P.S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

#### § 203.187. Small issuer exemption.

\* \* \* \* \*

(b) [ The filing requirements of § 209.010(b) (relating to required records; report on sales of securities and use of proceeds) are not applicable to offers and sales of securities made under this section.

#### (c) ] *Integration.*

(1) \*\*\*

(2) Offers and sales made by the issuer under this section shall be counted as offers and sales under the applicable numerical limitations in section 203(s) of the act (70 P.S. § 1-203(s)) if offers and sales under section 203(s) occur within a period of 6 consecutive months of an offer or sale made under this section.

[ (d) ] (c) *Computation.* Section 609.012 (relating to computing the number of offerees, purchasers and clients) applies to offers and sales of securities made under this section.

#### § 203.189. Isolated transaction exemption.

\* \* \* \* \*

(c) *Inclusion of prior offers and sales.* Offers and sales which occurred within the preceding 12 months from the date of an offer or sale to be made under this section that were made in reliance upon section 203(d), [ or ] (f) or (s) of the act, §§ 203.187 and 204.010(a)(1) and (2) (relating to small issuer exemption; and increasing number of purchasers and offerees), **SEC Rule 506** (17 CFR 230.506) or this section shall be counted against the numerical limitations in subsection (a)(1) and (2).

#### (d) *Integration.*

(1) Offers and sales made by the issuer under this section shall be counted as offers and sales under the

applicable numerical limitations [ set forth ] in § 204.010(a)(1) and (2) if offers and sales occur under § 204.010 within a period of 12 consecutive months of an offer or sale made under this section.

(2) Offers and sales made by the issuer under this section shall be counted as offers and sales under the applicable numerical limitations in section 203(s) of the act (70 P.S. § 1-203(s)) if offers and sales under section 203(s) occur within a period of 6 consecutive months of an offer or sale made under this section.

\* \* \* \* \*

#### § 203.191. SEC Rule 505 offerings.

(a) *Filing requirement.* The notice required by section 203(s)(i) of the act (70 P.S. § 203(s)(i)) shall be filed with the Commission within the time period specified in that section on Commission Form E as set forth in § 203.041 (relating to limited offerings).

(b) *Compensation.* The term "compensation," as used in section 203(s)(iv) of the act, is not limited to receipt of monetary consideration.

(c) *Integration.* Offers and sales made under this section shall be counted as offers and sales under the applicable numerical limitations in section 203(d) and (f) of the act (70 P.S. § 1-203(d) and (f)) and § 204.010 (relating to increasing number of purchasers and offerees).

(d) *Beneficial ownership.* For purposes of section 203(s)(v), whether a person is a beneficial owner of a security shall be determined in accordance with SEC Rule 13d-3 (17 CFR 240.13d-3 (relating to determination of beneficial owner)).

(e) *Amendments.* During the period of the offering, the issuer shall take steps necessary to insure that all material information contained in the notice remains current and accurate in all material respects. If a material statement made in the notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the Commission in accordance with § 609.011 (relating to filing amendments with Commission) within 5 business days of the occurrence of the event which required the filing of the amendment.

#### § 203.201. Accredited investor exemption.

(a) *Filing requirement.* The notice required by section 203(t)(i) of the act (70 P.S. § 203(t)(i)) shall be filed with the Commission within the time period specified in that section on Commission Form E as set forth in § 203.041 (relating to limited offerings).

(b) *General solicitation.* Use of general solicitation in a manner permitted by section 203(t) will not be considered to be an advertisement subject to section 606(c) of the act (70 P.S. § 606(c)) and § 606.031 (relating to advertising literature) but is subject to the antifraud provisions of the act (70 P.S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

(c) *Compensation.* The term "compensation," as used in section 203(t)(iv) of the act, is not limited to receipt of monetary consideration.



(d) *Beneficial ownership.* For purposes of section 203(t)(v) of the act, whether a person is a beneficial owner of a security shall be determined in accordance with SEC Rule 13d-3 (17 CFR 240.13d-3) (relating to determination of beneficial owner).

(e) *Amendments.* During the period of the offering, the issuer shall take steps necessary to insure that all material information contained in the notice remains current and accurate in all material respects. If a material statement made in the notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the Commission in accordance with § 609.011 (relating to filing amendments with Commission) within 5 business days of the occurrence of the event which required the filing of the amendment.

#### CHAPTER 204. EXEMPTION PROCEEDINGS

##### § 204.010. Increasing number of purchasers and offerees.

(a) [*Sales of securities.* Under section 204(a) of the act (70 P.S. § 1-204(a)), the number of purchasers and offerees permitted by section 203(d) and (e) of the act (70 P.S. § 1-203(d) and (e)), respectively, are increased in the manner set forth in this section, except as provided in subsection (b), if all securities transactions made in this Commonwealth under section 203(d) and (e) of the act, including those made under paragraphs (1) and (2) are effected by broker-dealers registered under section 301 of the act (70 P.S. § 1-301):

(1) In addition to the 25 persons to whom sales of securities may be made under section 203(d) of the act, sales of securities under that section also may be made in this Commonwealth during a 12 consecutive month period to:

- (i) Ten additional persons; and
- (ii) An unlimited number of experienced private placement investors, as that term is defined in subsection (d)(1); or
- (iii) As an alternative to, but not in combination with, subparagraphs (i) and (ii), an unlimited number of persons if all sales made under section 203(d) of the act (70 P.S. § 1-203(d)), including those made under this subparagraph, meet all of the following conditions:

(A) The securities are offered or sold in good faith reliance that the offering would qualify for exemption from the Securities Act of 1933 (15 U.S.C.A. §§ 77a-77aa) under Securities and Exchange Commission (SEC) Rules 501, 502, 503 and 505 or 506 of Regulation D (17 CFR 230.501, 230.502, 230.503, 230.505 and 230.506 (relating to rules governing limited offer and sale of securities without registration under the Securities Act of 1933)), as made effective in SEC Release No. 33-6389.

(B) Commission Form 203-D or, in the alternative, SEC Form D (as defined in subsection (d)(4) and Commission Form D Supplement found at § 203.041 (relating to limited offerings), accompanied by a copy of any offering circular, prospectus, memorandum or other document or brochure which has been or is proposed to be used in connection with the offer or sale of the securities, is filed with the Commission no later than the day on which the

securities are first issued or the issuer first receives consideration from a person therefor, whichever is earlier.

(C) The purchaser satisfies the definition of accredited investor in subsection (d)(5) or has a net worth or, where applicable, joint net worth with his spouse (in either event exclusive of home, furnishings and automobiles) at the time of sale of five times the purchaser's total purchase price. The conditions of this subparagraph will be satisfied if the broker-dealer registered under section 301 of the act (70 P.S. § 1-301) who makes the sale satisfies the requirements of subsection (e).

(2) In addition to the 50 persons to whom offers of securities may be made under section 203(e) of the act (70 P.S. § 1-203(e)), offers of securities under that section also may be made in this Commonwealth during a 12 consecutive month period to:

- (i) Forty additional persons; and
- (ii) The number of additional persons equal to those experienced private placement investors, as that term is defined in subsection (d)(1), who actually purchase the securities being offered in the securities transaction; or
- (iii) As an alternative to, but not in combination with subparagraphs (i) and (ii), an unlimited number of persons if all sales resulting therefrom meet the conditions of paragraph (1)(iii). The restriction contained in section 203(d)(ii) of the act (70 P.S. § 1-203(d)(ii)) concerning mass mailings is waived in connection with solicitations made in compliance with this subparagraph.

(3) Issuers which intend to rely on the provisions of subsection (a)(1)(i) and (ii) and have filed or will be timely filing SEC Form D with the SEC may, in lieu of filing Commission Form 203-D, file SEC Form D and Commission Form D Supplement found at § 203.041 with the Commission accompanied by a copy of any offering circular, prospectus, memorandum or other document or brochure which has been or is proposed to be used in connection with the offer or sale of the securities no later than the day on which the securities are first issued or the issuer first receives consideration from a person therefor, whichever is earlier. ]

*Increases in purchasers and offerees.* Under section 204(a) of the act (70 P.S. § 1-204(a)), the number of purchasers and offerees permitted under section 203(d) and (e) of the act, respectively (70 P.S. § 1-203(d) and (e)) shall be increased as follows, if the issuer complies with all the conditions described in subsection (b):

(1) The total number of persons to whom securities may be offered in this Commonwealth during a period of 12 consecutive months under section 203(e) shall be 90 persons, except that offers made to experienced private placement investors, as that term is defined in subsection (d), who actually purchase the securities being offered are not included in the limitation established by this paragraph.

(2) The total number of persons to whom securities may be sold in this Commonwealth during a period of 12 consecutive months under section 203(d) shall be 35 persons, except that sales made to

experienced private placement investors, as that term is defined in subsection (d) are not included in the numerical limitation established by this paragraph.

(b) [ *Disqualification* ] *Conditions.*

(1) [ Subsections (a)(1)(i), (ii), (a)(2)(i) and (ii) are not available to an issuer if the ] *Disqualification.* The issuer or a person who is an officer, director, principal, partner (other than a limited partner), promoter, or controlling person of the issuer or a person occupying a similar status or performing a similar function on behalf of the issuer, has not been convicted of a crime, made the subject of a sanction, or otherwise found to have met any of the criteria described in section 305 (a)(ii)—(xiii) of the act (70 P. S. § 1-305(a)(ii)—(xiii)) unless the person subject to the disqualification is registered under section 301 of the act (70 P. S. § 1-301).

(2) [ Subsections (a)(1)(iii) and (a)(2)(iii) are not available, if any of the persons described in SEC Rule 252(c), (d), (e) or (f) of Regulation A (17 CFR 230.252(c)—(f)) (relating to securities exempted) promulgated under the Securities Act of 1933 (15 U.S.C.A. § 77c(b)):

(i) Has filed a registration statement which is the subject of a currently effective registration stop order entered under any state securities law within 5 years prior to the filing of the notice required under subsection (a)(1)(iii)(B).

(ii) Has, within 5 years prior to the filing of the notice required under subsection (a)(1)(iii)(B), been convicted of a felony or misdemeanor in connection with the purchase or sale of a security or a felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

(iii) Is currently subject to a state administrative enforcement order or judgment entered by that state's securities administrator within 5 years prior to the filing of the notice required under subsection (a)(1)(iii)(B) or is subject to a state administrative enforcement order or judgment in which fraud or deceit, including but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within 5 years of the filing of the notice required under subsection (a)(1)(iii)(B).

(iv) Is subject to a state administrative enforcement order or judgment which prohibits, denies or revokes the use of an exemption from registration in connection with the offer, purchase or sale of securities.

(v) Is currently subject to an order, judgment or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an order, judgment or decree of a court of competent jurisdiction, permanently restraining or enjoining, the party from engaging in or continuing conduct or practice in connection with the offer, purchase or sale of a security or involving the making of a false filing with the state entered within 5 years prior to the filing of the notice required under subsection (a)(1)(iii)(B). ] *Notice filing.* With respect to reliance on subsection (a)(2), the issuer files with the Commission the notice required by section 203(d) of the act and § 203.041

(relating to limited offerings) and pays the filing fee required by section 602(b.1)(viii) of the act (70 P. S. § 1-602(b.1)(viii)).

(3) [ Subsections (a)(1)(iii) and (a)(2)(iii) are not available for the securities of an issuer subject to the disqualification provisions of SEC Rule 252(c), (d), (e) or (f) of Regulation A (17 CFR 230.252(c)—(f)) promulgated under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) ] *Broker-dealer requirement.* All offers and sales made to persons in reliance on section 203(d) and (e) of the act, including the increased number of offerees and purchasers permitted by subsection (a), are effected by a broker-dealer registered under section 301 of the act (70 P. S. § 1-301), except that this condition does not apply if the issuer either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth.

(4) *Statutory requirement.* With respect to all offers and sales made to persons permitted under this section, the issuer shall comply with the conditions imposed by section 203(d) and 203(e) of the act, respectively.

(c) *Exceptions.*

[ (1) ] Subsection [ (b)(2)(i)—(iii) and (v) shall ] (b)(1) does not apply if the person subject to the disqualification enumerated therein is licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against the person or if the broker-dealer employing the person is licensed or registered in this [ state ] Commonwealth and in the Form BD filed with [ this state ] the Commission has disclosed the order, conviction, judgment or decree relating to this person. Nothing in this paragraph shall be construed to allow a person disqualified under subsection [ (b)(2)(i)—(iii) or (v) ] (b)(1), to act in a capacity other than that for which the person is registered.

[ (2) A disqualification created under this section is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied. ]

(d) *Definitions.* For purposes of this section, the following terms [ , ] have the following meanings:

\* \* \* \* \*

(4) [ *Form D.* The form promulgated by the SEC (Reg. § 239.500 (17 CFR 239.500) under section 4(6) of the Securities Act of 1933 (15 U.S.C.A. § 77(d)(6)) and which, under SEC Rule 503 (17 CFR § 230.503), must be filed with the SEC by an issuer seeking to exempt securities transactions under SEC Regulation D.

(5) [ *Accredited investor.* A person who meets the definition of accredited investor [ set forth ] in SEC Rule 501(a) (17 CFR 230.501(a)).

(e) [ *Broker-dealers* ] *Due diligence obligation.*

(1) A broker-dealer registered under section 301 of the act (70 P. S. § 1-301) [ who makes a sale under subsection (a)(1)(ii) or (iii) ] that sells a security to

an experienced private placement investor in reliance on subsection (a) must receive a written representation that the purchaser [meets the standards set forth in subsection (a)(1)(iii)(C) or, where applicable,] meets the definition of "experienced private placement investor" [set forth] in subsection (d)(1)[;] and must have reasonable grounds to believe, and must believe after reasonable inquiry, that the written representation is correct.

(2) An issuer [relying on subsection (f) to make offers and sales under subsections (a)(1)(ii) and (a)(2)(ii)] that either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth and sells its securities to experienced private placement investors in reliance on subsection (a) must receive a written representation that the purchaser meets the definition of experienced private placement investor set forth in subsection (d)(1) and must have reasonable grounds to believe, and must believe after reasonable inquiry, that the written representation is correct.

(f) [*Principal place of business*] *Statutory basis for offers and sales under this section.* [Where an issuer is organized under the laws of this Commonwealth or organized under the laws of another state but has its principal place of business in this Commonwealth, a broker-dealer registered under section 301 of the act is not required to effect the securities transactions under sections 203(d) and (e) of the act, including those made under subsections (a)(1) and (2), in order:

(1) For the issuer to rely upon subsection (a)(1)(i), (ii), (2)(i) and (ii).

(2) For the issuer to rely upon subsection (a)(1)(iii) and (2)(iii) if the issuer, in addition to filing Commission Form 203-D or SEC Form D, files Part B of Commission Form D Supplement with the Commission to waive the broker-dealer requirements in subsection (a), and the Commission does not deny the application within 5 business days from the date of the filing. The Commission may deny the waiver application if the offering appears to be in violation of the law or abusive.] All offers and sales made to persons permitted by this section are deemed to be offers and sales made under section 203(d) and (e) of the act and all conditions imposed by those sections of the act are applicable to offers and sales to persons permitted by this section.

#### § 204.011. Waivers of the 12-month holding period.

(a) Under section 204(a) of the act (70 P. S. § 1-204(a)), the restriction under section 203(d)(i) of the act (70 P. S. § 1-203(d)(i)) not to sell securities purchased under that section for 12 months after the date of purchase automatically is waived if:

(1) The restricted securities [subsequently] are registered under the act, the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) or the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk) subsequent to a notice filed with the Commission under section 203(d) and § 203.041 (relating to limited offerings).

\* \* \* \* \*

§ 204.012. Waivers for [offerings where sales are made only to accredited investors] preeffective offers under section 203(h).

[(a) *Waivers.* When an issuer meets the conditions described in subsection (b), the Commission, under section 204(a) of the act (70 P. S. § 1-204(a)), waives the following requirements of section 203(d) of the act (70 P. S. § 1-203(d)) and increases the number of purchasers and offerees permitted by section 203(d) and (e) of the act.

(1) The condition of section 203(d)(i) of the act not to sell securities purchased for 12 months after the date of purchase (12-month holding period) is waived, if resales of the securities are made only to accredited investors or to the issuer during the 12-month holding period.

(2) The requirement under § 203.041 (relating to limited offerings) to file with the Commission a copy of the agreement of the investor to hold the securities purchased under section 203(d) for the 12-month holding period is waived, if a copy of the agreement between the issuer and the investor in accordance with the requirements of paragraph (1) is filed with the Commission.

(3) The condition contained in section 203(d)(ii) of the act concerning mass mailing or public media advertising made in connection with the solicitation of sales of securities to be made under section 203(d) is waived.

(4) The number of offerees permitted under section 203(e) to whom an issuer may offer securities if sales resulting from those offers are exempt under section 203(d) is increased to an unlimited number in this Commonwealth.

(5) The number of purchasers permitted under section 203(d) to whom the issuer may sell securities is increased to an unlimited number in this Commonwealth.

#### (b) *Conditions.*

(1) The securities are sold in good faith reliance that the offering would qualify for an exemption from registration under section 5 of the Securities Act of 1933 (1933 Act) (15 U.S.C.A. § 77e) under section 3(a)(11) of the 1933 Act (15 U.S.C.A. § 77c(a)(11)) or regulations adopted by the United States Securities and Exchange Commission (SEC) under section 3(b) of the 1933 Act, except an offering under Rule 505 of SEC Regulation D, and the securities sold, whether in or outside of this Commonwealth, will be sold only to accredited investors.

(2) The issuer specifies in any advertisement, communication, sales literature or other information which is publicly disseminated in connection with the offering of securities, including by means of electronic transmission or broadcast media, that the securities will be sold only to accredited investors. For purposes of this section, publicly disseminated means communicated to 100 or more persons or otherwise communicated, used or circulated in a public manner.

(3) The issuer does not engage in any solicitation of prospective purchasers by telephone until the issuer has reasonable grounds to believe that the person to be solicited is an accredited investor.

(4) The issuer places a legend on the cover page of any disclosure document proposed to be used in connection with the offering or on the cover page of the subscription agreement advising that the securities described in the disclosure document or the subscription agreement will be sold only to accredited investors.

(5) The issuer is not an investment company as defined in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80b-21).

(6) The issuer is not a development stage company with no specific business plan or purpose or a development stage company that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(7) The issuer is not subject to the disqualifications in § 204.010(b) (relating to increasing the number of purchasers and offerees) nor are its promoters, officers or directors subject to any disqualification described in that section.

(c) *Definition of accredited investor.* For purposes of this section, the term accredited investor has the same meaning as that term is defined in § 204.010(d)(5).

(d) *Exemption.* Nothing in this section otherwise prohibits, in connection with the offering, the availability of the exemption in section 203(c) of the act (70 P.S. § 1-203(c)) or § 203.184 (relating to offers and sales to principals). ]

Under section 204(a) of the act (70 P.S. § 1-204(a)), the Commission waives the requirement in section 203(h) of the act (70 P.S. § 1-203(h)) that a registration statement, including a prospectus, be filed with the Commission to make offers, but not sales, of securities in this Commonwealth if the issuer of the securities to be offered under the exemption in section 203(h) has filed a registration statement with the United States Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) prior to the time offers are made in this Commonwealth in reliance on section 203(h) of the act.

#### CHAPTER 205. REGISTRATION BY COORDINATION

§ 205.040. [Automatic effectiveness for] Series of unit investment trusts as separate issuers.

[ (a) Under section 205(d) of the act (70 P.S. § 1-205(d)), the requirements of section 205(b) and (c)(1)(iii) of the act (70 P.S. § 1-205(b) and (c)(1)(iii)) are waived for a registration statement filed under section 205 of the act by a unit investment trust, as the person is classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), which complies with the following:

(1) The unit investment trust is registered under the Investment Company Act of 1940.

(2) The unit investment trust is not engaged in the business of investing in securities issued by one or more open-end management investment companies, as those persons are classified in the Investment Company Act of 1940.

(3) Each series underlying a unit investment trust constitutes a separate and distinct issuer

under the act and shall individually file the following materials with the Commission. If a unit investment trusts offers multiple series, Form U-1 shall identify which series is being offered in this Commonwealth.

(i) One completed and properly executed Uniform Application to Register Securities (Form U-1), including the name and address of the trustee.

(ii) A statement identifying one or more previous series of the unit investment trust for which the effective date of the registration statement was determined under section 205(b) and (c) of the act (70 P.S. § 1-205(b) and (c)).

(iii) A copy of any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities of any state or by any court or the United States Securities and Exchange Commission (SEC).

(iv) Information required by section 205(d) of the act (70 P.S. § 1-205(d)), including notice of SEC effectiveness, price amendment and post-effective amendment containing one copy of the final prospectus.

(v) The appropriate fee as prescribed in section 602(b)(iv) of the act (70 P.S. § 1-602(b)(iv)).

(vi) The representation filed with the SEC under SEC Rule 487 (17 CFR 230.487) (relating to effectiveness of registration statements filed by certain unit investment trusts), which includes the following:

(A) The portfolio securities deposited in the series with respect to which the registration statement or pre-effective amendment is being filed do not differ materially in type or quality from those deposited in such previous series identified by the registrant.

(B) Except to the extent necessary to identify the specific portfolio securities deposited in, and to provide essential financial information for, the series with respect to which the registration statement or pre-effective amendment thereto is being filed, the registration statement or pre-effective amendment thereto does not contain disclosures that differ in any material respect from those contained in the registration statement of the previous series identified by the registrant.

(b) The Commission may deny, suspend or revoke the availability of this section to a unit investment trust if it appears to the Commission that a registration statement which has, or intends to become effective in this Commonwealth in reliance upon this section, is incomplete or inaccurate in any material respect or the registrant has not complied with the requirements set forth in subsection (a). ]

For purposes of complying with the requirements of sections 201 and 211(a) of the act (70 P.S. §§ 1-201 and 1-211(a)), each series underlying a unit investment trust, as that person is classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), constitutes a separate and distinct issuer under the act and shall be required to make a separate filing with the Commission under section 211(a).

## CHAPTER 207. GENERAL REGISTRATION PROVISIONS

### § 207.071. Escrow of promotional securities.

\* \* \* \* \*

(b) For the purposes of this section, the term "promotional securities" includes securities which are:

(1) Issued within the [ 2- ] 5-year period immediately preceding the date of the filing of a registration statement for a consideration substantially different from the proposed public offering price and for which price differential there is no commensurate change in the earnings or financial position of the issuer.

\* \* \* \* \*

(4) Issued within the [ 2- ] 5-year period immediately preceding the date of the filing of a registration statement to a promoter or proposed to be issued to a promoter at a price substantially lower than or on terms and conditions substantially more favorable than those on which securities of the same or a similar class or series have been or are to be sold to public investors.

\* \* \* \* \*

(c) The escrow of promotional securities shall be covered by an agreement which shall be subject to the [ written ] approval of the Commission [ , in substantially the format and in accordance with the provisions set forth in the following form, designated by the Commission as Form SE: ].

(Editor's Note: As part of this proposal, the Commission is proposing to delete FORM SE as it appears in 64 Pa. Code pages 207-3—207-7, serial pages (200089)—(200092) and (234901).)

One manually signed copy of the [ form ] agreement shall be filed with the Commission prior to the effectiveness of a registration of the issuer's securities.

[ (d) For the purpose of section 207(g) of the act, in determining whether the issuer has been in existence for more than 3 years the following factors, by way of illustration, are to be considered:

(1) Whether the issuer has significant revenues or earnings or both prior to the date of the filing of the registration statement.

(2) Whether the current officers and directors have been directing the operations of issuer for a significant period of time prior to the date of the filing of the registration statement.

(3) Whether the current or proposed business operations of the issuer are substantially similar to those conducted for a significant period of time prior to the date of the filing of the registration statement. ]

### § 207.072. Escrow of proceeds.

(a) The Commission, when it deems necessary for the protection of investors, and subject to the limitation of section 207(g) of the act (70 P.S. § 1-207(g)), may require as a condition to the registration of securities, whether to be sold by the issuer or another person, that the proceeds from the sale of the registered security in this Commonwealth be escrowed until the issuer receives a specified amount from the sale of the security either in this Commonwealth or elsewhere; or that the proceeds from the sale of the registered secu-

rity be escrowed for a specific use as set forth in the prospectus. The escrow depository shall be a bank or trust company acceptable to the Commission.

(b) The escrow of proceeds shall be covered by an agreement acceptable to the Commission which, at a minimum, meets the following conditions:

(1) The specified amount of proceeds shall be deposited in an interest bearing escrow or trust account, the terms of which are consistent with this subsection, particularly paragraph (7).

(2) The escrow depository may not be affiliated with the issuer or any officer, director, promoter or affiliate of the issuer or the underwriter of the securities which are the subject of the escrow or trust account.

(3) The agreement shall provide that the escrowed proceeds are not subject to claims by creditors of the issuer, affiliates of the issuer or underwriters until the proceeds have been released to the issuer pursuant to the terms of the agreement.

(4) A manually signed copy of the agreement shall be filed with the Commission and shall become part of the registration statement.

(5) The agreement shall be signed by an authorized officer of the issuer, an authorized officer of the underwriter, if applicable, and an authorized officer of the escrow depository.

(6) A summary of the principal terms of the agreement shall be included in the prospectus.

(7) If the minimum amount of proceeds is not raised within the specified time period or for the specific purpose set forth in the prospectus, the escrowed proceeds shall be released and returned directly to investors by the escrow depository by first class mail together with interest earned and without deductions for expenses (including commissions, fees or salaries), except that payment of interest shall be waived on proceeds held in escrow for less than 90 days.

### § 207.101. Effective period of registration statement.

\* \* \* \* \*

(d) Except with respect to an open-end or closed-end investment company, face amount certificate company or unit investment trust, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), the effective period of a section 205 registration statement may be extended [ for additional periods of 1 year each ] beyond the initial 1-year effectiveness period specified in subsection (a)(1) in increments of 1-year periods up to a maximum of 3 years from the initial effectiveness date of the registration statement in this Commonwealth by filing the following form designated as Form 207-J with the Commission prior to the expiration of the currently effective period of registration. [ The filing of Form 207-J will not extend the offering for a period beyond the effective period of the registration statement with the Securities and Exchange Commission. ] The provisions of this section are not available if the issuer, during the 3 year period from the initial effectiveness date of the registration statement in this Commonwealth, is required

**to file a new registration statement with Securities and Exchange Commission.**

FORM 207-J  
Instruction Sheet

\* \* \* \* \*

WHO MUST FILE: Issuers that want to extend the effective period of a Section 205 registration statement for an additional period of one year provided, however, that filing Form 207-J shall not extend the offering for a period beyond **[ the effective period of the registration statement with the ]** three years from the initial effective date of the registration statement in this Commonwealth. Form 207-J may not be used if the issuer was required to file a new registration statement with the United States Securities and Exchange Commission.

\* \* \* \* \*

4. (A) Initial effective date of registration statement in Pennsylvania:

(B) Description of securities registered:

**[ (C) Dollar amount of securities registered:**  
\_\_\_\_\_ **in Pennsylvania;**  
\_\_\_\_\_ **in all States.**

**(D) Dollar amount of securities sold to date in Pennsylvania:**  
\_\_\_\_\_.

**(E) Dollar amount of securities proposed to be sold during remainder of offering:**  
\_\_\_\_\_ **in Pennsylvania;**  
\_\_\_\_\_ **in all States.**

**(F) Expected date of termination of offering in Pennsylvania:**  
\_\_\_\_\_. ]

\* \* \* \* \*

IN WITNESS WHEREOF, this Form has been duly executed **[ this \_\_\_\_ day of \_\_\_\_\_, 19\_\_ ]**

(Insert Date)

**§ 207.130. Notice to purchasers under section 207(m).**

(a) This section applies to offerings of securities which are registered under section 206 of the act (70 P. S. § 1-206) and to securities transactions which are exempt from registration under sections 203(d) and (p) of the act (70 P. S. § 1-203(d) and (p)) and, if required by rule of the Commission, section 203 (r) of the act.

(b) The notice to purchasers required by **[ the first sentence of ]** section 207(m)(1) of the act (70 P. S. § 1-207(m)(1)) shall be given in accordance with all of the following:

\* \* \* \* \*

(2) Reference to the notice shall be made on the cover page of **[ a ]** the prospectus **[ or offering memorandum ]** used in connection with the offer and sale of the securities.

(3) An explanation of the right of withdrawal contained in section 207(m)(1) of the act, including the procedure to

be followed in exercising the right, shall be given in the text of **[ a ]** the prospectus **[ or other offering memorandum ]**.

(4) Reference to the right of withdrawal shall be made in **[ a ]** any subscription agreement used.

(5) The reference to the right of withdrawal **[ referred to ]** described in paragraph (2) shall be conspicuous by setting it apart from other text and by underlining, **italics** or capitalization.

(c) The notice to purchasers required by section 207(m)(2) of the act shall be given in accordance with all of the following:

(1) It shall be in writing.

(2) An explanation of the right of withdrawal contained in section 207(m)(2), including the procedure to be followed in exercising the right, shall be given.

(3) The explanation of the right of withdrawal shall be conspicuous, by setting it apart from other text and by underlining or capitalization.

**[ (b) ]** (d) Timely notice of **[ an intention to withdraw ]** withdrawal of the purchase shall be deemed to have been given by a purchaser within the 2 business-day period set forth in section 207(m) of the act if, during the 2-business day period, **[ the notice, in writing ]** a written notice to withdraw from the purchase:

\* \* \* \* \*

(2) Is **[ delivered to a telegraph or other message service for transmittal ]** sent electronically, including by e-mail or facsimile.

(3) Is deposited in the United States **[ mails ]** Postal Service, sent registered or certified mail, and **[ in the case of paragraph (2) and in the case of this paragraph, telegraph, postage or other transmittal ]** all applicable fees are paid by the sender **[ and the notice is addressed to the issuer or its affiliate at the place indicated in the instructions referred to in subsection (a)(3) ]**.

(4) Is delivered to a messenger or courier service for delivery with applicable fees paid by the sender.

**[ (c) The requirements of this section shall apply to offerings of securities which are exempt under sections 203(d), (f), (p) or (r) of the act (70 P. S. §§ 1-203(d), (f), (p) or (m)) unless otherwise provided by order of the Commission.**

**(d) ]** (e) The following language **[ of a ]** illustrates a right of withdrawal notice which complies with section 207(m)(1) of the act **[ notice for a section 206 of the act (70 P. S. § 1-206) registration is set forth by way of illustration ]**:

"If you have accepted an offer to purchase these securities made pursuant to a prospectus which contains a **written** notice explaining your right to withdraw your acceptance pursuant to section 207 (m)(1) of the Pennsylvania Securities Act of 1972 **[ (70 P. S. § 1-207(m)) ]**, you may elect, within two business days after the first time you have received this notice and a prospectus **(which is not materially different from the final prospectus)** to withdraw from your purchase agreement and receive a

full refund of all monies paid by you. Your withdrawal will be without any further liability to any person. To accomplish this withdrawal, you need only send a [letter or telegram] written notice (including a notice by facsimile or electronic mail) to the issuer (or underwriter if one is listed on the front page of the prospectus) indicating your intention to withdraw." [Such letter or telegram should be sent and postmarked prior to the end of the aforementioned second business day. If you are sending a letter, it is prudent to send it by certified mail, return receipt requested, to ensure that it is received and also to evidence the time when it was mailed. Should you make this request orally, you should ask for written confirmation that your request has been received." ]

(f) The following language illustrates a right of withdrawal which complies with section 207(m)(2) of the act:

"If you have accepted an offer to purchase these securities and have received a written notice explaining your right to withdraw your acceptance pursuant to section 207(m)(2) of the Pennsylvania Securities Act of 1972, you may elect, within two business days from the date of receipt by the issuer of your binding contract of purchase or, in the case of a transaction in which there is no binding contract of purchase, within two business days after you make the initial payment for the securities being offered, to withdraw your acceptance and receive a full refund of all monies paid by you. Your withdrawal of acceptance will be without any further liability to any person. To accomplish this withdrawal, you need only send a written notice (including a notice by facsimile or electronic mail) to the issuer (or placement agent if one is listed on the front page of the offering memorandum) indicating your intention to withdraw.

§ 207.140. [ Modification of statutory provisions to accommodate electronic filing ] Signatures on electronic filings.

[ For purposes of coordinating the provisions of the act with uniform procedures to facilitate electronic filings of registration statements under sections 205 and 206 of the act (70 P. S. §§ 1-205 and 1-206) by means of a securities registration depository, the Commission, under the authority provided in section 207(n) of the act (70 P. S. § 1-207(n)), modifies the provisions of section 207(j.1) of the act (70 P. S. § 1-207(j.1)) as follows:

(1) Notwithstanding any provision in section 207(j.1) of the act to the contrary, a registration by coordination by a unit investment trust, as that person is defined in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80b-21) is effective for a period beginning with its effective date in this State and ending 1 year after the date the registration statement for the same securities became effective with the United States Securities and Exchange Commission.

(2) A registration by coordination for an open-end or closed-end investment company or face amount certificate company, as those persons are

classified in the Investment Company Act of 1940, is effective for the period beginning with its effective date and ending 60 days after the registrant's fiscal year end for the fiscal year in which the filing under section 205 of the act became effective. ]

Under section 207(n) of the act (70 P. S. § 1-207(n)), the Commission authorizes the acceptance of a typed signature in lieu of any requirement for a manual signature on any notice required to be filed with the Commission under section 211 of the act (70 P. S. § 1-211) which is filed with the Commission electronically through its home page on the World Wide Web.

#### CHAPTER 209. BOOKS, RECORDS AND ACCOUNTS

§ 209.010. Required records; report on sales of securities and use of proceeds.

\* \* \* \* \*

(c) The form for reports required in subsection (b), except for subsection (b)(2), shall be filed with the Commission on the following form, designated by the Commission as Form 209:

\* \* \* \* \*

PART II Report of Sales of Securities Registered under Section 206.

\* \* \* \* \*

5. (A) Offering in Pennsylvania:

(i) Total number of shares or other units: \_\_\_\_\_

(ii) Per share or unit price: \_\_\_\_\_

(iii) Maximum aggregate offering price: \_\_\_\_\_

(B) Sales in Pennsylvania [ or other units ]: [ \_\_\_\_\_ ]

(i) Number of shares or other units: \_\_\_\_\_

(ii) [ Aggregate offering price ] Aggregate proceeds received: \_\_\_\_\_

\* \* \* \* \*

#### CHAPTER 211. FEDERALLY COVERED SECURITIES

§ 211.010. Notice filings for federally covered securities.

(a) The notices required under section 211(a) of the act (70 P. S. § 211(a)) to be filed by an open-end or closed-end investment company, unit investment trust or face amount certificate company, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64) (investment companies) shall be made on the Uniform Investment Company Notice Filing Form (Form NF) and shall be accompanied by the applicable filing fees and administrative assessments in sections 602(b.1)(iv) and 602.1(a)(5) of the act (70 P. S. §§ 1-602(b.1)(iv) and 1-602.1(a)(5)).

(b) No documents filed by Investment Companies with the SEC need be filed with the notice described in subsection (a) except for those documents filed with the SEC relating to mergers, acquisitions or reorganizations. In that case, copies of registration statements, prospectuses or posteffective amendments filed with the SEC are required to be filed with the Commission at the time the notice required by subsection (a) is filed.

(c) The notice required by section 211(b) of the act shall be filed with the Commission on Form D promulgated by the SEC and effective as of Septem-

ber 1, 1996, not later than 15-calendar days after the first sale of the Federally covered security in this Commonwealth and shall be accompanied by the filing fee in section 602(b.1)(vii) of the act.

#### Subpart E. ENFORCEMENT

### CHAPTER 504. TIME LIMITATIONS ON RIGHTS OF ACTION

#### § 504.060. Rescission offers.

\* \* \* \* \*

(b) Compliance with the procedures in subsection (a) is waived:

\* \* \* \* \*

(2) For a person making a rescission offer for possible violations of [sections] section 301 or 401—[ 406 ] 409 of the act (70 P. S. §§ 1-301 and 1-401—[ 1-406 ] 1-409) if the following apply:

\* \* \* \* \*

(viii) The person making the rescission offer provides a letter offering rescission to each rescission offeree which[, at a minimum, follows the format and] contains only the information set forth in Item 14 of the General Instructions to Commission Form RO.

(3) For an issuer which, after offering rescission for possible violations of section 201 of the act under this paragraph, will not have made rescission offers to more than five investors in this Commonwealth within the past 24 months, exclusive of investors which purchased under section 203(c) of the act and the following apply:

\* \* \* \* \*

(iii) The issuer provides a letter offering rescission to each rescission offeree which[, at a minimum, follows the format and] contains only the information set forth in Item 14 of the General Instructions to Commission Form RO.

\* \* \* \* \*

(f) The following form has been designated by the Commission as Form RO:

\* \* \* \* \*

#### DISCLOSURE GUIDE

\* \* \* \* \*

10. Attach a copy of the proposed Notice of Rescission Offer which [, at a minimum, should follow the format and] contains only the information set forth in Item 14. [Although rescission offer materials may be distributed prior to the end of the Commission staff review period set forth in Regulation 504.060(b)(1), it may be preferable to wait for completion of staff review in the event the Waiver Request is denied] You are strongly advised to refrain from distributing the rescission offer materials until the completion of the staff review period set forth in Regulation 504.060(b)(1), in the event the Waiver Request is denied.

\* \* \* \* \*

#### NOTICE OF RESCISSION OFFER

14. Where a rescission offer is made by the seller of the securities to the purchaser, the letter advising of the rescission offer [should follow, at a minimum, the format and] must contain only the information set

forth below. Where a rescission offer is being made by the purchaser to the seller, the letter advising of the rescission offer [should follow, at a minimum, the format and] must contain only the information set forth below except that appropriate modifications should be made in paragraphs 1 and 2 to conform to the provisions of Section 504(e) of the act.

\* \* \* \* \*

### CHAPTER 513. RESCISSION ORDERS

#### § 513.010. Rescission orders.

When the Commission, under section 513 of the act (70 P. S. § 1-513), orders an issuer or control person of an issuer to effect a rescission offer, the rescission offer shall be effected in accordance with § 504.060(a) (relating to rescission offers) unless the Commission, by order, otherwise prescribes.

#### Subpart F. ADMINISTRATION

### CHAPTER 603. ADMINISTRATIVE FILES

#### § 603.011. Filing requirements.

(a) Except as set forth in [subsections] subsection (f) [and (g)], documents and other communications to be filed with the Commission shall be filed in the Harrisburg office of the Commission.

\* \* \* \* \*

(d) No notice, statement, form[, ] or other document will be accepted for filing; no request for copies of documents will be granted; and no action will be taken by the [Securities] Commission unless the filings and request are accompanied by the required fees or charges as provided by the act and this section.

(e) Except as set forth in subsection (f), checks for payment of fees and charges shall be made payable to the order of "Commonwealth of Pennsylvania" and delivered or mailed to: Secretary, Pennsylvania Securities Commission; [ 333 Market Street; Harrisburg, Pennsylvania 17101 ] 1010 N. Seventh Street, Harrisburg, Pennsylvania 17102-1410.

\* \* \* \* \*

(g) In connection with [the registration or exemption of securities or securities transactions under sections 202, 203, 205, 206 or 210 of the act required disclosure documents] notice filings relating to a Federally covered security under section 211, notice forms may be filed electronically with the [Securities Registration Depository, 1700 N. Moore Street, Suite 1215, Arlington, VA 22209 (SRD) or a successor address thereto if the disclosure document is a registration statement that is required to be filed with the United States Securities and Exchange Commission under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e)] Commission as permitted by order of the Commission. In conjunction with [the] an electronic filing, fees or assessments required under sections 602 or 602.1 of the act (70 P. S. §§ 1-602 or 1-602.1) [may] shall be paid by means of [a check in the appropriate amount made payable to the order of "Securities Registration Depository" or electronic funds transfer in the appropriate amount to the SRD. Documents and payments filed with the SRD under this subsection will be deemed as filed



with the Commission ] an Automated Clearing House transfer of funds to the Commission's depository bank.

#### CHAPTER 606. MISCELLANEOUS POWERS OF COMMISSION

##### § 606.041. Delegation and substitution.

\* \* \* \* \*

(b) The Commission delegates to the Director of the Division of Licensing and Compliance, the Assistant Director of the Division of Licensing and Compliance and the Chief[ , ] of the Licensing Section of the Division of Licensing and Compliance:

\* \* \* \* \*

(6) The power exercisable under section 303(a)(i) of the act to grant a waiver of any requirement imposed under section 303(a)(i) of the act or section 304 of the act (70 P. S. § 1-304) or any regulation promulgated thereunder and impose conditions on, or limit the scope of, an initial or renewal license of a broker-dealer, agent, investment adviser or investment adviser representative.

\* \* \* \* \*

(d) The Commission delegates to the Director of the Division of Corporation Finance:

(1) The power exercisable under section [ 205(d) of the act (70 P. S. § 1-205(d)), to waive the requirement in section 205(c)(2)(iii) ] 206(c) of the act (70 P. S. § 1-206(c)) to order effective a registration statement filed under section 206 of the act for securities that have met the requirements for registration under the Mid-Atlantic Regional Review Protocol for Small Corporate Offering Registrations.

\* \* \* \* \*

(12) [ The power exercisable under section 609(a) of the act to waive the condition of § 203.141(a) (relating to sales to existing security holders) to file Commission 203-N if an issuer has filed, in lieu thereof and under the time limitations in section 203(n) of the act (70 P. S. § 1-203(n)), a copy of a registration statement designated by the SEC as Form F-7. ] The power exercisable under section 211(c) of the act (70 P. S. § 1-211(c)) to:

(i) Issue a stop order suspending the offer or sale of any security described in section 211(b) or (c).

(ii) Modify or vacate a stop order.

(13) The power exercisable under section 207(l)(1) of the act (70 P. S. § 1-207(l)(1)) to declare effective an amendment to any currently effective registration statement relating to [ an ] the increase in the specified amount of securities proposed to be offered in this Commonwealth, if the filing fee required by section 602(b.1) of the act (70 P. S. § 1-602(b.1)) has been paid.

(14) [ The power exercisable under section 204(a) of the act to waive the 2 business day time requirement of section 203(i) of the act for the mailing to the Commission of a copy of the final prospectus or final offering circular utilized or proposed to be utilized in connection with a sale under section 203(i) of the act which was filed with the SEC for one of the following:

(i) Sales of stock under a dividend reinvestment and stock purchase plan for which a registration statement has been filed with the SEC and declared effective.

(ii) Sales of stock underlying warrants or as part of an exchange offer for which a registration statement has been filed with the SEC and declared effective.

(15) ] \* \* \*

\* \* \* \* \*

#### CHAPTER 609. REGULATIONS, FORMS AND ORDERS

##### § 609.031. Application.

(a) This chapter, together with the constructions and interpretations hereof as the Commission may issue from time to time, sets forth the minimum requirements for financial statements included, under the act, as part of the following:

\* \* \* \* \*

(3) Proxy [ Statements ] materials under section 203(o) [ (ii) ] of the act (70 P. S. § 1-203(o) [ (ii) ]).

\* \* \* \* \*

##### § 609.034. Financial statements.

\* \* \* \* \*

(b) Except as provided in subsection (c), when an issuer proposes to register its securities for sale under section 206 of the act, when an issuer proposes to sell its securities under the exemption contained in Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) and proposes to register the securities under section 205 of the act, or when an issuer proposes to sell its securities under the exemption contained in section 203(p) of the act (70 P. S. § 203(p)), or when an issuer is required to file [ a ] proxy [ statement ] materials under section 203(o) [ (ii) ] of the act (70 P. S. § 203(o) [ (ii) ]), it shall file the following financial statements, all of which shall be prepared in accordance with generally accepted accounting principles and presented in comparative form:

\* \* \* \* \*

[Pa.B. Doc. No. 99-1183. Filed for public inspection July 23, 1999, 9:00 a.m.]

# NOTICES

## DEPARTMENT OF BANKING

### Action on Applications

The Department of Banking of the Commonwealth of Pennsylvania, 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 July 13, 1999.

### BANKING INSTITUTIONS

#### Holding Company Acquisitions

<i>Date</i>	<i>Name of Institution</i>	<i>Location</i>	<i>Action</i>
7-13-99	Hudson United Bancorp, Union City, New Jersey, To acquire 100% of the voting shares of JeffBanks, Inc., Philadelphia, Pennsylvania	Union City, NJ	Filed

#### New Charter Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
7-1-99	Susquehanna Trust & Investment Company Lititz Lancaster County	26 N. Cedar St. Lititz Lancaster County	Commenced Operations
7-8-99	Allegiance Bank of North America Bala Cynwyd Montgomery County	One Belmont Avenue Bala Cynwyd Montgomery County	Commenced

#### Conversions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
7-8-99	Quaint Oak Building and Loan Association Southampton Bucks County  <i>To:</i> Quaint Oak Savings Bank Southampton Bucks County  Application represents conversion from a State-chartered mutual savings association to a State-chartered mutual savings bank.	607 Lakeside Dr. Southampton Bucks County	Filed
7-9-99	Croydon Building and Loan Association Croydon Bucks County  <i>To:</i> Croydon Savings Bank Croydon Bucks County  Application represents conversion from a State-chartered mutual savings association to a State-chartered mutual savings bank.	704 State Road Croydon Bucks County	Filed
7-12-99	Metropolitan Savings & Loan Association Pittsburgh Allegheny County  <i>To:</i>	4415 Butler Street Pittsburgh Allegheny County	Effective

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
	Metropolitan Savings Bank Pittsburgh Allegheny County		
	Represents conversion from a State-chartered mutual savings association to a State-chartered mutual savings bank.		

**Consolidations, Mergers and Absorptions**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
7-8-99	First Bank of Philadelphia Philadelphia, and Pennsylvania Savings Bank, Philadelphia Surviving Institution— First Bank of Philadelphia, Philadelphia	Philadelphia	Filed
7-8-99	Clearfield Bank & Trust Company, Clearfield, and CSB Bank, Curwensville Surviving Institution— Clearfield Bank & Trust Company, Clearfield, with a change in corporate title to "Penn Laurel Bank & Trust Company"	Clearfield	Filed

**Branch Applications**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
7-1-99	First Liberty Bank & Trust Jermyn Lackawanna County	New Bridge Center Third & Pierce Sts. Kingston Luzerne County	Opened
7-1-99	Great Valley Savings Bank Reading Berks County	The Highlands at Wyomissing 2000 Cambridge Avenue Wyomissing Berks County	Opened
7-9-99	Summit Bank Bethlehem Northampton County	473 York Road Warminster Bucks County	Approved
7-12-99	Jefferson Bank Haverford Montgomery County	11725 Bustleton Ave. Philadelphia Philadelphia County	Approved
7-12-99	Laurel Trust Company Johnstown Cambria County	509 East Main Street Somerset Somerset County	Filed

**Branch Relocations/Consolidations**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
7-2-99	Southwest Bank Greensburg Westmoreland County	<i>Into:</i> 331 East Sixth Ave. Tarentum Allegheny County  <i>From:</i> 1121 Brackenridge Ave. Brackenridge Allegheny County	Effective
7-2-99	Southwest Bank Greensburg Westmoreland County	<i>Into:</i> 5 Fourth Street Youngwood Westmoreland County  <i>From:</i> Route 119 South Greensburg Westmoreland County	Effective

**Branch Discontinuances**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
7-12-99	Laurel Trust Company Johnstown Cambria County	101 Ligonier Street Latrobe Westmoreland County	Approved
7-12-99	Laurel Trust Company Johnstown Cambria County	911 Philadelphia St. Indiana Indiana County	Approved

**SAVINGS ASSOCIATIONS**

No activity.

**CREDIT UNIONS**

No activity.

DAVID E. ZUERN,  
*Secretary*

[Pa.B. Doc. No. 99-1184. Filed for public inspection July 23, 1999, 9:00 a.m.]

# DEPARTMENT OF ENVIRONMENTAL PROTECTION

## Applications, Actions and Special Notices

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### APPLICATIONS

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#### APPLICATIONS RECEIVED UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

##### [National Pollution Discharge Elimination System Program (NPDES)]

##### DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

##### (Part I Permits)

The following parties have applied for an NPDES permit to discharge controlled wastewaters into the surface waters of this Commonwealth. Unless otherwise indicated on the basis of preliminary review and application of lawful standards and regulations the Department of Environmental Protection (Department) proposes to issue a permit to discharge subject to certain effluent limitations and special conditions. These proposed determinations are tentative.

Where indicated the EPA Region III Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.6E.

Persons wishing to comment on the proposed permit are invited to submit a statement to the office noted above the application within 30 days from the date of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the responsible office considers the public response significant.

Following the 30-day comment period, 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 this determination may be appealed to the Environmental Hearing Board.

The application and related documents, proposed effluent limitations and special conditions, comments received and other information are on file and may be inspected and arrangements made for copying at the office indicated above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid service or other accommodations to participate in the proceeding should contact the Secretary to the Board at (717) 787-3483. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

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#### **Applications for National Pollutant Discharge Elimination System (NPDES) permit to discharge to State waters.**

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*Southeast Regional Office: Regional Manager, Water Management, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-6130.*

**PA 0051756.** Sewage, **State Farm Mutual Automobile Insurance Company**, One State Farm Drive, Concordville, PA 19331.

This application is for renewal of an NPDES permit to discharge treated sewage from the State Farm Mutual Automobile Insurance Company in Concord Township, **Delaware County**. This is an existing discharge to an unnamed tributary to West Branch Chester Creek.

The receiving stream is classified for the following uses: trout stocking fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of .025 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>		
(5-1 to 10-31)	20	40
(11-1 to 4-30)	25	50
Suspended Solids	30	60
Ammonia (as N)		
(5-1 to 10-31)	3.0	6.0
(11-1 to 4-30)	9.0	18.0
Total Residual Chlorine		
(3—5 years)	0.3	0.7
Fecal Coliform	200 colonies/100 ml as a geometric average	
Dissolved Oxygen	minimum of 4.0 mg/l at all times	
pH	within limits of 6.0—9.0 standard units at all times	
Total Residual Chlorine		
(0—2 years)	monitor/report	monitor/report

*Other Conditions.*

The EPA waiver is in effect.

**PA 0056260.** Sewage, **Kathleen J. Smith**, 2815 Rickerts Road, Dublin, PA 18917.

This application is for renewal of an NPDES permit to discharge treated sewage from the Smith Residence STP in Hilltown Township, **Bucks County**. This is an existing discharge to an unnamed tributary to Morris Run.

The receiving stream is classified for the following uses: warm water fishery, trout stocking fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of .0005 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>		
(5-1 to 10-31)	10	20
(11-1 to 4-30)	20	40
Suspended Solids	10	20
Ammonia (as N)		
(5-1 to 10-31)	3.0	6.0
(11-1 to 4-30)	9.0	18.0
Total Residual Chlorine	monitor/report	
Fecal Coliform	200 colonies/100 ml as a geometric average	
Dissolved Oxygen	minimum of 3.0 mg/l at all times	
pH	within limits of 6.0—9.0 standard units at all times	

The EPA waiver is in effect.

**PA 0055948.** Industrial waste, **Sunoco, Inc.**, Ten Penn Center, 3rd Floor, 1801 Market Street, Philadelphia, PA 19103.

This application is for renewal of an NPDES permit to discharge treated groundwater from former Atlantic Service Station located at 411 County Line Road in Horsham Township, **Montgomery County**. This is an existing discharge to unnamed tributary to Pennypack Creek.

The receiving stream is classified for the following uses: trout stocking fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 5,800 gpd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Benzene	0.001	0.002	0.0025
Total BETX*	0.1	0.2	0.25
Ethylbenzene	monitor/report	monitor/report	
Toluene	monitor/report	monitor/report	
Total Xylenes	monitor/report	monitor/report	

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Manganese	1.0	2.0	2.5
pH	within limits of 6.0—9.0 standard units at all times		

\*BETX shall be measured as sum of benzene, ethylbenzene, toluene and xylenes.

*Other Conditions:*

The EPA waiver is in effect.

Conditions for future permit modification.

*Southcentral Regional Office: Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.*

**PA 0010677.** Industrial waste, SIC: 3824, **Veeder-Root Company**, P. O. Box 1673, Altoona, PA 16603-1673.

This application is for renewal of an NPDES permit for an existing discharge of treated industrial waste to an unnamed tributary to Spencer Run, in Allegheny Township, **Blair County**.

The receiving stream is classified for warm water fishes, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was United Water Company located in Dauphin County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of .0048 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow (mgd)	XXX	monitor and report	XXX
pH (s.u.)		from 6.0—9.0 inclusive	
Temperature °F	XXX	Monitor and report	XXX
Total Zinc	XXX	Monitor and report	XXX
Hexavalent Chromium	XXX	Monitor and report	XXX

The proposed effluent limits for Outfall 002 for a design flow of .043 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow (mgd)	XXX	XXX	XXX
pH (s.u.)		from 6.0—9.0 inclusive	
Benzene	.001	.002	.0025
Toluene	1.0	2.0	2.5
1,2-Trans-Dichloroethylene	.10	.20	.25
1,1,1-Trichloroethane	.20	.40	.50
Total PCBs	.0000025	.000005	.000006

Persons may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is in effect.

**PA 0031062.** Sewage, SIC: 4952, **Robeson-Wernersville Municipal Authority**, P. O. Box 202, Wernersville, PA 19565-0202.

This application is for renewal of an NPDES permit for an existing discharge of treated sewage to Spring Creek, in Heidelberg Township, **Berks County**.

The receiving stream is classified for trout stocking fishery, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was Western Berks Water located in Bern Township, Berks County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 1.4 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5- to 10-31)	6		12
(11-1 to 4-30)	18		monitor and report
Total Phosphorus	1		2

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Residual Chlorine (Interim)	monitor and report 0.39	minimum of 5.0 at all times from 6.0—9.0 inclusive	monitor and report 1/29
(Final)			
Dissolved Oxygen			
pH			
Fecal Coliforms (5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		3,400/100 ml as a geometric average	

Persons may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is not in effect.

*Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**PA 0218111.** Sewage, **Conemaugh Township Supervisors**, 1120 Tire Hill Road, Johnstown, PA 15905-7707.

This application is for issuance of an NPDES permit to discharge treated sewage from the Tire Hill Wastewater Treatment Plant in Conemaugh Township, **Somerset County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Stony Creek, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Saltsburg Municipal Water Works on the Conemaugh River.

*Outfall 001:* new discharge, design flow of 0.45 mgd.

<i>Parameter</i>	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Concentration (mg/l) Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25	38		50
Suspended Solids	30	45		60
Ammonia Nitrogen (5-1 to 10-31)	15	22		30
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	0.5			1.6
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

*Northwest Regional Office: Regional Manager, Water Management, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.*

**PA 0222151—Amendment No. 1.** Industrial waste. **Witco Corporation**, One American Lane, Greenwich, CT 06831.

This application is for an amendment of a Part I NPDES permit, to discharge treated groundwater to Tunungwant Creek in Bradford, **McKean County**. This is an existing discharge.

The receiving water is classified for the following uses: warm water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the PA/NY state line on Tunungwant Creek located at Bradford, McKean County, approximately 2.7 miles below point of discharge.

The proposed discharge limits, based on a design flow of .367 mgd, are:

*Outfall No. 001, Interim Limits*

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX		
Total Iron	XX	XX	XX
Oil and Grease	15		30

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Dissolved Iron			7
pH		6.0—9.0 at all times	

*Outfall No. 001, Final Limits*

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX	XX	XX
Total Iron	3.5	7	8.8
Oil and Grease	15		30
Dissolved Iron			7
pH		6.0—9.0 at all times	

Final technology based limitation for total iron.

The EPA waiver is in effect.

**PA 0029726.** Sewage. **Jamestown Municipal Authority** P. O. Box 188, Jamestown, PA 16134.

This application is to hydraulically rerate the NPDES permit to discharge treated sewage to the Shenango River in Jamestown Borough, **Mercer County**. This is a minor discharge.

The receiving water is classified for the following uses: warm water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Greenville Municipal Authority intake on the Shenango River located at Greenville, approximately 7 miles below point of discharge.

The proposed effluent limits, based on a design flow of 0.15 mgd, are:

*Outfall No. 001, Interim Limits*

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Weekly Average (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			
(5-1 to 10-31)	25	40	50
(11-1 to 4-30)	20	30	40
TSS	30	45	60
Ammonia-Nitrogen			
(5-1 to 10-31)	9		18
(11-1 to 4-30)	7		14
Total Phosphorus (as P)	1		2
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		34,500/100 ml as a geometric average	
Total Residual Chlorine	0.5		1.2
pH		6.0—9.0 at all times	

The proposed effluent limits, based on a design flow of 0.26 mgd, are:

*Outfall No. 001, Final Limits*

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Weekly Average (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
TSS	30	45	60
Ammonia-Nitrogen			
(5-1 to 10-31)	20		40
Total Phosphorus (as P)	1		2
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		48,300/100 ml as a geometric average	
Total Residual Chlorine	0.5		1.6
pH		6.0—9.0 at all times	

The EPA waiver is in effect.

**PA 0037991.** Sewage, **Imperial Point North**, 563 Chaucer Court, Girard, PA 16417.

This application is for renewal of an NPDES permit to discharge treated sanitary sewage to an unnamed tributary to Lake Erie in Girard Township, **Erie County**. This is an existing discharge.



The receiving water is classified for cold water and migratory fishery, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, there is no existing/proposed downstream potable water supply to consider during the evaluation.

The proposed effluent limits for Outfall 001, based on average design flow of 0.080 mgd, are:

<i>Parameter</i>	<i>Effluent Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25	50
Total Suspended Solids	30	60
NH <sub>3</sub> -N		
(5-1 to 10-31)	2.0	4.0
(11-1 to 4-30)	6.0	12
Total Residual Chlorine	0.26	
Phosphorus as P	1.0	
Dissolved Oxygen	minimum of 3.0 mg/l at all times	
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	2,300/100 ml as a geometric average	
pH	6.0—9.0 standard units at all times	

The EPA waiver is in effect.

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#### Proposed NPDES Permit Renewal Actions for Minor Sewage Discharges

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The following parties have applied to renew their current NPDES permits to allow the continued discharge of controlled wastewaters into the surface waters of this Commonwealth. The Department of Environmental Protection (Department) has made a tentative determination to renew these permits and proposes to issue them, subject to their current permit effluent limitations and monitoring and reporting requirements, with appropriate and necessary updated requirements to reflect new or changed regulations and other requirements. The updates may include, but will not be limited to, applicable permit conditions and/or requirements addressing combined sewer overflows (CSOs), municipal sewage sludge management and total residual chlorine control (TRC). Major changes to or deviations from the terms of the existing permit will be documented and published with the final Department actions.

The EPA, Region III, Regional Administrator has waived the right to review or object to these proposed permit actions under the waiver provision 40 CFR 123.6E.

Persons wishing to comment on the proposed permits are invited to submit a statement to the Field Operations indicated as the office responsible, within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding these applications and proposed permit actions. Comments should include the name, address and telephone number of the writer and a brief statement to inform the Field Office of the basis of the comment and the relevant facts upon which it is based. A public hearing may be held if the Field Office considers the public response significant.

Following the 30-day comment period, the Water Management Program Manager will make a final determination regarding the proposed permit action. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit renewal application and related documents, proposed effluent limitations and special conditions, comments received and other information are on the Department's file. The documents may be inspected at, or a copy requested from, the Field Office that has been indicated above the application notice.

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*Southcentral Regional Office: Water Management Program, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110, (717) 705-4707.*

<i>NPDES No.</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Tributary Stream</i>	<i>New Permit Requirements</i>
PA 0041220	RMC Enterprises, Inc. P. O. Box 381 Elizabethtown, PA 17022-0381	Dauphin County Conewago Township	UNT to Conewago Creek	TRC
PA 0086495	Metal Industries Home Products, Inc. P. O. Box 305 Gratz, PA 17030-0305	Dauphin County Gratz Borough	Wiconisco Creek	TRC
PA 0086355	Howard D. and Shari M. Soule 7312 Sandy Hollow Road Harrisburg, PA 17112	Dauphin County West Hanover Township	UNT to Beaver Creek	TRC

## DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

### Applications under the Pennsylvania Clean Streams Law

#### (Part II Permits)

The following permit applications and requests for plan approval have been received by the Department of Environmental Protection (Department).

Persons objecting on the grounds of public or private interest to the approval of an application or submitted plan may file a written protest with the Department at the address indicated above each permit application or plan. Each written protest should contain the following: name, address and telephone number; identification of the plan or application to which the protest is addressed; and a concise statement in sufficient detail to inform the Department of the exact basis of the protest and the relevant facts upon which it is based. The Department may conduct a fact-finding hearing or an informal conference in response to any given protest. Each commentator will be notified in writing of the time and place if a hearing or conference concerning the plan, action or application to which the protest relates is held. To insure consideration by the Department prior to final action on permit applications and proposed plans, initial protests and additions or amendments to protests already filed should be filed within 15 calendar days from the date of this issue of the *Pennsylvania Bulletin*. A copy of each permit application and proposed plan is on file in the office indicated and is open to public inspection.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceeding should contact the Secretary to the Board at (717) 787-3483. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

#### Industrial waste and sewerage applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

*Southeast Regional Office: Regional Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-6130.*

**WQM Permit No. 1599411.** Sewerage. **East Goshen Township Municipal Authority**, 1580 Paoli Pike, West Chester, PA 19380. Applicant requests approval for the construction and operation of two pump stations with force main to serve Mill Valley, a residential community located in East Goshen Township, **Chester County**.

**WQM Permit No. 1599412.** Sewerage. **Eugene McKenna**, 131 Germany Hollow Road, Honeybrook, PA 19320. Applicant requests approval for the construction and operation for a single residential STP located in West Brandywine Township, **Chester County**.

**WQM Permit No. 4699419.** Sewerage. **Whitemarsh Township**, 616 Germantown Pike, Lafayette Hill, PA 19444-1821. Applicant requests modification to reduce/eliminate chlorine residual levels at the wastewater treatment plan located in Whitemarsh Township, **Montgomery County**.

**WQM Permit No. 4699201.** Industrial waste. **Lonza, Inc.**, 900 River Road, Conshohocken, PA 19428. Applicant requests approval for construction and operation to expand the wastewater treatment plant located in Upper Merion Township, **Montgomery County**.

*Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**A. 3099402.** Sewerage. **Consol Pennsylvania Coal Company**, 1800 Washington Road, Pittsburgh, PA 15241. Application for the construction and operation of a sewage treatment plant to serve the Crabapple Portal Facility located in Richhill Township, **Greene County**.

*Southwest Regional Office: Regional Oil and Gas Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**WQM Permit No. 3286201-T1.** Industrial waste. **Franklin Brine Treatment Corporation**, RD 2, Box 403-R, U. S. Route 322 East, Franklin, PA. Application to modify an existing industrial wastewater treatment facility in Burrell Township, **Indiana County**. Application received in the Regional Office: June 21, 1999.

*Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**WQM Permit No. 6299409.** Sewage. **Mary Beth Burnell and Richard L. Morrell, SRSTP**, R. R. 3, Box 39A, Sugar Grove, PA 16350. This project is for the construction of a single residence sewage treatment plant in Sugar Grove Township, **Warren County**.

## INDIVIDUAL PERMITS

### (PAS)

#### NPDES Individual

The following parties have applied for an NPDES permit to discharge stormwater from a proposed construction activity into the surface waters of this Commonwealth. Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain limitations set forth in the permit and special conditions. The proposed determinations are tentative. Limitations are provided in the permit as erosion and sedimentation control measures and facilities which restrict the rate and quantity of sediment discharged.

Where indicated, the EPA, Region III, Regional Administrator has waived the right to review or object to this proposed permit action under the waiver provision of 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the office noted above the application within 30 days from the date of this public notice. Comments reviewed within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the responsible office considers the public response significant.

Following the 30-day comment period, 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 this determination may be appealed to the Environmental Hearing Board.

The application and related documents, including the erosion and sedimentation control plan for the construction activity, are on file and may be inspected at the office noted above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

*Southeast Regional Office: Regional Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.*

**NPDES Permit PAS10-D111.** Stormwater. **Katz Builders and Developers**, 541 West Germantown Pike, Plymouth Meeting, PA 19462, has applied to discharge stormwater from a construction activity located in Solebury Township, **Bucks County** to Aquetong Creek.

**NPDES Permit PAS10-G370.** Stormwater. **East Vincent Township**, 900 West Bridge Street, Spring City, PA, has applied to discharge stormwater from a construction activity located in East Vincent Township, **Chester County**, to Schuylkill River and Stoney Run.

*Northeast Regional Office: Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

*Lehigh County Conservation District, District Manager, Lehigh Ag. Ctr., Ste. 102, 4184 Dorney Park Road, Allentown, PA 18104, (610) 391-9583.*

**NPDES Permit PAS10Q178.** Stormwater. **Hope Community Church**, Joseph Beblavy, 2074 Hefner Road, Fogelsville, PA 18051-2320, has applied to discharge stormwater from a construction activity located in Weisenberg Township, **Lehigh County**, to Hassen Creek.

*Southcentral Regional Office: Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 657-4707.*

*Mifflin County Conservation District, District Manager, 20 Windmill Hill Rm. 4, Burnham, PA 17009, (717) 248-4695.*

**NPDES Permit PAS-10-4505.** Stormwater. **Milroy Associates**, 269 Waring Avenue, State College, PA 16801, has applied to discharge stormwater from a construction activity located in Armagh Township, **Mifflin County**, to Tea Creek.

*Franklin County Conservation District, District Manager, 550 Cleveland Avenue, Chambersburg, PA 17201, (717) 264-8074.*

**NPDES Permit PAS-10-M105.** Stormwater. **Galen Powers Land Development**, 2341 Falling Spring Road, Chambersburg, PA 17201, has applied to discharge stormwater from a construction activity located in Guilford Township, **Franklin County**, to Falling Spring Creek.

*Northcentral Regional Office: Regional Water Management Program Manager, 208 W. Third St., Suite 101, Williamsport, PA 17701, (717) 327-3574.*

*Clinton County Conservation District, 36 Spring Run Rd., Rm. 104, Mill Hall, PA 17751, (570) 726-3798.*

**NPDES Permit PAS101916.** Stormwater. **Columbia Gas Transmission** has applied to discharge stormwater from a construction activity located in Beech Creek, Noyes, Chapman, Grugan and Gallagher Townships, **Clinton County** to Big Run, W. Branch, Panther Branch,

Swamp Branch, Middle Branch, East Branch, Cleneen Branch of Baker Run, Cranberry Run, Benjamin Run, Sled Road Hollow, Stevens Valley Run, Goodman Hollow, Johnson Run, Bear Pen Run, Rickey Run.

*Southwest Regional Office: Regional Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**NPDES Permit PAS10A109.** Stormwater. **Ron Plisco**, P. O. Box 545, Monroeville, PA 15146, has applied to discharge water from a construction activity located in North Versailles Township, **Allegheny County** to Jacks Run.

**NPDES Permit PAS100244.** Stormwater. **Level 3 Communications**, 14023 Denver West Parkway, Golden, Colorado 80401-3107, has applied to discharge water from a construction activity located in Ambridge Borough, Baden Borough, Beaver Falls Borough, Big Beaver Borough, Conway Borough, Darlington Township, East Rochester Borough, Freedom Borough, Harmony Township, Homewood Borough, New Brighton Borough, New Galilee Borough, Patterson Heights Borough, Rochester Borough, West Mayfield Borough, **Beaver County**; Enon Valley Borough, Little Beaver Township, New Beaver Borough, **Lawrence County**; and Avalon Borough, Bellevue Borough, Ben Avon Borough, Edgeworth Borough, Emsworth Borough, Glenfield Borough, Hayville Borough, Kilbuck Township, Leet Township, Leetsdale Borough, Osborne Borough, City of Pittsburgh, Ross Township, Sewickley Borough, **Allegheny County** to Big Sewickley Creek, UNT Ohio River, Legionville Run, Tavebau Run, Crows Run, Walnut Bottom Run, Wallace Run, UNT Beaver River, Clarks Run, Dutchman Run, Fasburg Run, LaCock Run, Beaver River, McKinley Run, Blockhouse Run, Jordan Run, UNT NF Little Beaver Creek, NF Little Beaver Creek, Spruce Run, Lowries Run, Toms Run, Kilburck Run, Jacks Run and Little Sewickley Creek.

## SAFE DRINKING WATER

**Applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).**

*Northeast Regional Office: Sanitarian Regional Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**3999503.** Public water supply. **South Whitehall Township Authority**, Daniel G. D'Imprio, Chairperson, 4444 Walbert Ave., Allentown, PA 18104. This proposal involves construction of a new booster pump station and tie-in to an existing watermain along Hamilton Boulevard. It is located in South Whitehall Township, **Lehigh County**.

*Engineer: Stephen R. Henning, P.E., G. Edwin Pidcock Co.*

**4899504.** Public water supply. **Whispering Hollow North Mobile Home Park, SPG, Inc.**, 139 Country Club Road, Northampton, PA 18067. This proposal involves the permitting of an existing system with modifications. The system consists of three well sources, disinfection treatment, pump station, tanks and distribution system. It is located in Moore Township, **Northampton County**.

*Engineer: Kenneth Fulford, K. L. Fulford Associates.*

**5299502.** Public water supply. **Saville Rustin Water Co., Pine Ridge Community**, Bettye Zareaie, General Manager, 1103 Pine Ridge Drive, Bushkill, PA 18324. This proposal involves construction and tie-in of a new

well source, installation of telemetric controls and flow control, along with treatment to control bio-fouling in one of the previously permitted wells. It is located in Lehman Township, **Pike County**.

*Engineer:* Charles H. Niclaus, P.E., Niclaus Engineering Corp.

**6699501.** Public water supply. **Stapleton Estates**, Tom Florey, Owner, 1186 Winola Road, Clarks Summit, PA 18411. This proposal involves the construction of a public water supply well, disinfection and storage system for a 20 unit mobile home park located in Clinton Township, **Wyoming County**.

*Engineer:* David D. Klepadlo, P.E., David D. Klepadlo & Associates.

*Regional Office:* Northcentral Field Operations, Environmental Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701.

**A. 1799502.** The Department has received a permit application from the **Clearfield Municipal Authority**, 107 East Market Street, Clearfield, PA 16830, Pike Township, **Clearfield County**, for interconnection of well Nos. 4 and 5 that were drilled in the winter of 1998 using an emergency permit as a result of severe drought conditions.

*Northwest Regional Office:* Regional Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6899.

**A. 1099503.** Public water supply. **Adams Township Municipal Water Authority**, 170 Hutchman Road, Mars, PA 16046. This proposal involves the construction of a master meter pit and water distribution system along State Route 228 corridor, from the Mars-Warrendale Road to Three Degree Road in Adams Township, **Butler County**.

## 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 as proposed for remediation to a site-specific standard or as a special industrial area, the municipality, within which the site is located, may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period the municipality may request that the person identified, as the remediator of the site, develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the Environmental Cleanup Program Manager in the Department's Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

*Southeast Regional Office:* Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.

**South Whit Shopping Center Associates**, City of Philadelphia, **Philadelphia County**. Christopher Orzechowski, RT Environmental Services, Inc., 215 W. Church Road, King of Prussia, PA 19406, has submitted a Notice of Intent to Remediate site groundwater contaminated with heavy metals, solvents and polycyclic aromatic hydrocarbons. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Philadelphia Inquirer* on July 1, 1999.

**Mill Street Partners Property**, Quakertown Borough and Richland Township, **Bucks County**. Robert C. Quick, QuickTec Environmental, P. O. Box 1432, Medford, NJ 08055, has submitted a Notice of Intent to Remediate site soil contaminated with lead. The applicant proposes to remediate the site to meet site-specific standards. A summary of the Notice of Intent to Remediate was reported to have been published in the *Quakertown Free Press* on June 22, 1999.

**PAEDCO Property (Former Phoenix Steel Foundry Building Site)**, Phoenixville Borough, **Chester County**. Gerald L. Kirkpatrick, P.G., Environmental Standards, Inc., 1140 Valley Forge Road, P. O. Box 810, Valley Forge, PA 19482-0810, has submitted a Notice of Intent to Remediate site soil contaminated with lead and heavy metals. The applicant proposes to remediate the site to meet Statewide health and site-specific standards. A summary of the Notice of Intent to Remediate was reported to have been published in *The Phoenix* on June 24, 1999.

**Holland Village Shopping Center-Holland Custom Cleaners**, Northampton Township, **Bucks County**. Alan R. Hirschfeld, P.G., Earth Sciences Consultants, Inc., P. O. Box 1448, Skippack, PA 19474, has submitted a Notice of Intent to Remediate site groundwater contaminated with solvents. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Bucks County Courier Times* on or about July 5, 1999.

*Northeast Regional Field Office: Joseph Brogna, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**PP&L Northern Division Service Center**, Dunmore Borough, **Lackawanna County**. Penn Environmental & Remediation, Inc., 2755 Bergey Road, Hatfield, PA 19440, has submitted a Notice of Intent to Remediate (on behalf of its client, Pennsylvania Power & Light, Inc., 2 North Ninth Street, Allentown, PA 18101) concerning the remediation of site soils found to have been contaminated with petroleum hydrocarbons and polycyclic aromatic hydrocarbons. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in *The Scranton Times* on June 30, 1999. A Final Report was simultaneously submitted. See additional *Pennsylvania Bulletin* notice.

*Southcentral Regional Office: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4705.*

**Grinnell Corporation**, Columbia Borough, **Lancaster County**. Grinnell Corporation, 1411 Lancaster Avenue, Columbia, PA 17512, has submitted a Notice of Intent to Remediate site groundwater contaminated with lead and heavy metals and site soils contaminated with lead, heavy metals, BTEX and PHCs. The applicant proposes to remediate the site to meet a combination of the Statewide health standard and site-specific standard requirements. A summary of the Notice of Intent to Remediate was reported to have been published in the *Lancaster Intelligencer Journal* on June 11, 1999.

**Ladd Hanford Used Auto Coral**, North Lebanon Township, **Lebanon County**. Frederick C. Laurenzo, Frederick Chevrolet, Cadillac, Olds, Geo, 1505 Quentin Road, Lebanon, PA 17042, has submitted an amended Notice of Intent to Remediate site soils and groundwater contaminated with solvents, BTEX and PHCs. The applicant proposes to remediate the site to meet a combination of the Statewide health standard and site-specific standard requirements. A summary of the Notice of Intent to Remediate was reported to have been published in the *Lebanon Daily News* on June 3, 1999.

**Caterpillar, Inc.**, Springettsbury Township, **York County**. Earth Tech, Two Market Plaza Way, Mechanicsburg, PA 17055, has submitted a Notice of Intent to Remediate site soil contaminated with lead and heavy metals. The applicant proposes to remediate the site to meet the site-specific standard requirements. A summary of the Notice of Intent to Remediate was reported to have been published in the *York Daily Record News* on June 25, 1999.

*Southwest Field Office: John J. Matviya, Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-5217.*

**Pittsburgh Forging Company Site (Former/American Bridge Corporation Property)**, Borough of Coraopolis, **Allegheny County**. American Bridge Corpo-

ration, Three Gateway Center, Suite 1100, Pittsburgh, PA 15222 and AMPCO Pittsburgh Corporation/Old Forgings, Rose Hoover, 600 Grant Street, Suite 4600, Pittsburgh, PA 15219, have submitted a Notice of Intent to Remediate soil and groundwater contaminated with lead solvents BTEX and PHCs. The applicant proposes to remediate the site to meet the site-specific standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Coraopolis Record* on June 16, 1999.

**Exxon Pittsburgh Specialty Products Plant (Former)**, City of Pittsburgh, **Allegheny County**. Exxon Company, U.S.A., 800 Bell Street, Houston, TX 77002 and Gloria McCleary, Integrated Science and Technology, Inc., 2595 South George Street, York, PA 17403, have submitted a Notice of Intent to Remediate soil and groundwater contaminated with PCBs, lead, heavy metals, solvents, BTEX, PHCs and PAH. The applicant proposes to remediate the site to meet the site-specific standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Pittsburgh Post Gazette* on June 15, 1999.

## SOLID AND HAZARDOUS WASTE

### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Applications submitted under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.**

*Northwest Regional Office: Regional Solid Waste Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6848.*

**Permit No. 100403.** An application to expand the landfill by 80 acres and to increase the average daily volume at the facility from 780 tons per day to 3,000 tons per day was received from **Seneca Landfill**, P. O. Box 1080, Mars, PA 16046, located in Jackson and Lancaster Townships, **Butler County**. Application was accepted by the Regional Office on July 2, 1999.

**Permit No. 101397.** An application to recirculate leachate at the Superior Greentree landfill was received from **Superior Greentree Landfill**, 635 Toby Road, Kersey, PA 15846, located in Fox Township, **Elk County**. Application was accepted by the Regional Office on July 7, 1999.

**Permit No. 100361.** A Phase II application for an expansion of the landfill was received from **McKean County Landfill**, P. O. Box 448, Mt. Jewett, PA 16740, located in Sergeant Township, **McKean County**. Application was accepted by the Regional Office on July 7, 1999.

## AIR QUALITY

### Notice of Plan Approval and Operating Permit Applications

#### Nonmajor 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. Although the sources covered by these applications may be located at a major facility, the sources being installed or modified do not trigger major new source review or prevention of significant deterioration requirements.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the Regional Offices identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

Persons wishing to file protests or comments on the proposed plan approval and/or operating permits must submit the protest or comment within 30 days from the date of this notice. 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's 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 to the date of the hearing.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121–143, the Federal Clean Air Act and regulations adopted under the act.

### OPERATING PERMITS

#### Notice of Intent to Issue Title V Operating Permits

Under 25 Pa. Code § 127.521, notice is given that the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to the following facilities. These facilities are major facilities subject to the operating permit requirements under Title V of the Federal Clean Air Act and 25 Pa. Code Chapter 127, Subchapters F and G (relating to operating permit requirements; and Title V operating permits).

Appointments to review copies of the Title V application, proposed permit and other relevant information must be made by contacting Records Management at the regional office telephone number noted. For additional information, contact the regional office noted.

Interested persons may submit written comments, suggestions or objections concerning the proposed Title V permit to the regional office within 30 days of publication of this notice. Written comments submitted to the Department during the 30-day public comment period shall include the name, address and telephone number of the person submitting the comments, along with the reference number of the proposed permit. The commentator should also include a concise statement of objections to the permit issuance and the relevant facts upon which the objections are based.

The Department reserves the right to hold a public hearing on the proposed action based upon the information received during the public comment period and will provide notice of any scheduled public hearing at least 30 days in advance of the hearing. The hearing notice will be

published in the *Pennsylvania Bulletin* and a newspaper of general circulation where the facility is located.

*Northeast Regional Office: Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, Attn: Michael Saffo, (570) 826-2531.*

**48-00021: Northampton Generating Co.** (1 Horwith Drive, Northampton, PA 18067), for CFB boiler, diesel generators, fire pumps and culm and ash handling systems in Northampton Borough, **Northampton County**.

*Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, Attn: Muhammad Zaman, (570) 327-3637.*

**07-05010: Small Tube Products Co., Inc.** (P. O. Box 1674, Altoona, PA 16603), located in Allegheny Township, **Blair County**. The facility operates a cold working redraw mill in the fabrication of tubing. The major source of emissions at the facility are the degreasing operations which are primary emitters of volatile organic compounds (VOCs).

**07-05029: Chicago Rivet & Machine Co.** (Industrial Park, Tyrone, PA 16686), located in Tyrone Borough, **Blair County**. The facility is a manufacturer of both metal rivets and custom made rivet machines. The major source of emissions at the facility is associated with the use of a vapor degreaser which is a primary emitter of volatile organic compounds (VOCs).

#### Notice of Intent to Revise Operating Permits for Hospital/Medical/Infectious Waste Incinerators

Under section 111(d)/129 of the Clean Air Act, the United States Environmental Protection Agency (EPA) promulgated Emission Guidelines to control the emission of designated pollutants from existing hospital/medical/infectious waste incinerators (HMIWI) (See 62 FR 48348, September 15, 1997). These guidelines are codified at 40 CFR Part 60, Subpart Ce and incorporated by reference in 25 Pa. Code § 122.3. These Emission Guidelines apply to all existing HMIWI units which have commenced construction on or before June 20, 1996.

The Department of Environmental Protection (Department) has determined that the affected HMIWI units listed as follows are subject to the Emission Guidelines. New or revised Federally enforceable State operating permits (FESOP), Title V operating permits or plan approvals, when necessary, will be submitted to the EPA as the legally enforceable mechanism to implement the Subpart Ce requirements.

**OP-32-00013: Indiana Hospital** (P. O. Box 788, Hospital Road, Indiana, PA 15701), in White Township, **Indiana County**. *Primary Emissions:* Sulfur oxides (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), hazardous air pollutants (HAPs) and particulate matter. *Affected HMIWI unit:* Primary Chamber Cleanair Mark VI, Rebuilt by Penn Industrial hospital/medical/infectious waste incinerator with secondary chamber PennRam Model No. 210-500, K-15-18, 210 pounds per hour. *Other Sources:* three boilers and two emergency generators.

**OP-65-00313: West Haven Nursing Home** (P. O. Box 278, Apollo, PA 15613), in Washington Township, **Westmoreland County**. *Primary Emissions:* Nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and particulate matter. *Affected HMIWI unit:* The hospital/medical/infectious waste incinerator is a starved air unit which employs a primary and secondary chamber and is manufactured by Kelley Co., Inc., 300 lbs/hr. This unit also

burns less than 10% hospital infectious waste and has applied for an exemption claim.

**OP-65-00732: Latrobe Area Hospital** (121 West 2nd Avenue, Latrobe, PA 15650), in Latrobe, **Westmoreland County**. *Primary Emissions:* Sulfur oxides (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), hazardous air pollutants (HAPs) and particulate matter. *Affected HMIWI unit:* The hospital/medical/infectious waste incinerator is manufactured by Simonds Mfg. Corp. model no. 2151B, natural gas double chamber batch type, 968 lbs/batch. *Other Sources:* two boilers and four emergency generators.

Copies of the draft permits or plan approvals and other relevant information are available for public inspection and additional information may be obtained by contacting the Southwest Regional Office, Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174, between the hours of 8 a.m. and 3:30 p.m., Monday through Friday, except holidays.

Interested persons may submit written comments, suggestions or objections concerning the proposed permits or plan approvals to the Regional Office noted above within 30 days of publication of this notice. Written comments submitted to the Department during the 30-day public comment period shall include the name, address and telephone number of the person submitting the comments, along with the permit number of the proposed permit. The commentator should include a concise statement of objections to the issuance of the revised permit or plan approval and the relevant facts upon which the objections are based.

A public hearing will subsequently be held for all HMIWI which will be shutting down, and have requested an extension beyond the 1 year compliance deadline specified in the draft permit or plan approval. The Department reserves the right to hold a public hearing on all other proposed actions based upon the information received during the public comment period and will provide notice of each hearing at least 30 days prior to the date of the hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation where the facility is located.

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**Applications received and intent to issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015).**

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*Northeast Regional Office: Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, (570) 826-2531.*

**48-306-010A: Pennsylvania Power and Light Co.** (Two North Ninth Street, Allentown, PA 18101), for operation of a natural gas boiler (Unit 3A auxiliary boiler) in Lower Mt. Bethel Township, **Northampton County**.

**48-309-063A: ESSROC Cement Corp.** (3251 Bath Pike, Nazareth, PA 18064), for operation of a cement clinker handling system at Nazareth Plant I in Nazareth Borough, **Northampton County**.

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**36-05094: Keystone Wood Specialties, Inc.** (P. O. Box 10127, Lancaster, PA 17605-0127), for operation of three spray booths in East Lampeter Township, **Lancaster County**.

**36-316-031B: Conestoga Wood Specialties Corp.** (245 Reading Road, East Earl, PA 17519), for modification to wood working operation—Plant No. 4 (System 4F,

including installation of a fabric collector), in East Earl Township, **Lancaster County**.

**PLAN APPROVALS**

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**Applications received and intent to issue Plan Approvals under the Air Pollution Control Act (35 P. S. §§ 4001—4015).**

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*Northeast Regional Office: Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, (570) 826-2531.*

**35-322-003C: Dominion Energy, Inc.** (Alliance Sanitary Landfill, Inc., P. O. Box 28, Taylor, PA 18517), for modification of the kryogenic condensate gas plant in Taylor Borough, **Lackawanna County**.

**48-309-106: Keystone Cement Co.** (P. O. Box A, Bath, PA 18014), for installation of silo tunnel ventilation controlled by a fabric collector in East Allen Township, **Northampton County**.

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**05-05006A: Columbia Gas Transmission Corp.** (Route 1, Box 25, Artemas, PA 17211-9741), for construction of natural gas dehydrator system at Artemas Compressor Station in Mann Township, **Bedford County**.

**28-329-001A: Borough of Chambersburg** (160 North Second Street, Chambersburg, PA 17201), for construction of engine-generator at the Diesel Power Plant in Chambersburg Township, **Franklin County**.

**28-03026A: Gish Logging, Inc.** (P. O. Box 282, Fort Loudon, PA 17224), for installation of a wood-fired boiler in Metal Township, **Franklin County**. The boiler is subject to 40 CFR Part 60, Subpart Dc, Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units.

**28-05022: RJC Industries, Inc.** (9523 Lincoln Way West, St. Thomas, PA 17252), for construction of two spray paint booths at a new wood working facility in Letterkenney Township, **Franklin County**.

**06-301-095A: Joseph D. Giles Funeral Home, Inc.** (21 Chestnut Street, Mohnton, PA 19540-1925), for construction of a gas fired crematory for human remains in Mohnton Borough, **Berks County**.

**22-03009A: Brubaker Tool Corp.** (200 Front Street, Millersburg, PA 17061), for modification of an existing heat treat line in Millersburg Borough, **Dauphin County**.

*Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.*

**TV-25-00316: Ethan Allen, Inc.** (77 South Main Street, Union City, PA 16438), for construction of a wood furniture robotic spray process resulting in a plantwide applicability limit (PAL) of 206 tpy of VOC and 24.0 tpy of particulate matter in Union City, **Erie County**.

**PA-43-287A: Jones Performance Products, Inc.** (1 Jones Way, West Middlesex, PA 16159-0808), for construction of a sheet mould compound press (300 tons) in West Middlesex, **Mercer County**. Jones performance is a Title V facility.

**PA-10-062A: Slippery Rock University** (Service and Kiester Road, Slippery Rock, PA 16057), for modification of two existing coal fired boilers (1 and 2) to be converted to natural gas located in Slippery Rock, **Butler County**.



**PA-10-021E: Indspec Chemical Corp.** (133 Main Street, P. O. Box 307, Petrolia, PA 16050), for construction of a 9,500 gallon storage vessel for resorcinol and installation of a scrubber to control the resorcinol emissions in Petrolia, **Butler County**.

**42-302-009A: Allied Signal Astor Corp. Petrowax** (Routes 46 and 446, Smethport, PA 16749), for minor modification to allow the bypass of the ESP when firing fuel oil only in Keating Township, **McKean County**.

**42-312-017A: Allied Signal Astor Corp. Petrowax** (Route 46 and 446, Smethport, PA 16749), for minor modification to allow simultaneous use of Tanks 22, 24, 28 and 29, and to reflect the tanks which were deleted in Keating Township, **McKean County**.

**PA-42-151A: Werzalit of America, Inc.** (40 Holley Avenue, Bradford, PA 16701), for modification of an hourly restriction in Bradford, **McKean County**.

**PA-10-267A: Three Rivers Aluminum Co., Inc.** (71 Progress Avenue, Cranberry Township, PA 16066), for modification of surface coating operation in Cranberry Township, **Butler County**. The modification will not cause an increase in emissions.

**PA-43-310B: Duferco Farrell Corp.** (15 Roemer Boulevard, Farrell, PA 16121), for construction of two package boilers (33.5 MMBtu/hr each) for the No. 7 pickle line rebuild project in Farrell, **Mercer County**.

**PA-20-040A: Advanced Cast Products, Inc.** (18700 Mill Street, Meadville, PA 16335), for construction of a new molding line, holding furnace, sand preparation, shakeout and baghouses to control the particulate emissions in Vernon Township, **Crawford County**.

*Philadelphia Department of Public Health: Air Management Services, 321 University Avenue, Philadelphia, PA 19104, (215) 685-7572.*

**99079: SJA Construction** (Independent Pier 2, Girard Point, Philadelphia, PA 19145), for construction and operation of a batch asphalt plant in the City of Philadelphia, **Philadelphia County**.

## MINING

### APPLICATIONS TO CONDUCT COAL AND NONCOAL ACTIVITIES

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of the application is available for inspection at the District mining office indicated above each application. Where a 401 water quality certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for the certification.

Written comments or objections, or requests for informal conferences on applications, may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the same address within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34 (relating to public notices of filing of permit applications, opportunity for comment and informal conferences).

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. The NPDES permits will contain, at a minimum, technology-based effluent limitations (as described in the Department's regulations—25 Pa. Code §§ 77.522, 87.102, 88.92, 88.187, 88.242, 89.52 and 90.102) for iron, manganese, suspended solids, settleable solids, alkalinity and pH. In addition to the above, more restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit when necessary for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies which have requested review of the NPDES permit requirements for a particular mining activity within the above-mentioned public comment period will be provided with a 30-day period to review and submit comments on those requirements.

Written comments or objections should contain the name, address and telephone number of persons submitting comments or objections; application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

*Greensburg District Office, R. D. 2, Box 603-C, Greensburg, PA 15601.*

#### *Coal Applications Received*

**26840105R. Boyle Land & Fuel Co.** (P. O. Box 576, Fredericktown, PA 15333). Renewal application received for continued operation and reclamation of a bituminous surface mine located in Wharton Township, **Fayette County**, affecting 69.6 acres. Receiving streams: unnamed tributaries to Stony Fork to Big Sandy Creek. Renewal application received: June 30, 1999.

**30890105R. Boyle Land & Fuel Co.** (P. O. Box 576, Fredericktown, PA 15333). Renewal application received for continued operation and reclamation of a bituminous surface mine located in Morgan Township, **Greene County**, affecting 49.9 acres. Receiving streams: unnamed tributaries of South Fork to South Fork to Monongahela River. Renewal application received: June 30, 1999.

**65990103. Gary Gioia Coal Company** (319 Karen Drive, Elizabeth, PA 15037). Application received for commencement, operation and reclamation of a bituminous surface mine located in Hempfield Township, **Westmoreland County**, proposed to affect 21.5 acres. Receiving streams: unnamed tributaries to Wilson Run to Wilson Run to Sewickley Creek to the Youghiogheny River. Application received: June 30, 1999.



**03980101. Walter L. Houser Coal Co., Inc.** (RR 9, Box 434, Kittanning, PA 16201). Application received for commencement, operation and reclamation of a bituminous surface auger mine located in Kittanning Township, **Armstrong County**, proposed to affect 207.0 acres. Receiving streams: Mill Run and unnamed tributaries to Mill Run. Application received: June 30, 1999.

*Hawk Run District Office, P. O. Box 209, Off Empire Road, Hawk Run, PA 16840.*

**17990113. Ed Hanslovan Coal Co., Inc.** (R. D. 2, Box 230, Morrisdale, PA 16858), commencement, operation and restoration of a bituminous surface mine-auger-coal refuse disposal-coal preparation plant facility permit in Bell Township, **Clearfield County** affecting 535 acres. Receiving streams: Lost Run and Laurel Run. Application received June 22, 1995.

*McMurray District Office, 3913 Washington Road, McMurray, PA 15317.*

**03871303. TJS Mining, Inc.** (R. D. 1, Box 260D, Shelocta, PA 15774), to revise the permit for the Darmac No. 2 in Plumcreek Township, **Armstrong County** to add permit and subsidence control plan acres and one vent borehole, no additional discharges. Application received June 14, 1999.

**32841307. Tanoma Coal Co., Inc.** (R. R. 1, Box 594, Marion Center, PA 15759), to revise the permit for the Tanoma Mine in Rayne Township, **Indiana County** to install the E-11 vent borehole, no additional discharges. Application received June 14, 1999.

**04991601. Quality Aggregates, Inc.** (200 Neville Rd., Pittsburgh, PA 15225), to operate the Colona Dock Mine in Monaca Borough, **Beaver County**, new prep plant, tippie load out (grandfathered pre-existing to 1930s), no additional discharges. Application received June 18, 1999.

**02733702. Consolidation Coal Company** (200 Hidden Valley Rd., McMurray, PA 15317), to renew the permit for the Renton Mine Coal Refuse Disposal Area in Plum Borough, **Allegheny County**, no additional discharges. Application received June 29, 1999.

**63981301. Consol Coal Co.** (R. D. 4, Box 425, Moundsville, WV 26041), to operate the Shoemaker Deep Mine in West Finley Township, **Washington County**, new mine (437.53 underground acres), no additional discharges. Application received June 30, 1999.

**32851302. Helvetia Coal Co.** (P. O. Box 219, Shelocta, PA 15774), to revise the permit for the Lucerne No. 6E and 6 Mine in Blacklick Township, **Indiana County** to drill boreholes to pump discharge 6E to 6 Mine, no additional discharges. Application received July 6, 1999.

**03921602. Glacial Sand & Gravel Co.** (P. O. Box 1022, Kittanning, PA 16201-5022), to renew the permit for the Glacial Coal Tipple in East Franklin Township, **Armstrong County**, no additional discharges. Application received July 7, 1999.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**54930102C11. Harriman Coal Corporation** (978 Gap Street, Valley View, PA 17983), correction to an existing anthracite surface mine operation in Porter Township, **Schuylkill County** affecting 460.0 acres, receiving stream—none. Application received June 23, 1999.

**49870201R2. Susquehanna Coal Company** (P. O. Box 27, 200 East Front Street, Nanticoke, PA 18634),

renewal of an existing coal refuse reprocessing and surface mine operation in Mt. Carmel Township, **Northumberland County** affecting 206.0 acres, receiving stream—none. Application received June 25, 1999.

**54850104R2. Tracy Coal Co.** (116 West Avenue, Mt. Carmel, PA 17851), renewal of an existing anthracite surface mine operation in Schuylkill Township, **Schuylkill County** affecting 102.5 acres, receiving stream—unnamed tributary to East Branch Schuylkill River. Application received June 29, 1999.

*Greensburg District Office, R. D. 2, Box 603-C, Greensburg, PA 15601.*

#### *Noncoal Applications Received*

**65900403. Pioneer Mid-Atlantic, Inc.** (400 Industrial Boulevard, New Kensington, PA 15068). Application received for a revision to add underground mining to the Whitney Quarry, located in Unity Township, **Westmoreland County**, affecting 492 acres. Receiving streams: unnamed tributaries to Ninemile Run, to Ninemile Run, to Loyalhanna Creek, to the Kiskiminetas River. Application received: June 30, 1999.

*Knox District Office, P. O. Box 669, Knox, PA 16232.*

**302124-4379306-E-3. H & H Materials, Inc.** (190 Canon Road, Stoneboro, PA 16153). Application for a stream encroachment to encroach within the 100 foot stream barrier of Little Shenango River in Lake Township, **Mercer County**. Receiving streams: Shenango River. Application received June 28, 1999.

**4379306. H & H Materials, Inc.** (190 Canon Road, Stoneboro, PA 16153). Revision to an existing sand and gravel pit operation in Lake Township, **Mercer County**, affecting 220.0 acres. Receiving streams: Shenango River. Revision to include a land use change from unmanaged natural habitat to unmanaged water impoundment on lands of H & H Materials, Inc. Application received June 28, 1999.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**774SM2A1C3. Berks Products Corporation** (P. O. Box 421, Reading, PA 19603), renewal of NPDES Permit No. PA0594521 in Ontelaunee Township, **Berks County**, receiving stream—Maiden Creek and Schuylkill River. Application received July 9, 1999.

## **APPLICATIONS RECEIVED UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT**

### **ENCROACHMENTS**

The following Dam Safety and Encroachment permit applications, requests for Environmental Assessment approval and requests for water quality certification have been received by the Department of Environmental Protection (Department). Section 401(a) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)) requires the State to certify that the involved projects will not violate the applicable provisions of 33 U.S.C.A. §§ 1311—1313, 1316 and 1317, as well as relevant State requirements. Initial requests for 401 certification will be published concurrently with the permit application. Persons objecting to approval of a request for certification under section 401 or to the issuance of a Dam Safety or Encroachment

Permit or the approval of Environmental Assessments must submit comments, suggestions or objections within 30 days of the date of this notice as well as questions to the office noted above the application.

**Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401 of the Federal Water Pollution Control Act.**

*Southeast Regional Office: Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**E15-623.** Encroachment. **Seawind Aviation**, SNA, Inc., P. O. Box 607, Kimberton, PA 19442-0607. To place and maintain fill in 1.7 acres of wetlands (PFO) located in the headwaters of Sucker Run (WWF-MF). The fill is associated with the construction of an aircraft repair and manufacturing facility located adjacent to the Chester County Airport (Carlson Airport) (Coatesville, PA Quadrangle N: 19.3 inches; W: 16.2 inches) in Valley Township, **Chester County**.

**E23-384.** Encroachment. **Tosco Pipeline**, 1100 Route 1, Linden, NJ 07036. To perform maintenance on an existing 8-inch and 10-inch pipeline across the following streams and bodies of water:

1. To place concrete encasement around the existing 8-inch pipe across Marcus Hook Creek (WWF), (Marcus Hook, PA-NJ-DE, USGS Quadrangle (N: 20.2 inches; W: 9.5-inches) in Aston Township, Delaware County.

2. To place concrete encasement around the existing 8-inch pipe with rip-rap apron upstream and downstream across Darby Creek (CWF-MF), (Lansdowne, PA USGS Quadrangle N: 13.00 inches; W: 11 inches) in Springfield Township, Delaware County.

3. To place concrete encasement around the existing 8-inch pipe with rip-rap apron upstream and downstream across Mylars Run (CWF-MF), (Lansdowne, PA USGS Quadrangle (N: 15.8 inches; W: 6.3 inches) in Upper Darby Township, Delaware County.

4. To place concrete encasement around the existing 8-inch, 10-inch pipes across Marcus Hook Creek, (Marcus Hook, PA-NJ-DE USGS Quadrangle N: 13.5 inches; W: 8.5 inches) in Trainer Borough, Delaware County.

5. To realign approximately 80 ft. of the stream channel of Marcus Hook Creek and to place concrete encasement around the existing 8-inch and 10-inch pipes, (Marcus Hook, PA-NJ-DE USGS Quadrangle N: 18.7 inches; W: 8.5 inches) in Upper Chichester Township, Delaware County.

6. To provide an additional mid-span support to an existing 8-inch pipeline across an unnamed tributary to Darby Creek (WWF) in John Heinz National Refuge, (Bridgeport, PA USGS Quadrangle, N: 22 inches; W: 6.5 inches) in Tinicum Township, **Delaware County**.

**E46-845.** Encroachment. **Abington Township**, 1176 Old York Road, Abington, PA 19001. To perform the following activities associated with the Baeder Run Flood Control Project:

1. To install and maintain 455 linear feet of 9-foot by 4-foot reinforced concrete box stream enclosure along Baeder Run (WWF). This structure will be installed adjacent to an existing 5.5-foot diameter reinforced concrete culvert to increase the hydraulic conveyance capacity.

2. To widen and maintain a 1,100 linear foot section of Baeder Run. The total width of the proposed channel will be about 18 feet between the downstream terminus of the aforementioned culvert and Wanamaker Road (average width increase is 7 feet).

3. To construct and maintain a reinforced modular black retaining wall along the streambank where the widening will occur.

The project is located (Germantown, PA Quadrangle N: 19.9 inches; W: 0.9 inch) in Abington Township, **Montgomery County**.

*Northeast Regional Office: Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**EA54-002NE.** Environmental Assessment. **Department of Environmental Protection**, Bureau of Abandoned Mine Reclamation, 2 Public Square, 5th Floor, Wilkes-Barre, PA 18711-0790. To place fill in four water bodies, totaling 0.19 acre, for the purpose of reclaiming an abandoned mine site as part of Project OSM 54 (3650) 101.1, Newtown South. The project is located approximately 1,300 feet south of S. R. 0209 on the crest of Red Mountain approximately 6,000 feet south west of the village of Newtown (Minersville, PA Quadrangle N: 2.4 inches; W: 14.6 inches), in Reilly Township, **Schuylkill County** (Baltimore District, U. S. Army Corps of Engineers). Approval of an Environmental Assessment is requested in conjunction with § 105.12(a)(16), Dam Safety and Waterway Management, regarding restoration activities.

**E54-268.** Encroachment. **James L. McAndrew**, 100 Centre Street, Ashland, PA 17921. To construct and maintain a pedestrian bridge, having a span of approximately 16.0 feet and a minimum underclearance of 3.0 feet across Little Mahanoy Creek (CWF), for the purpose of providing access to a portion of an 89.47-acre tract. The project is located approximately 1,000 feet north of the intersection of T-962 (Malones Road) and T-964 (Turnpike Road) Ashland, PA Quadrangle N: 2.4 inches; W: 8.1 inches), Butler Township, **Schuylkill County** (Baltimore District, U. S. Army Corps of Engineers).

**E64-205.** Encroachment. **Donald Henderson and Louis Bellucci**, R. R. 2, Honesdale, PA 18431. To construct and maintain a road crossing of Purdy Creek (HQ-CWF) consisting of three 30-inch diameter corrugated metal culverts set 6 inches below grade. The downstream culvert outlets will be protected by 18-inches of R-4 riprap set at grade. The project is located northeast of Hamlin off S. R. 0590 and Daniels Road. Proceed 1 mile on Daniels Road to Beaver Brook Road, the site is 1,000 feet from the intersection of Daniels and Beaver Brook Road. This is the Lakeview, PA Quadrangle N: 14.2 inches; W: 4.6 inches), Paupack Township, **Wayne County** (Philadelphia District, U. S. Army Corps of Engineers).

*Southcentral Regional Office: Section Chief, Water Management Program, Soils and Waterways Section, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110, (717) 705-4707.*

**E36-678.** Encroachment. **Penn Township**, 97 North Penryn Road, Manheim, PA 17545. To realign and maintain 1,400 feet channel reach of Santo Domingo Creek to prevent degrading of Lexington Road located about 3,000 feet southwest of Halfville Village (Lititz, PA Quadrangle N: 10.8 inches; W: 11.9 inches) in Penn Township, **Lancaster County**.

*Northcentral Region: Water Management, Soils and Waterways Section, F. Alan Sever, Chief, 208 West Third St., Suite 101, Williamsport, PA 17701.*

**E14-352.** Encroachment. **Eastern States Exploration Co.**, P. O. Box 178, Snow Shoe, PA 16874. To construct and maintain a natural gas pipeline, 6-inch in diameter, under: North Fork Beech Creek (CWF) (Flat Street and France Crossings), unnamed tributary to Beech Creek (CWF) (Pancake Crossing), unnamed tributary of Sandy Run (CWF), Beech Creek (Redbuck Road Crossing) (CWF), Rock Run (EV). The project begins at the meter house on Platt Street in Village of Clarence, (Snow Shoe, PA Quadrangle N: 9.00 inches; W: 9.42 inches) and ends at the ESEC Compressor Station on Hall Road located approximately 1 mile south of the intersection of Hall Road and Kato-Orviston Road (Snow Shoe SE, PA Quadrangle N: 11.83 inches; W: 12.92 inches) in Snow Shoe Township, **Centre County**. The project proposes to disturb 90—100 linear feet of streams.

*Southwest Regional Office: Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E02-1278.** Encroachment. **Neville Metals**, 3100 Grand Avenue, Pittsburgh, PA 15225. To expand, operate and maintain the existing barge docking facility in the channel of and along the left bank of the Ohio River for the purpose of improving and expanding the existing facility located near River Mile 7.1 (Emsworth, PA Quadrangle N: 1.5 inches; W: 14.9 inches) in Neville Township, **Allegheny County**.

**E11-278.** Encroachment. **East Carroll Township Supervisors**, 3350 Brick Road, Carrolltown, PA 15722. To remove the existing structure and to construct and maintain a corrugated metal box culvert having a normal span of 16.0 feet and an underclearance of 4.3 feet in Laurel Lick Run (HQ-CWF) located on T-511, approximately 1.5 miles east of U. S. Route 219 (Carrolltown, PA Quadrangle N: 12.3 inches; W: 9.3 inches) in East Carroll Township, **Cambria County**.

*Northwest Regional Office: Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**E25-590.** Encroachment. **PA Fish and Boat Commission**, 450 Robinson Lane, Bellefonte, PA 16823. To construct and maintain the following improvements at the Elk Creek Access along Lake Erie at the mouth of Elk Creek (Fairview, PA Quadrangle N: 4.25 inches; W: 16.4 inches) located in Girard Township, **Erie County**.

1. A 20-foot-wide by 1,450-foot-long, 8-inch-thick gravel/roadway in the 100-year floodplain of Elk Creek.
2. An 80-foot-long by 60-foot-wide parking lot within the 100-year floodplain of Elk Creek.
3. Five 48-inch-diameter plastic pipe culverts with rock riprap armor in a lagoon on the gravel roadway.
4. A 36-foot-long by 10-foot-wide gabion basket pier with concrete cap along the shore of Lake Erie at the mouth of Elk Creek.

**E33-198.** Encroachment. **Jefferson County Commissioners**, 155 Main Street, Jefferson Place, Brookville, PA 15825. To remove the existing County Bridge No. JC-6 (Windfall Bridge) and to realign approximately 150 feet of the channel of Big Run extending upstream from the bridge and to construct and maintain a prestressed concrete adjacent box beam bridge having a clear span of 80 feet and an underclearance of 7 feet on a 58 degree skew across Big Run on T-528 approximately 0.1 mile

East of T-524 (Punxsutawney, PA Quadrangle N: 19.3 inches; W: 1.4 inches) located in Henderson Township, **Jefferson County**.

## WATER ALLOCATIONS

**Applications filed under the act of June 24, 1939 (P. L. 842, No. 365) (32 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of this Commonwealth.**

*Northeast Regional Office: Sanitarian Regional Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**WA39-706B.** Water Allocation Permit. **South Whitehall Township**, Daniel G. D'Imperio, Chairperson, 4444 Walbert Ave., Allentown, PA 18104-1699. This proposal involves the purchase of 1.2 mgd, based on a 30-day average, from the City of Allentown. It is located in South Whitehall Township, **Lehigh County**.

*Engineer:* Stephen R. Henning, P.E., G. Edwin Pidcock Co.

**WA48-1005.** Water Allocation Permit. **Allen Township Authority**, Ilene Eckhart, Secretary, 4714 Indian Trail Road, Northampton, PA 18067-9492. This proposal involves the purchase of up to 400,000 gallons per day, based on an annual average, from the Bethlehem Authority/City of Bethlehem. It is located in Northampton County.

*Engineer:* James B. Birdsall, P.E., Hanover Engineering Associates, Inc.

## ACTIONS

### FINAL ACTIONS TAKEN UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

[National Pollution Discharge Elimination System Program (NPDES)]

#### DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

##### (Part I Permits)

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications and requests for plan approval and has issued the following significant orders.

Persons aggrieved by this 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, Market Street State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483, TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action 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 at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

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**Actions under The Clean Streams Law (35 P.S. §§ 691.1—691.1001).**

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*Southeast Regional Office: Regional Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-6130.*

**NPDES Permit No. PA0057011.** Sewage. **River Park Office Associates**, 555 North Lane, Suite 6101, Conshohocken, PA 19428, is authorized to discharge from a facility located at River Park Office Facility, in Whitmarsh Township, **Montgomery County** into Schuylkill River.

**NPDES Permit No. PA0050172.** Industrial waste. **Consolidated Rail Corporation**, 1000 Howard Blvd., Suite 400, Mount Laurel, NJ 08054, is authorized to discharge from a facility located at Conrail Morrisville Railyard in Falls Township, **Bucks County** into Rock Run.

**NPDES Permit No. PA0020460, Amendment No. 1.** Sewage. **Pennridge Wastewater Treatment Authority**, 180 Maple Avenue, P. O. Box 31, Sellersville, PA 18960. Applicant is granted approval for an amendment to reflect revised limits for total residual chlorine based on site-specific discharge mixing characteristics from a facility located in West Rockhill Township, **Bucks County** into East Branch Perkiomen Creek.

**NPDES Permit No. PA0052353.** Sewage. **Buckingham Township**, P. O. Box 413, Buckingham, PA 18912, is authorized to discharge from a facility located at Buckingham Township, **Bucks County** into Lahaska Creek.

**NPDES Permit No. PA0051071.** Industrial waste. **Schramm, Inc.**, 800 Lincoln Avenue, West Chester, PA 19380-4206, is authorized to discharge from a facility located at West Goshen Township, **Chester County** into Chester Creek, known as Goose Creek.

**WQM Permit No. 0999413.** Sewage. **Warwick Township Water and Sewer Authority**, P. O. Box 315, Jamison, PA 18929. Approval for the construction and operation of a sanitary sewer and pump station to serve Heritage Creek residential development located in Warwick Township, **Bucks County**.

**WQM Permit No. 0999409.** Sewerage. **McGrath Construction, Inc.**, 106 S. Bellevue Avenue, Suite 212, Langhorne, PA 19047. Approval for the construction of a pump station and force main to serve the proposed villages at Flowers Mill located in Middletown Township, **Bucks County**.

**WQM Permit No. 4699413.** Sewerage. **Lower Providence Township Sewer Authority**, 100 Parklane Drive, Eagleville, PA 19408. Approval for the construction and operation of a submersible pump station, force main and gravity sewer to serve Evansburg Crossing development located in Lower Providence Township, **Montgomery County**.

**WQM Permit No. 5199401.** Sewerage. **City of Philadelphia ARAMARK Tower**, 1101 Market Street, 4th Floor, Philadelphia, PA 19107-2994. Approval to modify the existing system at the Northeast Water Pollution Control Plant located in the **City of Philadelphia**.

**WQM Permit No. 2399402.** Sewage. **Upper Providence Township Sewer Authority**, 935 North Providence Road, Media, PA 19063-1499. Approval for the construction and operation of a sanitary sewer system to serve approximately 190 dwelling units. The project is

known as Southern Area Sanitary Sewer System Extension located in Upper Providence Township, **Delaware County**.

*Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**NPDES Permit No. PA-0045985-A1.** Sewerage. **Mountaintop Area Joint Sanitary Authority**, R. R. 4, Morio Drive, Mountaintop, PA 18707, is authorized to discharge from a facility located in Dorrance Township, **Luzerne County**, to Big Wapwallopen Creek.

**NPDES Permit No. PA-0063894.** Industrial waste. **Municipal Authority of the Borough of Minersville**, 2 East Sunbury Street, Minersville, PA 17954, is authorized to discharge from a facility located in Cass Township, **Schuylkill County**, to Dyer Run Reservoir.

**Permit No. 5498402.** Sewerage. **Municipal Authority of the Borough of Orwigsburg**, 209 North Warren Street, P. O. Box 128, Orwigsburg, PA 17961. Permit to construct two sanitary sewer extensions, located in Orwigsburg Borough, **Schuylkill County**.

*Southcentral Regional Office: Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.*

**NPDES Permit No. PA0043052.** Sewerage. **Municipal Authority of the Township of Spring**, 2800 Shillington Road, Cornwall Terrace, Sinking Spring, PA 19608, is authorized to discharge from a facility located in Spring Township, **Berks County** to the receiving waters named Cacoosing Creek.

**NPDES Permit No. PA0025381.** Sewerage. **Saxton Borough Municipal Authority**, P. O. Box 173, Saxton, PA 16678, is authorized to discharge from a facility located in Liberty Township, **Bedford County** to the receiving waters named Raystown Branch Juniata River.

**NPDES Permit No. PA0088005.** Sewerage. **Robert L. Boyd**, P. O. Box 43, Lurgan, PA 17232, is authorized to discharge from a facility located in Lurgan Township, **Franklin County** to the receiving waters of an unnamed tributary to the Conodoguinet Creek.

**NPDES Permit No. PA0082244.** Industrial waste. **Susquehanna Area Regional Airport Authority**, 135 York Drive, Suite 100, Middletown, PA 17057, is authorized to discharge from a facility located in Lower Swatara Township, **Dauphin County** to the receiving waters named Susquehanna River.

**NPDES Permit No. PA0087955.** Sewage. **Cassville Water & Sewer Authority**, P. O. Box 48, Cassville, PA 16623, is authorized to discharge from a facility located in Cass Township, **Huntingdon County** to the receiving waters of an unnamed tributary to Little Trough Creek.

**Permit No. 2899404.** Sewage. **Robert L. Boyd**, P. O. Box 43, Lurgan, PA 17232. This permit approves the construction of sewage treatment facilities in Lurgan Township, **Franklin County**.

**Permit No. 6798408.** Sewage. **Northeastern York County Sewer Authority**, P. O. Box 516, Mount Wolf, PA 17347-0515. This permit approves the construction of pump stations in East Manchester Township, **York County**.

**Permit No. 3699403.** Sewage. **Elizabethtown Borough**, 600 South Hanover Street, Elizabethtown, PA 17022. This permit approves the construction/operation of sewers and appurtenances in Elizabethtown Borough, **Lancaster County**.

**Permit No. 3199401.** Sewage, **Cassville Water & Sewer Authority**, P. O. Box 48, Cassville, PA 16623. This permit approves the construction/operation of sewage treatment facilities and sewers and appurtenances in Cass Township, **Huntingdon County**.

*Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**WQM Permit No. 1099407.** Sewage, **Fairwinds Manor, Inc.**, 327 North Main Street, Punxsutawney, PA 15767. This project is for the construction and operation of a small flow treatment facility in Winfield Township, **Butler County**.

**WQM Permit No. 4299402.** Sewage, **Westline Inn, Inc.**, Westline Road, Westline, PA 16751. This project is for the construction and operation of a small flow treatment facility located in Lafayette Township, **McKean County**.

**WQM Permit No. 2599402.** Sewage, **Lake City Municipal Sewer Authority**, 2350 Main Street, Lake City, PA 16423. This project is for proposed plans to modify an existing system in Lake City Borough, **Erie County**.

**WQM Permit No. 2099407.** Sewerage, **Donald K. Jr. and Kelli L. Granda SRSTP**, 16571 Harmonsburg Rd., Meadville, PA 16335. Construction of Donald K. Jr. and Kelli L. Granda SRSTP located in Vernon Township, **Crawford County**.

**WQM Permit No. 4399412.** Sewerage, **Wade Plymire, SRSTP**, 2113 Mercer-West Middlesex Rd., Mercer, PA 16137. Construction of Wade Plymire SRSTP located in Lackawannock Township, **Mercer County**.

**WQM Permit No. 4399413.** Sewerage, **George L. Johnson, SRSTP**, 5345 Tamarack Dr., Sharpsville, PA 16150. Construction of George L. Johnson SRSTP located in South Pymatuning Township, **Mercer County**.

**WQM Permit No. 4299403.** Sewerage, **Michael A. Torrey, SRSTP**, R. R. 1, Box 239A, Barbertown Rd., Eldred, PA 16731. Construction of Michael A. Torrey SRSTP located in Ceres Township, **McKean County**.

**WQM Permit No. 4399414.** Sewerage, **Terry Marachier, SRSTP**, 441 E. Jamestown Rd., Greenville, PA 16125. Construction of Terry Marachier SRSTP located in West Salem Township, **Mercer County**.

#### INDIVIDUAL PERMITS

##### (PAS)

The following approvals for coverage under NPDES Individual Permit for discharge of stormwater from construction activities have been issued.

These actions of the Department of Environmental Protection (Department) may be appealed to the Environmental Hearing Board (Board), Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483, by an aggrieved person 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). Appeals must be filed with the Board

within 30 days from the date of this issue of the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Department's regulations governing practice and procedure before the Board may be obtained from the Board.

*Southcentral Regional Office: Section Chief, Water Management Program, Soils and Waterways Section, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.*

**PAS-10-C001-R.** Individual NPDES, **Carac Inc.**, 100 Industrial Drive, Hamburg, PA 19526. To implement an erosion and sedimentation control plan for the Tilden Industrial Park on 106.8 acres in Tilden Township, **Berks County**. The project is located along Route 61 north of Route 22 (Auburn, PA Quadrangle N: 11.3 inches; W: 0.3 inch). Drainage will be to a tributary to the Schuylkill River.

**PAS-10-C013-R.** Individual NPDES, **P.C.C. Builders, Inc.**, 825 Berkshire Blvd., Wyomissing, PA 19610. To implement an erosion and sedimentation control plan for a residential subdivision on 95 acres in Spring Township, **Berks County**. The project is located east of Van Reed Road between Paper Mill and State Hill Road (Reading, PA Quadrangle N: 18.2 inches; W: 16.6 inches). Drainage will be to Cacoosing Creek.

**PAS-10-H083.** Individual NPDES, **South Middleton Township**, 4 Forge Road, Boiling Springs, PA 17007. To implement an erosion and sedimentation control plan for the construction of a middle school and an athletic field on 62 acres in South Middleton Township, **Cumberland County**. The project is located (Carlisle, PA Quadrangle N: 4.85 inches; W: 1.4 inches). Drainage will be to the Yellow Breeches Creek.

*Southeast Regional Office: Regional Waste Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.*

**PAS-10-H084.** Individual NPDES, **South Middleton Township Municipal Authority**, P. O. Box 8, Boiling Springs, PA 17007-0008. To implement an erosion and sedimentation control plan for the construction and installation of sanitary sewer lines along Sand Bank Road and Pine Street on 11.4 acres in South Middleton Township, **Cumberland County**. The project is located just west of Mt. Holly Springs Borough (Mt. Holly Springs, PA Quadrangle N: 20.75 inches; W: 11.1 inches). Drainage will be to Yellow Breeches Creek.

**PAS-10-M103.** Individual NPDES, **Aldine Martin**, 1111 Williamson Avenue, Greencastle, PA 17225. To implement an erosion and sedimentation control plan for a residential development called Heritage Estates on 60 acres in Greencastle Borough and Antrim Township, **Franklin County**. The project is located just west of Greencastle and about 600 feet north of PA 16 (Greencastle, PA Quadrangle N: 8.4 inches; W: 15.3 inches). Drainage will be to UNT Muddy Run.

*Southeast Regional Office: Regional Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.*

NPDES  
Permit No.

PAS10-G357

Applicant Name  
and Address

Wyeth Ayerst Laboratories  
P. O. Box 861  
Paoli, PA 19301-0861

County  
Municipality

East Whiteland Township  
Chester County

Receiving  
Stream

Little Valley Creek

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County Municipality</i>	<i>Receiving Stream</i>
PAS10-T020-R	The Cutler Group, Inc. P. O. Box 629 Horsham, PA 19044	Upper Providence Township Montgomery County	Schoolhouse Run

**INDIVIDUAL PERMITS****(PAR)****Approvals to Use NPDES and Other General Permits**

The following parties have submitted (1) Notices of Intent (NOIs) for coverage under General NPDES Permit(s) to discharge wastewater into the surface waters of this Commonwealth; (2) NOIs for coverage under General Permit(s) for Beneficial Use of Sewage Sludge or Residential Septage by Land Application in Pennsylvania; or (3) Notifications for First Land Application of Sewage Sludge.

The approval of coverage for land application of sewage sludge or residential septage under these general permits is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective general permit. The Department of Environmental Protection has reviewed the First Land Application of Sewage Sludge for the following sites and determined that the sites are suitable for land application of sewage sludge.

The EPA Region III Regional Administrator has waived the right to review or object to this permit action under the waiver provision: 40 CFR 123.24.

The application and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted.

The Department of Environmental Protection has acted on the following requests for coverage under the specified General Permit as follows:

*List of  
General Permit Type*

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater From Construction Activities
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From Single Residence Sewage Treatment Plant
PAG-5	General Permit for Discharges From Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges From Combined Sewer Systems
PAG-7	General Permit For Beneficial Use of Exceptional Quality Sewage Sludge By Land Application
PAG-8	General Permit For Beneficial Use of Non-Exceptional Quality Sewage Sludge By Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-9	General Permit For Beneficial Use of Residential Septage By Land Application to Agricultural Land, Forest or a Land Reclamation Site

*General Permit Type—PAG-2*

*Facility Location*

<i>County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Buckingham Township Bucks County	PAR10-D418	Cutler Group P. O. Box 629 Horsham, PA 19044	Unnamed Tributary Pine Run	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Bensalem Township Bucks County	PAR10-D367	Sam Braccia 715 Norristown Road Horsham, PA	Poquessing Creek	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Newtown Township Bucks County	PAR10-D424	Community Associates Underwriters 1098 Washington Crossing Road West Chester, PA 19380	Core Creek	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Northampton Township Bucks County	PAR10-D456	Christine M. Fluehr and Maryanne M. Bevan 800 Newtown Richboro Road Richboro, PA	Neshaminy Creek	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Richland Township Bucks County	PAR10-D369	Tollgate Partnership 52 Orchard Street Hatboro, PA 19040	Morgan and Tohickon Creeks	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Richland Township Bucks County	PAR10-D436	Bucks County Water & Sewer Authority 1275 Almshouse Road Warrington, PA	Tohickon Creek	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Richland Township Bucks County	PAR10-D396	Quakertown Christian School Building 143 Rocky Ridge Road Quakertown, PA	Morgan Creek	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Springfield Township Bucks County	PAR10-D434	Naceville Materials 2001 Ridge Road Sellersville, PA	Unnamed Tributary Saucon Creek	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Upper Makefield Township Bucks County	PAR10-D454	Toll Brothers Inc. 3103 Philmont Ave. Huntingdon Valley, PA	Jericho Creek	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Warwick Township Bucks County	PAR10-D427	Heritage Creek LP P. O. Box 249 Huntingdon Valley, PA 19006	Little Neshaminy Creek	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Warwick Township Bucks County	PAR10-D442	Country Club Plaza Assoc. LP 3841 Mechanicsville Rd. Doylestown, PA	Neshaminy Creek	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Cheltenham Township Montgomery County	PAR10-T546	US Postal Service Columbia PSO Box 701 Columbia, MD 21045	Unnamed Drainageway	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Upper Salford Township Montgomery County	PAR10-T517	Souderton Area School District 139 Harleysville Pike Souderton, PA	Unnamed Tributary to Vaughn Run	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
New Hanover Township Montgomery County	PAR10-T544	Anthony Giamo 311 West Ridge Pike Limerick, PA	Unnamed Tributary to Ministers Creek	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Hatfield Township Montgomery County	PAR10-T540	Rosenberger's Dairies 847 Forty Foot Road Hatfield, PA	Tributary of West Neshaminy Creek	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Whitemarsh Township Montgomery County	PAR10-T538	Preferred Real Estate Investment 555 North Lane Suite 6101	Schuylkill River	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Centre County Patton Township	PAR10F092	Colonnade at St. College State College Assoc. 20 Erford Rd., Suite 212 Lemoyne, PA 17043	Big Hollow	Centre County CD 414 Holmes Ave., Suite 4 Bellefonte, PA 16823 (814) 355-6817

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Butler County Fairview Township	PAR10E110	Karns City High School Athletic Field Renovation Karns City School District 1446 Kittanning Pike Karns City, PA 16041	Unnamed Tributary of South Bear Creek	Butler Conservation District 122 McCune Drive Butler, PA 16001-65001 (724) 284-5270
Littlestown Borough Adams County	PAR-10-0070	The Pelican Group, Inc. P. O. Box 160403 Mobile, AL 36616	Piney Creek	Adams County CD 57 N. Fifth St. Gettysburg, PA 17325 (717) 334-0636
Bern Township Berks County	PAR-10-C279	Appletree Corner Wingco Dev. Company R. D. 2, Box 2000, Bldg. A-1 Reading, PA 19605	Unnamed Tributary Schuylkill River	Berks County CD P. O. Box 520 1238 County Welfare Rd. Leesport, PA 19533 (610) 372-4657
Cumru Township Berks County	PAR-10-C253	East Pointe Business Centre Group One Properties Inc. Cross Roads Corp. Center 4641 Pottsville Pike, Suite E Reading, PA 19605	Schuylkill River	Berks County CD P. O. Box 520 1238 County Welfare Rd. Leesport, PA 19533 (610) 372-4657
South Heidelberg Township Berks County	PAR-10-C233-1	South Heidelberg Ind. Park South Heidelberg Ind. Assoc. 1628 North 18th Street Allentown, PA 18104	Cacoosing Creek	Berks County CD P. O. Box 520 1238 County Welfare Rd. Leesport, PA 19533 (610) 372-4657
Lemoyne Borough Cumberland County	PAR-10-H201	Bridge View Office Center Hempt Brothers, Inc. 205 Creek Road Camp Hill, PA 17011	Susquehanna River	Cumberland County CD 43 Brookwood Ave. Suite 4 Carlisle, PA 17013 (717) 240-7812
Lower Swatara Township Dauphin County	PAR-10-I202	East Shore Community Church P. O. Box 90026 Harrisburg, PA 17109	Susquehanna River	Dauphin County CD 1451 Peters Mountain Road Dauphin, PA 17018 (717) 921-8100
Southampton Township Franklin County	PAR-10-M173	Links of Olde Scotland Olde Scotland Road Shippensburg, PA 17257	N/A	Franklin County CD 550 Cleveland Avenue Chambersburg, PA 17201 (717) 264-8074
East Lampeter Township Lancaster County	PAR-10-O-388	Desmond Construction 1085 Manheim Pike Lancaster, PA 17601	Conestoga River	Lancaster County CD 1383 Arcadia Road Room 6 Lancaster, PA 17601 (717) 299-5361
East Earl Township Lancaster County	PAR-10-O-389	Marvin M. Weaver 1294 Martin Street East Earl, PA 17519	Mill Creek	Lancaster County CD 1383 Arcadia Road Room 6 Lancaster, PA 17601 (717) 299-5361
Penn Township Perry County	PAR-10-5128	Roger Barrick Whitetail Crossings 410 Sylvan Street Marysville, PA 17053	Fishing Creek	Perry County CD P. O. Box 36 (31 W. Main St.) New Bloomfield, PA 17068 (717) 582-8988



<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Fairview Township York County	PAR-10-Y103-R1	Dorwart Apartment Phase II James Dorwart 1375 Old Quaker Road Etters, PA 17319	Bennetts Run	York County CD 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Windsor Township York County	PAR-10-Y389	Taylor Estates Timothy F. Pasch 2215 East Market Street York, PA 17402	Kreutz Creek	York County CD 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Springettsbury Township York County	PAR-10-Y393	Harley Davidson Motor Com. Harley Davidson Phase I Grading 1425 Eden Road York, PA 17402	Codorus Creek	York County CD 118 Pleasant Acres Road York, PA 17402 (717) 840-7430

*General Permit Type—PAG-4*

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Eldred Township McKean County	PAG048601	Mark A. and Kathleen L. Shelander 387A Canfield Hollow Rd. Eldred, PA 16731	Canfield Creek	Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335-3481 (814) 332-6942
Vernon Township Crawford County	PAG048600	Donald K. Jr. and Kelli L. Granda 16571 Harmonsburg Rd. Meadville, PA 16335	Unnamed Tributary to Cussewago Creek	Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335-3481 (814) 332-6942
S. Pymatuning Township Mercer County	PAG048604	George L. Johnson 5345 Tamarack Dr. Sharpsville, PA 16150	Unnamed Tributary of McCullough Run	Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335-3481 (814) 332-6942
Lackawannock Township Mercer County	PAG048602	Wade Plymire 2113 Mercer—West Middlesex Rd. Mercer, PA 16137	Tributary to Harthegeg Run	Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335-3481 (814) 332-6942
W. Salem Township Mercer County	PAG048605	Terry Mariacher 441 E. Jamestown Rd. Greenville, PA 16125	Tributary Shenango River	Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335-3481 (814) 332-6942
Ceres Township McKean County	PAG048599	Michael A. Torrey R. R. 1, Box 239A Barbertown Rd. Eldred, PA 16731	Unnamed Tributary to Oswego Creek	Northwest Region Water Management 230 Chestnut St. Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-5**Facility Location  
County and  
Municipality**Permit No.**Applicant Name  
and Address**Receiving Stream  
or Body of Water**Contact Office and  
Telephone No.*Bruin Township  
Butler County

PAG058322

Roger D. Whited  
Bruin Service, Inc.  
163 Main Street  
Bruin, PA 15022-0054South Branch of  
Bear CreekNorthwest Region  
Water Management  
230 Chestnut St.  
Meadville, PA  
16335  
(814) 332-6942*General Permit Type—PAG-8**Facility Location  
County and  
Municipality**Permit No.**Applicant Name  
and Address**Receiving Stream  
or Body of Water**Contact Office and  
Telephone No.*Schuylkill County  
Frailey Township

PAG08-2210

Natural Soil Products  
200 E. Main St.  
Good Spring, PA 17981

N/A

Northeast Regional  
Office  
Water Management  
Program  
2 Public Square  
Wilkes-Barre, PA  
18711-0790  
(570) 826-2511**SEWAGE FACILITIES ACT  
PLAN APPROVAL****Plan approval granted under the Pennsylvania  
Sewage Facilities Act (35 P. S. §§ 750.1—750.20).***Northeast Regional Office: Water Management Program  
Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790,  
(570) 826-2511.***Monteforte Enterprises Land Development**

Project is located on the west side of I-81 at the intersection of I-81 and S. R. 848, New Milford Township, Susquehanna County.

*Project Description:* The project is a commercial subdivision situated on approximately 31 acres and will include the construction of a mini mall, museum, motel, retail store, restaurants, maintenance garage and other undefined commercial developments.

The project proposes construction of a treatment facility with the design capacity of 60,000 gpd and will utilize a dry stream discharge to a tributary of Nine Partners Creek for ultimate sewage disposal.

*Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**Lake Latonka, Jackson and Coolspring Townships,  
Mercer County**

*Coolspring Township Supervisors, c/o Pauline Marsh, Sec., 498 North Perry Highway, Mercer, PA 16137 and Jackson Township Supervisors, c/o Susan L. Montgomery, Sec., 51 North Foster Road, Jackson Center, PA 16133.*

*Project Description:* This approved project proposes construction of a new gravity and low-pressure sewer system and sewage treatment plant to serve the existing and future sewage disposal needs of Lake Latonka and the I79/Route 62 Interchange. The finance, construction, ownership and operation of the system will be handled by the Coolspring-Jackson Lake Latonka Joint Authority.

The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal.

**SAFE DRINKING WATER****Actions taken under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).**

*Northeast Regional Office: Sanitarian Regional Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**Permit No. 4898503.** Public water supply. **Greenwalt Water Company**, Ted Williams, President, 2521 Delabole Rd., Bangor, PA 18013. This proposal involves developing an existing well (W-1) as a bulk water source for drinking water. It is located in Washington Township, **Northampton County**. Construction permit issued June 28, 1999.

**Minor Amendment for South Whitehall Township Authority—Well No. 5.** It is located in South Whitehall Township, **Lehigh County**. Construction permit issued June 30, 1999.

**Minor Amendment for Freeland Municipal Authority.** It is located in Freeland Borough, **Luzerne County**. Construction permit issued June 21, 1999.

**Minor Amendment for Meadowbrook Mobile Home Park.** It is located in Washington Township, **Northampton County**. Construction permit issued on June 25, 1999.

**Operations Permit** issued to **Schuylkill County Municipal Authority**, New Boston Water Line Extension, Mahanoy Township, **Schuylkill County** on June 16, 1999.

**Operations Permit** issued to **Easton Suburban Water Authority**, Lower Nazareth Township, **Northampton County** on June 23, 1999.

**Operations Permit** issued to **Bethany Village**, Bethany Borough, **Wayne County**, on June 15, 1999.

**Operations Permit** issued to **Whitehall Township Authority**, (Mickley Gardens System) Whitehall Township, **Lehigh County** on June 4, 1999.

**Operations Permit** issued to **Beaver Run Water Association** (Holiday Pocono Subdivision), Kidder Township, **Carbon County**, on June 18, 1999.

*Regional Office: Northcentral Field Operations, Environmental Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701.*

**Permit No. MA.** The Department issued an operation permit to **Mahoning Township Authority**, 1101 Bloom Road, Danville, PA 17821, Mahoning Township, **Montour County** for operation of the recently constructed modification to the Montgomery Village booster pumping station. This permit amendment also includes operation of the telemetry system components that were installed at other sites in their public water system.

*Northwest Regional Office: Regional Manager, 230 Chestnut Street, Meadville, PA, (814) 332-6899.*

**Permit No. 2499502.** Public water supply. **Ridgway Township Municipal Authority**, Ridgway Drive, Ridgway, PA 15853, has been issued a construction permit for the construction of a potable water distribution system with provisions for a fire booster pump at the proposed Boot Jack Industrial Park in Ridgway Township, **Elk County**. *Type of Facility:* Community Water Supply. *Consulting Engineer:* Dwight D. Hoare, P.E., Allegheny Mountain Engineering, Inc., 481 Brusselles St., St. Marys, PA 15857. *Permit to Construct Issued:* July 6, 1999.

## HAZARDOUS SITES CLEANUP

**Under the Act of October 18, 1988**

**Proposed Response and Opening of the Administrative Record Under the Hazardous Sites Cleanup Act**

**Oak Lane Site**

**Falls Township, Bucks County**

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (HSCA) (35 P. S. §§ 6020.101—6020.1305), has proposed an interim response at the Oak Lane Site. The site is located in the Fairless Hills area of Falls Township, Bucks County. The site involves private wells contaminated with volatile organic compounds and includes properties along Oaklane Avenue, Pennsylvania Avenue and a portion of Lincoln Highway east of Oaklane Avenue. The Department has determined that releases of hazardous substances have occurred, have impacted groundwater in the area, and the releases pose a threat to human health and safety and the environment.

To eliminate the threat posed by the release of hazardous substances at the site, the Department considered the following alternative responses:

1. No action.
2. Installation of whole-house filtration systems.
3. Installation of a municipal water supply waterline.

The Department is proposing Alternative No. 3, installation of a municipal water supply waterline. The municipal waterline will be constructed and connected to 38 addresses currently being served by private wells. The proposed waterline will be constructed on the north end of Oaklane Avenue, the entire length of Pennsylvania Avenue, and that portion of the southern side of Lincoln Highway from Oaklane Avenue east to Trenton Road.

The administrative record, which contains the information that forms the basis for and documents the selection of this response action, is available for public review and comment. A copy of the administrative record is located at

the Falls Township Municipal Building, 188 Lincoln Highway, Suite 100, Fairless Hills, PA 19030, and is available for review in the Township Managers office during normal business hours, weekdays from 8:30 a.m. to 4:30 p.m. A copy of the administrative record is also located at the Bucks County Free Library, Regional Branch, 7311 New Falls Road, Levittown, PA 19055. The administrative record is located at the reference desk and is available during normal library hours. The administrative record may also be reviewed at the Southeast Regional Office, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428. Call Kevin Hess at (610) 832-6194 to make an appointment to review the administrative record at the Southeast Regional Office.

Written comments concerning the Department's proposed response and related to information contained in the administrative record will be accepted in person, if delivered, or by mail, if postmarked, on or before October 22, 1999. Written comments should be directed to the attention of Kevin Hess, PA DEP Project Officer, Suite 6010 Lee Park, 555 North Lane, Conshohocken, PA 19428.

In addition, the public will have an opportunity to present oral comments at a public hearing. The public hearing has been scheduled for September 15, 1999, at 7:30 p.m., in the Public Meeting Room at the Falls Township Falls Municipal Building, 188 Lincoln Highway, Suite 100, Fairless Hills, PA 19030. Persons wishing to present oral comments may register on or before the date of the public hearing by contacting John Gerdemann, DEP Community Relations Coordinator, at (610) 832-6228.

Persons with a disability who wish to attend the public hearing discussed previously and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact Kevin Hess directly at (610) 832-6194 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

The Department is providing this notice under sections 505(b) and 506(b) of the HSCA. The date of publication of this notice in the *Pennsylvania Bulletin* initiates the minimum 90-day public comment period on the Administrative Record, as provided, under the HSCA.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

**Under Act 2, 1995**

**Preamble 2**

**The following final reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of any final 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 methodology and

analytical results which demonstrate that the remediation has attained the cleanup standard selected.

For further information concerning the final report, contact the Environmental Cleanup Program Manager in the Department's Regional Office under which the notice of receipt of a final report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate regional office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following final reports:

*Southeast Regional Office: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.*

**South Whit Shopping Center Associates**, City of Philadelphia, **Philadelphia County**. Christopher Orzechowski, RT Environmental Services, Inc., 215 W. Church Road, King of Prussia, PA 19406, has submitted a Final Report concerning remediation of site groundwater contaminated with heavy metals, solvents and polycyclic aromatic hydrocarbons. The report is intended to document remediation of the site to meet the Statewide health standard.

*Southcentral Regional Office: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4705.*

**Keystone Distribution Center, Inc.**, Penn Township and Hanover Borough, **York County**. Ensafe, Inc., 24C East Roseville Road, Lancaster, PA 17601, has submitted a Final Report concerning remediation of site soils and groundwater contaminated with lead, BTEX and PHCs. The report is intended to document remediation of the site to the Statewide health standard.

**EASB Welding and Cutting Products**, Penn Township, **York County**. Buchart-Horn, Inc., P. O. Box 15040, York, PA 17405-7040, has submitted a combined Remedial Investigation/Final Report concerning remediation of site soils and groundwater contaminated with solvents. The report is intended to document remediation of the site to a combination of the Statewide health and site-specific standards.

*Northeast Regional Field Office: Joseph Brogna, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**PP&L Northern Division Service Center**, Dunmore Borough, **Lackawanna County**. Penn Environmental & Remediation, Inc., 2755 Bergey Road, Hatfield, PA 19440, has submitted a Final Report (on behalf of its client, Pennsylvania Power & Light, Inc., 2 North Ninth Street, Allentown, PA 18101) concerning the remediation of site soils found to have been contaminated with petroleum hydrocarbons and polycyclic aromatic hydrocarbons. The report is intended to document remediation of the site to meet the Statewide health standard. A Notice of Intent to Remediate was simultaneously submitted. See additional *Pennsylvania Bulletin* notice.

*Southwest Field Office: John J. Matviya, Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-5217.*

**Ford Leasing Development Company**, City of Monongahela, **Washington County**. Thomas J. Culek, Ford Leasing Development, One Parklane Boulevard, Suite 1500, East Dearborn, Michigan 48126, Petroclean

Environmental Services, P. O. Box 92, Carnegie, PA 15106 and Gregory P. Smoot, P. G., NTH Consultants, LTD, 860 Springdale Drive, Exton, PA 19341, have submitted a Final Report concerning remediation of site soil and groundwater contaminated with BTEX and PHCs. The report is intended to document remediation of the site to meet the site-specific standard.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

### Preamble 3

**The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908) and Chapter 250 Administration of Land Recycling Program.**

Provisions of 25 Pa. Code § 250.8 Administration of Land Recycling Program requires the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the Land Recycling and Environmental Remediation Standards Act (act). Plans and reports required by provisions of Act 2 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 reuse of the property, and in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. A cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis 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 methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program in the Department's Regional Office under which the notice of the plan or report appears. If information concerning a plan or report is required in an alternative form, contact the community relations coordinator at the appropriate regional office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has acted upon the following plans and reports:

*Southcentral Regional Office: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4705.*

**Hilltop Laundry**, Lewistown Borough, **Mifflin County**. Pat and Harry Mannino, 65 Colonial Drive, Reedsville, PA 17084, have submitted a final report

concerning the remediation of site soils contaminated with BTEX, PAHs and PHCs. The final report demonstrated attainment of the Statewide health standard, and was approved by the Department on June 23, 1999.

**Royer Tract**, South Middleton Township, **Cumberland County**. BL Tethys, LLC, 2407 Park Drive, 1st Floor, Harrisburg, PA 17110, has submitted a final report concerning the remediation of site groundwater contaminated with solvents. The final report demonstrated attainment of the background standard, and was approved by the Department on June 15, 1999.

*Southwest Field Office: John J. Matviya, Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-5217.*

**Redevelopment Authority of the City of McKeesport (Fifth and Hartman Streets)**, City of McKeesport, **Allegheny County**. Redevelopment Authority of the City of McKeesport, 201 Lysle Boulevard, McKeesport, PA 15132 and Von E. Fisher, KU Resources, Inc., One Library Place, Duquesne, PA 15110, have submitted a Final Report concerning remediation of site soil contaminated with lead and BTEX. The Final Report demonstrated attainment of the Statewide health standard and was approved by the Department on July 2, 1999.

*Northwest Regional Office: Craig Lobins, Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6648.*

**National Forge Company**, Brokenstraw Township, **Warren County**, One Front Street, Irvine, PA 16329, has submitted a Final Report concerning remediation of the site Area of Concern—7 (surface stained soils) contaminated with lead and heavy metals. The final report demonstrated attainment of the Statewide health standard and was approved by the Department on July 2, 1999.

## SOLID AND HAZARDOUS WASTE

### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Permits revoked under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003) and regulations to operate solid waste processing or disposal area or site.**

*Southcentral Regional Office: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4706.*

**Permit No. 603270. Star Rock Farm No. 40**, Borough of Millersville, Ten Colonial Avenue, Millersville, PA 17551. This permit has been revoked at the request of the permittee for a site in East Hopewell Township, **York County**. Permit revoked in the Regional Office July 7, 1999.

### PREVIOUSLY UNPERMITTED CLASS OF SPECIAL HANDLING WASTE

#### INFECTIOUS OR CHEMOTHERAPEUTIC WASTE

**Registration issued under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (52 P.S. §§ 4000.101—4000.1904); and municipal waste management regulations for a general permit for the processing of infectious or chemotherapeutic waste.**

*Bureau of Land Recycling and Waste Management: Central Office, Division of Municipal and Residual Waste, 14th Floor, Rachel Carson State Office Building, 400 Market St., Harrisburg, PA 17105-8472.*

**General Permit Registration No. WMGI007R001. PennState Geisinger Health System—South Central Region**, 500 University Drive—H115, Hershey, PA 17033-0850. Registration to operate under General Permit WMGI007 for the processing of infectious waste using sodium hypochlorite and low pressure steam in a modular treatment unit. The registration was approved in Central Office on July 6, 1999.

## AIR QUALITY

### OPERATING PERMITS

**Operating Permits issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**01-03011: Dal-Tile Corp.** (411 North Fourth Street, Gettysburg, PA 17325), issued July 1, 1999, for operation of five trim presses controlled by a fabric collector in Bendersville Borough, **Adams County**.

**01-309-008B: Dal-Tile Corp.** (411 North Fourth Street, Gettysburg, PA 17325), issued July 1, 1999, for operation of 15 hydraulic flat presses and two hydraulic trim presses controlled by a Pneumafill Company baghouse in Straban Township, **Adams County**.

**36-312-002A: Mobil Oil Corp.** (Eight South Main Street, Frazer, PA 19355), issued July 1, 1999, for operation of a bulk gasoline terminal consisting of a three bottom bay loading rack controlled by a vapor combustion unit located at 1360 Manheim Pike in Manheim Township, **Lancaster County**. This source is subject to 40 CFR Part 60, Subpart XX, Standards of Performance for New Stationary Sources, National Emission Standards for Bulk Gasoline Terminals.

**38-318-034: Conrad Enterprises, Inc.** (P. O. Box 656, Cornwall, PA 17016), issued July 1, 1999, for operation of a paint spray booth controlled by dry filters in Cornwall Borough, **Lebanon County**.

*Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.*

**PA-20-272A: Universal Stainless & Alloy Products** (121 Caldwell Street, Titusville, PA 16354), issued July 31, 1999, for a mold cleaning unit in Titusville, **Crawford County**.

**PA-33-002A: Owens-Brockway Glass Container** (Route 219, E & R Building, Plant 19, Brockway, PA 15824), issued June 30, 1999, for a glass melting furnace in Snyder Township, **Jefferson County**.

*City of Philadelphia: Air Management Services, 321 University Avenue, Philadelphia, PA 19104, (215) 823-7584.*

**V95-076: Newman and Co., Inc.** (6101 Tacony Street, Philadelphia, PA 19135), issued a Title V Operating Permit on July 9, 1999, for operation of a 118 MMBTU/hr boiler.

**V95-090: Park Towne Place Apartments** (2200 Ben Franklin Parkway, Philadelphia, PA 19130), issued a Title V Operating Permit on July 9, 1999, for operation of an apartment complex which includes two 20.8 MMBTU/hr boilers.

**V96-011: Lawrence-McFadden Co.** (7430 State Road, Philadelphia, PA 19136), issued a Title V Operating Permit on July 9, 1999, for manufacturing of industrial wood finish for kitchen cabinets, musical instruments, household and office furniture and wooden caskets. The facility's air emission sources include boilers, solvent storage tanks and mixers.

**S95-072: M. A. Bruder & Sons, Inc.** (52nd and Grays Avenue, Philadelphia, PA 19143), issued a Synthetic Minor Operating Permit on July 9, 1999, for manufacturing of paint for retail and commercial sales. The facility's air emission sources include boilers, ball mills, let-down tanks, blend tanks and mixers. The facility's air emission control devices are baghouses.

#### PLAN APPROVALS

**Plan Approvals issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southeast Regional Office: Air Quality Program, 555 North Lane, Conshohocken, PA 19428, (610) 832-6242.*

**PA-46-0182: Rotoflex Technology Inc.** (92B County Line Road, Colmar, PA 18915), issued for operation of a chrome plating process in Hatfield Township, **Montgomery County**.

*Northeast Regional Office: Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, (570) 826-2531.*

**48-313-082: Elementis Pigments, Inc.** (1525 Wood Avenue, Easton, PA 18042), issued June 25, 1999, for construction of a pigment granular forming process in Easton, **Northampton County**.

**48-313-083: Elementis Pigments, Inc.** (1525 Wood Avenue, Easton, PA 18042), issued June 25, 1999, for construction of a pigment blending and milling process in Easton, **Northampton County**.

**48-328-003: Pennsylvania Power & Light Co.** (Two North Ninth Street, Allentown, PA 18101), issued July 8, 1999, for reactivation of four combustion turbines at the Martins Creek Facility in Lower Mt. Bethel Township, **Northampton County**.

**54-313-06B: Air Products & Chemicals, Inc.** (P. O. Box 351, R. R. 1, Tamaqua, PA 18252), issued June 29, 1999, for construction of 26 additional electrolytic fluorine cells in Rush Township, **Schuylkill County**.

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**67-304-034C: R. H. Sheppard Co., Inc.** (101 Philadelphia Street, Hanover, PA 17331), issued July 1, 1999, for installation of two molding lines controlled by a fabric collector at Plant 8 in Hanover Borough, **York County**.

*Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.*

**PA-25-983A: Rupp Auto Livery** (303 East 32nd Street, Erie, PA 16504), issued June 28, 1999, for construction of a crematory incinerator in Erie, **Erie County**.

**Plan Approval extensions issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southeast Regional Office: Air Quality Program, 555 North Lane, Conshohocken, PA 19428, (610) 832-6242.*

**23-313-024D: Degussa Corp.** (1200 West Front Street, Chester, PA 19013), issued June 30, 1999, for operation of a fabric collector in City of Chester, **Delaware County**.

**09-320-049: Fres-Co Systems USA, Inc.** (3005 State Road, Telford, PA 18969), issued June 30, 1999, for operation of a flexographic press in West Rockhill Township, **Bucks County**.

**46-302-214: McNeil Consumer Healthcare** (7050 Camp Hill Road, Fort Washington, PA 19034), issued June 30, 1999, for operation of a 600 HP Johnston Boiler in Whitemarsh Township, **Montgomery County**.

**PA-15-0015A: Sartomer Co., Inc.** (610 South Bolmar Street, West Chester, PA 19382), issued June 30, 1999, for operation of an emergency generator in West Chester Borough, **Chester County**.

**PA-09-0087: Solkatronic Chemicals, Inc.** (351 Philadelphia Avenue, Morrisville, PA 19067), issued June 30, 1999, for operation of a surface coating operation in Falls Township, **Bucks County**.

**46-327-018: Superior Tube Co.** (3900 Germantown Pike, Collegeville, PA 19426), issued June 30, 1999, for operation of a new vapor degreaser in Lower Providence Township, **Montgomery County**.

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**06-1003B: Lucent Technologies, Inc.** (P. O. Box 13396, Reading, PA 13396), issued June 29, 1999, to authorize temporary operation of a photoresist stripper line covered under this Plan Approval until October 28, 1999, at the Reading Plant in Muhlenberg Township, **Berks County**.

**22-03021: A. P. Green Refractories, Inc.** (105 North Wood Street, Middletown, PA 17057), issued July 3, 1999, to authorize temporary operations of refractory products manufacturing controlled by five fabric collectors covered under this Plan Approval until October 30, 1999, at the Middletown Operations in Middletown Borough, **Dauphin County**.

**67-304-024A: R. H. Sheppard Co., Inc.** (P. O. Box 877, Hanover, PA 17331), issued May 23, 1999, to authorize temporary operation of a foundry sand handling system controlled by fabric collectors covered under this Plan Approval until September 19, 1999, at Rear 447 East Middle Street in Hanover Borough, **York County**.

*Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.*

**PA-24-012A: Carbide/Graphite Group, Inc.** (800 Theresia Street, St. Marys, PA 15857), issued May 30, 1999, for coke and graphite material handling in St. Marys, **Elk County**.

## MINING

### APPROVALS TO CONDUCT COAL AND NONCOAL ACTIVITIES

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—

1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. §§ 3301—3326); The Clean Streams Law (35 P.S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 water quality certification. Mining activity permits issued in response to the applications will also address the applicable 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).

*Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.*

#### *Coal Permits Issued*

**32663056.** Permit Renewal, **Beilchick Brothers** (P. O. Box 7, Heilwood, PA 15745-0007), commencement, operation and restoration of bituminous strip mine in Pine Township, **Indiana County**, affecting 748.0 acres, receiving stream to Little Yellow Creek and unnamed tributaries to Little Yellow Creek. Application received May 7, 1999; issued July 6, 1999.

**32803053.** Permit Renewal for reclamation only, **A & T Coal Company, Inc.** (c/o Vapco Engineering, P. O. Box 327, Punxsutawney, PA 15767), for continued restoration of a bituminous strip mine in Banks Township, **Indiana County**, affecting 160.0 acres, receiving stream unnamed tributary to South Branch Bear Run. Application received May 5, 1999; issued July 6, 1999.

**11940102.** Permit Renewal, **E. P. Bender Coal Company, Inc.** (Main and Lehmier Streets, P. O. Box 594, Carrolltown, PA 15722), commencement, operation and restoration of bituminous strip-auger-coal refuse disposal mine in Reade Township, **Cambria County**, affecting 133.0 acres, receiving stream unnamed tributaries to Powell Run; Powell Run; and unnamed tributary to Clearfield Creek. Application received April 12, 1999; issued July 2, 1999.

*Greensburg District Office, R. D. 2, Box 603-C, Greensburg, PA 15601.*

**65980105.** **Joseph Rostosky Coal Company** (R. R. 3, Box 112, Monongahela, PA 15063). Permit issued for commencement, operation and reclamation of a bituminous surface mine located in Rostraver Township, **Westmoreland County**, affecting 28.8 acres. Receiving streams: unnamed tributary to the Monongahela River. Application received: November 16, 1998; Permit issued: July 9, 1999.

*Hawk Run District Office, P. O. Box 209, Off Empire Road, Hawk Run, PA 16840.*

**17930114.** **Waroquier Coal Company** (P. O. Box 128, Clearfield, PA 16830), revision to an existing bituminous surface mine permit for a change in land use from noncommercial forestland to cropland/land occasionally cut for hay. This site is located in Brady Township, **Clearfield County** and affects 86.2 acres. Receiving streams: unnamed tributary to Little Anderson Creek and Little Anderson Creek. Application received December 16, 1998. Permit issued June 29, 1999.

**17823101.** **Hepburnia Coal Company** (P. O. Box 1, Grampian, PA 16838), transfer and renewal of an existing bituminous surface mine permit from Pentz Coal Company in Union Township, **Clearfield County** affecting 128 acres. Receiving streams: two unnamed tributaries of

Laborde Branch, to Laborde Branch, to Sandy Lick Creek, to Little Mill Creek, to Redbank Creek to Anderson Creek, and Anderson Creek to West Branch Susquehanna River to Susquehanna River. Application received August 23, 1994. Permit issued July 1, 1999.

**17890103.** **Thunder Coal Company** (P. O. Box 283, Grampian, PA 16838), revision to an existing bituminous surface mine permit for a change in permit acreage from 101.5 to 42.6 acres, located in Penn Township, **Clearfield County**. Receiving streams: unnamed tributaries 1, 2, 3 and 4 to Kratzer Run to Anderson Creek to West Branch Susquehanna River. Application received February 12, 1999. Permit issued June 16, 1999.

**14663003.** **Power Operating Co., Inc.** (P. O. Box 25, Osceola Mills, PA 16666), renewal of an existing bituminous surface mine permit in Rush Township, **Centre County** affecting 900 acres. Receiving streams: Trout Run to Moshannon Creek to West Branch Susquehanna River to Susquehanna River. Application received March 31, 1999. Permit issued June 29, 1999.

**17980903.** **Forcey Coal, Inc.** (P. O. Box 225, Madera, PA 16661), commencement, operation and restoration of an incidental mineral extraction permit in Gulich Township, **Clearfield County** affecting 28.3 acres. Receiving streams: unnamed tributaries of Muddy Run to Muddy Run, Muddy Run to Clearfield Creek, Clearfield Creek to West Branch Susquehanna River. Application received December 31, 1998. Permit issued July 1, 1999.

**17803150.** **Sky Haven Coal, Inc.** (R. R. 1, Box 180, Penfield, PA 15849), renewal of an existing bituminous surface mine-auger permit in Penn Township, **Clearfield County** affecting 434.5 acres. Receiving streams: unnamed tributary to Bell Run, unnamed tributary to Poplar Run, to Bell Run to West Branch Susquehanna River, to Susquehanna River. Application received April 26, 1999. Permit issued June 30, 1999.

**17813084.** **Sky Haven Coal, Inc.** (R. R. 1, Box 180, Penfield, PA 15849), renewal of an existing bituminous surface mine-auger permit in Lawrence Township, **Clearfield County** affecting 407.3 acres. Receiving streams: Wolf Run to, and an unnamed tributary to the West Branch of the Susquehanna River to the Susquehanna River. Application received March 11, 1999. Permit issued June 30, 1999.

**17673057.** **Power Operating Co., Inc.** (P. O. Box 25, Osceola Mills, PA 16666), renewal of an existing bituminous surface mine permit in Gulich Township, **Clearfield County** affecting 1,237.3 acres. Receiving streams: Whiteside Run and an unnamed tributary to Moshannon Creek and Moshannon Creek to West Branch Susquehanna River. Application received March 31, 1999. Permit issued June 30, 1999.

**17663136.** **EnerCorp, Inc.** (R. D. 2, Box 236, Morrisdale, PA 16858), renewal of an existing bituminous surface mine permit in Graham Township, **Clearfield County** affecting 202 acres. Receiving streams: Flat Run and Mons Run both to Alder Run to West Branch Susquehanna River to the Susquehanna River. Application received April 22, 1999. Permit issued June 30, 1999.

*Knox District Office, P. O. Box 669, Knox, PA 16232.*

**16840104.** **Ancient Sun, Inc.** (P. O. Box 129, Shippenville, PA 16254). Renewal of an existing bituminous strip and auger operation in Toby and Perry Townships, **Clarion County** affecting 116.7 acres. This renewal is issued for reclamation only. Receiving streams: Unnamed

tributary to Black Fox Run. Application received: April 26, 1999. Permit Issued: June 23, 1999.

**33940101. Original Fuels, Inc.** (P. O. Box 343, Punxsutawney, PA 15767). Renewal of an existing bituminous strip and auger operation in Oliver Township, **Jefferson County** affecting 175.0 acres. This permit is issued for reclamation only. Receiving streams: Unnamed tributary to Hadden Run and Unnamed tributary to Little Sandy Creek. Application received: April 9, 1999. Permit Issued: June 23, 1999.

**10980110. Fleishner Excavating** (350 Lardintown Road, Sarver, PA 16055). Commencement, operation and restoration of a bituminous strip operation in Clinton Township, **Butler County** affecting 58.4 acres. Receiving streams: Lardintown Run. Application received October 5, 1998. Permit issued: June 25, 1999.

**102911-10980110-E-1. Fleishner Excavating** (350 Lardintown Road, Sarver, PA 16055). Application for a stream encroachment to use and maintain the existing road presently located within the 100 foot barrier of Lardintown Run in Clinton Township, **Butler County**. Receiving streams: Lardintown Run. Application received: October 5, 1998. Permit Issued: June 25, 1999.

**102911-10980110-E-2. Fleishner Excavating** (350 Lardintown Road, Sarver, PA 16055). Application for a stream encroachment to mine through and reconstruct unnamed tributary E to Lardintown Run in Clinton Township, **Butler County**. Receiving streams: Lardintown Run. Application received: October 5, 1998. Permit Issued: June 25, 1999.

**33930112. Dunamis Resources, Inc.** (One Energy Place, Suite 4000, Latrobe, PA 15650). Renewal of an existing bituminous strip operation in Beaver Township, **Jefferson County** affecting 211.2 acres. This renewal is issued for reclamation only. Receiving streams: Unnamed tributaries to Reitz Run and Unnamed tributaries to Ferguson Run. Application received: May 10, 1999. Permit Issued: June 29, 1999.

*McMurray District Office, 3913 Washington Road, McMurray, PA 15317.*

**32971301. Britt Energies, Inc.** (P. O. Box 515, Indiana, PA 15701), to revise the permit for the Josephine No. 3 Mine in Center Township, **Indiana County** to add 217.7 acres underground, 249.5 acres Subsidence Control Plan, 6.1 acres surface, new T-Pond, change NPDES, Tributary to Laurel Run. Permit issued July 7, 1999.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**54981302. George Manhart** (R. R. 1, Box 664, Ashland, PA 17921), commencement, operation and restoration of an anthracite underground mine operation in Cass Township, **Schuylkill County** affecting 3.0 acres, receiving stream—none. Permit issued June 29, 1999.

**54840105R3. Coal Contractors (1991), Inc.** (Gowen Mine, Fern Glen, PA 18241), renewal of an existing anthracite surface mine operation in Cass Township, **Schuylkill County** affecting 272.2 acres, receiving stream—none. Renewal issued June 30, 1999.

*Knox District Office, P. O. Box 669, Knox, PA 16232.*  
*Noncoal Permits Issued*

**37930302. Quality Aggregates, Inc.** (200 Neville Rd., Pittsburgh, PA 15225). Revision to an existing limestone operation to approve the incidental extraction of coal in Slippery Rock Township, **Lawrence County** affecting 140.0 acres. Receiving streams: Unnamed tributary to

Slippery Rock Creek. Application received: May 11, 1999. Permit Issued: June 23, 1999.

**61990301. Cooperstown Sand & Gravel** (R. D. 2, Box 10, Franklin, PA 16323). Commencement, operation and restoration of a sand and gravel operation in Jackson Township, **Venango County** affecting 36.5 acres. Receiving streams: Unnamed tributary to Sugar Creek. Application received: January 20, 1999. Permit Issued: June 23, 1999.

**302377-61990301-E-1. Cooperstown Sand & Gravel** (R. D. 2, Box 10, Franklin, PA 16323). Application for a stream encroachment to mine through a 500 foot ephemeral segment of unnamed tributary No. 1 to Sugar Creek. Receiving streams: Unnamed tributary to Sugar Creek. Application received: January 20, 1999. Permit Issued: June 23, 1999.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**15830602C3. Allan A. Myers, Inc. d/b/a Independence Construction Materials** (4042 State Street, P. O. Box 657, Devault, PA 19432), renewal of NPDES Permit No. PA0614203 in Charlestown Township, **Chester County**, receiving stream—unnamed tributary to Pickering Creek. Renewal issued June 16, 1999.

**09890301C7. Naceville Materials** (1371 West Street Road, P. O. Box 161, Warminster, PA 18974), renewal of NPDES Permit No. PA0594466 in West Rockhill Township, **Bucks County**, receiving stream—unnamed tributary to Ridge Valley Creek. Renewal issued July 7, 1999.

**06920301C. Martin Stone Quarries, Inc.** (P. O. Box 297, Bechtelsville, PA 19505), renewal of NPDES Permit No. PA0595641 in Washington Township, **Berks County**, receiving stream—Swamp Creek. Renewal issued July 7, 1999.

**8175SM3A1C4. Warner Company** (P. O. Box 457, Devault, PA 19432), renewal of NPDES Permit No. PA0613797 in East Whiteland and Tredyffrin Townships, **Chester County**, receiving stream—Valley Creek. Renewal issued July 7, 1999.

**6875SM3C. Eastern Industries, Inc.** (4401 Camp Meeting Road, Suite 200, Center Valley, PA 18034-9454), renewal of NPDES Permit No. PA0612383 in Armagh Township, **Mifflin County**, receiving stream—Honey Creek. Renewal issued July 9, 1999.

*Hawk Run District Office, P. O. Box 209, Off Empire Road, Hawk Run, PA 16840.*

*Large Industrial Mineral (Noncoal) Permits Issued*

**4474SM14. New Enterprise Stone & Lime Co., Inc.** (Box 77, Church Street, New Enterprise, PA 16664), renewal of the NPDES permit on an existing large industrial minerals permit located in Bradford Township, **Clearfield County** affecting 39 acres. Receiving streams: unnamed tributary to Moravian Run to West Branch Susquehanna River. Application received March 12, 1999. Permit issued June 29, 1999.

*Knox District Office, P. O. Box 669, Knox, PA 16232.*  
*Small Noncoal (Industrial Minerals) Permits Issued*

**20982803. Andrew M. Kosturick** (8565 State Highway 285, Conneaut Lake, PA 16316). Commencement, operation and restoration of a small noncoal sand and gravel operation in Fallowfield Township, **Crawford County** affecting 5.0 acres. Receiving streams: none. Application received: December 11, 1998. Permit Issued: June 23, 1999.



*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**58980822. Thomas J. Mirra** (P. O. Box 664, New Milford, PA 18834-0664), commencement, operation and restoration of a bluestone quarry operation in New Milford Township, **Susquehanna County** affecting 5.0 acres, receiving stream—none. Permit issued June 29, 1999.

**58990805. Carl P. and Joyce A. Decker** (R. R. 1, Box 318, South Gibson, PA 18842), commencement, operation and restoration of a bluestone quarry operation in Gibson Township, **Susquehanna County** affecting 3.0 acres, receiving stream—none. Permit issued June 30, 1999.

**28990801. McGee Excavating** (Box 127, Spring Run, PA 17262), commencement, operation and restoration of a small quarry operation in Fannett Township, **Franklin County** affecting 1.0 acre, receiving stream—none. Permit issued July 9, 1999.

*Hawk Run District Office, P. O. Box 209, Off Empire Road, Hawk Run, PA 16840.*

#### *Coal Applications Withdrawn*

**17980102. K & J Coal Company, Inc.** (P. O. Box 189, Westover, PA 16692), commencement, operation and restoration of a bituminous surface mine-auger permit in Chest Township, **Clearfield County** affecting 108 acres. Receiving streams: unnamed tributary to Chest Creek and Chest Creek. Application received January 21, 1998. Application withdrawn July 2, 1999.

**17970103. Ecklund Coal Co., Inc.** (R. D. 1, Box 109, Irvona, PA 16656), revision to an existing bituminous surface mine permit for a change in permit acreage from 33.2 to 39.0 acres, located in Bigler Township, **Clearfield County**. Receiving streams: Alexander Run to Clearfield Creek. Application received February 8, 1999. Application withdrawn July 7, 1999.

## **ACTIONS TAKEN UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT**

### **ENCROACHMENTS**

The Department of Environmental Protection (Department) has taken the following actions on previously received Dam Safety and Encroachment permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

Persons aggrieved by this 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, 400 Market Street, Floor 2, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action 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 at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

**Actions on applications filed 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 sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402) and notice of final action for certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).** (Note: Permits issued for Small Projects do not include 401 Certification, unless specifically stated in the description.)

*Southeast Regional Office: Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**E15-605. Encroachment Permit. Borough of West Chester**, 401 West Gay Street, West Chester, PA 19380-2729. To remove two dilapidated single span concrete slab bridge and associated masonry abutments which carry Nields Street and Lacy Street across Goose Creek (WWF) and to install and maintain two precast reinforced concrete box culverts, at these locations, measuring 12 feet by 4 feet and 16 feet by 3.75 feet, respectively. The Nields Street Crossing is located about 100 feet west of its intersection with Franklin Street and the Lacey Street Crossing is located approximately 600 feet northwest at the next upstream road crossing (West Chester USGS Quadrangle N: 14.7 inches; W: 13.3 inches and N: 14.9 inches; W: 13.5 inches) in West Chester Borough, **Chester County**.

**E15-608. Encroachment Permit. Pennsylvania Department of Transportation**, 200 Radnor-Chester Road, St. Davids, PA 19087-5178. To widen and maintain an existing two span bridge over West Valley Creek (CWF-MF) on Pottstown Pike (S. R. 0100) by extending 20 feet on each end to accommodate the addition of two travel lanes. The site is located just south of the intersection of Route 30 and Route 100 (Downingtown, PA Quadrangle N: 5.0 inches; W: 0.5 inch) in West Whiteland Township, **Chester County**.

**E23-379. Encroachment Permit. Rose Tree Media School District**, 308 North Providence Road, Media, PA 19063. To place and maintain fill within 0.05 acre of wetland (PEM) which is located along an unnamed tributary to Chrome Run (TSF-MF). The site is located just east of the intersection of Barren Road and Van Leer Avenue (Media USGS Quadrangle N: 8.1 inches; W: 8.1 inches) in Middletown Township, **Delaware County**. The amount of wetland impact is considered a de minimis impact of 0.05 acre and wetland mitigation is not required.

**E46-814. Encroachment Permit. Upper Hanover Township**, 1704 Pillsbury Road, P. O. Box 27, East Greenville, PA 18041. To remove the existing 3-span concrete T-beam bridge which spans the 100-year floodway of the Northwest Branch of the Perkiomen Creek (CWF), and to construct and maintain a concrete box beam bridge having an 80-foot span and 7.5-foot underclearance with roadway approaches impacting 0.01 acre of wetland at this location to provide a safer structure for the traveling public. The site is located approximately 100 feet north of the intersection of Papermill Road and Bowers Mill Road (East Greenville, PA Quadrangle N: 0.4 inch; W: 4.85 inches) in Upper Hanover Township, **Montgomery County**.

**E51-171. Encroachment Permit. Carmen Gricco, Specialty Sales Etc., LLC**, 933 Penn Street, Philadelphia, PA 19123. To maintain four existing 17-inch steel pilings, to install and maintain a new cluster of three timber pilings

and to permanently moor, operate and maintain a commercial vessel at Pier 40 North along the Delaware River (WWF-MF), which will be utilized as a restaurant facility. The project is located approximately 1,000 feet southeast of Exit 18 of Interstate 95 (Northbound) and just east of the intersection of Penn Street and Ellen Street (Philadelphia, PA USGS Quadrangle N: 15.9 inches; W: 1.3 inches) in the City and **County of Philadelphia**.

**E15-592.** Encroachment Permit. **Longview Development**, 922 Old Eagle School Road, Suite 905, Wayne, PA 19087. To relocate and enclose 690 linear feet of unnamed tributary to French Creek (TSF) and to place and maintain fill within 0.10 acre of wetland (PFO) and 690 linear feet of watercourse. These activities are associated with the construction of the Phoenixville Town Center Shopping Center. This project is located just north of the intersection of Nutt Road (S. R. 0023) and Kimberton Road (S. R. 0113) (Phoenixville USGS Quadrangle N: 1.25 inches; W: 4.9 inches) in the Phoenixville Borough, **Chester County**. This permit requires the construction of replacement wetlands.

*Northeast Regional Office: Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**E45-370.** Encroachment. **Ross Township Supervisors**, P. O. Box 276, Saylorsburg, PA 18353. To maintain a low-flow road crossing consisting of an open-bottom, corrugated steel arch culvert in Lake Creek having a span of 10.6 feet and underclearance of 3.2 feet. The culvert was constructed using Emergency Permit No. EP4598403 and is located along Township Road T384 (Ross Road), approximately 400 feet southwest of T375 (Saylorsburg, PA Quadrangle N: 4.5 inches; W: 12.7 inches) in Ross Township, **Monroe County**.

**E64-201.** Encroachment. **Silver Quarter Corporation**, Tri-State Sports Center, R. R. 4, Route 6, Box 182, Honesdale, PA 18431. To place fill in approximately 0.19 acre of wetlands associated with the Lackawaxen River, for the construction of an accessory building and associated parking area to expand an existing retail business. The project is located on the south side of S. R. 0006, approximately 0.25 mile northwest of the intersection of S. R. 0006 and S. R. 0652 (White Mills, PA Quadrangle N: 8.8 inches; W: 12.7 inches), in Texas Township, **Wayne County**. The permittee is required to provide 0.19 acre of replacement wetlands.

*Southcentral Regional Office: Section Chief, Water Management Program, Soils and Waterways Section, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110, (717) 705-4707.*

**E31-151.** Encroachment. **Charles Swigart**, 223 Washington Street, Huntingdon, PA 16652. To remove an existing culvert crossing and to construct and maintain a single span concrete adjacent box beam bridge having a clear span of 58.5 feet and a minimum underclearance of 4.8 feet across Shaver Creek (HQ-CWF) and to place fill in 0.0012 de minimis acre of associated wetlands located on a private driveway about 5,000 feet south of SR 1008 and 0.66 mile south of its intersection with SR 0305 in the Village of Cottage (Donation, PA Quadrangle N: 21.0 inches; W: 14.2 inches) in West Township, **Huntingdon County**. This permit also includes 401 Water Quality Certification.

**E36-673.** Encroachment. **PA Dept. of Transportation**, Engineering District 8-0, 2140 Herr Street, Harrisburg, PA 17103. To remove the existing structure and its center pier and to construct and maintain a prestressed

concrete spread box beam bridge having a clear span of 73-foot on a 60 degree skew with an average underclearance of 8 foot across Indian Run (TSF) on SR 027 Reading Road (Ephrata, PA Quadrangle N: 8.0 inches; W: 7.5 inches) in Ephrata Township, **Lancaster County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

*Northcentral Region: Water Management, Soils and Waterways, F. Alan Sever, Chief, 208 West Third St., Williamsport, PA 17701.*

**E17-327.** Encroachment. **Pennsylvania Department of Transportation**, Engineering District 2-0, 1924-30 Daisy Street, P. O. Box 342, Clearfield, PA 16830. To remove the existing structure and to construct and maintain a prestressed concrete spread box beam bridge with a clear span of 60 feet on a skew of 83 degrees and a minimum underclearance of 7 feet 2 inches over Moose Creek on SR 1001 (River Road) and to remove the existing roadway and to construct and maintain approximately 1,300 feet of roadway and to construct approximately 100 linear feet of temporary stream diversion (Clearfield, PA Quadrangle N: 5.1 inches; W: 8.7 inches) in Lawrence Township, **Clearfield County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

**E19-192.** Encroachment. **PA Department of Transportation**, Engineering District 3-0, P. O. Box 218, Montoursville, PA 17754-0218. To repair, operate and maintain the existing bridge that carries SR 2005, Segment-Offset 0030/1208 across an unnamed tributary to Roaring Creek. The repair work shall consist of installing concrete bridge abutment jackets and paving of the stream bed with a maximum of 6-inches of concrete for a maximum length of 42 feet. The stream bed paving and abutment repairs are located along the eastern right-of-way of SR 0042 approximately 596 feet south of T-379 and SR 2005 intersection (Catawissa, PA Quadrangle N: 9.6 inches; W: 6.3 inches) in Locust Township, **Columbia County**. The repair work shall also include the installation of concrete baffles to ensure fish migration over the paved stream bed. Please ensure that the statement this permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

**E41-442.** Encroachment. **Richard and Eric Rankinen**, 2356 Riverside Drive, South Williamsport, PA 17702-6835. To remove selected submerged old growth timber logs, not including the log cribs, from the West Branch Susquehanna River bed within a 12-mile bank-to-bank reach upstream of the Hepburn Street Dam (Williamsport, PA Quadrangle N: 19.6 inches; W: 0.9 inch) to Linden, PA Quadrangle N: 12.5 inches; W: 16.5 inches) in the City of Williamsport, Loyalsock Township, South Williamsport Borough, Duboistown Borough, Armstrong Township, Susquehanna Township, Nipponose Township, Piatt Township and Woodward Township, **Lycoming County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

**E47-067.** Encroachment. **Valley Township Municipal Authority**, P. O. Box 307, Danville, PA 17821. To place and maintain approximately 280 cubic yards of fill in the floodway fringe of Mauses Creek for the expansion of the existing wastewater treatment plant from 140,000 gpd to 210,000 gpd. This project is located next to Route 54 about 2 miles north of Route 11 (Riverside, PA Quad-

range N: 20.5 inches; W: 1.3 inches) in Valley Township, **Montour County**. This permit was issued under section 105.13(e) "Small Projects."

*Permits Issued and Actions on 401 Certification*

*Northwest Regional Office: Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**E25-581.** Encroachment. **Erie Western Pennsylvania Port Authority**, 17 West Dobbins Landing, Erie, PA 16506-1424. To place a total of approximately 500,000 cubic yards of material dredged from the bed of Presque Isle Bay and local Lake Erie waters into the Erie Harbor Confined Disposal Facility (CDF) to create an upland public recreational area located south of the entrance channel to Presque Isle Bay (Erie North, PA Quadrangle N: 4.7 inches; W: 10.3 inches) located in the City of Erie, **Erie County**.

**ENVIRONMENTAL ASSESSMENT**

*Southeast Regional Office: Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**EA09-006SE.** Environmental Assessment. **Realen Homes, Inc.**, 725 Talamore Drive, Ambler, PA 19002. To construct, operate and maintain a nonjurisdictional dam and adjoining roadway across an unnamed tributary within the Neshaminy Creek Watershed (WWF-MF) in association with the Villages of Flowers Mill Residential Subdivision. The project is located approximately 100 feet from the intersection of Wood Lane (T-345) and Langhorne-Yardley Road (S. R. 2049) (Langhorne USGS Quadrangle N: 11.7 inches; W: 4.6 inches) in Middletown Township, **Bucks County**.

## SPECIAL NOTICES

### Notice of Planning Grant Awards under Section 901 of the Municipal Waste Planning, Recycling and Waste Reduction Act

The Department of Environmental Protection (Department) hereby announces the following grants to counties under the Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101) (53 P. S. § 4000.901) section 901 and section 208 of the Waste Tire Recycling Act (Act 190 of 1996). The awards listed here are based upon applications received by the Department in 1998 and 1999.

Planning grants are awarded to counties for 80% of approved costs for preparing municipal waste management plans as required by Act 101, for carrying out related studies, surveys, investigations, inquiries, research and analysis, including those related to siting, environmental mediation, education programs on pollution prevention and household hazardous waste and providing technical assistance to small businesses for pollution prevention. Grants may be awarded for feasibility studies and project development for municipal waste processing or disposal facilities, except for facilities for the combustion of municipal waste that are not proposed to be operated for the recovery of energy. All grant awards are predicated on the receipt of recycling fees required by sections 701 and 702 of Act 101, and the availability of moneys in the Recycling Fund.

Inquiries regarding the grant offerings should be directed to Sally Lohman, Planning Section, Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Division of Waste Minimization and Planning, P. O. Box 8472, Harrisburg, PA 17105-8472.

<i>Applicant</i>	<i>Project Description</i>	<i>Grant Award</i>
<i>Southeast Region</i>		
Bucks County	Household Hazardous Waste Education	\$12,336
Delaware County	Household Hazardous Waste Education	\$19,603
Montgomery County	Household Hazardous Waste Education	\$10,080
Philadelphia County	Conduct a waste composition study.	\$75,320
Philadelphia County	Household Hazardous Waste Education	\$10,080
<i>Northeast Region</i>		
Lackawanna County	Revise the County's Municipal Waste Management Plan	\$50,102
Wayne County	Revise the County's Municipal Waste Management Plan	\$21,859
<i>Southcentral Region</i>		
Adams County	Phase III work on the design for a municipal waste composting facility	\$15,000
Juniata County	Revise the County's Municipal Waste Management Plan	\$40,235
Berks County	Household Hazardous Waste Education	\$ 4,647
Lebanon County	Revise the Lebanon County Municipal Waste Management Plan	\$77,300
<i>Northcentral Region</i>		
Columbia County	Revise the Columbia County Municipal Waste Management Plan	\$35,160
<i>Northwest Region</i>		
Elk County	Provide technical assistance on pollution prevention to a small business in the form of a powdered metals study.	\$28,544

### **Request for Proposals for Municipal Solid Waste Capacity**

The following notices are placed through the Department of Environmental Protection as required by section 502(d) of Act 101 of 1988—the Municipal Waste Planning, Recycling and Waste Reduction Act.

Pike County, through the Office of Community Planning and Human Development, is soliciting disposal/processing facilities to provide part or all of the disposal capacity required annually for Pike County municipal waste for the next 10 years. Interested parties should contact the Pike County Office of Community Planning and Human Development at (570) 296-3434 to obtain a copy of the Facility Qualification Request which will be used to qualify facilities to participate in the Pike County Municipal Waste Management Plan. Responses to the Facility Qualification Request must be submitted on or before August 13, 1999, at 3 p.m.

[Pa.B. Doc. No. 99-1185. Filed for public inspection July 23, 1999, 9:00 a.m.]

### **Air Quality Technical Advisory Committee Meeting; Cancellation Notice**

The Air Quality Technical Advisory Committee Meeting scheduled for July 22, 1999, has been cancelled.

Questions regarding the cancellation may be directed to Terry L. Black, Chief, Regulation and Policy Section, Division of Air Resource Management, Bureau of Air Quality, at (717) 787-2030.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 99-1186. Filed for public inspection July 23, 1999, 9:00 a.m.]

### **Alternative Fuels Incentive Grant Program (AFIG) Opportunity Notice**

The Department of Environmental Protection (DEP), Bureau of Air Quality announces Cycle 7 of a program to promote and expand the use of alternative transportation fuels and fuel systems such as compressed natural gas (CNG), liquefied natural gas (LNG), propane (LPG), ethanol (E85), and methanol (M85) (85% alcohol and 15% gasoline mixture) and advanced electric vehicle systems in private and public sector vehicles. The DEP will provide a portion of the cost for the purchase and installation of equipment necessary to retrofit existing vehicles, the purchase of Original Equipment Manufacturer produced vehicle technologies or to build or improve refueling and recharging facilities. Applications to cover the cost of field testing and evaluating new alternative fuel vehicle technologies are also eligible for funding. Eligible applicants for incentive grants are schools and vocational school districts, municipal authorities; counties; cities; boroughs; incorporated towns; townships; county institution districts; corporations; partnerships; nonprofit entities; and Commonwealth residents. An application package, which provides more details on the program, can be obtained from the Department of Environmental Protection, Bureau of Air Quality, P. O. Box 8468, Harrisburg, PA 17105-8468, or by contacting the office at (717) 787-9495. You may also fax your request to

(717) 772-2303, Attn: AFIG. The deadline for submitting a Cycle 7 application to the DEP is October 1, 1999.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 99-1187. Filed for public inspection July 23, 1999, 9:00 a.m.]

### **Availability of Guidance**

Guidance Documents are on DEP's World Wide Web site (<http://www.dep.state.pa.us>) at the Public Participation Center. The "January 1999 Inventory" heading is the Governor's List of Non-regulatory Documents. The "Search the Inventory of Technical Guidance Documents" heading is a database of the Inventory. The "Final Documents" heading is the link to a menu of the various DEP bureaus and from there to each bureau's final technical guidance documents. The "Draft Technical Guidance" heading is the link to DEP's draft technical guidance documents.

DEP will continue to revise its documents, as necessary, throughout 1999.

#### *Ordering Paper Copies of DEP Guidance*

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 DEP at (717) 783-8727.

In addition, bound copies of some of DEP's documents are available as DEP publications. Please check with the appropriate bureau for more information about the availability of a particular document as a publication.

#### *Changes To Guidance Documents*

Here is the current list of recent changes. Persons who have any questions or comments about a particular document should call the contact person whose name and phone number is listed with each document. Persons who have questions or comments in general should call Joe Sieber at (717) 783-8727.

#### *Draft Guidance*

DEP ID: 250-3100-001 Title: Radioactivity Monitoring at Municipal and Residual Waste Processing and Disposal Facilities Description: The purpose of this guidance is to protect the environment and public health, safety and welfare from the possible dangers of radioactive material that is wrongly delivered to municipal and residual waste processing and disposal facilities.

This guidance provides operators of municipal and residual waste processing and disposal facilities with guidance on how to monitor for radioactive materials in incoming loads of waste and what steps to take in response to an alarm triggered by the monitoring. Some facilities will soon be required by regulation to monitor and inspect for radioactive materials. Facilities that are not required to monitor will be expected to follow this guidance document. Comment Period Extended until: August 13, 1999 Anticipated Effective Date: October 1, 1999 Contact: William Kirk at (717) 787-3479.

DEP ID: 361-0300-001 Title: Manure Management for Environmental Protection Description: This guidance describes approved practices for livestock and poultry operations under which DEP approval or a permit is not required. Also, describes related requirements under the Nutrient Management Act and the Pennsylvania Strategy

for Concentrated Animal Feeding Operations. Comment Period Ends: August 23, 1999 Anticipated Effective Date: September 8, 1999 Contact: Mohammad Farooq at (717) 787-4317.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 99-1188. Filed for public inspection July 23, 1999, 9:00 a.m.]

### Revised Biological Metric Availability

The Department of Environmental Protection (Department) is making available for public comment a proposal to revise the way it interprets and applies one of the biological metrics used to evaluate the appropriateness of special water quality protection for candidate waterbodies throughout this Commonwealth.

The Department has an ongoing process to evaluate waterbodies for possible inclusion in its Special Water Quality Protection Program. This process includes the application of five biological metrics to develop a biological condition score for the candidate waterbody. These metrics are designed to evaluate the structure and function of the invertebrate community and assess the overall health of the aquatic ecosystem. The composite score of the 5 metrics for a candidate waterbody is compared to that of a reference waterbody of known excellent quality and the percent difference is used, in conjunction with applicable regulatory criteria, to determine the appropriate Special Protection category (if any) for the candidate.

One of the 5 metrics considers the dominance of a single taxon or group of aquatic invertebrates in the biological community of the waterbody in question. Generally, healthy aquatic systems are not dominated by any single type or group of organisms but, rather, are well balanced with numerous taxa present in relatively equal numbers. An invertebrate collection dominated by a single taxon is normally an indication that an outside stress has altered the system and created conditions that favor the proliferation of one group of invertebrates (usually pollution tolerant) over the more normal condition of multiple groups in balance with each other. The metric Percent Dominant Taxon detects this condition and, when compared to a healthy, balanced reference condition, results in a poor score for the candidate waterbody.

This metric, in conjunction with the remaining 4 metrics, has been successfully used to evaluate many candidate waterbodies for special water quality protection. However, natural systems are varied, and it has come to the attention of Department staff that the metric Percent Dominant Taxon, when applied literally, can yield misleading results in aquatic systems naturally dominated by one or two taxa or in systems where the biological community is temporarily dominated by one or two taxa because the reproductive cycle for those taxa has yielded large numbers of individuals over a very brief interval of time. The following change in the procedure for scoring the metric Percent Dominant Taxon is proposed to take into account naturally occurring conditions or sample collections inadvertently timed to coincide with large hatches of one or two taxa of invertebrates.

For invertebrate collections dominated by a single taxon, Department staff will consider the Hilsenhoff Index number for that group of invertebrates. This index (on a scale of 1–10) reflects the sensitivity of the

organism to pollution. Low Hilsenhoff Index numbers are assigned to invertebrates that are sensitive to pollution. If the Hilsenhoff Index for the dominant taxon in a sample is 0, 1 or 2 (indicative of a pollution sensitive organism) the maximum score of 6 will be assigned for the Percent Dominant Taxon metric in that sample. This will recognize that a sensitive biological community exists at the site even though it is dominated by a single taxon.

Persons wishing to comment on this proposed method of interpreting and scoring the invertebrate biological metric Percent Dominant Taxon may do so by submitting written comment to Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Watershed Conservation, P. O. Box 8555, Harrisburg, PA 17105-8555, e-mail brezina.edward@dep.state.pa.us.

Comments must be received by close of business August 24, 1999. Comments received by facsimile will not be accepted.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 99-1189. Filed for public inspection July 23, 1999, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Application of Frankford Hospital—Torresdale Division, Philadelphia, PA for Exception to 28 Pa. Code § 153.1(b)

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) hereby gives notice that Frankford Hospital—Torresdale Division has requested an exception to the requirements of 28 Pa. Code § 153.1(b), referencing the "Guidelines for Design and Construction of Hospital and Health Care Facilities," 1996-97 Edition. The Petitioner is requesting an exception for several examination rooms which do not meet the minimum floor area of 80 square feet (Section 9.2.B1), and which do not contain the required piped medical gas system (Section 7.9.D7; 7.31.E5), in the Emergency Department fast track areas of the hospital.

The request is on file with the Department. Persons may receive a copy of the request for exception by requesting a copy from Division of Acute & Ambulatory Care, Department of Health, Room 532 Health & Welfare Building, Harrisburg, PA 17120, (717) 783-8980, Fax (717) 772-2163, E-Mail Address: LVIA@HEALTH.STATE.PA.US.

Those persons who wish to comment on this exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed above.

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/or provide comments to the Department and require an auxiliary aide service or other accommodation to do so, should contact Director, Division of Acute & Ambulatory Care at (717)783-8980, V/TT: (717)

783-6514 for Speech and/or Hearing Impaired Persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].

ROBERT S. ZIMMERMAN, Jr.,  
*Secretary*

[Pa.B. Doc. No. 99-1190. Filed for public inspection July 23, 1999, 9:00 a.m.]

### **Application of Moss Rehabilitation Hospital for Exception to 28 Pa. Code § 153.1(b)**

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) hereby gives notice that Moss Rehabilitation Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1(b) which require compliance with the standards contained in the following publication: Guidelines for Design and Construction of Hospital and Healthcare Facilities. Moss Rehabilitation specifically requests exemption from the following standards contained in this publication: handrails shall be provided on both sides of corridors used by patients.

The request is on file with the Department. Persons may receive a copy of the request for exception by requesting a copy from Division of Acute and Ambulatory Care, Department of Health, Room 532 Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, FAX: (717) 772-2163, E-Mail Address: LVIA@HEALTH.STATE.PA.US.

Those persons who wish to comment on this exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed above.

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 disability who wish to obtain a copy of the request and/or provide comments to the Department and require an auxiliary aide service or other accommodation to do so, should contact Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT: (717) 783-6514 for Speech and/or Hearing Impaired Persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].

ROBERT S. ZIMMERMAN, Jr.,  
*Secretary*

[Pa.B. Doc. No. 99-1191. Filed for public inspection July 23, 1999, 9:00 a.m.]

### **Availability of Draft Preventive Health and Health Services Block Grant Application for Federal Fiscal Year 2000**

The Department of Health (Department) is making copies available of the draft Preventive Health and Health Services Block Grant Application for FFY 2000, under 42 U.S.C.A. § 300 w-4. This application is the Commonwealth of Pennsylvania's draft request to the United States Department of Health and Human Services for block grant funding to address the Healthy People 2000/2010 Health Status Objectives.

The block grant application (Pennsylvania's funding request to HHS) describing proposed services, program goals, and objectives and activities will be available on or after August 5, 1999, and can be obtained by calling the Bureau of Chronic Diseases and Injury Prevention at (717) 787-6214. Persons with a disability who require an alternative format of the above-mentioned application (for example, large print, audio tape, braille) should also contact the Bureau of Chronic Diseases and Injury Prevention at (717) 787-6214 [TDD: (717) 783-6514].

A public hearing will be conducted by the Department for the purpose of receiving testimony on the above-mentioned application in accordance with 42 U.S.C.A. § 300 w-4. Comments and suggestions from the public should relate to the priorities and program plans included in the application.

The hearing will be held from 10 a.m. until 1 p.m., September 8, 1999, in the Conference Room 933, Health & Welfare Building, 7th and Forster Streets, Harrisburg, PA. Persons wishing to testify are requested to preregister by contacting the Bureau of Chronic Diseases and Injury Prevention at (717) 787-6214. Registration will be accepted on the day of the hearing. Persons will be allotted a maximum of 15 minutes to testify. Testifiers should provide the Department with two copies of their testimony at the time of the hearing.

Written comments will be accepted and should be sent to the Bureau of Chronic Diseases and Injury Prevention, Room 933, Health and Welfare Building, P. O. Box 90, Harrisburg, PA 17108, and should be received no later than 4 p.m., September 2, 1999.

Persons with a disability who desire to comment in alternative format (for example, large print, audio tape, braille) should notify the Bureau of Chronic Diseases and Injury Prevention at (717) 787-6214 [TDD: (717) 783-6514].

ROBERT S. ZIMMERMAN, Jr.,  
*Secretary*

[Pa.B. Doc. No. 99-1192. Filed for public inspection July 23, 1999, 9:00 a.m.]

### **Laboratories Approved to Perform Blood Lead and/or Erythrocyte Protoporphyrin Determinations Under the Clinical Laboratory Act**

The following laboratories are licensed in accordance with the Clinical Laboratory Act (35 P. S. §§ 2151—2165) and/or the Federal Clinical Laboratory Improvement Act of 1967 (42 U.S.C.A. § 263a), and are currently approved under 28 Pa. Code § 5.50 (relating to approval to provide special analytical services) to perform analyses of blood for lead or erythrocyte protoporphyrin content. This approval is based on demonstrated proficiency in periodic evaluations conducted by the Bureau of Laboratories of the Department of Health (Department).

Lead poisoning is a reportable noncommunicable disease. Approved laboratories which offer blood lead or erythrocyte protoporphyrin testing services are required to inform the Department of actual or possible incidents of this condition in accordance with 28 Pa. Code § 27.4 (relating to reportable noncommunicable diseases and conditions). In addition, the Department requests laboratories to submit reports on children under 6 years of age

and pregnant women, on whom laboratory tests confirm venous blood lead concentrations of 15 micrograms per deciliter or higher. The Department's collection and review of these latter reports would be consistent with the most recent revision of the guideline titled, *Preventing Lead Poisoning in Young Children*, which was published in 1991 by the United States Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, and is available from them.

Reports must be sent to the Department of Health, Division of Environmental Health, P. O. Box 90, Harrisburg, PA 17108. Report forms are available on request from the Division of Environmental Health.

Erythrocyte protoporphyrin determinations may be performed as an adjunct determination to substantiate blood lead levels of 25 micrograms per deciliter or higher. Since erythrocyte protoporphyrin concentrations may not increase as a result of low level exposures to lead, direct blood lead analysis is the only reliable method for identifying individuals with blood lead concentrations below 25 micrograms per deciliter.

Persons seeking blood lead or erythrocyte protoporphyrin analyses should determine that the laboratory employs techniques and procedures acceptable for the purpose for which the analyses are sought. Laboratories offering blood lead analysis only are designated with the letter "L" following the name of the laboratory. Those offering erythrocyte protoporphyrin analysis only are designated with the letter "P." Laboratories offering both services are designated with the letters "LP."

Blood lead analyses performed for occupational safety and health purposes must be conducted by a laboratory which also meets the requirements of the Occupational Safety and Health Administration of the United States Department of Labor as specified in 29 CFR 1910.1025(j)(2)(iii).

The list of approved laboratories will be reviewed semiannually and if there are changes to the list, a notice to that effect will be published in the *Pennsylvania Bulletin* at that time.

The Department's blood lead proficiency testing program is approved by the United States Department of Health and Human Services (HHS) in accordance with the requirements contained in the Clinical Laboratory Improvement Amendments of 1988 (42 CFR 493.901 and 493.937) which are administered by the Health Care Financing Administration (HCFA). Participation in these programs may therefore be used to demonstrate acceptable performance for approval purposes under both Federal and Commonwealth statutes.

Questions regarding this list should be directed to Dr. M. Jeffery Shoemaker, Director, Division of Chemistry and Toxicology, Department of Health, Bureau of Laboratories, P. O. Box 500, Exton, PA 19341-0500, (610) 363-8500.

Persons with a disability who require auxiliary aid service should contact Dr. Shoemaker at V/TT: (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT & T Relay Service at (800) 654-5984 [TT].

Allegheny County Coroners Office—L  
3441 Forbes Avenue Oakland  
Pittsburgh, PA 15213  
412-578-8072

Allegheny General Hospital—L  
320 East North Avenue  
Pittsburgh, PA 15212  
412-359-3521

American Medical Laboratories, Inc.—LP  
14225 Newbrook Drive  
Chantilly, VA 20153  
703-802-6900

Angeline Kirby Memorial Health Center—L  
71 North Franklin Street  
Wilkes-Barre, PA 18701  
717-823-5450

Associated Regional & University Pathologists—LP  
500 Chipeta Way  
Salt Lake City, UT 84108  
800-242-2787

Aurora Consolidated Labs—LP  
8901 West Lincoln Avenue  
West Allis, WI 53227  
414-328-7945

Children's Hospital of Philadelphia—P  
One Children's Center, 34th and Civic  
Philadelphia, PA 19104  
215-590-1000

Clarendon Laboratory—L  
1125 Flatbush Avenue  
Brooklyn, NY 11226  
718-856-4700

East Penn Manufacturing Company, Inc.—LP  
Deka Road, Keller Tech Center  
Lyons Station, PA 19536  
610-682-6361

Edison Medical Laboratories, Inc.—LP  
1692 Oak Tree Road, Suite 1  
Edison, NJ 08820  
732-906-7800

Ellwood City General Hospital—LP  
724 Pershing Street  
Ellwood City, PA 16117  
412-752-0081

Exide Corp. Indus. Hygiene Lab.—LP  
6313 Rising Sun Avenue  
Philadelphia, PA 19111  
215-342-1414

Geisinger Medical Center—L  
North Academy Road  
Danville, PA 17822  
717-271-6338

Great Smokies Diagnostic Laboratory—L  
63 Zillicoa Street  
Asheville, NC 28801  
828-253-0621

Hagerstown Medical Laboratory—L  
11110 Medical Campus Road, Suite 230  
Hagerstown, MD 21742  
301-790-8670

Health Network Laboratories—LP  
2024 Lehigh Street  
Allentown, PA 18103  
610-402-8150

Helena Laboratories—P  
P. O. Box 752  
Beaumont, TX 77704  
409-842-3714

LabCorp of America Holdings—LP  
6370 Wilcox Road  
Dublin, OH 43016  
800-282-7300

LabCorp of America Holdings—LP  
1447 York Court  
Burlington, NC 27215  
800-334-5161

LabCorp of America Holdings—LP  
69 First Avenue, P. O. Box 500  
Raritan, NJ 08869  
201-526-2400

Laboratory Corp of America—LP  
13900 Park Center Road  
Herndon, VA 22071  
703-742-3100

LabOne, Inc.—LP  
8915 Lenexa Drive  
Overland Park, KS 66214  
913-888-1770

Lancaster General Hospital—L  
555 North Duke Street, P. O. Box 3555  
Lancaster, PA 17603  
717-299-5511

LeadTech Corporation—L  
One Marine Plaza  
North Bergen, NJ 07047  
201-868-7707

Main Line Clinical Laboratory—L  
Lankenau Hospital  
100 East Lancaster Avenue  
Wynnewood, PA 19096  
610-645-2615

Mayo Clinic—LP  
200 First Street, S.W., Hilton 530  
Rochester, MN 55905  
507-284-8626

Mercy Health Lab-Mercy Fitzgerald Hospital—L  
Lansdowne Avenue and Bailey Road  
Darby, PA 19023  
610-237-4175

Mercy Hosptial Lab—L  
Pride and Locust Streets  
Pittsburgh, PA 15219  
412-232-7831

National Medical Services—LP  
3701 Welsh Road  
Willow Grove, PA 19090  
215-657-4900

Omega Medical Laboratories, Inc.—L  
2001 State Hill Road, Suite 100  
Wyomissing, PA 19610  
610-378-1900

Pacific Toxicology Laboratories—LP  
1545 Pontius Avenue  
Los Angeles, CA 90025  
310-479-4911

Pennsylvania Department of Health—LP  
Bureau of Laboratories  
P. O. Box 500  
Exton, PA 19341-0500  
610-363-8500

Pocono Medical Center—L  
206 East Brown Street  
East Stroudsburg, PA 18301  
717-476-3544

Primary Care Health Services, Inc., Laboratory—L  
7227 Hamilton Avenue  
Pittsburgh, PA 15208  
412-244-4728

Public Health Laboratory City of Philadelphia—L  
500 South Broad Street  
Philadelphia, PA 19146  
215-685-6811

Quest Diagnostics Incorporated—LP  
One Malcolm Avenue  
Teterboro, NJ 07608  
201-288-0900

Quest Diagnostics of PA, Inc.—LP  
875 Greentree Road  
Four Parkway Center  
Pittsburgh, PA 15220-3610  
412-920-7600

Quest Diagnostics of PA, Inc.—LP  
900 Business Center Drive  
Horsham, PA 19044  
215-957-9300

Quest Diagnostics, Incorporated—LP  
33608 Ortega Highway  
San Juan Capistrano, CA 92690  
714-728-4000

Reading Hospital and Medical Center—L  
6th and Spruce Streets  
Reading, PA 19603  
610-378-6080

SmithKline Beecham Clinical Laboratories—LP  
400 Egypt Road  
Norristown, PA 19403  
610-631-4200

SmithKline Bioscience Laboratories—LP  
7600 Tyrone Avenue  
Van Nuys, CA 91405  
818-376-6259

Specialty Laboratories—L  
2211 Michigan Avenue  
Santa Monica, CA 90404  
310-828-6543

St. Joseph Quality Medical Laboratory—L  
215 North 12th Street, Box 316  
Reading, PA 19603  
610-378-2200

Tamarac Medical—LP  
7000 South Broadway, Suite 2C  
Littleton, CO 80122  
303-794-1083

Toxi-Con Laboratories—LP  
120 Monahan Avenue, Suite 101  
Dunmore, PA 18512  
717-963-0722



University of Pittsburgh Medical Center—LP  
200 Lothrop Street  
CLSI Room 5929 MT  
Pittsburgh, PA 15213-2582  
412-647-7813

ROBERT S. ZIMMERMAN, Jr.,  
*Secretary*

[Pa.B. Doc. No. 99-1193. Filed for public inspection July 23, 1999, 9:00 a.m.]

### Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program)

#### I. Maximum Allowable Cost for WIC Food Prescription One and WIC Food Prescription Two

Under 28 Pa. Code § 1103.4(a)(6), the WIC Program hereby publishes notice of the maximum allowable cost for WIC Food Prescription One and WIC Food Prescription Two. The information contained herein is effective July 24, 1999.

The maximum allowable cost for WIC Food Prescription One is \$51.86 and the maximum allowable cost for WIC Food Prescription Two is \$98.16.

#### II. Contract Brand of Formula

Under 28 Pa. Code § 1103.5(c), the WIC Program hereby publishes notice of the name of the contract brand of infant formula. The WIC Program has entered into a contract with Ross Laboratories to be the primary provider of infant formula for the WIC Program. The contract brand of infant formula is Ross Products and the names of the formula are Similac with Iron and Isomil. Other brands and types of formula must be specified on the WIC check to be authorized for purchase with a WIC check. The information contained herein is effective July 24, 1999.

#### III. 1998-1999 WIC Food List

Under 28 Pa. Code § 1103.5(c), the WIC Program hereby publishes notice of the 1998-1999 WIC Food List which contains the required types of foods, the maximum allowable cost of certain foods and if applicable, names of allowable brands of foods. Effective July 24, 1999, the 1998-1999 WIC Food List authorizes the following as allowable foods for the purpose of the WIC Program:

##### *Cheese*

Regular, reduced fat, low fat or fat free, low cholesterol, low sodium.

In block, cubes, slices or shredded.

If from the dairy case, the cheese must be marked with weight, type and cost. Cheese must cost no more than \$5.99 per pound.

Minimum package size 8 ounces.

American (Pasteurized Process)	Cheddar
Cheddarella	Cojack
Colby (Longhorn)	Monterey Jack
Mozzarella	Muenster
Provolone	Swiss

Not Allowed: Individually wrapped; imported; deli service; cheese foods; imitation cheese; cheese products or spreads; string cheese; cheese with added ingredients.

##### *Milk*

Fluid (pasteurized; quarts costing no more than \$1, half gallons costing no more than \$2, or gallons costing no more than \$4). Any fat level allowed; acidophilus allowed.

Lactose reduced or lactose free if specified on the WIC check.

Evaporated (12 ounce cans) if specified on the WIC check.

Dry (packages) if specified on the WIC check.

Not allowed: Flavored milk, UHT milk, buttermilk, goat's milk, milk with added calcium or protein, milk in glass bottles, organic milk.

##### *Eggs*

Any size raw shell eggs costing no more than \$1.75 a dozen.

##### *Juice*

Canned Single Strength  
(46 ounce can, 100% pure juice):

Apple .....	Seneca, Lucky Leaf or Musselman's
Apple/Grape .....	Lucky Leaf, Musselman's
Orange .....	any brand
Pineapple .....	any brand
100% Grape, regular or white ..	Welch's
V8 (regular, lightly tangy, picante, healthy request) .....	Campbell's
Juicy Juice (any flavor) .....	Libby

Frozen Concentrated  
(11.5 to 12 ounce can, 100% pure juice):

Apple .....	Seneca, Shurfine, Weis, Musselman's, Old Orchard, Lucky Leaf, Foodland, Food Club
Orange .....	any brand
Pineapple-Orange .....	Dole
Pineapple-Orange-Banana .....	Dole
100% Grape .....	Seneca, Welch's with yellow pull tab
White Grape Juice Blends .....	Welch's with yellow pull tab

Not allowed: Juices with added sugar, alcohol or carbonation; cartons or bottled juices.

##### *Dry Beans and Peas*

Any kind in 1-pound package

Not allowed: Beans with seasonings

##### *Cereal*

Adult/Child Cereals:

Minimum package size 8 ounces.

General Mills:  
Cheerios (regular, multigrain plus)  
Chex (wheat, corn, rice, multi-bran)  
Kix (regular only)  
Total Corn Flakes  
Wheaties (regular flavor)

Kellogg Co.:  
Complete Bran Flakes (oat, wheat)  
Corn Flakes  
Mini Wheats (strawberry, blueberry, apple cinnamon, raisin)  
Product 19

Nabisco:  
 Cream of Wheat (regular, quick, instant)  
 Instant Cream of Wheat (original flavor packets)

Quaker Co.:  
 Instant Grits (all flavors)  
 Instant Quaker Oatmeal (regular flavor individual packets)  
 King Vitamin  
 Life (regular flavor)

Store Brand Cereal:  
 Crisp(y) Rice (Food Club, Weis Quality, Pathmark, Rich Foods, Best Yet)

Not allowed: Individual serving boxes.

*Peanut Butter*

15 to 18 ounce container costing no more than \$3 per container.

Not allowed: Reduced fat peanut butter; peanut butter mixed with jelly, marshmallow or chocolate.

*Infant Formula*

*Contract Brand*

Milk Based: Similac w/Iron                      Soy Based: Isomil  
 Other brands and types of formula must be specified on the WIC check.

*Infant Juice*

Any brand 4 ounce container.

Not allowed: Organic varieties, Beechnut Juice Plus or juice with yogurt.

*Infant Cereal*

Any brand in 8 or 16 ounce box.

Not allowed: Organic varieties, variety pack, cereal with fruit, formula or yogurt.

*Tuna and Carrots*

These foods are only for breast-feeding women whose babies do not get formula from WIC.

Tuna  
 (Any brand, chunk light, packed in water, 6 to 6 1/2 ounce cans)

Fresh Carrots  
 (Whole, unpeeled in 1 or 2 pound cello pack)

Canned Carrots  
 (Any brand sliced, 14 to 20 ounce can)

Persons who have questions, should call the WIC Program office at (717) 783-1289 or V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Services at (800) 654-5984 [TT].

(*Editor's Note:* For a regulation relating to the WIC Program, see 29 Pa.B. 3841 (July 24, 1999).)

ROBERT S. ZIMMERMAN, Jr.,  
*Secretary*

[Pa.B. Doc. No. 99-1194. Filed for public inspection July 23, 1999, 9:00 a.m.]

## DEPARTMENT OF PUBLIC WELFARE

### Public Hearing on Declining Resident Population at Mayview Mental Retardation Unit

The Department of Public Welfare (Department) will hold a public hearing on the declining resident population at Mayview Mental Retardation Unit, Allegheny County. The hearing will be held on Tuesday, August 10, 1999, from 6 p.m. to 8 p.m. at the Holiday Inn, Pittsburgh South, Allegheny County.

The Department, under authority of the act of April 28, 1999 (P. L. 24) is required to hold a public hearing on any State mental health or mental retardation facility within 30 days of a closure announcement or following a downsizing of 20% or more.

The resident population at Mayview Mental Retardation Unit has decreased because of many factors, including expansion of community living opportunities services.

Individuals or organizations wishing to testify should contact Mary Puskarich, Regional Director at (412) 565-5144 by August 3, 1999. Persons requiring special accommodations is asked to inform the Department at the time of scheduling.

FEATHER O. HOUSTOUN,  
*Secretary*

[Pa.B. Doc. No. 99-1195. Filed for public inspection July 23, 1999, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Finding

#### Clearfield County

Pursuant to the provisions of 71 P. S. Section 2002(b), the Secretary of Transportation makes the following written finding:

The Department of Transportation plans to make improvements to portions of State Road 219 Section A03 and N06 in Sandy Township, Clearfield County. The improvements consist of replacing the existing two lane multi-span concrete and steel bridge with a new three lane single span bridge, widening approximately 1.2 km (0.75 mile) of State Route 219, and updating traffic signals and intersections to accommodate a center left turn lane.

The proposed project will have No Adverse Effect on the Wilson School property, which has been determined eligible for the National Register of Historic Places. There is no feasible and prudent alternative to the usage of the historic resource.

No adverse environmental effect is likely to result from the reconstruction of these sections of highway.

BRADLEY L. MALLORY,  
*Secretary*

[Pa.B. Doc. No. 99-1196. Filed for public inspection July 23, 1999, 9:00 a.m.]

### Retention of Engineering Firms

#### **Bucks, Chester, Delaware, Montgomery and Philadelphia Counties Project Reference No. 08430AG2372**

The Department will retain an engineering firm to provide supplementary construction inspection staff of approximately one (1) inspector, under the Department's Inspector(s)-in-Charge for construction inspection and documentation services on various S.R.'s for the inspection and documentation of Roadside Development Contracts. Contract will be for a period of sixty (60) months.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an Engineering Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

- Review of resumes with emphasis on ability to perform the basic needs of the contract which are understanding and interpreting of current design criteria and do inspections of roadside development work done by contractors for brushing, herbicide applications, landscaping, mowing, revitalization, and tree and stump removal.
- Understanding of Department's requirements, policies and specifications.
- Past Performance.
- Number of NICET certified inspectors in each payroll classification.
- Availability of listed staff.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

<i>Classification</i>	<i>No. of Inspectors</i>
Transportation Construction Ins. Super. (TCIS) (NICET Highway Construction Level 3 or equivalent)	1 (1)

The number(s) in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

- Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.
- Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
- Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.

4. Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

5. Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The maximum reimbursement per hour of inspection for each Department Payroll Classification for calendar year of 1999:

<i>Payroll Classification</i>	<i>Maximum Straight Time Reimbursement Per Hour Of Inspection</i>
(TCIS)	\$40.54

The maximum reimbursement per hour of inspection includes all costs for providing construction inspection services at the project site during the normal work week.

Maximum reimbursement per hour of inspection for subsequent calendar years, if applicable, will be established at the scope of work meeting.

The firm selected may be required to attend a pre-construction conference with the Department and the construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards, safety and accident prevention, and equal opportunity provisions of the contract item. The firm selected will be required to provide one (1) Transportation Construction Inspection Supervisor who has the ability to inspect brushing, herbicide application, landscaping, mowing operations, revitalization, and tree and stump removal. This inspector must have the ability to identify dead and dying trees and do roadside restoration inspection and help with preparation of contract specifications and documents and obtain compliance with Work Zone Traffic Control specifications. Also, this person will help supervise the Roadside Development inspectors in each County office. The inspector supervisor may be required to perform other duties as may be required.

The firm selected will be required to supply the following equipment at no direct cost to the Department:

- Transportable Cellular Phone
- Telephone Pager

Letters of interest for this project must include a letter, signed by the individual you propose for the TCIS position, giving his or her approval to use his or her name in your letter of interest for this specific project.

The maximum number of resumes to be included in the letter of interest shall be as follows:

<i>Classification</i>	<i>No. of Resumes</i>
TCIS	2

This project reference assignment is considered non-complex. The letter of interest shall be limited to a maximum of three (3) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Andrew L. Warren, District Administrator  
Engineering District 6-0  
200 Radnor-Chester Road  
St. Davids, PA 19087-5178

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 p.m. prevailing time on the twentieth (20th) day following the date of this Notice.

Any technical questions concerning the requirements for this project should be directed to: Mr. Charles Stone, P.E. District 6-0, at (619) 964-6520.

**Delaware and Philadelphia County  
Project Reference No. 08430AG2373**

The Department will retain an engineering firm to provide supplementary construction inspection staff of approximately twenty (20) inspectors, under the Department's Inspector(s)-in-Charge for construction inspection and documentation services on S. R. 0095, Section FDN, Delaware and Philadelphia Counties. This project was shown in the planned project advertisement as S. R. 0095, Section FUN, Delaware and Philadelphia Counties, Construction Inspection. This project will construct foundations for five (5) bridges. The work will include the installation of piles and the construction of footings for piers and abutments. The project will also include limited storm pipe construction and the relocation of an existing expressway on-ramp.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an Engineering Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

- Review of inspectors' resumes with emphasis on construction inspection capabilities. Department and District experience and supervisory experience.
- Specialized experience in structures, drainage, earthwork, pile driving and Maintenance and Protection of Traffic.
- Number of NICET and NECEPT certified inspectors in each payroll classification.
- Understanding of Department's requirements, policies, and specifications.
- Ability to provide one (1) "CDS" operator or person capable of inputting data into a personal computer (TCIS Classification).
- Past performance.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

A minimum of two (2) individuals submitted as part of your inspection staff must have a NECEOP Bituminous Field Technician Certification.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

<i>Classification</i>	<i>No. of Inspectors</i>
Transportation Construction Manager 1 (TCM-1) (NICET Highway Construction Level 4 or equivalent)	1 (1)
Transportation Construction Ins. Super. (TCIS) (NICET Highway Construction Level 3 or equivalent)	3 (2)
Transportation Construction Inspector (TCI) (NICET Highway Construction Level 2 or equivalent)	12 (7)
Technical Assistant (TA) (NICET Highway Construction Level 1 or equivalent)	4 (0)

The number(s) in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

- Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.
- Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
- Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
- Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.
- Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The maximum reimbursement per hour of inspection for each Department Payroll Classification for calendar year of 1999:

<i>Payroll Classification</i>	<i>Maximum Straight Time Reimbursement Per Hour Of Inspection</i>
(TCM-1)	\$46.27
(TCIS)	\$40.54
(TCI)	\$35.47
(TA)	\$24.39

The maximum reimbursement per hour of inspection includes all costs for providing construction inspection services at the project site during the normal work week.

Maximum reimbursement per hour of inspection for subsequent calendar years, if applicable, will be established at the scope of work meeting.

The firm selected may be required to attend a pre-construction conference with the Department and the construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards,

safety and accident prevention, and equal opportunity provisions of the contract item; and perform other duties as may be required.

The firm selected will be required to supply the following equipment at no direct cost to the Department:

- a. One (1) 35MM camera (one per project).
- b. One (1) scanner.
- c. Safety vests-high visibility for inspectors.
- d. Four (4) cellular phones with radio capability.

The goal for Disadvantaged Business Enterprise (DBE) participation in this Agreement shall be ten percent (10%) of the total contract price. Additional information concerning DBE participation in this Agreement is contained in the General Requirements and Information Section after the advertised project(s).

Letters of interest for this project must include a letter, signed by the individuals you propose for all TCM-1 and TCIS positions, giving their approval to use their name in your letter of interest for this specific project.

The maximum number of resumes to be included in the letter of interest shall be as follows:

<i>Classification</i>	<i>No. of Resumes</i>
TCM-1	2
TCIS	4
TCI	11

No resumes are required for the TA Classification.

This project reference assignment is considered non-complex. The letter of interest shall be limited to a maximum of three (3) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Andrew Warren, District Administrator  
Engineering District 6-0  
200 Radnor-Chester Road  
St. Davids, PA 19087

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 p.m. prevailing time on the sixth (6th) day following the date of this Notice.

Any technical questions concerning the requirements for this project should be directed to: Mr. George Dunheimer, District 6-0, at (610) 964-6554.

**Bucks County  
Project Reference No. 08430AG2374**

The Department will retain an engineering firm to provide supplementary construction inspection staff of approximately four (4) inspectors, under the Department's Inspector(s)-in-Charge for construction inspection and documentation services in Bucks County on various S. R.'s for the inspection and documentation of Highway Occupancy Permit Projects, Guide Rail Repair, and Roadside Development Contracts and other general maintenance contracts. Contract will be for a period of sixty (60) months.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an Engineering Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be estab-

lished directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

- a. Review of resumes with emphasis on ability to perform the basic needs of the contract which are understanding and interpreting of current design criteria and the inspection of guide rail, concrete median barriers and impact attenuator installation; assisting construction permit applicants and inspection of drainage, curb, roadway widening and utility installations on state highways; and the inspection of roadside development work done by contractors for brushing, herbicide applications, landscaping, mowing, revitalization, and tree and stump removal.
- b. Understanding of Department's requirements, policies and specifications.
- c. Past performance.
- d. Number of NICET certified inspectors in each payroll classification.
- e. Availability of listed staff.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

<i>Classification</i>	<i>No. of Inspectors</i>
Transportation Construction Inspector (TCI)	4 (3)
(NICET Highway Construction Level 2 or equivalent)	

The number(s) in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

1. Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.
2. Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
3. Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
4. Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.
5. Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The maximum reimbursement per hour of inspection for each Department Payroll Classification for calendar year of 1999:

<i>Payroll Classification</i>	<i>Maximum Straight Time Reimbursement Per Hour Of Inspection</i>
(TCI)	\$35.47

The maximum reimbursement per hour of inspection includes all costs for providing construction inspection services at the project site during the normal work week.

Maximum reimbursement per hour of inspection for subsequent calendar years, if applicable, will be established at the scope of work meeting.

The firm selected may be required to attend a pre-construction conference with the Department and the construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards, safety and accident prevention, and equal opportunity provisions of the contract item. The firm selected will be required to provide two (2) Transportation Construction Inspectors for permit work who have the ability to perform the following: To conduct on-site inspection including all necessary information for evaluation, which includes but is not limited to sight distance, existing drainage, road condition, shoulder condition, grade of roadway and any additional condition which may require further study by the County Permit Engineer, Traffic Engineer, or Utility Engineer; assist applicant—private citizen, Township or Municipal authority and utility company by interpreting Pennsylvania Department of Transportation regulations on the driveway access, utility openings and method of restoration; attend municipal and utility preconstruction meetings to insure compliance with the Department of Transportation Regulations and coordination of inspection; enforce compliance with the Department of Transportation Publication 203—Work Zone Traffic Control; inspect work being conducted by the permittee as well as insure restoration of occupancy area within our right-of-way; coordinate inspection efforts with the County Permit Inspector of the Maintenance Department in the County to insure permittee's compliance with regulations; maintain a diary of permits which require intensive study and follow up on violation; have sufficient physical stamina to work under adverse weather conditions and hazardous terrain and stress; appear as a witness if required by the Assistant District Attorney's office; perform the above duties and any other related work assignment that requires the same knowledge that a permit inspector has as directed or assigned by the County Maintenance Manager.

One (1) Transportation Construction Inspector must have the ability to inspect brushing, herbicide application, landscaping, mowing operations, revitalization, and tree and stump removal. This inspector must have the ability to identify dead and dying trees and do roadside restoration inspection and help with preparation of contract specifications and documents and obtain compliance with Work Zone Traffic Control specifications. One (1) Transportation Construction Inspector must be familiar with PennDOT guide rail construction specifications, and be able to prepare estimates and work orders, and obtain compliance with Work Zone Traffic Control specifications. All inspectors may be required to perform other duties as required.

The firm selected will be required to supply the following equipment at no direct cost to the Department:

- 2 Transportable Cellular Phones
- 4 Telephone Pagers
- 1 Polaroid Spectra II Camera
- 3 5-Power Abney Levels with Stadia

The maximum number of resumes to be included in the letter of interest shall be as follows:

<i>Classification</i>	<i>No. of Resumes</i>
TCI	5

This project reference assignment is considered non-complex. The letter of interest shall be limited to a maximum of three (3) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Andrew L. Warren, District Administrator  
Engineering District 6-0  
200 Radnor-Chester Road  
St. Davids, PA 19087-5178

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 p.m. prevailing time on the twentieth (20th) day following the date of this Notice.

Any technical questions concerning the requirements for this project should be directed to: Mr. Charles Stone, P.E., District 6-0, at (610) 964-6520.

**Chester County  
Project Reference No. 08430AG2375**

The Department will retain an engineering firm to provide supplementary construction inspection staff of approximately five (5) inspectors, under the Department's Inspector(s)-in-Charge for construction inspection and documentation services in Chester County on various S. R.'s for the inspection and documentation of Highway Occupancy Permit Projects, Guide Rail Repair, and Roadside Development Contracts and other general maintenance contracts. Contract will be for a period of sixty (60) months.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an Engineering Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

a. Review of resumes with emphasis on ability to perform the basic needs of the contract which are understanding and interpreting of current design criteria and the inspection of guide rail, concrete median barriers and impact attenuator installation; assisting construction permit applicants and inspection of drainage, curb, roadway widening and utility installations on state highways; and the inspection of roadside development work done by contractors for brushing, herbicide applications, landscaping, mowing, revitalization, and tree and stump removal.

b. Understanding of Department's requirements, policies and specifications.

c. Past performance.

d. Number of NICET certified inspectors in each payroll classification.

e. Availability of listed staff.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

<i>Classification</i>	<i>No. of Inspectors</i>
Transportation Construction Inspector (TCI) (NICET Highway Construction Level 2 or equivalent)	4 (3)
Technical Assistant (TA) (NICET Highway Construction Level 1 or equivalent)	1 (0)

The number(s) in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

1. Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.

2. Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.

3. Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.

4. Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

5. Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The maximum reimbursement per hour of inspection for each Department Payroll Classification for calendar year of 1999:

<i>Payroll Classification</i>	<i>Maximum Straight Time Reimbursement Per Hour Of Inspection</i>
(TCI)	\$35.47
(TA)	\$24.39

The maximum reimbursement per hour of inspection includes all costs for providing construction inspection services at the project site during the normal work week.

Maximum reimbursement per hour of inspection for subsequent calendar years, if applicable, will be established at the scope of work meeting.

The firm selected may be required to attend a pre-construction conference with the Department and the construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards,

safety and accident prevention, and equal opportunity provisions of the contract item. The firm selected will be required to provide two (2) Transportation Construction Inspectors for permit work who have the ability to perform the following: To conduct on-site inspection including all necessary information for evaluation, which includes but is not limited to sight distance, existing drainage, road condition, shoulder condition, grade of roadway and any additional condition which may require further study by the County Permit Engineer, Traffic Engineer, or Utility Engineer; assist applicant—private citizen, Township or Municipal authority and utility company by interpreting Pennsylvania Department of Transportation regulations on the driveway access, utility openings and method of restoration; attend municipal and utility preconstruction meetings to insure compliance with the Department of Transportation Regulations and coordination of inspection; enforce compliance with the Department of Transportation Publication 203—Work Zone Traffic Control; inspect work being conducted by the permittee as well as insure restoration of occupancy area within our right-of-way; coordinate inspection efforts with the County Permit Inspector of the Maintenance Department in the County to insure permittee's compliance with regulations; maintain a diary of permits which require intensive study and follow up on violation; have sufficient physical stamina to work under adverse weather conditions and hazardous terrain and stress; appear as a witness if required by the Assistant District Attorney's office; perform the above duties and any other related work assignment that requires the same knowledge that a permit inspector has as directed or assigned by the County Maintenance Manager.

One (1) Transportation Construction Inspector must have the ability to inspect brushing, herbicide application, landscaping, mowing operations, revitalization, and tree and stump removal. This inspector must have the ability to identify dead and dying trees and do roadside restoration inspection and help with preparation of contract specifications and documents and obtain compliance with Work Zone Traffic Control specifications. One (1) Transportation Construction Inspector must be familiar with PennDOT guide rail construction specifications, and be able to prepare estimates and work orders, and obtain compliance with Work Zone Traffic Control specifications. All inspectors may be required to perform other duties as required.

TA's may have to perform some work at the District 6-0 office.

The firm selected will be required to supply the following equipment at no direct cost to the Department:

- 1 Transportable Cellular Phone
- 3 Telephone Pagers
- 1 Polaroid Spectra II Camera
- 2 5-Power Abney Levels with Stadia

The maximum number of resumes to be included in the letter of interest shall be as follows:

<i>Classification</i>	<i>No. of Resumes</i>
TCI	5
No resumes are required for the TA Classification	

This project reference assignment is considered non-complex. The letter of interest shall be limited to a maximum of three (3) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Andrew L. Warren, District Administrator  
Engineering District 6-0  
200 Radnor-Chester Road  
St. Davids, PA 19087-5178

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 p.m. prevailing time on the twentieth (20th) day following the date of this Notice.

Any technical questions concerning the requirements for this project should be directed to: Mr. Charles Stone, P.E., District 6-0, at (610) 964-6520.

**Philadelphia County  
Project Reference No. 08430AG2376**

The Department will retain an engineering firm to provide supplementary construction inspection staff of approximately five (5) inspectors, under the Department's Inspector(s)-in-Charge for construction inspection and documentation services in Philadelphia County on various S. R.'s for the inspection and documentation of Highway Occupancy Permit Projects, Guide Rail Repair, and Roadside Development Contracts and other general maintenance contracts. The Contract will be for a period of sixty (60) months.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an Engineering Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

- Review of resumes with emphasis on ability to perform the basic needs of the contract which are understanding and interpreting of current design criteria and the inspection of guide rail, concrete median barriers and impact attenuator installation; assisting construction permit applicants and inspection of drainage, curb, roadway widening and utility installations on state highways; and the inspection of roadside development work done by contractors for brushing, herbicide applications, landscaping, mowing, revitalization, and tree and stump removal.
- Understanding of Department's requirements, policies and specifications.
- Past performance.
- Number of NICET certified inspectors in each payroll classification.
- Availability of listed staff.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

<i>Classification</i>	<i>No. of Inspectors</i>
Transportation Construction Inspector (TCI) (NICET Highway Construction Level 2 or equivalent)	3 (2)
Technical Assistant (TA) (NICET Highway Construction Level 1 or equivalent)	2 (0)

The number(s) in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

- Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.
- Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
- Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
- Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.
- Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The maximum reimbursement per hour of inspection for each Department Payroll Classification for calendar year of 1999:

<i>Payroll Classification</i>	<i>Maximum Straight Time Reimbursement Per Hour Of Inspection</i>
(TCI)	\$35.47
(TA)	\$24.39

The maximum reimbursement per hour of inspection includes all costs for providing construction inspection services at the project site during the normal work week.

Maximum reimbursement per hour of inspection for subsequent calendar years, if applicable, will be established at the scope of work meeting.

The firm selected may be required to attend a pre-construction conference with the Department and the construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards, safety and accident prevention, and equal opportunity provisions of the contract item. The firm selected will be required to provide two (2) Transportation Construction Inspectors for permit work who have the ability to perform the following: To conduct on-site inspection including all necessary information for evaluation, which includes but is not limited to sight distance, existing drainage, road condition, shoulder condition, grade of roadway and any additional condition which may require further study by the County Permit Engineer, Traffic Engineer, or Utility Engineer; assist applicant—private citizen, Township or Municipal authority and utility company by interpreting Pennsylvania Department of



Transportation regulations on the driveway access, utility openings and method of restoration; attend municipal and utility preconstruction meetings to insure compliance with the Department of Transportation Regulations and coordination of inspection; enforce compliance with the Department of Transportation Publication 203—Work Zone Traffic Control; inspect work being conducted by the permittee as well as insure restoration of occupancy area within our right-of-way; coordinate inspection efforts with the County Permit Inspector of the Maintenance Department in the County to insure permittee's compliance with regulations; maintain a diary of permits which require intensive study and follow up on violation; have sufficient physical stamina to work under adverse weather conditions and hazardous terrain and stress; appear as a witness if required by the Assistant District Attorney's office; perform the above duties and any other related work assignment that requires the same knowledge that a permit inspector has as directed or assigned by the County Maintenance Manager.

One (1) Transportation Construction Inspector must have the ability to inspect brushing, herbicide application, landscaping, mowing operations, revitalization, and tree and stump removal. This inspector must have the ability to identify dead and dying trees and do roadside restoration inspection and help with preparation of contract specifications and documents and obtain compliance with Work Zone Traffic Control specifications. One (1) Transportation Construction Inspector must be familiar with PennDOT guide rail construction specifications, and be able to prepare estimates and work orders, and obtain compliance with Work Zone Traffic Control specifications. All inspectors may be required to perform other duties as required.

Two (2) Technical Assistants for inspection of graffiti removal contract and trash removal contracts and other general maintenance contracts. The need for these people may only be for part of the work year. All inspectors may be required to perform other duties as required.

TA's may have to perform some work at the District 6-0 office.

The firm selected will be required to supply the following equipment at no direct cost to the Department:

- 1 Transportable Cellular Phone
- 3 Telephone Pagers
- 1 Polaroid Spectra II Camera

The maximum number of resumes to be included in the letter of interest shall be as follows:

<i>Classification</i>	<i>No. of Resumes</i>
TCI	4

No resumes are required for the TA Classification

This project reference assignment is considered non-complex. The letter of interest shall be limited to a maximum of three (3) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Andrew L. Warren, District Administrator  
Engineering District 6-0  
200 Radnor-Chester Road  
St. Davids, PA 19087-5178

The Letter of Interest submission for this project reference number must be received at the address listed

above by 4:30 p.m. prevailing time on the twentieth (20th) day following the date of this Notice.

Any technical questions concerning the requirements for this project should be directed to: Mr. Charles Stone, P.E., District 6-0, at (610) 964-6520.

**Montgomery County  
Project Reference No. 08430AG2377**

The Department will retain an engineering firm to provide supplementary construction inspection staff of approximately seven (7) inspectors, under the Department's Inspector(s)-in-Charge for construction inspection and documentation services in Montgomery County on various S.R.'s for the inspection and documentation of Highway Occupancy Permit Projects, Guide Rail Repair, and Roadside Development Contracts and other general maintenance contracts. The Contract will be for a period of sixty (60) months.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an Engineering Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

a. Review of resumes with emphasis on ability to perform the basic needs of the contract which are understanding and interpreting of current design criteria and the inspection of guide rail, concrete median barriers and impact attenuator installation; assisting construction permit applicants and inspection of drainage, curb, roadway widening and utility installations on state highways; and the inspection of roadside development work done by contractors for brushing, herbicide applications, landscaping, mowing, revitalization, and tree and stump removal.

b. Understanding of Department's requirements, policies and specifications.

c. Past performance.

d. Number of NICET certified inspectors in each payroll classification.

e. Availability of listed staff.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

<i>Classification</i>	<i>No. of Inspectors</i>
Transportation Construction Inspector (TCI) (NICET Highway Construction Level 2 or equivalent)	4 (3)
Technical Assistant (TA) (NICET Highway Construction Level 1 or equivalent)	3 (0)

The number(s) in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

1. Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.

2. Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.

3. Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.

4. Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

5. Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The maximum reimbursement per hour of inspection for each Department Payroll Classification for calendar year of 1999:

<i>Payroll Classification</i>	<i>Maximum Straight Time Reimbursement Per Hour Of Inspection</i>
(TCI)	\$35.47
(TA)	\$24.39

The maximum reimbursement per hour of inspection includes all costs for providing construction inspection services at the project site during the normal work week.

Maximum reimbursement per hour of inspection for subsequent calendar years, if applicable, will be established at the scope of work meeting.

The firm selected may be required to attend a preconstruction conference with the Department and the construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards, safety and accident prevention, and equal opportunity provisions of the contract item. The firm selected will be required to provide two (2) Transportation Construction Inspectors for permit work who have the ability to perform the following: To conduct on-site inspection including all necessary information for evaluation, which includes but is not limited to sight distance, existing drainage, road condition, shoulder condition, grade of roadway and any additional condition which may require further study by the County Permit Engineer, Traffic Engineer, or Utility Engineer; assist applicant—private citizen, Township or Municipal authority and utility company by interpreting Pennsylvania Department of Transportation regulations on the driveway access, utility openings and method of restoration; attend municipal and utility preconstruction meetings to insure compliance with the Department of Transportation Regulations and coordination of inspection; enforce compliance with the Department of Transportation Publication 203—Work Zone Traffic Control; inspect work being conducted by the permittee as well as insure restoration of occupancy area within our right-of-way; coordinate inspection efforts with the County Permit Inspector of the Maintenance Department in the County to insure permittee's compliance with regulations; maintain a diary of permits which require intensive study and follow up on violation; have sufficient

physical stamina to work under adverse weather conditions and hazardous terrain and stress; appear as a witness if required by the Assistant District Attorney's office; perform the above duties and any other related work assignment that requires the same knowledge that a permit inspector has as directed or assigned by the County Maintenance Manager.

One (1) Transportation Construction Inspector must have the ability to inspect brushing, herbicide application, landscaping, mowing operations, revitalization, and tree and stump removal. This inspector must have the ability to identify dead and dying trees and do roadside restoration inspection and help with preparation of contract specifications and documents and obtain compliance with Work Zone Traffic Control specifications. One (1) Transportation Construction Inspector must be familiar with PennDOT guide rail construction specifications, and be able to prepare estimates and work orders, and obtain compliance with Work Zone Traffic Control specifications. All inspectors may be required to perform other duties as required.

TA's may have to perform some work at the District 6-0 office.

The firm selected will be required to supply the following equipment at no direct cost to the Department:

- 1 Transportable Cellular Phone
- 4 Telephone Pagers
- 1 Polaroid Spectra II Camera
- 2 5-Power Abney Levels with Stadia

The maximum number of resumes to be included in the letter of interest shall be as follows:

<i>Classification</i>	<i>No. of Resumes</i>
TCI	5

No resumes are required for the TA Classification

This project reference assignment is considered non-complex. The letter of interest shall be limited to a maximum of three (3) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Andrew L. Warren, District Administrator  
Engineering District 6-0  
200 Radnor-Chester Road  
St. Davids, PA 19087-5178

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 p.m. prevailing time on the twentieth (20th) day following the date of this Notice.

Any technical questions concerning the requirements for this project should be directed to: Mr. Charles Stone, P.E., District 6-0, at (610) 964-6520.

#### **Delaware County Project Reference No. 08430AG2378**

The Department will retain an engineering firm to provide supplementary construction inspection staff of approximately six (6) inspectors, under the Department's Inspector(s)-in-Charge for construction inspection and documentation services in Delaware County on various S. R.'s for the inspection and documentation of Highway Occupancy Permit Projects, Guide Rail Repair, and Roadside Development Contracts and other general maintenance contracts. The Contract will be for a period of sixty (60) months.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an Engineering Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

- a. Review of resumes with emphasis on ability to perform the basic needs of the contract which are understanding and interpreting of current design criteria and the inspection of guide rail, concrete median barriers and impact attenuator installation; assisting construction permit applicants and inspection of drainage, curb, roadway widening and utility installations on state highways; and the inspection of roadside development work done by contractors for brushing, herbicide applications, landscaping, mowing, revitalization, and tree and stump removal.
- b. Understanding of Department's requirements, policies and specifications.
- c. Past performance.
- d. Number of NICET certified inspectors in each payroll classification.
- e. Availability of listed staff.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

<i>Classification</i>	<i>No. of Inspectors</i>
Transportation Construction Inspector (TCI) (NICET Highway Construction Level 2 or equivalent)	3 (2)
Technical Assistant (TA) (NICET Highway Construction Level 1 or equivalent)	3 (0)

The number(s) in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

1. Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.
2. Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
3. Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
4. Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

5. Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The maximum reimbursement per hour of inspection for each Department Payroll Classification for calendar year of 1999:

<i>Payroll Classification</i>	<i>Maximum Straight Time Reimbursement Per Hour Of Inspection</i>
(TCI)	\$35.47
(TA)	\$24.39

The maximum reimbursement per hour of inspection includes all costs for providing construction inspection services at the project site during the normal work week.

Maximum reimbursement per hour of inspection for subsequent calendar years, if applicable, will be established at the scope of work meeting.

The firm selected may be required to attend a pre-construction conference with the Department and the construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards, safety and accident prevention, and equal opportunity provisions of the contract item. The firm selected will be required to provide two (2) Transportation Construction Inspectors for permit work who have the ability to perform the following: To conduct on-site inspection including all necessary information for evaluation, which includes but is not limited to sight distance, existing drainage, road condition, shoulder condition, grade of roadway and any additional condition which may require further study by the County Permit Engineer, Traffic Engineer, or Utility Engineer; assist applicant—private citizen, Township or Municipal authority and utility company by interpreting Pennsylvania Department of Transportation regulations on the driveway access, utility openings and method of restoration; attend municipal and utility preconstruction meetings to insure compliance with the Department of Transportation Regulations and coordination of inspection; enforce compliance with the Department of Transportation Publication 203—Work Zone Traffic Control; inspect work being conducted by the permittee as well as insure restoration of occupancy area within our right-of-way; coordinate inspection efforts with the County Permit Inspector of the Maintenance Department in the County to insure permittee's compliance with regulations; maintain a diary of permits which require intensive study and follow up on violation; have sufficient physical stamina to work under adverse weather conditions and hazardous terrain and stress; appear as a witness if required by the Assistant District Attorney's office; perform the above duties and any other related work assignment that requires the same knowledge that a permit inspector has as directed or assigned by the County Maintenance Manager.

One (1) Transportation Construction Inspector must have the ability to inspect brushing, herbicide application, landscaping, mowing operations, revitalization, and tree and stump removal. This inspector must have the ability to identify dead and dying trees and do roadside restoration inspection and help with preparation of contract specifications and documents and obtain compliance with Work Zone Traffic Control specifications. One (1) Transportation Construction Inspector must be familiar with

PennDOT guide rail construction specifications, and be able to prepare estimates and work orders, and obtain compliance with Work Zone Traffic Control specifications. All inspectors may be required to perform other duties as required.

TA's may have to perform some work at the District 6-0 office.

The firm selected will be required to supply the following equipment at no direct cost to the Department:

- 3 Transportable Cellular Phones
- 3 Telephone Pagers
- 1 Polaroid Spectra II Camera
- 2 5-Power Abney Levels with Stadia

The maximum number of resumes to be included in the letter of interest shall be as follows:

<i>Classification</i>	<i>No. of Resumes</i>
TCI	4
No resumes are required for the TA Classification	

This project reference assignment is considered non-complex. The letter of interest shall be limited to a maximum of three (3) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Andrew L. Warren, District Administrator  
Engineering District 6-0  
200 Radnor-Chester Road  
St. Davids, PA 19087-5178

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 p.m. prevailing time on the twentieth (20th) day following the date of this Notice.

Any technical questions concerning the requirements for this project should be directed to: Mr. Charles Stone, P.E., District 6-0, at (610) 964-6520.

#### **Berks County Project Reference No. 08430AG2379**

The Department will retain an engineering firm, for a multi-phase, specific project agreement to perform environmental studies and preliminary engineering, final design and services during construction (shop drawing reviews and consultation during construction) for the betterment and upgrade of S. R. 0061, Section 15S in the Township of Ontelaunee and the Borough of Leesport in Berks County, Engineering District 5-0. The design of this project is expected to have an overall duration of twenty-one (21) months with shorter, varying schedules for individual phases. This agreement will be administered by Engineering District 5-0. The estimated construction cost is \$9.0 million.

The existing S. R. 0061 in the project area is a four (4) lane major arterial highway that extends North and South through central and northern Berks County. The project study limits will extend from 150 meters South of the interchange between S. R. 061 and S. R. 0222 (formerly known as S. R. 3055) North along S. R. 0061 to 240 meters South of the intersection of S. R. 0061 and S. R. 4017 (Belleman's Church Road). The highway traverses rolling terrain and areas of heavy residential and commercial development in the southern portion of the project area and gradually turns into areas of farmland near the northern extents of the project area.

The selected engineering firm will be required to provide a variety of engineering services as indicated below, but not limited to:

1. All studies necessary for the preparation of a Categorical Exclusion Evaluation Level 3 (or Level 4 if there are archeological findings or if the project requires additional right-of-way) and associated documents including: cultural resource surveys; wetlands delineation and evaluation; Section 106 documents; hazardous waste reports; archeological surveys, etc.

2. Preliminary engineering including, but not limited to: field surveying; traffic studies (intersection analyses, traffic counts, signal warrants, etc.); Type, Size, and Location drawings (if necessary); Step 9 Submission; roadway design; E & S plans; soils and geotechnical reconnaissance; maintenance and protection of traffic; right-of-way investigation; and coordination with utility companies.

3. Preparation of final roadway plan, structure plans (if necessary), including, but not limited to: roadway and structure borings (if necessary); final design; and preparation of plans, specifications, and estimates.

4. Consultation during construction.

All engineering services for this project will be performed in accordance with current Department Metric Design Standards.

The following factors, listed in order of importance, will be considered by the Department during evaluation of the firms submitting acceptable Letters of Interest:

- a. Specialized expertise and technical competence.
- b. Project team composition.
- c. Project team experience.
- d. Ability to expedite project and maintain schedule and budget.
- e. Past performance.
- f. Location of consultant to project and to District Office.

The District will announce the firms that have been shortlisted at an open public meeting to be held in Engineering District 5-0, 1713 Lehigh Street, Allentown, PA 18103. All candidates that have submitted a Letter of Interest will be notified of the date. Specify a contact person in the letter of interest.

The goal for Disadvantaged Business Enterprise (DBE) participation in this Agreement shall be ten (10%) percent of the total contract price. Additional information concerning DBE participation in this Agreement is contained in the General Requirements and Information section after the advertised project(s).

This project reference assignment is considered complex. The letter of interest shall be limited to a maximum of five (5) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Walter E. Bortree, P.E., District Engineer  
Engineering District 5-0  
1713 Lehigh Street  
Allentown, PA 18103

Attention: Mr. Stephen L. Caruano, P.E.

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 p.m. prevailing time on the sixth (6th) day following the date of this Notice.

Any technical questions concerning the requirements for this project should be directed to: Mr. Stephen L. Caruano, P.E., District 5-0, at (610) 791-6062.

**Allegheny County**  
**Project Reference No. 08430AG2380**

The Department will retain an engineering firm to provide supplementary construction inspection staff of approximately fifteen (15) inspectors, under the Department's Inspector(s)-in-Charge for construction inspection and documentation services on the following projects:

1. S. R. 4003, Section A09, Allegheny County Local Name: S. R. 4003/Nelson-Houston This project involves milling and resurfacing, paved shoulders, concrete median barriers, guiderail work, drainage, pavement markings, and Maintenance and Protection of Traffic in Ross Township, Allegheny County.

2. S. R. 4003, Section A10, Allegheny County Local Name: McKnight Road This project involves milling and resurfacing, paved shoulders, concrete median barriers, guiderail work, drainage, pavement markings, and Maintenance and Protection of traffic in Ross and McCandless Townships, Allegheny County.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an Engineering Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

a. Review of inspectors' resumes with emphasis on construction inspection capabilities and specialized experience in the Maintenance and Protection of Traffic, asphalt paving, drainage, milling, guiderail work, concrete median barriers and pavement markings. (References should be supplied for each inspector).

b. Understanding of Department's requirements, policies, and specifications.

c. Past Performance.

d. Number of NICET certified inspectors in each payroll classification.

e. Number of available inspectors in each payroll classification.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

<i>Classification</i>	<i>No. of Inspectors</i>
Transportation Construction Ins. Super. (TCIS) (NICET Highway Construction Level 3 or equivalent)	2 (2)
Transportation Construction Inspector—Materials (TCI-Materials) (NICET Highway Materials Level 2 or equivalent)	2 (2)
Transportation Construction Inspector (TCI) (NICET Highway Construction Level 2 or equivalent)	7 (5)
Technical Assistant (TA) (NICET Highway Construction Level 1 or equivalent)	4 (0)

The number(s) in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

1. Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.

2. Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.

3. Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.

4. Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

5. Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The maximum reimbursement per hour of inspection for each Department Payroll Classification for calendar year of 1999:

<i>Payroll Classification</i>	<i>Maximum Straight Time Reimbursement Per Hour Of Inspection</i>
(TCIS)	\$40.54
(TCI—Materials)	\$36.55
(TCI)	\$35.47
(TA)	\$24.39

The maximum reimbursement per hour of inspection includes all costs for providing construction inspection services at the project site during the normal work week.

Maximum reimbursement per hour of inspection for subsequent calendar years, if applicable, will be established at the scope of work meeting.

The firm selected may be required to attend a pre-construction conference with the Department and the construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards, safety and accident prevention, and equal opportunity

provisions of the contract item; two (2) inspectors certified in computer documentation and perform other duties as may be required.

Letters of interest for this project must include a letter, signed by the individuals you propose for TCIS positions, giving their approval to use their name in your letter of interest for this specific project. The Technical Assistants do not need to be identified in the letter of interest.

The goal for Disadvantaged Business Enterprise (DBE) participation in this Agreement shall be fifteen percent (15%) of the total contract price. Additional information concerning DBE participation in this Agreement is contained in the General Requirements and Information Section after the advertised project(s).

The maximum number of resumes to be included in the letter of interest shall be as follows:

<i>Classification</i>	<i>No. of Resumes</i>
TCIS	3
TCI—M	3
TCI	9

No resumes are required for the TA Classification

The firm selected will be required to supply the following equipment at no direct cost to the Department:

- 1 Nuclear Densometer Gauge/License\*\*\*
- 1 Vehicle for the Transportation of that Nuclear Gauge\*\*\*
- 4 Cellular Telephones (Two-way Radios also acceptable)

\*\*\* At point of need when needed

This project reference assignment is considered non-complex. The letter of interest shall be limited to a maximum of three (3) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Raymond S. Hack, P.E., District Engineer  
Engineering District 11-0  
45 Thoms Run Road  
Bridgeville, PA 15017  
Attention: Design Liaison Unit

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 p.m. prevailing time on the sixth (6th) day following the date of this Notice.

Any technical questions concerning the requirements for this project should be directed to: Mr. Brian A. Krul, District 11-0, at (412) 429-3801.

**Jefferson County  
Project Reference No. 08430AG2381**

The Department will retain an engineering firm for a multi-phase agreement to provide preliminary engineering, environmental studies, final design, and services during construction for State Route 80, Section 545 (S. R. 80/36 Interchange) in Brookville Borough, Jefferson County. The project is located at Exit 13, State Route 80/State Route 36 Interchange, and will provide for the upgrading and realignment of the four (4) existing ramps. The estimated construction cost for this project is \$4.8 million.

The selected firm will be required to provide the following engineering and design services:

Develop and evaluate interchange alternatives, perform field surveys, plot topography and cross-sections, provide environmental studies and clearances, utility coordination, prepare preliminary plans for design field view submission, prepare categorical exclusion evaluation and other related documents, develop erosion and sedimentation control details and narrative, pavement design, geotechnical evaluation, reconnaissance and geological engineer report. Provide maintenance and protection of traffic plans, provide traffic signal study and plan, study and development of interchange lighting, geotechnical exploration, final roadway plans, minor bridge rehabilitation plan, prepare preliminary and final right-of-way plan. Provide materials for and participate in value engineering reviews, document engineering study findings and activities, drainage for ramps, prepare final construction plan specification and estimates, provide for project management and CPM scheduling using WELCOM or compatible software.

Construction services will consist of shop drawing review and construction consultation.

Letters of Interest will be evaluated at the District 10-0 office with emphasis on the following factors:

- a. Demonstrate ability to meet project schedules and control costs.
- b. Understanding of the Department's requirements, design manuals, policies and specifications.
- c. Past performance and experience on similar projects.
- d. Method of controlling quality on project and submissions.
- e. Experience and competence of project manager and key personnel.
- f. Location of consultant office to perform work with respect to the District office. This will include ability/provisions for quick response to District request.

The goal for Disadvantaged Business Enterprise (DBE) participation in this Agreement shall be fifteen (15%) percent of the total contract price. Additional information concerning DBE participation in this Agreement is contained in the General Requirements and Information section after the advertised project(s).

This project reference assignment is considered complex. The letter of interest shall be limited to a maximum of five (5) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Richard H. Hogg, P.E., District Engineer  
Engineering District 10-0  
P. O. Box 429, Route 286 South  
Indiana, PA 15701  
Attention: Mr. Brian N. Allen, P.E.

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 p.m. prevailing time on the twentieth (20th) day following the date of this Notice.

Engineering District 10-0 will announce the firms that have been short listed at an open public meeting to be held in the District office. All firms that have submitted a Letter of Interest will be notified of the time and date. Specify two (2) contact persons in the Letter of Interest.

Any technical questions concerning the requirements for this project should be directed to: Mr. George R. Boros, District 10-0, at (724) 357-2810.

### General Requirements and Information

Firms interested in providing the above work and services are invited to submit a Letter of Interest with the required information for each Project Reference Number for which the applicant wishes to be considered.

The Letter of Interest and required information must be submitted to the person designated in the individual advertisement.

The Letter of Interest and required information must be received by the Deadline indicated in the individual advertisement.

All consultants, both prime consultants and subconsultants, who desire to be included in a Letter of Interest must have an Annual Qualification Package on file with the appropriate District Office, by the deadline stipulated in the individual advertisements.

For Statewide projects, all consultants, both prime consultants and subconsultants, who desire to be included in a Letter of Interest must have an Annual Qualification Package on file with the Central Office, Bureau of Design by the deadline stipulated in the individual advertisements.

By submitting a letter of interest for the projects that requests engineering services, the consulting firm is certifying that the firm is qualified to perform engineering services in accordance with the laws of the Commonwealth of Pennsylvania.

Information concerning the Annual Qualification Package can be found in Strike-off Letter No. 433-99-04 or under the Notice to all Consultants published in the February 27, 1999 issue of the *Pennsylvania Bulletin*.

The requirements for Letters of Interest, in addition to the requirements stipulated in the individual advertisement, are as follows:

1. The Letter of Interest must include the project reference number, the firm's legal name, and the firm's federal identification number.
2. Identify the project manager.
3. Identify subconsultants, if any, including DBE/WBE, if required.
4. Identify key project staff.

If a Joint Venture responds to a project advertisement, the Department of Transportation will not accept separate Letters of Interest from the Joint Venture constituents. A firm will not be permitted to submit a Letter of Interest on more than one (1) Joint Venture for the same Project Reference Number. Also a firm that responds to a project as a prime may not be included as a designated subcontractor to another firm that responds as a prime to the project. Multiple responses under any of the foregoing situations will cause the rejection of all responses of the firm or firms involved. The above does not preclude a firm from being set forth as a designated subcontractor to more than one (1) prime responding to the project advertisement.

If a goal for Disadvantaged Business Enterprise (DBE) participation is established for an advertised project, firms expressing interest in the project must agree to ensure that Disadvantaged Business Enterprise (DBE) firms as defined in the Transportation Equity Act for the 21st century (TEA-21) and currently certified by the

Department of Transportation shall have the maximum opportunity to participate in any subcontracting or furnishing supplies or services approved under Form 442, Section 1.10(a). The TEA-21 requires that firms owned and controlled by women (WBEs) be included, as a presumptive group, within the definition of Disadvantaged Business Enterprise (DBE). The goal for DBE participation shall be as stated in the individual project advertisement. Responding firms shall make good faith efforts to meet the DBE goal using DBEs (as they are defined prior to the act, WBEs or combinations thereof).

Proposing DBE firms must be certified at the time of submission of the Letter of Interest. If the selected firm fails to meet the established DBE participation goal, it shall be required to demonstrate its good faith efforts to attain the goal.

Responses are encouraged by small firms, Disadvantaged Business Enterprise (DBE) firms, and other firms who have not previously performed work for the Department of Transportation.

The assignment of the agreement/contract for the above advertisement(s) will be made to one of the firms who submitted an acceptable Letter of Interest in response to the project advertisement. The assignment will be made based on the Department's evaluation of the firm's qualification and capabilities. The Department reserves the right to reject all letters submitted, to cancel the solicitations requested under this Notice, and/or to readvertise solicitation for the work and services.

BRADLEY L. MALLORY,  
*Secretary*

[Pa.B. Doc. No. 99-1197. Filed for public inspection July 23, 1999, 9:00 a.m.]

## INDEPENDENT REGULATORY REVIEW COMMISSION

### Actions Taken by the Commission

The Independent Regulatory Review Commission met publicly at 10:30 a.m., Thursday, July 8, 1999, and took the following action:

#### *Regulations Approved:*

Lobbying Disclosure Committee #63-6: Lobbying Disclosure (amends 51 Pa. Code, by adding Chapters 31—45).

*Commissioners Present:* John R. McGinley, Jr., Chairperson; Alvin C. Bush, Vice Chairperson; Arthur Cocodrilli; Robert J. Harbison, III; John F. Mizner

Public Meeting held  
July 8, 1999

*Lobbying Disclosure Committee—Lobbying Disclosure; Regulation No. 63-6*

### Order

On January 20, 1999, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Lobbying Disclosure Committee (LDC). This rulemaking amends 51 Pa. Code by adding Chapters 31—45. The authority for this regulation is

contained in sections 1305(b)(3)(iii) and 1310(c) of the Lobbying Disclosure Act (act) (65 Pa.C.S. §§ 1305(b)(3)(iii) and 1310(c)). The proposed regulation was published in the January 30, 1999 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on May 26, 1999. At its June 17, 1999 public meeting, the Commission voted to disapprove the final-form regulation. On June 23, 1999, the LDC notified the Commission of its intent to revise and resubmit the regulation. On June 24, 1999, the revised final-form regulation was submitted to the Commission.

This regulation is being promulgated to implement the act. The proposed regulations, like the act, outline what constitutes lobbying, who must register, what must be reported, and auditing and enforcement procedures.

Comments in support of the revised final-form regulation were received from Senators Brightbill, Mellow and Lemmond, members of the subcommittee established by the Rules and Executive Nominations Committee to review this regulation; and Stephen C. MacNett, General Counsel for the Senate Majority Caucus.

We have reviewed the revised final-form regulation and find it to be in the public interest. The LDC made numerous revisions in its resubmittal to address the concerns raised by this Commission and the Senate. Where changes were not made, the rationale provided by the LDC supports their position and is consistent with the criteria of the Regulatory Review Act.

*Therefore, It Is Ordered That:*

1. Regulation No. 63-6 from the Lobbying and Disclosure Committee, as resubmitted to the Commission on June 24, 1999, is approved;

2. The Commission's bar to final publication of Regulation No. 63-6 issued under section 6(b) of the Regulatory Review Act is hereby rescinded; and

3. The Commission will transmit a copy of this order to the Legislative Reference Bureau.

JOHN R. MCGINLEY, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 99-1198. Filed for public inspection July 23, 1999, 9:00 a.m.]

### Notice of Comments Issued

Section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)) provides that the designated standing committees may issue comments within 20 days of the close of the public comment period, and the Commission may issue comments within 10 days of the close of the committee comment period. The Commission comments are based upon the criteria contained in section 5a(h) and (I) of the act (75 P. S. § 745.5a(h)(I)).

The Commission has issued comments on the following proposed regulations. The agency must consider these comments in preparing the final-form regulation. The final-form regulations must be submitted by the dates indicated.

<i>Reg No.</i>	<i>Agency/Title</i>	<i>Issued</i>	<i>Final-Form Submission Deadline</i>
7-342	Environmental Quality Board Waste Oil 29 Pa.B. 1975 (April 10, 1999))	7/9/99	6/11/01

### **Environmental Quality Board Regulation No. 7-342 Waste Oil July 9, 1999**

We have reviewed this proposed regulation from the Environmental Quality Board (EQB) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P. S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to consistency with existing regulations, need, economic impact, reasonableness and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

#### **1. Incorporation by Reference.—Clarity.**

The majority of the proposed regulation mirrors the code of Federal Regulations (40 CFR Part 279). The rulemaking could have incorporated the CFR by reference and then added regulatory provisions where Pennsylvania's requirements differ. This would allow the reader to easily identify provisions which differ from the CFR. As published, Pennsylvania's regulations would have to be read side by side with the CFR to find any differences. This is a tedious process. We recognize that the CFR uses the term "used oil" where the proposed regulation uses "waste oil." However, the regulation could include language addressing the difference in terminology. The EQB should consider incorporating the CFR by reference, rather than duplicating the bulk of the Federal regulations in Pennsylvania's regulations. This would also be consistent with Executive Order 1996-1.

#### **2. Section 298.1. Definitions.—Reasonableness.**

*Inconsistent definitions.*

This section begins by stating that the terms defined in sections 245.1 (relating to storage tanks) and 260.2 (relating to hazardous waste) have the same meaning when used in this chapter. We have several concerns with this provision because some terms are defined differently in this rulemaking than they are in sections 245.1 and 260.2.

First, the terms "existing tank" and "new tank" are defined in this regulation, as well as in sections 245.1 and 260.2. Each definition contains a different effective date. Therefore, the EQB should clarify the appropriate effective date for this regulation.

Second, section 245.1 contains the definition of "aboveground storage tank." This rulemaking contains a definition of "aboveground tank." Are these two terms meant to be the same? If the terms are the same, the inconsistencies between the definitions in this rulemaking and section 245.1 must be resolved.

Third, the regulation defines "tanks" by providing that they are constructed primarily of nonearthen or nonwooden materials. In contrast, section 245.1 provides that they are constructed of nonearthen material. Clarification is necessary as to which definition will be used for this regulation.



*Definition of used oil and waste oil.*

The proposed regulation defines both "waste oil" and "used oil." The EQB has previously defined both terms in the residual waste regulations (section 287.1). There are minor differences in definitions between this regulation and the residual waste regulation. To avoid confusion, there needs to be consistent definitions and use of terms.

*Waste oil transfer facility.*

"Waste oil transfer facility" is defined as follows:

A transportation related facility including loading docks, parking areas, storage areas and other areas where shipments of waste oil are received or held, or both, during the normal course of transportation.

The definition of this term is largely consistent with the Federal definition of "used oil transfer facility." However, the Federal definition specifies that shipments of oil at a transfer facility are held for more than 24 hours and not longer than 35 days. The definition in the proposed regulation does not include minimum and maximum time frames.

In the Preamble, the EQB asserts that it is precluded by the Solid Waste Management Act (Act) from adopting the Federally specified time frames. According to the EQB, the definition of "transfer facility" in the act does not include time frames; therefore, they cannot be included in the definition of "waste oil transfer facility."

We disagree with this analysis. The act defines "transfer facility" in part as follows:

A facility which receives and processes or *temporarily* stores municipal or residual waste at a location other than the generation site, and which facilitates the transportation or transfer of municipal or residual waste to a processing or disposal facility. (Emphasis added.)

The act does not contain parameters for what period of time will be considered "temporarily." Consequently, the EQB has the discretion and authority to include minimum and maximum time frames for waste oil storage in the definition of "waste oil transfer facility." Commentators are concerned that without adopting the federal time frames, sites where transporters stop for very short periods of time could be considered transfer facilities and would be subject to the requirements of Subchapter E. The EQB should include the time frames contained in the CFR in the definition of "waste oil transfer facility." Furthermore, the EQB should consider amending the definition to more closely match the definition in the act by replacing "received or held, or both," with "received and processed or temporarily stored."

**3. Section 298.10. Applicability.—Reasonableness and Economic Impact.**

*Characteristic hazardous waste.*

Subsection (b)(2) provides that mixtures of waste oil and hazardous waste are subject to regulation as a hazardous waste. The exception to this requirement occurs if a mixture contains waste that is hazardous solely due to ignitability and the resultant mixture does not exhibit the characteristic of ignitability. This provision is more stringent than the corresponding Federal mixture rule. Under the Federal regulations, if the mixture does not qualify as a characteristically hazardous waste, it is only subject to the used oil regulations.

In the Preamble, the EQB asserts that allowing mixtures of waste oil and hazardous substances contradicts its pollution prevention efforts. The EQB is concerned

that allowing generators to mix hazardous waste with waste oil will reduce generators' incentive to use source reduction strategies to minimize the amount of hazardous waste they generate. The EQB is also concerned that the Federal mixture rule will not protect the environment or the public health, safety or welfare.

Executive Order 1996-1 requires that Pennsylvania's regulations "not exceed Federal standards unless justified by a compelling and articulable Pennsylvania interest or required by state law." The EQB has not demonstrated the unique circumstances in Pennsylvania that warrant a more restrictive mixture rule than that contained in the Federal regulations. If mixing reduces the contaminants to a level that is no longer hazardous, it is unclear how the environment or the public health, safety or welfare will be harmed. The EQB should consider adopting the Federal mixture rule or explain the unique and compelling Pennsylvania interests that justify a more stringent mixture rule.

*Treatment of wastewater contaminated with waste oil.*

Subsection (c)(4) provides two criteria for when wastewater will be managed under this chapter. The first criterion is that the wastewater contains at least 1% of waste oil. The other criterion is that the wastewater contains marketable quantities of waste oil. We have several concerns with this provision.

First, the EQB is creating a different standard than the Environmental Protection Agency's (EPA) regulation on used oil. The EPA standard is that the wastewater contains no visible signs of free-flowing oil. The EQB contends the "no visible waste oil test" does not apply to the reclamation of waste oil from wastewater. The EQB should explain why the proposed standard is necessary and how the EPA's standard does not provide adequate protection.

Second, if the EQB demonstrates the need to differ from the EPA, it should explain the reasonableness of the 1% standard.

Third, the criterion that the wastewater contain marketable quantities of waste oil is vague. We understand that some facilities have the technological capability of extracting very small quantities of waste oil. However, the EQB should define what it will consider "marketable quantities" of waste oil.

Finally, subsection (c)(4) is inconsistent with subsection (f). Subsection (f) uses the standard of "de minimis quantities" of waste oil in the wastewater compared to the 1% and marketable quantity standard in subsection (c)(4). The EQB should resolve this inconsistency.

**4. Section 298.11. Waste oil specifications.—Reasonableness and Need.**

*Minimum Btu value.*

Subsection (a) requires any waste oil or any oil produced by waste oil to have a minimum 8,000 Btu value in order to be burned for energy recovery. This threshold is not contained in the Federal used oil regulations. The EQB should justify the need for this provision. If the EQB demonstrates the need for a minimum Btu value, it should explain why 8,000 Btus is a reasonable minimum standard.

*Halogen count.*

Table 1 in section 298.11(b) lists the specifications for waste oil burned for energy recovery and fuel produced from waste oil by processing, blending or other treatment. Waste oil that falls within the specification in Table 1 is

not regulated as a waste and can be substituted for virgin fuel oil. Waste oil that exceeds the specifications in Table 1 is subject to the requirements of Chapter 298. Except for the limit for total halogens, Table 1 is identical to the corresponding table in the Federal regulations (40 CFR § 279.11).

The proposed regulation contains a 1000 parts per million (ppm) limit for halogens, while the Federal regulations contain a 4000-ppm limit for halogens. According to the Preamble, the 1000-ppm limit is designed to protect the health and property of individuals using waste oil for home heating fuel. According to the EQB, when the Federal regulations were adopted, EPA did not consider home heating applications.

As an alternative, the EQB is seeking comment on the possibility of using two limits for halogens. The two limits would be 1000 ppm for home heating applications and 4000 ppm for all other methods of energy recovery. Since the 1000-ppm limit is a direct result of the Department's concern relating to home heating applications, it is reasonable to apply this limit only to waste oil marketed for home heating fuel. The EQB should retain the Federal standard of 4000 ppm for all other methods of energy recovery.

#### **5. Section 298.20. Applicability.—Reasonableness and Need.**

##### *Other applicable provisions.*

Subsection (b)(3) creates a permit by rule for the processing of waste oil generated onsite and not sent offsite. Commentators questioned what will be considered "onsite" and whether materials generated by the same generator at several related locations and processed at a central location will be eligible for the permit by rule. The EQB should clarify these issues in the final form regulation.

##### *Recordkeeping.*

Subsection (c) requires generators to maintain certain records for 5 years. It is unclear why it is necessary to retain generator records for 5 years. The other recordkeeping requirements in the regulation require 3-year record retention. For consistency, the EQB should consider amending subsection (c) to require that generator records be maintained for 3 years.

#### **6. Section 298.22. Waste oil storage and Section 298.45. Waste oil storage at transfer facility.—Reasonableness and Economic Impact.**

##### *Labeling requirements.*

Sections 298.22(c) and 298.45(h) require aboveground storage units and pipes to be labeled "waste oil." The Federal regulations require this equipment to be labeled "used oil." Commentators have objected to the labeling requirements because they would require thousands of new labels on equipment which is already labeled to comply with the Federal requirements. We understand that Pennsylvania's definition of "used oil" differs from the Federal definition of "used oil" because the Used Oil Recycling Act was passed prior to the Federal regulations. However, it is unclear what benefit would result from requiring double labeling. The EQB should allow either a "waste oil" or "used oil" label to satisfy the labeling requirements.

If the EQB objects to allowing the use of either term, it should consider seeking a legislative amendment to the Used Oil Recycling Act to make Pennsylvania's definition of "used oil" consistent with the Federal definition.

##### *Spill prevention program.*

Subsection (e) provides that waste oil generators are subject to Chapter 265, which requires all generators to implement a spill prevention control and countermeasure program. Several commentators express concern that the EQB will require every waste oil generator to submit a spill prevention control and countermeasure plan. Commentators assert that requiring small generators to comply with these planning requirements will be financially burdensome. The EQB should consider whether it is necessary for a small generator to develop and implement a full contingency plan or if another alternative is appropriate.

#### **7. Section 298.25. Source reduction strategy.—Reasonableness and Conflict with existing regulations.**

This section requires all waste oil generators subject to this regulation to submit and prepare a source reduction strategy. However, section 287.51 of the residual waste regulations has an exemption from the source reduction strategy requirements for persons or municipalities who "generate residual waste as a result of collecting the waste, including the collecting of parts, machinery, vehicles, appliances and used oil from the repair or replacement of the parts, machinery, vehicles, appliances and used oil." Since "used oil" in the residual waste regulation would be included as waste oil in this rulemaking, there is an inconsistency between the proposed regulation and the residual waste regulation. This inconsistency should be resolved.

#### **8. Section 298.26 Biennial report.—Reasonableness and Conflict with existing regulations.**

This section requires all waste oil generators subject to this regulation to file a biennial report. However, section 287.51 of the residual waste regulations does not require a report for persons or municipalities who "generate residual waste as a result of collecting the waste, including the collecting of parts, machinery, vehicles, appliances and used oil from the repair or replacement of the parts, machinery, vehicles, appliances and used oil." Since "used oil" in the residual waste regulation would be included as waste oil in this rulemaking, there is an inconsistency between the proposed regulation and the residual waste regulation. This inconsistency should be resolved.

#### **9. Section 298.31. Waste oil aggregation points owned by the generator.—Reasonableness and Clarity.**

Subsection (b)(4) creates a permit-by-rule for waste oil aggregation points. The permit by rule will not be applicable if the operator accepts water, antifreeze or other residual or hazardous waste. If the operator accepts this other waste in accordance with the applicable regulations, why is the permit-by-rule not available?

#### **10. Section 298.45. Waste oil storage at transfer facility.—Reasonableness and Need.**

##### *Permits.*

Paragraph (b)(4) lists the conditions a waste oil transfer facility must meet to qualify for a general permit. Condition (iv) states the following:

(iv) The waste oil collected at a transfer facility is destined for a waste oil transfer or waste oil processing/refining facility located in this Commonwealth which is permitted by the same person who owns/operates the waste oil transfer facility.

Why must the oil must be sent to a transfer or processing/refining facility within Pennsylvania? If the oil is sent to a facility outside of Pennsylvania, that facility would be regulated by the appropriate state jurisdiction. Furthermore, the waste oil would no longer be in Pennsylvania. The risks associated with transportation would apply to both an in-state and out-of-state transfer. Therefore, it is unclear how Pennsylvania would be harmed by sending the waste oil to an out-of-state facility. We request the EQB explain the reasonableness of and need for general permit condition (b)(4)(iv).

#### *Additional requirements.*

Subsection (j) (which is incorrectly labeled (c) in the *Pennsylvania Bulletin*) requires a waste oil transporter to comply with the preparedness, prevention and contingency plan and emergency procedures in Subchapters C and D of Chapter 264. A transporter is also required to comply with the underground storage tank and spill prevention program in Chapter 245. These requirements apply regardless of whether the waste oil exhibits any characteristics of hazardous waste.

These provisions are incorrectly cited. Chapter 264 was repealed and replaced with Chapter 264a, and Subchapter C no longer exists. The contingency plan and emergency procedures are now contained in Chapter 264a, Subchapter D.

Furthermore, it is unclear why transporters should be subject to these chapters. The underground storage tank requirements in Chapter 245 do not appear to be relevant to transporters since transportation would not occur in underground tanks. It is also unclear why waste oil that does not exhibit any characteristics of hazardous waste should be subject to hazardous waste planning requirements in Chapter 264a, rather than the residual waste requirements. The EQB should address these issues in the final regulation.

#### **11. References to other Chapters of Regulations.—Clarity.**

The proposed regulation contains several references to other chapters of regulations that have recently changed. Specifically, incorrect citations are made to the recently revised hazardous waste regulations. The EQB should review the proposed regulation to correct outdated cross-references. In addition, the regulation is amending portions of sections 261.3, 261.5 and 261.6. These sections have recently been changed and need to be corrected to reflect the new sections.

JOHN R. MCGINLEY, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 99-1199. Filed for public inspection July 23, 1999, 9:00 a.m.]

#### **Notice of Filing of Final Rulemakings**

The Independent Regulatory Review Commission received, on the dates indicated, the following regulations for review. To obtain the date and time of the meeting, interested parties may contact the office of the Commission at (717) 783-5417. To obtain a copy of the regulation, interested parties should contact the agency promulgating the regulation.

#### *Final-Form*

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
14-421	Department of Public Welfare Eligibility Provisions for the Healthy Horizons Program for the Elderly/ Disabled; Medical Assistance Income	7/14/99

#### *Final-Omit*

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
16A-457	Department of State, Bureau of Professional and Occupational Affairs, State Board of Cosmetology Examination Fees	7/12/99

JOHN R. MCGINLEY, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 99-1200. Filed for public inspection July 23, 1999, 9:00 a.m.]

## **INSURANCE DEPARTMENT**

### **Application for Approval to Acquire Control of Conestoga Life Assurance Company**

Health and Benefits Management, LLC has filed an application to acquire control of Conestoga Life Assurance Company, a Pennsylvania domiciled stock life insurance company. The filing was made under the requirements set forth under the Insurance Holding Companies Act (40 P. S. § 991.1401, et seq.). Persons wishing to comment on the acquisition are invited to submit a written statement to the Insurance Department within 15 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include the name, address and telephone number of the interested party, identification of the application to which the statement is addressed, and a concise statement with sufficient detail and relevant facts to inform the Insurance Department of the exact basis of the statement. Written statements should be directed to Robert Brackbill, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, email to rbrackbi@ins.state.pa.us, or by fax to (717) 787-8557.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 99-1201. Filed for public inspection July 23, 1999, 9:00 a.m.]

### **Application for Merger of United General Life Insurance Company (UGL) with and into Conseco Senior Health Insurance Company (Conseco Senior)**

An application has been received requesting approval of the merger of UGL, a stock life insurance company organized under the laws of the State of Texas, with and into Conseco Senior Health Insurance Company (Conseco Senior), a stock limited life insurance company organized under the laws of the Commonwealth of Pennsylvania. The filing was made under the requirements set forth

under the Insurance Holding Companies Act (40 P.S. § 991.1401 et seq.), section 1957 of the Business Corporation Law (15 Pa.C.S. § 1957) and the GAA Amendments Act of 1990 (15 P.S. § 21101 et seq.). Persons wishing to comment on the merger are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include the name, address and telephone number of the interested party, identification of the application to which the statement is addressed, and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Cressinda Bybee, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120; fax (717) 787-8557; email <http://www.cbybee@ins.state.pa.us>.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 99-1202. Filed for public inspection July 23, 1999, 9:00 a.m.]

#### **Craig Edward Schmoll; Order to Show Cause; Doc. No. SC99-04-020**

A prehearing telephone conference initiated by the Administrative Hearings Office shall occur on August 18, 1999, at 1 p.m. 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), the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1 et seq. and the Insurance Department's Special Rules of Administrative Practice and Procedure, 31 Pa. Code Chapter 56.

A hearing shall occur on September 2, 1999, at 1 p.m. in the Administrative Hearings Office, Room 200, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102.

During the prehearing telephone conference, the parties shall be prepared to discuss settlement, stipulations, witnesses and documents anticipated for use at the hearing, estimated time for the hearing, special evidentiary or legal issues and other matters relevant to the orderly, efficient and just resolution of this matter.

Motions preliminary to those at hearing, protests, petitions to intervene, or notices of intervention, if any, must be filed on or before July 28, 1999, with the Docket Clerk, Administrative Hearings Office, Room 200, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102. Answers to petitions to intervene, if any, shall be filed on or before August 11, 1999.

A written request for continuance of the scheduled prehearing/settlement conference, for good cause, will be considered by the Presiding Officer. Prior to requesting a continuance, a party must contact the opposing party. All continuance requests must indicate whether the opposing party objects to a continuance.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid service or other accommodation to partici-

pate in the hearing, should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 99-1203. Filed for public inspection July 23, 1999, 9:00 a.m.]

#### **Hrvinak Motor Company; Prehearing/Settlement Telephone Conference**

*Appeal of Hrvinak Motor Company Under the Storage Tank and Spill Prevention Act, Underground Storage Tank Indemnification Fund; Doc. No. UT99-07-006*

A prehearing/settlement telephone conference shall be held on August 19, 1999, at 10 a.m. Motions preliminary to those at hearing, protest petitions to intervene or notices of intervention, if any, must be filed with the Docket Clerk, Administrative Hearings Office, Room 200, Capitol Associates Building, Harrisburg, PA 17102, on or before July 29, 1999. Answers to petitions to intervene, if any, shall be filed on or before August 12, 1999.

The date for a hearing shall be determined, if necessary, at the prehearing/settlement telephone conference.

A written request for continuance of the scheduled prehearing/settlement telephone conference, for good cause will be considered by the Presiding Officer. Prior to requesting a continuance, a party must contact the opposing party. All continuance requests must indicate whether the opposing party objects to a continuance.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 99-1204. Filed for public inspection July 23, 1999, 9:00 a.m.]

#### **Independence Blue Cross; Blue Cross Community Rated Group Rate Increase; Filing No. 19-P-99**

Independence Blue Cross submitted a filing requesting the Insurance Department's approval for a 29.6% premium rate increase for its community rated Basic Blue Cross hospitalization program effective October 1, 1999.

The proposed rate increase would impact approximately 8,800 contracts and produce additional annual premium income of \$6.6 million.

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Insurance Department's office in Philadelphia and Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Bharat Patel, Actuary, Insurance Department, Accident and Health Bureau, Office of Rate and Policy Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 99-1205. Filed for public inspection July 23, 1999, 9:00 a.m.]

## Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insureds have requested a hearing, as authorized by the act of June 17, 1998 (P. L. 464, No. 68) in connection with their company's termination of the insured's automobile policies. The hearings will be held in accordance with the requirements of the act; 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). All administrative hearings are held in the Insurance Department Offices in Harrisburg, PA. Failure by the appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The hearings will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of Edward and Annette Williams; file no. 99-265-32051; Nationwide Mutual Insurance Company; doc. no. PH99-07-001; August 4, 1999, at 10 a.m.;

Appeal of Dean P. Perronne; file no. 99-265-32091; AIU Insurance Company; doc. no. PH99-07-002; August 4, 1999, at 1 p.m.;

Appeal of Stephen Ramani; file no. 99-267-32245; Dairyland Insurance Company; doc. no. PH99-07-009; August 12, 1999, at 10 a.m.

Parties may appear with or without counsel and offer relevant testimony or evidence. Each party must bring documents, photographs, drawings, claims files, witnesses and the like necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Commissioner may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearings, and require an auxiliary aid, service or other accommodation to participate in the hearing, should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
Insurance Commissioner

[Pa.B. Doc. No. 99-1206. Filed for public inspection July 23, 1999, 9:00 a.m.]

## LIQUOR CONTROL BOARD

### Expiration of Leases

The following Liquor Control Board lease will expire:

York County, Wine & Spirits Shoppe #6705, Queensgate Shopping Center, 2081 Springwood Road, York, PA 17403-4840.

*Lease Expiration Date:* July 31, 2000

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 4,500 to 5,000 net useable square feet of new or existing retail commercial space within 1 mile of South Queen Street (Route 74) and Springwood Road, York Township.

*Proposals due:* August 13, 1999 at 12 Noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661  
**Contact:** Willard J. Rhodes, (717) 657-4228

JOHN E. JONES, III,  
*Chairperson*

[Pa.B. Doc. No. 99-1207. Filed for public inspection July 23, 1999, 9:00 a.m.]

## MILK MARKETING BOARD

### Hearing and Presubmission Schedule; Milk Marketing Area No. 1

Under the Milk Marketing Law (31 P. S. §§ 700j-101—700j-1301) the Milk Marketing Board will conduct a public hearing for Milk Marketing Area No. 1 on September 1, 1999, at 9 a.m. in Room 202 of the Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

#### *Purpose and scope of the hearing*

The purpose of the hearing will be to receive testimony and exhibits concerning cost replacement in Milk Marketing Area No. 1. In accordance with Section G of Official General Order A-890A, as amended by Official General Order A-890A (CRO 3), evidence will be limited to the following: annualized processing, packaging, and delivery costs; updated costs for containers, ingredients, and Class II products; updated labor, utility, and insurance costs based on comparisons between costs per point for corresponding quarters of calendar years 1998 and 1999; and a reasonable rate of return to milk dealers. Evidence shall be based on the audited costs of a cross-section of milk dealers doing business in Area No. 1.

#### *Entries of appearance*

The staff of the Board is deemed to be a party to this hearing, and the attorneys representing staff are deemed to have entered their appearances. Other persons that may be affected by the Board order fixing prices in Area No. 1 may be included on the Board's list of parties by:

1. Having their counsel file with the Board, by 4 p.m. on August 2, 1999, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25, which shall identify by name and address the party on whose behalf the appearance is made. Thereafter documents and other written communications required to be served upon or furnished to that party shall be sent to the attorney of record.

2. If unrepresented by counsel and wishing to appear on their own behalf under 1 Pa. Code § 31.21, filing with the Board, by 4 p.m. on August 2, 1999, an address to which documents and other written communications required to be served upon them or furnished to them may be sent.

*Witnesses, exhibits, presentation of evidence*

The parties shall observe the following requirements for advance filing of witness information and exhibits. The Board may exclude witnesses or exhibits of a party that fails to comply with these requirements. In addition, the parties shall have available in the hearing room at least 20 copies of each document for the use of nonparties attending the hearing.

1. By 12 noon on August 18, 1999, each party shall file with the Board six copies and serve on all other parties one copy of:

a. 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.

b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 4 p.m. on August 25, 1999, each party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

*Note:* A document is filed with the Board when it is received in the Board office. When more than one copy of a document is required to be filed, *all* copies must be received by the date and time indicated.

Parties that wish to offer in evidence documents on file with the Board, public documents, or records in other proceedings before the Board, or who 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 for data from Board staff*

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 August 13, 1999.

*Board's filing address*

The filing address for the Board is Pennsylvania 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 (PA Relay Service for TDD users).

LINDA J. BOWMAN,  
*Secretary*

[Pa.B. Doc. No. 99-1208. Filed for public inspection July 23, 1999, 9:00 a.m.]

## PENNSYLVANIA COMMISSION FOR WOMEN

### Meeting Notice

The Pennsylvania Commission for Women has scheduled the Commissioner's Meeting to be held Monday, July 19, 1999, at 9:30 a.m. until 3 p.m. The meeting will be held at the Harrisburg East—Holiday Inn at 4751 Lindle Road, Harrisburg, PA 17111. The public is invited to attend. Persons who need accommodations due to a disability and want to attend should contact Christine Anderson, Pennsylvania Commission for Women, 205 Finance Building, Harrisburg, PA 17120, at (717) 787-8128, at least 24 hours in advance so arrangements can be made.

LOIDA ESBRI,  
*Executive Director*

[Pa.B. Doc. No. 99-1209. Filed for public inspection July 23, 1999, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### 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. Publication of this notice shall be considered as sufficient notice to all carriers holding authority from this Commission. Applications will be considered without hearing in the absence of protests to the application. Protests to the applications published herein are due on or before Aug. 16, 1999, as set forth at 52 Pa. Code § 3.381 (relating to applications for transportation of property and persons). The protest shall also indicate whether it applies to the temporary authority application or the permanent application or both.

**Applications of the following for approval of the beginning of the exercise of the right and privilege of operating as common carriers for transportation of persons as described under each application.**

**A-00116030. Louis Thomas Wilder, Jr.** (8548 Williams Avenue, Philadelphia, Philadelphia County, PA 19150)—persons in limousine service, between points in the counties of Bucks and Montgomery, and the city and

county of Philadelphia, and from points in said city and counties, to points in Pennsylvania, and return.

**A-00116035. DuBois E.M.S. Ambulance Service, Inc.** (P. O. Box 187, DuBois, Clearfield County, PA 15801), a corporation of the Commonwealth of Pennsylvania—persons, in paratransit service, between points in the counties of Clearfield, Jefferson and Elk, and from points in said counties, to points in Pennsylvania, and vice versa. *Attorney:* Matthew B. Taladay, P. O. Box 487, DuBois, PA 15801.

**Applications of the following for approval *amendment of the right and privilege of operating motor vehicles as common carriers for the transportation of persons by transfer of rights as described under each application.***

**A-00108503, F. 1, Am-E. Gary L. Arndt, t/d/b/a A Limousine Service** (30 Prager Street, Allegheny County, PA 15215)—inter alia, to transport, by motor vehicle, persons in limousine service, between points in the counties of Fayette, Somerset and Washington, and from points in said counties, to points in the county of Allegheny, and return: *So as to permit the transportation of persons in limousine service between points in the county of Somerset, and from points in the said county, to points in the counties of Allegheny, Bedford, Cambria, Fayette and Westmoreland, and return; which is to be a transfer of all of the limousine rights of Larry J. Wills, under the certificate issued at A-00109753, F. 2, subject to the same limitations and conditions.* *Attorney:* John A. Pillar, 1106 Frick Building, Pittsburgh, PA 15219.

**Applications of the following for approval of the right to begin to operate as a broker for the transportation of persons as described under each application by transfer of rights as described under each application.**

**A-00116038. Christina A. Kelly, t/d/b/a Lowee's Group Sales** (4117 G. Beechwood Lane, Harrisburg, Dauphin County, PA 17112)—Arrange for the transportation of passengers and their baggage, between points in the counties of Cumberland, Dauphin, Lancaster, Perry and York, and from points in said counties, to other points in Pennsylvania, and return; which is to be a transfer of the right authorized Lois A. Anservitz, t/d/b/a Lowee's Group Sales, under the broker's license issued at A-00105502, subject to the same limitations and conditions.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 99-1210. Filed for public inspection July 23, 1999, 9:00 a.m.]

## Water Service Without Hearing

**A-222250, F2000. Millheim Borough.** Application of Millheim Borough for approval of the abandonment/discontinuance of water service to customers outside the limits of Millheim Borough.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before August 9, 1999, under 52 Pa. Code (relating to public utilities).

*Applicant:* Millheim Borough

*Through:* Cynthia Z. Dashem, Secretary/Treasurer, Millheim Borough Council, 225 East Main Street, P. O. Box 421, Millheim, PA 16854.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 99-1211. Filed for public inspection July 23, 1999, 9:00 a.m.]

## Water Service Without Hearing

**A-212285F0066. Pennsylvania-American Water Company.** Application of Pennsylvania-American Water Company for approval of (1) the transfer, by sale, of the water works property and rights of the Center Township Water System to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish water service to the public in all of Center Township, Butler County, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before August 9, 1999, under 52 Pa. Code (relating to public utilities).

*Applicant:* Pennsylvania-American Water Company

*Through and By Counsel:* Velma A. Redmond, Esquire, Susan D. Simms, Esquire, Corporate Counsel, Pennsylvania-American Water Company, 800 West Hersheypark Drive, Hershey, PA 17033.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 99-1212. Filed for public inspection July 23, 1999, 9:00 a.m.]

# STATE CONTRACTS INFORMATION

## DEPARTMENT OF GENERAL SERVICES

Notices of invitations for bids and requests for proposals on State contracts for services and commodities for which the bid amount is reasonably expected to be over \$10,000, are published in the State Contracts Information Section of the *Pennsylvania Bulletin* prior to bid opening date. Information in this publication is intended only as notification to its subscribers of available bidding and contracting opportunities, and is furnished through the Department of General Services, Vendor Information and Support Division. No action can be taken by any subscriber or any other person, and the Commonwealth of Pennsylvania is not liable to any subscriber or any other person, for any damages or any other costs incurred in connection with the utilization of, or any other reliance upon, any information in the State Contracts Information Section of the *Pennsylvania Bulletin*. Interested persons are encouraged to call the contact telephone number listed for the particular solicitation for current, more detailed information.

**EFFECTIVE JULY 1, 1985, A VENDOR'S FEDERAL IDENTIFICATION NUMBER (NUMBER ASSIGNED WHEN FILING INCOME TAX DOCUMENTS) OR SOCIAL SECURITY NUMBER IF VENDOR IS AN INDIVIDUAL, MUST BE ON ALL CONTRACTS, DOCUMENTS AND INVOICES SUBMITTED TO THE COMMONWEALTH.**

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". A qualified small business concern is an independently owned, operated for profit, business employing 100 or fewer employees and is not a subsidiary or affiliate of a corporation otherwise not qualified.

Such 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. The small business concern must include on every invoice submitted to the Commonwealth: "(name of vendor) is a qualified small business concern as defined at 4 Pa. Code § 2.32".

For information on the required payment date and annual interest rate, please call the Pennsylvania Department of Commerce, Small Business Action Center, 483 Forum Building, 783-5700.

### Reader's Guide

#### Legal Services & Consultation—26

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

⑦

⑤ Location

(For Commodities: Contact:)  
Vendor Services Section  
717-787-2199 or 717-787-4705

⑥ Duration

#### REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705



## GET A STEP AHEAD IN COMPETING FOR A STATE CONTRACT!

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. Our efforts focus on guiding the business community through the maze of state government offices. The bureau is, by law, the central repository for all state contracts over \$5,000. Bureau personnel can supply descriptions of contracts, names of previous bidders, pricing breakdowns and other information to help you submit a successful bid on a contract. We will direct you to the appropriate person and agency looking for your product or service to get you "A Step Ahead." Services are free except the cost of photocopying contracts or dubbing a computer diskette with a list of current contracts on the database. A free brochure, *"Frequently Asked Questions About State Contracts,"* explains how to take advantage of the bureau's services.

Contact: **Bureau of Contracts and Public Records**

Pennsylvania State Treasury  
Room G13 Finance Building  
Harrisburg, PA 17120  
717-787-2990  
1-800-252-4700

BARBARA HAFER,  
*State Treasurer*

### Commodities

**Project No. 924** Furnish and install four Modine Model POH185 unit heaters (oil fired) with AMPCO chimneys.

**Department:** Military Affairs  
**Location:** OMS No. 10 2734, Southampton Road, Philadelphia, PA  
**Duration:** July 1, 1999—June 30, 2000  
**Contact:** Emma Schroff, (717) 861-8518

**8250330** 11 each latest model loader/backhoe, 1 c. y. with extended dipper stick. For copy of the bid fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**GRA-RIB KNIT** The State Correctional Institution at Graterford is seeking vendors to supply rib knit body cloth 1 x 1 fabric to be 50/50 poly/cotton. Weight to be 5.2 ounce/square yard. Bleached snow white. Finished widths to be 19, 24, 26 and 28 inches. Actual amounts may vary, minimum order will be 5,000 pounds. Contracts will be awarded during the period July 1, 1999 through June 30, 2000.

**Department:** Corrections  
**Location:** Correctional Industries, P. O. Box 246, Off Route 29, Graterford, PA 19426  
**Duration:** July 1, 1999 through June 30, 2000  
**Contact:** Rick F. Bower Manager I, (610) 489-4151, ext. 2289

**180702** Chair, patient specialty positioning, Broda Elite or equal. Complete specifications may be obtained by contacting the hospital. Award to be made on an aggregate basis.

**Department:** Public Welfare  
**Location:** Warren State Hospital, 33 Main Drive, North Warren, PA 16365-5099  
**Duration:** August 01, 1999—September 30, 1999  
**Contact:** BD Munz, (814) 726-4496

**98-749** Commercial gas, 4 cylinders, R-12 refrigerant, dichlorodifluoromethane, 145 pound tanks.

**Department:** Public Welfare  
**Location:** Mayview State Hospital, 1601 Mayview Road, Bridgeville, PA 15017-1599  
**Duration:** FY 99—00  
**Contact:** F. Molisee, (412) 257-6215

**8504970** 1,500 each shovel LHRP, long handle shovel, round point, 48" fiberglass. For copy of the bid fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**8504940** 400 each spray tanks, 2 gal. Reference Rhomar No. RH553-S. For copy of the bid fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**8250400** 11 each latest model articulated loader, 2 c. y., all wheel drive with quick disconnect. For copy of the bid package fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**8250370** 2 each latest model pavement breaker, general purpose, mobile, 6 wheel. For copy of the bid fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**8250260** 15 each latest model rops cab with sweeper body, self propelled, single rear axle, single broom, diesel powered. For copy of the bid package fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**8250340** 10 each latest model vibratory roller, 10 ton self-propelled articulated. For copy of the bid fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**1703359** Laboratory instruments and equipment—9 each PM 2.5 sequential air sampler Rupprecht & Patashnick Model 2025A2 no substitute; 3 each PM 2.5 continuous air sampler Rupprecht & Patashnick Model 1400A no substitute; 3 each PM 2.5 continuous air sample inlet Rupprecht & Patashnick Model 1400A no substitute. For copy of the bid package fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**8250320** 19 each bituminous kettle, 200 gallon, trailer mounted double boiler with conveyor; 14 each bituminous kettle, 200 gallon trailer mounted, double boiler with air compressor and conveyor. For copy of the bid package fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**8250290** 11 each latest model 6x4 grader, 27K, articulating, rear wheel drive diesel engine. For copy of the bid fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**8250280** 7 each latest model 4x4 excavator, hydraulic 39K dual with rubber tires and diesel engine; 6 each latest model 4x4 excavator, hydraulic 39K dual, with rubber tires and diesel engine. For copy of the bid package fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**8250270** 6 each latest model excavator, hydraulic with rubber track and diesel engine. For copy of the bid package fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**8250220** 11 each latest model mini van, 5 passenger, automatic transmission, gasoline engine blue exterior paint color; 3 each latest model mini van 7 passenger automatic transmission, gasoline engine, blue exterior paint color; 11 each latest model mini van 7 passenger automatic transmission, gasoline engine, gray exterior paint color; 12 each latest model mini van, cargo, automatic transmission, gasoline engine, white exterior paint color; 11 each latest model mini van, cargo with windows, automatic transmission, gasoline engine, gray exterior paint color; 11 each latest model mini van, eight passenger, automatic transmission, gasoline engine, blue exterior paint color.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**8250190** 7 each van, cargo, full size, heavy duty, automatic transmission, gasoline engine, white exterior paint color; 6 each van, cargo, full size heavy duty with windows, automatic transmission, gasoline engine, blue exterior paint color; 6 each van, nine passenger full size, with 4 captains chairs, automatic transmission, gasoline engine, blue exterior paint color; 6 each van, cargo, extended, full size, heavy duty, automatic transmission, gasoline engine, air conditioning, blue exterior paint color; 7 each van, 5 passenger, full size, with cruise control, automatic transmission, gasoline engine, blue exterior color. For copy of the bid package fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**8250150** 11 plow, snow, 172 severe duty for high speed plowing; 11 each plow, snow 721-B severe duty for high speed plowing. For copy of the bid package fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**8160620** Brushes, paints, sealers and adhesive—250 gallon Epolon No. 91 alert yellow—Component A; 250 gallon Epolon No. 91 alert yellow—Component B; 250 gallons Epolon Rust Inhibitor II 615 Component A; 250 gallons Epolon Rust Inhibitor Components B; 100 gallon Epolon No. 9 onyx black Component A; 100 gallon Epolon No. 9 onyx black Component A; 100 gallon Epolon No. 9 onyx black Component B; 550 gallon Epolon Reducer No. 145. For copy of the bid package fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Emporium, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

**8250360** 6 each latest model articulated roller, walk behind, double drum; 6 each latest model articulated roller, walk behind, double drum with trailer. For copy of the bid package fax request to (717) 787-0725.

**Department:** Transportation  
**Location:** Harrisburg, PA  
**Duration:** FY 99—00  
**Contact:** General Services, (717) 787-2199/4705

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## SERVICES

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### Agricultural Services—02

**PGC-2609** Fumigate with Sectagon 42/Chloropicrin 100—8.0 acres at Howard Nursery, located in Centre County, Pennsylvania. Sectagon—42% Chloropicrin—100%. Rate—80 gallon per acre Sectagon, 150 lbs. per acre Chloropicrin 100. Sectagon will be applied by rotavate/roll method Chloropicrin will be injected 2" below depth of rotavator. The application will be applied between August 2, 1999 and September 10, 1999, with 2 working days notice.

**Department:** Game Commission  
**Location:** Howard Nursery, 197 Nursery Road, Howard, PA 16841  
**Duration:** August 2, 1999 to September 10, 1999  
**Contact:** James G. Bowers, (814) 355-4434

### Computer Related Services—08

**90780011** Rental of three generators (1 each 125 KW and 2 each 225 KW) for the dietary and Pocono buildings. Call for details.

**Department:** Public Welfare  
**Location:** White Haven Center, Buffalo Street, White Haven, PA 18661  
**Duration:** Prefer rental for the months of December 1999 and January 2000; will accept alternate bids  
**Contact:** Sandra A. Repak, Purchasing Agent, (570) 443-4232

### Construction and Construction Maintenance—09

**015DGSA502-76** Project title: Repair/Recoating Existing EPDM Roof Rubber. Brief description: Repair and recoat existing rubber roof. Estimated range: \$100,000 to \$500,000. General construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail a separate check for \$5 per set or provide your express mail account number to the office listed. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, August 4, 1999 at 1 p.m.

**Department:** General Services  
**Location:** Hilltop West Building Number 6, Clarks Summit State Hospital, Clarks Summit, Lackawanna County, PA  
**Duration:** 60 calendar days from date of initial job conference  
**Contact:** Contract and Bidding Unit, (717) 787-6556

**015DGSA1578-30** Project title: Main Kitchen—Roof Replacement. Brief description: Replace the existing EPDM roof with a new thermoplastic membrane roof to include demolition to existing metal deck. Add new isoboard insulation and fully adhered roof system, coping stone work, drain repair and new gravel stops. Estimated range: under \$100,000. General construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail a separate check for \$5 per set or provide your express mail account number to the office listed. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, August 4, 1999 at 1 p.m.

**Department:** General Services  
**Location:** State Correctional Institution Waymart, Wayne County, PA  
**Duration:** 120 calendar days from date of initial job conference  
**Contact:** Contract and Bidding Unit, (717) 787-6556

**015DGSA251-566** Project title: New 4-Bay Salt Storage Building. Brief description: Provide and install all materials to erect a 44' x 77' salt storage building, including concrete flooring and walls, wood structure, asphalt shingles, wood siding and wood trim. Estimated range: \$75,000 to \$125,000. General construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail a separate check for \$5 per set or provide your express mail account number to the office listed. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, August 4, 1999 at 11 a.m.

**Department:** General Services  
**Location:** PennDOT Maintenance District 10-3, Clarion, Clarion County, PA  
**Duration:** 120 calendar days from date of initial job conference  
**Contact:** Contract and Bidding Unit, (717) 787-6556

**015DGSA205-5** Project title: Construct Storage Building. Brief description: Furnish and erect pre-engineered metal building on existing concrete slab. Estimated range: Under \$100,000. General construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail a separate check for \$5 per set or provide your express mail account number to the office listed. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, August 4, 1999 at 11 a.m.

**Department:** General Services  
**Location:** PA State Police, Punxsutawney Headquarters, Punxsutawney, Jefferson County, PA  
**Duration:** 120 calendar days from date of initial job conference  
**Contact:** Contract and Bidding Unit, (717) 787-6556

**015DGSA1570-17** Project title: New Perimeter Security Lighting. Brief description: Install 50' poles with floodlight type lighting fixture, underground concrete encased duct bank and lighting control center. Estimated range: \$75,000 to \$125,000. Electrical construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail a separate check for \$5 per set or provide your express mail account number to the office listed. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, August 4, 1999 at 11 a.m.

**Department:** General Services  
**Location:** State Correctional Institution, Greensburg, Westmoreland County, PA  
**Duration:** 180 calendar days from date of initial job conference  
**Contact:** Contract and Bidding Unit, (717) 787-6556

**DGS402-51** Project title: Renovation of Dixon Hall. Brief description: The work consists of renovation to an existing 3-story building to provide a 5 story 42,841 sq. ft. administrative/office facility. Work includes demolition, new partitions and finishes, new structural, HVAC, plumbing, electrical systems and site/accessibility improvements. Estimated range: \$5,000,000 to \$10,000,000. General, HVAC, plumbing and electrical construction. Plan deposit: \$290 per set. Payable to: MacLachlan, Cornelius & Filoni, Inc. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed to arrange for delivery of documents. Mail a separate check or provide your express mail account number to the office listed. Mail requests to: MacLachlan, Cornelius & Filoni, Inc., 307 Fourth Avenue, 200 The Bank Tower, Pittsburgh, PA 15222, (412) 281-6568. Bid date: Wednesday, July 21, 1999 at 11 a.m. A prebid conference has been scheduled for Monday, June 28, 1999 at 10 a.m. at California University in Dixon Hall, Room 121, California, PA. Contact Tom Jameson, (724) 938-4310. All contractors who have secured contract documents are invited and urged to attend this prebid conference.

**Department:** General Services  
**Location:** California University, California, PA  
**Duration:** 390 calendar days from date of initial job conference  
**Contact:** Contract and Bidding Unit, (717) 787-6556

**PGC-2610** Repair spillway with gabion rock and baskets on State Game Lands No. 308, located at Lofty Reservoir, Kline Township, Schuylkill County. Fill potholes in spillway slab. Grout/underpin spillway slab to spillway wing wall interface. Prepare streambed and install gabion baskets and rock rip-rap to prevent erosion at end of spillway. Location map to be provided upon request.

**Department:** Game Commission  
**Location:** Pennsylvania Game Commission State Game Lands, 308 Lofty Reservoir, Kline Township, Schuylkill County, PA  
**Duration:** Work should be completed by November 30, 1999  
**Contact:** James Mercer, (717) 787-9620

## Demolition—11

**064845.** Demolition of building and any site improvement located at 54 Dekalb Pike, Upper Gwynedd Township, Montgomery County, PA. S. R. 202, Section 701. Building is a former restaurant.

**Department:** Transportation  
**Location:** Upper Gwynedd Township, Montgomery County, PA  
**Duration:** Open  
**Contact:** Roger Joseph, (610) 768-3006

**0500** Notice is hereby given by the Department of Transportation, that it is seeking bids for the demolition and/or removal of certain residential and commercial structures in conjunction with the construction of S. R. 222, Sections 001/002 in the County of Berks, Townships of Brecknock, Cumru, Spring. There is asbestos in some or all of the structures. For bid forms, date of inspection, specifications and further information contact the person listed.

**Department:** Transportation  
**Location:** Presnell Associates, Inc., 8 Morgan Drive, Sinking Spring, PA 19608  
**Duration:** As specified in contract  
**Contact:** William C. Skrapits, (610) 603-0201

## Environmental Maintenance—15

**OSM 10(0676)101.1** Abandoned mine land reclamation, Redmond North No. 3 involves approximately 188,300 c. y. grading, and seeding 28 acres. One hundred percent of this project is financed by the Federal government; Federal funds available for this program total \$21.6 million for Pennsylvania's 1999 AML grant.

**Department:** Environmental Protection  
**Location:** Slippery Rock Township, PA  
**Duration:** 270 days  
**Contact:** Construction Contracts Section, (717) 783-7994

## Food—19

**815-99** Frozen entrees and miscellaneous frozen foods: various items for delivery October—December 1999. For specifications, request bid package No. 815-99.

**Department:** Public Welfare  
**Location:** Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401  
**Duration:** October—December 1999  
**Contact:** Sue Brown, Purchasing Agent, (610) 313-1026

**820-99** Fresh fruits and vegetables: various items for delivery October—December 1999. For specifications, request bid package No. 820-99.

**Department:** Public Welfare  
**Location:** Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401  
**Duration:** October—December 1999  
**Contact:** Sue Brown, Purchasing Agent, (610) 313-1026

**RFP No. FAS9906** The State System of Higher Education is soliciting proposals for full catering and dining services for events and conference at the Dixon University Center, Harrisburg, PA. Contact Linda Venneri at (717) 720-4086 for RFP package. Request may also be made by email to lvenneri@sshe.chan.edu. Proposals must be submitted by 3 p.m., August 4, 1999.

**Department:** State System of Higher Education  
**Location:** Dixon University Center, 2986 North 2nd Street, Harrisburg, PA 17110  
**Duration:** Indefinite  
**Contact:** Linda Venneri, (717) 720-4086

**4228** Perishable foods: prepared salads; dairy products and drinks; prepared vegetables; frozen juice; poultry and poultry products; fresh fruits and vegetables; pastries, pies and cakes, fresh; frozen vegetable; fish and fish products, frozen; ice cream and sherbet; meat and meat products, miscellaneous frozen foods and bread, rolls and related products, fresh. Various deliveries for period beginning October 1, 1999 through December, 1999.

**Department:** Public Welfare  
**Location:** Mayview State Hospital, 1601 Mayview Road, Bridgeville, PA 15017-1599  
**Duration:** October 01, 1999—December 31, 1999  
**Contact:** F. Molisee, Purchasing Agent, (412) 257-6215

**818-99** Frozen vegetables and fruit: various items for delivery October—December 1999. For specifications request bid package No. 818-99.

**Department:** Public Welfare  
**Location:** Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401  
**Duration:** October—December 1999  
**Contact:** Sue Brown, Purchasing Agent, (610) 313-1026

**816-99** Fresh baked goods: various items for delivery October—December 1999. For specifications, request bid package No. 816-99.

**Department:** Public Welfare  
**Location:** Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401  
**Duration:** October—December 1999  
**Contact:** Sue Brown, Purchasing Agent, (610) 313-1026

**814-99** Meat and meat products—various items for delivery October—December 1999. For specifications, request bid package No. 814-99.

**Department:** Public Welfare  
**Location:** Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401  
**Duration:** October—December 1999  
**Contact:** Sue Brown, Purchasing Agent, (610) 313-1026

**813-99** Poultry and poultry products: various items for delivery October—December 1999. For specifications, request bid package No. 813-99.

**Department:** Public Welfare  
**Location:** Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401  
**Duration:** October—December 1999  
**Contact:** Sue Brown, Purchasing Agent, (610) 313-1026

**817-99** Bread, rolls, and the like: various items for delivery October—December 1999. For specifications, request bid package No. 817-99.

**Department:** Public Welfare  
**Location:** Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401  
**Duration:** October—December 1999  
**Contact:** Sue Brown, Purchasing Agent, (610) 313-1026

## Fuel Related Services—20

**1250** Maintenance of electrical systems for District 12-5 Westmoreland County: To include all installations maintained by PennDOT Westmoreland County—Repairs and maintenance required/price per hour and including travel time—hourly rate for emergency visit during regular hours and hourly rate for emergency visit during premium hours. To receive bid package contact Dave Parise at (724) 832-5387.

**Department:** Transportation  
**Location:** Transportation Maintenance District 12-5  
**Duration:** One year  
**Contact:** Dave Parise, (724) 832-5387

## HVAC—22

**Project No. 974** On-call air conditioning. For a bid package contact Emma Schroff at (717) 861-8518.

**Department:** Military Affairs  
**Location:** PaANG National Guard Armory, Willow Grove Naval Air Station, Willow Grove, PA  
**Duration:** October 1, 1999—September 30, 2002  
**Contact:** Emma Schroff, (717) 861-8518

**Project No. 975** On-call electrical services.

**Department:** Military Affairs  
**Location:** PaANG National Guard Armory, Willow Grove Naval Air Station, Willow Grove, PA  
**Duration:** October 1, 1999—September 30, 2002  
**Contact:** Emma Schroff, (717) 861-8518

**Project No. 1015** Electrical renovations.

**Department:** Military Affairs  
**Location:** PAARNG Armory, R. D. 1, Lock Haven, PA  
**Duration:** September 1, 1999—June 30, 2000  
**Contact:** Emma Schroff, (717) 861-8518

**120R-026** Complete maintenance and emergency repair of all heating, ventilation and air conditioning systems at both the Washington County Welcome Center, located on Interstate 70 approximately at the 5 mile marker, and the Greene County Welcome Center, located on Interstate 79 approximately at the 6 mile marker. All work to be performed according to contract bid specifications. For a bid package contact Michael D. Maurer at (724) 439-7374.

**Department:** Transportation  
**Location:** Washington and Greene County, PA  
**Duration:** Through June 30, 2000 with 5 two-year renewals  
**Contact:** Michael D. Maurer, (724) 439-7374

**07-D-99** Provide HVAC service as needed on a 7 day 24 hour basis at the Scranton Job Center, 135 Franklin Avenue, Scranton, PA 18503.

**Department:** Labor and Industry  
**Location:** Scranton Job Center, 135 Franklin Avenue, Scranton, PA 18503, Attn: Anne Marie Novobliski, Manager, (570) 963-4671  
**Duration:** October 01, 1999 through September 30, 2001 with a 2 year renewal option  
**Contact:** Norman Kee, (717) 705-0450

**07-E-99** Provide plumbing service as needed on a 7 day 24 hour basis for the Scranton Job Center, 135 Franklin Avenue, Scranton, PA 18503.

**Department:** Labor and Industry  
**Location:** Scranton Job Center, 135 Franklin Avenue, Scranton, PA 18503, Attn: Anne Marie Novobliski, Manager, (570) 963-4671  
**Duration:** October 01, 1999 through September 30, 2001 with a 2 year renewal option  
**Contact:** Norman Kee, (717) 705-0450

**lh-mnt-2518** Air conditioners: Sanyo split air system, tri-zone, and dual-zone units for two locations at the State Correctional Institution at Laurel Highlands.

**Department:** Corrections  
**Location:** State Correctional Institution-Laurel Highlands, 5706 Glades Pike, Somerset, PA 15501-0631  
**Duration:** July 26, 1999 to August 10, 1999  
**Contact:** Betsy Nightingale, (814) 445-6501

## Janitorial Services—23

**Bid No. 7954** Furnish all equipment, materials and labor to perform janitorial services, including emptying waste baskets; clean lavatories; sweep floors; machine buff tile floors; vacuum carpets; dust furniture; wash windows inside and outside; general housecleaning twice a year; shampoo carpets at the Embreeville Station, 1818 W. Strasburg Road, Coatesville, PA 19320. Detailed work schedule and bid must be obtained from Facility Management Division, (717) 783-5484.

**Department:** State Police  
**Location:** Embreeville Station, 1818 West Strasburg Road, Coatesville, PA 19320  
**Duration:** October 1, 1999—June 30, 2002  
**Contact:** Donna Enders, (717) 783-5484

**Bid No. 7955** Furnish all equipment, materials and labor to perform janitorial services, including emptying waste baskets; clean lavatories; sweep floors; machine buff tile floors; vacuum carpets; dust furniture; wash windows inside and outside; general housecleaning twice a year; shampoo carpets at the Indiana Station, 4221 Route 286, Highway West, Indiana, PA 15701. Detailed work schedule and bid must be obtained from Facility Management Division, (717) 783-5484.

**Department:** State Police  
**Location:** Indiana Station, 4221 Route 286, Highway West, Indiana, PA 15701  
**Duration:** November 1, 1999—June 30, 2002  
**Contact:** Donna Enders, (717) 783-5484

## Medical Services—29

**030-0317** Medical testing for at risk employees. Testing to include blood tests to determine exposure to lead, zinc, toluene, chromium and CBC, liver profile, kidney profile, pulmonary function testing, chest x-rays and possibly a battery of other tests depending on outcome of listed tests. All tests will be done within a 50 mile radius of this District Office in Montoursville, PA and blood samples will be collected from our employees at their job site by the awarded vendor. Tests will be scheduled throughout various months of the year.

**Department:** Transportation  
**Location:** 715 Jordan Avenue, P. O. Box 218, Montoursville, PA 17754 and surrounding 50 miles  
**Duration:** One year with the option of renewals  
**Contact:** Joseph M. Colucci, (570) 368-4205

## Property Maintenance—33

**B0000186** Millersville University is seeking qualified bidders who can provide the University with tree pruning, fertilization, and cabling during the 1999—2000 school year. Interested bidders should fax their requests to be placed on a bidders list to Anna Stauffer, fax (717) 871-2000 no later than 2 p.m. Friday, July 30, 1999.

**Department:** State System of Higher Education  
**Location:** Millersville University, Millersville, PA 17551  
**Duration:** September 1, 1999—June 30, 2000  
**Contact:** Anna Stauffer, (717) 872-3041

**120R-025** Tree trimming and removal along various routes in Fayette County. Contract will be bid on a per mile basis: payment will be made lump sum per line item. Department of Agriculture Business License number for pesticide application is required at the time of the bid. To receive a bid package contact Michael D. Maurer at (724) 439-7374.

**Department:** Transportation  
**Location:** Fayette County various State Routes as identified in Bid Package  
**Duration:** Variable  
**Contact:** Michael D. Maurer, (724) 439-7374

**Project No. 1016** Roof replacement. Approximately 28 squares of shingles, including new fascia, soffit, ridge vent, drip edge, gutters and replacing approximately 303 SF of bowed sheeting.

**Department:** Military Affairs  
**Location:** Building 7-3, Ft. Indiantown Gap, Annville, PA  
**Duration:** July 1, 1999—June 30, 2000  
**Contact:** Emma Schroff, (717) 861-8518

**0308** Chain link assembly and idler drive sprocket for Keeler Boiler. For a bid package contact Stanley Rygelski at (570) 587-7291.

**Department:** Public Welfare  
**Location:** Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, PA 18411-9505  
**Duration:** Approximate August 16, 1999—June 30, 2000  
**Contact:** Stanley Rygelski, Purchasing Agent, (570) 587-7291

**050-315** For contract mowing along State highways and interchanges throughout the counties of Berks, Carbon, Lehigh, Monroe, Northampton and Schuylkill. Each county will be awarded individually. All responses should be in by close of business (4 p.m.) on or before August 27, 1999.

**Department:** Transportation  
**Location:** Berks, Carbon, Lehigh, Monroe, Northampton and Schuylkill Counties, PA  
**Duration:** Five years from effective date  
**Contact:** Timothy R. Kaercher, (610) 798-4189

**SP 90777024** Repairs to EPDM roof—Newton Hall Building No. 2. Proof of visit required. For a bid package contact Stanley Rygelski at (570) 587-7291.

**Department:** Public Welfare  
**Location:** Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, PA 18411-9505  
**Duration:** September 1, 1999 through June 30, 2000  
**Contact:** Stanley Rygelski, Purchasing Agent, (570) 587-7291

## Real Estate Services—35

**SPC 373883** Proposals are invited to provide the Department of Revenue with 4,450 useable square feet of existing first floor office space and loading dock capabilities with minimum parking for ten vehicles, within the corporate limits of Clearfield, Clearfield County, PA. The Department of Revenue will occupy the space. Preference will be given to those locations with the first floor space adjacent to the loading dock facility. Proposals due: August 16, 1999, Solicitation No.: 92872.

**Department:** General Services  
**Location:** 505 North Office Building, Harrisburg, PA 17125  
**Duration:** Indeterminate 1999—2000  
**Contact:** Jennings K. Ward, (717) 787-7412

**SPC 373884** Lease office space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Department of Revenue with 4,450 useable square feet of existing first floor office space and loading dock capabilities with minimum parking for ten vehicles, within the corporate limits of State College, Centre County, PA. The Department of Revenue will occupy the space. Preference will be given to those locations with the first floor space adjacent to the loading dock facility. Proposals due: August 16, 1999. Solicitation No.: 92872.

**Department:** General Services  
**Location:** 505 North Office Building, Harrisburg, PA 17125  
**Duration:** Indeterminate 1999—2000  
**Contact:** Jennings K. Ward, (717) 787-7412

## Security Services—37

**SPC No. 1891810037** The Department of Revenue, Bureau of Imaging and Document Management is seeking bids to acquire security guard service at the bureau's facility located at 1854 Brookwood Street, Harrisburg, PA 17104. The effective date of the contract is to be determined. The end date will be June 30, 2000. This will be a multi-year, renewable contract. Renewals will be in 1 year increments with mutual agreement by both parties.

**Department:** Revenue  
**Location:** Bureau of Imaging and Document Management, 1854 Brookwood Street, Harrisburg, PA 17104  
**Duration:** From effective date through June 30, 2000  
**Contact:** William A. Lupp, (717) 772-5465

**07-F-99** Security services for the Greensburg Building Office, 351 Harvey Avenue, Greensburg, PA 15605—Contractor will provide onsite, unarmed, uniformed security guard for coverage from 7 a.m. through 5:15 p.m. Monday through Friday, except State holidays.

**Department:** Labor and Industry  
**Location:** Bureau of Disability Determination, 351 Harvey Avenue, Greensburg, PA 15605  
**Duration:** October 1, 1999 through September 30, 2001 with one 2-year renewal option  
**Contact:** Beverly Fenton, (717) 787-2560

**SP 1196000-008** The contractor shall provide testing, repairs, adjustments, maintenance and training on the com-tec control panel at the State Correctional Institution at Pittsburgh. Interested vendors should contact John Murphy at (412) 761-1955, ext. 251 for additional information. Anticipated bid period is August 02, 1999 to August 16, 1999.

**Department:** Corrections  
**Location:** State Correctional Institution at Pittsburgh, 3001 Beaver Avenue, P. O. Box 99901, Pittsburgh, PA 15233  
**Duration:** October 01, 1999 to June 30, 2002  
**Contact:** Carol Schaeffer, Purchasing Department, (412) 761-1955

## Miscellaneous—39

**1250-04** The Commonwealth is seeking price quotations for tire repairs or replacement in the county facility District 12-5, Greensburg, PA, Westmoreland County. To receive a bid package contact David Parise at (724) 832-5387, ext. 212.

**Department:** Transportation  
**Location:** District 12-5, Greensburg, PA 15601  
**Duration:** One year  
**Contact:** David Parise, (724) 832-5387, ext. 212

**PDA431** Provide translators for international visitors to the 2000 Farm Show. Translators are needed for many languages. Service to be provided January 4 to January 13, 2000. A lesser amount of service may be needed during the rest of the year. An estimated 1,000 hours of service will be needed for the 2000 Farm Show and an estimated 100 hours during the rest of the year.

**Department:** Agriculture  
**Location:** Harrisburg, PA  
**Duration:** October 1, 1999 to September 30, 2000  
**Contact:** Mike Mesaris, (717) 787-5674

**KURFP-0008:** Kutztown University is seeking to solicit proposals from vendors capable of providing continuation/standing order services for an undergraduate library collection. Those firms interested in receiving an RFP package must request it in writing and direct it to: Barbara Reitz, Director of Purchasing, Kutztown University, Kutztown, PA 19530 or fax (610) 683-4674 or e-mail: Reitz@Kutztown.edu. RFP packages will be available July 26, 1999. Questions requiring clarification prior to proposal submission must be submitted by August 3, 1999. Proposals are due by 12 p.m. on August 10, 1999.

**Department:** State System of Higher Education  
**Location:** Kutztown University, Kutztown, PA 19530  
**Duration:** 1 year with option to renew for 4 additional terms  
**Contact:** Barbara Reitz, (610) 683-4132

**D.S.O. 99-44/45** Vendor to supply to the State Correctional Institution Graterford security equipment—handcuffs, leg irons, waist chains, batons, gas masks, riot gloves and any other related equipment required.

**Department:** Corrections  
**Location:** State Correctional Institution—Graterford, P. O. Box 246, Off Route 29, Graterford, PA 19426  
**Duration:** 6 months  
**Contact:** Kelly Richardson, (610) 489-4151

**Inquiry No. 1253** 1995 or newer model truck; 18 to 24 foot aluminum cargo van; 24,500 to 26,000 lb. GVW; 180 HP gas or diesel engine; five or six speed synchromesh transmission.

**Department:** Public Welfare  
**Location:** Selinsgrove Center, Box 500, Route 522, Selinsgrove, PA 17870  
**Duration:** Indeterminate 1999-2000  
**Contact:** Arletta K. Ney, Purchasing Agent, (570) 372-5070

**BE-99001** Publication, Fish Restoration Booklet.

**Department:** Fish and Boat Commission  
**Location:** Delivery Location: Bureau of Boating and Education, Park Terrace and Pike Streets, Harrisburg, PA 17111  
**Duration:** Delivery Date: November 1, 1999  
**Contact:** Art Michaels, (717) 657-4520

**S-2208** Vendor to supply to the State Correctional Institution Graterford, polystyrene 5-compartment trays like: Tenneco Style No. THI-0500 school trays. Approximately 4,800 cases—delivery of 400 cases per month.

**Department:** Corrections  
**Location:** State Correctional Institution Graterford, Box 246, Route 29, Graterford, PA 19426  
**Duration:** 1 year  
**Contact:** Kelly Richardson, (610) 489-4151

**Lt. Grunder** Vendor to supply to the State Correctional Institution Graterford, puncture resistant corrections armor (concealable vest, cool max/poly cotton spa, no plate) Prism MW—thrust 1 "Most wearable" model by second change (Mfgr.).

**Department:** Corrections  
**Location:** State Correctional Institution Graterford, Box 246, Route 29, Graterford, PA 19426  
**Duration:** 6 months  
**Contact:** Kelly Richardson, (610) 489-4151

**D-2501** The Department of Environmental Protection is soliciting proposals for the design, development or renovation of public recreational facilities using waste tires or waste tire-derived materials. Proposals will only be accepted from nonprofit organizations and municipalities. Proposals are due by 4 p.m. on October 8, 1999. For a copy of the Request for Proposal, contact Shuvonna Ballard, Bureau of Land Recycling and Waste Management, 400 Market Street, Harrisburg, PA 17101-2301.

**Department:** Environmental Protection  
**Location:** Harrisburg, PA  
**Duration:** July, 1999—August, 2000  
**Contact:** Shuvonna Ballard, (717) 787-9870

**388116901** Site preparation, installation, and all materials for woven wire fence around all or portion of two timber sales located on the Tioga State Forest in Morris and Ward Townships, Tioga County. Perimeter of the fences is approximately 11,500 feet.

**Department:** Conservation and Natural Resources  
**Location:** Tioga State Forest District No. 16, One Nessmuk Lane, Wellsboro, PA 16901  
**Duration:** May 10, 2000  
**Contact:** William C. Beacom, (570) 724-2868

**D.S.O. 99-42/43** Vendor to supply to the State Correctional Institution Graterford, security equipment—shotguns and handguns.

**Department:** Corrections  
**Location:** State Correctional Institution Graterford, P. O. Box 246, Off Route 29, Graterford, PA 19426  
**Duration:** 6 months  
**Contact:** Kelly Richardson, (610) 489-4151

**Project No. 923** Addition to existing MVSC security fence.

**Department:** Military Affairs  
**Location:** Building 12092, Ft. Indiantown Gap, Annville, PA  
**Duration:** September 1, 1999—September 30, 2000  
**Contact:** Emma Schroff, (717) 861-8518

**B0000192** Millersville University is seeking qualified bidders who can provide the University with toner for its HP LaserJet printers and campus copiers (including but not limited to Canon, Mita, Monroe, Sharp, and the like). Bid prices would remain effective through June 30, 2000. Interested vendors should fax their requests to be placed on a bidders list to Anna Stauffer, fax (717) 871-2000, no later than Friday, July 30, 1999.

**Department:** State System of Higher Education  
**Location:** Millersville University, Millersville, PA 17551  
**Duration:** 10 months—August, 1999—June, 2000  
**Contact:** Anna Stauffer, (717) 872-3041

**Inquiry No. 002** The service is to provide for the construction of a computerized drug control module for after hour drug dispensing. Copies of the bid packet can be obtained by contacting the Purchasing Department of the Allentown State Hospital at (610) 740-3428 or by fax at (610) 740-3424.

**Department:** Public Welfare  
**Location:** Allentown State Hospital, 1600 Hanover Avenue, Allentown, PA 18103-2498  
**Duration:** July 20, 1999 through December 30, 1999  
**Contact:** Lois Kerbacher, (610) 740-3428

**RFP 01-99** The Commonwealth of Pennsylvania is seeking to contract with a single qualified vendor to provide Statewide validation and reporting services to the Department of Public Welfare concerning verification of job retention and medical benefits for welfare recipients placed in employment. Please be advised that, due to the purpose and function of the tasks to be performed by the verification contractor and the absolute necessity to avoid any conflict of interest, no proposal from either existing Department of Public Welfare providers of direct employment and training services or their subcontractors will be accepted in response to this Request for Proposal. Complete specifications/details can be obtained by contacting the Procurement Office.

**Department:** Public Welfare

**Location:** Statewide

**Duration:** Anticipated date: October 1, 1999 through September 30, 2003 w/renewal options

**Contact:** Rose Wadlinger, (717) 783-3767

**PDA432** Develop an emergency management plan for the Animal Health Commission. The contractor must have professional expertise in emergency preparedness and the operation of the animal and livestock industries in Pennsylvania. Contractor will develop a working relationship with animal and livestock producers, veterinarians, USDA and others to create an operational emergency network.

**Department:** Agriculture

**Location:** Harrisburg, PA

**Duration:** September 1, 1999 to June 30, 2000

**Contact:** Michael Mesaris, (717) 787-5674

[Pa.B. Doc. No. 99-1213. Filed for public inspection July 23, 1999, 9:00 a.m.]

## DESCRIPTION OF LEGEND

- |  |   |
|--|---|
| <p><b>1</b> Advertising, Public Relations, Promotional Materials</p> <p><b>2</b> Agricultural Services, Livestock, Equipment, Supplies &amp; Repairs: Farming Equipment Rental &amp; Repair, Crop Harvesting &amp; Dusting, Animal Feed, etc.</p> <p><b>3</b> Auctioneer Services</p> <p><b>4</b> Audio/Video, Telecommunications Services, Equipment Rental &amp; Repair</p> <p><b>5</b> Barber/Cosmetology Services &amp; Equipment</p> <p><b>6</b> Cartography Services</p> <p><b>7</b> Child Care</p> <p><b>8</b> Computer Related Services &amp; Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p><b>9</b> Construction &amp; Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p><b>10</b> Court Reporting &amp; Stenography Services</p> <p><b>11</b> Demolition—Structural Only</p> <p><b>12</b> Drafting &amp; Design Services</p> <p><b>13</b> Elevator Maintenance</p> <p><b>14</b> Engineering Services &amp; Consultation: Geologic, Civil, Mechanical, Electrical, Solar &amp; Surveying</p> <p><b>15</b> Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core &amp; Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p><b>16</b> Extermination Services</p> <p><b>17</b> Financial &amp; Insurance Consulting &amp; Services</p> <p><b>18</b> Firefighting Services</p> <p><b>19</b> Food</p> <p><b>20</b> Fuel Related Services, Equipment &amp; Maintenance to Include Weighing Station Equipment, Underground &amp; Above Storage Tanks</p> <p><b>21</b> Hazardous Material Services: Abatement, Disposal, Removal, Transportation &amp; Consultation</p> | <p><b>22</b> Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental &amp; Repair</p> <p><b>23</b> Janitorial Services &amp; Supply Rental: Interior</p> <p><b>24</b> Laboratory Services, Maintenance &amp; Consulting</p> <p><b>25</b> Laundry/Dry Cleaning &amp; Linen/Uniform Rental</p> <p><b>26</b> Legal Services &amp; Consultation</p> <p><b>27</b> Lodging/Meeting Facilities</p> <p><b>28</b> Mailing Services</p> <p><b>29</b> Medical Services, Equipment Rental and Repairs &amp; Consultation</p> <p><b>30</b> Moving Services</p> <p><b>31</b> Personnel, Temporary</p> <p><b>32</b> Photography Services (includes aerial)</p> <p><b>33</b> Property Maintenance &amp; Renovation—Interior &amp; Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning &amp; Planting, etc.)</p> <p><b>34</b> Railroad/Airline Related Services, Equipment &amp; Repair</p> <p><b>35</b> Real Estate Services—Appraisals &amp; Rentals</p> <p><b>36</b> Sanitation—Non-Hazardous Removal, Disposal &amp; Transportation (Includes Chemical Toilets)</p> <p><b>37</b> Security Services &amp; Equipment—Armed Guards, Investigative Services &amp; Security Systems</p> <p><b>38</b> Vehicle, Heavy Equipment &amp; Powered Machinery Services, Maintenance, Rental, Repair &amp; Renovation (Includes ADA Improvements)</p> <p><b>39</b> Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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GARY E. CROWELL,  
*Secretary*



**Contract Awards**

The following awards have been made by the Department of General Services, Bureau of Purchases:

<b>Requisition or Contract #</b>	<b>PR Award Date or Contract Effective Date</b>	<b>To</b>	<b>In the Amount Of</b>
0080-01	07/08/99	Optical Security Industries	420,000.00
4710-01	07/09/99	Hancor, Inc.	1,133,590.55
1012119-01	07/13/99	Shirn's Pontiac GMC, Inc.	35,920.00
1736118-01	07/13/99	Galey & Lord, Inc.	120,000.00
1741208-01	07/13/99	Warnock Motor Sales, Inc.	83,508.00

<b>Requisition or Contract #</b>	<b>PR Award Date or Contract Effective Date</b>	<b>To</b>	<b>In the Amount Of</b>
1743158-01	07/13/99	Gelmarc Distributors, Inc.	11,916.23
8157330-01	07/13/99	AC Miller Concrete Prod., Inc.	80,250.00
8171600-01	07/13/99	AC Miller Concrete Prod., Inc.	35,620.00

GARY E. CROWELL,  
*Secretary*

[Pa.B. Doc. No. 99-1214. Filed for public inspection July 23, 1999, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 28—HEALTH AND SAFETY

### DEPARTMENT OF HEALTH

[28 PA. CODE CHS. 201, 203, 205, 207,  
209 AND 211]

#### Long-Term Care Nursing Facilities

##### *Scope and Purpose*

This final rulemaking amends Part IV (relating to health facilities) by amending Subpart C (relating to long-term care facilities), Chapters 201, 203, 205, 207, 209 and 211, to read as set forth in Annex A.

The Health Care Facilities Act (act) (35 P. S. §§ 448.101—448.904) provides that, to be issued a license as a health care facility, an applicant shall show that: 1) it is a responsible entity; 2) the place to be used as a health care facility is adequately constructed, equipped and maintained, and safely and efficiently operated; 3) it will provide safe and efficient services adequate for the care and treatment of patients or residents; and 4) it is in substantial compliance with the rules and regulations of the Department of Health (Department). See section 808(a) of the act (35 P. S. § 448.808(a)).

The vast majority of long-term care nursing facilities (facilities) in this Commonwealth participate in the Federal Medicare and Medicaid programs. The Department is the State survey agency for the Health Care Financing Administration (HCFA) and, as such, surveys facilities for Federal certification as well as State licensure purposes. Facilities which participate in the Medicare and Medical Assistance (MA) Programs must comply with the Federal certification regulations in 42 CFR 483.1—483.75 (relating to requirements for long-term care facilities), as well as the State licensure regulations in Part IV, Subpart C.

The Federal regulations address many of the same areas addressed by the facility licensure regulations in Part IV, Subpart C. In certain instances the State licensure and Federal certification regulations are duplicative. In other cases, the two sets of regulations conflict. In an effort to resolve the inconsistencies and unnecessary duplication, the Department is adopting many of the Federal regulatory provisions and incorporating them into its State licensure regulations. Further, the Department has deleted those State licensure regulations which were overly prescriptive, but has kept those regulations which the Federal certification regulations either do not address or are less specific than the licensure regulations.

The Department felt it necessary, for public protection purposes, to keep certain State licensure regulations which are not addressed in the Federal certification regulations. For example, there is no Federal counterpart to the State licensure regulation in § 211.1 (relating to reportable diseases), requiring the reporting of specific diseases, or to § 201.22 (relating to prevention, control and surveillance of tuberculosis (TB)), pertaining to the protocols for tuberculosis control.

There are a few amendments to current regulations which are stricter in some respects than the corresponding Federal regulations. For example, the Federal regulation in 42 CFR 483.13(a) (relating to resident behavior and facility practices) states that a restraint may not be

applied for discipline or convenience. The State licensure regulation pertaining to restraints in § 211.8 (relating to use of restraints) has always been more specific than the Federal regulation. The Department has now added a requirement that the need for a restraint be reviewed every 30 days by an interdisciplinary team as defined in § 201.3 (relating to definitions). Another amendment in § 201.3 revises the definition of "restraint" to include chemical as well as physical restraints. This follows the Federal regulations.

The State licensure regulation in § 201.14 (relating to responsibility of licensee) lists various incidents that must be reported to the appropriate Division of Nursing Care Facility field office. The proposed amendments add deaths due to sepsis as a reportable incident and require notification within 24 hours.

With regard to transfers and discharges, both State and Federal regulations provide that they shall be appropriate and may occur only after adequate prior notice. However, the amendment in § 201.29(d) (relating to resident's rights) specifically places the responsibility for appropriate placement on the facility.

The regulations will provide consistency for the majority of facilities that participate in the Federal reimbursement programs and will offer additional protection to residents of this Commonwealth by retaining important State licensure provisions that are not fully addressed by the Federal certification regulations.

##### *Public Comments*

Notice of proposed rulemaking was published at 27 Pa.B. 3609 (July 19, 1997) with an invitation to submit written comments within 30 days. Within the 30 day comment period, the Department received letters with comments from 36 individuals or organizations having an interest in long-term care. The Department also received comments from Senator Allen Kukovich and former Senator Hardy Williams, and Representatives Mike Veon, Patricia Vance, Keith McCall and James Casorio. The Department of Aging and Department of Public Welfare submitted comments as well. Finally, the Independent Regulatory Review Commission (IRRC) provided the Department with comments to the proposed rulemaking.

The following is a discussion of the comments received and the Department's response to those comments:

##### *Chapter 201. Applicability, Definitions, Ownership and General Operation of Long-Term Care Nursing Facilities*

###### *Section 201.2. Requirements.*

The Department received various comments with respect to the proposed amendment of this section to incorporate Subpart B of the Federal long-term care certification regulations, 42 CFR 483.1—483.75, into the State licensure regulations, with certain specific exceptions. In light of comments received, the Department has removed several exceptions in the proposed regulations. The exceptions which the Department has decided to not incorporate primarily reference the Medicare and Medicaid programs and are thus applicable to the facilities which participate in those programs only and not suitable as general licensure regulations.

Several commentators, including the Pennsylvania Association of Non Profit Homes for the Aging (PANPHA), the Pennsylvania Health Care Association (PHCA), the Pennsylvania Association of County Homes Affiliated

Homes (PACAH), former Senator Williams and IRRC, suggested that the Department should adopt the Federal nurse aide training requirement in 42 CFR 483.75(e) (relating to administration), which provides for each state to operate a nurse aide registry and requires a state approved training and competency evaluation for nurse aides that meets the requirements of 42 CFR 483.151—483.154.

The Department currently operates the nurse aide registry for the Commonwealth. The majority of facilities require Federal certification and thus must use the registry and trained nurse aides. However, the Department agrees with the commentators that it should adopt the Federal regulation as a State requirement as well, to ensure that facilities in this Commonwealth, including those that do not participate in the Medicare or MA Programs, hire only trained nurse aides who have passed a competency evaluation and are in good standing on the registry. Therefore, the Department has adopted the Federal regulation in 42 CFR § 483.75(e) as a requirement of State licensure, by excluding it from the proposed list of exceptions.

The PANPHA asked why the Department was not adopting the Minimum Data Set (MDS) required by the Federal regulation in 42 CFR 483.20(b)(1)(i) (relating to resident assessment). Following the implementation of the case-mix reimbursement system, the Department added a new Pennsylvania-specific section to the MDS. Therefore, the Department has determined that it should adopt the MDS requirement for state licensure purposes as a quality improvement initiative. It has excluded that regulatory requirement from the proposed list of exceptions.

The Department agrees with a comment from former Senator Williams that it should adopt the Federal regulation in 42 CFR 483.10(c)(3)(i) (relating to level A requirement: Resident rights), which requires a facility to deposit residents' personal funds in excess of \$50 in an interest bearing account separate from the facility's operating accounts. Although the current licensure regulation in § 201.18 (relating to management) does not require that resident funds be placed in an interest bearing account, the Department concludes that this should be a requirement for all Commonwealth facilities. Therefore, the Department has decided it will adopt 42 CFR 483.10(c)(3) so that all facilities in this Commonwealth, and not just those which participate in the Medicare or MA Programs, will be required to place residents' funds in excess of \$50 in an interest bearing account. However, the Department has determined that it will not adopt the surety bond requirement in 42 CFR 483.10(c)(7) as a State licensure requirement.

The PANPHA and former Senator Williams questioned why the Department was not adopting the Federal regulatory requirement in 42 CFR 483.70(d)(1)(iv) (relating to physical environment) requiring full visual privacy. The exception in § 201.2 (relating to exceptions) in the proposed regulations was a typographical error. It is now corrected to read 42 CFR 483.70(d)(1)(v), which requires privacy curtains only in facilities initially certified after March 3, 1992. The Department interprets the requirement of full visual privacy to mean all beds shall have privacy curtains.

Several commentators, including the Department of Aging and former Senator Williams, expressed concern regarding the format of the regulations and expressed their desire to see the text of the Federal regulations adopted rather than the regulatory citation alone. The

Department does not consider it necessary to include the specific Federal language for purposes of official legal publication in the *Pennsylvania Bulletin* and the *Pennsylvania Code*. The Department currently provides regulation manuals upon request. It will ensure that those manuals integrate the Federal regulatory sections being adopted, and it will make them available to providers and the public in a user-friendly format.

The Department had proposed to revise the exception provision in former § 201.2 and move it to the general administrative Chapter 51 (relating to general information). Several commentators did not realize that this was the case and expressed concern that the exception provision had been deleted. The exception provisions are now applicable to all health care facilities and appear in §§ 51.33 and 51.34 (relating to requests for exceptions; and revocation of exceptions).

#### *Section 201.3. Definitions.*

##### *Abuse*

Section 201.3 is amended to include a new definition of "abuse." The definition is taken from the guidelines to the Federal regulations. This is also the definition of "abuse" which is used by the Department when adjudicating appeals by nurse aides who have had a finding of abuse entered against them in the nurse aide registry. The Department kept that portion of the former definition which now appears under the subheading of "neglect."

IRRC, the PANPHA and PACAH commented that the Department should adopt the definition of abuse in the Older Adults Protective Services Act (35 P. S. §§ 10225.101—10225.5102) (Act 79), rather than the language in the federal guidelines. The definition of abuse in Act 79 is included in the language proposed by the Department except that the definition of sexual abuse in Act 79 refers to the definition of sexual abuse in the Protection From Abuse Act (PFA). The Department felt that the definition of sexual abuse in the PFA deals more with sexual abuse among family members and was not as relevant as the description of what constitutes sexual abuse in the Federal abuse guidelines.

IRRC also commented that the Department should include the statutory definition of "abandonment." The Department has decided not to include a separate definition of abandonment as the definition of "neglect" covers that concept. This definition states that neglect includes deprivation by a caretaker of goods or services which are necessary to maintain physical or mental health.

The Department concludes that the definition of "abuse" in the Federal abuse guidelines is more explicit and includes most of the definition in Act 79. Also, the Department's definition of "abuse" specifically states that it applies to all residents, including those who are not necessarily competent or conscious. Further, to remain consistent with its investigations and prosecutions of nurse aides accused of abusing residents, the Department feels it is important to adopt the language in the Federal guidelines.

The proposed rulemaking would have added the requirement that the abuse be "willful." The Department has removed this term since this is not part of the Federal language. The Department agrees with recommendations from IRRC and Cedarbrook Nursing Homes that this qualifier be removed as it would make it much more difficult to prosecute an alleged abuser.

The PHCA and Extendicare expressed their concern that the definitions of "abuse" and "neglect" do not take

into consideration the fact that services may be withheld at the request of a resident such as in an advance directive. They recommended that this be clarified in the definitions. A living will or other advance directive would be part of a resident's clinical record and as such would be readily available for review by surveyors if a question would arise as to whether withholding particular care or therapy constituted neglect. The Department, therefore, does not choose to incorporate this exception into the definitions.

#### *Activities Coordinator*

In response to a comment by the PANPHA, pointing out that § 211.17 (relating to patient activities) would be deleted with the exception of the provisions dealing with pet therapy, the Department has deleted the definition of "activities coordinator." This term will no longer appear in the regulations.

#### *Charge nurse*

The definition of "charge nurse" was revised as proposed. The Department received a comment from the PNA that this term was outdated in the health care industry. However, as it is used in many nursing facilities, the Department has not changed the heading of charge nurse. It has, however, updated the requirements for being a charge nurse.

#### *Clinical records*

The PANPHA and IRRC commented that the proposed definition of "clinical records" was too broad and could require the release of more than just the resident's medical record. The proposed definition was based on the Federal interpretation of the term. However, in response to the comment, the Department deleted the portion of the proposed definition that included records dealing with social records and resident fund accounts.

#### *Dietitian*

The proposed rulemaking included a revised definition of "dietitian" to require that a person who would serve as a dietitian would have either registration by the Commission on Dietetic Registration of the American Dietetic Association, or appropriate education, training or experience. A dietitian and IRRC suggested that the Department specify what appropriate education, training or experience is. Therefore, the Department has revised the definition to specifically include those requirements which make one eligible for registration by the Commission.

#### *Dietetic service supervisor*

In response to a suggestion by the PANPHA the Department deleted the word "qualified" before "dietitian" in the definition of "dietetic service supervisor" as the qualifications for a dietitian are in the definition of that term.

#### *Elopement*

The Department is adding a definition of "elopement" in this section and taking the definition out of § 201.14 (relating to responsibility of licensee). The PACAH had raised a specific comment with regard to the requirement of reporting elopements in § 201.14, arguing that elopement should be limited to incapacitated residents who are missing from the facility for over 1 hour. The PANPHA suggested a definition that would limit elopements to residents who have wandered off the facility's premises and whose whereabouts are unknown. The Department rejected this recommendation. It determined that the definition of "elopement" should apply to all residents who are missing and not be limited to those who have

wandered off the premises. Further, the Department does not believe the reporting requirement should be triggered by a specific period of time that the resident is missing.

The facility's premises could encompass many acres of surrounding land owned by the facility. Residents who elope are at risk of injury or death. There have been instances of these occurrences in the past. Therefore, the Department is more comfortable with a comprehensive definition which would require reporting when a resident leaves the facility itself without the facility's knowledge. This strict definition is not intended, however, to restrict the freedom of movement of those residents who are competent and generally permitted outside on facility grounds.

#### *Existing facility*

IRRC, the PANPHA and PHCA commented that the Department should revise this definition to reflect that an existing facility is a facility constructed and licensed before the effective date of these regulations. The Department agrees.

#### *Experimental Drug*

The Department agrees with a suggestion made by IRRC that it delete the definition of "experimental drug" as it is deleting § 211.9(p)(relating pharmaceutical services) where the term is used.

#### *Facility*

The Department is amending this definition by referring to the definition of "long-term care nursing facility" in section 802.1 of the act (35 P.S. § 448.802a). The previous definition was identical to the definition of "long-term care nursing facility" in the act. The Department of Aging had suggested that the Department define "facility" as an entity that includes housing and comprehensive medical services. However, the definition of "facility" in the regulations must be the same as a long-term care nursing facility, which is the licensed entity that the act authorizes the Department to regulate.

#### *Interdisciplinary team*

A definition is now included for the term "interdisciplinary team." This definition has been taken from the Federal regulation at 42 CFR 483.20(d)(2)(ii), which lists the professionals who must take part in the preparation of residents' care plans. IRRC and the PANPHA feel that the words "the participation of" should be deleted from the proposed definition to ensure that the resident or family member will be included.

PANPHA expressed a concern that the definition did not fully relay the fact that the resident and the resident's family are an integral part of the team. The Department of Aging pointed out that the resident may not have family, and recommended that the team should include the responsible person. The Department has revised the definition to address both concerns.

The Department concludes that the Federal requirement adequately protects the resident's interests. The Federal language requires the facility to use its best efforts to include the resident or the resident's representative, but allows for some flexibility for those limited situations where it is not possible to do so, such as where a resident is incapacitated and has no representative or family members to participate.

#### *Locked restraint*

PACAH and the Philadelphia Geriatric Center recommended deleting the definition of "locked restraint" as it

is no longer used. The Department does not agree that the definition should be deleted at this time.

#### *Long term care nursing facility*

The definition of a "long-term care nursing facility" has been deleted as it is referred to in the revised definition of "facility."

#### *Mantoux tuberculin skin test*

The Department has deleted this definition as it is now referred to as an "intradermal skin test" and defined in § 201.22(d) (relating to notification of change in patient status).

#### *Medical record practitioner*

The Department agrees with comments from IRRC, an accredited record technician and the Pennsylvania Health Information Management Association (PHIMA) that the definition relates to the clinical record keeping requirements in § 211.5 (relating to clinical records) and should specify criteria for personnel in charge of these records. The Department recognizes that the issues surrounding medical record keeping have become more complex, has reconsidered its proposal to delete the definition, and has updated the definition to reflect the present requirements of the American Health Information Management Association (AHIMA).

#### *Nurse aide*

After considering comments by the Department of Public Welfare, the Pennsylvania Nurses Association (PNA) and IRRC, the Department has amended the definition of "nurse aide" to reflect the Federal language and to require that the person be in good standing on the Pennsylvania nurse aide registry. This will require all facilities, including those that do not participate in the Medicare or MA Programs, to hire nurse aides who have received or are in the process of receiving required training and evaluation.

#### *Resident*

The term "resident" has been added to the definitions and replaces the term "patient" throughout the regulations. This change has been made in order to be consistent with Federal terminology and to reflect the fact that for the most part individuals in long-term care nursing facilities are residing there.

#### *Restraint*

The definition of "restraint" has been revised in accordance with the guidelines to the Federal certification regulations and now specifically includes chemical restraints. Further, the definition now includes devices which are adjacent to a resident in addition to those which are applied to a resident and, depending on the situation, could include side rails. This is also consistent with the Federal view of what constitutes a restraint.

#### *Serious violation*

The Department has deleted the definition of "serious violation" as it is defined in section 811 of the act (35 P. S. § 448.811 (1)).

#### *Skilled or intermediate nursing care*

The Department is deleting the definition of "intermediate care" and including a new definition of "skilled or intermediate care" which is in keeping with the elimination of the distinction between these two levels of care since the implementation of the case-mix reimbursement

system. The new definition reflects a range of care, rather than two separate levels of care, which may be provided in a nursing facility.

The PANPHA and the Department of Aging support the integration of the levels of care, however, the PANPHA and Presbyterian Senior Care suggested that the Department delete the portion of the definition that states the care is that which is provided to "an individual not in need of hospitalization" and "above the level of room and board." The Department did not delete these provisions as it believes it is necessary to identify the appropriate level of care to be provided in the facility and to distinguish this level of care from personal care or acute care provided in hospitals.

The PHCA would like to see the term "intermediate" deleted and the Department of Public Welfare suggested that the Department just define "nursing care" instead of "skilled or intermediate care." The Department is bound by the definition of "long-term care nursing facility" in the act which specifically references "skilled or intermediate care."

IRRC expressed concerns that, due to differing usage in other regulations pertaining to provision and payment of services in long-term care facilities, the use of the word "daily" may cause confusion. The Department intends this word to be interpreted according to common usage, that is, these services must be available 7 days each week to the residents of the facility.

#### *Social worker*

Although one comment was received that opposed the proposed revised definition, the Department has adopted the Federal definition of a qualified social worker, as proposed, which requires a bachelor's degree in a human service field and one year of experience. The comment objected to the former requirement that the individual be a graduate of a school of social work accredited by the Council on Social Work or have 1 year of experience in a health setting. The revised definition is more strict in that it requires a degree as well as experience in a health care setting.

#### *Therapeutic recreation specialists*

The Department deleted the definition of "therapeutic recreation specialists," as it has adopted the Federal regulation in 42 CFR 483.15(f) (relating to quality of life). The Federal provision provides that resident activities must be directed by a qualified therapeutic recreation specialist and includes the requirements for these individuals.

#### *Section 201.12. Application for license.*

Former subsection (b), requiring the issuance of a Certificate of Need (CON) as a condition of licensure, has been deleted.

#### *Section 201.13. Issuance of license.*

This section sets forth licensure fees and has been revised to reflect the statutory increase in fees which have been in effect since 1992, following amendments to the act.

#### *Section 201.14. Responsibility of licensee.*

The Department received a number of comments to the proposed revisions of this section. It has been revised in the final version so as not to duplicate provisions in the publication in June of 1998 of Chapter 51, which includes general provisions applicable to all health care facilities, including required incident reporting. The Department has revised this section to cover those situations that are

not completely addressed in § 51.3 (relating to notification). Subsection (e) will now require the reporting of serious incidents within 24 hours. Subsection (d) will add a requirement that facilities report deaths occurring in the facility or following a hospital admission due to sepsis.

Incidents such as temporary disruptions of services, deaths due to injuries, accidents or suicide, elopements and complaints of resident abuse, which are covered in § 51.3 have been deleted from this section.

The PHCA commented that the phrase "following a hospital admission" should be deleted from subsection (d)(1), as the facility should not be responsible for reporting deaths that occur in the hospital. The PANPHA expressed some uncertainty as to whether the facility must track a resident who is admitted to a hospital for a lengthy stay. As all health care facilities are required to report deaths due to malnutrition, dehydration or sepsis under § 51.3, if the resident is transferred to the hospital and subsequently dies of one of these causes, the hospital will be responsible for reporting the death. Therefore, the Department has deleted the provision in the proposed regulations which would have required nursing facilities to report these deaths following a hospital admission.

The PACAH also questioned why the Department is requiring reporting on transfers as well as subsequent admissions to hospitals as a result of accidents and injuries. The Department believes it is important to be notified of accidents and injuries that require a resident to be sent to the hospital, even if there is no need for subsequent admission.

Several commentators, including the PANPHA and PHCA, questioned why the proposed regulations require facilities to report hospitalizations due to sepsis. The proposal would also require that deaths occurring in the facility or following a hospital admission due to malnutrition or dehydration be reported by the facility. The Department has reevaluated this requirement and deleted the subsection in light of the regulation at § 51.3(g), which requires all licensed health care facilities to report resident or patient deaths due to malnutrition, dehydration or sepsis. Therefore, a death due to malnutrition, dehydration or sepsis would be reported by the facility where the resident or patient expired.

The PACAH felt that the current 24 hour time frame for reporting in subsection (e) is insufficient time to allow the facility to fully investigate the incident being reported. The PHCA suggested the time frame be within 24 hours of the first working day after the incident. The Department considers the 24 hour time frame to be important. An investigation does not have to be completed within the 24 hour period for initial reporting of an incident. Facilities may report emergencies by the Department's hot line after hours or on weekends and holidays.

#### *Section 201.15. Restrictions on license.*

The Department has deleted subsection (c), as the language defining a "serious violation" is part of the act. Former subsection (d), which is now subsection (c), has been amended to reflect that an appeal from an order of the Department is to the Health Policy Board. This is consistent with an amendment to The Administrative Code of 1929 (71 P. S. § 2102(n)), in 1996, which transferred the duties of the former State Health Facilities Hearing Board to the Health Policy Board.

#### *Section 201.16. Change in ownership, structure or name.*

The requirements in this section have been addressed in § 51.4 (relating to change in ownership; change in management). Therefore, this section is being repealed.

#### *Section 201.17. Location.*

The PANPHA and PACAH questioned whether the Department was proposing to delete this section. The Department did not address this section in the proposed rulemaking and has not deleted or amended this section.

#### *Section 201.18. Management.*

Former subsection (j) is now subsection (h). It requires facilities which accept responsibility for residents' financial affairs to provide residents with access to their money within 3 bank business days from the date of request. The regulation had provided for 7 days.

IRRC and St. Mary's Home of Erie commented that subsection (e)(7), which requires a strike plan, should only be applicable to unionized facilities. As the Department has applied this requirement to unionized facilities only, it agrees and has clarified this in the subsection.

#### *Section 201.19. Personnel policies and procedures.*

This section has been revised to delete all subsections except for former subsection (b). The subsections which have been deleted are either covered by the Federal regulations which have been adopted or are included in other sections of these regulations.

The University of Pennsylvania Health System's Institute on Aging raised a question with regard to former subsection (i), which required employees to have a chest X-ray within the previous 60 days if the intradermal tuberculin skin test was positive. The question was whether a chest X-ray taken more than 60 days prior to the skin test would be satisfactory. Revised § 201.22 (relating to prevention, control and surveillance of tuberculosis (TB)) addresses tuberculosis protocols and provides that an employee or resident whose skin test is positive shall be referred for further diagnostic testing and treatment in accordance with current standards of practice.

#### *Section 201.20. Staff development.*

Subsection (c) has been revised to require annual in-service training on resident rights.

#### *Section 201.21. Use of outside resources.*

In response to a comment by the PANPHA, the Department has revised subsection (a) to require facilities to ensure that personnel and services provided by outside resources meet all necessary licensure and certification requirements.

#### *Section 201.22. Prevention, control and surveillance of tuberculosis (TB).*

This section addresses the testing of residents and personnel for tuberculosis. The Department has revised this section, including its title.

The proposed criteria were based on National standards, including CDC protocols. The Pennsylvania Medical Society (PMS) expressed its approval of the Department's inclusion of National guidelines and standards, including those of the CDC.

A fellow with the University of Pennsylvania Health System's Institute on Aging suggested that the regulations address the situation where a resident or a responsible person refuses the required testing. Another commentator suggested that terminally ill residents not be

tested. The Department believes that these situations will need to be reviewed on a case by case basis. If necessary, exceptions can be granted in individual situations.

The Hospital and Health System Association of Pennsylvania (HAP) commented that SNFs in hospitals should be granted automatic exceptions to subsection (c)'s requirement of baseline TB testing on residents. The Department does not believe it would be appropriate to grant a blanket exception to hospital-based SNFs. Instead, it believes that any exceptions should be requested on a case by case basis. The regulations do not require that the 2-step test be complete before a resident is admitted. However, the facility must obtain a base line TB status on each resident.

The PANPHA questioned the requirement in proposed subsection (h) which required volunteers having 10 or more hours per week of contact with residents to be tested along with employees having the same contact. The Department recognized the difficulty facilities would face if forced to test volunteers and, therefore, has deleted the reference to volunteers.

Several commentators, including the University of Pennsylvania Health System's Institute of Aging, the PACAH and PANPHA, asked whether the TB testing of personnel must be preemployment. Another commentator questioned whether an employee who has a new positive reaction to the skin test may continue to work in the facility pending the results of a chest X-ray. Subsections (j) and (m) provide that testing and results are to be preemployment. Therefore, an employee having a new positive reaction would not be permitted to have contact with residents until the facility had chest X-ray results indicating the employee did not have TB. Subsection (j) has been revised to clarify that the 2-step intradermal skin test must be administered to employees prior to employment.

Two commentators felt the section was unclear as to what was meant by "previous positive reaction" in subsection (l). The Department is referring to those residents or employees who have prior history of a positive skin reaction but have no diagnosis of active TB.

The PANPHA and the United Church of Christ Homes suggested that the criteria in subsection (n) is too strict and that a facility should be permitted to admit a resident with infectious tuberculosis if the facility has a negative pressure room and is otherwise able to handle the resident's condition. The Department recognizes that subsection (n) is strict, but concludes that the criteria for admission of residents with diagnoses of TB are necessary to adequately safeguard other residents.

#### *Section 201.24. Admission policy.*

The Department proposed to delete this section in its entirety, but in light of comments received, including comments from the Department of Aging, the Pennsylvania Health Law Project and Community Legal Services, has decided to keep subsections (a)—(d). The commentators felt that it was important to state that a resident does not have to name a responsible person if the resident chooses not to do so. In response to a comment from the Department of Aging, the provision in subsection (a) which allowed facilities to name a resident's responsible person as a third-party financial guarantor if the agreement was in writing, has now been deleted to reflect the Federal regulations which prohibit third-party guaranties.

The Pennsylvania Health Law Project and Community Legal Services suggested it was important to keep subsec-

tion (b) to prohibit an express waiver of liability or of certain resident rights in an admission agreement.

Subsection (e) has been deleted as it is dealt with more specifically in § 201.22(n) (relating to prevention, control and surveillance of tuberculosis (TB)).

#### *Section 201.25. Discharge policy.*

It was proposed that this section was to be deleted in its entirety. However, the Department agrees with a comment by Community Legal Services that subsection (a) should be retained as the Federal regulation at 42 CFR 483.12(a)(7) (relating to admission, transfer and discharge) only requires "sufficient preparation and orientation" prior to discharge and does not specifically address the need for coordinated discharge planning. It is important that a resident have a single coordinated discharge plan rather than separate plans from various disciplines.

Additional language has been added to § 201.29(e) and (f) (relating to resident rights) regarding the facility's responsibilities with regard to transfer and discharge of residents. The new language clarifies that 30 days advance notice must be given prior to discharge and that the facility is responsible for assuring that the resident is appropriately placed.

#### *Section 201.26. Power of attorney.*

The PANPHA had requested that the Department expand this section to address situations where a resident has no power of attorney for health care and is unable to make his wishes known. The Department is unable to regulate in this area. Facilities are bound by current State law surrounding power of attorney, advance directives and guardianship.

Although the Department recognizes the difficulties facilities face in these situations, guidance in this area must come from the legislature or the courts. The Department notes that facilities which participate in MA are to provide the summary of State law concerning advance directives to residents upon admission. All facilities should offer residents the opportunity to draft a living will if they are competent and wish to do so.

#### *Section 201.27. Advertisement of special services.*

In response to a comment from the Pennsylvania Association of Rehabilitation Facilities (PARF), the Department decided to retain this section. It provides that facilities may not advertise special services such as rehabilitation or physical therapy unless the service is provided by specifically trained personnel.

#### *Section 201.28. Nondiscriminatory policy.*

This section has been repealed. The subject matter is now addressed in §§ 51.11—51.12 (relating to civil rights compliance and nondiscriminatory policy) in the general administrative chapter which applies to all health care facilities.

#### *Section 201.29. Resident rights.*

The Department proposed to delete subsections (a)—(c), as the Federal regulations address resident rights. These subsections provided that facilities are to have written policies regarding the rights and responsibilities of residents and are to make them available to residents, staff and consumer groups.

In response to comments from Community Legal Services and the PANPHA, the Department has decided not to delete subsection (a) and to revise subsection (b) by adding a provision which requires that resident rights

policies be available to residents and members of the public. Subsection (c) is also retained.

In light of a comment from the PACAH, the Department has clarified the language in subsection (e) to ensure that information regarding available services and charges which are covered by the facility's per diem rate is first provided to the resident, if competent, and to the resident's responsible person if the resident is not competent.

Former subsection (h) is now subsection (f) and includes subject matter previously dealt with in former § 201.25 (b) (relating to discharge policy) which provided for reasonable advance notice of 30 days prior to a transfer or discharge of the resident. HAP had suggested that the Department include a provision automatically exempting hospital-based SNFs from the 30-day notice provision, as many residents are not in these units that long. The Department does not see the need to include a specific exception in the regulation, as there is a provision that the transfer or discharge may be implemented in less than 30 days if the plans are suitable to the resident.

In response to a comment from the Department of Aging, language has been added to subsection (f) which requires the transferring facility to inform the resident of its bed-hold policy prior to transfer.

The PACAH commented that amended subsections (f) and (g), which provide that the facility is responsible for a safe and orderly transfer, are covered by the Federal regulations in 42 CFR 483.12 and should be deleted. Although 42 CFR 483.12 does address the transfer and discharge issue, the Department believes that the language in amended subsections (f) and (g), as revised, is more specific than the Federal language in that it provides that the transfer or discharge without 30-days advance notice must be acceptable to the resident. Further, subsection (g) specifically states that the receiving facility must be capable of meeting the resident's needs. In response to a suggestion from the Department of Aging, the Department added language to subsection (g), requiring transferring or discharging facilities to inform the resident as to whether the receiving facility participates in the Medicare or MA programs, or both.

As proposed, subsection (f) had stated reasonable advance notice was to be interpreted as 30 days "unless appropriate plans could be implemented." The Department agreed with the assessment of St. Mary's Home of Erie that this was unclear. Therefore, it has clarified the phrase by adding the word "sooner" after "implemented." Also, the Department, in response to comments by the PANPHA, has further clarified the provision by specifying that transfer or discharge plans executed with less than 30 days notice, must be acceptable to the resident. The subsection was further clarified by adding language requiring that suitable clinical records, in addition to a list of medications and treatments, accompany the resident being transferred.

The Department added subject matter to subsection (g) which had been addressed in former § 201.25(g), which provided that it is not necessary to transfer a resident between or within a facility if in the opinion of the attending physician such a transfer would be harmful to the resident.

The Department had proposed to delete subsection (i), but has accepted the recommendation of Community Legal Services that it be retained. The PACAH had supported the deletion of the subsection, as Federal regulations address the provision of advocacy information

to residents, but encouraged the retention of language giving hot line numbers and requiring that this information be provided to residents. Subsection (h) contains information that is specific to Pennsylvania and therefore appropriate to retain.

The Department deleted former subsections (j)—(n), as the same subject matter is addressed by the Federal regulations. Community Legal Services requested that former subsection (j) be retained. However, the Department feels that this subsection is fully addressed in 42 CFR 483.10(a)(2).

The Pennsylvania Health Law Project and Community Legal Services requested that the Department retain former subsection (l), which provided that where a facility is responsible for a resident's funds, the facility must maintain written policies that assure the resident receives a quarterly accounting and prohibit the facility from commingling the resident's funds with its own. The Federal regulation in 42 CFR 483.10(c)(4)(i) and (ii), prohibits commingling of resident and facility funds and requires that the resident be provided with financial statements each quarter and upon request. Although the Federal regulation does not specifically require written policies, it does require the facility to have a system to assure full, complete and separate accounting. The Department would cite a facility whose system is inadequate. Therefore, the Department believes that the Federal regulation fully addresses the provisions of former subsection (l).

In response to a comment from Community Legal Services, the Department is retaining former subsection (o), which provides that the resident is to be treated with consideration, respect and in full recognition of dignity. Although the Federal regulations are similar, subsection (o), now subsection (j), is broader. The commentator further complimented the Department on its interpretive guidelines to this subsection.

Former subsections (p)—(s) and (u), which addressed the resident's right to associate freely with members of the resident's family and the community, have been deleted as they are covered by Federal regulations which have been adopted. Although former subsection (p), which prohibited a resident from performing services for the facility, is not specifically dealt with in the Federal regulations, subsection (j) of the revised licensure regulations, which requires a resident to be treated with dignity, would prohibit this.

In response to comments from the Pennsylvania Health Law Project and Community Legal Services, the Department is retaining former subsection (t), now subsection (k), which permits residents to retain personal clothing and possessions and mandates that facilities make provisions for the proper handling of these items.

The Department proposed to delete former subsection (v), which listed rights which devolve to a resident's responsible person in situations where the resident is adjudicated incapacitated, found by their attending physician to be incapable of understanding their rights, or unable to communicate.

Comments were received from the Pennsylvania Medical Directors Association, the PMS, the Pennsylvania Health Law Project and Community Legal Services, urging the Department to retain this section, as they felt the Department should address surrogate decision making through regulation.

Although the Department recognizes the need for providers to have guidance on treatment issues for incapaci-



tated residents, it has reservations as to whether Pennsylvania law actually permits a responsible person to make certain decisions concerning their treatment in situations where the resident has not been adjudicated incapacitated. Even in situations where there is a durable power of attorney for health care, it is not clear whether a responsible person is authorized under Pennsylvania law to exercise certain residents' rights such as the right to refuse or discontinue life sustaining treatment. A responsible party would need a valid advance directive specifically authorizing such a refusal or appointing that individual as the surrogate decision maker.

The Department has addressed these competing concerns by redesignating former subsection (v) as subsection (l) and revising it to allow for a resident's right to devolve to a responsible person where the resident has been adjudicated incapacitated or "as Pennsylvania law otherwise authorizes." This permits decisions on a case-by-case basis and allows for changes in the law of surrogate decision-making. Facilities may wish to obtain legal guidance in developing procedures and protocols in this area.

In response to comments from Community Legal Services, the Department is retaining former subsections (x) and (y), now subsections (n) and (o). These subsections require resident rights to be posted and fully explained to residents who cannot read and/or who do not understand English. Further, they prohibit experimental treatment or research without Department approval and full disclosure to residents. The Pennsylvania Long-Term Care Pharmacist's Coalition disagreed with the requirement that facilities must obtain Department approval prior to implementing experimental research such as clinical drug trials using residents. Rather they felt these procedures should instead be run past an institutional review board. The Department's requirement that experimental research be approved is simply to ensure that the resident is fully informed of the risks, if any. The facility still needs to obtain any further requisite approvals regarding clinical validity of the treatment or trials from the appropriate regulatory agencies such as the FDA.

#### *Section 201.30. Access requirements.*

The Department had proposed to delete this section with the exception of former subsection (f), now subsection (b), which provides that a person entering a facility shall identify himself and receive permission from the resident to enter the resident's room. The PACAH suggested that the deletion of former subsection (e), now subsection (a), which permits facilities to limit access, would tie the hands of facilities charged with the responsibility for the resident. The Department is retaining this subsection, but has adopted the PACAH's suggestion that access be limited only in those situations where the interdisciplinary care team has determined that access would be detrimental to the resident's health. Any complaints from residents, family or friends regarding access restrictions will be swiftly and thoroughly reviewed by the Department.

The Pennsylvania Health Law Project urged the Department to prohibit facility personnel from questioning attorneys as to the reason for visiting the resident. The Department incorporated a provision to this effect and expanded the prohibition to cover the Department of Aging ombudsman as well as any representative of the Department who may wish to speak directly with a resident.

Former subsection (h) has been deleted as its subject matter is now addressed in § 201.29 (relating to resident rights).

#### *Section 201.31. Transfer agreement.*

The Department proposed to delete subsection (a). The Department has decided that the subsection is necessary, but has revised subsection (b) to state that a transfer agreement must provide for the interchange of necessary medical information as well as the transfer of residents' personal effects.

Former subsection (c), which dealt with facilities not having a transfer agreement with a hospital, has been deleted.

#### *Section 201.32. Room placements.*

This section has been repealed. The Department believes it is obvious that a married couple may share a room if they so desire and that such a directive by way of a regulation is not necessary. Furthermore, the Federal regulations in 42 CFR § 483.10(m), which is part of the section on resident rights being adopted by the Department, provides for this right.

#### *Chapter 203. Application of Life Safety Code for Long-Term Care Nursing Facilities.*

The Department has revised § 203.1 (relating to application of the *Life Safety Code*) to state that facilities are to comply with the applicable edition of the *Life Safety Code* that has been adopted by the Department.

Former § 203.2 (relating to restrictions) required long-term care facilities to comply with certain *Life Safety Code* standards. As all long-term care facilities are currently required to meet *Life Safety Code* construction and sprinkler requirements, this section is duplicative. The Department has repealed this section.

#### *Chapter 205. Physical Plant and Equipment Standards for Long-Term Care Nursing Facilities.*

##### *Buildings and Grounds*

#### *Section 205.3 Building approval.*

This section has been deleted. Its requirements that no new constructions or alterations may be occupied until the Department has authorized occupancy, appear at § 51.5 (relating to building occupancy).

#### *Section 205.4. Building plans.*

This section sets forth the requirements for both preliminary and final architectural plan approval. Only one set of plans will now be required. The Department has incorporated the preliminary plan criteria in former subsection (f), in subsection (e), former subsection (h) which addresses the final plan submission.

Although the PANPHA supports the Department's effort to streamline the physical plant section and to permit providers more flexibility, it suggested that the Department continue to require a preliminary and final plan approval process, as the two-step process was helpful to providers in that it identified many necessary changes needed in the architectural, mechanical and electrical plans. The Department will continue to work with providers and will review plans prior to final submission if requested to do so. The final submission of plans may also be revised if the review finds that there are necessary changes to be made.

The Department adopted a recommendation from PANPHA that the reference to preliminary plans be deleted from former subsection (c), now subsection (b).

#### *Section 205.5. Number of building plans to be prepared.*

This section, which required preliminary plans to be filed in duplicate, has been repealed.

*Section 205.7. Basement or cellar.*

The Department has deleted subsection (a).

*Section 205.8. Ceiling heights.*

Subsections (a) and (b) have been deleted, permitting ceiling heights except in boiler rooms to be 7 feet, 6 inches.

*Section 205.9. Corridors.*

The Department has deleted former subsections (a) and (b) and added a prohibition that corridors may not be used for storage. One commentator asked the Department to clarify the section to permit the temporary storage of equipment while serving residents. The Department has decided not to do so as it does not want to raise issues of what is temporary, or permit the temporary storage of items such as geri-chairs and IV equipment.

*Section 205.14. Locks.*

Although the Department did not propose any substantive changes to this section, the PANPHA requested that protocols for special locking arrangements (SLAs) be included in the regulations. The Department has decided not to issue standard protocols at this time. Instead, it feels that it is important to look at each individual request for an SLA on a case-by-case basis to ensure residents subject to these exceptions are provided with sufficient therapeutic activities and that staffing will not decrease as a result of an exception being issued. However, the Department is accepting IRRC's recommendation that the issue be studied and, if necessary, addressed in future rulemaking.

*Section 205.20. Resident bedrooms.*

This section is amended to require only a flat amount of square footage for single and multibed rooms and to delete additional minimum space requirements within the square footage requirement. For example, a single-bed bedroom must still have a minimum room area clearance of 100 feet, but requirements that there be a minimum of 3 feet between the bed and the adjacent wall and 4 feet between the foot of the bed and the opposing wall or furniture have been deleted.

The Department had received reports that these requirements sometimes mandated bed placements which were contrary to a resident's preference. It wants to provide facilities with the flexibility to arrange rooms in various ways. The PANPHA commended the Department's decision to delete the specific spatial requirements within the minimum square footage.

*Section 205.21. Special care room.*

The PANPHA pointed out that the special care room should be required to have negative pressure and that this should be reflected in § 205.66 (relating to special ventilation requirements for new construction) which sets forth special ventilation requirements. This section has been amended to require ventilation as specified in § 205.66.

*Section 205.24. Dining room.*

The Department has deleted former sections (a) and (b) which addressed the space requirements when a facility combined a dining room and a recreation area. Former subsection (c) is now subsection (a). A new subsection (b) is added which requires tables and space to accommodate wheelchairs. St. Mary's Home of Erie inquired as to whether the Department will make exceptions for facilities which do not provide tables and space to accommodate wheelchairs. As with all requests for exceptions, the

Department will review requests individually under § 51.33 (pertaining to requests for exceptions) which requires the publication of the request as well as the determination in the *Pennsylvania Bulletin*.

The PACAH commented that the requirement that adaptive devices be provided to facilitate the eating of meals was not included in this section, but supported its deletion as it is covered by Federal requirements. This language appeared instead in § 211.6(h) (relating to dietary services) and has been deleted.

*Section 205.25. Kitchen.*

The PACAH suggested that the entire section be deleted as it felt it was overly prescriptive. Most of the requirements for a kitchen have been deleted with the exception of subsection (a), which requires that there be a kitchen, and former subsection (d), now subsection (b), which requires a service pantry on each unit.

*Section 205.27. Lounge and recreation rooms.*

The Department deleted former subsections (b) and (c) and retained the text of subsection (a) with a minor amendment. A comment was received from a nursing home administrator regarding former subsection (a), that lounges should not be required on each floor. The requirement is for lounges on each floor rather than each unit. The Department believes it is important that residents not have to go to another floor, to visit the lounge area, which could require the negotiation of stairs.

*Section 205.31. Storage.*

The Department has retained the text of subsection (a). This provision requires that for each bed there be a minimum of 10 square feet of storage space provided for items, including residents' possessions. A couple comments were received suggesting that former subsections (c) and (d), pertaining to storage of residents belongings and indoor recreation equipment, be deleted. These subsections have been deleted as had been proposed.

*Section 205.33. Utility room.*

The Department has added a new subsection (b), which requires separate bedpan flushers to be provided in soiled workrooms unless a facility has them in residents' bathrooms. Also, a new subsection (c) has been added which requires hand-washing facilities in soiled and clean utility rooms. Former subsections (b) and (c) were deleted.

*Section 205.34. Treatment room or examining room.*

This section has been deleted.

*Section 205.35. Telephone.*

This section has been deleted. The Federal regulations which are being adopted require that residents have access to a telephone.

*Sections 205.36. Bathing facilities, 205.37. Equipment for bathrooms, 205.38. Toilet facilities, 205.39. Toilet room equipment, and 205.40. Lavatory facilities.*

These sections address bathrooms, toilet rooms and lavatories. The Department has deleted requirements as to the size of tubs and shower stalls while retaining the requirement of a minimum clearance around bathtubs in § 205.36(h).

Subsections (c) and (d) were originally proposed to be deleted in § 205.37. The Department received a recommendation from an administrator and a facility that subsection (d)'s requirement of a dressing area next to the shower be deleted. However, in light of past incidents involving resident injury while bathing, the Department

has determined that the entire section should remain and that additional language should be added to subsection (c) to require appropriate supervision of and assistance for residents being bathed. The Department believes subsection (d)'s requirement of a dressing area next to the shower will help to prevent resident falls.

A new subsection (e), which requires that bath water temperature be tested before a resident is bathed, has also been added to this section. One commentator suggested requiring comfortable air temperature as well, but the Department considers this matter to be adequately covered in Federal regulations which require a comfortable environment.

In § 205.38, the Department proposed to delete subsections (b)—(e) while keeping subsection (a) and subsection (f), now designated as subsection (e), which requires a minimum ratio of 1 toilet per 4 residents. After reviewing comments received, the Department decided to keep subsection (b), which requires no less than 3 1/2 feet of space from the front of the toilet to the wall, and the first sentence of subsection (c), which requires at least one toilet on each floor to accommodate residents in wheelchairs. The specific spatial requirements which were previously listed were deleted in response to a question from the PANPHA as to whether or not the dimensions were adequate to accommodate wheelchairs and other assistive devices. The Department also decided to keep former subsection (g), now designated as subsection (f), which requires separate toilets and lavatories for use by visitors.

*Sections 205.61. Heating requirements for existing and new construction, 205.62. Special heating requirements for new construction, 205.63. Plumbing and piping systems required for existing and new construction, and 205.64. Special plumbing and piping systems for new construction.*

The Department has deleted several subsections from these sections which address heating requirements and plumbing and piping systems, since these are for the most part covered in the NFPA 101 Life Safety Code which is already incorporated by reference in § 203.1 (relating to application of the Life Safety Code).

Although § 205.61(a) was proposed to be deleted, the Department has rethought this proposal. It has determined that it should retain a reference to local and State building codes and continue to require that the most stringent apply.

*Section 205.66. Special ventilation requirements for new construction.*

This section sets forth special ventilation requirements for new construction. Amendments have been made to the chart contained in subsection (a). Criteria for the special care room have been added in response to a comment from the PANPHA. The provisions for exam and treatment rooms have been deleted to reflect that former § 205.34, pertaining to exam and treatment rooms, has been deleted.

*Section 205.67. Electric requirements for existing and new construction.*

In response to a comment from the PANPHA, the Department has deleted the reference to lighting which is satisfactory for sewing as well as the reference to 200 footcandles. It has also revised the section to simply require lighting which is satisfactory for resident activities.

*Sections 205.71. Bed and furnishings and 205.72. Furniture.*

Most of the provisions in these two sections have been deleted. However, the Department is retaining the requirement in § 205.71, that a bed be equipped with an appropriately sized mattress, and in § 205.72, that each resident have a bedside drawer or cabinet which can be locked. References to all other types of furniture such as bedside chairs, overbed tables and footstools have been deleted. Much of former § 205.72(j) is retained, however, the former exception to the requirement of a drawer or cabinet in former subsection (j) has been deleted. It is important that every resident have a locked drawer or cabinet in which to store personal possessions.

*Sections 205.73. Sterilization.*

This section, pertaining to sterilization requirements, has been repealed. Sterilization is covered under the general infection control provisions in the Federal regulations at 42 CFR 483.65.

*Section 205.74. Linen.*

This section, which requires a sufficient quantity of linen, was proposed to be deleted in its entirety, as the Federal regulations require that facilities have bedding which is appropriate to the climate. The Department agrees with a comment from the PANPHA that the Federal requirement alone is not sufficient. Therefore, the text of former subsection (a), requiring sufficient linen, has been retained, although the specific requirement of three daily changes of linen per resident has been deleted.

*Section 205.75. Supplies.*

The PACAH suggested that the Department delete this section arguing that it is repetitive of Federal and State regulations. The Department is retaining the section as there is no direct Federal regulation generally requiring adequate supplies.

*Chapter 207. Housekeeping and Maintenance Standards for Long-Term Care Nursing Facilities*

*Sections 207.1. Environmental safety and 207.3. Housekeeping.*

These sections address environmental safety, housekeeping and maintenance. The Department is repealing them in light of the general requirement in § 207.2(a) (relating to administrator's responsibility) that the administrator be responsible for the satisfactory housekeeping and maintenance of the buildings and grounds.

*Section 207.2. Administrator's responsibility.*

The provision in subsection (b) which required a full-time employee to be responsible for housekeeping and maintenance and for the training of personnel has been deleted. The Department has also deleted former subsection (c) which specifically stated that the administrator is responsible for ensuring contract services meet the requirements of the chapter. It was concluded that this did not have to be specifically stated, as the administrator is responsible for ensuring that the licensure requirements are met whether they are performed by employees or contracted out.

*Section 207.4. Ice containers and storage.*

Former subsections (b)—(d) have been deleted. The Department retained the general provision in former subsection (a), which requires the sanitary handling of the ice storage container.

*Section 207.5. Maintenance of equipment and building.*

This section has been repealed. Its provisions are adequately addressed in § 207.2(a) (relating to administrator's responsibility), which provides that the administrator is responsible for the satisfactory housekeeping and maintenance of the facility.

*Chapter 209. Fire Protection and Safety Programs for Long-Term Care Nursing Facilities**Section 209.1. Fire department service.*

In response to a comment from the Department of Aging, the reference to the fire department in this section has been changed to emergency services to reflect the fact that most areas are covered by an emergency notification system.

*Section 209.2. Hazardous areas.*

In response to a comment by the PACAH, this former section, which addressed requirements for pipes and radiators in residents' rooms, has been repealed, as these matters are addressed in § 205.61 (relating to heating requirements for existing and new construction).

*Section 209.3. Smoking.*

The Department proposed to retain only subsection (a), which provides that the facility must have smoking policies, and subsection (b), which requires the facility to take safeguards against smoking related fire hazards. Subsections (c)–(g), which mandate certain smoking precautions, were to appear as guidelines to the regulation.

The PACAH commented that it agreed with the retention of subsection (b), but did not agree with the proposed deletion of subsections (c)–(f). In response to a smoking related incident, as well as the PACAH's comment, the Department concluded that it was important to retain the entire section and to reword subsection (c) to require adequate supervision for smoking residents who require it. Although subsections (e)–(g) are addressed in the Life Safety Code, the Department determined that it was important to also specifically retain them in the licensure regulations.

Both the PACAH and the University of Pennsylvania Medical Center's Institute on Aging, commented on this section. The PACAH urged the Department to address in subsection (a) the rights of smoking residents as well as nonsmoking residents, and to require that the policies be reviewed upon admission. The rights of smoking residents are already addressed in this section. The Department will review any complaints by smoking residents on a case by case basis.

The Institute on Aging and PACAH stated that they would like the Department to address the protection of employees by adopting regulations banning smoking entirely in facilities. The Department believes that this is an issue to be negotiated between the employees and each individual facility, and that a specific disposition should not be dictated by regulation.

*Sections 209.4. Fire extinguishers, 209.5. Emergency lighting system and 209.6. Fire alarm.*

These sections are being repealed, as the matters they address are already addressed in the NFPA 101 Life Safety Code. The Department has moved former § 209.6(b), requiring personnel to be instructed in the use of fire extinguishers, to a new § 209.7(c) (relating to disaster preparedness).

*Section 209.7. Disaster preparedness.*

This section has been revised by deleting former subsection (a) and incorporating its requirement that the facility have a comprehensive written disaster plan into former subsection (b), now subsection (a). Also, the requirement that had been included in § 209.6 (relating to fire alarm), requiring all employees to be instructed in the use of fire extinguishers, is added in subsection (c). The PANPHA asked whether all employees must be instructed in the use of the fire extinguishers. Recognizing the potential for disaster which a fire in a long-term care nursing facility could have, the Department feels it is necessary that all employees be instructed in the use of the fire extinguishers and has clarified § 209.7(c) accordingly.

There are a limited number of types of extinguishers which facilities would use and local fire companies and departments are often willing to assist in this type of instruction.

*Chapter 211. Program Standards for Long-Term Care Nursing Facilities**Section 211.1. Reportable diseases.*

This section which was titled "Infection control," has been amended and is now titled "Reportable diseases." The list of reportable has been updated. A new subsection (c) has been added to require facilities to report cases of resistant bacterial infections such as Methicillin Resistant Staphylococcus Aureus (MRSA), Vancomycin-Resistant Enterococci (VRE) and Vancomycin-Resistant Staphylococcus Epidermidis (VRSE) to the local field office for the Division of Nursing Care Facilities.

Cedarbrook and Lehigh County Home asked whether the Department was requiring the reporting of individual cases of MRSA or only nosocomial outbreaks. HAP, PHCA, PACAH and St. Mary's Home of Erie felt that reporting individual cases was cumbersome and unnecessary, and urged the Department to limit the reporting requirement for MRSA to nosocomial outbreaks. The Department has reconsidered the usefulness of this information reported on an individual basis and has revised the subsection to require reporting of only nosocomial outbreaks of the resistant bacterial infections such as MRSA.

The PANPHA suggested that the Department define "nosocomial outbreak," however, such a determination could vary depending on the size of the facility. The Department instead revised the regulation to require the determination of a nosocomial outbreak for reporting purposes to be made by the facility's medical director.

*Section 211.2. Physician services.*

The Department had proposed to amend this section by retaining subsection (e), which states that the attending physician is responsible for the medical evaluation of a resident and for prescribing appropriate care. The Department had also proposed to retain former subsection (l)(2) and (4). These provisions provided that a medical director's duties include review of incidents and accidents which occur in the facility, and the development of policies delineating physician responsibilities. As proposed, the remainder of the paragraphs of former subsection (l) were deleted in light of the adoption of the Federal regulation on physician services and responsibilities of the medical director at 42 CFR 483.40 and 483.75(i) (relating to physician services; and administration).

Good Shepherd suggested the Department retain former subsection (a), which stated that the facility shall have a physician responsible for the needs of the residents. The Department believes this is adequately addressed in the Federal regulations. The commentator, along with Quest Diagnostics and the PANPHA, agreed with the Department's proposed deletion of former subsections (g) and (h), which prescribed various admission and periodic testing of residents and recognized that physicians now have the flexibility to order only those tests they feel are necessary in individual situations.

The PANPHA questioned the requirement of former subsection (e), now subsection (a), that the physician is responsible for the medical evaluation of the resident, as the physician is only part of an interdisciplinary team. The Department is retaining this requirement. Although the team has input into the resident's care plan, the physician has the final responsibility for the resident's medical evaluation.

The Department proposed to delete former subsection (f) in its entirety. This subsection stated that the facility shall have current medical information at admission, and information on the rehabilitation potential with a summary of the prior course of treatment within 48 hours. The University of Pennsylvania Health System's Institute on Aging commented that 48 hours was too short a time for the facility to assess the resident, but felt the Federal requirement of 30 days was too long for the initial physician visit.

The Federal regulation in 42 CFR 483.20 provides that the facility have physician orders at the time of admission and that an assessment be within 14 days of admission. Therefore, the Department deleted the portion of former subsection (f), now subsection (b), which provided for the summary of the rehabilitation potential and prior course of treatment within 48 hours of admission, and is instead requiring that the medical assessment include this information and be conducted no later than 14 days after admission.

Several commentators were confusing the medical assessment required by this subsection with the MDS's functional assessment. One commentator suggested that the Department define "medical assessment"; however, the Department believes that is within the realm of the practice of medicine and therefore a decision to be made by the practitioner.

The University of Pennsylvania Health System's Institute on Aging, the PMS, the Pennsylvania Medical Directors Association (PDMA) and IRRC objected to the proposed deletion of former subsection (k), which states that a facility must have a medical director licensed in this Commonwealth. The Department agrees that the Federal requirement of a medical director in 42 CFR 483.75(i) would not cover the requirement of a Pennsylvania license. Therefore, the subsection has been retained as new subsection (c).

#### *Section 211.3. Oral and telephone orders.*

Subsection (b) provides that a physician must countersign oral orders for care and treatments within 7 days of receipt of the order. Former § 211.9(h), now subsection (c), provides that physicians countersign oral orders for medications within 48 hours. However, the Department received comments from the PACAH, PHCA and PANPHA that countersignatures for both medications and treatments should be 7 days. St. Mary's Home of Erie noted the problems facilities face with weekend orders. The Department is concerned that there is more of a likeli-

hood that a mistake could be made with oral orders for medications than for treatments, as many medications sound similar and there could be mistakes regarding the dosage. Therefore, the 48 hour time limit is kept for countersignatures to medication orders. In light of the fact that facsimile transmissions are permitted, the Department believes that the 48 hour time limit is not unreasonable and best protects the health and safety of residents.

Both the PNA and IRRC commented that subsection (a) should be amended to reflect that only registered nurses and not licensed nurses may take oral orders. The subsection has been amended to reflect this. IRRC suggested that a section be added providing that licensed practical nurses may accept oral orders only in emergency situations under 49 Pa. Code § 21.145(b) (relating to functions of the LPN). As this is already the scope of practice set forth in the nurse board's regulations, the Department does not feel it is necessary to repeat the regulation here.

In response to a suggestion by the PANPHA, the Department moved former § 211.9(f) (relating to pharmaceutical services) with minor revisions to this section and redesignated it as subsection (c).

Subsections (d) and (e) have been added. They provide that initial written orders and countersignatures may be by facsimile transmission. They also require facilities to have policies and protocols for the taking and transcribing of oral orders. Subsection (d) provides that oral orders shall only be accepted in situations where it is "impractical" for the practitioner to issue a written order. Although the Department recognizes the subjective nature of the term "impractical," subsection (e) requires facilities to identify, through written policies, those types of situations where oral orders would be acceptable. Therefore, the facility will be required to have written policies to follow which the Department will review as part of the survey process.

#### *Section 211.4. Procedure in event of death.*

Subsections (a)—(c) are deleted. These subsections required a facility to notify a resident's treating physician upon the resident's death and to document the death in the resident's medical record. They also required the physician to complete and sign the death certificate under Article V of the Vital Statistics Law of 1953 (35 P. S. §§ 450.501—450.506). The Department does not believe it is necessary to include these items in licensure regulations, as they reflect standard protocol and existing law.

#### *Section 211.5. Clinical records.*

The Department has changed the term "medical records" to "clinical records" to be consistent with Federal terminology. It has also deleted former subsections (b), (d)—(g) and (o). Subsection (o) outlined what had to be included in nurses' notes. It is not necessary to include that information in a specific licensure regulation as the information should be included in nurses' notes using standard protocol. The other subsections, which addressed resident requests for copies of records and maintenance of medical record facilities, are adequately covered by Federal regulations in 42 CFR 483.75(l).

The Department proposed to delete the term "medical record practitioner" and amend former subsection (n), now subsection (i), to require that the supervisory responsibility for the medical record service be performed by "personnel competent to carry out the functions of the medical record service." The PACAH agreed with the proposed deletion of the term and related requirements,

as it felt the requirement added an unnecessary expense. However, IRRC, the PHCA, PANPHA and two accredited record technicians (ARTs), urged the Department to expressly set forth basic requirements for qualifications of medical records personnel. The Department has amended subsection (i) to require the medical records service to be assigned to a medical records practitioner and it has included a definition of "medical records practitioner" in § 201.3 (relating to definitions).

Several commentators, including the PANPHA and PHCA, expressed concern that the proposed language prohibited the use of medical records consultants. Therefore, the Department has added specific language to subsection (i) which permits a facility to contract with a medical records practitioner to act as a consultant, but that still requires overall supervisory responsibility of the clinical record service be by a medical records practitioner. The facility which uses a consultant for this purpose must ensure that the consultant devotes a sufficient number of hours to adequately supervise the clinical record service.

*Section 211.6. Dietary services.*

The Department has eliminated former subsections (a), (b), (e)—(j), (l), (n)—(q) and (s). These subsections address adequate staffing, frequency of meals, substitutions and sanitary conditions and are covered by the Federal regulations in 42 CFR 483.35. The remaining provisions have been recodified in subsections (a)—(f).

In response to a comment by the PHCA that hand washing does not guarantee a food service worker will be free of communicable diseases, the Department deleted language in subsection (f) which suggested that result. The subsection now simply requires that dietary personnel practice hygienic food handling techniques.

*Section 211.7. Physician assistants and certified registered nurse practitioners.*

The last sentence in subsection (a), which stated that physician assistants and certified registered nurse practitioners (CRNPs) could not be used in lieu of physicians, was deleted as it referenced former § 211.2(b) and (c) (relating medical services), which was deleted as well. The PACAH agreed with the section as written. The University of Pennsylvania Health System's Institute on Aging argued that the section should reflect the fact that CRNPs may prescribe drugs. As subsection (a) states that CRNPs may be utilized in accordance with the requirements of their licensing statute and regulations governing their scope of practice, the Department does not believe it is necessary to specifically grant them the right to prescribe in facility licensure regulations.

*Section 211.8. Restraints.*

The Department added drug restraints to subsection (d), which requires a physician's order for the use of a restraint, and deleted former subsection (f), which did not require an order for a geriatric chair. Both amendments are consistent with Federal regulations. New subsection (f) requires an interdisciplinary team to reevaluate the need for all restraints ordered by physicians. As proposed, subsection (e) would have required the physician to review the necessity for the continued restraint every 30 days. In response to a comment by the PANPHA, the Department has revised the section by deleting that requirement in subsection (e) and adding a requirement to subsection (f) that the interdisciplinary team shall reevaluate the use of all restraints every 30 days or sooner if necessary. This section ties into § 211.11(b) (relating to resident care plan), which requires the indi-

vidual charged with coordinating the resident care plan to be part of the interdisciplinary team. The review may be sooner than every 30 days based on the interdisciplinary team's assessment of the resident.

Both Good Shepherd and Lehigh County Home commented that the Federal requirement of quarterly reports by the interdisciplinary team would be sufficient. The Department wants to encourage restraint reduction. It believes that a more frequent periodic review by the interdisciplinary team will assist facilities with this initiative.

St Mary's Home of Erie questioned whether the physician would have to attend the interdisciplinary team meeting. It is not mandatory that the physician attend the meetings, however, as an essential member of the team, the physician must have input into and review the team report and any recommendations therein to discontinue restraint usage.

The Philadelphia Geriatric Center questioned what the Department meant by a chemical restraint in subsection (d) as proposed. The Department has included a revised definition that specifically includes chemical restraints in § 201.3 (relating to definitions), and deleted the words "physical or chemical" in subsection (d). Instead, it included the word "drug" along with the list of physical restraints which require a physician's order. One commentator suggested the Department clarify that the use of a drug be for purposes of restraint in subsection (d). The Department has not done so as it believes that the wording is clear.

Lehigh County Home also commented that the pharmacist rather than the interdisciplinary team was the expert on chemical restraints and should review these orders instead of the interdisciplinary team. The Department believes that the pharmacist should have input in these situations and should either consult with or be a part of the interdisciplinary team.

A nursing home administrator suggested that the regulations permit the use of side rails and not consider them a restraint, because families often request them. The Department recognizes that families may request side rails, but the Department views side rails as a potential restraint and has not exempted them in these regulations. Facilities need to communicate to families the potential effect that the use of side rails or any restraint may have on the resident. The HCFA considers side rails to be a restraint as well.

*Section 211.9. Pharmacy services.*

The Department has eliminated the provisions in subsection (a) which provided that the facility have written policies and procedures for ensuring the identity of the resident and recording of medication administration. These requirements are covered by the Federal regulation in 42 CFR 483.60(a), which states that the facility must assure accurate administration of all drugs. PANPHA suggested that subsection (a) (1) and (2), which requires the facility to ensure the identity of the resident prior to administering the medication and to record the dosage and time given, be retained as a safeguard. The Department rejected this recommendation. It believes that this is standard protocol and covered by the broad general wording of the Federal regulation. The Department incorporated a suggestion from HAP that the words "regarding medication administration" be added to former subsection (a)(3), now subsection (a)(1).

That part of subsection (e) which required a 30 or 60 day review of physician's orders for intermediate or

skilled care residents has been deleted to reflect the elimination of the references to skilled and intermediate care. Former subsections (f) and (g), which addressed automatic stop orders and the recording of any medications not given, as well as former subsection (i), which specified the information which needed to appear on a prescription container, have also been deleted as the Department believes these matters are adequately covered by the Federal regulations which address labeling requirements, require the accurate "acquiring, receiving, dispensing, and administering" of all pharmaceuticals, and specifically address labeling of drugs.

Former subsection (h), which addressed oral orders for medications, has been moved to § 211.3 (relating to oral and telephone orders) as suggested by the PANPHA.

The Department added the provisions of provider Bulletin No. 53, issued in January 1998, to former subsection (j), now subsection (f), which permits a resident to use an outside pharmacy as long as the pharmacy complies with applicable regulations and facility policies. Subsections (f)(1)–(4), which address the facility's responsibilities when residents choose outside pharmacies, have been added to the proposed language.

The Department proposed to delete former subsection (k), now subsection (g), which addressed the labeling and handling of over-the-counter drugs. The Department agrees with a suggestion from Good Shephard that this subsection be retained.

The Department has revised former subsection (m), now subsection (i), to require the return of outdated or deteriorated medications to the issuing pharmacy on at least a quarterly basis. St. Mary's Home of Erie suggested the requirement that these drugs be returned to the issuing pharmacy be eliminated. However, the Department feels this is the proper means of disposing and accounting for these medications.

Former subsection (o), which required the facility to have policies regarding the pharmacist's duties and the pharmaceutical committee's role, has been deleted as well, since the Federal regulation addresses service consultation and the role of the pharmacist in the facility.

Former subsection (p), which addressed experimental use of drugs, has been deleted as the subsection simply referenced a Federal regulation addressing experimental use of drugs. Former subsection (q) has been deleted, as its requirements for storage of drugs and biologicals is dealt with in 42 CFR 483.60(e).

The Department has amended former subsection (r), now subsection (k), which outlined the duties of the pharmaceutical services committee. The subsection provides that the oversight of the pharmaceutical services in the facility is the responsibility of the quality assurance committee. Good Shephard and the Pennsylvania Long-Term Pharmacists Coalition were concerned that this amendment could be interpreted as eliminating the pharmacist's role in reviewing drug regimens and the pharmacy committee's role in the oversight of pharmaceutical services in the facility. This was not the Department's intent. Facilities are encouraged to appoint a pharmacist to the quality assurance committee. New language has been added to subsection (k) which requires that the quality assurance committee seek input from the pharmacist in developing written procedures for administration and control of drugs, and in overseeing the pharmaceutical services within the facility. Facilities may continue to operate pharmaceutical services committees which may function separately or as an integral part of the quality

assurance committee. Further, the Federal language in 42 CFR 483.60(c) specifically provides that each resident's drug regimen is to be reviewed monthly by a licensed pharmacist.

*Section 211.10. Resident care policies and 211.11. Resident care plan.*

The Department has deleted former subsections (a), (b) and (d)–(f) of § 211.10, which required a facility to have resident care policies and former subsections (d) and (e) of § 211.11, which provided that resident care plans are to be interdisciplinary and are to set goals to be utilized by the care team. Federal regulations in 42 CFR 483.20(d) address the requirements of resident care plans and the role of the interdisciplinary care team. The portion of § 211.10(c) which addressed what specifics must be included in resident care policies has been deleted as well.

The Department has revised subsections (a)–(c) of § 211.11. Subsection (a) had required a registered nurse (RN) to develop the care plan. The amended language does not limit facilities to using an RN, but states that the facility shall designate an individual to be responsible for the coordination and implementation of the care plan. Subsection (b) requires the individual to be a member of the interdisciplinary team.

The PNA objected to the proposed amendment to subsection (a) and urged the Department to retain the RN requirement. The Department felt that the facility should still have the flexibility to use an individual other than an RN as an overall coordinator, but added specific language to subsection (c) which provides that the RN is responsible for developing the nursing assessment portion of the resident care plan. This is consistent with 42 CFR 483.20(c)(1)(ii), which states that an RN is responsible for signing and certifying the information on the resident assessment instrument used to develop the care plan.

Although the Department proposed to delete former subsection (g), which provides that the resident shall participate in the development and review of the resident's care plan, it has reconsidered the matter and is retaining the subsection as subsection (e).

*Section 211.12. Nursing services.*

The Department has amended subsection (a), which required nursing services to meet the needs of residents, to reflect the Federal language in 42 CFR 483.30(a) which requires nursing services to meet the needs of residents on a 24-hour basis. The PNA suggested that nursing care be under the direction of an RN at all times. Although new subsection (f)(1) permits a facility to use an LPN on the night tour of duty in facilities having a census of 59 or less, subsection (f)(2) requires a registered nurse to be on call and proximate to the facility in such a situation.

Former subsection (d), which required that if a director of nursing has institutional responsibilities other than nursing an RN shall serve as an assistant, has been deleted. The PACAH objected to the proposed deletion as it feels an assistant is necessary to ensure that someone will be serving as a director of nursing at all times. The Department believes that the requirement of a full time director of nursing is clearly set forth in subsection (b) and implied by the other provisions of this section which describe the director of nursing's responsibility and accountability. Facilities may hire registered nurses to assist the director of nursing if necessary.

Former subsection (g), now subsection (e), required that a facility designate a "charge nurse" to supervise all nursing activities. In response to a comment from a

facility that the term "charge nurse" should be "supervisor," the Department has changed the wording to state that the facility shall designate an RN to oversee nursing activities on all tours of duty. The PHCA questioned whether this would still permit the use of an LPN as charge nurse on the night tour of duty in facilities of 59 or less. This is still permitted as long as the RN is available as set forth in subsection (f)(2).

Former subsection (e), now subsection (d), is amended to delete former requirements that the director of nursing be responsible for nursing service objectives, job descriptions, scheduling rounds and staff development. The Department did not feel it had to mandate that these particular assignments be performed by the director of nursing only. The director of nursing is still responsible for standards of accepted nursing practice, written job descriptions for nursing personnel, coordination of nursing services with other resident services, recommendations for staffing levels and general supervision of nursing services. The PNA's comments reflect that it agrees with continuing to designate these delineated duties being assigned to the director of nursing.

Former subsections (f) and (i) have been deleted. They addressed supervision of nursing services and minimum staffing ratios through July 1, 1988.

The Department has amended the general number of nursing hours in former subsection (n), now subsection (i), to eliminate the distinctions between skilled and intermediate care. By statement of policy dated February 17, 1996, the Department set the requirement at 2.3 hours of nursing care per resident in a 24-hour period. This subsection implements this statement of policy as revised. This is a minimum requirement. Any quality of care deficiencies will be cited even if facilities meet the minimum staffing ratio.

Many commentators, including IRRC, Senator Kukovich and former Senator Williams, Representatives Casorio and Veon, PNA, PANPHA, the Pennsylvania AFL/CIO, United Church of Christ Homes, the Lehigh County Home, St. Mary's Home of Erie, SEIU and the Pennsylvania Health Law Project, expressed their belief that the 2.3 minimum number of hours was too low. The commentators felt that acuity levels have been rising in long-term care nursing facilities as individuals are spending less time in acute care settings before being released to a nursing home and that the minimum nurse staffing levels should reflect this. The majority of the stakeholders who commented on this provision argued that the level should be 2.7. The Department has reconsidered the issue and has revised the minimum nursing staff level to 2.7 hours of direct care for each resident.

The PACAH and the Pennsylvania AFL/CIO oppose any flat minimum rate for nursing hours. Although the Department recognizes that a flat minimum rate does not guarantee positive outcomes, it believes that it is important to set a minimum staffing level which is simply a floor that a facility may not go below. Obviously, quality is determined by many factors, but a minimum staffing level can not hurt facilities which are staffed at or above that level. The minimum level will likely help facilities which are not meeting that staffing level to avoid deficiency situations which may result from insufficient staffing.

One commentator suggested that the term "nursing unit" in new subsection (k), which requires weekly time schedules to reflect personnel by unit, be defined. The Department is reluctant to do so. It chooses to provide

licensees with the flexibility to determine what constitutes a nursing unit for their own individual facility.

Subsections (r) and (s) are deleted, as nutritional needs and restorative care are addressed in the comprehensive resident assessments required by the Federal regulations in 42 CFR 483.25(d), (i) and (j).

#### *Section 211.13. Rehabilitative services.*

The Department has repealed this section, as this subject matter is covered by the Federal regulation in 42 CFR 483.45.

#### *Section 211.14. Diagnostic services.*

This section is deleted, as the subject is addressed in the Federal regulation in 42 CFR 483.75(j) and (k).

#### *Section 211.15. Dental services.*

The Department is deleting subsections (b)—(d) from this section as the subject matter addressed in those subsections are covered in the Federal regulation in 42 CFR 483.55. Subsection (a) is amended to require that facilities assist residents in obtaining routine and emergency dental care.

#### *Section 211.16. Social services.*

The Department had proposed to delete this section as the subject matter is covered in the Federal regulation in 42 CFR 483.15(g). However, the Federal requirement mandates only that social services be provided and that a social worker be employed by facilities with a census of more than 120 residents. The Department deleted the majority of the section, but added language that requires facilities with 120 beds or less that do not employ a social worker to obtain consultation with a qualified social worker.

#### *Section 211.17. Pet therapy.*

The Department deleted all subsections from this section addressing resident activities, except for former subsection (f) which sets forth requirements for facilities using pet therapy. Resident activities are addressed in the Federal regulation in 42 CFR 483.15(f). In response to a comment from St. Mary's Home of Erie that dining rooms are sometimes used as all purpose rooms and animals should be permitted there, the Department revised subsection (l) to prohibit animals in the dining room only when meals are being served.

#### *Fiscal Impact*

The final rulemaking incorporates most of the Federal certification regulations for long-term care nursing facilities. It retains only those State licensure requirements which are either not addressed by the Federal regulations or are stricter than the Federal standards but important to keep to ensure high quality of care for the citizens of this Commonwealth. The final rulemaking will not impose additional costs on the great majority of long-term care nursing facilities, which are already certified to participate in the Federal Medicare Program and therefore already need to comply with the Federal regulations that have been incorporated by reference.

The few facilities which do not participate in Medicare or MA may incur minor costs in heightened educational and training requirements for nurse aides. The adoption of 2.7 hours of direct nursing care per resident for long-term care nursing facilities should not impose an additional financial burden on these providers. The Department's statistics indicate that currently almost 90% of long-term care providers either meet or exceed this standard.



The final-form regulations eliminate the requirement that facilities file two sets of construction plans for new construction or renovation and, instead, require only one set of plans to be filed. This will save facilities time and money. Although the final-form regulations keep a basic square footage requirement for rooms, they remove many of the specific spacial dimension requirements inside those rooms. This will permit flexibility in design for new construction or renovations and thereby result in potential savings for providers.

#### *Paperwork Requirements*

The final-form regulations will not have a significant impact on existing reporting, recordkeeping or other paperwork requirements. This is because the Department is simply incorporating various Federal requirements that the great majority of long-term nursing care providers already satisfy.

#### *Effective Date/Sunset Date*

The final-form regulations will become effective upon publication in the *Pennsylvania Bulletin*.

#### *Statutory Authority*

Section 803 of the act (35 P. S. § 448.803), authorizes the Department to promulgate regulations necessary to carry out the purposes and provisions of the act. Section 801.1 of the act provides that the purpose of the act is to promote the public health and welfare through the establishment of regulations setting minimum standards for the operation of health care facilities. The same section provides that the minimum standards are to assure safe, adequate and efficient facilities and services and are also to promote the health, safety and adequate care of patients or residents of these facilities.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 19, 1997, the Department submitted a copy of notice of proposed rulemaking, published at 27 Pa. B. 3609 to IRRC and the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In compliance with section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), the Department submitted a copy of the final-form regulations to IRRC and the Committees on March 30, 1999. In addition, the Department provided IRRC and the Committees with information pertaining to commentators and a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

In preparing these final-form regulations the Department has considered all comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House and Senate Committees on April 19, 1999. IRRC met on April 22, 1999, and approved the regulation in accordance with section 5.1(d) of the Regulatory Review Act. The Office of Attorney General approved these regulations for form and legality on July 12, 1999.

#### *Contact Person*

Questions regarding these final-form regulations may be submitted to: William A. Bordner, Director, Department of Health, Division of Nursing Care Facilities, P. O. Box 90, Harrisburg, PA 17108-0090, (717) 787-1816. Persons with disabilities who would like to obtain this document in an alternative format (that is, large print, audio tape, braille) should contact James T. Steele, Jr., so that the necessary arrangements can be made.

#### *Findings*

The Department finds that:

(1) Public notice of intention to adopt the regulations adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 760, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The adoption of the final-form regulations in the manner provided by this order is necessary and appropriate for the administration of the authorizing statute.

#### *Order*

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department at 28 Pa. Code Chapters 201, 203, 205, 207, 209 and 211, are amended by amending §§ 201.1—201.3, 201.12—201.15, 201.18—201.20, 201.22—201.26, 201.29—201.31, 203.1, 205.1, 205.2, 205.4, 205.6—205.10, 205.12—205.14, 205.16, 205.17, 205.19—205.28, 205.31—205.33, 205.36—205.40, 205.61—205.64, 205.66—205.68, 205.71, 205.72, 205.74, 205.75, 207.2, 207.4, 209.1, 209.3, 209.7, 209.8, 211.1—211.12 and 211.15—211.17; and by deleting §§ 201.16, 201.28, 201.32, 203.2, 205.3, 205.5, 205.11, 205.15, 205.18, 205.29, 205.34, 205.35, 205.65, 205.73, 207.1, 207.3, 207.5, 209.2, 209.4—209.6, 211.13 and 211.14, to read as set forth in Annex A.

(*Editor's Note:* Sections §§ 201.11, 201.17 and 201.27 have not been amended but are being printed in Annex A for clarity. The proposed amendments to Chapters 551, 553, 555, 557, 559, 561, 563, 565, 567, 569, 571 and 573 published at 27 Pa.B. 3609 remain outstanding.)

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

(c) The Secretary of Health shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for their review and action as required by law.

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

(e) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ROBERT S. ZIMMERMAN, Jr.,  
*Secretary*

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 2542 (May 8, 1999).)

**Fiscal Note:** 10-149A. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART IV. HEALTH FACILITIES

Subpart C. LONG TERM CARE FACILITIES

CHAPTER 201. APPLICABILITY, DEFINITIONS  
OWNERSHIP AND GENERAL OPERATION OF  
LONG TERM CARE NURSING FACILITIES

GENERAL PROVISIONS

Sec.	
201.1.	Applicability.
201.2.	Requirements.
201.3.	Definitions.

OWNERSHIP AND MANAGEMENT

201.11.	Types of ownership.
201.12.	Application for license.
201.13.	Issuance of license.
201.14.	Responsibility of licensee.
201.15.	Restrictions on license.
201.16.	(Reserved).
201.17.	Location.
201.18.	Management.
201.19.	Personnel policies and procedures.
201.20.	Staff development.
201.21.	Use of outside resources.
201.22.	Prevention, control and surveillance of tuberculosis (TB).
201.23.	Closure of facility.
201.24.	Admission policy.
201.25.	Discharge policy.
201.26.	Power of attorney.
201.27.	Advertisement of special services.
201.28.	(Reserved).
201.29.	Resident rights.
201.30.	Access requirements.
201.31.	Transfer agreement.
201.32.	(Reserved).

GENERAL PROVISIONS

§ 201.1. Applicability

This subpart applies to profit and nonprofit long-term care nursing facilities which provide either skilled nursing care or intermediate nursing care, or both, within the facilities under the act.

§ 201.2. Requirements.

The Department incorporates by reference Subpart B of the Federal requirements for long-term care facilities, 42 CFR 483.1—483.75 (relating to requirements for long-term care facilities) revised as of October 1, 1998, as licensing regulations for long-term care nursing facilities with the exception of the following sections and subsections:

- (1) Section 483.1 (relating to basis and scope).
- (2) Section 483.5 (relating to definitions).
- (3) Section 483.10(b)(10), (c)(7) and (8) and (o) (relating to level A requirement: Resident rights).
- (4) Section 483.12(a)(1), (b), (c)(1) and (d)(1) and (3) (relating to admission, transfer and discharge rights).
- (5) Section 483.20(j) and (m) (relating to resident assessment).
- (6) Section 483.30(b)—(d) (relating to nursing services).
- (7) Section 483.40(e) and (f) (relating to physician services).
- (8) Section 483.55 (relating to dental services).
- (9) Section 483.70(d)(1)(v) and (3) (relating to physical environment).
- (10) Section 483.75(e)(1), (h) and (p) (relating to administration).

§ 201.3. Definitions.

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

*Abuse*—The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm or pain or mental anguish, or deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental and psychosocial well-being. This presumes that instances of abuse of all residents, even those in a coma, cause physical harm, or pain or mental anguish. The term includes the following:

(i) *Verbal abuse*—Any use of oral, written or gestured language that willfully includes disparaging and derogatory terms to residents or their families, or within their hearing distance, regardless of their age, ability to comprehend or disability. Examples of verbal abuse include:

(A) Threats of harm.

(B) Saying things to frighten a resident, such as telling a resident that the resident will never be able to see his family again.

(ii) *Sexual abuse*—Includes sexual harassment, sexual coercion or sexual assault.

(iii) *Physical abuse*—Includes hitting, slapping, pinching and kicking. The term also includes controlling behavior through corporal punishment.

(iv) *Mental abuse*—Includes humiliation, harassment, threats of punishment or deprivation.

(v) *Involuntary seclusion*—Separation of a resident from other residents or from his room or confinement to his room (with/without roommates) against the resident's will, or the will of the resident's legal representative. Emergency or short term monitored separation from other residents will not be considered involuntary seclusion and may be permitted if used for a limited period of time as a therapeutic intervention to reduce agitation until professional staff can develop a plan of care to meet the resident's needs.

(vi) *Neglect*—The deprivation by a caretaker of goods or services which are necessary to maintain physical or mental health.

*Act*—The Health Care Facilities Act (35 P. S. §§ 448.101—448.904).

*Administration of drugs*—The giving of a dose of medication to a patient as a result of an order of a practitioner licensed by the Commonwealth to prescribe drugs.

*Administrator*—An individual who is charged with the general administration of a facility, whether or not the individual has an ownership interest in the facility and whether or not the individual's functions and duties are shared with one or more other individuals. The administrator shall be currently licensed and registered by the Department of State under the Nursing Home Administrators License Act (63 P. S. §§ 1101—1114.2).

*Alteration*—An addition, modification or modernization in the structure or usage of a building or section thereof or change in the services rendered.

*Ambulatory patient*—An individual who is physically and mentally capable of getting in and out of bed and walking a normal path to safety in a reasonable period of time, including the ascent and descent of stairs without the aid of another person.

*Ambulatory resident*—An individual who is physically and mentally capable of getting in and out of bed and walking a normal path to safety in a reasonable period of time, including the ascent and descent of stairs without the aid of another person.

*Audiologist*—A person licensed as an audiologist by the Pennsylvania State Board of Examiners in Speech-Language and Hearing, or excluded from the requirement of licensure under the Speech-Language and Hearing Licensure Act (63 P. S. §§ 1701—1719).

*Authorized person to administer drugs and medications*—Persons qualified to administer drugs and medications in facilities are as follows:

(i) Physicians and dentists who are currently licensed by the Bureau of Professional and Occupational Affairs, Department of State.

(ii) Registered nurses who are currently licensed by the Bureau of Professional and Occupational Affairs, Department of State.

(iii) Practical nurses who have successfully passed the State Board of Nursing examination.

(iv) Practical nurses licensed by waiver in this Commonwealth who have successfully passed the United States Public Health Service Proficiency Examination.

(v) Practical nurses licensed by waiver in this Commonwealth who have successfully passed a medication course approved by the State Board of Nursing.

(vi) Student nurses of approved nursing programs who are functioning under the direct supervision of a member of the school faculty who is present in the facility.

(vii) Recent graduates of approved nursing programs who possess valid temporary practice permits and who are functioning under the direct supervision of a professional nurse who is present in the facility. The permits shall expire if the holders of the permits fail the licensing examinations.

(viii) Physician assistants and registered nurse practitioners who are certified by the Bureau of Professional and Occupational Affairs.

*Basement*—A story or floor level below the main or street floor. If, due to grade differences, there are two levels qualifying as a street floor, a basement is a floor below the lower of the two street floors.

*CRNP—Certified Registered Nurse Practitioner*—A registered nurse licensed in this Commonwealth who is certified by the State Board of Nursing and the State Board of Medicine as a CRNP, under the Professional Nursing Law (63 P. S. §§ 211—225) and the Medical Practice Act of 1985 (63 P. S. §§ 422.1—422.45).

*Charge nurse*—A person designated by the facility who is experienced in nursing service administration and supervision and in areas such as rehabilitative or geriatric nursing or who acquires the preparation through formal staff development programs and who is licensed by the Commonwealth as one of the following:

(i) A registered nurse.

(ii) A registered nurse licensed by another state as a registered nurse and who has applied for endorsement from the State Board of Nursing and has received written notice that the application has been received by the State Board of Nursing. This subparagraph applies for 1 year, or until Commonwealth licensure is completed, whichever period is shorter.

(iii) A practical nurse who is a graduate of a Commonwealth recognized school of practical nursing or who has 2 years of appropriate experience following licensure by waiver as a practical nurse.

(iv) A practical nurse shall be designated by the facility as a charge nurse only on the night tour of duty in a facility with a census of 59 or less.

*Clinical laboratory*—A place, establishment or institution, organized and operated primarily for the performance of bacteriological, biochemical, hematological, microscopical, serological or parasitological or other tests by the practical application of one or more of the fundamental sciences to material originating from the human body, by the use of specialized apparatus, equipment and methods, for the purpose of obtaining scientific data which may be used as an aid to ascertain the state of health. The tests are conducted using specialized apparatus, equipment and methods, for the purpose of obtaining scientific data which may be used as an aid to ascertain the state of health.

*Clinical records*—Facility records, whether or not automated, pertaining to a resident, including medical records.

*Controlled substance*—A drug, substance or immediate precursor included in Schedules I—V of the Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144).

*Corridor*—A passageway, hallway or other common avenue used by patients and personnel to travel between buildings or sections of the same building to reach a common exit or service area. The service area includes, but is not limited to, living room, kitchen, bathroom, therapy rooms and storage areas not immediately adjoining the patient's sleeping quarters.

*Department*—The Department of Health of the Commonwealth.

*Dietetic service supervisor*—A person who meets one of the following requirements:

(i) Is a dietitian.

(ii) Is a graduate of a dietetic technician or dietetic assistant training program, correspondence course or classroom course approved by the American Dietetic Association.

(iii) Is a member of the American Dietetic Association or the Dietary Managers Association.

(iv) Is a graduate of a State approved course that provided 90 or more hours of classroom instruction in food service supervision and has experience as a supervisor in a health care institution with consultation from a dietitian.

(v) Has training and experience in food service supervision and management in a military service equivalent in content to the program in subparagraph (iv).

(vi) Has a baccalaureate degree from a State approved or accredited college or university and has at least 12 credit hours in food service, nutrition or diet therapy and at least 1 year of supervisory experience in the dietary department of a health care facility.

*Dietitian*—A person who is either:

(i) Registered by the Commission on Dietetic Registration of the American Dietetic Association.

(ii) Eligible for registration and who has a minimum of a bachelor's degree from a United States regionally

accredited college or university and has completed the American Dietetic Association (ADA) approved dietetic course requirements and the requisite number of hours of ADA approved supervised practice.

*Director of nursing services*—A registered nurse who is licensed and eligible to practice in this Commonwealth and has 1 year of experience or education in nursing service administration and supervision, as well as additional education or experience in areas such as rehabilitative or geriatric nursing, and participates annually in continuing nursing education. The director of nursing services is responsible for the organization, supervision and administration of the total nursing service program in the facility.

*Drug administration*—An act in which a single dose of a prescribed drug or biological is given to a patient by an authorized person in accordance with statutes and regulations governing the act. The complete act of administration entails removing an individual dose from a previously dispensed, properly labeled container, verifying it with the physician's orders, giving the individual dose to the proper patient and promptly recording the time and dose given.

*Drug dispensing*—An act by a practitioner or a person who is licensed in this Commonwealth to dispense drugs under the Pharmacy Act (63 P. S. §§ 390-1—390-13) entailing the interpretation of an order for a drug or biological and, under that order, the proper selecting, measuring, labeling, packaging and issuance of the drug or biological for a patient or for a service unit of the facility.

*Drug or medication*—A substance meeting one of the following qualifications:

- (i) Is recognized in the official United States Pharmacopeia, or official National Formulary or a supplement to either of them.
- (ii) Is intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals.
- (iii) Is other than food and intended to affect the structure or a function of the human body or other animal body.
- (iv) Is intended for use as a component of an article specified in subparagraph (i), (ii) or (iii), but not including devices or their components, parts or accessories.

*Elopement*—When a resident leaves the facility without the facility staff being aware that the resident has done so.

*Existing facility*—A long-term care nursing facility or section thereof which was constructed and licensed as such on or before July 24, 1999.

*Exit or exitway*—A required means of direct egress in either a horizontal or vertical direction leading to the exterior grade level.

*Facility*—A licensed long-term care nursing facility as defined in Chapter 8 of the act (35 P. S. §§ 448.801—448.821).

*Full-time*—A minimum of a 35-hour work week involving a minimum of 4 days per week.

*Interdisciplinary team*—A team including the resident's attending physician, a registered nurse with responsibility for the resident and other appropriate staff in disciplines as determined by the resident's needs, and the resident. If the resident is cognitively impaired and

unable to fully participate, the team shall include to the extent practicable, the participation of the resident, and shall also include the resident's family, a responsible person or the resident's legal representative.

*Licensed practical nurse*—A practical nurse licensed to practice under the Practical Nurse Law (63 P. S. §§ 651—667.8).

*Licensee*—The individual, partnership, association or corporate entity including a public agency or religious or fraternal or philanthropic organization authorized to operate a licensed facility.

*Locked restraints*—A mechanical apparatus or device employed to restrict voluntary movement of a person not removable by the person. The term includes shackles, straight jackets and cage-like enclosures and other similar devices.

*Medical record practitioner*—A person who is certified or eligible for certification as a registered records administrator (RRA) or a health information technologist/accredited record technician by the American Health Information Management Association (AHIMA) and who has the number of continuing education credits required for each designation by the AHIMA.

*NFPA*—National Fire Protection Association.

*Nonambulatory resident*—A resident who is not physically or mentally capable of getting in and out of bed and walking a normal path to safety in a reasonable period of time, including the ascent and descent of stairs, without the aid of another person.

*Nonproprietary drug*—A drug containing a quantity of controlled substance or drug requiring a prescription, a drug containing biologicals or substances of glandular origin—except intestinal-enzymes and liver products—and drugs which are administered parenterally.

*Nurse aide*—An individual providing nursing or nursing-related services to residents in a facility who:

- (i) Does not have a license to practice professional or practical nursing in this Commonwealth.
- (ii) Does not volunteer services for no pay.
- (iii) Has met the requisite training and competency evaluation requirements as defined in 42 CFR 483.75 (relating to administration).
- (iv) Appears on the Commonwealth's Nurse Aide Registry.
- (v) Has no substantiated findings of abuse, neglect or misappropriation of resident property recorded in the Nurse Aide Registry.

*Nursing care*—A planned program to meet the physical and emotional needs of the patient. The term includes procedures that require nursing skills and techniques applied by properly trained personnel.

*Nursing service personnel*—Registered nurses, licensed practical nurses and nurse aides.

*Occupational therapist*—A person licensed as an occupational therapist by the State Board of Occupational Therapy Education and Licensure.

*Occupational therapy assistant*—A person licensed as an occupational therapy assistant by the State Board of Occupational Therapy Education and Licensure.

*Patient activities coordinator*—A person who meets one of the following requirements:

- (i) Is a qualified therapeutic recreation specialist.

(ii) Has 2 years of experience in a social or recreational program, within the last 5 years, 1 year of which was full-time in a patient activities program in a health care setting.

**Pharmacist**—A person licensed by the State Board of Pharmacy to engage in the practice of pharmacy.

**Pharmacy**—A place properly licensed by the State Board of Pharmacy where the practice of pharmacy is conducted.

**Physical therapist**—A person licensed as a physical therapist by the State Board of Physical Therapy.

**Physical therapy assistant**—A person registered as a physical therapy assistant by the State Board of Physical Therapy.

**Physician assistant**—An individual certified as a physician assistant by the State Board of Medicine under the Medical Practice Act of 1985 (63 P. S. §§ 422.1—422.45), or by the State Board of Osteopathic Medical Examiners under the Osteopathic Medical Practice Act (63 P. S. §§ 271.1—271.18).

**Practice of pharmacy**—The practice of the profession concerned with the art and science of the evaluation of prescription orders and the preparing, compounding and dispensing of drugs and devices, whether dispensed on the prescription of a medical practitioner or legally dispensed or provided to a consumer. The term includes the proper and safe storage and distribution of drugs, the maintenance of proper records, the participation in drug selection and drug utilization reviews and the responsibility of relating information as required concerning the drugs and medicines and their therapeutic values and uses in the treatment and prevention of disease. The term does not include the operations of a manufacturer or distributor as defined in The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144).

**Prescription**—A written or verbal order for drugs issued by a licensed medical practitioner in the course of this professional practice.

**Proprietary drug**—A drug which does not contain a quantity of a controlled substance which can be purchased without a prescription and may be purchased from sources other than a pharmacy, and is usually sold under a patented or trade name.

**Registered nurse**—A nurse licensed to practice in this Commonwealth under The Professional Nursing Law (63 P. S. §§ 211—225.5).

**Resident**—A person who is admitted to a licensed long-term care nursing facility for observation, treatment, or care for illness, disease, injury or other disability.

**Residential unit**—A section or area where persons reside who do not require long-term nursing facility care.

**Responsible person**—A person who is not an employee of the facility and is responsible for making decisions on behalf of the resident. The person shall be so designated by the resident or the court and documentation shall be available on the resident's clinical record to this effect. An employee of the facility will be permitted to be a responsible person only if appointed the resident's legal guardian by the court.

**Restraint**—A restraint can be physical or chemical.

(i) A physical restraint includes any apparatus, appliance, device or garment applied to or adjacent to a resident's body, which restricts or diminishes the resident's level of independence or freedom.

(ii) A chemical restraint includes psychopharmacologic drugs that are used for discipline or convenience and not required to treat medical symptoms.

**Skilled or intermediate nursing care**—Professionally supervised nursing care and related medical and other health services provided for a period exceeding 24 hours to an individual not in need of hospitalization, but whose needs are above the level of room and board and can only be met in a long-term care nursing facility on an inpatient basis because of age, illness, disease, injury, convalescence or physical or mental infirmity. The term includes the provision of inpatient services that are needed on a daily basis by the resident, ordered by and provided under the direction of a physician, and which require the skills of professional personnel, such as, registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech pathologists or audiologists.

**Social worker**—An individual with the following qualifications:

(i) A Bachelor's Degree in social work or a Bachelor's Degree in a human services field including sociology, special education, rehabilitation counseling and psychology.

(ii) One year of supervised social work experience in a health care setting working directly with individuals.

**Speech/language pathologist**—A person licensed as a speech/language pathologist by the State Board of Examiners in Speech-Language and Hearing, or excluded from the requirements of licensure under the Speech-Language and Hearing Licensure Act (63 P. S. §§ 1701—1719).

## OWNERSHIP AND MANAGEMENT

### § 201.11. Types of ownership.

The owner of a facility may be an individual, a partnership, an association, a corporation or combination thereof.

### § 201.12. Application for license.

(a) An application for a license to operate a facility shall be made under section 807 of the act (35 P. S. § 448.807). The application form shall be obtained from the Division of Nursing Care Facilities, Bureau of Quality Assurance, Department of Health.

(b) The following shall be submitted with the application for licensure:

(1) The names and addresses of a person who has direct or indirect ownership interest of 5% or more in the facility as well as a written list of the names and addresses of the facility's officers and members of the board of directors.

(2) If the owner is a nonprofit corporation, a complete list of the names and addresses of the officers and directors of the corporation and an exact copy of its charter and articles of incorporation which are on file with the Department of State as well as amendments or changes.

(3) If the owner is a partnership, the names and addresses of partners.

(4) The name, address and license number of the administrator.

### § 201.13. Issuance of license.

(a) A person may not maintain or operate a facility without first obtaining a license issued by the Depart-

ment. A license to operate a facility is not transferable without prior approval of the Department.

(b) A license to operate a facility will be issued when the Department receives the completed application form and the licensure fee and when, after inspection by an authorized representative of the Department, it has been determined that the necessary requirements for licensure have been met.

(c) The required fee for a license is:

Regular Licenses (new or renewal).....	\$250
Each inpatient bed in excess of 75 beds .....	\$2
Provisional I License.....	\$400
Each inpatient bed.....	\$4
Provisional II License .....	\$600
Each inpatient bed.....	\$6
Provisional III License .....	\$800
Each inpatient bed.....	\$8
Provisional IV License .....	\$1,000
Each inpatient bed.....	\$10

(d) The license will be issued to the owner of a facility and will indicate the name and address of the facility, the number and types of beds authorized and the date of the valid license.

(e) A regular license will be issued when, in the judgment of the Department, there is substantial compliance with this subpart.

(f) A provisional license is governed by the following:

(1) A provisional license will be issued if there are numerous deficiencies or a serious specific deficiency and if the facility is not in substantial compliance with this subpart and the Department finds that:

(i) The applicant is taking appropriate steps to correct the deficiencies in accordance with a timetable submitted by the applicant and agreed upon by the Department.

(ii) There is no cyclical pattern of deficiencies over a period of 2 or more years.

(2) The provisional license will be issued for a specified period of time not more than 6 months. The provisional license may be renewed, at the discretion of the Department, no more than three times. Upon substantial compliance with this subpart, a regular license will be issued.

(g) The facility shall have on file the most recent inspection reports, relating to the health and safety of patients, indicating compliance with applicable State and local statutes and regulations. Upon request, the facility shall make the most recent report available to interested persons.

(h) If the Department's inspection report indicates deficiencies, the facility shall indicate in writing its plans to make corrections and specify dates by which the corrective measures will be completed. The plans are valid only upon approval by the Department.

(i) The current license shall be displayed in a public and conspicuous place in the facility.

#### § 201.14. Responsibility of licensee.

(a) The licensee is responsible for meeting the minimum standards for the operation of a facility as set forth by the Department and by other State and local agencies responsible for the health and welfare of patients.

(b) If the services are purchased for the administration or management of the facility, the licensee is responsible for insuring compliance with this subpart, and other relevant Commonwealth regulations.

(c) The licensee through the administrator shall report to the appropriate Division of Nursing Care Facilities field office serious incidents involving residents. As set forth in § 51.3 (relating to notification). For purposes of this subpart, references to patients in § 51.3 include references to residents.

(d) In addition to the notification requirements in § 51.3, the facility shall report in writing to the appropriate division of nursing care facilities field office:

(1) Transfers to hospitals as a result of injuries or accidents.

(2) Admissions to hospitals as a result of injuries or accidents.

(e) The administrator shall notify the appropriate division of nursing care facilities field office as soon as possible, or, at the latest, within 24 hours of the incidents listed in § 51.3 and subsection (d).

(f) Upon receipt of a strike notice, the licensee or administrator shall promptly notify the appropriate Division of Nursing Care Facilities field office and keep the Department apprised of the strike status and the measures being taken to provide resident care during the strike.

(g) A facility owner shall pay in a timely manner bills incurred in the operation of a facility that are not in dispute and that are for services without which the patient's health and safety are jeopardized.

(h) The facility shall report to the Department, on forms issued by the Department, census, rate and program occupancy information as the Department may request.

#### § 201.15. Restrictions on license.

(a) A license shall apply only to the licensure, the name of the facility and the premises designated therein. It may not be transferable to another licensee or property without prior written approval of the Department.

(b) A license becomes void without notice if any of the following conditions exist:

(1) The expiration date has been reached.

(2) There is a change in ownership and the Department has not given prior approval.

(3) There is a change in the name of the facility, and the Department has not given prior approval for the transfer of the license.

(4) There is a change in the location of the facility and the Department has not given prior approval.

(c) A final order or determination by the Department relating to licensure may be appealed by the provider of services to the Health Policy Board under section 2102(n) of The Administrative Code of 1929 (71 P. S. § 532(n)).

#### § 201.16. (Reserved).

#### § 201.17. Location.

The facility shall be operated as a unit reasonably distinct from the other related services, if located in a building which offers various levels of health-related services.

#### § 201.18. Management.

(a) The facility shall have an effective governing body or designated person functioning with full legal authority and responsibility for the operation of the facility.

(b) The governing body shall adopt and enforce rules relative to:

- (1) The health care and safety of the residents.
- (2) Protection of personal and property rights of the residents, while in the facility, and upon discharge or after death.

(3) The general operation of the facility.

(c) The governing body shall provide the information required in § 201.12 (relating to application for license) and prompt reports of changes which would affect the current accuracy of the information required.

(d) The governing body shall adopt effective administrative and patient care policies and bylaws governing the operation of the facility in accordance with legal requirements. The administrative and patient care policies and bylaws shall be in writing; shall be dated; shall be made available to the members of the governing body, which shall ensure that they are operational; and shall be reviewed and revised, in writing, as necessary. The policies and bylaws shall be available upon request, to patients, responsible persons and for review by members of the public.

(e) The governing body shall appoint a full-time administrator who is currently licensed and registered in this Commonwealth and who is responsible for the overall management of the facility. The Department may, by exception, permit a long-term care facility of 25 beds or less to share the services of an administrator in keeping with section 3(b) of the Nursing Home Administrators License Act (63 P.S. § 1103(b)). The sharing of an administrator shall be limited to two facilities. The schedule of the currently licensed administrator shall be publicly posted in each facility. The administrator's responsibilities shall include the following:

(1) Enforcing the regulations relative to the level of health care and safety of residents and to the protection of their personal and property rights.

(2) Planning, organizing and directing responsibilities obligated to the administrator by the governing body.

(3) Maintaining an ongoing relationship with the governing body, medical and nursing staff and other professional and supervisory staff through meetings and periodic reports.

(4) Studying and acting upon recommendations made by committees.

(5) Appointing, in writing and in concurrence with the governing body, a responsible employee to act on the administrator's behalf during temporary absences.

(6) Assuring that appropriate and adequate relief personnel are utilized for those necessary positions vacated either on a temporary or permanent basis.

(7) Developing a written plan to assure the continuity of resident care and services in the event of a strike in a unionized facility.

(f) A written record shall be maintained on a current basis for each resident with written receipts for personal possessions and funds received or deposited with the facility and for expenditures and disbursements made on behalf of the resident. The record shall be available for review by the resident or resident's responsible person upon request.

(g) The governing body shall disclose, upon request, to be made available to the public, the licensee's current daily reimbursement under Medical Assistance and Medi-

care as well as the average daily charge to other insured and noninsured private pay residents.

(h) When the facility accepts the responsibility for the resident's financial affairs, the resident or resident's responsible person shall designate, in writing, the transfer of the responsibility. The facility shall provide the residents with access to their money within 3 bank business days of the request and in the form—cash or check—requested by the resident.

#### **§ 201.19. Personnel policies and procedures.**

Personnel records shall be kept current and available for each employee and contain sufficient information to support placement in the position to which assigned.

#### **§ 201.20. Staff development.**

(a) There shall be an ongoing coordinated educational program which is planned and conducted for the development and improvement of skills of the facility's personnel, including training related to problems, needs and rights of the residents.

(b) An employee shall receive appropriate orientation to the facility, its policies and to the position and duties. The orientation shall include training on the prevention of resident abuse and the reporting of the abuse.

(c) There shall be at least annual in service training which includes at least infection prevention and control, fire prevention and safety, accident prevention, disaster preparedness, resident confidential information, resident psychosocial needs, restorative nursing techniques and resident rights, including personal property rights, privacy, preservation of dignity and the prevention and reporting of resident abuse.

(d) Written records shall be maintained which indicate the content of and attendance at the staff development programs.

#### **§ 201.21. Use of outside resources.**

(a) The facility is responsible for insuring that personnel and services provided by outside resources meet all necessary licensure and certification requirements, including those of the Bureau of Professional and Occupational Affairs in the Department of State, as well as requirements of this subpart.

(b) If the facility does not employ a qualified professional person to render a specific service to be provided by the facility, it shall make arrangements to have the service provided by an outside resource, a person or agency that will render direct service to residents or act as a consultant to the facility.

(c) The responsibilities, functions and objectives and the terms of agreement, including financial arrangements and charges of the outside resource shall be delineated in writing and signed and dated by an authorized representative of the facility and the person or agency providing the service.

(d) Outside resources supplying temporary employees to a facility shall provide the facility with documentation of an employee's health status as required under § 201.22 (c)—(j) and (l)—(m) (relating to prevention, control and surveillance of tuberculosis (TB)).

#### **§ 201.22. Prevention, control and surveillance of tuberculosis (TB).**

(a) The facility shall have a written TB infection control plan with established protocols which address risk assessment and management, screening and surveillance

methods, identification, evaluation, and treatment of residents and employees who have a possible TB infection or active TB.

(b) Recommendations of the Centers for Disease Control (CDC), United States Department of Health and Human Services (HHS) shall be followed in treating and managing persons with confirmed or suspected TB.

(c) A baseline TB status shall be obtained on all residents and employees in the facility.

(d) The intradermal tuberculin skin test is to be used whenever skin testing is done. This consists of an intradermal injection of 0.1 ml of purified protein derivative (PPD) tuberculin containing 5 tuberculin units (TU) using a disposable tuberculin syringe.

(e) The 2-step intradermal tuberculin skin test shall be the method used for initial testing of residents and employees. If the first test is positive, the person tested shall be considered to be infected. If the first test is negative, a second test should be administered in 1—3 weeks. If the second test is positive, the person tested shall be considered to be previously infected. If the second test result is negative, the person is to be classified as uninfected.

(f) Persons with reactions of  $\geq 10$  mm or persons with symptoms suggestive of TB regardless of the size of the test reaction, shall be referred for further diagnostic studies in accordance with CDC recommendations.

(g) A written report of test results shall be maintained in the facility for each individual, irrespective of where the test is performed. Reactions shall be recorded in millimeters of induration, even those classified as negative. If no induration is found, "0 mm" is to be recorded.

(h) Skin test "negative" employees having regular contact of 10 or more hours per week with residents shall have repeat tuberculin skin tests at intervals determined by the risk of transmission in the facility. The CDC protocol for conducting a TB risk assessment in a health care facility shall be used to establish the risk of transmission.

(i) Repeat skin tests shall be required for tuberculin-negative employees and residents after any suspected exposure to a documented case of active TB.

(j) New employees shall have the 2-step intradermal skin test before beginning employment unless there is documentation of a previous positive skin reaction. Test results shall be made available prior to assumption of job responsibilities. CDC guidelines shall be followed with regard to repeat periodic testing of all employees.

(k) The intradermal tuberculin skin test shall be administered to new residents upon admission, unless there is documentation of a previous positive test.

(l) New tuberculin positive reactors (converters) and persons with documentation of a previous positive reaction, shall be referred for further diagnostic testing and treatment in accordance with current standards of practice.

(m) If an employee's chest X-ray is compatible with active TB, the individual shall be excluded from the workplace until a diagnosis of active TB is ruled out or a diagnosis of active TB is established and a determination made that the individual is considered to be noninfectious. A statement from a physician stating the individual is noninfectious shall be required.

(n) A resident with a diagnosis of TB may be admitted to the facility if:

(1) Three consecutive daily sputum smears have been negative for acid-fast bacilli.

(2) The individual has received appropriate treatment for at least 2—3 weeks.

(3) Clinical response to therapy, as documented by a physician, has been favorable.

#### **§ 201.23. Closure of facility.**

(a) The administrator or owner shall notify the appropriate Division of Nursing Care Facilities field office at least 90 days prior to closure.

(b) If the facility is to be closed, the licensee shall notify the resident or the resident's responsible person in writing.

(c) Sufficient time shall be given to the resident or the resident's responsible person to effect an orderly transfer.

(d) No resident in a facility may be required to leave the facility prior to 30 days following receipt of a written notice from the licensee of the intent to close the facility, except when the Department determines that removal of the resident at an earlier time is necessary for health and safety.

(e) If an orderly transfer of the residents cannot be safely effected within 30 days, the Department may require the facility to remain open an additional 30 days.

(f) The Department is permitted to monitor the transfer of residents.

(g) The licensee of a facility shall file proof of financial responsibility with the Department to insure that the facility continues to operate in a satisfactory manner for a period of 30 days following the notice of intent to close.

#### **§ 201.24. Admission policy.**

(a) The resident may be permitted to name a responsible person. The resident is not required to name a responsible person if the resident is capable of managing the resident's own affairs.

(b) A facility may not obtain from or on behalf of residents a release from liabilities or duties imposed by law or this subpart except as part of formal settlement in litigation.

(c) A facility shall admit only residents whose nursing care and physical needs can be provided by the staff and facility.

(d) A resident with a disease in the communicable stage may not be admitted to the facility unless it is deemed advisable by the attending physician—medical director, if applicable—and administrator and unless the facility has the capability to care for the needs of the resident.

#### **§ 201.25. Discharge policy.**

There shall be a centralized coordinated discharge plan for each resident to ensure that the resident has a program of continuing care after discharge from the facility. The discharge plan shall be in accordance with each resident's needs.

#### **§ 201.26. Power of attorney.**

Power of attorney may not be assumed for a resident by the licensee, owner/operator, members of the governing body, an employee or anyone having a financial interest in the facility unless ordered by a court of competent jurisdiction.



**201.27. Advertisement of special services.**

A facility may not advertise special services offered unless the service is under the direction and supervision of personnel trained or educated in that particular special service, such as, rehabilitation or physical therapy by a registered physical therapist; occupational therapy by a registered occupational therapist; skilled nursing care by registered nurses; special diets by a dietitian; or special foods.

**§ 201.28. (Reserved).****§ 201.29. Resident rights.**

(a) The governing body of the facility shall establish written policies regarding the rights and responsibilities of residents and, through the administrator, shall be responsible for development of and adherence to procedures implementing the policies.

(b) Policies and procedures regarding rights and responsibilities of residents shall be available to residents and members of the public.

(c) Policies of the facility shall be available to staff, patients, consumer groups and the interested public, including a written outline of the facility's objectives and a statement of the rights of its residents. The policies shall set forth the rights of the resident and prohibit mistreatment and abuse of the resident.

(d) The staff of the facility shall be trained and involved in the implementation of the policies and procedures.

(e) The resident or if the resident is not competent, the resident's responsible person, shall be informed verbally and in writing prior to, or at the time of admission, of services available in the facility and of charges covered and not covered by the per diem rate of the facility. If changes in the charges occur during the resident's stay, the resident shall be advised verbally and in writing reasonably in advance of the change. "Reasonably in advance" shall be interpreted to be 30 days unless circumstances dictate otherwise. If a facility requires a security deposit, the written procedure or contract that is given to the resident or resident's responsible person shall indicate how the deposit will be used and the terms for the return of the money. A security deposit is not permitted for a resident receiving Medical Assistance (MA).

(f) The resident shall be transferred or discharged only for medical reasons, for his welfare or that of other residents or for nonpayment of stay if the facility has demonstrated reasonable effort to collect the debt. Except in an emergency, a resident may not be transferred or discharged from the facility without prior notification. The resident and the resident's responsible person shall receive written notification in reasonable advance of the impending transfer or discharge. Reasonable advance notice shall be interpreted to mean 30 days unless appropriate plans which are acceptable to the resident can be implemented sooner. The facility shall inform the resident of its bed-hold policy, if applicable, prior to discharge. The actions shall be documented on the resident record. Suitable clinical records describing the resident's needs, including list of orders and medications as directed by the attending physician shall accompany the resident if the resident is sent to another medical facility.

(g) Unless the discharge is initiated by the resident or resident's responsible person, the facility is responsible to assure that appropriate arrangements are made for a safe and orderly transfer and that the resident is transferred

to an appropriate place that is capable of meeting the resident's needs. Prior to transfer, the facility shall inform the resident or the resident's responsible person as to whether the facility where the resident is being transferred is certified to participate in the Medicare and MA reimbursement programs.

(h) It is not necessary to transfer a resident whose condition had changed within or between health care facilities when, in the opinion of the attending physician, the transfer may be harmful to the physical or mental health of the resident. The physician shall document the situation accordingly on the resident's record.

(i) The resident shall be encouraged and assisted throughout the period of stay to exercise rights as a resident and as a citizen and may voice grievances and recommend changes in policies and services to the facility staff or to outside representatives of the resident's choice. The resident or resident's responsible person shall be made aware of the Department's Hot Line (800) 254-5164, the telephone number of the Long-Term Care Ombudsman Program located within the Local Area Agency on Aging, and the telephone number of the local Legal Services Program to which the resident may address grievances. A facility is required to post this information in a prominent location and in a large print easy to read format.

(j) The resident shall be treated with consideration, respect and full recognition of dignity and individuality, including privacy in treatment and in care for the necessary personal and social needs.

(k) The resident shall be permitted to retain and use personal clothing and possessions as space permits unless to do so would infringe upon rights of other residents and unless medically contraindicated, as documented by his physician in the medical record. Reasonable provisions shall be made for the proper handling of personal clothing and possessions that are retained in the facility. The resident shall have access and use of these belongings.

(l) The resident's rights devolve to the resident's responsible person as follows:

(1) When the resident is adjudicated incapacitated by a court.

(2) As Pennsylvania law otherwise authorizes.

(m) The resident rights in this section shall be reflected in the policies and procedures of the facility.

(n) The facility shall post in a conspicuous place near the entrances and on each floor of the facility a notice which sets forth the list of resident's rights. The facility shall on admission provide a resident or resident's responsible person with a personal copy of the notice. In the case of a resident who cannot read, write or understand English, arrangements shall be made to ensure that this policy is fully communicated to the resident. A certificate of the provision of personal notice as required in this section shall be entered in the resident's clinical record.

(o) Experimental research or treatment in a nursing home may not be carried out without the approval of the Department and without the written approval of the resident after full disclosure. For the purposes of this subsection, "experimental research" means an experimental treatment or procedure that is one of the following:

(1) Not a generally accepted practice in the medical community.

(2) Exposes the resident to pain, injury, invasion of privacy or asks the resident to surrender autonomy, such as a drug study.

**§ 201.30. Access requirements.**

(a) The facility may limit access to a resident when the interdisciplinary care team has determined it may be a detriment to the care and well-being of the resident in the facility. The facility may not restrict the right of the resident to have legal representation or to visit with the representatives of the Department of Aging Ombudsman Program. A facility may not question an attorney representing the resident or representatives of the Department, or the Department of Aging Ombudsman Program, as to the reason for visiting or otherwise communicating with the resident.

(b) A person entering a facility who has not been invited by a resident or a resident's responsible persons shall promptly advise the administrator or other available agent of the facility of that person's presence. The person may not enter the living area of a resident without identifying himself to the resident and without receiving the resident's permission to enter.

**§ 201.31. Transfer agreement.**

(a) The facility shall have in effect a transfer agreement with one or more hospitals, located reasonably close by, which provides the basis for effective working arrangements between the two health care facilities. Under the agreement, inpatient hospital care or other hospital services shall be promptly available to the facility's residents when needed.

(b) A transfer agreement between a hospital and a facility shall be in writing and specifically provide for the exchange of medical and other information necessary to the appropriate care and treatment of the residents to be transferred. The agreement shall further provide for the transfer of residents' personal effects, particularly money and valuables, as well as the transfer of information related to these items when necessary.

**§ 201.32. (Reserved).**

**CHAPTER 203. APPLICATION OF LIFE SAFETY CODE FOR LONG TERM CARE NURSING FACILITIES**

Sec.	
203.1.	Application of the <i>Life Safety Code</i> .
203.2.	(Reserved).

**§ 203.1. Application of the *Life Safety Code*.**

A facility shall meet the applicable edition of National Fire Protection Association 101 *Life Safety Code* which is currently adopted by the Department. A facility previously in compliance with prior editions of the *Life Safety Code* is deemed in compliance with subsequent *Life Safety Codes* except renovation or new construction shall meet the current edition adopted by the Department.

**§ 203.2. (Reserved).**

**CHAPTER 205. PHYSICAL PLANT AND EQUIPMENT STANDARDS FOR LONG TERM CARE NURSING FACILITIES**

**BUILDINGS AND GROUNDS**

Sec.	
205.1.	Location or site.
205.2.	Grounds.
205.3.	(Reserved).
205.4.	Building plans.
205.5.	(Reserved).
205.6.	Function of building.

**MINIMUM PHYSICAL PLANT STANDARDS**

205.7.	Basement or cellar.
205.8.	Ceiling heights.
205.9.	Corridors.
205.10.	Doors.

205.11.	(Reserved).
205.12.	Elevators.
205.13.	Floors.
205.14.	Locks.
205.15.	(Reserved).
205.16.	Stairs.
205.17.	Stairways.
205.18.	(Reserved).
205.19.	Windows and windowsills.
205.20.	Resident bedrooms.
205.21.	Special care room.
205.22.	Placement of beds.
205.23.	Location of bedrooms.
205.24.	Dining room.
205.25.	Kitchen.
205.26.	Laundry.
205.27.	Lounge and recreation rooms.
205.28.	Nurses' station.
205.29.	(Reserved).
205.31.	Storage.
205.32.	Janitor closet.
205.33.	Utility room.
205.34.	(Reserved).
205.35.	(Reserved).
205.36.	Bathing facilities.
205.37.	Equipment for bathrooms.
205.38.	Toilet facilities.
205.39.	Toilet room equipment.
205.40.	Lavatory facilities.

**MECHANICAL AND ELECTRICAL REQUIREMENTS**

205.61.	Heating requirements for existing and new construction.
205.62.	Special heating requirements for new construction.
205.63.	Plumbing and piping systems required for existing and new construction.
205.64.	Special plumbing and piping systems requirements for new construction.
205.65.	(Reserved).
205.66.	Special ventilation requirements for new construction.
205.67.	Electric requirements for existing and new construction.
205.68.	Special electrical requirements for new construction.

**FURNISHINGS, EQUIPMENT AND SUPPLIES**

205.71.	Bed and furnishings.
205.72.	Furniture.
205.73.	(Reserved).
205.74.	Lien.

**SUPPLIES**

205.75.	Supplies.
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**BUILDINGS AND GROUNDS**

**§ 205.1. Location or site.**

A building to be used for and by residents shall be located in areas conducive to the health and safety of the residents.

**§ 205.2. Grounds.**

(a) Grounds shall be adequate to provide necessary service areas and outdoor areas for residents. A facility with site limitations may provide rooftop or balcony areas if adequate protective enclosures are provided.

(b) Delivery areas, service yards or parking area shall be located so that traffic does not cross areas commonly used by residents.

**§ 205.3. (Reserved).**

**§ 205.4. Buildings plans.**

(a) There may be no new construction of a facility without the Department's approval of final plans. There may be no alterations or additions to an existing building or conversion of a building or facility made prior to the Department's approval of final plans.

(b) Plans, including architectural, mechanical and electrical plans, shall include requested changes and shall be submitted to the Department for final approval before construction, alterations or remodeling begins.

(c) The licensee or prospective licensee shall have the opportunity to present and discuss purposes and plans

concerning the requested changes indicated on the architectural plans with the Department. If differences occur and cannot be resolved, administrative hearing may be sought under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(d) Plans shall be resubmitted to the Department for approval if construction or alteration has not been started within 24 months from the date the plans received final approval.

(e) Plans submitted to the Department for approval shall include the following items:

(1) Wall sections and details, including stairs, location and fastening of handrails and grab bars.

(2) Mechanical and electrical drawings.

(3) Schedules of room finishes, door type and size, plumbing fixtures, electrical fixtures and special equipment, such as sterilizers, kitchen equipment and the like.

(4) Site plan—1 inch equals 40 feet—indicating new and existing structures, roads, services, walls and north arrow.

(5) Floor plans using a minimum of 1/8 inch scale.

(6) One-fourth inch scale layout: main kitchen, nurse's station, utility room, physical therapy room, occupational therapy room and the like.

(7) One-fourth inch scale layout: typical bedroom, indicating window, door, radiator, air conditioner, electrical outlets, permanent fixtures, furniture placement or other pertinent information; typical bathroom; and a toilet room.

(8) Exterior elevation.

(9) Wall section, typical.

(10) Plans shall be on drawing sheets at least 15 by 24 inches and not exceed 32 by 42 inches in size including the borders.

#### **§ 205.5. (Reserved).**

#### **§ 205.6. Function of building.**

(a) No part of a building may be used for a purpose which interferes with or jeopardizes the health and safety of residents. Special authorization shall be given by the Department's Division of Nursing Care Facilities if a part of the building is to be used for a purpose other than health care.

(b) The only persons who may reside in the facility shall be residents, employees, the licensee, the administrator or members of the administrator's immediate family.

#### **MINIMUM PHYSICAL PLANT STANDARDS**

#### **§ 205.7. Basement or cellar.**

Basements or cellars may be used for storage, laundry, kitchen, heat, electric and water equipment. Approval from the Department's Division of Nursing Care Facilities shall be secured before areas may be used for other purposes, such as physical therapy, central supply, occupational therapy and the like.

#### **§ 205.8. Ceiling heights.**

Ceiling heights may be 7 feet 6 inches except in boiler rooms where a minimum of 30 inches shall be provided above the main boiler heater and connecting piping. Adequate headroom for convenient maintenance and other proposed operations shall be maintained below the piping.

#### **§ 205.9. Corridors.**

(a) Resident corridors shall have a handrail on both sides with a return to the wall at each rail ending. Handrails shall be detailed and finished for safety and shall be free from snagging. Brackets may not impede the continuous progress of hands along the railing.

(b) Corridors shall be lighted adequately during the day and night.

(c) Areas used for corridor traffic may not be considered as areas for dining, storage, diversional or social activities.

#### **§ 205.10. Doors.**

(a) Doors into bathrooms and toilet rooms used by residents shall be at least 36 inches wide, except for an existing facility where the minimum width of toilet room doors is 32 inches.

(b) A door to a resident room shall swing into the room.

(c) A door to a toilet room which swings into the toilet area shall be equipped with special hardware which permits the door to be opened from the outside, and swing out, in case of emergency.

(d) Resident and visitor toilet stall doors shall swing out. Curtains or equivalent shall be considered as meeting this requirement.

(e) A door to a basement or a cellar may not be located in a resident room.

(f) A door opening to the exterior, which may be opened occasionally for ventilation purposes, with the exception of an approved exit door, shall be effectively covered with screening.

#### **§ 205.11. (Reserved).**

#### **§ 205.12. Elevators.**

(a) Elevator service shall be provided for residents when a resident use area is located above or below the first floor or grade level entrance in a building constructed or converted for use after January 1975 as a facility providing either skilled or intermediate care.

(b) The cab platform of an elevator shall measure no less than 5 feet by 7 feet 6 inches. Cab and shaft door may have not less than a 44 inch opening and shall be power operated.

#### **§ 205.13. Floors.**

(a) Floors traveled by residents shall be of nonskid material.

(b) Floors in the kitchen, bathroom, toilet rooms, shower rooms, utility rooms, bedpan and hopper rooms shall be of nonskid, nonabsorbent materials and easily cleanable.

#### **§ 205.14. Locks.**

Doors into rooms used by residents may not be locked from the outside when the resident is in the room.

#### **§ 205.15. (Reserved).**

#### **§ 205.16. Stairs.**

Stairs used by residents shall have no locked gates or free swinging doors obstructing ascent or descent.

#### **§ 205.17. Stairways.**

There shall be indoor stairs and stairways to a basement if the stairs are to be used by personnel of the facility.

**§ 205.18. (Reserved).**

**§ 205.19. Windows and windowsills.**

(a) Window openings in the exterior walls that are used for ventilation shall be effectively covered by screening.

(b) Rooms with windows opening onto light or air shafts, or onto an exposure where the distance between the building or an obstruction higher than the windowsill is less than 20 feet may not be used for resident bedrooms.

**§ 205.20. Resident bedrooms.**

(a) A bed for a resident shall be placed only in a bedroom approved by the Department.

(b) The maximum number of residents who may be accommodated in the facility shall be indicated on the license.

(c) The number of resident bedrooms and the number of beds in a room may not exceed the maximum number approved by the Department.

(d) Single bed bedrooms shall provide minimum room area clearance, in addition to the area of closets, vestibule, wardrobes and toilet rooms, of 100 square feet.

(e) Single resident bedrooms in facilities licensed prior to January 1975, shall contain at least 80 square feet of space.

(f) A multibed bedroom shall provide minimum room area clearances, in addition to the area of closets, vestibule, wardrobes and toilet rooms of 80 square feet per bed.

(g) In facilities licensed prior to January 1975, resident multibed bedrooms shall have at least 65 square feet of space per resident.

**§ 205.21. Special care room.**

(a) Provisions shall be made for isolating a resident as necessary in a single room which is ventilated to the outside as set forth in § 205.66 (relating to special ventilation requirements for new construction). For new construction, there shall be an adjoining private bathroom which contains a toilet, lavatory and either a standard size tub or a shower.

(b) Provisions shall be available to identify this room with appropriate precautionary signs.

**§ 205.22. Placement of beds.**

A bed may not be placed in proximity to radiators, heat vents, air conditioners, direct glare of natural light or drafts unless adequate provisions are made for resident comfort and safety.

**§ 205.23. Location of bedrooms.**

A resident bedroom shall have adjoining toilet facilities and shall be located conveniently near bathing facilities, except for those facilities licensed prior to January 1975.

**§ 205.24. Dining room.**

(a) There shall be a minimum dining area of 15 square feet per bed for the first 100 beds and 13 1/2 square feet per bed for beds over 100. This space is required in addition to the space required for lounge and recreation rooms. These areas shall be well lighted and well ventilated.

(b) Tables and space shall be provided to accommodate wheelchairs with trays and other devices.

**§ 205.25. Kitchen.**

(a) There shall be at least one kitchen large enough to meet the needs of the facility.

(b) A service pantry shall be provided for each nursing unit. The pantry shall contain a refrigerator, device for heating food, sink, counter and cabinets. For existing facilities, a service pantry shall be provided for a nursing unit unless the kitchen is sufficiently close for practical needs and has been approved by the Department.

**§ 205.26. Laundry.**

(a) A laundry room shall be provided in a facility where commercial laundry service is not used for the washing of soiled linens.

(b) The entrance and exit to the laundry room shall be located to prevent the transportation of soiled or clean linens through food preparation, food storage or food serving areas.

(c) The facility shall have a separate room for central storage of soiled linens. The room shall be well ventilated, constructed of materials impervious to odors and moisture and easily cleaned. Soiled linens may not be transported through areas where clean linen is stored.

(d) A facility shall provide a separate room or area for central storage of clean linens and linen carts.

(e) Equipment shall be made available and accessible for residents desiring to do their personal laundry.

**§ 205.27. Lounge and recreation rooms.**

There shall be a minimum of 15 square feet of floor space per bed for recreation or lounge rooms provided for the first 100 beds and 13 1/2 square feet for all beds over 100. There shall be recreation or lounge rooms for residents on each floor.

**§ 205.28. Nurses' station.**

(a) A nurses' station shall be located in each nursing unit, located as centrally as practical within the nursing unit. A common nurses' station serving more than a single nursing unit may be permitted when the design of the project and method of operation indicate a satisfactory level of service. The size and facilities of the nurses' station shall be increased appropriate to the number of beds served and additional staffing required.

(b) The nurses' station may not be more than 120 feet from the most remote resident room served.

(c) The nurses' station shall have facilities for:

(1) A nurses' call system.

(2) Charting and supplies.

(3) Medication storage and preparation, which may be within the clean workroom, if a self-contained cabinet is provided. The medication storage cabinet shall be locked. Mechanical ventilation shall be provided in this workroom. If a medication cart is used, provisions shall be made to lock the cart or to place the cart when not in use in a safe area that can be locked. The cart may not be stored in the corridor.

(4) A double-locked narcotic compartment within the medication area.

**§ 205.29. (Reserved).**

**§ 205.31. Storage.**

General storage space shall be provided for storage of supplies, furniture, equipment, residents' possessions and the like. Space provided for this purpose shall be com-

mensurate with the needs of the nursing facility, but may not be less than 10 square feet per bed.

**§ 205.32. Janitor closet.**

(a) At least one janitor closet shall be provided in a unit. If physical arrangement permits, one janitor's closet may serve more than one nursing unit or wing.

(b) A separate janitor's closet is required for the kitchen.

**§ 205.33. Utility room.**

(a) Provisions shall be made in each nursing unit near the nurses' station for utility rooms. The area shall have separate soiled and clean workrooms. The rooms may not be more than 120 feet from the most remote room served. If one nursing station services several resident corridors, a soiled utility room shall be on each unit.

(b) Facilities for flushing and rinsing bedpans, such as a spray attachment for the clinical sink or a separate bedpan flusher, shall be provided in the soiled workroom of each nursing unit, unless bedpan flushing devices, together with bedpan lugs on toilets are provided in each resident's toilet for this purpose.

(c) Hand-washing facilities shall be available in the soiled and clean utility rooms.

**§ 205.34. (Reserved).**

**§ 205.35. (Reserved).**

**§ 205.36. Bathing facilities.**

(a) The facility shall provide a general bathing area in each nursing unit to serve residents' bedrooms which do not have adjoining bathrooms with a bathtub or shower.

(b) Bathing fixtures for either the tub or shower shall be provided at a ratio of one fixture per 15 beds or major fraction thereof.

(c) Unless bathing fixtures are located in a separate room, there shall be compartments to permit privacy. Cubicle curtains may provide this privacy.

(d) Each room or compartment shall provide space for the use of bathing fixtures, wheelchairs and dressing. Sufficient space shall be provided for the attendant who may need to assist the resident.

(e) Each bathing room shall include a toilet and lavatory. If more than one tub or shower is in the bathing room, privacy shall be provided at each bathing facility and at the toilet.

(f) Showers designed for wheelchair use may be no less than 4 feet square, shall be without curbs and shall have handrails and curtains.

(g) Water controls for handicapped shower areas shall be located outside the shower stall. Other shower areas may have standard installation of shower controls.

(h) The facility shall have at least one bathtub in each centralized bath area on each floor that is accessible from three sides with a minimum of 3 feet clearance on each side and 4 feet clearance from the foot of the tub to adjacent wall or obstruction.

**§ 205.37. Equipment for bathrooms.**

(a) Grab bars shall be installed as necessary at each tub and shower for safety and convenience. Grab bars, accessories and anchorage shall have sufficient strength to sustain a weight of 250 pounds for 5 minutes.

(b) The general bathroom or shower room used by residents shall be provided with one emergency signal

bell located in close proximity to the tub or shower and which registers at the nursing station. This is in addition to the emergency signal bell located at each toilet unless a single bell can be reached by the resident from both the toilet and tub or shower.

(c) Provisions shall be made available to get residents in and out of bathtubs in a safe way to prevent injury to residents and personnel. The facility shall provide appropriate supervision and assistance to ensure the safety of all residents being bathed.

(d) A dressing area shall be provided immediately adjacent to the shower stall and bathtub. In the dressing area, there shall be provisions for keeping clothes dry while bathing.

(e) The facility shall ensure that water for baths and showers is at a safe and comfortable temperature before the resident is bathed.

**§ 205.38. Toilet facilities.**

(a) In toilet rooms that adjoin resident bedrooms, there shall be at least one toilet for four residents. This shall be directly accessible from bedrooms without entering the general corridor. In no case may one toilet service more than two bedrooms. The minimum dimension of a patient toilet room containing only a toilet shall be 3 feet by 6 feet.

(b) There may be no less than 3 1/2 feet of space from front of toilet to opposite wall or fixtures.

(c) There shall be at least one toilet on each floor to accommodate patients in wheelchairs.

(d) At least one toilet room shall be provided for toilet training. This room shall be accessible from the nursing corridor and may serve the bathing area. Minimum dimensions for a toilet-training room containing only a toilet shall be 5 feet by 6 feet.

(e) Floors or units with more than eight residents of both sexes shall be provided with separate toilet fixtures in a ratio of 1:4 or major fraction thereof for each sex. In existing facilities, overall toilet fixtures shall be provided in a ratio of 1:8 or major fraction thereof for each bed.

(f) Toilets and lavatories other than resident facilities shall be provided for male and female visitors in facilities.

**§ 205.39. Toilet room equipment.**

(a) Toilet rooms shall be provided with lavatory, soap or soap dispenser, paper towels, mechanical dryer or other sanitary means of toweling. In toilet rooms adjacent to bedrooms, the lavatory may be omitted if provided in each bedroom.

(b) Toilets used by residents shall be provided with handrails or assist bars on each side capable of sustaining a weight of 250 pounds and an emergency call bell within reaching distance.

**§ 205.40. Lavatory facilities.**

(a) A floor occupied by residents shall have lavatories in the ratio of 1:4 residents or major fraction thereof. In existing facilities, lavatory fixtures shall be provided in a ratio of 1:8 or major fraction thereof for each bed.

(b) A mirror shall be over each lavatory used by residents.

**MECHANICAL AND ELECTRICAL REQUIREMENTS**

**§ 205.61. Heating requirements for existing and new construction.**

(a) The heating system shall comply with local and State codes. If there is a conflict, the more stringent requirements shall apply.

(b) Exposed heating pipes, hot water pipes or radiators in rooms and areas used by residents or within reach of residents, shall be covered or protected to prevent injury or burns to residents. This includes hot water or steam piping above 125°F.

**§ 205.62. Special heating requirements for new construction.**

(a) Boiler feed pumps, heat circulating pumps, condensate return pumps and fuel oil pumps shall be connected and installed so that the total load can be carried by the remaining pumps with one pump out of service.

(b) To prevent shutting down the entire system when repairs are required, supply and return mains and risers of cooling, heating and process steam systems shall be valved to isolate the various sections of the system. Each piece of equipment shall be valved at the supply and return.

**§ 205.63. Plumbing and piping systems required for existing and new construction.**

(a) Potable ice may not be manufactured or stored in the soiled utility room.

(b) Water distribution systems shall be designed and arranged to provide potable hot and cold water at hot and cold water outlets at all times. The system pressure shall be sufficient to operate fixture and equipment during maximum demand periods.

(c) Hot water outlets accessible to residents shall be controlled so that the water temperature of the outlets does not exceed 110°F.

**§ 205.64. Special plumbing and piping systems requirements for new construction.**

(a) Plumbing systems shall be installed to meet the requirements of local plumbing codes and Chapter 14, Medical Care Facility Plumbing Equipment, of the *PHCC National Standard Plumbing Code*. Sections 14.22 and 14.23 of the *PHCC National Standard Plumbing Code* are not mandatory, but are recommended. If the codes listed in this subsection conflict, the most stringent requirement shall apply.

(b) Approved backflow preventers or vacuum breakers shall be installed with plumbing fixtures or equipment where the potable water supply outlet may be submerged and which is not protected by a minimum air gap. This includes hose bibs, janitor sinks, bedpan-flushing attachments and other fixtures to which hoses or tubing can be attached.

(c) Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(d) Shower bases and tubs shall provide nonskid surfaces for standing residents.

**§ 205.65. (Reserved).**

**§ 205.66. Special ventilation requirements for new construction.**

(a) Ventilation for new construction shall conform to the following:

<i>Area Designation</i>	<i>Pressure Relationship to Adjacent Areas</i>	<i>Minimum Air Changes of Outdoor Air Per Hour</i>	<i>Minimum Total Air Changes Per Hour</i>	<i>All Air Directly to Outdoors</i>	<i>Recirculated within Room Units</i>
Resident Room	Equal	2	2	Optional	Optional
Resident Area Corridor	Equal	Optional	2	Optional	Optional
Physical therapy	Negative	2	6	Optional	Optional
Occupational therapy	Negative	2	6	Optional	Optional
Soiled workroom or soiled holding	Negative	2	10	Yes	No
Clean workroom or clean holding	Positive	2	4	Optional	Optional
Toilet room	Negative	Optional	10	Yes	No
Bathroom	Negative	Optional	10	Yes	No
Janitor's closet	Negative	Optional	10	Yes	No
Sterilizer equipment room	Negative	Optional	10	Yes	No
Linen and trash chute rooms	Negative	Optional	10	Yes	No
Food preparation center	Equal	2	10	Yes	Yes
Warewashing room	Negative	Optional	10	Yes	Yes
Dietary day storage	Equal	Optional	2	Yes	No
Laundry, general	Equal	2	10	Yes	No
Soiled linen sorting and storage	Negative	Optional	10	Yes	No
Clean linen storage	Positive	Optional	2	Yes	No
Special Care Room/Isolation	Negative	2	6	Yes	No

(b) Central air systems shall be provided with filters having a minimum efficiency of 25% based on ASHRAE Standard No. 52-68 and certified by an independent testing agency. Central air systems shall have a manometer installed across each filter bed.

(c) Air supply systems shall be operated mechanically. Air exhaust and return systems shall be operated mechanically, except for air not required to be exhausted directly outdoors as indicated in subsection (a). Where subsection (a) requirements for outdoor air is optional, this air may be supplied directly by transfer ducts or grilles to adjacent spaces without being filtered through a central system. Air may not be transferred to or from corridors, to or from adjacent spaces, except as permitted in the applicable edition of the National Fire Protection Association 101 *Life Safety Code* which is currently adopted by the Department.

(d) The dietary dry storage and kitchenware washing rooms may use direct air from the kitchen without being filtered through a central system.

(e) The ventilation rates indicated in subsection (a) are minimum mandatory rates for the area listed and may not be construed as precluding the use of higher rates. For areas not listed, such as dining rooms, lounge and recreation rooms, solarium, and the like, mechanical ventilation rates are optional, but where mechanical ventilation is provided, the supply air shall be obtained from the outdoors through individual room units or from central systems. The unlisted room areas, if ventilated, shall contain an equal pressure relationship.

(f) Where mechanical ventilation is not mandatory or provided, the areas may be ventilated by outside windows that can be easily opened and closed.

(g) Outdoor air intakes may be no less than 25 feet from waste air discharges, such as discharge from ventilation systems, combustion stacks, plumbing vents, vehicle exhaust and the like. The bottom of outdoor air intakes serving central systems and kitchens may not be less than 3 feet above the finished grade or roof level.

(h) Ventilation air openings which are located near floors shall be installed not less than 3 inches above the finished floor.

(i) Air quantities in cubic feet per minute shall be indicated on the drawings for room supply, return and exhaust ventilation openings.

**§ 205.67. Electric requirements for existing and new construction.**

(a) Artificial lighting shall be restricted to electric lighting.

(b) Spaces occupied by people, machinery and equipment within buildings shall have electric lighting which is operational at all times.

(c) Electric lights satisfactory for residents' activities shall be available.

(d) Electric lights in rooms used by residents shall be placed or shaded to prevent direct glare to the eyes of residents.

(e) Night lights shall be provided in bedrooms, stairways, corridors, bathrooms and toilet rooms used by residents.

(f) Arrangements to transfer lighting from overhead fixtures to night light fixtures in stairways and corridors

shall be designed so that switches can only select between two sets of fixtures and cannot extinguish both sets at the same time.

(g) In addition to night lights, residents' bedrooms shall have general lighting. The light emitting surfaces of the night light may not be in direct view of a resident in a normal in-bed position.

(h) A reading light shall be provided for each resident.

(i) In each resident room there shall be grounding type receptacles as follows: one duplex receptacle on each side of the head of each bed except for parallel adjacent beds. Only one duplex receptacle is required between beds plus sufficient duplex receptacles to supply portable lights, television and motorized beds, if used, and one duplex receptacle on another wall.

(j) A nurse's calling station—signal originating device—with cable with push button housing attached or other system approved by the Department shall be provided at each resident bed location so that it is accessible to the resident. Two cables and buttons serving adjacent beds may be served by one station. An emergency calling station within reach of the resident shall be provided at each bathing fixture and toilet unless a single bell can be reached by the resident from both the bathing fixture and the toilet. Cable and push button housing requirement will apply to those facilities constructed after July 1, 1987.

(k) Calls shall register by a signal receiving and indicating device at the nurses' station, and shall activate a visible signal in the corridor at the resident's door. In multicorridor nursing units, additional visible signal indicators shall be installed at corridor intersections.

**§ 205.68. Special electrical requirements for new construction.**

(a) Electrical systems and equipment shall comply with the latest edition of the *National Electrical Code, NFPA 70*. If local or State codes are more stringent, the more stringent requirements apply.

(b) Materials comprising the electrical systems shall be listed as complying with applicable standards of the Underwriters' Laboratories, Inc., or other similarly established standards.

(c) Minimum lighting levels for long-term care nursing facilities shall conform with the following:

Area	Footcandles
Corridors and interior ramps	20
Stairways other than exits	30
Exit stairways and landings	5 on floor
Doorways	10
Administrative and lobby areas, day	50
Administrative and lobby areas, night	20
Chapel or quiet area	30
Physical therapy	20
Occupational therapy	30
Worktable, coarse work	100
Worktable, fine work	200
Recreation area	50
Dining area	30
Resident care unit (or room) general	10

<i>Area</i>	<i>Footcandles</i>
Resident care room, reading	30
Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk, for charts and records	70
Nurses' medicine cabinet	100
Utility room, general	20
Utility room, work counter	50
Pharmacy area, general	30
Pharmacy, compounding and dispensing areas	100
Janitor's closet	15
Toilet and bathing facilities	30
Barber and beautician areas	50

(d) The applicable standards for lighting levels are those established by the current edition of the Illuminating Engineering Society of North America (IES) Lighting Handbook.

#### FURNISHINGS, EQUIPMENT AND SUPPLIES

##### § 205.71. Bed and furnishings.

A bed shall be equipped with a firm supporting mattress which is equal to the size of the frame and provides for the comfort and safety of the resident.

##### § 205.72. Furniture.

A resident shall be provided with a drawer or cabinet in the resident's room that can be locked.

##### § 205.73. (Reserved).

##### § 205.74. Linen.

The facility shall have available at all times a quantity of linens essential for proper care and comfort of patients.

#### SUPPLIES

##### § 205.75. Supplies.

Adequate supplies shall be available at all times to meet the residents' needs.

#### CHAPTER 207. HOUSEKEEPING AND MAINTENANCE STANDARDS FOR LONG TERM CARE NURSING FACILITIES

##### HOUSEKEEPING AND MAINTENANCE

Sec.	(Reserved).
207.1.	(Reserved).
207.2.	Administrator's responsibility.
207.3.	(Reserved).
207.4.	Ice containers and storage.
207.5.	(Reserved).

##### HOUSEKEEPING AND MAINTENANCE

##### § 207.1. (Reserved).

##### § 207.2. Administrator's responsibility.

(a) The administrator shall be responsible for satisfactory housekeeping and maintenance of the buildings and grounds.

(b) Nursing personnel may not be assigned housekeeping duties that are normally assigned to housekeeping personnel.

##### § 207.3. (Reserved).

##### § 207.4. Ice containers and storage.

Ice storage containers shall be kept clean, and ice shall be handled in a sanitary manner to prevent contamination.

##### § 207.5. (Reserved).

#### CHAPTER 209. FIRE PROTECTION AND SAFETY PROGRAMS FOR LONG TERM CARE NURSING FACILITIES

##### FIRE PROTECTION AND SAFETY

Sec.	
209.1.	Fire department service.
209.2.	(Reserved).
209.3.	Smoking.
209.4.	(Reserved).
209.5.	(Reserved).
209.6.	(Reserved).
209.7.	Disaster preparedness.
209.8.	Fire drills.

##### FIRE PROTECTION AND SAFETY

##### § 209.1. Fire department service.

The telephone number of the emergency services serving the facility shall be posted by the telephones in each nursing station, office and appropriate place within the facility.

##### § 209.2. (Reserved).

##### § 209.3. Smoking.

(a) Policies regarding smoking shall be adopted. The policies shall include provisions for the protection of the rights of the nonsmoking residents. The smoking policies shall be posted in a conspicuous place and in a legible format so that they may be easily read by residents, visitors and staff.

(b) Proper safeguards shall be taken against the fire hazards involved in smoking.

(c) Adequate supervision while smoking shall be provided for those residents who require it.

(d) Smoking by residents in bed is prohibited unless the resident is under direct observation.

(e) Smoking is prohibited in a room, ward or compartment where flammable liquids, combustible gases or oxygen is used or stored, and in other hazardous locations. The areas shall be posted with "NO SMOKING" signs.

(f) Ash trays of noncombustible material and safe design shall be provided in areas where smoking is permitted.

(g) Noncombustible containers with self-closing covers shall be provided in areas where smoking is permitted.

##### § 209.4. (Reserved).

##### § 209.5. (Reserved).

##### § 209.6. (Reserved).

##### § 209.7. Disaster preparedness.

(a) The facility shall have a comprehensive written disaster plan which shall be developed and maintained with the assistance of qualified fire, safety and other appropriate experts. It shall include procedures for prompt transfer of casualties and records, instructions regarding the location and use of alarm systems and signals and fire fighting equipment, information regarding methods of containing fire, procedures for notification of appropriate persons and specifications of evacuation routes and procedures. The written plan shall be made available to and reviewed with personnel, and it shall be available at each nursing station and in each department. The plan shall be reviewed periodically to determine its effectiveness.



(b) A diagram of each floor showing corridors, line of travel, exit doors and location of the fire extinguishers and pull signals shall be posted on each floor in view of residents and personnel.

(c) All personnel shall be instructed in the operation of the various types of fire extinguishers used in the facility.

#### § 209.8. Fire drills.

(a) Fire drills shall be held monthly. Fire drills shall be held at least four times per year per shift at unspecified hours of the day and night.

(b) A written report shall be maintained of each fire drill which includes date, time required for evacuation or relocation, number of residents evacuated or moved to another location and number of personnel participating in a fire drill.

### CHAPTER 211. PROGRAM STANDARDS FOR LONG TERM CARE NURSING FACILITIES

Sec.	
211.1.	Reportable diseases.
211.2.	Physician services.
211.3.	Oral and telephone orders.
211.4.	Procedure in event of death.
211.5.	Clinical records.
211.6.	Dietary services.
211.7.	Physician assistants and certified registered nurse practitioners.
211.8.	Use of restraints.
211.9.	Pharmacy services.
211.10.	Resident care policies.
211.11.	Resident care plan.
211.12.	Nursing services.
211.13.	(Reserved).
211.14.	(Reserved).
211.15.	Dental services.
211.16.	Social services.
211.17.	Pet therapy.

#### § 211.1. Reportable diseases.

(a) When a resident develops a reportable disease, the administrator shall report the information to the appropriate health agencies and appropriate Division of Nursing Care Facilities field office. Reportable diseases and conditions are:

Acquired Immune Deficiency Syndrome  
 Amebiasis  
 Animal Bites  
 Anthrax  
 Botulism  
 Brucellosis  
 Campylobacteriosis  
 Chlamydia Trachomatous Infections  
 Cholera  
 Diphtheria  
 Encephalitis  
 Food Poisoning  
 Giardiasis  
 Gonococcal Infections  
 Guillian-Barre Syndrome  
 Haemophilus influenzae type b disease  
 Hepatitis, Viral, including Type A and Type B  
 Hepatitis, non-A and non-B  
 Histoplasmosis  
 Kawasaki disease

Legionnaires' disease  
 Leptospirosis  
 Lyme Disease  
 Lymphogranuloma venereum  
 Malaria  
 Measles  
 Meningitis-all types  
 Meningococcal Disease  
 Mumps  
 Pertussis (whooping cough)  
 Plague  
 Poliomyelitis  
 Psittacosis (ornithosis)  
 Rabies  
 Reye's syndrome  
 Rickettsial diseases, including Rocky Mountain Spotted Fever  
 Rubella (German measles) and congenital rubella syndrome  
 Salmonellosis  
 Shigellosis  
 Syphilis, all stages  
 Tetanus  
 Toxic Shock Syndrome  
 Toxoplasmosis  
 Trichinosis  
 Tuberculosis, all forms  
 Tularemia  
 Typhoid  
 Yellow Fever

(b) Cases of scabies and lice shall be reported to the appropriate Division of Nursing Care Facilities field office.

(c) Significant nosocomial outbreaks, as determined by the facility's medical director, of Methicillin Resistant Staphylococcus Aureus (MRSA), Vancomycin-Resistant Staphylococcus Aureus (VRSA), Vancomycin-Resistant Enterococci (VRE), and Vancomycin-Resistant Staphylococcus Epidermidis (VRSE) shall be reported to the appropriate Division of Nursing Care Facilities field office.

#### § 211.2. Physician services.

(a) The attending physician shall be responsible for the medical evaluation of the resident and shall prescribe a planned regimen of total resident care.

(b) The facility shall have available, prior to or at the time of admission, resident information which includes current medical findings, diagnoses and orders from a physician for immediate care of the resident. The resident's initial medical assessment shall be conducted no later than 14 days after admission and include a summary of the prior treatment as well as the resident's rehabilitation potential.

(c) A facility shall have a medical director who is licensed as a physician in this Commonwealth and who is responsible for the overall coordination of the medical

care in the facility to ensure the adequacy and appropriateness of the medical services provided to the residents. The medical director may serve on a full- or part-time basis depending on the needs of the residents and the facility and may be designated for single or multiple facilities. There shall be a written agreement between the physician and the facility.

(d) The medical director's responsibilities shall include at least the following:

(1) Review of incidents and accidents that occur on the premises and addressing the health and safety hazards of the facility. The administrator shall be given appropriate information from the medical director to help insure a safe and sanitary environment for residents and personnel.

(2) Development of written policies which are approved by the governing body that delineate the responsibilities of attending physicians.

**§ 211.3. Oral and telephone orders.**

(a) A physician's oral and telephone orders shall be given to a registered nurse, physician or other individual authorized by appropriate statutes and the State Boards in the Bureau of Professional and Occupational Affairs and shall immediately be recorded on the resident's clinical record by the person receiving the order. The entry shall be signed and dated by the person receiving the order. Written orders may be by fax.

(b) A physician's oral and telephone orders for care and treatments, shall be dated and countersigned with the original signature of the physician within 7 days of receipt of the order. If the physician is not the attending physician, he shall be authorized and the facility so informed by the attending physician and shall be knowledgeable about the resident's condition.

(c) A physician's telephone and oral orders for medications shall be dated and countersigned by the prescribing practitioner within 48 hours. Oral orders for Schedule II drugs are permitted only in a bona fide emergency.

(d) Oral orders for medication or treatment shall be accepted only under circumstances where it is impractical for the orders to be given in a written manner by the responsible practitioner. An initial written order as well as a countersignature may be received by a fax which includes the practitioner's signature.

(e) The facility shall establish policies identifying the types of situations for which oral orders may be accepted and the appropriate protocols for the taking and transcribing of oral orders in these situations, which shall include:

(1) Identification of all treatments or medications which may not be prescribed or dispensed by way of an oral order, but which instead require written orders.

(2) A requirement that all oral orders be stated clearly, repeated by the issuing practitioner, and be read back in their entirety by personnel authorized to take the oral order.

(3) Identification of all personnel authorized to take and transcribe oral orders.

(4) The policy on fax transmissions.

**§ 211.4. Procedure in event of death.**

(a) Written postmortem procedures shall be available at each nursing station.

(b) Documentation shall be on the resident's clinical record that the next of kin, guardian or responsible party has been notified of the resident's death. The name of the notified party shall be written on the resident's clinical record.

**§ 211.5. Clinical records.**

(a) Clinical records shall be available to, but not be limited to, representatives of the Department of Aging Ombudsman Program.

(b) Information contained in the resident's record shall be privileged and confidential. Written consent of the resident, or of a designated responsible agent acting on the resident's behalf, is required for release of information. Written consent is not necessary for authorized representatives of the State and Federal government during the conduct of their official duties.

(c) Records shall be retained for a minimum of 7 years following a resident's discharge or death.

(d) Records of discharged residents shall be completed within 30 days of discharge. Clinical information pertaining to a resident's stay shall be centralized in the resident's record.

(e) When a facility closes, resident clinical records may be transferred with the resident if the resident is transferred to another health care facility. Otherwise, the owners of the facility shall make provisions for the safekeeping and confidentiality of clinical records and shall notify the Department of how the records may be obtained.

(f) At a minimum, the resident's clinical record shall include physicians' orders, observation and progress notes, nurses' notes, medical and nursing history and physical examination reports; identification information, admission data, documented evidence of assessment of a resident's needs, establishment of an appropriate treatment plan and plans of care and services provided; hospital diagnoses authentication—discharge summary, report from attending physician or transfer form—diagnostic and therapeutic orders, reports of treatments, clinical findings, medication records and discharge summary including final diagnosis and prognosis or cause of death. The information contained in the record shall be sufficient to justify the diagnosis and treatment, identify the resident and show accurately documented information.

(g) Symptoms and other indications of illness or injury, including the date, time and action taken shall be recorded.

(h) Each professional discipline shall enter the appropriate historical and progress notes in a timely fashion in accordance with the individual needs of a resident.

(i) The facility shall assign overall supervisory responsibility for the clinical record service to a medical records practitioner. Consultative services may be utilized, however, the facility shall employ sufficient personnel competent to carry out the functions of the medical record service.

**§ 211.6. Dietary services.**

(a) Menus shall be planned at least 2 weeks in advance. Records of menus of foods actually served shall be retained for 30 days. When changes in the menu are necessary, substitutions shall provide equal nutritive value.

(b) Sufficient food to meet the nutritional needs of residents shall be prepared as planned for each meal.

There shall be at least 3 days' supply of food available in storage in the facility at all times.

(c) Overall supervisory responsibility for the dietary services shall be assigned to a full-time qualified dietary services supervisor.

(d) If consultant dietary services are used, the consultant's visits shall be at appropriate times and of sufficient duration and frequency to provide continuing liaison with medical and nursing staff, advice to the administrator, resident counseling, guidance to the supervisor and staff of the dietary services, approval of menus, and participation in development or revision of dietary policies and procedures and in planning and conducting inservice education and programs.

(e) A current therapeutic diet manual approved jointly by the dietitian and medical director shall be readily available to attending physicians and nursing and dietetic service personnel.

(f) Dietary personnel shall practice hygienic food handling techniques. An employee shall wear clean outer garments, maintain a high degree of personal cleanliness and conform to hygienic practices while on duty. Employees shall wash their hands thoroughly with soap and water before starting work, after visiting the toilet room and as often as necessary to remove soil and contamination.

#### **§ 211.7. Physician assistants and certified registered nurse practitioners.**

(a) Physician assistants and certified registered nurse practitioners may be utilized in facilities, in accordance with their training and experience and the requirements in statutes and regulations governing their respective practice.

(b) If the facility utilizes the services of physician assistants or certified registered nurse practitioners, the following apply:

(1) There shall be written policies indicating the manner in which the physician assistants and certified registered nurse practitioners shall be used and the responsibilities of the supervising physician.

(2) There shall be a list posted at each nursing station of the names of the supervising physician and the persons, and titles, whom they supervise.

(3) A copy of the supervising physician's registration from the State Board of Medicine or State Board of Osteopathic Medicine and the physician assistant's or certified registered nurse practitioner's certificate shall be available in the facility.

(4) A notice plainly visible to residents shall be posted in prominent places in the institution explaining the meaning of the terms "physician assistant" and "certified registered nurse practitioner."

(c) Physician assistants' and certified registered nurse practitioners' documentation on the resident's record shall be countersigned by the supervising physician within 7 days with an original signature and date by the licensed physician. This includes progress notes, physical examination reports, treatments, medications and any other notation made by the physician assistant or certified registered nurse practitioner.

(d) Physicians shall countersign and date their verbal orders to physician assistants or certified registered nurse practitioners within 7 days.

(e) This section may not be construed to relieve the individual physician, group of physicians, physician assistant or certified registered nurse practitioner of responsibility imposed by statute or regulation.

#### **§ 211.8. Use of restraints.**

(a) Restraints may not be used in lieu of staff effort. Locked restraints may not be used.

(b) Restraints may not be used or applied in a manner which causes injury to the resident.

(c) Physical restraints shall be removed at least 10 minutes out of every 2 hours during the normal waking hours to allow the resident an opportunity to move and exercise. Except during the usual sleeping hours, the resident's position shall be changed at least every 2 hours. During sleeping hours, the position shall be changed as indicated by the resident's needs.

(d) A signed, dated, written physician order shall be required for a restraint. This includes the use of chest, waist, wrist, ankle, drug or other form of restraint. The order shall include the type of restraint to be used.

(e) The physician shall document the reason for the initial restraint order and shall review the continued need for the use of the restraint order by evaluating the resident. If the order is to be continued, the order shall be renewed by the physician in accordance with the resident's total program of care.

(f) Every 30 days, or sooner if necessary, the interdisciplinary team shall review and reevaluate the use of all restraints ordered by physicians.

#### **§ 211.9. Pharmacy services.**

(a) Facility policies shall ensure that:

(1) Facility staff involved in the administration of resident care shall be knowledgeable of the policies and procedures regarding pharmacy services including medication administration.

(2) Only licensed pharmacists shall dispense medications for residents. Licensed physicians may dispense medications to the residents who are in their care.

(b) Medications shall be administered by authorized persons as indicated in § 201.3 (relating to definitions).

(c) Medications and biologicals shall be administered by the same licensed person who prepared the dose for administration and shall be given as soon as possible after the dose is prepared.

(d) Medications shall be administered under the written orders of the attending physician.

(e) Each resident shall have a written physician's order for each medication received. This includes both proprietary and nonproprietary medications.

(f) Residents shall be permitted to purchase prescribed medications from the pharmacy of their choice. If the resident does not use the pharmacy that usually services the facility, the resident is responsible for securing the medications and for assuring that applicable pharmacy regulations and facility policies are met. The facility:

(1) Shall notify the resident or the resident's responsible person, at admission and as necessary throughout the resident's stay in the facility, of the right to purchase medications from a pharmacy of the resident's choice as well as the resident's and pharmacy's responsibility to

comply with the facility's policies and State and Federal laws regarding packaging and labeling requirements.

(2) Shall have procedures for receipt of medications from outside pharmacies including requirements for ensuring accuracy and accountability. Procedures shall include the review of medications for labeling requirements, dosage and instructions for use by licensed individuals who are authorized to administer medications.

(3) Shall ensure that the pharmacist or pharmacy consultant will receive a monthly resident medication profile from the selected pharmacy provider.

(4) Shall have a policy regarding the procurement of medications in urgent situations. Facilities may order a 7-day supply from a contract pharmacy if the resident's selected pharmacy is not able to comply with these provisions.

(g) If over-the-counter drugs are maintained in the facility, they shall bear the original label and shall have the name of the resident on the label of the container. The charge nurse may record the resident's name on the nonprescription label. The use of nonprescription drugs shall be limited by quantity and category according to the needs of the resident. Facility policies shall indicate the procedure for handling and billing of nonprescription drugs.

(h) If a unit of use or multiuse systems are used, applicable statutes shall be met. Unit of use dispensing containers or multiuse cards shall be properly labeled. Individually wrapped doses shall be stored in the original container from which they were dispensed.

(i) At least quarterly, outdated, deteriorated or recalled medications shall be identified and returned to the dispensing pharmacy for disposal in accordance with acceptable professional practices. Written documentation shall be made regarding the disposition of these medications.

(j) Disposition of discontinued and unused medications and medications of discharged or deceased residents shall be handled by facility policy which shall be developed in cooperation with the consultant pharmacist. The method of disposition and quantity of the drugs shall be documented on the respective resident's chart. The disposition procedures shall be done at least quarterly under Commonwealth and Federal statutes.

(k) The oversight of pharmaceutical services shall be the responsibility of the quality assurance committee. Arrangements shall be made for the pharmacist responsible for the adequacy and accuracy of the services to have committee input. The quality assurance committee, with input from the pharmacist, shall develop written policies and procedures for drug therapy, distribution, administration, control, accountability and use.

(l) A facility shall have at least one emergency medication kit. The kit used in the facility shall be governed by the following:

(1) The facility shall have written policies and procedures pertaining to the use, content, storage and refill of the kits.

(2) The quantity and categories of medications and equipment in the kits shall be kept to a minimum and shall be based on the immediate needs of the facility.

(3) The emergency medication kits shall be under the control of a practitioner authorized to dispense or pre-

scribe medications under the Pharmacy Act (63 P. S. §§ 390.1—390.13).

(4) The kits shall be kept readily available to staff and shall have a breakaway lock which shall be replaced after each use.

#### **§ 211.10. Resident care policies.**

(a) Resident care policies shall be available to admitting physicians, sponsoring agencies, residents and the public, shall reflect an awareness of, and provision for, meeting the total medical and psychosocial needs of residents. The needs include admission, transfer and discharge planning.

(b) The policies shall be reviewed at least annually and updated as necessary.

(c) The policies shall be designed and implemented to ensure that each resident receives treatments, medications, diets and rehabilitative nursing care as prescribed.

(d) The policies shall be designed and implemented to ensure that the resident receives proper care to prevent pressure sores and deformities; that the resident is kept comfortable, clean and well-groomed; that the resident is protected from accident, injury and infection; and that the resident is encouraged, assisted and trained in self-care and group activities.

#### **§ 211.11. Resident care plan.**

(a) The facility shall designate an individual to be responsible for the coordination and implementation of a written resident care plan. This responsibility shall be included as part of the individual's job description.

(b) The individual responsible for the coordination and implementation of the resident care plan shall be part of the interdisciplinary team.

(c) A registered nurse shall be responsible for developing the nursing assessment portion of the resident care plan.

(d) The resident care plan shall be available for use by personnel caring for the resident.

(e) The resident, when able, shall participate in the development and review of the care plan.

#### **§ 211.12. Nursing services.**

(a) The facility shall provide services by sufficient numbers of personnel on a 24-hour basis to provide nursing care to meet the needs of all residents.

(b) There shall be a full-time director of nursing services who shall be a qualified licensed registered nurse.

(c) The director of nursing services shall have, in writing, administrative authority, responsibility and accountability for the functions and activities of the nursing services staff, and shall serve only one facility in this capacity.

(d) The director of nursing services shall be responsible for:

(1) Standards of accepted nursing practice.

(2) Nursing policy and procedure manuals.

(3) Methods for coordination of nursing services with other resident services.

(4) Recommendations for the number and levels of nursing personnel to be employed.

(5) General supervision, guidance and assistance for a resident in implementing the resident's personal health program to assure that preventive measures, treatments, medications, diet and other health services prescribed are properly carried out and recorded.

(e) The facility shall designate a registered nurse who is responsible for overseeing total nursing activities

<i>Census</i>	<i>Day</i>
59 and under	1 RN
60/150	1 RN
151/250	1 RN and 1 LPN
251/500	2 RNs
501/1,000	4 RNs
1,001/Upward	8 RNs

(2) When the facility designates an LPN as a nurse who is responsible for overseeing total nursing activities within the facility on the night tour of duty in facilities with a census of 59 or under, a registered nurse shall be on call and located within a 30-minute drive of the facility.

(g) There shall be at least one nursing staff employee on duty per 20 residents.

(h) At least two nursing service personnel shall be on duty.

(i) A minimum number of general nursing care hours shall be provided for each 24-hour period. The total number of hours of general nursing care provided in each 24-hour period shall, when totaled for the entire facility, be a minimum of 2.7 hours of direct resident care for each resident.

(j) Nursing personnel shall be provided on each resident floor.

(k) Weekly time schedules shall be maintained and shall indicate the number and classification of nursing personnel, including relief personnel, who worked on each tour of duty on each nursing unit.

(l) The Department may require an increase in the number of nursing personnel from the minimum requirements if specific situations in the facility—including, but not limited to, the physical or mental condition of residents, quality of nursing care administered, the location of residents, the location of the nursing station and location of the facility—indicate the departures as necessary for the welfare, health and safety of the residents.

#### **§ 211.13. (Reserved).**

#### **§ 211.14. (Reserved).**

#### **§ 211.15. Dental services.**

(a) The facility shall assist residents in obtaining routine and 24-hour emergency dental care.

(b) The facility shall make provisions to assure that resident dentures are retained by the resident. Dentures shall be marked for each resident.

within the facility on each tour of duty each day of the week.

(f) In addition to the director of nursing services, the following daily professional staff shall be available.

(1) The following minimum nursing staff ratios are required:

<i>Evening</i>	<i>Night</i>
1 RN	1 RN or 1 LPN
1 RN	1 RN
1 RN and 1 LPN	1 RN and 1 LPN
2 RNs	2 RNs
3 RNs	3 RNs
6 RNs	6 RNs

#### **§ 211.16. Social services.**

(a) The facility shall provide social services designed to promote preservation of the patient's physical and mental health and to prevent the occurrence or progression of personal and social problems. Facilities with a resident census of more than 120 residents shall employ a qualified social worker on a full-time basis.

(b) In facilities with 120 beds or less that do not employ a full-time social worker, social work consultation by a qualified social worker shall be provided and documented on a regular basis.

#### **§ 211.17. Pet therapy.**

If pet therapy is utilized, the following standards apply:

(1) Animals are not permitted in the kitchen or other food service areas, dining rooms when meals are being served, utility rooms and rooms of residents who do not want animals in their rooms.

(2) Careful selection of types of animals shall be made so they are not harmful or annoying to residents.

(3) The number and types of pets shall be restricted according to the layout of the building, type of residents, staff and animals.

(4) Pets shall be carefully selected to meet the needs of the residents involved in the pet therapy program.

(5) The facility shall have written procedures established which will address the physical and health needs of the animals. Rabies shots shall be given to animals who are potential victims of the disease. Care of the pets may not be imposed on anyone who does not wish to be involved.

(6) Pets and places where they reside shall be kept clean and sanitary.

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