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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 repropose.

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.

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 2000.

PENNSYLVANIA BULLETIN

Volume 30 Number 35
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Part II

This part contains the
Environmental Quality Board's
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THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 100, 200, 4000 AND 6000]

Procedure When Defendant Fails to Appear for Preliminary Hearing: Arrest Warrants

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.Rs.Crim.P. 109, 110, 112, 113, 140, 141, 142, 146, 6000, 6001, 6003, and 9024, and approve revisions of the Comments to Pa.Rs.Crim.P. 225, 231, 4008, and 4016. These rule changes establish one statewide, uniform procedure for handling court cases in which a defendant has failed to appear for the preliminary hearing: if a defendant fails to appear for the preliminary hearing after notice and without cause, the defendant's absence will be deemed a waiver of the defendant's right to be present, the case will proceed in the defendant's absence, and a warrant for the defendant's arrest will be issued. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Supplemental Report highlights some additional changes that have been made to the proposal as the result of the Committee's review of the comments we received in response to the publication of the proposal at 29 Pa.B. 6454 (December 25, 1999). Please note that the Committee's Supplemental Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the additional proposed rule changes precedes the Supplemental Report and is shown in small caps and bold, and is underlined.[1]

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901 no later than Monday, September 18, 2000.

By the Criminal Procedural Rules Committee

J. MICHAEL EAKIN,
Secretary

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 100. PROCEDURE IN COURT CASES

PART IV. PROCEEDINGS BEFORE ISSUING AUTHORITIES

Rule 142. Disposition of Case at Preliminary Hearing.[2]

(A) At the conclusion of the preliminary hearing, the decision of the issuing authority shall be publicly pronounced.

[(a)] (B) If the Commonwealth establishes a prima facie case of the defendant's guilt, the issuing authority shall hold the defendant for court. Otherwise, the defendant shall be discharged. **[In either event, the decision of the issuing authority shall be publicly pronounced.**

(b)] (C) * * *

* * * * *

(D) In any case in which the defendant fails to appear for the preliminary hearing:

(1) if the issuing authority finds that the defendant did not receive notice, or finds that there was good cause explaining the defendant's failure to appear, the issuing authority shall continue the preliminary hearing to a specific date and time, and shall give notice of the new date and time as provided in Rule 141(D).[3]

(2) If the issuing authority finds that the defendant's absence is without good cause and after notice, the absence shall be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority. In these cases, the issuing authority shall:

(A) PROCEED WITH THE CASE IN THE SAME MANNER AS THOUGH THE DEFENDANT WERE PRESENT; AND

(B) IF THE CASE IS HELD FOR COURT OR IF THE PRELIMINARY HEARING IS CONTINUED, ISSUE A WARRANT FOR THE ARREST IF THE DEFENDANT.

(3) WHEN THE ISSUING AUTHORITY ISSUES A WARRANT PURSUANT TO PARAGRAPH (D)(2)(B), THE ISSUING AUTHORITY RETAINS JURISDICTION TO DISPOSE OF THE WARRANT UNTIL:

(A) THE FORMAL ARRAIGNMENT OCCURS; OR

(B) THE DEFENDANT FAILS TO APPEAR FOR THE FORMAL ARRAIGNMENT AND THE COMMON PLEAS COURT JUDGE ISSUES A BENCH WARRANT FOR THE DEFENDANT.

Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; 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; renumbered Rule 142 October 8, 1999, effective January 1, 2000; **renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; amended _____, 2000, effective _____, 2000.**

Comment

Paragraph **[(b)] (C)** was amended in 1983 to reflect the fact that a bail determination will already have been made at the preliminary arraignment, except in those

[1] The other proposed changes shown just in bold and underlining and in bold and brackets are the proposed additions and deletions that are discussed in the Committee's explanatory Report published in December 1999.

[2] Rule 142 will be renumbered Rule 543 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[3] Rule 141 will be renumbered Rule 542 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

cases **[where] in which**, pursuant to a summons, the defendant's first appearance is at the preliminary hearing. See Rules 109 and 110.[4]

When a defendant fails to appear for the preliminary hearing, before proceeding with the case as provided in paragraph (D), the issuing authority must determine (1) whether the defendant received notice of the time, date, and place of the preliminary hearing either in person at a preliminary arraignment as provided in Rule 140(E)(2) or in a summons served as provided in Rule 112, and (2) whether the defendant had good cause explaining the absence.[5]

If the issuing authority determines that the defendant did not receive notice or that there is good cause explaining why the defendant failed to appear, the preliminary hearing must be continued and rescheduled for a date certain. See paragraph (D)(1). For the procedures when a preliminary hearing is continued, see Rule 141(D).[6]

If the issuing authority determines that the defendant received notice and has not provided good cause explaining why he or she failed to appear, the defendant's absence constitutes a waiver of the defendant's right to be present for subsequent proceedings before the issuing authority. The duration of this waiver only extends through those proceedings that the defendant is absent.

When the defendant fails to appear after notice and without cause, paragraph (D)(2)(a) provides that the case is to proceed in the same manner as if the defendant were present. The issuing authority either would proceed with the preliminary hearing as provided in Rule 141(A), (B), (C) and Rule 142(A), (B), and (C); or, if the issuing authority determines it necessary, continue the case to a date certain as provided in Rule 141(D); or, in the appropriate case, convene the preliminary hearing for the taking of testimony of the witnesses who are present, and then continue the remainder of the hearing until a date certain.[7] When the case is continued, the issuing authority still should send the required notice of the new date to the defendant, thus providing the defendant with another opportunity to appear.

Paragraph (D)(2)(b) requires the issuing authority to issue an arrest warrant if the case is held for court or when the preliminary hearing is continued.

IT IS EXPECTED PURSUANT TO PARAGRAPH (D)(3),

(A) IN THOSE CASES IN WHICH A DEFENDANT IS APPREHENDED ON THE ISSUING AUTHORITY'S WARRANT PRIOR TO THE FORMAL ARRAIGNMENT OR THE ISSUANCE OF A COMMON PLEAS JUDGE'S BENCH WARRANT, THE DEFENDANT WILL BE TAKEN BEFORE THE ISSUING AUTHORITY FOR RESOLUTION OF THE WARRANT, COUNSEL, AND BAIL, AND

(B) IMMEDIATELY FOLLOWING THE FORMAL ARRAIGNMENT OR THE ISSUANCE OF A COMMON PLEAS COURT JUDGE'S BENCH WARRANT, THE CLERK OF COURTS OR COURT ADMINISTRATOR MUST NOTIFY THE ISSUING AUTHORITY, AND THE ISSUING AUTHORITY MUST RECALL AND CANCEL THE WARRANT.

FOR THE PURPOSES OF SETTING BAIL ONCE BAIL HAS BEEN SET BY A COMMON PLEAS JUDGE, SEE RULES 4008 AND 4016.[8]

SEE RULE 303 (ARRAIGNMENT) FOR NOTICE OF FORMAL ARRAIGNMENT REQUIREMENTS. [9]

SEE RULE 6003 (PROCEDURE IN NON-SUMMARY MUNICIPAL COURT CASES) FOR THE PRELIMINARY HEARING PROCEDURES IN MUNICIPAL COURT.[10]

Committee Explanatory Reports:

* * * * *

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

Supplemental Report explaining the proposed changes concerning warrant procedures published at 30 Pa.B. 4547 (September 2, 2000).

CHAPTER 200. INFORMATIONS AND INVESTIGATING GRAND JURIES

PART I. INFORMATIONS

Rule 225. Information: Filing, Contents, Function.[11]

* * * * *

Official Note: **Rule 225 [Adopted] adopted** February 15, 1974, effective immediately; Comment revised January 28, 1983, effective July 1, 1983; amended August 14, 1995, effective January 1, 1996**; renumbered Rule 560 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

* * * * *

SEE RULE 142(D) FOR THE PROCEDURES WHEN A DEFENDANT FAILS TO APPEAR FOR THE PRELIMINARY HEARING.[12] WHEN THE PRELIMINARY HEARING IS HELD IN THE DEFENDANT'S ABSENCE AND THE CASE IS HELD FOR COURT, THE ATTORNEY FOR THE COMMONWEALTH SHOULD PROCEED AS PROVIDED IN THIS RULE.

Committee Explanatory Reports:

* * * * *

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

Supplemental Report explaining the proposed Comment revision concerning failure to appear for preliminary hearing published at 30 Pa.B. 4547 (September 2, 2000).

[4] Rules 109 and 110 will be renumbered Rules 509 and 510 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[5] Rules 140 and 112 will be renumbered Rules 540 and 511 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[6] Rule 141 will be renumbered Rule 542 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[7] Rule 142 will be renumbered Rule 543 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[8] Rules 4008 and 4016 will be renumbered Rules 529 and 536 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[9] Rule 303 will be renumbered Rule 571 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[10] Rule 6003 will be renumbered Rule 1003 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[11] Rule 225 will be renumbered Rule 560 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[12] Rule 142 will be renumbered Rule 543 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

Rule 231. Presentation of Information Without Preliminary Hearing.[13]

* * * * *

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

Comment

* * * * *

NOTHING IN THIS RULE IS INTENDED TO PRECLUDE THE ATTORNEY FOR THE COMMONWEALTH FROM FILING AN INFORMATION OR FROM HAVING THE DATE FOR THE FORMAL ARRAIGNMENT SCHEDULED IN THOSE CASES IN WHICH THE ISSUING AUTHORITY HAS CONDUCTED THE PRELIMINARY HEARING IN THE DEFENDANT'S ABSENCE AS PROVIDED IN RULE 142(D). [14]

Committee Explanatory Reports:

* * * * *

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

Supplemental Report explaining the proposed Comment revision concerning preliminary hearing in defendant's absence published at 30 Pa.B. 4547 (September 2, 2000).

CHAPTER 4000. BAIL

PART I. PROCEDURES FOR PRE-VERDICT RELEASE

Rule 4008. Modification of Bail Order Prior to Verdict.[15]

* * * * *

Official Note: Former Rule 4008, adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4010. Present Rule 4008 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996**; renumbered Rule 529 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

* * * * *

In Municipal Court cases, the Municipal Court judge may modify bail in the same manner as a common pleas court judge may under this rule. See Rule 6011.[16]

ONCE BAIL HAS BEEN MODIFIED BY A COMMON PLEAS JUDGE, ONLY THE COMMON PLEAS JUDGE SUBSEQUENTLY MAY MODIFY BAIL, EVEN IN CASES THAT ARE PENDING BEFORE A DISTRICT JUSTICE. SEE RULES 142 AND 4016.[17]

* * * * *

Committee Explanatory Reports:

* * * * *

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

Supplemental Report explaining the proposed Comment revision published at 30 Pa.B. 4547 (September 2, 2000).

PART III. GENERAL PROCEDURES IN ALL BAIL CASES

Rule 4016. Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture: Bail Pieces; Exoneration of Surety.[18]

* * * * *

Official Note: Former Rule 4016 **[,]** adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4012; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4016. Present Rule 4016 adopted 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**; renumbered Rule 536 and Comment revised March 1, 2000, effective April 1, 2001 ; Comment revised _____, 2000, effective _____, 2000.**

Comment

* * * * *

ONCE BAIL HAS BEEN MODIFIED BY A COMMON PLEAS JUDGE PURSUANT TO RULE 4008, ONLY THE COMMON PLEAS JUDGE SUBSEQUENTLY MAY CHANGE THE CONDITIONS OF RELEASE, EVEN IN CASES THAT ARE PENDING BEFORE A DISTRICT JUSTICE. SEE RULES 142 AND 4008. [19]

Whenever the bail authority is a judicial officer in a court not of record, pursuant to paragraph (A)(2)(a), that officer should set forth in writing his or her reasons for ordering a forfeiture, and the written reasons should be included with the transcript.

* * * * *

Committee Explanatory Reports:

* * * * *

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

Supplemental Report explaining the proposed Comment revision published at 30 Pa.B. 4547 (September 2, 2000).

[13] Rule 231 will be renumbered Rule 565 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[14] Rule 142 will be renumbered Rule 543 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[15] Rule 4008 will be renumbered Rule 529 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[16] Rule 6011 will be renumbered Rule 1011 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[17] Rules 142 and 4016 will be renumbered Rule 543 and 536 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[18] Rule 4016 will be renumbered Rule 536 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[19] Rules 142 and 4008 will be renumbered Rule 543 and 529 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

CHAPTER 6000. RULES OF CRIMINAL PROCEDURE FOR THE MUNICIPAL COURT OF PHILADELPHIA

Rule 6003. Procedure in Non-Summary Municipal Court Cases.[20]

A. INITIATION OF CRIMINAL PROCEEDINGS

(1) Criminal proceedings in **court** cases **[which charge any misdemeanor under the Crimes Code or other statutory criminal offenses, other than a summary offense, for which no prison term may be imposed or which is punishable by a term of imprisonment of not more than 5 years]** shall be instituted by filing a written complaint, except that proceedings may be also instituted by:

(a) an arrest without a warrant when a **felony or** misdemeanor is committed in the presence of the police officer making the arrest; or

(b) an arrest without a warrant upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when the arrest without a warrant is specifically authorized by law **[.] ; or**

(c) an arrest without a warrant upon probable cause when the offense is a felony.

* * * * *

B. CERTIFICATION OF COMPLAINT

Before a Municipal Court judge may issue process or order further proceedings **[in a Municipal Court case],** the judge shall ascertain and certify on the complaint that:

* * * * *

(C) SUMMONS AND ARREST WARRANT PROCEDURES

When a Municipal Court judge finds grounds to issue process based on a complaint, the judge shall:

* * * * *

(2) issue a warrant of arrest when:

* * * * *

(e) the identity of the defendant is unknown; **[or]**

(f) a defendant is charged with more than one offense, and one of the offenses is punishable by imprisonment for a term of more than 5 years; or

* * * * *

D. PRELIMINARY ARRAIGNMENT

(1) When a defendant has been arrested within Philadelphia County **[in a Municipal Court case]**, with or without a warrant, the defendant shall be afforded a preliminary arraignment by a Municipal Court judge without unnecessary delay. If the defendant was arrested without a warrant pursuant to paragraph (A)(1)(a) or (b), unless the Municipal Court judge makes a determination of probable cause, the defendant shall not be detained.

(2) At the preliminary arraignment, the Municipal Court judge:

* * * * *

(d) shall also inform the defendant:

* * * * *

(ii) **in a Municipal Court case,** of the day, date, hour, and place for trial, which shall not be less than 20 days after the preliminary arraignment unless the **[issuing authority] Municipal Court judge** fixes an earlier date upon request of the defendant or defense counsel, with the consent of the attorney for the Commonwealth; **[and]**

(iii) in a case charging a felony, of the date, time, and place of the preliminary hearing, which shall not be less than 3 nor more than 10 days after the preliminary arraignment unless extended for cause or the Municipal Court judge fixes an earlier date upon the request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth; and

[(iii)] (iv) * * *

* * * * *

E. PRELIMINARY HEARING IN CASES CHARGING A FELONY

(1) In cases charging a felony, the preliminary hearing in Municipal Court shall be conducted as provided in Rule 141 (Preliminary Hearing; Continuances) and Rule 142 (Disposition of Case at Preliminary Hearing).[21]

(2) In any case in which the defendant fails to appear for the preliminary hearing, if the Municipal Court judge finds that:

(a) the defendant did not receive notice, or finds that there was good cause explaining the defendant's failure to appear, the judge shall continue the preliminary hearing to a specific date and time, and shall give notice of the new date and time as provided in Rule 141(D); or

(b) the defendant's absence is without cause and after notice, the absence shall be deemed a waiver by the defendant of the right to be present at any further proceedings before the Municipal Court judge. In these cases, the judge shall:

(i) PROCEED WITH THE CASE IN THE CAME MANNER AS THOUGH THE DEFENDANT WAS PRESENT; AND

(ii) IF THE CASE IS HELD FOR COURT OR THE PRELIMINARY HEARING CONTINUED, ISSUE A WARRANT FOR THE ARREST OF THE DEFENDANT.

(3) WHEN THE ISSUING AUTHORITY ISSUES A WARRANT PURSUANT TO PARAGRAPH (E)(2)(B)(II), THE MUNICIPAL COURT JUDGE RETAINS JURISDICTION TO DISPOSE OF THE WARRANT UNTIL;

(a) THE FORMAL ARRAIGNMENT OCCURS; OR

(b) THE DEFENDANT FAILS TO APPEAR FOR THE FORMAL ARRAIGNMENT AND THE COMMON PLEAS COURT JUDGE ISSUES A BENCH WARRANT FOR THE DEFENDANT.

[(E)] (F). ACCEPTANCE OF BAIL PRIOR TO TRIAL

The Clerk of Quarter Sessions shall accept bail at any time prior to the Municipal Court trial.

Official Note: Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective

[20] Rule 6003 will be renumbered Rule 1003 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[21] Rules 141 and 142 will be renumbered Rules 542 and 543 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

August 1, 1980; amended October 22, 1981, effective January 1, 1982; Comment revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded August 9, 1994, effective January 1, 1995. New Rule 6003 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; amended March 22, 1996, effective July 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1003 and amended March 1, 2000, effective April 1, 2001; **amended _____, 2000, effective _____, 2000.**

Comment

[Former Rule 6003 was rescinded and replaced by new Rule 6003 in 1994. Although Rule 6003 has been extensively reorganized, only subsections (D)(1) and (D)(2)(c) reflect changes in the procedures contained in the former rule.]

The 2000 amendments make it clear that Rule 6003 covers the preliminary procedures for all non-summary Municipal Court cases, see Rule 6001(A), and cases charging felonies, including the institution of proceedings, the preliminary arraignment, and the preliminary hearing.[22]

See Chapter 100 (Procedure in Court Cases), Parts I (Instituting Proceedings), II (Complaint Procedures), III(A) (Summons Procedures), III(B) (Arrest Procedures in Court Cases), and IV (Proceedings in Court Cases Before Issuing Authorities) for the statewide rules governing the preliminary procedures in court cases, including non-summary Municipal Court cases, not otherwise covered by this rule.[23]

The 2000 amendments to paragraph (A)(1) align the procedures for instituting cases in Municipal Court with the statewide procedures in Rule 101 (Means of Instituting Proceedings in Court Cases).[24]

The 1996 amendments to paragraph (A)(2) align the procedures for private complaints in non-summary **cases in** Municipal Court **[cases]** with the statewide procedures for private complaints in Rule 106 (Approval of Private Complaints).[25] In all cases **[where] in which** the affiant is not a law enforcement officer, the complaint must be submitted to the attorney for the Commonwealth for approval or disapproval.

As used in this rule, "Municipal Court judge" includes a bail commissioner acting within the scope of the bail commissioner's authority under 42 Pa.C.S. § 1123(A)(5).

* * * * *

Under paragraph D(3), after the preliminary arraignment, if the defendant is detained, the defendant must be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she must be committed to jail as provided by law.

As provided in paragraph (E)(2)(b), a defendant who is absent without cause and after notice will be deemed to have waived his or her right to be present for subsequent proceedings before the Municipal Court judge. The duration of this waiver only extends through those proceedings that the defendant is absent.

When a defendant is absent without cause after notice, the case will proceed in the same manner as if the defendant were present. The judge should proceed with the preliminary hearing as provided in Rule 141(A), (B), and (C) and Rule 142(A), (B), and (C); or, if the judge determines it necessary, continue the case to a date certain as provided in Rule 141(D); or, in the appropriate case, convene the preliminary hearing for the taking of testimony of the witnesses who are present, and then continue the remainder of the hearing until a date certain. When the case is continued, the judge still should send the required notice of the new date to the defendant, thus providing the defendant with another opportunity to appear.[26]

If the case is held for court following a preliminary hearing in the defendant's absence or the preliminary hearing is continued, the Municipal Court judge must issue an arrest warrant as provided in paragraph (E)(2)(b)(ii).

SEE RULE 303 (ARRAIGNMENT) FOR NOTICE OF ARRAIGNMENT REQUIREMENTS.[27]

Committee Explanatory Reports:

* * * * *

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

Supplemental Report explaining the proposed changes concerning warrant procedures published at 30 Pa.B. 4547 (September 2, 2000).

SUPPLEMENTAL REPORT

Proposed Amendments to Pa.Rs.Crim.P. 142 and 6003, and Correlative Revisions of the Comments to Pa.Rs.Crim.P. 225, 231, 4008, and 4016

PROCEDURE WHEN DEFENDANT FAILS TO APPEAR FOR PRELIMINARY HEARING: ARREST WARRANTS

I. *Background*[28]

The Committee published a proposal for statewide, uniform rules establishing the procedures governing cases in which a defendant fails to appear for a preliminary hearing. The proposal, published at 29 Pa.B. 6454 (December 25, 1999), provides when the defendant's absence is without cause that the district justice is to issue an arrest warrant, and the defendant's absence will be deemed a waiver of his or her presence at all proceedings

[22] Rules 6003 and 6001 will be renumbered Rules 1003 and 1001 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[23] Chapter 100 will be renumbered Chapter 5 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[24] Rule 101 will be renumbered Rule 502 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[25] Rule 106 will be renumbered Rule 506 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[26] Rules 141 and 142 will be renumbered Rules 542 and 543 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[27] Rule 303 will be renumbered Rule 571 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[28] For purposes of this Supplemental Report, we only discuss the post-publication changes to Rules 142, 225, 231, 4008, 4016, and 6003. The remainder of the proposed changes to Rules 142 and 6003, as well as all the proposed changes to Rules 109, 110, 113, 140, 141, 6000, 6001, and 9024 have not been modified since publication.

that arise during the defendant's absence. The published proposal did not include specific procedures concerning the arrest warrant. In response to the publication of the proposal, the Committee received a number of letters that questioned how the warrant would be handled, particularly in those cases in which the preliminary hearing is held in the defendant's absence. For example:

(1) If the case is held for court, following the issuance of the warrant, would the defendant be returned to the district justice who issued the warrant, or should the defendant be taken to the court of common pleas?

(2) If the charges are dismissed, must the district justice issue a warrant?

(3) How long would the district justice's warrant be effective?

The correspondents suggested that this issue should be resolved to provide the uniformity in practice that the Committee is trying to accomplish with the proposal.

The Committee agreed with the correspondents that the proposal should address the particulars concerning the issuance and execution of arrest warrants in failure to appear cases. Accordingly, the Committee is proposing several additional changes to Rules 142 (Disposition of Case at Preliminary Hearing) and 6003 (Procedure in Non-summary Municipal Court Cases).

In addition, as a result of our post-publication review, the Committee agreed to make some correlative changes. First, we are proposing revisions of the Comments to Rules 225 (Information: Filing, Contents, Function) and 231 (Presentation of Information Without Preliminary Hearing) that would remind the bench and bar that cases in which the preliminary hearing is held in the defendants' absence are to be treated in the same manner as any other case held for court following a preliminary hearing. Second, the Committee is proposing revisions of the Comments to Rules 4008 (Modification of Bail Order Prior to Verdict) and 4016 (Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety) that would clarify in those cases in which a common pleas judge has modified bail before the preliminary hearing, the issuing authority may not modify bail when a defendant fails to appear for the preliminary hearing.

II. *Discussion of Rule Changes*

A. *Arrest Warrant Procedures: Rules 142 and 6003*

The Committee considered that there are two options for handling arrest warrants issued by a district justice following a defendant's failure to appear for the preliminary hearing—jurisdiction over the warrant could stay with the issuing authority or move with the case to the court of common pleas. We settled on a procedure in which the jurisdiction of the warrant stays with the issuing authority because, in most cases, the issuing authority will have set the bail and will be the most familiar with the case for purposes of making a post-arrest bail decision. By having the issuing authority retain jurisdiction in these cases, there is a greater likelihood that the defendant will be located quickly and processed in a timely manner without the delay that would occur with the case moving to the common pleas court. In addition, the Committee was sensitive to the fact that common pleas judges would not want the additional burden of handling these warrant cases prior to the arraignment.

The Committee recognized that there had to be an outside limit for the issuing authority's jurisdiction, and approved the concept that the issuing authority retains jurisdiction over the warrant until either the formal arraignment occurs or the common pleas judge issues a bench warrant when the defendant fails to appear for the formal arraignment—either of these "events" extinguishes the warrant. Once either event occurs, it is expected that the clerk of courts or the court administrator will notify the issuing authority so he or she may recall and cancel the warrant.[29] Both Rules 142(D)(3) and 6003(E)(3) set forth this jurisdictional concept. In view of the reference to the common pleas judge issuing a bench warrant following a failure to appear for the formal arraignment, the Committee agreed to include in the Comments to Rules 142 and 6003 a cross-reference to Rule 303 to emphasize the notice of formal arraignment procedures.

The last paragraph of the Rule 142 Comment provides a gloss on the Rule 142 changes. First, the Comment explains when the defendant is apprehended while the case is still within the issuing authority's jurisdiction, the defendant is taken to the issuing authority for "resolution of the warrant, counsel, and bail." It is expected the district justice will follow Rule 4016 concerning bail, and will advise the defendant concerning his or her right to counsel if the defendant is not represented. Second, the Comment provision explains that either the clerk of courts or the court administrator should advise the issuing authority when his or her jurisdiction over the warrant has ended, and in that event, "the issuing authority must recall and cancel the warrant."

Finally, the Committee agreed that both Rules 142 and 6003 should be modified to clarify that in those cases in which a preliminary hearing is held in the defendant's absence and the case is dismissed, no warrant would be issued. To accomplish this, in Rule 142(D)(2), paragraphs (a) and (b) have been reversed from the way they were published so the "proceed with the case . . ." clause is first and "issue a warrant . . ." clause is second. In addition, the following introductory phrase has been added to the warrant provision: "if the case is held for court or the preliminary hearing is continued." Comparable changes have been made to Rule 6003(E)(2)(b)(i) and (ii).

B. *Correlative Comment Revisions*

1. *Rules 225 and 231*

Following the publication of the proposal, concern was expressed that the application of Rules 225 and 231 to the proposed procedure for proceeding with the preliminary hearing in the defendant's absence might be confusing. Acknowledging the intent of the proposed procedure is that a case that is bound over following a preliminary hearing in a defendant's absence is to be treated in the same manner as any other case that is bound over for court, the Committee agreed the Comments to Rules 225 and 231 should include a brief explanation that the attorney for the Commonwealth should prepare the information and proceed in the same manner with these cases as with any other case that is held for court.

2. *Bail: Rules 142, 4008, and 4016*

Another issue that was raised following publication concerned the interplay between Rule 4008, which prohibits a district justice from modifying bail after bail has been modified by a common pleas judge, and Rule 4016, which permits the bail authority to change the conditions of release when a person violates a condition of the bail bond—if the modification by the common pleas judge occurs while the case is pending with the district justice

[29] The terms "recall" and "cancel" are taken from the district justices' computer manual for the procedures of handling warrants.

and conditions change following the modification, such as the defendant fails to appear for a preliminary hearing and the district justice issues a warrant, would the district justice be authorized to modify the bail pursuant to Rule 4016? After reviewing the Committee's rule history, the members concluded that Rule 4008 "trumps" Rule 4016: once a common pleas judge modifies bail, only the common pleas judge subsequently may modify bail, even in cases that still are pending before the district justice. In the failure to appear warrant context, once the defendant is apprehended, the decision to change the conditions of bail would have to be made by the common pleas judge, although the district justice would be authorized to hold the defendant pending this decision pursuant to Rule 4016(d).

The Committee noted that, although this scenario will not occur frequently, the issue is one that could create confusion. We agreed that something should be included in the rules to clarify this interplay. Accordingly, we are proposing revisions of the Comments to Rules 142, 4008, and 4016. The Rule 142 Comment revision would cross-reference Rules 4008 and 4016. The revision of the Comments to Rules 4008 and 4016 would explain the interplay between the two rules: once bail has been set by a common pleas judge pursuant to Rule 4008, only the common pleas judge may change the conditions as provided in Rule 4016(A) even when the case is pending before a district justice.

[Pa.B. Doc. No. 00-1497. Filed for public inspection September 1, 2000, 9:00 a.m.]

Title 255—LOCAL RULES OF COURT

BRADFORD COUNTY

Rules of Civil Procedure Nos. 1018 and 1018.1; Caption and Notice to Defend Form

Order

And now, this 15th day of August, 2000, the Court hereby adopts the attached Bradford County Rule of Civil Procedure, to be effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Rule with the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee and one (1) copy to the *Bradford County Law Journal* for publication in the next issue of the *Bradford County Law Journal*.

It is further ordered that this local rule shall be kept continuously available for public inspection and copying in the Prothonotary's Office.

By the Court

JEFFREY A. SMITH,
President Judge

Rule 1018. Caption.

Every pleading shall contain a caption setting forth the name of the court, the number of the action and the name of the pleading. The caption of any agreement, stipulation, exception, discontinuance, praecipe to withdraw or order relating to support, custody, alimony, alimony pendente lite or divorce shall include the following: the right-hand side of the caption shall contain information specifically identifying what issues are or will be resolved thereby, along with the date of filing of the pleading which raised the issue.

The caption shall be in substantially the following form:

(PLAINTIFF)	:	IN THE COURT OF COMMON PLEAS
VS.	:	OF BRADFORD COUNTY, PENNSYLVANIA
(DEFENDANT)	:	NO.
	:	(SUPPORT ISSUE) FILED: (Date)
	:	(CUSTODY ISSUE) FILED: (Date)
	:	(DIVORCE ISSUE) FILED: (Date)

Rule 1018.1. Notice to Defend. Form.

The following shall be designated in the Notice to Defend form as the office that parties may contact to find where they can get legal help.

PROTHONOTARY
Bradford County Courthouse
301 Main Street
Towanda, PA 18848
(570) 265-1705

[Pa.B. Doc. No. 00-1498. Filed for public inspection September 1, 2000, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that William G. Dade, having been disbarred from the practice of law in the Commonwealth of Virginia, the Supreme Court of Pennsylvania issued an Order dated August 18, 2000 disbarring William G. Dade from the practice of law in this Commonwealth, to become effective September 17, 2000. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Executive Director & Secretary
The Disciplinary Board of the
Supreme Court

[Pa.B. Doc. No. 00-1499. Filed for public inspection September 1, 2000, 9:00 a.m.]

RULES AND REGULATIONS

Title 64—SECURITIES

SECURITIES COMMISSION

[64 PA. CODE CHS. 202, 203, 205, 206, 301—305, 404, 602 AND 603]

Registration of Securities; Investment Adviser Representatives; and Administration

Statutory Authority

The Securities Commission (Commission), under the authority contained in sections 202(g), 203(j), (q) and (r), 205(b), 206(b), 301(b), 302(f), 303(a)—(e), 304(a), (b) and (e), 305(a) and (f), 404(a), 602(f), 603(c) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-202(g), 1-203(j), (q) and (r), 1-205(b), 1-206(b), 1-301(b), 1-302(f), 1-303(a)—(e), 1-304(a), (b) and (e), 1-305(a) and (f), 1-404(a), 1-602(f), 1-603(c) and 1-609(a)) (act) amends and adopts regulations concerning the subject matter of the act.

Publication of Notice of Proposed Rulemaking

Publication of a notice of proposed rulemaking appeared at 30 Pa.B. 2237 (May 6, 2000).

Public Comments

The Commission received comment letters from the Certified Financial Planners Board of Standards (CFP), the Investment Company Institute (ICI), the Financial Planning Association (FPA) and the Investment Counsel Association of America (ICAA). Under section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), comment letters were forwarded within 5 days of receipt to the Independent Regulatory Review Commission (IRRC) and the legislative standing committees. Comments were made with respect to the following regulatory proposals:

§ 303.012. The ICI and FPA commented that the amount specified in subsection (b)(1) should be raised from $500 to $1,200. This dollar figure refers to the amount of funds received by an investment adviser as prepayment of advisory fees 6 months or more in advance of when they are due. An investment adviser applying for registration with the Commission that fell into this category would be required to file an audited balance sheet prepared in accordance with generally accepted accounting principles. This requirement mirrors similar requirements for investment advisers required to be registered with the United States Securities and Exchange Commission (SEC) and uniform model rules adopted by the North American Securities Administrators Association (NASAA) for investment advisers who are regulated exclusively by the states.

In 1996, Congress enacted the National Securities Markets Improvement Act of 1996 (NSMIA). Prior to this legislation, investment advisers conducting business in this Commonwealth had to be registered with the Commission and, if they were engaging in interstate commerce, with SEC. In NSMIA, Congress recognized that there were basically two types of investment advisers—those who were small advisers that provided advice to an exclusively retail clientele and those who were money managers for institutions and individuals with significant assets under management.

In NSMIA, Congress determined that the SEC would have exclusive authority over investment advisers with assets under management of $25 million or more, known as Federally-covered advisers (FCAs) and states would have exclusive authority over investment advisers which had less than $25 million under management, known as state-registered advisers (SRAs). The NSMIA effectively split the universe of investment advisers into two distinct groups regulated by two distinct levels of government—State and Federal. Implicit in the NSMIA was legislative recognition that what may be appropriate regulation for FCAs may not be appropriate for SRAs. The NSMIA, however, did retain state authority over the FCAs with respect to fraudulent or deceptive conduct.

Post-NSMIA, the NASAA adopted a Memorandum of Understanding Concerning Investment Advisers and Investment Adviser Representatives (MOU) on April 27, 1997 (available at www.nasaa.org/iaoversight/iamou). The MOU recognized that uniformity of rules among states concerning investment advisers subject exclusively to state registration was crucial and a working group was established . The Commission subscribed to the MOU and this rulemaking seeks to implement model rules adopted by the NASAA in the context of the MOU (NASAA Model Rules).

Prior to this rulemaking, an applicant described in subsection (b)(1) was not required to file an audit report. To be uniform with the NASAA Model Rule 202(a)-1, the Commission proposed adoption of the requirement that an applicant who receives prepayment of advisory fees of $500 or more per client 6 months or more in advance of when they are due be required to file an audited statement of financial condition. The commentators note that the SEC recently issued a notice of proposed rulemaking to change various requirements for the FCAs and, in the SEC provision analogous to this one, the SEC proposes to raise the aggregate amount from $500 to $1,200. The commentators urged, for Federal/state uniformity, that the Commission do likewise for SRAs.

Although the NASAA Model Rule 202(d)-1 is set at $500, the new SEC provision will be found in Form ADV which is an application form used by both the states and the SEC. Therefore, most applicants will be apprised of the SEC rule allowing up to $1,200 in prepayment of fees and will have to perform further research to determine that the rule is not applicable to the SRAs. Also, the NASAA Model Rule could be changed in the future to reflect the new SEC provision. The Commission adopted the amendment with the $1,200 figure which is consistent with the SEC.

The FPA and ICI also commented about application of this regulation to the SRAs whose principal place of business is not in this Commonwealth. Another part of the NSMIA adopted "home state" treatment with respect to net capital and bonding and books and records. For example, an SRA maintains its principal place of business in Maryland but has 10 retail clients in this Commonwealth which requires registration with the Commission. Under the NSMIA, the Commission is prohibited from requiring the Maryland SRA to comply with the requirements of any Commission regulation concerning net capital and bonding or books and records that exceed the requirements of the Maryland Securities Division if the Maryland SRA is registered or licensed in Maryland and is in compliance with applicable requirements of the Maryland Division of Securities.

Currently, the United States Senate Committee on Banking, Housing and Urban Affairs is drafting legislation known as the Securities Markets Enhancement Act (SMEA). The Commission, through the NASAA, has been actively involved with drafting of the SMEA as have ICI and FPA. One SMEA proposal is to provide "home state" treatment for financial reports. All relevant parties, including the FPA and ICI, have agreed to language to be included in section 222 of the Federal Investment Advisers Act of 1940 (1940 Act) to implement the treatment. The Commission added a provision that mirrors the language proposed to be amended into the 1940 Act by the SMEA.

§ 303.014. The ICI commented that the Commission should clarify that the rule included investment adviser representatives of the FCAs. The Commission agreed and inserted language suggested by the ICI. Another comment was that, in subsection (c), there should be a conjunctive "or" between investment adviser representative (IAR) and investment adviser rather than "and." The apparent theory was that the Commission might be overstepping its authority under the NSMIA by requiring a FCA to file something with the Commission that was not filed with the SEC and the language may result in the Commission receiving duplicative filings.

Form U-4, which is the document which must be maintained current under this regulation, is a uniform form used by state securities regulators and industry for registration of IARs employed by SRAs and FCAs. Under the instructions to Form U-4, the "Appropriate Signatory" is "the individual designated by the . . . investment adviser [SRA or FCA] . . . who is authorized to execute Form U-4 on its behalf." Since Form U-4 must be signed by the employing firm, an IAR cannot file an amendment on his own. Therefore, there is little scope for filing duplication and, in the 8 years since this regulation was last amended, this has not been the case.

The ICI's concern about the FCA's signing amendments to Form U-4 as violative of the NSMIA is misplaced. This regulation requires no more signatures than what currently is required by the instructions to Form U-4. No FCA has declined to sign Form U-4 on behalf of an IAR with a place of business in this Commonwealth or complained about this requirement. If the ICI's belief is sincere, the better course of action would be to request the NASAA and securities industry representatives to revise Form U-4. On this basis, the Commission declined to accept this comment.

§ 303.015. The ICI commented that the regulation should be revised to distinguish initial notice filings from renewal filings. The Commission agreed. Under section 303(a)(iii) of the act, a FCA must file a copy of its Form ADV as filed with SEC prior to acting as a FCA in this Commonwealth and pay a notice filing fee of $300. This is the initial filing requirement. For renewals, the FCA, under section 602(d.1) shall pay an annual notice filing fee of $300. The Commission revised this regulation to address ICI's concerns and also has indicated that renewals may be made through an investment adviser registration depository.

§ 303.021. The ICI urged a clarification to the language in subsection (c). The Commission agreed.

§ 303.032. The ICI, FPA and ICAA commented on this regulation. The CFP also commented. The CFP commented that the designation in proposed § 303.032(c)(1)(ii)(A) should read "Certified Financial Planner Board of Standards, Inc." The Commission accepted this comment and modified the amendment accordingly.

The ICI, FPA and ICAA expressed two identical concerns. The first concern was that there was no provision which exempted an investment adviser or an IAR from taking the required examinations if the investment adviser or an IAR had taken the appropriate examination after January 1, 2000 (which date is important because new Series 65 and Series 66 examinations were implemented on that date), was registered continuously in another state as an investment adviser or an IAR since the date of the examination but applied for registration in this Commonwealth more than 2 years from the date of taking the examination. The Commission agreed with this comment and added subsection (a)(3) which would exempt persons from having to retake an examination if they met either of the criteria in subsection (a)(1) or (2) and had not been out of the business for more than 2 years immediately preceding the filing of an application for registration in this Commonwealth. This parallels an existing provision applicable to agents of broker-dealers in § 303.031.

The second issue raised was automatic waivers of the examination requirement provided in subsection (c) based upon a person possessing a specified designation and not having any disciplinary history requiring an affirmative response to the Disclosure Information section of Form U-4. The commentators argue that this was not part of the NASAA Model Rules even though they recognize that a state securities regulator may want to require additional examinations for any individual found to have violated state or Federal securities laws. The commentators claim that the proposed language is too broad as it would include bankruptcies and customer complaints in addition to Federal or state securities laws violations or proceedings.

The Commission had established criteria for the waiver of exams in §§ 604.014 and 604.016 which is exerciseable by delegated authority under § 606.041(b) upon application. An intent of this amendment was to eliminate the application process and make certain waivers automatic if the applicant had no reportable disciplinary history.

Under the amendment, existence of reportable disciplinary history does not consign the applicant to never being eligible for a waiver of the examination requirement. It just would not make the waiver automatic. A waiver still could be granted on a case-by-case basis and subsection (c)(4) makes it clear that applicants have the ability to petition the Commission for an order waiving the examination requirement.

In recognition of the comments, however, the Commission did modify subsection (c)(1)—(3) to narrow the disciplinary history to an affirmative response to Items 23A-E or H of Form U-4 or successor item thereto. Items 23A and B address criminal convictions; 23C-E deal with proceedings before the SEC, CFTC, state securities regulators and self-regulatory organizations (stock exchanges, NASD) and Item 23H relates to court injunctions. The Commission believes this provides a balanced approach to the concerns of industry and the need to protect investors.

The FPA also commented that the regulation should not afford waivers to certified public accountants (CPAs) or attorneys. In the statement of policy published in § 604.016 in which the Commission expressed its disposition to grant waivers of examination requirements to persons holding certain designations referred to in subsection (c), the Commission also expressed a similar disposition with respect to CPAs and members of the bar who are in good standing. The Commission believes it

would be unfair at this time and, without substantial evidence, to treat CPAs and attorneys differently than the other designations contained in the same statement of policy. Therefore, the Commission declined to accept this comment.

§ 303.042. The ICI commented on this proposal and raised the same issue as was raised with respect to § 303.012. The Commission determined to address this comment in the same manner as the ICI comment raised with respect to § 303.012.

The FPA commented on the proposal that a SRA with discretionary authority over client funds and securities, but without custody, would be required to maintain a minimum net worth of $10,000. The FPA was concerned that this would act as a barrier to entry into the business for first time advisers. The FPA suggested that this requirement be waived if: (1) the SRA had a certain amount of experience and a satisfactory disciplinary record; (2) the SRA provided evidence of errors and omissions insurance sufficient to cover investor losses, such as $100,000 per occurrence with an aggregate amount of coverage based on experience; or (3) the SRA's compensation is a fee based solely on the amount of assets under management, is a retainer or other flat fee, an administrative fee for services rendered under the Employee Retirement Income Security Act of 1974 and the adviser does not receive any other compensation or pecuniary benefit, directly or indirectly, as a result of any purchase or sale in the account.

Under the MOU, the NASAA adopted Model Rule 202(d)-1 which established uniform capital requirements for SRAs (CCH NASAA Reports ¶3529-3). To promote uniformity of regulation among the states, the Commission proposed to substantially lower its current capital requirements of $20,000 minimum net capital or $50,000 tangible net worth to $10,000 net worth contained in the NASAA Model Rule. Adoption of the amendment would provide substantial regulatory relief from the current net worth requirements for approximately 32% of registered investment advisers that have custody. For exceptional circumstances, the Commission does possess the authority to waive the requirements of this regulation on a case-by-case basis upon good cause shown. Therefore, the Commission adopted the amendment as proposed.

§ 304.012. The ICI suggested a minor clarifying amendment which the Commission accepted.

§ 304.022. The ICI again raised the same comments with respect to this section as it did with § 303.012. The Commission addressed the comments in the same manner as § 303.012.

§ 305.011. The ICI expressed two concerns. The first was that the regulation did not have a specific provision which addressed "home state" treatment afforded for books and records under the NSMIA. The second was that, to the extent that this regulation imposed recordkeeping requirements beyond those of the SEC with respect to broker-dealers, there was insufficient recognition that the NSMIA would preempt those provisions for broker-dealers registered under the Securities Exchange Act of 1934 (1934 Act).

On the first concern, the Commission added language consistent with the "home state" treatment for investment advisers with a principal place of business outside this Commonwealth. On the second concern, the Commission modified the regulation to be consistent with the Rules of Conduct for member firms of the National Association of Securities Dealers (NASD). Because the requirements of this regulation now mirror the NASD Conduct Rules applicable to SEC registered broker-dealers, the regulation does not extend beyond that permitted by the NSMIA. The requirements of subsection (c) parallel those contained in the following NASD Conduct Rules:

Subsection (c)(1)—NASD Conduct Rule 3010(a)(5) and 3010(b).

Subsection (c)(2)—NASD Conduct Rules 3010(a)(6) and (b).

Subsection (c)(3)—NASD Conduct Rules 3010(a), (b), (e) and 3110(c)(1).

Subsection (c)(4)—NASD Conduct Rule 3010(d).

Subsection (c)(5)—NASD Conduct Rule 3010(c).

Subsection (c)(6)—NASD Conduct Rules 3010(a), (b) and 3110(d).

Subsection (c)(7)—NASD Conduct Rules 3010(d) and 3110(c)(3).

Subsection (c)(8)—NASD Conduct Rules 3010(b)—(d).

Subsection (c)(9)—NASD Conduct Rule 3010(a)(7)

Subsection (c)(10)—NASD Conduct Rule 3010(c) and NASD Notice to Members 98-38.

The Commission did modify the amendment to add a new subsection to clarify the length of time records are required to be kept under subsection (c)(9) and (10)(iii) and the manner in which they may be kept. The Commission could find no similar time limitation in the NASD Rules. The relevant NASD rule on inspections states that "Each member shall retain a written record of the dates upon which each review and inspection is conducted." As there appears to be no controlling provision Federally, the Commission does not believe it is constrained by the NSMIA. The Commission's experience is that, in supervision cases, usually 3 years have passed before the investor files a complaint. Therefore, the Commission adopted a requirement to keep any records required by this section for 5 years, the first 2 years in an easily accessible place.

§ 305.019. The ICAA expressed a concern that, since this section covered IARs who may work for a FCA, the Commission may be attempting to regulate conduct of FCAs which is impermissible under the NSMIA (except to the extent that the conduct of a FCA constitutes fraud or deceit). The ICAA suggested that the regulation be limited solely to IARs of SRAs. The Commission disagrees.

The Commission, per the NSMIA and Act 109 of 1998, has no registration authority over FCAs. The purpose of this regulation is to place all registrants under the Commission's jurisdiction (including the SRAs and IARs) on notice as to what types of activity may be deemed "dishonest or unethical" which could form the basis for revocation, suspension or conditioning of their license pursuant to section 305(a)(ix) of the act. Under that section, the Commission only has authority to affect the licenses of persons over whom it has registration jurisdiction.

Even if the SRAs or IARs would engage in conduct described in this regulation, a revocation, suspension or conditioning of a license is not automatic. The Commission must institute a separate proceeding against the registrant. If, in its investigation of an IAR of a FCA for activity described in this regulation, the Commission concluded that the FCA was responsible for the activity and not the IAR, the Commission could proceed against the FCA only by issuance of an Order to Show Cause and

only if the activity constituted fraud or deceit. Under Federal law, the Commission cannot affect the ability of the FCA to conduct advisory business in this Commonwealth.

To adopt the ICAA's proposal would be to leave out an significant number of IAR registrants over which the Commission has full regulatory authority from the ambit of this regulation which would create an unequal playing field between the IARs of FCAs and IARs of SRAs. This is not desirable regulatory policy. To address the ICAA's concern, the Commission, however, did add a new subsection to make it clear that the regulation does not apply to the FCAs unless the conduct otherwise is actionable under section 401(a) or (c) or 404 of the act.

§ 305.061. The ICAA commented that, under the investment adviser registration depository scheme, Form ADV-W only will be used to withdraw the registration of a FCA from SEC. The Commission made changes to this amendment for withdrawing a notice filing by a FCA consistent with this comment. The Commission also added a provision to address withdrawal from registration with the Commission in instances where an SRA becomes a FCA.

§§ 303.012—306.061. The ICAA recommended that all references in these regulations to a central registration depository be replaced with a reference to an investment adviser registration depository. The ICAA was concerned that persons may confuse the registration depository for investment advisers with the Central Registration Depository run by the NASD for broker-dealers and agents. The Commission agreed with the ICAA's comment and changed references.

§ 404.010. The ICAA and ICI both commented on this amendment. Both were concerned about indirect regulation of FCAs. The ICAA asserted that firms, not IARs, advertise. The Commission's experience is otherwise as there have been many instances where a IAR has advertised without the knowledge, consent or authorization of the employing firm. This regulation, which is issued under section 404 of the act makes it clear in subsection (c) that the prohibitions imposed by that section apply to FCAs only to the extent that the prohibited conduct involves fraud or deceit.

Like the similar suggestion made on § 305.019 (the ICI did not raise this comment on § 305.019), to adopt the ICAA's proposed language (and the ICI's with respect to this amendment) would be to leave out a significant number of IAR registrants over which the Commission has full regulatory authority from the ambit of this regulation. This would create uneven regulation between the IARs of FCAs and the IARs of SRAs. That is not desirable regulatory policy. To address this issue, the Commission, however, added a subsection to indicate that this section does not apply to FCAs unless the conduct otherwise is actionable under sections 401(a) or (c) or 404 of the act.

§§ 404.011 and 404.012. The ICI suggested that these two rules more closely conform to the revisions to SEC rules proposed in its recent release on Form ADV. For instance, the SEC proposes to incorporate the wrap fee brochure disclosure into the investment adviser disclosure brochure. The Commission agreed and has incorporated the provisions of § 404.012 into § 404.011 consistent with the SEC proposals. This, of course, necessitated renumbering of §§ 404.013 and 404.014.

In the new Form ADV which is used by the SEC and state securities regulators, the FCAs and SRAs both will have to develop a disclosure brochure as part of completing Form ADV. Therefore, no investment adviser can be registered either with the SEC or with a state unless it has developed a brochure. Under the Commission's proposed rulemaking, an SRA did not have to provide a disclosure brochure to those clients for whom it provided impersonal advisory services requiring a payment of less than $200.

Because Form ADV requires each SRA to create a disclosure brochure as part of the application process, the Commission believes that every client should be entitled to receive the same disclosure about the adviser. This requirement adds no burden to the registrant as it must develop the disclosure brochure anyway as part of the application process. This being the case, the Commission determined to delete the language which appeared in § 404.011(d) in the proposed rulemaking and modify accordingly the language which had appeared in § 404.011(b) and (g).

By letter dated June 26, 2000, Commission staff advised the ICI, FPA and ICAA of the foregoing responses to their comments and provided them with the text of the final-form regulations. By letter dated June 28, 2000, the ICI expressed support for adoption of the final-form regulations as they appear herein. On the same date, representatives of the FPA and ICAA advised Commission staff by telephone that those organizations joined the ICI in their support for adoption of the final-form regulations.

Commission Comments

§ 603.031. The Commission revised subsection (f) to insure that the confidentiality provisions of this section will apply to individuals who are investment advisers doing business as sole proprietors and individuals who are principals of broker-dealer and investment adviser firms.

Comments of the SEC

By letter dated May 30, 2000, and received on June 5, 2000, SEC Chairman Arthur Levitt wrote each state securities administrator urging state regulators to require investment advisers and Federally covered advisers to participate in a Web-based, one-stop electronic filing system for investment advisers known as the Investment Adviser Registration Depository (IARD). Mr. Levitt noted that the SEC has expended $3.2 million in Federal funds to develop the IARD and will be requiring all investment advisers subject to SEC jurisdiction to make filings through that system. Chairperson Levitt explained that full participation by the states to require receipt of notice filings by FCAs through IARD as well as registration applications for SRAs will result in keeping user fees as low as possible for SRAs.

In its proposed form rules and in minor revisions suggested by commentators and included in the final-form regulations, the Commission will have authority to designate, by order, the IARD as the filing depository for the FCAs, SRAs and IARs. As the availability of the IARD for filing by these various groups will be phased in over the next 12-18 months, the Commission envisions issuance of a series of orders at differing times designating the IARD as the filing depository.

The Commission further noted that the United States Senate Banking Committee is considering amendments to the Investment Advisers Act of 1940 which would preempt state jurisdiction over notice filings and fee payments by the FCAs and registration applications and fee payments by out-of-State investment advisers subject to State registration if the Commission did not accept filings

made through the IARD. The Commission agrees with the SEC that compulsory filings with the IARD will provide a more complete database for investor protection and lowering of costs to participants. It also preserves state jurisdiction if Congress enacts the proposed amendments.

Comments of the IRRC

By letter dated July 6, 2000, the Commission received the following comments of IRRC.

§ 303.012. IRRC reiterated the comments of the ICI and FPA with respect to increasing the threshold in subsection (b)(1) from $500 to $1,200 and asked the Commission to consider raising the threshold. In its final form rules, the Commission increased the threshold to $1,200.

IRRC restated the comments of the ICI and FPA concerning the filing of certain statements of financial condition by out-of-State investment advisers. In its final form rules, the Commission adopted subsection (f) that gives "home state" treatment to these financial reports which mirrors a proposed amendment to the 1940 Act being considered by Congress.

IRRC pointed out a typographical error in subsection (b)(2). In its final form rules, the Commission corrected the error.

§ 303.014. IRRC agreed with a comment made by the ICI to clarify the application of subsections (a) and (b) with respect to Federally covered advisers. In its final form rules, the Commission adopted clarifying language.

With respect to the ICI's comment on subsection (b), IRRC requested the Commission to explain its position. As set forth under the Public Comments, the Commission explained why it disagreed with the ICI's assertion that this subsection creates the potency for duplicative filings and demonstrated that, historically, such has not been the case. By letter dated June 28, 2000, the ICI stated its support for the final form rules which, in this respect, were unchanged from the proposed form rules.

§ 303.015. In noting a comment made by the ICI, IRRC asked the Commission to explain the renewal process for the FCAs. In its final-form rules, the Commission substantially revised this section to distinguish initial notice filings and renewals. Section 303(a)(iii) of the act requires the initial notice filing on Form ADV and section 602(d.1) of the act requires an annual notice filing fee. The Commission also would have the authority to require renewals to be made through IARD which basically would consist of electronic transmittal of the annual filing fee to the Commission's depository bank.

§ 303.021. IRRC restated an ICI comment that registered investment advisers should be added to this section. In its final-form rules, the Commission included registered investment advisers.

§ 303.032. With respect to subsection (a)(1) and (2), IRRC reiterated the comments of ICI and FPA concerning application of the 2-year limitation. In its final-form rules, the Commission added a new paragraph (3) to address this issue and resolve the potential problem raised in the ICI and FPA comment letters. By letter dated June 28, 2000, the ICI expressed support for adoption of the final form rules and, on the same day, a representative of the FPA advised Commission staff by telephone that FPA also supported adoption of the Commission's final form rules.

IRRC also noted the FPA's concern about providing waivers of the examination requirement for attorneys and certified public accountants. This explanation has been provided in the Public Comments Section of this Preamble and, on June 28, 2000, a representative of the FPA advised Commission staff by telephone that the FPA supported adoption of the Commission's final form rules.

IRRC further noted a comment from the Certified Financial Planners Board of Standards that the designation contained in the proposed form rules was imprecise. In its final-form regulations, the Commission adopted the designation appropriate to this organization.

§ 303.042. IRRC raised the same comment as the ICI and FPA concerning the $500 or $1,200 threshold issue which also was raised with respect to § 303.012. In its final form rules, the Commission adopted a threshold of $1,200.

With respect to subsection (d), IRRC requested an explanation of the circumstance under which the Commission may require a current appraisal of an asset, the value of which is being submitted to establish the required net worth. For instance, if an investment adviser possessed a work of art which he wanted to assign a value for purposes of calculating the net worth required for an investment adviser under the act and regulations, the Commission may request an apprisal of that object rather than accept the value submitted by the registrant. The same may be true with respect to shares in a closely-held company or a general or limited partnership. In practice, this provision is rarely used as a registrant that must demonstrate a certain net worth usually does so in cash, cash equivalents or marketable securities.

§ 303.051. IRRC requested an explanation of why the Commission used the term "may" instead of "shall" in subsection (a)(1) which deviates from the NASAA model rule. The reason for this deviation was that the Commission wanted to retain discretion as to whether it would allow an investment adviser to make up its net worth deficiency through a surety bond. While the Commission does not necessarily foresee any particular circumstance under which it would not grant such an order, adopting "shall" would forever foreclose the Commission from raising any objection.

With respect to subsection (c), IRRC requested a description of the circumstances under which the Commission would request evidence of existence of a surety bond. One instance is when an investment adviser is filing an annual financial report under § 304.022 which indicates that the adviser is meeting its net worth requirement through a surety bond (assuming original approval was granted by the Commission under § 303.051). The Commission may ask for evidence of the surety bond to insure that it is current and in full effect for the appropriate amount. The Commission conducts routine and for cause examinations of investment adviser and broker-dealer branch offices throughout this Commonwealth. One of the items which is checked during an examination is that the investment adviser has the requisite net worth. Again, if the investment adviser is relying on a surety bond to meet the applicable net worth requirement, the examiner may ask for evidence that it is current and in full effect for the appropriate amount.

§ 304.012. IRRC reiterated the ICI's comment that an introductory clause should be added to subsection (a) indicating in the forepart of the regulation that the requirements of this section do not apply to persons specified in subsection (j). In its final form rules, the Commission adopted an introductory clause.

In its comments, IRRC asserted that the definition of "investment adviser representative" in this rule was at

variance with the definition of that term in section 102(j.1) of the act. The Commission believes that an individual described in subsection (a)(12)(iv) and (13)(v) would be an investment adviser representative under section 102(j.1) of the act and that it has not gone beyond the statutory definition. In reality, the definition used in paragraphs (12) and (13) is a subset of the statutory definition.

As IRRC noted, this language is consistent with the NASAA Model Rule on this subject. The NASAA (which follows identical statutory language as section 102(j.1) of the act) and the Commission felt that it was important to communicate a more precise nature of a person's activities for whom the investment adviser would have the compliance burden of maintaining books and records. This gives the firm's principals a better, "plain English" understanding than the statutory definition otherwise may impart. The important issue is that the Commission not go beyond the statutory definition and include persons within the ambit of the regulation that the Legislature did not intend. IRRC is appropriately sensitive to this issue as is the Commission.

The Commission is satisfied that the definition contained in paragraphs (12) and (13) does not go beyond the statutory definition. In fact, it explicitly does not include solicitors which are included in the statutory definition of investment adviser in section 102(j.1)(i)(D) of the act. Under section 609(a) of the act, the Commission is authorized to define "any terms, whether or not used in this act, insofar as the definitions are not inconsistent with the act." The Commission posits that the definition of "investment adviser representative" adopted for purposes of paragraphs (12) and (13) are not inconsistent with section 102(j.1) of the act.

The Commission also believes that uniformity, particularly in the area of books and records, is important. This language is taken directly from the relevant NASAA Model Rule. A change in this provision may inject uncertainty for investment advisers and the professionals who counsel them in the interpretation of their legal obligations under the act.

§ 304.052. IRRC requested whether the Commission could specify what constitutes "adequate." In its final-form regulations, the Commission deleted the phrase "adequately disclosed to each client in writing" because the disclosure of compensation is now covered by adoption of § 404.011 which requires delivery of a brochure containing all the information required by Part 2 to Form ADV. Part 2 of Form ADV, which also applies to FCAs, requires disclosure of material information about the firm and its business practices, including fees and compensation. The Commission thinks that the disclosure of fee information is best addressed in § 404.011 and in uniformity with the requirements of Form ADV.

§ 305.011. With respect to subsection (a)(1), IRRC commented on use of the term "timely" and whether a specific period of time should be adopted. The Commission reviewed this section and, in its final rules, adopted language used in NASD Rule of Conduct 3010 upon which it is modeled which does not include use of that term. Revisions were made to subsections (a)(1) and (c).

On subsection (c), IRRC restated the ICI's comment about recordkeeping requirements for out-of-state investment advisers. In its final form rules, the Commission added subsection (e) which addresses this comment in the same fashion as a similar comment raised on § 303.012.

Also on subsection (c), IRRC suggested that the Commission should establish the specific length of time records required under this section need be kept. In its final form rules, the Commission added subsection (d) which specifies 5 years, the first 2 years being in an easily accessible place. This language is taken from a similar provision in the NASD Rules of Conduct.

§ 305.061. IRRC noted the comment made by the ICAA. In its final form rules, the Commission adopted provisions allowing withdrawals from registration through the IARD, including withdrawals from State registration resulting from a registrant becoming a FCA.

§ 404.011. IRRC expressed concern that this section may be inconsistent with Federal rules. In its final-form rulemaking, the Commission adopted this section which is modeled on the Federal rule proposed in the SEC Release on Form ADV. This action included combining (a la the Federal model) proposed rules §§ 404.011 and 404.012. The Commission does not anticipate that the SEC rule proposal will change significantly upon final adoption by the SEC. In the event that the Federal rule would change, the Commission would use its powers under section 609(a) of the act to waive any provision of this section which would be inconsistent with the final Federal rule.

Summary and Purpose of Final-Form Regulations

§ 202.070. The change clarifies when the exemption would be available to certain nonemployes included in compensatory plans or compensatory contracts.

§ 203.101. The change allows attorneys to give a clear legal opinion on the availability of the exemption.

§ 203.171. The change allows attorneys to give a clear legal opinion on the availability of the exemption.

§ 203.185. The change allows attorneys to give a clear legal opinion on the availability of the exemption.

§ 203.186. The change allows attorneys to give a clear legal opinion on the availability of the exemption.

§ 203.192. The new regulation creates a registration exemption for certain rights offerings and exchange tender offers made by foreign private companies to residents of this Commonwealth that are exempt from registration with the SEC.

§ 205.021. The change replaces Form 205 with Form R and eliminates the requirement to file Form R for all issuers applying for registration under section 205 of the act except those relying on SEC Regulation A.

§ 206.010. The change replaces Form 206 with Form R and restricts the requirement to file Form R to issuers making an offering under sections 3(a)(4) or (11) of the Securities Act of 1933, Rule 504 of SEC Regulation D or SEC Regulation A.

§ 301.021. This regulation has been repealed because its provisions have been superseded by a new Web-based electronic transfer program.

§ 302.063. This change codifies a No Action Letter issued by the Commission in 1999 concerning third-party brokerage activities in a limited purpose bank branch office.

§ 303.012. This change anticipates electronic filing through an investment adviser registration depository and eliminates the requirement for investment adviser applicants that do not have custody, possession or discretion over clients' funds or securities to file a statement of financial condition.

§ 303.014. This change utilizes the new term "investment adviser representative" and anticipates electronic filing through an investment adviser registration depository.

§ 303.015. This new regulation implements the notice filing requirement imposed on the FCAs by Act 109 of 1998.

§ 303.021. This change accords the same treatment to notice filings by the FCAs for successor firms as is accorded to registered investment advisers.

§ 303.032. This change repeals the experience requirement for agents and the IARs, adopts new uniform examinations for investment advisers and the IARs, uniform grandfathering provisions and uniform waivers of the examination. These are based upon on a uniform model adopted by the NASAA.

§ 303.042. This change reduces net worth requirements for investment advisers and eliminates the current net worth requirement for investment advisers that do not have custody, possession or discretion over clients' funds or securities. These changes are based on a NASAA model rule and conform to Federal law as provided by the NSMIA.

§ 303.051. This change revises the surety bond requirements to conform to a NASAA Model Rule and the requirements of the NSMIA.

§ 304.012. This change establishes recordkeeping requirements for investment advisers in Subpart C. This change conforms to a NASAA Model Rule and the NSMIA.

§ 304.022. This change requires investment adviser financial reports. It conforms to the NSMIA, a proposed amendment to the NSMIA and a NASAA Model Rule.

§ 304.052. This change recognizes that standardized commission rates charged by National securities exchanges have been eliminated.

§ 305.011. This change expands coverage of this regulation to IARs and incorporates requirements found in the NASD Code of Conduct Rules.

§ 305.019. This change expands coverage of this regulation to IARs and includes failure to comply with investor suitability requirements as a basis for taking action against a person's license.

§ 305.061. This change anticipates electronic filing through an investment adviser registration depository and extends the regulation to withdrawal of notice filings by the FCAs and SRAs who become the FCAs.

§ 404.010. This change extends this regulation to the IARs.

§ 404.011. This new regulation makes it a fraudulent, deceptive or manipulative act or practice within the meaning of section 404 of the act for an investment adviser to fail to furnish a disclosure statement to prospective clients. Also, an investment adviser who sponsors a wrap fee program must furnish a wrap fee disclosure statement to prospective clients. Similar rules apply to the FCAs.

§ 404.012. This new regulation makes it a fraudulent, deceptive or manipulative act or practice within the meaning of section 404 of the act for an investment adviser to make cash payments to persons who solicit business for the investment adviser unless certain requirements are met. A similar provision already applies to FCAs.

§ 404.013. This new regulation makes it a fraudulent, deceptive or manipulative act or practice within the meaning of section 404 of the act for an investment adviser to have custody or possession of clients' funds or securities unless certain requirements are met. This regulation is similar in scope to § 404.020 which is being deleted. A similar provision already applies to the FCAs.

§ 404.020. This regulation was repealed in favor of § 404.013 which codifies current requirements.

§ 602.060. This change deletes the subscription fee for the Commission's Bulletin and Annual Report. These publications are now available to the public free of charge.

§ 603.031. This change would clarify that any record which the Commission deems excluded from the definition of a public record in 65 P. S. § 66.1(2) may be withheld from the public and that confidential treatment would be provided for Social Security numbers, home addresses and dates of birth of individuals appearing on Form U-4, Form BD and Form ADV.

Persons Affected by these Final-Form Regulations

The first eight proposed regulatory actions will affect issuers relying on certain exemptions from registration to issue securities and issuers of securities in registered offerings. The bulk of the remaining proposed regulatory actions will affect, to varying degrees, broker-dealers, agents, the FCAs, SRAs and IARs. These actions are required to implement Act 109 of 1998 and the NSMIA.

Fiscal Impact

Investment Advisers; Federally Covered Advisers. Regulatory actions affecting investment advisers will lower compliance costs by reducing or eliminating net worth requirements, reducing or eliminating required financial reports, waiving examination requirements for certain classes of applicants and conforming Commission rules to uniform NASAA Model Rules and provisions of the NSMIA. The FCAs will benefit from significant cost reductions by being able to make one electronic filing and fee payment to satisfy notice filing and fee payment requirements in every state they transact business.

The final-form regulations permit the Commission to issue orders requiring participation in the IARD. These user fees slightly will offset the significant savings afforded by these final-form regulations to SRAs by the elimination of the current $5,000 net capital/$12,500 tangible net worth requirement for two-thirds of investment advisers registered in this Commonwealth (those without custody or discretion) and a reduction from $20,000 net capital/$50,000 tangible net worth to $10,000 net worth for the other one-third of investment advisers registered in this Commonwealth (those with discretion) versus a projected $125 annual IARD user fee for the SRAs. The final-form rules are expected to save the SRAs a total of $10 million in collective net worth requirements versus collective annual IARD user fees of $58,750.

Development of the IARD by the SEC was mandated by Congress in the NSMIA. Although the SEC has expended $3.2 million in Federal funds to underwrite development costs, the IARD will require payment of a user fee to cover operating costs. This user fee would be in addition to license fees and assessments required under sections 602(d.1) and 602.1 of the act. Nevertheless, all the commentators, which represent the FCAs and SRAs, commented favorably on the final form rules wherein the Commission, by order, can require filings to be made through the IARD.

The exact amount of the user fees has not yet been determined by the SEC, in part because it does not know the level of participation by the SRAs. That is why the SEC Chairperson Arthur Levitt, in his May 30, 2000, letter, urged the widest possible participation by the states because that would result in the lowest possible user fees for SRAs. In the same letter, it was noted that larger, FCAs will pay higher user fees than the SRAs.

The NASAA recently advised the Commission (in an unofficial capacity) that it thought the likely annual user fee would be approximately $125 for SRAs and approximately $50 for IARs. As of July 1, 2000, the Commission has 470 registered investment advisers and 2,333 registered IARs. The vast majority of registered IARs (69%) work for FCAs which will be mandated by the SEC to use IARD.

In return for the IARD user fee, investment advisers can make as many filings by means of the IARD electronic system as they want (registration applications, amendments, filing and updating of disclosure materials). This eliminates duplicate filings with other states, associated mailing costs and issuing separate checks for fee payments. Being Web-based, the investment advisory community will have access to IARD on a 24-hour a day basis. The NASAA further advised that the IARD does provide hardship exemptions for persons who may not have access to Internet or, due to computer problems beyond their control, may not be able to file timely through the IARD. The Commission intends to honor hardship exemptions granted by the IARD.

The Commission understands that the United States Senate Banking Committee is considering amendments to the 1940 Act which would preempt state jurisdiction over notice filings and fee payments by FCAs and registration applications and fee payments by out-of-state investment advisers subject to state registration if the Commission did not accept filings made through the IARD.

Given Congressional support for mandating the IARD in the NSMIA and current Congressional ruminations on mandating state participation in the IARD on pain of preemption; the request of the SEC for state participation in the IARD; support for the IARD by the trade organizations representing the entire spectrum of the investment advisory community; the elimination or substantial reduction of net worth requirement for all investment advisers registered with the Commission; the benefit to investors of having a complete, Web-based data base to consult when looking for investment advisory services; and the time savings to the investment advisory community of making all regulatory filings in one place online, the Commission believes the benefits of participating in the IARD justify the costs of participation to the investment advisory community.

Issuers. Most companies making a registered public offering of securities no longer will have to expend the time and money to file an additional state-specific form with the Commission.

Recordkeeping, supervision, disclosure delivery. The recordkeeping provisions, supervisory requirements and disclosure delivery requirements are similar to what currently is required by the NASD Code of Conduct, existing Commission regulations or Federal law with respect to FCAs. Therefore, the regulatory actions will not impose additional financial burdens on applicants or registrants.

Paperwork

The Commission has eliminated current Forms 205 and 206 in favor of one new form designated as Commission Form R which will be used by certain issuers making application with the Commission to make a public offering of securities in this Commonwealth. The Commission further reduced substantially the categories of issuers that would be required to file new Form R. With respect to investment advisers, the Commission, in certain cases, has eliminated required financial reports and statements of financial condition that must be filed by applicants or registrants and, in other cases, reduced substantially the required financial reports and statements of financial condition.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 11, 2000, the Commission submitted a copy of proposed rulemaking at 30 Pa.B. 2237 to 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 accordance with section 5(b) of the Regulatory Review Act, the Commission provided IRRC and the Committees with a copy of a detailed Regulatory Analysis form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available upon request.

By letter dated July 6, 2000, IRRC provided the Commission with its comments on the proposed rulemaking. The Commission's response to those comments is contained in this Preamble. In response to a letter from IRRC dated July 24, 2000, recommending tolling of the review period to address certain technical and clarification issues, the Commission, by letter to IRRC dated July 26, 2000, requested tolling and resubmitted revised final-form rules. By letter dated July 27, 2000, IRRC advised the Commission that it did not object to tolling the review period.

In preparing final-form rules, the Commission considered the comments received from the public, the United States Securities and Exchange Commission and IRRC. The final-form rules were submitted on July 12, 2000, to the House Committee on Commerce and Economic Development, the Senate Committee on Banking and Insurance and IRRC. Final-form rules were deemed approved by the House Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance on August 7, 2000. IRRC met on August 10, 2000, and approved the final-form rules.

Availability in Alternative Formats

This final-form rulemaking may be made available in alternative formats upon request. TDD users should use the AT&T Relay Center (800) 854-5984. To make arrangements for alternative formats, contact Joseph Shepherd, ADA Coordinator, (717) 787-6828.

Contact Person

The contact person for an explanation of these regulations and amendments is G. Philip Rutledge, Deputy Chief Counsel, Pennsylvania Securities Commission, Eastgate Building, 1010 N. Seventh Street, 2nd Floor, Harrisburg, PA 17102-1410, (717) 783-5130.

Order

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

(a) The regulations of the Commission, 64 Pa. Code Chapters 202, 203, 205, 206, 301, 302, 303, 304, 305, 404, 602 and 603 are amended by amending §§ 202.070, 203.101, 203.171, 203.185, 203.186, 205.021, 206.010, 302.063, 303.051, 404.020 and 602.060 to read as set forth at 30 Pa.B. 2237; by adding § 203.192 to read as set forth at 30 Pa.B. 2237 and by deleting § 301.021 to read as set forth at 30 Pa.B. 2237; by amending §§ 303.012, 303.014, 303.021, 303.032, 303.042, 304.012, 304.022, 304.052, 305.011, 305.019, 305.061, 404.010 and 603.031 to read as set forth in Annex A; and by adding §§ 303.015 and 404.011—404.013 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Secretary of the Commission shall submit this order, 30 Pa.B. 2237 and Annex A to the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Commission shall certify this order, 30 Pa.B. 2237 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

M. JOANNA CUMMINGS,
Secretary

(*Editor's Note*: The proposal to add § 404.014 included in the document at 30 Pa.B. 2237, has been withdrawn by the Commission. For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 30 Pa.B. 4480 (August 26, 2000).)

Fiscal Note: Fiscal Note 50-114 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 64. SECURITIES

PART I. SECURITIES COMMISSION

Subpart C. REGISTRATION OF BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES AND NOTICE FILINGS BY FEDERALLY-COVERED ADVISERS

CHAPTER 303. REGISTRATION AND NOTICE FILING PROCEDURE

§ 303.012. Investment adviser registration procedure.

(a) An application for initial registration as an investment adviser shall contain the information requested in and shall be made on the Uniform Application for Investment Adviser Registration (Form ADV), or a successor form. The applicant shall complete and file with the Commission or with an investment adviser registration depository designated by order of the Commission one copy of the form accompanied by the filing fee in section 602(d.1) of the act (70 P. S. § 1-602(d.1)), the compliance assessment in section 602.1(a)(4) of the act and any exhibits required by this section.

(b) Except as set forth in subsection (f), the following statements of financial condition shall accompany an application for initial registration as an investment adviser.

(1) An applicant that has custody of client funds or securities or an applicant that requires payment of advisory fees 6 months or more in advance and in excess of $1,200 per client shall file an audited balance sheet of the applicant prepared in accordance with generally accepted accounting principles and accompanied by a standard audit report containing an unqualified opinion of an independent certified public accountant or an independent public accountant. The accountant shall submit, as a supplementary opinion, comments based upon the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and the procedures for safeguarding securities and funds and shall indicate corrective action taken or proposed. The balance sheet required by this paragraph shall be as of the end of the applicant's most recent fiscal year. If that balance sheet is as of a date more than 45 days prior to the date of filing the application, the applicant also shall file a subsequent balance sheet prepared in accordance with generally accepted accounting principles as of a date within 45 days of the date of filing. This balance sheet may be unaudited and may be prepared by management of the applicant. If the applicant is a certified public accountant or a public accountant or whose principals include one or more certified public accountants or public accountants, the applicant, in lieu of filing an audit report, may file a report modeled after the management responsibility letter contained in paragraph 9600.22 of the American Institute of Certified Public Accountant's Technical Information Service and signed by a certified public accountant or public accountant who either is the applicant or one of the principals of the applicant.

(2) An applicant that has discretionary authority over client funds or securities, but not custody, shall file a balance sheet which need not be audited but shall be prepared in accordance with generally accepted accounting principles. The balance sheet required by this paragraph shall be as of the end of the applicant's most recent fiscal year. If that balance sheet is as of a date more than 45 days prior to the date of filing the application, the applicant also shall file a subsequent balance sheet, which must be prepared in accordance with generally accepted accounting principles as of a date within 45 days of filing the application. Each balance sheet required by this paragraph may be unaudited and prepared by management of the applicant. Each balance sheet required by this paragraph also shall contain a representation by the applicant that the balance sheet is true and accurate.

(3) An applicant whose proposed activities do not come within paragraph (1) or (2) need not file a statement of financial condition.

(c) As part of the requirements relating to the statements of financial condition set forth in subsection (b), the Commission may require the following:

(1) A list of the securities reflected in the statement of financial condition of the applicant valued at the market.

(2) A description of material contractual commitments of the applicant not otherwise reflected in the statement of financial condition.

(3) In the case of a sole proprietor, whose statement of financial condition includes only those assets and liabilities used in the applicant's investment adviser business, an affirmative statement by the applicant that its liabilities which have not been incurred in the course of business as an investment adviser are not greater than the applicant's assets not used in its investment adviser business.

(d) An investment adviser registered under the act shall take steps necessary to ensure that material information contained in its Form ADV and exhibits remains current and accurate. If a material statement made in Form ADV and exhibits becomes incorrect or inaccurate the investment adviser shall file with the Commission an amendment on Form ADV within 30 days of the occurrence of the event which requires the filing of the amendment.

(e) For purposes of this section, the following terms shall have the following meanings:

Principal—The chairperson, president, chief executive officer, general manager, chief operating officer, chief financial officer, vice president or other officer in charge of a principal business function (including sales, administration, finance, marketing, research and credit), secretary, treasurer, controller and any other natural person who performs similar functions.

Principal place of business—The meaning set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

(f) An applicant that maintains its principal place of business in a state other than this Commonwealth need not comply with subsection (a) if the applicant meets the following:

(1) Is registered as an investment adviser in the state in which it maintains its principal place of business.

(2) Is in compliance with the financial reporting requirements of the state in which it maintains its principal place of business.

(3) Has not taken custody of the assets of any client residing in this Commonwealth at any time during the preceding 12-month period.

§ 303.014. Investment adviser representative registration procedures.

(a) An application for initial registration as an investment adviser representative of an investment adviser or Federally-covered adviser shall contain the information requested in and shall be made on the Uniform Application for Securities Industry Registration or Transfer Form (Form U-4), or a successor form. The investment adviser representative and the investment adviser or Federally covered adviser shall complete and file with the Commission or with an investment adviser registration depository designated by order of the Commission one copy of Form U-4 and exhibits thereto accompanied by the filing fee required by section 602(d.1) of the act (70 P. S. § 1-602(d.1)), the compliance assessment required by section 602.1(a)(1) of the act (70 P. S. § 1-602.1(a)(1)) and the results evidencing passage of the examinations required by § 303.032 (relating to qualification of and examination requirement for investment advisers and investment adviser representatives).

(b) An investment adviser representative and an investment adviser or Federally-covered adviser shall take necessary steps to ensure that material information contained in Form U-4 remains current and accurate. If a material statement made in the Form U-4 becomes incorrect or incomplete, the investment adviser representative and the investment adviser or Federally-covered adviser shall file with the Commission an amendment to Form U-4 within 30 days of the occurrence of the event which requires the filing of the amendment.

§ 303.015. Notice filing for Federally-covered advisers.

(a) *Initial filing.* The notice required to be filed by Federally-covered advisers under section 303(a)(iii) of the act (70 P. S. § 1-303(a)(iii)) shall be the uniform application for investment adviser registration (Form ADV) or successor form thereto as filed with the United States Securities and Exchange Commission. Prior to the Federally-covered adviser conducting advisory business in this Commonwealth, a completed Form ADV accompanied by the notice filing fee required by section 602(d.1) of the act (70 P. S. § 1-602(d.1)) shall be filed with the Commission or with an investment adviser registration depository designated by order of the Commission.

(b) *Renewals.* Every Federally-covered adviser conducting advisory business in this Commonwealth annually shall pay a notice filing fee set forth in section 602(d.1) of the act. Payment of the notice filing fee should be made directly with the Commission or with an investment adviser registration depository designated by order of the Commission.

§ 303.021. Registration and notice filing procedures for successors to a broker-dealer, investment adviser or Federally-covered adviser.

(a) The following apply with respect to broker-dealers:

(1) When a broker-dealer is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, a broker-dealer registered under section 301 of the act (70 P. S. § 1-301) and as a broker or dealer under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 77o(b)) (successor broker-dealer) based solely on a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor broker-dealer shall comply with the requirements of SEC Rule 15b1-3(a) promulgated under the Securities Exchange Act of 1934, except that the successor broker-dealer shall file the amendments to Form BD with the Commission.

(2) When a broker-dealer is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, a broker-dealer registered under section 301 of the act and as a broker or dealer under section 15(b) of the Securities Exchange Act of 1934 (successor broker-dealer) for reasons other than a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor broker-dealer shall comply with the requirements of SEC Rule 15b1-3(b) promulgated under the Securities Exchange Act of 1934, except that the successor shall file Form BD with the Commission.

(b) The following shall apply to investment advisers:

(1) When an investment adviser is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, an investment adviser registered under section 301 of the act (successor investment adviser) based solely on a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser may file an initial application for registration by amending Form ADV of the predecessor and, under section 303(b) of the act (70 P. S. § 1-303(b)), succeed to the unexpired portion of the predecessor's term of registration.

(2) When an investment adviser is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, an investment adviser regis-

tered under section 301 of the act for reasons other than a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser shall file Form ADV with the Commission. Upon registration, the successor investment adviser, under section 303(b) of the act, shall succeed to the unexpired portion of the predecessor's term of registration.

(c) When a Federally covered adviser is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, a registered investment adviser or of another Federally-covered adviser (successor Federally-covered adviser), the successor Federally-covered adviser shall file with the Commission either Form ADV or an amendment to Form ADV as required under SEC Release No. IA-1357 (December 28, 1992) and, under section 303(b) of the act, shall succeed to the unexpired portion of the predecessor's notice period.

§ 303.032. Examination requirements for investment advisers and investment adviser representatives.

(a) *Examination requirements.* An individual may not be registered as an investment adviser or investment adviser representative under the act unless the person has met one of the following qualifications:

(1) Received, on or after January 1, 2000, and within 2 years immediately prior to the date of filing an application with the Commission, a passing grade on The Uniform Investment Adviser Law Examination (Series 65), or successor examination.

(2) Received, on or after January 1, 2000, and within 2 years immediately prior to the date of filing an application with the Commission, a passing grade on the General Securities Representative Examination (Series 7) administered by the National Association of Securities Dealers, Inc. and the Uniform Combined State Law Examination (Series 66) or successor examinations.

(3) Received, on or after January 1, 2000, a passing grade on either the Series 65 examination or passing grades on both the Series 7 and Series 66 examinations and has not had a lapse in registration as an investment adviser or investment adviser representative in any state other than this Commonwealth for a period exceeding 2 years immediately prior to the date of filing an application with the Commission.

(b) *Grandfathering.*

(1) Compliance with subsection (a) is waived if the individual meets the following qualifications:

(i) Prior to January 1, 2000, the individual had received a passing grade on the Series 2, 7, 8 or 24 examination for registered representatives or supervisors administered by the National Association of Securities Dealers, Inc. and the Series 65 or Series 66 examinations.

(ii) The individual has not had a lapse in employment as an investment adviser, investment adviser representative or principal or agent of a broker-dealer for any consecutive period exceeding 2 years immediately preceding the date of filing an application with the Commission.

(2) An individual need not comply with subsection (a) if the individual meets the following qualifications:

(i) Prior to January 1, 2000, the individual was registered as an investment adviser or investment adviser representative in any state requiring the licensing, registration or qualification of investment advisers or investment adviser representatives.

(ii) The individual has not had a lapse in registration as an investment adviser or investment adviser representative in another state for any consecutive period exceeding 2 years immediately preceding the date of filing an application with the Commission.

(c) *Waivers of exam requirements.* Compliance with subsection (a) is waived if:

(1) The individual meets the following qualifications:

(i) Has no disciplinary history which requires an affirmative response to Items 23A-E or Item 23H of The Uniform Application for Securities Industry Registration or Transfer (Form U-4) or successor items thereto.

(ii) Has been awarded any of the following designations which, at the time of filing of the application with the Commission, is current and in good standing:

(A) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.

(B) Chartered Financial Consultant (CFC) or Master of Science and Financial Services (MSFS) awarded by the American College, Bryn Mawr, Pennsylvania.

(C) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts.

(D) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

(E) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.

(2) The individual is licensed as a certified public accountant, is currently in good standing and has no disciplinary history that requires an affirmative response to Items 23A-E or Item 23H of Form U-4 or successor items thereto.

(3) The individual is licensed as an attorney, is currently in good standing and has no disciplinary history that requires an affirmative response to Items 23A-E or Item 23H of Form U-4 or successor items thereto.

(4) The individual has received an order from the Commission waiving compliance with subsection (a).

§ 303.042. Investment adviser capital requirements.

(a) Every investment adviser registered or required to be registered under section 301 of the act (70 P. S. § 1-301) shall maintain at all times the following net worth requirements:

(1) An investment adviser that has its principal place of business in a state other than this Commonwealth shall maintain the net worth required by the state where the investment adviser maintains its principal place of business if the investment adviser currently is licensed in that state and is in compliance with that state's net worth requirements.

(2) Except as provided in subsection (e), an investment adviser that has its principal place of business in this Commonwealth and also is registered as a broker-dealer under section 301 of the act shall maintain at all times a minimum net capital of $25,000.

(3) An investment adviser that has its principal place of business in this Commonwealth and has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000.

(4) An investment adviser that has its principal place of business in this Commonwealth and has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all

times a minimum net worth of $10,000. An investment adviser will not be deemed to be exercising discretion and subject to the requirements of this paragraph when it places trade orders with a broker-dealer under a third-party trading agreement if:

(i) The investment adviser has executed a separate investment adviser contract exclusively with its clients that acknowledges that a third-party agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account.

(ii) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser, in fact, does not exercise discretion with respect to the account.

(iii) A third-party trading agreement is executed between the investment adviser, the client and the broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(5) An investment adviser that has its principal place of business in this Commonwealth and accepts prepayment of advisory fees of more than 6 months in advance and more than $1,200 per client shall maintain at all times a positive net worth.

(b) As condition of the right to continue to transact business in this Commonwealth, an investment adviser registered under the act shall notify, by the close of business on the next business day, the Commission if the investment adviser's total net worth is less than the minimum required net worth. Within 24 hours after transmitting the notice, the investment adviser shall file a report of its financial condition including the following:

(1) A proof of money balances of ledger accounts in the form of a trial balance.

(2) A computation of net worth.

(3) An analysis of clients' securities and funds which are not segregated.

(4) A computation of the aggregate amount of clients' ledger debit balances.

(5) A computation of the aggregate amount of clients' ledger credit balances.

(6) A statement as to the number of client accounts.

(c) For the purpose of this section, the following terms have the following meanings:

Custody—A person is deemed to have custody of client funds or securities if the person directly or indirectly holds clients funds or securities, has any authority to obtain possession of them or has the ability to appropriate them.

Net capital—The meaning set forth in 17 CFR 240.15c3-1 (relating to net capital requirements for brokers or dealers), promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk).

Net worth—The excess of assets over liabilities as determined by generally accepted accounting principles reduced by the following:

(i) Prepaid expenses except items properly classified as current assets under generally accepted accounting principles.

(ii) Deferred charges.

(iii) Goodwill, franchises, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense and all other assets of an intangible nature.

(iv) Home furnishings, automobiles and any other personal items not readily marketable in the case of an individual.

(v) Advances or loans to stockholders and officers in the case of a corporation; members and managers in the case of a limited liability company; and advances or loans to partners in the case of a partnership.

Principal place of business—The meaning set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A §§ 80b-1—80b-21).

(d) For investment advisers registered or required to be registered under the act, the Commission may require that a current appraisal be submitted to establish the worth of an asset being calculated under the net worth formulation.

(e) The requirements of subsection (a)(2) do not apply to an investment adviser that has its principal place of business in this Commonwealth and also is registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 77o) if the broker-dealer is one of the following:

(1) Subject to, and in compliance with, SEC Rule 15c3-1.

(2) A member of a National Securities Exchange whose members are exempt from SEC Rule 15c3-1 under subsection (b)(2) thereof and the broker-dealer is in compliance with all rules and practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

CHAPTER 304. POSTREGISTRATION PROVISIONS

§ 304.012. Investment adviser required records.

(a) Except as provided in subsection (j), every investment adviser registered under the act shall make and keep true, accurate and current the following books, ledgers and records:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(5) All bills or statements (or copies of), paid or unpaid, relating to the investment adviser's business as an investment adviser.

(6) All trial balances, financial statements, net worth computation, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this subsection, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement and a cash flow statement. The net worth computation means the net worth required by § 303.042 (relating to investment adviser capital requirements), if any.

(7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to one or more of the following:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given.

(ii) Any receipt, disbursement or delivery of funds or securities.

(iii) The placing or execution of any order to purchase or sell any security, except that an investment adviser:

(A) Is not required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser.

(B) With respect to any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service sent by the investment adviser to more than 10 persons (including transmission by electronic means), the investment adviser is not required to keep a record of the names and addresses of the persons to whom it was sent except, that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

(8) A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(10) A copy in writing of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

(11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(12) Records of transactions as follows:

(i) A record of every transaction in a security in which the investment adviser or investment adviser representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership except:

(A) Transactions effected in any account over which neither the investment adviser nor any investment adviser representative of the investment adviser has any direct or indirect influence or control.

(B) Transactions in securities which are direct obligations of the United States. The record shall state:

(I) The title and amount of the security involved; the date and nature of the transaction (that is, purchase, sale or other acquisition or disposition).

(II) The price at which it was effected.

(III) The name of the broker-dealer or bank with or through whom the transaction was effected.

(ii) The record may also contain a statement declaring that the reporting or recording of any transaction will not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

(iii) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(iv) For purposes of this paragraph, the following terms have the following meanings:

(A) *Investment adviser representative*—A partner, officer or director of the investment adviser; any employe who participates in any way in the determination of which recommendations shall be made; any employe of the investment adviser who, in connection with assigned duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

(I) Any person in a control relationship to the investment adviser.

(II) Any affiliated person of a controlling person.

(III) Any affiliated person of an affiliated person.

(B) *Control*—The power to exercise a controlling influence over the management or policies of a company, unless the power is solely the result of an official position with the company. A person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control the company.

(v) An investment adviser shall implement adequate procedures and use reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13) Records of transactions by investment advisers primarily engaged in a business other than advising clients as follows:

(i) Notwithstanding paragraph (12), when the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record shall be maintained of every transaction in a security in which the investment adviser or any investment adviser representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions:

(A) Effected in any account over which neither the investment adviser nor any investment adviser representative of the investment adviser has any direct or indirect influence or control.

(B) In securities which are direct obligations of the United States. The record shall state:

(I) The title and amount of the security involved.

(II) The date and nature of the transaction (that is, purchase, sale, or other acquisition or disposition).

(III) The price at which it was effected, and the name of the broker-dealer or bank with or through whom the transaction was effected.

(ii) The record may also contain a statement declaring that the reporting or recording of any transaction will not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

(iii) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(iv) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent 3 fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of the following:

(A) Its total sales and revenues.

(B) Its income (or loss) before income taxes and extraordinary items, from other business or businesses.

(v) For purposes of this paragraph, the following terms have the following meanings:

(A) *Investment adviser representative*—When used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, the term means any partner, officer, director or employe of the investment adviser who participates in any way in the determination of which recommendations shall be made; any employe who, in connection with assigned duties, obtains information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations as follows:

(I) Any person in a control relationship to the investment adviser.

(II) Any affiliated person of a controlling person.

(III) Any affiliated person of an affiliated person.

(B) *Control*—The power to exercise a controlling influence over the management or policies of a company, unless the power is solely the result of an official position with company. A person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control the company.

(vi) An investment adviser shall implement adequate procedures and use reasonable diligence to promptly obtain reports of all transactions required to be recorded.

(14) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser under § 404.011 (relating to investment adviser brochure rule), and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser shall maintain the following:

(i) Evidence of a written agreement to which the adviser is a party related to the payment of the fee.

(ii) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor.

(iii) A copy of the solicitor's written disclosure statement if required by § 404.012 (relating to cash payment for client solicitation).

(iv) For purposes of this paragraph, the term "solicitor" means any person or entity who, for compensation, directly or indirectly solicits any client for, or refers any client to, an investment adviser.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for, or demonstrate the calculation of, the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including but not limited to, electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser) except that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

(17) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employe, and regarding any written customer or client complaint.

(18) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to the client.

(19) Written procedures to supervise the activities of employes and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(20) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or Federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in paragraph (12), which file should contain, but is not limited to, all applications, amendments, renewal filings and correspondence.

(b) If an investment adviser subject to subsection (a) has custody or possession of securities or funds of any client, the records required to be made and kept by subsection (a) also shall include:

(1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(2) A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(3) Copies of confirmations of all transactions effected by or for the account of any client.

(4) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(c) Every investment adviser subject to subsection (a) that renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

(2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client.

(d) Books or records required by this section may be maintained by the investment adviser so that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e) Every investment adviser subject to subsection (a) shall preserve the following records in the manner prescribed:

(1) The books and records required to be made under subsections (a), (b) and (c)(1) (except for books and records required to be made under subsection (a)(11) and (a)(16)), shall be maintained and preserved in an easily accessible place for at least 5 years from the end of the fiscal year during which the last entry was made on record, the first 2 years being in the principal office of the investment adviser.

(2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least 3 years after termination of the enterprise.

(3) Books and records required to be made under subsection (a)(11) and (18) shall be maintained and preserved in an easily accessible place for at least 5 years, the first 2 years being in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media.

(4) Books and records required to be made under subsection (a)(19) and (22) shall be maintained and preserved in an easily accessible place for at least 5 years, the first 2 years being in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media.

(5) Notwithstanding other record preservation requirements of this section, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(i) Records required to be preserved under subsections (a)(3), (7)—(10), (14)—(15), (17)—(19), (b) and (c).

(ii) Records or copies required under subsection (a)(11) and (16) which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address or telephone number.

(f) An investment adviser subject to subsection (a), before ceasing to do business as an investment adviser, shall arrange and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the Commission in writing of the exact address where the books and records will be maintained during the period.

(g) The requirements for the storage of records are as follows:

(1) Records required to be maintained and preserved under this section may be immediately produced or reproduced by photograph on film or, as provided in paragraph (2) on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

(i) Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record.

(ii) Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the Commission by its examiners or other representatives may request.

(iii) Store separately from the original one other copy of the film or computer storage medium for the time required.

(iv) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration or destruction.

(v) With respect to records stored on photographic film, at all times have available for the Commission's examination of its records under section 304(a) of the act (70 P. S. § 1-304(a)) facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(2) An investment adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

(h) For purposes of this section, the following terms have the following meanings:

(i) *Client*—Any person to whom the investment adviser has given investment advice for which the investment adviser has received compensation.

(ii) *Investment supervisory services*—The giving of continuous advice as to the investment of funds on the basis

of the individual needs of each client. Discretionary power does not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(iii) *Principal place of business*—The meaning set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

(i) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3) (relating to records to be made by certain exchange members, brokers and dealers) and 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk), which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, shall be deemed to be made, kept, maintained and preserved in compliance with this section.

(j) The requirements of this section do not apply to an investment adviser registered under section 301 of the act that meets the following conditions:

(1) Has its principal place of business in a state other than this Commonwealth.

(2) Is licensed as an investment adviser in the state where it has its principal place of business.

(3) Is in compliance with the recordkeeping requirements of the state in which it has its principal place of business.

§ 304.022. Investment adviser required financial reports.

(a) Except as provided in subsection (b), the following investment advisers registered under section 301 of the act (70 P. S. § 1-301) shall file the following reports of financial condition with the Commission within 120 days of the investment adviser's fiscal year end:

(1) An investment adviser that has custody of client funds or securities or requires prepayment of advisory fees 6 months or more in advance and in excess of $1,200 per client shall file with the Commission an audited balance sheet as of the end of its fiscal year. The balance sheet shall be prepared in accordance with generally accepted accounting principles and contain an unqualified opinion of an independent certified public accountant or independent public accountant. The accountant shall submit, as a supplementary opinion, comments based on the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate corrective action taken or proposed. If the investment adviser is a certified public accountant or a public accountant or whose principals include one or more certified public accountants or public accountants, the investment adviser, in lieu of filing an audit report, may file a report modeled after the management responsibility letter contained in paragraph 9600.22 of the American Institute of Certified Public Accountant's Technical Information Service signed by a certified public accountant or public accountant or one of the principals of the investment adviser.

(2) An investment adviser who has discretionary authority over client funds or securities, but not custody, shall file with the Commission a balance sheet as of the end of its fiscal year. The balance sheet need not be audited but shall be prepared in accordance with generally accepted accounting principles. The balance sheet shall contain a representation by the investment adviser that it is true and accurate.

(b) The requirements of subsection (a) do not apply to an investment adviser registered under section 301 of the act whose principal place of business is in a state other than this Commonwealth if the investment adviser meets the following conditions:

(1) Is registered in the state in which it maintains its principal place of business.

(2) Is in compliance with the financial reporting requirements of the state in which it maintains its principal place of business.

(3) Has not taken custody of assets of any client residing in this Commonwealth at any time during the preceding 12 month period.

(c) For purposes of this section, the following terms have the following meanings:

Principal—The chair, president, chief executive officer, general manager, chief operating officer, chief financial officer, vice president or other officer in charge of a principal business function (including sales, administration, finance, marketing, research and credit), secretary, treasurer, controller and any other natural person who performs similar functions.

Principal place of business—The meaning set forth in 17 CFR 275-203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

§ 304.052. Investment adviser compensation.

No investment adviser registered under the act may charge or receive commissions or other compensation in connection with the giving of investment advice unless the compensation is fair and reasonable and is determined on an equitable basis.

CHAPTER 305. DENIAL, SUSPENSION, REVOCATION AND CONDITIONING OF REGISTRATION

§ 305.011. Supervision of agents, investment adviser representatives and employes.

(a) Every broker-dealer and investment adviser registered under section 301 of the act (70 P. S. § 1-301) shall exercise diligent supervision over the securities activities and securities related activities of its agents, investment adviser representatives and employes.

(1) Each broker-dealer and investment adviser, in exercising diligent supervision, shall establish and maintain written procedures and a system for applying and enforcing those written procedures which are reasonably designed to achieve compliance with the act and this title and to detect and prevent any violations of statutes, rules, regulations or orders described in section 305(a)(v) and (ix) of the act (70 P. S. § 1-305(a)(v) and (ix)), the Conduct Rules of the National Association of Securities Dealers, Inc., or any applicable fair practice or ethical standard promulgated by the United States Securities and Exchange Commission or by a National Securities Exchange registered under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk).

(2) Final responsibility for proper supervision shall rest with the broker-dealer and investment adviser.

(b) Every issuer who employs agents registered under section 301 of the act shall be subject to the supervision requirements of subsection (a) with respect to those agents.

(c) As evidence of compliance with the supervisory obligations imposed by this section, every broker-dealer and investment adviser shall implement written procedures, a copy of which shall be kept in each location at which the broker-dealer or investment adviser conducts business, and shall establish, maintain and enforce those written procedures designed to achieve compliance with the act and this title and to detect and prevent violations described in subsection (a). These written procedures, at a minimum, shall address:

(1) The supervision of every agent, investment adviser representative, employe and supervisor by a designated qualified supervisor.

(2) Methods to be used to determine that all supervisory personnel are qualified by virtue of character, experience and training to carry out their assigned responsibilities.

(3) Methods to be used to determine the good character, business repute, qualifications, and experience of any person prior to making application for registration of that person with the Commission and hiring that person.

(4) The review and written approval by the designated supervisor of the opening of each new customer account.

(5) The frequent examination of customer accounts to detect and prevent violations, irregularities or abuses.

(6) The prompt review and written approval of the handling of customer complaints.

(7) The prompt review and written approval by the designated supervisor of all securities transactions and all correspondence pertaining to the solicitation or execution of all securities transactions.

(8) The review and written approval by the designated supervisor of the delegation by a customer of discretionary authority with respect to the customer's account and frequent examination of discretionary accounts to prevent violations, irregularities or abuses.

(9) The participation of each agent and investment adviser representative either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the broker-dealer or investment adviser at which compliance matters relevant to the activities of the agents and investment adviser representatives are discussed. Written records shall be maintained reflecting the interview or meeting.

(10) The periodic inspection of each location in this Commonwealth from which business is conducted to ensure that the written procedures and systems are enforced. In establishing an inspection cycle, the broker-dealer and investment adviser shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done and the number of agents or investment adviser representatives assigned to the location.

(i) The obligation of diligent supervision required by this section may require that one or more locations in this Commonwealth receive more than one inspection per year and that one or more of these inspections be unannounced.

(ii) It is the responsibility of the broker-dealer or investment adviser to determine the required number of inspections each location is to receive each year to ensure that the written procedures and systems are enforced and the supervisory obligations imposed by this section are being honored.

(iii) Written records shall be maintained reflecting each inspection conducted.

(d) Records required to be maintained under this section shall be maintained for 5 years, the first 2 years being in an easily accessible place. The retention and preservation of records may be on microfilm, computer disks or tapes or other electronic medium if adequate facilities are maintained for examination of facsimiles.

(e) To the extent that this section imposes any recordkeeping requirement on an investment adviser registered under section 301 of the act (70 P. S. § 1-301), the recordkeeping requirement does not apply if the investment adviser meets the following conditions:

(1) Has its principle place of business in a state other than this Commonwealth.

(2) Is licensed as an investment adviser in the state where it has its principal place of business.

(3) Is in compliance with the recordkeeping requirements of the state in which it has its principal place of business.

§ 305.019. Dishonest and unethical practices.

* * * * *

(b) Under section 305(a)(ix) of the act (70 P. S. § 1-305(a)(ix)), the Commission may deny, suspend, condition or revoke a broker-dealer, agent, investment adviser or investment adviser representative registration or censure a broker-dealer, agent, investment adviser or investment adviser representative registrant if the registrant or applicant, or in the case of any broker-dealer or investment adviser, any affiliate thereof, has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer.

(c) The Commission, for purposes of section 305(a)(ix) of the act, will consider the actions in paragraphs (1)—(3) to constitute dishonest or unethical practices in the securities business or taking unfair advantage of a customer. The conduct described in paragraphs (1)—(3) is not exclusive. Engaging in other conduct inconsistent with the standards in subsection (a), such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices or taking unfair advantage of a customer or former customer in any aspect of a tender offer also constitute grounds for denial, suspension, conditioning or revocation of any registration or application for registration of a broker-dealer, agent, investment adviser or investment adviser representative.

(1) *Broker-dealers.* Includes the following actions:

* * * * *

(xxii) Failing to comply with investor suitability standards imposed as a condition of the registration of securities under section 205 or 206 of the act (70 P. S. § 1-205 or § 1-206) in connection with the offer, sale or purchase of a security in this Commonwealth.

(2) *Agents.* Includes the following actions:

* * * * *

(vi) Engaging in conduct specified in paragraph (1)(ii)—(vi), (ix), (x), (xiv)—(xvii), (xxi) and (xxii).

(3) *Investment advisers and investment adviser representatives.* Includes the following actions:

(i) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of a security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.

(ii) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed under oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

* * * * *

(viii) Misrepresenting to an advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative or an employe of the investment adviser or misrepresenting the nature of the advisory services being offered or fees to be charged for the service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(ix) Providing a report or recommendation to an advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to render advice or where an investment adviser or investment adviser representative orders the report in the normal course of providing advice.

* * * * *

(xi) Failing to disclose to clients in writing before advice is rendered a material conflict of interest relating to the investment adviser, the investment adviser representative or an employe of the investment adviser which could reasonably be expected to impair the rendering of unbiased and objective advice including:

* * * * *

(B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to the advice will be received by the investment adviser, the investment adviser representative or an employe of the investment adviser.

* * * * *

(xv) Taking an action, directly or indirectly, with respect to those securities or funds in which a client has a beneficial interest, where the investment adviser has custody or possession of the securities or funds when the adviser's action is subject to, and does not comply with, the requirements of § 404.013 (relating to investment adviser custody or possession of funds or securities of clients).

(xvii) Failing to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of section 204a of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-4a) and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder.

(xviii) Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-5) and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers and investment adviser representatives registered under section 301 of the act (70 P. S. § 1-301) notwithstanding whether the investment adviser is exempt from registration with the United States Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-3).

(xix) To indicate, in an advisory contract, any condition, stipulation or provision binding any person to waive compliance with any provision of the act.

(xx) Engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative or contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-6(4)) and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers and investment adviser representatives registered under section 301 of the act notwithstanding whether the investment adviser is exempt from registration with the United States Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940.

(xxi) Engaging in conduct or committing any act, directly, indirectly or through or by another person, which would be unlawful for the person to do directly under the provisions of this act or any rule, regulation or order issued thereunder.

(d) This section does not apply to Federally covered advisers unless the conduct otherwise is actionable under section 401(a) or (c) or 404 of the act (70 P. S. § 1-401(a) or (c) or 1-404).

§ 305.061. Withdrawal of registration or notice filing.

(a) The following applies to investment advisers that want to withdraw from registration as an investment adviser registered under section 301 of the act (70 P. S. § 1-301):

(1) For an investment adviser that seeks to withdraw from registration under section 301 of the act because the investment adviser has become a Federally covered adviser subject to exclusive registration with the United States Securities and Exchange Commission, the investment adviser shall file an amendment to the uniform application for investment adviser registration (Form ADV) or successor form thereto with the Commission or with an investment adviser registration depository designated by order of the Commission.

(2) For an investment adviser that seeks to withdraw from registration under section 301 of the act because the investment adviser no longer transacts business in this Commonwealth as an investment adviser, the investment adviser shall file a notice of withdrawal from registration as an investment adviser form (Form ADV-W), or a successor form with the Commission or with an investment adviser registration depository designated by order of the Commission.

(b) An application to withdraw from registration as a broker-dealer shall contain the information requested in

and shall be made on Uniform Request for Withdrawal from Registration as a Broker-Dealer Form (Form BDW) or a successor form.

(c) To withdraw from registration as investment adviser representative, the investment adviser or Federally covered adviser for whom the investment adviser representative was employed shall file the Uniform Termination Notice for Securities/Futures Industry Registration (Form U-5) or a successor form thereto with the Commission or with an investment adviser registration depository designated by order of the Commission within 30 days from the date of termination.

(d) To withdraw from registration as an agent of a broker-dealer or an issuer, the broker-dealer or issuer shall file Form U-5 or successor form thereto with the Commission within 30 days from the date of termination.

(e) To withdraw a notice filing, a Federally covered adviser shall file a notice with the Commission or with an investment adviser registration depository designated by order of the Commission.

Subpart D. FRAUDULENT AND PROHIBITED PRACTICES

CHAPTER 404. PROHIBITED ACTIVITIES; INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

§ 404.010. Advertisements by investment advisers and investment adviser representatives.

(a) It shall constitute a fraudulent, deceptive or manipulative act, practice or course of conduct within the meaning of section 404 of the act (70 P. S. § 1-404), for any investment adviser or investment adviser representative, directly or indirectly, to publish, circulate or distribute any advertisement:

(1) Which refers, directly or indirectly, to any testimonial of any kind by any customer concerning the investment adviser or investment adviser representative concerning any advice, analysis, report or other service rendered to the customer by the investment adviser or investment adviser representative.

(2) Which refers, directly or indirectly, to past specific recommendations of the investment adviser or investment adviser representative which were or would have been profitable to any person; provided, however, that this does not prohibit an advertisement which sets forth or offers to furnish a list of all recommendations made by the investment adviser or investment adviser representative for the 12 month period immediately preceding the date of the publication of the advertisement, and which:

(i) Includes the name of each such security recommended, the date and nature of each such recommendation (for example, whether to buy, sell or hold,) the market price at the time, the price at which the recommendation was to be acted upon, and the current market price of each such security.

(ii) Contains the following cautionary legend prominently displayed on the first page thereof in print or type as large as the largest print or type used in the body or text stating: "IT SHOULD NOT BE ASSUMED THAT RECOMMENDATIONS MADE IN THE FUTURE WILL BE PROFITABLE OR WILL EQUAL THE PERFORMANCE OF THE SECURITIES IN THIS LIST."

(3) Which represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the difficulties with respect to its use.

(4) Which contains any statement to the effect that any report, analysis or other service will be furnished free or without charge, unless the report, analysis or other service actually is or will be furnished absolutely without condition or obligation.

(5) Which contains any untrue statement of a material fact, or which is otherwise false or misleading in any material respect, including the failure to disclose compensation (including free or discounted securities) received directly or indirectly in connection with making a recommendation concerning a specific security.

(6) Which recommends the purchase or sale of any security unless the investment adviser or investment adviser representative simultaneously offers to furnish to any person upon request a tabular presentation of:

(i) The total number of shares or other units of the security held by the investment adviser or investment adviser representative for its own account or for the account of officers, directors, trustees, partners or affiliates of the investment adviser or for discretionary accounts of the investment adviser or investment adviser representative maintained for clients.

(ii) The price or price range at which the securities listed in subparagraph (i) were purchased.

(iii) The date or range of dates during which the securities listed in response to subparagraph (i) were purchased.

(b) For the purpose of this section, the term "advertisement" includes any notice, circular, letter or other written communication addressed to more than one person or any notice or other announcement in any publication, by radio or television, or by electronic means, which offers:

(1) Any analysis, report or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

(2) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

(3) Any other investment advisory service with regard to securities.

(c) For the purpose of this section, the term "client" means any person to whom the investment adviser or investment adviser representative has given investment advice for which the investment adviser or investment adviser representative has received compensation.

(d) This section does not apply to Federally covered advisers unless the conduct otherwise is actionable under section 401(a) or (c) or 404 of the act (70 P. S. § 1-401(a) or (c) or 1-404).

§ 404.011. Investment adviser brochure disclosure.

(a) Failure of an investment adviser to provide each advisory client or prospective advisory client the disclosure required by this section shall constitute a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P. S. § 1-404).

(b) An investment adviser registered under section 301 of the act (70 P. S. § 1-301) shall offer and deliver to each client and prospective client a current firm brochure and one or more supplements as required by this section. The brochure and supplements shall contain the information required by Part 2 of Form ADV (CFR 279.1).

(c) An investment adviser shall deliver to each client and prospective client all of the following:

(1) A current firm brochure.

(2) Current brochure supplements for each investment adviser representative who will provide advisory services to a client.

(d) The firm brochure and one or more supplements required by this section shall be delivered in compliance with one of the following:

(1) Not less than 48 hours prior to entering into any investment advisory contract with the client or prospective client.

(2) At the time of entering into a contract, if the advisory client has a right to terminate the contract without penalty within 5 business days after entering into the contract.

(e) An investment adviser shall, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplements required by subsection (b). If a client accepts a written offer, the investment adviser shall send to that client the current brochure and supplements within 7 days after the investment adviser is notified of the acceptance.

(f) If, as an investment adviser, the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this section the investment adviser shall treat each of the partnership's limited partners, the company's members or the trust's beneficial owners as a client. For the purposes of this section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(g) If an investment adviser renders substantially different types of investment advisory services to different clients, the investment adviser may provide them with different brochures, so long as each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by Part 2A of Form ADV if the information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(h) Except as provided by paragraph (1), if the investment adviser is a sponsor of a wrap fee program, the brochure required to be delivered by subsection (b) to a client or prospective client of the wrap fee program shall be a wrap fee brochure containing all the information required by Form ADV. Any additional information in a wrap fee brochure shall be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(1) The investment adviser does not have to offer or deliver a wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information specified in Part 2A Appendix 1 to Form ADV.

(2) A wrap fee brochure does not take the place of any brochure supplements that the investment adviser is required to deliver under this section.

(i) In accordance with Part 2 of Form ADV, the investment adviser shall amend its brochure and any brochure supplement and deliver the amendments to clients promptly when any information contained in the brochure or brochure supplement becomes materially inaccurate. The amendments shall be promptly filed with the Commission or with an investment adviser registration depository designated by the Commission.

(j) Delivering a brochure or supplement in compliance with this section does not relieve the investment adviser of any other disclosure obligations which the investment adviser may have to its clients or prospective clients under the act or this title.

(k) For the purposes of this section, the following terms have the following meanings:

(1) *Client*—A person to whom the investment adviser has given investment advice and for which the investment adviser has received compensation.

(2) *Entering into*—In reference to an investment advisory contract, the term does not include an extension or renewal without material change of the contract which is in effect immediately prior to the extension or renewal.

(3) *Portfolio manager*—The process of determining or recommending securities transactions for any portion of a client's portfolio.

(4) *Sponsor*—An investment adviser that is compensated under a wrap fee program for administering, organizing or sponsoring the program, or for selecting or providing advice to clients regarding the selection of other investment advisers in the program.

(5) *Wrap fee program*—A program under which a client is charged a specified fee or fees not based directly on transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

§ 404.012. Cash payment for client solicitation.

(a) Failure of an investment adviser to comply with the requirements of this section concerning cash payments for client solicitation constitutes a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P. S. § 1-404).

(b) An investment adviser may not pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

(1) The investment adviser is registered under the act.

(2) The solicitor, unless exempted, is registered under the act.

(3) The cash fee is paid pursuant to a written agreement to which the investment adviser is a party.

(4) The written agreement required by paragraph (3) shall:

(i) Describe the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor.

(ii) Contain an undertaking by the solicitor to perform its duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the act and the rules thereunder.

(iii) Require that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the following:

(A) The investment adviser's written disclosure statement required by § 404.011 (relating to investment adviser brochure disclosure).

(B) A separate written disclosure document which contains the following:

(I) The name of the solicitor.

(II) The name of the investment adviser.

(III) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser.

(IV) A statement that the solicitor will be compensated for his solicitation services by the investment adviser.

(V) The terms of the compensation arrangement, including a description of the compensation paid or to be paid to the solicitor.

(VI) The amount, if any, for the cost of obtaining his account the client will be charged in addition to the advisory fee, and the differential, if any, among clients with respect to the amount or level of the advisory fees charged by the investment adviser if the differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(5) The investment adviser receives from the client prior to, or at the time of, entering into any written or oral investment advisory contract with the client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement required by § 404.011 and the solicitor's written disclosure document required by paragraph (4)(iii)(B).

(c) For purposes of subsection (b)(4), this section does not apply to an investment adviser when the cash fee is paid to a solicitor as follows:

(1) With respect to solicitation activities for the provision of impersonal advisory services only.

(2) A solicitor who is one of the following:

(i) A partner, officer, director or employe of the investment adviser.

(ii) A partner, officer, director or employe of a person which controls, is controlled by, or is under common control with the investment adviser if the status of the solicitor as a partner, officer, director or employe of the investment adviser or other person, is disclosed to the client at the time of the solicitation or referral.

(d) Nothing in this section relieves a person of a fiduciary or other obligation to which the person may be subject under the law.

(e) For purposes of this section, the following terms have the following meanings:

(1) *Client*—Any prospective client.

(2) *Impersonal advisory services*—Investment advisory services provided solely by means of one of the following:

(i) Written materials or oral statements which do not purport to meet the objectives or needs of the specific client.

(ii) Statistical information containing no expressions of opinions as to the investment merits of particular securities.

(iii) Any combination of the foregoing services.

(3) *Solicitor*—A person or entity who, for compensation, directly or indirectly, solicits a client for, or refers a client to, an investment adviser.

§ 404.013. Investment adviser custody or possession of funds or securities of clients.

(a) Failure of an investment adviser not registered as a broker dealer that has custody or possession of funds or securities in which any client has a beneficial interest to comply with the requirements of this section shall constitute a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P. S. § 1-404).

(b) An investment adviser registered under section 301 of the act (70 P. S. § 1-301) that has custody or possession of funds or securities in which any client has any beneficial interest shall:

(1) Notify the Commission in writing that the investment adviser has or may have custody. The notification shall be given on Form ADV.

(2) Segregate the securities of each client marked to identify the particular client having the beneficial interest therein and held in safekeeping in some place reasonably free from risk of destruction or other loss.

(3) Deposit all client funds, in one or more bank accounts containing only clients funds.

(4) Maintain the accounts described in paragraph (3) in the name of the investment adviser as agent or trustee for the clients.

(5) Maintain a separate record for each account described in paragraph (3) showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account.

(6) Immediately after accepting custody or possession of funds or securities from a client, notify the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice thereof to the client.

(7) At least once every 3 months, send each client an itemized statement showing the funds and securities in the investment adviser's custody at the end of each period and all debits, credits and transactions in the client's account during that period.

(8) At least once every calendar year, engage an independent certified public accountant or independent public accountant to verify all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment adviser. A report stating that an accountant has made an examination of the client funds and securities, and describing the nature and extent of the examination, shall be filed with the Commission within 30 days after each examination.

(c) For purposes of this section, a person will be deemed to have custody if the person directly or indirectly

holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

Subpart F. ADMINISTRATION

CHAPTER 603. ADMINISTRATIVE FILES

§ 603.031. Public inspection of records.

(a) During the regular business hours of the Commission, members of the public may, upon written request to do so, inspect at the Commission's Harrisburg Office those documents which are public records. The written request required by this subsection shall set forth the public records to be inspected.

(b) The Commission may withhold from public inspection those records which it determines are excluded from the definition of public records in section 1 of the act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. § 66.1(2)), known as the Right-to-Know Law.

(c) A request for the confidential treatment of information contained in a statement, application, notice or report submitted to the Commission may accompany the statement, application, notice or report and specify the reasons for the request; the material which is the subject of the request should be separated from other parts of the filing. Upon proper showing, the Commission will treat as confidential the material which is the subject of the request.

(d) Nothing in this section may be deemed to make available for public inspection books, papers, correspondence, memoranda agreements or other documents or records contained in an investigative file maintained by the Commission. In addition, no minutes, documents or other memoranda of the Commission or of the staff which deal with or concern the institution, maintenance or termination of an investigation may be available for public inspection.

(e) Except as set forth in paragraphs (1) and (2), financial statements required to be filed under §§ 303.011, 303.012, 304.021 and 304.022 shall be public.

(1) Statements of income required to be filed under §§ 303.011 and 304.021 (relating to broker-dealer registration procedures; and broker-dealer required financial reports) and nonrequired statements of income filed under §§ 303.011, 303.012, 304.021 and 304.022 shall be confidential if the income statements are bound separately from the accountant's report, the statement of financial condition and the accompanying notes.

(2) Financial statements which are deemed confidential under paragraph (1) shall be available for official use by an official or employe of the government of the United States or a state, by a National Securities Exchange or registered National securities association of which the person filing the financial statements is a member, and by other persons whom the Commission authorizes disclosure of the information as being in the public interest. Nothing in this subsection may be deemed to be in derogation of the rules of a registered National Securities Exchange or registered National securities association which give customers of a member broker or dealer the right, upon request to the member broker or dealer, to obtain information relative to its financial condition.

(f) The Commission has determined to treat confidential the following information which will not be available for public inspection under any provision of the act and which the Commission deems excluded from the definition of public records in section 1(2) of the Right-to-Know Law:

(1) Social Security number, date of birth and home address of an individual registered or applying for registration as an agent or an investment adviser representative that appears on the uniform application for securities industry registration or transfer (Form U-4) or successor form thereto required to be filed with the Commission under § 303.013 or 303.014 (relating to agent registration procedures; and investment adviser representative registration procedures).

(2) The Social Security number, date of birth and home address of an individual registered or applying for registration as an investment adviser or filing a notice as a Federally covered adviser that appears on the uniform application for investment adviser registration (Form ADV) or successor form thereto required to be filed with the Commission or an investment adviser registration depository designated by order of the Commission under § 303.012 or 303.015 (relating to investment adviser registration procedure; and notice filing for Federally covered advisers).

(3) The Social Security number, date of birth and home address of an individual who is a principal of a person registered or applying for registration as a broker-dealer or investment adviser or filing a notice as a Federally covered adviser that appears on the uniform application for broker-dealer registration (Form BD) or Form ADV or successor forms thereto. For purposes of this section, the term "principal" has the meaning as set forth in § 303.012(e).

[Pa.B. Doc. No. 00-1500. Filed for public inspection September 1, 2000, 9:00 a.m.]

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CHS. 137, 137a AND 137b]

Preferential Assessment of Farmland and Forest Land Under the Clean and Green Act

The Department of Agriculture (Department) proposes to establish regulations for implementing the Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S. §§ 5490.1—5490.13), commonly referred to as the Clean and Green Act (act).

In summary, the act allows owners of agricultural, agricultural reserve or forest reserve land to apply for preferential assessment of their land. If the application is approved, the land receives an assessment based upon its use value, rather than its market value.

The Department offers the proposed amendments to replace outdated provisions, incorporate provisions that reflect various issues which have arisen under the act, provide examples to guide the regulated community and address the revisions to the act accomplished by the act of December 21, 1998 (P. L. 1225, No. 156) (Act 156). The proposed amendments will delete current regulations in Chapter 137 (relating to preferential assessment of farmland and forest land) and the current statement of policy in Chapter 137a (relating to Clean and Green Act—statement of policy), and replace these chapters with a single chapter, Chapter 137b (relating to preferential assessment of farmland and forest land under the Clean and Green Act).

Authority

The amendments are proposed under authority of section 11 of the act (72 P. S. § 5490.11), which requires the Department promulgate regulations necessary to promote the efficient, uniform, Statewide administration of that statute. In addition, section 12 of Act 156 (72 P. S. § 5490.4a note) amended the act to allow the Department to implement the interim regulations which are currently in Chapter 137a without proceeding through the regulatory promulgation process ordinarily required by law. It also required the Department to replace this statement of policy with formal regulations by April 30, 2001.

Need for the Proposed Amendments

There is an immediate need for the proposed amendments. As stated, Act 156 requires the Department to replace the current statement of policy with formal regulations by April 30, 2001. In addition, the proposed amendments will replace current outdated and inadequate regulations and help bring about uniform interpretation and application of the act throughout this Commonwealth.

In summary, the Department is satisfied there is a need for the proposed amendments, and that they are otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Summary of the Proposed Amendments

As stated, the proposed amendments will replace outdated regulatory provisions, incorporate provisions to resolve questions that have arisen under the act, provide examples to guide the regulated community and address the revisions to that act accomplished by Act 156. The proposed amendments will delete current regulations in Chapter 137 and the current statement of policy in Chapter 137a and replace these chapters.

The Department solicited comments from affected parties as it drafted the proposed amendments. Among those offering comments were the Pennsylvania Farm Bureau, legislative staff, private individuals and county assessors or county officials from Bradford, Clinton, Dauphin, Lancaster, Lehigh, Mifflin, Montgomery, Northampton, Sullivan and Union Counties. Although there were disagreements among commentators, and between commentators and the Department, numerous suggestions offered by these commentators have either been incorporated into the proposed amendments or have helped shape this document.

A summary of some of the more significant provisions of the proposed amendments follows.

Proposed § 137b.2 (relating to definitions) consolidates definitions found in the act, Chapter 137 and Act 156. It also adds several new terms, such as "enrolled land" and "ineligible land."

Proposed § 137b.11 (relating to general) provides an explanation of what constitutes agricultural land, agricultural reserve land and forest reserve land—the three types of land eligible for preferential assessment under the act. It also clarifies the circumstances under which land may be enrolled to receive a preferential tax assessment. This section emphasizes that "farmstead land" is to be included in the eligible land, and that ineligible land may be included in an application for preferential assessment, but may not be preferentially assessed. The section contains a number of examples to help illustrate its provisions.

Proposed § 137b.41 (relating to application forms and procedures) describes the general procedure by which a landowner may apply for preferential assessment under the act. It also addresses the types of proof which a county assessor might reasonably require of a landowner to demonstrate that land is in an eligible use, with particular emphasis on the types of documentation that can establish "agricultural use" or "forest reserve."

Proposed § 137b.42 (relating to deadline for submission of applications) describes the application window for persons seeking preferential assessment of their land under the act. A landowner who applies for preferential assessment by June 1 of a particular year, and whose application is subsequently approved, will begin to receive the preferential assessment as of the commencement of the tax year of each taxing body in the following calendar year.

Proposed § 137b.46 (relating to fees of the county board for assessment appeals) describes the fees which may be charged by a county board for assessment appeals for processing or amending applications for preferential assessment. Subsection (b) lists the circumstances where an application should be amended without charge.

Proposed § 137b.51 (relating to assessment procedures) describes the assessment process. In summary, the Department will provide a county assessor with use values for various land use categories and land use subcategories. The county assessor will use these values—or county-assessor-generated use values that are lower than those provided by the Department—in determining a

"total use value" for a tract of enrolled land. This total use value is used in calculating the preferential assessment for the enrolled land. To provide a meaningful basis for comparing county-assessor-generated use values to those generated by the Department, this section requires that a county assessor generate use values for the same land use subcategories with respect to which the Department generates its use values.

Proposed § 137b.52 (relating to duration of preferential assessment) describes various circumstances that would alter or end preferential assessment of enrolled land. It also clarifies that the payment of roll-back taxes with respect to some portion of a tract of enrolled land does not automatically trigger the removal of the entire tract from preferential assessment. Subsection (d) sets forth a number of examples to illustrate this point. Subsection (e) lists some of the circumstances under which a county should terminate the preferential assessment of a tract of enrolled land.

Proposed § 137b.53 (relating to calculation and recalculation of preferential assessment) requires a county assessor to recalculate the preferential assessment of currently-enrolled land if farmstead land on the currently-enrolled land is not also preferentially assessed, or if the current assessment was calculated with use values that are higher than those provided by the Department. Also, if a county conducts a county-wide reassessment, it shall recalculate the preferential assessment of all enrolled land. This section does not limit a landowner's right to seek recalculation of the preferential assessment.

Proposed § 137b.62 (relating to enrolled "agricultural use" land of less than 10 contiguous acres) contains a description of the types of evidence that will suffice to demonstrate that a particular tract of less-than-10 acres of "agricultural use" land generates at least $2,000 in income from agricultural production each year.

Proposed § 137b.63 (relating to notice of change of application) requires an owner of enrolled land to provide a county assessor at least 30 days' advance written notice of a change in use of the land to something other than agricultural, agricultural reserve or forest reserve, or if there is a change in ownership of the enrolled land, or if there is a division or conveyance of the land.

Proposed § 137b.64 (relating to agricultural reserve land to be open to the public) attempts to clarify the requirement of section 2 of the act (72 P. S. § 5490.2) that "agricultural reserve" land be ". . . used for outdoor recreation of the enjoyment of scenic or natural beauty and open to the public for this use, without charge or fee, on a nondiscriminatory basis." The section allows a landowner to place reasonable restrictions on the uses to which the enrolled land may be put, and affords county assessors the option to establish procedures by which to identify the specific uses to which enrolled land may be put and disseminate that information to the public.

Proposed § 137b.71 (relating to death of an owner of enrolled land) provides that a "Class A" beneficiary who inherits enrolled land is not liable for roll-back taxes if the tract the beneficiary inherits does not meet the minimum requirements for preferential assessment. If the beneficiary subsequently changes the character or use of the land so that it no longer meets the minimum requirements for preferential assessment, though, preferential assessment shall cease and roll-back taxes shall be due.

Proposed § 137b.72 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit) allows for up to 2 acres of enrolled land to be used for activities related to agriculture and supportive of agricultural production on the remaining enrolled land. Preferential assessment would end on this up-to-2-acre tract, and roll-back taxes would also be due with respect to that tract.

Proposed § 137b.73 (relating to wireless or cellular telecommunications facilities) allows for a small portion of enrolled land to be leased for the erection and operation of a cellular communications tower. Preferential assessment ends with respect to the leased tract and roll-back taxes are due with respect to that leased tract, as well.

Proposed § 137b.74 (relating to option to accept or forgive roll-back taxes in certain instances) affords a county assessor the option to waive roll-back taxes with respect to certain enrolled land that is transferred to specific charitable organizations for charitable purposes.

Proposed §§ 137b.75 and 137b.76 (relating to transfer of enrolled land for use as a cemetery; and transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail) address situations where transfers of enrolled land to specific entities for specific uses are allowed without triggering liability for roll-back taxes or ending preferential assessment of that portion of the enrolled land that is not transferred.

Proposed § 137b.81 (relating to general) addresses the situations in which a landowner may be liable for roll-back taxes with respect to enrolled land. In general, a change in use of enrolled land to something other than agricultural use, agricultural reserve or forest reserve triggers liability for roll-back taxes.

Proposed §§ 137b.82—137b.84 (relating to split-off tract; split-off that complies with section 6(a.1)(1)(i) of the act; and split-off that does not comply with section 6(a.1)(1)(i) of the act) address "split-offs" of enrolled land, and differentiate between split-offs that occur in accordance with the criteria in section 6(a.1)(1)(i) of the act and those that do not. The former triggers liability for roll-back taxes on the split-off tract only, while the latter triggers liability for roll-back taxes on the entire tract of enrolled land.

Proposed § 137b.89 (relating to calculation of roll-back taxes) provides a formula by which a county assessor can calculate the roll-back tax amount, plus simple interest thereon at the rate of 6% per annum.

Proposed § 137b.93 (relating to disposition of interest on roll-back taxes) describes requirements imposed by section 8(b.1) of Act 156 (72 P. S. § 5490.8(b.1)) with respect to the disposition of interest on roll-back taxes. Prior to Act 156, this interest belonged to the various affected taxing authorities. Act 156 requires this interest be provided to the county agricultural land preservation board for use under the Agricultural Area Security Law (3 P. S. §§ 901—915), which pertains to the purchase of agricultural conservation easements. If the county does not have such a board, the county assessor is to coordinate with the Department to arrange the transfer of the interest to the Agricultural Conservation Easement Purchase Fund, to be used in the Statewide agricultural conservation easement purchase effort.

Proposed §§ 137b.101—137b.112 (relating to duties of a county assessor) provide an overview of the various responsibilities of a county assessor under the act. These duties involve recordkeeping, recording approved applications, updating records on an annual basis, determining

total use values, notifying landowners of changes in status, enforcement, evidence gathering and assessment of roll-back taxes.

Proposed § 137b.131 (relating to civil penalties) restates the penalty provisions in section 5.2 of the act (72 P. S. § 5490.5b). That provision allows for the imposition of a $100 civil penalty against a landowner who violates any provision of the act or its attendant regulations.

Persons Likely to be Affected

The proposed amendments promote the efficient, uniform, Statewide administration of the act. They update and supplant outdated and inadequate regulations in Chapter 137, supplant the statement of policy in Chapter 137a and implement changes to the act accomplished by Act 156. Although a number of persons and entities are likely to be impacted by the subject matter of this proposed rulemaking, the provisions of the act, rather than the provisions of the proposed regulations, drive these impacts.

Owners of agricultural, agricultural reserve and forest reserve land meeting the minimum requirements for preferential assessment set forth in the act will be affected by the proposed amendments. The use values prescribed by the act are likely to decrease taxes for these owners of enrolled land, or maintain these taxes at a comparatively lower level than those imposed upon owners of land that is not enrolled under the act to receive preferential assessment.

Taxpayers who do not own agricultural, agricultural reserve and forest reserve land meeting the minimum requirements for preferential assessment in the act will be impacted by the proposed amendments, in that they are the likely entity to be called upon to makeup any tax revenue shortfalls caused by a decrease in the taxes of those persons described in the preceding paragraph.

County governments will be affected by the proposed amendments, in that there is likely to be expense involved in recalculating preferential assessments as required under the act. There may also be costs involved as owners of currently-enrolled land seek recalculation of the preferential assessments of their land. In addition, the amendment to the act accomplished by Act 156 may result in tax revenue shortfalls where collections from agricultural, agricultural reserve and forest reserve lands are lower than anticipated.

Fiscal Impact

Commonwealth

The proposed amendments will have no appreciable fiscal impact upon the Commonwealth.

Political Subdivisions

The proposed amendments will impose costs upon county governments. As stated previously, counties are likely to incur expenses in recalculating preferential assessments as required under the act. There may also be costs involved as owners of currently-enrolled land seek recalculation of the preferential assessments of their land. In addition, the amendment to the act accomplished by Act 156 may result in tax revenue shortfalls when collections from agricultural, agricultural reserve and forest reserve lands are lower than anticipated.

Private Sector

If the act (as amended by Act 156) results in a county receiving less tax revenue than anticipated from agricultural, agricultural reserve and forest reserve lands, other taxpayers from the private sector (that is, owners of lands that are not in agricultural use, agricultural reserve or forest reserve) may ultimately be called upon to make up this tax revenue shortfall.

General Public

If the act (as amended by Act 156) results in a county receiving less tax revenue than anticipated from agricultural, agricultural reserve and forest reserve lands, other taxpayers (that is, owners of lands that are not in agricultural use, agricultural reserve or forest reserve) may ultimately be called upon to make up this tax revenue shortfall.

Paperwork Requirements

The proposed amendments will not result in an appreciable increase in the paperwork handled by the Department.

Regulatory Review

The Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on August 21, 2000, in accordance with section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)). The Department also provided IRRC and the Committees a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has an objection to any portion of the proposed amendments, it must notify the Department 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 sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to the publication of the proposed amendments.

Public Comment Period

The Department invites public comment with respect to the proposed amendments. Written comments should be directed to the contact person. The public comment period with respect to the proposed amendments shall expire after 30 days from publication of the proposed amendments in the *Pennsylvania Bulletin*.

Annotated Copies Available

The Department will e-mail interested persons a copy of an annotated, unofficial version of the proposed amendments. The extensive annotations reference statutory authority for various provisions of the proposed amendments, cite related provisions from the current regulations in Chapters 137 and 137a, and summarize comments received by the Department in the preliminary drafting process for the proposed amendments. Requests for E-mail copies of the annotated, unofficial version of the proposed amendments should be directed to the contact person identified in this Preamble.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Farmland Protection, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Raymond C. Pickering, (717) 783-3167.

Sunset/Expiration Date

Although no sunset or expiration date is set for the regulations, the Department would review their efficacy on an ongoing basis.

Effective Date

The proposed amendments will take effect upon the date of final adoption.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-133. No fiscal impact; (8) recommends adoption.

(*Editor's Note*: As part of this proposed rulemaking, the Department is proposing to delete the text of Chapters 137 and 137a, which appear at 7 Pa. Code pages 137-1—137-35, serial pages (257043)—(257077) and pages 137a-1—137a-27, serial pages (257079)—(257105). The following chapter is new and is printed in regular type to enhance readability.)

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

CHAPTER 137b. PREFERENTIAL ASSESSMENT OF FARMLAND AND FOREST LAND UNDER THE CLEAN AND GREEN ACT

GENERAL PROVISIONS

§ 137b.1. Purpose.

(a) This chapter establishes procedures necessary for the uniform Statewide implementation of the act. The act provides for land devoted to agricultural use, agricultural reserve use or forest reserve use to be assessed at the value it has for that use rather than at fair market value. The intent of the act is to encourage the keeping of land in one of these uses.

(b) The benefit to an owner of enrolled land is an assurance that the enrolled land will not be assessed at the same rate as land that is not enrolled land. In almost all cases, an owner of enrolled land will see a reduction in his property assessment compared to land assessed or valued at its fair market value. The difference between assessments of enrolled land and land that is not enrolled land will be most noticeable when a county is reassessed. The intent of the act is to protect the owner of enrolled land from being forced to go out of agriculture, or sell part of the land to pay taxes.

§ 137b.2. Definitions.

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

Act—The Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S. §§ 5490.1—5490.13), commonly referred to as the Clean and Green Act.

Agricultural commodity—Any of the following:

(i) Agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products.

(ii) Pasture.

(iii) Livestock and the products thereof.

(iv) Ranch-raised furbearing animals and the products thereof.

(v) Poultry and the products of poultry.

(vi) Products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.

(vii) Processed or manufactured products of products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.

Agricultural reserve—

(i) Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for that use, without charge or fee, on a nondiscriminatory basis.

(ii) The term includes any farmstead land on the tract.

Agricultural use—Land which is used for the purpose of producing an agricultural commodity or is devoted to and meets the requirements and qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.

(i) The term includes any farmstead land on the tract.

(ii) The term includes a woodlot.

(iii) The term includes land which is rented to another person and used for the purpose of producing an agricultural commodity.

Assessment ratio or *county's established predetermined ratio*—The ratio established by a taxing body that determines on what portion of the assessed value the millage rate is to be levied, as prescribed by assessment law.

Capitalization rate—The percentage rate used to convert income to value, as determined by the most recent 5-year rolling average of 15-year fixed loan interest rates offered to landowners by the Federal Agricultural Mortgage Corporation or other similar Federal agricultural lending institution, adjusted to include the landowner's risk of investment and the effective tax rate.

Class A beneficiaries for inheritance tax purposes—The following relations to a decedent: grandfather, grandmother, father, mother, husband, wife, lineal descendants, wife, widow, husband or widower of a child. Lineal descendants include all children of the natural parents and their descendants, whether or not they have been adopted by others, adopted descendants and their descendants and stepdescendants.

Contiguous tract—

(i) All portions of one operational unit as described in the deed or deeds, whether or not the portions are divided by streams, public roads or bridges and whether or not the portions are described as multiple tax parcels, tracts, purparts or other property identifiers.

(ii) The term includes supportive lands, such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds and streams.

Contributory value of farm building—The value of the farm building as an allocated portion of the total fair market value assigned to the tract, irrespective of replacement cost of the building.

(i) The preferred method of calculating the contributory value of a farm building shall be a method based upon fair market comparison and the extraction of the value of the farm building from the total fair market value of the parcel.

(ii) Alternate methods of calculating this value may be used when the contributory value of a farm building using the preferred approach would not accurately reflect this contributory value.

County—The county assessor, the county board of assessment or other county entity responsible to perform or administer a specific function under the act.

Curtilage—The land surrounding a residential structure and farm building used for a yard, driveway, onlot sewage system or access to any building on the tract.

Department—The Department of Agriculture of the Commonwealth.

Enrolled land—Land eligible for a preferential assessment under an approved application for preferential assessment filed in accordance with the act.

Fair market value—The price as of the valuation date for the highest and best use of the property which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is under no obligation to buy would pay for the property.

Farm building—A structure utilized to store, maintain or house farm implements, agricultural commodities or crops, livestock and livestock products, as defined in the Agricultural Area Security Law (3 P. S. §§ 901—915).

Farmstead land—Any curtilage and land situated under a residence, farm building or other building which supports a residence, including a residential garage or workshop.

Forest reserve—Land, 10 acres or more, stocked by forest trees of any size and capable of producing timber or other wood products.

(i) The term includes farmstead land on the tract.

(ii) The term includes land which is rented to another person and used for the purpose of producing timber or other wood products.

Income approach—The method of valuation which uses a capitalization rate to convert annual net income to an estimate of present value. Present value is equal to the net annual return to land divided by the capitalization rate.

Ineligible land—Land which is not used for any of the three eligible uses (agricultural use, agricultural reserve or forest reserve) and therefore cannot receive use value assessment.

Land use category—Agricultural use, agricultural reserve or forest reserve.

Land use subcategory—A category of land in agricultural use, agricultural reserve or forest reserve, established by the Department and assigned a particular use value in accordance with sections 3 and 4.1 of the act (72 P. S. §§ 5490.3 and 5490.4a). A land use subcategory may be based upon soil type, forest type, soil group or any other recognized subcategorization of agricultural or forest land.

Net return to land—Annual net income per acre after operating expenses are subtracted from gross income. The calculation of operating expenses does not include interest or principal payments.

Normal assessment—The total fair market value of buildings and ineligible land, as of the base year of assessment, on a tract multiplied by the assessment ratio.

Outdoor recreation—Passive recreational use of land that does not entail the erection of permanent structures, grading of the land, the disturbance or removal of topsoil or any change to the land which would render it incapable of being immediately converted to agricultural use.

(i) The term includes hiking, hunting, horseback riding and similar passive recreational uses of the land.

(ii) The term does not include the use of land for baseball, soccer fields, football fields, golf courses or similar uses.

Pasture—Land, other than land enrolled in the USDA Conservation Reserve Program, used primarily for the growing of grasses and legumes for consumption by livestock.

Person—A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

Preferential assessment—The total use value of land qualifying for assessment under the act.

Roll-back tax—The amount equal to the difference between the taxes paid or payable on the basis of the valuation and the taxes that would have been paid or payable had that land not been valued, assessed and taxed as other land in the taxing district in the current tax year, the year of change, and in 6 of the previous tax years or the number of years of preferential assessment up to 7.

Rural enterprise incidental to the operational unit—A commercial enterprise or venture that is conducted within 2 acres or less of enrolled land and, when conducted, does not permanently impede or otherwise interfere with the production of an agricultural commodity on that portion of the enrolled land that is not subject to roll-back taxes under section 8(d) of the act (72 P. S. § 5490.8(d)) as a result of that commercial enterprise or venture.

Separation—A division, by conveyance or other action of the owner, of enrolled land into two or more tracts of land, the use of which continues to be agricultural use, agricultural reserve or forest reserve and all tracts so formed meet the requirements of section 3 of the act.

Split-off—A division, by conveyance or other action of the owner, of enrolled land into two or more tracts of land, the use of which on one or more of the tracts does not meet the requirements of section 3 of the act.

Tract—

(i) A lot, piece or parcel of land.

(ii) The term does not refer to any precise dimension of land.

Transfer—A conveyance of all of the contiguous enrolled land described in a single application for preferential assessment under the act. When a single application for preferential assessment includes noncontiguous land, the conveyance of the entirety of any contiguous land described in that application is also a transfer.

USDA—The United States Department of Agriculture.

USDA-ERS—The United States Department of Agriculture-Economic Research Service.

USDA-NRCS—The United States Department of Agriculture-Natural Resources Conservation Service.

Woodlot—An area of less than 10 acres, stocked by trees of any size and contiguous to or part of land in agricultural use or agricultural reserve.

§ 137b.3. Responsibilities of the Department.

(a) *General.* The Department's responsibilities are to provide the use values described in section 4.1 of the act (72 P. S. § 5490.4a) and provide the forms and regulations necessary to promote the efficient, uniform Statewide administration of the act.

(b) *Information gathering.* The Department will collect information from county assessors for each calendar year to insure that the act and this chapter are being implemented fairly and uniformly throughout this Commonwealth. This information will be collected through a survey form to be provided to county assessors by the Department no later than December 15 each year, and which county assessors shall complete and submit to the Department by January 31 of the following year.

§ 137b.4. Contacting the Department.

For purposes of this chapter, communications to the Department shall be directed to the following address:

Pennsylvania Department of Agriculture
Bureau of Farmland Protection
2301 North Cameron Street
Harrisburg, PA 17110-9408
Telephone: (717) 783-3167
Facsimile: (717) 772-8798

ELIGIBLE LAND

§ 137b.11. General.

Three types of land are eligible for preferential assessment under the act.

(1) Land in agricultural use.

(2) Land in agricultural reserve.

(3) Land in forest reserve.

§ 137b.12. Agricultural use.

Land that is in agricultural use is eligible for preferential assessment under the act if it has been in agricultural production for at least 3 years preceding the application for preferential assessment, and is one of the following:

(1) Comprised of 10 or more contiguous acres (including any farmstead land and woodlot).

(2) Has an anticipated yearly gross agricultural production income of at least $2,000 from the production of an agricultural commodity.

§ 137b.13. Agricultural reserve.

Land that is in agricultural reserve is eligible for preferential assessment under the act if at least 60% of the land is in USDA-NRCS land capability classifications I through VI, excluding water areas and wetland areas, and the land is comprised of 10 or more contiguous acres (including any farmstead land).

§ 137b.14. Forest reserve.

Land that is in forest reserve is eligible for preferential assessment under the act if it is presently stocked with trees so that it is capable of producing annual growth of 25 cubic feet per-acre, and the land is comprised of 10 or more contiguous acres (including any farmstead land).

§ 137b.15. Inclusion of farmstead land.

(a) Farmstead land is an integral part of land in agricultural use, agricultural reserve or forest reserve. In considering whether land is in agricultural use, agricultural reserve or forest reserve, a county shall include any portion of that land that is farmstead land.

(b) Farmstead land shall be considered to be land that qualifies for preferential assessment under the act and this chapter.

§ 137b.16. Residence not required.

A county may not require that an applicant for preferential assessment under the act be a resident of the county or reside on the land with respect to which preferential assessment is sought.

§ 137b.17. Common ownership required.

A landowner seeking preferential assessment under the act shall be the owner of every tract of land listed on the application.

Example 1: Husband and wife are joint owners of two contiguous 100-acre tracts of farmland. They have common ownership of both tracts and may include these tracts in a single application for preferential assessment.

Example 2: Husband and wife are joint owners of a 100-acre tract of farmland. Husband and son are joint owners of a contiguous 100-acre tract of farmland. These two tracts may not be combined in a single application for preferential assessment.

§ 137b.18. County-imposed eligibility requirements.

A county assessor may not impose eligibility requirements or conditions other than those prescribed in section 3 of the act (72 P. S. § 5490.3).

Example: A county may not require an owner of contiguous—but separately deeded—tracts of land to consolidate the tracts in a single deed or require any alteration of existing deeds as a condition of eligibility for preferential assessment.

§ 137b.19. Multiple tracts on a single application.

A landowner seeking preferential assessment under the act may include more than one tract in a single application for preferential assessment, regardless of whether the tracts on the application have separate deeds, are identified by separate tax parcel numbers or are otherwise distinct from each other.

(1) *Contiguous tracts.*

(i) A landowner seeking preferential assessment under the act may include in the application individual contiguous tracts that would not—if considered individually—qualify for preferential assessment.

(ii) If two or more tracts on a single application for preferential assessment are contiguous, the entire contiguous area shall meet the use and minimum size requirements for eligibility.

(2) *Noncontiguous tracts.* If any tract on a single application for preferential assessment is not contiguous to another tract described on that application, that individual tract shall—by itself—meet the use and minimum size requirements for eligibility.

§ 137b.20. Inclusion of all contiguous land described in the deed to the tract with respect to which enrollment is sought.

A landowner may not apply for preferential assessment for less than the entire contiguous portion of land described in the deed applicable to a tract with respect to which preferential assessment is sought.

Example 1: A landowner owns a single, 100-acre tract of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The application may not be for less than the entire 100 acres.

Example 2: A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The deed to this land describes three separate tracts: two contiguous 50-acre tracts and a noncontiguous 50-acre tract. The landowner's options are as follows:

(1) Enroll the contiguous 50-acre tracts.

(2) Enroll the noncontiguous 50-acre tract.

(3) Enroll both the contiguous 50-acre tracts and the noncontiguous 50-acre tract.

The landowner does not have the option to enroll only one of the contiguous 50-acre tracts.

§ 137b.21. Exclusion of noncontiguous tract described in a single deed.

If two or more tracts of land are described in a single deed, a landowner seeking preferential assessment under the act may exclude from the application for preferential assessment any separately-described tract that is not contiguous to the tracts for which preferential assessment is sought.

Example: A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The deed to this land describes three separate tracts: two contiguous 50-acre tracts and a noncontiguous 50-acre tract. The landowner has the option to seek to enroll the noncontiguous 50-acre tract.

§ 137b.22. Landowner may include or exclude from the application tracts described in separate deeds.

If the landowner seeking preferential assessment under the act owns contiguous tracts that are described in separate deeds, the landowner may include or exclude any of the contiguous tracts from the application for preferential assessment.

§ 137b.23. Land adjoining preferentially assessed land with common ownership is eligible.

(a) *General.* A tract of land in agricultural use, agricultural reserve or forest reserve shall receive a preferential assessment under the act regardless of whether the tract meets the 10-contiguous-acres minimum acreage requirement or the $2,000-per-year minimum anticipated gross

income requirement, or both, established in section 3 of the act (72 P. S. § 5490.3) if the following occur:

(1) The landowner owns both the tract for which preferential assessment is sought and a contiguous tract of enrolled land.

(2) The landowner files an amended application for preferential assessment, describing both the tract for which preferential assessment is sought and the contiguous tract of enrolled land. The amended application shall be in accordance with the act and this chapter.

(b) *Roll-back taxes.* A violation of the provisions of preferential assessment on a tract added under subsection (a) shall trigger liability for roll-back taxes, plus interest, on that tract and all other contiguous tracts identified in the amended application.

§ 137b.24. Ineligible land may appear on an application, although it cannot receive preferential assessment.

A landowner seeking preferential assessment under the act shall include ineligible land on the application if the ineligible land is part of a larger contiguous tract of eligible land, and the use of the land which causes it to be ineligible exists at the time the application is filed. Although this ineligible land may not receive preferential assessment, the applicant shall specify the boundaries and acreage of the ineligible land. The ultimate determination of whether land is eligible or ineligible shall be made by the county assessor.

Example: A landowner owns a 100-acre tract of land, 90 acres of which is productive farmland and 10 acres of which is occupied by an auto salvage yard. If the landowner seeks preferential assessment of the 90 acres of farmland, the application shall describe the entire 100-acre tract and the county will not require the 10-acre tract be surveyed-out or deeded as a prerequisite to the application being considered. If preferential assessment is granted, it will apply to the 90 acres of farmland. The 10-acre tract would continue to be assigned its fair market value and assessed accordingly.

§ 137b.25. Multiple land use categories on a single application.

An applicant for preferential assessment under the act may include land in more than one land use category in the application. A county assessor shall allow the applicant to submit an application that designates those portions of the tract to be assessed under each of the different land use categories.

Example: A landowner owns 100 acres of land. The landowner may submit an application that designates 75 acres in agricultural use, 13 acres in agricultural reserve and 12 acres in forest reserve, if the acreage identified by the landowner for the particular land use category meets the minimum criteria in section 3 of the act (72 P. S. § 5490.3) for that land use category.

§ 137b.26. Land located in more than one tax district.

If land for which preferential assessment is sought lies in more than one taxing district, the county's determination as to whether the land meets applicable minimum acreage requirements for eligible land shall be made on the basis of the total contiguous acreage—without regard to the boundaries of the taxing districts in which the land is located.

Example 1: A landowner has a 100-acre tract of farmland—94 acres of which lies in Township A and 6 acres of which lies in Township B. The landowner files an application seeking preferential assessment of this land. The fact that the tract lies in two separate townships shall be immaterial to the determination of whether the 100-acre tract meets the requirements for preferential assessment under the act.

Example 2: A landowner has a 100-acre tract of farmland—94 acres of which lies in County A and 6 acres of which lies in County B. The landowner files an application in each county, seeking preferential assessment of that portion of the 100-acre tract lying within the respective counties. The fact that the tract lies in two separate counties shall be immaterial to the determination of whether the land described in the application meets the requirements for preferential assessment under the act.

§ 137b.27. Assessment of ineligible land.

Land and buildings that are included in an application for preferential assessment under the act but are ineligible for preferential assessment shall be appraised at fair market value and shall be assessed accordingly.

APPLICATION PROCESS

§ 137b.41. Application forms and procedures.

(a) *Standardized application form required.* A county shall require a landowner seeking to apply for preferential assessment under the act to make that application on a current "Clean and Green Valuation Application" form—a uniform preferential assessment application form developed by the Department. The Department will provide an initial supply of these forms to a county upon request. The county assessor shall maintain an adequate supply of these forms.

(b) *Application form and worksheets.* A landowner seeking to apply for preferential assessment under the act shall complete a Clean and Green Valuation Application. The county assessor shall complete the appropriate sections of the current "Clean and Green Valuation Worksheet" form for each category of eligible land described in the application. The Department will provide an initial supply of these forms to a county upon request.

(c) *Obtaining an application and reviewing this chapter.* A landowner seeking preferential assessment under the act may obtain an application form and required worksheets from the county board of assessment office. A county assessor shall retain a copy of this chapter at the county board of assessment office, and shall make this copy available for inspection by any applicant or prospective applicant.

(d) *Required language.* An application for preferential assessment shall contain the following statement:

The applicant for preferential assessment hereby agrees, if the application is approved for preferential assessment, to submit 30 days notice to the county assessor of a proposed change in use of the land, a change in ownership of a portion of the land or of any type of division or conveyance of the land. The applicant for preferential assessment hereby acknowledges that, if the application is approved for preferential assessment, roll-back taxes under the act in 72 P. S. § 5490.5a may be due for a change in use of the land, a change in ownership of a portion of the land, or any type of division or conveyance of the land.

(e) *Additional information.* A county assessor may require an applicant to provide additional information or documentation necessary to substantiate that the land is eligible for preferential assessment. A county assessor requiring additional information shall notify the applicant in writing and shall clearly state in the notice the reasons why the application or other information or documentation submitted by the applicant is insufficient to substantiate eligibility, and shall identify the particular information the county assessor requests to substantiate eligibility.

(f) *Signature of all landowners required.* An application for preferential assessment may not be accepted by a county if it does not bear the notarized signature of all of the owners of the land described in the application.

§ 137b.42. Deadline for submission of applications.

(a) *General.* A landowner seeking preferential assessment under the act shall apply to the county by June 1. If the application is approved by the county assessor, preferential assessment shall be effective as of the commencement of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.

Example 1: A landowner applies for preferential assessment on or before June 1, 2001. The application is subsequently approved. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2002.

Example 2: A landowner applies for preferential assessment on or after June 2, 2001, but not later than June 1, 2002. The application is subsequently approved. The application deadline is June 1, 2002. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2003.

(b) *Exception: years in which a county implements countywide reassessment.* In those years when a county implements a countywide reassessment, or a countywide reassessment of enrolled land, the application deadline shall be extended to either a date 30 days after the final order of the county board for assessment appeals or by October 15 of the same year, whichever date is sooner. This deadline is applicable regardless of whether judicial review of the order is sought.

§ 137b.43. Applications where subject land is located in more than one county.

If a landowner seeks to enroll a tract of land for preferential assessment under the act, and the tract is located in more than one county, the landowner shall file the application with the county assessor in the county to which the landowner pays property taxes.

§ 137b.44. County processing of applications.

A county shall accept and process in a timely manner all complete and accurate applications for preferential assessment so that, if the application is accepted, preferential assessment is effective as of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.

Example 1: An application for preferential assessment is filed on or before June 1, 2001. The county must review and process the application so that—if the application is approved—preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2002 (the calendar year immediately following the application deadline).

Example 2: An application for preferential assessment is filed at some point from June 2, 2001 through June 1, 2002. The county must review and process the application so that—if the application is approved—preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2003 (the calendar year immediately following the application deadline).

§ 137b.45. Notice of qualification for preferential assessment.

A county assessor shall provide an applicant for preferential assessment under the act with written notification of whether the land described in that application qualifies for that preferential assessment or fails to meet the qualifications for preferential assessment.

§ 137b.46. Fees of the county board for assessment appeals.

(a) *Application processing fee.* A county board for assessment appeals may impose a fee of no more than $50 for processing an application for preferential assessment under the act, or for processing changes other than those described in subsection (b). This fee may be charged regardless of whether the application is ultimately approved or rejected. This fee is exclusive of any fee which may be charged by the recorder of deeds for recording the application.

(b) *Circumstances under which initial application shall be amended without charge.* A county board for assessment appeals may not charge a fee for amending an initial application for preferential assessment to reflect changes resulting from one or more of the following:

(1) Split-off.

(2) Separation.

(3) Transfer or change of ownership.

PREFERENTIAL ASSESSMENT

§ 137b.51. Assessment procedures.

(a) *Use values and land use subcategories to be provided by the Department.* The Department will determine the land use subcategories and provide county assessors use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.

(b) *Determining use values and land use subcategories.*

(1) *Agricultural use and agricultural reserve.* In calculating appropriate county-specific agricultural use values and agricultural reserve use values, and land use subcategories, the Department will consult with the Department of Agricultural Economics and Rural Sociology of the College of Agricultural Sciences at the Pennsylvania State University, the Pennsylvania Agricultural Statistics Service, USDA-ERS, USDA-NRCS and other sources the Department deems appropriate. In determining county-specific agricultural use and agricultural reserve use values, the Department will use the income approach for asset valuation.

(2) *Forest reserve.* In calculating appropriate county-specific forest reserve use values and land use subcategories, the Department will consult with the Bureau of Forestry of the Department of Conservation and Natural Resources.

(c) *County assessor to determine total use value.*

(1) For each application for preferential assessment, the county assessor shall establish a total use value for land in agricultural use and agricultural reserve, including farmstead land, by considering available evidence of the capability of the land for its particular use utilizing the USDA-NRCS Agricultural Land Capability Classification system and other information available from USDA-ERS, the Pennsylvania State University and the Pennsylvania Agricultural Statistics Service. Contributory value of farm buildings, as calculated in accordance with § 137b.54 (relating to calculating the contributory value of farm buildings), shall be used.

(2) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve, including farmstead land, by considering available evidence of capability of the land for its particular use. Contributory value of farm buildings, as calculated in accordance with § 137b.54 shall be used.

(d) *Determining preferential assessment.* The preferential assessment of land is determined by multiplying the number of acres in each land use subcategory by the use value for that particular land use subcategory, and then adding these products. The Department will establish land use subcategories as part of the procedure to establish use values.

(e) *Option of county assessors to establish and use lower use values.* A county assessor may establish use values for land use subcategories that are less than the use values established by the Department for those same land use subcategories. A county assessor may use these lower use values in determining preferential assessments under the act. Regardless of whether the county assessor applies use values established by the Department or lower use values established by the county assessor, the county assessor shall apply the use values uniformly when calculating or recalculating preferential assessments, and shall apply these use values to the same land use subcategories as established by the Department. Calculation and recalculation of preferential assessments shall be made in accordance with § 137b.53 (relating to calculation and recalculation of preferential assessment). A county assessor may not, under any circumstances, establish or apply use values that are higher than those use values established by the Department.

(f) *Option of county assessors to select between county-established use values and use values provided by the Department.* When a county assessor has established use values for the three land use categories (agricultural use, agricultural reserve and forest reserve), and the use values for some—but not all—of these land use categories are lower than those provided by the Department, the county assessor has the option to apply the lower use value with respect to each individual land use category, without regard to whether it was provided by the Department or established by the county assessor.

§ 137b.52. Duration of preferential assessment.

(a) *General.* Enrolled land shall remain under preferential assessment for as long as it continues to meet the minimum qualifications for preferential assessment. Land that is in agricultural use, agricultural reserve or forest reserve shall remain under preferential assessment even if its use changes to either of the other two uses.

Example: A landowner owns a 100-acre tract of enrolled land, consisting of 85 acres in agricultural use and 15 acres in forest reserve. If the landowner later amends his application to one in which 60 acres are in agricultural use, 30 acres are in agricultural reserve and 10 acres are in forest reserve, the entire 100-acre tract continues to receive preferential assessment (although different use values and land use subcategories may apply in recalculating the preferential assessment).

(b) *No termination of preferential assessment without change of use.* An owner of enrolled land may not unilaterally terminate or waive the preferential assessment of enrolled land. Preferential assessment terminates as of the change of use of the land to something other than agricultural use, agricultural reserve or forest reserve. It is this event—the change of use of the enrolled land to something other than agricultural use, agricultural reserve or forest reserve—that terminates preferential assessment and triggers liability for roll-back taxes and interest. Although an owner of enrolled land may not unilaterally terminate or waive the preferential assessment of enrolled land, the landowner may minimize roll-back tax liability by voluntarily paying taxes in the amount the landowner would be obligated to pay if the land not preferentially assessed.

Example 1: An owner of 60 acres of enrolled land no longer wishes to have the enrolled land receive a preferential assessment under the act. The landowner writes the county assessor and notifies the county assessor of this desire. The landowner does not change the use of the land from one of the land use categories. The preferential assessment of the land shall continue.

Example 2: Same facts as Example 1, except the landowner changes the use of the 60 aces of enrolled land to something other than agricultural use, agricultural reserve or forest reserve, and the change of use occurs on July 1. Preferential assessment ends as of that change of use, and roll-back taxes and interest are due as of the date of the change of use.

Example 3: Same facts as Example 1, except that the landowner began to receive preferential assessment in the 1998 tax year. Beginning with the 2000 tax year and each tax year thereafter, the landowner elects to voluntarily pay—and the county assessor agrees to accept—property taxes on the basis of the enrolled land's fair market assessed value, rather than the enrolled land's preferential assessment value. On September 1, 2004, the landowner changes the use of all of the land to something other than agricultural use, agricultural reserve or forest reserve. Preferential assessment ends as of the change of use, and the landowner is liable for the payment of roll-back taxes. Assuming the landowner paid all of the taxes due for tax years 2000, 2001, 2002, 2003 and 2004 based upon the normal assessed value of the enrolled land, the landowner would only be liable for roll-back taxes and interest for tax years 1998 and 1999—the only tax years of the 7-year period for roll-back tax liability in which the landowner paid taxes based upon preferential assessment, rather than the enrolled land's normal assessed value.

Example 4: Same facts as Example 3, except that on September 1, 2007, the landowner changes the use of all of the land to something other than agricultural use, agricultural reserve or forest reserve. Preferential assessment ends as of the change of use, and the landowner is liable for the payment of roll-back taxes. Since the landowner had been voluntarily paying taxes on the basis of the normal assessed value of the enrolled land for longer than the 7-year period for

roll-back tax liability, though, the landowner's roll-back tax liability would be zero.

(c) *Split-offs, separations, transfers and other events.* Split-offs, separations and transfers under the act or this chapter will not result in termination of preferential assessment on the land which is retained by the landowner and which continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3). In addition, the following events will not result in termination of preferential assessment on that portion of enrolled land which continues to meet the requirements of section 3 of the act:

(1) The lease of a portion of the enrolled land to be used for a wireless or cellular communication tower in accordance with section 6(b.1) of the act (72 P. S. § 5490.6(b.1)) and § 137b.73 (relating to wireless or cellular telecommunications facilities).

(2) The change of use of a portion of the enrolled land to another land use category (agricultural use, agricultural reserve or forest reserve).

(3) Condemnation of a portion of the land.

(4) The sale or donation of a portion of the enrolled land to any of the entities described in section 8(b)(1)—(7) of the act (72 P. S. § 5490.8(b)(1)—(7)), for the purposes described in that section, and § 137b.74 (relating to option to accept or forgive roll-back taxes in certain instances).

(5) The use of up to 2 acres of the enrolled land for direct commercial sales of agriculturally related products or for a rural enterprise incidental to the operational unit, in accordance with section 8(d) of the act and § 137b.72 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit).

(6) The conveyance of a portion of the enrolled land to a nonprofit corporation for use as a cemetery, in accordance with section 8(e) of the act and § 137b.75 (relating to transfer of enrolled land for use as a cemetery).

(7) The conveyance of a portion of the enrolled land to a nonprofit corporation for use as a trail, in accordance with section 8(e) of the act and § 137b.76 (relating to transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail).

(8) The distribution, upon the death of the owner of the enrolled land, of the enrolled land among the beneficiaries designated as Class A for inheritance tax purposes, in accordance with section 6(d) of the act and § 137b.71 (relating to death of an owner of enrolled land).

(d) *Payment of roll-back taxes does not affect preferential assessment of remaining land.* The payment of roll-back taxes and interest under the act and this chapter may not result in termination of preferential assessment on the remainder of the land covered by preferential assessment.

Example 1: A landowner owns a 100-acre tract of enrolled land, which is in agricultural use. The landowner splits off a tract of no more than 2 acres and that 2-acre tract is used for a residential dwelling as described in section 6(a.1)(1)(i) of the act and meets the other criteria in that paragraph. Although the 2-acre tract is no longer entitled to receive preferential assessment, the 98-acre tract shall continue to receive preferential assessment. Also, roll-back taxes would be due with respect to the 2-acre tract.

Example 2: Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A splits off a 2-acre tract and sells it to Landowner B, with the understanding that Landowner B will use the land for a residential dwelling permitted under section 6(a.1)(1)(i) of the act. Roll-back taxes are due with respect to the 2-acre tract. Landowner B does not erect the permitted residential dwelling, but converts the 2-acre tract to commercial use. Landowner B owes roll-back taxes with respect to the entire 100-acre tract (under section 6(a.1) of the act). Landowner A has no liability for any of the roll-back taxes which were triggered and are owed by Landowner B as a result of the conversion of the 2-acre tract to commercial use. If the 98-acre tract owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act, it shall continue to receive preferential assessment.

Example 3: Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A separates the land into a 50-acre tract and two 25-acre tracts, and sells a 25-acre tract to Landowner B. All 100 acres continue in agricultural use and continue to meet the requirements of section 2 of the act. No roll-back taxes are due. The entire 100-acre tract shall continue to receive preferential assessment.

Example 4: Same facts as Example 3, except that within 7 years of the separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll-back taxes with respect to the entire 100-acre tract (under section 6(a.2) of the act). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 2 of the act, it shall continue to receive preferential assessment under the act.

Example 5: Same facts as Example 3, except that more than 7 years after the date of separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll-back taxes on his 25-acre tract (under section 6(a.2) of the act). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act, it shall continue to receive preferential assessment under the act.

(e) *Termination of preferential assessment by county.* The maximum area with respect to which a county may terminate preferential assessment may not exceed:

(1) In the case of a split-off that is not a condemnation and that meets the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, the land so split-off.

(2) In the case of a split-off that is not a condemnation and that does not meet the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, all contiguous land enrolled under the application for preferential assessment.

(3) In the case when the owner of enrolled land changes the use of the land so that it no longer meets the requirements in section 3 of the act, all contiguous land enrolled under the application for preferential assessment.

(4) In the case when the owner of enrolled land leases a portion of that land for wireless or cellular telecommunications in accordance with section 6(b.1) of the act and § 137b.74, the land so leased.

(5) In the case of condemnation, the land so condemned.

(6) In the case when enrolled land is sold or donated to an entity described in section 8(b)(1)—(7) of the act in accordance with the requirements in those paragraphs, the land so sold or conveyed.

(7) In the case when not more than 2 acres of enrolled land is used for direct commercial sales of agriculturally related products and activities or for rural enterprises incidental to the operational unit, in accordance with section 8(d) of the act and § 137b.72, the land so used for those purposes.

(8) In the case when a portion of enrolled land is conveyed to a nonprofit corporation for use as a cemetery in accordance with section 8(e) of the act and § 137b.75, the land so transferred.

(9) In the case when a portion of the enrolled land is conveyed to a nonprofit corporation for use as a trail in accordance with section 8(e) of the act and § 137b.76, the land so transferred.

(10) In the case when enrolled land is distributed upon the death of the landowner among the beneficiaries designated as Class A for inheritance tax purposes in accordance with section 6(d) of the act and § 137b.71 the portion that fails to meet the requirements for preferential assessment in section 3 of the act.

(f) *Termination of preferential assessment on erroneously-enrolled land.* If a county assessor erroneously allows the enrollment of land that did not, at the time of enrollment, meet the minimum qualifications for preferential assessment, the county assessor shall, in accordance with section 3(d)(2) of the act provide the landowner written notice that preferential assessment is to be terminated. The notice shall state the reasons for termination and afford the landowner the opportunity for a hearing. If the use of the land was not an eligible use at the time it was enrolled, and preferential assessment is terminated for that reason, no roll-back taxes shall be due from the landowner as a result.

(g) *Transfer does not trigger roll-back taxes.* The transfer of all of the enrolled land described in a single application for preferential assessment to a new owner without a change to an ineligible use does not trigger the imposition of roll-back taxes. When the enrolled land consists of several noncontiguous tracts enrolled under a single application for preferential assessment, the transfer of all of the contiguous acreage within such a noncontiguous tract will not trigger the imposition of roll-back taxes.

§ 137b.53. Calculation and recalculation of preferential assessment.

(a) *New values each year.* As described in § 137b.51 (relating to assessment procedures), the Department will determine the land use subcategories and provide a county use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.

(b) *Option of county assessor in calculation of preferential assessment.* A county assessor shall calculate the preferential assessment of enrolled land using one of the following methods:

(1) Calculate the preferential assessment of all of the enrolled land in the county each year.

(2) Establish a base year for preferential assessment of enrolled land in the county, and use this base year in calculating the preferential assessment of enrolled land in the county.

(c) *Required recalculation of preferential assessment if current assessment is based upon use values higher than those provided by the Department.* A county assessor shall calculate the preferential assessment of all enrolled land in the county using either the current use values and land use subcategories provided by the Department or lower use values established by the county assessor.

Example 1: All of the enrolled land in a particular county receives a preferential assessment under the act that is calculated with use values that are lower than the use values provided by the Department. The county has the option of either continuing to assess all enrolled land using its lower use values or recalculating the preferential assessment of all enrolled land using the use values provided by the Department.

Example 2: All of the enrolled land in a particular county receives a preferential assessment under the act that is calculated with use values that are higher than the use values provided by the Department. The county shall recalculate the preferential assessment of all enrolled land using either the use values provided by the Department or lower use values determined by the county assessor.

(d) *Required recalculation of preferential assessment if farmstead land has not been preferentially assessed as agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land which contains farmstead land if the earlier calculation did not value and assess the farmstead land as agricultural use, agricultural reserve or forest reserve. This recalculation shall be accomplished in accordance with § 137b.51.

Example: In calculating the preferential assessment of enrolled land, a county has assessed farmstead land at its fair market value, rather than as part of the land that is in agricultural use, agricultural reserve or forest reserve. The county shall recalculate these assessments so that the farmstead land receives preferential assessment, rather than assessment based on fair market value.

(e) *Required recalculation of preferential assessment if contributory value of farm buildings has not been used in determining preferential assessment of land in agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land if the earlier calculation did not consider the contributory value of any farm buildings on that land. This recalculation shall be accomplished in accordance with § 137b.51.

(f) *Required recalculation of preferential assessment in countywide reassessment.* If a county undertakes a countywide reassessment, or a countywide reassessment of enrolled land, the county assessor shall recalculate the preferential assessment of all of the enrolled land in the county, using either the current use values and land use subcategories provided by the Department, or lower use values established by the county assessor and land use subcategories provided by the Department.

(g) *Land enrolled prior to June 2, 1998.* A county assessor is not obligated under the act or this chapter to

recalculate the preferential assessment of land that is the subject of applications for preferential assessment filed on or before June 1, 1998, unless recalculation is required under subsection (c), (d), (e) or (f).

§ 137b.54. Calculating the contributory value of farm buildings.

A county assessor shall be responsible to calculate the contributory value of farm buildings on enrolled land.

OBLIGATIONS OF THE OWNER OF ENROLLED LAND

§ 137b.61. Transfer of enrolled land.

When enrolled land is transferred to a new owner, the new owner shall file an amendment to the original application for the purposes of providing the county assessor with current information and to sign the acknowledgments required under section 4(c) of the act (72 P. S. § 5490.4(c)).

§ 137b.62. Enrolled "agricultural use" land of less than 10 contiguous acres.

(a) *Demonstration of anticipated yearly gross income from agricultural production.* If a landowner has a contiguous tract of less than 10 acres of enrolled agricultural use land, the county assessor may require the landowner to demonstrate each year that the anticipated yearly gross income from the production of agricultural commodities on the enrolled land is at least $2,000. A landowner may not be required to demonstrate more than once per year that the enrolled land has sufficient anticipated yearly gross income from the production of agricultural commodities to continue to receive preferential assessment. A county assessor requiring additional information shall notify the landowner in writing and shall clearly state in the notice the reasons why the information or documentation submitted by the landowner fails to demonstrate sufficiency of income, and shall identify the particular information the county assessor requests to demonstrate sufficiency of income.

(b) *Annual requirement; circumstances beyond the landowner's control.* The $2,000 anticipated annual gross income requirement referenced in this section shall be met each year, unless circumstances beyond the landowner's control are the cause of the requirement not being met.

(c) *Examples.*

Example 1: A landowner owns 9 acres of enrolled land. The land contains a 9-acre orchard, and is enrolled as agricultural use land. Although the landowner reasonably anticipated production well above the $2,000 minimum production requirement in a particular year, and represented that to the county assessor, a drought, hailstorm or blight causes the orchard's production to drop below $2,000 that year. Preferential assessment of the orchard shall continue.

Example 2: A landowner owns 9 acres of enrolled land. The land contains a 9-acre orchard, and is enrolled as agricultural use land. A plant disease destroys the fruit trees. Although the landowner replants the orchard, it will take several years for gross income from agricultural production from that orchard to meet the $2,000 requirement. Preferential assessment of the orchard shall continue.

Example 3: A landowner owns 8 acres of enrolled land. The tract generates over $2,000 in gross annual income from swine production. The landowner sells the swine herd and does not begin another agricultural production operation on the land. The land is no longer in agricultural use. The landowner's failure to continue the land in an agricultural use capable of producing income constitutes a change to an ineligible use. The landowner is liable for roll-back taxes and interest, and preferential assessment shall terminate.

§ 137b.63. Notice of change of application.

(a) *Landowner's responsibility to provide advance notice of changes.* An owner of enrolled land shall provide the county assessor of the county in which the land is located at least 30 days' advance written notice of any of the following:

(1) A change in use of the enrolled land to some use other than agricultural use, agricultural reserve or forest reserve.

(2) A change in ownership with respect to the enrolled land or any portion of the land.

(3) Any type of division, conveyance, transfer, separation or split-off of the enrolled land.

(b) *Contents of notice.* The notice described in subsection (a) shall include the following information:

(1) The name and address of any person to whom the land is being conveyed, granted or donated.

(2) The date of the proposed transfer, separation or split-off.

(3) The amount of land to be transferred, separated or split-off.

(4) The present use of the land to be transferred, separated or split-off.

(5) The date of the original application for preferential assessment under the act.

(6) A description of previous transfers, separations or split-offs of that enrolled land from the date of preferential assessment, of which the landowner is aware.

(7) The intended use to which the land will be put when transferred, separated or split-off, if known.

(8) The tax parcel number.

(c) *Landowner's duty to notify.* As stated in § 137b.41(d) (relating to application forms and procedures), a person applying for preferential assessment of land under the act shall acknowledge on the application form the obligation described in subsection (a).

§ 137b.64. Agricultural reserve land to be open to the public.

(a) *General.* An owner of enrolled land that is enrolled as agricultural reserve land shall allow the land to be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty without charge or fee, on a nondiscriminatory basis. Enrolled land that is in agricultural use or forest reserve is excluded from this requirement.

(b) *Actual use by public not required.* Enrolled land that is enrolled as agricultural reserve land need not actually be used by the public for the purposes described in subsection (a) to continue to receive a preferential assessment. It shall, however, be available for use for those purposes.

(c) *Reasonable restrictions on use allowed.* A landowner may place reasonable restrictions on public access to enrolled land that is enrolled as agricultural reserve land. These restrictions might include limiting access to the

land to pedestrians only, prohibiting hunting or the carrying or discharge of firearms on the land, prohibiting entry where damage to the land might result or where hazardous conditions exist, or other reasonable restrictions.

(d) *Entry upon the agricultural reserve land.* A person shall, whenever possible, notify the landowner before entering upon enrolled land that is enrolled as agricultural reserve land. The landowner may deny entry when damage to the property might result. The landowner can prohibit entry to areas of the agricultural reserve land upon prior notification to the county assessor of the existence of a hazardous condition on that land. The landowner's reasons to deny entry to the land shall be based upon fact and acceptable to the county assessor.

(e) *County assessor's discretion.* A county assessor may establish reasonable guidelines by which an owner of enrolled agricultural reserve land may identify the conditions under which the land shall be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty, and by which the county assessor may maintain an up-to-date summary of the locations of agricultural reserve land within the county and the public uses to which these agricultural reserve lands may be put. A county assessor may disseminate this information to the public.

IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT

§ 137b.71. Death of an owner of enrolled land.

(a) *Inheriting a tract that does not meet minimum requirements for preferential assessment.* Upon the death of an owner of enrolled land, if any of the enrolled land that is divided among the beneficiaries designated as Class A for inheritance tax purposes no longer meets the minimum qualifications for preferential assessment, preferential assessment shall terminate with respect to the portion of the enrolled land that no longer meets the minimum requirements for preferential assessment, and no roll-back tax may be charged on any of the land that no longer meets the requirements for preferential assessment.

Example: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and the land is divided among several Class A beneficiaries, as follows: Landowner B-75 acres. Landowner C-2 acres. Landowner D-23 acres. The tracts owned by Landowners B and D continue in agricultural use. The 2-acre tract owned by Landowner C no longer meets the size or income requirements in section 3 of the act (72 P. S. § 5490.3). Under these facts, preferential assessment of the 2-acre tract ends. Landowner C does not owe roll-back taxes with respect to this tract. Landowners B and D continue to receive preferential assessment.

(b) *Inheriting a tract that meets the minimum requirements for preferential assessment.* If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and the tract continues in agricultural use, agricultural reserve or forest reserve, preferential assessment shall continue. If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and subsequently changes the use of that tract so that it does not qualify for preferential assessment, that beneficiary shall owe roll-back taxes with respect to the portion of the enrolled land he inherited, but no roll-back taxes are due with respect to any other portion of the enrolled land inherited by another beneficiary.

Example 1: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and Landowners B and C each inherit a 50-acre tract, as Class A beneficiaries. The tracts owned by Landowners B and C continue in agricultural use. Preferential assessment continues.

Example 2: Same facts as Example 1, except Landowner B converts the 50-acre tract of agricultural land to industrial use. Landowner B owes roll-back taxes with respect to the 50-acre tract. Landowner A does not owe roll-back taxes. Preferential assessment continues with respect to Landowner A's tract.

§ 137b.72. Direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit.

(a) *General.* An owner of enrolled land may apply up to 2 acres of enrolled land toward direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, without subjecting the entirety of the enrolled land to roll-back taxes, if both of the following apply to the commercial activity or rural enterprise:

(1) The commercial enterprise does not permanently impede or otherwise interfere with the production of an agricultural commodity on that portion of the enrolled land which is not subject to roll-back taxes under section 8(d)(2) of the act (72 P. S. § 5490.8(d)(2)).

(2) The commercial activity is owned and operated by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes.

(b) *Roll-back taxes and status of preferential assessment.* If a tract of 2-acres-or-less of enrolled land is used for direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, the 2-acre-or-less tract shall be subject to roll-back taxes, and preferential assessment of that 2-acre-or-less tract shall end. The remainder of the enrolled land shall continue under preferential assessment as long as that remainder continues to meet the requirements for eligibility in section 3 of the act (72 P. S. § 5490.3).

(c) *Inventory by county assessor to determine ownership of goods.* A county assessor may inventory the goods sold at the business to assure that they are owned by the landowner or persons who are class A beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, and that the goods meet the requirements of this section.

§ 137b.73. Wireless or cellular telecommunications facilities.

(a) *Permitted use.* A landowner may lease a tract of enrolled land to be used for wireless or cellular telecommunications, if the following conditions are satisfied:

(1) The tract so leased does not exceed 1/2 acre.

(2) The tract does not have more than one communication tower located upon it.

(3) The tract is accessible.

(4) The tract is neither conveyed nor subdivided. A lease may not be considered a subdivision.

(b) *Roll-back taxes imposed with respect to leased land.* A county assessor shall assess and impose roll-back taxes upon the tract of land leased by an owner of enrolled land for wireless or cellular telecommunications purposes.

(c) *Preferential assessment ends and fair market value assessment commences with respect to leased land.* A county assessor shall assess land leased in accordance with subsection (a) based upon its fair market value.

(d) *Preferential assessment continues on unleased land.* The lease of enrolled land in accordance with subsection (a) does not invalidate the preferential assessment of the remaining enrolled land that is not so leased, and that enrolled land shall continue to receive a preferential assessment, if it continues to meet the minimum requirements for eligibility in section 3 of the act (72 P. S. § 5490.3).

(e) *Wireless services other than wireless telecommunications.* Wireless services other than wireless telecommunications may be conducted on land leased in accordance with subsection (a) if the wireless services share a tower with a wireless telecommunications provider.

(f) *Responsibility for obtaining required permits.* The wireless or cellular telecommunications provider shall be solely responsible for obtaining required permits in connection with any construction on a tract of land which it leases for telecommunications purposes under subsection (a).

(g) *Responsibility of municipality for issuing required permits.* A municipality may not deny a permit necessary for wireless or cellular communications use for any reason other than the applicant's failure to strictly comply with permit application procedures.

§ 137b.74. Option to accept or forgive roll-back taxes in certain instances.

(a) *Option to accept or forgive principal on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may accept or forgive roll-back taxes with respect to that portion of the enrolled land that is granted or donated to any one of the following:

(1) A school district.

(2) A municipality.

(3) A county.

(4) A volunteer fire company.

(5) A volunteer ambulance service.

(6) A religious organization, if the religious organization uses the land only for construction or regular use as a church, synagogue or other place of worship, including meeting facilities, parking facilities, housing facilities and other facilities which further the religious purposes of the organization.

(7) A not-for-profit corporation that qualifies as tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. § 501(c)(3)), if prior to accepting ownership of the land, the corporation enters into an agreement with the municipality wherein the subject land is located guaranteeing that the land will be used exclusively for recreational purposes, all of which shall be available to the general public free of charge. If the corporation changes the use of all or a portion of the land or charges admission or any other fee for the use or enjoyment of the facilities, the corporation shall immediately become liable for all roll-back taxes and accrued interest previously forgiven.

(b) *No option to forgive interest on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may not forgive interest due on roll-back taxes with respect to that portion of the enrolled land that is granted or donated to any one of the entities or for any of the uses described in subsection (a)(1)—(7). That interest shall be distributed in accordance with section 8(b.1) of the act (72 P. S. § 5490.8(b.1)).

§ 137b.75. Transfer of enrolled land for use as a cemetery.

(a) *Transfers.* If an owner of enrolled land sells, donates or otherwise transfers any portion of the enrolled land to a nonprofit corporation for use as a cemetery, and at least 10 acres of the remainder of the enrolled land remain in agricultural use, agricultural reserve or forest reserve after the transfer, no violation of preferential assessment will be deemed to have occurred and roll-back taxes may not be assessed with respect to either the transferred portion of the enrolled land or the remainder of the enrolled land.

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner sells 20 acres of the enrolled land to a nonprofit corporation for use as a cemetery. The remaining 30-acre tract continues in agricultural use. Under these facts, no roll-back taxes are due with respect to either tract. The 30-acre tract continues to receive preferential assessment. The 20-acre tract receives an assessment based on fair market value.

(b) *Exception.* If a nonprofit corporation acquires enrolled land as described in subsection (a), and subsequently changes the use of the land to some use other than as a cemetery or transfers the land for use other than as a cemetery, or uses the land for something other than agricultural use, agricultural reserve or forest reserve, the nonprofit corporation shall be required to pay roll-back taxes on that land.

Example: Same facts as the example under subsection (a), but 2 years after it acquired the 20-acre tract, the nonprofit corporation changes the use to something other than cemetery use, agricultural use, agricultural reserve or forest reserve. The nonprofit corporation owes roll-back taxes with respect to the 20-acre tract. The owner of the 30-acre tract is not liable for the payment of any roll-back taxes triggered by the nonprofit corporation's change of use.

§ 137b.76. Transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail.

(a) *Transfers.* If an owner of enrolled land sells, donates or otherwise transfers any portion of the enrolled land, or transfers an easement or right-of-way with respect to any portion of the enrolled land, no violation of preferential assessment will be deemed to have occurred and roll-back taxes may not be assessed with respect to either the transferred portion of the enrolled land or the remainder of the enrolled land if all of the following occur:

(1) The land is transferred to a nonprofit corporation.

(2) The transferred land is used as an unpaved trail for nonmotorized passive recreational use. Walking, jogging, running, roller skating, in-line skating, pedacycling, horseback riding and the use of animal-drawn vehicles

are examples of passive recreational use, as are all other forms of man-powered or animal-powered conveyance.

(3) The transferred land does not exceed 20 feet in width.

(4) The transferred land is available to the public for use without charge.

(5) At least 10 acres of the remainder of the enrolled land remain in agricultural use, agricultural reserve or forest reserve.

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 20-foot-wide pathway across the land to a nonprofit corporation for use as a trail, and otherwise complies with paragraphs (1)—(5) and section 8(e) of the act (72 P. S. § 5490.8(e)). Under these facts, no roll-back taxes are due with respect to either tract. The trail receives an assessment based upon fair market value. The remainder of the landowner's 50-acre tract continues to receive a preferential assessment.

(b) *Exception.* If a nonprofit corporation acquires enrolled land or an easement or right of way with respect to enrolled land as described in subsection (a), and the use of the land is subsequently changed to a use other than the use described in subsection (a)(1)—(5) or section 8(e) of the act, the nonprofit corporation shall be required to pay roll-back taxes on that land. The land is no longer entitled to preferential assessment.

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 15-foot-wide pathway across the land to a nonprofit corporation for use as a trail. The conveyance is for a use described in subsection (a)(1)—(5) or section 8(e) of the act. The nonprofit corporation subsequently changes the use of the trail to a motorcycle trail, a snowmobile trail or some other use not allowed under subsection (a)(1)—(5) or section 8(e) of the act. Under these facts, roll-back taxes are due with respect to the 15-foot-wide tract. The remainder of the 50-acre tract continues to receive a preferential assessment. The owner of the remainder continuing to receive preferential assessment is not liable for any roll-back taxes triggered by the nonprofit corporation's change of use.

LIABILITY FOR ROLL-BACK TAXES

§ 137b.81. General.

If an owner of enrolled land changes the use of the land to something other than agricultural use, agricultural reserve or forest reserve or changes the use of the enrolled land so that it otherwise fails to meet the requirements of section 3 of the act (72 P. S. § 5490.3), or uses the land for something other than agricultural use, agricultural reserve or forest reserve, that landowner shall be responsible for the payment of roll-back taxes. The owner of enrolled land may not be liable for any roll-back tax triggered as a result of a change to an ineligible use by the owner of a split-off tract.

§ 137b.82. Split-off tract.

When a split-off tract meets the following criteria, which are set forth in section 6(a.1)(1) of the act (72 P. S. § 5490.6(a.1)(1)), roll-back taxes are only due with respect to the split-off tract, and are not due with respect to the remainder:

(1) The tract split off does not exceed 2 acres annually, except that a maximum of the minimum residential lot size requirement annually may be split off if the property is situated in a local government unit which requires a minimum lot size of 2-3 acres.

(2) The tract is used for agricultural use, agricultural reserve or forest reserve or for the construction of a residential dwelling to be occupied by the person to whom the land is conveyed.

(3) The total tract split off does not exceed the lesser of 10 acres or 10% of the entire tract of enrolled land.

§ 137b.83. Split-off that complies with section 6(a.1)(1)(i) of the act.

If enrolled land undergoes split-off and the tract that is split-off meets the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes with respect to the split-off tract. The preferential assessment of that split-off tract shall be terminated. If the remainder of the enrolled land is in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3), no roll-back taxes are due with respect to that remainder, and preferential assessment shall continue with respect to that tract.

Example: Landowner owns 50 acres of enrolled land. Landowner splits off 2 acres for a residential dwelling, in compliance with section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes on the 2-acre tract, and the preferential assessment of that tract shall be terminated. The remaining 48-acre tract would continue to receive a preferential assessment, assuming it remains in agricultural use, agricultural reserve or forest reserve and otherwise continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3).

§ 137b.84. Split-off that does not comply with section 6(a.1)(1)(i) of the act.

If enrolled land undergoes split off and the tract that is split-off does not meet the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes with respect to all of the enrolled land.

Example 1: Landowner owns 50 acres of enrolled land. Landowner splits off 4 acres in a single year. This split-off would not meet the size requirements in section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes on the entire 50-acre tract. The 4-acre tract no longer receives preferential assessment. If the 46-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, preferential assessment would continue with respect to that tract.

Example 2: Landowner owns 50 acres of enrolled land. Landowner splits off 2-acre tracts in 3 different years. The aggregate amount of land split-off (6 acres) exceeds the 10% cap in section 6(c.1)(1)(i) of the act. Under these facts, the aggregate total of split-off land could not exceed 5 acres. The landowner owes roll-back taxes on the entire 50-acre tract. The three 2-acre tracts no longer receive preferential assessment. If the remaining 44-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, preferential assessment would continue with respect to that 44-acre tract.

§ 137b.85. Split-off occurring through condemnation.

If any portion of a tract of enrolled land is condemned, the condemnation may not trigger liability for roll-back taxes on either the condemned portion of the enrolled land or the remainder. If the condemned portion or the remainder of the enrolled land remains in agricultural use, agricultural reserve or forest reserve, and meets the criteria in section 3 of the act (72 P. S. § 5490.3), preferential assessment shall continue with respect to that condemned portion or remainder.

§ 137b.86. Split-off occurring through voluntary sale in lieu of condemnation.

If any portion of a tract of enrolled land is—in lieu of requiring the condemnation process to proceed—voluntarily sold by a landowner to an entity that possesses the lawful authority to acquire that portion through condemnation, the transfer may not trigger liability for roll-back taxes on either the split-off portion of the enrolled land or the remainder. If the split-off portion or the remainder of the enrolled land remains in agricultural use, agricultural reserve or forest reserve, and meets the criteria in section 3 of the act (72 P. S. § 5490.3), preferential assessment shall continue with respect to that split-off portion or remainder.

§ 137b.87. Change in use of separated land occurring within 7 years of separation.

If enrolled land undergoes separation, and one of the tracts created through separation is converted to other than agricultural use, agricultural reserve or forest reserve within 7 years of the date of the separation, or is converted so that it no longer meets the requirements of section 3 of the act (72 P. S. § 5490.3), the owner of the ineligible tract owes roll-back taxes with respect to all of the enrolled land. The ineligible tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive a preferential assessment.

Example: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A sells Landowner B a 50-acre portion of this enrolled land. Both 50-acre tracts continue in agricultural use, and preferential assessment continues with respect to both tracts. Six years after the original 100-acre tract of enrolled land was separated, Landowner B converts his 50-acre tract to industrial use. Landowner B owes roll-back taxes with respect to the entire 100-acre tract. Landowner A's 50-acre tract continues to receive preferential assessment, and the preferential assessment of Landowner B's 50-acre tract ends.

§ 137b.88. Change in use of separated land occurring 7 years or more after separation.

If enrolled land undergoes separation, and one of the tracts created through separation is converted to other than agricultural use, agricultural reserve or forest reserve 7 years or more after the date of the separation, the owner of the separated tract owes roll-back taxes with respect to that separated tract, but does not owe roll-back taxes with respect to the remainder of the enrolled land. The separated tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive a preferential assessment.

Example: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A sells Landowner B a 50-acre portion of this enrolled land. Both 50-acre tracts continue in agricultural use, and preferential assessment continues with respect to both tracts. Eight years after the original 100-acre tract of enrolled land was separated, Landowner B converts his 50-acre tract to industrial use. Landowner B owes roll-back taxes with respect to the 50-acre tract which he has converted to ineligible use. Landowner A's 50-acre tract continues to receive preferential assessment, and the preferential assessment of Landowner B's 50-acre tract ends.

§ 137b.89. Calculation of roll-back taxes.

A county assessor shall calculate roll-back taxes using the following formula:

(1) If preferential assessment has been in effect for 7 tax years or more, calculate the difference between preferential assessment and normal assessment in the current tax year, and in each of the 6 tax years immediately preceding the current tax year. If preferential assessment has been in effect for less than 7 tax years, calculate the difference between preferential assessment and normal assessment in the current tax year, and in each of the tax years in which the enrolled land was preferentially assessed.

(2) With respect to each of these sums, multiply that sum by the corresponding factor, which reflects simple interest at the rate of 6% per annum from that particular tax year to the present:

Year	*Factor*
Current Tax Year	1.00
1 Tax Year Prior	1.06
2 Tax Years Prior	1.12
3 Tax Years Prior	1.18
4 Tax Years Prior	1.24
5 Tax Years Prior	1.30
6 Tax Years Prior	1.36

(3) Add the individual products obtained under Step (2). The sum equals total roll-back taxes, including simple interest at 6% per annum on each year's roll-back taxes.

Example 1: Landowner's liability for roll-back taxes is triggered on July 1, 7 or more tax years after preferential assessment began. The county assessor calculates the difference between the preferential assessment and normal assessment in the current tax year and in each of the 6 tax years preceding the current tax year, in accordance with this section. The county assessor determines the appropriate sum to be $2,000 in each full year, and prorates this sum with respect to the current tax year.

Year	*Amount Multiplied by Factor*
Current Tax Year	$1,000 x 1.00 = $1,000
1 Tax Year Prior	$2,000 x 1.06 = $2,120
2 Tax Years Prior	$2,000 x 1.12 = $2,240
3 Tax Years Prior	$2,000 x 1.18 = $2,360
4 Tax Years Prior	$2,000 x 1.24 = $2,480
5 Tax Years Prior	$2,000 x 1.30 = $2,600
6 Tax Years Prior	$2,000 x 1.36 = $2,720
TOTAL ROLL-BACK TAXES, WITH INTEREST:	$15,520

Example 2: Landowner's liability for roll-back taxes is triggered on July 1, less than 7 tax years after preferential assessment began. The county assessor calculates the difference between the preferential assessment and normal assessment in the current tax year and each of the tax years since preferential assessment began, in accordance with this section. The county assessor determines the appropriate sum

to be $2,000 in each of these years. The county assessor would calculate roll-back taxes and interest in accordance with the chart set forth in Example 1, calculating for only those tax years in which preferential assessment occurred.

§ 137b.90. Due date for roll-back taxes.

If roll-back taxes are owed, they are due on the day of the change in use or other event triggering liability for those roll-back taxes.

§ 137b.91. Liens for nonpayment of roll-back taxes.

The county can refer a claim for unpaid roll-back taxes and interest to the county's Tax Claim Bureau, and take other actions necessary to cause a lien to be placed on the land for the value of the roll-back taxes and interest and other administrative and local court costs. The lien can be collected in the same manner as other lien-debts on real estate.

§ 137b.92. Time period within which roll-back taxes are to be calculated and notice mailed.

(a) *General.* A county assessor shall calculate the roll-back taxes, and mail notice of these roll-back taxes to the affected landowner, within 5 days of learning of a change in status triggering liability for roll-back taxes. The county assessor shall also mail a copy of the notice to the other taxing bodies of the district in which the land is located.

(b) *Notice of change of application.* If a county assessor receives a "notice of change of application" described in § 137b.63 (relating to notice of change of application), and that notice triggers liability for roll-back taxes, the 5-day period described in subsection (a) shall commence as of receipt of that notice.

§ 137b.93. Disposition of interest on roll-back taxes.

(a) *"Eligible county" explained.* A county is an "eligible county" under the Agricultural Area Security Law (3 P. S. §§ 901—915), and for purposes of this chapter, if it has an agricultural conservation easement purchase program that has been approved by the State Agricultural Land Preservation Board in accordance with that statute.

(b) *Disposition in an eligible county.*

(1) *County treasurer.* If a county is an eligible county, the county treasurer shall make proper distribution of the interest portion of the roll-back taxes it collects to the county commissioners or the county comptroller, as the case may be. The county commissioners or comptroller shall designate all of this interest for use by the county agricultural land preservation board. This interest shall be in addition to other local money appropriated by the eligible county for the purchase of agricultural conservation easements under section 14.1(h) of the Agricultural Area Security Law (3 P. S. § 914.1(h)).

(2) *County agricultural land preservation board.* A county agricultural land preservation board that receives interest on roll-back taxes in accordance with paragraph (1) shall segregate that money in a special roll-back account. Notwithstanding any other provisions of the Agricultural Area Security Law, the eligible county board under the Agricultural Area Security Law shall, in its discretion and in accordance with its approved county agricultural conservation easement purchase program, give priority to the purchase of agricultural conservation easements from agricultural security areas located within the municipality in which the land subject to the roll-back tax is located.

(c) *Disposition in a county that is not an eligible county.* If a county is not an eligible county, the county treasurer shall forward the interest portion of the roll-back taxes it collects to the Agricultural Conservation Easement Purchase Fund. The county treasurer shall coordinate with the Department's Bureau of Farmland Protection, at the address in § 137b.4 (relating to contacting the Department) to accomplish this transfer.

DUTIES OF COUNTY ASSESSORS

§ 137b.101. General.

A county assessor shall perform all the duties prescribed by the act and this chapter. The county assessor has the major responsibility for administration of the act.

§ 137b.102. Recordkeeping.

A county assessor shall indicate on assessment rolls and any other appropriate records the base year fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land. A county assessor shall indicate on property record cards as much of the information in this section it deems appropriate for the performance of its duties under the act and this chapter.

§ 137b.103. Recording approved applications.

A county assessor shall record any approved application in the office of the recorder of deeds in the county where the land is preferentially assessed.

§ 137b.104. Determining total use value.

A county assessor shall determine the total use value for all enrolled land. The contributory value of farm buildings shall be used in determining the total use value.

§ 137b.105. Annual update of records.

A county assessor shall, at least on an annual basis, update property record cards, assessment rolls and any other appropriate records to reflect all changes in the fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land. This subsection does not require that a county assessor recalculate the preferential assessment of all enrolled land each year, but instead requires the county assessor to maintain reasonably current records reflecting any changes in preferential assessment.

§ 137b.106. Notification of change in preferential assessment status.

A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of an approval, termination or change with respect to the preferential assessment status. This written notice shall apprise the landowner and the taxing body of the right to appeal the action in accordance with section 9 of the act (72 P. S. § 490.9). The written notice shall be mailed within 5 days of the change of status. If the written notice terminates or changes preferential assessment status it shall set forth the reasons for the change or termination.

§ 137b.107. Notification of change in factors affecting total assessment.

A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of any change in the base year fair market value, the normal assessment, the use value or the preferential assessment. This written notice shall apprise the landowner and the taxing body of the right to appeal the action in accordance with section 9

of the act (72 P. S. § 5490.9). The written notice shall be mailed within 5 days of the change.

§ 137b.108. Adjusting records to reflect split-off, separation or transfer.

A county assessor shall adjust an approved and recorded application for preferential assessment under the act to reflect a change when an owner of enrolled land changes enrollment status as a result of a split-off, separation, transfer or change of ownership. These changes may include those actions described in § 137b.52 (relating to duration of preferential assessment). A county assessor may require the preparation, execution and filing of a new application for preferential assessment (without charging the landowner an application fee) to accomplish such an adjustment.

§ 137b.109. Enforcement and evidence gathering.

The evidentiary burden shall be on a county assessor to produce evidence demonstrating that a split-off tract is actively being used in a manner which is inconsistent with residential use, agricultural use, agricultural reserve or forest reserve.

§ 137b.110. Assessment of roll-back taxes.

A county assessor shall calculate, assess and file claims with the county's Tax Claim Bureau for roll-back taxes owed under the act.

§ 137b.111. Record of tax millage.

A county assessor shall maintain a permanent record of the tax millage levied by each of the taxing authorities in the county for each tax year.

§ 137b.112. Submission of information to the Department.

A county assessor will compile and submit the information required by the Department under § 137b.3(b) (relating to responsibilities of the Department).

RECORDER OF DEEDS

§ 137b.121. Duty to record.

A recorder of deeds shall record approved applications for preferential assessment in a preferential assessment docket, and record changes of land use triggering the imposition of roll-back taxes.

§ 137b.122. Fees of the recorder of deeds.

A recorder of deeds may charge a landowner whose application for preferential assessment is approved a fee for filing the approved application in a preferential assessment docket. This fee may also be charged with respect to the filing of an amendment to a previously-approved application. A recording fee may not be charged unless the application or amendment has been approved by the county board for assessment appeals. The maximum fee for recording approved preferential assessment applications and amendments thereto shall be in accordance with laws relating to the imposition of fees by recorders of deeds.

MISCELLANEOUS

§ 137b.131. Civil penalties.

(a) *General.* A county board for assessment appeals may assess a civil penalty of not more than $100 against a person for each violation of the act or this chapter.

(b) *Written notice of civil penalty.* A county board for assessment appeals shall assess a civil penalty against a person by providing that person written notice of the penalty. This notice shall be served by certified mail or personal service. The notice shall set forth the following:

(1) A description of the nature of the violation and of the amount of the civil penalty.

(2) A statement that the person against whom the civil penalty is being assessed may appeal the penalty by delivering written notice of the appeal to the county board for assessment appeals within 10 calendar days of receipt of the written notice of penalty.

(c) *Appeal hearing.* If timely notification of the intent to contest the civil penalty is given, the person contesting the civil penalty shall be provided with a hearing in accordance with 2 Pa.C.S. Chapter 5, Subchapter B and Chapter 7, Subchapter B (relating to local agency law).

(d) *Final civil penalty.* If, within 10 days from the receipt of the notification described in subsection (b), the person against whom the civil penalty is assessed fails to notify the county board for assessment appeals of intent to contest the assessed penalty, the civil penalty shall become final.

§ 137b.132. Distributing taxes and interest.

The county treasurer or tax claim bureau shall be responsible for the proper distribution of the taxes to the proper taxing authority (that is, political subdivision) and the proper distribution of interest in accordance with § 137b.93 (relating to disposition of interest on roll-back taxes).

§ 137b.133. Appealing a decision of the county assessor.

A landowner whose land is the subject of an application for preferential assessment under the act, or a political subdivision affected by the preferential assessment of that land may appeal a decision of the county assessor regarding the application and the method used to determine preferential assessments under the act. The landowner shall first appeal to the county board of assessment. After this board has made a decision, the landowner then has a right to appeal to the court of common pleas.

[Pa.B. Doc. No. 00-1501. Filed for public inspection September 1, 2000, 9:00 a.m.]

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 23]
School Immunization

The Department of Health (Department), with the approval of the State Advisory Health Board (Board), proposes to amend § 23.83 (relating to immunization requirements). The proposed amendment is set forth in Annex A.

A. *Purpose of the Proposed Amendment*

The proposed amendment sets out immunization requirements that children seeking to enter and attend school in this Commonwealth must meet. The proposed amendment is based upon recommendations of the Advisory Committee on Immunization Practices (ACIP), an advisory committee of the Federal Centers for Disease Control and Prevention (CDC). The proposed amendment would reverse the order of subsections and add explanatory language to the current regulation for the sake of

clarity, add new requirements for chickenpox (varicella) immunity, and expand requirements for hepatitis B immunization. The Department is proposing this amendment to ensure that the school environment, known to be an ideal setting for the transmission of communicable diseases, particularly when children are susceptible due to lack of immunity, is made more safe. Hepatitis B and chickenpox, as well as the already listed diseases, carry the risk of serious morbidity, lifelong disability and death.

Children attending schools are known to be a group at high risk for contracting communicable and potentially dangerous diseases. Requiring immunity before a child enters school in first grade or kindergarten, or before the child is permitted to attend a school in the Commonwealth, protects that child before the child enters an environment which readily lends itself to the transmission of disease.

Ensuring that children are appropriately immunized carries with it advantages for the public as a whole, including other high-risk populations, as well as for the child. Vaccinated children who will not contract these diseases will not miss school and suffer discomfort from contracting hepatitis B or chickenpox. In addition, their parents will not be required to take time off from their jobs to care for a sick child, or pay medical bills related to their illness. There is less chance of other persons contacting a highly infectious disease if children are vaccinated. If outbreaks of highly communicable diseases are prevented by immunizations before they occur, public health officials and physicians need not treat or contain an outbreak, and public funds need not be spent on disease intervention activities.

B. *Requirements of the Proposed Amendment*

Section 23.83. Immunization requirements.

In conjunction with the substantive amendment of this section, the Department is proposing to make minor changes for the purposes of clarity. The Department proposes to reverse the current order of subsections (a) and (b) so that the list of immunizations now required for school entry would appear in subsection (a) and come before the list of immunizations currently required for school attendance, which would now appear in subsection (b). This would place the immunization requirements in appropriate chronological order.

The current regulation relating to religious exemptions remains in effect, and is not affected by this proposed amendment.

Subsection (a). Required for entry.

This subsection is substantially the same as current subsection (b), with some changes. Subsection (a) would clarify that the vaccinations required for children attending school in this Commonwealth are also required for children entering school for the first time. It would remain substantially the same, therefore, with three main additions. Subsection (a) would include the german measles (rubella) vaccination and the mumps vaccination as immunizations required for school entry. This is already the practice, but the Department believes it is necessary to specifically include german measles (rubella) and mumps in subsection (a).

Subsection (a) would also allow hepatitis B immunity to be proven by seriological evidence of antibody to hepatitis B. This requirement would acknowledge that some children may have developed immunity to hepatitis B. Allowing proof of immunity by laboratory testing will avoid unnecessary vaccination for those children.

Further, subsections (a) and (b) currently recommend the combined DTP immunization for the purposes of immunizing against diphtheria and pertussis, and the combined MMRII vaccine for the purposes of immunizing against measles, mumps and german measles (rubella). The Department is proposing not to retain this language in subsection (a), as it is a recommendation, and not a regulatory standard. The Department does believe that the combined MMRII vaccine should be recommended for children under the age of 7 years. The Department would, however, recommend the combined DTaP vaccine in place of the combined DTP vaccine. DTaP is a newer and improved vaccine. Although the risk for side effects with either vaccine is minimal when weighed against the benefits of immunization, DTaP is associated with fewer side effects than DTP, and reduces the risk of convulsions and high fever.

The Department is also proposing to add chickenpox (varicella) immunity to the list of requirements for entry in kindergarten or first grade. In lieu of this vaccination, subsection (a)(8) would permit a parent, guardian or physician to provide a written statement of history of chickenpox immunity, or would permit the child's history of immunity to be proved by laboratory testing.

Chickenpox is a highly contagious disease that may result in discomfort, severe illness and death to the child. The disease may cause absence from school, which could have a deleterious effect on the child's school career. A child's illness from chickenpox can result in a parent or guardian expending money to treat an otherwise preventable disease, as well as causing worry and absence from work to care for the child. There is also the possibility of an outbreak of the disease in a susceptible population, for example, nonimmunized school-age children, multiplying the effect throughout the community. The May 28, 1999, *Morbidity and Mortality Weekly Report (MMWR)*, a publication of the CDC, reported that chickenpox (varicella) incidence is highest among children aged 1—6 years. Therefore, implementing immunity requirements for school entry will have a great effect on reducing the incidence of disease. The CDC noted in a 1997 study that for every dollar spent for chickenpox (varicella) vaccine, $5.40 is saved in indirect health benefit costs (work lost) and direct medical costs. Requiring chickenpox (varicella) immunity will therefore save money for both the Commonwealth and the public.

The Department, with the approval of the Board, has determined that it is more effective for the prevention and control of the spread of disease, and in the interests of the children of this Commonwealth, as well as other susceptible populations, to require immunization for this disease. Both the American Academy of Pediatrics and the ACIP recommend that this vaccination be given. The Department, with the approval of the Board, has chosen to follow that recommendation.

Subsection (b). Required for attendance.

This subsection is substantially the same as current subsection (a). The Department is proposing some changes to this subsection as well as repositioning it. Subsection (b) would make clear that a child in school in this Commonwealth who has not received immunizations as listed in subsection (a), for whatever reason, would be required to receive the immunizations listed in subsection (b) as a condition of continued attendance.

As in proposed subsection (a), the Department is proposing to add language permitting laboratory proof of hepatitis B in lieu of a vaccination. The Department is

also proposing not to retain language recommending the use of the combined DTP vaccine and the combined MMRII vaccine.

Subsection (c). Required for entry into the seventh grade.

This subsection is new. The Department is proposing to delete the current text of subsection (c) as unnecessary. Subsection (c) currently requires that two doses of the measles (rubeola) immunization be an all-grades requirement beginning in the school year 2000—2001. The requirement for this immunization would be included in subsections (a) and (b).

Subsection (c), as amended, would require that three properly spaced doses of the hepatitis B vaccine be given upon entry into the seventh grade or, in a nongraded system, at the time a child is 12 years of age if the child did not previously receive the immunization. Hepatitis B is also a serious and highly contagious disease. Section 3 of the Newborn Child Testing Act (35 P. S. § 623) requires vaccination for the disease at school entry. Section 2 of that law (35 P. S. § 622) also requires the Department to implement a program of hepatitis B prevention through immunization of children. The MMWR for November 22, 1996, reported that in the United States, most persons with hepatitis B contracted the virus as young adults or adolescents. In that November MMWR, ACIP recommended that adolescents at 11 and 12 years of age, who have not been previously vaccinated for the virus, should be vaccinated against hepatitis B. Based on this recommendation, the Department, with the approval of the Board, is proposing to expand its regulation to require the hepatitis B vaccination in the seventh grade, or, in an ungraded class, in the year in which the child is 12 years of age, as part of its hepatitis B prevention program.

Subsection (c) would also require that the chickenpox (varicella) vaccination be given to children in the seventh grade, or, in an ungraded class, in the year in which the child is 12 years of age, if the child has not already acquired immunity. This proposal is based upon ACIP recommendations, and has the approval of the Board. Subsection (c)(2)(i) and (ii) would set out proper dosages for different age groups. As in subsection (a)(8)(i), subsection (c)(2)(iii) would accept a history of chickenpox immunity proved by laboratory testing, or would allow a parent, guardian or physician to provide a statement of history of chickenpox disease, in lieu of the immunization. Subsection (c)(2)(iii) would also permit an emancipated child to provide this statement.

C. *Affected Persons*

This proposed amendment would affect children entering school for the first time in kindergarten or first grade in this Commonwealth, and those children attending school in this Commonwealth who have not yet been vaccinated for hepatitis B or chickenpox (varicella). The proposed amendment would also affect their parents or guardians. The proposed amendment would also affect school districts and their employes, since school districts are required to ensure that children attending school have the appropriate vaccinations. To the extent that physicians would be requested by parents and guardians to provide vaccination histories or other proof of vaccination, physicians would also be affected tangentially.

D. *Cost and Paperwork Estimate*

Cost

Commonwealth

The Commonwealth would incur some costs for the purchase and administration of the additional vaccines. The savings, however, in terms of the amount of funds that would not be needed to coordinate disease outbreak investigations and control measures, would outweigh the additional program and vaccine costs.

Local Government

There would be no additional cost to local governments. Local governments should see some cost savings from the prevention of disease outbreaks, since local governments do bear some of the cost of disease outbreak investigations and control measures.

Regulated Community

Families whose children's vaccinations are covered by their insurance plans (public or private) under State law should not see any out-of-pocket cost for the vaccinations. Families whose insurance plans do not cover these vaccinations, or who do not have insurance, will need to seek other assistance to pay for vaccinations, or pay out-of-pocket. In general, there is other assistance provided for vaccinations from the Department, if no third-party payer is available. The Department provides vaccinations either free of charge, or charges a fee based on a sliding fee scale according to the family's income. The savings in prevention of childhood illness would outweigh the minimal cost of the vaccine.

School districts already have mechanisms in place for determining whether or not children have been appropriately immunized, and taking action based on that determination. This proposed amendment would add two additional immunizations to review, which should not add to the current cost of ensuring immunizations are up to date. Again, the savings in prevention of an outbreak of a childhood illness in a school district should outweigh the minimal cost in staff time to review two additional immunizations.

General Public

The general public should not see an increase in cost.

Paperwork Estimates

Commonwealth and the Regulated Community

There would be minimal additional paperwork requirements for the Commonwealth and the regulated community. The requirement that school districts report the number of immunizations is already in place. The proposed amendment would merely add two additional immunization requirements to the current list of required immunizations.

Although physicians could be requested by a parent or guardian to provide an immunization history for varicella, the Department would not be mandating that physicians provide an immunization history. The proposed amendment merely states that the Department would accept this history in lieu of the actual vaccination requirement.

Parents and guardians would need to present information relating to varicella immunity when children enter school for the first time in this Commonwealth in kindergarten or the first grade. Parents, guardians and emancipated children would need to present information relating to hepatitis B immunity when entering the seventh grade.

Local Government

There is no additional paperwork requirement for local government.

General Public

There is no additional paperwork requirement for the general public.

E. *Statutory Authority*

The Department obtains its authority to promulgate regulations relating to immunizations in schools from several sources. Generally, the Disease Prevention and Control Law (35 P. S. §§ 521.1—521.21) (act) provides the Board with the authority to issue rules and regulations on a variety of issues relating to communicable and noncommunicable diseases, including what control measures are to be taken with respect to which diseases, provisions for the enforcement of control measures, requirements concerning immunization and vaccination of persons and animals, and requirements for the prevention and control of disease in public and private schools. Section 16(b) of the act (35 P. S. § 521.16(b)) gives the Secretary of Health (Secretary) the authority to review existing regulations and make recommendations to the Board for changes the Secretary considers to be desirable.

The Department also finds general authority for the promulgation of its regulations in section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)), which gives the Department this general authority. Section 2111(b) of The Administrative Code of 1929 (71 P. S. § 541(b)) provides the Board with additional authority to promulgate regulations deemed by the Board to be necessary for the prevention of disease, and for the protection of the lives and the health of the people of this Commonwealth. That section further provides that the regulations of the Board shall become the regulations of the Department.

The Department's specific authority for promulgating regulations relating to school immunizations is found in The Administrative Code of 1929 and in the Public School Code of 1949 (24 P. S. §§ 1-101). Section 2111(c.1) of The Administrative Code of 1929 (71 P. S. § 541(c.1)) provides the Board with the authority to make and revise a list of communicable diseases against which children are required to be immunized as a condition of attendance at any public, private or parochial school, including kindergarten. The section requires the Secretary to promulgate the list, along with any rules and regulations necessary to insure the immunizations are timely, effective and properly verified.

Section 1303a of the Public School Code of 1949 (24 P. S. § 13-1303a) provides that the Board will make and review a list of diseases against which children must be immunized, as the Secretary may direct, before being admitted to school for the first time. The section provides that the school directors, superintendents, principals or other persons in charge of any public, private, parochial or other school including kindergarten, shall ascertain whether the immunization has occurred, and certificates of immunization will be issued in accordance with rules and regulations promulgated by the Secretary with the sanction and advice of the Board.

The Hepatitis Prevention Act (35 P. S. §§ 630.1—630.3) provides the Department with authority to implement a program for the prevention of hepatitis B through immunization of children consistent with ACIP's recommendations. (See 35 P. S. § 630.2).

F. *Effectiveness/Sunset Dates*

The proposed amendment will become effective upon final publication in the *Pennsylvania Bulletin*. No sunset date has been established. The Department will continually review and monitor the effectiveness of this regulation.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2000, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Health and Human Services Committee and the Senate Public Health and Welfare Committee. In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a 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 amendment, it will notify the Department 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 regulation by the Department, the General Assembly and the Governor, of objections raised.

H. *Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendment to Alice Gray, Director, Division of Immunization, Department of Health, P. O. Box 90, Harrisburg, PA 17108, (717) 787-5681, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Persons with a disability who wish to submit comments, suggestions or objections regarding the proposed amendment may do so by using V/TT (717) 783-6514 for speech or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984[TT]. Persons who require an alternative format of this document may contact Ms. Gray so that necessary arrangements may be made.

ROBERT S. ZIMMERMAN, Jr.,
Secretary

Fiscal Note: 10-162. No fiscal impact; (8) recommends adoption. Funding for the childhood immunization program comes from the Federal government in the form of a grant. Funding is available to serve children receiving publicly funded vaccines from the Department of Health. The Department of Public Welfare through its Medical Assistance program is currently providing coverage for immunizations established by the Advisory Committee on Immunization Practices which include the Hepatitis B and chicken pox vaccinations.

Annex A

TITLE 28. HEALTH AND SAFETY

PART III. PREVENTION OF DISEASES

CHAPTER 23. SCHOOL HEALTH

Subchapter C. IMMUNIZATION

§ 23.83. Immunization requirements.

(a) **[** ***Required for attendance.*** **The following immunizations are required as a condition of attendance at school in this Commonwealth.**

(1) ***Diphtheria.*** **Three or more properly spaced doses of diphtheria toxoid, which may be administered as a single antigen vaccine, in combination**

with tetanus toxoid or in combination with tetanus toxoid and pertussis vaccine. The Department recommends the combined DTP vaccine for children under 7 years of age.

(2) *Tetanus.* Three or more properly spaced doses of tetanus toxoid, which may be administered as a single antigen vaccine, in combination with diphtheria toxoid or in combination with diphtheria toxoid and pertussis vaccine. The Department recommends the combined DTP vaccine for children under 7 years of age.

(3) *Poliomyelitis.* Three or more properly spaced doses of either oral polio vaccine or enhanced inactivated polio vaccine, but if a child received any doses of inactivated polio vaccine prior to 1988, a fourth dose of inactivated polio vaccine is required.

(4) *Measles (rubeola).* One dose of live attenuated measles vaccine administered at 12 months of age or older or a history of measles immunity proved by serological evidence showing antibody to measles determined by the hemagglutination inhibition test or a comparable test. Measles vaccine may be administered as a single antigen vaccine. The Department recommends the combined MMRII vaccine.

(5) *German measles (rubella).* One dose of live attenuated rubella vaccine administered at 12 months of age or older or a history of rubella immunity proved by serological evidence showing antibody to rubella determined by the hemagglutination inhibition test or a comparable test. Rubella vaccine may be administered as a single antigen vaccine. The Department recommends the combined MMRII vaccine.

(6) *Mumps.* One dose of attenuated mumps vaccine administered at 12 months of age or older or a physician diagnosis of mumps disease indicated by a written record signed by the physician or the physician's designee. Mumps vaccine may be administered as a single antigen vaccine. The Department recommends the combined MMRII vaccine.] *Required for entry.* The following immunizations are required for entry into school for the first time at the kindergarten or first grade level, at a public, private or parochial school in this Commonwealth, including special education and home education programs.

(1) *Hepatitis B.* Three properly-spaced doses of hepatitis B vaccine or a history of hepatitis B immunity proved by laboratory testing.

(2) *Diphtheria.* Four or more properly-spaced doses of diphtheria toxoid, which may be administered as a single antigen vaccine, in combination with tetanus toxoid or in combination with tetanus toxoid and pertussis vaccine. One dose shall be administered on or after the 4th birthday.

(3) *Tetanus.* Four or more properly-spaced doses of tetanus toxoid, which may be administered as a single antigen vaccine, in combination with diphtheria toxoid or in combination with diphtheria toxoid and pertussis vaccine. One dose shall be administered on or after the 4th birthday.

(4) *Poliomyelitis.* Three or more properly-spaced doses of a combination of oral polio vaccine or enhanced inactivated polio vaccine.

(5) *Measles (rubeola).* Two properly-spaced doses of live attenuated measles vaccine, the first dose administered at 12 months of age or older, or a history of measles immunity proved by serological evidence showing antibody to measles as determined by the hemagglutination inhibition test or a comparable test. Each dose of measles vaccine may be administered as a single antigen vaccine.

(6) *German measles (rubella).* One dose of live attenuated rubella vaccine, administered at 12 months of age or older or a history of rubella immunity proved by serological evidence showing antibody to rubella determined by the hemagglutination inhibition test or a comparable test. Rubella vaccine may be administered as a single antigen vaccine.

(7) *Mumps.* One dose of live attenuated mumps vaccine, administered at 12 months of age or older or a physician diagnosis of mumps disease indicated by a written record signed by the physician or the physician's designee. Mumps vaccine may be administered as a single antigen vaccine.

(8) *Chickenpox (varicella).* One of the following:

(i) One dose of varicella vaccine, administered at 12 months of age or older.

(ii) A history of chickenpox immunity proved by laboratory testing or a written statement of history of chickenpox disease from a parent, guardian or physician.

(b) [*Required for entry.* The following immunizations are required for entry into school for the first time at the kindergarten or first grade level, at any public, private or parochial school, including special education and home education programs.

(1) *Hepatitis B.* Three properly-spaced doses of hepatitis B vaccine.

(2) *Diphtheria.* Four or more properly-spaced doses of diphtheria toxoid, which may be administered as a single antigen vaccine, in combination with tetanus toxoid or in combination with tetanus toxoid and pertussis vaccine. The Department recommends the combined DTP vaccine. One dose shall be administered on or after the 4th birthday.

(3) *Tetanus.* Four or more properly-spaced doses of tetanus toxoid, which may be administered as a single antigen vaccine, in combination with diphtheria toxoid or in combination with diphtheria toxoid and pertussis vaccine. The Department recommends the combined DTP vaccine. One dose shall be administered on or after the 4th birthday.

(4) *Poliomyelitis.* Three or more properly-spaced doses of any combination of oral polio vaccine or enhanced inactivated polio vaccine.

(5) *Measles (rubeola).* Two properly-spaced doses of live attenuated measles vaccine, the first dose administered at 12 months of age or older, or a history of measles immunity proved by serological evidence showing antibody to measles as determined by the hemagglutination inhibition test or a comparable test. Each dose of measles vaccine may be administered as a single antigen vaccine. The Department recommends the combined MMRII vaccine.] *Required for attendance.* The following immunizations are required as a condition of attendance at school in this Commonwealth if the child

has not received the immunizations required for school entry listed in subsection (a):

(1) *Diphtheria*. Three or more properly spaced doses of diphtheria toxoid, which may be administered as a single antigen vaccine, in combination with tetanus toxoid or in combination with tetanus toxoid and pertussis vaccine.

(2) *Tetanus*. Three or more properly spaced doses of tetanus toxoid, which may be administered as a single antigen vaccine, in combination with diphtheria toxoid or in combination with diphtheria toxoid and pertussis vaccine.

(3) *Poliomyelitis*. Three or more properly spaced doses of either oral polio vaccine or enhanced inactivated polio vaccine, but if a child received any doses of inactivated polio vaccine administered prior to 1988, a fourth dose of inactivated polio vaccine is required.

(4) *Measles (rubeola)*. Two properly spaced doses of live attenuated measles vaccine, administered at 12 months of age or older or a history of measles immunity proved by serological evidence showing antibody to measles determined by the hemagglutination inhibition test or a comparable test. Each dose of measles vaccine may be administered as a single antigen vaccine.

(5) *German measles (rubella)*. One dose of live attenuated rubella vaccine, administered at 12 months of age or older or a history of rubella immunity proved by serological evidence showing antibody to rubella determined by the hemagglutination inhibition test or any comparable test. Rubella vaccine may be administered as a single antigen vaccine.

(6) *Mumps*. One dose of live attenuated mumps vaccine, administered at 12 months of age or older or a physician diagnosis of mumps disease indicated by a written record signed by the physician or the physician's designee. Mumps vaccine may be administered as a single antigen vaccine.

(c) **[*Required for the school year 2000/2001*. The following immunization shall be an all-grades requirement at the beginning of the 2000/2001 school year (August/September 2000) for attendance at school in this Commonwealth:**

***Measles (rubeola)*. Two properly-spaced doses of attenuated measles vaccine, the first dose administered at 12 months of age or older, or a history of measles immunity, proved by serological evidence showing antibody to measles as determined by the hemagglutination inhibition test or a comparable test. Each dose of measles vaccine may be administered as single antigen. The Department recommends the combined MMRII vaccine.] *Required for entry into 7th grade*. In addition to the immunizations listed in subsection (b), the following immunizations are required at any public, private, parochial or vocational school in this Commonwealth, including special education and home education programs, as a condition of entry for students entering the seventh grade; or, in an ungraded class, for students in the school year that the student is 12 years of age:**

(1) *Hepatitis B*. Three properly-spaced doses of hepatitis B vaccine or a history of hepatitis B immunity proved by laboratory testing.

(2) *Chickenpox (varicella)*. One of the following:

(i) One dose of varicella vaccine, administered at 12 months of age or older.

(ii) Two properly-spaced doses of varicella vaccine for children 13 years of age and older.

(iii) A history of chickenpox immunity proved by laboratory testing, or a written statement of history of chickenpox disease from the parent, guardian, emancipated child or physician.

[Pa.B. Doc. No. 00-1502. Filed for public inspection September 1, 2000, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 109]

Disinfectants and Disinfection Byproducts

The Environmental Quality Board (Board) proposes to amend Chapter 109 (relating to safe drinking water). The proposed amendments will establish maximum residual disinfectant levels (MRDLs) and monitoring requirements for free chlorine, combined chlorine and chlorine dioxide. Maximum contaminant levels (MCLs) and monitoring requirements will be established for five haloacetic acids, chlorite and bromate. The MCL for total trihalomethanes will be lowered. The proposed amendments will also establish prefiltration treatment techniques for public water systems that use conventional filtration to reduce source water total organic carbon (TOC), which serves as a precursor to disinfection byproducts.

The proposal was adopted by the Board at its meeting of July 18, 2000.

A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information, contact Jeffrey A. Gordon, Acting Chief, Division of Drinking Water Management, P. O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-4018 or Pamela Bishop, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) web site (http://www.dep.state.pa.us).

C. *Statutory Authority*

The proposed rulemaking is being made under the authority of section 4 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.4), which grants the Board the authority to adopt rules and regulations governing the provision of drinking water to the public, and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-7 and 510-20).

D. *Background and Purpose*

The public health benefits of disinfection are significant and well-recognized. However, these very disinfection practices pose health risks of their own. Although disinfectants such as chlorine, hypochlorites and chlorine dioxide are effective in controlling many harmful microorganisms, they react with organic and inorganic matter in the water to form disinfection byproducts (DBPs), which pose health risks at certain levels.

The first DBPs discovered in public drinking water were halogenated methanes in 1974. As a result, the United States Environmental Protection Agency (EPA) promulgated an MCL for the composite sum of four individual DBP species: chloroform, bromodichloromethane, dibromochloromethane and bromoform. This composite sum was termed "Total Trihalomethanes" (TTHMs) and had an MCL of 0.1 mg/L which was applied only to community water systems serving at least 10,000 people. This MCL is currently in effect today.

Since the discovery of TTHMs in drinking water in 1974, other DBPs have been identified and studied for their health effects. Many of these studies have shown DBPs to be carcinogenic or to cause reproductive or developmental effects, or both, in laboratory animals. Studies have also shown that high levels of the disinfectants themselves may cause health problems over long periods of time, including damage to both the blood and the kidneys. While many of these studies have been conducted at high doses, the weight of the evidence indicates that DBPs present a potential public health problem that must be addressed.

In 1992, the EPA initiated a rulemaking process to address public health concerns associated with disinfectants, DBPs and microbial pathogens. As part of this rulemaking process, the EPA established a Regulatory Negotiation (Reg/Neg) Committee which included representatives of state and local health and regulatory agencies, public water systems, elected officials, consumer groups and environmental groups.

The EPA's most significant concern in developing regulations for disinfectants and DBPs was the need to ensure that adequate treatment be maintained for controlling risks from microbial pathogens. One of the major goals addressed in the rulemaking process was to develop an approach that would reduce the level of exposure from disinfectants and DBPs without undermining the control of microbial pathogens. The intention was to ensure that drinking water is microbiologically safe at the limits set for disinfectants and DBPs and that these chemicals do not pose an unacceptable health risk at these limits. Thus, the Reg/Neg Committee also considered a range of microbial issues and agreed that the EPA should also propose a companion microbial rule, the *Interim Enhanced Surface Water Treatment Rule* (IESWTR).

Following months of intensive discussions and technical analysis, the Reg/Neg Committee recommended the development of three sets of rules: a two-stage rule to address disinfectants and DBPs (D/DBPs), the IESWTR and an *Information Collection Rule* (ICR). The approach used in developing these proposals considered the constraints of simultaneously treating water to control microbial contaminants, disinfectants and DBPs. The Reg/Neg Committee agreed that the schedule for the IESWTR should be linked to the schedule of the first stage of the D/DBP rule to assure simultaneous compliance and a balanced risk-risk based implementation. The Reg/Neg Committee also agreed that additional information on health risk, occurrence, treatment technologies and analytical methods needed to be developed to better understand the risk-risk tradeoff, and how to accomplish an overall reduction in health risks to both pathogens and D/DBPs. Finally, the Reg/Neg Committee agreed that to develop a reasonable set of rules and to understand more fully the limitations of the current *Surface Water Treatment Rule*, additional field data were critical. Thus, a key component of the regulation negotiation agreement was the promulgation of the ICR.

The *Federal Disinfectants and Disinfection Byproducts Rule* (D/DBPR) (40 CFR Parts 9, 141 and 142), which was promulgated on December 16, 1998, was developed based on the outcome of this rulemaking process, as well as a wide range of technical comments from stakeholders and members of the public. The D/DBPR is intended to regulate treatment practices at public water systems to eliminate or minimize disinfectant levels and disinfection byproducts that may cause harmful health effects. The D/DBPR is applicable to all community and nontransient noncommunity water systems that use a chemical disinfectant or oxidant, as well as to all transient noncommunity water systems that use chlorine dioxide. The D/DBPR will establish MRDLs for free chlorine, combined chlorine and chlorine dioxide. MCLs will also be established for five haloacetic acids, chlorite and bromate. The current MCL for TTHMs will be lowered from 0.1 mg/L to 0.08 mg/L and will be applied to all community and nontransient noncommunity water systems, regardless of the population that is served. The D/DBPR will also regulate prefiltration treatment techniques for public water systems that use conventional filtration to reduce source water TOC, which serves as a precursor to disinfection byproducts.

On April 14, 2000, the EPA proposed corrective amendments to both the D/DBPR and IESWTR. These corrective amendments are minor in nature (for example, change in compliance date from December 17, 2001, to January 1, 2002) and are, as of the date of this writing, still in the proposed stage of rulemaking. For the purposes of this proposed rulemaking, the Department assumes that all of the proposed Federal corrective amendments will ultimately be adopted as final amendments. When the final Federal corrective amendments are promulgated, those final changes will be taken into consideration in connection with final adoption of this proposed rulemaking.

Other Federal rules will be promulgated in the future as a follow-up to both the D/DBPR and the IESWTR. These rules will be the *Stage 2 D/DBPR, Long Term 1 Enhanced Surface Water Treatment Rule* (LT1), *Long Term 2 Enhanced Surface Water Treatment Rule* (LT2) and *Filter Backwash Rule* (FBR). The LT1 and FBR rules are expected in 2001. The LT2 and Stage 2 D/DBPR rules are expected in 2002.

The Board proposes to incorporate both the Federal D/DBPR and the proposed Federal corrective amendments into Chapter 109. The rulemaking is necessary for the Commonwealth to retain primacy under the Federal Safe Drinking Water Act. See 35 P. S. §§ 721.2(a)(3) and 721.5(a) and 42 U.S.C.A. § 300g-2a.

The draft proposed amendments were submitted for review to the Water Resources Advisory Committee (WRAC) on February 9, 2000. Comments were received from the WRAC on March 21, 2000.

The WRAC adopted a comment from the Philadelphia Water Department (PWD) concerning the treatment techniques for DBP precursors found in 40 CFR 141.135

(relating to treatment technique for control of disinfection byproduct (DBP) precursors). The PWD was concerned that, during months when the "alternate" criteria of 40 CFR 141.135(c)(2) were met, the monthly "compliance" factors as per the same section would not be used in the compliance calculation defined in 40 CFR 141.135(c)(1).

The reason for this concern was that the PWD was not aware that 40 CFR 141.135(c) was referenced in § 109.202(g)(1). By not noting this reference, the PWD assumed that the quarterly compliance calculation of the running annual average in § 109.202(g)(2)(ii) was the same procedure applicable to systems doing enhanced coagulation or softening under 40 CFR 141.135(c). This procedure, however, makes no use of the monthly "compliance" factors that are specified in 40 CFR 141.135(c)(2). Hence, the PWD became concerned that the perceived omission of monthly "compliance" factors could cause more violations (under 40 CFR 141.135(c)(2) for systems doing enhanced coagulation or softening) than would be incurred with the use of the monthly "compliance" factors. This issue was later discussed with the PWD and clarified to the PWD's satisfaction. Accordingly, there is no change to the proposed amendments.

The draft proposed amendments were submitted to the Small Water Systems Technical Assistance Center Advisory Board (TAC) for review and discussion on March 23, 2000. Comments were received from the TAC on April 19, 2000. The TAC had no specific comments that would change the proposed amendments.

E. *Summary of Regulatory Requirements*

The proposed amendments reflect, and are no more stringent than, both the new Federal D/DBPR requirements and the proposed Federal corrective amendments. In addition to the following proposed amendments described, numerous sections have been amended to add MRDL references.

1. *§ 109.1. Definitions.*

This section was amended to add the following EPA definitions: enhanced coagulation, enhanced softening, Groundwater Under the Direct Influence of Surface Water (GUDI), haloacetic acids (HAA5), maximum residual disinfectant level (MRDL), SUVA, total organic carbon (TOC) amd TTHM. The definitions of surface water and National Primary Drinking Water Regulations were also amended. These amendments reflect the new definitions of the Federal D/DBPR found in 40 CFR 141.2.

2. *§ 109.202(a)(3). Primary MCLs.*

This new paragraph was added to incorporate the EPA's new requirements for obtaining an extension for compliance with the disinfection byproducts MCLs. This amendment reflects the Federal requirement found in 40 CFR 141.64(b)(2) (relating to maximum contaminant levels for disinfection byproducts).

3. *§ 109.202(f). MRDLs.*

This new subsection was added to incorporate the EPA's new MRDLs by reference. This amendment reflects the Federal requirement found in 40 CFR 141.65 (relating to maximum residual disinfectant levels).

4. *§ 109.202(g). Treatment technique requirements for disinfection byproduct precursors.*

This new subsection was added to incorporate the EPA's new total organic carbon removal requirements. This amendment reflects the Federal requirement found in 40 CFR 141.135.

5. *§ 109.301(8)(vi). Monitoring requirements for public water systems that obtain finished water from another public water system.*

This new subparagraph was added to incorporate the EPA's requirement that the Federal D/DBPR be applied to all consecutive community and nontransient noncommunity water systems that serve water that contains a chemical disinfectant or oxidant. This amendment reflects the Federal requirement found in 40 CFR 141.130(a)(1) (relating to general requirements).

6. *§ 109.301(12). Monitoring requirements for disinfection byproducts and disinfection byproduct precursors.*

This new paragraph was added to incorporate the EPA's new monitoring requirements for disinfection byproducts and total organic carbon. This amendment reflects the Federal requirements found in 40 CFR 141.132(a), (b) and (d) (relating to monitoring requirements).

7. *§ 109.301(13). Monitoring requirements for disinfectant residuals.*

This new paragraph was added to incorporate the EPA's new monitoring requirements for disinfectant residuals. This amendment reflects the Federal requirement found in 40 CFR 141.132(c).

8. *§ 109.401. General public notification requirements.*

This section was amended to add the EPA's acute violations for chlorine dioxide. This amendment reflects the Federal requirement found in 40 CFR 141.133(c)(2)(i) (relating to compliance requirements).

9. *§ 109.403(d). Description and content of notice.*

This new subsection was added to incorporate the EPA's new public notification requirements for total trihalomethanes. This amendment reflects the Federal requirement found in 40 CFR 141.154(e) (relating to required additional health information).

10. *§ 109.701(a)(8). Reporting requirements for disinfectant residuals.*

This new paragraph was added to incorporate the EPA's new disinfectant reporting requirements. This amendment reflects the Federal requirement found in 40 CFR 141.134(c) (relating to reporting and recordkeeping requirements).

11. *§ 109.701(a)(9). Reporting requirements for disinfection byproducts.*

This new paragraph was added to incorporate the EPA's new disinfection byproduct reporting requirements. This amendment reflects the Federal requirement found in 40 CFR 141.134(b).

12. *§ 109.701(a)(10). Reporting requirements for disinfection byproduct precursors.*

This new paragraph was added to incorporate the EPA's new reporting requirements for total organic carbon. This amendment reflects the Federal requirement found in 40 CFR 141.134(d).

13. *§ 109.701(e). Monitoring plans for disinfectants, disinfection byproducts and disinfection byproduct precursors.*

This new subsection was added to incorporate the EPA's new requirements for monitoring plans pertaining to disinfectants, disinfection byproducts and total organic carbon. This amendment reflects the Federal requirement found in 40 CFR 141.132(f).

14. *§ 109.704(c). Operator certification.*

This new subsection was added to incorporate the EPA's new requirements for nontransient noncommunity operator qualifications. Specifically, this subsection requires that nontransient noncommunity water systems that provide water that contains a chemical disinfectant must be operated by qualified operators. This subsection closely parallels current language in § 109.1107(c)(2) in that it will provide for a 3-year phase-in period for having a qualified operator, establishes certification under the Sewage Treatment Plant and Waterworks Operators' Certification Act (63 P. S. §§ 1001—1015) as the criteria for being qualified, and establishes a minimum certification level of disinfection only, according to § 303.2 (relating to waterworks operators certificates). This amendment reflects the Federal requirement found in 40 CFR 141.130(c).

15. *§ 109.710(c). Disinfectant residual in the distribution system.*

This new subsection was added to incorporate the EPA's new conditions for obtaining a temporary exemption from compliance with both the chlorine and chloramines MRDLs. This amendment reflects the Federal requirement found in 40 CFR 141.130(d).

16. *§ 109.805. Certification procedure.*

This section was amended to update the EPA references in subsection (b) and to incorporate the EPA's new annual proficiency testing requirement for certified drinking water laboratories. This amendment reflects the Federal requirement found in 40 CFR 141.131(b)(2) (relating to analytical requirements).

17. *§ 109.1003(a)(1)(viii). Monitoring requirements.*

This new subparagraph was added to incorporate the EPA's new bromate monitoring requirements for bottled water systems. This amendment reflects the Federal requirement found in 40 CFR 141.132(b)(3).

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed rulemaking.

Benefits

The public health benefits of disinfection practices are significant and well-recognized. Disinfection, however, poses its own health risks. The proposed amendments will implement standards that will either minimize or eliminate harmful disinfectant levels and disinfection byproducts in public water systems.

The proposed amendments will affect 2,565 public water systems that serve a total population of over 10.4 million Pennsylvanians. These 10.4 million people will benefit from a reduction in health risks associated with disinfection practices, such as bladder cancer and kidney damage.

The EPA has estimated that the Nation may realize a total annual benefit of up to $4 billion as a result of avoiding up to 2,232 cases of bladder cancer per year. In this Commonwealth, this translates into a total annual benefit of up to $175 million in avoiding up to 98 cases of bladder cancer per year.

Compliance Costs

The EPA has estimated that a total annual cost of almost $684 million will be borne by the regulated community, Nationwide, as a result of this rule. It is estimated that water systems in this Commonwealth will bear over $23 million of this total annual cost.

The $23 million estimate will include up-front capital costs associated with process modifications. These process modifications may involve the dose or type of disinfectant chemical, the process locations of disinfectant addition, technologies or treatment techniques that reduce source water TOC, technologies or treatment techniques that remove DBPs and new source development activities.

The $23 million estimate also includes ongoing costs associated with operations and maintenance. These costs will include maintenance activities of any new technologies or sources that are installed because of this rule. These costs will also include the routine compliance expenses of monitoring, reporting and recordkeeping.

Compliance Assistance Plan

The Safe Drinking Water Program utilizes the Commonwealth's PENNVEST Program to offer financial assistance to eligible public water systems. This assistance is in the form of a low-interest loan, with some augmenting grant funds for hardship cases. Eligibility is based upon factors such as public health impact, compliance necessity and project/operational affordability.

The Safe Drinking Water Program has established a network of regional and central office training staff that is responsive to identifiable training needs. The target audience in need of training may be either program staff or the regulated community.

In addition to this network of training staff, the Bureau of Water Supply Management has a division dedicated to providing both training and outreach support services to public water system operators. The Department's Internet site also contains the *Drinking Water & Wastewater Treatment System Operator Information Center* Internet site, which provides a bulletin board of timely, useful information for treatment plant operators.

Paperwork Requirements

The proposed amendments will require that water systems comply with two to four new contaminant standards, as well as with one to three new disinfectant residual standards. To comply with these standards, the water system will need to monitor and report these contaminants and disinfectant residuals. Water systems which treat with conventional filtration will also need to monitor and report total organic carbon, both in the source water and in the treated water.

It is anticipated that this additional monitoring and reporting will be easily facilitated by the addition of one or two new data reporting forms and that little additional paperwork will be necessary.

G. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy

Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department 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 of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor and the General Assembly of objections raised prior to final publication of the amendments.

I. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objection regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17105-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by October 2, 2000 (within 30 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by October 2, 2000 (within 30 days of publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@dep.state.pa.us and must also be received by the Board by October 2, 2000. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF,
Chairperson

Fiscal Note: (1) General Fund; (2) Implementing Year 2000-01 is $585,000; (3) 1st Succeeding Year 2001-02 is $585,000; 2nd Succeeding Year 2002-03 is $585,000; 3rd Succeeding Year 2003-04 is $585,000; 4th Succeeding Year 2004-05 is $585,000; 5th Succeeding Year 2005-06 is $585,000;

	Environmental Program Management	*Environmental Protection Operations*
(4) Fiscal Year 1999-00	$40,200,000	$71,402,000
Fiscal Year 1998-99	$33,123,000	$70,083,000
Fiscal Year 1997-98	$31,139,000	$64,093,000;

(7) Environmental Program Management/Environmental Protection Operation; (8) recommends adoption. The costs will be covered from these two appropriations. An estimated 85% of the costs should be reimbursed by the Federal government.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 109. SAFE DRINKING WATER

Subchapter A. GENERAL PROVISIONS

§ 109.1. Definitions.

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

* * * * *

***Enhanced coagulation*—The addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.**

***Enhanced softening*—The improved removal of disinfection byproduct precursors by precipitative softening.**

* * * * *

***GUDI—Groundwater Under the Direct Influence of Surface Water*—Any water beneath the surface of the ground with the presence of insects or other macroorganisms, algae, organic debris or large diameter pathogens such as *Giardia lamblia* and *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity or pH which closely correlate to climatological or surface water conditions. The term does not include finished water.**

***HAA5—Haloacetic acids (five)*—The sum of the concentrations in milligrams per liter of the haloacetic compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid and dibromoacetic acid), rounded to two significant figures after addition.**

* * * * *

***MRDL—Maximum Residual Disinfectant Level*—The maximum permissible level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects.**

* * * * *

National Primary Drinking Water Regulations—Primary drinking water regulations and implementation regulations promulgated by the Administrator under the Federal act at 40 CFR **[141.1—141.42 and 142.1—142.55] Parts 141 and 142 (relating to National Primary Drinking Water Regulations; and National Primary Drinking Water Regulations Implementation)**. The term includes interim, revised and final regulations.

* * * * *

***SUVA—Specific Ultraviolet Absorption at 254 Nanometers (NM)*—An indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV_{254}) (in m^{-1}) by its concentration of dissolved organic carbon (DOC) (in mg/L).**

* * * * *

Surface water—Water open to the atmosphere or subject to surface runoff **[, or water directly influenced by surface water, which may include springs, infiltration galleries, cribs or wells]**. The term does not include finished water. **[Water is directly influenced by surface water when the aquifer is configured to allow the passage of pathogenic protozoans, subjecting the source to contamination by the protozoans. Direct influence may be determined on a case-by-case basis and may be determined by one or both of the following:**

(i) Significant and relatively rapid shifts in water characteristics, such as turbidity, temperature, conductivity or pH (which may also change in groundwater but at a much slower rate) which closely correlate to climatologic or surface water conditions.

(ii) The presence of insects or other macroorganisms, algae, organic debris or large-diameter protozoans such as Giardia lamblia.]

* * * * *

***TOC—Total Organic Carbon*—The total organic carbon in mg/L measured using heat, oxygen, ultraviolet irradiation, chemical oxidants or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.**

***TTHM*—Total trihalomethanes.**

* * * * *

Subchapter B. MCLS**, MRDLS** OR TREATMENT TECHNIQUE REQUIREMENTS

§ 109.202. State MCLs**, MRDLs** and treatment technique requirements.

(a) *Primary MCLs.*

* * * * *

(3) A public water system that is installing granular activated carbon or membrane technology to comply with the MCL for TTHMs, HAA5, chlorite (where applicable) or bromate (where applicable) may apply to the Department for an extension of up to 24 months past the applicable compliance date specified in the Federal regulations. but not beyond December 31, 2003. In granting the extension, the Department will set a schedule for compliance and may specify any interim measures that the Department deems necessary. Failure to meet the schedule or interim treatment requirements constitutes a violation of National Primary Drinking Water Regulations.

* * * * *

(f) *MRDLs.*

(1) A public water system shall supply drinking water that complies with the MRDLs adopted by the EQB under the act.

(2) This subchapter incorporates by reference the primary MRDLs in the National Primary Drinking Water Regulations, in 40 CFR Part 141, Subpart G (relating to maximum contaminant levels and maximum residual disinfectant levels) as state MRDLs, under the authority of section 4 of the act (35 P. S. § 721.4), unless other MRDLs are established by regulations of the Department. The primary MRDLs which are incorporated by reference are effective on the date established by the Federal regulations.

(g) *Treatment technique requirements for disinfection byproduct precursors.*

(1) A public water system that uses either surface water or GUDI sources and that uses conventional filtration treatment shall provide adequate treatment to reliably control disinfection byproduct precursors in the source water. Enhanced coagulation and enhanced softening are deemed by the Department to be treatment techniques for the control of disinfection byproduct precursors in drinking water treatment and distribution systems. This subchapter incorporates by reference the treatment technique in 40 CFR 141.135 (relating to treatment technique for control of disinfection byproduct (DBP) precursors). Coagulants approved by the Department are deemed to be acceptable for the purpose of this treatment technique. This treatment technique is effective on the date established by the Federal regulations.

(2) The following requirements apply:

(i) Systems that use either surface water or GUDI sources and that use conventional filtration treatment shall operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal levels specified in 40 CFR 141.135 unless the system meets at least one of the alternative compliance criteria listed in subparagraph (ii) or (iii).

(ii) Systems that use either surface water or GUDI sources that use conventional filtration treatment may use the alternative compliance criteria in clauses (A)—(F) to comply with this subsection in lieu of complying with subparagraph (i).

(A) The system's source water TOC level, measured in accordance with Subchapter C (relating to monitoring requirements), is less than 2.0 mg/L, calculated quarterly as a running annual average.

(B) The system's treated water TOC level, measured in accordance with Subchapter C, is less than 2.0 mg/L, calculated quarterly as a running annual average.

(C) The system's source water TOC level, measured in accordance with Subchapter C, is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity, measured in accordance with Subchapter C, is greater than 60 mg/L (as $CaCO_3$), calculated quarterly as a running annual average; and either the TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, or prior to the effective date for compliance in subsection (a)(3), the system has made a clear and irrevocable financial commitment not later than the effective date for compliance to use technologies that will limit the levels of TTHMs and HAA5 to no more than 0.040 mg/L and 0.030 mg/L, respectively. Systems shall summit evidence of a clear and irrevocable financial commitment. In addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the Department for approval not later than the effective date for compliance. These technologies shall be installed and operating by June 30, 2005. Failure to install and operate these technologies by the date in the approved schedule

will constitute a violation of the National Primary Drinking Water Regulations.

(D) The TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(E) The system's source water SUVA, prior to any treatment and measured monthly in accordance with Subchapter C, is no greater than 2.0 L/mg-m, calculated quarterly as a running annual average.

(F) The system's finished water SUVA, measured monthly in accordance with Subchapter C, is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(iii) Systems practicing enhanced softening that cannot achieve the TOC removals required by subparagraph (i) may use the alternative compliance criteria in clauses (A) and (B) in lieu of complying with subparagraph (i).

(A) Softening that results in lowering the treated water alkalinity to less than 60 mg/L (as $CaCO_3$), measured monthly in accordance with Subchapter C and calculated quarterly as a running annual average.

(B) Softening that results in removing at least 10 mg/L of magnesium hardness (as $CaCO_3$), measured monthly and calculated quarterly as an annual running average.

§ 109.203. Unregulated contaminants.

The Department may by order establish **[a] an** MCL or treatment technique requirement on a case-by-case basis for a public water system in which an unregulated contaminant creates a health risk to the users of the public water system. An unregulated contaminant is one for which no MCL or treatment technique requirement has been established under § 109.202 (relating to State MCLs**, MRDLs** and treatment technique requirements).

Subchapter C. MONITORING REQUIREMENTS

§ 109.301. General monitoring requirements.

The monitoring **[and analytical]** requirements**[, including approved sampling procedures and analytical techniques,]** established by the EPA under the National Primary Drinking Water Regulations, 40 CFR Part 141 (relating to national primary drinking water regulations), as of December 8, 1984, are incorporated by reference. Public water suppliers shall monitor for compliance with MCLs **and MRDLs** in accordance with the requirements established in the National Primary Drinking Water Regulations, except as otherwise established by this chapter unless increased monitoring is required by the Department under § 109.302 (relating to special monitoring requirements). Alternative monitoring requirements may be established by the Department and may be implemented in lieu of monitoring requirements for a particular National Primary Drinking Water Regulation if the alternative monitoring requirements are in conformance with the Federal act and regulations. The monitoring requirements shall be applied as follows:

* * * * *

(2) *Performance monitoring for unfiltered surface water.* A public water supplier using unfiltered surface water sources shall conduct the following source water and performance monitoring requirements on an interim basis until filtration is provided, unless increased monitoring is required by the Department under § 109.302:

(i) Except as provided under subparagraphs (ii) and (iii), a public water supplier:

* * * * *

(D) Shall continuously monitor the residual disinfectant concentration required under § 109.202(c)(1)(iii) (relating to State MCLs, **MRDLs** and treatment technique requirements) of the water being supplied to the distribution system and record the lowest value for each day. If a public water system's continuous monitoring equipment fails, the public water supplier may, upon notification of the Department under § 109.402, substitute grab sampling every 4 hours in lieu of continuous monitoring. Grab sampling may not be substituted for continuous monitoring for longer than 5 days after the equipment fails.

* * * * *

(3) *Monitoring requirements for coliforms.* Public water systems shall determine the presence or absence of total coliforms for each routine or check sample; and, the presence or absence of fecal coliforms or E. coli for a total coliform positive sample in accordance with analytical techniques approved by the Department under § 109.304 (relating to analytical requirements). A system may forego fecal coliform or E. coli testing on a total coliform-positive sample if the system assumes that any total coliform-positive sample is also fecal coliform-positive. A system which chooses to forego fecal coliform or E. coli testing shall, under § 109.402(1), notify the Department within 1 hour of when the system is first notified of the total coliform-positive sample result.

(i) *Frequency.* Public water systems shall collect samples at regular time intervals throughout the monitoring period as specified in the system distribution sample siting plan under § 109.303(a)(2) (relating to sampling requirements). Systems which use groundwater and serve 4,900 persons or fewer, may collect all required samples on a single day if they are from different sampling sites in the distribution system.

* * * * *

(C) A public water system that uses a surface water source and does not practice filtration in compliance with Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements) shall collect at least one total coliform sample at the entry point, or an equivalent location as determined by the Department, to the distribution system within 24 hours of each day that the turbidity level in the source water, measured as specified in paragraph (2)(i)(B), exceeds 1.0 NTU. The Department may extend this 24-hour collection limit to a maximum of 72 hours if the system adequately demonstrates a logistical problem outside the system's control in having the sample analyzed within 30 hours of collection. A logistical problem outside the system's control may include a source water turbidity result exceeding 1.0 NTU over a holiday or weekend in which the services of a Department certified laboratory are not available within the prescribed sample holding time. These sample results shall be included in determining compliance with the MCL for total coliforms established under § 109.202(a)(2).

* * * * *

(8) *Monitoring requirements for public water systems that obtain finished water from another public water system.*

(i) Consecutive water suppliers shall monitor for compliance with the MCL for microbiological contaminants at the frequency established by the EPA and incorporated by reference into this chapter.

(ii) Community consecutive water suppliers shall:

(A) Monitor for compliance with the MCL for total trihalomethanes (TTHMs) **[at the frequency established by the EPA and incorporated by reference into this chapter] established under 40 CFR 141.12 (relating to maximum contaminant levels for total trihalomethanes) in accordance with the requirements of 40 CFR 141.30 (relating to total trimalomethanes sampling, analytical and other requirements)** if the system does one of the following:

* * * * *

(vi) Community water systems and nontransient noncommunity water systems that provide finished water that contains a chemical disinfectant or oxidant shall comply with the monitoring requirements for disinfection byproducts and disinfectant residuals in paragraphs (12)(i)—(iii) and (13).

* * * * *

(10) *Additional monitoring.* The Department may by written notice require a public water supplier to conduct monitoring for compliance with MCLs **or MRDLs** during a specific portion of a monitoring period, if necessary to ensure compliance with the monitoring or reporting requirements in this chapter.

* * * * *

(12) *Monitoring requirements for disinfection byproducts and disinfection byproduct precursors.* Community water systems and nontransient noncommunity water systems that use a chemical disinfectant or oxidant, or provide finished water that contains a chemical disinfectant or oxidant, shall monitor for disinfection byproducts. Systems that use either surface water or GUDI sources and that serve at least 10,000 persons shall begin monitoring by January 1, 2002. Systems that use either surface water or GUDI sources and that serve fewer than 10,000 persons, or systems that use groundwater sources, shall begin monitoring by January 1, 2004. Systems monitoring for disinfection byproducts and disinfection byproduct precursors shall take all samples during normal operating conditions. Systems monitoring for disinfection byproducts and disinfection byproduct precursors may use only data collected under this chapter to qualify for reduced monitoring. Compliance with the MCLs and monitoring requirements for TTHMs, HAA5, chlorite (where applicable) and bromate (where applicable) shall be determined in accordance with 40 CFR 141.132 and 141.133 (relating to monitoring requirements; and compliance requirements) which are incorporated herein by reference.

(i) *TTHMs and HAA5.*

(A) *Routine monitoring.*

(I) Systems that use either surface water or GUDI sources shall monitor as follows:

(-a-) Systems serving at least 10,000 persons shall take at least four samples per month per treatment plant. At least 25% of all samples collected each quarter shall be collected at locations representing maximum residence time, with the remainder of the samples representing locations of at least average residence time.

(-b-) Systems serving from 500 to 9,999 persons shall take at least one sample per quarter per treatment plant. The sample shall be taken at a location that represents a maximum residence time.

(-c-) Systems serving fewer than 500 persons shall take at least one sample per year per treatment plant during the month of warmest water temperature. The sample shall be taken at a location that represents a maximum residence time. If the sample, or average of all samples, exceeds either a TTHM or HAA5 MCL, then the system shall take at least one sample per quarter per treatment plant. The sample shall be taken at a location that represents a maximum residence time. The system may reduce the sampling frequency back to one sample per year per treatment plant in accordance with the reduced monitoring criteria of clause (B).

(-d-) If a system samples more frequently than the minimum required in items (-a-)—(-c-), at least 25% of all samples collected each quarter shall be collected at locations representing maximum residence time, with the remainder of the samples representing locations of at least average residence time.

(II) Systems that use groundwater sources shall monitor as follows:

(-a-) Systems serving at least 10,000 persons shall take at least one sample per quarter per treatment plant. Multiple wells drawing water from a single aquifer may be considered as a single treatment plant. The sample shall be taken at a location that represents a maximum residence time.

(-b-) Systems serving fewer than 10,000 persons shall take at least one sample per year per treatment plant during the month of warmest water temperature. Multiple wells drawing water from a single aquifer may be considered as a single treatment plant. The sample shall be taken at a location that represents a maximum residence time. If the sample, or average of all samples, exceeds either a TTHM or HAA5 MCL, the system shall take at least one sample per quarter per treatment plant. The sample shall be taken at a location that represents a maximum residence time. The system may reduce the sampling frequency back to one sample per year per treatment plant in accordance with the reduced monitoring criteria of clause (B).

(-c-) If a system samples more frequently than the minimum required, at least 25% of all samples collected each quarter shall be collected at locations representing maximum residence time, with the remainder of the samples representing locations of at least average residence time.

(B) *Reduced monitoring.* Systems that have monitored for TTHMs and HAA5 for at least 1 year may reduce monitoring according to this clause. Systems that use either surface water or GUDI sources shall monitor source water TOC monthly for at least 1 year prior to qualifying for reduced monitoring. The Department retains the right to require a system that meets the requirements of this clause to resume routine monitoring.

(I) Systems that use either surface water or GUDI sources and that have a source water annual TOC

average that is no greater than 4.0 mg/L and an annual TTHM average that is no greater than 0.040 mg/L and an annual HAA5 average that is no greater than 0.030 mg/L may reduce monitoring according to items (-a-)—(-c-). Systems that qualify for reduced monitoring may remain on reduced monitoring provided that the annual TTHM average is no greater than 0.060 mg/L and the annual HAA5 average is no greater than 0.045 mg/L. Systems that exceed these levels shall resume routine monitoring as prescribed in clause (A) in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L for TTHMs or 0.045 mg/L for HAA5.

(-a-) Systems serving at least 10,000 persons may reduce monitoring to one sample per quarter per treatment plant. The sample shall be taken at a location that represents a maximum residence time. Systems on reduced monitoring are not required to monitor source water TOC.

(-b-) Systems serving from 500 to 9,999 persons may reduce monitoring to one sample per year per treatment plant. The sample shall be taken during the month of warmest water temperature and at a location that represents a maximum residence time. Systems on reduced monitoring are not required to monitor source water TOC.

(-c-) Systems serving fewer than 500 persons and that are on increased monitoring as prescribed by clause (A) may reduce monitoring to one sample per year per treatment plant. The sample shall be taken during the month of warmest water temperature and at a location that represents a maximum residence time. Systems on reduced monitoring are not required to monitor source water TOC.

(II) Systems that use groundwater sources may reduce monitoring according to the following:

(-a-) Systems serving at least 10,000 persons may reduce monitoring to one sample per year per treatment plant if the annual TTHM average is no greater than 0.040 mg/L and the annual HAA5 average is no greater than 0.030 mg/L. The sample shall be taken during the month of warmest water temperature and at a location that represents a maximum residence time. Systems that qualify for reduced monitoring may remain on reduced monitoring provided that the annual TTHM average is no greater than 0.060 mg/L and the annual HAA5 average is no greater than 0.045 mg/L. Systems that exceed these levels shall resume routine monitoring as prescribed in clause (A) in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L for TTHMs or 0.045 mg/L for HAA5.

(-b-) Systems serving fewer than 10,000 persons may reduce monitoring to one sample per 3-year cycle per treatment plant if the annual TTHM average is no greater than 0.040 mg/L and the annual HAA5 average is no greater than 0.030 mg/L for 2 consecutive years or the annual TTHM average is no greater than 0.020 mg/L and the annual HAA5 average is no greater than 0.015 mg/L for 1 year. The sample shall be taken during the month of warmest water temperature within the 3-year cycle beginning on January 1 following the quarter in which the system qualifies for reduced monitoring. The sample shall be taken at a location that represents a maximum residence time. Systems that qualify for reduced monitoring may remain on reduced monitoring provided that the annual TTHM average is no greater than 0.080 mg/L and the annual HAA5 average is no greater than 0.060 mg/L. Systems that exceed these levels shall resume routine monitoring as prescribed in clause (A) in the quarter immediately following the quarter in which the system exceeds 0.080 mg/L for TTHMs or 0.060 mg/L for HAA5.

(ii) *Chlorite.* Community water systems and nontransient noncommunity water systems that use chlorine dioxide for disinfection or oxidation, or provide finished water that contains chlorine dioxide, shall monitor for chlorite.

(A) *Routine monitoring.*

(I) *Daily monitoring.* Systems shall take daily samples at the entrance to the distribution system. Systems that must conduct additional monitoring in accordance with clause (B) shall continue to take routine daily samples at the entrance to the distribution system.

(II) *Monthly monitoring.* Systems shall take a three-sample set each month in the distribution system. The system shall take one sample at each of the following locations: as close to the first customer as possible; at a location representing an average residence time; and at a location representing a maximum residence time. Systems that must conduct additional monitoring in accordance with subclause (III) may use the results of the additional monitoring to meet the monthly monitoring requirements of this subclause.

(III) *Additional monitoring.* If a daily sample at the entrance to the distribution system exceeds the chlorite MCL, the system shall take three samples in the distribution system on the following day. The system shall take one sample at each of the following locations: as close to the first customer as possible, at a location representing an average residence time and at a location representing a maximum residence time.

(B) *Reduced monitoring.* Chlorite monitoring in the distribution system required by clause (A)(II) may be reduced to one three-sample set per quarter after 1 year of monitoring where no individual chlorite sample taken in the distribution system under clause (A)(II) has exceeded the chlorite MCL and the system has not been required to conduct additional monitoring under clause (A)(III). The system may remain on the reduced monitoring schedule until either any of the three individual chlorite samples taken quarterly in the distribution system exceeds the chlorite MCL or the system is required to conduct additional monitoring under clause (A)(III), at which time the system shall revert to routine monitoring as prescribed by clause (A).

(iii) *Bromate.* Community water systems and nontransient noncommunity water systems that use ozone for disinfection or oxidation, or provide finished water that contains ozone, shall monitor for bromate.

(A) *Routine monitoring.* Systems shall take one sample per month for each treatment plant that uses ozone. Systems shall take the monthly sample

at the entrance to the distribution system while the ozonation system is operating under normal conditions.

(B) *Reduced monitoring.* Systems required to analyze for bromate may reduce monitoring from monthly to quarterly provided that the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for 1 year. Systems on reduced monitoring shall continue to take monthly samples for source water bromide. Systems may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L based upon representative monthly measurements, at which time the system shall revert to routine monitoring as prescribed by clause (A).

(iv) *Disinfection byproduct precursors.* Systems that use either surface water or GUDI sources and that use conventional filtration shall monitor for disinfection byproduct precursors.

(A) *Routine monitoring.* Systems shall take monthly samples of the source water alkalinity, the source water TOC and the combined filter effluent TOC for each treatment plant that uses conventional filtration. The three samples shall be taken concurrently and at a time that is representative of both normal operating conditions and influent water quality.

(B) *Reduced monitoring.* Systems with an average treated water TOC of less than 2.0 mg/L for 2 consecutive years, or less than 1.0 mg/L for 1 year, may reduce monitoring for source water alkalinity, source water TOC and combined filter effluent TOC from monthly to quarterly for each applicable treatment plant. The system shall revert to routine monitoring as prescribed by clause (A) in the month following the quarter when the annual average treated water TOC is not less than 2.0 mg/L.

(C) *Early monitoring.* Systems may begin monitoring to determine whether the TOC removal requirements of 40 CFR 141.135(b)(1) (relating to enhanced coagulation and enhanced softening performance requirements) can be met 12 months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any system that does not monitor during this period, and then determines in the first 12 months after the compliance date that it is not able to meet the requirements of 40 CFR 141.135(b)(1) and must therefore apply for alternate minimum TOC removal requirements under 40 CFR 141.135(b)(4) is not eligible for retroactive approval of the alternate minimum TOC removal requirements and is in violation. Systems may apply for alternate minimum TOC removal requirements any time after the compliance date.

(13) *Monitoring requirements for disinfectant residuals.* Community water systems and nontransient noncommunity water systems that use a chemical disinfectant or oxidant, or provide finished water that contains a chemical disinfectant or oxidant, shall monitor for disinfectant residuals. Transient noncommunity water systems that use chlorine dioxide as either a disinfectant or oxidant shall monitor for chlorine dioxide disinfectant residual. Systems that use either surface water or GUDI sources and that serve at least 10,000 persons shall begin monitoring by January 1, 2002. Systems that use either surface water or GUDI sources and that serve fewer than 10,000 persons, or systems that use groundwater sources, shall begin monitoring by January 1, 2004. Systems monitoring for disinfectant residuals shall take all samples during normal operating conditions. Compliance with the MRDLs and monitoring requirements for chlorine, chloramines and chlorine dioxide (where applicable) shall be determined in accordance with 40 CFR 141.132 and 141.133 (relating to monitoring requirements; and compliance requirements) which are incorporated herein by reference.

(i) *Chlorine and chloramines.* Systems shall measure the residual disinfectant level at the same points in the distribution system and at the same time that total coliforms are samples, as specified in paragraph (3). Systems that used either surface water or GUDI sources may use the results of residual disinfectant concentration sampling conducted under paragraph (1) or (2) in lieu of taking separate samples.

(ii) *Chlorine dioxide.*

(A) *Routine monitoring.* Systems shall take one sample per day at the entrance to the distribution system. For any daily sample that exceeds the MRDL, the system shall conduct additional monitoring as specified in clause (B) in addition to the sample required at the entrance to the distribution system. Compliance shall be based on consecutive daily samples collected by the system under this clause.

(B) *Additional monitoring.* If a daily sample at the entrance to the distribution system exceeds the chlorine dioxide MRDL, the system shall take three samples in the distribution system on the following day. If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfectant addition points after the entrance to the distribution system, the system shall take three samples as close to the first customer as possible, at intervals of at least 6 hours. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one or more disinfection addition points after the entrance to the distribution system, the system shall take one sample at each of the following locations: as close to the first customer as possible, at a location representing an average residence time, and at a location representing a maximum residence time.

§ 109.302. Special monitoring requirements.

(a) The Department may require a public water supplier to conduct monitoring in addition to that required by § 109.301 (relating to general monitoring requirements) if the Department has reason to believe the public water system is not in compliance with the MCL**, MRDL** or treatment technique requirement for the contaminant.

* * * * *

§ 109.303. Sampling requirements.

(a) The samples taken to determine a public water system's compliance with MCLs **or MRDLs** or to deter-

mine compliance with monitoring requirements shall be taken at the locations identified in §§ 109.301 and 109.302 (relating to general monitoring requirements; and special monitoring requirements), or as follows:

* * * * *

§ 109.304. Analytical requirements.

(a) Sampling**[, monitoring]** and analysis shall be performed in accordance with analytical techniques adopted by the EPA under the Federal act or methods approved by the Department.

(b) An alternate analytical technique may be employed with the written approval of the Department and the concurrence of the Administrator. An alternate technique will be accepted only if it is substantially equivalent to the prescribed test in both precision and accuracy as it relates to the determination of compliance with MCLs **or MRDLs** or treatment technique requirements. The use of the alternate analytical technique may not decrease the frequency of monitoring required by this subchapter.

Subchapter D. PUBLIC NOTIFICATION

§ 109.401. General public notification requirements.

For the purposes of this section, the term "acute violation" means a violation of the MCL for a contaminant or another condition that may pose an acute risk to human health. Acute violations include, but are not limited to: the MCL for nitrate or nitrite is exceeded, the turbidity performance level which is required to be measured to determine compliance with § 109.202(c) (relating to State MCLs**, MRDLs** and treatment technique requirements) or the turbidity level at an unfiltered surface water source exceeds 5 NTU, the MCL for total coliforms is exceeded due to the presence of fecal coliforms or E. coli in the water distribution system**, the MRDL for chlorine dioxide is exceeded in the distribution system 1 day after an MRDL exceedance at the entry point, failure to monitor in the distribution system one day after a chlorine dioxide MRDL exceedance at the entry point,** and the occurrence of a waterborne disease outbreak.

(1) The public water supplier shall give public notification in accordance with this section when one of the following occurs:

(i) The public water system is not in compliance with the applicable primary MCLs**, MRDLs** or treatment technique requirements in Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements).

* * * * *

(2) A community water supplier, except for violations involving POE devices, required to provide public notification shall, at a minimum, provide public notification in a form approved by the Department as follows:

* * * * *

(iii) In addition to the publication of the notice in accordance with **[the provisions of]** paragraph (2)(i)**,** the water supplier, except one required to post or hand deliver the notice under paragraph (2)(i)(A) or (B) shall furnish a copy of the notice to the radio and television stations serving the area after the supplier learns of an acute violation or another primary MCL **or MRDL** violation under paragraph (1)(i) in accordance with the following schedule:

* * * * *

(B) Within 7 days of a violation of another primary MCL **or MRDL**.

* * * * *

§ 109.402. Emergency public notification.

In addition to the requirements of § 109.401 (relating to general public notification requirements), the Department may require public notice by providing a water supply warning to be given if conditions in a public water system present an imminent hazard to the public health.

(1) A public water supplier who knows that a primary MCL **or MRDL** has been exceeded or a treatment technique performance standard has been violated or has reason to believe that circumstances exist which may adversely affect the quality of drinking water, including, but not limited to, source contamination, spills, accidents, natural disasters or breakdowns in treatment, shall report the circumstance to the Department within 1 hour of discovery of the problem.

* * * * *

§ 109.403. Description and content of notice.

(a) Notice given under this subchapter shall be written in a manner reasonably designed to fully inform the users of the system.

* * * * *

(2) The notice shall disclose material facts regarding the subject including the nature of the problem and, when appropriate, a clear statement that an MCL**, an MRDL** or a treatment technique requirement has been violated and the preventive measures that should be taken by the public.

* * * * *

(d) Community water systems serving at least 10,000 persons that detect TTHM above 0.080 mg/L, but below the MCL in 40 CFR 141.12 (relating to maximum contaminant levels for total trihalomethanes), as an annual average, monitored and calculated under 40 CFR 141.30 (relating to total trihalomethanes sampling, analytical and other requirements), shall include health effects language prescribed by paragraph (73) of Appendix C to 40 CFR Subpart O (relating to consumer confidence reports).

Subchapter E. PERMIT REQUIREMENTS

§ 109.503. Public water system construction permits.

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(c) *Permit fees.*

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(3) Applications for permits or major permit amendments submitted to satisfy the requirements of Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements) for removal of VOCs and SOCs through the construction of treatment facilities designed to achieve greater removal of contaminants than would be achieved by conventional filtration shall be accompanied by a fee of $2,500.

* * * * *

§ 109.505. Requirements for noncommunity water systems.

A noncommunity water system shall obtain a construction permit under § 109.503 (relating to public water system construction permits) and an operation permit

under § 109.504 (relating to public water system operation permits), unless the noncommunity water system satisfies paragraph (1) or (2). The Department retains the right to require a noncommunity water system that meets the requirements of paragraph (1) or (2) to obtain a construction and an operation permit, if, in the judgment of the Department, the noncommunity water system cannot be adequately regulated through standardized specifications and conditions. A noncommunity water system which is released from the obligation to obtain a construction and an operation permit shall comply with the other requirements of this chapter, including design, construction and operation requirements described in Subchapters F and G (relating to design and construction standards; and system management responsibilities).

* * * * *

(2) A noncommunity water system not covered under paragraph (1) is not required to obtain a construction and an operation permit if it satisfies the following specifications and conditions:

(i) The sources of supply for the system are groundwater sources requiring treatment no greater than disinfection to provide water of a quality that meets the primary MCLs established under Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements).

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§ 109.506. Emergency permits.

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(b) State and Federal agencies conducting emergency response bulk water hauling operations are not required to obtain a permit under this subchapter, if a Department approved source is utilized and adequate monitoring is conducted to assure compliance with the microbiological MCL specified in § 109.202 (relating to State MCLs**, MRDLs** and treatment technique requirements).

* * * * *

§ 109.507. Permits for innovative technology.

The Department may consider proposals for innovative water treatment processes, methods or equipment and may issue an innovative technology construction or operation permit if the applicant demonstrates to the Department's satisfaction that the proposal will provide drinking water that complies with Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements). Applications for innovative technology construction permits shall satisfy the requirements of § 109.503 (relating to public water system construction permits). The Department may condition innovative technology operation permits on duration, additional monitoring, reporting or other requirements as it deems necessary to protect the public health. The Department may revoke an innovative technology construction or operation permit if it finds the public water system is not complying with drinking water standards or the terms or conditions of the permit or if there is a significant change in the source water quality which could affect the reliability and operability of the treatment facility. Authorization for construction, operation or modifications obtained under an innovative technology permit will not extend beyond the expiration date of the permit.

Subchapter F. DESIGN AND CONSTRUCTION STANDARDS

§ 109.602. Acceptable design.

(a) A public water system shall be designed to provide an adequate and reliable quantity and quality of water to the public. The design shall ensure that the system will, upon completion, be capable of providing water that complies with the primary and secondary MCLs**, MRDLs** and treatment techniques established in Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements) except as further provided in this section.

* * * * *

§ 109.605. Minimum treatment design standards.

The level of treatment required for raw water depends upon the characteristics of the raw water, the nature of the public water system and the likelihood of contamination. The following minimum treatment design standards apply to new facilities and major changes to existing facilities:

(1) For surface water sources, the minimum treatment design standard for filtration technologies is a 99% removal of Giardia cysts and a 99% removal of viruses. The determination of the appropriate filtration technology to be used shall be based on the following:

* * * * *

(ii) Direct filtration, slow sand filtration and diatomaceous earth filtration may be permitted if studies, including pilot studies where appropriate, approved by the Department are conducted and demonstrate, through achievement of the turbidity performance standards specified in § 109.202(c)(1)(i) (relating to State MCLs**, MRDLs** and treatment technique requirements), that the minimum treatment design standard can be achieved consistently, reliably and practically under appropriate design and operating conditions.

* * * * *

§ 109.611. Disinfection.

Disinfection facilities shall be designed to provide the dosage rate and contact time prior to the first customer sufficient to provide a quality of water that complies with the microbiological MCL **and the appropriate MRDL**, specified in § 109.202 (relating to State MCLs, **MRDLs** and treatment technique requirements).

§ 109.612. POE devices.

* * * * *

(c) A public water supplier using POE devices as a means of treatment shall install a POE device on the service line to customers, except for customers who are provided with water that meets the requirements of Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements) without the use of a POE device.

* * * * *

Subchapter G. SYSTEM MANAGEMENT RESPONSIBILITIES

§ 109.701. Reporting and recordkeeping.

(a) *Reporting requirements for public water systems.* Public water systems shall comply with the following requirements:

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(2) *Monthly reporting requirements for performance monitoring.*

* * * * *

(ii) The test results of performance monitoring required under § 109.301(2) for public water suppliers using unfiltered surface water sources shall include the following, at a minimum:

* * * * *

(B) For performance monitoring of the residual disinfectant concentration of the water being supplied to the distribution system:

(I) The date, time and lowest value each day the concentration is less than the residual disinfectant concentration required under § 109.202(c)(1)(iii) (relating to State MCLs**, MRDLs** and treatment technique requirements).

* * * * *

(8) *Reporting requirements for disinfectant residuals.* Public water systems shall report MRDL monitoring data as follows:

(i) For systems monitoring for chlorine dioxide under § 109.301(13), the dates, results and locations of the samples that were taken during the previous month.

(ii) For systems monitoring for either chlorine or chloramines under § 109.301(13):

(A) The monthly arithmetic average of all samples taken in each month for the last 12 months.

(B) The arithmetic average of all monthly averages for the last 12 months.

(9) *Reporting requirements for disinfection byproducts.*

(i) Systems monitoring for TTHMs and HAA5 under § 109.301(12) shall report the following:

(A) Systems monitoring on a quarterly or more frequent basis shall report the following:

(I) The number of samples taken during the last quarter.

(II) The date, location and result of each sample taken during the last quarter.

(III) The arithmetic average of all samples taken in the last quarter.

(IV) The annual arithmetic average of the quarterly arithmetic averages for the last 4 quarters.

(V) Whether the annual arithmetic avearge exceeds the MCL for either TTHMs or HAA5.

(B) Systems monitoring less than quarterly but no less than annually shall report the following:

(I) The number of samples taken during the last year.

(II) The date, location and result of each sample taken during the last monitoring period.

(III) The arithmetic average of all samples taken in the last year.

(IV) Whether the annual arithmetic average exceeds the MCL for either TTHMs or HAA5.

(C) Systems monitoring less than annually shall report the following:

(I) The date, location and result of the last sample taken.

(II) Whether the sample exceeds the MCL for either TTHMs or HAA5.

(ii) Systems monitoring for chlorite under § 109.301(12) shall report the following:

(A) The number of entry point samples taken each month for the last 3 months.

(B) The date, location and result of each entry point and distribution sample taken during the last quarter.

(C) The arithmetic average of each three-sample set of distribution samples taken in each month in the reporting period.

(D) Whether the monthly arithmetic average exceeds the MCL.

(iii) Systems monitoring for bromate under § 109.301(12) shall report the following:

(A) The number of samples taken during the last quarter.

(B) The date, location and result of each sample taken during the last quarter.

(C) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year.

(D) Whether the annual arithmetic average exceeds the MCL.

(10) *Reporting requirements for disinfection byproduct precursors.* Systems monitoring for TOC under § 109.301(12) shall report in accordance with 40 CFR 141.134(d) (relating to reporting and recordkeeping requirements for disinfection byproduct precursors and enhanced coagulation or enhanced softening).

* * * * *

(d) *Record maintenance.* The public water supplier shall retain on the premises of the public water system or at a convenient location near the premises the following:

* * * * *

(3) Records of action taken by the public water supplier to correct violations of MCLs**, MRDLs** or treatment technique requirements, which shall be kept for at least 3 years after the last action taken with respect to the particular violation involved.

* * * * *

(e) *Monitoring plans for disinfectants, disinfection byproducts and disinfection byproduct precursors.* Systems required to monitor for disinfection byproducts or disinfection byproduct precursors under § 109.301(12) or disinfectant residuals under § 109.301(13) shall develop and implement a monitoring plan. The system shall maintain the plan and make it available for inspection by the Department and the general public no later than 30 days following the applicable compliance dates. All systems that use either surface water or GUDI sources shall submit a copy of the monitoring plan to the Department no later than the date of the first report required under this subchapter. The Department may also require the plan to be submitted by any other system, regardless of size or source water type. After review, the Department may require changes in any of the plan components.

(1) The plan shall include the following components:

(i) Specific locations and schedules for collecting samples for any parameters included in § 109.301 (12) or (13).

(ii) How the system will calculate compliance with the MCLs, MRDLs and treatment techniques.

(iii) If approved for monitoring as a consecutive system, or if providing water to a consecutive system, the sampling plan shall reflect the entire distribution system.

(iv) Systems may consider multiple wells drawing water from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required under § 109.301(12)(i).

(2) The system shall notify the Department of subsequent revisions to an approved monitoring plan for approval as they occur. Revisions to an approved monitoring plan shall be submitted in written form to the Department within 30 days of notifying the Department of the revisions.

§ 109.704. Operator certification.

* * * * *

(c) Beginning _____(*Editor's Note*: The blank refers to a date 3 years from the effective date of the adoption of this proposal), nontransient noncommunity water systems that provide water that contains a chemical disinfectant shall be operated by qualified personnel certified under the Sewage Treatment Plant and Waterworks Operators' Certification Act (63 P. S. §§ 1001—1015). The minimum certification to operate these facilities shall be a certificate to operate plants with disinfection only, under § 303.2 (relating to waterworks operators certificates).

§ 109.710. Disinfectant residual in the distribution system.

(a) A disinfectant residual acceptable to the Department shall be maintained throughout the distribution system of the community water system sufficient to assure compliance with the microbiological MCLs and the treatment technique requirements specified in § 109.202 (relating to State MCLs**, MRDLs** and treatment technique requirements). The Department will determine the acceptable residual of the disinfectant considering factors such as type and form of disinfectant, temperature and pH of the water, and other characteristics of the water system.

* * * * *

(c) Public water systems may increase residual chlorine or chloramine, but not chlorine dioxide, disinfectant levels in the distribution system to a level that exceeds the MRDL for that disinfectant and for a time necessary to protect public health or to address specific microbiological contamination problems caused by circumstances such as, but not limited to, distribution line breaks, storm runoff events, source water contamination events or cross-connection events.

Subchapter H. LABORATORY CERTIFICATION

§ 109.801. Certification requirement.

A laboratory shall be certified under this subchapter to perform analyses acceptable to the Department for the purposes of ascertaining drinking water quality and demonstrating compliance with monitoring requirements established in Subchapter C (relating to monitoring requirements).

* * * * *

(3) A parameter of drinking water quality for which no MCL**, MRDL** or monitoring requirement of general applicability has been established may be part of a certification subcategory.

§ 109.805. Certification procedure.

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(b) [For certification areas other than microbiology, the laboratory shall successfully complete at least one set of performance evaluation samples required by the Department for the parameters in the category for which certification is sought. Acceptable tolerances of analyses of performance evaluation samples shall be as stated by the EPA in 40 CFR 141.23(k)(5), 141.24(f)(17) and (h)(19) (relating to inorganic chemical sampling and analytical requirements; and organic chemicals other than total trihalomethanes, sampling and analytical requirements). For microbiology certification, the laboratory shall successfully complete a set of performance evaluation samples as required by the Department to show proficiency.] The laboratory shall successfully complete at least one set of proficiency test samples required by the Department for the parameters in the category for which certification is sought. Acceptable tolerances of analyses of proficiency test evaluation samples shall be as stated by the EPA in 40 CFR Part 141 (relating to National Primary Drinking Water Regulations) or the "National Standards for Water Proficiency Testing, Criteria Document." For parameters not included in either document the acceptance limits shall be those established by the Department.

* * * * *

(e) In addition to terms and conditions in the certification issued to a laboratory, the certified laboratory shall fulfill the following requirements to maintain certification:

* * * * *

(3) The laboratory shall successfully complete at least one set of proficiency test samples required by the Department at least once every 12 months.

§ 109.810. Reporting and notification requirements.

* * * * *

(b) A laboratory certified under this subchapter shall whenever an MCL**, MRDL** or a treatment technique performance requirement under § 109.202 (relating to State MCLs**, MRDLs** and treatment technique requirements) is violated, or a sample result requires the collection of check samples under § 109.301 (relating to general monitoring requirements):

* * * * *

Subchapter I. VARIANCES AND EXEMPTIONS ISSUED BY THE DEPARTMENT

§ 109.901. Requirements for a variance.

* * * * *

(b) The Department may grant one or more variances to a public water system from a treatment technique requirement upon a finding that the public water supplier applying for the variance has demonstrated that, because of the nature of the raw water source of the system the treatment technique is not necessary to protect the health of the persons served by the system. The treatment technique requirements established under § 109.202(c)

(relating to State MCLs, **MRDLs** and treatment techniques requirements) and treatment technique requirements established under § 109.1102(b) (relating to action levels and treatment technique requirements) are not eligible for a variance.

§ 109.903. Requirements for an exemption.

* * * * *

(b) The treatment technique requirements established under § 109.202(c) (relating to State MCLs**, MRDLs** and treatment technique requirements) and treatment technique requirements established under § 109.1102(b) (relating to action levels and treatment technique requirements) are not eligible for an exemption.

Subchapter J. BOTTLED WATER AND VENDED WATER SYSTEMS, RETAIL WATER FACILITIES AND BULK WATER HAULING SYSTEMS

§ 109.1002. MCLs**, MRDLs** or treatment techniques.

(a) Bottled water and vended water systems, retail water facilities and bulk water hauling systems shall supply drinking water that complies with the MCLs**, MRDLs** and treatment technique requirements under §§ 109.202 and 109.203 (relating to State MCLs**, MRDLs** and treatment technique requirements; and unregulated contaminants). Bottled water systems, vended water systems, retail water facilities and bulk water hauling systems shall provide continuous disinfection for groundwater sources. Water for bottling labeled as mineral water, under § 109.1007 (relating to labeling requirements for bottled water systems, vended water systems and retail water facilities) shall comply with the MCLs except that mineral water may exceed the MCL for total dissolved solids.

* * * * *

§ 109.1003. Monitoring requirements.

(a) *General monitoring requirements.* Bottled water and vended water systems, retail water facilities and bulk water hauling systems shall monitor for compliance with the MCLs **and MRDLs** in accordance with § 109.301 (relating to general monitoring requirements) and shall comply with § 109.302 (relating to special monitoring requirements). The monitoring requirements shall be applied as follows, except that systems which have installed treatment to comply with a primary MCL shall conduct quarterly operational monitoring for the contaminant which the facility is designed to remove:

(1) Bottled water systems, retail water facilities and bulk water hauling systems, for each entry point shall:

* * * * *

(viii) Monitor monthly for bromate, if the system uses ozone for disinfection or oxidation.

(A) Systems shall take one sample per month for each entry point that uses ozone while the ozonation system is operating under normal conditions.

(B) Systems may reduce monitoring for bromate from monthly to quarterly if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for 1 year. Systems on reduced monitoring shall continue monthly source water bromide monitoring. If the running annual average source water bromide concentration, computed quarterly, is equal to or exceeds 0.05 mg/L, the system shall revert to routine monitoring as prescribed by clause (A).

* * * * *

(c) *Sampling requirements.*

(1) For bottled water and vended water systems, retail water facilities and bulk water hauling systems, samples taken to determine compliance with MCLs, **MRDLs and** monitoring requirements, including special monitoring requirements for unregulated contaminants, and treatment techniques shall be taken from each entry point.

* * * * *

(d) *Repeat monitoring for microbiological contaminants.*

* * * * *

(3) If a check sample is total coliform-positive, the system shall be deemed to have violated the MCL for total coliforms established under § 109.1002 (relating to MCLs, **MRDLs** or treatment techniques).

§ 109.1004. Public notification.

(a) *General public notification requirements.* A bottled water, vended water, retail water or bulk water supplier shall give public notification in accordance with this section. In addition, a bulk water supplier shall give public notification in accordance with §§ 109.401(a) and 109.406(b) (relating to general public notification requirements; and public notice requirements for unregulated contaminants).

(1) A bottled water, vended water, retail water or bulk water supplier who knows that a primary MCL **or an MRDL** has been exceeded or treatment technique performance standard has been violated or has reason to believe that circumstances exist which may adversely affect the quality of drinking water, including, but not limited**[,]** to, source contamination, spills, accidents, natural disasters or breakdowns in treatment, shall report the circumstances to the Department within 1 hour of discovery of the problem.

* * * * *

(b) *Description and content of notice.* Notice given under this section shall be written in a manner reasonably designed to fully inform the users of the system. When appropriate or as designated by the Department, additional notice in a foreign language shall be given.

* * * * *

(2) The notice shall disclose material facts regarding the subject, including the nature of the problem and, when appropriate, a clear statement that an MCL **or MRDL** has been violated and preventive measures that should be taken by the public.

* * * * *

§ 109.1005. Permit requirements.

* * * * *

(e) *Permit applications.* An application for a public water system permit for a bottled water or vended water system, retail water facility or bulk water hauling system shall be submitted in writing on forms provided by the Department and shall be accompanied by plans, specifications, engineer's report, water quality analyses and other data, information or documentation reasonably necessary to enable the Department to determine compliance with the act and this chapter. The Department will make available to the applicant the *Public Water Supply Manual,* available from the Bureau of Water Supply Management, Post Office Box 8467, Harrisburg, Pennsylvania 17105-8467 which contains acceptable design standards and technical guidance. Water quality analyses

shall be conducted by a laboratory certified under this chapter. An application for a public water system permit for a bottled water or vended water system, retail water facility or bulk water hauling system shall include:

* * * * *

(7) In addition to the information required under paragraphs (1)—(6), an application for a bottled water system permit shall include:

(i) An analysis of the quality of the manufactured water for each bottled water product. The analysis shall include data for each primary and secondary contaminant under § 109.1002 (relating to MCLs**, MRDLs** or treatment techniques).

* * * * *

§ 109.1006. Design and construction standards.

* * * * *

(b) *Acceptable design*. Bottled water and vended water systems, retail water facilities and bulk water hauling systems shall be designed to provide an adequate quality of water to the public. The design shall ensure that the system will, upon completion, be capable of providing water that complies with the primary and secondary MCLs**, MRDLs** and treatment techniques established in § 109.1002 (relating to MCLs**, MRDLs** or treatment techniques). The Department may approve control techniques, such as nonremoval processes, which abate the problems associated with a secondary contaminant, and achieve the objective of the secondary MCL.

* * * * *

§ 109.1009. System operational requirements.

* * * * *

(c) *Disinfectant residual requirements*. A disinfectant residual acceptable to the Department shall be maintained at the entry point of the bottled water or vended water system, retail water facility or bulk water hauling system sufficient to assure compliance with the microbiological MCL specified in § 109.1002 (relating to MCLs**, MRDLs** or treatment techniques). The Department will determine the acceptable residual of the disinfectant considering **[such]** factors **such** as type and form of disinfectant, temperature and pH of the water, and other characteristics of the water system.

* * * * *

Subchapter K. LEAD AND COPPER

§ 109.1105. Permit requirements.

* * * * *

(b) *Construction permits and permit amendments*. The water supplier shall submit an application for a public water system construction permit for a newly-created system or an amended construction permit for a currently-permitted system for corrosion control treatment facilities by the applicable deadline established in § 109.1102(b)(2) (relating to action levels and treatment technique requirements), unless the system complies with paragraph (1) or (2) or otherwise qualifies for a minor permit amendment under § 109.503(b) (relating to public water system construction permits). The permit application shall comply with § 109.503 and contain the applicable information specified therein. The application shall include recommended water quality parameter performance requirements for optimal corrosion control treatment as specified in § 109.1102(b)(5) and other data, information or documentation necessary to enable the Department to consider the application for a permit for construction of the facilities.

(1) *Community water system minor permit amendments*. The community water supplier may submit a written request for an amended construction permit to the Department if the system satisfies the conditions under subparagraphs (i)—(iv). A request for an amended construction permit under this paragraph shall describe the proposed change in sufficient detail to allow the Department to adequately evaluate the proposal.

* * * * *

(iii) Except for corrosion control treatment, the sources require treatment no greater than disinfection to provide water of a quality that meets the MCLs and treatment technique requirements established under Subchapter B (relating to MCLs**, MRDLs** or treatment technique requirements).

* * * * *

(2) *Nontransient noncommunity water system permits*. The nontransient noncommunity water supplier is not required to obtain a construction permit or permit amendment under subsection (b) if the system satisfies the following specifications and conditions:

* * * * *

(iii) Except for corrosion control treatment, the sources require treatment no greater than disinfection to provide water of a quality that meets the MCLs and treatment technique requirements established under Subchapter B.

* * * * *

[Pa.B. Doc. No. 00-1503. Filed for public inspection September 1, 2000, 9:00 a.m.]

[25 PA. CODE CH. 109]
Interim Enhanced Surface Water Treatment

The Environmental Quality Board (Board) proposes to amend Chapter 109 (relating to safe drinking water). The proposed amendments pertain to filtration systems that serve at least 10,000 people and that use either surface water sources or groundwater sources that are under the direct influence of surface water (GUDI). The proposed amendments establish: 2-log (99%) *Cryptosporidium* removal requirements; strengthened combined filter effluent turbidity performance standards and individual filter turbidity provisions; and disinfection benchmark provisions to assure continued levels of microbial protection while facilities take the necessary steps to comply with new disinfection byproduct standards. Also, the proposed amendments include *Cryptosporidium* in the definition of "GUDI."

The proposal was adopted by the Board at its meeting of July 18, 2000.

A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information, contact Jeffrey A. Gordon, Acting Chief, Division of Drinking Water Management, P. O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-4018 or Pamela Bishop, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) Web site (http://www.dep.state.pa.us).

C. *Statutory Authority*

The proposed rulemaking is being made under the authority of section 4 of the Pennsylvania Safe Drinking Water Act (act) (35 P. S. § 721.4), which grants the Board the authority to adopt rules and regulations governing the provision of drinking water to the public, and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-7 and 510-20).

D. *Background and Purpose*

The Board promulgated the Filter Rule in March of 1989 to address the rising number of waterborne disease outbreaks in this Commonwealth. The rule required public water systems with surface water sources to filter and disinfect, cover finished water reservoirs, perform treatment performance and water quality compliance monitoring and provide public notification of violations. The rule also established design and performance standards for the filtration and disinfection treatment techniques intended to protect against the adverse health effects of exposure to *Giardia lamblia*, viruses and legionella, as well as many other pathogenic organisms. The United States Environmental Protection Agency (EPA) also promulgated the *Federal Surface Water Treatment Rule* (SWTR) in 1989.

The Federal SWTR did not specifically address the protozoan *Cryptosporidium parvum*. In terms of occurrence, *Cryptosporidium* is common in the environment. Most surface water sources contain, or are vulnerable to, *Cryptosporidium* contamination at one time or another. Since some people are carriers, *Cryptosporidium* may enter the water by means of treated or untreated sewage. Other sources of *Cryptosporidium* contamination are those animals that live in or near water. Livestock are notorious carriers of *Cryptosporidium*. Runoff from watersheds allows transport of this pathogen into water bodies used as sources for drinking water treatment plants. Complicating this matter is *Cryptosporidium*'s resistance to standard disinfection practices.

In humans, *Cryptosporidium* may cause a severe gastrointestinal infection, termed cryptosporidiosis, that can last several weeks. It may cause the death of individuals who have a weaker immune system due to age, cancer treatment, AIDS and antirejection organ replacement drugs. In 1993, *Cryptosporidium* caused over 400,000 people in Milwaukee to experience serious intestinal illness. More than 4,000 were hospitalized and at least 50 deaths were attributed to the *Cryptosporidium* outbreak. There has also been cryptosporidiosis outbreaks in Nevada, Oregon, and Georgia over the past several years.

The *Federal Interim Enhanced Surface Water Treatment Rule* (IESWTR) was promulgated on December 16, 1998, by EPA. This rule is intended to improve the control of microbial pathogens, specifically the protozoan *Cryptosporidium parvum*, in drinking water. The IESWTR applies to public water systems serving 10,000 or more people and which use surface water or groundwater under GUDI. Key provisions established include: a Maximum Contaminant Level Goal (MCLG) of zero for *Cryptosporidium*; 2-log *Cryptosporidium* removal requirements for systems that filter; strengthened combined, and individual, filter effluent turbidity performance standards; disinfection benchmark provisions to assure continued levels of microbial protection while facilities take the necessary steps to comply with new disinfection byproduct standards; inclusion of *Cryptosporidium* in the definition of "GUDI"; and sanitary surveys for all surface water systems regardless of size. Published concurrently with the IESWTR is the Disinfectants and Disinfection Byproducts Rule (D/DBPR). The D/DBPR is intended to regulate disinfection practices at public water systems to eliminate or minimize disinfection byproducts that may cause harmful health effects.

On April 14, 2000, the EPA proposed corrective amendments to both the IESWTR and D/DBPR. These corrective amendments are minor in nature (such as, change in compliance date from December 17, 2001 to January 1, 2002) and are, presently still in the proposed stage of rulemaking. For the purposes of this proposed rulemaking, the Department assumes that all of the proposed Federal corrective amendments will ultimately be adopted as final amendments. When the final Federal corrective amendments are promulgated, those final changes will be taken into consideration in connection with final adoption of this proposed rulemaking.

Other Federal rules expected to be promulgated in the future as follow-up to both the IESWTR and the D/DBPR are: the *Long Term 1 (LT1)* and the *Long Term 2 (LT2) Enhanced Surface Water Treatment Rules, Stage 2 Disinfectants and Disinfection Byproducts Rule*, and the *Filter Backwash Rule (FBR)*. The LT1 will apply to public water systems using surface water or GUDI sources and that serve less than 10,000. The LT1 and the FBR are expected in 2001. The LT2 and Stage 2 D/DBP Rule are expected in 2002.

The Board is proposing to incorporate the provisions of both the Federal IESWTR and the proposed Federal corrective amendments into the Pennsylvania Safe Drinking Water Regulations. The rulemaking is necessary for the Commonwealth to retain primacy under the Federal Safe Drinking Water Act. (See 35 P. S. §§ 721.2(a)(3) and 721.5(a) and 42 U.S.C.A. § 300g-2a.) The proposed amendments will provide additional protection against disease-causing organisms (pathogens) in drinking water. The proposed amendments would focus primarily on treatment requirements for the waterborne pathogens of *Giardia, Cryptosporidium* and viruses. With the exception of sanitary surveys, the proposed amendments would apply to all public water systems that use surface water or GUDI sources and that serve at least 10,000 people. Among the features of the rule would be a change in the definition of "surface water" and the addition of the new "GUDI" definition, and new or additional requirements for control of *Giardia, Cryptosporidium* and viruses. Ultimately, the proposed amendments will decrease the likelihood of endemic illness from *Cryptosporidium*, thus reducing health care costs. In addition, the filtration provisions of the rule are expected to increase the level of protection from other pathogens (such as, *Giardia lamblia* or other waterborne bacterial or viral pathogens).

The draft proposed amendments were submitted for review to the Water Resources Advisory Committee

(WRAC) on February 9, 2000. Comments were received from the WRAC on March 21, 2000. The draft proposed amendments were submitted to the Small Water Systems Technical Assistance Center Advisory Board (TAC) for review and discussion on March 23, 2000. Comments were received from the TAC on April 19, 2000.

Advisory Committees' Recommendations

The Department presented three issues to WRAC and TAC. These issues, and the Committees' responses, are as follows:

1. Should the Department seek third-party assistance on Comprehensive Performance Evaluations (CPEs)?

WRAC believes that utilities should have the option of obtaining third-party services to conduct CPEs. Accordingly, the Department should have oversight of all third-party purveyors to ensure proper and consistent CPE procedures.

TAC Board feels that CPEs should be performed by the Department. TAC feels that the Department has the expertise and that CPEs are an issue of regulatory oversight. TAC also feels that this interaction with the Department would further strengthen the partnership/assistance relationships that have already been cultivated between the Department and the regulated community.

With both WRAC and TAC suggesting opposing opinions on this issue, the Department proceeded to make the final decision. The Department decided to exclude third parties from providing CPEs. In making its decision, the Department felt strongly that most of the water systems affected by this rule are well-positioned for compliance with the rule's provisions. Consequently, the Department believes that the number of required CPEs will be too few for third parties to develop and maintain sufficient expertise to perform this service at a reasonable cost.

2. Should the IESWTR be extended to systems serving fewer than 10,000 people?

Both WRAC and TAC committees believe that the rule should not be extended to smaller systems until so required by Federal regulations. TAC recommended that small systems now need to recognize that this rule will eventually be applied to them. The Department should notify small systems of this requirement as soon as possible. A dissenting member of the TAC Board, however, felt that if this action would provide greater protection to public health, and if the majority of systems are already complying with these requirements, then the IESWTR should be put in place for everyone.

The proposed amendments reflect the WRAC and TAC's recommendation.

3. Should the Department express the filtered water turbidity standard as 1 NTU, as done by the EPA, or as 1.0 NTU?

Both committees believe that the Department should not add the additional decimal place since this would be more stringent than the Federal regulations. Both committees recommended to keep the filtered water turbidity limit at 1 NTU since we are already reducing the limit from 2.0 NTU. The vote on this recommendation was not unanimous for the TAC Board for the same reasons stated in paragraph (2).

The proposed amendments reflect WRAC and TAC's recommendation.

E. *Summary of Regulatory Requirements*

The proposed amendments reflect, and are no more stringent than, both the new Federal IESWTR requirements and the proposed Federal corrective amendments.

1. *§ 109.1. Definitions.*

This section was amended to add the following EPA definitions: "CPE—Comprehensive Performance Evaluation," "disinfection profile," "filter profile" and "GUDI—groundwater under the direct influence of surface water." The current definitions of "National Primary Drinking Water Regulations" and "surface water" were also amended. The current language in Chapter 109 included GUDI in the definition of "surface water." Since the EPA's new GUDI definition was added, the "surface water" definition was amended to delete GUDI inclusion. These amendments reflect the new definitions found in 40 CFR 141.2.

2. *§ 109.202(c)(1). Treatment technique requirements for pathogenic bacteria, viruses and protozoan cysts.*

This paragraph includes the requirement for 99% removal of *Cryptosporidium* for systems serving 10,000 or more people. This amendment reflects the Federal requirement in 40 CFR 141.73 (relating to filtration).

3. *§ 109.202(c)(1)(i)(A)(III). Conventional or direct filtration.*

This new subclause was added to incorporate the EPA's revised turbidity performance standards for conventional and direct filtration systems serving 10,000 or more people. This amendment reflects the Federal requirement in 40 CFR 141.173(a)(1) (relating to filtration).

4. *§ 109.202(c)(1)(i)(C). Other filtration technologies.*

This clause was amended to clarify the Department's discretionary authority with respect to turbidity standards. It may be necessary to require a more stringent turbidity standard to ensure that the proposed standard of 99% *Cryptosporidium* oocyst removal is achieved under § 109.202(c)(1). The effect of this amendment will be no more stringent than the current requirement in § 109.202(c)(1)(i)(C).

5. *§ 109.204. Disinfection profiling and benchmarking.*

This new section was added to incorporate the EPA's new disinfection profiling and benchmarking requirements for systems using surface water or GUDI sources and serving 10,000 or more people. The amendment reflects the Federal requirement in 40 CFR 141.172 (relating to disinfection profiling and benchmarking). The amendment will require public water systems required to conduct disinfection profiling to submit the disinfection profiling data and the benchmark data to the Department by June 1, 2001, in a format acceptable to the Department.

6. *§ 109.205. Filter profile, filter self-assessment and comprehensive performance evaluations.*

This new section was added to incorporate the EPA's new individual filter evaluation requirements. This amendment reflects the Federal requirements in 40 CFR 141.175.

7. *§ 109.301(1)(iv). Performance monitoring for filtration and disinfection.*

This new subparagraph was added to incorporate the EPA's individual filter continuous monitoring requirements for systems using surface water or GUDI sources and serving 10,000 or more people. This subparagraph also includes the EPA's requirements for turbidimeter

calibration and continuous monitor failure procedures. This amendment reflects the Federal requirements in 40 CFR 141.174(a) and (b) (relating to filtration sampling requirements).

8. *§ 109.605(1). Minimum treatment design standards.*

This paragraph was amended to incorporate the requirement of 99% removal of *Cryptosporidium* oocysts for systems using surface water and GUDI sources and serving 10,000 or more people. This amendment reflects the Federal requirements in 40 CFR 141.173(b).

9. *§ 109.701(a)(2)(i)(A). Monthly reporting requirements for performance monitoring.*

This clause was amended to incorporate the EPA's new monthly turbidity reporting requirements for systems using surface water or GUDI sources and serving 10,000 or more people. This amendment reflects the Federal requirements in 40 CFR 141.175.

10. *§ 109.701(a)(2)(i)(B). Monthly reporting requirements for performance monitoring.*

This clause was amended to incorporate the EPA's new monthly residual disinfectant reporting requirements for systems using surface water or GUDI sources and serving 10,000 or more people. This amendment reflects the Federal requirements in 40 CFR 141.175.

11. *§ 109.701(e). Reporting requirements for public water systems required to perform individual filter monitoring under § 109.301(1)(iv).*

This new subsection was added to incorporate the EPA's new reporting requirements for systems conducting individual filter monitoring. This amendment reflects the new Federal requirements found in 40 CFR 141.175.

12. *§ 109.701(f). Alternative individual filter turbidity exceedance levels.*

This new subsection was added to incorporate the EPA's alternative turbidity criteria for systems practicing lime softening. This amendment reflects the new Federal requirements found in 40 CFR 141.175.

13. *§ 109.703(b)(5). Facilities operation.*

This paragraph was amended to require conventional or direct filtration facilities without individual filter bed turbidity monitoring capabilities to conduct annual filter bed evaluations. This amendment reflects the Federal requirements in 40 CFR 141.174.

14. *§ 109.714. Filter profile, filter self-assessment and comprehensive performance evaluations.*

This new section was added to incorporate the EPA's new reporting requirements for individual filter evaluations. This amendment reflects the Federal requirements in 40 CFR 141.175.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments.

Benefits

The implementation of the proposed amendments will significantly reduce the level of *Cryptosporidium* in finished drinking water supplies through improvements in filtration. The rule will also reduce the likelihood of the occurrence of outbreaks of cryptosporidiosis by providing a larger margin of safety against the outbreaks for some systems. In addition, the filtration provisions of the rule are expected to increase the level of protection from other pathogens (for example, *Giardia lamblia* or other waterborne bacterial or viral pathogens).

Compliance Costs

Approximately 120 public water systems will be affected by these proposed amendments. These systems will incur increased costs as a result of improved turbidity treatment and disinfection benchmark monitoring. The customers of these affected water systems may experience higher water rates as a result of these increased costs. The actual increase in water rates will depend on a number of factors, including population served and the filtration technology utilized. According to the EPA studies conducted Nationally, 92% of the households affected by this proposed rulemaking will incur less than a cost of $1 per month. Seven percent of the affected households will face an increase in cost of $1 to $5 per month. The highest increase in cost will be approximately $8 per month and will be faced by approximately 23,000 households Nationally.

The assumptions and structure of the EPA analysis tend to overestimate the highest costs. To incur these higher costs, a system would have to implement all, or almost all, of the treatment activities. These systems, however, might seek less costly alternatives, such as connecting into a larger regional water system.

The estimated total annual cost that will be borne by the regulated community in this Commonwealth will be about $10.3 million. Many filtration plants evaluated in this Commonwealth currently meet the IESWTR turbidity requirements and, possibly, may not incur additional expense for improved turbidity removal. The benefits that may result from this proposed rulemaking in this Commonwealth may range from $20 to $100 million per year using a valuation of $2,000 in health damages avoided per cryptosporidiosis illness prevented.

Compliance Assistance Plan

The Safe Drinking Water Program utilizes the Commonwealth's PENNVEST Program to offer financial assistance to eligible public water systems. This assistance is in the form of a low-interest loan, with some augmenting grant funds for hardship cases. Eligibility is based upon factors such as public health impact, compliance necessity and project/operational affordability.

The Safe Drinking Water Program has established a network of regional and central office training staff that is responsive to identifiable training needs. The target audience in need of training may be either program staff or the regulated community.

In addition to this network of training staff, the Bureau of Water Supply Management has a division dedicated to providing both training and outreach support services to public water system operators. The Department's Internet site also contains the *Drinking Water & Wastewater Treatment System Operator Information Center* Internet site, which provides a bulletin board of timely, useful information for treatment plant operators.

Paperwork Requirements

The proposed amendments will require public water systems to monitor and report individual filter turbidity. It is anticipated that this additional monitoring and reporting will be easily facilitated by the addition of one or two new data reporting forms and that little additional paperwork will be necessary.

G. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department 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 of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor and the General Assembly of objections raised prior to final publication of the amendments.

I. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17105-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by October 2, 2000 (within 30 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by October 2, 2000 (within 30 days of publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@dep.state.pa.us and must also be received by the Board by October 2, 2000. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-358. (1) General Fund; (2) Implementing Year 2000-01 is $1,352,000; (3) 1st Succeeding Year 2001-02 is $1,352,000; 2nd Succeeding Year 2002-03 is $1,352,000; 3rd Succeeding Year 2003-04 is $1,352,000; 4th Succeeding Year 2004-05 is $1,352,000; 5th Succeeding Year 2005-06 is $1,352,000;

	Environmental Program Management	*Environmental Protection Operations*
(4) Fiscal Year 1999-00	$40,200,000	$71,402,000
Fiscal Year 1998-99	$33,123,000	$70,083,000
Fiscal Year 1997-98	$31,139,000	$64,093,000

(7) Environmental Program Management and Environmental Protection Operations; (8) recommends adoption. The costs will be covered from these two appropriations. An estimated 85% of the costs should be reimbursed by the Federal government.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHAPTER 109. SAFE DRINKING WATER

Subchapter A. GENERAL PROVISIONS

§ 109.1. Definitions.

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

* * * * *

***CPE—Comprehensive Performance Evaluation*—A thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices.**

(i) The CPE is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements.

(ii) The CPE shall consist of at least the following components:

(A) Assessment of plant performance.

(B) Evaluation of major unit processes.

(C) Identification and prioritization of performance limiting factors.

(D) Assessment of the applicability of comprehensive technical assistance.

(E) Preparation of a CPE report.

* * * * *

***Disinfection profile*—The summary of daily *Giardia lamblia* inactivation through the treatment plant as determined through procedures and measurement methods established by the EPA.**

* * * * *

***Filter profile*—A graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.**

* * * * *

GUDI—Groundwater Under the Direct Influence of Surface Water—

(i) Any water beneath the surface of the ground with the presence of insects or other macroorganisms, algae, organic debris or large diameter pathogens such as *Giardia lamblia* and *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity or pH which closely correlate to climatological or surface water conditions. The term does not include finished water.

* * * * *

National Primary Drinking Water Regulations—Primary drinking water regulations and implementation regulations promulgated by the Administrator under the Federal act **[at] in** 40 CFR **[141.1—141.42 and 142.1—142.55] Parts 141 and 142 (relating to National Primary Drinking Water Regulations; and National Primary Drinking Water Regulations Implementation).** The term includes interim, revised and final regulations.

* * * * *

Surface water—Water open to the atmosphere or subject to surface runoff**[, or water directly influenced by surface water, which may include springs, infiltration galleries, cribs or wells]**. The term does not include finished water. **[Water is directly influenced by surface water when the aquifer is configured to allow the passage of pathogenic protozoans, subjecting the source to contamination by the protozoans. Direct influence may be determined on a case-by-case basis and may be determined by one or both of the following:**

(i) Significant and relatively rapid shifts in water characteristics, such as turbidity, temperature, conductivity or pH (which may also change in groundwater but at a much slower rate) which closely correlate to climatologic or surface water conditions.

(ii) The presence of insects or other macroorganisms, algae, organic debris or large-diameter protozoans such as Giardia lamblia.]

* * * * *

Subchapter B. MCLS OR TREATMENT TECHNIQUE REQUIREMENTS

§ 109.202. State MCLs and treatment technique requirements.

* * * * *

(c) *Treatment technique requirements for pathogenic bacteria, viruses and protozoan cysts.* A public water system shall provide adequate treatment to reliably protect users from the adverse health effects of microbiological contaminants, including pathogenic bacteria, viruses and protozoan cysts. The number and type of treatment barriers and the efficacy of treatment provided shall be commensurate with the type, degree and likelihood of contamination in the source water.

(1) A public water supplier shall provide, as a minimum, continuous filtration and disinfection for surface water **and GUDI** sources. The treatment technique shall provide at least 99.9% removal and inactivation of Giardia lamblia cysts, and at least 99.99% removal and inactivation of enteric viruses. **Beginning January 1, 2002, public water suppliers serving 10,000 or more people shall provide at least 99% removal of cryptosporidium oocysts.** The Department, depending on source water quality conditions, may require additional treatment as necessary to meet the requirements of this chapter and to protect the public health.

(i) The filtration process shall meet the following performance requirements:

(A) *Conventional or direct filtration.*

* * * * *

(III) Beginning January 1, 2002, for public water systems serving 10,000 or more persons, the filtered water turbidity shall meet the following criteria:

(-a-) Be less than or equal to 0.3 NTU in at least 95% of the measurements taken each month under § 109.301(1).

(-b-) Be less than or equal to 1 NTU at all times, measured under § 109.301(1).

* * * * *

(C) *Other filtration technologies.* The same performance criteria as those given for conventional filtration and direct filtration in clause (A) shall be achieved **unless the Department specifies more stringent performance criteria.**

* * * * *

(vi) For a source including springs, infiltration galleries, cribs or wells permitted for use by the Department prior to May 16, 1992, and determined by the Department to be **[directly influenced by surface water] a GUDI source**, the public water supplier shall:

* * * * *

(B) Provide continuous filtration and disinfection in accordance with this paragraph within 48 months after the Department determines the source of supply is **[directly influenced by surface water] a GUDI source.**

(C) Submit to the Department for approval a feasibility study within 1 year after the Department determines the source of supply is **[directly influenced by surface water] a GUDI source.** The feasibility study shall specify the means by which the supplier shall, within the deadline established in clause (B), meet the requirements of this paragraph and shall otherwise comply with paragraph (1)(iv)(A).

* * * * *

§ 109.204. Disinfection profiling and benchmarking.

The disinfection profiling and benchmarking requirements, established by the EPA under the National Primary Drinking Water Regulations in 40 CFR 141.172 (relating to disinfection profiling and benchmarking) are incorporated by reference except as otherwise established by this chapter. The public water supplier shall conduct disinfection profiling in accordance with the procedures and methods in the most current edition of the *Disinfection Profiling and Benchmarking Guidance Manual* published by the EPA. The public water supplier required to conduct disinfection profiling shall submit the disinfection profiling data and the benchmark data to the Department by June 1, 2001, in a format acceptable to the Department.

§ 109.205. Filter profile, filter self-assessment and comprehensive performance evaluations.

Public water systems are required to perform or conduct a filter profile, filter self-assessment or comprehensive performance evaluation if any individual filter monitoring conducted under § 109.301(1)(iv) (relating to general monitoring requirements) demonstrates that one or more of the following conditions exist:

(1) A public water system shall produce a filter profile within 7 days of an individual filter turbidity exceedance (unless the reason for the exceedance can be determined) if any individual filter has a measured turbidity level greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart; or, if any individual filter has a measured turbidity level greater than 0.5 NTU in two consecutive measurements taken 15 minutes apart at the end of the first 4 hours of continuous filter operation after the filter has been backwashed or otherwise taken offline.

(2) A public water system shall conduct a filter self-assessment within 14 days of an individual filter turbidity exceedance if any individual filter has a measured turbidity level greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of 3 consecutive months.

(3) A public water system shall arrange for a comprehensive performance evaluation to be conducted by the Department within 30 days of any individual filter having a measured turbidity level greater than 2.0 NTU in 2 consecutive measurements taken 15 minutes apart at any time in each of 2 consecutive months. The comprehensive performance evaluation shall be completed within 90 days following the individual filter turbidity exceedance.

Subchapter C. MONITORING REQUIREMENTS

§ 109.301. General monitoring requirements.

The monitoring and analytical requirements, including approved sampling procedures and analytical techniques, established by the EPA under the National Primary Drinking Water Regulations, 40 CFR Part 141 (relating to national primary drinking water regulations), as of December 8, 1984, are incorporated by reference. Public water suppliers shall monitor for compliance with MCLs in accordance with the requirements established in the National Primary Drinking Water Regulations, except as otherwise established by this chapter unless increased monitoring is required by the Department under § 109.302 (relating to special monitoring requirements). Alternative monitoring requirements may be established by the Department and may be implemented in lieu of monitoring requirements for a particular National Primary Drinking Water Regulation if the alternative monitoring requirements are in conformance with the Federal act and regulations. The monitoring requirements shall be applied as follows:

(1) *Performance monitoring for filtration and disinfection.* A public water supplier providing filtration and disinfection of surface water **or GUDI** sources shall**[, beginning July 1, 1990,]** conduct the performance monitoring requirements established by the EPA under the National Primary Drinking Water Regulations, unless increased monitoring is required by the Department under § 109.302.

(i) Except as provided under subparagraphs (ii) and (iii), a public water supplier:

(A) Shall determine **and record** the turbidity level of representative samples of the system's filtered water at least once every 4 hours that the system is in operation, except as provided in clause (B).

(B) May substitute continuous turbidity monitoring **and recording** for grab sample monitoring **and manual recording** if it validates the continuous measurement for accuracy on a regular basis using a **[protocol approved] procedure specified** by the **[Department] manufacturer**. For systems using slow sand filtration or filtration treatment other than conventional filtration, direct filtration or diatomaceous earth filtration, the Department may reduce sampling frequency to once per day.

(C) Shall continuously monitor **and record** the residual disinfectant concentration of the water being supplied to the distribution system and record both the lowest value for each day and the number of periods each day when the value is less than .2 mg/l for more than 4 hours. If a public water system's continuous monitoring **or recording** equipment fails, the public water supplier may, upon notification of the Department under § 109.402 (relating to emergency public notification), substitute grab sampling **or manual recording** every 4 hours in lieu of continuous monitoring. Grab sampling **or manual recording** may not be substituted for continuous monitoring **or recording** for longer than 5 days after the equipment fails.

(D) Shall measure **and record** the residual disinfectant concentration at representative points in the distribution system no less frequently than the frequency required for total coliform sampling for compliance with the MCL for microbiological contaminants.

* * * * *

(iv) A public water supplier providing conventional filtration treatment or direct filtration and serving 10,000 or more people and using surface water or GUDI sources shall, beginning January 1, 2002, conduct continuous monitoring of turbidity for each individual filter using an approved method under the EPA regulation in 40 CFR 141.74(a) (relating to analytical and monitoring requirements) and record the results every 15 minutes.

(A) The water supplier shall calibrate turbidimeters using the procedure specified by the manufacturer.

(B) If there is failure in the continuous turbidity monitoring equipment, the system shall conduct grab sampling every 4 hours in lieu of continuous monitoring.

(C) A public water supplier has a maximum of 5 days following the failure of the equipment to repair or replace the equipment.

(2) *Performance monitoring for unfiltered surface water **and GUDI**.* A public water supplier using unfiltered surface water **or GUDI** sources shall conduct the following source water and performance monitoring requirements on an interim basis until filtration is provided, unless increased monitoring is required by the Department under § 109.302:

* * * * *

Subchapter F. DESIGN AND CONSTRUCTION STANDARDS

§ 109.605. Minimum treatment design standards.

The level of treatment required for raw water depends upon the characteristics of the raw water, the nature of the public water system and the likelihood of contamination. The following minimum treatment design standards apply to new facilities and major changes to existing facilities:

(1) For surface water **and GUDI** sources, the minimum treatment design standard for filtration technologies is a 99% removal of Giardia cysts, **a 99% removal of cryptosporidium oocysts** and a 99% removal of viruses. The determination of the appropriate filtration technology to be used shall be based on the following:

* * * * *

(2) For surface water **and GUDI** sources, the minimum treatment design standard for disinfection technologies utilized prior to the first user of the system is a total of 99.9% inactivation of Giardia cysts and a 99.99% inactivation of viruses. Total treatment system disinfection capability will be credited toward this design standard. The CT factors and measurement methods established by the EPA are the criteria to be used in determining compliance with this minimum treatment design standard.

Subchapter G. SYSTEM MANAGEMENT RESPONSIBILITIES

§ 109.701. Reporting and recordkeeping.

(a) *Reporting requirements for public water systems.* Public water systems shall comply with the following requirements:

* * * * *

(2) *Monthly reporting requirements for performance monitoring.*

(i) The test results of performance monitoring required under § 109.301(1) (relating to general monitoring requirements) for public water suppliers providing filtration and disinfection of surface water **or GUDI** sources shall include the following at a minimum:

(A) For turbidity performance monitoring:

* * * * *

(II) The number of **filtered water turbidity** measurements taken each month.

(III) The number of **filtered water turbidity** measurements that **are less than or** equal **[or exceed] to** .5 NTU for conventional, direct or other filtration technologies, or 1.0 NTU for slow sand or diatomaceous earth filtration technologies.

(IV) The date, time and values of **any filtered water turbidity** measurements exceeding 2.0 NTU.

(V) In lieu of clause (A)(III) and (IV), beginning January 1, 2002, for public water systems that serve 10,000 or more people and use conventional or direct filtration:

(-a-) The number of filtered water turbidity measurements that are less than or equal to 0.3 NTU.

(-b-) The date, time and values of any filtered water turbidity measurements that exceed 1 NTU for systems using conventional or direct filtration or that exceed the maximum level set under § 109.202(c)(1)(i)(A)(III) (relating to State MCLs and treatment technique requirements).

(B) For performance monitoring of the residual disinfectant concentration of the water being supplied to the distribution system:

* * * * *

(III) The date, time and highest value each day the concentration is greater than the residual disinfectant concentration required under § 109.202(c)(1)(ii).

(IV) If the concentration does not rise above that required under § 109.202(c)(1)(ii), the date, time and highest value measured that month.

* * * * *

(ii) The test results of performance monitoring required under § 109.301(2) for public water suppliers using unfiltered surface water **or GUDI** sources shall include the following, at a minimum:

* * * * *

(e) *Reporting requirements for public water systems required to perform individual filter monitoring under § 109.301(1)(iv).*

(1) Public water systems providing filtration and disinfection of surface water sources shall report individual filter turbidity results if individual filter turbidity measurements demonstrate that one or more of the following conditions exist:

(i) An individual filter has a measured turbidity level greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart.

(ii) An individual filter has a measured turbidity level of greater than 0.5 NTU in two consecutive measurements taken 15 minutes apart at the end of the first 4 hours of continuous filter operation after the filter has been backwashed or otherwise taken offline.

(iii) An individual filter has a measured turbidity level greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of 3-consecutive months.

(iv) An individual filter has a measured turbidity level greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of 2-consecutive months.

(2) Individual filter turbidity monitoring reported as required under paragraph (1) shall include the following at a minimum:

(i) Filter number.

(ii) Turbidity measurements.

(iii) The dates on which the exceedance occurred.

(iv) If an individual filter demonstrates a condition under paragraph (1)(i) or (ii), the date on which a filter profile was produced or the date on which the reason for a turbidity exceedance was determined.

(v) If an individual filter demonstrates a condition under paragraph (1)(iii), the date on which a filter self-assessment was conducted.

(vi) If an individual filter demonstrates a condition under paragraph (1)(iv), the date on which a comprehensive performance evaluation was conducted.

(f) *Alternative individual filter turbidity exceedance levels*. Public water systems using lime softening may apply to the Department for alternative individual filter turbidity exceedance levels if they demonstrate that the higher individual filter turbidity levels are due to lime carryover and not to degraded filter performance.

§ 109.703. Facilities operation.

* * * * *

(b) For surface water **or GUDI** sources, a public water supplier using filtration shall comply with the following requirements:

* * * * *

(5) **[In lieu of individual filter bed turbidity monitoring] Except for public water systems covered under § 109.301(1)(iv) (relating to general monitoring)**, a system with conventional or direct filtration facilities permitted prior to March 25, 1989, without **[those] individual filter bed turbidity monitoring** capabilities shall conduct an annual filter bed evaluation program, acceptable to the Department, which includes an evaluation of filter media, valves, surface sweep and sampling of filter turbidities over one entire filter run; and shall submit to the Department, with the Annual Water Supply Report, a study that demonstrates that the water supplier's filter-to-waste or alternate approved operating procedures are meeting the operating conditions under paragraph (1) or (4).

§ 109.710. Disinfectant residual in the distribution system.

* * * * *

(b) A public water system that uses surface water **or GUDI** sources or obtains finished water from another permitted public water system using surface water **or GUDI** sources shall comply with the following requirements:

* * * * *

§ 109.714. Filter profile, filter self-assessment and comprehensive performance evaluations.

Public water systems required to perform individual filter monitoring under § 109.301(1)(iv) (relating to general monitoring requirements) shall notify the Department if individual filter turbidity measurements demonstrate that one or more of the following conditions exist:

(1) If an individual filter demonstrates a condition under § 109.701(e)(1)(i) or (ii) (relating to reporting and recordkeeping), the Department shall be notified within 24 hours of the turbidity level exceedance that a filter profile will be produced within 7 days of the turbidity level exceedance, unless the system notifies the Department of the reason for the exceedance.

(2) If an individual filter demonstrates a condition under § 109.701(e)(1)(iii), the Department shall be notified within 24 hours of the turbidity level exceedance that a self-assessment of the filter will be conducted within 14 days of the turbidity level exceedance. A filter self-assessment shall consist of at least the following components:

(i) Assessment of filter performance.

(ii) Development of a filter profile.

(iii) Identification and prioritization of factors limiting filter performance.

(iv) Assessment of the applicability of corrections.

(v) Preparation of a filter self-assessment report.

(3) If an individual filter demonstrates a condition under § 109.701(e)(1)(iv), the Department shall be notified within 24 hours of the turbidity level exceedance that a comprehensive performance evaluation will need to be conducted by the Department within 30 days following the turbidity level exceedance.

[Pa.B. Doc. No. 00-1504. Filed for public inspection September 1, 2000, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 51]

Civil Penalty Forfeiture Process

The Fish and Boat Commission (Commission) proposes to adopt Chapter 51, Subchapter K (relating to civil penalty forfeiture process). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed regulations relate to the forfeiture of civil penalties for failure to comply with section 3510 of the code (relating to marking of dams).

A. *Effective Date*

The proposed regulations, if approved on final rulemaking, will go into effect upon publication of an order adopting the regulations in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the proposed regulations, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's Web site (http://www.fish.state.pa.us).

C. *Statutory Authority*

The proposed regulations are published under the statutory authority of section 3510 of the code.

D. *Purpose and Background*

The act of June 18, 1998 (P. L. 702, No. 91) effective January 1, 1999, amended the code by adding section 3510. This section applies to owners of existing run-of-the-river dams and permittees for the construction or installation of new run-of-the-river dams. Specifically, it requires the owners of dams identified by the Department of Environmental Protection (DEP) as meeting the statutory definition of a "run-of-the-river" dam to mark the areas above and below the dams and on the banks immediately adjacent to the dams with signs and buoys. The design and content of these signs and buoys was determined by the Commission after consultation with DEP. The signs are intended to warn the swimming, fishing and boating public of the hazards posed by the dam.

E. *Summary of Proposal*

Section 3510 of the code provides that any person who fails to comply with the marking requirements shall forfeit and pay a civil penalty of not less than $500 nor more than $5,000. This section further provides that any person who fails to comply with the maintenance requirements shall forfeit and pay a civil penalty of not less than $250 nor more than $5,000. To recover civil penalties, the Commission must have an administrative process for forfeiture of civil penalties in place. Accordingly, the Commission proposes the new regulations as set forth in Annex A.

F. *Paperwork*

The proposed regulations will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The proposed regulations will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed regulations will impose no new costs on the private sector or the general public.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed regulations to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment ofelectronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-108. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 51. ADMINISTRATIVE PROVISIONS

Subchapter K. CIVIL PENALTY FORFEITURE PROCESS

Sec.

§ 51.101. General.

(a) Under section 3510(h) of the code (relating to marking of dams), a person failing to comply with section 3510(a) or (b) of the code shall forfeit a civil penalty of not less than $500 nor more than $5,000.

(b) Under section 3510(h) of the code, a person failing to comply with section 3510(c) of the code shall forfeit a civil penalty of not less than $250 nor more than $5,000.

(c) The civil penalties described in subsections (a) and (b) may be recovered by civil suit or process in the name of the Commonwealth. The purpose of this subchapter is to describe the administrative process for forfeiture of civil penalties under the code.

§ 51.102. Initiation of process.

(a) The administrative process to effect the forfeiture of a civil penalty under section 3510(h) of the code may be initiated by any person authorized to enforce the code and any employe of the Commission or the Department of Environmental Protection authorized by the Executive Director to initiate the process.

(b) A person authorized to initiate the process under subsection (a) shall do so by completing a report on a form approved by the Executive Director. The report, to be executed under penalty of law, will, at a minimum, describe:

(1) The name of the owner or permittee of the dam.

(2) The location of the dam, including county and township or other political subdivision.

(3) The dates the dam was inspected.

(4) The nature of the noncompliance.

§ 51.103. Compliance notification.

(a) Prior to serving an order to show cause for civil penalty under section 3510 of the code, the Executive Director or a designee will send the owner or permittee of the dam in question a written compliance notification that will describe the nature of the alleged noncompliance with section 3510 of the code.

(b) The compliance notification shall give the owner or permittee of the dam not less than 15 nor more than 30 days to demonstrate to the satisfaction of the Executive Director or a designee that the owner or permittee has brought the dam into compliance with section 3510 of the code or face forfeiture of civil penalties.

§ 51.104. Order to show cause for forfeiture of civil penalty.

(a) If the owner or permittee fails to demonstrate compliance after the notification described in § 51.103 (relating to compliance notification), the Executive Director or a designee will serve on the owner or permittee of the dam an order to show cause for forfeiture of civil penalty in a form approved by the Executive Director or designee. Service will be by registered or certified mail, or by personal service. If the mail is tendered at the address in the permit, or at an address where the owner or permittee is located, and delivery is refused, or mail is not collected, the requirements of this section shall be deemed to have been complied with upon tender.

(b) The owner or permittee who has been served with an order to show cause in accordance with subsection (a) has 30 days to file an answer to the order to show cause. If no answer is submitted, the failure to submit a timely answer will operate as a waiver and the proposed forfeiture of civil penalty will become a final forfeiture upon the expiration of the 30-day period unless the Executive Director or a designee determines to hold a hearing on the proposed forfeiture under the procedures in § 51.107 (relating to hearings).

§ 51.105. Amount of proposed civil penalty forfeiture.

(a) *Amount.* The amount of the proposed civil penalty forfeiture will be set forth in the order to show cause for civil penalty forfeiture. In determining the amount of the proposed forfeiture, the Executive Director or a designee will consider:

(1) *Health and safety of public.* The hazards posed to the health or safety of the public. The minimum proposed civil penalty forfeiture will be $2,500 if the Executive Director or a designee determines, based on the uses of the waters, that the unmarked dam poses substantial danger to the angling, boating and wading public.

(2) *Negligence, recklessness or intentional failure.* Whether the violation was caused by a negligent, reckless or intentional failure to comply. A civil penalty of at least $500 should be proposed in cases of negligent failure to comply. A civil penalty of at least $2,000 should be proposed where there is probable cause to believe that the lack of compliance was based on reckless misconduct. A civil penalty of at least $3,000 should be proposed when there is probable cause to believe that the lack of compliance was based on wilful or intentional misconduct.

(3) *Speed of compliance.* A credit will be given of up to $1,000 based on the attempt of the owner or permittee to achieve rapid compliance after the owner or permittee knew or should have known of the violation. The credit will be available to offset only civil penalties assessed for the specific violation at issue.

(4) *Cost to the Commonwealth.* In proposing the amount of a civil penalty forfeiture, the costs to the Commonwealth will be considered. The costs may include:

(i) Administrative costs.

(ii) Costs of inspection.

(iii) Costs of preventive or restorative measures taken by the Commission or the Department of Environmental Protection to prevent or lessen the threat of damage to persons or property.

(5) *Savings to the dam owner/permittee.* If the owner or permittee of the dam who fails to comply gains economic benefit as a result of the noncompliance, the proposed civil penalty may include an amount equal to the savings up to the statutory maximum for each violation.

(6) *History of previous violations.* In determining a proposed civil penalty for a violation, the Executive Director or a designee will consider previous noncompliance with the requirements of section 3510 of the code (relating to marking of dams) for which the same owner or permittee has been found to have been responsible in a prior adjudicated proceeding, agreement, consent order or decree that became final within the previous 3-year period. The penalty otherwise assessable for noncompliance shall be increased by a factor of 25% for each previous violation. The total increase in assessment based on the history of the previous violation will not exceed $1,000.

(i) A previous instance of noncompliance will not be counted if it is the subject of pending administrative or judicial review, or if the time to request the review or to appeal the administrative or judicial decision determining the previous violation has not expired.

(ii) Each previous instance of noncompliance will be counted without regard to whether it led to a civil penalty assessment.

(b) *Maximum penalty.* If consideration of the factors described in this section yields a penalty in excess of the statutory maximum, the maximum civil penalty will be proposed for that violation.

(c) *Revision of proposed civil penalty.* The Executive Director, upon his own initiative or upon written request received within 15 days of issuance of an order to show cause, may revise a proposed civil penalty calculated in accordance with the dollar limits in subsection (a). If the Executive Director revises the civil penalty, the Department of Environmental Protection will use the general criteria in subsection (a) to determine the appropriate civil penalty. When the Executive Director has elected to revise a civil penalty, he will give a written explanation of the basis for the revised civil penalty to the dam owner or permittee to whom the order to show cause was issued.

§ 51.106. Procedure in lieu of hearing.

(a) When for any reason a hearing is not held with regard to forfeiture, the entire written file on the case shall be submitted to the Commission, which will review the matter and make a final determination as to its disposition. The action of the Commission is considered the final agency action.

(b) Subsection (a) supersedes 1 Pa. Code § 35.226 (relating to final orders).

§ 51.107. Hearings.

(a) If an owner or permittee of a dam requests a hearing, or the Executive Director or a designee determines a hearing is appropriate, the Executive Director will appoint a presiding officer to conduct the hearing on behalf of the Commission. This subsection supersedes 1 Pa. Code § 35.185 (relating to designation of presiding officers).

(b) Hearings will be conducted at the Harrisburg office of the Commission or at another location the presiding officer or Executive Director may designate. Dam owners or permittees will be given at least 10 days written notice of the date and time of the hearing.

(c) The burden of proof to justify the proposed forfeiture will be on the Commission to prove by a preponderance of the evidence that the proposed action is justified by the facts and circumstances.

(d) The presiding officer will permit either oral argument at the conclusion of the hearing or the filing of written briefs, but not both, except in cases of extraordinary complexity when the presiding officer finds, upon motion of the parties or his own motion, that the ends of justice require allowance of both. When briefs are to be filed, the procedures of 1 Pa. Code §§ 35.191—35.193 (relating to proceedings in which briefs are to be filed; content and form of briefs; and filing and service of briefs) will be followed. This subsection supersedes 1 Pa. Code § 35.204 (relating to oral argument before presiding officer).

§ 51.108. Report of the presiding officer.

(a) After the hearing is closed, the transcript prepared, and briefs, if any, received, the presiding officer will prepare a proposed report, the contents of which shall be in substantial compliance with 1 Pa. Code § 35.205 (relating to contents of proposed reports).

(b) A copy of the proposed report shall be served on the owner or permittee of the dam, the Commission staff and other parties of record who shall thereafter have 30 days to file exceptions to the report together with any brief on exceptions. Briefs opposing exceptions may be filed in

accordance with 1 Pa. Code § 35.211 (relating to procedure to except to proposed report).

(c) If no timely exceptions to the proposed report are filed, the proposed report will be considered the final administrative adjudication of the Commission.

(d) If exceptions to the proposed report are filed, the proposed report, together with the entire record, the briefs, the exceptions, and briefs on and opposing exceptions will be subject to review by the Commission under § 51.109 (relating to final administrative action).

§ 51.109. Final administrative action.

(a) When exceptions are filed to the proposed report or which are disposed of under § 51.106 (relating to procedure in lieu of hearing), the members of the Commission will review the case file, together with other matters of record and filings in the proceedings. At a public meeting convened under 65 Pa.C.S. Chapter 7 (relating to the Sunshine Act), the Commission will consider the matter. Unless ordered by the Commission, oral argument will not be permitted at the public meeting nor will the respondent be permitted to reargue or retry matters that were raised or could have been raised before the presiding officer. The Commission will vote to approve or disapprove a proposed report or, in cases under § 51.106, to issue an order as appropriate.

(b) The action by the Commission will be considered the final administrative adjudication with respect to the forfeiture of civil penalties. The dam owner or permittee will be notified in writing of the final action. The final order will be considered officially entered on the date it is mailed or otherwise served, whichever comes first.

(c) If, after the entry of a final order, the dam owner or permittee files a timely petition for review or judicial appeal of the adjudication, the owner or permittee may apply in writing to the Executive Director for a stay of the effective date of the order. The filing of a petition for review or judicial appeal does not operate as an automatic stay. The Executive Director may grant a stay for good cause shown.

[Pa.B. Doc. No. 00-1505. Filed for public inspection September 1, 2000, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CHS. 139 AND 141]

Bear Season; Ammunition for Flintlocks

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its June 21, 2000, meeting proposed the following amendments:

Amend § 139.4 (relating to seasons and bag limits for the license year) to give the Executive Director the authority to extend the bear season when there has been an underharvest of bear.

Amend § 141.43 (relating to deer) to expand the types of ammunition lawful for use in the flintlock muzzleloader season.

These proposed amendments will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for this proposal is 34 Pa.C.S. (relating to the Game and Wildlife Code) (code).

This proposal was made public at the June 21, 2000, meeting of the Commission, and comments on this proposal can be sent to the Executive Director of the Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until October 6, 2000.

Proposed Amendment to § 139.4

1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its June 21, 2000, meeting proposed changing § 139.4 to give the Executive Director authority to extend the bear season, if there is an underharvest of bear. This change is proposed under sections 322(c)(1) and 2102(b)(1) of the code (relating to powers and duties of commission; and regulations).

2. *Purpose and Authority*

The bear population in this Commonwealth has increased dramatically in recent years. This has resulted in an increased number of incidents involving nuisance bears. To minimize these incidents, it is essential to meet bear harvest goals for the season.

Section 322(c) of the code specifically empowers the Commission to "... fix seasons ... and daily, season and possession limits 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. The proposed change would add a footnote to the bear season authorizing the Executive Director to extend the bear season by order, from 1 to 4 days where it appears that there has been an underharvest of bear.

3. *Regulatory Requirements*

The proposal would expand possible hunting opportunities within limitations.

4. *Persons Affected*

Those wishing to hunt bear and having the required license would be affected by the proposed change.

5. *Cost and Paperwork Requirements*

There will be no additional cost or paperwork resulting from the proposed change.

6. *Effective Dates*

The effective dates are July 1, 2000 to June 30, 2001.

Proposed Amendment to § 141.43

1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its June 21, 2000, meeting proposed changing § 141.43 to allow the use of any and all single projectile ammunition during the muzzleloading deer season. This proposal was made under section 2102(d) of the code.

2. *Purpose and Authority*

The Commission is mandated by section 2102(d) of the code to promulgate regulations "... stipulating ... the type of firearms and ammunition, which may be used." The change is proposed under this authority.

There has been a great deal of confusion with regard to what ammunition may be used during the muzzleloading deer season. The proposed change should end this confusion and simplify what ammunition can be used.

3. *Regulatory Requirements*

The proposed change will expand the types of ammunition that can be lawfully used and relax regulatory requirements.

4. *Persons Affected*

Those wishing to hunt deer during the special muzzleloading seasons will be affected by the proposed change.

5. *Cost and Paperwork Requirements*

The proposed change should not result in additional cost or paperwork.

6. *Effective Date*

The proposed change will be effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

Contact Person

For further information on the proposed changes contact David Overcash, Acting Director, Bureau of Law Enforcement, (717) 783-6526, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-124. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 139. SEASONS AND BAG LIMITS

§ 139.4. Seasons and bag limits for the license year.

2000-2001 OPEN HUNTING AND FURTAKING SEASONS, DAILY LIMIT, FIELD POSSESSION LIMIT AND SEASON LIMIT
OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED

* * * * *

Species	*First Day*	*Last Day*	*Daily Limit*	*Season Limit*
		BEAR		
Bear, any age	Nov. 20	Nov. 22[*****]	1	1

* * * * *

[*****] The Executive Director is hereby authorized to extend, by order, in accordance with § 139.3, this season either Statewide or on a designated area basis when it appears, after polling the Bureau of Wildlife Management, the Commissioners and regional directors, that there has been an underharvest of bear. The extension may be from 1 to 4 days and may be concurrent with the Statewide antlered deer firearms season. The extension shall be between the first and third Saturday (inclusive) immediately following the regular bear season.

CHAPTER 141. HUNTING AND TRAPPING

Subchapter C. BIG GAME

§ 141.43. Deer.

* * * * *

(b) *Muzzleloading season.* Firearms lawful for use are original muzzleloading single-barrel guns manufactured prior to 1800, or a similar reproduction of an original muzzleloading single-barrel gun which:

* * * * *

(2) **[Propels a single spherical lead ball with a cloth patch or a maxi-ball or mini-ball] Propels single-projectile ammunition.**

* * * * *

[Pa.B. Doc. No. 00-1506. Filed for public inspection September 1, 2000, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CHS. 89 AND 89a]

Policies and Forms; General Filing Requirements and General Contents of Forms

The Insurance Department (Department) proposes to amend Chapter 89 (relating to general filing requirements and general contents of forms), and adopt Chapter 89a (relating to approval for life insurance, accident and health insurance and property and casualty insurance filing and form) to read as set forth in Annex A. This rulemaking is proposed under the authority contained in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); sections 510—514 of The Insurance Company Law of 1921 (40 P. S. §§ 510—514), and section 3(a) of the Accident and Health Filing Reform Act (40 P. S. § 3803(a)).

Purpose

Chapter 89 was adopted in 1969. This chapter was intended to provide filing and content requirements for life and accident and health insurance forms to insurers doing business in this Commonwealth. These requirements are necessary to assure the consistent and complete filing of forms by insurers.

The Department is proposing to establish Chapter 89a to improve readability. These new sections of Chapter 89a set forth the requirements for the content and filing of life insurance and annuities, accident and health insurance and property and casualty insurance form filings. In addition, requirements for annuities and property and casualty insurance and provisions to allow for filings by means of the Internet or electronically were also incorporated in Chapter 89a. This will ensure the consistent application of filing requirements across all product lines filed with the Department. The Department is also revising these regulations to respond to changes in the insurance marketplace.

Explanation of Regulatory Requirements

Section 89.3 (relating to filing requirements) is being proposed for deletion. Portions of 89.3 will be incorporated in new § 89a.3 (relating to filing requirement).

Section 89.4 (relating to general filing procedures) is being proposed for deletion. Portions of 89.4 will be incorporated into new § 89a.4 (relating to general filing procedure).

Section 89.5 (relating to letter of submission) is being proposed for deletion. Portions of 89.5 will be incorporated into new § 89a.5 (relating to letter of submission).

Section 89.11 (relating to general contents of forms) is being proposed for deletion. Portions of 89.11 will be incorporated into new § 89a.6 (relating to general contents of forms).

Section 89.17 (relating to replacement of forms) is being proposed for deletion because it is not necessary for companies to inform the Department that a form or filing is obsolete or no longer being issued.

Section 89.21 (relating to general) is being proposed for deletion because tentative approval of filings is no longer necessary. Parts of § 89.21 are being incorporated into new § 89a.4 (relating to general filing procedure).

Section 89.22 (relating to changes in forms) is being proposed for deletion because the section is obsolete and no longer applicable to the review of form filings by the Department.

Section 89.23 (relating to documents shall be complete) is being proposed for deletion.

Section 89a.1 (relating to definitions) sets forth the definitions to be utilized in the chapter. Two definitions have been added to the subsection, which were not in § 89.1 to bring the regulations up-to-date with current market conditions and activities. "Filer" has been added to clarify the entity submitting forms to the Department. "Prominent type" has been added for clarification of certain form content requirements.

Section 89a.2 (relating to purpose) establishes the purpose of the chapter.

Section 89a.3 (relating to form filings) is being proposed to include annuities and property and casualty insurance forms to the requirements of the chapter as well as previous language contained in § 89.3. Section 89a.3(b) contains language that was previously found in § 89.4(c).

Section 89a.4 (relating to general filing procedure) includes the requirements found previously in § 89.4 and establishes the specific filing procedures and requirements that need to be followed. Section 89a.4(a) now allows for the filing of forms by means of the Internet and other electronic mediums and sets forth the specific filing requirements for this method of filing forms.

Section 89a.5 (relating to letter of submission) includes the requirements found previously in § 89.5 and establishes the specific filing procedures and requirements being used by the Department for letter of submissions.

Section 89a.6 (relating to general contents of forms) includes the requirements found previously in §§ 89.11 and 89.17 and establishes the specific form contents and requirements necessary for review by the Department. Section 89a.6 also has a readability section added. This section is being added because the readability issue is a consumer protection.

Affected Parties

Insurance companies transacting business in this Commonwealth who must follow the Department's form and content requirements of form filings will be affected by the proposed rulemaking.

Fiscal Impact

State Government

The proposal will not have an impact on Department costs associated with monitoring industry compliance because this does not represent a major change from current policy.

General Public

The proposal is not expected to have any cost impact on premiums paid by consumers for insurance policies.

Political Subdivisions

The proposal has no impact on costs to political subdivisions.

Private Sector

The proposal will not have any major impact on private sector costs because this does not represent a major change from current policy.

Paperwork

This proposal imposes no additional paperwork requirements on the Department and modifies the paperwork requirements imposed on the insurance industry.

Effectiveness/Sunset Date

The proposal will become effective upon final adoption and publication in the *Pennsylvania Bulletin* as final rulemaking. No sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Pennsylvania Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to psalvato@ins.state.pa.us or faxed to (717) 772-1969.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2000, the Department submitted a copy of this proposal to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted proposal, 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 that material is available to the public upon request.

If IRRC has any objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by that portion. The

Regulatory Review Act (71 P. S. §§ 745.1—745.14) specifies detailed procedures for the agency, the Governor and the General Assembly to review these objections before final publication of the regulations.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: 11-184. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART IV. LIFE INSURANCE

CHAPTER 89. APPROVAL OF LIFE, ACCIDENT AND HEALTH INSURANCE

Subchapter A. REQUIREMENTS FOR ALL POLICIES AND FORMS

GENERAL PROVISIONS

§ 89.1. Definitions.

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

* * * * *

Advertisement—**[Printed or audio visual material used in newspapers, magazines, on radio or television, billboards or similar displays; descriptive literature or sales items, including but not limited to, circulars, leaflets, booklets, depictions, illustrations and form letters; prepared sales talks, presentations or material for use by agents or brokers and representations made by an agent or broker in connection therewith.] As defined in § 51.1 (relating to definitions).**

* * * * *

§ 89.3. **[Filing requirement] (Reserved).**

[(a) Policies, contracts, certificates, endorsements, riders, applications and related forms for life, accident and health insurance shall, prior to their use in this Commonwealth, be submitted to and formally approved by the Department for filing or approval, unless specifically excepted under section 354 of the act (40 P. S. § 477(b)).

(b) The filing letter accompanying a document which deviates from the guidelines in this chapter shall call attention to the deviation and explain how it meets the applicable requirements of the insurance laws of the Commonwealth.

(c) The submission of the documents shall be directed to the Director, Bureau of Regulation of Rates and Policies, Insurance Department, Harrisburg, Pennsylvania 17120.]

§ 89.4. **[General filing procedure] (Reserved).**

[(a) *Number of copies.* Policies and related forms being submitted for either tentative or formal approval shall be submitted in duplicate. One copy will be retained by the Department in its files and the other copy will be returned to the insurer with the action taken by the Department noted thereon.

(b) *By whom submitted.* Submissions should be made by the home office of the company, association, exchange or society rather than by local representatives, bureaus, company, associations or conferences, except if other arrangements have been specially made with and agreed to by the Department. Correspondence from the Department relating thereto and approvals or disapprovals of the submissions will be mailed to the home office of the company, association, exchange or society.

(c) *Out-of-State delivery.* Where other jurisdictions require prior review by the Department, a single copy of each form (in duplicate for a group accident and health form) which is to be issued by a domestic insurer for delivery only outside of this Commonwealth, or to be used with policies or contracts delivered outside of this Commonwealth, may be filed with the Department.

(d) *Tentative approval.* In order that a form may be given due consideration and defects therein pointed out and corrected before it is printed for formal submission, an insurer may submit printer's proofs of the form in two copies for tentative approval. If other than printer's proofs are submitted, the copies shall be clearly legible. Typewritten copies or copies prepared by a legible duplicating process may be submitted for documents to be used in connection only with single cases or when their use will be too infrequent to justify other preparation.]

§ 89.5. **[Letter of submission] (Reserved).**

[The letter of submission shall be in duplicate, signed by a representative of the company authorized to submit forms for filing or approval, and shall contain at least all of the following information:

(1) The identifying form number of each form submitted. If the form is for a document other than a policy or contract, the form number of the policy or contract form or forms with which it will be used shall be indicated or, if for more general use, the type or group of the forms shall be described.

(2) A brief statement of the coverage provided. If the form is a policy or contract submitted for approval, there shall be a statement appropriately identifying the specific type of coverage provided.

(3) If the form contains provisions, conditions or concepts which depart from those generally used by the industry and which could be construed as uncommon or unusual, there shall be a statement to this effect which will point out the specific purpose and use of the form, provision, condition or concept.

(4) If the form is a new one, not replacing an existing form, a statement to that effect.

(5) If the form is intended to supersede another approved or filed form, the form number of the approved or filed form which is to be superseded, the approval date of the form superseded and a statement of the material changes made. If the previous form has not yet been formally acted upon by the Department, the form number and submission date shall be given.

(6) If the form being filed for formal approval has previously been submitted for preliminary review, a reference to the previous submission and a statement setting out either that the formal filing agrees precisely with the previous submission, or the specific changes made in the form since the time of preliminary review.

(7) If a form is intended to replace a very recently approved form because of an error found in the approved form, the insurer shall, if the approved form has not been issued, return the approved form with a statement in the submission letter that the form has not been issued. The insurer may, under these circumstances, use the same form number on the submitted corrected form. If, however, the form has been issued, the insurer shall place a new form number on the corrected form and need not return the previously approved form.

(8) A statement as to whether the form has been approved or authorized for use by the insurance department of the state of domicile of the insurer or that the form is not to be used in such state. If approval or authorization for use was sought but not granted, the reason for the action should be stated. This paragraph does not apply to group insurance.]

PREPARATION OF FORMS

§ 89.11. **[General contents of forms] (Reserved).**

[(a) *Title and address.* A policy form shall recite the full corporate or legal title of the company, association, exchange or society. The official home office address (city and state or province) shall appear on the face, on the back or on the specifications page. If administrative offices are maintained elsewhere, the other addresses may also be shown. For filing purposes, other forms filed should be identified with the name of the company by rubber stamp or other appropriate means.

(b) *Form number.* A form shall be designated by a suitable form number which may consist of numbers or letters, or both, and which shall appear in the lower left corner of the first page. The form number should be adequate to distinguish the form in question from others used by the insurer without reference to edition or printing date. The fact that various benefits are included in the policy by rider need not be reflected in the policy form number.

(c) *Hypothetical data.* Blank spaces of each policy form, except an application, shall be filled in and completed with hypothetical data to indicate the purpose and use of the form. In individual life insurance cases, it is suggested that forms be filled in as of age 35, except for forms to be used to insure juveniles, in which case the use of age 10 is suggested.

(d) *Description of policy.* A brief description of the nature of the policy shall be printed at the top or bottom of the first page of the policy and on the filing back, if any, or on the specifications page (where window-type policies or policies in booklet form are used). In the case of policies in booklet form, the plastic cover, if bulky, need not be filed. A statement shall be included in the brief description indicating whether the policy is participating or nonparticipating.]

§ 89.17. **[Replacement of forms] (Reserved).**

[(a) A new filing which replaces a form previously approved shall state the form number of the form or forms to be replaced in each case.

(b) If an approved form or filing becomes obsolete and is no longer being issued, the insurer shall so inform the Department.]

§ 89.18. Miscellaneous requirements.

(a) **[Marketing procedures. If a form is submitted involving a method of marketing which departs from the direct agent approach or which employs a new concept, a complete explanation of the marketing procedures shall be provided, if requested by the Department.**

(b) *Countersignature of agent.* In submitting forms to the Department, consideration should be given to sections 501 and 610 of the act (40 P. S. §§ 631 and 730), which provide for the countersignature of an authorized resident agent for insurers not incorporated or organized under the laws of the Commonwealth but authorized to transact business herein. It shall be necessary to provide in the forms, when required by law, for the countersignature of the authorized resident agent or to explain its omission fully.

(c)] ***

[(d)] (b) ***

FORMAL APPROVAL

§ 89.21. **[General] (Reserved).**

[(a) Policy forms may be submitted for formal approval either after or without tentative approval.

(b) Policy forms submitted for formal approval should be submitted in the form intended for actual issue, generally, in printed form. If a policy form will not be printed, as in cases of single or infrequent use, it is important that the form, when reproduced, be clear and legible and in reasonably permanent form considering its probable period of use.]

§ 89.22. **[Changes in forms] (Reserved).**

[The Department may not consider for formal approval a form which has been modified by typewritten, ink or other insertions or deletions. The changes should be made by printed, multigraph or rubber stamp endorsement properly executed by an authorized representative of the company.]

§ 89.23. **[Documents shall be complete] (Reserved).**

[The Department is concerned with complete policies, endorsements, certificates, applications and related forms. If amendatory pages are submitted, the pages shall be properly executed as such. Otherwise, the complete revised form including the amendments shall be submitted with distinguishing form number.]

(*Editor's Note*: The following text is proposed to be added and is being printed in regular type to enhance readability.)

CHAPTER 89a. APPROVAL FOR LIFE INSURANCE, ACCIDENT AND HEALTH INSURANCE AND PROPERTY AND CASUALTY INSURANCE FILING AND FORM

GENERAL FILING PROVISIONS

PREPARATION OF FORMS

GENERAL FILING PROVISIONS

§ 89a.1. Definitions.

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

Department—The Insurance Department of the Commonwealth.

Filer—A person or entity submitting insurance or annuity forms to the Department.

Prominent type—Font or formatting techniques which differentiate selected text from other text. The term includes, for example, capital letters, contrasting color and underscoring.

§ 89a.2. Purpose.

This chapter provides the criteria for insurers to use in preparing specific form filings for Department review. Additionally, the chapter provides requirements for the general content of forms.

§ 89a.3. Form filings.

(a) *Submission of forms.* Policies, contracts, certificates, endorsements, riders, applications and related forms for life insurance and annuities, accident and health insurance, and property and casualty insurance, intended to be issued in this Commonwealth, shall be submitted to the Department in accordance with the following:

(1) Forms for life insurance and annuities issued by insurance companies shall be submitted for prior approval in accordance with section 354 of The Insurance Company Law of 1921 (40 P. S. § 477b), unless specifically excepted under section 354 of The Insurance Company Law of 1921. Forms for life insurance and annuities issued by fraternal benefit societies shall be submitted for prior approval in accordance with section 404(f) of the Fraternal Benefit Societies Code (40 P. S. § 1142-404(f)), unless specifically excepted under section 354 of The Insurance Company Law of 1921.

(2) Forms for accident and health insurance shall be filed in accordance with section 3 of the Accident and Health Filing Reform Act (40 P. S. § 3803).

(3) Forms for property and casualty insurance shall be submitted for prior approval in accordance with section 354 of The Insurance Company Law of 1921 unless specifically excepted under section 354 of The Insurance Company Law of 1921.

(b) *Out-of-State delivery.* When other jurisdictions require prior approval or filing by the Department of forms to be issued in those jurisdictions by domestic Pennsylvania insurers, the insurers may submit the forms to the Department for approval or filing for issuance outside of this Commonwealth only.

§ 89a.4. General filing procedure.

(a) *Number of copies.*

(1) Forms intended to be issued in this Commonwealth shall be submitted in duplicate for hard copy filings. Filers submitting forms by means of the Internet or other electronic medium shall submit one electronic copy. One copy of each form may be retained by the Department.

(2) One copy of a form intended to be issued only outside this Commonwealth shall be submitted.

(b) *Clearly legible forms.* Forms intended to be issued in this Commonwealth shall be submitted in clearly legible form.

(c) *Filing fee.* A submission of forms shall include any filing fee as required by section 212 of The Insurance Department Act of 1921 (40 P. S. § 50).

(d) *Self-addressed stamped return envelope.* A hard copy submission of forms shall include a self-addressed envelope bearing enough postage to permit the return to the filer of the duplicate copies of the forms or submission letter, or both.

(e) *Separate submissions.* Forms for each line of insurance, life and annuities, accident and health, and property and casualty, shall be submitted separately to their respective bureaus within the Department: the Bureau of Life Insurance, the Bureau of Accident and Health Insurance, and the Bureau of Property and Casualty Insurance.

(f) *By whom submitted.* A submission of forms shall be made by the home office or an administrative office of the insurer, or by an attorney at law representing the insurer, unless the following applies:

(1) The submission includes, or is preceded by, a document from the insurer specifically authorizing the filer to make the submission on the insurer's behalf.

(2) The submission is made by a rating organization, licensed in this Commonwealth, on behalf of its members and subscriber companies.

§ 89a.5. Letter of submission.

The letter of submission shall be in duplicate for hard copy filings, shall clearly identify the insurer whose name appears on the forms, and shall be sent to the appropriate bureau director in the Office of Rate and Policy Regulation under the requirements of § 89a.4(e) (relating to general filing procedure). Only one copy of the letter of submission is necessary for Internet or other electronic submissions. The letter shall contain at least all of the following information for each form submitted:

(1) The identifying form number. Additionally, if the form is other than a policy, contract or certificate, the form number of the policy, contract or certificate with which it will be used, and the date approved by or filed with the Department, or if not approved or filed, the date last submitted to the Department, or if for more general use, the type or group of the forms shall be described. If the form is a group certificate, the form number of the group master policy with which it will be used, and the date the group master policy was approved by or filed with the Department, or if not approved or filed, the date last submitted to the Department, or if the certificate is for general use, the types of group master policies with which it will be used.

(2) A designation of the general type of form submitted; for example, policy, contract, certificate, rider, endorsement, amendment, agreement, application, insert page or other general type.

(3) A brief statement of the specific type of insurance or annuity benefit coverage provided by the form. If the form does not provide insurance or annuity benefit coverage, a brief statement of the specific purpose of the form.

(4) If the form contains any provision, condition, feature or concept that departs from those generally used by the industry and that could be construed as new, innovative, uncommon or unusual, a statement to this effect and an explanation of the specific purpose of the provision, condition, feature or concept.

(5) An explanation of the marketing method, if the method of marketing of the form departs from the direct sales approach or employs a new concept.

(6) If the form is a new one, not replacing an existing form, a statement to that effect.

(7) If the form is intended to replace another form, the form number of the form to be replaced, the date that the form was approved by or filed with the Department, and a statement of the changes made to the form to be replaced.

(8) For group insurance policy forms, a brief description of the type of entity to which the group policy will be issued; for example, discretionary group, association, out-of-State trust.

(9) The amount of the filing fee included with the submission or the amount that will be billed to the insurer.

PREPARATION OF FORMS

§ 89a.6. General contents of forms.

(a) *Name and address.* Each form shall state the full corporate or legal name of the company, association, exchange or society. However, the name need appear for filing purposes only on a rider, endorsement, amendment, agreement or insert page. If added for filing purposes only, the name may be added by any legible means. If more than one insurer is using an application, a multicompany application providing for the designation of the applicable insurer and available coverages, if applicable, may be used. A policy, contract or fraternal certificate shall state a current address for the insurer, consisting of at least a city and state or province.

(b) *Form number.* Each form shall contain a form number consisting of numbers, letters, or both. The form number shall be adequate to distinguish the form from all others used by the insurer. The form number may be the same as that of a form to be replaced. However, if the form to be replaced was approved by or filed with the Department, it may not have been issued in this Commonwealth and shall be withdrawn from any issuance in this Commonwealth.

(c) *Description or caption.* Each form, except an insert page, shall contain a brief description or descriptive caption. This brief description or descriptive caption shall appear in prominent type on the first or cover page of the form, or, in the case of a policy, contract or certificate, on the specifications page if the brief description or descriptive caption is visible without opening the form. The brief description or descriptive caption shall contain at least the following information:

(1) A designation of the general type of the form, that is, policy, contract, certificate, rider, endorsement, amendment, agreement, application or other general type.

(2) A designation of the specific type of insurance or annuity coverage provided, or if the form does not provide insurance or annuity coverage, a designation of the purpose of the form.

(3) If the form is a policy, contract or certificate, an indication of whether the form is participating or nonparticipating.

(d) *Required statement.* A rider, endorsement, amendment or agreement designated by another term in its brief description or descriptive caption shall state that it is "attached to and made part of the (policy, contract or certificate)," as appropriate.

(e) *Hypothetical data.* The blank spaces of each form, except an application, shall be filled in with hypothetical data to indicate the purpose of the form. This data shall be realistic and consistent with the other contents of the form.

(f) *Readability.* A form:

(1) Shall be written in simple words and with sentences as short as possible. The words and sentences should convey meanings clearly and directly. Words should be used in their commonly understood senses.

(2) Shall contain a definition or explanation of terminology that would not be ordinarily understood by a person of average intelligence.

(3) May not contain inconsistent or contradictory language or provisions.

(4) That provides insurance coverage, shall accurately and completely explain the coverage and conditions of coverage.

[Pa.B. Doc. No. 00-1507. Filed for public inspection September 1, 2000, 9:00 a.m.]

STATE BOARD OF EDUCATION

[22 PA. CODE CHS. 14 AND 342]

Special Education Services and Programs

The State Board of Education (Board) proposes to amend Chapter 14 (relating to special education services and programs) and delete Chapter 342 (standards relating to special education services and programs) to read as set forth in Annex A, under the authority of the Public School Code of 1949 (24 P. S. §§ 1-101—27-2702-B).

This proposed rulemaking establishes procedures for the identification of students who are disabled and in need of special education services and programs and set forth requirements and procedures for the delivery of those services and programs.

Purpose

The proposed revisions to Chapter 14 are designed to align the chapter with the Federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. §§ 1400—1419), as amended June 4, 1997, and related Federal regulations, and applicable provisions of Pennsylvania statute and court decisions.

The Board determined that many areas in the Federal rules are sufficiently detailed to provide for effective implementation and, therefore, are proposed to be incorporated by reference.

Additional language is found in this proposal where: 1) Federal rules require greater detail for implementation; 2) court decisions applicable to the Commonwealth

require regulations; and 3) the current practice in special education in this Commonwealth requires provisions in the regulations.

Proposed Chapter 14 includes provisions currently in Chapter 342 necessary for the implementation of special education programs and services. As a result, Chapter 342 is proposed for deletion.

This rulemaking on Chapter 14 will become a part of the eligibility grant application to the United States Department of Education under IDEA ensuring the provision of a free appropriate public education to students and children with disabilities. Copies of the eligibility grant application will be made available to the public through the Department of Education.

In separate rulemaking, the Board has proposed removing provisions for special education for gifted students from current Chapters 14 and 342 and establishing them in a separate new Chapter 16 (special education for gifted students). Those regulations are proceeding in the final-form phase of the regulatory review process and will be published shortly.

Requirements of the Proposal

The proposed revisions to Chapter 14 adopt terminology, establish the purpose, specify timelines for development and implementation of Individualized Education Program (IEP) plans, maintain requirements regarding extended school year services, require behavior support in addition to the Federal requirements and govern facilities in which special education is to be delivered. Major elements of the proposed rules include:

Alignment with Applicable Statutes—Proposed revisions to Chapter 14 affirm the Board's intent that children with disabilities be provided quality special education services and programs consistent with Federal and Commonwealth statute. The proposal defines terms as they apply to children with disabilities and the responsibilities of schools to provide a free appropriate public education for these students. See §§ 14.102 and 14.103 (relating to purpose; and terminology related to Federal regulations). To accomplish this, all sections of current Chapter 14 are proposed for deletion with the proposed text beginning at § 14.101 (relating to definitions).

School District and Intermediate Unit Plans—Section 14.104 (relating to educational plans) delegates decisions regarding the format, content and timeline for submission of school district and intermediate unit plans to the Secretary. Submission of school district plans is consistent with the submission of strategic planning as required under Chapter 4 (relating to academic standards and assessment). Intermediate units' submission of special education plans is consistent with Federal regulatory duties and with the provision of services to preschool children served under Early Intervention Service System Act (11 P. S. §§ 875-101—875-503).

Child Find and Screening—Proposed revisions to Chapter 14 identify the responsibilities of school districts to find students who may need special services and programs as prescribed by IDEA for school aged children. Proposed § 14.121 (relating to child find) retains duties to provide public notice on a periodic basis to ensure that parents and others are able to assist in this effort. The requirement to screen students who are thought to be disabled is retained in the revisions. See § 14.122 (relating to screening). The proposal provides options to school districts in carrying out the child find responsibility through the use of instructional support teams or other procedures designed locally. See § 14.122.

Evaluation and Reevaluation—Proposed § 14.123 (relating to evaluation) retains the current total number of school days for completing the evaluation process, but eliminate intermediate timelines. In addition, proposed § 14.123 and § 14.124 (relating to reevaluation) require that evaluations and reevaluations of students include a certified school psychologist, when appropriate, to reflect Federal requirements and remove the current requirement that school psychologists participate in all evaluations regardless of student needs. Consistent with Federal regulations, 34 CFR 300.536 (relating to reevaluations), this proposal requires reevaluation every 3 years or sooner if requested by a parent or local education agency. See § 14.124. The current requirement for reevaluation is every 2 years. A 2-year reevaluation timeline for students who are mentally retarded and protected by the *PARC v. Commonwealth* Consent Decree (334 F. Supp. 1257 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972)) is retained in § 14.124.

Review of Evaluation Report—General timelines for IEP meetings are required in the Federal rules. Proposed § 14.131 (relating to IEP) retains the current provision for parents to receive a copy of the evaluation report 10 days prior to the IEP team meeting. The 10-day review period may be waived by the parent.

Educational Placement—Under Federal regulations, educational placement for students with disabilities must be determined on a child-by-child basis. Proposed revisions to Chapter 14 retain the application of caseload maximums from Chapter 342 which limit the number of students assigned to any special education teacher. See § 14.142 (relating to caseload for special education). Class-size limitations—the number of students in a class at any one time—are proposed for deletion. In proposed § 14.141, school districts are permitted to develop caseloads other than those found in § 14.142 upon Department approval. The Department's intervention is required if the district developed caseload is determined to be inadequate by specified indicators in § 14.141. Changes in caseloads for speech therapy in this proposal are designed to clarify current confusion in their implementation in § 14.142.

Disciplinary Placements—Revisions to Chapter 14 rules retain the number of days a student with disabilities may be suspended in a school year, the number of consecutive days of suspension constituting a change in placement and the additional protections of students identified as mentally retarded as required by the *PARC v. Commonwealth* Consent Decree. See § 14.143 (relating to disciplinary placements).

Early Intervention—Revisions to Chapter 14 retain rules governing early intervention child find, public awareness and screening. To reflect current practice in the field, the frequency for reevaluation of early intervention children in these proposed rules is changed from once every year to once every 2 years or sooner if requested by a parent or local education agency. See § 14.153 (relating to evaluation). Proposed § 14.154 requires the IEP to be reviewed annually rather than semiannually to reflect practice in the field. The right of parents to request IEP meetings more frequently is retained. Proposed §§ 14.156—14.158 (relating to system of quality assurance; exit criteria; and data collection and confidentiality) address the additional responsibilities for the early intervention system of quality assurance of services, exit criteria and data collection and confidentiality required by the Early Intervention Service System Act.

Levels of Due Process—Current requirements for prehearing conferences, due process hearings and appeals are retained. Sections 14.161 and 14.162 (relating to prehearing conferences; and impartial due process hearings and expedited due process hearing) include new duties with regard to expedited hearings and dissemination of electronic record of transcripts and decisions as required in Federal statute and regulation.

Representation in Due Process Hearings—Based on its review under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506), on August 8, 2000, the Office of Attorney General requested that § 14.162(i) be changed prior to publication of the proposal in the *Pennsylvania Bulletin* to make it clear that both under Federal statute and regulations and under State law, licensed attorneys only may represent parents in due process proceedings. Federal statute provides for parties to be accompanied and advised by individuals with special knowledge or training in special education but those individuals may not perform any functions that constitute the practice of law. Section 14.162(i) as proposed in Annex A clarifies the roles of legal representation and the participation of other knowledgeable persons in due process hearings

Other Provisions—These include the retention of rules governing facilities for special education currently found in Chapter 342 (see § 14.144 (relating to facilities)); the elimination of provisions for experimental programs which have not been used by the field; and the elimination of rules governing course completion, diplomas and planned courses now found in Chapter 4.

Affected Parties

Students who need or may need special education services and programs will be affected by this proposal. The proposal also will affect parents and guardians of those students by guaranteeing their participation in the process of determining services and programs that best meet the needs of their child. School districts and intermediate units will be affected through compliance with the regulations.

Cost and Paperwork Estimates

This proposal provides procedures for consistent implementation of existing Federal and Commonwealth law and regulation. Adopting these revisions to Chapter 14 may result in savings by changing the reevaluation requirement from every 2 years to every 3 years (except for students who are mentally-retarded). This change could result in an approximate annual Statewide savings of $ 4.75 million for school districts.

School districts will experience additional costs over time in complying with new Federal requirements (such as, the requirement that regular education teachers participate in IEP meetings) that might minimize the potential savings previously described. New Federal rules have created additional paperwork requirements including regarding student goals and benchmarks in the IEP, and the more frequent issuance of procedural safeguards notices related to IEP team meetings, reevaluation and in certain disciplinary situations.

Effective Date

This proposal will become effective upon final publication in the *Pennsylvania Bulletin*.

Sunset Date

The effectiveness of the regulations in Chapter 14 will be reviewed by the Board every 4 years, in accordance with the Board's policy and practice respecting all regulations promulgated by the Board. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2000, the Board submitted a copy of this proposal to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. In addition to submitting the proposal, the Board provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposal, it will notify the Board 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 amendments, by the Board, the General Assembly and the Governor of objections raised.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Peter H. Garland, Executive Director of the State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333 within 30 days following publication in the *Pennsylvania Bulletin*. Persons needing additional information regarding this proposal may contact Peter H. Garland (717) 787-3787. Copies of the proposal are available by calling (717) 787-3787, the TDD at (717) 787-7367 or by accessing the State Board's website at http://www.pde.psu.edu/regs/regulations.html.

The Federal regulations to be adopted by reference may be found at http://www.ideapractices.org/lawandregs.htm or http://www.cisc.k12.pa.us/federalregister/, or by requesting a copy from Dr. Garland.

Alternative formats of the proposal (such as, braille, large print, cassette tape) are available to members of the public upon request to Dr. Garland at the telephone numbers and address previously listed. Public comment is welcomed in alternative formats, such as Braille or taped comments and telephone comments from persons with disabilities. Persons who are disabled and wish to submit comments by telephone should call Nancy Zeigler (717) 783-6134 or TDD (717) 787-7367.

In addition, public hearings on the proposal will be conducted by the Board. Hearings will begin at 9 a.m. and conclude at 4 p.m. Dates and sites are as follows:

September 15, 2000
Harrisburg Office of PA Training and Technical Assistance Network (formerly Central Instructional Support Center)
Suite 600
6340 Flank Drive
Harrisburg, PA

September 21, 2000
Philadelphia Office of PA Training and Technical Assistance Network (formerly Eastern Instructional Support Center)
Main Conference Room
200 Anderson Road
King of Prussia, PA

September 25, 2000
Hampton Banquet Hall (across from Pittsburgh Office of PA Training and Technical Assistance Network (formerly Western Instructional Support Center))
5416 Route 8
Gibsonia, PA

Persons wishing to testify at any of the hearings should contact the Board office no later than 4 p.m. on September 12, 2000, at the address and telephone numbers given in this Preamble. Testimony will be scheduled on a first-come, first serve basis.

Twenty-five copies of the oral testimony at the time of presentation are requested.

Persons unable to appear and present testimony at a hearing are encouraged to submit written comments to the Board. Written and alternative formats of comments will be afforded the same thoughtful consideration by the Board as testimony.

Persons with disabilities needing alternative means of providing public comment may make arrangements by calling Dr. Garland.

PETER H. GARLAND,
Executive Director

Fiscal Note: 6-270. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 14. SPECIAL EDUCATION SERVICES AND PROGRAMS

(*Editor's Note:* The State Board of Education is proposing to delete the current text of §§ 14.1—14.8, 14.21—14.25, 14.31—14.39, 14.41—14.45, 14.51—14.56, 14.61—14.68 and 14.71—14.74, which appear at 22 Pa. Code pages 14-4 to 14-46, serial pages (256360), (229113), (242011) to (242014), (261009) to (261012), (229119) to (229124), (242017) to (242018), (256361) to (256364), (249383) to (249384), (252451) to (252452), (256365) to (256367), (202979) to (202990), (249391) to (249392), (222351), (256369) to (256370) and (202995) to (202996). The following text is new and printed in regular type to enhance readability.)

GENERAL PROVISIONS

CHILD FIND, SCREENING AND EVALUATION

IEP

EDUCATIONAL PLACEMENT

EARLY INTERVENTION

PROCEDURAL SAFEGUARDS

GENERAL PROVISIONS

§ 14.101. Definitions.

In addition to the definitions in § 14.103 (relating to terminology related to Federal regulations), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Early Intervention Services System Act (11 P. S. §§ 875-101—875-503).

Agency—An intermediate unit, school district, approved private school, State-operated program or facility or other public (excluding charter schools under 24 P. S. §§ 17-1701-A—17-1732-A) or private organization providing educational services to children with disabilities or providing early intervention services.

Age of beginners—The minimum age established by the school district board of directors for admission to the district's first grade under § 11.15 (relating to admission of beginners).

Department—The Department of Education of the Commonwealth.

Developmental areas—The term includes cognitive, communicative, physical, social/emotional and self-help.

Developmental delay—A child is considered to have a developmental delay when one of the following exists:

(i) The child's score, on a developmental assessment device, on an assessment instrument which yields a score in months, indicates that the child is delayed by 25% of the child's chronological age in one or more developmental areas.

(ii) The child is delayed in one or more of the developmental areas, as documented by test performance of 1.5 standard deviations below the mean on standardized tests.

ESY—Extended school year.

Early intervention agency—An intermediate unit, school district or licensed provider which has entered into a mutually agreed upon written arrangement with the Department to provide early intervention services to eligible young children in accordance with the act.

Early intervention services—An appropriate educational program of specially designed instruction and related services to meet the needs of eligible young children and address the strengths and needs of the family to enhance the child's development. The need for the services and programs shall be in one or more of the following areas: physical, sensory, cognitive, communicative, social-emotional and self-help.

Eligible young child—A child who is less than the age of beginners and at least 3 years of age and who meets the criteria at 34 CFR 300.7 (relating to a child with a disability).

IEP—Individualized education program.

IST—Instructional support team.

MDT—Multidisciplinary team.

Mutually agreed-upon written arrangement—An agreement between the Department and an intermediate unit, school district or other public or private agency to provide early intervention services that comply with this chapter and the act.

Secretary—The Secretary of the Department.

§ 14.102. Purpose.

(a) It is the intent of the Board that children with disabilities be provided with quality special education services and programs. The purposes of this chapter are to serve the following:

(1) To adopt Federal regulations by incorporation by reference to satisfy the statutory requirements under the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400—1419) and to ensure that:

(i) Children with disabilities have available to them a free appropriate public education which is designed to enable the student to participate fully and independently in the community, including preparation for employment or higher education.

(ii) The rights of children with disabilities and parents of these children are protected.

(2) To adopt, except as expressly otherwise provided in this chapter, the requirements of 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) as published at 64 FR 12418—12469 (March 12, 1999). The following sections are incorporated by reference.

(i) 34 CFR 300.4—300.6.

(ii) 34 CFR 300.7(a) and (c).

(iii) 34 CFR 300.8—300.24.

(iv) 34 CFR 300.26.

(v) 34 CFR 300.28 and 300.29.

(vi) 34 CFR 300.121—300.125.

(vii) 34 CFR 300.138 and 300.139.

(viii) 34 CFR 300.300.

(ix) 34 CFR 300.302—300.309.

(x) 34 CFR 300.311(b)(c).

(xi) 34 CFR 300.313.

(xii) 34 CFR 300.320 and 300.321.

(xiii) 34 CFR 300.340.

(xiv) 34 CFR 300.342—300.346.

(xv) 34 CFR 300.347 (a), (b) and (d).

(xvi) 34 CFR 300.348—300.350.

(xvii) 34 CFR 300.403.

(xviii) 34 CFR 300.450—300.462.

(xix) 34 CFR 300.500—300.515.

(xx) 34 CFR 300.519—300.529.

(xxi) 34 CFR 300.531—300.536.

(xxii) 34 CFR 300.540—300.543.

(xxiii) 34 CFR 300.550—300.553.

(xxiv) 34 CFR 300.560—300.574(a) and (b).

(xxv) 34 CFR 300.576.

(3) To specify how the Commonwealth will meet its obligations to suspected and identified children with disabilities who require special education and related services to reach their potential.

(4) To provide to the Commonwealth, through the Department, general supervision of services and programs provided under this chapter.

(b) To provide services and programs effectively, the Commonwealth will delegate operational responsibility for school aged students to its school districts to include the provision of child find duties prescribed by 34 CFR 300.125(a) (relating to child find).

§ 14.103. Terminology related to Federal regulations.

For purposes of interfacing with 34 CFR Part 300, the following term applies, unless the context clearly indicates otherwise:

Local educational agency—Where the Federal provision uses the term "local educational agency," for purposes of this chapter, the term means an intermediate unit, school district, State operated program or facility or other public organization providing educational services to children with disabilities or providing early intervention services.

§ 14.104. Educational plans.

(a) Each school district shall develop a special education plan every 3 years consistent with the 3-year review cycle of the strategic plan of the school district under § 4.13 (relating to strategic plans). The Secretary will prescribe the format, content and time for submission of the special education plan.

(b) Each school district's special education plan shall specify special education programs that operate in the district and those that are operated in the district by the intermediate units, area vocational technical schools and other agencies.

(c) Each school district's special education plan shall include procedures for the education of all students with a disability who are residents of the district including those receiving special education in approved private schools and students with a disability who are nonresidents placed in private homes or institutions in the school district under sections 1305, 1306 and 1306.2 of the Public School Code of 1949 (24 P. S. §§ 13-1305, 13-1306 and 13-1306.2).

(d) Each intermediate unit shall prepare annually and submit to the Secretary a special education plan specifying the special education services and programs to be operated by the intermediate unit. The Secretary will prescribe the format, content and time for submission of the intermediate units' plans.

(e) Each early intervention agency shall develop an early intervention special education plan every 3 years.

(f) The Department will approve plans in accordance with the following criteria:

(1) Services and programs are adequate in quantity and variety to meet the needs of students identified as children with disabilities within the school district or intermediate unit or eligible young children within the early intervention agency.

(2) The full range of services and programs under this chapter are available to children with disabilities and eligible young children.

(3) The plan meets the specifications defined in this chapter and the format, content and time for submission of the agency plans prescribed by the Secretary.

(g) Portions of the plans that do not meet the criteria for approval will be disapproved. Prior to disapproval, Department personnel will discuss disapproved portions of the plan and suggest modifications with appropriate intermediate unit or school district personnel. Portions of the plan that are not specifically disapproved will be deemed approved.

(h) When a portion of an intermediate unit, school district or early intervention plan is disapproved, the Department will issue a notice specifying the portion of the plan disapproved, and the rationale for the disapproval and the opportunity for a hearing under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to the General Rules of Administrative Practice Procedure). If requested, the Department will convene a hearing within 30-calendar days after the receipt of the request. The Department will render a decision within 30-calendar days following the hearing.

CHILD FIND, SCREENING AND EVALUATION

§ 14.121. Child find.

(a) In addition to the requirements incorporated by reference in 34 CFR 300.125(a)(i) (relating to child find), each school district shall adopt and use a public outreach awareness system to locate and identify children thought to be eligible for special education within the school district's jurisdiction.

(b) Each school district shall conduct awareness activities to inform the public of its early intervention and special education services and programs and the manner in which to request services and programs.

(c) Each school district shall provide annual public notification, published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the school district of child identification activities and of the procedures followed to ensure confidentiality of information pertaining to students with disabilities or eligible young children in accordance with this chapter.

§ 14.122. Screening.

(a) Each school district shall establish a system of screening to accomplish the following:

(1) Identify and provide initial screening and direct intervention for students prior to referral for a special education evaluation.

(2) Provide peer support for teachers and other staff members to assist them in working effectively with students in the general education curriculum.

(3) Conduct hearing and vision screening in accordance with section 1402 of the Public School Code of 1949 (24 P. S. § 14-1402) for the purpose of identifying students with hearing or vision difficulty so that they can be referred for assistance or recommended for evaluation for special education.

(4) Identify students who may need special education services and programs.

(b) Each school district shall implement a comprehensive screening process. School districts may implement instructional support according to Department guidelines or an alternative screening process. School districts which elect not to use instructional support for screening shall develop and implement a comprehensive screening process that meets the requirements specified in subsections (a) and (c).

(c) The screening process shall include:

(1) For students with academic concerns, an assessment of the student's functioning in the curriculum including curriculum-based and performance-based assessment.

(2) For students with behavioral concerns, a systematic observation of the student's behavior in the classroom or area in which the student is displaying difficulty.

(3) An intervention based on the results of the assessments under paragraph (1) or (2).

(4) An assessment of the student's response to the intervention.

(5) A determination as to whether the student's assessed difficulties are due to a lack of instruction or limited English proficiency.

(6) A determination as to whether the student's needs exceed the functional ability of the regular education program to maintain the student at an appropriate instructional level.

(d) If screening activities have produced little or no improvement within 60 school days after initiation, the student shall be formally referred for evaluation under § 14.123 (relating to evaluation).

(e) Screening activities do not serve as a bar to the right of a parent to request an evaluation, at any time, including prior to or during the conduct of screening activities.

§ 14.123. Evaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.534(a)(1) (relating to determination of eligibility), shall include a certified school psychologist when appropriate.

(b) In addition to the requirements incorporated by reference at 34 CFR 300.531—300.535, the initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60-school days after the agency receives written parental consent.

§ 14.124. Reevaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.536 (relating to reevaluation), shall include a certified school psychologist where appropriate.

(b) In addition to the requirements incorporated by reference at 34 CFR 300.536, a reevaluation report shall be provided to the parents within 60 school days from the date that the request for reevaluation was received from the parent or teacher, or from the date that a determination is made by the agency that conditions warrant a reevaluation.

(c) Students identified as mentally retarded shall be reevaluated at least once every 2 years.

IEP

§ 14.131. IEP.

(a) Notwithstanding the requirements incorporated by reference, the following provisions apply to IEPs:

(1) Copies of the comprehensive evaluation report shall be disseminated to the parents at least 10 days prior to the meeting of the IEP team. A parent may waive this 10-day rule.

(2) If a student with a disability moves from one school district in this Commonwealth to another, the new district shall implement the existing IEP to the extent possible or shall provide the services and programs specified in an interim IEP agreed to by the parents until a new IEP is developed and implemented and until the completion of due process proceedings under this chapter.

(3) If a student with a disability moves into a school district in this Commonwealth from another state, the new school district may treat the student as a new enrollee and place the student into regular education and it is not required to implement the student's existing IEP.

(4) Every student receiving special education and related services provided for in an IEP developed prior to _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.) shall continue to receive the special education and related services under that IEP subject to the terms, limitations and conditions set forth in law.

(b) In addition to the requirements incorporated by reference in 34 CFR 300.29, 300.344(b) and 300.347(b) (relating to transition services; IEP team; and content of IEP), each school district shall designate persons responsible to coordinate transition activities.

§ 14.132. ESY.

This section sets forth the standards for determining whether a student with disabilities requires ESY as part of the student's program.

(1) At each IEP meeting for a student with disabilities, the school districts shall determine whether the student is eligible for ESY services and if so, make subsequent determinations about the services to be provided.

(2) In considering whether a student is eligible for ESY services, the IEP team shall consider the following factors, however, no single factor shall be considered determinative:

(i) Regression—whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occurs as a result of an interruption in educational programming.

(ii) Recoupment—whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming.

(iii) Whether the student's difficulties with regression and recoupment make it unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives.

(iv) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.

(v) The extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers.

(vi) The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process.

(vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities.

(3) Reliable sources of information regarding a student's educational needs, propensity to progress, recoupment potential and year-to-year progress may include the following:

(i) Progress on goals in consecutive IEPs.

(ii) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.

(iii) Reports by parents of negative changes in adaptive behaviors or in other skill areas.

(iv) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.

(v) Observations and opinions by educators, parents and others.

(vi) Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

(4) The need for ESY services will not be based on any of the following:

(i) The desire or need for day care or respite care services.

(ii) The desire or need for a summer recreation program.

(iii) The desire or need for other programs or services which, while they may provide educational benefit, are not required to ensure the provision of a free appropriate public education.

§ 14.133. Behavior support.

(a) Positive rather than negative measures shall form the basis of behavior management programs. Behavior management programs include a variety of techniques to develop and maintain skills that will enhance an individual student's or young child's opportunity for learning and self-fulfillment. The types of intervention chosen for a particular student or young child shall be the least intrusive.

(b) Not withstanding the requirements incorporated by reference in 34 CFR 300.24(b)(9)(vi), (13)(v), 300.346(a)(2)(i) and (d) and 300.520(b) and (c) (relating to related services; development, review, and revision of IEP; and authority of school personnel), with regard to a child's behavior, the following words and terms when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Aversive techniques—Deliberate activities designed to establish a negative association with a specific behavior.

Behavior management—The development, change and maintenance of selected behaviors through the systematic application of behavior change techniques.

Positive techniques—Methods which utilize positive reinforcement to shape a student's behavior, ranging from the use of positive verbal statements as a reward for good behavior to specific tangible rewards.

Restraints—Devices and techniques designed and used to control acute or episodic aggressive behaviors or to control involuntary movements or lack of muscular control due to organic causes or conditions. The term includes physical and mechanical restraints.

(c) Restraints to control acute or episodic aggressive behavior may be used only when the student is acting in

a manner as to be a clear and present danger to himself, to other students or to employes, and only when less restrictive measures and techniques have proven to be or are less effective. The use of restraints to control the aggressive behavior of an individual student shall cause a meeting of the IEP team to review the current IEP for appropriateness and effectiveness. The use of restraints may not be included in the IEP for the convenience of staff, as a substitute for an educational program, or employed as punishment.

(d) Mechanical restraints, which are used to control involuntary movement or lack of muscular control of students when due to organic causes or conditions, may be employed only when specified by an IEP and as determined by a medical professional qualified to make the determination, and as agreed to by the student's parents. Mechanical restraints shall prevent a student from injuring himself or others or promote normative body positioning and physical functioning.

(e) The following aversive techniques of handling behavior are considered inappropriate and may not be used by agencies in educational programs:

(1) Corporal punishment.

(2) Punishment for a manifestation of a student's disability.

(3) Locked rooms, locked boxes or other locked structures or spaces from which the student cannot readily exit.

(4) Noxious substances.

(5) Deprivation of basic human rights, such as withholding meals, water or fresh air.

(6) Suspensions constituting a pattern under § 14.143(a) (relating to disciplinary placements).

(7) Treatment of a demeaning nature.

(8) Electric shock.

(f) Agencies have the primary responsibility for ensuring that behavior management programs are in accordance with this chapter, including the training of personnel for the use of specific procedures, methods, and techniques, and for having a written policy on the use of behavior management techniques and obtaining parent consent prior to the use of highly restraining or intrusive procedures.

(g) In accordance with their plans, agencies may convene human rights committees to oversee the use of restraining or intrusive procedures and restraints.

EDUCATIONAL PLACEMENT

§ 14.141. Educational placement.

Notwithstanding the requirements incorporated by reference with regard to educational placements:

(1) The following words and terms, when used in § 14.142 (relating to caseload for special education), have the following meanings:

Autistic support—Services for students with the disability of autism.

Blind and visually impaired support—Services for students with the disability of visual impairment, including blindness.

Deaf and hard of hearing impaired support—Services for students with the disabilities of deafness or hearing impairment.

Emotional support—Services for students with the disability of emotional disturbance.

Full-time—Special education classes provided for the entire school day, with opportunities for participation in nonacademic and extracurricular activities to the maximum extent appropriate, which may be located in or outside of a regular school.

Itinerant—Regular classroom instruction for most of the school day, with special education services and programs provided by special education personnel inside or outside of the regular class for part of the school day.

Learning support—Services for students with a disability whose primary identified need is academic learning.

Life skills support—Services for students with a disability focused primarily on the needs of students for independent living.

Multiple disabilities support—Services for students with multiple disabilities.

Part-time—Special education services and programs outside the regular classroom but in a regular school for most of the school day, with some instruction in the regular classroom for part of the school day.

Physical support—Services designed primarily to meet the needs of students with the disabilities of orthopedic or other health impairment.

Resource—Regular classroom instruction for most of the school day, with special education services and programs provided by special education personnel in a resource room for part of the school day.

Speech and language support—Services for students with the disability of speech and language impairment.

(2) Each school district shall establish caseloads for special education and submit a caseload chart to the Department for approval as part of their special education plan consistent with § 14.104 (relating to educational plans). The caseload and supporting documents submitted shall:

(i) Ensure the ability of assigned staff to provide the services required in each student's IEP.

(ii) Apply to special education classes operated in the school district.

(iii) Provide a justification for why the policy deviates from the recommended caseloads in § 14.142 (relating to caseload for special education), if applicable.

(3) The caseloads of the district operating the program or in which an intermediate unit operates a program in the district, shall be followed when a class operated in a district contains children from more than one district. Caseloads of an intermediate unit operated program when student educational placements are located in other than a school district building and which serve students from more than one school district, shall adhere to the referring district caseload chart with the lowest number of student enrollment for the class.

(4) Caseloads are not applicable to approved private schools.

(5) The Department may impose caseloads on agencies when the caseload is determined to be inadequate. The Department will consider at least the following indicators when making the determination:

(i) Graduation rates of students with a disability.

(ii) Drop-out rates of students with a disability.

(iii) Postsecondary transition of students with a disability.

(iv) Rate of grade level retentions.

(v) Statewide and district-wide assessment results as prescribed by §§ 4.51 and 4.52 (relating to State assessment system; and local assessment system).

(6) Each school district shall establish an age range for elementary school classes (grades K—6) and secondary school classes (grades 7—12) and submit to the Department an age range chart for approval as part of their special education plan consistent with § 14.104. School district age range shall:

(i) Ensure the ability of assigned staff to provide the services required in each student's IEP.

(ii) Apply to special education classes operated in the school district.

(iii) Provide a justification for any deviation in the age range from these recommended age ranges: no greater difference than 3 years in chronological age from the youngest to the oldest student in elementary school (grades K—6); no greater difference than 4 years in chronological age from the youngest to the oldest student in secondary school (grades 7—12).

§ 14.142. Caseload for special education.

This chart presents the recommended maximum caseload allowed on a single teacher's roll for each school district.

Type of Service	*Itinerant*	*Resource*	*Part-time*	*Full-time:*
Learning Support	50	20	15	12
Life Skills Support	20	20	15	12 Elementary 15 Secondary
Emotional Support	50	20	15	12
Deaf and Hearing Impaired Support	50	15	10	8
Blind or Visually Impaired Support	50	15	15	12
Speech and Language Support	65			8
Physical Support	50	15	12	12
Autistic Support	12	8	8	8
Multiple Disabilities Support	12	8	8	8

§ 14.143. Disciplinary placements.

(a) Notwithstanding the requirements incorporated by reference in 34 CFR 300.519(b) (relating to change of placement for disciplinary removals), a series of nonconsecutive removals from school occurring on more than 15 school days in a school year will be considered a pattern so as to be deemed a change in educational placement.

(b) A removal from school is a change of placement for a student who is identified with mental retardation, except if the student's actions are consistent with 34 CFR 300.520(a)(2)(i) and (ii) (relating to authority of school personnel). For this purpose the definitions in 34 CFR § 300.520(d) apply.

§ 14.144. Facilities.

The comparability and availability of facilities for students with a disability shall be consistent with the approved intermediate unit or school district plan, which shall provide, by description of policies and procedures, the following:

(1) Students with disabilities will be provided appropriate classroom space.

(2) Moving of a class shall occur only when the result will be:

(i) To bring the location for delivery of special education services and programs closer to the students' homes.

(ii) To improve the delivery of special education services and programs without reducing the degree to which the students with disabilities are educated with students without disabilities.

(iii) To respond to an emergency which threatens the students' health or safety.

(iv) To accommodate ongoing building renovations, provided that the movement of students with disabilities due to renovations will be proportional to the number of students without disabilities being moved.

(v) That the location of classes shall be maintained within a school building for at least 3 school years.

(3) Each special education class is:

(i) Maintained as close as appropriate to the ebb and flow of usual school activities.

(ii) Located where noise will not interfere with instruction.

(iii) Located only in space that is designed for purposes of instruction.

(iv) Readily accessible.

(v) Composed of at least 28 square feet per student.

EARLY INTERVENTION

§ 14.151. Purpose.

Notwithstanding the requirements incorporated by reference, with regard to early intervention services:

(1) The Department will provide for the delivery of early intervention services.

(2) The Department may provide for the delivery of some or all of these services through mutually agreed-upon written arrangements. Each mutually agreed-upon written arrangement may include memoranda of understanding under an approved plan submitted to the Department by an intermediate unit, school district or other agencies.

§ 14.152. Child find, public awareness and screening.

(a) Each early intervention agency shall adopt and use a system to locate and identify eligible young children

and young children thought to be eligible who reside within the boundary served by the early intervention agency.

(b) Each early intervention agency shall conduct awareness activities to inform the public of early intervention services and programs and the manner by which to request these services and programs.

(c) Each early intervention agency shall notify the public of child identification and the procedures followed to ensure confidentiality of information pertaining to eligible young children.

§ 14.153. Evaluation.

Notwithstanding the requirements adopted by reference:

(1) Evaluations shall be conducted by early intervention agencies for children who are thought to be eligible for early intervention and who are referred for evaluation.

(2) Evaluations shall be sufficient in scope and depth to investigate information relevant to the young child's suspected disability, including, but not limited to, physical development, cognitive and sensory development, learning problems, learning strengths and educational needs, communication development, social and emotional development, self-help skills and health considerations, as well as an assessment of the family's perceived strengths and needs which will enhance the child's development.

(3) The assessment shall include information to assist the MDT to determine whether the child has a disability and needs special education and related services and to determine the extent to which the child can be involved in the general curriculum or appropriate preschool activities.

(4) The following timeline applies to the completion of evaluations and reevaluations under this section:

(i) Initial evaluation or reevaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 days after the early intervention agency receives written parental consent.

(ii) Notwithstanding the requirements incorporated by reference in 34 CFR 300.536 (relating to reevaluation), a reevaluation report shall be provided within 60 days from the date that the request for reevaluation was received from the parent or teacher, or from the date that a determination is made that conditions warrant a reevaluation.

(iii) Reevaluations shall occur at least every 2 years.

(5) Each eligible young child shall be evaluated by an MDT, to make a determination of continued eligibility for early intervention services and to develop an evaluation report in accordance with the requirements concerning evaluation under § 14.123 (relating to evaluation), excluding the provision to include a certified school psychologist where appropriate under § 14.123(a).

§ 14.154. IEP.

(a) An IEP is a written plan for the provision of appropriate early intervention services to an eligible young child, including services to enable the family to enhance the young child's development. The IEP shall be based on and be responsive to the results of the evaluation.

(b) Notwithstanding the requirements incorporated by reference, the IEP team shall include:

(1) At least one special education teacher or special education provider.

(2) An agency representative familiar with the general education curriculum or appropriate activities for preschool children. With regard to the adoption of 34 CFR 300.344(a)(4) (relating to IEP team), the agency representative should be qualified to provide or supervise the provision of specially designed instruction to meet the needs of children with disabilities. This could include a preschool supervisor or service coordinator or designee of the early intervention agency.

(c) With parental consent, the IEP shall include a section on family services, which shall provide for appropriate services to assist the family in supporting the eligible young child's development.

(d) Notwithstanding the requirements incorporated by reference, the following timelines govern the preparation and implementation of IEPs:

(1) The IEP of each eligible young child shall be implemented as soon as possible, but no later than 14 days after the completion of the IEP.

(2) The IEP of each eligible young child shall be reviewed by the IEP team at least annually.

(e) For children who are within 1 year of transition to a program for school age students, the IEP shall contain goals and objectives which address the transition process.

(f) Progress indicators include, but are not limited to, IEP annotation, dated progress and documented parental feedback.

(g) If an eligible young child moves from one early intervention agency to another in this Commonwealth, the new early intervention agency shall implement the existing IEP to the extent possible or shall provide services and programs specified in an interim IEP agreed to by the parents until a new IEP is developed and implemented and until the completion of due process proceedings under this chapter.

(h) Every eligible young child receiving special education and related services provided for in the IEP developed prior to _____ (*Editor's Note:* The blank refers to the effective date of the adoption of this proposed rulemaking.) shall continue to receive the special education and related services under that IEP subject to the terms, limitations and conditions set forth in law.

§ 14.155. Range of services.

(a) The Department will ensure that options are available to meet the needs of children eligible for early intervention. The options may be made available directly by early intervention agencies or through contractual arrangements for services and programs of other agencies in the community, including preschools, provided these other agencies are appropriately licensed by the Department or the Department of Public Welfare.

(b) The IEP team shall review the alternatives in subsection (c) in descending order, except for the options relating to services and programs provided in the home. Services provided in the home may be the least restrictive early intervention program for an eligible young child.

(c) The IEP team shall recommend services and programs be provided in a regular class or regular preschool program unless the IEP team determines that the IEP cannot be implemented in a regular class or regular preschool program even with supplemental aids and services. The placement options include the following:

(1) A regular preschool program or class for the entire school or program day with supportive intervention, including modifications to the regular program and individualization by the preschool program or classroom teacher.

(2) A regular preschool program or class for all or most of the school or program day, with supplemental aids and services provided by early intervention personnel.

(3) Early intervention services and programs provided in a specialized setting for most or all of the program day, with noneligible young children.

(4) Early intervention services and programs provided in a specialized setting, with some programming provided in the regular preschool program or class and opportunities for participation with noneligible young children in play or other activities.

(5) Early intervention services and programs provided in the home, including services which are provided in conjunction with services provided in another setting.

(6) Early intervention services provided in a specialized early intervention program.

(7) Early intervention services and programs provided in a specialized setting, including the following:

(i) An approved private school.

(ii) A residential school, residential facility, State school or hospital or special secure setting on an individual or group basis, with parental consent.

(iii) An approved out-of-State program.

(d) The duration of early intervention services, in terms of program days and years, shall accommodate the individual needs of eligible young children. The duration of early intervention services shall be developed by each early intervention agency and shall be included in its plans under § 14.104 (relating to educational plans).

§ 14.156. System of quality assurance.

The Department will assure in accordance with section 302(b) of the act (11 P. S. § 875-302(b)) through its monitoring and technical assistance activities, a system of quality assurance, including evaluation of the developmental appropriateness, quality and effectiveness of programs; assurance of compliance with program standards; and provision of assistance to assure compliance. These requirements will apply to those programs operated by the early intervention agency directly or those providers contracted by the early intervention program. Monitoring will include onsite review of:

(1) *Developmental appropriateness.* The programs and settings for eligible young children shall include the following developmentally and age appropriate practices, and shall:

(i) Include a curriculum based on established scope and sequence of instruction.

(ii) Maximize the amount of time a child is engaged in learning experiences.

(iii) Maximize parent involvement, including activities which parents can do with the child.

(iv) Facilitate social interaction with normally developing children.

(v) Provide experiences to stimulate learning in all domains: physical, cognitive, communicative, social-emotional and self-help.

(vi) Be in an environment in which children can learn through active exploration and interaction with concrete materials, with adults and with other children.

(vii) Be in an environment organized so that children may select many of their own activities among a variety of learning areas including: dramatic play, blocks, science, math, games and puzzles, books, recordings, art and music.

(viii) Provide daily opportunities for children to use small and large muscles, to listen to stories, to see how spoken and written language are related and to express themselves creatively.

(ix) Be in an environment organized so that children may work individually or in small groups for part of the day.

(x) Provide activities and adult interactions that are responsive to individual differences in ability, interests, cultural backgrounds and linguistic styles.

(xi) Develop self-control by using positive guidance techniques, such as modeling, encouraging expected behavior, setting clear limits and redirecting the child to more acceptable activity.

(xii) Provide opportunities for children to develop social skills, such as cooperating, helping, sharing, negotiating and talking with others to solve interpersonal problems.

(2) *Caseload.* The caseloads of professional personnel shall be determined on the basis of maximums allowed and the amount of time required to fulfill the specific IEPs. The following caseloads shall be used in early intervention programs:

(i) *Supportive intervention.* In a regular preschool program in which supportive intervention is the primary method of service, the caseload range should be 10—40 children with no more than 6 eligible young children serviced in the same session.

(ii) *Specialized setting.* In early intervention programs provided in a specialized setting, the staff ratio is based on the developmental levels of the children. At least one staff member shall be a certified professional. For children functioning at:

(A) 0-18 months—1 staff member for every 3 eligible young children, with a maximum class size of nine.

(B) 18-36 months—1 staff member for every 4 eligible young children, with a maximum class size of 12.

(C) 36 months and up—one staff member for every 6 eligible young children, with a maximum class size of 18 children.

(iii) *Home based program.* In early intervention programs in which the home based program is provided to eligible young children as the only program, the ratio is 10 to 20 young children per teacher. This shall also include teachers of the visually impaired, hearing impaired, and orientation and mobility specialists.

(iv) *Early intervention program—speech and language.* In early intervention programs, the speech and language itinerant program will be provided within a caseload of 10 to 50 eligible young children enrolled per teacher.

(v) *Early intervention program—physical and occupational therapies.* In early intervention programs where physical therapy or occupational therapy, or both, is specified on the IEP, individual caseloads are determined with consideration of the type of services delivered and the time required for those services.

(3) *Documented progress indicators.* Progress indicators may include IEP annotation, dated progress reports and documented parental feedback.

§ 14.157. Exit criteria.

(a) Under section 301(1) of the act (11 P. S. § 875-301(1)), children shall be exited from early intervention based on one or more of the following criteria:

(1) The child has reached the age of beginners and is therefore no longer eligible for early intervention services authorized under the act.

(2) The child has functioned within the range of normal development for 4 months, with an IEP, and as verified by the IEP team.

(3) The parent or guardian withdrew the child from early intervention for other reasons.

(b) If the child does not meet exit criteria and the child's IEP demonstrates that the child will benefit from services which can be provided only through special education, nothing in the law or this chapter shall prevent that placement.

§ 14.158. Data collection and confidentiality.

The Department will require early intervention agencies to maintain accurate information concerning eligible young children and the types of services received, and to report that information in aggregate at predetermined dates throughout the fiscal year. The Secretary will prescribe the format, content, data items and time for submission of the required information.

PROCEDURAL SAFEGUARDS

§ 14.161. Prehearing conferences.

The purpose of the prehearing conference is to reach an amicable agreement in the best interests of the student or young child.

(1) In addition to the requirements incorporated by reference in 34 CFR 300.503—300.505 (relating to prior notice by the public agency; content of notice; procedural safeguards notice; and parental consent), the notice shall provide for a parent to request the school district to convene a prehearing conference in instances when the parent disapproves the school district's proposed action or refusal to act.

(2) When requested, the school district shall convene the prehearing conference within 10 days of receipt of the parent notice and shall be chaired by the superintendent or the superintendent's designee.

(3) If the prehearing conference results in agreement, the provisions under § 14.131 (relating to IEP) shall be applied. Within 5-calendar days of the agreement, a parent may notify the school district in writing of a decision not to approve the recommended assignment. When a parent gives notice not to approve the recommended assignment, or if the prehearing conference does not result in an agreement, the provisions under § 14.162 (relating to impartial due process hearing and expedited due process hearing) shall be applied.

(4) The parents or the school district may waive the right to a prehearing conference and immediately request an impartial due process hearing under § 14.162.

§ 14.162. Impartial due process hearing and expedited due process hearing.

(a) In addition to the requirements incorporated by reference in 34 CFR 300.504 (relating to procedural safeguard notice), with regard to a student who is mentally retarded or thought to be mentally retarded, notice when mailed shall be issued to the parent by certified mail (addressee only, return receipt requested).

(b) Parents may request an impartial due process hearing concerning the identification, evaluation, or educational placement of, or the provision of a free appropriate public education to a student who is a child with a disability or who is thought to be a child with a disability or a young child who is eligible or who is thought to be eligible, if the parents disagree with the school district's, or the early intervention agency's in the case of a young child, identification, evaluation or placement of, or the provision of a free appropriate public education to the student or young child.

(c) A school district, or the early intervention agency in the case of a young child, may request a hearing to proceed with an initial evaluation or an initial educational placement when the district, or the early intervention agency in the case of a young child, has not been able to obtain consent from the parents or in regard to a matter under subsection (b).

(d) The hearing for a child with a disability or thought to be a child with a disability shall be conducted by and held in the school district at a place reasonably convenient to the parents. A hearing for an eligible young child or thought to be eligible young child shall be conducted by the early intervention agency at a place reasonably convenient to the parents. These options shall be set forth in the notice provided for requesting a hearing.

(e) The hearing shall be an oral, personal hearing and shall be open to the public unless the parents request a closed hearing. If the hearing is open, the decision issued in the case, and only the decision, shall be available to the public. If the hearing is closed, the decision shall be treated as a record of the student or young child and may not be available to the public.

(f) The decision of the hearing officer shall include findings of fact, a discussion and conclusions of law. Although technical rules of evidence will not be followed, the decision shall be based solely upon the substantial evidence presented at the hearing.

(g) The hearing officer shall have the authority to order that additional evidence be presented.

(h) Notwithstanding the requirements incorporated by reference in 34 CFR 300.509(a)(4) (relating to hearing rights), a written transcript of the hearing shall, upon request, be made and provided to parents at no cost.

(i) Parents may be represented by legal counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities.

(j) A parent or parent's representative shall be given access to educational records, including any tests or reports upon which the proposed action is based.

(k) A party may prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least 5-business days before the hearing.

(l) A party has the right to compel the attendance of and question witnesses who may have evidence upon which the proposed action might be based.

(m) A party has the right to present evidence and testimony, including expert medical, psychological or educational testimony.

(n) Any party to a hearing has the right to obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(o) The decision of the hearing officer regarding a child with a disability or thought to be a child with a disability may be appealed to a panel of three appellate hearing officers. The panel's decision may be appealed further to a court of competent jurisdiction. In notifying the parties of its decision, the panel shall indicate the courts to which an appeal may be taken. The decision of the hearing officer regarding an eligible young child may be appealed to a court of competent jurisdiction. In notifying the parties of the decision, the hearing officer shall indicate the courts to which an appeal may be taken.

(p) The following applies to coordination services for hearings and to hearing officers and appellate hearing officers:

(1) The Secretary may contract for coordination services in support of hearings conducted by local school districts. The coordination services shall be provided on behalf of school districts and may include arrangements for stenographic services, arrangements for hearing officer services, scheduling of hearings and other functions in support of procedural consistency and the rights of the parties to hearings.

(2) If a school district chooses not to utilize the coordination services under paragraph (1), it may conduct hearings independent of the services if it has obtained the Secretary's approval of procedures that similarly provide for procedural consistency and ensure the rights of the parties. In the absence of approval, a school district which receives a request for an impartial due process hearing shall forward the request to the entity providing coordination services under paragraph (1) without delay.

(3) The Secretary will contract for the services of hearing officers for hearings related to an eligible young child or thought to be eligible young child and for appellate hearing officers for school aged students and may compensate the hearing officers and appellate hearing officers for their services. The compensation does not cause the hearing officers and appellate hearing officers to become employes of the Department.

(4) Neither a hearing officer nor an appellate hearing officer may be an employe or agent of a school entity in which the parents or student or young child resides, or of an agency which is responsible for the education or care of the student or young child. A hearing officer or appellate hearing officer shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties.

(q) The following timeline applies to due process hearings:

(1) A hearing shall be held within 30-calendar days after a parent's or school district's initial request for a hearing.

(2) The hearing officer's decision shall be issued within 45-calendar days after the parent's or school district's request for a hearing.

(3) The appellate hearing panel shall render a decision within 30-calendar days after a request for review and shall provide the parties a written copy of the panel's decision.

(4) A hearing officer or appellate hearing officer may grant specific extensions of time beyond the periods in paragraphd (1)—(3) at the request of either party.

(5) If an expedited hearing is conducted under 34 CFR 300.528 (relating to expedited due process hearings) the hearing officer decision shall be mailed within 45 days of the public agency's receipt of the request for the hearing without exceptions or extensions.

(r) Each school district and early intervention agency shall keep a list of the persons who serve as hearing officers. The list shall include the qualifications of each hearing officer. School districts and early intervention agencies shall provide parents with information as to the availability of the list and shall make copies of it available upon request.

PART XVI. STANDARDS

CHAPTER 342. (Reserved)

(*Editor's Note:* The State Board of Education is proposing to delete the current text of §§ 342.1—342.8, 342.21—342.25, 342.31—342.39, 342.41—342.46, 342.51—342.56, 342.61—342.68 and 342.71—342.74, 22 Pa. Code pages 342-3—342-53, serial pages (229133) to (229136), (252471) to (252472), (229139) to (229150), (256447) to (256454), (252473) to (252474), (229159) to (229162), (256455) to (256457), (229165) to (229182) and (238135).)

[Pa.B. Doc. No. 00-1508. Filed for public inspection September 1, 2000, 9:00 a.m.]

STATEMENTS OF POLICY

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE
[55 PA. CODE CHS. 3270 and 3280]
Overpopulation of Indoor Child Care Space

Scope

This statement of policy applies to:

(1) Child day care center operators.

(2) Group day care home operators.

Purpose

The purpose of this statement of policy is to rescind Children, Youth and Families (CYF) Bulletin #3001-94-01 and issue a statement of policy extending the Department of Public Welfare's (Department) policy regarding the use of indoor child care space to all child day care centers and group day care homes.

Discussion

On July 30, 1994, the Department issued CYF Bulletin #3001-94-01 to establish §§ 3270.61a and 3280.61a (relating to overpopulation of indoor child care space—statement of policy) regarding the use of indoor child care space and to establish the Department's policy regarding citations for noncompliance with §§ 3270.61(c) and 3280.61(c) (relating to measurement and use of indoor child care space). CYF Bulletin #3001-94-01 applied to a child day care center located in any premises and a group day care home not located in a residence.

Based on a review of field operations, the Department has determined to extend the policy issued in CYF Bulletin #3001-94-01 to include a group day care home located in a residence. A group day care home located in a residence faces the same constraints as a group day care home not located in a residence with regard to the use of indoor child care space during program time and lunch time. At these times, the Department finds it may be appropriate for program purposes to include the entire group of children simultaneously in an activity.

Comments

Refer comments and questions regarding this statement of policy to Jennifer Lau, Bureau of Child Day Care Services, Department of Public Welfare, (717) 787-8691.

Effective Date

This statement of policy became effective June 1, 2000.

(*Editor's Note*: The regulations of the Department, 55 Pa. Code Chapters 3270 and 3280, are amended by amending §§ 3270.61a and 3280.61a to read as set forth in Annex A.)

Fiscal Note: 14-BUL-061. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART V. CHILDREN, YOUTH AND FAMILIES MANUAL

Subpart D. NONRESIDENTIAL AGENCIES, FACILITIES AND SERVICES

ARTICLE I. LICENSING/APPROVAL

CHAPTER 3270. CHILD DAY CARE CENTERS

PHYSICAL SITE

§ 3270.61a. Overpopulation of indoor child care space—statement of policy.

(a) This policy regarding enforcement of the requirements of §§ 3270.61(c) and 3280.61(c) (relating to measurement and use of indoor child care space) is the Department's effort to afford flexibility regarding the use of indoor child care space in a child day care center and a group day care home located in any premises. The Department will not cite a facility for noncompliance with §§ 3270.61(c) and 3280.61(c) if an indoor child care space is overpopulated during program time if the following conditions are met:

(1) The overpopulation for purposes of program activity is limited to two time periods daily not exceeding 1/2 hour in each period.

(2) The time of overpopulation is designated on the facility's schedule of daily activities.

(3) The space is not occupied by children of the infant or young toddler age levels during the time permitted for overpopulation.

(4) The number of children present in the overpopulated space is not more than twice the measured capacity of the space.

(b) When a facility serves meals in a space designated and measured as indoor child care space, the Department will not cite the facility for noncompliance with §§ 3270.61(c) and 3280.61(c) when the space is overpopulated during lunch time if the following guidelines are observed:

(1) The overpopulation for lunch time is limited to times when children are eating and for a maximum of 1 hour daily.

(2) The time of overpopulation for the purpose of serving lunch is designated on the facility's schedule of daily activities.

(3) The number of children present in the space does not exceed twice the measured capacity of the space.

(c) The Department's previous procedure and direction for licensing staff dictates that a facility with a space dedicated exclusively to serving meals and snacks is not measured for a capacity of children, but is inspected for other requirements that impact on the health and safety of children. The policy presented in this section does not alter the Department's previous procedure and direction.

CHAPTER 3280. GROUP DAY CARE HOMES

PHYSICAL SITE

§ 3280.61a. Overpopulation of indoor child care space—statement of policy.

(a) This policy regarding enforcement of the requirements of §§ 3270.61(c) and 3280.61(c) (relating to mea-

surement and use of indoor child care space) is the Department's effort to afford flexibility regarding the use of indoor child care space in a child day care center and a group day care home located in any premises. The Department will not cite a facility for noncompliance with §§ 3270.61(c) and 3280.61(c) if an indoor child care space is overpopulated during program time if the following conditions are met:

(1) The overpopulation for purposes of program activity is limited to two time periods daily not exceeding 1/2 hour in each period.

(2) The time of overpopulation is designated on the facility's schedule of daily activities.

(3) The space is not occupied by children of the infant or young toddler age levels during the time permitted for overpopulation.

(4) The number of children present in the overpopulated space is not more than twice the measured capacity of the space.

(b) When a facility serves meals in a space designated and measured as indoor child care space, the Department will not cite the facility for noncompliance with §§ 3270.61(c) and 3280.61(c) when the space is overpopulated during lunch time if the following guidelines are observed:

(1) The overpopulation for lunch time is limited to times when children are eating and for a maximum of 1 hour daily.

(2) The time of overpopulation for the purpose of serving lunch is designated on the facility's schedule of daily activities.

(3) The number of children present in the space does not exceed twice the measured capacity of the space.

(c) The Department's previous procedure and direction for licensing staff dictates that a facility with a space dedicated exclusively to serving meals and snacks is not measured for a capacity of children, but is inspected for other requirements that impact on the health and safety of children. The policy presented in this section does not alter the Department's previous procedure and direction.

[Pa.B. Doc. No. 00-1509. Filed for public inspection September 1, 2000, 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 August 22, 2000.

BANKING INSTITUTIONS

Holding Company Acquisitions

Date	*Name of Corporation*	*Location*	*Action*
7-27-00	Sterling Financial Corporation, Lancaster, to acquire 100% of the voting shares of Hanover Bancorp, Inc., Hanover	Lancaster	Effective
8-16-00	M&T Bank Corporation, and Olympia Financial Corp., Buffalo, NY, to acquire 100% of the voting shares of Keystone Financial, Inc., Harrisburg, PA	Buffalo, NY	Approved

Conversions

Date	*Name of Institution*	*Location*	*Action*
8-22-00	Chelten Hills Savings Association Abington Montgomery County *To:* Chelten Hills Savings Bank Abington Montgomery County Represents conversion from a State-chartered mutual savings association to a State-chartered mutual savings bank.	Abington	Approved

Consolidations, Mergers and Absorptions

Date	*Name of Bank*	*Location*	*Action*
8-21-00	The Phillipsburg National Bank and Trust Company, Phillipsburg, NJ, and Twin Rivers Community Bank, Easton, PA Surviving Institution— The Phillipsburg National Bank and Trust Company, Phillipsburg, NJ with a change in Corporate Title to Vista Bank, National Association	Phillipsburg, NJ	Effective
8-22-00	Merchants Bank of Pennsylvania, Shenandoah, and The First National Bank of Leesport, Leesport Surviving Institution— Merchants Bank of Pennsylvania, Shenandoah, with a change in Corporate Title to "Leesport Bank"	Shenandoah	Approved

Branch Applications

Date	*Name of Bank*	*Location*	*Action*
8-14-00	Pittsburgh Home Savings Bank Pittsburgh Allegheny County	1000 Village Run Rd. Wexford Pine Township Allegheny County	Opened

Date	*Name of Bank*	*Location*	*Action*
8-22-00	First Commonwealth Bank Indiana Indiana County	9503 Lincoln Highway Bedford Bedford County	Approved

Branch Relocations/Consolidations

Date	*Name of Bank*	*Location*	*Action*
8-16-00	Bank of Hanover and Trust Company Hanover York County	*To:* 10 Lincoln Street New Oxford Adams County	Approved
		From: 318 Lincolnway East New Oxford Adams County	
8-16-00	Laurel Bank Johnstown Cambria County	*To:* 534 Main Street Berlin Somerset County	Approved
		From: 506 Main Street Berlin Somerset County	

Branch Discontinuances

Date	*Name of Bank*	*Location*	*Action*
8-16-00	The Drovers & Merchants Bank York York County	Pennsylvania Ave. and Landvalle St. York Haven York County	Approved
8-18-00	Main Street Bank Reading Berks County	3321 Willow Lane Macungie Lehigh County	Filed
8-18-00	Main Street Bank Reading Berks County	Route 61 Schuylkill Haven Schuylkill County	Filed

Articles of Amendment

Date	*Name of Bank*	*Purpose*	*Action*
8-18-00	Earthstar Bank Southampton Bucks County	To change the principal place of business *From:* 111 Second Street Pike, Southampton, Upper Southampton Township, Bucks County, PA *To:* 376 Second Street Pike, Southampton, Upper Southampton Township, Bucks County, PA	Approved and Effective

SAVINGS INSTITUTIONS

Branch Applications

Date	*Name of Association*	*Location*	*Action*
8-16-00	Washington Savings Association Philadelphia Philadelphia County	8729 Frankford Ave. Philadelphia Philadelphia County	Approved

CREDIT UNIONS

No activity.

DAVID E. ZUERN,
Secretary

[Pa.B. Doc. No. 00-1510. Filed for public inspection September 1, 2000, 9:00 a.m.]

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

Commonwealth's Consolidated Plan

The Department of Community and Economic Development (DCED) proposes to amend the Commonwealth's Consolidated Plan for Federal Fiscal Years (FFY) 2000-2004.

This notice is to summarize the change being made to the Commonwealth's Consolidated Plan for the years 2000—2004. In the Program Description—Section I(C)(1) Administration, it states that the Commonwealth may use up to 1% of its FY 2000 Community Development Block Grant (CDBG) administrative funds to provide technical assistance grants. The State proposes to use up to 1% of its CDBG administrative funds from prior year grants also to provide technical assistance.

Persons with questions regarding these proposed changes to the Commonwealth's Consolidated Plan should contact the Department of Community and Economic Development, 502 Forum Building, Office of Community Development and Housing, Harrisburg, 17120, Ed Geiger, Director at (717) 787-5327.

SAMUEL A. MCCULLOUGH,
Secretary

[Pa.B. Doc. No. 00-1511. Filed for public inspection September 1, 2000, 9:00 a.m.]

Team Pennsylvania Workforce Investment Board Meeting

The Team Pennsylvania Workforce Investment Board formally known as Team Pennsylvania Human Resources Investment Council will be holding a Board Meeting on Thursday, September 28, 2000, from 9:30 a.m.—12:30 p.m. at the Westmoreland County Community College in Greensburg, PA.

Persons with a disability who wish to attend the meeting and require special accommodations, should contact the Team Pennsylvania Workforce Investment Board Office at (717) 772-4966.

SAMUEL A. MCCULLOUGH,
Secretary

[Pa.B. Doc. No. 00-1512. Filed for public inspection September 1, 2000, 9:00 a.m.]

DEPARTMENT OF EDUCATION

Application of Pierce Junior College for Approval of Amendment of its Articles of Incorporation

Notice of Opportunity for Hearing and Invitation to Protest

Under 24 Pa.C.S. § 6503(e) (relating to certification of institutions), the Department of Education (Department) will consider the application of Pierce Junior College for a Certificate of Authority approving the institution's amendment to and the restating of its Articles of Incorporation in their entirety.

In accordance with 24 Pa.C.S. § 6503(e), the Department will act upon the application without hearing, unless within 30 days after the publication of this notice in the *Pennsylvania Bulletin* a written request for public hearing is filed with the Department, along with a notice of intervention, a petition to intervene or protest in accordance with 1 Pa. Code §§ 35.23 and 35.24 (relating to protest) or 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

All petitions to intervene, protest and request for hearing shall be filed with Dr. Warren D. Evans, Chartering/Governance/Accreditation Specialist, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-7572 on or before 4 p.m. on the due date prescribed by this notice. Persons wishing to review the application should phone or write to the aforementioned office to schedule a time for an in-office review. Copies of the application are not available.

Persons with a disability who wish to attend the hearing, if held, and require an auxiliary aid, service or other accommodation to participate, should contact Dr. Evans at the listed telephone number to discuss how the Department may best accommodate their needs.

EUGENE W. HICKOK,
Secretary

[Pa.B. Doc. No. 00-1513. Filed for public inspection September 1, 2000, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

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 to 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.

Applications for National Pollutant Discharge Elimination System (NPDES) Permit to discharge to State waters.

Southeast Regional Office: Regional Manager, Water Management, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-6130.

PA 0026964. Amendment No. 2. Sewage, **Montgomery County Sewer Authority**, P. O. Box 297, 5 River Road, Oaks, PA 19456.

This application is for an amendment of an NPDES permit to discharge treated sewage from a wastewater treatment plant in Upper Providence Township, **Montgomery County**. This is an existing discharge to the Schuylkill River.

The receiving stream is classified for the following uses: warm water fishery, migratory fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 9.5 mgd are as follows:

Parameter	*Average Monthly (mg/l)*	*Average Weekly (mg/l)*	*Instantaneous Maximum (mg/l)*
$CBOD_5$			
(5-1 to 10-31)	15	25	30
(11-1 to 4-30)	25	40	50
Total Suspended Solids	30	45	60
Ammonia as N			
(5-1 to 10-31)	5.0		10.0
(11-1 to 4-30)	9.0		18.0
Fecal Coliform	200#/100ml		
Dissolved Oxygen			5.0 inst. minimum
Total Residual Chlorine	0.5		1.6
pH	within limits of 6.0—9.0 standard units at all times		

Monitoring is required for lead, nickel, phenols, copper, zinc, mercury, silver, arsenic, chromium VI and free cyanide.

The EPA waiver is not in effect.

Southcentral Regional Office: Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.

PA 0086291, SIC Code 4922, Industrial Waste, **Texas Eastern Transmission Corporation (Perulack Compressor Station)**, 5400 Westheimer Court, WO-8A16, Houston, TX 77056.

This application is for renewal of an NPDES permit for an existing discharge of treated industrial waste to an unnamed tributary to Lick Run, in Lack Township, **Juniata County**.

The receiving stream is classified for TSF, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO_2-NO_3, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was United Water of Pennsylvania located in Susquehanna Township, 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 0.029 mgd are:

Parameter	*Average Monthly (mg/l)*	*Maximum Daily (mg/l)*	*Instantaneous Maximum (mg/l)*
Flow		monitor	
pH (s.u.)		6.0 to 9.0	
Total PCBs	0.13	0.26	0.32

Part C includes requirements for WQBELs at or below detection limits.

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 0082601, SIC Code 6515, Sewage, **James Decker Jr. (Hartslog Courts)**, R. R. 7, Box 919, Altoona, PA 16601.

This application is for amendment of an NPDES permit for an existing discharge of treated sewage to an unnamed tributary to Crooked Creek, in Porter Township, **Huntingdon 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_2-NO_3, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was United Water Company located in Susquehanna Township. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.045 mgd are:

Parameter	*Average Monthly (mg/l)*	*Instantaneous Maximum (mg/l)*
$CBOD_5$	25	50
Total Suspended Solids	30	60
NH_3-N		
(5-1 to 10-31)	4.0	8.0
(11-1 to 4-30)	12	24
Total Residual Chlorine	0.3	1.0
Dissolved Oxygen	minimum of 5.0 at all times	
pH	from 6.0 to 9.0 inclusive	
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	4,300/100 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 in effect.

Northcentral Region: Environmental Program Manager, Water Management, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 321-6574.

PA 0113280. SIC 8221, **Pennsylvania State University**, 101P Office of Physical Plant Building, University Park, PA 16802-1118.

This proposed action is for a reissued NPDES permit for discharge of treated industrial wastewater to an unnamed tributary to Slab Cabin Run in State College Borough, **Centre County**.

The receiving stream is classified for the following uses: cold water fishery and aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO_2-NO_3, fluoride and phenolics, the downstream potable water supply (PWS) considered during the evaluation is the PA American Water Company located at Milton.

The proposed effluent limits for Outfall 001 based on a design flow of 0.576 mgd are:

Parameter	*Average Monthly (mg/l)*	*Maximum Daily (mg/l)*	*Instantaneous Maximum (mg/l)*
Alpha Emitters	monitor		
Beta Emitters	monitor		
pH	6.0—9.0 s.u. at all times		

The proposed effluent limits for Outfall 101, based on a design flow of 0.072 mgd, are:

Parameter	*Average Monthly (mg/l)*	*Average Weekly (mg/l)*	*Instantaneous Maximum (mg/l)*
pH	6.0—9.0 s.u. at all times.		

Other Requirements: Compliance with U.S. NRC Title 10 CFR Part 20, Standards for Protection Against Radiation.

The EPA waiver is in effect.

PA 0023248, Sewerage, SIC 4952, **Berwick Municipal Authority**, 344 Market Street, Berwick, PA 18603.

This proposed action is for revoke and reissuance of an NPDES permit for an existing discharge of treated sewage to the North Branch of the Susquehanna River in the Borough of Berwick, **Columbia County**.

The receiving stream is classified for the following uses: warm water fishery, aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO_2-NO_3, fluoride and phenolics, the existing downstream potable water supply (PWS) considered during the evaluation is Danville Municipal Water Authority located at 20 river miles downstream on the North Branch of the Susquehanna River.

The proposed effluent limits for Outfall 001 based on a design flow of 3.7 mgd are:

Parameter	*Average Monthly (mg/l)*	*Average Weekly (mg/l)*	*Instantaneous Maximum (mg/l)*
BOD_5	35	53	70
Total Suspended Solids	40	60	80
Total Chlorine Residual	0.5		1.6
pH	6.0 to 9.0 at all times		
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		

Outfall 002 through 005—Combined Sewer Overflows—Monitor and Report: Flow, Duration, Frequency.

Other Conditions:

(1) Management and Control of Combined Sewer Overflow

(2) Industrial Pretreatment Program

The EPA waiver is not in effect.

PA 0022187. Sewerage, SIC, 4952, **Beavertown Municipal Authority**, 419 Old Orchard Drive, Beavertown, PA 17813-9707.

This proposed action is for renewal of an NPDES permit for an existing discharge of treated sewage wastewater to Luphers Run in Beavertown Borough and Kern Run in Beaver Township, **Snyder County**.

The receiving stream is classified for the following uses: cold water fishery, aquatic life, water supply and recreation. For the purposes of evaluating effluent requirements for TDS, NO_2-NO_3, fluoride and phenolics, the existing downstream potable water supply (PWS) considered during the evaluation is Dauphin Consolidated Water Company located at Dauphin approximately 50 river miles downstream.

Outfall 001

The proposed effluent limits for the existing sewage treatment plant based on a design flow of 0.144 mgd are:

Parameter	*Average Monthly (mg/l)*	*Average Weekly (mg/l)*	*Instantaneous Maximum (mg/l)*
$CBOD_5$	25	40	50
TSS	30	45	60
Ammonia-N			
(6-1 to 10-31)	7	10	14
Total Cl_2 Residual	report		
Fecal Coliforms:			
(5-1 to 9-30)	200 col/100 ml as a geometric mean		
(10-1 to 4-30)	2,000 col/100 ml as a geometric mean		
pH	6.0 to 9.0 at all times		

The proposed effluent limits for the new sewage treatment plant, based on a design flow of 0.16 mgd, are:

Parameter	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
$CBOD_5$	25	40	50
TSS	30	45	60
Ammonia-N			
(6-1 to 10-31)	15	22	30
Total Cl_2 Residual	0.50		1.6
Fecal Coliforms			
(5-1 to 9-30)	200 col/100 ml as a geometric mean		
(10-1 to 4-30)	2,000 col/100 ml as a geometric mean		
pH	6.0 to 9.0 at all times		

The EPA waiver is in effect.

Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

PA 0005037-A1, Industrial Waste, SIC, 4911, **EME Homer City Generation LP**, 18101 Von Karman Avenue, Suite 1700, Irvine, CA 92612-1046.

This application is for an amendment of an NPDES permit to discharge treated process water from the flue gas desulfurization wastewater plant in Center Township, **Indiana County**.

The following effluent limitations are proposed for discharge to the receiving waters, Blacklick Creek, classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply (PWS) in Saltsburg Municipal Water Authority, located at Saltsburg, 28 miles below the discharge point.

Outfall 027: new discharge, design flow of 0.179 mgd.

	Mass (lb/day)		Concentration (mg/l)		
Parameter	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	monitor and report				
Total Suspended Solids			30	100	
$CBOD_5$			25	50	
Oil and Grease			15	20	
Temperature (°F)				110	
Beryllium			0.8	1.6	
Lead			0.1	0.2	
Mercury			0.002	0.004	
Selenium			0.8	1.6	
Boron			monitor and report		
MBAS			monitor and report		
Osmotic Pressure			monitor and report		
Sulfate			monitor and report		
TDS			monitor and report		
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is not in effect.

PA 0006335. Industrial Waste, SIC, 3317, **Koppel Steel Corporation**, 23rd and Duss Avenue, Ambridge, PA 15003.

This application is for renewal of an NPDES permit to discharge treated process water, cooling water and untreated stormwater from the Ambridge Plant in Ambridge Borough, **Beaver County**.

The following effluent limitations are proposed for discharge to the receiving waters of the Ohio River, classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply (PWS) is Midland Water Authority, located at Midland, PA, 17.2 miles below the discharge point.

Outfall 001: existing discharge, design flow of 0.12 mgd.

	Mass (lb/day)		Concentration (mg/l)		
Parameter	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow	monitor and report				
Total Suspended Solids	125.64	335.03	15	40	
Oil and Grease		83.75		10	
pH	not less than 6.0 nor greater than 9.0				

Outfalls 002 and 003: existing discharge, design flow of varied mgd.

	Mass (lb/day)		*Concentration (mg/l)*		
Parameter	*Average Monthly*	*Maximum Daily*	*Average Monthly*	*Maximum Daily*	*Instantaneous Maximum*
	The discharge from these outfalls shall consist of uncontaminated stormwater runoff only.				

The EPA waiver is not in effect.

PA 0217905-A1. Industrial Waste, SIC, 4941, **Municipal Authority of the Borough of Oakmont**, P. O. Box 73, 721 Allegheny Avenue, Oakmont, PA 15139.

This application is for amendment of an NPDES permit to discharge treated process water from the Hulton Treatment Plant in Oakmont Borough, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, Allegheny River and Falling Springs Run, classified as warm water fisheries with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply (PWS) is Fox Chapel Authority, located at 255 Alpha Drive, RIDC Industrial Park, Pittsburgh, PA 15238, 2.6 miles below the discharge point.

Outfall 002: new discharge, design flow of 0.15 mgd.

	Mass (lb/day)		*Concentration (mg/l)*		
Parameter	*Average Monthly*	*Maximum Daily*	*Average Monthly*	*Maximum Daily*	*Instantaneous Maximum*
Flow (mgd)	monitor and report				
Suspended Solids			30		60
Total Residual Chlorine			0.5		1.25
Aluminum			4.0		8.0
Iron			2.0		4.0
Manganese			1.0		2.0
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

Outfall 003: new discharge, design flow of 0.15 mgd.

	Mass (lb/day)		*Concentration (mg/l)*		
Parameter	*Average Monthly*	*Maximum Daily*	*Average Monthly*	*Maximum Daily*	*Instantaneous Maximum*
Flow (mgd)	monitor and report				
Suspended Solids			30		60
Total Residual Chlorine			0.5		1.25
Aluminum			4.0		8.0
Iron			2.0		4.0
Manganese			1.0		2.0
pH	not less than 6.0 nor greater than 9.0				

PA 0216879. Sewage, **Calandrella's, Inc.**, R. D. 2, Box 320, Avonmore, PA 15618.

This application is for renewal of an NPDES permit to discharge treated sewage from Calandrella's Restaurant STP in Bell Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Unnamed Tributary of Wolford Run, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Buffalo Township Municipal Authority, Freeport Plant, on the Allegheny River.

Outfall 001: new discharge, design flow of 0.0048 mgd.

	Concentration (mg/l)			
Parameter	*Average Monthly*	*Average Weekly*	*Maximum Daily*	*Instantaneous Maximum*
$CBOD_5$	25			50
Suspended Solids	30			60
Ammonia Nitrogen				
(5-1 to 10-31)	3.5			7.0
(11-1 to 4-30)	10.5			21.0
Fecal Coliform:				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			

Parameter	Concentration (mg/l) Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
Total Residual Chlorine	0.5			1.2
Dissolved Oxygen	not less than 3 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA 0218600. Sewage, **Arthur Leonard**, 310 Spang Road, Baden, PA 15005.

This application is for issuance of an NPDES permit to discharge treated sewage from the Leonard Single Residence Sewage Treatment Plant in Middlecreek Township, **Somerset County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Laurel Hill Creek, which are classified as a high quality cold 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: Ohiopyle Municipal Water Authority.

Outfall 001: new discharge, design flow of .0004 mgd.

Parameter	Concentration (mg/l) Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
$CBOD_5$	10			20
Suspended Solids	10			20
Ammonia Nitrogen				
(5-1 to 10-31)	1.5			3.0
(11-1 to 4-30)	4.5			9.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	0.5			1.0
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

Northwest Regional Office: Regional Manager, Water Management, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.

PA 0104299. Sewage. **Lutherlyn Camp & Retreat Center**, P. O. Box 355, Prospect, PA 16052-0355.

This application is for renewal of an NPDES permit, to discharge treated sewage to Semiconon Run in Connoquenessing Township, **Butler County**. This is an existing discharge.

The receiving water is classified for the following uses: cold water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO_2-NO_3, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Harmony Borough Water intake on Little Connoquenessing Creek located in Harmony Borough, approximately 10.5 miles below point of discharge.

The proposed discharge limits for Outfall No. 001 based on a design flow of 0.0155 mgd are:

Parameter	Average Monthly (mg/l)	Instantaneous Maximum (mg/l)
$CBOD_5$	25	50
TSS	30	60
Total Phosphorus		
(4-1 to 10-31)	2	4
Ammonia-Nitrogen		
(5-1 to 10-31)	7	14
(11-1 to 4-30)	21	42
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	5,800/100 ml as a geometric average	
Total Residual Chlorine		
(Final Limits)	0.5	1.2
pH	6.0—9.0 at all times	

The EPA waiver is in effect.

PA 0221783. Sewage. **Crystal Springs Mobile Home Park**, P. O. Box 145, Forestville, PA 16035.

This application is for renewal of an NPDES permit, to discharge treated sewage to McDonald Run in Mercer Township, **Butler County**. This is an existing discharge.

The receiving water is classified for the following uses: cold water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO_2-NO_3, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Camp Alegheny-Salvation Army intake on Slippery Rock Creek located at Camp Allegheny, approximately 24 miles below point of discharge.

The proposed discharge limits for Outfall No. 001 based on a design flow of 0.0195 mgd are:

Parameter	*Average Monthly (mg/l)*	*Instantaneous Maximum (mg/l)*
$CBOD_5$	25	50
TSS	30	60
Ammonia-Nitrogen		
(5-1 to 10-31)	6.5	13
(11-1 to 4-30)	19.5	39
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	2,000/100 ml as a geometric average	
Total Residual Chlorine	0.5	1.2
Dissolved Oxygen	minimum of 3.0 mg/l at all times	
pH	6.0—9.0 at all times	

The EPA waiver is in effect.

PA 0032913. Sewage. **Scenic Mobile Home Park**, 524 W. Locust Street, Woodstock, VA 22664.

This application is for a renewal of an NPDES permit to discharge treated sewage to the Unnamed Tributary to Brush Run in Pymatuning Township, **Mercer County**. This is an existing discharge.

The receiving water is classified for the following uses: warm water fish, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO_2-NO_3, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Sharpsville Municipal Water Authority on the Shenango River located at river mile 32.6 and is located 4.8 miles below point of discharge.

The proposed effluent limits for Outfall No. 001 based on a design flow of 0.02000 mgd are:

Parameter	*Average Monthly (mg/l)*	*Instantaneous Maximum (mg/l)*
$CBOD_5$	25	50
TSS	30	60
Ammonia-Nitrogen		
(5-1 to 10-31)	2.5	5
(11-1 to 4-30)	7.5	15
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	2,000/100 ml as a geometric average	
Total Residual Chlorine		
(Interim)	monitor and report	
(Final)	0.5	1.2
pH	6.0—9.0 at all times	

The EPA waiver is in effect.

PA 0103934. Sewage. **The Well (Restaurant/Tavern)**, R. D. 1, Ridgway, PA 15853.

This application is for renewal of an NPDES permit to discharge treated sewage to Elk Creek in Ridgway Township, **Elk County**. This is an existing discharge.

The receiving water is classified for the following uses: cold water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO_2-NO_3, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Western Pennsylvania Water Company on the Clarion River located at Clarion, approximately 65 miles below point of discharge.

The proposed effluent limits for Outfall No. 001 based on a design flow of .002 mgd are:

Parameter	*Average Monthly (mg/l)*	*Instantaneous Maximum (mg/l)*
$CBOD_5$	25	50
TSS	30	60
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	100,000/100 ml as a geometric average	
Total Residual Chlorine	0.5	1.5
pH	6.0—9.0 at all times	

The EPA waiver is in effect.

Proposed NPDES Permit Renewal Actions for Minor Sewage Discharges

Southcentral Regional Office: Water Management Program, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110, (717) 705-4707.

NPDES No.	*Facility Name and Address*	*County and Municipality*	*Tributary Stream*	*New Permit Requirements*
PA 0034001	Bedford Materials Co. Inc. P. O. Box 657 Bedford, PA 15522	Bedford County Napier Township	UNT Raystown Branch/Juniata River	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 or protests. Each commentator will be notified in writing of the time and place if a hearing or conference concerning the plan or 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. 1500424. Sewerage. **Robert E. Assini**, 20 Rima Court, Danville, CA 94526. Applicant is requesting approval for the construction and operation of a failed onsite septic tank and drainfield for an individual stream discharge WWTP located in Birmingham Township, **Chester County**.

WQM Permit No. 2300409. Sewerage. **Jerry & Helen Colli**, 196 Andrien Road, Glen Mills, PA 19342. Applicant is requesting approval for the construction and operation of a small flow treatment facility to repair an existing malfunctioning sewage disposal system located in Concord Township, **Delaware County**.

Southcentral Regional Office: Water Management Program Manager, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110-8200, (717) 705-4707. Persons who wish to review any of these applications should contact Mary DiSanto at (717) 705-4732.

A. 3600406. Sewage, submitted by **David Ober**, 171 Hillcrest Lane, Elizabethtown, PA 17022 in West Donegal Township, **Lancaster County** to construct a small flow treatment facility was received in the Southcentral Region on August 9, 2000.

A. 4400401. Sewage, submitted by **Granville Township Board of Supervisors**, One Helen Street, Lewistown, PA 17044 in Granville Township, **Mifflin County** to rerate their sewage treatment plant was received in the Southcentral Region on August 10, 2000.

Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

A. 9084-S-A3. Sewerage, **City of Jeannette Municipal Authority**, P. O. Box 294, Penn, PA 15675. Application for the construction and operation of sewers and appurtenances to serve the Jeannette Raw Sewage Pumping Station located in Penn Boro, **Westmoreland County**. The Pennsylvania Infrastructure Investment Authority (Pennvest) which administers Pennsylvania's State Revolving Fund has been identified as a possible funding source. The Department's review of the sewage facilities plan revision has not identified any significant environmental impacts resulting from this proposal.

A. 0200413. Sewerage, **Sanitary Authority of Elizabeth Township**, 522 Rock Run Road, Buena Vista, PA 15018. Application for the construction and operation of sewers and appurtenances to serve the Arrowhead Lakes Area Sewer System located in Elizabeth Township, **Allegheny County**.

A. 2600403. Sewerage, **Dunbar Township Municipal Authority**, P. O. Box 815, Connellsville, PA 15425. Application for the construction and operation of a sewage treatment plant to serve the Dunbar Township Sanitary Authority WWTP, located in Dunbar Township, **Fayette County**.

A. 462S022-A1. Sewerage, **City of Duquesne Sanitary Authority**, 12 South Second Street, Duquesne, PA 15110. Application for the modification and operation of upgrades and improvements to the sewage treatment plant to serve the Duquesne STP located in Duquesne City, **Allegheny County**.

A. 467S021-A2. Sewerage, **Masontown Municipal Authority**, Two Court Street, Masontown, PA 15461. Application for the modification and operation of the

sewage treatment plant to serve the Big Run STP located in Masontown Borough, **Fayette County**. The Pennsylvania Infrastructure Investment Authority (Pennvest) which administers the Pennsylvania's State Revolving Fund has been identified as a possible funding source. The Department's review of the sewage facilities plan revision has not identified any significant environmental impacts resulting from this proposal.

A. 467S035-A1. Sewerage, **Masontown Municipal Authority**, Two Court Street, Masontown, PA 15461. Application for the modification and operation of the sewage treatment plant to serve the Cats Run STP Plant #1 (Bessemer STP) located in Masontown Borough, **Fayette County**. The Pennsylvania Infrastructure Investment Authority (Pennvest) which administers the Pennsylvania's State Revolving Fund has been identified as a possible funding source. The Department's review of the sewage facilities plan revision has not identified any significant environmental impacts resulting from this proposal.

Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.

WQM Permit No. 2400402. Sewage, **Roger D. Annis**, 230 Parade Street, St. Marys, PA 15857. This project is for the construction of a single residence sewage treatment plant in the City of St. Marys, **Elk County**.

WQM Permit No. 2500413. Sewage. **Jonathan Bowser and Brenda McBride**, 49 North Lake Road, North East, PA 16428. This project is for the construction and operation of a small flow treatment facility to serve two single family dwellings in North East Township, **Erie 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 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-G429. Stormwater. **General Residential Properties, Inc.**, 666 Exton Commons, Exton, PA 19341, has applied to discharge stormwater from a construction activity located in East Whiteland Township, **Chester County**, to Valley Creek (EV).

NPDES Permit PAS10-G430. Stormwater. **Upper Uwchlan Township**, 140 Pottstown Pike, Chester Springs, PA has applied to discharge stormwater from a construction activity located in Upper Uwchlan Township, **Chester County**, to Unnamed Tributary to Pickering Creek (HQ-TSF).

NPDES Permit PAS10-G431. Stormwater. **O'Neill Properties**, 1101 West DeKalb Pike, Wayne, PA 19087, has applied to discharge stormwater from a construction activity located in East Whiteland Township, **Chester County** to Little Valley Creek (EV).

Southcentral Regional Office: Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 657-4707.

Franklin County Conservation District, District Manager, Franklin County CD, 550 Cleveland Avenue, Chambersburg, PA 17201, (717) 264-8074

NPDES Permit PAS-10-m107. Stormwater. **Strait Manufacturing & Welding,** 56 Strait Lane, Greencastle, PA 17225 has applied to discharge stormwater from a construction activity located in Antrim Township, **Franklin County**, to Muddy Run (HQ-CWF).

Southwest Regional Office: Regional Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

NPDES PAS10A113. Stormwater. **The Buncher Company**, 5600 Forward Avenue, Pittsburgh, PA 15217 has applied to discharge stormwater from a construction site located in Leetsdale Borough, **Allegheny County** to Little Sewickley Creek (HQ-TSF).

SAFE DRINKING WATER

Application received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Regional Office: Northcentral Field Operations, Environmental Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701.

Application No. Minor Amendment. The Department has received a permit application from State College Borough Water Authority, 1201 West Branch Road, State

College, PA 16801-7697, Ferguson Township, **Centre County**. The application is for replacement of sodium bicarbonate with liquid caustic soda for pH adjustment for the Pine Grove Mills Water System.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

Preamble 1

Acknowledgment of Notices of Intent to Remediate submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6027.908).

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the background standard, Statewide health standard, the site-specific standard, or who intend to remediate a site as a special industrial area, must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known 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)(l)(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 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.

Former Recycle Metals Corp., Parcel "A," Proposed Lankford Autoplex, Plymouth Township, **Montgomery County**. Christopher G. Barricklow, EncoTech Midwest, Inc., 39255 Country Club Drive, Suite B40, Farmington Hills, MI 48331, has submitted a Notice of Intent to Remediate site soil contaminated with PCBs and lead. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in *The Norristown Times Herald* on June 23, 2000.

Park West Town Center, City of Philadelphia, **Philadelphia County**. Darryl D. Borrelli, Manko, Gold & Katcher, LLP, 401 City Avenue, Suite 500, Bala Cynwyd, PA 19004, has submited a Notice of Intent to Remediate site soil contaminated with PCBs, lead, heavy metals, solvents, BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons and groundwater contaminated with solvents, BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons. The site is located in a special industrial area. The applicant's proposed remediation will address any immediate, direct or imminent threat to the public health and the environment and will be based on the results of the Baseline Remedial Investigation Report. A summary of the Notice of Intent to Remediate was reported to have been published in *The Philadelphia Daily News* on August 8, 2000.

Northeast Regional Field Office: Joseph Brogna, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

Former Allentown Paint Factory, City of Allentown, **Lehigh County**. William Ahlert, Manager, Mid-Atlantic Services, Lawler, Matusky & Skelly Engineers, LLP, The Sovereign Building, 609 Hamilton Mall, Allentown, PA 18101 has submitted a Notice of Intent to Remediate (on behalf of his client, Abraham Atiyeh, Sixth Street, Whitehall, PA 18052) concerning the remediation of site soils found or suspected to have been contaminated with lead, petroleum hydrocarbons, polycyclic aromatic hydrocarbons and BTEX components. The application proposes to remediate the site to meet the Statewide health standard. A Final Report was simultaneously submitted. Please refer to additional *Pennsylvania Bulletin* notice.

Northcentral Regional Office: Michael C. Welch, Environmental Cleanup Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448, (570) 321-6525.

Former Berwick Forge & Fabricating, Berwick Borough, **Columbia County**. Manko, Gold & Katcher, LLP, on behalf of its client, Berwick Industrial Development Association, 120 East Third Street, Berwick, PA 18603, has submitted a Notice of Intent to Remediate soil and groundwater contaminated with PCBs, lead, heavy metals, solvents, BTEX, PHCs and PAHs. The applicant proposes to remediate the site to meet the Special Industrial Area requirements. A summary of the Notice of Intent to Remediate was reported to have been published in the *Press Enterprise* on July 14, 2000.

Southwest Field Office: John J. Matviya, Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-5217.

Fuccillo Ford, Town of Hampton, **Allegheny County**. Fuccillo Ford, Route 11, Adams, NY, OP-TECH Environ-

mental Services, 6392 Deere Road, Syracuse, NY 13220, and Paul Suozzi, 108 Sawyer Avenue, Tonawanda, NY 14150 has submited a Notice of Intent to Remediate soil contaminated with PCBs, lead, heavy metals, solvents, BTEX, PHCs and PAHs. 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 *North Hills News Record* on February 9, 2000.

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), act of July 28, 1988 (P. L. 556, No. 101) and regulations to operate solid waste processing or disposal area or site.

Regional Office: Northeast Regional Office, Regional Solid Waste Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

Permit I. D. No. 101318. **Rosencranse Sanitary Landfill**, Rosencranse Corporation, 1815 South Wolf Road, Hillside, IL 60162. A major permit modification for the installation and operation of an active landfill gas (LFG) collection/control system at this closed, municipal waste landfill located in Berlin Township, **Wayne County**. The application was received in the Regional Office on April 4, 2000; and as of August 8, 2000, it was found to be administratively complete.

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 necesssary 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. Any comments or protests filed with the Department Regional Offices must include a concise statement of the objections to the issuance of the plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

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

Applications received and intent to issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015).

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

06-05061: Cambridge-Lee Industries, Inc. (P. O. Box 14026, Reading, PA 19612) for a Synthetic Minor Operating Permit for a copper rolling and drawing operation in Ontelaunee Township, **Berks County**.

Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.

17-305-045: King Coal Sales, Inc. (P. O. Box 712, Philipsburg, PA 16866) for operation of a rotary coal breaker, associated bin and conveyors and a 150 horsepower diesel generator in Morris Township, **Clearfield County**. The rotary coal breaker and associated conveyors are subject to Subpart Y of the Federal Standards of Performance for New Stationary Sources.

City of Philadelphia: Air Management Services, 321 University Avenue, Philadelphia, PA 19104, (215) 685-7584.

S95-033: McWhorter Technologies (7600 State Road, Philadelphia, PA 19136) for operation of a facility that manufactures liquid coating resins in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include three natural gas or propane-fired furnaces each rated less than 3.5 MMBTU/hr, a 10.5 MMBTU/hr #2 oil, natural gas or propane-fired boiler, a 4.2 MMBTU/hr natural gas or propane-fired boiler and a 6.0 MMBTU/hr #2 oil-fired back-up boiler, a diesel fire pump, three process reactors, seven process tanks, a rupture tank, 31 storage tanks, a split tank, two tankwagon loading stations, an unloading station, a drum-fill station and an air stripping tower. The facility's air emission control devices include a scrubber system and condensers.

S96-028: Pearl Pressman Liberty (5th and Poplar Streets, Philadelphia, PA 19123) for operation of an offset lithographic printing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include five nonheatset offset sheetfed lithographic printing presses and two #2 oil-fired boilers each rated less than 2.0 MMBTU/hr

S00-003: Pioneer Leathertouch, Inc. (2250 East Ontario Street, Philadelphia, PA 19134) for operation of a rotogravure printing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include one 150 hp #5 oil-fired boiler, one rotogravure printing press and one gluer.

S95-064: Philadelphia Baking Co. (Grant Avenue and Roosevelt Blvd., Philadelphia, PA 19115) for opera-

tion of a bakery in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include an 8 MMBTU/hr boiler, a 5 MMBTU/hr boiler, two 3 MMBTU/hr air and heating units, and two oven lines. Emissions from the oven lines are controlled by a catalytic oxidizer.

N96-002: Tenet HealthSystem: Medical College of Pennsylvania—Main Campus and Eastern Pennsylvania Psychiatric Institute (3300 Henry Avenue, Philadelphia, PA 19129) for operation of a hospital in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include five emergency generators and two 650 hp natural gas or #6 oil-fired boilers, two 750 hp #4 oil-fired boilers and one 200 hp natural gas-fired boiler.

N96-003: Tenet HealthSystem: Medical College of Pennsylvania—Queen Lane Campus (2900 West Queen Lane, Philadelphia, PA 19129) for operation of a hospital in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include one emergency generator and five #2 oil-fired boilers; two are rated at 225 hp, one is rated at 112 hp, and two are rated at 84 hp.

Notice of Intent to Issue Title V Operating Permits

Under 25 Pa. Code § 127.521, 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 persons submitting the comments, along with the reference number of the proposed permit. The commentator should also include a concise statement of any 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.

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

TV-26-00119: Anchor Glass Container Corp. (4343 Anchor Glass Parkway, Tampa, FL 33634) for their glass container manufacturing facility at their A. W. Workman (Plant 05) in South Connellsville, **Fayette County**. As a result of the potential levels of NO_x, Particulate matter, and SO_x emitted from this facility, it is a major stationary source as defined in Title I, Part D of the Clean Air Amendments. The facility is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G.

TV-04-446: AES Beaver Valley Partners Inc. (394 Frankfort Road, Monaca, PA 15061) for their coal fired power plant in Potter Township, **Beaver County**. As a result of the potential levels of NO_x, Particulate matter, and SO_x emitted from this facility, it is a major stationary source as defined in Title I, Part D of the Clean Air Amendments. The facility is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G.

Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.

TVOP-62-00017: United Refining Co.—Warren (P. O. Box 780, Warren, PA 16365) in Warren, **Warren County**. The facility's air emission sources consist of five boilers, the refinery facility, two sulfur plants, wastewater separators and system and several storage tanks. The facility is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments.

TVOP-24-00083: Carbone of America, Graphite Materials Division (201 Stackpole Street, St. Marys, PA 15857) in St Marys, **Elk County**. The facility is primarily used for the production of graphite materials. The facility's air emission sources include material handling equipment, beehive kilns, curing ovens, carbottom kilns, batch graphitizers and miscellaneous finishing and machining equipment. The facility is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments due to the facility's potential to emit of Sulfur Oxides and Particualte Matter less than 10 microns in diameter. The facility is therefore subject to the Title V Operating Permit requirements adopted in 25 Pa. Code Chapter 127, Subchapter G.

Philadelphia Department of Public Health: Air Management Services, 321 University Ave., Philadelphia, PA 19104, (215) 685-7584.

V95-018: Gasket Materials Corp. (80-88 Morris Street, Philadelphia, PA 19148) for operation of a gasket manufacturing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include two adhesive coaters, a hot melt coater and a solvent cleaning process.

V95-052: Graphic Arts, Inc. (4100 Chestnut Street, Philadelphia, PA 19104) for operation of a facility that manufactures high quality printed materials using lithographic printing presses in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include five nonheatset sheetfed lithographic printing presses and one 2.7 MMBTU/hr natural gas-fired boiler.

V99-001: Grays Ferry Cogeneration Partnership (2600 Christian Street, Philadelphia, PA 19146) for operation of a steam and electric generating facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include a 1119 MMBTU/hr natural gas or #2 fuel-fired auxiliary boiler and a 1515 MMBTU/hr natural gas or #2 fuel-fired combustion turbine with or without a 366 MMBTU/hr natural gas or #2 fuel-fired Heat Recovery Steam Generator (HRSG) with Selective Catalytic Reduction System (SCR).

V95-016: Interstate Brands Corp. (9801 Blue Grass Road, Philadelphia, PA 19114) in the City of Philadelphia, **Philadelphia County**. The facilitiy's air emissions' sources include two 33 MMBTU/hr boilers, two 2.8

MMBTU/hr air compressors, 17 <2 MMBTU/hr heaters, three yeast baking ovens, one nonyeast baking ovens, one yeast fryer, and three nonyeast fryers. The air compressors each have selective noncatalytic reduction (SNCR). The yeast baking ovens are controlled by two catalytic oxidizers.

V95-057: Navy Public Works Center—Detachment Philadelphia (Broad and Porter Streets, Philadelphia, PA 19112) for operation of a facility that provides facilities maintenance, repair, utilities, engineering planning, consultation and construction services in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include a diesel pump, three 217/207 MMBTU/hr boilers that burn natural gas/#6 fuel oil controlled by low NO_x burners with associated flue gas recirculation, one diesel vehicle fueling station, and one gasoline vehicle fueling station controlled by vapor recovery.

V95-029: Naval Surface Warfare Center Carderock Division (NSWCCD) Ship System Engineering Station (5001 South Broad Street, Code 02, Philadelphia, PA 19112-5083) for operation of a facility in which activities include the research, development, testing, evaluation, fleet support and in-service engineering for surface and undersea naval ships in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include five wall-fired ship boilers, each with a heat input between 200 and 385 MMBTU/hr, six boilers each with a heat input <10 MMBTU/hr, ten heaters each with a heat input <3 MMBTU/hr, seven emergency generators, three engine test cells, three diesel engines used for testing, ten gas turbines, a paint spray booth, abrasive blasting, wood working and a dip tank solvent cleaner. The facility's air emissions control devices include a dust collector and baghouse.

V95-046: Northeast Water Pollution Control Plant (3899 Richmond Street, Philadelphia, PA 19137) for operation of a water treatment plant in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include liquid treatment processes, solids treatment processes, four 20-50 MMBTU/hr boilers, seven boilers <15 MMBTU/hr, four digester gas flares and a cold degreaser.

V95-005: PECO Energy Co., Richmond Station (3901 North Delaware Avenue, Philadelphia, PA 19137) for operation of an electric utility in the City of Philadelphia, **Philadelphia County**. The facility's air emissions sources include two 838 MMBTU/hr combustion turbines and a 1.7 MMBTU/hr boiler.

V96-012: SBF Communication Graphics (3747 Ridge Avenue, Philadelphia, PA 19132) for operation of a facility that prints and collates business forms in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include seven nonheatset offset litographic printing presses, three heatset offset lithographic printing presses [one with infrared heat, one with two 804,000 BTU/hr natural gas-fired dryers, and one with eight UV dryers], one 1.26 MMBTU/hr #2 oil-fired boiler and one paper trim collection system w/cyclone and bailer.

V95-045: Southwest Water Pollution Control Plant/Biosolids Recycling Center (8200 Enterprise Avenue, Philadelphia, PA 19153) for operation of a water treatment plant in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include liquid treatment processes, solids treatment processes, Biosolids Recycling Center processes, three 20-50 MMBTU/hr boilers, four boilers, two furnaces and a steam cleaner, each <15 MMBTU/hr, four digester gas flares and two portable sandblast units.

V95-002: Trigen—Philadelphia Energy Corp., Schuylkill Station (2600 Christian Street, Philadelphia, PA 19146) for operation of a steam generating facility in the City of Philadelphia, **Philadelphia County**. The facility's air emissions sources include two 795 MMBTU/hr boilers and one 761 MMBTU/hr boiler. Two of the boilers are controlled by a cyclone separator.

PLAN APPROVALS

Applications received and intent to Issue Plan Approvals under the Air Pollution Control Act (35 P. S. §§ 4001—4015).

Northeast Regional Office: Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, (570) 826-2531.

40-301-080: SPCA of Luzerne County (524 East Main Street, Wilkes-Barre, PA 18702) for construction of a crematory incinerator and associated air cleaning device in Plains Township, **Luzerne County**.

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

21-05001A: Lear East, LP (50 Spring Road, Carlisle, PA 17103) for the modification to automotive carpet foam molding operation and installation of a KJ Automotive Carpet Molding Line in Carlisle Borough, **Cumberland County**.

Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.

08-302-042: Oak Hill Veneer, Inc. (P. O. Box 304, Troy, PA 16947) for construction of a 16.26 million BTU/hour wood-fired boiler and associated air cleaning device (a multiclone collector) in Troy Township, **Bradford County**. This boiler is subject to Subpart Dc of the Federal Standards of Performance for New Stationary Sources.

OP-08-0004A: Masonite Corp. (P. O. Box 311, Towanda, PA 18848) for reactivation of a 161 million BTU per hour woodwaste and natural gas-fired boiler (No. 2 boiler), the particulate matter emissions from which will be controlled by an electrostatic precipitator, which has been out of operation for more than 1 year in Wysox Township, **Bradford County**. The applicant proposes to operate the boiler no more than 1,000 hours per 12-consecutive month period. The boiler could result in the emission of up to 16.84 tons of particulate matter/PM10 (particulate matter sized less than ten microns in diameter), 24.15 tons of nitrogen oxides, 135.24 tons of carbon monoxide, 4.025 tons of volatile organic compound and .097 tons of sulfur oxides for a 12-consecutive month period.

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

PA-03-076A: The Peoples Natural Gas Co. (625 Liberty Avenue, CNG Tower, Pittsburgh, PA 15222) for installation of EFGI on Gerty #2 at Girty Compressor Station in South Bend Township, **Armstrong County**.

PA-32-303A: Dominion Transmission, Inc. (625 Liberty Avenue, Pittsburgh, PA 15222) for installation of a compressor engine at Cherry Tree Station in Montgomery Township, **Indiana County**.

PA-63-905A: Ross Mould, Inc. (259 South College Street, Washington, PA 15301) for operation of facility in Washington City, **Washington County**.

Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.

PA-33-168A: Miller Welding & Machine Co. (1000 Miller Drive, Brookville, PA 15825) for construction of a surface coating operation (for fabricated metal parts) in Rose Township, **Jefferson County**.

PA-25-025B: General Electric (2901 East Lake Road, Erie, PA 16531) for revision of existing operating permit conditions for surface coating operations at the Erie facility in Erie, **Erie County**. The public notice is required for sources required to obtain a Plan Approval at Title V facilities in accordance with 25 Pa. Code § 127.44. The permit will be subject to the following conditions:

1. Pounds of VOC per gallon of coating for each source shall remain the same.

2. Total VOC emissions for each source shall be based on a consecutive 12-month period.

3. The sources shall comply with 25 Pa. Code § 129.52 for surface coating processes.

4. The sources shall comply with 25 Pa. Code §§ 123.31 and 123.41 for odor and visible emissions.

These conditions will satisfy the requirements of 25 Pa. Code § 127.12b (pertaining to plan approval terms and conditions) and will demonstrate the Best Available Technology for the source.

For additional information regarding the above, please contact Lori McNabb or Devendra Verma at (814) 332-6940 or by writing the Department at the previous address.

PA-25-066D: AKW LP (1015 East 12th Street, Erie, PA 16503) for construction of a new 7,000 ton forging press controlled by a scrubber and voluntary emission limit of permits PA-25-066A and PA-25-066B by Accuride Corp. in the City of Erie, **Erie County**. The facility is not a Title V Facility.

PA-25-648B: Welch's (South Lake Street, P. O. Box 471, North East, PA 16428) for modification of an existing boiler (146 MMBtu/hr) to increase hours of operation to 8,760 hrs/year in North East, **Erie County**. This modification is subject to Federal NSPS, 40 CFR Part 60, Subpart Db.

PA-25-648A: Welch's (South Lake Street, P. O. Box 471, North East, PA 16428) for construction of a natural gas-fired 120.8 MMBtu/hr combustion unit in North East, **Erie County**. This construction is subject to 40 CFR Part 60, Subpart Db.

Notice of Intent to Issue

Air Quality Plan Approval **PA-03-975A**, **Armstrong Energy, LLC, c/o Dominion Energy, Inc.**, P. O. Box 26532, Richmond, VA 23261. Notice is hereby given in accordance with 25 Pa. Code § 127.44(b) and 127.45 that the Department intends to issue an Air Quality Plan Approval to allow the construction of the Armstrong Energy Project, near State Road 156 in South Bend Township, **Armstrong County**.

The proposed facility is subject to the applicable requirements of 25 Pa. Code, Chapter 127 (related to construction, modification, reactivation and operation of sources, including the nonattainment New Source Review provisions of Subchapter E), 40 CFR 52.21 (related to Prevention of Significant Deterioration), 40 CFR Part 60, Subparts GG and Kb, (related to standards of performance for turbines and storage tanks), 40 CFR Parts 72, 73, 75 and 77 (related to acid rain), and 25 Pa. Code §§ 123.102—123.120 (related to the NO_x budget program). The Department believes that the facility will meet these requirements by complying with the following Plan Approval conditions:

1. The facility is to be constructed in accordance with the plans submitted with the application (as approved herein).

2. Upon completion of the construction of the facility, an operating permit must be obtained. Notify the Department when the installation is completed so that the facility can be inspected for issuance of an operating permit.

3. This Plan Approval authorizes Armstrong Energy, LLC to construct a Gas Turbine Generating Station, located in South Bend Township, **Armstrong County**.

4. The main source at this facility will be four simple-cycle, dual-fuel combustion turbines, General Electric Model GE 7 FA, rated at 165.1 MW and 1545 mmbtu/hr each. Turbines will be equipped with dry low NO_x combustors for use during the combustion of natural gas. Turbines shall also be equipped with water injection for use during the combustion of low sulfur diesel fuel.

5. Supporting equipment at this site will include four natural gas heaters rated at 7.7 mmbtu/hr each and two 2.25 million-gallon diesel fuel storage tanks.

6. NO_x emissions from the turbines shall be limited to 9 ppm during the combustion of natural gas. Hourly emission rates from each turbine during the combustion of natural gas shall be limited to the following:

Pollutant	*Rate*
NO_x	64.0 lb/unit hr
CO	31.0 lb./unit hr
SO_2	2.8 lb/unit hr
VOCs	3.0 lb/unit hr
PM_{10}	18.0 lb/unit hr

7. NO_x emissions from the turbines shall be limited to 56 ppm during the combustion of low-sulfur diesel fuel. Hourly emission rates from each turbine during the combustion of diesel fuel shall be limited to the following

Pollutant	*Rate*
NO_x	456.0 lb/unit hr
CO	79.0 lb/unit hr
SO_2	100.0 lb.unit hr
VOCs	8.0 lb/unit hr
PM_{10}	39.0 lb/unit hr

8. Total consumption of natural gas in all turbines combined per 12-consecutive month period shall not exceed 14.77×10^9 standard cubic feet when burning 100% natural gas.

9. Total consumption of low sulfur diesel fuel in all turbines combined per 12-consecutive month period shall not exceed 11.41×10^6 gallons when burning 100% fuel oil.

10. Consumption of natural gas shall be reduced by 892 standard cubic feet for every gallon of diesel fuel consumption during the same 12-consecutive month period.

11. The annual average sulfur content of the low-sulfur diesel fuel shall not exceed 0.05 weight percent.

12. Pollutant emissions from the total facility shall not exceed the following:

Total Facility—Wide Emission Rate (Tons/Year)

	Source			
Pollutant	*Turbines (All)*	*Nat. Gas Heaters*	*Fuel Oil Storage*	*Total*
NO_x	253.7	3.5		257.2
CO	124.6	3.0		127.6
SO_2	38.5			38.5
VOCs	11.6		0.1	11.7
PM_{10}	80.1			80.1

13. Per 25 Pa. Code § 127.13, if the construction is not commenced within 18 months of issuance of this Plan Approval, or if there is more than an 18-month lapse in construction, a new Plan Approval application shall be submitted.

14. The proposed construction is subject to 25 Pa. Code §§ 127.206(d)(1) and (2), and other applicable sections of Chapter 127, Subchapter E, for nonattainment New Source Review. In accordance with 25 Pa. Code § 127.205(3), each modification to a facility shall offset in accordance with 25 Pa. Code §§ 127.201 and 127.211, the total of the net increase in potential to emit.

15. The net NO_x emission increase from this facility is limited to 257.2 tons per year. In accordance with 25 Pa. Code § 127.210, new emissions will be offset with ERCs in a ratio of 1.15:1. Required ERCs equals 296 tons.

16. Permittee shall procure 296 tons of NO_x Emission Reduction Credits prior to commencement of operation. Credits will be required to be certified by the Department.

17. The turbines are subject to the applicable requirements of the 40 CFR Part 60, Subpart GG, Standards of Performance for Stationary Gas Turbines.

18. The two 2.25 million-gallon low-sulfur diesel fuel storage tanks are subject to the applicable requirements of 40 CFR Part 60, Subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels.

19. In accordance with 40 CFR 60.334(a), permittee shall install and operate a continuous monitoring system to monitor and record the fuel consumption and the ratio of water to fuel being fired in the turbine. This system shall be accurate to within ±5%, and must be approved by the Department.

20. In accordance with 40 CFR 60.344(a), permittee shall monitor the sulfur content and nitrogen content of the fuel being fired in each turbine. Certification of the sulfur and nitrogen contents of the fuel by the fuel supplier shall be used to demonstrate compliance with this condition.

21. Permittee shall install, certify, maintain and operate a Department-approved emission monitoring system in accordance with 25 Pa. Code Chapter 139, the Department's *Continuous Source Monitoring Manual*, 40 CFR Part 60, and 40 CFR Part 75. At a minimum the system shall measure and record the following for each turbine:

Exhaust Gas Flow

Nitrogen Oxide emissions as (NO_2) (Continuous)

Carbon Monoxide (Continuous)

% Oxygen (Continuous)

22. Permittee shall record hours of operation of each of the turbines, and the amount and type of fuel consumed, on a daily basis.

23. Permittee shall comply with the applicable reporting requirements of 40 CFR 60.7, 40 CFR 60.116b(d) and 40 CFR 60.334(c).

24. In accordance with 40 CFR 60.4, copies of all requests, reports, applications, submittals and other communications shall be forwarded to both the Environmental Protection Agency and the Department at the address shown below, unless otherwise noted:

Director, Air, Toxics, and Radiation, Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107 and PA Department of Environmental Protection, Regional Air Quality Manager, Office of Air Quality, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

25. In accordance with 40 CFR 60.334(c), permittee shall record daily, and shall report quarterly, in accordance with 40 CFR 60.7(c), any 1-hour period during which the average water-to-fuel ratio, as measured by the continuous water and fuel measuring system, falls below the ratio that was determined during the stack test to demonstrate compliance with NO_x emission limitations. Permittee shall also report any period during which the actual fuel-bound nitrogen content exceeds the fuel-bound nitrogen content determined during the stack test to demonstrate compliance with the NO_x emission limitations. Permittee shall also report any period during which the actual fuel-bound sulfur content exceeds 0.05 weight percent.

26. Compliance with the turbine emission limitations for NO_x and CO while using both low-sulfur diesel fuel and natural gas shall be demonstrated through performance stack testing on each turbine.

A. In accordance with 40 CFR 60.335(c)(2), the monitoring device required by 40 CFR 60.334 shall be used to determine the fuel consumption and the water-to-fuel ratio necessary to comply with turbine NO_x emission limitations at 30, 50, 75 and 100% of peak load, or at four points in the normal operating range of the gas turbine, including the minimum point in the range and peak load. All loads shall be corrected to ISO conditions using the appropriate equations as supplied by the turbine manufacturer.

B. All stack testing shall be performed in accordance with 40 CFR 60.8 and 60.335, 25 Pa. Code Chapter 139 regulations and the most recent version of the Department's *Source Testing Manual*.

C. Two copies of the stack test protocol shall be submitted to the Department at least 60 days in advance of the stack test date. Stack testing shall not take place until permittee has received written approval of the stack test protocol.

D. Company shall notify the Department of the date and the time of the stack test at least 2 weeks prior to the tests so that an observer may be present.

E. Two copies of the stack test results shall be submitted to the Department within 60 days of completion of the test.

F. Stack testing shall be performed within 60 days of achieving maximum firing rate but no later than 180 days after the initial startup.

G. Permittee shall record all pertinent operating data during the stack test and include this data with the stack test results.

27. The combustion turbines are subject to the Title IV Acid Rain Program of the 1990 Clean Air Act Amendments, and shall comply with all applicable provisions of

that Title, including the following:

40 CFR Part 72	Permits Regulations
40 CFR Part 73	Sulfur Dioxide Allowance System
40 CFR Part 75	Continuous Emissions Monitoring
40 CFR Part 77	Excess Emissions

28. The combustion turbines are subject to the applicable requirements of the NO_x Budget Program established at 25 Pa. Code §§ 127.102—123.120.

29. In accordance with 25 Pa. Code §§ 123.1 and 123.2, there shall be no fugitive emissions from this facility except those that arise from the use of roads. All reasonable actions shall be taken to minimize fugitive emissions that arise from use of roads. Reasonable actions shall include, but shall not be limited to paving, sweeping, and application of water or other dust suppressants. In no case shall fugitive emissions arising from the use of roads be permitted to cross the property line.

30. In accordance with 25 Pa. Code § 123.31, permittee shall not permit the emission of any malodorous air contaminants from any source in such a manner that the malodors, as determined by the Department, are detectable outside the permittee's property.

31. The opacity of the exhaust from all sources at this facility shall not exceed 10% at any time. Opacity shall be measured using EPA Reference Method 9, found at 40 CFR 60, Appendix A.

32. All equipment at this facility shall be equipped with manufacturer-designed silencers and/or mufflers. The turbines, generators and gas compressors shall be enclosed in structures designed by the manufacturer to minimize sound levels.

33. This Plan Approval authorizes the temporary operation of the sources covered by this Plan Approval provided that the following conditions are met.

A. The Department must receive written notice from the permittee of the anticipated date that sources will commence operation.

B. Operation is authorized only to facilitate the startup and shakedown of the sources, to permit operation of the sources pending the issuance of an Operating Permit, or to permit the evaluation of the sources for compliance with all appliable regulations and requirements.

C. This condition authorizes temporary operation of the sources for a period of 180 days from the start of commencement of operation, provided that the Department receives notice from the permittee under Subpart A.

D. Permittee may request an extension of this Plan Approval if compliance with all applicable regulations and Plan Approval requirements has not been established. The extension request shall be submitted in writing at least 15 days prior to the end of this period of temporary operation and shall provide a description of the compliance status of the source, a detailed schedule for establishing compliance, and the reasons that compliance has not been established.

E. The notice submitted by the permittee pursuant to Subpart A, above, prior to the expiration date of this Plan Approval, shall modify the Plan Approval expiration date. The new Plan Approval expiration date shall be 180 days from the date of the start-up.

F. Permittee shall submit a Title V Operating Permit Application within 120 days of startup of the sources and/or pollution control devices.

PSD air quality modeling shows that the maximum impacts for CO, NO_2 and PM_{10} are below the class II area significance levels. A full impact analysis to determine PSD increment consumption and compliance with the National Ambient Air Quality Standards was therefore not necessary.

Any person wishing to either object to issuance of the plan approval or a proposed condition thereof, or to provide the Department with additional information that they believe should be considered prior to the issuance of the plan approval, or to request a hearing may submit the information to the Department. Comments should be mailed to the Department at the address shown below. All comments must be received within 30 days of the date of this public notice. Comments shall include the following:

1. Name, address and telephone number of the person filing the comment.

2. Identification of the proposed plan approval issuance being opposed.

3. Concise statement of the objections to the plan approval issuance, and the relevant facts upon which the objections are based.

Written comments should be mailed to Barbara Hatch, Air Pollution Control Engineer, PADEP, 400 Waterfront Drive, Pittsburgh, PA 15222, (412) 442-4000.

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 these 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 such 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 §§ 86.31—86.34 and 77.121—77.123 (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. These

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, 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 abovementioned public comment period will be provided within 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.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

Coal Applications Received

54000103. Joe Kuperavage Coal Company (916 Park Avenue, Port Carbon, PA 17965), commencement, operation and restoration of an anthracite surface mine operation in Blythe Township, **Schuylkill County** affecting 255.0 acres, receiving stream—Schuylkill River. Application received August 7, 2000.

Knox District Office, P. O. Box 669, Knox, PA 16232.

16950109. Rosebud Mining Company (R. D. 1, Box 379A, Kittanning, PA 16201). Renewal of an existing bituminous surface strip operation in Toby Township, **Clarion County** affecting 311.0 acres. Receiving streams: unnamed tributary to Black Fox Run and Fiddler's Run to Black Fox Run. Application for reclamation only. Application received July 27, 2000.

16850116. Terry Coal Sales, Inc. (P. O. Box 58, Distant, PA 16223). Renewal of an existing bituminous surface strip, auger and fly ash/bottom ash disposal operation in Porter Township, **Clarion County** affecting 648.5 acres. Receiving streams: unnamed tributary to Leisure Run. Application for reclamation only. Application received August 2, 2000.

61990102. Ben Hal Mining Company (389 Irishtown Road, Grove City, PA 16127). Revision to an existing bituminous surface strip operation in Clinton and Venango Township, **Venango and Butler Counties** affecting 40.7 acres. Receiving streams: Unnamed tributary to Scrubgrass Creek. Revision to add the placement of fly ash within the permit area. Application received August 11, 2000.

16000104. Milestone Crushed, Inc. (521 South Street, Clarion, PA 16214). Commencement, operation and restoration of a bituminous surface strip operation in Richland Township, **Clarion County**, affecting 107.2 acres. Receiving streams: Unnamed tributaries to Turkey Run. Application received August 11, 2000.

Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.

56000105. Hoffman Mining, Inc. (P. O. Box 130, 118 Runway Road, Friedens, PA 15541), commencement, operation and restoration of bituminous surface mine in Shade Township, **Somerset County**, affecting 76.6 acres, receiving stream Clear Shade, Dark Shade and tributaries to Clear Shade and Dark Shade, application received August 9, 2000.

11000103. **T. J. Mining, Inc.** (P. O. Box 370, Carrolltown, PA 15722), commencement, operation and restoration of bituminous surface mine in Cresson Township, **Cambria County**, affecting 84.0 acres, receiving stream Burgoon Run and unnamed tributraries to Burgoon Run, application received August 11, 2000.

Greensburg District Office, R. R. 2, Box 603-C, Greensburg, PA 15601.

26000201. Carbon Fuel Resources, Inc. (P. O. Box 275, West Leisenring, PA 15489). Application received for commencement, operation, and reclamation of a coal refuse reprocessing site located in German Township, **Fayette County**, proposed to affect 73.7 acres. Receiving streams: unnamed tributary to Monongahela River and unnamed tributary to Browns Run to Monongahela River. Application received: August 9, 2000.

03950108. Thomas J. Smith, Inc. (R. D. 1, Box 260D, Shelocta, PA 15774). Renewal application received for continued reclamation of a bituminous surface auger mine located in Burrell Township, **Armstrong County**, affecting 193.3 acres. Receiving streams: unnamed tributary "B" to Long Run and Long Run. Renewal application received: August 16, 2000.

65950107. Ralph Smith & Son, Inc. (R. D. 1, Box 184C, Derry, PA 15627). Renewal application received for continued reclamation of a bituminous surface mine located in Loyalhanna Township, **Westmoreland County**, affecting 97.7 acres. Receiving streams: two unnamed tributaries to Wolford Run. Renewal application received: August 16, 2000.

Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.

Small Noncoal (Industrial Minerals) Final Bond Release Received:

11940803. **Gerald Whited** (263 Morris Street, Northern Cambria, PA 15714). Final bond release $1,000 for the complete restoration of a small noncoal quarry in Susquehanna Township, **Cambria County**, affecting 1.0 acre, receiving stream West Branch Susquehanna, application received August 16, 2000.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

Small Noncoal (Industrial Mineral) Bond Release Application

64920803. Mary Jane Sherman (36 E. Main Street, Hancock, NY 13783), Stage I and II bond release for a small quarry operation in Buckingham Township, **Wayne County** affecting 0.4 acre for $400 on property owned by Mary Jane Sherman. Application received August 14, 2000.

Department of Environmental Protection

Bureau of Deep Mine Safety

The Bureau of Deep Mine Safety (BDMS) has approved Mon View Mining Company's request for a variance from the requirements of section 224(b) of the Pennsylvania

Bituminous Coal Mine Act at the Mathies Mine concerning test hole drilling. This notification contains a summary of this request. A complete copy of the variance request may be obtained from Allison Gaida by calling (724) 439-7469 or from BDMS web site at http://www.dep.state.pa.us/dep/deputate/minres/dms/dms.htm.

Summary of the request: Mon View Mining Company requested a variance from section 224(b) of the Pennsylvania Bituminous Coal Mine Act for an alternative to the test hole-drilling plan. The proposal accords protections to persons and property substantially equal to or greater than the requirements of section 224.

The basis for the Bureau's approval is summarized in the following conclusions:

1. The long horizontal borehole method proposed in lieu of the requirements set forth in section 224 has been used successfully at the Mathies Mine and other underground mines in this Commonwealth.

2. The long horizontal borehold method proposed is much less labor intensive and provides less exposure to lifting and strain type injuries, by not having to handle and use hand-held drills and steels. By mining normal depth cuts, the work force will be subjected to less risk of having accidents associated with equipment place changes.

3. The long horizontal borehold proposed in lieu of the requirement set forth in section 224(b) will provide a greater coal barrier than required by section 224(b). Mon View Mining Company's proposed long horizontal borehold method provides a 457% larger barrier for the protection of the miners from contacting the abandoned mine over the requirements of section 224(b).

4. The long horizontal boreholes will provide a quicker method to close the borehold in the event of contacting the abandoned mine by closing the valve located at the end of the pipe grouted in the rib and will be more suitable for grouting, if needed.

This approval is limited to Mon View Mining Company's variance from the requirements in section 224(b). All other terms and requirements of section 224(b) shall remain in effect. Continued authorization for operation under the approval is contingent upon compliance with the measures described in Mathies' plan.

APPLICATIONS RECEIVED UNDER SECTION 401: FEDERAL WATER POLLUTUON CONTROL ACT

ENCROACHMENTS

The following permit applications and requests for Environmental Assessment approval and requests for water quality certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (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 any comments, suggestions or objections within 30 days of the date of this notice as well as any questions to 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.

Application 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.

E15-648, **E23-400**, **E46-871**. Encroachment. **PADOT**, 7000 Geerdes Blvd., King of Prussia, PA 19406. To install and maintain an ancillary conduit along several major regional roadways through **Chester, Delaware and Montgomery Counties** associated with the Intelligent Transportation System (ITS). The main stem will extend along US Route 202 Section 400, starting at a point 200 feet south of King Road (Malvern, PA Quadrangle N: 3.5 inches; W: 12.00 inches) and ending at a point just east of North Gulph Road (Valley Forge PA, Quadrangle N: 16.00 inches; W: 1.1 inches).

The scope of work will also include various branches as follows: Branch No. 1 will extend approximately 3 miles along the SEPTA Route 100 Rail Line, between the Route 202 overpass to just past the Montgomery Avenue overpass. Branch No. 2 will extend approximately 7.6 miles westbound along US Route 422 from the Route 202 Interchange. Branch No. 3 will extend approximately 5.2 miles eastbound on I-76 from milepost 382.2 to milepost 333.4. Branch No. 4 will extend 5.2 miles along I-476 from milepost 13.9 to milepost 19.1 and connect to the I-76 branch. Branch No. 5 will extend 1.2 miles along Route 23 between the US Route 422 Interchange and Allendale Road intersection and will connect with the District 6-0 Headquarters.

Proposed conduit within portions of Chester County, E15-648, will be installed along roadway right-of-ways over existing structures which cross: Trout Creek (WWF); Valley Creek (WWF, MF); Valley Creek (EV); Little Valley Creek (EV) and unnamed tributaries to aforementioned watercourses located in Tredyffrin, East Whiteland and West Whiteland Townships.

Proposed conduit within portions of Delware County, E23-400, will be installed along roadway right-of-ways over existing structures which cross: Meadowbrook (CWF; MF); Ithan Creek (CWF, MF); Browns Run (CWF, MF) and Hardings Run (CWF, MF) located in Radnor and Haverford Townships.

Proposed conduit within portions of Montgomery County, E46-871, will be installed along roadway right-of-ways over existing structures which cross: Crow Creek (WWF); Doe Run (TSF); Gulph Creek (WWF); Perkiomen Creek (TSF); Plymouth Creek (WWF); Sawmill Run (WWF); Schuylkill River (WWF, MF); Trout Creek (WWF) and unnamed tributaries to aforementioned watercourses in Upper Merion, West Norriton, Lower Providence, Lower Merion and Plymouth Townships and West Conshohocken Borough.

Southcentral Regional Office: Section Chief, Water Management Program, Soils and Waterways Section, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110, (717) 705-4707.

E06-542. Encroachment. **Central Berks Fire Co. No. 1**, P. O. Box 306, Centerport, PA 19516. To construct and maintain an access ramp and dry hydrant system in the floodway of the Schuylkill River (WWF, Scenic River) at a point at Belleman's Church Road for the purpose of providing access for fire trucks to draw water (Temple, PA Quadrangle N: 14.7 inches; W: 14.1 inches) in Centre Township, **Berks County**.

E07-334. Encroachment. **Logan Township, Bonnie Lewis**, 800 39th St., Altoona, PA 16601. To construct and maintain additions and improvements to the existing Greenwood Sewage Treatment Plant and be constructed a 24-inch outfall pipe in the floodway of Little Juniata River TSF) at a point approximately 2,000 feet upstream of SR 4018 (Bellwood, PA Quadrangle N: 13.5 inches; W: 14.1 inches) in Antis Township, **Blair County**.

E21-312. Encroachment. **Upper Allen Township**, 100 Gettysburg Pike, Mechanicsburg, PA 17055. To (1) remove an existing 30-inch corrugated metal pipe and an existing concrete block wall; (2) construct and maintain a 38-inch by 60-inch, 20-foot long elliptical concrete culvert (3) construct and maintain about 227 feet of trapezoidal shaped channel having a bottom width of 4.0 feet with three to one side slopes; and, (4) construct and maintain a 38-inch by 60-inch, 108-foot long stream reinforced concrete stream enclosure with R-5 riprap at the pipe's exit for the purpose of relocating approximately 340 feet of stream channel of an unnamed tributary to the Yellow Breeches Creek (a.k.a. Trout Run) (CWF) located near the Village of Grantham (Lemoyne PA Quadrangle N: 5.9 inches; W: 16.7 inches) in Upper Allen Township, **Cumberland County**.

E36-696. Encroachment. **Virginia Brady, Pequea Township**, 1020 Millwood Road, Willow Street, PA 17584. To remove the existing bridge and to construct and maintain a new concrete bridge having a single span of 20 feet with an underclearance of 8 feet minimum across the channel of Goods Run (TSF) on T-557 (Millwood Road) located about 0.7 mile south of Baumgardner Village (Conestoga, PA Quadrangle N: 13.8 inches; W: 5.0 inches) in Pequea Township, **Lancaster County**.

Northcentral Region: Water Management, Soils and Waterways Section, F. Alan Sever, Chief, 208 West Third Street, Suite 101, Williamsport, PA 17701.

E18-303. Encroachment. **Donald Shetler**, R. R. 1, Box 527B, Lock Haven, PA 17745. To maintain a steel beam wood deck bridge with concrete abutments approximately 24′ long by 12′ 6″ wide with a waterway opening of 17′ by 5′ and to remove a gravel bar approximately 50′ by 10′ and to fill in an eroded bank with removed gravel and to construct and maintain approximately 50 feet of riprap stream bank protection. The project is located on the south side of Big Plum Road approximately 2000′ east of the intersection of Big Plum Road with Cider Press Road (Jersey Shore, PA Quadrangle N: 7.0 inches; W: 1.7 inches) in Dunnstable Township, **Clinton County**. The project will not impact wetlands while impacting approximately 80 feet of waterway. Big Plum Run is a cold water fisheries stream.

E55-165. Encroachment. **Matthew Metzger**, 19 Greenbrier Avenue, Selinsgrove, PA 17870. To construct, operate and maintain a road crossing an unnamed tributary to Middle Creek (Cold Water Fishery) and a contributory channel to the same waterway for access to private property. The road crossing the unnamed tributary shall be constructed with two 6-foot diameter by 25-foot long culvert pipes. The project will not impact wetlands while impacting 50-feet of waterway which is located along the northern right-of-way of SR 2010 approximately 879-feet west of SR 2007 and SR 2010 intersection (Freeburg, PA Quadrangle N: 2.7 inches; W: 3.0 inches) in Washington Township, **Snyder County**.

Southwest Regional Office: Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E02-1094 A1. Encroachment. **Parent and Child Guidance Center**, 2644 Banksville Road, Pittsburgh, PA 15216. To amend Permit No. E02-1094 which authorized the maintenance of an existing 10′ diameter CMP culvert 235′ long in a Tributary to Saw Mill Run (WWF), located approximately 1100′ north of the intersection of Banksville Road and Potomac Avenue (Pittsburgh West, PA Quadrangle N: 5.5 inches; W: 5.3 inches) in the City of Pittsburgh, **Allegheny County**. The permit is amended to include the operation and maintenance of an existing 10′ diameter CMP culvert 106.5′ long to operate, maintain and repair an existing 12′-10″ × 8′-4″ CMP plate arch culvert 151′ long and to construct and maintain 10′ diameter CMP 272′ long culvert extension to the existing 235′ long 10′ diameter culvert for the purpose of expanding the facilities parking lot.

E02-1314. Encroachment. **Urban Redevelopment Authority of Pittsburgh**, 200 Ross Street, Pittsburgh, PA 15219-2069. To construct and maintain a 48 inch outfall and a gabion lined and slush grouted stilling basin along the right bank of Nine Mile Run (TSF) as part of the Summerset at Frick Park Nine Mile Run Development (Pittsburgh East, PA Quadrangle N: 9.1 inches; W: 4.5 inches) in the City of Pittsburgh, **Allegheny County**.

E32-422. Encroachment. **Grant Township Supervisors**, 1599 Hartman Road, Marion Center, PA 15759. To operate and maintain a 6 inch depressed 72 inch × 55 inch arch pipe culvert in Rairigh Run (HQ-CWF) authorized for construction under Emergency Permit No. EP3200202. The project is located on T-830, approximately 1 mile from its intersection with SR 1037 (Rochester Mills, PA Quadrangle N: 5.35 inches; W: 7.35 inches) in Grant Township, **Indiana County**.

E65-763. Encroachment. **St. Clair Township**, P. O. Box 506, Seward, PA 15954. To remove the existing structure and to construct and maintain a 6 inch depressed 64 inch × 43 inch CMP arch culvert in Shannon Run (HQ-CWF) for the purpose of minimizing flooding. The project is located on Wildcat Road, approximately 1 mile from its intersection with Shannon Creek Road (Rachelwood, PA Quadrangle N: 17.0 inches; W: 9.0 inches) in St. Clair Township, **Westmoreland County**.

E02-1315. Encroachment. **Millvale Borough**, 501 Lincoln Avenue, Millvale, PA 15209. To construct and maintain a river trail and recreational facility along the right bank of the Allegheny River (WWF) consisting of the following: a sunken barge filled with R-6 riprap, a pedestrian walkway across the back channel of the Allegheny River on the north end of Washington's Landing (Herrs Island), access walking ramps along the river bank, various parking lots, a 24′ wide bituminous access road from Bridge Street to the proposed Three Rivers Rowing Club site, a 10′ wide aggregate walking trail from the City of Pittsburgh Corporation Limit through Millvale Borough and extending into Shaler Township, a canoe/kayak landing site and access road, a 50′ × 175′ boat storage building, a 55′ × 90′ boathouse and a gazebo. The project begins at River Mile 2.9 to 3.9 (Pittsburgh East, PA Quadrangle, the project begins at N: 17.1 inches;

W: 13.8 inches and ends at N: 19.4 inches; W: 12.1 inches) in the City of Pittsburgh, Millvale Borough and Shaler Township, **Allegheny County**.

E63-496. Encroachment. **American Legion Post #940**, 800 Middle Street, West Brownsville, PA 15417. To construct and maintain a 645 foot long marina along the left bank of the Monongahela River (WWF) at River Mile 55.2 (California, PA Quadrangle N: 6.0 inches; W: 0.4 inch) in West Brownsville Borough, **Washington County**.

Northwest Regional Office: Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.

E20-489. Encroachment. **PA Department of Conservation and Natural Resources**, Park Region No. 2, P. O. Box 387, Prospect, PA 16052-0387. To expand, rehabilitate and maintain the Jamestown Boat Livery in Pymatuning Lake east of Williamsfield Road approximately 2 miles north of S. R. 322 in Pymatuning State Park (Hartstown, PA Quadrangle N: 1.5 inches; W: 13.1 inches) in West Shenango Township, **Crawford County**, including the following:

1. Excavate approximately 0.6 acre of shoreline area above normal pool elevation of 1,008 feet, including approximately 0.087 acre of wetland.

2. Dredge approximately 12,000 cubic yards of material from approximately 2-acre area to establish a minimum of 5-foot depth of water at normal pool elevation of 1,008 feet.

3. Install approximately 400 linear feet of PVC sheet pile bulkhead or rock riprap shoreline protection with concrete dock bulkheads.

4. Remove the existing docks and install new floating docks to provide approximately 175 boat slips.

E25-602. Encroachment. **Millcreek Township**, 3608 West 26th Street, Erie, PA 16506. To conduct the following activities associated with the Heidler Road Drainage Improvement Project in a tributary to Walnut Creek downstream of Heidler Road northwest of Sterrettania Road (S. R. 832) in Millcreek Township, **Erie County**:

1. Realign approximately 800 feet of stream channel beginning at Heidler Road and extending downstream (Swanville, PA Quadrangle N: 8.0 inches; W: 6.9 inches).

2. Remove the existing structure and to install and maintain three 60-inch diameter HDPE pipe culverts having a length of 50 feet on a private driveway approximately 850 feet downstream of Heidler Road (Swanville, PA Quadrangle N: 8.1 inches; W: 6.85 inches).

3. Remove the existing structure and to install and maintain three 60-inch diameter HDPE pipe culverts having a length of 50 feet on a private driveway approximately 1,700 feet downstream of Heidler Road (Swanville, PA Quadrangle N: 8.5 inches; W: 6.45 inches).

4. Install and maintain concrete block stream bank walls along both banks for a distance of approximately 100 feet extending upstream from a private driveway approximately 2,600 feet downstream of Heidler Road (Swanville, PA Quadrangle N: 8.9 inches; W: 6.1 inches).

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. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

Industrial waste and sewerage actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

Permits Issued

Southeast Regional Office: Regional Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-6130.

WQM Permit No. 0900402. Sewerage. **Bucks County Water and Sewer Authority**, 1275 Almshouse Road, Warrington, PA 18976. Applicant is granted approval for the construction and operation of a submersible triplex pump station to serve in New Hope Borough and Solebury Townships, **Bucks County**.

WQM Permit No. 1500418. Sewerage. **City of Coatesville Authority**, 114 East Lincoln Highway, P. O. Box 791, Coatesville, PA 19320. Applicant is granted approval for the construction and operation of a pump station to serve Brinton Station a residential development located in East Fallowfield Township, **Chester County**.

WQM Permit No. 2300404. Sewerage. **White Horse Village Associates**, 535 Gradyville Road, Newtown Square, PA 19073-2814. Applicant is granted approval to rerate the White Horse Village STP located in Edgmont Township, **Delaware County**.

WQM Permit No. 1500405. Sewerage. **Uwchlan Township**, P. O. Box 255, Lionville, PA 19353-0255. Applicant is granted approval for the construction and operation to expand the Eagleview WWTP located in Uwchlan Township, **Chester County**.

NPDES Permit No. PA0053783. Sewage. **Avon Grove School District**, 375 South Jennersville Road, West Grove, PA 19390, is authorized to discharge from a facility located at Penn London Elementary School in New London Township, **Chester County** into an UNT to West Branch of White Clay Creek.

NPDES Permit No. PA0053180. Sewerage. **Montgomery Township Municipal Sewer Authority**, 1001 Stump Road, Montgomeryville, PA 18936, is authorized to discharge from a facility located in Montgomery Township, **Montgomery County** into receiving waters named Little Neshaminy Creek.

Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

NPDES Permit PA-0044024. Industrial Waste. **Pennsylvania Fish and Boat Commission, Benner Spring Fish Research Station**, 1225 Shiloh Road, State College, PA 16801-8495 is authorized to discharge from a facility located in Mt. Pleasant Township, **Wayne County**, to West Branch Lackawaxen.

NPDES Permit PA-0061247. Sewerage. **Carbon Dack Associates, L.L.C.**, 650 Naamans Road, Suite 315, P. O. Box 470, Brandywine Corporate Center, Claymont, DE 19073 is authorized to discharge from a facility located in Mahoning Township, **Carbon County**, to an unnamed tributary of Mahoning Creek.

NPDES Permit PA-0061131. Sewerage. **Dalton Sewer Authority**, P. O. Box 538, Dalton, PA 18414 is authorized to discharge from a facility located in La Plume Township, **Lackawanna County**, to Ackerly Creek.

Southcentral Regional Office: Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.

Permit No. PA0028746. Sewerage. **Hampden Township (Pinebrook Plant)**, 230 South Sporting Hill Road, Hampden, PA 17055-3097 is authorized to discharge from a facility located in Hampden Township, **Cumberland County** to the receiving waters named Conodoguinet Creek.

Permit No. PA0014656. Sewerage. **Exide Corporation (Hamburg Facility)**, P. O. Box 14205, Reading, PA 19612-4205 is authorized to discharge from a facility located in Hamburg Borough, **Berks County** to the receiving waters named Schuylkill River.

Permit No. PA0042528. Sewerage. **Lester B. Searer** (Margaretta Mobile Home Park), 4754 East Propsect Road, York, PA 17406-8653 is authorized to discharge from a facility located in Lower Windsor Township, **York County** to the receiving waters named Cabin Creek.

Permit No. PA0081868. Sewerage. **Fairview Township** (Fairview Township North WWTP), 599 Lewisberry Road, New Cumberland, PA 17070 is authorized to discharge from a facility located in Fairview Township, **York County** to the receiving waters named Susquehanna River.

Permit No. PA0026735. Sewerage. **Swatara Township Authority**, 8675 Paxton Street, Hummelstown, PA 17036-8601 is authorized to discharge from a facility located in Swatara Township, **Dauphin County** to the receiving waters named Swatara Creek.

Permit No. PA0044621. Sewerage. **DCNR—Canoe Creek State Park**, R. R. 2, Box 560, Hollidaysburg, PA 16648 is authorized to discharge from a facility located in Frankstown Township, **Blair County** to the receiving waters named New Creek.

Permit No. 0100402. Sewage. **Biglerville Borough Authority**, 33 Musselman Avenue, Biglerville, PA 17307. This permit approves the construction of a pump station in Butler Township, **Adams County**.

Permit No. 6788449 00-1. Seage. **Fairview Township**, 599 Lewisberry Road, New Cumberland, PA 17070-2399. This permit approves the construction of Sewage Treatment Facilities in Fairview Township, **York County**.

Northcentral Regional Office: Department of Environmental Protection, 208 West Third Street, Suite 101, Grit Building, Williamsport, PA 17701.

NPDES Permit PA0036820. Sewerage. **Galeton Borough Authority**, P. O. Box 222, Galeton, PA 16922. Renewal granted to Borough Authority to discharge from facility located at Galeton Borough, **Potter County.**

NPDES PA0024627. Sewerage. **McClure Municipal Authority**, P. O. Box 138, McClure, PA 17841. Renewal Granted to Authority to discharge from facility located at McClure Borough, **Snyder County**.

NPDES PA0114073. Sewerage transfer. **Dominion Transmission Inc.**, 445 West Main Street, Clarksburg, WV 26301. Change in ownership has taken place to facility located at Farmington Township, **Tioga County**.

NPDES Permit PA 0228206. Industrial Waste. **Clearfield Municipal Authority**, 107 East Market Street, Clearfield, PA 16830. Permission granted to discharge from facility located at Pike Township, **Clearfield County**.

WQM Permit No. 1795408-A40. Sewerage. **Bradford Township/McBride**, P. O. Box 79, Woodland, PA 16881. Approval granted to construct and maintain single residence sewer system in the Bradford Township, **Clearfield County** pilot program.

WQM Permit No. 0884403-T2. Transfer Sewerage. **Shirley A. Hanson**, R. R. 1, Box 161, Harvey's Lake, PA 18618. Permission to transfer Hillside Mobile Home Park, granted to Permittee. Facility located at Ridgebury Township, **Bradford County**.

WQM Permit No. 0800403. Sewerage. **Colin L. Reed**, R. R. 2, Box 222, Gillett, PA 16925. Permission granted to construct and maintain single residence sewer system located at South Creek Township, **Bradford County**.

Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

NPDES Permit No. PA0027715-A1. Industrial. **Mill Service, Inc.**, 1815 Washington Road, Pittsburgh, PA 15241-1498 is authorized to discharge from a facility located at Yukon Facility, South Huntingdon Township, **Westmoreland County** to receiving waters named Sewickley Creek.

NPDES Permit No. PA0215899. Industrial, **Veka, Inc.**, 100 Veka Drive, Fombell, PA 16123 is authorized to discharge from a facility located at Marion Township, **Beaver County** to receiving waters named Connoquenessing Creek.

NPDES Permit No. PA0096369. Sewage. **Valley High Mobile Home Park**, 79 Valley High MHP, Ruffsdale, PA 15679 is authorized to discharge from a facility located at Valley High MHP STP, East Huntington

Township, **Westmoreland County** to receiving waters named Unnamed Tributary of Buffalo Run.

NPDES Permit No. PA0216925. Sewage. **Consolidation Coal Company**, P. O. Box 100, Osage, WV 26543 is authorized to discharge from a facility located at Kuhntown Portal Wastewater Treatment Plant, Wayne Township, **Greene County** to receiving waters named Unnamed Tributary of Hoovers Run.

NPDES Permit No. PA0218545. Sewage. **Quecreek Mining, Inc.**, 1576 Stoystown Road, Friedens, PA 15541 is authorized to discharge from a facility located at Quecreek No. 1 Mine Portal Sewage Treatment Plant, Lincoln Township, **Somerset County** to receiving waters named Unnamed Tributary of Quemahoning Creek.

Permit No. 5670406-A1. Sewage. **Indian Lake Borough**, 1301 Causeway Drive, Indian Lake, PA 15926. Construction of equalization facilities located in Indian Lake Borough, **Somerset County** to serve Indian Lake Borough Sewage Treatment Plant.

Permit No. 6599415. Sewerage. **Mill Service, Inc.**, R. D. 1, Box 135A, Cemetery Road, Yukon, PA 15698. Construction of Activated Sludge Sewage Treatment System located in South Huntingdon Township, **Westmoreland County** to serve Mill Service, Inc.

Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.

NPDES Permit No. PA0221627. Sewage. **Tri Lane Estates Mobile Home Park**, R. D. 7, Mercer, PA 16137 is authorized to discharge from a facility located in Lackawannock Township, **Mercer County** to an unnamed tributary to Little Neshannock Creek.

NPDES Permit No. PA0041831. Sewage. **Northwest Crawford County Sewer Authority**, P. O. Box 56, Springboro, PA 16435 is authorized to discharge from a facility located in Springboro Borough, **Crawford County** to Conneaut Creek.

NPDES Permit No. PA0101320. Sewage. **Colonial Estates Mobile Home Park**, 432 Candle Avenue, Sebastian, FL 32958 is authorized to discharge from a facility located in Oil Creek Township, **Crawford County** to an unnamed tributary to Pine Creek.

NPDES Permit No. PA0092185. Sewage. **Peter Rabbit Campground, Inc.**, 551 Mahood Road, Butler, PA 16001 is authorized to discharge from a facility located in Brady Township, **Butler County** to Big Run.

NPDES Permit No. PA0221813. Sewage. **John H. Sechriest and James L. Whitmire**, 302 Egypt Road, Warren, PA 16365 are authorized to discharge from a facility located in Glade Township, **Warren County** to an unnamed tributary to Glade Run.

WQM Permit No. 4300401. Sewage. **Humane Society of Mercer County, Inc.**, P. O. Box 331, Sharpsville, PA 16150. This project is for the construction and operation of a small flow treatment facility located in Jefferson Township, **Mercer County**.

WQM Permit No. 1090402. Sewage. **Concordia Lutheran Ministries**, 615 North Pike Road, Cabot, PA 16023-2299. This project is for proposed plans to add redundancy to their existing system to ease maintenance in Jefferson Township, **Butler County**.

WQM Permit No. 4300408. Sewerage, **James A. Pumphrey SRSTP**, 1687 Lake Road, Mercer, PA 16137. Construction of James A. Pumphrey SRSTP located in Jefferson Township, **Mercer County**.

WQM Permit No. 2000409. Sewerage, **Frank E. Pashel SRSTP**, 234 Guenevere Dr., Pittsburgh, PA 15237. Construction of Frank E. Pashel SRSTP located in Wayne Township, **Crawford County**.

INDIVIDUAL PERMITS

(PAS)

The following NPDES Individual Permits for discharges of stormwater from Construction Activities have been issued.

Northeast Regional Office: Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

NPDES Permit No.	*Applicant Name and Address*	*County and Municipality*	*Receiving Stream*
PAS10Q194	Posocco Equities 2610 Walbert Avenue Allentown, PA 18104	Lehigh County Upper Macungie Township	Little Lehigh and Jordan Creek HQ-CWF
PAS10Q203	Bracy, Inc. 5412 Shimerville Road Emmaus, PA 18049-5011	Lehigh County Upper Milford Township	Little Lehigh Creek HQ-CWF
PAS10Q062-R	IRA Lehnich P. O. Box 223 Emmaus, PA 18104	Lehigh County Lower Macungie Township	Little Lehigh Creek HQ-CWF
PAS10Q200	Scott D. Davis and David S. Mushko 544 Jubilee Street Emmaus, PA 18049	Lehigh County Upper Milford and Lower Macungie Township	Little Lehigh Creek HQ-CWF
PAS10Q196	Bible Baptist Church 511 Farmington Road Breinigsville, PA 18031	Lehigh County Upper Macungie Township	Little Lehigh Creek HQ-CWF

NPDES Permit No.	*Applicant Name and Address*	*County and Municipality*	*Receiving Stream*
PAS10R032	Silverleaf Resorts, Inc. Suite 120 1221 River Bend Drive Dallas, TX 75247	Luzerne County Butler and Dennison Townships	Nescopeck Creek HQ-CWF
PAS10S086	Charles M. Hannig Hannig Enterprise, Inc. 200 Plaza Court, Suite A East Stroudsburg, PA 18301	Monroe County Hamilton Township	Kettle Creek HQ-CWF
PAS10S082	Bestway Enterprises, Inc. 3877 Luker Road Cortland, NY 13047	Monroe County Barrett Township	Cranberry Creek HQ-CWF
PAS107419	US Department of Justice Federal Bur. Of Prisons 320 First St., NW Washington, DC 20534 & Bell Engineering Corp. 1330 Buffalo Rd. Rochester, NY 14624	Wayne County Canaan Township	Middle Creek Basin HQ-CWF-MF

Southwest Regional Office: Regional Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

NPDES Permit No.	*Applicant Name and Address*	*County and Municipality*	*Receiving Stream*
PAS10B011-1	Armstrong County Industrial Development Authority Armstrong County Department of Planning and Development 402 Market Street Kittanning, PA 16201-1485	Armstrong County North Buffalo Township South Buffalo Township	Pine Creek (HQ-CWF) and Nicholson Run (WWF)
PAS10B012	Mark Ann Industries, Inc. P. O. Box 1022 Kittanning, PA 16201	Armstrong County West Franklin Toiwnship	UNT Buffalo Creek
PAS10B013	The Bauer Company, Inc. P. O. Box 1022 Kittanning, PA 16201	Armstrong County West Franklin Township	Buffalo Creek (HQ-TSF)
PAS101022	Jackson Township Water Authority 2949 William Penn Avenue Johnstown, PA 15909	Cambria County Jackson Township	Laurel Run (HQ-CWF) and Saltlick Run (HQ-CWF)

INDIVIDUAL PERMITS

(PAR)

Coverage Under NPDES and/or Other General Permits

The following parties have submitted (1) Notices of Intent (NOIs) for Coverage under General NPDES Permits to discharge wastewater into the surface of the Commonwealth; (2) NOIs for coverage under General Permits 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 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.

List of NPDES and/or other 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

List of NPDES and/or other General Permit Type

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.
PAG-10	General Permit for Discharge Resulting From Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	Concentrated Animal Feeding Operations (CAFOs)

General Permit Type—PAG-2

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream Body of Water or Site Name and Address*	*Contact Office and Telephone No.*
Northampton Township Bucks County	PAR10-D503	Council Rock School District 301 Twining Ford Rd., Richboro, PA 18954	Tributary to Neshaminy Creek (WWF, MF)	Department of Environmental Protection Suite 6010, Lee Park, 555 North Lane, Conshohocken, PA 19428 (610) 832-6130
New Hope Borough Bucks County	PAR10-D517	Union Square Limited Partnership P. O. Box 59, New Hope, PA 18938	Delaware River (WWF, MF)	Department of Environmental Protection Suite 6010, Lee Park, 555 North Lane, Conshohocken, PA 19428 (610) 832-6130
Plumstead Township Bucks County	PAR10-D521	GPNJ Associates, LP 4557 French Dr., Doylestown, PA 18901	Cabin Run Creek (CWF)	Department of Environmental Protection Suite 6010, Lee Park, 555 North Lane, Conshohocken, PA 19428 (610) 832-6130
Durham/Riegelsville Boroughs Bucks County	PAR10-D534	International Paper P. O. Box 158, Rieglesville, PA 18077	Delaware River (WWF, MF)	Department of Environmental Protection Suite 6010, Lee Park, 555 North Lane, Conshohocken, PA 19428 (610) 832-6130
Richland Township Bucks County	PAR10-D514	Walnut Bank Farm 130 Buck Rd., Suite 201, Holland, PA	Tohickon Creek (TSF)	Department of Environmental Protection Suite 6010, Lee Park, 555 North Lane, Conshohocken, PA 19428 (610) 832-6130
Newtown Township Bucks County	PAR10-D370	J. Loew and Associates, Inc. 55 Country Club Drive, Suite 200 Downingtown, PA 19335	Newtown Creek (WWF, MF)	Department of Environmental Protection Suite 6010, Lee Park, 555 North Lane, Conshohocken, PA 19428 (610) 832-6130
Tinicum Township Delaware River	PAR10-J183	Mack-Cali Realty Corporation 11 Commerce Dr., Cranford, NJ 07016	Long Hook Creek (WWF)	Department of Environmental Protection Suite 6010, Lee Park, 555 North Lane, Conshohocken, PA 19428 (610) 832-6130

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream Body of Water or Site Name and Address*	*Contact Office and Telephone No.*
Antis Township Bellwood Borough Blair County	PAR-10-0702	Bellwood Bridge PennDOT 1620 N. Juniata Street Hollidaysburg, PA 16648	Little Juniata River	Blair County CD 1407 Blair Street Hollidaysburg, PA 16648 (814) 696-0877
Halifax Township Dauphin County	PAR-10-1206	Carol & Larry Strohecker 615-A Dunkie School Road Halifax, PA 17032	Susquehanna River	Dauphin County CD 1451 Peters Mountain Road Dauphin, PA 17018 (717) 921-8100
Swatara Township Dauphin County	PAR-10-1243	The McNaughton Company 4400 Deerpath Road Harrisburg, PA 17110	Beaver Creek	Dauphin County CD 1451 Peters Mountain Road Dauphin, PA 17018 (717) 921-8100
Derry Township Dauphin County	PAR-10-1236	Hershey Trust Company Founders Hall P. O. Box 830 Hershey, PA 17033-0830	Spring Creek (East)	Dauphin County CD 1451 Peters Mountain Road Dauphin, PA 17018 (717) 921-8100
City of Harrisburg Dauphin County	PAR-10-1241	Harrisburg City School Dist. P. O. Box 2645 Harrisburg, PA 17105-2645	Spring Creek (West)	Dauphin County CD 1451 Peters Mountain Road Dauphin, PA 17018 (717) 921-8100
Southampton Township Franklin County	PAR-10-M217	James & Marlies Newman Stonewall Ridge Phase 2 & 3 121 Cottage Road Shippensburg, PA 17257	Muddy Run WWF	Franklin County CD 550 Cleveland Avenue Chambersburg, PA 17201 (717) 264-8074
Washington Township Franklin County	PAR-10-M218	Waynesboro Youth Soccer Assn. 12105 Old Pen Mar Road Waynesboro, PA 17268	East Branch Antietam Creek CWF	Franklin County CD 550 Cleveland Avenue Chambersburg, PA 17201 (717) 264-8074
Centre County Bellefonte Borough	PAR10F083	Kevin Zimmerman Parkview Heights Assoc. 742 Benner Pike Bellefonte, PA 16823	Unt. Spring Creek	Centre County CD 414 Holmes Ave. Suite 4 Bellefonte, PA 16823 (814) 355-6817
Columbia County Greenwood Twp/ Millville Boro	PAR102141	Millville Area School Dist. David Bowser, Secretary P. O. Box 260 Millville, PA 17846	Batten Run	Columbia County CD 702 Sawmill Rd. Suite 105 Bloomsburg, PA 17815 (570) 784-1310
Columbia County Town of Bloomsburg	PAR102143	Bloomsburg University Student Apts. Bloomsburg University Dept. of Geography & Science Sandra Kehoe Bloomsburg, PA 17815	Neals Run to Susquehanna River	Columbia County CD 702 Sawmill Rd. Suite 105 Bloomsburg, PA 17815 (570) 784-1310
Columbia County Briar Creek Borough	PAR102144	Dollar Tree Distribution Ctr. Donald & Joanne Bower R. R. 3, Box 3355 Berwick, PA 18603	Susquehanna River	Columbia County CD 702 Sawmill Rd. Suite 105 Bloomsburg, PA 17815 (570) 784-1310

General Permit Type—PAG-3

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream Body of Water or Site Name and Address*	*Contact Office and Telephone No.*
Northampton County Upper Nazareth Township	PAR602234	Northern Auto Sales, Inc. 3486 Gun Club Road Nazareth, PA 18064	West Branch of Monocacy Creek	Northeast Office 2 Public Sq. Wilkes-Barre, PA 18711-0790 (570) 826-2511
Mifflin County Lewistown Borough	PAR213520	Juniata Concrete Company Lewistown Plant R. R. 3, P. O. Box 325 Mifflintown, PA 17059	Juniata River	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Perry County Oliver Township	PAR213537	Juniata Concrete Company Newport Plant R R. 3, P. O. Box 325 Mifflintown, PA 17059	Little Buffalo Creek	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Juniata County Walker Township	PAR213541	Juniata Concrete Company Mifflintown Plant R. R. 3, P. O. Box 325 Mifflintown, PA 17059	UNT to Cedar Spring Run to Doe Run	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Lancaster County Rapho Township	PAR203523	Bigbee Steel & Tank Company 99 W. Elizabethtown Road Manheim, PA 17545	Chickies Creek Rife Run	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Bedford County Bedford Township	PAR803502	Cannondale Corporation 172 Friendship Road Bedford, PA 15522	West Branch of Juniata River	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Lancaster County Ephrata Borough	PAR133502	Skip's Cutting 501 Alexander Drive Ephrata, PA 17522	Cocalico Creek	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Bedford County Napier Township	PAR603567	James Young A J Auto Salvage R. D. 1, West Ridge Road Schellsburg, PA 15559	UNT to Shawnee Branch	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
York County Fairview Township	PAR603568	Kevin D. Young New Cumberland Auto Parts 1532 Thompson Lane Mechanicsburg, PA 17055	UNT to Yellow Breeches Creek	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Bedford County Londonderry Township	PAR603569	Jim Sacco Auto Wrecker 2469 Cooksmill Road Hyndman, PA 15545	Wills Creek	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Lebanon County South Lebanon Township	PAR203578	Alcoa, Inc. 3000 State Drive Lebanon, PA 17042	Quittapahilla Creek	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Dauphin County Elizabethville Borough	PAR803593	C. Summers, Inc. 112 Spruce Street Elizabethville, PA 17023	Wiconisco Creek	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Lancaster County East Earl Township	PAR213514	Terre Hill Concrete Products, Inc. Plant #2 P. O. Box 10 Terre Hill, PA 17581	Conestoga River	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream Body of Water or Site Name and Address*	*Contact Office and Telephone No.*
Lancaster County East Earl Township	PAR213515	Terre Hill Concrete Products, Inc. Plant #1 & Plant #3 P. O. Box 10 Terre Hill, PA 17581	Conestoga River	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
York County Spring Garden Township	PAR603518	Larami Metal Co., Inc. P. O. Box 12 1173 Kings Mill Road York, PA 17405	Trib. To Codorus Creek	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Blair County Taylor Township	PAR603570	Yerty Auto Service & Parts, Inc. Carl W. Yerty 1562 N. Route 36 Roaring Springs, PA 16673	UNT to Halter Creek	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Lancaster County New Holland Borough & Earl Township	PAR803534	Sindall Transport, Inc. 461 Diller Avenue New Holland, PA 17557	Mill Creek	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Adams County Mount Pleasant Township	PAR603571	Jeffrey J. Hartlaub Hartlaub & Sons Used Auto Parts, Inc. 270 Kuhn Road Littlestown, PA 17340	UNT to South Branch of Conewago Creek	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Clearfield County Bradford Township	PAG045098	Dorothy M. McBride R. R. 2, Box 276 Clearfield, PA 16830	Unnamed trib. Millstone Run	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Clearfield County Bradford Township	PAG044822	Daniel Turner P. O. Box 52 Bigler, PA 16825-0052	Sallies Bottom	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Bradford County South Creek Township	PAG045100	Colin L. Reed R. R. 2, Box 222 Gillett, PA 16925	Unnamed trib. To Roaring Run	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Loyalsock Township Lycoming County	PAR704816	Glenn O. Hawbaker, Inc. 2801 Canfield Lane, P. O. Box 249 Montoursville, PA 17754	Loyalsock Creek	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Harrison Township Potter County	PAR404806	Dominion Transmission Inc. West Main St. Clarksburg, WV 26301	North Br. Cowanesque River	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Genesee Township Potter County	PAR404804	Dominion Transmission Inc. 445 West Main St. Clarksburg, WV 26301	Rose Lake Run	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Clymer Township Tioga County	PAR404801	Dominion Transmission Inc. 445 West Main St. Clarksburg, WV 26301	Mill Creek	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
City of DuBois Clearfield County	PAR804830	United Parcel Service, Inc. 690 Division Street DuBois, PA 15801	Storm Drain to Beaver Run	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream Body of Water or Site Name and Address*	*Contact Office and Telephone No.*
Fayette County Springfield Township	PAR606159	Robert Platt Auto Wreckers 213 Foxburg Road Normalville, PA 15469	Unnamed feeder to Indiana Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Westmoreland County Unity Township	PAR806143	Westmoreland County Airport Authority 200 Pleasant Unity Road Suite 103 Latrobe, PA 15650	Monastery Run	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Allegheny County Greentree Borough	PAR806198	Wheeling Acquisition Corporation 100 East First Street Brewster, OH 44613	Whiskey Run	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Cambria County Lower Yoder Township	PAR806199	PA Department of Transportation Engineering District 9-0 1620 North Juniata Street Hollidaysburg, PA 16648	St. Clair Run	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

General Permit Type—PAG-4

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream Body of Water or Site Name and Address*	*Contact Office and Telephone No.*
Jefferson Township Mercer County	PAG048684	James A. Pumphrey 1687 Lake Road Mercer, PA 16137	Magargee Run	Northwest Region Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Wayne Township Crawford County	PAG048681	Frank E. Pashel 234 Guenevere Drive Pittsburgh, PA 15237	Sugar Lake	Northwest Region Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Bedford County Broad Top Township	PAG043657	Broad Top Township Merle and Edna Mae Barton 187 Municipal Road Defiance, PA 16633-0057	Int. Trib. to Longs Run	Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707

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General Permit Type—PAG-5

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream Body of Water or Site Name and Address*	*Contact Office and Telephone No.*
Former Canton Exxon Rt. 14/414 Canton, PA 17724 Canton Borough Bradford County	PAG054808	Ed Owlett Putnam Oil Company 5 East Avenue P. O. Box 114 Wellsboro, PA 16901	Spring Brook, tributary of Towanda Creek	Northcentral Regional Office Environmental Cleanup 208 W. Third St. Ste. 101 Williamsport, PA 17701-6448 (570) 321-6550

General Permit Type—PAG-7

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream Body of Water or Site Name and Address*	*Contact Office and Telephone No.*
Montgomery Township Franklin County	PAG-07-0003	Synagro Mid Atlantic 1605 Dooley Road Whiteford, MD 21160	Larry Young Farm Montgomery Twp. Franklin County	Southcentral Regional Office 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707

General Permit Type—PAG-8

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream Body of Water or Site Name and Address*	*Contact Office and Telephone No.*
Montgomery Township Franklin County	PAG-08-3502 PAG-08-3515 PAG-08-3517 PAG-08-3522 PAG-08-3542 PAG-08-3547 PAG-08-3825	Synagro Mid Atlantic 1605 Dooley Road Whiteford, MD 21160	Larry Young Farm Montgomery Township Franklin County	Southcentral Regional Office 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Hopewell Township Bedford County	PAG-08-3508	Hopewell Borough WWTP P. O. Box 160 Hopewell, PA 16650	Bruce O'Neal Farm Hopewell Twp. Bedford County	Southcentral Regional Office 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
East Hempfield Township Lancaster County	PAG-08-3509	Kline's Services Inc. Five Holland Street P. O. Box 626 Salunga, PA 17538	Charles Farm East Hempfield Twp. Lancaster County	Southcentral Regional Office 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Taylor Township Blair County	PAG-08-3534	Martinsburg Municipal Authority 133 E. Allegheny Street P. O. Box 307 Martinsburg, PA 16662	E. F. Smith Farm Taylor Township Blair County	Southcentral Regional Office 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
East Donegal Township Lancaster County	PAG-08-3530	Columbia Municipal Authority 308 Locust Street Columbia, PA 17512	Dennis Drager Farm East Donegal Twp. Lancaster County	Southcentral Regional Office 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Dublin Township Huntingdon County	PAG-08-3543	Shade Gap Joint Municipal Authority P. O. Box 185 Shade Gap, PA 17255	Robert Skelly Farm Dublin Township Huntingdon County	Southcentral Regional Office 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707

General Permit Type—PAG-9

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream Body of Water or Site Name and Address*	*Contact Office and Telephone No.*
St. Thomas Township Franklin County	PAG-09-3550	Galen May 197 Pioneer Drive St. Thomas, PA 17252	Kenneth Myers Farm St. Thomas Township Franklin County	Southcentral Regional Office 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Antrim Township Franklin County	PAG-09-3531	Thomas L. Daley S. R. Daley Son 4103 West Weaver Road Greencastle, PA 17225	N/A	Southcentral Regional Office 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707

General Permit Type—PAG-10

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream Body of Water or Site Name and Address*	*Contact Office and Telephone No.*
Allegheny Township Potter County	PAG104802	Tennessee Gas Pipeline Co. 197 Tennessee Rd. Coudersport, PA 16915	Peet Brook Near Colesburg	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Regional Office: Northcentral Field Operations, Environmental Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701.

Permit No. Minor Amendment. The Department issued an operation permit amendment to Hamilton Township Municipal Authority, P. O. Box 236, Morris Run, PA 16939, Hamilton Township, **Tioga County**. This permit amendment authorizes operation of your water filtration plant with the new media that was recently installed.

Permit No. 0899501. The Department issued an operation permit to Wyalusing Personal Care Home, R. R. 1, Box 186, Wyalusing, PA 18853, Wyalusing Township, **Bradford County**. This permit authorizes operation of the water system for Wyalusing Personal Care Home.

Northwest Regional Office: Regional Manager, Water Supply Management, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6899.

Permits Issued

1099505. Public Water Supply. **Young's Mobile Home Park**, 1723 Oneida Valley Road, Karns City, PA 16041. Permit issued for existing well Nos. 2, 3 and 4. Facilities located in Concord Township, **Butler County**.

Type of Facility: Certified Mobile Home Park.

Consulting Engineer: Jonathan K. Hiser, P. E., Hiser Engineering, Inc., P. O. Box 339, Worthington, PA 16262.

Construction Permit Issued: August 17, 2000.

HAZARDOUS SITES CLEANUP

Under the Act of October 18, 1988

Delancy Road Drum Removal Site

Thompson Township, Fulton County

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1304) (HSCA) has initiated a prompt interim response at the Delancy Road Drum Removal Site in Thompson Township, Fulton County, PA. This response has been undertaken under section 505(b) of HSCA.

Unknown persons discarded four 55-gallon drums. This was reported to the Southcentral Region Emergency Response Team (ERT), and recorded as Incident Notification #2597. A site investigation was performed, and recorded as ERT Incident #2652. The Department's ERT set the drums upright, secured them in place, opened and sampled the contents for laboratory analysis. The ERT also checked for the presence of ionizing radiation, photoionizable products, flammability, pH, fluorides, petroleum, chlorides, bromides, iodides and oxidizers. Use of a photoionization detector indicated that the material was highly flammable.

Sampling results from the Department's Bureau of Laboratories showed the presence of two compounds, toluene at a concentration of 407,000 parts per million (ppm) and acetone at a concentration of 218,000 ppm. These constituents, the reported chemical concentrations, and flammable properties are characteristic of paint wastes. This was also consistent with labeling information on the drums. One drum was labeled for the original product sold by PPC Quality Products, Fast Lacquer Thinner PC-10 (100% Virin Solvents—UN 1263 paint related material). This product contains toluene, acetone, methanol, naphtha, and ethylene glycol. PPC, Inc. was located at 1000 Armory Place, Brandenberg, KY 40108. An additional label read TALSOL Corporation, 4677 Devitt Drive, Cincinnati, OH, Poison—Lacquer Thinner—

VOC 6.86 lb/gal. It appears that each of the four drums has similar contents. The total volume for the four drums is estimated at 180 gallons.

Because the drums were intact and the contents had not spilled to the ground creating an emergency situation, the retrieval and disposal responsibility had been referred to the Southcentral Region's Environmental Cleanup Program, Hazardous Sites Cleanup Section.

The Department considered two alternatives: 1) No action, which would allow the drums to remain at their present location, and 2) The removal and proper disposal of the drums. The Department determined that the no action alternative would not be protective of public health or safety or the environment since deterioration of the drums and release of their contents would result in soil contamination, potential groundwater contamination and a direct contact threat to persons exposed to the drums' contents.

The Department removed the drums on August 8, 2000. This action was taken prior to the development of the Administrative Record to be protective of human health and the environment.

The Department is providing this notice under sections 505(b) and 506(b) of HSCA, and the publication of this notice starts the Administrative Record period under HSCA. The Administrative Record which contains information about this site and which supports the Department's decision to perform this action at the site is available for public review and comment. The Administrative Record can be examined from 8 a.m. to 4 p.m. at the Department's Southcentral Regional Office located at 909 Elmerton Avenue, Harrisburg, PA 17110, by contacting Barbara Faletti at (717) 705-4864. The Administrative Record can also be reviewed at the Fulton County Conservation District Office, 216 North 2nd Street, Suite 15, McConnellsburg, PA 17233 during normal operating hours.

The Administrative Record will be open for comment from the date of publication of this notice in the *Pennsylvania Bulletin* and will remain open for 90 days. Persons may submit written comments regarding this action to the Department before December 1, 2000, by mailing them to Barbara Faletti at PA Dept. of Environmental Protection, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.

The public will have an opportunity to present oral comments regarding the action taken at a public hearing. The hearing has been scheduled for Monday, October 16, 2000, at 7 p.m. at the Fulton County Conservation District Office, 216 North 2nd Street, Suite 15, McConnellsburg, PA 17233. Persons wishing to present formal oral comment at the hearing should register before 4 p.m., October 11, 2000, by calling Sandra Roderick at (717) 705-4931. If no request for formal oral comment is received, the hearing will be canceled.

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 call Sanda Roderick at the above number or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

Preamble 2

The following final reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of final reports. A final report is submitted to document cleanup of a release of a regulated substance at a site 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 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.

Unisys and Former Lockheed Martin Site, Tredyffrin Township, **Chester County**. Randy L. Shuler, Environmental Resources Management, Inc., 250 Phillips Blvd., Suite 280, Ewing NJ, has submitted a Final Report concerning remediation of site soil and groundwater contaminated with heavy metals and solvents. The report is intended to document remediation of the site to meet Statewide health and site-specific standards.

Former Recycle Metals Corp., Parcel "A," Proposed Lankford Autoplex, Plymouth Township, **Montomgery County**. Christopher G. Barricklow, EncoTech Midwest, Inc., 39255 Country Club Drive, Suite B40, Farmington Hills, MI 48331, has submitted a Final Report concerning remediation of site soil contaminated with PCBs and lead. The report is intended to document remediation of the site to meet the Statewide health standard.

Former Braun Iron Works, Upper Moreland Township, **Montgomery County**. Laura L. Peck, Law Office of Janet S. Kole, 900 Haddon Avenue, Suite 412, Collingswood, NJ 08108, has submitted a Final Rpeort concerning remediation of site soil contaminated with lead. The report is intended to document remediation of the site to meet the Statewide health standard.

Northeast Regional Field Office: Joseph Brogna, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

Former Allentown Paint Factory, City of Allentown, **Lehigh County**. William Ahlert, Manager, Mid-Atlantic Services, Lawler, Matusky & Skelly Engineers, LLP, The Sovereign Building, 609 Hamilton Mall, Allentown, PA 18101 has submitted a Final Report (on behalf of his client, Abraham Atiyeh, Sixth Street, Whitehall, PA 18052) concerning the remediation of site soils found or suspected to have been contaminated with lead, petroleum hydrocarbons, polycyclic aromatic hydrocarbons and BTEX components. The report was submitted to document remediation of the site to meet the Statewide health standard. A Notice of Intent to Remediate was simultaneously submitted. Please refer to additional *Pennsylvania Bulletin* notice.

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 the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigations, 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 content of the plans and reports, please contact the Environmental Cleanup Program Manager in the Department of Environmental Protection Regional Office under which the notice of the plan and report appears. If information concerning the plan and 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 plans and reports.

Southeast Regional Office: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.

ORFA Corp. of America, City of Philadelphia, **Philadelphia County**. A Baseline Environmental Report concerning remediation of site soil contaminated with lead, heavy metals, pesticides, solvents, BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons and groundwater contaminated with lead, heavy metals, BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons was submitted to the Department and approved. The special industrial area Consent Order and Agreement was executed on June 17, 1997 and the cleanup was completed on January 15, 1998.

Triboro Electric Company, Doylestown Borough, **Bucks County**. Terrence J. McKenna, Keating Environmental Management, Inc., 479 Thomas Jones Way, Suite 700, Exton, PA 19341, has submitted a Final Report concerning remediation of site soil contaminated with petroleum hydrocarbons. The report demonstrated attainment of the Statewide health standard and was approved by the Department on August 7, 2000.

Dick Residence, North Coventry Township, **Chester County**. Brian R. Evans, Hydrocon Services, Inc., 2945 S. Pike Avenue, Allentown, PA 18103, has submitted a Final Report concerning remediation of site soil contaminated with BTEX and polycyclic aromatic hydrocarbons. The report demonstrated attainment of the Statewide health standard and was approved by the Department on August 7, 2000.

Former Synthane Taylor Facility, West Norriton Township, **Montgomery County**. James F. Mattern, HydroScience, Inc., 607 Washington Street, Reading, PA 19601, has submitted a Final Report concerning remediation of site soil and groundwater contaminated with lead, heavy metals, solvents, BTEX and polycyclic aromatic hydrocarbons. The report demonstrated attainment of the Statewide health standard and was approved by the Department on August 10, 2000.

Northcentral Regional Office: Michael C. Welch, Environmental Cleanup Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448, (570) 321-6525.

Janet Gass Residence, City of Sunbury, **Nortumberland County**. EarthRes Group, Inc., on behalf of its client Janet Gass, 805 Market Street, Sunbury, PA 17801, has submitted a Final Report concerning the remediation of site soil contaminated with BTEX and PAHs. The Final Report demonstrated attainment of the Statewide health standard and was approved by the Department on August 15, 2000.

Northwest Regional Office: Craig Lobins, Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6648.

Caparo Steel Company (Perox Plant former Impoundment Area AOC-8), 15 Roemer Blvd., Farrell, PA 16121, City of Farrell, **County of Mercer**, Paul Wojciak, Environmental Management Associates Consultants, 10925 Perry Higway, Wexford, PA 15090, on behalf of his client, had submitted a final report concerning remediation of site soils and groundwater contaminated with lead and heavy metals. The report demonstrated attainment of the Statewide health standard and was approved by the Department on August 10, 2000.

SOLID AND HAZARDOUS WASTE

LICENSE TO TRANSPORT HAZARDOUS WASTE

Renewal licenses issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations for license to transport hazardous waste.

Bureau of Land Recycling and Waste Management: Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.

Chemical Solvents, Inc., 3751 Jennings Road, Cleveland, OH 44109; **License No. PA-AH 0049**; renewal license issued August 8, 2000.

Inland Waters Pollution Control, Inc., 2021 S. Schaefer Highway; Detroit, MI 48217; **License No. PA-AH 0292**; renewal license issued August 9, 2000.

S&M Management Incorporated, P. O. Box 1429, Milford, PA 18337-1429; **License No. PA-AH 0412**; renewal license issued August 17, 2000.

Hazardous waste transporter license voluntarily terminated under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6) and regulations for license to transport hazardous waste.

Bureau of Land Recycling and Waste Management: Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.

Pros Services, Inc., P. O. Box 610548, Port Huron, MI 48061-0548; **License No. PA-AH 0481**; license terminated July 31, 2000.

Salesco Systems, USA Inc.—AZ, 5736 West Jefferson Street, Phoenix, AZ 85043; **License No. PA-AH 0508**; license terminated August 11, 2000.

Zecco, Inc., 345 W. Main Street, Northboro, MA 01532; **License No. PA-AH 0416**; license terminated August 8, 2000.

License issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations for license to transport hazardous waste.

Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O Box 8471, Harrisburg, PA 17105-8471.

Sina Environmental, 11875 Dublin Blvd., A 100, Dublin, CA 94568; **License No. PA-AH 0670**; license issued August 14, 2000.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Permits issued under the Solid Waste Management Act and regulations to operate solid waste processing or disposal area or site.

Responsible Office: Southcentral Regional Office, Regional Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4706.

Permit No. 300653. Landfill No. 1, Appleton Papers, Inc. (100 Paper Mill Road, Roaring Springs, PA 16673). Permit modification issued for the closure plan for a facility in Taylor Township, **Blair County**. Permit issued in the Southcentral Region on August 14, 2000.

Permit No. 101544. GLRA Municipal Waste Landfill, Greater Lebanon Refuse Authority (1610 Russell Rd., Lebanon, PA 17046). Permit issued approving the permit renewal for a facility in North Annville and North Lebanon Townships, **Lebanon County**. Permit issued in the Southcentral Region on August 21, 2000.

PREVIOUSLY UNPERMITTED CLASS OF SPECIAL HANDLING WASTE

INFECTIOUS OR CHEMOTHERAPEUTIC WASTE

Renewal licenses issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6) and regulations for license to transport infectious and chemotherapeutic waste.

Bureau of Land Recycling and Waste Management: Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.

Cole Care, Inc., 1001 East Second Street, Coudersport, PA 16915-9762; **License No. PA-HC 0178**; renewal license issued August 17, 2000.

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.

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

TV-11-0005: Republic Technologies International, LLC (1001 Main Street, Gate 3, Johnstown, PA 15909). This Title V Operating Permit was issued August 14, 2000, for operation of their steel manufacturing facility in Franklin Borough, **Cambria County**.

Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.

PA-25-124A: Mayer Brothers Construction Co. (1902 Cherry Street, Erie, PA 16502) on August 31, 2000 for a batch asphalt plant in Erie, **Erie County**.

Administrative Amendment of 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.

Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.

41-310-010C: Lycoming County Resource Management Services, (P. O. Box 187, Montgomery, PA 17752) on August 14, 2000, to incorporate conditions established in Plan Approval 41-310-010D for a stone crusher, triple deck screen, two conveyors and a 475 horsepower diesel generator at the Lycoming County Landfill in Brady Township, **Lycoming County**.

OP-41-0007: Coastal Aluminum Rolling Mills, Inc. (2475 Trenton Avenue, Williamsport, PA 17701) on August 14, 2000, to incorporate conditions established in Plan

Approval OP-41-0007B for a metal coil coating application station, curing oven and associated air cleaning device (a catalytic oxidizer) in the City of Williamsport, **Lycoming County**. The coil coating application station and curing oven are subject to Subpart TT of the Federal Standards of Performance for New Stationary Sources.

Operating Permits Minor Modification 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.

06-05063: Boyertown Foundry, Inc. (Box G, New Berlinville, PA 19545) for modification to a gray iron foundry controlled by various control devices in Boyertown, **Berks County**. This will increase the maximum melt rate of the cupola from 14 to 16 tons/hr. The Title V Operating Permit contains all appropriate requirements for this source.

Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.

17-399-008: Rescar, Inc. (450 Osborn Street, DuBois, PA 15801) on August 15, 2000, to allow the use of a sodium bicarbonate solution, a soda ash solution or other Department-approved alkaline solutions in lieu of a sodium hydroxide solution in a chlorine tank car cleaning operation and associated packed bed scrubber in the City of DuBois, **Clearfield County**.

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.

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 750-4702.

06-01069I: East Penn Manufacturing Co., Inc., (P. O. Box 147, Lyon Station, PA 19536-0147) issued August 21, 2000, for the modification of their Lead/Acid Battery Manufacturing Plant in Richmond Township, **Berks County**. These sources are subject to 40 CFR Part 60, Subpart KK—Standards of Performance for Lead/Acid Battery Manufacturing Plants.

07-05033A: Grannas Bros. Stone & Asphalt Co., Inc. (P. O. Box 488, Hollidaysburg, PA 16648) issued August 21, 2000, for the construction of a drum mix asphalt plant controlled by a cyclone in series with a fabric collector and water sprays at the Ganister Quarry in Catharine Township, **Blair County**. The drum mix asphalt plant is subject to 40 CFR Part 60, Subpart OOO—standards of Performance for Nonmetallic Mineral Processing Plants.

Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.

62-329-004A: National Fuel Gas Corp., Roystone Station (Route 6, Warren, PA 16365) on August 14, 2000, for modification of the compressors in Sheffield Township, **Warren County**.

PA-42-176F: Temple Inland Forest Products Corp.—Mt. Jewett (Hutchins Road, Mt. Jewett, PA 16740) for addition of a transfer line from the saw trim silo in Sargeant Township, **McKean County**.

PA-42-176E: Temple Inland Forest Products Corp.—Mt. Jewett (Hutchins Road, Mt. Jewett, PA 16740) for operation of the start up cyclone in Sargeant Township, **McKean County**.

42-399-027B: Temple Inland Forest Products Corp.—Mt Jewett (Hutchins Road, Mt. Jewett, PA 16740) for installation of a wet ESP in Sargeant Township, **McKean County**.

42-399-015A: Temple Inland Forest Products Corp.—Mt. Jewett (Hutchins Road, Mt. Jewett, PA 16740) for three wet ESPs in Sargeant Township, **McKean County**.

Plan Approvals 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.

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

67-05003A: Mastercraft Specialties, Inc. (800 Maple Street, Red Lion, PA 17356) on August 16, 2000, to authorize temporary operation of a surface coating operation, covered under this Plan Approval until December 14, 2000, in Red Lion Borough, **York County**.

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

PA-65-602A Derry Construction Co., Inc. (R. D. 5, Box 34, Latrobe, PA 15650) on August 11, 2000, for installation of an asphalt batch facility at Torrance Asphalt Facility in Derry Township, **Westmoreland County**.

PA-32-305-053: Senate Coal Mines, Inc. (One Energy Place, Suite 5100, Latrobe, PA 15650) on August 11, 2000, for installation of bituminous coal processing at Coral Tipple in Burrell Township, **Indiana County**.

PA-11-305-025: Senate Coal Mines, Inc. (One Energy Place, Suite 5100, Latrobe, PA 15650) on August 11, 2000, for installation of a wet coal refuse reclaim plant at Mine #42 in Adams Township, **Cambria County**.

PA-32-040A: Reliant Energy Mid-Atlantic Power Holdings, LL (1001 Broad Street, P. O. Box 1050, Johnstown, PA 15907) on August 14, 2000, for installation of Boiler 15 at Seward Station in East Wheatfield Township, **Indiana County**.

Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.

PA-16-136A: Bituminous Road Maintenance (521 South Street, Clarion, PA 16214) on July 31, 2000, for a drum type hot mix asphalt plant in Beaver/Licking Townships, **Clarion County**.

PA-25-267A: American Meter Co. (920 Payne Avenue, Erie, PA 16512) on July 31, 2000, for two rubber curing ovens in Erie, **Erie County**.

10-313-028B: Indspec Chemical Corp. (133 Main Street, Petrolia, PA 16050) on August 31, 2000, for a resorcinol flaker, bagging and packaging in Petrolia Borough, **Butler County**.

PA-25-069C: Engelhard Corp. (1729 East Avenue, Erie, PA 16503) on August 31, 2000, for a sphere plant loader in Erie, **Erie County**.

PA-37-264D: Ellwood Quality Steels Co. (700 Moravia Street, New Castle, PA 16101) on August 31, 2000, for a natural gas fired furnace in New Castle, **Lawrence County**.

PA-37-268A: Commercial Asphalt Supply, Inc. (Route 108, R. D. 3, Box 353, Slippery Rock, PA 16057) on August 30, 2000, for a drum mix asphalt plant in Scott Township, **Lawrence County**.

PA-42-185A: IA Construction Co. (Route 155, P. O. Box 568, Franklin, PA 16323) on August 31, 2000, for a batch asphalt plant in Annin Township, **McKean County**.

PA-43-317A: Lindy Paving, Inc. (Route 173N, R. D. 3, Northgate Industrial Park, New Castle, PA 16105) on August 31, 2000, for a drum mix asphalt plant in Wolf Creek Township, **Mercer 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 these 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).

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

Coal Permits Issued

54793206R3. Rading Anthracite Company (200 Mahantongo Street, Pottsville, PA 17901), renewal of an existing anthracite coal refuse reprocessing and surface mine operation in Mahanoy Township, **Schuylkill County** affecting 3,038.0 acres, receiving stream—Mahanoy Creek. Renewal issued August 21, 2000.

Greensburg District Office, R. R. 2, Box 603C, Greensburg, PA 15601.

03840106. State Industries, Inc. (P. O. Box 1022, Kittanning, PA 16201). Permit revised to include a permanent stream crossing at a bituminous surface/auger mining site located in East Franklin Township, **Armstrong County**, affecting 583.4 acres. Receiving streams: unnamed tributary to the Allegheny River. Application received: June 22, 2000. Revision issued: August 15, 2000.

30980101. Coresco, Inc. (P. O. Box 1209, Morgantown, WV 26507). Permit revised to include coal ash placement at a bituminous surface mine located in Dunkard Township, **Greene County**, affecting 100 acres. Receiving streams: unnamed tributary of Dunkard Creek; Crooked Run—Dunkard Creek and Crooked Run are tributaries of the Monongahela River. Application received: May 2, 2000. Revision issued: August 16, 2000.

Knox District Office, P. O. Box 669, Knox, PA 16232.

37900110. Ambrosia Coal & Construction Co. (R. R. 1, Box 422, Edinburg, PA 16116) Renewal of an existing bituminous strip and auger operation in North Beaver Township, **Lawrence County**, affecting 133.0 acres. This renewal is issued for reclamation only. Receiving stream: one unnamed tributary to Edwards Run and Edwards Run. Application received: June 2, 2000. Permit Issued: August 7, 2000.

33900109. Tamburlin Brothers Coal Co., Inc. (P. O. Box 1419, Clearfield, PA 16830) Renewal of an existing bituminous strip and auger operation in Snyder Township, **Jefferson County** affecting 87.0 acres. This renewal is issued for reclamation only. Receiving streams: Unnamed tributary to Little Toby Creek. Application received: July 9, 2000. Permit issued: August 11, 2000.

33803005. Krach & Gearhart (R. R. 4, Box 486, DuBois, PA 15801) Renewal of an existing bituminous strip and auger operation in Winslow, Washington & Pine Creek Townships, **Jefferson County** affecting 387.1 acres. This renewal is issued for reclamation only. Receiving streams: Unnamed tributary to O'Donnell Run and Unnamed tributaries to Five Mile Run. Application received: June 7, 2000. Permit Issued: August 7, 2000.

33960107. Ben Hal Mining Company (389 Irishtown Road, Grove City, PA 16127) Transfer of an existing bituminous strip operation from MAF Coal & Excavation, Inc. in Union Township, **Jefferson County** affecting 17.8 acres. Receiving streams: Welch Run. Application received: May 4, 2000. Permit Issued: August 11, 2000.

10990104. Ben Hal Mining Company (389 Irishtown Road, Grove City, PA 16127) Commencement, operation and restoration of a bituminous strip operation in Clay & Center Townships, **Butler County** affecting 68.8 acres. Receiving streams: Unnamed tributaries to Muddy Creek. Application received: December 17, 2000. Permit Issued: August 11, 2000.

24840105. Black Oak Development, Inc. (P. O. Box 176, Glen Campbell, PA 15742) Renewal of an existing bituminous strip operation in Benezette Township, **Elk County** affecting 133.0 acres. This renewal is issued for reclamation only. Receiving streams: Four unnamed tributaries to Bennett Branch Sinnemahoning Creek. Application received: September 20, 1999. Permit Issued: August 15, 2000.

33940107. Fred A. Deemer, Jr. (R. D. 1, Reynoldsville, PA 15851) Revision to an existing bituminous strip operation to change to postmining land use from forestland to recreation on a portion of the Louie Caltagarone property in Washington and Winslow Townships, **Jefferson County**. Receiving streams: Two unnamed tributaries to Sandy Lick Creek. Application received: June 14, 2000. Permit Issued: August 16, 2000.

Ebensburg District Office, 437 South Center Street, P. O Box 625, Ebensburg, PA 15931-0625.

Coal Applications Issued:

11960109. Permit Revision, **Paul F. Becker Coal Company** (1593 Old Route 22, Duncansville, PA 16635), to add auger mining to the operation in Elder Township, **Cambria County**, affecting 27.0 acres, receiving stream unname tributary to Brubaker Run, application received May 12, 2000, issued August 18, 2000.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

Small Noncoal (Industrial Mineral) Permits Issued

58002807. Powers Stone, Inc. (R. R. 5, Box 124, Montrose, PA 18801), commencement, operation and restoration of a bluestone quarry operation in Forest Lake Township, **Susquehanna County** affecting 5.0 acres, receiving stream—none. Permit issued August 16, 2000.

52000802. Kai Lee Wicksnes (P. O. Box 44, Rowland, PA 18457), commencement, operation and restoration of a bluestone quarry operation in Lackawaxen Township, **Pike County**, affecting 1.0 acre, receiving stream—Lords Creek. Permit issued August 16, 2000.

58992805. Douglas G. Kilmer (R. R. 1, Box 85K, Union Dale, PA 18470), commencement, operation and restoration of a bluestone quarry operation in New Milford Township, **Susquehanna County**, affecting 2.0 acres, receiving stream—none. Permit issued August 16, 2000.

58000826. Betsy D. Groover (R. R. 2, Box 5A, Montrose, PA 18801), commencement, operation and restoration of a bluestone quarry operation in Jessup Township, **Susquehanna County** affecting 1.0 acre, receiving stream—none. Permit issued August 18, 2000.

58000831. Donald R. Rood (Box I, Nicholson, PA 18446), commencement, operation and restoration of a bluestone quarry operation in Springville Township, **Susquehanna County** affecting 1.0 acre, receiving stream—none. Permit issued August 18, 2000.

58000835. Beatrice Mack (R. R. 1, Box 172, Kinglsey, PA 18826), commencement, operation and restoration of a bluestone quarry operation in Harford Township, **Susquehanna County** affecting 1.0 acre, receiving stream—none. Permit issued August 18, 2000.

58000824. Joseph M. Kovitch (P. O. Box 720, Hallstead, PA 18822), commencement, operation and restoration of a small industrial mineral quarry operation in Great Bend Township, **Susquehanna County**, affecting 2.0 acres, receiving stream—unnamed tributary to the Susquehanna River. Permit issued August 18, 2000.

28000802. William O'Donnell Excavating (P. O. Box 26, Doylesburg, PA 17219), commencement, operation and restoration of a small industrial mineral quarry operation in Fannett Township, **Franklin County**, affecting 2.0 acres, receiving stream—unnamed tributary to Burns Creek. Permit issued August 18, 2000.

Knox District Office, P. O. Box 669, Knox, PA 16232.

25002803. Rodger E. Niemeyer, Sr. (8939 Jones Rd., R. D. 1, Wattsburg, PA 16442) Commencement, operation and restoration of a small noncoal sand and gravel operation in Venango Township, **Erie County** affecting 5.5 acres. Receiving streams: West Branch French Creek. Application received: April 17, 2000. Permit Issued: August 11, 2000.

Hawk Run District Office, P. O. Box 209, Off Empire Road, Hawk Run, PA 16840

Small Industrial Minerals Permits Issued

08000802. John T. Strope (R. R. 1, Box 179C, Rome, PA 18837), commencement, operation and restoration of a Small Industrial Minerals (Bluestone) permit in Warren Township, **Bradford County** affecting 1 acre. Receiving streams: unnamed tributaries to Wappasening Creek and Pendleton Creek. Application received January 31, 2000. Permit issued August 9, 2000.

Greensburg District Office, R. R. 2, Box 603-C, Greensburg, PA 15601.

Noncoal (Industrial Minerals) Permits Issued

02940301R. Olszewski Contracting Co., Inc. (197 Route 30 West, Imperial, PA 15126). NPDES renewal issued for a large noncoal surface mine located in Findlay Township, **Allegheny County**, affecting 62.0 acres. Receiving streams: North Fork of Montour Run to Montour Run. Application received: July 21, 2000. NPDES Renewal issued: August 18, 2000.

Knox District Office, P. O. Box 669, Knox, PA 16232.

Noncoal Permits Issued

37980304. Quality Aggregates, Inc. (200 Neville Road, Pittsburgh, PA 15225) Revision to an existing sand & gravel operation to add 11.9 acres to the surface mining permit boundary in Slippery Rock Township, **Lawrence County** affecting 56.5 acres. Receiving streams: Unnamed tributary to Slippery Rock Creek. Application received: May 8, 2000. Permit Issued: August 11, 2000.

Greensburg District Office, R. D. 2, Box 603-C, Greensburg, PA 15601.

Coal Applications Denied

03840106. State Industries, Inc. (P. O. Box 1022, Kittanning, PA 16201). Request for a land use change on the T. Hooks property denied at a bituminous surface/auger mine located in East Franklin Township, **Armstrong County**, affecting 583.4 acres. Receiving streams: unnamed tributary to the Allegheny River. Application received: June 20, 2000. Revision denied August 11, 2000.

Knox District Office, P. O. Box 669, Knox, PA 16232.

Coal Permits Denied

10000101. State Industries, Inc. (P. O. Box 1022, Kittanning, PA 16201) Commencement, operation and restoration of a bituminous strip and auger operation in Cherry Township, **Butler County** affecting 111.7 acres. Receiving streams: Unnamed tributary to South Branch Slippery Rock Creek and South Branch Slippery Rock Creek. Application received: February 14, 2000. Permit denied: August 15, 2000.

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 the 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.)

Southcentral Regional Office: Section Chief, Water Management Program, Soils and Waterways Section, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110, (717) 705-4707.

E07-334. Encroachment. **Logan Township, Bonnie Lewis**, 800 39th St., Altoona, PA 16601. To construct and maintain additions and improvements to the existing Greenwood Sewage Treatment Plant and be constructed a 24-inch outfall pipe in the floodway of Little Juniata River TSF) at a point approximately 2,000 feet upstream of SR 4018 (Bellwood, PA Quadrangle N: 13.5 inches; W: 14.1 inches) in Antis Township, **Blair County**. 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.

E08-360. Encroachment. **Michael J. McGlinchy**, R. R. 1, Box 177, Riverside Drive, Sayre, PA 18840. To construct and maintain a 22′ × 24′ two story addition with a full basement to a private residence on the east side of SR 1043 in the floodway of the Susquehanna River approximately 0.7 miles north of the intersection of SR 1043 with the Sayre bridge over the Susquehanna River (Sayre, PA Quadrangle N: 19.5 inches; W: 0.8 inch) in Athens Township, **Bradford County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E12-119. Encroachment. **Gary Brown**, R. R. 2, Box 238D, Emporium, PA 15834. To restore 1,000-feet of Clear Creek; construct, operate and maintain a water intake structure along Clear Creek for water supply to a 2 acre pond. The stream bank restoration work shall consist of regrading the eroded stream banks to side slopes of 4 feet horizontal to 1 foot vertical and applying vegetative stabilization. The water intake structure shall be constructed with a channel that shall have a maximum length of 10 feet, maximum bottom width of 3 feet, and maximum depth of 7 feet. The channel side slopes shall be stabilized with log cribbing or an equally effective measure. The project is located along the western right-of-way of SR 0046 approximately 2,200 feet west of SR 4004 and SR 0046 intersection (Rich Valley, PA Quadrangle N: 5.0 inches; W: 7.0 inches) in Shippen Township, **Cameron County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E19-201. Encroachment. **Vincent Lushinski**, R. R. 1, Box 763, Shamokin, PA 17872. To remove the existing structure and to construct and maintain a single span bridge with a span of 19 feet and underclearance of 4.7 feet across Mugser Run located off S. R. 3008 approximately two miles west of Route 42 (Mt. Carmel, PA Quadrangle N: 18.1 inches; W: 8.55 inches) in Cleveland Township, **Columbia County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E55-161. Encroachment. **Naren and Poonam Srivastava**, 8 North Stonebridge Drive, Selinsgrove, PA 17870. To construct and maintain a 13 foot by 5 foot 1 inch structural plate arch culvert crossing over Rolling Green Run (Sunbury, PA Quadrangle N: 16.8 inches; W: 13.2 inches) in Monroe Township, **Snyder County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E55-163. Encroachment. **Pennsylvania Department of Transportation, Engineering District 3-0**, P. O. Box 218, Montoursville, PA 17754-0218. To remove the existing superstructure and to construct and maintain a single span concrete adjacent box beam bridge on existing abutments with a span of 83.5 feet and underclearance of 15 feet across Middle Creek and to place fill along 51 feet of the upstream channel bank to widen the roadway embankment. This project is located on SR 35 approximately 100 feet west of its intersection with SR 2009 (Freeburg, PA Quadrangle N: 4.80 inches; W: 3.40 inches) in Washington and Penn Townships, **Snyder County**. This project also includes a temporary one-lane bridge to maintain traffic during construction. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E57-088. Encroachment. **L. L. Baumunk & Sons, Inc.**, P. O. Box 1, Shunk, PA 17768. To construct and maintain a collection and storage facility for waste sawdust within 50-feet of an unnamed tributary to Hoagland Branch off of 154N (Shunk, PA Quadrangle N: 8.7 inches; W: 15.8 inches) in Fox Township, **Sullivan County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E59-399. Encroachment. **Phillip and Ellen Krajewski**, R. R. 1, Box 48C, Liberty, PA 16930. To construct and maintain a single dwelling private access bridge across Little Fall Creek which has a width of 12 feet, a span of 28 feet and a clearance of 3.6 feet. The bridge will be constructed on concrete abutments and have a wooden superstructure. This site is located 1/2 mile south of T-642 from the intersection with SR 414 (Nauvoo, PA Quadrangle N: 13.1 inches; W: 10.7 inches) in Liberty Township, **Tioga County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

Southwest Regional Office: Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Permits Issued

E63-483. Encroachment. **Union Township**, 3904 Finleyville-Elrama Road, Finleyville, PA 15332. To remove the existing structures, to construct and maintain a 12′ × 4′ RC box culvert depressed 6″ in a tributary to Froman Run (TSF), to construct and maintain a 48″ diameter RCP culvert in a tributary to Froman Run, to construct and maintain a 14′ × 3.5′ RC box culvert depressed 6″ in a tributary to Froman Run, to construct and maintain 52′ of gabion basket walls in a tributary to Peters Creek, to relocate and maintain approximately 995′ of a tributary to Froman Run and relocate and maintain approximately 30′ of a tributary to Peters Creek. The work is part of the proposed improvements to 9,860′ of Patterson Road (T-992). The project begins near the intersection of Patterson

Road and Route 88 and the project ends near the intersection of Patterson Road and Finleyville-Elrama Road (Project starts at Monongahela, PA Quadrangle N: 18.7 inches; W: 14.6 inches, and ends at Glassport, PA Quadrangle N: 0.5 inches; W: 15.4 inches) in Union Township, **Washington County**.

E63-489. Encroachment. **FLEXSYS America, L. P.**, Route 481, Monongahela, PA 15063. To construct and maintain an addition to the existing FLEXSYS office building along the left bank of Taylors Run (WWF) for the purpose of providing additional office space located on the south side of Taylors Run Road (S. R. 481), approximately 650 feet south from the intersection of Taylors Run Road (S. R. 481) and Front Street (Monongahela, PA Quadrangle N: 10.5 inches; W: 8.5 inches) in Carroll Township, **Washington County**. This permit was issued under section 105.13(e) "small projects." This permit also includes 401 Water Quality Certification.

E65-734. Encroachment. **Ligonier Township Supervisors**, 18 Old Lincoln Highway West, Ligonier, PA 15658-8763. To operate and maintain the reshaped channel and earthen berms extending approximately 700 linear feet along an unnamed tributary to Mill Creek (CWF) for the purpose of minimizing flooding. The project is located off of Township Road 519 (Wilpen, PA Quadrangle N: 0.3 inch; W: 14.2 inches) in Ligonier Township, **Westmoreland County**. Impacts to 0.1 acre of wetlands will be mitigated through a contribution to the Pennsylvania Wetland Replacement Fund. This permit was issued under section 105.13(e) "small projects." This permit also includes 401 Water Quality Certification.

E65-758. Encroachment. **Municipal Sanitary Authority of the City of New Kensington**, 120 Logans Ferry Road, New Kensington, PA 15068. To construct and maintain buildings and process units in the floodplain of Pucketa Creek (TSF) and Little Pucketa Creek (TSF) for the purpose of upgrading the sludge handling processes at the Water Pollution Control Plant of the Municipal Sanitary Authority of the City of New Kensington (New Kensington West, PA Quadrangle N: 9.4 inches; W: 1.4 inches) in the City of New Kensington, **Westmoreland County**. This permit was issued under section 105.13(e) "small projects." This permit also includes 401 Water Quality Certification.

E65-749. Encroachment. **Township of Penn**, P. O. Box 452, Harrison City, PA 15636. To remove the existing structures on Berlin Road at two locations and to construct and maintain a 48-foot long dual elliptical pipe culvert having two clear spans of 45 inches and an underclearance of 29 inches in an unnamed tributary to Bushy Run (WWF) located just downstream of the proposed dam (D65-186) and a 214-foot long dual elliptical pipe culvert having two clear spans of 45 inches and an underclearance of 29 inches in an unnamed tributary to Bushy Run located approximately 1,600 feet downstream of the Bushy Run Area Detention Basin (E65-720). Also to construct and maintain a 1,200 LF channel between the proposed structures and to place and maintain fill in 0.03 acre of wetland. The purpose of the project is to improve the drainage system (Irwin, PA Quadrangle N: 18.1 inches; W: 1.1 inches) in Penn Township, **Westmoreland County**. Replacement wetlands are to be constructed in conjunction with File No. D65-186. This permit was issued under section 105.13(e) "small projects." This permit also includes 401 Water Quality Certification.

Northwest Regional Office: Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.

E20-488. Encroachment. **Canadohta Lake Park, Inc.**, 35765 Circuit Drive, Union City, PA 16438. To perform the following activities in Canadohta Lake at the existing Canadohta Lake Park on the east side of the lake (Lake Canadohta, PA Quadrangle N: 11.0 inches; W: 12.1 inches) in Bloomfield Township, **Crawford County**:

1. Dredge accumulated sand deposits from an area measuring approximately 50 feet wide by 80 feet long by 1.5 feet deep and redeposit the dredged sand onto the existing beach;

2. Dredge accumulated sediment from an area measuring approximately 80 feet wide by 15 feet long by 1.5 feet deep at the existing boat dock.

This permit authorizes perpetual periodic dredging to maintain the above facilities.

E25-609. Encroachment. **Thomas A. Calicchio**, 410 Rondeau Drive, Erie, PA 16505. To extend and maintain a concrete block groin into Lake Erie to a shale elevation of 569.8 feet IGLD, a distance of approximately 52.5 feet from the end of the existing structure to provide shoreline protection at the property located at 410 Rondeau Drive north of S. R. 5 Alternate (West Lake Road) (Swanville, PA Quadrangle N: 18.0 inches; W: 7.2 inches) in Millcreek Township, **Erie County**.

E25-611. Encroachment. **PA Department of Transportation, District 1-0**, 255 Elm Street, Oil City, PA 16301-1499. To relocate, repair and replace a total of 985 feet of 96-inch diameter reinforced concrete pipe stream enclosure in a tributary to Lake Erie (Garrison Run) extending upstream from the north side of East 12th Street (S. R. 5) approximately 700 feet west of Wayne Street as part of the construction work for the East Side Access Highway S. R. 4034, Section A51 (Erie North, PA Quadrangle N: 1.2 inches; W: 8.4 inches) in the City of Erie, **Erie County**.

E42-268. Encroachment. **PA Game Commission, Bureau of Land Management**, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797. To remove the existing structures and to construct and maintain the following structures in Skinner Creek (HQ-CWF) to provide timber harvesting and public access within State Game Lands No. 61 west of Port Allegany in Liberty Township, **McKean County**:

1. A reinforced concrete box culvert having a 14-foot wide by 4-foot high waterway opening or two 5.9-foot wide by 3.9-foot high corrugated metal pipe arch culverts on Skinner Creek Road approximately 3.8 miles west of T-408 (Port Allegany, PA Quadrangle N: 8.5 inches; W: 12.9 inches);

2. A reinforced concrete box culvert having two 10-foot wide by 4-foot high waterway openings on Coalbed Hollow Road approximately 2.4 miles west of T-408 (Port Allegany, PA Quadrangle N: 6.7 inches; W: 9.9 inches).

E62-358. Encroachment. **Bingaman and Son Lumber, Inc.**, Box 247, East Main Street, Kreamer, PA 17833. To modify and maintain the existing concrete wall and fill along approximately 115 feet of the left 50-foot floodway of a tributary to West Branch Tionesta Creek for construction of a concrete pad around the drying kilns approximately 200 feet north of Brown Avenue at the existing Clarendon facility at 22 East Brown Avenue (Clarendon, PA Quadrangle N: 5.5 inches; W: 13.5 inches) in Clarendon Borough, Department of Transportation, District 1-0, **Warren County**.

E62-366. Encroachment. **Pa. Dept. of Transportation, District 1-0**, 255 Elm Stret, Oil City, PA 16301. To

remove the existing bridge and to construct and maintain a prestressed concrete adjacent box beam bridge having a clear span of 67 feet and an underclearance of 6 feet on a 60 degree skew across Tidioute Creek on S. R. 3009, Section B04, Segment 0060 Offset 2225 approximately 0.6 mile southeast of Youngsville Road at the village of Hemlock (Tidioute, PA Quadrangle N: 15.0 inches; W: 9.2 inches) in Deerfield and Triumph Townships, **Warren County**.

E62-367. Encroachment. **Pa. Game Commission**, R. D. 2, Box 140, Corry, PA 16407. To remove the existing superstructure and to install and maintain a 35-foot long pre-fabricated steel bridge providing a span of about 25 feet and an underclearance of 4.5 feet across Wildcat Run for Game Commission access within State Game Land No. 29 approximately 1,000 feet upstream of the confluence with West Branch Tionesta Creek (Cherry Grove, PA Quadrangle N: 21.0 inches; W: 9.3 inches) in Watson Township, **Warren County**.

E62-369. Encroachment. **Sugar Grove Township**, R. D. 4, Box 205, Sugar Grove, PA 16350, To remove the existing bridge and to install and maintain three 7-foot diameter steel pipe culverts in Patchen Run on T-579 (Patchen Run Road) approximately 0.5 mile west of S. R. 27 (Sugar Grove, PA Quadrangle N: 9.9 inches; W: 12.9 inches) in Sugar Grove Township, **Warren County**.

[Pa.B. Doc. No. 00-1514. Filed for public inspection September 1, 2000, 9:00 a.m.]

Availability of Technical Guidance

Technical guidance documents are on DEP's world wide web site (www.dep.state.pa.us) at the public participation center. The "July 2000 Inventory" heading is the Governor's list of nonregulatory guidance documents. 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 nonregulatory documents, as necessary, throughout 2000.

Ordering Paper Copies of DEP Technical Guidance

DEP encourages the use of the Internet to view guidance documents. When this option is not available, persons can order a bound paper copy of the latest inventory or an unbound paper copy of any of the final documents listed on the inventory by calling 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 Technical Guidance Documents

Below 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.

Interim Policy

DEP ID: 012-0200-001 Title: Interim Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in DEP Review of Permits for Facilities and Infrastructure Description: DEP will seek to promote sound land use planning and development by considering comprehensive planning and zoning ordinances in our decision-making process on permits and approvals related to facilities and infrastructure. This guidance will provide direction to DEP staff for the implementation of Acts 67 and 68 of 2000 in the administration of current DEP programs to avoid or minimize conflict with local land use decisions. This guidance addresses how DEP will consider comprehensive planning and zoning ordinances in DEP's decision-making processes concerning facilities and infrastructure.

DEP will apply this policy where it has regulatory and decision-making discretion pursuant to legal authority and through the administration of DEP programs and regulations. This policy applies to DEP staff and applicants for DEP permits, approvals and funding. Specifically, it applies to facilities or infrastructure for proposed projects that involve changes to land use or new land development.

Interim Effective Date: Effective immediately, with 30-day comment period provided before issuance of final guidance. Comment Period Ends: October 2, 2000 Contact: Policy Office, (717) 783-8727 or e-mail: smartgrowth@dep.state.pa.us

JAMES M. SEIF,
Secretary

[Pa.B. Doc. No. 00-1515. Filed for public inspection September 1, 2000, 9:00 a.m.]

Name Change for Facilities

The Department of Environmental Protection (Department) has taken final action to change the name on all permits, licenses and approvals at the following facilities. The name on all permits, licenses and approvals previously issued to Sithe Northeast Management Company is now Reliant Energy Northeast Management Company. All permits, licenses and approvals previously with the name Sithe Pennsylvania Holdings LLC have been changed to Reliant Energy Mid-Atlantic Power Holdings LLC. Permits, licenses and approvals were issued to the power generating facilities and related operations noted. Three exceptions to the renaming are noted. A complete list of the permits, licenses and approvals affected is available from Lori Reed of the Department's Office of Field Operations at (717) 787-5027. This list is also available on the web at www.dep.state.pa.us (choose hot topics). Plan approval and permit applications are also included in the name change.

Facility Name	*County*	*DEP Region*
Blossburg	Tioga	Northcentral
Shawville	Clearfield	Northcentral
Gilbert	Northampton	Northeast
Portland	Northampton	Northeast
Portland LLC[1]	Northampton	Northeast (application only)
Shawnee	Monroe	Northeast
Piney	Clarion	Northwest
Warren	Warren	Northwest
Wayne	Crawford	Northwest
Hamilton	Adams	Southcentral
Hunterstown LLC[2]	Adams	Southcentral (application only)
Mountain	Cumberland	Southcentral

Facility Name	*County*	*DEP Region*
Orrtanna	Adams	Southcentral
Titus	Berks	Southcentral
Tolna	York	Southcentral
Williamsburg	Blair	Southcentral
Conemaugh	Indiana	Southwest
Keystone	Armstrong	Southwest
Seward	Indiana	Southwest
Erie West LLC[3]	Erie	Northwest (application only)

[1] The permittee is Reliant Energy Portland LLC.
[2] The permittee is Reliant Energy Hunterstown LLC.
[3] The permittee is Reliant Energy Erie West LLC.

JAMES M. SEIF,
Secretary

[Pa.B. Doc. No. 00-1516. Filed for public inspection September 1, 2000, 9:00 a.m.]

Wetland Replacement Project

The Department of Environmental Protection (Department) has approved the following wetland restoration projects for funding under the Pennsylvania Wetland Replacement Project (PWRP). The PWRP is a jointly managed fund between the Department and the National Fish and Wildlife Foundation established to offset wetland losses. Construction for the following projects is anticipated to begin in early fall 2000. Further information may be obtained by contacting Kelly Heffner, Department of Environmental Protection, Division of Waterways, Wetlands and Erosion Control, P. O. Box 8775, Harrisburg, PA 17105-8775; (717) 787-6827 or e-mail Heffner.Kelly@dep.state.pa.us.

Project No. S04D58-001

Sponsored by Mr. and Mrs. Ed Zygmunt, the primary objective of the 3.5-acre emergent wetland restoration in the Tuscarora Creek Watershed of the Susquehanna River drainage is wildlife habitat. An additional benefit is water quality improvement by intercepting sediment runoff from the unimproved township road. This wetland will be adjacent to existing wetlands already on the landowner's property. The project is located in Auburn Township, Susquehanna County.

Project No. S07K36-001

Sponsored by Octoraro Native Plant Nursery, the primary objective of the 2.6-acre emergent wetland restoration in the Octoraro Creek Watershed of the Susquehanna River drainage is to provide water quality improvements to the Octoraro Creek, a warm water fishery, by detaining sediment and nutrients from the nursery and other significant agricultural areas in a portion of the watershed. The project is located in Colerain Township, Lancaster County.

Project No. P13C28-003

Sponsored by William Hess, the primary objective of the 1-acre emergent wetland restoration in the West Branch Antietam Creek Watershed is water quality improvements. The project proposes placing a wetland upslope of the barnyard to intercept sediment and nutrients. This project is very well supported and may serve as a demonstration project. The project is located in Quincy Township, Franklin County.

Project No. D03F46-001

Sponsored by the Gwynedd Wildlife Preserve, the primary objective of the 4-acre emergent wetland restoration in the Wissahickon Creek Watershed is wildlife habitat improvements. The Preserve is primarily upland and the wetland component will add a new habitat feature attracting a new guild of species. The project is located in Upper Gwynedd Township, Montgomery County.

Project No. D03D15-003

The 130-acre Black Rock Preserve owned by Chester County is being developed into a park through the efforts of the Chester County Parks and Recreation System. One part of the park development is the restoration/creation of 10 acres of wetland that will be emergent, scrub/shrub, and forested. The objective on the park adjacent to the Schuylkill River is to provide wildlife habitat, educational and recreational opportunities and water quality benefits. The project is located in the Borough of Phoenixville, Chester County.

Project No. O16C53-001

Sponsored by the Bureau of Forestry (Susquehannock State Forest) the primary objective of the 1-acre emergent wetland restoration is to increase habitat diversity for wildlife. This portion of State Forest is old-field and a wetland component will attract different species of wildlife. The project is located in the Allegheny River Watershed, Sweden Township, Potter County.

Project No. S10A41-001

Sponsored by the Bureau of Forestry (Tiadaghton State Forest) the primary objective of the 4- acre project is to restore an emergent wetland community in a forested setting to increase wildlife habitat. The project is located in the Slate Run Watershed, a high quality, cold-water fishery, in Brown Township, Lycoming County.

Project No. S11D31-002

Sponsored by Lee Wilson, the primary objective of this 1-acre emergent wetland restoration in the Three Springs Creek cold-water fishery watershed is water quality improvement by intercepting runoff from farm fields, including sediment. The project is located in Cromwell Township, Huntingdon County.

Project No. S11B31-004

Sponsored by Marvin Zook, the primary objective of the 0.5-acre emergent wetland restoration in the Garner Run watershed of the Shaver Creek drainage is wildlife habitat. The project will be implemented by plugging an existing ditch and with the assistance of the Pennsylvania Game Commission, the landowner will install various nesting structures. The project is located in West Township, Huntingdon County.

Project No. P13A05-002

Sponsored by William Poorbaugh, the primary objective of the 1-acre emergent wetland restoration is wildlife habitat. A secondary benefit will be water quality improvements to Amarine Branch Creek from sediment and nutrient retention. The project is located in Southampton Township, Bedford County.

Project No. P13A05-001

Sponsored by Bob Merritt, the primary objective of the 9-acre scrub/shrub wetland restoration in the Potomac Watershed is wildlife habitat improvements. A secondary benefit will be water quality improvements to the high quality, cold-water fishery Shobers Run. The project is located in Bedford Township, Bedford County.

Project No. S11C05-001

Sponsored by Kevin McCrary, the primary objective of the 1-acre emergent wetland restoration in the drainage of the warm water fishery, Spicer Brook, is wildlife habitat. A secondary benefit will be water quality improvements to the watercourse immediately adjacent to the wetland Kegg Run. The project is located in Napier Township, Bedford County.

JAMES M. SEIF,
Secretary

[Pa.B. Doc. No. 00-1517. Filed for public inspection September 1, 2000, 9:00 a.m.]

DEPARTMENT OF GENERAL SERVICES

State Surplus Property Division

The Department of General Services, State Surplus is selling an IBM Main Frame Computer. For information, call (717) 787-4085 or write to the Department of General Services, State Surplus, Room G-12, 2221 Forster St., Harrisburg, PA 17125. Persons may obtain a bid packet by visiting the Department's web site at www.dgs.state.pa.us under State Surplus Property. Requests for bid packets must be made before the bid opening on September 19, 2000, at 1 p.m.

GARY E. CROWELL,
Secretary

[Pa.B. Doc. No. 00-1518. Filed for public inspection September 1, 2000, 9:00 a.m.]

DEPARTMENT OF HEALTH

Application of Mercy Hospital of Pittsburgh for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) hereby gives notice that Mercy Hospital of Pittsburgh has requested an exception to the requirements of 28 Pa. Code § 107.2, which requires that the membership of the medical staff be limited to physician and dentists.

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 following Division and address.

Department of Health
Division of Acute and Ambulatory Care
Room 532, Health and Welfare Building
Harrisburg, PA 17120
(717) 783-8980
Fax: (717) 772-2163
E-Mail Address: jinks@state.pa.us

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 and Ambulatory Care at (717) 783-8980, V/TT: (717) 783-6154 for Speech and/or Hearing Impaired Persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 {TT}.

ROBERT S. ZIMMERMAN,
Secretary

[Pa.B. Doc. No. 00-1519. Filed for public inspection September 1, 2000, 9:00 a.m.]

Application of Mercy Providence Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) hereby gives notice that Mercy Providence Hospital has requested an exception to the requirements of 28 Pa. Code § 107.2, which requires the membership of the medical staff be limited to physician and dentists.

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 following Division and address.

Department of Health
Division of Acute and Ambulatory Care
Room 532, Health and Welfare Building
Harrisburg, PA 17120
(717) 783-8980
Fax: (717) 772-2163
E-Mail Address: jinks@state.pa.us

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 and Ambulatory Care at (717) 783-8980, V/TT: (717) 783-6154 for Speech and/or Hearing Impaired Persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 {TT}.

ROBERT S. ZIMMERMAN,
Secretary

[Pa.B. Doc. No. 00-1520. Filed for public inspection September 1, 2000, 9:00 a.m.]

Health Policy Board Meeting

The Health Policy Board is scheduled to hold a meeting on Wednesday, September 13, 2000, at 10 a.m., in Room 327, Health and Welfare Building, Seventh and Forster Streets, Harrisburg, PA.

For additional information or if persons with a disability who desire to attend the meeting and require an auxiliary aid service or other accommodation to do so,

should contact Dottie Pines at (717) 783-2500, V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Services at (800) 654-5984 [TT].

This meeting is subject to cancellation without notice.

ROBERT S. ZIMMERMAN,
Secretary

[Pa.B. Doc. No. 00-1521. Filed for public inspection September 1, 2000, 9:00 a.m.]

Stakeholders' Meeting for the Health Resources and Services Administration's Traumatic Brain Injury State Demonstration Grant

The Department of Health (Department), Division of Special Health Care Programs, will hold a public meeting on September 15, 2000, for stakeholders interested in the Department's ongoing effort to secure a grant from the Health Resources and Services Administration, an agency under the auspices of the Federal Department of Health and Human Services. The grant is intended to enhance access to comprehensive and coordinated services for individuals with traumatic brain injuries and their families. The Department seeks input on the development of its grant proposal, and continued support and collaboration from stakeholders.

The meeting will be held in the Rachel Carson State Office Building, Auditorium, 2nd Floor, 400 Market Street, Harrisburg, PA, starting at 9:30 a.m.

For additional information, contact Emmanuel M. Nzambi, Program Analyst, Division of Special Health Care Programs at (717) 787-2020.

Persons with a disability who desire to attend the meeting and require an auxiliary aid, services or other accommodation to do so, should contract the Bureau of Family Health at (717) 787-7192; V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Services at (800) 654-5984 [TT].

ROBERT S. ZIMMERMAN,
Secretary

[Pa.B. Doc. No. 00-1522. Filed for public inspection September 1, 2000, 9:00 a.m.]

WIC Vendor Advisory Workgroup Meeting

The Department of Health (Department), Supplemental Food Program for Women, Infants and Children (WIC Program), will hold a meeting of the WIC Vendor Advisory Workgroup on September 22, 2000, from 9 a.m. to 3 p.m. in Room 327 of the Health and Welfare Building, Commonwealth and Forster Streets, Harrisburg, PA 17120.

The purpose of the meeting is to solicit comments and recommendations from workgroup members regarding program operation and State regulations as they relate to the delivery of food benefits to WIC participants.

Members of the advisory workgroup have been appointed by the Secretary of Health. The meeting is open to the public. To ensure appropriate accommodations, the Department requests that persons other than appointed workgroup members wishing to attend the meeting advise the Department's WIC Program Office by calling Linda Welsh at (717) 783-1289.

Persons with a disability who wish to attend the meeting and require an auxiliary aid service or other accommodation to do so, should contact Linda Welsh at (717) 783-1289; 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. 00-1523. Filed for public inspection September 1, 2000, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

Addition of a New Neonatal Intensive Care Procedure Code Fee Increase for Selected Neonatal Intensive Care Services

By this notice, under to 55 Pa. Code § 1150.61(a), the Department of Public Welfare (Department) announces that effective September 1, 2000, the following new neonatal intensive care procedure code has been added to the Medical Assistance (MA) Program Fee Schedule.

Procedure Code	*Description of Service*	*MA Fee*
99298	Subsequent neonatal intensive care, per day, for the evaluation and management of the recovering very low birth weight infant (less than 1,500 grams)	$80

Under to 55 Pa. Code § 1150.61(a), the Department also announces that the fees for the following neonatal intensive care services are increased retroactively, effective August 1, 1996, as follows:

Procedure Code	*Description of Service*	*Current Fee*	*Increased Fee Effective 8-1-1996*
99295	Initial neonatal intensive care, per day, for the evaluation and management of a critically ill neonate or infant. (This code is reserved for day of admission.)	$130.50	$450
99296	Subsequent neonatal intensive care, per day, for the evaluation and management of critically ill and unstable neonate or infant.	$73.50	$230

Procedure Code	*Description of Service*	*Current Fee*	*Increased Fee Effective 8-1-1996*
99297	Subsequent neonatal intensive care, per day, for the evaluation and management of a critically ill though stable neonate or infant.	$52.50	$130

Procedure codes 99295, 99296, 99297 and 99298 are bundled (global) codes, which represent care starting with the date of admission to the neonatal intensive care unit and may be billed only once per day, per patient. Care rendered includes management; monitoring and treatment of the patient including enteral and parenteral nutritional maintenance, metabolic and hematologic maintenance; pharmacologic control of the circulatory system; parent counseling; case management services and personal direct supervision of the health care team in performance of cognitive and procedural activities.

In addition to those services listed above, the following procedures are also included in the bundled (global) neonatal codes (99295, 99296, 99297 and 99298): umbilical venous (36510) and umbilical arterial (36620) catheters, central (36488, 36490) or peripheral vessel catheterization (36000), other arterial catheters (36140, 36620), oral or nasogastric tube placement, endotracheal intubation (31500), lumbar puncture (62270), suprapubic bladder aspiration (51000), initiation and management of mechanical ventilation (94656, 94657) or continuous positive airway pressure (CPAP) 94660, surfactant administration, intravascular fluid administration, transfusion of blood components (36430, 36440), vascular punctures (36420, 36600), invasive or noninvasive electronic monitoring of vital signs, bedside pulmonary function testing, and/or monitoring or interpretation of blood gases or oxygen saturation (94760-94762). A provider must bill for neonatal intensive care services using the bundled (global) procedure codes (99295, 99296, 99297 and 99298) and may not bill separately for services performed, which are listed above.

When the neonate is no longer considered to be critically ill and attains a body weight which exceeds 1,500 grams, the codes for Subsequent Hospital Care (99231-99233) should be used.

Fiscal Impact

The estimated cost for Fiscal Year 2000-2001 including all retroactive costs as a result of the addition of the new neonatal intensive care procedure code and the retroactive rate increase for selected neonatal intensive care procedure codes is $3.619 million ($1.679 million in State funds). The estimated cost for Fiscal Year 2001-2002 is $1.306 million ($0.600 million in State funds).

Contact Person

A copy of this notice is available for review at Local County Assistance Offices. Interested persons are invited to submit written comments to this notice within 30 days of this publication. These comments should be sent to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Deputy Secretary's Office, Attention: Suzanne Love, Room 515 Health and Welfare Building, Harrisburg, PA 17120.

Persons with a disability may use the AT&T Relay service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (Voice users). Persons who require another alternative should contact Thomas Vracarich in the Office of Legal Counsel at (717) 783-2209.

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-NOT-256. (1) General Fund; (2) Implementing Year 2000-01 is $1.659 million; (3) 1st Succeeding Year 2001-02 is $0.600 million; 2nd Succeeding Year 2002-03 is $0.600 million; 3rd Succeeding Year 2003-04 is $0.600 million; 4th Succeeding Year 2004-05 is $0.600 million; 5th Succeeding Year 2005-06 is $0.600 million; (4) 1999-00 Program—$622,669 million; 1998-99 Program—$695,935 million; 1997-98 Program—$662.740 million; (7) Medical Assistance—Outpatient; (8) recommends adoption.

Funds are available in the Department's budget to cover the costs projected due to this fee increase.

[Pa.B. Doc. No. 00-1524. Filed for public inspection September 1, 2000, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania Instant Battleship Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314), and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Instant Battleship® Game.

2. *Price:* The price of a Pennsylvania Instant Battleship Game instant lottery game ticket is $3.00.

3. *Play Symbols:* Each Pennsylvania Instant Battleship Game instant lottery game ticket will feature a "Your Shots" area and a "Target Grid" area. The play symbols and their captions located in the "Your Shots" area are: The letters A through J, each with the numbers 1 through 10. The play symbols and their captions located in the "Target Grid" area are: An Aircraft Carrier Symbol (AC) consisting of five parts; a Battleship Symbol (BS) consisting of four parts; a Cruiser Symbol (CR) consisting of three parts; a Submarine Symbol (SB) consisting of three parts; a Destroyer Symbol (DS) consisting of two parts; and a Mine Symbol (MN).

4. *Prizes:* The prizes that can be won in this game are $3, $5, $6, $50, $500, $6,000 and $60,000.

5. *Approximate Number of Tickets Printed For the Game:* Approximately 4,200,000 tickets will be printed for the Pennsylvania Instant Battleship Game instant lottery game.

6. *Determination of Prize Winners:*

(a) Holders of tickets where the player completely uncovers (sinks) an Aircraft Carrier Symbol (AC), a

Battleship Symbol (BS), a Cruiser Symbol (CR), a Submarine Symbol (SB) and a Destroyer Symbol (DS), using only the letter-number combinations found in the "Your Shots" area, on a single ticket, shall be entitled to a prize of $60,000. Winners of the $60,000 prize do not receive the individual prizes which correspond to the uncovering (sinking) of each individual ship.

(b) Holders of tickets where the player completely uncovers (sinks) an Aircraft Carrier Symbol (AC), using only the letter-number combinations found in the "Your Shots" area, on a single ticket, shall be entitled to a prize of $6,000.

(c) Holders of tickets where the player completely uncovers (sinks) a Battleship Symbol (BS), using only the letter-number combinations found in the "Your Shots" area, on a single ticket, shall be entitled to a prize of $500.

(d) Holders of tickets where the player completely uncovers (sinks) a Cruiser Symbol (CR), using only the letter-number combinations found in the "Your Shots" area, on a single ticket, shall be entitled to a prize of $50.

(e) Holders of tickets where the player completely uncovers (sinks) a Submarine Symbol (SB), using only the letter-number combinations found in the "Your Shots" area, on a single ticket, shall be entitled to a prize of $6.

(f) Holders of tickets where the player completely uncovers (sinks) a Destroyer Symbol (DS), using only the letter-number combinations found in the "Your Shots" area, on a single ticket, shall be entitled to a prize of $5.

(g) Holders of tickets where the player uncovers a Mine Symbol (MN), using only the letter-number combinations found in the "Your Shots" area, on a single ticket, shall be entitled to a prize of $3.

7. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

Get	*Win*	*Approximate Odds*	*Approximate No. of Winners Per 4,200,000 Tickets*
Hit a MN	$3	1:5.56	756,000
Sink a 2 Hit Ship (DS)	$5	1:16.13	260,400
Hit a MN x 2	$6	1:66.67	63,000
Sink a 3 Hit Ship (SB)	$6	1:100	42,000
Hit a MN + Sink a 2 Hit Ship (DS)	$8	1:100	42,000
Hit a MN + Sink a 3 Hit Ship (SB)	$9	1:200	21,000
Hit a MN x 3	$9	1:100	42,000
Hit a MN x 4	$12	1:200	21,000
Hit a MN x 2 + Sink a 3 Hit Ship (SB)	$12	1:200	21,000
Hit a MN x 3 + Sink a 3 Hit Ship (SB)	$15	1:200	21,000
Hit a MN x 5	$15	1:200	21,000
Hit a MN x 4 + Sink a 2 Hit Ship (DS) + Sink a 3 Hit Ship (SB)	$23	1:200	21,000
Sink a 3 Hit Ship (CR)	$50	1:300	14,000
Sink a 4 Hit Ship (BS)	$500	1:24,000	175
Sink a 5 Hit Ship (AC)	$6,000	1:120,000	35
Sink all 5 Ships	$60,000	1:840,000	5

AC = Carrier
BS = Battleship
CR = Cruiser
SB = Submarine
DS = Destroyer
MN = Mine

8. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Instant Battleship Game instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

9. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Instant Battleship Game, prize money from winning Pennsylvania Instant Battleship Game instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Instant Battleship Game instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

10. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-101—3761-314), the regulations contained in 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

11. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Instant Battleship Game or through normal communications methods.

ROBERT A. JUDGE, Sr.,
Secretary

[Pa.B. Doc. No. 00-1525. Filed for public inspection September 1, 2000, 9:00 a.m.]

Pennsylvania Royal 7's Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314), and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Royal 7's.

2. *Price:* The price of a Pennsylvania Royal 7's instant lottery game ticket is $1.00.

3. *Play Symbols:* Each Pennsylvania Royal 7's instant lottery game ticket will contain one play area. The play symbols and their captions located in the play area are: 1 (ONE), 2 (TWO), 3 (THR), 4 (FOR), 5 (FIV), 6 (SIX), 7 (SVN), 8 (EGT), 9 (NIN) and a Crown Symbol (CRN).

4. *Prizes:* The prizes that can be won in this game are $1, $2, $3, $7, $17, $77, $777 and $7,777.

5. *Approximate Number of Tickets Printed For the Game:* Approximately 12,000,000 tickets will be printed for the Pennsylvania Royal 7's instant lottery game.

6. *Determination of Prize Winners:*

(a) Holders of tickets with three matching play symbols of 7 (SVN) in a left to right diagonal in the play area, and a prize amount of $7,777 in the corresponding prize arrow, on a single ticket, shall be entitled to a prize of $7,777.

(b) Holders of tickets with three matching play symbols of 7 (SVN) in a right to left diagonal in the play area, and a prize amount of $777 in the corresponding prize arrow, on a single ticket, shall be entitled to a prize of $777.

(c) Holders of tickets with three matching play symbols of 7 (SVN) in the same row in the play area, and a prize amount of $77 in the corresponding prize arrow, on a single ticket, shall be entitled to a prize of $77.

(d) Holders of tickets with three matching play symbols of 7 (SVN) in the same row in the play area, and a prize amount of $17 in the corresponding prize arrow, on a single ticket, shall be entitled to a prize of $17.

(e) Holders of tickets with three matching play symbols of 7 (SVN) in the same column in the play area, and a prize amount of $7 in the corresponding prize arrow, on a single ticket, shall be entitled to a prize of $7.

(f) Holders of tickets with a Crown Symbol (CRN) in the play area, on a single ticket, shall be entitled to a prize of $7.

(g) Holders of tickets with three matching play symbols of 7 (SVN) in the same row in the play area, and a prize amount of $3 in the corresponding prize arrow, on a single ticket, shall be entitled to a prize of $3.

(h) Holders of tickets with three matching play symbols of 7 (SVN) in the same column in the play area, and a prize amount of $2 in the corresponding prize arrow, on a single ticket, shall be entitled to a prize of $2.

(i) Holders of tickets with three matching play symbols of 7 (SVN) in the same column in the play area, and a prize amount of $1 in the corresponding prize arrow, on a single ticket, shall be entitled to a prize of $1.

7. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

Get Three 7's In Any Row, Column Or Diagonal Or Get A Crown To Win Prizes Of:	*Win*	*Approximate Odds*	*Approximate No. of Winners Per 12,000,000 Tickets*
Middle Column	$1	1:11.11	1,080,000
Left Column	$2	1:16.67	720,000
Top Row	$3	1:42.86	280,000
Crown	$7	1:60	200,000
Right Column	$7	1:60	200,000
Center Row	$17	1:300	40,000

Get Three 7's In Any Row, Column Or Diagonal Or Get A Crown To Win Prizes Of:	*Win*	*Approximate Odds*	*Approximate No. of Winners Per 12,000,000 Tickets*
Bottom Row	$77	1:4,800	2,500
Right to Left Diagonal	$777	1:60,000	200
Left to Right Diagonal	$7,777	1:1,000,000	12

8. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Royal 7's instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

9. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Royal 7's, prize money from winning Pennsylvania Royal 7's instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Royal 7's instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

10. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-101—3761-314), the regulations contained in 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

11. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Royal 7's or through normal communications methods.

ROBERT A. JUDGE, Sr.,
Secretary

[Pa.B. Doc. No. 00-1526. Filed for public inspection September 1, 2000, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Application for Lease of Right-of-Way

The Department of Transportation, under the authority contained in section 2002(c) of The Administrative Code of 1929 (71 P. S. § 512(c)) and in 67 Pa. Code § 495.4, gives notice that an application to lease highway right-of-way has been submitted to the Department by George J. Trucco, Trucco Agency, 1157 Water Street, Meadville, PA 16335 to lease highway right-of-way located on SR 6/19/322, (old L.R. 82-9), named Smock Road, in the Township of Vernon, Crawford County, consisting of approximately .983 acres, for the purpose of mowing the grass and removing debris.

Interested persons are invited to submit, within 30 days from the publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestions and/or objections regarding the approval of this application to John L. Baker, P.E., District Engineer, Engineering District 1-0, P. O. Box 398, 255 Elm St., Oil City, PA 16301.

Questions regarding this application or the proposed use may be directed to Jeffrey E. Hahne, District Property Manager, P. O. Box 398, 255 Elm St., Oil City, PA 16301 (814) 678-7071.

BRADLEY L. MALLORY,
Secretary

[Pa.B. Doc. No. 00-1527. Filed for public inspection September 1, 2000, 9:00 a.m.]

Demolition

The City of Altoona is seeking bids for the demolition of 19 residential and two commercial structures on Chestnut Avenue, Altoona, PA. The demolition of the structures includes removal of the complete foundation, backfilling with select granular material and compacting for highway subgrade. Bidders must be pre-qualified by the Pennsylvania Department of Transportation for demolition work. Work performed on this project will be subject to the United States Department of Labor (Davis/Bacon) wage rates, FHWA, HUD and State regulations. The contractor will have 45 days from the date of the notice-to-proceed to complete the work.

Sealed bids will be accepted at the Altoona Office of the City Clerk until 2 p.m., local prevailing time, September 25, 2000. A prebidders conference will be held in the Conference Room of the Altoona Planning and Community Development Department, 1117 9th Avenue, Altoona, PA on Friday, September 8, 2000, at 10 a.m., local prevailing time. An inspection tour of the properties will follow the meeting.

For a copy of bid forms, specifications and further information, contact Nick Ardizzone at the Altoona Planning and Community Development Department, (814) 949-2470.

Department: Altoona Planning and Community Development
Location: City of Altoona, Blair County, PA
Duration: 45 Days
Contact: Nick Ardizzone, (814) 949-2470

BRADLEY MALLORY,
Secretary

[Pa.B. Doc. No. 00-1528. Filed for public inspection September 1, 2000, 9:00 a.m.]

Lease of Public Right of Way

An application has been made to the Department of Transportation, under 67 Pa. Code § 495.4(d) (relating to application procedure) and section 2002 of The Administrative Code of 1929 (71 P. S. § 512) by Anthony Bozzuto, Manager, Parking Services, University of Pennsylvania, Department of Transportation & Parking, Suite 447A, 3401 Walnut Street, Philadelphia, PA 19104 to Lease Public Right of Way, S.R. 3006 Section 03B, lower level of Walnut Street, between 31st and 32nd Streets, to be used as private parking for personnel of the University of Pennsylvania.

Interested persons are invited to submit written comments, suggestions and/or objections to the approval of the application, within 30-calendar days from the date of publication of this notice to Andrew L. Warren, District Administrator, Engineering District 6-0, 7000 Geerdes Boulevard, King of Prussia, PA 19406-1525.

BRADLEY L. MALLORY,
Secretary

[Pa.B. Doc. No. 00-1529. Filed for public inspection September 1, 2000, 9:00 a.m.]

Retention of Engineering Firms

Bedford County
Project Reference No. 08430AG2598

The Department will retain an engineering firm for a multi-phase, specific project agreement to provide environmental studies, preliminary engineering, final design and services during construction for the roadway relocation of S.R. 0056 Section 013. The corridor for this roadway relocation is referred to as "North Pleasantville Mountain Relocation" in the S.R. 0056 Planning Study prepared for the Department in 1995. This two (2) lane roadway relocation is approximately 3.1 miles in length. The proposed corridor is wooded mountainous terrain with few existing residences. These residences are mainly situated near the ends of the proposed relocation where the new roadway will tie to existing roadways. The major improvements include eliminating several sharp curves and some segments of steep grades. This project is located west of Pleasantville in West St. Clair Township, Bedford County.

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. Specialized experience and technical competence of the design team. The team must demonstrate an ability to collect and analyze data, make decisions to develop quality plans in a timely manner, meet accelerated schedules, the capacity for innovative engineering to resolve complex problems, familiarity with the project and how the project relates to the firms' experience.

b. Past experience of firm with respect to cost control, work quality and meeting schedules, with emphasis on District 9-0 projects. The specific experience and project management skills of the individuals who constitute the firm will be considered.

c. Understanding the Department's requirements, Design Manuals, policies and procedures. The selected firm must demonstrate their ability to communicate ideas and/or practices across units, subconsultants and the general public.

d. Current and projected workload on PennDOT and Pennsylvania Turnpike projects will be considered. List current PennDOT projects and PennDOT contact person including their telephone number.

e. The specific experience and project management skills of the subconsultant selected by the prime.

f. Firm must describe their methods of controlling the quality of project submissions by outlining a project specific Quality Assurance/Quality Control (QA/QC) plan.

g. Location of firm with respect to District 9's office as it relates to their ability to provide quick response time to the District's requests.

The firm selected may be required to provide a variety of engineering services as indicated below, but not limited to; all studies necessary for the preparation of a Categorical Exclusion Level 2 (or higher level, if unanticipated issues are discovered) and associated documents, field surveying, traffic studies, line & grade submission, Design field view submission; drainage design, E & S plan, soils and geotechnical reconnaissance, maintenance and protection of traffic, right-of-way investigation, coordination with utility companies, H&H submissions, and TS&L submissions, roadway design, preparation of final roadway, structure plans, and right-of-way plan, roadway and structure borings, final design, preparation of plans, specifications, and estimates, Shop Drawing review and consultation during construction.

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).

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. Earl L. Neiderhiser, P.E., District Engineer
Engineering District 9-0
1620 North Juniata Street
Hollidaysburg, PA 16648
Attn.: Terry L. Bouch

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 Terry L. Bouch, phone number (814)696-7171, fax number (814)696-7173.

Berks, Carbon, Lehigh, Monroe, Northampton, and Schuylkill Counties
Project Reference No. 08430AG2599

The Department will retain an engineering firm for an Open-End Contract for various engineering and/or environmental services on various projects located in Engineering District 5-0, that is Berks, Carbon, Lehigh, Monroe, Northampton, and Schuylkill Counties. The Contract will be for a sixty (60) month period with projects assigned on an as-needed basis. The maximum amount of the Open-End Contract will be $1.0 million.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating

an Open-End Contract based on the Department's evaluation of the letters of interest received in response to this solicitation. The final ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the final 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) Past record of performance with respect to cost control, work quality, ability to meet schedules, and previous experience on Open-end Contracts. The specific experience of individuals employed by the firm shall be considered.

b) Available staffing for this assignment and the ability to meet the Department's needs.

c) Specialized experience and technical competence of firm.

d) Location of Consultant in respect to the District.

The work and services required under this Contract may encompass a wide range of environmental studies and engineering efforts with the possibility of several different types of projects with short completion schedules being assigned concurrently. The anticipated types of projects include, but not limited to, bridge replacements or bridge rehabilitation with minor approach work, environmental studies, roadway betterments (3R type,) minor capital improvement projects (bridges or roadway), railroad grade crossing projects, and minor location studies, etc.

The engineering work and services which may be required under this Contract include, but are not limited to, perform field surveys; plot topography and cross sections; prepare submission for utility verification and relocations engineering; prepare all pertinent submissions and materials necessary for the Department to prepare the application to PUC and for the PUC field conference; attend and supply any required information for all PUC meetings and hearings during the design of the project; develop erosion control details and narrative; prepare right of way plans; complete structure designs including type, size and location reports, core boring layouts and foundation designs and reports; develop traffic control plans with narratives; conduct soils investigations and prepare soils reports; investigate utility involvement on projects; provide material for and participate in value engineering reviews; coordinate contacts with railroad officials and procure railroad related costs, permits, and insurance; collect signal timing, accident data and other traffic flow data; document engineering study findings and activities; alternative analysis to assess impacts and mitigation; and prepare construction plans, specifications, estimates, and NBIS structure inspections, as needed.

The areas of environmental study required under the Contract may include, but are not limited to: air quality; noise; energy; vibration; hazardous waste; surface water and ground water quality; surface water and ground water hydrology; terrestrial ecology including threatened and endangered species; wetlands; soils; geology; farmlands; visual quality; socio-economic resources; cultural resources; Section 4(f) Evaluations; early coordination and; scoping correspondence; meeting minutes; public meeting and hearing presentations; visualization materials, handouts and displays; technical basis reports (TBRs) and/or technical files; NEPA environmental documents; Section 106 documents; mitigation plans and reports; wetland and floodplain findings; and preliminary engineering plans, and remote sensing/mapping innovations. The format and content of all documents will be consistent with applicable State and Federal regulations, policies and guidelines.

The engineering services and environmental studies identified above are the general work activities that can be expected under this Open-End Contract. A specific project-related Scope of Work will be outlined for each individual Work Order developed under this Open-End Contract.

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:

Walter E. Bortree, P.E., District Engineer
Engineering District 5-0
1713 Lehigh Street
Allentown, PA 18103-4727
Attn: James R. McGee, 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 tenth (10th) day following the date of this Notice.

Any technical questions concerning the requirements for this project should be directed to James R. McGee, P.E., phone number (610) 798-4156, fax number (610) 798-4116.

Adams, Cumberland, Dauphin, Franklin, Lancaster, Lebanon, Perry and York Counties
Project References No. 08430AG2600

The Department of Transportation will retain an engineering firm for an Open-End Contract for various engineering and environmental services on traffic and maintenance type projects located in Engineering District 8-0 that is Adams, Cumberland, Dauphin, Franklin, Lancaster, Lebanon, Perry and York Counties. The contract is expected to be for sixty (60) month period with projects assigned on an as needed basis. The maximum amount of the Open-End Contract will be $1.0 million.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an Open-End Contract based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The final ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the final 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. Specialized experience and technical competence of the firm with emphasis on the firm's ability to handle projects of a diverse and complex nature. The firm's experience in traffic related design, including Intelligent Transportation System (ITS) implementation, safety and maintenance improvement projects and minor bridge or culvert design projects; the firm's ability to address critical environmental issues in a timely and cost effective manner; and the firm's ability to procure all necessary permits.

b. Past record of performance with respect to cost control, work quality, ability to meet schedules and

previous experience on Open-End Contracts. The specific experience of individuals who constitute the firms shall be considered.

c. Location of consultant in respect to the Engineering District 8-0.

d. Use of Micro-station CADD compatible equipment.

e. Available staffing for this assignment. The selected firm could be assigned up to 20 concurrent work orders of a similar or diverse nature. Prompt turn-around time is expected.

f. Relative size of the team, to the size of projects that may be completed under this Contract.

The possibility exists that many different types of projects will be assigned under short term completion schedules which will encompass a wide range of traffic engineering projects, including, but not limited to, traffic signal and signal system design/analysis, traffic signing and sign structure designs and reviews, prepare/review maintenance and protection of traffic plans and preliminary field surveys.

Other areas of traffic engineering expertise associated with these projects may include, but are not limited to, developing and reviewing traffic signal permit drawings (new and revised), developing and/or reviewing traffic signal construction plans, data collection analysis (including preliminary field surveys and traffic counts), developing traffic signal coordination timing plans, analyzing and fine-tuning existing signal system timing plans to address any system deficiencies, observe on-street system operation during peak and off peak periods, adjust coordination timing parameters to optimize traffic flow, prepare lighting conversion plans, conducting traffic engineering studies in accordance with Title 67, Chapter 201, reviewing Highway Occupancy Permits (HOPs) in accordance with Title 67, Chapter 441 and Publication 170 for appropriate design criteria, review traffic impact studies, checking HOP plans and documentation for accuracy and compliance with current requirements and design standards, review for driveway applications as well as intersection improvements, conduct detailed field views for each permit review, review and evaluate traffic impact studies, drainage design, regulatory and warning signs, and pavement markings.

In addition, the selected firm may be required to perform engineering studies and design in support of the District's Maintenance Unit. These services could include, but are not limited to: drainage and hydraulic studies, storm water management, minor structural design, core borings and geotechnical investigations, PUC coordination, wetland delineation and mitigation design, preparation of categorical exclusion evaluations, preparation of erosion and sedimentation control plans, and preparation of GP-7 minor stream encroachment permit, applications for Penn DEP.

Provide survey data for in-house design projects, if needed. Survey information must be directly compatible with the District's in-house design capabilities. The District uses in-house software (available to the consultant) or TDS software with a DOS operating data collection.

Consultant shall be able to provide Architectural and Architectural Engineering services including the design and construction drawing preparation for single story wood and/or masonry building repairs or improvements where construction cost is expected to be less than ten thousand dollars. The consultant shall be able to perform structural analyses on existing buildings and be familiar with the Pennsylvania Department of Labor and Industry Building Code requirements.

Consultant shall be able to prepare subdivision and land development plans for Maintenance stockpiles and represent Department at municipal meetings where approval of subdivision and land development plans are necessary.

Areas of environmental study associated with these projects may include, but are not limited to: soils, geology; streams, rivers and watercourses, wetlands, floodplains, navigable waterways, surface water and groundwater resources, National and State Wild and Scenic Rivers and Streams; vegetation, wildlife and habitat, terrestrial and aquatic ecology, threatened and endangered species investigation, farmland, National Natural Landmarks, natural and wild areas, cultural resources, parks and recreation facilities, hazardous and residual waste including under ground storage tanks, air quality, noise, energy, vibration, public controversy on environmental grounds, aesthetic and other values including visual quality, and socioeconomic impacts. All environmental studies will be conducted in accordance with accepted analysis techniques and methodologies.

The selected firm may be required to perform any or all of the above in order to ensure a completed traffic engineering or maintenance investigation has been performed: provide all necessary engineering services, material and equipment necessary to collect, analyze and review data, prepare reports, and attend meetings with applicants and agencies.

The format and content of all documents, plans, and specifications will be consistent with applicable State and Federal regulations and guidelines. This is the general description of the work involved. A more specific and project related scope of work will be outlined for each individual work order developed under the Open-End Contract.

Project schedules will be maintained by the Department using Welcome "Open Plan" software. Consultant schedule software must be compatible.

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. Barry G. Hoffman, P.E., District Engineer
Engineering District 8-0
2140 Herr Street
Harrisburg, PA 17103-1699
Attention: Mr. Glenn Rowe, 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.

Any technical questions concerning the requirements of this project should be directed to Mr. Glenn Rowe at (717) 783-3981.

Butler County
Project Reference No. 08430AG2601

The Department will retain an engineering firm to provide final design services and services during construc-

tion on S.R. 0008, Section 283, Main Street Viaduct Bridge Replacement, Butler County.

This project involves the replacement of the existing structure that carries S.R. 0008 over Connoquenessing Creek, Buffalo & Pittsburgh Railroad, and Bessemer & Lake Erie Railroad on a new alignment in the City of Butler, Butler County. The project begins at the intersection of Main Street and Wayne Street (S.R. 356) in the City of Butler and precedes south across the river and railroads, then ties back into S.R. 0008 near the intersection of Roosevelt Blvd. The estimated construction cost for this project is $16 million.

The project will involve the construction of a four lane, major structure (approximately 1200 feet in length) and approach roadway.

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) Specialized experience and technical competence of firm with major structure design. The specific experience of individuals employed by the firm shall be considered.

b) Past record of performance with respect to cost control, work quality and ability to meet accelerated schedules.

c) Available staffing for this assignment, including projected workload for the prime consultant and subconsultants.

d) Location of Consultant in respect to the District.

The firm selected may be required to provide the following services or perform the following tasks (note: this list may be expanded or reduced as the project requirements dictate): Utility verification and relocation; PUC involvement and coordination; field surveys; roadway cross sections; drainage design; traffic control plans; traffic signal plans; lighting plan; pavement marking and signing plan; waste management plan; final roadway plans; core borings; geotechnical report; foundation approval; final structure plans; erosion and sedimentation control plans; value engineering and safety review submissions; construction CPM schedule; project review meetings; public/special interest group meetings; design partnering; completion of all applicable forms; PS&E package submission; project management and administration. Services during construction activities will include, but not limited to, construction consultation, alternate design review and shop drawing reviews. The project will be designed in English units.

Others are advancing the project, through the completion of the preliminary design submission and field view, preliminary type, size and location and final right-of-way plans. The selected firm must build upon the work that has been performed to date with minimal redundancy.

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).

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
Route 286 South, P. O. Box 429
Indiana, PA 15701
Attn: Jim Andrews, 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.

Any technical questions concerning the requirements for this project should be directed to Jim Andrews, P.E., phone number 724-357-2080, fax number 724-357-1905.

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.

For District 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 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 Central Office, Bureau of Design by the deadline stipulated in the individual advertisements.

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*.

By submitting a letter of interest for the projects that request 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. A firm not conforming to this requirement may submit a letter of interest as a part of a joint venture with an individual, firm or corporation which is permitted under State law to engage in the practice of engineering.

The letter of interest must include full disclosure of any potential conflict of interest by the prime or any subconsultant based on Engineering Involvement Restrictions Guidelines as established in Strike-off Letter No. 433-00-02 published March 27, 2000. If there are no potential conflicts you shall include the following statement: "I have reviewed Strike-off Letter No. 433-00-02 and determine that there are no potential conflicts of interest for anyone on this project team."

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 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).

Proposed 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.

Letters of Interest for will be considered non-responsive and eliminated from further consideration for any of the following reasons:

1. Letters of Interest not received on time.

2. Project of interest is not identified.

3. An Annual Qualification Package for the prime consultant and all subconsultants is not on file with the organization receiving the Letter of Interest.

4. Conflict of Interest evaluation statement is not included.

5. A Disadvantaged Business Enterprise (DBE) participation goal is established for the Project Reference Number but no DBE/WBE is identified and no good faith effort is included.

6. Firm submitted a Letter of Interest on more than one (1) Joint Venture or a firm submitted a Letter of Interest as a prime and was also included as a subconsultant, to another firm. Multiple responses under any of the foregoing situations will cause the rejection of all responses of the firm, or firms, involved.

In addition to the above reasons, a Letter of Interest for Construction Inspection Services will be considered non-responsive for any of the following reasons:

1. Prime consultant or any subconsultant does not have a Federal Acquisition Regulation (FAR) Audit Field Overhead Rate on file with the Department.

2. Using an individual's resume without including a letter granting the individual's approval for TCIS and higher positions.

3. Exceeding the maximum number of resumes in a payroll classification.

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. 00-1530. Filed for public inspection September 1, 2000, 9:00 a.m.]

HEALTH CARE COST CONTAINMENT COUNCIL

Meeting Schedule

Please be advised that the following meetings of the Health Care Cost Containment Council have been scheduled: Wednesday, September 6, 2000, Data Systems Committee—10 a.m.; Mandated Benefits Review Committee—1 p.m.; Education and Outreach Committee—3 p.m. Thursday, September 7, 2000, Council Meeting—10 a.m. The meetings will be held in the conference room at the Council Office, 225 Market Street, Suite 400, Harrisburg, PA 17101. The public is invited to attend. If you are in need of accommodations due to a disability and want to attend the meetings, please contact Cherie Elias, Health Care Cost Containment Council, 225 Market Street, Harrisburg, PA 17101, (717) 232-6787 at least 24 hours in advance so that arrangements can be made.

MARC P. VOLAVKA,
Executive Director

[Pa.B. Doc. No. 00-1531. Filed for public inspection September 1, 2000, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Comments Issued

Section 5(d) and (g) of the Regulatory Review Act (71 P. S. § 745.5 (d) and (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 committees' comment period. The Commission's comments are based upon the criteria contained in section 5.1(h) and (i) of the Regulatory Review Act (71 P. S. § 745.5a(h) and (i)).

The Commission issued comments on the following proposed regulations. The agency must consider these comments in preparing the final-form regulations. The final-form regulations must be submitted by the dates indicated.

Reg. No.	Agency/Title	Issued	Final-Form Submission Deadline
7-353	Environmental Quality Board Oil and Gas Wells	8/17/00	7/17/02
57-217	Pennsylvania Public Utility Commission Licensing Requirements for Natural Gas Suppliers	8/17/00	7/17/02

Environmental Quality Board Regulation No. 7-353
Oil and Gas Wells

August 17, 2000

We submit for consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P. S. § 745.5a(h) and (i)) which have not been met. The Environmental Quality Board (EQB) must respond to these comments when it submits the final-form regulation. If the final-form regulation is not delivered by July 17, 2002, the regulation will be deemed withdrawn.

1. Section 78.1. Definitions.—Clarity.

Reportable release of brine

This definition contains substantive reporting thresholds. It would be more appropriate to move the reporting thresholds to § 78.66 of the regulation.

2. Section 78.17. Permit renewal.—Clarity.

This section requires notice to parties within 1,000 feet of the well. Regarding notice to a gas storage reservoir, it is not clear whether the 1,000-foot limit is from a gas storage reservoir or a gas reservoir protective boundary. This should be clarified in the final-form regulation.

3. Section 78.53. Erosion and sedimentation control.—Clarity.

The last sentence of this section refers the reader to the "best management practices" in the Oil and Gas Operators Manual. However, the purpose of this reference is unstated. The final-form regulation should explain the application or purpose of the referenced document. For example, the language in § 78.78(a) of the proposed regulation states "(t)he Department will use recommendations . . . listed in the Department's Coal Pillar Technical Guidance . . . ."

4. Section 78.56. Pits and tanks for temporary containment.—Clarity.

Existing language in subsection (d) requires the owner or operator to "remove or fill the pit." The proposed addition of the last sentence requires pits to be "restored." We understand that these requirements are the same. To avoid possible confusion, we suggest that the EQB replace the word "restored" with "remove or fill the pit" to clarify the intent in this subsection.

5. Section 78.61. Disposal of drill cuttings.—Clarity.

Subsection (b)(8) uses the term "liquid fraction" while subsection (c) uses the term "free liquid fraction." It is our understanding that these terms should be the same. Accordingly, the term in subsection (b)(8) should be amended to "free liquid fraction" to be consistent with subsection (c).

6. Section 78.62. Disposal of residual waste—pits and Section 78.63. Disposal of residual waste—land application.—Consistency with the statute.

Section 510-34 of the Administrative Code of 1929 (71 P. S. § 510-34) exempts any well drilled "prior to April 18, 1985." The regulation requires surety or collateral bonds for wells drilled "after April 18, 1985." To be consistent with the statute, the regulation should apply to wells drilled "after April 17, 1985."

7. Section 78.66. Release of polluting substances.—Clarity.

The title of this section and subsection (a) refer to "polluting substances." However, the defined term in § 91.1 of the Water Resources regulations is "pollutant." For clarity, the Department should use the defined term "pollutant" in the final-form regulation. Additionally, in subsection (e) the EQB should replace the reference to "substance" in paragraphs (1)—(3) with the term "pollutant" to be consistent throughout the regulation.

Subsection (c)(4) contains the phrase "the quantity of the brine involved." It is not clear what is meant by the term "involved." For example, is the "quantity of brine involved" all of the brine in a pit that can potentially leak, or just the quantity that has leaked from the pit? The EQB should consider using the term "released" instead.

8. Section 78.76. Drilling within a gas storage reservoir.—Clarity.

In subsection (b), the word "or" in the phrase "drilling, casing and cementing plan or the proposed well" should be changed to "for."

9. Section 78.78. Pillar permit applications.—Clarity.

In subsection (b) the reference to the "most recent coal pillar study" should be clarified by adding a reference to subsection (a).

10. Section 78.87. Gas storage reservoir protective casing and cementing procedures.—Clarity.

In subsection (a) the term "reservoir protective area" should be prefaced by the terms "gas storage" to avoid any confusion.

Pennsylvania Public Utility Commission Regulation No. 57-217

Licensing Requirements for Natural Gas Suppliers

August 17, 2000

We submit for consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P. S. § 745.5a(h) and (i)) which have not been met. The Pennsylvania Public Utility Commission (PUC) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by July 17, 2002, the regulation will be deemed withdrawn.

1. Section 62.101. Definitions.—Conformance with statutory authority and Clarity.

Marketing Services Consultant and Nontraditional Marketer

The proposed term "Marketing Services Consultant" is defined, in part, as "(a) commercial entity, such as a telemarketing firm or auction-type website, that under contract to a licensee, acts as an agent to market natural gas supply services to retail gas customers for the

licensee." The proposed definition of "Nontraditional Marketer" also includes a commercial entity. Why wouldn't the "commercial entity" referenced in the definition of "Nontraditional Marketer" be considered a "Marketing Services Consultant"? Any distinctions in the definitions of these terms should be clarified in the final-form regulation.

Natural Gas Distribution Company; Natural Gas Supply Services; and Retail Gas Customer

The definitions of these terms in the regulation differ from the definitions of the same terms in the Natural Gas Choice and Competition Act (act) (66 Pa.C.S. § 2202). The definitions of these terms in the final-form regulation should conform to the statutory definitions or reference the act, or the PUC should justify the differences.

NGS—Natural Gas Supplier

The definition of this term in the proposed regulation differs from the definition of the same term in the act. Specifically, the definition in the regulation does not include the entire last paragraph of the act's definition that expressly exempts NGSs from being classified as a public utility. We question the omission of this paragraph in the proposed regulation, and recommend that, in the final-form regulation, this definition be amended to conform to the statutory definition or reference the act.

2. Section 62.102. Scope of licensure.—Statutory authority.

Subsections (d) and (e) exempt nontraditional marketers and marketing services consultants from the licensure requirement. The act defines a "natural gas supplier," in part, as an entity that "provides natural gas supply services to retail customers." "Natural gas supply services" are defined in the act to include "the sale or arrangement of the sale of natural gas to retail customers." It appears that both nontraditional marketers and marketing services consultants "arrange the sale of natural gas" between the NGS and the customer. We request that the PUC explain its statutory authority for the exemptions in subsections (d) and (e).

3. Section 62.103. Application process.—Clarity.

Subsection (c) requires that copies of completed applications, with supporting documentation, be served upon five specified state regulators and each NGDC in whose service territory the applicant intends to provide natural gas supply services. Subsection (e) provides that an applicant may designate those items, in the application, that it believes are confidential and privileged. Do the confidentiality provisions apply to copies provided under subsection (c)? If so, an introductory qualifying clause should be added to subsection (c), making the disclosure of information subject to the limitations of subsection (e).

We also recommend that the reference to ". . . each NGDC in whose service territory the applicant intends to provide natural gas supply services" be made a new paragraph (6) under subsection (c).

4. Section 62.104. Application form.—Clarity.

Subsection (a)(6) requires an applicant for a license to provide financial information that is "sufficient to demonstrate financial fitness." Additionally, the regulation provides examples of the type of information that "may" be submitted. It is unclear how the PUC will determine if the financial information is "sufficient." To improve clarity, the PUC should list the minimum documentation that is required, or the criteria it will use to determine if the information submitted is "sufficient."

5. Section 62.106. Open and nondiscriminatory access.—Clarity.

This section references the standards for open and nondiscriminatory access to a gas distribution system "in the act." For clarity, the final-form regulation should specifically cite the relevant sections of the act. The PUC should also clarify the criteria it will use to determine if a municipal corporation will provide open and nondiscriminatory access to its gas distribution system.

6. Section 62.107. Publication of notice of filing.—Clarity.

Subsection (b)(2) requires a notice of filing an application to be provided to the PUC in an "acceptable electronic format." The term "acceptable" is vague. What is an "acceptable electronic format"? The PUC should amend the regulation to make this clarification, or direct an applicant to the location or phone number for the information.

7. Section 62.108. Protests to applications.—Reasonableness and Clarity.

Subsection (c)(3) states: "If a protest is sufficiently documented, the application will be transferred to the Office of Administrative Law Judge for hearings or mediation as deemed appropriate." How will the PUC determine which protests will result in hearings and which will result in mediation? Is there a list of criteria that need to be satisfied in both cases? The PUC should explain the process and criteria for establishing whether a protest goes to a hearing or to mediation, and delete the phrase "as deemed appropriate."

8. Section 62.112. Bonds or other security.—Economic and fiscal impact and Clarity.

This section requires an NGS to post a bond or other security to receive a license to conduct business in this Commonwealth. We have a number of concerns with this section. First, it does not include a prioritization of claims for payment under a bond or other security if an NGS defaults. For clarity, the PUC should establish the priority of claimants by listing who would receive payment from a bond or other security in the event that an NGS ceases service. This approach is consistent with the electric generation supplier licensure regulations in 52 Pa. Code § 54.40(f)(3).

Second, subsection (c) states: "The amount and form of the security . . . shall be reasonably based on the criteria established in this section." The term "reasonably" is unnecessary, and it should be deleted from this subsection.

Finally, subsection (e) includes the phrase "unreasonable service." This phrase is unclear. The PUC should either define it or provide examples of "unreasonable service" in this section.

9. Section 62.113. Transfer or abandonment of license.—Clarity.

Petition and application

In this section, the PUC requires two steps for a license transfer. The order of the steps is unclear. As written, the

regulation implies that the PUC approves license transfers before receiving the financial and technical fitness application. If that is so, why would an application be necessary after the transfer is granted? In what order does the PUC require submission of these two documents, or are both to be submitted simultaneously? The PUC should amend the regulation to clarify the chronology of document submittal and whether both the petition and an application are necessary.

Abandonment of service

Subsection (b) contains the phrase: "A licensee may not abandon service . . . ." Does "abandon service" mean an NGS surrenders its license? Or, does the phrase refer to the failure to renew or the cancellation of an NGS contract? The PUC should clarify "abandon service" in the final-form regulation.

10. Section 62.110. Regulatory assessments.—Statutory authority. Section 62.114. License suspension; license revocation.—Statutory authority.

Section 62.110 (a) requires licensed NGSs to pay assessments to defray regulatory costs, under section 510 of the Public Utility Code (66 Pa.C.S. § 510). Section 62.114(a)(1) provides that the license of an NGS may be suspended or revoked for failure to pay an assessment. However, section 510 of the Code only authorizes the PUC to collect regulatory assessments from public utilities. The definition of "Natural Gas Supplier" in section 2202 of the act states: "Notwithstanding any other provision of this title, a natural gas supplier . . . is not a public utility as defined in section 102 (relating to definitions) . . . ." (Emphasis added.)

Based on the highlighted language in the definition, it is unclear that an NGS is a public utility. The PUC should explain its authority for collecting these assessments from an NGS under section 510, or delete §§ 62.110(a) and 62.114(a)(1) from the final-form regulation.

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 00-1532. Filed for public inspection September 1, 2000, 9:00 a.m.]

Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission received the following regulations on the dates indicated. To obtain the date and time of the meeting at which the Commission will consider these regulations, contact the Commission at (717) 783-5417 or visit its web site at www.irrc.state.pa.us. To obtain a copy of the regulation, contact the promulgating agency.

Final-Form

Reg. No.	*Agency/Title*	*Received*
6-261	State Board of Education College and University Security	08/22/00

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 00-1533. Filed for public inspection September 1, 2000, 9:00 a.m.]

INSURANCE DEPARTMENT

Appeal of Mary E. Brown Under the Motor Vehicle Financial Responsibility Law and Catastrophic Loss Benefits Continuation Fund; Doc. No. CF00-08-018

A prehearing telephone conference initiated by this office shall be conducted on October 3, 2000, at 1 p.m. A date for a hearing shall be determined, if necessary, at the prehearing telephone conference. At 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. No prehearing memoranda or other written submissions are required for the prehearing telephone conference; however, the parties are encouraged to discuss settlement and possible stipulations pending the conference. Motions preliminary to those at hearing, protests to intervene or notice of intervention, if any, must be filed on or before September 21, 2000, with the Docket Clerk, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North 7th Street, Harrisburg, PA 17102. Answers to petitions to intervene, if any, shall be filed on or before October 2, 2000.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid service or other accommodation to participate in the hearing, should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 00-1534. Filed for public inspection September 1, 2000, 9:00 a.m.]

Appeal of OK Grocery Company under the Storage Tank and Spill Prevention Act; Underground Storage Tank Indemnification Fund USTIF File No. 99-319(F); Doc. No. UT00-08-017

A prehearing telephone conference shall be held on September 28, 2000 at 10 a.m. in Room 200, Administrative Hearings Office, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102. At the prehearing telephone conference, the parties shall be prepared to discuss settlement, stipulations, witnesses and documents anticipated for use at 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, notices of appearance, or notices of intervention, if any, must be filed with the Docket Clerk on or before September 18, 2000. Answers to petitions to intervene, if any shall be filed on or before September 22, 2000.

A date for a hearing shall be determined, if necessary, at the prehearing telephone conference.

Persons with a disability who wish to attend the above-referenced administrative hearing, and require an

auxiliary aid, service or other accommodation to participate in the hearing, should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 00-1535. Filed for public inspection September 1, 2000, 9:00 a.m.]

Application for Merger

An application has been received requesting approval of the merger of Title Insurance Company, a nonadmitted stock title insurance company organized under the laws of the State of Alabama, with and into Commonwealth Land Title Insurance Company, a stock title insurance company organized under the laws of the Commonwealth of Pennsylvania. The initial filing was received on August 21, 2000, and was made under requirements set forth under the Business Corporation Law of 1988, 15 Pa.C.S. §§ 1921—1932 and 15 P. S. §§ 21205—21207. Persons wishing to comment on the grounds of public or private interest in this merger are invited to submit a written statement to the Insurance Department (Department) within 15 days from the date of publication of this notice in the *Pennsylvania Bulletin*. Each written statement must include the name, address and telephone number of the interested party, identification of the application to which the statement is addressed, and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Cressinda Bybee, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120; fax (717) 787-8557; E-mail cbybee@ins.state.pa.us.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 00-1536. Filed for public inspection September 1, 2000, 9:00 a.m.]

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insured has requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68) in connection with the termination of the insured's automobile policy. The hearing will be held in accordance with the requirements of the act; 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). This administrative hearing will be held in the Insurance Department's Regional Offices in Harrisburg, PA. Failure by the appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The hearing will be held in the Second Floor Hearing Room, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102.

Appeal of David E. Still; file no. 00-181-05100; Allstate Insurance Company; doc. no. P00-08-019; September 20, 2000, 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 may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator, at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 00-1537. Filed for public inspection September 1, 2000, 9:00 a.m.]

PENNSYLVANIA COMMISSION FOR WOMEN

Meeting Notice

The Pennsylvania Commission for Women has scheduled the bimonthly Commission meeting to be held on Monday, September 18, 2000, at 10 a.m. until 3 p.m. at the Wyndham Garden Hotel, 765 Eisenhower Boulevard, 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 or (888) 615-7477, at least 24 hours in advance so arrangements can be made.

LOIDA ESBRI,
Executive Director

[Pa.B. Doc. No. 00-1538. Filed for public inspection September 1, 2000, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Number Conservation Measures Granted to Pennsylvania by the Federal Communications Commission in its Order released March 31, 2000—NXX Code Reclamation; M-00001373

Commissioners Present: John M. Quain, Chairman; Robert K. Bloom, Vice Chairman; Nora Mead Brownell; Aaron Wilson, Jr.; Terrance J. Fitzpatrick

Public Meeting held
August 17, 2000

Order

By the Commission:

Introduction

Both Federal and State statutes have created the opportunity for new telephone companies to compete against existing companies for local telephone business.[1] These statutes were designed to foster competition in the telecommunications marketplace with the hope of ultimately lowering prices and improving choices for consumers. Unfortunately, however, the proliferation of fax machines, computer modems, cellular phones and competitive carriers in the local service market have created an unprecedented demand for NXX codes [2] and the current antiquated telephone network is unable to deal with this heightened demand. Consequently, area codes are rapidly exhausting in this Commonwealth and nationwide. Without area codes, there are no numbers available for carriers to provide telecommunications service to their customers. In recent years, the solution to this exhausting area code problem has been to establish new area codes.[3] Unfortunately, however, while new area codes make more numbers available for use, they also create a vast array of new problems for both consumers and telecommunications carriers.[4]

State and Federal regulators, as well as the telecommunications industry, have been working on addressing this extremely complex numbering problem for several years. Efforts have focused both on developing methods of allocating numbers more efficiently and on developing methods for increasing carriers' accountability for the numbering resources they obtain. These efforts have resulted in orders issued by the Federal Communications Commission (FCC) establishing number conservation measures to be implemented on the state [5] and national levels.

Effective July 17, 2000, the FCC established a national framework (FCC Numbering Order) for thousand-block pooling and other number conservation measures.[6] Pending implementation of this nationally mandated thousand-block pooling and the other measures set forth in the FCC Numbering Order, state commissions were given the authority to reclaim NXX codes that have not been activated within six months. This grant of authority marks a significant change in the role state commissions can play in ensuring that numbering resources are available to all carriers without the constant need to keep implementing new but unnecessary area codes.

The Commission believes that code reclamation is one of several number conservation methods that will help to alleviate the current numbering crisis in Pennsylvania and ensure the availability of Pennsylvania NXX codes to all carriers. Consequently, the Commission has decided to implement the NXX code reclamation process discussed more fully in the following paragraphs.

Discussion

The job of allocating NXX codes has been delegated by the FCC to the North American Numbering Plan Administrator (NANPA). Reclamation of codes involves the return of NXX codes to the NANPA when they have not been activated within the required timeframe.[7] As noted by the FCC in its order, reclamation is one of the quickest and easiest number conservation measures to implement. By reclaiming NXX codes that are not in use, the life of an area code is prolonged since the reclaimed codes are added to the total inventory of assignable NXX codes in the Numbering Plan Areas.

All requests for NXX codes are made directly to the NANPA. After an NXX code is given to a carrier and made available for use [8], the carrier then has 6 months to activate the code and submit verification to the NANPA that the code is activated.[9] This verification is satisfied when the carrier submits a "Part 4" form to the NANPA. Prior to the FCC Numbering Order, state commissions played no role in the process of code reclamation. After giving carriers several opportunities to submit their Part 4 form verifications or request an extension of time within which to activate their NXX code, the NANPA would recommend to the Industry Numbering Committee (INC) [10] which NXX codes should be reclaimed. The INC

[1] See, The Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C.A. § 251(e)(1), and Chapter 30 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 3001—3009.

[2] NXX codes are the three digits following the area code in a 10-digit telephone number. Under the current infrastructure, telephone numbers are assigned to carriers in blocks of 10,000. Consequently, even if a carrier has only 10 customers, 10,000 numbers are still assigned in that area code causing 9,990 numbers to remain unused and unavailable. The result of this is that the amount of NXX codes in an area code exhaust so that a new area code needs to be instituted to generate new NXX codes, and hence, new numbers available for assignment.

[3] In Pennsylvania between 1994 and 2000, the number of area codes increased from four to nine. By 2001, three more new area codes will be implemented and planning is underway to look at the need to institute additional new area codes in the future.

[4] With the implementation of each new area code, telecommunications carriers must absorb the cost of equipment and technology upgrades to ensure service. Further, businesses must update their advertisements, reprint stationery, and reprogram machines such as fax machines, computer modems and other devices to recognize the new area code. Moreover, small businesses could lose business since customers might be unaware of the change or because of technical problems due to the change. Finally, costs to consumers include the necessity of reprogramming answering machines, alarm systems, personal fax machines, and the like. Further, consumers are responsible for notifying friends, family, and other people with whom they interact such as doctors, pharmacists, and financial institutions of their changing phone number.

[5] On July 20, 2000, the FCC issued an order addressing Pennsylvania's December 23, 1999 Petition for Delegated Authority to Implement Number Conservation Measures. *In the Matter of Numbering Resource Optimization*, CC Doc. Nos. 99-200, 96-98, NSD File No. L-99-101. In this Order, the FCC granted Pennsylvania's request for the following authority: 1) to implement thousand block pooling, 2) to maintain rationing procedures for 6 months following implementation of NPA relief, 3) to implement NXX code sharing (after investigating it, reporting results to FCC, and determining that it is feasible and economically viable), and 4) to hear and address claims for an extraordinary need for numbering resources in an NPA subject to a rationing plan.

[6] See Report and Order and Further Notice of Proposed Rulemaking at CC Doc. No. 99-200, *In the Matter of Numbering Resource Optimization*.

[7] Pursuant to the FCC Order, the Central Office Code Guidelines were modified to require code holders to return an NXX code if no numbers in the code are in service within 6 months after the effective published date of the NXX code. *Central Office Code (NXX) Assignment Guidelines*, INC 95-0407-009 (rev. June 19, 2000 effective July 16, 2000) at § 8.1. Further, the FCC Order requires that code reclamation procedures begin within 60 days after this 6-month deadline to ensure that NXX codes are returned in a timely manner.

[8] According to the INC Guidelines, there is a 66-day waiting period after assignment of an NXX code to a carrier by the NANPA and the ability of the carrier to provide the code to an end user. *Central Office Code (NXX) Assignment Guidelines*, INC 95-0407-008 (rev. June 19, 2000 effective July 16, 2000) at § 6.1.2.

[9] See *Central Office Code (NXX) Assignment Guidelines*, INC 95-0407-008 (rev. June 19, 2000 effective July 16, 2000) at § 6.3.3.

[10] The Industry Numbering Committee is a committee of the Alliance For Telecommunications Industry Solutions (ATIS) which attempts to address and resolve industry-wide issues associated with the planning, administration, allocation, assign-

then made a final decision regarding whether or not the codes should be reclaimed.

The FCC Numbering Order redesigned this process and gave state commissions the ability to take an active role in the reclamation process. Under this grant of authority from the FCC, state commissions can investigate and determine whether code holders have activated NXX codes within six months of them being available for use by the carrier. Further, state commissions may request proof from all code holders that NXX codes have been activated and assignment of the numbers has commenced. State commissions are required to accord the code holder an opportunity to explain the circumstances causing any delay in activating NXX codes in a timely manner. The FCC directed the NANPA to abide by the state commission's determination to reclaim an NXX code if the state commission is satisfied that the code holder has not activated the code within the time specified in the FCC Numbering Order.

As a result of this new ability for state involvement in the reclamation process, the Commission and the NANPA have developed the following procedure that will now be implemented. The NANPA will accept Part 4 forms from the carrier as verification of NXX code activation [11] during the 6-month time frame to activate the NXX code. As permitted by the FCC, the Commission reserves the right to investigate and determine whether code holders have activated NXX codes even if a Part 4 form has been submitted to the NANPA. Upon the expiration of that 6-month period, the NANPA will notify the delinquent carrier by facsimile that its Part 4 form is due. The carrier will then have 14 days to respond to this request. Any request for an extension of time and any failure to respond to the NANPA will be referred to the Commission. Each month the NANPA will send to the Commission a report regarding these NXX codes that have not been activated so that the Commission can decide whether or not their Pennsylvania NXX codes should be reclaimed.

The Commission has determined that this monthly report will be sent directly to the Commission's Bureau of Fixed Utility Services which will then send a Secretarial letter to the affected carrier by certified mail. This Secretarial letter will give the carrier a second opportunity to explain why its Pennsylvania NXX codes have not been activated. The carrier will have 10 days from the date of the letter to send its written response to the Commission. In its response, the carrier will be required to verify that the NXX code contains numbers that have been assigned and must provide proof regarding this assertion. In the alternative, the carrier can use its response as an opportunity to explain any circumstance causing the delay in assigning the numbers and a request that it be granted an extension of time within which to activate the NXX code.

The Commission will then review the responses it receives following this Secretarial letter and make a determination at public meeting regarding whether or not the NXX codes should be reclaimed. The carrier will be sent notice of the Commission's decision informing it that the Commission intends to pursue one of the three courses of action. First, the Commission may notify the carrier that reclamation of a particular NXX code is not warranted; consequently, no further action will be taken. Second, the Commission may notify the carrier it has been granted an extension of time within which to activate the NXX code; in this situation, the carrier will be expected to send verification to the Commission when the NXX code is activated and, once that is received, the Commission will not pursue any further action. Third, the Commission may notify the carrier that NXX code reclamation is necessary.

Following this notice to the carrier, the Commission's Bureau of Fixed Utility Services will then inform the NANPA regarding its decision with respect to each NXX code. The NANPA will be informed on a monthly basis regarding the status of the Commission's investigation of the Pennsylvania NXX codes identified by the NANPA as not being activated within the 6 month timeframe.

Conclusion

Because the Commission is concerned about the current availability and usage of numbering resources and the impact of proliferating new area codes on consumers as well as telecommunications carriers, the Commission intends to exercise its newly granted authority to institute code reclamation. By making more numbers available through the reclamation of unused NXX codes, the Commission hopes to relieve some of the problems faced by both Pennsylvania consumers and carriers resulting from the proliferation of unnecessary area codes in the Commonwealth; *Therefore*,

It Is Ordered That:

1. The Commission will work with the NANPA to investigate and determine whether code holders have activated NXX codes within 6 months from the date they were available for use.

2. The Commission's Bureau of Fixed Utility Services is given the authority to implement the Commission's reclamation process as set forth in this order subject to final Commission review and approval.

3. A copy of this order shall be served on all jurisdictional telecommunications carriers, wireless carriers, the Office of Consumer Advocate, the Office of Small Business Advocate and North American Numbering Plan Administrator.

4. A copy of this order shall be published both in the *Pennsylvania Bulletin* and on the Commission's website.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1539. Filed for public inspection September 1, 2000, 9:00 a.m.]

ment and use of numbering resources. ATIS is a North American standards body concerned with the development of telecommunications standards, operating procedures and guidelines.

[11] Under the FCC Order, numbers within an NXX code are properly assigned when they are either working in the Public Switched Telephone Network under an agreement with a specific end user or they are not yet working but have a service order pending to be working within 5 days.

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 September 25, 2000, as set forth at 52 Pa. Code § 3.381 (relating to applications for transportation of property and persons). The protest shall also indicate

whether it applies to the temporary authority application or the permanent application or both.

Application of the following for *amendment* to the certificate of public convenience approving the operation of motor vehicles as *common carriers* for the transportation of *household goods* by *transfer* as described under each application.

A-00097588, Folder 1, Am-C. Maroadi Transfer & Storage, Inc. (1801 Lincoln Highway, Rt. 30, North Versailles, Allegheny County, PA 15137), a corporation of the Commonwealth of Pennsylvania, inter alia—household goods in use, between points in the borough of Pitcairn, Allegheny County, and within 15 miles by the usually traveled highways of the limits of said borough: *so as to permit* the transportation of household goods in use, between points in the city of Clairton, Allegheny County, and within 25 miles by the usually traveled highways of the limits of said city; which is to be a transfer of part of the rights authorized under the certificate issued at A-00094626 to J. Phillips & Sons, Inc., a corporation of the Commonwealth of Pennsylvania, subject to the same limitations and conditions. *Attorney:* John A. Pillar, 1106 Frick Building, Pittsburgh, PA 15219.

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 00-1540. Filed for public inspection September 1, 2000, 9:00 a.m.]

Telecommunications

A-310448F0003. Verizon Pennsylvania Inc. and A.R.C. Networks, Inc., d/b/a InfoHighway. Joint Petition of Verizon Pennsylvania Inc. and A.R.C. Networks, Inc., d/b/a InfoHighway, for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and A.R.C. Networks, Inc., d/b/a InfoHighway, by its counsel, filed on August 21, 2000, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. and A.R.C. Networks, Inc., d/b/a InfoHighway Joint Petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1541. Filed for public inspection September 1, 2000, 9:00 a.m.]

Telecommunications

A-310932F0002. Verizon Pennsylvania, Inc. and Broadview Networks, Inc. Joint Petition of Verizon Pennsylvania Inc. and Broadview Networks, Inc., for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and Broadview Networks, Inc., by its counsel, filed on August 17, 2000, at the Pennsylvania Public Utility Commission (Commission), a Joint Petition for approval of an Interconnection Agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. and Broadview Networks, Inc. Joint Petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1542. Filed for public inspection September 1, 2000, 9:00 a.m.]

Telecommunications

A-310883F0002. Verizon Pennsylvania, Inc. and Choctaw Communications, Inc. Joint Petition of Verizon Pennsylvania, Inc. and Choctaw Communications, Inc. for approval of a resale agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and Choctaw Communications, Inc., by its counsel, filed on August 14, 2000, at the Pennsylvania Public Utility Commission (Commission), a Joint Petition for approval of a Resale Agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. and Choctaw Communications, Inc. Joint Petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1543. Filed for public inspection September 1, 2000, 9:00 a.m.]

Telecommunications

A-310951F0002. Verizon Pennsylvania Inc. and Essex Communications, Inc. Joint Petition of Verizon Pennsylvania Inc. and Essex Communications, Inc., for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and Essex Communications, Inc. by its counsel, filed on August 15, 2000, at the Pennsylvania Public Utility Commission (Commission), a

Joint Petition for approval of an Interconnection Agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. and Essex Communications, Inc. Joint Petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1544. Filed for public inspection September 1, 2000, 9:00 a.m.]

Telecommunications

A-311003. Verizon Pennsylvania, Inc. and Media Log, Inc. Joint Petition of Verizon Pennsylvania Inc. and Media Log, Inc., for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and Media Log, Inc., by its counsel, filed on August 14, 2000, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. and Media Log, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1545. Filed for public inspection September 1, 2000, 9:00 a.m.]

Telecommunications

A-310535. Verizon Pennsylvania Inc. Network Access Solutions Corporation. Joint Petition of Verizon Pennsylvania Inc. and Network Access Solutions Corporation, for approval of an interconnection agreement under section 252(e) of The Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and Network Access Solutions Corporation, by its counsel, filed on August 14, 2000, at the Pennsylvania Public Utility Commission (Commission), a Joint Petition for approval of an Interconnection Agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. and Network Access Solutions Corporation joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1546. Filed for public inspection September 1, 2000, 9:00 a.m.]

Telecommunications

A-310976F0002. Verizon Pennsylvania Inc. f/k/a Bell Atlantic-Pennsylvania, Inc. and Delaware's Plan B Communications, Inc. Joint Petition of Verizon Pennsylvania Inc. f/k/a Bell Atlantic-Pennsylvania, Inc. and Delaware's Plan B Communications for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. f/k/a Bell Atlantic-Pennsylvania, Inc. and Delaware's Plan B Communications, Inc., by its counsel, filed on August 14, 2000, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. f/k/a Bell Atlantic-Pennsylvania, Inc. and Delaware's Plan B Communications, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1547. Filed for public inspection September 1, 2000, 9:00 a.m.]

Telecommunications

A-310920. Verizon Pennsylvania, Inc. f/k/a Bell Atlantic-Pennsylvania, Inc. and MMT, Gori, Inc. Joint Petition of Verizon Pennsylvania, Inc. f/k/a Bell Atlantic-Pennsylvania, Inc. and MMT, Gori, Inc. for approval of a resale agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania, Inc. f/k/a Bell Atlantic-Pennsylvania, Inc. and MMT, Gori, Inc., by its counsel, filed on August 14, 2000, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of a resale agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg,

PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania, Inc. f/k/a Bell Atlantic-Pennsylvania, Inc. and MMT, Gori, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1548. Filed for public inspection September 1, 2000, 9:00 a.m.]

Telecommunications

A-310905. Verizon Pennsylvania, Inc. f/k/a Bell Atlantic-Pennsylvania, Inc. and Williams Local Network, Inc. Joint Petition of Verizon Pennsylvania, Inc. f/k/a/ Bell Atlantic-Pennsylvania, Inc. and Williams Local Network, Inc. for approval of an adopted interconnection agreement under section 252(i) of the Telecommunications Act of 1996.

Verizon Pennsylvania, Inc. f/k/a/ Bell Atlantic-Pennsylvania, Inc. and Williams Local Network, Inc., by its counsel, filed on August 17, 2000, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania, Inc. f/k/a/ Bell Atlantic-Pennsylvania, Inc. and Williams Local Network, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1549. Filed for public inspection September 1, 2000, 9:00 a.m.]

Telecommunications

A-310870. Verizon North Inc. f/k/a GTE North Incorporated and Metrocall, Inc. Joint Petition of Verizon North Inc. f/k/a GTE North Incorporated and Metrocall, Inc. for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon North Inc. f/k/a GTE North Incorporated and Metrocall, Inc., by its counsel, filed on August 14, 2000, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon North Inc. f/k/a GTE North Incorporated and Metrocall, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1550. Filed for public inspection September 1, 2000, 9:00 a.m.]

Water Service
Without Hearing

A-212750 F0007. Consumers Pennsylvania Water Company-Shenango Valley Division. Application of Consumers Pennsylvania Water Company-Shenango Valley Division, for approval of 1) the acquisition, by purchase, of certain water supply system assets of Mahoning Township, and 2) the right of CPWC to begin to offer, render, furnish or supply water service to the public in a portion of Mahoning Township, Lawrence 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 September 12, 2000, under 52 Pa. Code (relating to public utilities).

Applicant: Consumers Pennsylvania Water Company-Shenango Valley Division

Through and By Counsel: Mark J. Kropilak, Esquire, 762 West Lancaster Avenue, Bryn Mawr, PA 19010.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1551. Filed for public inspection September 1, 2000, 9:00 a.m.]

PHILADELPHIA REGIONAL PORT AUTHORITY

Invitation for Bids

The Philadelphia Regional Port Authority (PRPA) will accept proposals for Project #00-229-001 (Janitorial Supplies) until 2 p.m. on Thursday, September 14, 2000.

The bid documents can be obtained from the Director of Procurement, 210 W. Washington Sq., 13th Floor, Philadelphia, PA 19106, (215) 928-9100 and will be available Tuesday, September 5, 2000. The PRPA is an equal opportunity employer. Contractor will be required to comply with all applicable equal employment opportunity laws and regulations.

JAMES T. MCDERMOTT, Jr.,
Executive Director

[Pa.B. Doc. No. 00-1552. Filed for public inspection September 1, 2000, 9:00 a.m.]

STATE ETHICS COMMISSION

Public Meeting
Harrisburg

The Public Official and Employee Ethics Law requires that the State Ethics Commission (Commission) hold at least two public hearings each year to seek input from persons and organizations who represent any individual subject to the provisions of the law and from other interested parties.

The Commission will conduct a public meeting in Room 307 Finance Building, Harrisburg, Pennsylvania on September 21, 2000, beginning at 9 a.m. for purposes of receiving said input and for the conduct of other agency business. Public officials, public employes, organizations and members of the general public may attend.

Persons seeking to testify or present statement, information or other comments in relation to the Ethics Law, the regulations of the State Ethics Commission or agency operations should contact Claire J. Hershberger at (717) 783-1610 or (800) 932-0936. Written copies of any statement should be provided at the time of the meeting.

AUSTIN M. LEE,
Chairperson

[Pa.B. Doc. No. 00-1553. Filed for public inspection September 1, 2000, 9:00 a.m.]

STATE CONTRACTS INFORMATION

DEPARTMENT OF GENERAL SERVICES

Notices of invitations for bids and requests for proposals on State contracts for services and commodities for which the bid amount is reasonably expected to be over $10,000, are published in the State Contracts Information Section of the *Pennsylvania Bulletin* prior to bid opening date. Information in this publication is intended only as notification to its subscribers of available bidding and contracting opportunities, and is furnished through the Department of General Services, Vendor Information and Support Division. No action can be taken by any subscriber or any other person, and the Commonwealth of Pennsylvania is not liable to any subscriber or any other person, for any damages or any other costs incurred in connection with the utilization of, or any other reliance upon, any information in the State Contracts Information Section of the *Pennsylvania Bulletin*. Interested persons are encouraged to call the contact telephone number listed for the particular solicitation for current, more detailed information.

EFFECTIVE JULY 1, 1985, A VENDOR'S FEDERAL IDENTIFICATION NUMBER (NUMBER ASSIGNED WHEN FILING INCOME TAX DOCUMENTS) OR SOCIAL SECURITY NUMBER IF VENDOR IS AN INDIVIDUAL, MUST BE ON ALL CONTRACTS, DOCUMENTS AND INVOICES SUBMITTED TO THE COMMONWEALTH.

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter.

Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:
The payment date specified in the contract.
30 days after the later of the receipt of a proper invoice or receipt of goods or services.
The net payment date stated on the business' invoice.
A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center
PA Department of Community and Economic Development
374 Forum Building
Harrisburg, PA 17120
800-280-3801 or (717) 783-5700

Reader's Guide

Legal Services & Consultation—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

(5) Location

(6) Duration

(7)

(For Commodities: Contact:)
Vendor Services Section
717-787-2199 or 717-787-4705

REQUIRED DATA DESCRIPTIONS

(1) Service Code Identification Number: There are currently 39 state service and contractural 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

MAI-0524 Contract to provide Best Power uninterruptable power supplies and storage unit. The equipment must be Best Power to be compatible with existing equipment.
Department: Corrections
Location: State Correctional Institution at Albion, 10745 Rt. 18, Albion, PA 16475-0001
Duration: One time supply
Contact: Lesley S. Jarrett, Purchasing Agent II, (814) 756-5778, Ext. 750

HVH/PHY-7451 Medication carts for pharmacy use at the Hollidaysburg Veterans Home. Approximately seven carts—reference: Artromick. For a bid package or questions, fax your request to Becky J. Clapper, Purchasing Agent III at (814) 696-5395. Bid will be opened during the month of September.
Department: Military Affairs
Location: Hollidaysburg Veterans Home, Rte. 220 @ Meadows Intersection, P. O. Box 319, Hollidaysburg, PA 16648-0319
Duration: One-time only bid
Contact: Becky Clapper, Purchasing Agent, (814) 696-5210, Fax: (814) 696-5395

1122110 Soling Material: 10 1/2 Iron Buffed Sheet. Sheet size to smaller than 9 sq. ft. For a copy of bid package fax request to (717) 787-0725.
Department: Corrections
Location: Graterford, PA
Duration: FY 2000—01
Contact: Vendor Services, (717) 787-2199

1084230 Trousers: Uniform, Winter Weight. For a copy of bid package fax request to (717) 787-0725.
Department: Game Commission
Location: Harrisburg, PA
Duration: FY 2000—01
Contact: Vendor Services, (717) 787-2199

1075220 Print and Maintain Inventory of Boating Safety Education Certificate Card. For a copy of bid package fax request to (717) 787-0725.
Department: Fish and Boat Commission
Location: Harrisburg, PA
Duration: FY 2000—01
Contact: Vendor Services, (717) 787-2199

1124110 Automotive Engine Diagnostic Program. For a copy of bid package fax request to (717) 787-0725.
Department: Corrections
Location: Indiana, PA
Duration: FY 2000—01
Contact: Vendor Services, (717) 787-2199

INF SYS 99-96 160 Each—Q-Term/UNISYS Terminal Emulator License.
Department: State Police
Location: Information Systems Div., 1800 Elmerton Avenue, Harrisburg, PA 17110
Duration: November 30, 2000
Contact: Robert D. Stare, (717) 705-5921

TS Erosion Control Mats (Approx. 200 rolls) Jute Mats (Approx. 135 rolls), Attn: Regine Faith, Fax (717) 861-2932.
Department: Military Affairs
Location: Ft. Indiantown Gap, Training Site, Annville, PA 17003
Duration: FY 00
Contact: Regine Faith, (717) 861-8455

SERVICES

Construction—09

FM-0592 60 ft. × 100 ft. tarp building on existing grade and paved surfaces.
Department: Transportation
Location: Pennsylvania Department of Transportation, Route 601, 3112 N. Center Avenue, Somerset, PA 15501
Duration: 60 days after award of contract
Contact: Rodney Beiter, (814) 445-7905

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016 Provide all labor, material, tools, equipment, items and devices for the placement of a concrete slabs 106′ × 20′ × 10″ deep at the PA ARNG Armory, Friedens.
Department: Military Affairs
Location: PA Army National Guard, 1483 Stoystown Road, Friedens, PA 15541
Duration: June 30, 2001
Contact: Emma Schroff, (717) 861-8518

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017 New access road 153′ × 17′6″ & 31′6″ wide. Also overlay approximately 5,770 square yards of existing bituminous pavement.
Department: Military Affairs
Location: PA National Guard Armory, 1720 E. Caracas Ave., Hershey, PA
Duration: June 30, 2001
Contact: Emma Schroff, (717) 861-8518

018 Tuck-point-waterproof approximately 3,600 lf of deteriorated brick joints.
Department: Military Affairs
Location: PA National Guard Armory OMS #28, 1300 Penn St., Williamsport, PA
Duration: June 30, 2001
Contact: Emma Schroff, (717) 861-8518

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019 Provide all labor, materials, tools, equipment, items and devices for concrete renovations.
Department: Military Affairs
Location: PA Army National Guard, R. D. #1, Sunbury, PA 17801-9801
Duration: June 30, 2001
Contact: Emma Schroff, (717) 861-8518

FDC-320-641 Provide and install a complete geothermal heating, ventilation and air conditioning system for the new classroom building at Kings Gap Environmental Education and Training Center in Cumberland County. Note: Bid documents will be available on or after September 5, 2000.
Department: Conservation and Natural Resources
Location: Dickinson Township
Duration: 60 days
Contact: Construction Management Section, (717) 787-5055

FDC-131-981 Extend riprap along the riverbank at Shikellamy State Park in Northumberland County. Work includes 120 tons R-7 and 40 tons of R-4 riprap, 22 tons of AASHTO #1's; landscaping and 4.0 C. Y.'s of class C concrete. Note: Bid documents will be available on or after September 5, 2000.
Department: Conservation and Natural Resources
Location: Upper Augusta Township
Duration: 30 days
Contact: Construction Management Section, (717) 787-5055

FDC-209-835 Rehabilitate existing water system at McConnells Mill State Park in Lawrence County. Work includes clearing, grubbing, excavation and backfill, water distribution system (500 L. F.) concrete, water treament system, pump and motor, well house, E & S measures, paving (4 tons) and maintenance and protection of traffic. Note: Bid documents will be available on or after September 6, 2000.
Department: Conservation and Natural Resources
Location: Slippery Rock Township
Duration: 120 days
Contact: Construction Management Section, (717) 787-5055

ESU 405-640 East Stroudsburg University is accepting bids on ESU 405-640 Koehler Fieldhouse Roof Replacement. EST Gen. Prime $750K. For bid package send $35 nonrefundable fee to STV Architects, 205 Welsh Drive, Douglassville, PA 19518, (610) 385-8200. For special accommodations and meeting locations, call Ann Zaffuto at (570) 422-3595. Prebid September 27, 2000 at 1 p.m. Bid opening October 18, 2000 at 2 p.m. All responsible bidders are invited including MBE/WBE firms.
Department: State System of Higher Education
Location: East Stroudsburg University, East Stroudsburg, PA 18301
Duration: 120 days A.N.P.
Contact: STV Architects, (610) 385-8200

FDC-313-982 Replacing pipe and parking lot rehabilitation in Shawnee State Park, Bedford County. Work includes excavating, backfilling and compacting; approximately 1,100 L. F. of 15, 18, 24, 30 and 48 inch HDPE pipe; 2 inlets; 18 end sections; 200 L. F. underdrain, stone masonry repair, 200 S. Y. geotextile; 590 tons bituminous paving; 874 tons 2A aggregate; 400 L. F. split rail fence; line painting and landscaping. Note: Bid documents will be available on or after September 5, 2000.
Department: Conservation and Natural Resources
Location: Napier Township
Duration: Complete all work by May 18, 2001
Contact: Construction Management Section, (717) 787-5055

DGS1103-48ST4 Project Title: Concrete and Structural Precast. Brief Description: All work necessary to complete the furnishing and installation of case-in-place concrete and structural precast concrete (excluding the cast-in-place concrete installed by the Foundation Contractor). Estimated Range: $5,000,000 to $10,000,000. Concrete and Structural Precast Construction. Plans Deposit: $200 per set payable to: Pitt-Center Partners. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. Bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail a separate check for $50 or provide your express mail account number to the office listed below. Mail requests to: Pitt-Center Partners, 3803 University Drive, Pittsburgh, PA 15213, Attn: Nancy Vicheck, Tel: (412) 621-4222. Bid Date: Thursday, September 7, 2000 at 11 a.m.
Department: General Services
Location: University of Pittsburgh Campus, Pittsburgh, Allegheny County, PA
Duration: 448 Calendar days from date of initial job conference
Contact: Contract and Bidding Unit, (717) 787-6556

SO-187 The State Correctional Institution at Somerset will be soliciting bids to provide material and labor to install a chainlink canopy enclosure on existing L-5 housing unit outdoor exercise cells, 18 each. Vendors will be required to visit the site prior to bidding. The requested completion date of this project is November 30, 2000. Interested vendors should contact the institution directly for a bid package.
Department: Corrections
Location: State Correctional Institution at Somerset, 1590 Walters Mill Road, Somerset, PA 15510-0001
Duration: 9/1/00 through 6/30/01
Contact: Theresa Solarczyk, Purchasing Agent, (814) 443-8100, Ext. 311

C19:03-101 Subsurface Exploration-Flood Protection Project involves approximately 30 LF overburden drilling, 260 LF overburden drilling and sampling, two undisturbed samplings and 55 LF rock coring (NWM). This project issues September 1, 2000; bid documents will not be sent until payment in the amount of $10 is received.
Department: Environmental Protection
Location: Bloomsburg, Columbia County
Duration: 40 days after notice to proceed
Contact: Construction Contracts Section, (717) 783-7994

DGSA972-14 Project Title: Roof & Gutter/Downspout Replacement—Various Buildings. Brief Description: Replace roofing, flashing, gutters and downspouts on various buildings. Estimated Range: $100,000 to $200,000. General Construction. Plans Deposit: $25 per set payable to: Commonwealth of PA. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. Bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed below to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail a separate check for $5 per set or provide your express mail account number to the office listed below. Mail requests to: Department of General Services, Room 107 Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125. Tel: (717) 787-3923. Bid Date: Wednesday, September 20, 2000 at 2 p.m. A prebid conference has been scheduled for Wednesday, September 6, 2000 at 10 a.m. at Landis Valley Museum in the Administrative Offices Conference Room in the Country Store, Lancaster, Lancaster County, PA. Contact: Will Morrow, (717) 569-0401, Ext. 220. All Contractors who have secured Contract Documents are invited and urged to attend this Prebid Conference.
Department: General Services
Location: Landis Valley Museum, Lancaster, Lancaster County, PA
Duration: 150 Calendar days from date of initial job conference
Contact: Contract and Bidding Unit, (717) 787-6556

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020 Replace 3,700 square feet of sidewalk, include two driveway slabs, 150 LF of security fence, gate, reconnection of rainwater leaders to stormwater sewer, disconnecting and plugging sanitary sewer pipe.
Department: Military Affairs
Location: PA National Guard Armory, 358 W. Main St., Ligonier, PA
Duration: June 30, 2001
Contact: Emma Schroff, (717) 861-8518

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021 Repair approximately 2,300 square yards of bituminous pavement, and furnish and install two concrete tank turning pads (2,200 square feet). Contractor to verify quantities.
Department: Military Affairs
Location: PA National Guard Armory, Route 15 South R. D. 1, Lewisburg, PA
Duration: June 30, 2001
Contact: Emma Schroff, (717) 861-8518

Demolition—11

012006 The Erie County Maintenance District is seeking bids for the demolition of an existing 100′ diameter concrete salt storage dome (including floor and foundations) and removal of all refuse from work site.
Department: Transportation
Location: PennDOT Maintenance Stockpile, Waterford, Erie County, PA
Duration: All work to be completed by May 31, 2001
Contact: William Mantz, (814) 678-7383

015012 The Venango County Maintenance District is seeking bids for the demolition of an existing 116′ diameter concrete salt storage dome (including floor and foundations) and removal of all refuse from work site.
Department: Transportation
Location: PennDOT Maintenance Stockpile, Franklin, Venango County, PA
Duration: All work to be completed by May 31, 2001
Contact: William Mantz, (814) 678-7383

Drafting—12

2000-SRC West Chester Univ. of PA of the State System of Higher Education is issuing RFP 2000-SRC for a feasibility study and the option for full architectural/engineering services for construction documentation and construction administration. The feasibility study for the approximately 72,000 gross square foot center will include site selection from two potential sites, programming, code and zoning analysis, student group meetings and preparation of presentation materials for student referendum in early April 2001. Should the project continue beyond the study, the work will consist of full A/E services including design, documentation and construction administration to complete the project. To be considered, firms must have demonstrated experience with three similar projects in the last 10 years. All responses are subject to review by University Selection/Negotiation Boards and systems representatives. A preproposal meeting will be held at 10 a.m. on September 26 meeting in the lower level conference room at Philips Memorial Building. Proposals are due by 3 p.m. on October 6, 2000. Late responses will not be considered regardless of reason. Request RFP via jmarthinsen@wcupa.edu or fax (610) 436-2720. Please include e-mail address.

Department: State System of Higher Education
Location: West Chester University, West Chester, PA 19383
Duration: To be determined
Contact: Jacki Marthinsen, Contracts Manager, (610) 436-2705

Engineering Services—14

08430AG2601 To provide final design services and services during construction for S. R. 0008, Section 283 in Butler County. Details concerning this project may be found under Department of Transportation—Retention of Engineering Firms in the *Pennsylvania*, or www.statecontracts.com under Retention of Engineering Firm Data.

Department: Transportation
Location: Engineering District 10-0
Duration: Thirty days after construction completion
Contact: N/A

08430AG2600 Open-End Contract to provide various engineering and environmental services on traffic and maintenance type projects in Engineering District 8-0, that is Adams, Cumberland, Dauphin, Franklin, Lancaster, Lebanon, Perry and York Counties. Details concerning this project may be found under Department of Transportation—Retention of Engineering Firms in the *Pennsylvania Bulletin* or www.statecontracts.com under Retention of Engineering Firm Data.

Department: Transportation
Location: Engineering District 8-0
Duration: Sixty months
Contact: N/A

08430AG2599 Open-End Contract to provide various engineering and environmental services on various projects in Engineering District 5-0, that is, Berks, Carbon, Lehigh, Monroe, Northampton and Schuylkill Counties. Details concerning this project may be found under Department of Transportation—Retention of Engineering Firms in the *Pennsylvania Bulletin* or www.statecontracts.com under Retention of Engineering Firm Data.

Department: Transportation
Location: Engineering District 5-0
Duration: Sixty Months
Contact: N/A

08430AG2598 A multi-phase agreement to provide environmental studies, preliminary engineering, final design and construction consultation for S. R. 0056, Section 013, in Bedford County. Details concerning this project may be found under Department of Transportation—Retention of Engineering Firms in the *Pennsylvania Bulletin* or www.statecontracts.com under Retention of Engineering Firm Data.

Department: Transportation
Location: Engineering District 9-0
Duration: Thirty days after construction
Contact: N/A

Environmental Maintenance—15

120008 Vendor to provide on-call drilling equipment & operator for Soils & Geological engineering investigation on various types of terrain, per specifications. Also provide maintenance and protection of traffic during drilling operations when required. Contract will include renewal language similar to "By mutual consent of both parties," this contract shall be renewable for 1 year periods, for a total of four such renewals.' Letters of interest must be received no later than close of business on the Friday after the last date of advertisement in the *Pennsylvania Bulletin*.

Department: Transportation
Location: Anywhere within Engineering District 1200: Fayette, Greene, Washington and Westmoreland Counties
Duration: January 1, 2001 to December 31, 2001
Contact: Mike Kuhn (or Bob Hoone), (724) 439-7245 (or 7357)

Food—19

Bid #003 The bid is for meat and meat products (frozen). A copy of the bid packet is available by contacting the Purchasing Department by phone (610) 740-3428 or Fax (610) 740-3424.

Department: Public Welfare
Location: Allentown State Hospital, 1600 Hanover Avenue, Allentown, PA 18109
Duration: October 2, 2000 through December 29, 2000
Contact: Lois Kerbacher, Purchasing Agent II, (610) 740-3428

Bid #005 The bid is for poultry, poultry products and fish (frozen). A copy of the bid packet is available by contacting the Purchasing Department by phone (610) 740-3428 or Fax (610) 740-3424.

Department: Public Welfare
Location: Allentown State Hospital, 1600 Hanover Avenue, Allentown, PA 18109
Duration: October 2, 2000 through December 29, 2000
Contact: Lois Kerbacher, Purchasing Agent II, (610) 740-3428

Bid #004 The bid is for miscellaneous foods (frozen miscellaneous baked goods, miscellaneous entrees, egg products, milk shakes, and non-meat items). A copy of the bid packet is available by contacting the Purchasing Department by phone (610) 740-3428 or fax (610) 740-3424.

Department: Public Welfare
Location: Allentown State Hospital, 1600 Hanover Avenue, Allentown, PA 18109
Duration: October 2, 2000 through December 29, 2000
Contact: Lois Kerbacher, Purchasing Agent II, (610) 740-3428

HVH-7373 To supply milk to the Hollidaysburg Veterans Home for approximately 500 residents for a 1 year period—January 1, 2001 through December 31, 2001. Delivery to be made 3 days a week—Monday, Wednesday and Friday. Deliveries are needed by 7:30 a.m. Bid opening: November 1, 2000 at 11 a.m. For a bid package/questions, fax your request to Becky Clapper at (814) 696-5395.

Department: Military Affairs
Location: Hollidaysburg Veterans Home, Rte. 220 @ Meadows Intersection, P. O. Box 319, Hollidaysburg, PA 16648-0319
Duration: January 1, 2001 through December 31, 2001
Contact: Becky Clapper, (814) 696-5210

M-879 Meats & Meat Products; Poultry & Poultry Products; Fish; Cheeses. To be delivered only at the request of the facility.

Department: Labor and Industry
Location: F.O.B. Shipping Platform, 727 Goucher St., Johnstown, PA 15905
Duration: October, November, December 2000
Contact: Christine A. Sloan, Purchasing Agent, (814) 255-8228

HVAC—22

DES022 The Department of Transportation is soliciting bids for emergency and routine work to heating, plumbing and air conditioning systems as needed at the Johnstown Driver Exam Site. All requests for bid packages can be obtained by faxing request for bid package to: Susan Sobotor at Fax (717) 783-7971 or calling (717) 783-3931.
Department: Transportation
Location: Johnstown Driver Exam Site, 563 Walters Avenue, Johnstown, PA 15901
Duration: 5 years
Contact: Susan Sobotor, (717) 783-3931

DES025 The Department of Transportation is soliciting bids for emergency and routine work to heating, plumbing and air conditioning systems as needed at the New Castle Driver Exam Site. All requests for bid packages can be obtained by faxing request for bid package to: Susan Sobotor at fax (717) 783-7971 or calling (717) 783-3931.
Department: Transportation
Location: New Castle Driver Exam Site, R. D. #2, Box 190, New Castle, PA 16101
Duration: 5 years
Contact: Susan Sobotor, (717) 783-3931

DES024 The Department of Transportation is soliciting bids for emergency and routine work to heating, plumbing and air conditioning systems as needed at the Mercer Driver Exam Site. All requests for bid packages can be obtained by faxing request for bid package to: Susan Sobotor at fax (717) 783-7971 or calling (717) 783-3931.
Department: Transportation
Location: Mercer Driver Exam Site, 519B Greenville Road, Mercer, PA 16137 16101
Duration: 5 years
Contact: Susan Sobotor, (717) 783-3931

DES023 The Department of Transportation is soliciting bids for emergency and routine work to heating, plumbing and air conditioning systems as needed at the Lewistown Driver Exam Site. All requests for bid packages can be obtained by faxing request for bid package to: Susan Sobotor at fax (717) 783-7971 or calling (717) 783-3931.
Department: Transportation
Location: Lewistown Driver Exam Site, 13187 Ferguson Valley Road, Yeagertown, PA 17099
Duration: 5 years
Contact: Susan Sobotor, (717) 783-3931

DES026 The Department of Transportation is soliciting bids for emergency and routine work to heating, plumbing and air conditioning systems as needed at the New Kensington Driver Exam Site. All requests for bid packages can be obtained by faxing request for bid package to: Susan Sobotor at fax (717) 783-7971 or calling (717) 783-3931.
Department: Transportation
Location: New Kensington Driver Exam Site, 1600 Greensburg Road, New Kensington, PA 15068
Duration: 5 years
Contact: Susan Sobotor, (717) 783-3931

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015 Purchase and install a 4 ton gas fired/electric cooled roof top HVAC package unit with a single stage economizer. Installation of all appurtenant utilities (gas & electric) and the installation of one 2 × 4 concentric diffuser to supply and return. Work also includes removal and capping of existing hydronic unit heater.
Department: Military Affairs
Location: PA Army National Guard, Sellersville Armory, 225 Park Ave., Sellersville, PA 18960
Duration: June 30, 2001
Contact: Emma Schroff, (717) 861-8518

MN-00-0208 The Contractor shall provide the following items: 21 each Catalog #GECSCMM10M2H1AMC3WH 100 Low Bay Fixture with Lamp and 25 each Catalog #GECSCMM17M2A1ASC5WH 175 Low Bay Fixture with Lamp. Specification sheets of items to be provided by vendor to be supplied with bid proposal.
Department: Corrections
Location: Department of Corrections, State Correctional Institution at Cresson, P. O. Box A, Old Route 22, Cresson, PA 16630
Duration: September 5, 2000—June 30, 2001
Contact: Barbara A. Lloyd, Pur. Agent, (814) 886-8181, Ext. 166

DES021 The Department of Transportation is soliciting bids for emergency and routine work to heating, plumbing and air conditioning systems as needed at the East Rochester Driver Exam Site. All requests for bid packages can be obtained by faxing request for bid package to: Susan Sobotor at fax (717) 783-7971 or calling (717) 783-3931.
Department: Transportation
Location: Department of Transportation, East Rochester Drive Exam Site, 149 Stewart Avenue, East Rochester, PA 15074
Duration: 5 years
Contact: Susan Sobotor, (717) 783-3931

1103 Install approximately 350 feet of water service into existing building.
Department: Military Affairs
Location: PA National Guard Armory, 1159 Rapps Dam Road, Phoenixville, PA 19460
Duration: June 30, 2001
Contact: Brenda Lower, (717) 861-2118

00881013 Replace steam and condenstate piping on the grounds of the Loysville Youth Development Center (Perry County).
Department: Public Welfare
Location: Loysville Youth Development Center, R. D. #2, Box 365B, Loysville, PA 17047
Duration: Anticipated start date 9/15/00 through 11/1/00
Contact: Joel Campbell, Fac. Maint. Mgr., (717) 789-5512

Laboratory Services—24

2010000025 Analyzation of Pennsylvania convicted offender DNA samples. Detailed specifications must be obtained from the Procurement and Supply Division.
Department: State Police
Location: Services to be performed at vendor's premises
Duration: One Year
Contact: Diane Bolden, Procurement & Supply Division, (717) 705-5923

Lodging Facilities—27

350S03 The Department of Transportation is soliciting interested contractors, available within 15 miles of State College, PA, to provide hotel facilities, food and equipment services for its Bureau of Office Services' Purchasing Academy to be conducted on Tuesday, October 31, 2000 through Thursday, November 2, 2000. The number of persons participating in this Academy is anticipated to be between 80 and 110. A bid package may be obtained by Faxing your request to Vikki Mahoney at (717) 783-7971. Include in your request: Reference SPC 350S03; your company name; address; phone number and Fax number.
Department: Transportation
Location: Within 15 miles of State College, PA
Duration: Six Months
Contact: Tonja Jackson, (717) 783-8910

Property Maintenance—33

1104 VCT Floor Tile Installation.
Department: Military Affairs
Location: Department of Military & Veterans Affairs Building 0-47, Ft. Indiantown Gap, Annville, PA 17003-5002
Duration: September 1, 2000 to January 31, 2001
Contact: Aimmee/Brenda, (717) 861-8519/2118

00718-000-00-AS-1 Interior partitions with store front glazing & doorways, window modifications & misc. electrical work. A pre-bid meeting will be held on September 20, 2000 at 9 a.m. at the Somerset Historical Center, Somerset, PA, Somerset County for all firms interested in submitting bids for the project. For directions contact the Project Manager at (717) 772-4992 or the site at (814) 443-6621. All interested bidders should submit a $25 (nonrefundable) check and a request for a bid package in writing to: PA Historical & Museum Commission, Division of Architecture, Room 526, 3rd & North Streets, Harrisburg, PA 17120—Attention: Judi Yingling, (717) 772-2401. All proposals are due on Friday, October 6, 2000 at 11:45 a.m. Bid opening will be held in Room 526, 5th Floor of the State Museum Building, corner of 3rd & North Streets, Harrisburg, PA 17120.

Department: Historical and Museum Commission
Location: Somerset Historic Park, 10649 Somerset Pike, Somerset, PA 15501
Duration: November 10, 2000 to October 31, 2001
Contact: Judi Yingling, (717) 772-2401

040123A The Pennsylvania Department of Transportation Engineering District 4-0 requires spring and fall cleanup, fertilization, and maintenance of landscaped areas, approximately 32 acres, throughout District 4-0, including the counties of Luzerne, Lackawanna, Pike, Susquehanna, Wayne and Wyoming Counties. Specifications may be obtained by faxing request to (570) 963-4245 Attn: Roadside Unit or by phoning (570) 963-4048 between the hours of 8 a.m. and 3 p.m. Monday through Friday.

Department: Transportation
Location: Engineering District 4-0
Duration: One year with renewal option
Contact: Martha Spaide, (570) 963-4048

Sanitation—36

SP386208001 Sealed bids will be received at Dept. of Conservation and Natural Resources, Linn Run State Park, P. O. Box 50, Rector, PA 15677-0050, until 2 p.m. prevailing time September 25, 2000, and then publicly opened and read. For Solid Waste Collection and Disposal at Linn Run State Park. A bid proposal containing all pertinent information must be obtained from the office of the Park Manager, Linn Run State Park.

Department: Conservation and Natural Resources
Location: Dept. of Conservation and Natural Resources, Linn Run State Park, P. O. Box 50, Rector, PA 15677-0050
Duration: January 1, 2001 to December 31, 2003
Contact: Linn Run State Park, (724) 238-6623

Vehicle, Machinery Services—38

LBLA-380 30 Excalibur light bars model X47A and various accessories. Must be Excalibur.

Department: Public Utility Commission
Location: Motor Carrier Enforcement Division, 4th Floor Barto Bldg., 231 State St., Harrisburg, PA 17101
Duration: N/A
Contact: Karen Rhinehart, (717) 787-6686

Miscellaneous—39

00776028 Provide portable X-ray services to the patients on the grounds of the Allentown State Hospital using state of the art equipment when requested by a physician.

Department: Public Welfare
Location: Allentown State Hospital, 1600 Hanover Avenue, Allentown, PA 18109-2498
Duration: 9/1/00 to 6/30/00
Contact: Robert Mitchell, (610) 740-3425

388108003 The construction of woven wire fences: including vehicle and main gates at specified locations at each project area. Bids could result in multiple contracts.

Department: Conservation and Natural Resources
Location: Bureau of Forestry, 158 South Second Ave., Clarion, PA 16214
Duration: June 30, 2001
Contact: Herb Landes, (814) 226-1901

0400-MT Engineering District 4-0 is requesting bids for highway materials testing laboratory equipment that includes one Gilson Test Master Model TM-3F large aggregate shaker or approved equal, one Model SS-30 small aggregate shaker or approved equal, one Model DOL-270 aggregate oven or approved equal and one Model DO8A-84 table for the aforementioned oven or approved equal. The contract will be awarded on the lowest total amount of all items bid, or on a line item basis, whichever is in the best interest of the Commonwealth.

Department: Transportation
Location: PA Dept. of Transportation, Engineering District 4-0, O'Neill Highway, Dunmore, PA 18512
Duration: January 1, 2001
Contact: Gerald Pronko, (570) 963-4039

08-B-00 Language Interpreter Services (Spanish only) to be provided on an as-needed basis for appeals about Unemployment Compensation Benefits. To request a bid package please call (717) 787-2877 or fax request to (717) 787-0688.

Department: Labor and Industry
Location: Department of Labor and Industry, UC Board of Review, 444 N. Third Street, Philadelphia, PA 19123
Duration: October 1, 2000 to September 30, 2001 with four 1 year renewal options
Contact: Cherianita Thomas/BF, (717) 787-2877

08-C-00 Language Interpreter Services to be provided on an as-needed basis for appeals about Unemployment Compensation Benefits. Languages included, but not limited to Albanian, Amharic, Arabic, Farrsi, French, Haitian-Creole, Italian, Korean, Polish, Russian, Vietnamese and Chinese and Indian dialects. For bid package please call (717) 787-2877 or fax request to (717) 787-0688.

Department: Labor and Industry
Location: Department of Labor and Industry, UC Board of Review, 444 N. Third Street, Philadelphia, PA 19123
Duration: October 1, 2000 to September 30, 2001 with four 1 year renewal options
Contact: Cherianita Thomas/BF, (717) 787-2877

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002 This work is for parts in place by vendor to repair a Surface Systems, Inc. Roadway Weather Information Station, which includes replacement of the perimeter fence. Bid to include tower repair, fence replacement, equipment installation, debris removal and commissioning (final hook-up) by a SSI Factory trained technician to get this station back to its original working condition. To receive a bid package, please send request to Fax (570) 387-4254 Attn: S. A. Hunsinger.

Department: Transportation
Location: Roadway Weather Information Station is located at the Columbia County Roadside Rest Area on I-80 East Bound between Exits 37 and 38 at mile marker 245.
Duration: One time purchase
Contact: N/A

08-D-00 Language Interpreter Services (Spanish only) to be provided on an as-needed basis for appeals about Unemployment Compensation Benefits. For a bid package please call (717) 787-2877 or Fax request to (717) 787-0688.

Department: Labor and Industry
Location: Department of Labor and Industry, UC Board of Review, 224 Nazareth Park, Bethlehem, PA 18017
Duration: October 1, 2000 to September 30, 2001 with four 1 year renewal options
Contact: Cherianita Thomas/BF, (717) 787-2877

LBLA 1270 Furnish & Install Freestanding Greenhouse, approximately 30′ x 50′.

Department: Public Welfare
Location: Selinsgrove Center, Box 500, Route 522, Selinsgrove, PA 17870
Duration: Indeterminate 2000—2001
Contact: Arletta K. Ney, Purch. Agt., (570) 372-5070

B0000338 Millersville University is seeking qualified vendors who can provide the University's Biology Department with 24 steel herbarium cases mounted on a fixed system of rails and track that permit access to a selected row of cases by opening of one aisle using mechanical controls (high density mobile shelving). Interested bidders must fax their requests to be placed on a bidder's list to Anna Stauffer no later than 2 p.m. on Friday, September 8, 2000.

Department: State System of Higher Education
Location: Millersville University, Millersville, PA 17551
Duration: To be installed and functional by December 31, 2000
Contact: Anna Stauffer, (717) 872-3041

MU-SCORE1 Millersville University is seeking qualified vendors who can provide the University with an electronic center court four-sided basketball scoreboard with shot clocks (Display 6′ x 13′2″). Interested bidders must fax their requests to be placed on a bidder's list no later than 2 p.m. on Friday, September 8, 2000 to Anna Stauffer at (717) 871-2000.

Department: State System of Higher Education
Location: Millersville University, Millersville, PA 17551
Duration: To be functional for 2000 B-Ball season
Contact: Anna Stauffer, (717) 872-3041

[Pa.B. Doc. No. 00-1554. Filed for public inspection September 1, 2000, 9:00 a.m.]

DESCRIPTION OF LEGEND

1 Advertising, Public Relations, Promotional Materials

2 Agricultural Services, Livestock, Equipment, Supplies & Repairs: Farming Equipment Rental & Repair, Crop Harvesting & Dusting, Animal Feed, etc.

3 Auctioneer Services

4 Audio/Video, Telecommunications Services, Equipment Rental & Repair

5 Barber/Cosmetology Services & Equipment

6 Cartography Services

7 Child Care

8 Computer Related Services & Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting

9 Construction & Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.

10 Court Reporting & Stenography Services

11 Demolition—Structural Only

12 Drafting & Design Services

13 Elevator Maintenance

14 Engineering Services & Consultation: Geologic, Civil, Mechanical, Electrical, Solar & Surveying

15 Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core & Exploratory Drilling, Stream Rehabilitation Projects and Installation Services

16 Extermination Services

17 Financial & Insurance Consulting & Services

18 Firefighting Services

19 Food

20 Fuel Related Services, Equipment & Maintenance to Include Weighing Station Equipment, Underground & Above Storage Tanks

21 Hazardous Material Services: Abatement, Disposal, Removal, Transportation & Consultation

22 Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental & Repair

23 Janitorial Services & Supply Rental: Interior

24 Laboratory Services, Maintenance & Consulting

25 Laundry/Dry Cleaning & Linen/Uniform Rental

26 Legal Services & Consultation

27 Lodging/Meeting Facilities

28 Mailing Services

29 Medical Services, Equipment Rental and Repairs & Consultation

30 Moving Services

31 Personnel, Temporary

32 Photography Services (includes aerial)

33 Property Maintenance & Renovation—Interior & Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning & Planting, etc.)

34 Railroad/Airline Related Services, Equipment & Repair

35 Real Estate Services—Appraisals & Rentals

36 Sanitation—Non-Hazardous Removal, Disposal & Transportation (Includes Chemical Toilets)

37 Security Services & Equipment—Armed Guards, Investigative Services & Security Systems

38 Vehicle, Heavy Equipment & Powered Machinery Services, Maintenance, Rental, Repair & Renovation (Includes ADA Improvements)

39 Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories

GARY E. CROWELL,
Secretary

Contract Awards

The following awards have been made by the Department of General Services, Bureau of Purchases:

Requisition or Contract No.	PR Award Date or Contract Effective Date	To	In the Amount Of
0030-02	09/01/00	Laser Imaging Systems Inc.	561,047.33
0033-07	08/23/00	Fry Communications Inc.	475,430.40
5610-25	08/15/00	Atlantic States Materials	20,200.00
5610-25	08/15/00	Bedrock Quarries Inc.	25,140.00
5610-25	08/15/00	Berks Products Corp.	3,952.50
5610-25	08/15/00	Better Materials Corp.	250.00
5610-25	08/15/00	Birdsboro Materials/ Div./of Hainies & Kibblehouse Inc.	2,500.00
5610-25	08/15/00	Blooming Glen Quarry/ Div./of Haines & Kibblehouse Inc.	2,500.00
5610-25	08/15/00	Buffalo Limestone Inc.	45,700.00
5610-25	08/15/00	Carmeuse Pennsylvania Lime Inc.	6,900.00
5610-25	08/15/00	Cordorus Stone & Supply Company Inc.	2,500.00
5610-25	08/15/00	Commercial Stone Company Inc.	110,022.50
5610-25	08/15/00	Conneaut Lake & Gravel Inc.	34,745.00
5610-25	08/15/00	County Line Quarry	1,500.00
5610-25	08/15/00	Eastern Industries	38,876.00
5610-25	08/15/00	Eureka Stone Quarry Inc.	6,325.00
5610-25	08/15/00	G. F. Edwards Inc.	3,645.00
5610-25	08/15/00	Glacial Sand & Gravel OC	4,875.00
5610-25	08/15/00	Glasgow Inc.	2,250.00
5610-25	08/15/00	G. L. McKnight Inc.	1,000.00
5610-25	08/15/00	Glenn O. Hawbaker Inc.	35,168.00
5610-25	08/15/00	Global Stone Penroc LP	1,750.00
5610-25	08/15/00	H & H Materials Inc.	7,210.00
5610-25	08/15/00	H. B. Mellott Estate Inc.	10,150.00
5610-25	08/15/00	Hanson Aggregates Pennsylvania Inc.	785,078.00
5610-25	08/15/00	Hasbrouck Sand & Gravel Inc.	25,350.00
5610-25	08/15/00	Hempt Bros. Inc.	2,000.00
5610-25	08/15/00	Hoover Sand & Gravel Co.	16,665.00
5610-25	08/15/00	Hunlock Sand & Gravel Co.	6,080.00
5610-25	08/15/00	IA Construction Corp.	567,016.00
5610-25	08/15/00	Independence Construction Materials	1,250.00
5610-25	08/15/00	International Mill Service	81,930.50
5610-25	08/15/00	Jay Fulkroad & Sons Inc.	250.00
5610-25	08/15/00	Keystone Lime Company Inc.	17,800.00
5610-25	08/15/00	Latrobe Construction Co.	33,000.00
5610-25	08/15/00	M & M Limestone Co.	2,500.00
5610-25	08/15/00	Martin Limestone Inc.	250.00
5610-25	08/15/00	Martin Stone Quarries Inc.	4,972.50
5610-25	08/15/00	Meckley's Limestone Products	2,500.00

Requisition or Contract No.	PR Award Date or Contract Effective Date	To	In the Amount Of
5610-25	08/15/00	Naceville Materials A Joint Venture	2,500.00
5610-25	08/15/00	National Limestone & Quarry Inc.	24,190.00
5610-25	08/15/00	New Centerville Stone & Sand	18,175.00
5610-25	08/15/00	New Enterprise Stone & Lime Co. Inc.	332,887.00
5610-25	08/15/00	P Stone Inc.	4,922.00
5610-25	08/15/00	PBS Coals Inc. (Stone Division)	173,580.00
5610-25	08/15/00	PENN/MD Materials/ Div./of Haines & Kibblehouse Inc.	500.00
5610-25	08/15/00	Pennsy Supply Inc.	2,330.00
5610-25	08/15/00	Pikes Creek Sand & Stone LLC	2,00.00
5610-25	08/15/00	Pioneer Mid-Atlantic	32,912.50
5610-25	08/15/00	Plumstead Materials/ Div./ Naceville Materials	2,000.00
5610-25	08/15/00	Porter Sand & Gravel	33,340.00
5610-25	08/15/00	Pottstown Trap Rock Quarries	2,000.00
5610-25	08/15/00	Red Oak Sand & Gravel LLC	1,000.00
5610-25	08/15/00	Rohrer's Quarry Inc.	500.00
5610-25	08/15/00	Russells Mineral Inc.	61,715.00
5610-25	08/15/00	Slippery Rock Materials	149,010.00
5610-25	08/15/00	Slusser Brothers Trucking & Excavating Co.	7,145.00
5610-25	08/15/00	South Bend Limestone Co.	10,230.00
5610-25	08/15/00	State Aggregates Inc.	273,445.00
5610-25	08/15/00	Tarmac America	250.00
5610-25	08/15/00	The Waylite Corp.	4,275.00
5610-25	08/15/00	Union Quarries Inc.	1,000.00
5610-25	08/15/00	Valley Quarries Inc.	3,750.00
5610-25	08/15/00	Waste Management & Processors Inc.	23,196.50
5610-25	08/15/00	Wyoming Sand	80,575.00
5610-25	08/15/00	York Building Products	1,000.00
6530-01	09/01/00	Red Line Medical Supply	75,000.00
6530-01	09/01/00	Village Distributors	10,000.00
6530-01	09/01/00	Jordan Reses Home Health Care	25,000.00
6530-01	09/01/00	Hans C. Egloff Inc./d/b/a Neuropedic	25,000.00
6530-01	09/01/00	Spenco	10,000.00
6810-02	08/23/00	American Rock Salt Co. LLC	4,052,862.15
6810-02	08/23/00	International Salt Co. LLC	6,070,716.88
6810-02	08/23/00	Cargill Inc. (Salt Division)	16,943,483.69
6810-02	08/23/00	Morton International	3,574,768.56
6810-02	08/23/00	IMC Salt Inc.	2,691,140.25
7920-07	08/23/00	Dedeavors Corp. d/b/a DeSantis Janitor	25,720.10
7920-07	08/23/00	Calico Industries Inc.	21,173.88
1009040-01	08/22/00	Hasco International	94,578.70

Requisition or Contract No.	PR Award Date or Contract Effective Date	To	In the Amount Of
1039160-01	08/22/00	Resource Pennsylvania	131,536.00
8252250-01	08/22/00	Shaull Equipment & Supply Co. Inc.	273,460.00
8252280-01	08/22/00	Ingersol Rand Co.	11,019.00
8252280-02	08/22/00	Service Supply/Div. of Stephenson Equip.	8,374.00
8252310-01	08/22/00	Five Star International	107,516.00

GARY E. CROWELL,
Secretary

[Pa.B. Doc. No. 00-1555. Filed for public inspection September 1, 2000, 9:00 a.m.]