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Latest Pennsylvania Code Reporter (Master Transmittal Sheet):

No. 311, October 2000

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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.

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PENNSYLVANIA BULLETIN

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Part II

This part contains the
Office of the Attorney General's
Tobacco Settlement

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THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 82]

Amendment of Section 18 of the Pennsylvania Continuing Legal Education Board Regulations; No. 254 Supreme Court Rules Doc. No. 1

Order

Per Curiam:

And Now, this 12th day of October, 2000, Section 18 of the Pennsylvania Continuing Legal Education Board Regulation is amended as follows.

To the extent that notice of proposed rulemaking would be required by Pa.R.J.A. No. 103, the amendment of the rule is hereby found to be required in the interest of efficient administration.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b) and shall be effective immediately.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 82. CONTINUING LEGAL EDUCATION

Subpart B. CONTINUING LEGAL EDUCATION BOARD REGULATIONS

Section 18. Board Fee Schedule.

Following is a schedule of fees established by the Board to be paid by providers and lawyers. This schedule will be reviewed annually by the Board and may be modified at any time upon approval by the Pennsylvania Supreme Court.

* * * * *

Fee per credit hour to be paid by provider with attendance certification	**[$2.00/]** $1.50 **[*]**
Fee per credit hour to be paid by lawyer for certification when fee not paid by provider	**[$2.00/]** $1.50 **[*]**
Fee per credit hour when lawyer requests CLE credit for teaching course	**[$2.00/] $1.50 [*]**

* * * * *

Fee for late compliance with **annual** CLE requirement	$100.00
Fee for continued late compliance with annual CLE requirement	**$100.00**

* * * * *

[Charges] The following charges are to be paid by a provider for failure to comply with the rules or these regulations:

* * * * *

[*Reduction to $1.50 effective May 1, 1997]

[Pa.B. Doc. No. 00-1849. Filed for public inspection October 27, 2000, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 50]

Proposed Amendments Relating to Procedures in Summary Cases

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.Rs.Crim.P. 53 and 76, and approve the revisions of the Comments to Pa.Rs.Crim.P. 51, 59, 64, 69, 75, 83, and 84. These rule changes clarify the procedures in summary cases when the defendant is a juvenile and make other correlative and conforming changes. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's 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 proposed rule changes precedes the Report.

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, November 27, 2000.

By the Criminal Procedural Rules Committee

J. MICHAEL EAKIN,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 50. PROCEDURE IN SUMMARY CASES

PART I. INSTITUTING PROCEEDINGS

Rule 51. Means of Instituting Proceedings in Summary Cases.[1]

* * * * *

Official Note: Previous Rule 51, adopted January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; Comment re-

[1] Rule 51 will become Rule 400 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

vised December 15, 1983, effective January 1, 1984; rescinded July 12, 1985, effective January 1, 1986; and replaced by present Rules 3, 51, 52, 55, 60, 65, 70, 75, and 95. Present Rule 51 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised January 31, 1991, effective July 1, 1991; Comment revised January 16, 1996, effective immediately; Comment revised June 6, 1997, effective immediately**; renumbered Rule 400 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

* * * * *

For general procedures applicable in all summary cases, see Chapter 4 Part E, Rules 80, 81, 82, 83, 84, 85, 87, and 90.[2]

For the procedures for appealing to the court of common pleas for a trial de novo, see Chapter 4 Part F, Rule 86.[3]

* * * * *

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

* * * * *

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).

Report explaining the proposed Comment revision concerning the citation to the Juvenile Act published at 30 Pa.B. 5531 (October 28, 2000).

PART II. CITATION PROCEDURES

Rule 53. Contents of Citation.[4]

* * * * *

(B) The copy delivered to the defendant shall also contain a notice to the defendant:

* * * * *

(4) that failure to respond to the citation as provided above within the time specified:

(a) shall result in the issuance of a summons when a violation of an ordinance or any parking offense is charged, **or when the defendant is a juvenile,** and in all other cases shall result in the issuance of a warrant for the arrest of the defendant; and

* * * * *

Official Note: Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 53 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995; **renumbered Rule 403 and Comment revised March 1, 2000, effective April 1, 2001;** amended March 3, 2000, effective July 1, 2000**; amended _____, 2000, effective _____, 2000**.

Comment

* * * * *

Paragraph (B)(4)(a) provides notice to the defendant who is a juvenile that a summons will be issued if the defendant fails to respond to the citation.

Paragraph (B)(4)(b) provides notice to the defendant that his or her license will be suspended if the defendant fails to respond to the citation or summons within the time specified in the rules. See 75 Pa.C.S. § 1533.

* * * * *

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).

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1509 (March 18, 2000).

Report explaining the proposed amendments concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

PART IIA. PROCEDURES WHEN CITATION IS ISSUED TO DEFENDANT

Rule 59. Guilty Pleas.[5]

* * * * *

Official Note: Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 75. Present Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991**; renumbered Rule 409 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

Nothing is this rule is intended to require that an issuing authority should proceed as provided in para-

[2] Rules 80, 81, 82, 83, 84, 85, and 90 will become Rules 451, 452, 453, 454, 455, 456, 457, and 458 respectively as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[3] Rule 86 will become Rules 460, 461 and 462 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[4] Rule 53 will become Rule 403 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[5] Rule 59 will become Rule 409 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

graph (C) when the defendant returns the written guilty plea and fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

When the defendant is a juvenile and appears as provided in paragraph (C), if there is a likelihood of imprisonment, the issuing authority should forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

* * * * *

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).

Report explaining the proposed Comment revisions concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

PART IIB. PROCEDURES WHEN CITATION FILED

Rule 64. Guilty Pleas.[6]

* * * * *

Official Note: Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 84. Present Rule 64 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; **renumbered Rule 414 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

* * * * *

Nothing is this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

When the defendant is a juvenile and appears as provided in paragraph (C), if there is a likelihood of imprisonment, the issuing authority should forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

* * * * *

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).

Report explaining the proposed Comment revisions concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

PART III. PROCEDURES IN SUMMARY CASES WHEN COMPLAINT FILED

Rule 69. Guilty Pleas.[7]

* * * * *

Official Note: Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; **renumbered Rule 424 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

* * * * *

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

When the defendant is a juvenile and appears as provided in paragraph (C), if there is a likelihood of imprisonment, the issuing authority should forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

* * * * *

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).

Report explaining the proposed Comment revisions concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

PART V. PROCEDURES REGARDING ARREST WARRANTS IN SUMMARY CASES

Rule 75. Issuance of Arrest Warrant.[8]

* * * * *

Official Note: Rule 75 [Adopted] adopted July 12, 1985, effective January 1, 1986; effective date extended to

[6] Rule 64 will become Rule 414 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[7] Rule 69 will become Rule 424 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[8] Rule 75 will become Rule 430 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; **renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

Personal service of a citation under paragraph **[(1)(a)](A)(1)** is intended to include the issuing of a citation to a defendant as provided in Rule 51**[(a)](A)** and the rules of **[Part II A] Chapter 4, Part B(1)**.[9]

When the defendant is a juvenile, and the defendant has failed to respond to the citation, the issuing authority should issue a summons as provided in Rule 53(B)(4)(a). If the juvenile fails to respond to the summons, the issuing authority should issue an arrest warrant as provided in paragraph (A)(1) and (2).

* * * * *

When the defendant is a juvenile and has not paid the fine and costs, the issuing authority may not issue a warrant, but should issue the notice required by paragraph (D) to the juvenile and the juvenile's parents, guardian, or other custodian. The notice should inform the defendant and defendant's parents, guardian, or other custodian that, in lieu of a warrant of arrest as permitted by the rules, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will provide notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv).

When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

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Committee Explanatory Reports:

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

Report explaining the proposed Comment revisions concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

Rule 76. Procedure When Defendant Arrested with Warrant.[10]

* * * * *

(D) When the defendant is taken before the issuing authority under paragraph (B)(4),

(1) the defendant shall enter a plea; and

(2) if the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the defendant shall be given an immediate trial unless:

[(1)] (a) the Commonwealth is not ready to proceed**,** or the defendant requests a postponement **or is not capable of proceeding, [in which event] and in any of these circumstances,** the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial;

[(2)] (b) ***

[(3)] (c) ***

(3) If the defendant is a juvenile and cannot be given an immediate trial, the issuing authority promptly shall notify the defendant and defendant's parents, guardian, or other custodian of the date set for the summary trial, and shall release the defendant on his or her own recognizance.

Official Note: Rule 76 [[Adopted] adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; amended August 9, 1994, effective January 1, 1995; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; **renumbered Rule 431 and amended March 1, 2000, effective April 1, 2001; amended _____, 2000, effective _____, 2000.**

Comment

* * * * *

Delay of trial under paragraph (D)**[(1)] (2)(b)** is required by statutes such as 18 Pa.C.S. § 3929 (pretrial fingerprinting and record-ascertainment requirements).

Although the defendant's trial may be delayed under this rule, the requirement that an arrested defendant be taken without unnecessary delay before the proper issuing authority remains unaffected.

In cases in which the juvenile has failed to "comply with a lawful sentence" imposed by the issuing authority, the Juvenile Act requires the issuing authority to certify notice of the failure to comply to the court of common pleas. See the definition of "delinquent act," paragraph (2)(iv), in 42 Pa.C.S. § 6302.

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Committee Explanatory Reports:

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

Report explaining the proposed amendments concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

PART VI. GENERAL PROCEDURES IN SUMMARY CASES

Rule 83. Trial in Summary Cases.[11]

* * * * *

Official Note: Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; Comment revised April 18,

[9] Rule 51 will become Rule 400 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[10] Rule 76 will become Rule 431 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[11] Rule 83 will become Rule 454 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; Comment revised February 13, 1998, effective July 1, 1998; **renumbered Rule 454 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

* * * * *

Although the scheduling of summary trials is left by the rules to the discretion of the issuing authority, it is intended that trial will be scheduled promptly upon receipt of a defendant's plea or promptly after a defendant's arrest. When a defendant is incarcerated pending a summary trial, it is incumbent upon the issuing authority to schedule trial for the earliest possible time.

When the defendant is a juvenile, if there is a likelihood of imprisonment, the issuing authority should not conduct the trial, but should forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

* * * * *

Committee Explanatory Reports:

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

Report explaining the proposed Comment revisions concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

Rule 84. Trial in Defendant's Absence.[12]

* * * * *

Official Note: Rule 84 [Adopted] adopted July 12, 1985, effective January 1, 1986; **January 1, 1986** effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended April 18, 1997, effective July 1, 1997; **[27 Pa.B. 2116]** amended October 1, 1997, effective October 1, 1998; **renumbered Rule 455 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

In those cases in which the issuing authority determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence, the issuing authority may issue a warrant for the arrest of the defendant in order to have the defendant brought before the issuing authority for the summary trial. See Rule 75(B).[13] The trial would then be conducted with the defendant present as provided in these rules. See Rule 83.[14]

When the defendant is a juvenile, if there is a likelihood of imprisonment, the issuing authority should not conduct the trial, but should forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

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Committee Explanatory Reports:

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

Report explaining the proposed Comment revisions concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 53 and 76, and Revisions of the Comments to Pa.Rs.Crim.P. 51, 59, 64, 69, 75, 83, and 84

Summary Case Procedures When Defendant is a Juvenile

I. *Background*

One area of criminal practice that continues to be a source of confusion concerns the handling of summary cases in which the defendant is a juvenile. The Juvenile Act (the Act), 42 Pa.C.S. §§ 6302, 6303, and 6326, only applies to proceedings in summary cases involving juveniles (1) when the summary offense arises out of the same episode or transaction involving a delinquent act for which a petition alleging delinquency is filed and (2) when the defendant has failed to comply with a lawful sentence imposed by the issuing authority. In addition, the Juvenile Act prohibits the detention of juveniles in summary cases and the imposition of a sentence of imprisonment. The summary case rules, however, do not provide procedures when these circumstances occur. For example, the Committee received several inquiries asking whether, when a juvenile defendant fails to respond to a citation, the issuing authority should proceed pursuant to Rule 75 (Issuance of Arrest Warrant) and issue a warrant, and, if such a warrant is issued, how the issuing authority should proceed when the juvenile is apprehended. Others asked whether the issuing authority should issue a warrant or the notice required by Rule 75(D) when a juvenile has failed to pay fines and costs and the fact of the non-compliance is to be certified to the common pleas court.[15]

The Committee agreed that the minor judiciary, the bar, law enforcement, and the criminal justice system in general would be greatly assisted if the rules were amended to clarify the procedures, particularly when a warrant is issued.

II. *Discussion*

A. *Juvenile Act-Related Changes*

The Committee initiated this project by reviewing the Juvenile Act, 42 Pa.C.S. §§ 6301 et seq. As noted in the Comments to Rules 1 and 51, the Criminal Rules apply to proceedings involving juveniles "only to the extent the Juvenile Act does not vest jurisdiction in the Juvenile Court." It is clear from Section 6302 (Definitions), which provides, inter alia:

[12] Rule 84 will become Rule 455 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[13] Rule 75 will become Rule 430 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[14] Rule 83 will become Rule 454 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[15] One district justice had inquired whether the Administrative Offices of Pennsylvania Courts' (AOPC) Judicial Computer Project (JPC) computerized form of notice could be modified to use for juvenile defendants, giving them notice that the case will be certified to the court of common pleas rather than notice of the warrant.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"DELINQUENT ACT."

* * * * *

(2) The term shall not include:

(iv) Summary offenses, unless the child fails to comply with a lawful sentence imposed thereunder, in which event notice of such fact shall be certified to the court. ["Court" is defined as court of common pleas.]

that summary cases involving juveniles ordinarily are not within the scope of the Juvenile Act. The confusion the correspondents noted arises because of other provisions of the Act. First, Section 6303 (Scope of Chapter), paragraph (b), provides, inter alia:

(b) Minor Judiciary.—No child shall be detained, committed or sentenced to imprisonment by a district justice or a judge of the minor judiciary unless the child is charged with an act set forth in paragraph (2)(i), (ii), (iii) or (v) of the definition of "delinquent act" in Section 6302 (relating to definitions). [Paragraph (2)(i)-(iii) and (v) pertains to murder and the enumerated crimes committed by a defendant 15 years and older that would be tried in adult court.]

Because this provision makes specific reference to the other paragraphs that are excluded from the definition of "delinquent act," but not the paragraph concerning summary offenses, it has been interpreted as meaning that the minor judiciary may not sentence a juvenile in a summary case to imprisonment, nor may they detain these juveniles. How the provision is implemented is one source of confusion.

To further cloud the issue, three sections of the Act address custody and detention. Section 6324 (Taking into custody) provides that a child may be taken into custody (1) pursuant to an order of the court under this chapter and (2) pursuant to the laws of arrest. Section 6325 (Detention of child) provides:

> A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless his detention or care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court or because he has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required, or an order for his detention or shelter care has been made by the court pursuant to this chapter.

Finally, Section 6326 (Release or delivery to court) provides, inter alia,

> (a) General rule—A person taking a child into custody, with all reasonable speed and without first taking the child elsewhere, shall:
>
> (1) notify the parent, guardian or other custodian of the apprehension of the child and his whereabouts;
>
> (2) release the child to his parents, guardian, or other custodian upon their promise to bring the child before the court when requested by the court, unless his detention or shelter care is warranted or required under section 6325 (relating to detention of child); or
>
> (3) bring the child before the court or deliver him to a detention or shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness which requires prompt treatment. He shall promptly give written notice, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court.
>
> (b) Detention in police lockup generally prohibited—Unless a child taken into custody is alleged to have committed a crime or summary offense or to be in violation of conditions of probation or other supervision following an adjudication of delinquency, the child may not be detained in a municipal police lockup or cell or otherwise held securely within a law enforcement facility or structure which houses an adult lockup.
>
> (c) Detention in police lockup under certain circumstances—A child alleged to have committed a crime or summary offense or to be in violation of conditions of probation or other supervision following an adjudication of delinquency may be held securely in a municipal police lockup or other facility which houses an adult lockup only under the following conditions:
>
> (1) the secure holding shall only be for the purpose of identification, investigation, processing, releasing or transferring the child to a parent, guardian, other custodian, or juvenile court or county children and youth official, or to a shelter care or juvenile detention center;
>
> (2) the secure holding shall be limited to the minimum time necessary to complete the procedures listed in paragraph (1), but in no case may such holding exceed six hours; and
>
> (3) if so held, a child must be separated by sight and sound from incarcerated adult offenders and must be under the continuous visual supervision of law enforcement officials or facility staff.

After reviewing these provisions of the Act, the Committee considered how the rules could be modified to comport with the provisions of the Act while providing guidance to the minor judiciary, the bar, and law enforcement officers. The first issue addressed was the procedures when the defendant failed to comply with a lawful sentence. Rule 75(C) provides for an arrest warrant when a defendant fails to pay the fines and costs. Rule 75(D) provides for a notice to the defendant before the warrant is issued for failure to pay.[16] This notice requirement was added to the rules in 1997 to give the defendant notice of the consequence of failing to pay the fines and costs, and to give the defendant a 10-day window of opportunity to comply before the warrant is issued. The Committee decided that it made sense in cases involving a juvenile to provide comparable safeguards, and is proposing the seventh paragraph of the Rule 75 Comment be revised to explain what the issuing authority is to do when a juvenile defendant fails to pay the fine and costs. The issuing authority would give the 10-day notice provided by the rule, but the notice would advise the defendant that failure to pay or appear within the 10 days will result in a notice of the non-compliance to the court of common pleas rather than issuance of a warrant.[17] The Committee included that the notice also should be given the defendant's parents, guardian, or other custodian, consistent with the requirements of the Act. A comparable

[16] JPC has designed a computerized form that is used by the minor judiciary for providing this notice.

[17] If this change is approved, the DJS will have to design a separate form for the juvenile's notice.

revision would be made to the Comment to Rule 76 (Procedure When Defendant Arrested with Warrant).

A second and related issue concerns the cases when a defendant fails to respond to the citation. Rule 75(A) requires that a warrant should be issued. An exception to this is set forth in Rule 53 (Contents of Citation) for cases involving a violation of an ordinance or any parking offense. In these cases, a summons must be issued before a warrant, giving the defendant a second opportunity to respond. The Committee agreed that a comparable exception should apply to juveniles, and is proposing that Rule 53(B)(4)(a) be amended by the addition of "or when the defendant is a juvenile," with a brief explanation of this change in the Comments to Rules 53 and 75. If the juvenile fails to respond to the summons, the case would proceed in the same manner as any summary case, and a warrant would be issued pursuant to Rule 75(A). This would be explained in a new second paragraph in the Rule 75 Comment.

The third issue the Committee addressed related to the prohibition in Section 6303 that "no child shall be detained, committed or sentenced to imprisonment by a district justice or a judge of the minor judiciary. . . ." Considering first the prohibition on detaining and committing a juvenile, the Committee noted the rules provide for the payment of fines and costs or collateral, and for the prompt release of a defendant when certain criteria are satisfied following an arrest without a warrant. Because the rules provide for the prompt release of a defendant, the Committee concluded nothing additional was necessary concerning these procedures when a juvenile is involved.[18] The rules also provide that the defendant, arrested with or without a warrant, be taken without unnecessary delay before the issuing authority for an immediate trial. The Committee agreed if an immediate trial cannot be held and the defendant is a juvenile, the juvenile must be released on his or her own recognizance. To make this clear, the Committee is proposing that Rule 76 be amended by the addition of a new paragraph (D)(3) requiring, in cases in which the juvenile cannot be given an immediate trial, that the issuing authority promptly give notice of the date and time for the summary trial to the defendant and defendant's parents, guardian, or other custodian. In addition, the paragraph requires the issuing authority to release the juvenile on recognizance when the summary trial cannot immediately be held.

Addressing the second prong of Section 6303's prohibition—no child shall be sentenced to imprisonment—was a more difficult question. The language of the Act is subject to a number of interpretations. We questioned whether the Act intended, in a case in which there was a likelihood of imprisonment, that a summary trial be conducted by the district justice but the sentence imposed in the common pleas court. Alternatively, could the trial only be held if the district justice determined there was no likelihood of imprisonment; in these cases, would the district justice be prohibited from imposing a sentence of imprisonment? When there is a likelihood of imprisonment, would the district justice be required to send the entire matter to the common pleas court? We settled on the last option—sending the case to the common pleas court for the trial—because this creates the least amount of confusion while ensuring no juvenile would be sentenced to imprisonment by a member of the minor judiciary. To make this clear, the Committee is proposing the Comments to the guilty plea rules, Rules 59, 64, 69, and the trial rules, Rules 83 and 84, be revised by the addition of cautionary language to alert the issuing authority that, when the defendant is a juvenile and there is a likelihood of imprisonment, the case should be forwarded to the court of common pleas for disposition.

As we were working on this proposal, the Committee reviewed the other summary case rules, and noted the cross-reference to Sections 6302 and 6303 of the Act in the Comment to Rule 51(Means of Instituting Proceedings in Summary Cases). We agreed that there also should be a reference to Section 6326 because of its provisions for detention of juveniles arrested in summary cases, and have revised the Comment accordingly.

B. *Miscellaneous Changes*

The Committee agreed that Rule 76 should be amended to conform to changes to other rules. The changes to paragraphs (D)(1) and (D)(2), which apply to all summary cases, not just those involving juveniles, conform Rule 76 to the provisions in Rule 83 and provide guidance to the minor judiciary about how to proceed when a defendant is brought before the issuing authority following an arrest. If a defendant is taken before an issuing authority, the defendant must enter a plea. If the defendant pleads guilty, the issuing authority imposes sentence, or, if the defendant pleads not guilty, the defendant is given an immediate trial.

Paragraph (D)(2)(a) would be amended by the addition of "not capable of proceeding" to be consistent with the comparable provision in Rule 71, which was amended in 1999 to make it clear that the district justice may decide not to hold the trial when a defendant is incapacitated in some way and not able to proceed with the trial.

[Pa.B. Doc. No. 00-1850. Filed for public inspection October 27, 2000, 9:00 a.m.]

[18] The Committee, relying on the provision in Section 6324 that a child may be taken into custody pursuant to the laws of arrest, reasoned that it is appropriate for police officers to arrest defendants who are juveniles for summary offenses when the arrest is authorized by law. Furthermore, Section 6326(b) appears to authorize the police to take a defendant who is a juvenile into custody, albeit with a number of limitations.

[234 PA. CODE CHS. 300 AND 1500]

Proposed Amendment of Rules 316 and 1504 Relating to Appointed Counsel

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.Rs.Crim.P. 316 and 1504 to clarify that appointed counsel's obligation extends until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's 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 proposed rule changes precedes the Report.

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, November 27, 2000.

By the Criminal Procedural Rules Committee

J. MICHAEL EAKIN,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 300. PRETRIAL PROCEEDINGS

Rule 316. Assignment of Counsel.[1]

* * * * *

(C) *In all Cases.*

* * * * *

(3) **[Where] When** counsel has been assigned, such assignment shall be effective until final judgment, including any proceedings upon direct appeal.

Official Note: [Adopted] Rule 318 adopted November 29, 1972, effective 10 days hence; replacing prior rule; amended September 18, 1973, effective immediately; **[formerly Rule 318,]** renumbered Rule 316 and amended June 29, 1977, **and October 21, 1977**, effective through November 22, 1977, effective as to cases in which the indictment of information is filed on or after January 1, 1978**; renumbered Rule 122 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000**.

Comment

This rule is designed to implement the decisions of *Argersinger v. Hamlin*, 407 U. S. 25 (1972), and *Coleman v. Alabama*, 399 U. S. 1 (1970), that no defendant in a summary case be sentenced to imprisonment unless **[he] the defendant** was represented at trial by counsel, and that every defendant in a court case has counsel starting no later than the preliminary hearing stage.

Assignment of counsel can be waived, if such waiver is knowing, intelligent, and voluntary. See *Faretta v. California*, 422 U. S. 806 (1975). **[With regard to] Concerning** the appointment of standby counsel for the defendant who elects to proceed pro se, see Rule 318.[2]

In both summary and court cases, the assignment of counsel to indigent defendants remains in effect until all appeals on direct review have been completed.

Ideally, counsel should be assigned to indigent defendants immediately after they are brought before the issuing authority in all summary cases in which a jail sentence is possible, and immediately after preliminary arraignment in all court cases. This rule strives to accommodate the requirements of the Supreme Court of the United States to the practical problems of implementation. Thus, in summary cases, paragraph **[(a)] (A)** requires a pretrial determination by the issuing authority as to whether a jail sentence would be likely in the event of a finding of guilt in order to determine whether trial counsel should be assigned to indigent defendants. It is expected that the issuing authorities will in most instances be guided by their experience with the particular offense with which defendants are charged. This is the procedure recommended by the ABA Standards Relating to Providing Defense Services § 4.1 (Approved Draft, 1968) and cited in the United States Supreme Court's opinion in Argersinger, supra. If there is any doubt, the issuing authority can seek the advice of the attorney for the Commonwealth, if one is prosecuting the case, as to whether the Commonwealth intends to recommend a jail sentence in case of conviction.

In court cases, paragraph **[(b)] (B)** requires counsel to be assigned at least in time to represent the defendant at preliminary hearing. Although difficulty may be experienced in some judicial districts in meeting the Coleman requirement, it is believed that this is somewhat offset by the prevention of many post-conviction proceedings which would otherwise be brought based on the denial of the right to counsel. However, there may be cases in which counsel has not been assigned prior to the preliminary hearing stage of the proceedings; e.g., counsel for the preliminary hearing has been waived, or a then-ineligible defendant subsequently becomes eligible for assigned counsel. In such cases it is expected that the defendant's right to assigned counsel will be effectuated at the earliest appropriate time.

Subparagraph **[(c)] (C)**(1) retains in the issuing authority or judge the power to assign counsel regardless of indigency or other factors when, in **[his] issuing authority's or judge's** opinion, the interests of justice require it.

Subparagraph **[(c)(iii)] (C)(3) [implements the decisions of *Douglas v. California*, 372 U. S. 353 (1963), and *Commonwealth v. Hickox*, 249 A.2d 777 (Pa. 1969), by providing] makes it clear** that **appointed** counsel **[appointed originally shall retain] retains** his **or her** assignment until final judgment, which includes **[appellate procedure] all avenues of appeal through the Supreme Court of Pennsylvania. See *Commonwealth v. Daniels*, 420 A.2d 1323 (Pa. 1980)**.

This rule neither addresses counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U. S. 745, nor ineffective assistance of counsel, see *Wainwright v. Torna*, 455 U. S. 586 (1982).

For suspension of Acts of Assembly, see Rule 340.[3]

***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).

Report explaining the proposed Comment revision concerning duration of counsel's obligation published at 30 Pa.B. 5535 (October 28, 2000).

CHAPTER 1500. POST-CONVICTION COLLATERAL PROCEEDINGS

Rule 1504. Appointment of Counsel; in Forma Pauperis.[4]

* * * * *

(F) Appointment of Counsel in Death Penalty Cases.

* * * * *

[1] Rule 316 will become Rule 122 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[2] Rule 318 will become Rule 121 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[3] Rule 340 will become Rule 1101 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[4] Rule 1504 will be renumbered Rules 904 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

(2) The appointment of counsel shall be effective throughout the post-conviction **collateral** proceedings, including any appeal from disposition of the petition for post-conviction collateral relief.

* * * * *

Official Note: Previous Rule 1504 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effectie June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by Rule 1507. Present Rule 1504 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; amended January 21, 2000, effective July 1, 2000; **renumbered Rule 904 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

* * * * *

Consistent with Pennsylvania post-conviction practice **[under former Rules 1503 and 1504]**, it is intended that counsel be appointed in every case in which a defendant has filed a petition for post-conviction collateral relief for the first time and is unable to afford counsel or otherwise procure counsel. However, the rule now limits appointment of counsel on second or subsequent petitions so that counsel should be appointed only if the judge determines that an evidentiary hearing is required. Of course, the judge has the discretion to appoint counsel in any case when the interests of justice require it.

Paragraph (D) makes it clear that appointed counsel retains his or her assignment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. See *Commonwealth v. Daniels*, 420 A.2d 1323 (Pa. 1980).

This rule neither addresses counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U. S. 745, nor ineffective assistance of counsel, see *Wainwright v. Torna*, 455 U. S. 586 (1982).

* * * * *

Committee Explanatory Reports:

Final Report explaining the August 11, 1997 amendments published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

Final Report explaining the January 21, 2000 amendments adding paragraph (F) concerning appointment of counsel published with the Court's Order at 30 Pa.B. 624 (February 5, 2000).

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).

Report explaining the proposed Comment revision concerning duration of counsel's obligation published at 30 Pa.B. 5535 (October 28, 2000).

Report

Proposed Amendments to Pa.Rs.Crim.P. 316 and 1504

Duration of Appointed Counsel's Obligation

The Committee undertook a review of the duration of appointed counsel's obligation provisions in Rule 316 (Assignment of Counsel) at the request of the Court.[5] The Court asked the Committee to consider the general issue of whether the provision in Rule 316(C)(3) "such assignment shall be effective until final judgment, including any proceedings upon direct appeal" continues through the allocatur process. The Court also asked the Committee to consider whether the Court's May 9, 2000 Order concerning the exhaustion of state remedies for purposes of federal habeas corpus relief should impact on the scope of Rule 316.

A. *Duration of Appointed Counsel's Obligation*

The Committee considered first the Court's question concerning the duration of appointed counsel's obligation, and reviewed the Rule 316 history and case law interpreting Rule 316. When the Committee recommended the appointment of counsel rule in 1964, the submission to the Court explained that the Committee was proposing that the rule provide counsel's assignment shall be effective until final judgment including any proceedings upon direct appeal, and that the proposal was based on the United States Supreme Court's decision in *Douglas v. California*, 372 U. S. 353 (1963). The Committee, however, did not explain what was intended by "any proceedings upon direct appeal." Douglas is not conclusive as to the meaning of "direct appeal" because the Supreme Court limited the scope of the decision saying "We are not here concerned with the problems that might arise from the denial of counsel for the preparation of a petition for discretionary review or mandatory review beyond the stage in the appellate process at which the claims have once been presented by a lawyer and passed upon by an appellate court."

Subsequently, the Court decided *Commonwealth v. Hickox*, 249 A.2d 777 (Pa. 1969). The *Hickox* opinion directs appointed counsel following the affirmance of defendant's sentence by the Superior Court "to proceed in accordance with the Rule," suggesting that in 1969 the Court interpreted the use of "direct appeal" in Rule 316 to include discretionary appeals. The citation to *Hickox* was added to the Rule 316 Comment. The Committee concluded the addition of *Hickox* supported the premise that the intent of the rule is that appointed counsel is to stay in the case through the state courts' discretionary appeal process.

The issue of the length of appointed counsel's obligation has continued to arise in cases. The United States Supreme Court again addressed the issue in 1974 in *Ross v. Moffitt*, 417 U.S. 600 (1974). The Supreme Court held that there is no constitutional right to appointed counsel for discretionary appeals, noting that the decision should be made at the state level. The Pennsylvania Supreme Court did just that in 1980 when, in *Commonwealth v. Daniels*, 420 A.2d 1323 (Pa. 1980), it noted "by this Rule [Rule 316], this Court long has guaranteed that a person seeking allowance of appeal is entitled to the assistance of counsel." Since *Daniels*, there have been several Superior Court cases addressing this issue in the context of ineffective assistance of counsel for failing to seek allowance of appeal to the Supreme Court, all accepting the premise that appointed counsel stays in the case through discretionary appeal. See, e.g., *Commonwealth v. Morrow*, 474 A.2d 322 (Pa. Super. 1984) and *Commonwealth v. West*, 482 A.2d 1339 (Pa. Super, 1984).

In view of the Committee rule history and the case law, the Committee reaffirmed that the appointment of counsel pursuant to Rule 316 extends through appeals to the

[5] References in the Report to "Supreme Court" mean the U. S. Supreme Court, and references to "Court" mean the Pennsylvania Supreme Court.

Pennsylvania Supreme Court. Because of the Court's inquiry and the fact that the issue continues to arise, the Committee agreed that Rule 316 should be clarified. Because the sixth paragraph of the Rule 316 Comment currently addresses this issue, the Committee agreed the clarification should be made in that paragraph.

The present Comment provides:

> Paragraph (C)(3) implements the decisions of *Douglas v. California*, 372 U.S. 353 (1963), and *Commonwealth v. Hickox*, 249 A.2d 777 (Pa. 1969), by providing that counsel appointed originally shall retain his or her assignment until final judgment, which includes appellate procedure.

The Committee initially considered merely substituting "which includes appellate procedure" in the last line of the paragraph with a phrase such as "which includes discretionary appeal." We reconsidered this because the *Douglas* and *Hickox* opinions involved cases in which the appeal was an appeal as of right, and both Courts appear to use "direct appeal" in that context. The Committee agreed a reasonable interpretation of the "implements" language would be that "direct appeal" only goes through the appeal as of right stage. Although paragraph (C)(3) initially was the result of those two cases, subsequent Pennsylvania cases have clearly interpreted Rule 316 as applying through discretionary appeals to the Pennsylvania Supreme Court. In view of this, and because Pennsylvania courts have gone in a different direction than the federal courts since *Ross v. Moffitt*, the Committee was concerned the "implements" language in the Rule 316 *Comment* was confusing. Accordingly, we are proposing the "implements" language be deleted. In addition, to make the provision clearer concerning the duration of appointed counsel's obligation, we are proposing the paragraph be revised to explain that paragraph (C)(3) "makes it clear that appointed counsel retains his or her assignment until final judgement, which includes all avenues of appeal through the Supreme Court of Pennsylvania."[6] We are proposing a citation to *Commonwealth v. Daniels* be added because this is the most recent decision in which the Court has addressed the issue, and more clearly states the proposition.

During the course of our discussions concerning these proposed changes, several members expressed concern that the changes would result in an appointed attorney being forced to file a petition for allowance of appeal even when counsel, in exercising his or her professional judgment, determines it is inappropriate. Although the Committee agreed that Rule 316 only addresses the appointment of counsel, not counsel's professional responsibilities, the members were sensitive to the concerns being raised, and are proposing an additional paragraph be added to the *Comment* to clarify this point. This new paragraph includes cross-references to *Jones v. Barnes*, 463 U.S. 745 (1983), concerning counsel's professional obligations, and *Wainwright v. Torna*, 455 U. S. 586 (1982), concerning ineffective assistance of counsel.

As we discussed Rule 316, we noted that comparable issues arise in the context of Rule 1504 (Appointment of Counsel; In Forma Pauperis), and are proposing the same changes to the Rule 1504 Comment.

B. *Court's May 9, 2000 Order*

Turning to the second part of the Court's inquiry concerning the impact of its May 9, 2000 Order on Rule 316, the Committee reviewed *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999). In Boerckel, the Supreme Court addressed the exhaustion doctrine, holding, inter alia, "state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process," and when that process is two-tiered, both tiers should be utilized if the discretionary review is a normal part of the established review process. The Supreme Court went on to say "nothing in our decision today requires exhaustion of any specific state remedy when a State has provided that that remedy is unavailable," suggesting the states can by rule or statute provide that a given procedure is not available. Based on our review of this case and the Court's Order, the Committee concluded that no changes to Rule 316 with regard to the May 9, 2000 Order were necessary.

[Pa.B. Doc. No. 00-1851. Filed for public inspection October 27, 2000, 9:00 a.m.]

[6] Rule 75 will become Rule 430 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

Title 255—LOCAL COURT RULES

LYCOMING COUNTY

Amendments to Rules of Civil Procedure; #00-00666

Order

And now, this 5th day of October, 2000, it is hereby *Ordered and Directed* as follows:

1. Lycoming County Rule of Civil Procedure L430 is hereby revised as set forth as follows:

2. The Prothonotary is directed to:

a. File seven (7) certified copies of this order with the Administrative Office of the Pennsylvania Courts.

b. Distribute two (2) certified copies of this order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

c. File one (1) certified copy of this order with the Pennsylvania Civil Procedural Rules Committee.

d. Forward one (1) copy of this order to the Lycoming Reporter for publication therein.

e. Foreward one (1) copy to the chairman of the Lycoming County Customs and Rules Committee.

f. Keep continuously available for public inspection copies of this order.

3. The rule revision approved by this order shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

CLINTON W. SMITH,
President Judge

L.430 Service by Publication.

A. Any request for service pursuant to a special order of court under Pa.R.C.P. 430 shall **[be accompanied by a proposed order] comply with Rule L206.**

B. Service by publication shall be made in such a manner that the person so served shall have at least ten (10) days after publication to act on the matter served by publication.

C. Service shall be complete upon the appearance of the last complete publication. Proofs of publication shall be filed before judgment or any other action is taken by the plaintiff.

D. Where service by publication is permitted by Pa.R.C.P. 410 (concerning real property actions), the notice shall be published for one week in the *Lycoming Reporter* and at least one newspaper of general circulation. The notice shall be **in the form required by the rules and shall include a description of the land involved. [substantially in the following form:]**

[_____ [caption of case]
To: _____
Name(s) of Defendant(s)

You are notified that the plaintiff(s) has (have) commenced an action to quiet title against you which you are required to defend.

You are required to plead to the complaint within twenty (20) days after the last appearance of this notice, that is, no later than _____ _____. If you fail to answer the complaint within said twenty (20) days, a preliminary judgment may be entered against you thirty (30) days thereafter.

This action concerns the land here described:

(describe land)

If you wish to defend you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE.

IF YOU DO NOT HAVE A LAWYER CONTACT:

Prothonotary
Lycoming County Courthouse
Williamsport, PA 17701
Telephone 570-327-2251

IF YOU CANNOT AFFORD A LAWYER CONTACT:

Susquehanna Legal Services Office
329 Market Street
Williamsport, PA 17701
Telephone 570-323-8741]

[Pa.B. Doc. No. 00-1852. Filed for public inspection October 27, 2000, 9:00 a.m.]

WYOMING AND SULLIVAN COUNTIES
2001 Court Calendar; No. 2000-1063

And Now, the 6th day of October, 2000,

It Is Ordered that the Court Calendar of the Court of Common Pleas of the 44th Judicial District of Pennsylvania for the Year 2001, be and the same is hereby established in accordance with the schedule hereto and made a part hereof.

By the Court

BRENDAN J. VANSTON,
President Judge

2001 Court Calendar for Wyoming County

Account Confirmation

January	2
February	6
March	6
April	3
May	1
June	5
July	5
August	7
September	4
October	2
November	6
December	4

Arraignments

January	10
February	14
March	14
April	11
May	9
June	13
July	11
August	8
September	12
October	10
November	7
December	12

Domestic Relations

	De Novos	*Contempts*
January	9	11
February	13	8
March	13	15
April	10	12
May	8	10
June	12	14
July	10	5
August	6	2
September	11	13
October	9	11
November	5 (1:15)	8
December	11	13

General Call

September	4

Juveniles

January	3
February	7
March	7
April	4
May	2
June	6
July	2

Juveniles

August	1
September	5
October	3
November	5
December	5

Criminal Trial Weeks

February	26
April	23
June	25
August	13
October	15
December	17

Guilty Pleas & Status Call

January	5
February	2
March	9
April	6
May	11
June	8
July	6
August	10
September	7
October	5
November	2
December	7

Dependency

January	11
February	8
March	12
April	12
May	10
June	14
July	12
August	2
September	13
October	11
November	8
December	13

Civil Trial Weeks

January 15, 2001
March 19, 2001
May 21, 2001
July 16, 2001
September 17, 2001
November 13, 2001

Close Civil Trial List

December 1, 2000	(March, 2001)
February 2, 2001	(May 2001)
April 6, 2001	(July, 2001)
June 1, 2001	(September, 2001)
August 3, 2001	(November, 2001)
October 5, 2001	(January, 2002)
December 7, 2001	(March, 2002)

Sentences & ARD Hearings

January	10
February	14
March	14
April	11
May	9
June	13
July	11
August	8
September	12
October	10
November	7
December	12

Prison Board

January	2
February	6
March	6
April	3
May	1
June	5
July	3
August	7
September	4
October	2
November	6
December	4

Miscellaneous, Arraignments and Account Confirmations

January	4
February	1
March	8
April	5
May	3
June	7
July	3
August	9
September	6
October	4
November	1
December	6

Civil & Criminal Trial Weeks

January 22, 2001
March 26, 2001
May 29, 2001
September 24, 2001
October 22, 2001

Close Civil Trial List

December 1, 2000	(March, 2001 Trial Term)
March 2, 2001	(May, 2001 Trial Term)
June 8, 2001	(September, 2001 Trial Term)
August 3, 2001	(October, 2001 Trial Term)
October 5, 2001	(January, 2002 Trial Term)
December 7, 2001	(March, 2002 Trial Term)

General Call

September 6, 2000

[Pa.B. Doc. No. 00-1853. Filed for public inspection October 27, 2000, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Christopher G. Martucci having been disbarred by consent from the practice of law in the State of New Jersey by Order of the Supreme Court of New Jersey dated July 12, 2000, the Supreme Court of Pennsylvania issued an Order dated October 5, 2000, disbarring Christopher G. Martucci from the Bar of this Commonwealth. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of 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 of Pennsylvania

[Pa.B. Doc. No. 00-1854. Filed for public inspection October 27, 2000, 9:00 a.m.]

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 138h]

Agricultural Land Conservation Assistance Grant Program

The Department of Agriculture (Department) hereby amends Chapter 138h (relating to agricultural and land conservation assistance grant program) to read as set forth in 30 Pa.B. 638 (February 5, 2000) and Annex A.

Authority

Section 7.3 of the act of June 18, 1982 (P. L. 549, No. 159) (3 P. S. § 1207.3) (act) authorizes the Department to award grants to counties for designated purposes related to the conservation of agricultural land, and empowers the Department to promulgate regulations necessary to support the grant program. It is under this statutory authority these regulatory revisions are made.

The act requires the Department to consult with the State Agricultural Land Preservation Board (State Board) in establishing eligibility criteria for grants and in promulgating regulations necessary to administer and enforce the act. The State Board reviewed and approved these proposed regulatory revisions at its November 5, 1998, meeting.

Need for the Amendments

The Department is preparing to solicit a third round of grant applications under the Agricultural Land Conservation Assistance Grant Program (Grant Program). This rulemaking will help to remove certain ambiguous or unnecessary language, clarify the criteria under which grants will be awarded and otherwise facilitate the distribution of grant funds to meet the underlying legislative intent.

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

Comments

Notice of proposed rulemaking was published at 30 Pa.B. 638 (February 5, 2000) and provided for a 30-day public comment period.

Neither the public nor the Legislature offered comment with respect to the proposed amendments.

The Independent Regulatory Review Commission (IRRC) offered a single comment. It recommended that the proposal be revised so as not to delete "The availability of funding for the project from a source other than the Commonwealth" as one of the criteria to be considered by the Department in evaluating projects for funding under the Grant Program.

The Department accepts IRRC's recommendation and has implemented it in the final-form regulations.

Fiscal Impact

Commonwealth

The amendments will impose no costs and have no fiscal impact upon the Commonwealth. The act, itself, allows for up to $750,000 to be awarded in grants. The amendments would not increase or decrease that sum, but would help ensure the grant funds are spent for the purposes described in the act. To date, the Department has awarded grants totaling $124,062.61. As a result, there remains authority to award an additional $625,937.39 in grants.

Political Subdivisions

The amendments will impose no costs and have no fiscal impact upon political subdivisions. If a county seeks grant funds for a project permitted under the act, though, it must pay at least 50% of the project's costs.

Private Sector

The amendments will impose no costs and have no fiscal impact on the private sector.

General Public

The amendments will impose no costs and have no fiscal impact upon the general public.

Paperwork Requirements

The amendments are not expected to result in an appreciable increase in paperwork. The Department has developed grant application forms which it will distribute to interested persons, and will review completed applications in consultation with the State Board. Paperwork will be minimal.

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: Sandra Robison, telephone (717) 783-3167.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 24, 2000, the Department submitted a copy of the notice of proposed rulemaking published at 30 Pa.B. 638, to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment. As stated, no comments were received from either the Legislature or the public with respect to the proposed amendments.

In preparing these final-form regulations, the Department has considered the comments received (consisting of a single revision which was suggested by IRRC and implemented by the Department in the final-form regulations).

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), these final-form regulations were deemed approved by the House and Senate Agricultural and Rural Affairs Committees on October 4, 2000. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 5, 2000, and approved the final-form regulations.

Findings

The Department finds that:

(1) Public notice of its intention to adopt the final-form regulations encompassed by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received were considered.

(3) The modifications that were made to the final-form regulations in response to comments received do not enlarge the purpose of the proposal published at 30 Pa.B. 638. The adoption of the final-form regulations in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

Order

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

(1) The regulations of the Department, 7 Pa. Code Chapter 138h, are amended by amending §§ 138h.1, 138h.2, 138h.4, 138h.6—138h.10 and 138h.12 to read as set forth at 30 Pa.B. 638 and by amending § 138h.5 to read as set forth in Annex A.

(2) The Secretary of Agriculture shall submit this order, 30 Pa.B. 638 and Annex A to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(3) The Secretary of Agriculture shall certify this order, 30 Pa.B. 638 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

SAMUEL E. HAYES, Jr.,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 30 Pa.B. 5499 (October 21, 2000).)

Fiscal Note: Fiscal Note 2-124 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

CHAPTER 138h. AGRICULTURAL LAND CONSERVATION ASSISTANCE GRANT PROGRAM

§ 138h.5. Eligibility criteria.

(a) *General*. The following general criteria apply to applications for projects:

(1) The Grant Program will not accept applications for the following:

(i) Projects already completed.

(ii) Stages of projects already in progress.

(iii) Stages of projects for which funding has been included in a county appropriation or when other funding has been approved.

(2) Subsequent stages or upgrades may be considered for funding if documentation is provided to the Department to demonstrate that the stage or upgrade was not included in funding plans for earlier stages of the project.

(b) *Specific*. The following specific criteria will be used to evaluate applications for funding consideration:

(1) The acceptability of costs within the proposed budget.

(2) The availability of funding for the project from a source other than the Commonwealth.

(3) The extent to which the project contributes to the Commonwealth's goal of preserving agricultural land.

(4) The geographic scope of the project and the amount of agricultural land which will be affected by the project described in the application.

(5) The anticipated date of full implementation of a county program.

(6) The impact the project would have on other county programs.

[Pa.B. Doc. No. 00-1855. Filed for public inspection October 27, 2000, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 51]

Civil Penalty Forfeiture Process

The Fish and Boat Commission (Commission) by this order adopts Chapter 51, Subchapter K (relating to civil penalty forfeiture process). The Commission is publishing these regulations under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The 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 regulations will go into effect upon publication of an order adopting the regulations in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the regulations, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site (http://www.fish.state.pa.us).

C. *Statutory Authority*

The 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 were 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 Regulations*

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. In order to recover civil penalties, the Commission must have an administrative process for forfeiture of civil penalties in place. Accordingly, the Commission has adopted the new regulations as proposed.

F. *Paperwork*

The regulations will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The regulations will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The regulations will impose no new costs on the private sector or the general public.

H. *Public Involvement*

A notice of proposed rulemaking was published at 30 Pa.B. 4619 (September 2, 2000). The Commission did not receive any public comments regarding the proposed regulations.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201, 1202) and the regulations promulgated thereunder (1 Pa. Code §§ 7.1 and 7.2).

(2) A public comment period was provided, and no comments were received.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 51, are amended by adding §§ 51.101—51.109 to read as set forth at 30 Pa.B. 4619 (September 2, 2000).

(b) The Executive Director will submit this order and 30 Pa.B. 4619 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 30 Pa.B. 4619 and deposit them with the Legislative Reference Bureau as required by law.

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

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-108 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 00-1856. Filed for public inspection October 27, 2000, 9:00 a.m.]

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 21]

Kennels; Licensure; and Dog-Caused Damage

A public hearing has been scheduled to seek input from persons and organizations concerning proposed amendments to Chapter 21 (relating to general provisions; kennels; licensure; dog-caused damage).

The Bureau of Dog Law Enforcement will conduct a public meeting at 10 a.m. on December 14, 2000, in Room 309 at the Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA. The Bureau is looking for input on proposed amendments as follows:

1. Amendment of § 21.51 (relating to lifetime dog license issuance) which would allow for the use of microchips.

2. Additional amendments to Chapter 21.

Persons seeking to testify or present statement information or other comments should contact Jan Frushone-Gibas at (717) 787-3062. Written copies of any statements should be provided at time of the meeting.

Written comments may also be sent prior to the meeting to be included in the record. The commentator's name, address and phone number must be included with the comment. Comments may be sent to: Department of Agriculture, Bureau of Dog Law Enforcement, ATTN: Richard F. Hess, Director, 2301 N. Cameron Street, Harrisburg, PA 17110-9408.

SAMUEL E. HAYES Jr.,
Secretary

[Pa.B. Doc. No. 00-1857. Filed for public inspection October 27, 2000, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 64]

Private Passenger Automobile Policy Forms

The Insurance Department (Department) hereby withdraws the proposed rulemaking of private passenger automobile policy forms (# 11-147) on October 18, 2000, from consideration at this time.

This notice is provided to those individuals and organizations that had submitted comments to the proposed rulemaking that was published at 28 Pa.B. 4931 (October 3, 1998).

The Department will reconsider certain issues and will resubmit the rulemaking as proposed at a later date.

M. DIANE KOKEN,
Commissioner

[Pa.B. Doc. No. 00-1858. Filed for public inspection October 27, 2000, 9:00 a.m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Agricultural Land Conservation Assistance Grant Program

Notice is hereby given of the commencement of an application period for grants under the Agricultural Land Conservation Assistance Grant Program (program) administered by the Department of Agriculture (Department). The program is authorized by sections 7.1 and 7.3 of the act of June 18, 1982 (P. L. 549, No. 159) (3 P. S. §§1207.1 and 1207.3). Regulations for the program appear at 7 Pa. Code Chapter 138h (relating to Agricultural Land Conservation Assistance Program Grant program). Amendments to Chapter 138h appear at 30 Pa.B. (October 28, 2000).

Applications for the program will be accepted by the Department beginning November 28, 2000, for a 45 day period ending January 12, 2000. Information and grant application forms may be obtained from Sandra E. Robison, Bureau of Farmland Preservation, Department of Agriculture, 2301 N. Cameron Street, Room 404, Harrisburg, PA 17110-9408.

SAMUEL E. HAYES, Jr.,
Secretary

[Pa.B. Doc. No. 00-1859. Filed for public inspection October 27, 2000, 9:00 a.m.]

Dog Control Facility Bill Reimbursement Grant Program

The Department of Agriculture (PDA) hereby gives notice that it intends to award up to $100,000 in grants under its Year 2001 Dog Control Facility Bill Reimbursement Program (Program). The Program will award bill reimbursement grants of up to $7,500-per-recipient to humane societies or associations for the prevention of cruelty to animals that meet the guidelines and conditions of this Program. The Program will be funded from the Dog Law Restricted Account, from funds which are hereby declared to be "surplus" funds for the limited purposes set forth in the Dog Law (3 P. S. § 459-1002(b)).

The proposed guidelines and conditions for the Program are set forth below. These proposed guidelines and conditions are substantively identical to the guidelines and conditions for last year's "Year 2000 Dog Control Facility Bill Reimbursement Grant Program," published at 30 Pa.B. 313 (January 15, 2000). In fulfillment in 7 Pa. Code § 23.4 (relating to conditions and guidelines), PDA invites public and legislative review of these proposed guidelines and conditions. Commentators should submit their comments, in writing, so they are received by PDA no later than 30 days from the date the proposed guidelines and conditions are published in the *Pennsylvania Bulletin*. Comments should be directed to the following: Richard Hess, Director, Bureau of Dog Law Enforcement, Pennsylvania Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408.

PDA will review and consider all written comments in preparing the final guidelines and conditions for the Program. The final guidelines and conditions for the Program will be published in the *Pennsylvania Bulletin* after the close of the comment period referenced. The Department will invite the submission of grant applications at that time.

Proposed Guidelines and Conditions for the Year 2001 Dog Control Facility Bill Reimbursement Grant Program

1. Definitions.

The following words and terms, when used in these guidelines and conditions, have the following meanings:

Department—The Pennsylvania Department of Agriculture.

Dog control—The apprehending, holding and disposing of stray or unwanted dogs, or as otherwise defined in the Dog Law at 3 Pa.C.S. § 459-102.

Eligible Bill—A document seeking payment for materials, services or utilities from a grant recipient, setting forth the following:

i. The date the document is issued.

ii. The name and address of the humane society or association for the prevention of cruelty to animals to which the bill is issued.

iii. If for materials, a description of the materials and the date of delivery.

iv. If for services, a description of the nature of the services and the dates upon which the services were rendered.

v. If for utilities (such as electricity, water, sewer, waste disposal and similar purposes), a statement of the period for which the utility for which payment is sought was provided.

vi. The name, address and telephone number of the entity issuing the document.

Humane society or association for the prevention of cruelty to animals—A nonprofit society or association duly incorporated under 15 Pa.C.S. Ch. 53 Subch. A (relating to incorporation generally) for the purpose of prevention of cruelty to animals, or as otherwise defined in the Dog Law at 3 Pa.C.S. § 459-102.

Program—The Year 2001 Dog Control Facility Bill Reimbursement Program.

2. Eligibility.

A humane society or association for the prevention of cruelty to animals is eligible to apply to receive a grant under the Program if that humane society or association for the prevention of cruelty to animals:

a. Has been in operation for at least 1 year immediately preceding the application date.

b. Has performed dog control functions for at least 1 year immediately preceding the application date.

c. Has, in the performance of its dog control functions, accepted at least 100 stray or unwanted dogs into its facility within the year immediately preceding the application date.

d. Is not a party to a contract with PDA under which PDA pays that humane society or association for the prevention of cruelty to animals for dog control activities performed in the year 2001.

e. Agrees—as a condition of receiving any grant money under the Program—to continue to perform dog control activities through the year 2001.

f. Has a total operating budget of $150,000 or less for the 2001 calendar year or, if its budget is on a basis other than calendar year, has a total operating budget of $150,000 or less for each fiscal year comprising any portion of calendar year 2001.

3. Use of Grant Funds.

The Department will allocate a specific maximum grant amount to a successful grant applicant through a written grant agreement. This maximum grant amount will be specified in the grant agreement, and will not exceed $7,500 with respect to any application. The maximum grant amount will be retained by PDA and used to reimburse the grant recipient for eligible bills the grant recipient has paid with respect to materials, services or utilities provided to the grant recipient from January 1, 2001 through December 31, 2001. The total reimbursement PDA will pay a grant recipient will not exceed the maximum grant amount. Any money remaining in a grant allocation beyond the termination date of the grant agreement will lapse into the Dog Law Restricted Account. If a bill covers materials, services or utilities provided, in whole or in part, before January 1, 2001 or after December 31, 2001, that bill is not an eligible bill and will not be reimbursed by PDA under the Program.

4. Application Process.

a. *Application required*. A humane society or association for the prevention of cruelty to animals seeking a grant under the Program must complete a written application form and deliver it to PDA no later than 30 days from the date the final guidelines and conditions are published in the *Pennsylvania Bulletin*. Applications received by PDA beyond that date will not be considered.

b. *Obtaining an application form*. PDA will provide grant application forms upon request. Requests for application forms should be directed to the following:

Richard Hess, Director
Bureau of Dog Law Enforcement
Pennsylvania Department of Agriculture
2301 North Cameron Street
Harrisburg, PA 17110-9408
Telephone: (717) 787-4833
Fax: (717) 772-4352

c. *Contents of grant application form*. A grant application form shall require the following information:

i. The name and address of the applicant.

ii. Information to verify that the applicant is a humane society or association for the prevention of cruelty to animals and otherwise meets the eligibility requirements set forth in paragraph 2, above.

iii. The maximum grant amount sought by the applicant—not to exceed $7,500.

iv. A description of the eligible bills for which the grant applicant intends to seek reimbursement, including a description (and copies, if available) of bills received by the applicant in 2000 for the same type of materials, services or utilities for which reimbursement will be sought under the grant agreement.

v. Such other information as PDA might reasonably require.

5. Review and approval of grant application.

a. *Review and notification*. PDA will review each timely grant application and provide the applicant written notification of whether PDA awards the grant, denies the grant or awards a grant in some amount less than the applicant sought. This written notification will be mailed no later than 60 days from the date the final guidelines and conditions are published in the *Pennsylvania Bulletin*, to the address provided by the applicant on the grant application form. If an application is incomplete or PDA requires additional information or documentation in order to evaluate the grant request, it will so advise the applicant.

b. *Review criteria*. PDA will consider the following, among other factors, in determining whether to award a grant application:

i. The number of applications received and the availability of funds for the grants sought.

ii. The relative contribution of the applicant to dog control activities in the area it serves.

iii. The relative contribution of the applicant to dog control as compared to the relative contribution of other applicants.

iv. The relative importance of the grant to the continued operation of the applicant's dog control facility.

v. The expense or logistical difficulty PDA would encounter if the applicant's dog control facility was no longer in operation.

6. Grant agreement.

a. *Grant agreement required*. A successful grant applicant must execute a grant agreement with PDA, setting forth the terms and conditions under which the grant money will be used by PDA to reimburse the grant recipient for payment of eligible bills.

b. *Reimbursement requests*. The grant agreement will set forth the exact procedure by which a grant recipient shall seek reimbursement from PDA for payment of eligible bills. The basic reimbursement request procedure will be as follows:

By May 15, 2001 the grant recipient will: (1) Deliver copies of the eligible bills it has paid between January 1 and April 30, 2001; (2) Verify that these bills have been paid and are eligible for reimbursement; and (3) Provide a detailed report of the dog control activities performed by the successful applicant during the referenced 4-month period.

By September 15, 2001 the grant recipient will: (1) Deliver copies of the eligible bills it has paid between May 1 and August 31, 2001; (2) Verify that these bills have been paid and are eligible for reimbursement; and (3) Provide a detailed report of the dog control activities performed by the successful applicant during the referenced 4-month period.

By January 15, 2002 the grant recipient will: (1) Deliver copies of the eligible bills it has paid between September 1 and December 31, 2001; (2) Verify that these bills have been paid and are eligible for reimbursement; and (3) Provide a detailed report of the dog control activities performed by the successful applicant during the referenced 4-month period.

c. *Payment by PDA*. PDA will reimburse a grant recipient for eligible bills within 60 days of receiving a complete and timely reimbursement request.

d. *Termination*. PDA may terminate a grant agreement at any time by providing the grant recipient written notice of termination at the address set forth on the grant application.

SAMUEL E. HAYES, Jr.,
Secretary

[Pa.B. Doc. No. 00-1860. Filed for public inspection October 27, 2000, 9:00 a.m.]

Land Trust Reimbursement Grant Program

The Department of Agriculture (Department) published the procedures and standards for the Land Trust Reimbursement Grant Program (Program) at 29 Pa.B. 6342 (December 18, 1999). In summary, these standards and procedures restate the self-executing language set forth in section 1716(a)(3) of The Administrative Code of 1929 (71 P. S. § 456(a)(3)).

The Program is a pilot program, and is funded by a $500,000 allocation from the State Agricultural Land Preservation Board (State Board). The Program allows for the awarding of reimbursement grants to qualified land trusts. A grant can reimburse a qualified land trust up to $5,000 of the expenses it incurs in acquiring an "agricultural conservation easement," as that term is defined in the Agricultural Area Security Law (3 P. S. §§ 901—915). These expenses include appraisal costs, legal services, title searches, document preparation, title insurance, closing fees and survey costs.

Since the Program has been in effect, a number of qualified land trusts have suggested the standards and procedures be revised to allow for the reimbursement of expenses relating to the acquisition of agricultural conservation easements that do not—by themselves—meet the minimum size (acreage) requirements for agricultural conservation easement purchase, but that adjoin land that is already subject to an agricultural conservation easement.

To date, only a relatively small portion of the $500,000 allocated to the Program by the State Board has been expended. The Department is inclined to accept the suggestion offered by the qualified land trusts, and expand the eligibility requirements for reimbursement grants under the Program. This revision: (1) is consistent with the statutory authority for the Program; (2) is consistent with the definition of "agricultural conservation easement" in section 3 of the Agricultural Area Security Law (at 3 P. S. § 903); and (3) is expected to increase the rate at which Program funds will be spent to reimburse these qualified land trusts for a portion of their costs in acquiring agricultural conservation easements.

The Department hereby rescinds Section 8 of the terms and conditions of the Program (published at 29 Pa.B. 6342) in its entirety and replaces that section with the following:

8. *State Board Review*. The State Board will review any complete, timely application for a reimbursement grant within 60 days of receipt. PDA shall stamp or otherwise identify each complete reimbursement grant application to record the date and the order in which these applications are received. The State Board will consider reimbursement grant applications in the order they are received. The State Board may not approve a reimbursement grant application unless all of the following criteria are met:

a. The application meets the requirements of 71 P. S. § 456.

b. The land use restrictions imposed under the deed of agricultural conservation easement are comparable to restrictions imposed under a deed of agricultural conservation easement acquired in accordance with the Agricultural Area Security Law.

c. The land subject to the agricultural conservation easement is within an agricultural security area of 500 or more acres.

d. One or more of the following is true of the land:

i. The land is comprised of at least 50 contiguous acres, contains at least 50% of soils which are both available for agricultural production and of land capability classes I-IV, as defined by the USDA-NRCS, and contains at least 50% harvested cropland, pasture or grazing land; or

ii. The land is of any acreage but adjoins land that is either currently subject to an agricultural conservation easement purchased under authority of the Agricultural Area Security Law or adjoins land that has been approved by the State Board for agricultural conservation easement purchase under authority of the Agricultural Area Security Law, such that—in the aggregate—the land and the restricted land it adjoins comprise at least 50 contiguous acres; or

iii. Is comprised of 10 or more acres, and adjoins land that is both comprised of 10 or more acres and subject to an agricultural conservation easement held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. § 170(h)(3)).

e. There are sufficient unencumbered funds available to fund the reimbursement grant amount sought in the reimbursement grant application.

Further information may be obtained by contacting the Pennsylvania Department of Agriculture, Attn: Raymond C. Pickering, Director, Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 783-3167.

SAMUEL E. HAYES, Jr.,
Secretary

[Pa.B. Doc. No. 00-1861. Filed for public inspection October 27, 2000, 9:00 a.m.]

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 October 17, 2000.

BANKING INSTITUTIONS

Holding Company Acquisitions

Date	*Name of Corporation*	*Location*	*Action*
10-6-00	M&T Bank Corporation and Its Wholly-Owned Subsidiary, Olympia Financial Corp., Buffalo, New York, acquired 100% of the voting shares of Keystone Financial, Inc., Harrisburg, Pennsylvania	Buffalo, NY	Effective
10-10-00	National Penn Bancshares, Inc., Boyertown, to acquire 100% of the voting shares of Community Independent Bank, Inc., Bernville	Boyertown	Filed

Branch Applications

Date	*Name of Bank*	*Location*	*Action*
10-12-00	Iron and Glass Bank Pittsburgh Allegheny County	3400 South Park Rd. Bethel Park Allegheny County	Filed
10-12-00	Premier Bank Doylestown Bucks County	2100 Street Road Bensalem Bucks County	Opened
10-16-00	The Muncy Bank and Trust Company Muncy Lycoming County	319 S. Main Street Muncy Lycoming County (Drive-Up Facility)	Approved

Branch Relocations

Date	*Name of Bank*	*Location*	*Action*
10-12-00	Parkvale Savings Bank Monroeville Allegheny County	*To:* 74 Allegheny River Boulevard Verona Allegheny County	Approved
		From: 736 Allegheny River Boulevard Verona Allegheny County	
10-16-00	Sun Bank Selinsgrove Snyder County	*To:* 141 Plaza 15 Route 15 North Lewisburg Union County	Approved
		From: Routes 15 & 45 Lewisburg Union County (Approved/Unopened)	

Branch Discontinuances

Date	*Name of Bank*	*Location*	*Action*
10-16-00	Laurel Bank Johnstown Cambria County	324 Curry Hollow Rd. Pleasant Hills Allegheny County	Approved

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS

Consolidations, Mergers and Absorptions

Date	*Name of Credit Union*	*Location*	*Action*
10-11-00	Belco Community Credit Union, Harrisburg, and Quaker Oats Shiremanstown Federal Credit Union, Shiremanstown Surviving Institution— Belco Community Credit Union, Harrisburg	Harrisburg	Filed

JAMES B. KAUFFMAN, Jr.,
Acting Secretary

[Pa.B. Doc. No. 00-1862. Filed for public inspection October 27, 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, Regional Administrator has waived his right to review or object to this proposed permit action under the waiver provision 40 CFR 123.6E.

Persons wishing to comment on the proposed permit are invited to submit a statement to the Field Office indicated as the office responsible, 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 Field Office of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the Field Office considers the public response significant.

Following the 30-day comment period, the Water Management Program Managers 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 received and other information are on file and may be inspected and arrangements made for copying at the Field Office that has been indicated above the application.

Applications for National Pollutant Discharge Elimination System (NPDES) Permit to discharge to State waters.

Northeast Region: Environmental Protection Manager, Water Management, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2553.

PA 0063428. Sewerage, **Blue Mountain Ski Area**, Box 201, 127 Harvard Ave., Palmerton, PA.

This proposed action is for renewal of an NPDES permit to discharge treated sewage into Buckwha Creek in Lower Towamensing Township, **Carbon County**.

The receiving stream is classified for the following uses: cold water migratory fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 based on a design flow of .05 mgd are:

Parameter	*Monthly Average (mg/l)*	*Instantaneous Maximum (mg/l)*
$CBOD_5$	25.0	50.0
Total Suspended Solids	30.0	60.0
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	
pH	6.0 to 9.0 standard units at all times	
Total Residual Chlorine	1.20	2.80

The EPA waiver is not in effect.

PA 0045985. Sewerage, **Mountaintop Area Joint Sanitary Authority**, R. R. 4, Morio Drive, Mountaintop, PA 18707.

This proposed action is for renewal of an NPDES permit to discharge treated sewage into Big Wapwallopen Creek in Dorrance Township, **Luzerne County**.

The receiving stream is classified for the following uses: cold 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 proposed downstream potable water supply (PWS) considered during the evaluation is Danville Borough Water Co. located on the north branch of the Susquehanna River.

The proposed effluent limits for Outfall 001 for a design flow of 4.16 mgd are:

Parameter	*Monthly Average (mg/l)*	*Weekly Average*	*Instantaneous Maximum (mg/l)*
$CBOD_5$	25	40	50
Total Suspended Solids	30	45	60
NH_3-N			
(5-1 to 10-31)	2.5	—	5
(11-1 to 4-30)	7.5	—	15
Dissolved Oxygen	a minimum of 5 mg/l 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		
pH	6.0 to 9.0 standard units at all times		
Total Residual Chlorine	maximum at .05 mg/l at all times		
Total Fluoride	monitor and report		monitor and report
Total Copper	monitor and report		monitor and report

*Limits based on increase of flow from 2.85 mgd to 4.16 mgd and become effective when expanded plant becomes operational.

The EPA waiver is not in effect.

PA 0044423. Industrial, **Lehigh University**, 461 Webster Street, Bethlehem, PA 18015.

This proposed action is for renewal of an NPDES permit to discharge non-contact cooling water into Saucon Creek in the City of Bethlehem, **Northampton County**.

The receiving stream is classified for the following uses: Cold water fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 based on a design flow of 0.002 mdg are:

Parameter	*Monthly Average (mg/l)*	*Daily Maximum (mg/l)*	*Instantaneous Maximum (mg/l)*
Temperature	monitor and report		110°F

The EPA waiver is in effect.

Southcentral Regional Office: Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.

PA 0084034. SIC Code 8211, Sewage, **West Perry School District**, (Carroll Elementary), R. R. 1, Box 7A, Elliottsburg, PA 17024.

This application is for renewal of an NPDES permit for an existing discharge of treated sewage to an unnamed tributary to Sherman Creek in Watershed 7-A (Sherman Creek), in Carroll Township, **Perry 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 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 0.0125 mgd are:

Parameter	*Average Monthly (mg/l)*	*Instantaneous Maximum (mg/l)*
$CBOD_5$	25	50
Suspended Solids	30	60
NH_3-N		
(5-1 to 10-31)	3.5	7.0
(11-1 to 4-30)	10.5	21
Total Residual Chlorine	0.38	1.25
Dissolved Oxygens	minimum of 5.0 at all times	
pH	from 6.0—9.0 inclusive	
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	5,000/100 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.

PA 0009776. SIC Code 3269, Industrial waste, **The Pfaltzgraff Company (West York Facility)**, Bowman Road, P. O. Box 244, Thomasville, PA 17364.

This application is for renewal of an NPDES permit for an existing discharge of treated industrial waste to an unnamed tributary of Codorus Creek in Watershed 7-H (Codorus Creek), in West Manchester Township, **York 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 the Wrightsville Water Supply Company located on the Susquehanna River in Wrightsville Borough, York County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 101 for a design flow of 0.0416 mgd are:

Parameter	*Average (mg/l) Monthly*	*Maximum (mg/l) Daily*	*Instantaneous Maximum (mg/l)*
pH		from 6.0 to 9.0 inclusive	
Total Suspended Solids	10	20	25

In addition, the proposed monitoring requirements for stormwater at the facility include sampling twice per year and monitoring for the following: $CBOD_5$, Chemical Oxygen Demand, Dissolved Iron, Oil and Grease, pH, Total Copper, Total Kjeldahl Nitrogen, Total Lead, Total Phosphorus, Total Suspended Solids and Total Zinc.

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 Program, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448, (570) 327-3666

PA 0045969. Industrial waste, SIC: 5771, **Sunoco, Inc. (R & M)**, 1801 Market Street, 15th Floor/10PC, Philadelphia, PA 19380.

This proposed action is for renewal of an NPDES permit for an existing discharge of treated stormwater runoff from a petroleum marketing terminal to an unnamed tributary to the Susquehanna River in Point Township, **Northumberland 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 Sunbury Municipal Authority located approximately 4 river miles downstream.

The proposed effluent limits for Outfall 001 limits are:

	Concentration (mg/l)			Mass (lbs/day)	
Parameter	Average Monthly	Daily Maximum	Instantaneous Maximum	Average Monthly	Daily Maximum
Total Recoverable Petroleum Hydrocarbons			report		

Other Conditions:
(1) Treatment facilities must be "API approved oil/water separator."
(2) Design requirements for sizing treatments units.
(3) Minimum inspection requirements.
(4) Disposal of oil and solids.
(5) Record keeping.
(6) Preparedness, Prevention and Contingency (PPC) Plan.
(7) No Discharge of Tank Bottom Water.
(8) No discharge of sewage, wash water, boiler blow down or other waste waters.

The EPA waiver is in effect.

PA 0115088. Sewerage, SIC: 4952, **Benton Municipal Water and Sewer Authority**, P. O. Box 516, Benton, PA 17814-0516.

This proposed action is for renewal of an NPDES permit for an existing discharge of treated sewage wastewater to Fishing Creek in Benton Borough, **Columbia 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 Bloomsburg Water Company located on Fishing Creek approximately 15 miles downstream.

The proposed effluent limits for Outfall 001 based on a design flow of 0.132 mgd are:

Parameter	Average (mg/l) Monthly	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
C-BOD_5	25	40	50
TSS	30	45	60
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 0097306. Industrial waste, SIC: 4941, **Municipal Authority of the Township of Robinson**, P. O. Box 15539, Pittsburgh, PA 15244.

This application is for renewal of an NPDES permit to discharge treated process water from the Municipal Authority of the Township of Robinson Water Treatment Plant in Robinson Township, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, 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 Borough Water Authority, located 25 miles below the discharge point.

Outfall 001: existing discharge, design flow of 0.265 mgd.

	Mass (lb/day)		Concentration (mg/l)		
Parameter	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Total Suspended Solids			30.0		60.0
Iron			2.0		4.0
Aluminum			4.0		8.0
Manganese			1.0		2.0
Total Residual Chlorine			0.5		1.0
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

PA 0217077. Industrial waste, SIC, **Almac Machine Company, Inc.**, 205 Morgan Place, Johnstown, PA 15907.

This application is for renewal of an NPDES permit to discharge treated process water and untreated stormwater/groundwater from Almac—Johnstown Plant in the City of Johnstown, **Cambria County**.

The following effluent limitations are proposed for discharge to the receiving waters of Little Conemaugh 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 Saltsburg Municipal Water Works, located at 308 Point Street, Saltsburg, PA 15681, 49 miles below the discharge point.

Outfall 302: existing discharge, design flow of 0.0072 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		60
Oil and Grease			15		30
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

PA 0092827. Sewage, **All American Energy SW, Inc.**, 1851 North Road, McDonald, PA 15057.

This application is for renewal of an NPDES permit to discharge treated sewage from Oakdale Warehouse STP in North Fayette Township, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as drainage swale to Fink 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: West View Borough Municipal Water Authority on the Ohio River.

Outfall 001: existing discharge, design flow of 0.0002 mgd.

	Concentration (mg/l)			
Parameter	*Average Monthly*	*Average Weekly*	*Maximum Daily*	*Instantaneous Maximum*
$CBOD_5$	25			50
Suspended Solids	30			60
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	monitor and report			
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.

PA0028371. Sewage. **Youngsville Municipal Authority**, 40 Railroad Street, Youngsville, PA 16317.

This application is for renewal of an NPDES Permit to discharge treated sewage to Brokenstraw Creek in Youngsville Borough, **Warren 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 Emlenton Municipal Authority on the Allegheny River located at Emlenton, approximately 90 miles below point of discharge.

The proposed effluent limits, based on a design flow of 0.324 mgd, are:

Outfall No. 001

	Interim Limits		
Parameter	*Monthly Average (mg/l)*	*Weekly Average (mg/l)*	*Instantaneous Maximum (mg/l)*
Flow		monitor and report	
$CBOD_5$	25	40	50
Total Suspended Solids	30	45	60
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		100,000 ml as a geometric average	

	Interim Limits		
Parameter	Monthly Average (mg/l)	Weekly Average (mg/l)	Instantaneous Maximum (mg/l)
Total Residual Chlorine	0.5		1.6
pH		6.0—9.0 at all times	

The proposed effluent limits, based on a design flow of 0.624 mgd, are:

Outfall No. 001

	Final Limits		
Parameter	Monthly Average (mg/l)	Weekly Average (mg/l)	Instantaneous Maximum (mg/l)
Flow		monitor and report	
$CBOD_5$	25	40	50
Total Suspended Solids	30	45	60
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		100,000 ml as a geometric average	
Total Residual Chlorine	0.5		1.6
pH		6.0—9.0 at all times	

The EPA waiver is in effect.

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 name, address and telephone number of the protestor, identification of the plan or application to which the protest is addressed and a concise statement or protest 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 protester will be notified in writing of the time and place of any scheduled hearing or conference concerning the plan or action or application to which the protest relates. To insure consideration by the Department prior to final action on permit application 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.

Industrial waste and sewerage applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

A. 4000403. Sewerage. **Wyoming Valley Sanitary Authority**, P. O. Box 33A, Wilkes-Barre, PA 18703-1333. Application to replace three existing screen pumps with four submersible pumps, located in Hanover Township, **Luzerne County**. Application received in the Regional Office September 5, 2000.

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 applicaitons should contact Mary DiSanto at (717) 705-4732.

A. 6700201. Industrial waste submitted by **United Defense LP**, P. O. Box 15512, York, PA 17405-1512 in West Manchester Township, **York County** to install a dissolved air flotation unit at the UDLP Industrial Wastewater Plant was received in the Southcentral Region on October 2, 2000.

A. 2170410 (amendment 00-1). Sewage submitted by **Lower Allen Township Authority**, 120 Limekiln Road, New Cumberland, PA 17070-2428 in Fairview Township, **York County** to re-rate their existing sewage treatment plant was received in the Southcentral Region on October 6, 2000.

A. 0100406. Sewage submitted by **Test Enterprises, Inc.**, 1235 Abbottstown Pike, Hanover, PA 17331 in Berwick Township, **Adams County** to install an aeration treatment plant to serve 72+ dwelling units was received in the Southcentral Region on October 6, 2000.

Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

A. 0483202-A1. Industrial waste, **Industrial Waste Inc**, 333 N. Summit Street, P. O. Box 10086, Toledo, OH 43699-0086. Application for the modification and operation to the existing chlorine contact tank to include a sulfonation process to serve the Darlington Site located in Darlington Township, **Beaver County**.

A. 9939-S-A1. Sewerage, **McCandless Township Sanitary Authority**, 9600 Perry Highway, Pittsburgh, PA 15237. Application for the replacement and operation of an interceptor to serve Rochester Road located in the town of McCandless, **Allegheny 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. These 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 discharge.

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 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the Regional Office or County Conservation District Office indicated as the responsible office, within 30 days from the date of this public notice. A copy of the written comments should be sent to the County Conservation District Office. 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 Regional Office of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the Regional Office considers the public response significant.

Following the 30-day comment period, the Water 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 appealable 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 County Conservation District Office or the Department Regional Office indicated 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.

Northeast Regional Office: Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.

Luzerne County Conservation District, District Manager, 485 Smith Pond Road, Lehman, PA 18627-0250, (717) 674-7991.

NPDES Permit PAS10R036. Stormwater. **Chris L. Rau**, Cherry Ridge, HC2 Box 2537, Jim Thorpe, PA 18229, has applied to discharge stormwater from a construction activity located in Dennison Township, **Luzerne County**, to Mill Creek Watershed.

Southwest Regional Office: Regional Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

NPDES PAS101024. Stormwater. **Cambria County Industrial Development Corporation**, 209 South Center Street, Ebensburg, PA 15931 has applied to discharge stormwater from a construction site located in Cambria Township, **Cambria County** to Stewart Run, HQ-CWF.

NPDES PAS10W081. Stomwater. **J. R. Properties-I, Inc.**, 600 Waterdam Plaza Road, McMurray, PA 15317 has applied to discharge stormwater from a construction site located in North Strabane Township, **Washington County** to Little Chartiers Creek, HQ-WWF.

NPDES PAS103118. Stormwater. **Dominion Transmission Corporation**, 445 West Main Street, P. O. Box 2450, Clarksburg, WV 26302-2450 has applied to discharge stormwater from a construction site located in Green Township and Montgomery Township, **Indiana County** to Hazlett Run (HQ-CWF) and Howell's Run (CWF).

SAFE DRINKING WATER

Application received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Bureau of Water Supply Management, Division of Drinking Water Management, 400 Market Street, Harrisburg, PA 17105, Contact: Godfrey C. Maduka, (717) 787-9037.

A. 9996494. Danone International Brands, Inc., 208 Harbor Drive, Stanford, CT 06902, Philippe Caradec, VP Quality, Environmental & Regulatory Affairs. Applicant requests Department approval to sell bottled water in Pennsylvania under the brand names: Walgreens Drinking Water, Pure American Spring Water, CVS Natural Spring Water, Great Buy Spring Water, Pure American Distilled Water, Walgreens Distilled Water, Great Buy Distilled Water and CVS Distilled Water.

Regional Office: Northcentral Field Operations, Environmental Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701.

Minor Amendment. The Department has received a permit application from **Blossburg Municipal Authority**, 206 Main Street, Blossburg, PA 16912, Blossburg Borough, **Tioga County**. The application is for replacement of media and porous plates in filter and sandblast and paint filter tank of the Belman Run traveling bridge filter rehab.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

Preamble 1

Acknowledgment of Notices of Intent to Remediate submitted under the Land Recycling and *Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).*

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (Act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the background standard, Statewide health standard, the site-specific standard, or who intend to remediate a

site as a special industrial area, must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known 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.

Branch Road Farm Property, East Rockhill Township, **Bucks County**. Walter H. Hungarter, III, RT Environmental Services, Inc., 215 W. Church Road, King of Prussia, PA 19406, has submitted a revised Notice of Intent to Remediate site soil contaminated with heavy metals and pesticides. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in *The News Herald* on July 12, 2000.

Celotex Site, City of Philadelphia, **Philadelphia County**. Jacenty Serwik, Urban Engineers, Inc., 530 Walnut St., 14th Floor, Philadelphia, PA 19106, has submitted a Notice of Intent to Remediate site soil contaminated with BTEX and polycyclic aromatic hydrocarbons and site groundwater contaminated with solvents, BTEX, and polycyclic aromatic hydrocarbons. The applicant proposes to remediate the site to meet Statewide health and site-specific standards. A summary of the Notice of Intent to Remediate was reported to have been published in *The Philadelphia Daily News* on August 4, 2000.

Former Diamond Oil Property—Lot 2, City of Coatesville, **Chester County**. James R. Taylor, Taylor Geoservices, 341 Dartmouth Avenue, Swarthmore, PA 19081, has submitted a Notice of Intent to Remediate site soil and groundwater contaminated with BTEX 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 Brandywine Ledger* on August 10, 2000.

Balabanovic Residence, Norristown Borough, **Montgomery County**. Joshua Trewitz, Marshall Miller & Assoc., 3913 Hartsdale Drive, Suite 1306, Camp Hill, PA 17011, has submitted a Notice of Intent to Remediate site soil contaminated with BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in *The Times Herald* on August 21, 2000.

Richmond Waterfront Industrial Park LLC, City of Philadelphia, **Philadelphia County**. A. L. Holmstrom, Rohn & Haass Company, Box 584, Bristol, PA 19107, has submitted a Notice of Intent to Remediate site soil, groundwater, surface water and sediment contaminated with PCBs, lead, heavy metals, pesticides, dioxin, solvents, BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in *The Philadelphia Inquirer* on September 1, 2000.

Home Depot, USA, (Phila.) Port Richmond, City of Philadelphia, **Philadelphia County**. Christopher Orzechowski, RT Environmental Services, Inc., 215 W. Church Road, King of Prussia PA 19406, has submitted a Notice of Intent to Remediate site soil contaminated with lead, BTEX and polycyclic aromatic hydrocarbons. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in *The Philadelphia Inquirer* on September 20, 2000.

Bensalem Redevelopment, L.P., Former Elf-Atochem NA, Inc., Cornwells Heights Plant, Bensalem Township, **Bucks County**. C. Peter Barringer, Environmental Resources Management, 855 Springdale Drive, Exton PA 19341, has submitted a Notice of Intent to Remediate site soil, groundwater and surface water contaminated with PCBs, lead, heavy metals, pesticides, solvents, BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons. The applicant proposes to remediate the site to meet Statewide health, background and site-specific standards. A summary of the Notice of Intent to Remediate was reported to have been published in *The Philadelphia Daily News* on September 25, 2000.

3207 Kennedy Road Property, East Norriton Township, **Montgomery County**. Michael Williams, Clayton Services, Corp., 111 North 2nd Street, North Wales PA 19454, has submitted a Notice of Intent to Remediate site soil contaminated with BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons. The applicant pro-

poses to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in *The Bucks Mont Courier* on September 27, 2000.

Southcentral Regional Office: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4705.

Boas School, City of Harrisburg, **Dauphin County**. Skelly & Loy, Inc., 2601 North Front Street, Harrisburg, PA 17110 and Boas Associates, P. O. Box 622, Lemoyne, PA 17043 have submitted a Notice of Intent to Remediate site soils and groundwater contaminated with PHCs. The applicants propose to remediate the site to meet the Statewide health standard requirements. A summary of the Notice of Intent to Remediate was reported to have been published in the *Harrisburg Patriot News* on October 5, 2000.

Distribution Pole 40732S30345, Borough of Lititz, **Lancaster County**. PPL Generation LLC, Two North Ninth Street, Allentown, PA 18101 has submitted a Notice of Intent to Remediate site soils contaminated with PCBs. The applicant proposes to remediate the site to meet the Statewide health standard requirements. A summary of the Notice of Intent to Remediate was reported to have been published in the *Lancaster Intelligencer Journal/New Era* on August 28, 2000.

Alex and Dawn Marie Acevedo Residence, Rapho Township, **Lancaster County**. Alex and Dawn Marie Acevedo, 32 Crystal Court, Manheim, PA 17545 and Hydrocon Services, Inc., 2945 South Pike Avenue, Allentown, PA 18103 have submitted a Notice of Intent to Remediate site soils contaminated with BTEX and PAHs. The applicants propose to remediate the site to meet the Statewide health standard requirements. A summary of the Notice of Intent to Remediate was reported to have been published in the *Lancaster Intelligencer Journal* on August 17, 2000.

SOLID AND HAZARDOUS WASTE

RESIDUAL WASTE PROCESSING FACILITIES

Application received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and the residual waste regulations for a general permit to operate residual waste processing facilities and the beneficial use of residual waste other than coal ash.

Central Office: Division of Municipal and Residual Waste, 14th Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101-2301.

General Permit Application No. WMGR063. Advanced Recycling Technology, Inc., 149 Main Street, P. O. Box 374, Philmont, NY 12565. General Permit Number WMGR063 for processing of combustion residues, metallurgical process residues, sludges and scales, chemical wastes, generic manufacturing wastes, spent catalysts, batteries, and non-hazardous residue from treatment of hazardous waste prior to metal reclamation at a smelter. The processing involves grinding, drying, blending, and combustion at their facility located at 340 South Broad Street, Hallam, PA 17406. The Department accepted the application as administratively complete on September 24, 1999. A request from the applicant to expand the types of residual waste to be covered under the application was received on September 28, 2000.

Comments concerning the application should be directed to Ronald C. Hassinger, Chief, General Permits and Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Land Recycling and Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472. Persons interested in obtaining more information about the general permit application may contact the Division at (717) 787-7381. TDD users may contact the Department through the Pennsylvania Relay Service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to, and approval or denial of the application.

Applications received under the Solid Waste Act (35 P. S. §§ 6018.101—6018.1003) and regulations to operate a solid waste processing or disposal area or site.

Southwest Regional Office: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

A. 300370. Allegheny Energy Supply Co., LLC, 800 Cabin Hill Drive, Greensburg, PA 15601-1689. Harfield's Power Station, Route 21, P. O. Box 728, Masontown, PA 15063. An application for a reissuance and acceptance of additional wastes to a residual waste landfill in Monongahela Township, **Greene County** was received in the Regional Office on October 10, 2000.

A. 300809. Allegheny Energy Supply Co., LLC, 800 Cabin Hill Drive, Greensburg, PA 15601-1689. Mitchell Power Station, 50 Electric Way, Courtney, PA 15067. An application for a reissuance and acceptance of additional wastes to a residual waste landfill in Union Township, **Washington County** was received in the Regional Office on October 11, 2000.

AIR QUALITY

Notice of Plan Approval and Operating Permit Applications

Nonmajor Sources and Modifications

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State operating permit and Title V operating permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals 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 receive a copy of the proposed Plan Approval or Operating Permit must indicate their interest to the Department Regional Office within 30 days of the date of this notice, and must file protests or comments on

a proposed Plan Approval or Operating Permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Any comments or protests filed with the Department Regional Offices must include a concise statement of the objections to the issuance of the plan approval or operating permit and relevant facts, which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the Regional Office identified below. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121 through 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) and 25 Pa. Code Chapter 127, Subchapter F (relating to operating permit requirements).

Northeast Regional Office: Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, (570) 826-2531.

58-317-001: Pennfield Corp. (711 Rohrerstown Road, P. O. Box 4366, Lancaster, PA 17604) for operation of a grain processing operation in Bridgewater Township, **Susquehanna County**.

48-309-110: Keystone Cement Co. (P. O. Box A, Bath, PA 18014) for operation of raw material transfer system in East Allen Township, **Northampton County**.

48-00008: Mack Printing Co. (1991 Northampton Street, Easton, PA 18042-3189) for a Synthetic Minor Operating Permit for commercial printing and bookbinding in Wilson Borough, **Northampton County**.

45-00014: Mack Printing Co. (34 North Crystal Street, East Stroudsburg, PA 18301) for a Synthetic Minor Operating Permit for commercial printing and bookbinding in East Stroudsburg Borough, **Monroe County**.

39-00043: Beatrice Cheese, Inc. (1002 MacArthur Road, Whitehall, PA 18052) for a Synthetic Minor Operating Permit for a fluid milk processing facility in Whitehall Township, **Lehigh County**.

35-00045: Eureka Stone Quarry, Inc. (P. O. Box 249, Chalfont, PA 18914) for a Synthetic Minor Operating Permit for a hot mix asphalt, sand, gravel and concrete facility in Covington Township, **Lackawanna County**.

45-00013: All American Sports Corp. (P. O. Box 305, Stroudsburg, PA 18301) for a Synthetic Minor Operating Permit for a liquid coating operation in Stroudsburg Borough, **Monroe County**.

45-00003: Reliant Energy Mid Atlantic Power Holdings LLC (1001 Broad Street, Johnstown, PA 15907) for a Synthetic Minor Operating Permit for transportation and utilities electric services in Middle Smithfield Township, **Monroe County**.

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

28-03033: Nitterhouse Masonry Products, LLC. (859 Cleveland Avenue, Chambersburg, PA 17201) for a Natural Minor Operating Permit for a concrete and brick manufacturing facility in Chambersburg Borough, **Franklin County**.

28-03034: Nitterhouse Masonry Products, LLC. (859 Cleveland Avenue, Chambersburg, PA 17201) for a Natural Minor Operating Permit for a concrete block and brick manufacturing facility in Guilford Township, **Franklin County**.

28-03035: Nitterhouse Concrete Products, Inc. (2655 Molly Pitcher Highway South, Chambersburg, PA 17201) for a Natural Minor Operating Permit for a concrete products manufacturing facility in Guilford Township, **Franklin County**.

67-03063: Advanced Recycling Technology, Inc. (340 South Broad Street, Hallam, PA 17406) for the construction of an industrial dryer controlled by a wet scrubber in Hallam Borough, **York County**.

Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.

10-021G: Indspec Chemical Corp. (133 Main Street, Petrolia, PA 16050) for operation of a reactor in Petrolia, **Butler County**.

25-028C: International Paper Co. (1540 East Lake Road, Erie, PA 16533) for operation of a lime silo and lime slaker in Erie, **Eric County**.

25-069D: Engelhard Corp. (1729 East Avenue, Erie, PA 16503) for operation of a metal oxide catalyst in Erie, **Erie County**.

37-309A: Kasgro Rail Corp. (320 East Cherry Street, New Castle, PA 16102) for operation of a paint booth in New Castle, **Lawrence County**.

37-399-009A: Hickman Mfg. Inc. (R. D. 2, Route 18, New Beaver, PA 16141) for operation of a roof coating process in New Beaver Borough, **Lawrence County**.

37-00011: Dairy Farmers of America (R. D. 1, P. O. Box 198, New Wilmington, PA 16142) for a Natural Minor Operating Permit for operation of a cheese manufacturing plant with associated boilers, whey spray dryer and waste water treatment plant with flare in Wilmington Township, **Lawrence County**.

Notice of Intent to Issue Title V Operating Permits

Under 25 Pa. Code §§ 127.521 and 127.424, 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 using the appropriate regional office telephone number noted below. For additional information, contact the appropriate regional office noted.

Interested persons may submit written comments, suggestions or objections concerning the proposed Title V permit to the regional office within 30 days of publication of this notice. Written comments submitted to the Department during the 30-day public comment period shall include the name, address and telephone number of the person submitting the comments, along with the reference number of the proposed permit. The commentator should also include a concise statement of any objections to the permit issuance and the relevant facts upon which the objections are based. Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the Regional Office identified. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

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.

32-00055: Edison Mission Energy (1750 Power Plant Road, Homer City, PA 15748) for their 1,850 MW coal powered electrical generation plant in Center Township, **Indiana County**.

PLAN APPROVALS

Applications received and intent to issue Plan Approvals under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B (relating to plan approval requirements).

Southeast Regional Office: Air Quality Program, 555 North Lane, Conshohocken, PA 19428, telephone (610) 832-6242.

46-0035: SmithKline Beecham Pharmaceuticals (709 Swedeland Road, King of Prussia, PA 19406) for modification of Building No. 11 Acid Gas Scrubber in Upper Merion Township, **Montgomery County**.

46-0035: SmithKline Beecham Pharmaceuticals (709 Swedeland Road, King of Prussia, PA 19406) for modification to remove current permit conditions identified by the Department as not applicable in Upper Merion Township, **Montgomery County**.

15-0015B: Sartomer Co., Inc. (610 South Bolmar Street, West Chester, PA 19382) for an amendment of an emergency Generator in West Chester Borough, **Chester County**.

46-313-093A: SmithKline Beecham Research Co. (1250 South Collegeville Road, Collegeville, PA 19426) for modification of three centrifuges and one filter dryer in Upper Providence Township, **Montgomery County**.

AQ-SE-0010: Valley Forge Land Cleaning & Wood Recycling (Route 23 and Frog Hollow Road, Phoenixville, PA 19460) for construction of a Portable Wood Grinder in East Vincent Township, **Chester County**.

23-0014A: Kimberly-Clark Tissue Co. (Front Street and Avenue of the States, Chester, PA 19013) for an amendment of the No. 12 Paper Machine—Dryer Burner in City of Chester, **Delaware County**.

23-0021A: Congoleum Corp. (4401 Ridge Road, Trainer, PA 19061) for construction of a 1,000 kilowatt emergency generator in Trainer Borough, **Delaware County**.

46-0208: PPL Upper Hanover LLC (Gravel Pike and Route 29, East Greenville, PA 18041) for installation of two simple cycle turbines in Upper Hanover Township, **Montgomery County**.

15-310-044: Glasgow, Inc. (660 Morehall Road, Malvern, PA 19355) for construction of a portable crushing plant in East Whiteland Township, **Chester County**.

46-310-054: Glasgow, Inc. (309 and Hartman, Montgomeryville, PA 18936) for construction of a portable crushing plant in Montgomery Township, **Montgomery County**.

46-310-055: Glasgow, Inc. (Church Road, King of Prussia, PA 19046) for construction of a portable crushing plant in Upper Merion Township, **Montgomery County**.

46-0198C: Blommer Chocolate Co. (1101 Blommer Drive, East Greenville, PA 18041) for installation of a W400 Winnower and Baghouse in Upper Hanover Township, **Montgomery County**.

Northcentral Regional Office: Air Quality Program 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.

41-327-003: PMF Industries, Inc. (2601 Reach Road, Williamsport, PA 17701) for construction of a solvent vapor degreaser in the City of Williamsport, **Lycoming County**. This degreaser is subject to Subpart T of the National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 63.

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

03-207A: Pioneer Mid-Atlantic, Inc. (400 Industrial Boulevard, New Kensington, PA 15068) for installation of a diesel engine, generator and tanks at the Allegheny II Dredge in Gilpin Township, **Armstrong County**.

32-330B: Senate Coal Mines, Inc. (One Energy Place, Suite 5100, Latrobe, PA 15650) for installation of a generator at the Ondo Mine in Brushvalley Township, **Indiana County**.

65-864B: Zeus Aluminum Products (USA) Inc. (R. R. 6 Box 20, Latrobe Industrial Park, Latrobe, PA 15650) for installation of a sand reclamation unit at the Latrobe Plant in Unity Township, **Westmoreland County**.

03-147A: Asbury Graphite Mills, Inc. (R. D. 7, Box 1, Kittanning, PA 16201) for installation of a cage mill crusher at the Kittanning Division in North Buffalo Township, **Armstrong County**.

65-788K: Sony Electronics, Inc. (1001 Technology Drive, Mt. Pleasant, PA 15666) for installation of a lacquer spray machine at the Pittsburgh Manufacturing Center in Mt. Pleasant Township, **Westmoreland County**.

65-891B: Firestone Building Products Co. (525 Congressional Boulevard, Carmel, IN 46032) to replace the blowing agent, HCFC-141B with Pentane, and an addition of a regenerative thermal oxidizer to the process at the Youngwood Plant in Youngwood Boro, **Westmoreland County**.

04-439A: Arrow Terminals L.P. (2701 Midland-Beaver Road, Industry, PA 15052) for the barge unloading at the Industry Terminal in Industry Borough, **Beaver County**.

04-707B: Quality Aggregates, Inc. (200 Neville Road, Pittsburgh, PA 15225) for installation of a barge unloading excavator at the Colona Dock in Monaca Borough, **Beaver County**.

Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.

24-123B: Superior Greentree Landfill, Inc. (635 Toby Road, Kersey, PA 15846) to install an upgraded enclosed flare. 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. The enclosed flares shall be designed and operated to either reduce NMOC by 98 weight percent or reduce the outlet NMOC concentration to less than 20 parts per million by volume, dry basis as hexane at 3% oxygen.

2. The following conditions are for the LFG Specialties Flare, Model No. EF1255I16 or equivalent:

a) Within 30 days of the operator's intent to commence operation, a test procedure and a sketch with dimensions indicating the location of sampling ports and other data to ensure the collection of representative samples shall be submitted to the Department.

b) Within 90 days of the operator's intent to commence operation, stack tests shall be performed in accordance with the provisions of Chapter 139 to show that the flare is complying with condition 1 and to determine the emission rate of oxides of nitrogen. The stack test shall be performed when the enclosed flare is initially started. The expected flow rate will be approximately 1,000 cfm. As the LFG flow rate increases, additional stack tests will be required. Stack tests shall be performed when the enclosed flare is operated at a LFG flow rate of 2,500 cfm and 5,000 cfm (maximum design capacity).

c) At least 2 weeks prior to the test, the Department shall be informed of the date and time of the test.

d) Within 60 days after completion of the test, two copies of the complete test report, including all operating conditions, shall be submitted to the Department for approval.

3. The following conditions are for the John Zink Flare, Model ZTOF or equivalent:

a) Within 30 days of the operator's intent to commence operation, a test procedure and a sketch with dimensions indicating the location of sampling ports and other data to ensure the collection of representative samples shall be submitted to the Department.

b) Within 90 days of the operator's intent to commence operation, stack tests shall be performed in accordance with the provisions of Chapter 139 to show that the flare is complying with condition 1 and to determine the emission rates for NO_x and CO emissions. The stack test shall be performed while the enclosed flare is operated at the maximum rated capacity as stated on the application or the maximum achievable flow rate from the existing gas collection system at the time the performance test is conducted.

c) At least 2 weeks prior to the test, the Department shall be informed of the date and time of the test.

d) Within 60 days after completion of the test, two copies of the complete test report, including all operating conditions, shall be submitted to the Department for approval.

4. Temperature sensing devices shall be installed on both flares at a place to show that the exhaust gases, prior to being discharged into the atmosphere.

a) The LFG Specialties or equivalent flare (expansion area) shall achieve a minimum temperature of 1500°F for at least 0.3 second. If, during the stack test, a temperature higher than 1500°F is maintained, then the flare shall always be operated at the higher temperature.

b) The John Zink or equivalent flare (original disposal area) shall achieve a minimum temperature of 1800°F for at least 1 second. If, during the stack test, a temperature other than 1800°F is maintained and all requirements are achieved, the flare shall always be operated, at the minimum, of the tested temperature.

5. Temperatures shall be recorded whenever the enclosed flares are in operation. The recording charts shall be made available to the Department personnel upon request. These charts shall be maintained for a period of not less than 6 months.

6. The enclosed flares must be enclosed ground types which are shrouded with no visible flame shooting from the flare.

7. The facility shall either:

a) Install, calibrate and maintain a gas flow rate measuring device that shall record the flow to the control device at least every 15 minutes; or

b) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type of configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

8. Any gas collected from the landfill that is not routed to a treatment system that processes gas for subsequent sale or use, shall be controlled by one of the enclosed flares.

9. The facility shall comply with New Source Performance Standards (NSPS) 40 CFR Part 60 Subpart WWW and shall comply with all applicable requirements of this subpart, 40 CFR 60.4 requires submission of copies of all requests, reports, applications, submittals and other communications to both EPA and the Department. The EPA copies shall be forwarded to: Director, Air, Toxics and Radiation Division, US EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103.

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 such 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 §§ 77.121—77.123 and 86.31—86.34 (relating to public notices of filing of permit applications, opportunity for comment, and informal conferences).

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. The NPDES permits will contain, at a minimum, technology-based effluent limitations (as described in the Department's regulations—25 Pa. Code §§ 77.522, 87.102, 88.92, 88.187, 88.242, 89.52, and 90.102) for iron, manganese, suspended solids, settleable solids, alkalinity, and pH. In addition to the above, more restrictive effluent limitations, restrictions on discharge volume, or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit when necessary for compliance with water quality standards (in accordance with 25 Pa. Code Chs. 93 and 95). Persons or agencies which have requested review of the NPDES permit requirements for a particular mining activity within the above-mentioned public comment period will be provided with a 30-day period to review and submit comments on those requirements.

Written comments or objections should contain the name, address and telephone number of persons submitting comments or objections; application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

Cambria Office, 286 Industrial Park Road, Ebensburg, PA 15931-4119.

Coal Applications Received:

56920105, Permit Revision. Sanner Energies, Inc. (1179 Rockdale Road, Rockwood, PA 15557-6409), to change the land use from woodland to cropland and unmanaged natural habitat in Southampton Township, **Somerset County**, affecting 100.2 acres, receiving stream unnamed tributaries to North Branch of Jennings Run, application received October 2, 2000.

11960103, Permit Renewal for reclamation only. K & J Coal Company, Inc. (P. O. Box 189, Westover, PA 16692), for continued restoration of a bituminous surface mine in Chest Township, **Cambria County**, affecting 29.0 acres, receiving stream unnamed tributaries to Chest Creek, application received October 5, 2000.

56900201. Permit for reclamation only. RNS Services, Inc. (P. O. Box 38, 7 Riverside Plaza, Blossburg, PA 16912), for continued restoration of a bituminous coal refuse reprocessing surface mine in Lincoln Township, **Somerset County**, affecting 8.0 acres, receiving stream unnamed tributary to Quemahoning Creek, application received October 11, 2000.

56890108, Permit Revision. Godin Brothers, Inc. (136 Godin Drive, Boswell, PA 15531), for a land use change from woodland to unmanaged natural habitat on properties owned by Coal Junction Coal Company, Inc. and James Godin, Gladys Godin, and David Godin in Jenner Township, **Somerset County**, affecting 82.9 acres, receiving stream unnamed tributary to Quemahoning Creek; and unnamed tributary to Hoffman Run, application received October 11, 2000.

32900106, Permit Revision. Mears Enterprises, Inc. (P. O. Box 157, Clymer, PA 15728), for a land use change from forestland to unmanaged natural habitat on the lands of Boyzy King and Albert Stiffler in Grant Township, **Indiana County**, affecting 260.0 acres, receiving stream unnamed tributaries to Little Mahoning Creek, application received October 10, 2000.

Greensburg District Office, R. R. 2, Box 603-C, Greensburg, PA 15601.

03950109. Walter L. Houser Coal Co., Inc. (R. R. 9, Box 434, Kittanning, PA 16201). Renewal application received for continued reclamation of a bituminous surface mine located in Mahoning Township, **Armstrong County**, affecting 80.0 acres. Receiving streams: unnamed tributary to Mahoning Creek and Mahoning Creek. Renewal application received: October 11, 2000.

Hawk Run District Office, P. O. Box 209, Off Empire Road, Hawk Run, PA 16840.

17960101. Sky Haven Coal, Inc. (R. D. 1, Box 180, Penfield, PA 15849), revision to an existing bituminous surface mine permit for a change in permit acreage from 170.7 to 184.8 acres. The permit is located in Morris Township, **Clearfield County**. Receiving streams: Hawk Run and two unnamed tributaries to Hawk Run. Application received September 22, 2000.

17950119. Moravian Run Reclamation Co., Inc. (605 Sheridan Drive, Clearfield, PA 16830), revision to an existing bituminous surface mine permit for a postmining change in land use from pastureland to forestland and wildlife habitat. The permit is located in Pike Township, **Clearfield County** and affects 168 acres. Receiving streams: unnamed tributaries to Little Clearfield Creek. Application received September 22, 2000.

17970119. Moravian Run Reclamation Co., Inc. (605 Sheridan Drive, Clearfield, PA 16830), transfer of an existing bituminous surface mine permit from Penn Grampian Coal Company, located in Gulich Township, **Clearfield County** affecting 52.7 acres. Receiving streams: Muddy Run. Application received September 29, 2000.

17000904. R. B. Contracting (R. D. 1, Box 13, Curwensville, PA 16833), commencement, operation and restoration of an Incidental Coal Extraction permit in Pike Township, **Clearfield County** affecting 6.5 acres. Receiving streams: unnamed tributaries to Little Clearfield Creek. Application received September 28, 2000.

17000905. Shud's Coal Hounds, Inc. (R. R. 1, Box 301, Houtzdale, PA 16651), commencement, operation and restoration of an Incidental Coal Extraction permit in Bigler Township, **Clearfield County** affecting 5.7 acres. Receiving streams: unnamed stream to Upper Morgan Run. Application received September 28, 2000.

Knox District Office, P. O. Box 669, Knox, PA 16232.

33950109. Original Fuels, Inc. (P. O. Box 343, Punxsutawney, PA 15767). Renewal of an existing bituminous surface strip and auger operation in Beaver Township, **Jefferson County** affecting 110.5 acres. Receiving streams: Unnamed tributary of Tarkiln Run and Red Run to Redbank Creek to the Allegheny River. Application for reclamation only. Application received October 6, 2000.

33970106. M. B. Energy, Inc. (P. O. Box 1319, Indiana, PA 15701-1319). Renewal of an existing bituminous surface strip and auger operation in Henderson and Bell Townships, **Jefferson and Clearfield Counties** affecting 300.00 acres. Receiving streams: Unnamed tributaries of Laurel Run and Laurel Run. Application for reclamation only. Application received October 10, 2000.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

54803203T2. International Anthracite Corporation (213 S. 16th Street, Pottsville, PA 17901), transfer of an existing coal refuse reprocessing operation from Harriman Coal Corporation in Hegins Township, **Schuylkill County**, affecting 76.0 acres, receiving stream—Rausch Creek. Application received September 27, 2000.

54930102T. International Anthracite Corporation (213 S. 16th Street, Pottsville, PA 17901), transfer of an existing anthracite surface mine operation from Harriman Coal Corporation in Porter Township, **Schuylkill County**, affecting 460.0 acres, receiving stream—none. Application received September 27, 2000.

54880203T2. Meadowbrook Coal Company (Box 477, Lykens, PA 17048), transfer of an existing coal refuse reprocessing operation from Harriman Coal Corporation in Tremont Township, **Schuylkill County** affecting 15.8 acres, receiving stream—Lorberry Creek. Application received September 27, 2000.

54683045T. Blaschak Coal Corp. (P. O. Box 12, Mahanoy City, PA 17948), transfer of an existing anthracite surface mine operation from Pagnotti Enterprises, Inc. in Union, Butler and West Mahanoy Townships, **Schuylkill County** affecting 743.0 acres, receiving stream—none. Application received October 10, 2000.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

Small Noncoal (Industrial Mineral) Bond Release Application

40980803. Diane Gabriel (R. R. 1 Box 440B, Hazleton, PA 18201), Stage I and II bond release of a small quarry operation in Butler Township, **Luzerne County** affecting 5.0 acres for $5,000 on property owned by Kevin Lamont. Application received October 2, 2000.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

Noncoal Applications Received

09840301C5. Waste Management Disposal Services of PA, Inc. (1121 Bordentown Road, Morrisville, PA 19067), renewal of NPDES Permit No. PA0614301 in Falls Township, **Bucks County**, receiving stream—unnamed tributary to Delaware River. Application received October 2, 2000.

8274SM5A1C5. D. M. Stoltzfus & Son, Inc. (P. O. Box 84, Talmage, PA 17580), correction to an existing quarry operation in Fulton Township, **Lancaster County** affecting 330.23 acres, receiving stream—Octoraro Creek. Application received October 5, 2000.

Cambria Office, 286 Industrial Park Road, Ebensburg, PA 15931-4119.

Industrial Minerals NPDES Permit Renewal Applications Received:

4274SM26. New Enterprise Stone & Lime Company, Inc. (P. O. Box 77, New Enterprise, PA 16664), renewal of NPDES Permit No. PA0599174, Cromwell Township, **Huntingdon County**, receiving stream Shade Creek. NPDES Renewal application received October 11, 2000.

APPLICATIONS RECEIVED UNDER SECTION 401: FEDERAL WATER POLLUTION 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 Pollutiion Control Act.

Southeast Regional Office, Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

E09-811. Encroachment. **Lower Makefield Township**, 1100 Edgewood Road, Yardley, PA 19067. To perform the following activities associated with the bridge replacement and roadway improvements for Sandy Run Road: 1. To remove an existing simple span bridge and to construct and maintain, in its place, a twin cell precast concrete box culvert with cast-in-place concrete wing walls across Brock Creek (WWF). Each of the precast box culverts will have a clear span of 22.0 feet. The left cell

will be placed along the stream channel and will have a rise of approximately 6.0 feet (1.0 feet depressed) and the right cell will be placed along the overbank and will have a rise of approximately 3.5 feet. 2. To install and maintain 490 linear feet of cellular concrete lining along the right overbank to provide scour protection for the ingress and egress of flood flows in this area. 3. To relocate and maintain a 30-inch RCP stormwater outfall structure and to install and maintain a 24-inch RCP stormwater outfall structure associated with proposed drainage facilities. 4. To relocate and maintain an existing 8-inch sanitary sewer pipe on the downstream side of the culvert. 5. To modify and maintain an existing stormwater drainage channel and to provide lining protection with R-6 riprap. 6. To construct and maintain temporary cofferdams associated with the diversion of stream flow through the project area. The site is located approximately 300 feet northwest of the intersection of Sandy Run Road and College Avenue (Trenton West, NJ-PA USGS Quadrangle N: 20.1 inches, W: 13.3 inches) in Lower Makefield Township, **Bucks County**.

EA09-009SE. Encroachment. **J. Kevan Busik**, 6603 Route 202, Box 778, New Hope, PA 18938. A request for an Environmental Assessment to construct, operate and maintain a nonjurisdictional dam across a small intermittent tributary to the Cuttalossa Creek (HQ-CWF). The dam and associated impoundment will impact about 350-linear foot of the stream. The project is situated approximately 200-feet northeast of the intersection of Paxson Road and Paxson Hill Road (Lumberville, PA-NJ Quadrangle N: 4.30 inches; W: 2.00 inches) in Solebury Township, **Bucks County**.

Southcentral Regional Office: Section Chief, Water Management Program, Soils and Waterways Section, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110, (717) 705-4707.

E22-418. Encroachment. **Milton Hershey School**, Founders Hall, Hershey, PA 17033. To remove a wooden plank pedestrian bridge and (1) construct and maintain a twin cell pre-cast concrete box culvert having twin spans of 14.0 feet and a height of 5.0 feet with concrete wing walls in an unnamed Tributary to an unnamed Tributary to Spring Creek (WWF); (2) construct and maintain a twin cell, pre-cast concrete box culvert having twin spans of 17.0 feet and heights of 6.0 feet in an unnamed Tributary to Spring Run (WWF); (3) construct three 29-inch by 45-inch, 85 feet long, elliptical reinforced concrete culvert pipes in an unnamed Tributary to an unnamed Tributary to Spring Creek (WWF); (4) construct three 29-inch by 45-inch, 65 feet long, elliptical reinforced concrete culvert pipes in an unnamed Tributary to an unnamed Tributary to Spring Creek (WWF); (5) and fill in de minimis acres wetlands associated with both twin cell box culvert crossings all associated with the construction of the Milton Hershey School, Student Housing Expansion and Campus Consolidation Project located on both north and south sides of US 322 and on the east side of Homestead Road (Palmyra, PA Quadrangle N: 3.2 inches; W: 16.0 inches) and (Hershey, PA Quadrangle N: 15.55 inches; W: 1.5 inches, N: 6.1 inches; W: 0.1 inch and N: 6.3 inches; W: 16.9 inches) in Derry Township, **Dauphin County**.

E31-165. Encroachment. **Richard Wilt**, 819 Washington Street, Huntingdon, PA 16652. To remove some areas of fill and to fill in some areas in the floodway of the Juniata River (WWF) at a point approximately 1,800 feet upstream of Route 829 for the purpose of providing recreational activities (Mount Union, PA Quadrangle N: 12.0 inches; W: 10.5 inches) in Henderson Township, **Huntingdon County**.

E34-097. Encroachment. **Norfolk Southern Railway Company**, 600 West Peachtree Street, Atlanta, GA 30308. To construct a fiber optics line across the channel of Tuscorora Creek (CWF) at a point approximately 500 feet upstream of its mouth (Mifflintown, PA Quadrangle N: 5.75 inches; W: 1.0 inch) in Turbett Township, **Juniata County**.

E44-103. Encroachment. **Norfolk Southern Railroad**, 600 W. Peachtree Street, Atlanta, GA 30308. To construct a fiber optic line across the channels of the Juniata River (WWF) at four Norfolk Southern Railroad crossings (Lewistown, PA Quadrangle N: 13.5 inches; W: 12.5 inches); (Lewistown, PA Quadrangle N: 11.0 inches; W: 14.5 inches); (Newton Hamilton, PA Quadrangle N: 12.25 inches; W: 12.5 inches); (Newton Hamilton, PA Quadrangle N: 1.5 inches; W: 17.25 inches) in Granville, Bratton and Wayne Townships, **Huntingdon County**.

Northcentral Region, Water Management, Soils and Waterways Section, F. Alan Sever, Chief, 208 West Third Street, Suite 101, Williamsport, PA 17701.

E59-410. Encroachment. **Union Township Supervisors**, R. R. 1, Box 282A, Roaring Branch, PA 17765. To remove an existing culvert and to construct and maintain a 5-foot diameter 60-foot long ADS N-12 culvert with the associated R-7 riprap inlet and outlet protection in Sugar Works Run located 0.75 mile southwest of Gleason on T-341 (Back Road) (Gleason, PA Quadrangle N: 1.1 inches; W: 9.7 inches) in Union Township, **Tioga County**. This project proposes to impact 120 linear feet Sugar Works Run, which is classified as High Quality—Cold Water Fishery, with the minor channel realignment and new culvert installation.

E59-412. Encroachment. **DCNR, Bureau of Forestry**, P. O. Box 8451, Harrisburg, PA 17105-8451. To remove an existing bridge and to construct and maintain a prestressed concrete spread box beam bridge with a normal span of 5.94-meters and a minimum underclearance of 2.36-meters in Left Asaph Run located 0.4 mile located 1,000 feet south west of the intersection of Left Asaph Run Road and Right Asaph Run Road (Asaph, PA Quadrangle, N: 7.2 inches; W: 10.1 inches) in Shippen Township, **Tioga County**. This project proposes to temporarily impact 35-meters and permanently impact 22-meters of Left Asaph Run Road, which is classified as a High Quality—Cold Water Fishery.

Southwest Regional Office, Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E32-425. Encroachment. **Pennsylvania Department of Transportation**, Engineering District 10-0, 2550 Oakland Avenue, P. O. Box 429, Indiana, PA 15701-0429. To remove the existing bridge and to construct and maintain a bridge having a normal clear span of 75.0 feet and an underclearance of 18 feet across Yellow Creek (TSF), on S. R. 3035, Section 450 for the purpose of realignment of the roadway. The project is located approximately 200 feet south of Station Street (Indiana, PA Quadrangle N: 7.95 inches; W: 5.1 inches) in Homer City Borough, **Indiana County**.

E26-274. Encroachment. **CBF, Inc., Landfill**, R. D. 1, Box 266, McClellandtown, PA 15458. To place and maintain fill in 0.08 acre of wetland in the watershed of an unnamed tributary to Dunlap Creek (WWF) in association with an expansion of the existing J & J Landfill,

located approximately 1,200 feet north of S. R. 21, and 9,000 feet east of the intersection of S. R. 3013 (New Salem, PA Quadrangle N: 3.8 inches; W: 12.1 inches) in German Township, **Fayette County**.

Northwest Regional Office: Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.

E43-286. Encroachment. **PA Department of Transportation**, District 1-0, 255 Elm Street, P. O. Box 398, Oil City, PA 16301. To fill a total of 0.38 acre of seven wetland areas (0.25 acre PEM, 0.01 acre PEM/PFO, 0.02 acre PSS/PFO and 0.10 acre PEM/PSS/PFO) and to extend the existing 70.33-foot long, 5-foot diameter reinforced concrete pipe culvert by 36.6 feet upstream and 35 feet downstream and to maintain the resulting 142-foot long stream enclosure in Pine Hollow Run approximately 1,600 feet north of S. R. 62 (Sharon East, PA Quadrangle N: 20.5 inches; W: 10.3 inches) associated with widening of S. R. 18, Section A01 beginning at the intersection with S. R. 62 Bypass (Sharon East, PA Quadrangle N: 19.0 inches; W: 10.3 inches) and extending north approximately 2.4 miles (Sharpsville, PA Quadrangle N: 2.9 inches; W: 9.6 inches) iin the City of Hermitage, **Mercer County**. This project also includes the modification of four existing culverts on watercourses (tributaries to Pine Hollow Run) having contributory drainage areas less than 100 acres.

This project proposes to provide for replacement of 0.38 acre of wetland through a monetary contribution to the Pennsylvania Wetland Replacement Project.

E62-372. Encroachment. **City of Warren**, 318 West Third Avenue, Warren, PA 16365-2388. To conduct the following activities along the right bank of the Allegheny River associated with the City of Warren's Riverfront Development Project at the existing Liberty Street parking lot upstream of the Hickory Street Bridge (Warren, PA Quadrangle N: 17.1 inches; W: 3.2 inches) in the City of Warren, **Warren County**:

1. To lower approximately 350 feet of the existing concrete stream bank retaining wall by 10 feet and excavate the area behind the wall back approximately 16 feet.

2. To construct and maintain approximately 350 feet of reinforced concrete retaining wall approximately 16 feet back from the existing wall.

3. To construct and maintain approximately 350 feet of 16-foot wide concrete sidewalk between the new wall and existing wall.

4. To construct and maintain a pile supported wooden observation deck over the sidewalk.

5. To install and maintain approximately 350 feet of rock riprap bank protection along the toe of the existing concrete retaining wall.

6. To rehabilitate and maintain the remaining existing concrete stream bank retaining wall.

WATER QUALITY CERTIFICATION

Requests for Certification under Section 401 of the Federal Water Pollution Control Act

The following requests have been made to the Department of Environmental Protection (Department) for certification under § 401(a) of the 1972 amendments to the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)) that there is reasonable assurance that the construction herein described will not violate applicable Federal and State water quality standards.

Prior to final approval of the proposed certification, consideration will be given to any comments, suggestions or objection which are submitted in writing 30 days of the date of this Notice. Comments should be submitted to the Department at the address indicated above each of the following requests for certification. All comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed, and a concise statement of comments, objections or suggestions in sufficient detail to inform the Department of the exact basis of the proposal 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 comments if deemed necessary to resolve conflicts. Each individual will be notified in writing of the time and place of any scheduled hearing or conference concerning the certification request to which the protest relates. Maps, drawings and other data pertinent to the certification request are available for inspection and review at the address indicated above each request for certification between the hours of 8 a.m. and 4 p.m. on each working day.

Southeast Regional Office: Regional Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.

Certification Request Initiated By: Sunoco, Inc., Ten Penn Center, 1801 Market Street, Philadelphia, PA 19103.

Project Description/Location: This activity involves the discharge of supernatant from the U. S. Army Corps of Engineers Fort Mifflin Dredge Disposal Basin into the Delaware Estuary—Zone 4. The supernatant will be generated through the disposal of approximately 50,000 cubic yards of sediment dredged from the Sunoco Girard Point Wharf facility at the Philadelphia Refinery. A hydraulic suction dredge and pipeline will be used to move the sediment directly to the disposal basin.

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.

Any person 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, Rachel Carson 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.

Southcentral Regional Office: Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.

Permit No. PA0023108. Sewerage. **Borough of Elizabethtown**, 600 South Hanover Street, Elizabethtown, PA 17022 is authorized to discharge from a facility located in West Donegal Township, **Lancaster County** to the receiving waters named Susquehanna River in Watershed 7-G.

Permit No. PA0083526. Sewerage. **R. H. Sheppard Company, Inc.**, 101 Philadephia Street, Hanover, PA 17331 is authorized to discharge from a facility located in Hanover Borough, **York County** to the receiving waters named Oil Creek in Watershed 7-H.

Permit No. 3600404. Sewage. **Borough of Elizabethtown**, 600 South Hanover Street, Elizabethtown, PA 17022. This permit approves the construction of sewage treatment facilities and pump stations in West Donegal Township, **Lancaster County**.

Permit No. 6700407. Sewage. **Springfield Township Sewer Authority**, 9211 Susquehanna Trail South, Seven Valleys, PA 17360. This permit approves the construction of pump stations in Springfield Township, **York County**.

Northcentral Regional Office, Department of Environmental Protection, 208 West Third Street, Suite 101, Grit Building, Williamsport, PA 17701.

NPDES PA0209694. Sewerage Amendment. **James Sherwood Personal Care Retirement Home**, James V. and Karen E. Sherwood, R. R. 2 Box 2, Canton, PA 17724. Permission granted to discharge from a facility located at Canton Township, **Bradford County**.

NPDES PA0114961. Sewerage. **Hughesville-Wolf Township Joint Municipal Authority**, P. O. Box 207, Hughesville, PA 17737. Permission granted to discharge from facility located at Wolf Township, **Lycoming County**.

NPDES PA0028282. Sewerage. **Eagles Mere Borough Authority**, P. O. Box 393, Eagles Mere, PA 17731. Renewal granted to discharge from facility located at Eagles Mere Borough, **Sullivan County**.

NPDES PA0008575-A3 Amendment. Industrial waste. **Williamsport Wire Rope Inc.**, P. O. Box 3188, Williamsport, PA 17701. Department amendment the permit with concurrence of the Company to include the stormwater discharge from facility and will cancel the stormwater general permit. Facility located at City of Williamsport, **Lycoming County**.

NPDES PA0113751. Industrial waste. **TRW Valve Division**, 601 E. Market Street, Danville, PA 17821. Renewal granted to discharge to storm sewer from a groundwater remediation system. Facility located at Borough of Danville, **Montour County**.

NPDES PA0008915. Industrial waste. **Osram Sylvania**, One Jackson Street, Wellsboro, PA 16901. Renewal granted to discharge from facility located at Wellsboro Borough, **Tioga County**.

NPDES PA0112275. Industrial waste. **Con-Lime Inc.**, P. O. Box 118, Bellefonte, PA 16823. Permission granted to discharge from facility located at Con-Lime Mine # 1, located at Benner Township, **Centre County**.

WQM Permit No. 4900401. Sewerage. **The Municipal Authority of the City of Sunbury**, 225 Market Street, Sunbury, PA 17801-3482. Permission granted to upgrade the existing facility to meet projected loadings. Facility located at City of Sunbury, **Northumberland County**.

WQM Permit No. 1499409. Sewerage Amendment. **University Area Joint Authority**, 1576 Spring Valley Road, State College, PA 16801. Letter Amendment granted due to problems of right-of-way easements for that portion of the sewer line that establishes connection with the existing downstream University Area Joint Authority. Facility name is Colonnade located at Patton Township, **Centre County**.

WQM Permit No. 1900404. Sewerage. **Susan Powlus**, R. R. 3 Box 2390B, Berwick, PA 18603. Permission granted to repair malfunctioning on lot system. Facility located at North Centre Township, **Columbia County**.

WQM Permit No. 1800403. Sewerage. **Western Clinton County Municipal Authority**, 365 Huron Avenue, Renovo, PA 17764-0363. Permission granted to construct a new 45 foot diameter secondary clarifier and addition of 1.2 meter belt filter press with a package polymer feet system. Facility located at Renovo Borough, **Clinton County**.

WQM Permit No. 4185405-T5. Transfer Sewerage. **Joe De Gregorio**, 1923 Biddle Road, Montoursville, PA 17754. Permission granted for transfer of ownership to facility located at Upper Fairfield Township, **Lycoming County**.

WQM Permit No. 1900403. Sewerage. **Molly B. Conrad**, 2185 Mill Road, Catawissa, PA 17820. Permission granted to replace malfunctioning septic system at facility located at Locust Township, **Columbia County**.

WQM Permit No. 4900201. Industrial waste. **Merck & Company, Inc.**, P. O. Box 600, Danville, PA 17821-0600. Permission granted to modify treatment facility. Facility located in Riverside Borough, **Northumberland County**.

WQM Permit No. 4975201. Industrial waste amendment. **Merck & Company Inc.**, P. O. Box 600, Danville, PA 17821-0600. Permission granted to update existing North Belt Filter press to facility located at Riverside Borough, **Northumberland County**.

Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

NPDES Permit No. PA0217824-A1. Sewage. **YMCA of Pittsburgh**, 126 Nagle Road, Fombell, PA 16123-9414 is authorized to discharge from a facility located at Camp Kon-O-Kwee/Spencer STP, Marion Township, **Beaver County** to receiving waters named Connoquenessing Creek.

Permit No. 0400408. Sewage. **YMCA of Pittsburgh**, Camp Kon-O-Kwee/Spencer, 126 Nagle Road, Fombell, PA 16123-9414. Construction of sewage treatment plant, pump station located in Marion Township, **Beaver County** to serve Camp Kon-O-Kwee/Spencer.

Permit No. 3279406-A5. Sewage. **Indiana Borough**, 80 North Eighth Street, Indiana, PA 15701. Construction

of wastewater treatment plant expansion and upgrade, wastewater detention tank and interceptor sewer replacement located in Indiana Borough, **Indiana County** to serve Indiana Borough and White Township.

Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.

NPDES Permit No. PA0103233. Sewage. **Moniteau School District**, Dassa McKinney Elementary School, 391 Hooker Road, West Sunbury, PA 16061 is authorized to discharge from a facility located in Clay Township, **Butler County** to an unnamed tributary to South Branch Slippery Rock Creek.

NPDES Permit No. PA0103276. Sewage. **Shippenville Borough Municipal Authority**, 106 School Street, Box 244, Shippenville, PA 16254 is authorized to discharge from a facility located in Elk Township, **Clarion County** to Deer Creek.

NPDES Permit No. PA0025445. Sewage. **Borough of Wampum**, P. O. Box 65, 355 Main Street Ext., Wampum, PA 16157 is authorized to discharge from a facility located in Wampum Borough, **Lawrence County** to Beaver River.

NPDES Permit No. PA0103934. Sewage. **The Well (Restaurant/Tavern)**, R. D. 1, Ridgway, PA 15853 is authorized to discharge from a facility located in Ridgway Township, **Elk County** to Elk Creek.

WQM Permit No. 1600403. Sewage. **Kalyumet Campground**, R. R. 1, Box 672, Lucinda, PA 16235. This project is for the construction and operation of a small flow treatment facility located in Highland Township, **Clarion County**.

WQM Permit No. 4300410. Sewage. **Upper Shenango Valley Water Pollution Control Authority**, Orangeville Pump Station, P. O. Box 1449, Hermitage, PA 16148. This project is for the expansion of the existing pump station and includes replacement of the raw sewage pumps, comminutor and standby generator with electrical and heating and ventilating upgrades as necessary in the City of Hermitage, **Mercer County**.

INDIVIDUAL PERMITS

(PAS)

The following approvals from coverage under NPDES Individual Permit for Discharge of Stormwater from Construction Activities have been issued.

Northcentral Region: Water Management, Soils and Waterways Section, F. Alan Sever, Chief, 208 West Third Street, Williamsport, PA 17701.

NPDES Permit No.	*Applicant Name and Address*	*County Municipality*	*Receiving Stream*
PAS10F092	State College Boro Water Auth. 1201 W. Branch Rd. State College, PA 16801	Centre County Ferguson Township	Slab Cabin Run
PAS101919	PA DEP Bur. Abandoned Mine Reclamation P. O. Box 8476 Harrisburg, PA 17105-8476	Clinton County Noyes and Leidy Townships	Stony Run and Brewery Run

INDIVIDUAL PERMITS

(PAR)

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 arrangement 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

List of NPDES and/or other General Permit Type	
PAG-6	General Permit for Wet Weather Overflow Discharges From Combined Sewer Systems
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Non-Exceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest or a Land Reclamation Site
PAG-10	General Permit for Discharges 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.*
Lackawanna County City of Carbondale	PAR10N109	Nancy Perri 1 N. Main St. Carbondale, PA 18407	Lackawanna River TSF	Lackawanna CD (570) 281-9495
Lackawanna County Moosic Borough	PAR10N114	Victor DePhillipo 600 Linden St. Scranton, PA 18503	Springbrook Creek CWF	Lackawanna CD (570) 281-9495
Ferguson and Patton Townships Centre County	PAR10F118	North Atherton Shoppes V-M ASC LP Greg Morris P. O. Box 1252 Altoona, PA 16602	Unt. Big Hollow Run	Centre County Cons. Dist. 414 Holmes Ave. Suite 4 Bellefonte, PA 16823 (814) 355-6817

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.*
Luzerne County Wilkes-Barre Township	PAR402201	Stericycle, Inc. 260 Johnson Street Wilkes-Barre, PA 18702	N/A	Northeast Office 2 Public Sq. Wilkes-Barre, PA 18711-0790 (570) 826-2511
Snyder County McClure Borough	PAR204805	Lozier Corporation 48 East Ohio Street McClure, PA 17841	UNT to S. Br. Middle Creek	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664

General Permit Type—PAG-4

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream or Body of Water*	*Contact Office and Telephone No.*
Bedford County Broad Top Township	PAG043662	Broad Top Township William and Regina Fisher 187 Municipal Road P. O. Box 57 Defiance, PA 16633-0057	Shermans Valley Run	DEP—Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Bedford County Broad Top Township	PAG043661	Broad Top Township Russell and Mona Pittman 187 Municipal Road P. O. Box 57 Defiance, PA 16633-0057	Shermans Valley Run	DEP—Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream or Body of Water*	*Contact Office and Telephone No.*
Bedford County Broad Top Township	PAG043663	Broad Top Township Lou and Lorraine Figard 187 Municipal Road P. O. Box 57 Defiance, PA 16633-0057	Int. Trib. to Longs Run	DEP—Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Lycoming County Clinton Township	PAG044844	Donald R. Person 212 Elimsport Road Montgomery, PA 17752	Unt. Black Hole Creek	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Centre County Harris Township	PAG044852	Petronella Hesser 610 South Academy Street Boalsburg, PA 16827	Unt Spring Ck.	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Clearfield County Bradford Township	PAG044807	Cheryl Y. Cartley R. R. 1 Box 482A Woodland, PA 16881	Unt of Millstone Run	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Clearfield County Bradford Township	PAG044976	Marjorie Jo Teats R. R. 1 Box 82-5 Woodland, PA 16873	Forcey Run	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Columbia County North Centre Township	PAG045097	Susan Powlus R. R. 3 Box 2390B Berwick, PA 18603	Fester Hollow	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Clearfield County Brady Township	PAG044805	Jeffrey Jamison R. D. 1 Box 177 Luthersburg, PA 15848	Stump Creek	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Montour County Mayberry Township	PAG045103	Richard Morris R. D. 2 Box 299 Catawissa, PA 17820	Little Roaring Creek	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Lycoming County Upper Fairfield Township	PAG044863	Joe DeGregorio 1923 Biddle Road Montoursville, PA 17754	UNT to Mill Creek	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Columbia County Locust Township	PAG045096	Molly B. Conrad 2185 Mill Rd. Catawissa, PA 17820	Roaring Creek	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Cambridge Township Crawford County	PAG048350	Ronald J. Riley 22389 Walters Road Venango, PA 16440	Unnamed Tributary of French Creek	DEP Northwest Region Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

General Permit Type—PAG-5

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream or Body of Water*	*Contact Office and Telephone No.*
Luzerne County Kingston Township	PAG-052208	Anthony Butler 62 Laurel Road White Haven, PA 18661	Toby's Creek	Northeast Office 2 Public Sq. Wilkes-Barre, PA 18711-0790 (570) 826-2511

General Permit Type—PAG-8

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream or Body of Water*	*Contact Office and Telephone No.*
Union County East Buffalo Township	PAG084820	Lewisburg Area Joint Authority P. O. Box 305 Lewisburg, PA 17837-0305		Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664

General Permit Type—PAG-9

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream or Body of Water*	*Contact Office and Telephone No.*
Westmoreland County Hempfield Township		George Hapchuk d/b/a Hapchuk Sanitation R. D. 10 Box 276 Greensburg, PA 15601		Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

General Permit Type—PAG-10

Facility Location County and Municipality	*Permit No.*	*Applicant Name and Address*	*Receiving Stream or Body of Water*	*Contact Office and Telephone No.*
Lycoming County Armstrong Township	PAG104803	Gulf Limited Partnership 90 Everett Ave. Chelsea, MA 02150-2337	W. Br. Susquehanna River	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664

SEWAGE FACILITIES ACT

PLAN APPROVAL

Plan revision approval granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).

Regional Office: Water Management Program Manager, Southwest Region, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Location: **The Villages of Maxwell and LaBelle** and sewer lines being extended to the site of the proposed State Correctional Institution along S. R. 4020, Luzerne Township, **Fayette County**.

Approval of a special study to the official Sewage Facilities Plan of Luzerne Township, Fayette County. Project involves the construction of sewage collection, conveyance and treatment facilities for the Villages of Maxwell, LaBelle and the new proposed State Correctional Institution along S. R. 4020. Treated sewage will be discharged to the Monongahela River near the Village of Maxwell.

The Department's review of the Sewage Facilities Special Study has not identified any significant impacts resulting from this proposal.

Southwest Regional Office: Regional Manager, Water Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Location: **Ray and Gladys Spangler Single Residence STP**. West side of SR 1005 approximately 0.6 mile south of intersection of SR 1005 and SR 1007, Stonycreek Township, **Somerset County**.

Approval of a revision to the Official Sewage Plan of Stonycreek Township, Somerset County. Project involves construction of a small flow sewage treatment facility to serve an existing dwelling located on SR 1005. Treated effluent is to be discharged to an unnamed tributary of the Stonycreek River.

SAFE DRINKING WATER

Actions 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. 1498505-Operation Temporary # 1. The Department issued an Operation Permit to **College Township Water Authority**, 1481 East College Avenue, State College, PA 16801, College Township, **Centre County**. This permit authorizes temporary operation of Spring Creek Park Well, a disinfection system, a sequestration system and a pump station.

Permit No. 449603-A9. The Department issued an Operation Permit to **Tulpehocken Spring Water Company**, 28 Meadow Run Drive, Winfield, PA 17889, Point Township, **Northumberland County**. This permit authorizes operation of Well # 1, the softeners and ultraviolet light. The well and associated treatment is located at the Oak Park Plant in Point Township, Northumberland County.

Permit No. 1499501. The Department issued an Innovative Operational Permit to **Boggs Township Water System**, 1270 Runville Road, Bellefonte, PA 16823, Boggs Township, **Centre County**. This permit authorizes operation of a new EPD filtration plant, new pump in Well 1, and associated transmission mains and controls.

Permit No. 1400506. The Department issued a construction permit to **State College Borough Water Authority**, 1201 West Branch Avenue, State College, PA 16801, State College Borough, **Centre County**. This permit authorizes construction of a pump station and transmission main to serve water to the Pine Grove Mills area.

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, please 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:

Southcentral Regional Office: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4705.

Alex and Dawn Marie Acevedo, Rapho Township, **Lancaster County**. Alex and Dawn Marie Acevedo, 32 Crystal Court, Manheim, PA 17545 and Hydrocon Services, Inc., 2945 South Pike Avenue, Allentown, PA 18103 have submitted a Final Report concerning remediation of site soils contaminated with BTEX and PAHs. The report is intended to document remediation of the site to the Statewide health standard.

Cole Office Environments, Springettsbury Township, **York County**. ARCADIS Geraghty & Miller, Inc., 3000 Cabot Blvd., West, Suite 3004, Langhorne, PA 19047 has submitted a combined Remedial Investigation/Final Report concerning remediation of site soils contaminated with heavy metals. The report is intended to document remediation of the site to the site specific standard.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

Preamble 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediations 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 Remediations 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 investigation, concentration of regulated substances in environmental media, benefits of reuse of the property, and in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. A cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed, and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, please contact the Environmental Cleanup Program Manager in the Department Regional Office under which the notice of the plan or report appears. If information concerning a plan or report is required in an alternative form, contact the community relations coordinator at the appropriate regional office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has acted upon the following plans and reports:

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 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 documented attainment of the Statewide health standards and was approved on October 12, 2000.

SOLID AND HAZARDOUS WASTE

HAZARDOUS WASTE, TREATMENT, STORAGE AND DISPOSAL FACILITIES

Permits issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to operate a hazardous waste treatment, storage, or disposal facility.

Southeast Regional Office: Regional Solid Waste Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

Permit No. PAD980550412. Lonza, Inc., Riverside Facility, 900 River Road, Conshohocken, PA 19428. A 10-year permit renewal and permit modification was issued for permittee's captive hazardous waste storage and treatment (incineration) facility located in Upper Merion Township, **Montgomery County**. Permit was issued by the Southeast Regional Office on October 3, 2000.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Solid waste permits issued under the Solid Waste Management Act and regulations to operate solid waste processing or disposal area or site.

Southcentral Regional Office: Regional Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4706.

Permit No. 100944. Lanchester Landfill, Chester County Solid Waste Authority (7224 Division Highway, Narvon, PA 17555). Permit modification issued for the construction and operation of a leachate recirculation and spray irrigation system for a facility in Caenarvon and Honey Brook Townships, **Lancaster County**. Permit issued in the Southcentral region on October 11, 2000.

AIR QUALITY

OPERATING PERMITS

General Plan Approval and Operating Permit usage authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

65-0934: Kriebel Minerals, Inc. (P. O. Box 765, Clarion, PA 16214) on October 13, 2000, for construction and operation of a compressor engine at the Lynn Compressor in East Huntingdon Township, **Westmoreland County**.

65-0933: Kriebel Minerals, Inc. (P. O. Box 765, Clarion, PA 16214) on October 13, 2000, for construction and operation of a compressor engine at the Sony Compressor in East Huntingdon Township, **Westmoreland County**.

Administrative Operating Permit Amendments issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.450 (relating to administrative operating permit amendments).

Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.

10-00171: Butler Color Press (Bonnie Brook Industrial Park, Butler, PA 16003) for an administrative amendment to the Synthetic Minor Operating Permit to incorporate the newly applicable requirements from Plan Approval No. PA10-00171A in Butler Township, **Butler County**. The facility's emission limitation for Volatile Organic Compounds remains at 49.9 tons per year.

Operating Permits issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F (relating to operating permit requirements).

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

04-000-227: Koppel Steel Corp. (P. O. Box 750, Beaver Falls, PA 15010) on October 12, 2000, for heat treat furnaces and heaters at the Ambridge Plant in Harmony Township, **Beaver County**.

Philadelphia Department of Public Health, Air Management Services, 321 University Ave., Philadelphia, PA 19104, (215) 685-7584.

95-084: LaFrance Corp. (8425 Executive Avenue, Philadelphia, PA 19153-3893) on September 7, 2000, for operation of a zinc die caster in the City of Philadelphia, **Philadelphia County**. The Synthetic Minor facility's air emission sources include four significant combustion units each rated less than 4.5 MMBTU/hr, five spray booths with dry panel filters, one roller coat, two silk screen machines, one chromium electroplating operation and one nitric acid stripping operation. The facility's air emission control devices include one chromium scrubber and one nitric scrubber.

95-033: McWhorter Technologies (7600 State Road, Philadelphia, PA 19136) on October 3, 2000, for operation of a facility that manufactures liquid coating resins in the City of Philadelphia, **Philadelphia County**. The Synthetic Minor facility's air emission sources include three natural gas or propane-fired furnaces each rated less than 3.5 MMBTU/hr, one 10.5 MMBTU/hr # 2 oil, natural gas or propane-fired boiler, one 4.2 MMBTU/hr natural gas or propane-fired boiler and one 6.0 MMBTU/hr # 2 oil-fired back-up boiler, one diesel fire pump, three process reactors, seven process tanks, one rupture tank, 31 storage tanks, one split tank, two tankwagon loading stations, one unloading station, one drum-fill station, and one air stripping tower. The facility's air emission control devices include one scrubber system and 10 condensers.

96-028: Pearl Pressman Liberty (5th and Poplar Streets, Philadelphia, PA 19123) on October 3, 2000, for operation of an offset lithographic printing facility in the City of Philadelphia, **Philadelphia County**. The Synthetic Minor facility's air emission sources include five non-heatset offset sheetfed lithographic printing presses and two # 2 oil-fired boilers each rated less than 2.0 MMBTU/hr.

00-003: Pioneer Leathertouch, Inc. (2250 E. Ontario Street, Philadelphia, PA 19134) on October 3, 2000, for

operation of a rotogravure printing facility in the City of Philadelphia, **Philadelphia County**. The Synthetic Minor facility's air emission sources include one 150 hp # 5 oil-fired boiler, one rotogravure printing press and one gluer.

PLAN APPROVALS

Plan Approvals issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B (relating to plan approval requirements).

Southeast Regional Office: Air Quality Program, 555 North Lane, Conshohocken, PA 19428, (610) 832-6242.

09-0127: Bracalente Mfg. Co., Inc. (20 West Creamery Road, Trumbauersville, PA 18970) on October 10, 2000, for operation of a solvent recovery system in Trumbauersville Borough, **Bucks County**.

09-0019A: Miller & Son Paving, Inc. (887 Mill Creek Road, Rushland, PA 18956) on October 10, 2000, for operation of a batch asphalt plant in Wrightstown Township, **Bucks County**.

15-0102: Columbia Transmission Communications (55 Pottstown Pike, Chester Springs, PA 19425) on October 12, 2000, for operation of a 1,850-hp Diesel Fired Generator in West Vincent Township, **Chester County**.

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

06-03085A: Power Packaging, Inc. (1055 Cross Roads Boulevard, Reading, PA 19605) on October 16, 2000, for construction of a boiler with flue gas recirculation at the Reading Plant in Muhlenberg Township, **Berks County**. This source is subject to 40 CFR Part 60, Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units.

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

04-009A: Maverick Tube, LP (4400 West Fourth Avenue, Beaver Falls, PA 15010) on October 12, 2000, for a boiler and metal heat furnaces at the Beaver Falls Site in Beaver Falls, **Beaver County**. The Department has reissued this plan approval so that it may correctly identify the sources in operation at this facility.

56-263B: RoxCoal, Inc. (P. O. Box 149, Friedens, PA 15541) on October 16, 2000, for screening operation at the Sarah Mine in Jenner Township, **Somerset County**.

Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.

25-070D: Gunite EMI Corp. (603 West 12th Street, Erie, PA 16501) on October 13, 2000, for modification of the # 11 Cleaning Mill in Erie, **Erie County**.

Plan Approvals extensions issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.13 (relating to extensions).

Southeast Regional Office: Air Quality Program, 555 North Lane, Conshohocken, PA 19428, (610) 832-6242.

46-0124: Montgomery Chemical (901 Conshohocken Road, Conshohocken, PA 19428) on October 13, 2000, for operation of a chemical manufacturing process in Plymouth Township, **Montgomery County**.

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

26-020A: Commercial Stone Co., Inc. (2200 Springfield Pike, Connellsville, PA 15425) on October 12, 2000, for operation of a crusher and grizzly feeder at the Rich Hill Quarry in Bullskin Township, **Fayette County**.

26-177A: Golden Eagle Construction/Asphalt Division (P. O. Box 945, Uniontown, PA 15401) on October 12, 2000, for operation of a hot-mix asphalt plant at the Coolspring Asphalt Plant in North Union Township, **Fayette County**.

65-858A: American Video Glass Co. (777 Technology Drive, Mt. Pleasant, PA 15666) for installation of television glass manufacturing at the New Stanton Plant in Mount Pleasant Township, **Westmoreland County**.

Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.

33-002B: Owens Brockway Glass Container (Crenshaw Plant # 19, Route 219 North, Brockway, PA 15824) on September 30, 2000, for a glass melting furnace in Snyder Township, **Jefferson 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 such 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

54921301C. M & H Coal Company (P. O. Box 559, Hegins, PA 17938), correction to an existing anthracite underground operation in Frailey Township, **Schuylkill County** affecting 12.46 acres, receiving stream—Middle Creek. Correction issued October 6, 2000.

Cambria Office, 286 Industrial Park Road, Ebensburg, PA 15931-4119.

56990104. Dunamis Resources, Inc. (One Energy Place, Suite 4000, Latrobe, PA 15650), commencement, operation and restoration of a bituminous surface-auger mine in Jenner Township, **Somerset County**, affecting 140 acres, receiving stream unnamed tributaries to/and Gum Run, unnamed tributaries to/and Roaring Run, application received September 20, 1999, permit issued October 6, 2000.

11001104. Permit Revision. Alverda Enterprises, Inc. (P. O. Box 87, Alverda, PA 15701), to utilize an existing stream crossing on an unnamed tributary to Brubaker Run situated on the property of Matthew and

Amy Dillon in Elder Township, **Cambria County**, for the purpose of entering and conducting exploration activities throughout the site. Application received August 30, 2000, issued October 6, 2000.

11960103. Permit Renewal for reclamation only. K & J Coal Company, Inc. (P. O. Box 189, Westover, PA 16692), for continued restoration of a bituminous surface mine in Chest Township, **Cambria County**, affecting 29.0 acres, receiving stream unnamed tributaries to Chest Creek, application received October 5, 2000, issued October 10, 2000.

56980109. Permit Revision. Mountaineer Mining Corporation (1010 Garrett Shortcut Road, Berlin, PA 15530), to add 3.7 acres to the existing 29.4 acre permit in Brothersvalley Township, **Somerset County**, affecting 33.1 acres, receiving stream unnamed tributaries to/and Hays Run and unnamed tributaries to/and Buffalo Creek, application received June 27, 2000, issued October 11, 2000.

Greensburg District Office, R. R. 2, Box 603-C, Greensburg, PA 15601.

03000101. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001). Permit issued for commencement, operation and reclamation of a bituminous surface auger mine located in Plumcreek Township, **Armstrong County**, affecting 233.0 acres. Receiving streams: unnamed tributaries to Cherry Run to Cherry Run to Crooked Creek to the Allegheny River. Application received: February 24, 2000. Permit issued: October 10, 2000.

Hawk Run District Office, P. O. Box 209, Off Empire Road, Hawk Run, PA 16840.

17950105. Hepburnia Coal Company (P. O. Box I, Grampian, PA 16838), renewal of an existing bituminous surface mine permit in New Washington and Newburg Boroughs, Chest Township, **Clearfield County** affecting 185.3 acres. Receiving streams: unnamed tributaries to Chest Creek and Chest Creek to West Branch of the Susquehanna River. Application received May 10, 2000. Permit issued September 28, 2000.

17890124. Hepburnia Coal Company (P. O. Box I, Grampian, PA 16838), renewal of an existing bituminous surface mine permit in Penn Township, **Clearfield County** affecting 490 acres. Receiving streams: unnamed tributaries to Kratzer Run to Kratzer Run and unnamed tributaries to the West Branch of the Susquehanna River to the West Branch of the Susquehanna River to the Susquehanna River. Application received July 17, 2000. Permit issued September 26, 2000.

14820103. Al Hamilton Contracting Company (R. D. 1, Box 87, Woodland, PA 16881), renewal of an existing bituminous surface mine permit in Rush Township, **Centre County** affecting 379.7 acres. Receiving streams: unnamed tributary to Trout Run and unnamed tributary to Moshannon Creek to Moshannon Creek, to the West Branch Susquehanna River to Susquehanna River. Application received July 25, 2000. Permit issued September 26, 2000.

17930117. Sky Haven Coal, Inc. (R. R. 1, Box 180, Penfield, PA 15849), transfer of an existing bituminous surface mine permit from Al Hamilton Contracting Co., located in Goshen Township, **Clearfield County** affecting 329.8 acres. Receiving streams: unnamed tributary to Surveyor Run and Surveyor Run. Application received April 13, 2000. Permit issued September 27, 2000.

17980118. Waroquier Coal Company (P. O. Box 128, Clearfield, PA 16830), commencement, operation and restoration of a bituminous surface mine permit in Lawrence Township, **Clearfield County** affecting 193.3 acres. Receiving streams: unnamed tributaries Numbers 1 and 2 to the West Branch of the Susquehanna River and unnamed tributary Number 3 to Montgomery Creek to the West Branch of the Susquehanna River. Application received August 27, 1998. Permit issued October 3, 2000.

17970108. M. B. Energy, Inc. (175 McKnight Road, Blairsville, PA 15717-7960), revision to an existing bituminous surface mine permit for a change in permit acreage from 475.2 to 513.7 acres. The permit is located in Bell Township, **Clearfield County**. Receiving streams: unnamed tributaries of Whisky Run and unnamed tributaries of Haslett Run to Whisky Run and Haslett Run both contributory to West Branch Susquehanna River. Application received June 28, 2000. Permit issued October 12, 2000.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

Small Noncoal (Industrial Mineral) Permits Issued

58000812. Robert Strohl (71 South Main Street, Apt. 4, Montrose, PA 18801-1300), commencement, operation and restoration of a bluestone quarry operation in Forest Lake Township, **Susquehanna County** affecting 3.0 acres, receiving stream—none. Permit issued October 12, 2000.

Hawk Run District Office, P. O. Box 209, Off Empire Road, Hawk Run, PA 16840.

Small Industrial Minerals Permits Issued

14000801. Martin L. Koleno (120 Hickory Road, Clarence, PA 16829), commencement, operation and restoration of a Small Industrial Minerals (Shale) permit in Snow Shoe Township, **Centre County** affecting 1.0. Receiving streams: Cherry Run, North Fork, tributary to Beech Creek. Application received June 9, 2000. Permit issued September 26, 2000.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

Noncoal Permits Issued

4873SM1A1C5. J. E. Baker Company (320 North Baker Road, York, PA 17405), correction to an existing quarry operation in West Manchester Township, **York County** affecting 1031.9 acres, receiving stream—unnamed tributary to Codorus Creek and Honey Run. Correction issued October 3, 2000.

7174SM1C2. Hempt Bros. (205 Creek Road, Camp Hill, PA 17011), correction of an existing quarry operation in Steelton Borough and Swatara Township, **Dauphin County** affecting 213.3 acres, receiving stream—Susquehanna River. Correction issued October 4, 2000.

7174SM1C3. Hempt Bros. (205 Creek Road, Camp Hill, PA 17011), renewal of NPDES Permit # PA 0009407 in Steelton Borough and Swatara Township, **Dauphin County**, receiving stream—Susquehanna River. Renewal issued October 4, 2000.

47950301T2. Hanson Aggregates Pennsylvania, Inc. (1900 Sullivan Trail, P. O. Box 231, Easton, PA 18044-0231), transfer of an existing quarry operation in Limestone Township, **Montour County** affecting 30.0 acres, receiving stream—none. Transfer issued October 4, 2000.

Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.

Industrial Minerals NPDES Permit Renewal Application Issued:

32900301. Edward C. Griffith Quarrying, Inc. (R. D. 1, Box 176, Rochester Mills, PA 15771), renewal of NPDES Permit No. PA 0598712, North and East Mahoning Townships, **Indiana County**, receiving streams unnamed tributary to Little Mahoning Creek. NPDES Renewal Application received August 23, 2000, issued October 10, 2000.

ACTIONS TAKEN UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT

ENCROACHMENTS

DAMS, ENCROACHMENTS AND ENVIRONMENTAL ASSESSMENTS

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)).

Any person 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 Health Board (Board) within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

Northeast Regional Office: Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

E64-212. Encroachment. **Pennsylvania Department of Transportation**, District 4-0, P. O. Box 111, Scranton, PA 18501. To remove the existing structure and to construct and maintain a pre-stressed adjacent box beam bridge having a normal span of 38.5 feet (11.74 meters) and an underclearance of 7.19 feet (2.19 meters) on a 65° skew across Middle Creek. The project also includes the placement of fill in a de minimus area of wetlands equal to 0.02 acre (0.008 hectare) to allow realignment of the bridge approaches to improve the horizontal geometry of the roadway. The project is located upstream of the existing structure along S. R. 0296, Segment 0050, Offset 0854, approximately 400 feet (121.9 meters) southeast of S. R. 0196 (Lake Ariel, PA Quadrangle N: 19.6 inches; W: 2.6 inches) in Lake and South Canaan Townships, **Wayne County**.

Northcentral Region, Water Management—Soils and Waterways, F. Alan Sever, Chief, 208 West Third Street, Williamsport, PA 17701.

E14-378. Encroachment. **Carl Hanscom**, P. O. Box 279, Julian, PA 16844. To maintain a family picnic area on 450 cubic yards of clean soil fill with its associated 2B stone wearing course in the left floodway of Whetstone Run located 500 feet north on Whetstone Road from S. R. 3032 (Bear Knob, PA Quadrangle N: 2.3 inches; W: 13.8 inches) in Huston Township, **Centre County**. This permit was issued under section 105.13(e) "Small Projects."

E17-350. Encroachment. **Harry W. Hand**, 530 Spruce Street, Clearfield, PA 16830. To construct and maintain a portion of two mobile homes on two separate lots that extend into the floodway of Montgomery Creek. The structures measure 5 feet by 76 feet and are located between Clarendon Avenue and Powell Avenue and between Clarendon Avenue and Lawrence Street. This permit also authorizes an attached 4 foot by 4 foot deck on the structure located on Clarendon Avenue and Lawrence Street. The subject lots are located 1/10 of a mile west of Washington Avenue in the town of Clearfield (Clearfield, PA Quadrangle N: .75 inch; W: 12.3 inches) in Lawrence Township, **Clearfield County**.

Southwest Regional Office: Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E04-266. Encroachment. **Pennsylvania Department of Transportation**, Engineering District 11-0, 45 Thoms Run Road, Bridgeville, PA 15017. To remove the existing structures and to construct and maintain the following structures and activities for the purpose of building the Freedom Crider Transportation Safety Improvement Project (S. R. 2004, Section B05). Relocate and maintain 1,350 feet of Crows Run (WWF) and construct and maintain a twin cell, rigid frame bridge having two clear spans of 15.0 feet and a maximum underclearance of 4.6 feet in Crows Run, construct and maintain a precast concrete arch culvert having a single clear span of 16.0 feet and an underclearance of 7.0 feet in a tributary to Crows Run (WWF), to construct and maintain a 225 feet long, 84 inch diameter, reinforced concrete pipe with a 65 feet long rip rap energy dissipater, 106.0 feet of rock lined channel and 55 feet of natural lined channel in a tributary to Crows Run, and to place and maintain fill within 0.79 acre of palustrine emergent and 0.01 acre of palustrine forested wetlands that are associated with the stream relocation and road construction. The project is located along Freedom-Crider Road (S. R. 2004) approximately 4 miles west of its intersection with S. R. 0019 (Baden, PA Quadrangle, Project starts at N: 9.3 inches; W: 5.3 inches, Project ends at N: 9.6 inches; W: 9.5 inches) in New Sewickley Township, **Beaver County**. To compensate for the wetland impacts, the applicant proposes to construct 1.07 acres of palustrine scrub/shrub and forested wetlands along the relocated Crows Run.

E04-267. Encroachment. **New Sewickley Township**, 233 Miller Road, Rochester, PA 15074. To remove the existing bridge and to construct and maintain a precast concrete arch culvert having a single span of 32.0 feet and an underclearance of 8.9 feet with a low flow channel 13 feet wide and 0.5 foot deep in Crows Run (WWF). The work is an integral part of the Freedom-Crider Transportation Safety Improvement and is located along McElhaney Road (T-674) approximately 300 feet north of its intersection with S. R. 2004 (Baden, PA Quadrangle N: 9.4 inches; W: 7.8 inches) in New Sewickley Township, **Beaver County**.

E63-491. Encroachment. **Donna Lee Weber**, Flagler Center, Suite 502, 501 South Flagler Drive, West Palm Beach, FL 33401. To construct and maintain a retaining wall approximately 80 feet in length along the left bank of Maple Creek (WWF) and to remove gravel bars from the channel of said stream for the purpose of preventing further stream bank erosion. The property is located on

the south side of Lincoln Avenue, approximately 110 feet east from the intersection of Lincoln Avenue and Twilight Hollow Road (Monongahela, PA Quadrangle N: 1.2 inches; W: 2.8 inches) in Charleroi Borough, **Washington County**. This permit was issued under section 105.13(e) "small projects." This permit also includes 401 Water Quality Certification.

E65-761. Encroachment. **Municipality of Murrysville**, 4100 Sardis Road, Murrysville, PA 15668. To remove two existing structures and to construct and maintain a 1.0-foot depressed 16.0-foot x 6.0-foot concrete box culvert in Turtle Creek (TSF) for the purpose of providing access to residents in Ball Park Court. This permit also authorizes the placement and maintenance of rock rip rap along the banks of approximately 40 feet of Turtle Creek (TSF) downstream from the proposed culvert. The project is located on Ball Park Road, approximately 200 feet from its intersection with Old William Penn Highway (Slickville, PA Quadrangle N: 7.5 inches; W: 14.2 inches) in the Municipality of Murrysville, **Westmoreland County**. This permit was issued under section 105.13(e) "small projects." This permit also includes 401 Water Quality Certification.

SPECIAL NOTICES

Notice of Settlement Under the Hazardous Sites Cleanup Act

Adams Sanitation Company, Inc. Tyrone Township, Adams County

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (HSCA) (35 P. S. §§ 6020.101—6020.1305), has entered into a proposed consent decree regarding the Department's costs incurred for conducting response activities at the Adams Sanitation Company, Inc. (ADSCO) site. The ADSCO Site is an inactive, privately owned landfill situated on an approximate 108-acre tract of land. The Site is located in Tyrone Township, Adams County. The surrounding area is rural. An onsite private water supply has been contaminated by hazardous substances migrating from the landfilled areas.

The landfill was operated by Adams Sanitation Company from 1970—1983, during which time approximately 78 acres were filled. In 1983, Keystone Sanitation Company acquired Adams Sanitation Company's assets, name and trade name, including their lease rights and obligations at the ADSCO Landfill. The rights and obligations were assigned to Adams Sanitation Company, Inc., a wholly owned subsidiary of Keystone Sanitation Company. Between 1984 and 1990, approximately 8.8 acres were landfilled. The Department alleges that Waste Management of Pennsylvania, Inc., is a successor to Keystone Sanitation Company, Inc., with respect to the ADSCO Landfill.

Because of the threat to human health and the environment, the Department conducted an initial site characterization. The Department currently estimates that its past and future response costs for the ADSCO Site will amount to approximately $2.5 million.

The Department has entered into a proposed consent decree with Waste Management of Pennsylvania, Inc., and the Keystone Defendants. Under the terms of the consent decree, the settling parties will pay the Department a total of $436,000, plus the forfeiture of the ADSCO Landfill bond as their share of liability in reimbursement of past and future response costs at the site.

This notice is provided under section 1113 of HSCA (35 P. S. § 6020.1113). This section provides that the settlements will become final upon the filing of the Department's response to any significant written comments. The proposed consent decree that contains the specific terms of the settlement is available for public review and comment. The proposed consent decree can be examined from 8 a.m. to 4 p.m. at the Department's office at 909 Elmerton Avenue, Harrisburg, PA 17110, by contacting Barbara Faletti at (717) 705-4864. A public comment period on the proposed consent decree will extend for 60 days from today's date. Persons may submit written comments regarding the proposed consent decree to the Department by December 27, 2000, by submitting them to Barbara Faletti at the above address.

[Pa.B. Doc. No. 00-1863. Filed for public inspection October 27, 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 non-regulatory 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 non-regulatory 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.

Draft Guidance

DEP ID: 012-0200-002 Title: Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in DEP Review of Grants for Facilities and Infrastructure. Description: DEP will seek to promote sound land use planning and development by considering comprehensive planning and zoning ordinances in its decision making process on certain grants. This guidance will provide direction to DEP staff for the implementation of Acts 67 and 68 of 2000 in the administration of current DEP grant programs to avoid or minimize conflict with local land use decisions.

DEP will apply this policy where it has regulatory and decision-making discretion under legal authority and through the administration of DEP programs and regulations. This policy applies to DEP staff and applicants for DEP grant approvals. Anticipated Effective Date: January 1, 2001 Comment Period Ends: November 27, 2000 Contact: Policy Office, (717) 783-8727 or email: growingsmarter@dep.state.pa.us

Final Guidance

DEP ID: 700-0200-001 Title: Technology Management Process Description: The Technology Management Process will help define and communicate technological needs, and by working in partnership with inventors, entrepreneurs, trade associations and the public, it will help reduce the barriers to, and increase the opportunities for new technology. This document details the technology review process and describes the DEP technology clearinghouse, technology evaluation criteria, technology verification, outreach, training and awareness, and roles and responsibilities. Effective Date: October 28, 2000 Contact: Calvin Kirby at (717) 772-5834.

DEP ID: 274-0300-002 Title: Source Testing Manual, (Revision 3.2) Description: This guidance is intended to clarify and expand upon the Department's regulations relating to source testing. The document was revised to incorporate testing procedures for "newly regulated" pollutants and/or sources, to correct errors or revise procedures as new information becomes available, and to provide additional clarification in problem areas. Effective Date: November 11, 2000 Contact: Rick Szekeres at (717) 772-3938.

DEP ID: 383-2100-208 Title: DEP Approval Guide for Noncommunity Water Systems Description: The purpose of this guidance is to establish a rational and reasonable basis for staff decisions which will promote quality, timely and consistent service to the public and regulated community. Department staff will follow the guidance and procedures presented in this guidance document to direct and support implementation of consecutive water systems activities under the safe drinking water management programs. Effective Date: October 28, 2000 Contact: Trudy Troutman at (717) 783-3795.

JAMES M. SEIF,
Secretary

[Pa.B. Doc. No. 00-1864. Filed for public inspection October 27, 2000, 9:00 a.m.]

Water Resources Advisory Committee Meeting

Because of a lack of agenda items, the Water Resources Advisory Committee's November 8, 2000, meeting has been cancelled. The Committee's next meeting will be held in January 2001 at a date and location to be announced.

For further information, contact Carol Young at (717) 787-9637.

JAMES M. SEIF,
Secretary

[Pa.B. Doc. No. 00-1865. Filed for public inspection October 27, 2000, 9:00 a.m.]

DEPARTMENT OF HEALTH

Human Immunodeficiency Virus (HIV) Community Prevention Planning Committee; Public Meetings

The Statewide HIV Community Prevention Planning Committee, established by the Department of Health under sections 301 and 317 of the Public Health Service Act, (42 U.S.C.A. §§ 241(a) and 247(b)), will hold a public meeting on Wednesday, November 15, 2000.

The meeting will be held at the Sheraton Inn Harrisburg East, 800 East Park Avenue, Harrisburg, PA 17111, from 9 a.m. to 3 p.m.

For additional information contact Thomas M. DeMelfi, Department of Health, Bureau of HIV/AIDS, P. O. Box 90, Room 912, Health and Welfare Building, Harrisburg, PA 17108, (717) 783-0572.

Persons with a disability who desire to attend the meeting and require an auxiliary aid service or other accommodation to do so, should also contact Thomas DeMelfi at the above number or at 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, Jr.,
Secretary

[Pa.B. Doc. No. 00-1866. Filed for public inspection October 27, 2000, 9:00 a.m.]

Requests for Exceptions for Long-Term Care Nursing Facilities

The following long-term care nursing facilities are seeking an exception to 28 Pa. Code § 201.18(e) (relating to management):

Wood River Village Nursing Center
3200 Bensalem Boulevard
Bensalem, PA 19020

The St. Joseph Transitional Level of Care Center
145 North 6th Street
Reading, PA 19601

The following long-term care nursing facilities are seeking an exception to 28 Pa. Code § 205.6(a) (relating to function of building):

Harmarvillage Care Center
715 Freeport Road
Cheswick, PA 15024

Sharon Regional Health System Skilled Care Center
740 East State Street
Sharon, PA 16146

ManorCare Health Services Yardley
1480 Oxford Valley
Yardley, PA 19067

St. Francis Nursing Center Cranberry
5 St. Francis Way
Cranberry Township, PA 16066

Masonic Homes
One Masonic Drive
Elizabethtown, PA 17022

Meadow View Senior Living Center
RR4, Box 4000
Montrose, PA 18801

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.12 (b) (relating to elevators):

Clepper Manor
959 East State Street
Sharon, PA 16146

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.18 (e) (relating to management):

Wood River Village Nursing Center
3200 Bensalem Boulevard
Bensalem, PA 19020

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.25(a) (relating to kitchen):

Carleton Senior Care and Rehabilitation Center
10 West Avenue
Wellsboro, PA 16901

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.26(a) (relating to laundry):

Carleton Senior Care and Rehabilitation Center
10 West Avenue
Wellsboro, PA 16901

The following long-term care nursing facilities are seeking an exception to 28 Pa. Code § 205.28 (b) (relating to nurses' station):

The Wesley Village
209 Roberts Road
Pittston, PA 18640

Margaret E. Moul Home
2050 Barley Road
York, PA 17404

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.31 (relating to storage):

Jewish Home of Greater Harrisburg
4000 Linglestown Road
Harrisburg, PA 17112

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.33(a) (relating to utility room):

Margaret E. Moul Home
2050 Barley Road
York, PA 17404

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.36(f) (relating to bathing facilities):

Meadow View Senior Living Center
RR4 Box 4000
Montrose, PA 18801

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.71 (relating to bed and furnishings):

Kinkora Pythian Home
25 Cove Road
Duncannon, PA 17020

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 211.12(f)(1)(h) (relating to nursing services):

The Long Home
200 North West End Avenue
Lancaster, PA 17603

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 211.16(a) (relating to social services):

ManorCare Health Services- Harrisburg
800 King Russ Road Road
Harrisburg, PA 17109

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 201.2, which incorporates by reference 42 C.F.R. § 483.70(d)(1)(i)(ii) (relating to resident rooms):

Greenridge Nursing Home
1530 Sanderson Avenue
Scranton, PA 18509

The requests are on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from:

Division of Nursing Care Facilities
Room 526, Health and Welfare Building
Harrisburg, PA 17120
(717) 787-1816
Fax: (717) 772-2163
E-Mail Address: PAEXCEPT@STATE.PA.US

Those persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the division and address listed.

Comments received by the Department within 15 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of the request and/or provide comments to the Department and require an auxiliary aide service or other accommodation to do so, should contact V/TT: (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].

ROBERT S. ZIMMERMAN, Jr.,
Secretary

[Pa.B. Doc. No. 00-1867. Filed for public inspection October 27, 2000, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

Public Notice of Intent to Change the Payment Amount and Payment Method for the HIV-1 Viral Load Test (CPT Code 87536)

The purpose of this announcement is to provide public notice of the Department's intent to change the payment amount and payment method for the HIV- 1 Viral Load Test (CPT Code 87536) to be consistent with the national limitation amount (NLA) established by the Health Care Financing Administration (HCFA) for the Medicare program.

In June 1997, when HIV-1 Viral Load Tests were relatively new, HCFA advised State Medicaid Agencies to establish an appropriate payment amount for the HIV-1 Viral Load Test, which would assure efficiency, economy and access to this laboratory service. HCFA also advised Medicare contractors to set an interim amount for the payment of these tests. During the past 2½ years, HCFA

collected and examined cost and payment data relating to the HIV-1 Viral Load Test. HCFA now has used this information to establish the Medicare NLA of $117.59 for the HIV-1 Viral Load Test (CPT Code 87536) effective January 1, 2000.

Prior to the designation of CPT Code 87536 for the HIV-1 Viral Load Test, the Department paid for HIV-1 Viral Load Testing under CPT Code 87179. The Department's method of payment for HIV-1 Viral Load Testing mirrored that of the payment method already in place for chlamydia and gonorrhea testing. Specifically, the Department paid for this testing on a "per probe" basis. Utilizing this method of payment, the Medical Assistance (MA) Program has been paying a maximum of $139.14 for HIV Viral Load Testing ($23.19 per probe, up to a maximum of six probes.)

Since under Federal and State law, MA payment for laboratory services cannot exceed the Medicare NLA established by HCFA, the Department is required to change the maximum amount paid for CPT Code 87536 so as not to exceed the Medicare NLA of $117.59. Concomitantly, since there now exists a CPT Code specific to HIV-1 Viral Load Testing, the Department will stop paying for this test on a "per probe" basis, and will instead adopt the Medicare NLA of $117.59 for CPT Code 87536. This change will be effective November 30, 2000.

Fiscal Impact

For Fiscal Year 2000-2001, the fiscal impact as a result of changing the payment amount for the HIV-1 Viral Load Test will be $0.107 million in total funds ($0.051 million in State General Funds and $0.056 million in Federal Funds). For Fiscal Year 2001-2002, the fiscal impact as a result of changing the payment amount for the HIV-1 Viral Load Test will be $0.256 million in total funds ($0.120 million in State General Funds and $0.136 million in Federal 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 the 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 17105-2675.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voices users). Persons who require an alternate format should contact Thomas Vracarich at (717) 783-2209.

FEATHER O. HOUSTOUN
Secretary

Fiscal Note: 14-NOT-262. (1) General Fund; (2) Implementing Year 2000-01 is $51,000; (3) 1st Succeeding Year 2001-02 is $120,000; 2nd Succeeding Year 2002-03 is $120,000; 3rd Succeeding Year 2003-04 is $120,000; 4th Succeeding Year 2004-05 is $120,000; 5th Succeeding Year 2005-06 is $120,000; (4) 1999-00 Program—$622.669 Million; 1998-99 Program—$695.935 Million; 1997-98 Program—$662.740 Million; (7) Medical Asisstance—Outpatient; (8) recommends adoption. Funds are available in the Department's current budget to cover the costs created by this change.

[Pa.B. Doc. No. 00-1868. Filed for public inspection October 27, 2000, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania Cash Cow Doubler 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 Cash Cow Doubler.

2. *Price*: The price of a Pennsylvania Cash Cow Doubler instant lottery game ticket is $1.00.

3. *Play Symbols*: Each Pennsylvania Cash Cow Doubler instant lottery game ticket will contain one play area. The play symbols and their captions located in the play area are: $1.00 (ONE DOL), $2.00 (TWO DOL), $4.00 (FOR DOL), $5.00 (FIV DOL), $8.00 (EGT DOL), $10.00 (TEN DOL), 20 (TWENTY), 40 (FORTY), 80 (EIGHTY), $500 (FIV HUN), $5,000 (FIV THO) and a Bell Symbol (BELL).

4. *Prizes*: The prizes that can be won in this game are $1, $2, $4, $5, $8, $10, $20, $40, $80, $500 and $5,000.

5. *Approximate Number of Tickets Printed For the Game*: Approximately 12,000,000 tickets will be printed for the Pennsylvania Cash Cow Doubler instant lottery game.

6. *Determination of Prize Winners*:

(a) Holders of tickets with three matching play symbols of $5,000 (FIV THO) in the play area on a single ticket, shall be entitled to a prize of $5,000.

(b) Holders of tickets with three matching play symbols of $500 (FIV HUN) in the play area on a single ticket, shall be entitled to a prize of $500.

(c) Holders of tickets with three matching play symbols of 80 (EIGHTY) in the play area on a single ticket, shall be entitled to a prize of $80.

(d) Holders of tickets with two matching play symbols of 40 (FORTY) and a Bell Symbol (BELL) play symbol in the play area on a single ticket, shall be entitled to a prize of $80.

(e) Holders of tickets with three matching play symbols of 40 (FORTY) in the play area on a single ticket, shall be entitled to a prize of $40.

(f) Holders of tickets with two matching play symbols of 20 (TWENTY) and a Bell Symbol (BELL) play symbol in the play area on a single ticket, shall be entitled to a prize of $40.

(g) Holders of tickets with three matching play symbols of 20 (TWENTY) in the play area on a single ticket, shall be entitled to a prize of $20.

(h) Holders of tickets with two matching play symbols of $10.00 (TEN DOL) and a Bell Symbol (BELL) play symbol in the play area on a single ticket, shall be entitled to a prize of $20.

(i) Holders of tickets with three matching play symbols of $10.00 (TEN DOL) in the play area on a single ticket, shall be entitled to a prize of $10.

(j) Holders of tickets with two matching play symbols of $5.00 (FIV DOL) and a Bell Symbol (BELL) play symbol in the play area on a single ticket, shall be entitled to a prize of $10.

(k) Holders of tickets with three matching play symbols of $8.00 (EGT DOL) in the play area on a single ticket, shall be entitled to a prize of $8.

(l) Holders of tickets with two matching play symbols of $4.00 (FOR DOL) and a Bell Symbol (BELL) play symbol in the play area on a single ticket, shall be entitled to a prize of $8.

(m) Holders of tickets with three matching play symbols of $5.00 (FIV DOL) in the play area on a single ticket, shall be entitled to a prize of $5.

(n) Holders of tickets with three matching play symbols of $4.00 (FOR DOL) in the play area on a single ticket, shall be entitled to a prize of $4.

(o) Holders of tickets with two matching play symbols of $2.00 (TWO DOL) and a Bell Symbol (BELL) play symbol in the play area on a single ticket, shall be entitled to a prize of $4.

(p) Holders of tickets with three matching play symbols of $2.00 (TWO DOL) in the play area on a single ticket, shall be entitled to a prize of $2.

(q) Holders of tickets with two matching play symbols of $1.00 (ONE DOL) and a Bell Symbol (BELL) play symbol in the play area on a single ticket, shall be entitled to a prize of $2.

(r) Holders of tickets with three matching play symbols of $1.00 (ONE DOL) in the play area 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	*Win*	*Approximate Odds*	*Approximate No. of Winners Per 12,000,000 Tickets*
3-$1	$1	1:9.38	1,280,000
2-$1 + Bell	$2	1:21.43	560,000
3-$2	$2	1:37.50	320,000
2-$2 + Bell	$4	1:50	240,000
3-$4	$4	1:100	120,000
3-$5	$5	1:150	80,000
2-$4 + Bell	$8	1:200	60,000
3-$8	$8	1:600	20,000
2-$5 + Bell	$10	1:300	40,000
3-$10	$10	1:300	40,000
2-$10 + Bell	$20	1:1,000	12,000
3-$20	$20	1:1,500	8,000
2-$20 + Bell	$40	1:3,000	4,000
3-$40	$40	1:9,600	1,250
2-$40 + Bell	$80	1:8,000	1,500
3-$80	$80	1:26,667	450
3-$500	$500	1:120,000	100
3-$5,000	$5,000	1:1,000,000	12
Bell = Doubler			

8. *Retailer Incentive Awards*: The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Cash Cow Doubler 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 Cash Cow Doubler, prize money from winning Pennsylvania Cash Cow Doubler 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 Cash Cow Doubler 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 Cash Cow Doubler or through normal communications methods.

LARRY P. WILLIAMS,
Acting Secretary

[Pa.B. Doc. No. 00-1869. Filed for public inspection October 27, 2000, 9:00 a.m.]

Pennsylvania Frosty the Doughman Doubler 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 Frosty the Doughman Doubler.

2. *Price*: The price of a Pennsylvania Frosty the Doughman Doubler instant lottery game ticket is $2.00.

3. *Play Symbols*: Each Pennsylvania Frosty the Doughman Doubler instant lottery game ticket will contain one play area featuring a "Frosty's Numbers" area and a "Your Numbers" area. The play symbols and their captions located in the "Frosty's Numbers" are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENTY) and 21 (TWYONE). The play symbols and their captions located in the "Your Numbers" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENTY), 21 (TWYONE) and a Candy Cane Symbol (CANE).

4. *Prize Play Symbols*: The prize play symbols and their captions located in the "Your Numbers" area are: $2.00 (TWO DOL), $4.00 (FOR DOL), $5.00 (FIV DOL), $10.00 (TEN DOL), 20 (TWENTY), 40 (FORTY), $200 (TWO HUN), $1,000 (ONE THO) and $20,000 (TWY THO).

5. *Prizes*: The prizes that can be won in this game are $2, $4, $5, $10, $20, $40, $200, $400, $1,000 and $20,000. A player can win up to eight times on a ticket.

6. *Approximate Number of Tickets Printed For the Game*: Approximately 6,960,000 tickets will be printed for the Pennsylvania Frosty the Doughman Doubler instant lottery game.

7. *Determination of Prize Winners*:

(a) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Frosty's Numbers" play symbols and a prize play symbol of $20,000 (TWY THO) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $20,000.

(b) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Frosty's Numbers" play symbols and a prize play symbol of $1,000 (ONE THO) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $1,000.

(c) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Candy Cane Symbol (CANE) and a prize play symbol of $200 (TWO HUN) appears under the Candy Cane Symbol (CANE) play symbol, on single ticket, shall be entitled to a prize of $400.

(d) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Frosty's Numbers" play symbols and a prize play symbol of $200 (TWO HUN) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $200.

(e) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Frosty's Numbers" play symbols and a prize play symbol of 40 (FORTY) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $40.

(f) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Candy Cane Symbol (CANE) and a prize play symbol of 20 (TWENTY) appears under the Candy Cane Symbol (CANE) play symbol, on single ticket, shall be entitled to a prize of $40.

(g) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Frosty's Numbers" play symbols and a prize play symbol of 20 (TWENTY) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $20.

(h) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Candy Cane Symbol (CANE) and a prize play symbol of $10.00 (TEN DOL) appears under the Candy Cane Symbol (CANE) play symbol, on single ticket, shall be entitled to a prize of $20.

(i) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Frosty's Numbers" play symbols and a prize play symbol of $10.00 (TEN DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $10.

(j) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Candy Cane Symbol (CANE) and a prize play symbol of $5.00 (FIV DOL) appears under the Candy Cane Symbol (CANE) play symbol, on single ticket, shall be entitled to a prize of $10.

(k) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Frosty's Numbers" play symbols and a prize play symbol of $5.00 (FIV DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $5.

(l) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Frosty's Numbers" play symbols and a prize play symbol of $4.00 (FOR DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $4.

(m) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Candy Cane Symbol (CANE) and a prize play symbol of $2.00 (TWO DOL) appears under the Candy Cane Symbol (CANE) play symbol, on single ticket, shall be entitled to a prize of $4.

(n) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Frosty's Numbers" play symbols and a prize play symbol of $2.00 (TWO DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $2.

8. *Number and Description of Prizes and Approximate Odds*: The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

Match Any Of Your Numbers To Either Of Frosty's Numbers Or Get (Candy Cane) To Double With Prize(s) Of:	*Win*	*Approximate Odds*	*Approximate No. of Winners Per 6,960,000 Tickets*
$2	$2	1:5.58	1,248,160
$4	$4	1:62.50	111,360
$2 x 2	$4	1:34.09	204,160
$2 (Candy Cane)	$4	1:33.33	208,800
$5	$5	1:75	92,800
$10	$10	1:500	13,920
$5 x 2	$10	1:375	18,560
$5 (Candy Cane)	$10	1:187.50	37,120
$2 x 5	$10	1:300	23,200
$20	$20	1:750	9,280
$5 x 4	$20	1:750	9,280
$4 x 5	$20	1:187.50	37,120
$10 (Candy Cane)	$20	1:500	13,920
$40	$40	1:2,400	2,900
$5 x 8	$40	1:1,000	6,960
$10 x 4	$40	1:1,333	5,220
$20 (Candy Cane)	$40	1:1,622	4,292
$200	$200	1:24,000	290
$40 x 5	$200	1:12,000	580
$40 x 4 + $20 x 2	$200	1:12,000	580
$1,000	$1,000	1:120,000	58
$200 x 5	$1,000	1:120,000	58
$200 (Candy Cane + $200 x 3	$1,000	1:120,000	58
$20,000 (Candy Cane) = Doubler	$20,000	1:870,000	8

9. *Retailer Incentive Awards*: The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Frosty the Doughman Doubler instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money*: For a period of 1 year from the announced close of Pennsylvania Frosty the Doughman Doubler, prize money from winning Pennsylvania Frosty the Doughman Doubler 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 Frosty the Doughman Doubler instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law*: In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (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.

12. *Termination of the Game*: The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Frosty the Doughman Doubler or through normal communications methods.

LARRY P. WILLIAMS,
Acting Secretary

[Pa.B. Doc. No. 00-1870. Filed for public inspection October 27, 2000, 9:00 a.m.]

Pennsylvania Holiday Gift 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 Holiday Gift.

2. *Price*: The price of a Pennsylvania Holiday Gift instant lottery game ticket is $5.00.

3. *Play Symbols*: Each Pennsylvania Holiday Gift instant lottery game ticket will contain one play area featuring a "Lucky Numbers" area and a "Your Numbers" area. The play symbols and their captions located in the "Lucky Numbers" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV),

13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENTY), 21(TWYONE), 22 (TWYTWO), 23 (TWYTHR) and 24 (TWYFOR). The play symbols and their captions located in the "Your Numbers" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENTY), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR) and a Gift Symbol (GIFT).

4. *Prize Play Symbols*: The prize play symbols and their captions located in the "Your Numbers" area are: $5.00 (FIV DOL), $10.00 (TEN DOL), 15 (FIFTN), 20 (TWENTY), 25 (TWY FIV), 50 (FIFTY), 75 (SVY FIV), $100 (ONE HUN), $500 (FIV HUN), $5,000 (FIV THO) and YEAR ($10K/WK/YR).

5. *Prizes*: The prizes that can be won in this game are $5, $10, $15, $20, $25, $50, $75, $100, $500, $5,000 and $520,000 ($10,000 a week for a year). A player can win up to 10 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game*: Approximately 2,160,000 tickets will be printed for the Pennsylvania Holiday Gift instant lottery game.

7. *Determination of Prize Winners*:

(a) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Gift Symbol (GIFT) and a prize play symbol of YEAR ($10K/WK/YR) appears under the Gift Symbol play symbol, on a single ticket, shall be entitled to a prize of $520,000 ($10,000 a week for a year).

(b) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Lucky Numbers" play symbols and a prize play symbol of $5,000 (FIV THO) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $5,000.

(c) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Lucky Numbers" play symbols and a prize play symbol of $500 (FIV HUN) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $500.

(d) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Lucky Numbers" play symbols and a prize play symbol of $100 (ONE HUN) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $100.

(e) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Lucky Numbers" play symbols and a prize play symbol of 75 (SVY FIV) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $75.

(f) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Lucky Numbers" play symbols and a prize play symbol of 50 (FIFTY) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $50.

(g) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Lucky Numbers" play symbols and a prize play symbol of 25 (TWY FIV) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $25.

(h) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Lucky Numbers" play symbols and a prize play symbol of 20 (TWENTY) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $20.

(i) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Lucky Numbers" play symbols and a prize play symbol of 15 (FIFTN) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $15.

(j) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Lucky Numbers" play symbols and a prize play symbol of $10.00 (TEN DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $10.

(k) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Lucky Numbers" play symbols and a prize play symbol of $5.00 (FIV DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of $5.

8. *Number and Description of Prizes and Approximate Odds*: The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

Match Any Of Your Numbers To Either Of The Lucky Numbers Or Get A Gift Symbol With Prize(s) Of:	*Win*	*Approximate Odds*	*Approximate No. of Winners Per 2,160,000 Tickets*
$5	$5	1:5.00	432,000
$5 x 2	$10	1:28.57	75,600
$10	$10	1:150	14,400
$5 x 3	$15	1:150	14,400
$5 + $10	$15	1:150	14,400
$15	$15	1:300	7,200
$5 x 4	$20	1:300	7,200
$5 x 2 + $10	$20	1:300	7,200
$10 x 2	$20	1:300	7,200

Match Any Of Your Numbers To Either Of The Lucky Numbers Or Get A Gift Symbol With Prize(s) Of:	*Win*	*Approximate Odds*	*Approximate No. of Winners Per 2,160,000 Tickets*
$15 + $5	$20	1:300	7,200
$20	$20	1:300	7,200
$5 x 5	$25	1:300	7,200
$5 x 2 + $15	$25	1:300	7,200
$10 x 2 + $5	$25	1:300	7,200
$15 + $10	$25	1:300	7,200
$25	$25	1:300	7,200
$5 x 10	$50	1:1,412	1,530
$5 x 2 + $20 x 2	$50	1:857.14	2,520
$5 x 8 + $10	$50	1:857.14	2,520
$5 x 5 + $10 + $15	$50	1:1,200	1,800
$25 x 2	$50	1:1,600	1,350
$50	$50	1:1,600	1,350
$25 x 3	$75	1:4,800	450
$15 x 5	$75	1:4,800	450
$20 x 3 + $15	$75	1:4,800	450
$5 x 5 + $25 x 2	$75	1:12,000	180
$15 x 4 + $5 x 3	$75	1:12,000	180
$75	$75	1:24,000	90
$5 x 8 + 10 + $50	$100	1:4,000	540
$10 x 10	$100	1:4,000	540
$10 x 8 + $20	$100	1:12,000	180
$50 x 2	$100	1:12,000	180
$25 x 4	$100	1:12,000	180
$20 x 5	$100	1:12,000	180
$100	$100	1:30,000	72
$50 x 10	$500	1:86,400	25
$100 x 5	$500	1:108,000	20
$500	$500	1:432,000	5
$5,000	$5,000	1:432,000	5
GIFT	$520,000	1:1,080,000	2
GIFT = $10K/WEEK/YEAR			

9. *Retailer Incentive Awards*: The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Holiday Gift instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money*: For a period of 1 year from the announced close of Pennsylvania Holiday Gift, prize money from winning Pennsylvania Holiday Gift 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 Holiday Gift instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law*: In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (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.

12. *Termination of the Game*: The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Holiday Gift or through normal communications methods.

LARRY P. WILLIAMS,
Acting Secretary

[Pa.B. Doc. No. 00-1871. Filed for public inspection October 27, 2000, 9:00 a.m.]

Pennsylvania Holidays for Life 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 Holidays for Life.

2. *Price*: The price of a Pennsylvania Holidays for Life instant lottery game ticket is $10.00.

3. *Play Symbols*:

(a) Each Pennsylvania Holidays for Life instant lottery game ticket will contain ten play areas known as Game 1, Game 2, Game 3, Game 4, Game 5, Game 6, Game 7, Game 8, Game 9 and Game 10. Each game is played separately.

(b) The play symbols and their captions located in the play area for Game 1 are: $5.00 (FIV DOL), $10.00 (TEN DOL), 15 (FIFTN), 20 (TWENTY), 25 (TWY FIV), 35 (TRY FIV), 50 (FIFTY), 75 (SVY FIV), $100 (ONE HUN), $120 (HUNTWY), $1,000 (ONE THO) and LIFE ($100K/YR/LIFE).

(c) The play symbols and their captions located in the "Fast Cash" area for Game 2 are: Snowflake Symbol (FLAKE), Bell Symbol (BELL), Stocking Symbol (STKNG), Gift Symbol (GIFT), Tree Symbol (TREE) and Wreath Symbol (WRATH).

(d) The play symbols and their captions located in the "Your Numbers" area for Game 3 and Game 7 and the "Your" and "Their" areas for Game 4 and Game 9 are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE) and 10 (TEN).

(e) The play symbols and their captions located in the play area for Game 5 are: Tree Symbol (TREE) and Wreath Symbol (WRATH).

(f) The play symbols and their captions located in the play area for Game 6 are: $5.00 (FIV DOL), $10.00 (TEN DOL), 15 (FIFTN), 20 (TWENTY), 25 (TWY FIV), 35 (TRY FIV), 50 (FIFTY), 75 (SVY FIV), $100 (ONE HUN) and LIFE ($100K/YR/LIFE).

(g) The play symbols and their captions located in the play area for Game 8 are: Stocking Symbol (STKNG) and Wreath Symbol (WRATH).

(h) The play symbols and their captions located in the "Bonus" area for Game 10 are: Stocking Symbol (STKNG), Sled Symbol (SLED), Tree Symbol (TREE), Wreath Symbol (WRATH) and Gift Symbol (GIFT).

4. *Prize Play Symbols*:

(a) The prize play symbols and their captions located in the "Prize" areas for Game 3 are: $5.00 (FIV DOL), $10.00 (TEN DOL), 20 (TWENTY), $100 (ONE HUN) and LIFE ($100K/YR/LIFE).

(b) The prize play symbols and their captions located in the "Prize" areas for Game 4 are: $5.00 (FIV DOL), $10.00 (TEN DOL), 15 (FIFTN), 20 (TWENTY) and $100 (ONE HUN).

(c) The prize play symbols and their captions located in the "Prize" area for Game 5 are: $5.00 (FIV DOL), $10.00 (TEN DOL), 15 (FIFTN), 25 (TWY FIV), 35 (TRY FIV), 60 (SIXTY), $100 (ONE HUN), $10,000 (TEN THO) and LIFE ($100K/YR/LIFE).

(d) The prize play symbols and their captions located in the "Prize" areas for Game 7 are: $5.00 (FIV DOL), $10.00 (TEN DOL), 20 (TWENTY), 35 (TRY FIV), $100 (ONE HUN), $120 (HUNTWY) and LIFE ($100K/YR/LIFE).

(e) The prize play symbols and their captions located in the "Prize" area for Game 8 are: $5.00 (FIV DOL), $10.00 (TEN DOL), 15 (FIFTN), 20 (TWENTY), 25 (TWY FIV), 50 (FIFTY), 60 (SIXTY), $100 (ONE HUN), $1,000 (ONE THO) and $10,000 (TEN THO).

(f) The prize play symbols and their captions located in the "Prize" areas for Game 9 are: $5.00 (FIV DOL), $10.00 (TEN DOL), 20 (TWENTY) and LIFE ($100K/YR/LIFE).

5. *Prizes*:

(a) The prizes that can be won in individual games on this ticket are $5, $10, $15, $20, $25, $35, $50, $60, $75, $100, $120, $1,000, $10,000 and $100,000 a year for life ($2 million guaranteed).

(b) The $100,000 a year for life ($2 million guaranteed) prize will be paid by an initial cash payment of $100,000 plus equal annual payments of $100,000 over the lifetime of the winner and continuing under the provisions of 61 Pa. Code § 811.16 (relating to prizes payable after death of prize winner) until the $2 million minimum has been paid to the estate of the deceased. If the winner of the Pennsylvania Holidays for Life prize is younger than 18 years of age, the winner will not begin to receive the prize until the winner reaches 18 years of age. Only one claimant per ticket allowed.

(c) The player can win up to 11 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game*: Approximately 1,080,000 tickets will be printed for the Pennsylvania Holidays for Life instant lottery game.

7. *Description of Game Play Methods*:

(a) Game 1 and Game 6 play method: Get three like play symbols in the play area for that game and win that prize.

(b) Game 2 play method: Get a Snowflake Symbol or a Bell Symbol to win.

(c) Game 3 and Game 7 play method: When the total of "Your Numbers" equals 7 or 11 within a game, win prize shown for that game.

(d) Game 4 and Game 9 play method: When "Your" number is higher than "Their" number within a game, win prize shown for that game.

(e) Game 5 play method: Find three Tree Symbols in any one row, column or diagonal and win prize shown.

(f) Game 8 play method: Find three Stocking Symbols in any one row, column or diagonal and win prize shown.

(g) Game 10 play method: Get a Sled Symbol to win.

8. *Number and Description of Prizes and Approximate Odds*: The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

Win With Prize(s) Of:	*Win*	*Approximate Odds*	*Approximate No. of Winners Per 1,080,000 Tickets*
G1$10	$10	1:30	36,000
G2$10	$10	1:30	36,000
G5$10	$10	1:150	7,200
G6$10	$10	1:150	7,200

Win With Prize(s) Of:	*Win*	*Approximate Odds*	*Approximate No. of Winners Per 1,080,000 Tickets*
G8$10	$10	1:150	7,200
G3$5 x 2	$10	1:60	18,000
G4$5 x 2	$10	1:60	18,000
G7$5 x 2	$10	1:60	18,000
G9$5 x 2	$10	1:60	18,000
G1$5 + G5$5	$10	1:60	18,000
G6$5 + G8$5	$10	1:60	18,000
G1$5 + G6$5	$10	1:50	21,600
G3$5 + G9$5	$10	1:50	21,600
G4$5 + G7$5	$10	1:50	21,600
G1$15	$15	1:300	3,600
G5$15	$15	1:300	3,600
G6$15	$15	1:300	3,600
G8$15	$15	1:300	3,600
G1$5 + G3$5 x 2	$15	1:300	3,600
G2$10 + G4$5	$15	1:300	3,600
G5$5 + G7$5 x 2	$15	1:300	3,600
G6$10 + G8$5	$15	1:300	3,600
G7$5 + G9$5 x 2	$15	1:300	3,600
G1$20	$20	1:300	3,600
G2$20	$20	1:150	7,200
G3$20	$20	1:300	3,600
G4$20	$20	1:300	3,600
G1$10 + G3$5 x 2	$20	1:300	3,600
G2$10 + G4$5 x 2	$20	1:300	3,600
G5$10 + G6$5 + G7$5	$20	1:300	3,600
G6$5 + G7$5 x 2 + G9$5	$20	1:300	3,600
G7$10 + G9$5 x 2	$20	1:300	3,600
G1$25	$25	1:300	3,600
G5$25	$25	1:300	3,600
G6$25	$25	1:300	3,600
G8$25	$25	1:300	3,600
G1$20 + G5$5	$25	1:300	3,600
G2$20 + G4$5	$25	1:150	7,200
G3$5 x 2 + G5$5 + G6$5 + G8$5	$25	1:300	3,600
G5$10 + G7$5 x 2 + G9$5	$25	1:300	3,600
G7$5 x 2 + G8$5 + G9$5 x 2	$25	1:300	3,600
G1$35	$35	1:300	3,600
G6$35	$35	1:300	3,600
G1$20 + G3$5 x 2 + G5$5	$35	1:300	3,600
G2$10 + G4$10 + G6$5 + G8$5 + G9$5	$35	1:300	3,600
G2$10 + G3$5 + G5$10 + G7$5 x 2	$35	1:300	3,600
G1$50	$50	1:1,200	900
G6$50	$50	1:1,200	900
G10$50	$50	1:1,200	900
G1$25 + G2$10 + G5$10 + G6$5	$50	1:600	1,800
G2$10 + G4$5 x 2 + G6$10 + G7$5 x 2 + G9$5 x 2	$50	1:685.71	1,575
G3$5 + $10 + G4 $15 + G6$5 + G8$10 + G9$5	$50	1:685.71	1,575
G5$25 + G6$10	$50	1:480	2,250

Win With Prize(s) Of:	*Win*	*Approximate Odds*	*Approximate No. of Winners Per 1,080,000 Tickets*
+ G7$5 x 2 + G8$5			
G6$15 + G7$10 + $5 + G8$5 + G9$10 + $5	$50	1:400	2,700
G5$60	$60	1:12,000	90
G8$60	$60	1:12,000	90
G2$20 + G6$20 + G8$20	$60	1:6,000	180
G2$10 + G10$50	$60	1:6,000	180
G1$10 + G2$20 + G4$5 x 2 + G6$10 + G8$10	$60	1:6,000	180
G3$5 x 2 + G5$10 + G7$10 x 2 + G9$20	$60	1:4,000	270
G1$5 + G2$10 + G3$5 x 2 + G4$5 x 2 + G5$5 + G6$5 + G7$5 x 2 + G8$5	$60	1:4,000	270
G1$75	$75	1:12,000	90
G6$75	$75	1:12,000	90
G2$10 + G5$35 + G7$10 x 2 + G9$5 x 2	$75	1:12,000	90
G2$10 + G6$15 + G10$50	$75	1:6,000	180
G5$100	$100	1:6,000	180
G8$100	$100	1:6,000	180
G1$50 + G10$50	$100	1:6,000	180
G2$20 + G5$10 + G7$20 + G10$50	$100	1:6,000	180
G1$120	$120	1:24,000	45
G7$120	$120	1:24,000	45
G1$50 + G2$20 + G6$10 + G7$20 x 2	$120	1:12,000	90
G2$10 + G3$20 x 2 + G5$10 + G7$35 + G8$20 + G9$5	$120	1:12,000	90
G1$1,000	$1,000	1:120,000	9
G8$1,000	$1,000	1:120,000	9
G1$100 + G3$100 x 2 + G4$100 x 2 + G5$100 + G6$100 + G7$100 x 2 + G8$50 + G10$50	$1,000	1:120,000	9
G5$10,000	$10,000	1:1,080,000	1
G8$10,000	$10,000	1:540,000	2
LIFE	$100,000/ YR/LIFE	1:1,080,000	1

Life = $100,000/YR/LIFE

9. *Claiming of Prizes*: For purposes of claiming the $100,000 a year for life prize under the Pennsylvania Holidays for Life game, "lifetime" for legal entities shall be defined as 20 years beginning the date the prize is claimed. Only one claimant per ticket is allowed for the $100,000 a year for life prize.

10. *Retailer Incentive Awards*: The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Holidays for Life instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

11. *Unclaimed Prize Money*: For a period of 1 year from the announced close of Pennsylvania Holidays for Life, prize money from winning Pennsylvania Holidays for Life 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 Holidays for Life 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.

12. *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.

13. *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 Holidays for Life or through normal communications methods.

LARRY P. WILLIAMS,
Acting Secretary

[Pa.B. Doc. No. 00-1872. Filed for public inspection October 27, 2000, 9:00 a.m.]

Pennsylvania Reindeer Games 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 Reindeer Games.

2. *Prize*: The price of a Pennsylvania Reindeer Games instant lottery game ticket is $1.00.

3. *Play Symbols*: Each Pennsylvania Reindeer Games instant lottery game ticket will contain one play area. The play symbols and their captions located in the play area are: $1.00 (ONE DOL), $2.00 (TWO DOL), $3.00 (THR DOL), $5.00 (FIV DOL), $10.00 (TEN DOL), 15 (FIFTN), 20 (TWENTY), 30 (THIRTY), 40 (FORTY), $100 (ONE HUN) and $500 (FIV HUN).

4. *Prizes*: The prizes that can be won in this game are $1, $2, $3, $5, $10, $15, $20, $30, $40, $100 and $500.

5. *Approximate Number of Tickets Printed For the Game*: Approximately 12,000,000 tickets will be printed for the Pennsylvania Reindeer Games instant lottery game.

6. *Determination of Prize Winners*:

(a) Holders of tickets with three matching play symbols of $500 (FIV HUN) in the play area on a single ticket, shall be entitled to a prize of $500.

(b) Holders of tickets with three matching play symbols of $100 (ONE HUN) in the play area on a single ticket, shall be entitled to a prize of $100.

(c) Holders of tickets with three matching play symbols of 40 (FORTY) in the play area on a single ticket, shall be entitled to a prize of $40.

(d) Holders of tickets with three matching play symbols of 30 (THIRTY) in the play area on a single ticket, shall be entitled to a prize of $30.

(e) Holders of tickets with three matching play symbols of 20 (TWENTY) in the play area on a single ticket, shall be entitled to a prize of $20.

(f) Holders of tickets with three matching play symbols of 15 (FIFTN) in the play area on a single ticket, shall be entitled to a prize of $15.

(g) Holders of tickets with three matching play symbols of $10.00 (TEN DOL) in the play area on a single ticket, shall be entitled to a prize of $10.

(h) Holders of tickets with three matching play symbols of $5.00 (FIV DOL) in the play area on a single ticket, shall be entitled to a prize of $5.

(i) Holders of tickets with three matching play symbols of $3.00 (THR DOL) in the play area on a single ticket, shall be entitled to a prize of $3.

(j) Holders of tickets with three matching play symbols of $2.00 (TWO DOL) in the play area on a single ticket, shall be entitled to a prize of $2.

(k) Holders of tickets with three matching play symbols of $1.00 (ONE DOL) in the play area 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	*Win*	*Approximate Odds*	*Approximate No. of Winners Per 12,000,000 Tickets*
3-$1	$1	1:6.25	1,920,000
3-$2	$2	1:18.75	640,000
3-$3	$3	1:42.86	280,000
3-$5	$5	1:60	200,000
3-$10	$10	1:300	40,000
3-$15	$15	1:300	40,000
3-$20	$20	1:600	20,000
3-$30	$30	1:1,200	10,000
3-$40	$40	1:3,200	3,750
3-$100	$100	1:6,000	2,000
3-$500	$500	1:48,000	250

8. *Retailer Incentive Awards*: The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Reindeer Games 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 Reindeer Games, prize money from winning Pennsylvania Reindeer Games 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 Reindeer Games 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 Reindeer Games or through normal communications methods.

LARRY P. WILLIAMS,
Acting Secretary

[Pa.B. Doc. No. 00-1873. Filed for public inspection October 27, 2000, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Addendum and Revision of the Listing of Approved Speed-Timing Devices and Appointment of Maintenance and Calibration Stations

Addendum

The Department of Transportation, Bureau of Motor Vehicles, under the authority of 75 Pa.C.S. § 3368, at 29 Pa.B. 6534 (December 25, 1999), published a notice listing all Department-approved speed-timing devices and maintenance and calibration stations for use until the next comprehensive list is published. The Department added device approvals on January 29, 2000; February 26, 2000; June 17, 2000; and September 16, 2000, by publication at 29 Pa.B. 6534, 30 Pa.B. 591, 30 Pa.B. 3126, and 30 Pa.B. 4861, respectively.

Cancellation

As a further amendment to the December 1999 list of approved official electronic speed-timing devices (nonradar) which calculate average speed between any two points, the Department hereby gives notice of the cancellation of the following stations:

- Marella's Jewelry, 416 North Springfield Road, Clifton Heights, Delaware County, Pa. 19018 (Appointed: 08/10/79, Station W42).
- Zimmel Jewelers, 1521 Bethlehem Pike, Flourtown, Montgomery County, Pa. 19031 (Appointed: 04/17/80, Station W35).

Comments, suggestions or questions may be directed to Barb Tomassini, Manager, Inspection Processing Section, Vehicle Inspection Division, Bureau of Motor Vehicles, Third Floor, Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104 or by (717) 787-2895.

Other approved speed-timing devices and appointment of maintenance and calibration stations appear at 29 Pa.B. 6534 (December 25, 1999), 30 Pa.B. 591 (January 29, 2000), 30 Pa.B. 1211 (February 26, 2000), 30 Pa.B. 3126 (June 16, 2000) and 30 Pa.B. 4861 (September 16, 2000).

BRADLEY L. MALLORY,
Secretary

[Pa.B. Doc. No. 00-1874. Filed for public inspection October 27, 2000, 9:00 a.m.]

Contemplated Sale of Land no Longer Needed for Transportation Purposes

The Department of Transportation, under 71 P. S. § 513 (e)(7), intends to sell certain land owned by the Department.

The parcel available is located in Cumberland Township, Adams County and consists of approximately 3.4979 acres. This property is land locked and fronts along Route 15 which is a limited access highway.

It has been determined that the land is no longer needed for present or future Transportation purposes.

Interested Public Entities are invited to express their interest in purchasing the site within thirty (30) calendar days from the date of publication of this notice to: Barry G. Hoffman, P. E. District Engineer. Department of Transportation Engineering District 8-0, 2140 Herr Street, Harrisburg, PA 17013.

BRADLEY L. MALLORY,
Secretary

[Pa.B. Doc. No. 00-1875. Filed for public inspection October 27, 2000, 9:00 a.m.]

Finding

Westmoreland County

Pursuant to the provisions of 71 P. S. Section 2002(b), the Secretary of Transportation makes the following written finding:

The Department of Transportation plans to replace the existing Hannas Run Bridge on S.R. 1017 in Ligonier Township, Westmoreland County. Beyond the thirty-three (33) foot right-of-way designated for the existing roadway and bridge, the project location lies completely within the Clifford Farm property, a National Register-eligible historic resource.

I have considered the environment, economic, social, and other effects of the proposed project as enumerated in Section 2002 of the Administrative Code, and have concluded that there is no feasible and prudent alternative to the project as designed, and all reasonable steps have been taken to minimize such effect.

No adverse environmental effect is likely to result from the replacement of this bridge.

BRADLEY L. MALLORY,
Secretary

[Pa.B. Doc. No. 00-1876. Filed for public inspection October 27, 2000, 9:00 a.m.]

Retention of Engineering Firms

Washington County
Project Reference No. 08430AG2626

The Department will retain an engineering firm to provide supplementary construction inspection staff of approximately fourteen (14) inspectors, under the Department's Inspector(s)-in-Charge for construction inspection and documentation services on the following projects:

1. S.R. 0070, Section 10R, Washington County Local Name: Interstate PM SPC2002 This project involves milling, overlay and guide rail.

2. S.R. 0070, Section A20, Washington County Local Name: Interstate PM SPC2001 This project involves concrete patching, overlay and guide rail.

Department policy requires firms providing construction inspection services to have a Federal Acquisition Regulation (FAR) field overhead rate established. The Department's current policy (SOL-430-91-34) requires a firm to submit their proposed field and office cost allocation approach, before the beginning of the fiscal year where the separate overhead rates would apply. This approach must comply with the provisions set forth in Part 31 of the Federal Acquisition Regulations (48 CFR Chapter 1) which governs the determination of the eligibility of costs making up the firm's Direct and Indirect Costs.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an Engineering Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The 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. Review of inspectors' resumes with emphasis on construction inspection capabilities and specialized experience in Maintenance and Protection of Traffic, soils, structures, concrete, asphalt paving, and drainage.

b. Past Performance ratings.

c. Understanding of District 12-0 Department requirements, policies, and specifications.

d. Number of available inspectors in each payroll classification.

e. Number of NICET certified inspectors in each payroll classification.

f. Ability to provide CDS operator.

g. Previous District 12-0 experience.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

Classification	*No. of Inspectors*
Transportation Construction Ins. Super. (TCIS) (NICET Highway Construction Level 3 or equivalent)	3 (3)
Transportation Construction Inspector (TCI) (NICET Highway Construction Level 2 or equivalent)	8 (5)
Technical Assistant - 1 (TA-1) (NICET Highway Construction Level 1 or equivalent)	2 (0)
Technical Assistant (TA) (NICET Highway Construction Level 1 or equivalent)	1 (0)

The number(s) in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

1. Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.

2. Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.

3. Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.

4. Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

5. Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The maximum hourly payroll rate for each Department Payroll Classification for calendar year 2000 shall be as shown:

Payroll Classification	*Maximum Straight Time Hourly Payroll Rate (Year 2000)*
(TCIS)	$20.34
(TCI)	$17.05
(TA-1)	$13.80
(TA)	$11.72

If applicable, the maximum straight time hourly payroll rate for subsequent calendar years will be established at the scope of work meeting.

The maximum hourly payroll rate is the maximum hourly rate paid to an employee in a specific Department Payroll classification. The Department reserves the right to negotiate hourly payroll rates of compensation of individuals based on knowledge, experience and education up to the payroll classification maximum hourly payroll rate.

The firm selected may be required to attend a preconstruction conference with the Department and the

construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards, safety and accident prevention, and equal opportunity provisions of the contract item; and perform other duties as may be required.

The Department will reimburse for actual miles driven on the project as directed by the Department, and a maximum of $32.50/day for either mileage to and from the work site or lodging. An inspector will not be reimbursed for a combination of the two during the same day. Mileage will be reimbursed for the most direct route from the inspector's residence or the Consultant's office, whichever is less, to the project site and return at the lesser of the maximum mileage rate established by the Commonwealth or the firm's current policy. The first fifteen (15) miles each day of an inspector's commute from and to his/her residence or the consultant's office to the work location is considered normal commuting travel and will not be eligible for mileage reimbursement. Lodging will be reimbursed at a maximum rate of $32.50/day, in lieu of mileage, but receipts for all costs must be provided to the Department with the Engineer's invoice. Lodging will only be reimbursed for employees whose home or headquarters is more than 65 miles from the project.

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).

Letters of interest for this project must include a letter, signed by the individuals you propose for all TCIS positions, giving their approval to use their name in your letter of interest for this specific project.

The maximum number of resumes to be included in the letter of interest shall be as follows:

Classification	*No. of Resumes*
TCIS	4
TCI	10

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 (any pages beyond 3 will not be reviewed by the Department), 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. Michael H. Dufalla, P.E., District Engineer
Engineering District 12-0
P. O. Box 459, North Gallatin Avenue Extension
Uniontown, PA 15401
Attn: Chuck Thompson, 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 Mr. John Knapik, phone number (724) 439-7253, fax number (724) 430-4402.

Westmoreland County

Project Reference No. 08430AG2627

The Department will retain an engineering firm to perform final design and services during construction (consultation during construction and shop drawing review) on S.R. 0022, Section B10, the reconstruction of Traffic Route 22, Westmoreland County.

This project involves the reconstruction of S.R. 0022 from Township Road #966 (segment 0450/offset 0000) in Derry Township, Westmoreland County to the Borough of Blairsville in Indiana County (Westmoreland County segment 0480/offset 2849, Indiana County segment 0010/offset 0000).

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 in roadway and bridge design. The specific experience of individuals employed by the firm shall be considered.

b) Ability to expedite the project.

c) Project team composition .

d) Available staffing for this assignment and the ability to meet the Department's needs.

The firm selected may be required to perform, but not limited to, the following tasks: field surveys; roadway design; intersection geometry investigations; signing layout; prepare a quality development plan; prepare geotechnical reports; traffic control plans; hydraulic computations; utility coordination; right of way plans; preliminary and final structure plans; erosion and sedimentation control plans; signing and pavement marking plans; traffic signal plans; construction plans, forms, specifications and estimates; hazardous waste site investigations; noise feasibility and reasonableness worksheets; roadway and structure borings; project partnering and public involvement.

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. Michael H. Dufalla, P.E., District Engineer
Engineering District 12-0
P. O. Box 459, North Gallatin Avenue Extension
Uniontown, PA 15401
Attention: Mr. P. Gregory Bednar, 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 Mr. P. Gregory Bednar, P.E., at phone number (724) 439-7243, fax number (724) 430-4401.

Westmoreland County

Project Reference No. 08430AG2628

The Department will retain an engineering firm to perform final design and services during construction (consultation during construction and shop drawing review) on S.R. 0022, Section B09, the reconstruction of Traffic Route 22, Westmoreland County.

This project involves the reconstruction of S.R. 0022 from just west of S.R. 0982 (segment 0410/offset 0000) to Township Road #966 (segment 0450/offset 000) in Derry Township, Westmoreland 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) Past record of performance with respect to cost control, work quality, ability to meet schedules, and previous experience in roadway and bridge design. The specific experience of individuals employed by the firm shall be considered.

b) Ability to expedite the project.

c) Project team composition .

d) Available staffing for this assignment and the ability to meet the Department's needs.

The firm selected may be required to perform, but not limited to, the following tasks: field surveys; roadway design; intersection geometry investigations; signing layout; prepare a quality development plan; prepare geotechnical reports; traffic control plans; hydraulic computations; utility coordination; right of way plans; preliminary and final structure plans; erosion and sedimentation control plans; signing and pavement marking plans; traffic signal plans; construction plans, forms, specifications and estimates; hazardous waste site investigations; noise feasibility and reasonableness worksheets; roadway and structure borings; project partnering and public involvement.

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. Michael H. Dufalla, P.E., District Engineer
Engineering District 12-0
P. O. Box 459, North Gallatin Avenue Extension
Uniontown, PA 15401
Attention: Mr. P. Gregory Bednar, 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 Mr. P. Gregory Bednar, P.E., at phone number (724) 439-7243, fax number (724) 430-4401.

Schuylkill County

Project Reference No. 08430AG2629

The Department will retain an engineering firm for a multi-phase, specific project agreement to provide preliminary engineering, environmental documentation, final design, and construction services on S.R. 0309, Section 02B, S.R. 0309 Tamaqua Stone Arch Replacement, Schuylkill County.

This project involves the replacement of the existing stone arch structure carrying S.R. 0309 over the Little Schuylkill River in the Borough of Tamaqua, Schuylkill 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) Past record of performance with respect to cost control, work quality, ability to meet schedules, and previous experience on similar work. 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 with respect to the District Office.

e) Project team composition.

The firm selected may be required to perform the following services for this project:

1. All studies necessary for the preparation of a Categorical Exclusion Evaluation Level 1B and associated documents including, but not limited to: cultural resource surveys; wetlands delineation and evaluation; Section 106 documents; hazardous waste reports; archeological surveys.

2. Preliminary engineering including, but not limited to: Field surveying; hydraulic and hydrologic analysis; type, size, and location drawings; Step 9 Submission; roadway design (for roadway approach work); E & S plans; soils and geotechnical reconnaissance; maintenance and protection of traffic; right-of-way investigation; and coordination with utility companies (and railroad companies if warranted).

3. Preparation of final roadway and structure plans, including, but not limited to: roadway and structure borings; final design; and preparation of plans, specifications, and estimates.

4. Services during construction, including construction consultation and shop drawing review.

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. Walter E. Bortree, P.E., District Engineer
Engineering District 5-0
1713 Lehigh Street
Allentown, PA 18103
Attention: Brian H. Graver

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 Brian H. Graver, Consultant Agreement Administrator, phone number (610) 798-4322, fax number (610) 798-4303.

Monroe County

Project Reference No. 08430AG2630

The Department will retain an engineering firm for a multi-phase, project specific agreement to provide preliminary engineering, environmental documentation, final design, and construction services on S.R. 4003, Section 01B, S.R. 4003 Thornhurst Bridge Replacement, Monroe County.

This project involves the replacement of the existing structure carrying S.R. 4003 over the Lehigh River in Coolbaugh Township, Monroe 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) Past record of performance with respect to cost control, work quality, ability to meet schedules, and previous experience on similar work. 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 with respect to the District Office.

e) Project team composition.

The firm selected may be required to perform the following services for this project:

1. All studies necessary for the preparation of a Categorical Exclusion Evaluation Level 2 and associated documents including, but not limited to: cultural resource surveys; wetlands delineation and evaluation; Section 106 documents; hazardous waste reports; archeological surveys.

2. Preliminary engineering including, but not limited to: Field surveying; hydraulic and hydrologic analysis; type, size, and location drawings; Step 9 Submission; roadway design (for roadway approach work); E & S plans; soils and geotechnical reconnaissance; maintenance and protection of traffic; right-of-way investigation; and coordination with utility companies.

3. Preparation of final roadway and structure plans, including, but not limited to: roadway and structure borings; final design; and preparation of plans, specifications, and estimates.

4. Services during construction, including construction consultation and shop drawing review.

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. Walter E. Bortree, P.E, District Engineer
Engineering District 5-0
1713 Lehigh Street
Allentown, PA 18103
Attention: Brian H. Graver

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 Brian H. Graver, Consultant Agreement Administrator, phone number (610) 798-4322, fax number (610) 798-4303.

Lancaster County

Project Reference No. 08430AG2631

The Department will retain an engineering firm to provide preliminary engineering, final design, environmental studies and construction consultation on four (4) separate projects to close three (3) crossings on the AMTRAK Keystone Corridor - Philadelphia to Harrisburg Line. Details of the projects follow:

1. Newcomer Road (T-360). Located in Rapho Township/Mt. Joy Borough south of S.R. 0230. The crossing will be removed and the road closed.

2. Eby Chiques Road (T-364). Located in Rapho Township south of S.R. 0230. The crossing will be removed, the road relocated and a bridge built to span the railroad 500-feet east of the present crossing. The relocation will pass through a proposed light industrial development on the north side of the railroad. This project will require a railroad electrification plan.

3. Irishtown Road (T-533). Located in Leacock Township between S.R. 0030 and S.R. 0340. The crossing will be removed and parallel roads on each side of the railroad constructed. To the south, Cherry Lane will extend north and then east along the railroad and connect to Irishtown Road. To the north, Harvest Road will extend west along the railroad and connect to Irishtown Road. Additionally, local road improvements, (i.e., resurfacing, shoulders, etc.) will be part of this project.

4. Longnecker Road (S.R. 4003). Located in Mt. Joy Borough, 2100-feet west of the Newcomer Road Crossing. Prior to the Newcomer Road crossing closure, Longnecker Road will be reconstructed to provide additional clearance at the AMTRAK overpass.

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) Experience working successfully with AMTRAK.

b) Experience working successfully with local municipalities.

c) The project team is expected to visit the site and provide an overview of their understanding of possible issues for the project based on their field observations.

d) Specialized experience and technical competence with similar projects and their ability to provide innovative solutions to complex technical problems.

e) Project team management including sub consultants and how the project manager will manage several disciplines and interact successfully with the District.

f) Understanding of the Departments' requirements, Design Manuals, policies and specifications.

g) Resource availability to meet multiple assignments in a timely manner.

h) Past record with respect to cost control, work quality, and ability to meet schedules.

i) Ability of the project team to communicate effectively in various mediums and provide strong public involvement management skills.

The Department is seeking a multi-disciplined firm with highway and structure design experience. The project team should include experience in traffic signal design, geotechnical engineering, railroad electrification design, environmental studies and preparation.

The selected firm will be required to provide a variety of engineering services including, but not limited to, the following: environmental studies and documentation, interagency permits, roadway design, structure design, grading design, geometric design, signal and signing design, drainage design, utility coordination, right-of-way plans, surveying, construction cost estimating, construction scheduling, public meeting and agency coordination, public utility coordination, geotechnical engineering, plans preparation, proposal preparation, pavement design, traffic analysis, maintenance of traffic design and railroad electrification design.

With the exception of S.R. 4003, the projects involve township owned roads. The relocated roads and bridge once constructed will be owned by the townships and will be designed to meet local standards. The townships will be active and involved team members throughout the design process.

Consultant or sub-consultant must provide an authorization letter from AMTRAK as part of the Letter of Interest. The letter must state that the firm is authorized to perform electrification design for AMTRAK. Letters of Interest without this authorization will be rejected.

The design duration is expected to vary between six (6) to fifteen (15) months, depending on the complexity of the individual project. The estimated construction cost of the improvements is $6 million.

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 moderately 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) specifying project team members and project manager, 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: Doug Murphy

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:00 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 Doug Murphy, District 8-0, at phone (717) 783-3773, Fax (717) 705-5493.

Allegheny County

Project Reference No. 08430AG2632

The Department will retain an engineering firm to provide preliminary engineering, environmental studies, final design, and engineering services in construction on S.R. 0079, Section A23, Parkway Ramps, Allegheny County.

This project involves the preliminary engineering, environmental studies, final design and engineering services in construction necessary in the construction of two new ramps in order to complete the I79/I279 interchange. One ramp will connect I-79 South to S.R. 0022 West towards the Pittsburgh International Airport. The other ramp will connect S.R. 0022 East to I-79 North. This project is located in the Townships of Collier and Robinson in Allegheny County. The estimated construction cost for this project is $40 million.

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.

b) Experience and abilities of key personnel (project manager, bridge engineer, etc.) that will be assigned to the project.

c) Past record of performance with respect to cost control, work quality, ability to meet schedules, and previous experience.

d) Available staffing for this assignment and the ability to meet the Department's needs.

e) Special requirements of the project; firm's experience in highway design, structure design, maintenance and protection of traffic on similar interstate projects.

f) Subconsultants assigned to this project.

g) Location of Consultant with respect to the District Office.

The firm selected may be required to perform a variety of services including, but not limited to, the following: Preliminary Engineering; field surveys, utility coordination, geotechnical studies, preliminary right of way investigation, safety reviews, value engineering, environmental studies, alternative alignment studies, and waste investigation: Final Design; preparation of roadway, structure, traffic signing and pavement marking, traffic signal, right of way, erosion and sedimentation control, and highway lighting plans, construct ability reviews, intelligent transportation systems (ITS), maintenance and protection of traffic, and project administration: Construction; construction consultation and shop drawing reviews.

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. Raymond S. Hack, P.E, District Engineer
Engineering District 11-0
45 Thoms Run Road
Bridgeville, PA 15017
Attn: Robert M. Collins, 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 Robert M. Collins, P.E., District 11-0, at phone number (412) 429-4928, fax number (412) 429-4933.

Schuylkill County

Project Reference No. 08430AG2633

The Department will retain an engineering firm to provide preliminary engineering, environmental documentation, final design, and construction services on S.R. 0054, Section 05M, S.R. 054 Mahanoy City Culvert Replacement, Schuylkill County.

This project involves the replacement of the existing corrugated metal arch pipe culvert carrying a tributary of Mahanoy Creek under S.R. 0054 in the Borough of Mahanoy City, Schuylkill 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) Past record of performance with respect to cost control, work quality, ability to meet schedules, and previous experience on similar work. 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 with respect to the District Office.

e) Project team composition.

The firm selected may be required to perform the following services for this project:

1. All studies necessary for the preparation of a Categorical Exclusion Evaluation Level 1b and associated documents including, but not limited to: cultural resource surveys; wetlands delineation and evaluation; Section 106 documents; hazardous waste reports; archeological surveys.

2. Preliminary engineering including, but not limited to: Field surveying; hydraulic and hydrologic analysis; type, size, and location drawings; Step 9 Submission; roadway design (for roadway approach work); E & S plans; soils and geotechnical reconnaissance; maintenance and protection of traffic; right-of-way investigation; and coordination with utility companies.

3. Preparation of final roadway and structure plans, including, but not limited to: roadway and structure borings; final design; and preparation of plans, specifications, and estimates.

4. Services during construction, including construction consultation and shop drawing review.

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 moderately 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. Walter E. Bortree, P.E., District Engineer
Engineering District 5-0
1713 Lehigh Street
Allentown, PA 18103
Attention: Brian H. Graver

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 Brian H. Graver, phone number (610) 798-4322, fax number (610) 798-4303.

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 nonresponsive 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. 00-1877. Filed for public inspection October 27, 2000, 9:00 a.m.]

HEALTH CARE COST CONTAINMENT COUNCIL

Meeting Dates

The following meetings of the Health Care Cost Containment Council have been scheduled: Wednesday, November 1, 2000, Data Systems Committee—10 a.m.; Education & Outreach Committee—1 p.m. Thursday, November 2, 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. Individuals who need accommodation due to a disability and want to attend the meetings should contact Cherie Elias, Health Care Cost

Containment Council, 225 Market Street, Harrisburg, PA 17101, or call (717) 232-6787 at least 24 hours in advance so that arrangements can be made.

MARC P. VOLAVKA,
Executive Director

[Pa.B. Doc. No. 00-1878. Filed for public inspection October 27, 2000, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Comments Issued

Sections 5(d) and 5(g) of the Regulatory Review Act (71 P. S. §§ 745.5(d) and 745.5(g)) provide that the designated standing committees may issue comments within 20 days of the close of the public comment period, and the Independent Regulatory Review Commission (Commission) may issue comments within 10 days of the close of the committees' comment period. The Commission's Comments are based upon the criteria contained in subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (75 P. S. §§ 745.5a(h) and 745.5a(i)).

The Commission issued Comments on the following proposed regulation. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted by the date indicated.

Reg. No.	*Agency/Title*	*Issued*	*Final-Form Submission Deadline*
16A-674	State Board of Occupational Therapy Education and Licensure General Revisions	10/12/00	9/11/02
47-7	Milk Marketing Board Board Calculation of Bonding Obligation	10/12/00	9/11/02

State Board of Occupational Therapy Education and Licensure Regulation No. 16A-674

General Revisions

October 12, 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 State Board of Occupational Therapy Education and Licensure must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by September 11, 2002, the regulation will be deemed withdrawn.

1. Section 42.24 Code of Ethics.—Reasonableness.

This section updates the regulation to reflect the 1994 American Occupational Therapy Association (AOTA) Code of Ethics. However, in April of this year, AOTA revised its Code of Ethics. The Board should revise the final-form regulation to reflect the 2000 AOTA Code of Ethics.

Milk Marketing Board Regulation No. 47-7

Calculation of Bonding Obligation

October 12, 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 Milk Marketing Board (Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by September 11, 2002, the regulation will be deemed withdrawn.

Section 151.9. Calculation of bonding obligation.—Clarity and Lack of ambiguity.

Subsection (a).

Subsection (a) contains a citation to the Act, as well as a quote from the Act. We have three recommendations. First, the Board should include the citation to the Act in its preamble rather than in the text of the regulation. Second, statutory language may be explained, but there is no need to quote it. Finally, for greater clarity and readability, the final-form regulation should be written in the active voice.

Subsections (b)(1) and (b)(2).

Subsection (b)(1) includes the phrase "a purchase subject to minimum pricing fixed by the Board" and Subsection (b)(2) includes the phrase "a purchase not subject to minimum pricing fixed by the Board." How does a purchase subject to minimum pricing differ from a purchase not subject to minimum pricing? The Board should clarify in the final-form regulation the type of purchases included in each category.

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 00-1879. Filed for public inspection October 27, 2000, 9:00 a.m.]

INSURANCE DEPARTMENT

Appeal of Erie Insurance Exchange and Erie Insurance Group; Brenda L. Foultz; Doc. No. DO00-09-017

On September 15, 2000, Erie Insurance Exchange and Erie Insurance Company (collectively "Erie" or "petitioner") filed a Petition for Declaratory Order seeking a determination by the Insurance Commissioner of Pennsylvania that Erie is not violating the Motor Vehicle Physical Damage Appraiser Act nor applicable regulations when its appraisers specify that repairs to damaged vehicles be made by using: (a) parts that were not made by the original equipment manufacturer (that is, non-OEM aftermarket parts); and/or (b) used parts that were made by the original equipment manufacturer (that is, used OEM parts).

On or before November 17, 2000, interested persons desiring to participate in this action must file a petition to intervene under 1 Pa. Code §§ 35.27—35.32 and agencies authorized to participate shall file a notice of intervention under 1 Pa. Code § 35.27(1). Petitions to inter-

vene and notices of intervention shall be filed with the Docket Clerk of the Administrative Hearings Office, Pennsylvania Insurance Department, Capitol Associates Building Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answers to petitions to intervene, if any, shall be filed on or before December 8, 2000. Except as otherwise specifically provided herein, all protests, petitions and motions preliminary to hearing, and all answers to the petition for declaratory order, shall be filed on or before December 22, 2000.

Interested persons are reminded of the need to serve all parties with any document which is filed with the Administrative Hearings Office. Copies of pertinent docket material relating to this case may be obtained from Karen Bernhard, Docket Clerk, at the address listed previously, (717) 783-4819.

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, please contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 00-1880. Filed for public inspection October 27, 2000, 9:00 a.m.]

Appeal of W. V. Hovis under the Storage Tank and Spill Prevention Act; Underground Storage Tank Indemnification Fund; USTIF File No. 99-304(F); Doc No. UT00-10-010

A prehearing telephone conference shall be held on November 14, 2000 at 10 a.m. A date for a hearing shall be determined, if necessary, at the prehearing/settlement telephone conference.

Motions preliminary to those at hearing, protest, petitions to intervene or notices of intervention, if any, must be filed on or before October 31, 2000 with the Docket Clerk, Administrative Hearings Office, Room 200, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102. Answers to petitions to intervene, if any shall be filed on or before November 7, 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. 00-1881. Filed for public inspection October 27, 2000, 9:00 a.m.]

Application for Approval to Acquire Control of Pennsylvania Medical Society Liability Insurance Company

NORCAL Mutual Insurance Company, a California domiciled insurer, has filed an application to acquire control of Pennsylvania Medical Society Liability Insurance Company, a Pennsylvania domiciled stock casualty insurance company. The initial filing was received on October 16, 2000, and was made pursuant with requirements set forth under the Insurance Holding Companies Act (40 P. S. §§ 991.1401 —991.1413) . Persons wishing to comment on the grounds of public or private interest in this acquisition are invited to submit a written statement to the Insurance Department within 30 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. 00-1882. Filed for public inspection October 27, 2000, 9:00 a.m.]

Kim Marie Lee; Doc No. AG00-10-004

A prehearing telephone conference initiated by the Administrative Hearings Office shall occur on November 8, 2000 at 9:30 a.m. The proceedings in this matter will be governed by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the General Rules of Administrative Practice and Procedure), 1 Pa. Code Part II and the Insurance Department's Special Rules of Administrative Practice and Procedure, 31 Pa. Code Chapter 56. 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 the 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. Except as established at the prehearing conference, both parties shall appear at the scheduled hearing, if necessary, prepared to offer all relevant testimony or other 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. Motions preliminary to those at hearing, protests, petitions to intervene, or notices of intervention, if any, must be filed on or before October 30, 2000 with the Docket Clerk, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answers to petitions to intervene, if any, shall be filed on or before November 6, 2000. The Presiding Officer will consider a written request for continuance for the scheduled prehearing telephone conference, for good cause only. Prior to requesting a continuance, a party must contact the opposing party. All continuance requests must indicate whether the opposing party objects to a continuance.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid service or other accommodations to participate in the hearing, should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 00-1883. Filed for public inspection October 27, 2000, 9:00 a.m.]

Paul E. Kuntz; License Denial; Doc No. AG00-10-001

A prehearing telephone conference initiated by the Administrative Hearings Office shall occur on November 1, 2000 at 10:30 a.m. The proceedings in this matter will be governed by 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 and Procedure) and the Insurance Department's Special Rules of Administrative Practice and Procedure, 31 Pa. Code Chapter 56. A hearing shall occur on November 15, 2000 at 10 a.m. At the prehearing telephone conference, the parties shall be prepared to discuss settlement, stipulations, witnesses and the 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. On or before October 20, 2000, each party shall file with the Administrative Hearings Office a prehearing statement which shall contain (1) a comprehensive statement of undisputed facts to be stipulated between the parties; (2) a statement of additional contended facts; (3) names and address of witnesses along with the specialties of experts to be called; (4) a list of documents to be used at the hearing; (5) special evidentiary or other legal issues; and (6) the estimated time for that party's case. Contemporaneously with service of the prehearing statement on the opposing party, each party shall supply the other with a copy of any report generated by an expert witness designated on the prehearing statement. Any report subsequently received from a party's expert witness prior to hearing shall be supplied to the other party within 2 business days. Copies of expert reports need not be filed with the Administrative Hearings Office. Except as established at the prehearing conference, both parties shall appear at the scheduled hearing, if necessary, prepared to offer all relevant testimony or other 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. Motions preliminary to those at hearing, protests, petitions to intervene, or notices of intervention, if any, must be filed on or before October 20, 2000 with the Docket Clerk, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answers to petitions to intervene, if any, shall be filed on or before October 27, 2000. The Presiding Officer will consider a written request for continuance for the scheduled prehearing telephone conference, for good cause only. Prior to requesting a continuance, a party must contact the opposing party. All continuance requests must indicate whether the opposing party objects to a continuance.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid service or other accommodations to participate in the hearing, should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 00-1884. Filed for public inspection October 27, 2000, 9:00 a.m.]

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insureds have requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68) in connection with 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 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 Administrative Hearings Office, Room 2000, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102.

Appeal of Arun Mallik; file no. 00-188-06082; CNA Insurance Company; doc. no. P00-10-009; November 7, 2000, at 10 a.m.;

Appeal of Philip W. Jr. and Brenda Drayden; file no. 00-188-05619; State Farm Insurance Company; doc. no. P00-10-007; November 9, 2000, at 10 a.m.;

Appeal of Sudantha K. Vidanage; file no. 00-181-06455; American International Insurance Co.; doc. no. P00-10-012; November 15, 2000, at 1 p.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. 00-1885. Filed for public inspection October 27, 2000, 9:00 a.m.]

United Services Automobile Association Homeowners Program Rate Revision

On October 16, 2000, the Insurance Department received from United Services Automobile Association a filing for a rate level change for homeowners insurance.

The company requests an overall 0.2% increase amounting to +$37,000 annually, to be effective February 1, 2001.

Unless formal administrative action is taken prior to December 15, 2000 the subject filing may be deemed approved by operation of law.

Copies of the filing will be available for public inspection, by appointment, during normal working hours at the Insurance Department's offices in Harrisburg, Philadelphia, Pittsburgh and Erie.

Interested parties are invited to submit written comments, suggestions or objections to Michael W. Burkett, Insurance Department, Bureau of Regulation of Rates and Policies, Room 1311, Strawberry Square, Harrisburg, PA 17120 (e-mail at mburkett@ins.state.pa.us) within 15 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Secretary

[Pa.B. Doc. No. 00-1886. Filed for public inspection October 27, 2000, 9:00 a.m.]

LIQUOR CONTROL BOARD

Expiration of Leases

The following Liquor Control Board lease will expire:

Delaware County, Wine & Spirits Shoppe #2333, Barclay Square Shopping Center, 1500 Garrett Road, Upper Darby, PA 19082-4519.

Lease Expiration Date: June 30, 2001

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 6,000 net useable square feet of new or existing retail commercial space within a 1/2 mile radius of 1500 Garrett Road.

Proposals due: November 17, 2000 at 12 noon

Department:	Pennsylvania Liquor Control Board
Location:	Real Estate Division, 8305 Ridge Avenue, Philadelphia, PA 19128-2113
Contact:	James M. Bradley, (215) 482-9670

Luzerne County, Wine & Spirits Shoppe #4007, 1 Colonial Village, Nanticoke, PA 18634-1618.

Lease Expiration Date: May 31, 2002

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 2,800 to 3,400 net useable square feet of new or existing retail commercial space within the City of Nanticoke or in the adjacent portions of the surrounding municipalities.

Proposals due: November 17, 2000 at 12 noon

Department:	Pennsylvania Liquor Control Board
Location:	Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661
Contact:	Ronald Hancher, Jr., (717) 657-4228

JOHN E. JONES, III,
Chairperson

[Pa.B. Doc. No. 00-1887. Filed for public inspection October 27, 2000, 9:00 a.m.]

PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY

Change of Location of Meeting

The scheduled meetings of Fiscal Year 2000-01 of the Pennsylvania Infrastructure Investment Authority (PENNNVEST) Board of Directors will be held on Wednesday, November 15, 2000, and Wednesday March 21, 2001, at 10 a.m. in a reserved section of the Ballroom on the second floor of Crowne Plaza Harrisburg, 23 South Second Street, Harrisburg, Pennsylvania.

Persons requiring ADA accommodations should contact Elaine Keisling (717) 783-4494.

PAUL K. MARCHETTI,
Executive Director

[Pa.B. Doc. No. 00-1888. Filed for public inspection October 27, 2000, 9:00 a.m.]

PENNSYLVANIA INTERGOVERNMENTAL COOPERATION AUTHORITY

Financial Statement

Under section 207 of the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class (act of June 5, 1991 (P. L. 9, No. 6)) the Pennsylvania Intergovernmental Cooperation Authority (Authority) is required to publish a "concise financial statement" annually in the *Pennsylvania Bulletin*. The Authority has issued its annual report for its fiscal year ended June 30, 2000, which includes an audit for the period performed in accordance with generally accepted auditing standards by an independent firm of certified public accountants. The complete annual report of the Authority may be obtained from the Authority at 1429 Walnut Street, 14th floor, Philadelphia, PA 19102, (215) 561-9160.

JOSEPH C. VIGNOLA,
Executive Director

SUMMARY PUBLISHED UNDER SECTION 207 OF ACT 1991-6 OF THE COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA INTERGOVERNMENTAL COOPERATION AUTHORITY

CONDENSED BALANCE SHEET
JUNE 30, 2000

ASSETS	
Current Assets:	
Cash and short-term investments	$ 164,870,107
PICA taxes receivable	3,619,922
Accrued interest receivable	518,847
Interfund receivable	235,448
Total current assets	169,244,324
PROPERTY, PLANT AND EQUIPMENT—Office furniture and equipment	154,979
OTHER ASSETS—Prepaid rent and security deposit	11,545
AMOUNT AVAILABLE IN DEBT SERVICE FUNDS FOR RETIREMENT OF LONG-TERM DEBT	88,796,161
AMOUNT TO BE PROVIDED FOR RETIREMENT OF LONG-TERM DEBT	870,623,839
TOTAL ASSETS	$1,128,830,848
LIABILITIES AND FUND EQUITY	
CURRENT LIABILITIES:	
Accounts payable	$ 71,969
Accrued payroll and taxes	332,986
Due to the City of Philadelphia	3,861,164
Bonds payable—current portion	57,570,000
Interfund payable	235,448
Total current liabilities	62,071,567
BONDS PAYABLE—Long-term portion	901,850,000
FUND EQUITY:	
Fund balances:	
Unreserved	352,331
Reserved for debt service	88,796,161
Reserved for the benefit of the City of Philadelphia	73,689,810
Reserved for subsequent PICA administration	1,916,000
Total fund balances	164,754,302
Investment in general fixed assets	154,979
TOTAL LIABILITIES AND FUND EQUITY	$1,128,830,848

CONDENSED STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES YEAR ENDED JUNE 30, 2000

REVENUES:	
PICA taxes	$ 259,059,205
Interest earned on investments	14,688,848
Total revenues	273,748,053
EXPENDITURES:	
Grants to the City of Philadelphia	175,696,385
Debt service:	
Principal	54,675,000
Interest	52,396,149
Administration:	
Operations	1,190,045
Capital outlay	28,700
Debt issuance costs	10,017
Total expenditures	283,996,296
EXCESS OF EXPENDITURES AND OTHER USES OVER REVENUES AND OTHER SOURCES	(10,248,243)
FUND BALANCES, JULY 1, 1999	175,002,545
FUND BALANCES, JUNE 30, 2000	$ 164,754,302

[Pa.B. Doc. No. 00-1889. Filed for public inspection October 27, 2000, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Certificates of Public Convenience Without Hearing

A-210910 F0002; A-210017 F0002; A-213180; A-212 105; and A-211210. Fawn Lake Forest Water Company et al. Joint Application for Certificates of Public Convenience approving the transfer of control of 1) Fawn Lake Forest Water Company, 2) Western Utilities, Inc., 3) Waymart Water Company, 4) Northeastern Utilities, Inc., and 5) Hawley Water Company, to Philadelphia Suburban Corporation.

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 November 13, 2000, under 52 Pa. Code (relating to public utilities).

Applicant: Fawn Lake Forest Water Company, Western Utilities, Inc., Waymart Water Company, Northeastern Utilities, Inc., Hawley Water Company, Philadelphia Suburban Corporation.

Through and By Counsel: D. Mark Thomas, Esquire, Patricia Armstrong, Esquire, Thomas T. Niesen, Esquire, Thomas, Thomas, Armstrong & Niesen, 212 Locust Street, P. O. Box 9500, Harrisburg, PA 17108-9500.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1890. Filed for public inspection October 27, 2000, 9:00 a.m.]

Implementation of Number Conservation Measures Granted to Pennsylvania by the Federal Communications Commission in its Order released July 20, 2000—Thousands-Block Number Pooling; M-00001427

Public Meeting held
October 13, 2000

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; Nora Mead Brownell; Aaron Wilson, Jr.; Terrance J. Fitzpatrick

Tentative 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] Consequently, area codes are rapidly exhausting in Pennsylvania and Nationwide.

[1] *See*, The Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 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 by NXX code (which contains 10,000 numbers). Consequently, even if a carrier has only ten 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.

The Commission, in addition to other state and Federal regulators as well as the telecommunications industry, has been dedicated to finding a solution for this 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. Number pooling is a number conservation measure with the potential of significantly slowing the depletion numbering resources. "Pooling" refers to sharing spare resources and thousands-block pooling (1K pooling) is a method of assigning those resources. In number pooling, there is an inventory of telephone numbers that participating service providers[3] share and use in groups of 1,000 numbers. The entity responsible for monitoring the pool and allocating the resources in the pool is known as the Pooling Administrator (PA). Numbers are added to the pool through 1,000 block (or NXX-X) donations from service providers as well as through 10,000 block (or NXX) code assignments made by the Code Administrator to the PA.

The Commission has long advocated the benefits of 1K pooling for Pennsylvania and has been attempting to implement this number conservation measure for over three years. The Commission first ordered 1K pooling to be implemented in the 717, 215, and 610 numbering plan areas (NPAs) in its July 15, 1997 order at docket numbers P-00961027, P-00961061, and P-00961071. Unfortunately, however, the Federal Communications Commission (FCC) curtailed the Commission's efforts in the fall of 1998 by ruling that the Commission did not have the authority to implement such a measure without receiving approval from the FCC.[4] But, the FCC did determine that state commissions could file petitions with it requesting such authority. Consequently, the Commission filed its Petition for Delegated Authority to Implement Number Conservation Measures, CC Docket No. 96-98, on December 27, 1999 and requested, among other initiatives, the authority to implement 1K pooling.

On March 31, 2000, the FCC released its National number pooling order[5] which establishes, in addition to other number conservation measures, a National framework for 1K pooling and a National roll out for pooling to begin once the FCC names a National PA. Regarding the Commission's request to implement 1K pooling in Pennsylvania, the FCC's March 31, 2000 order asked the Commission to file a supplement to its pending petition for delegated authority demonstrating that: 1) an NPA is in jeopardy, 2) the NPA in question has a remaining life span of at least a year, and 3) that the NPA is in one of the largest 100 Metropolitan Statistical Areas (MSAs)[6], or alternatively, that the majority of wireline carriers in the NPA are LNP-capable.

The Commission filed its Supplement to its Petition for Delegated Authority to Implement Number Conservation Measures on April 25, 2000. The Commission asserted that both 412 and 610/484 fit within the above definition and would be appropriate for 1K pooling. Also, the Commission indicated that the 724, 717, 570, 215/267 NPAs, would benefit from 1K pooling based on the history of their life expectancy and the Commission's experience with them since 1996.

On July 20, 2000, the FCC issued an order (FCC Order) granting the Commission's request to implement 1K pooling on an interim trial basis.[7] The Commission is anxious to implement 1K pooling in Pennsylvania and remains committed to having adequate numbering resources available to all telecommunications providers while being mindful of the impact of proliferating new area codes on Pennsylvania's citizens. By implementing 1K pooling in combination with other number conservation measures,[8] the Commission will better ensure that telecommunications carriers have adequate numbering resources without needing to resort to adding new area codes. Before implementing 1K pooling, however, the Commission is requesting comments from consumers, the telecommunications industry, and other interested parties as discussed below.

Discussion

I. Where Should Pennsylvania's First Interim Pooling Trial be Implemented?

Pursuant to paragraphs 45 and 46 of the FCC Order, the Commission can implement 1K pooling in the Philadelphia MSA and the Pittsburgh MSA. Further, the Commission can implement 1K pooling in any new NPA implemented in these two NPAs. However, the Commission must first implement 1K pooling in a single MSA and may not expand to another MSA until pooling has been fully implemented in the initial one.

Therefore, the Commission is seeking comments on whether its first 1K interim pooling trial should be implemented in the Pittsburgh MSA (which is the 412 NPA) or the Philadelphia MSA (which consists of the 610/484 NPA). Specifically, the Commission is interested in which MSA would be more favorable than the other for implementation of an interim 1K pooling trial. Also, the Commission would like to know what effect pooling would have in each MSA. Finally, the Commission invites comments regarding the technical aspects of 1K pooling, the ability of various carriers to participate in the pooling trial, and the experiences carriers have had while participating in pooling trials in other states.

[3]To be able to participate in 1K pooling a carrier must be LNP-capable. See *Report and Order and Further Notice of Proposed Rulemaking in the Matter of Numbering Resource Optimization, CC Docket No. 99-200,* 15 FCC Rcd 7574, ¶ 116 (2000). Although the telephone network is designed to route traffic based on the assignment of an NXX code (10,000 numbers) to one specific carrier, the introduction of local number portability (LNP) has begun to make the network more flexible. Because LNP enables the switch-specific restriction of telephone number assignments to be removed, any telephone number can be assigned to any switch offering service in the telephone number's rate center. Consequently, all LNP-capable providers who service a particular rate area can share all telephone number resources. By making the entire spare number inventory available to many providers, telephone number utilization can be improved and NPA lives extended. Service providers who cannot participate in the pool would continue to receive NXX codes from the code administrator in 10,000 blocks.

[4]*In the Matter of Petition for Declaratory Ruling and Request for Expedited action on July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, 717; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd 190029 (1998) *recon. pending.*

[5]See *Report and Order and Further Notice of Proposed Rulemaking in the Matter of Numbering Resource Optimization, CC Docket No, 99-200,* 15 FCC Rcd 7574 (2000). In this Report and Order, the FCC established new policies and rules to reduce the need for new area codes and addressed two of the major factors that contribute to numbering resource exhaust—the absence of regulatory, industry, or economic control over requests for numbering resources and the allocation of numbers in blocks of 10,000 regardless of the carrier's actual need. In addition, the FCC mandated that carriers assign all available telephone numbers within an opened thousands-block before opening another thousands-block and this requirement applies to both a carrier's existing numbering resources and any future numbering resources. See *Report and Order and Further Notice of Proposed Rulemaking in the Matter of Numbering Resource Optimization, CC Docket No. 99-200,* 15 FCC Rcd 7574 ¶ 244 (2000).

[6]MSAs are geographic areas designated by the Bureau of Census for purposes of collecting and analyzing data. The boundaries of MSAs are defined using statistics that are widely recognized as indications of metropolitan character. *See Policy and Rules Concerning Rates for Dominant Carriers,* Memorandum Opinion and Order, 12 FCC Rcd 8115, 8122 (1997).

[7]*In the Matter of Numbering Resource Optimization,* CC Docket Nos. 99-200, 96-98, NSD File No. L-99-101. Beyond 1K pooling, this order also grants the Commission authority to do the following: 1) maintain rationing procedures for 6 months following implementation of NPA relief, 2) implement NXX code sharing (after investigating it, reporting results to FCC, and determining that it is feasible and economically viable), and 3) hear and address claims for an extraordinary need for numbering resources in an NPA subject to a rationing plan.

[8]See *Implementation of Number Conservation Measures Granted to Pennsylvania by the Federal Communications Commission in its Order released March 31, 2000—NXX Code Reclamation,* Docket No. M-00001373 (Order entered August 22, 2000), 30 Pa. B. 4701 (September 2, 2000) (Commission established process for reclaiming NXX codes from carriers who have failed to activate them within 6 months of their availability for assignment to customers.)

The following information about each NPA is being offered to aid commenters in their response:

A. The 412 NPA

The 412 NPA was one of Pennsylvania's original four area codes. On July 15, 1997, 412 was split by Commission order at Docket No. P-00961027 with the new 724 NPA activated on February 1, 1998. Relief planning again became necessary for the 412 NPA on November 29, 1999 when it was declared to be in jeopardy[9] by the North American Numbering Plan Administrator (NANPA).[10] On July 9, 1999 an industry consensus was reached to institute an all services multiple overlay. Therefore, on August 1, 2001, the 878 NPA will be activated and will overlay both the 412 and the 724 geographic areas.

The 412 NPA encompasses Allegheny county. There are approximately 23 rate centers in this area. Also, approximately 21 of the telecommunications carriers in this area are LNP-capable, they presently hold 433 NXX codes in the 412 NPA, and they are able to participate in the pool. According to the Commission's data[11], the average utilization rate for the 412 NPA is 55%.[12]

As of September 19, 2000, 130 NXX codes were available for assignment in the 412 NPA. The projected exhaust date, as calculated by the NANPA in May 2000, for the 412 NPA is third quarter 2002. Currently, the telecommunications industry has agreed to ration NXX codes at the rate of six per month because of the 412 NPA's continuing jeopardy status.[13] According to the industry consensus plan, however, the jeopardy status will end upon activation of the new 878 NPA in August 2001 and NXX codes will no longer be rationed.

B. The 610/484 NPA

The 610 NPA was activated on January 7, 1995 as a split of Pennsylvania's original 215 NPA. Then, on May 21, 1998, the 610 NPA was overlayed by 484 pursuant to Commission order at Docket No. P-00961061, and the 484 NPA was activated on June 5, 1999. Further relief planning became necessary for the 610/484 NPA on November 29, 1999 when it was declared to be in jeopardy by the NANPA. On December 2, 1999, an industry consensus was reached to institute an all services distributed overlay. Therefore, on May 1, 2001, the 835 NPA will be activated and will encompass the 610/484 geographic area.

The counties covered by the 610/484 NPAs are Berks, Chester, Delaware, Lehigh, Montgomery, and Northampton. There are approximately 88 rate centers in this area. Also, approximately 68 of the telecommunications carriers in this area are LNP-capable, they presently hold 1071 NXX codes in the 610/484 NPAs, and they are able to participate in the pool. According to the Commission's data[14], the average utilization rate for the 610/484 NPA is 46%.[15]

As of September 19, 2000, 207 NXX codes were available for assignment in the 610/484 NPA. The projected exhaust date, as calculated by NANPA in May 2000, for the 610/484 NPA is third quarter 2002. Currently, the industry has agreed to ration NXX codes at the rate of 10 per month because of the 610/484 NPA's continued jeopardy status. According to the industry consensus plan, however, the jeopardy status will end upon activation of the new 835 NPA in May 2001 and NXX codes will no longer be rationed. Additionally, there are 15 uncontaminated NXX codes that were reserved by the Commission in its May 21, 1998 order at Docket No. P-00961061 for future number conservation measures. Consequently, these NXX codes are available for donation to the pool in a 1K pooling trial.

II. The Date Established for Pennsylvania's First Interim Pooling Trial

Because the Commission is dedicated to implementing Pennsylvania's first interim pooling trial as early as possible and because other states have been able to implement their pooling trials anywhere from 1 month to 6 months after the final pooling order, the Commission has determined that Pennsylvania's first interim 1K pooling trial should be fully implemented on March 1, 2001. This date reflects the 20 day comment period established by this tentative order, the Commission's review of those comments, and the issuance of a final 1K pooling order no later than the December 20, 2000 public meeting. If, however, March 1, 2001 is not feasible for valid reasons, commenters are invited to explain these reasons to the Commission and propose the earliest possible date that a 1K pooling trial can begin in Pennsylvania.

III. Who Should Implement Pennsylvania's First Interim Pooling Trial?

Once the Commission has determined where to implement its first 1K interim pooling trial, a decision regarding who should assume the responsibility as the interim PA needs to be made. The Commission, in its final 1K pooling order, will name the interim PA. The Commission is currently aware that both NeuStar, Inc. and Telecordia Technologies, Inc. are interested in serving as the interim PA. The Commission is seeking comments from both of these companies, as well as any other interested company, regarding their qualifications, experience, and ability to implement a successful interim pooling trial in Pennsylvania. Also, the Commission is interested in the industry's opinion regarding who should be selected as the interim PA since the industry will be working closely with the chosen interim PA.

[9]Pursuant to the Central Office Code (NXX) Assignment Guidelines, "a jeopardy condition exists when the forecasted and/or actual demand for NXX resources will exceed the known supply during the planning/implementation interval for relief." Central Office Code (NXX) Assignment Guidelines at 48 (INC 95-0407-008, June 19, 2000). A copy of these guidelines can be obtained from www.atis.org.

[10]The NANPA is the entity that allocates numbering resources and monitors the viability of area codes to determine when all of the numbers available in the area code are nearing exhaust.

[11]By Opinion and Order entered October 23, 1998, Docket Numbers P-00961027, P-00961061, and P-00961071, the Commission exercised its plenary statutory powers, under 66 Pa.C.S.A. §§ 501 and 505, and directed all carriers to submit all data concerning fill of existing exchange codes, assignment of numbers and remaining number availability.

[12]Reporting from 85% of Pennsylvania's NXX code holders on October of 1999 showed that the utilization rate in the 412 NPA was 54%. Reporting from 60% of the Pennsylvania NXX code holders in June of 2000 showed that the utilization rate in the 412 NPA was 56%. Note that this data is based on reporting from the carriers prior to the FCC's March 31, 2000 national pooling order; therefore, reportedly "used" NXX codes presumably include those numbers now defined by the FCC as assigned, intermediate, reserved, aging, and administrative numbers. See *Report and Order and Further Notice of Proposed Rulemaking in the Matter of Numbering Resource Optimization, CC Docket No. 99-200*, 15 FCC Rcd 7574 ¶¶ 11-36 (2000).

[13]The Industry Numbering Committee Guidelines provide that when an area code is in a jeopardy situation the NANPA convenes a meeting of the industry to discuss and adopt a consensus plan for rationing the numbers in the area code. *Central Office Code (NXX) Assignment Guidelines*, INC 95-0407-008, June 19, 2000 at § 9.0.

[14]By Opinion and Order entered October 23, 1998, Docket Numbers P-00961027, P-00961061, and P-00961071, the Commission exercised its plenary statutory powers, under 66 Pa. C.S.A. §§ 501 and 505, and directed all carriers to submit data concerning fill of existing exchange codes, assignment of numbers and remaining number availability.

[15]Reporting from 85% of Pennsylvania's NXX code holders in October of 1999 showed that the utilization rate in the 610 NPA was 58% and in the 484 NPA it was 53%. Reporting from 60% of the Pennsylvania NXX code holders in June of 2000 showed that the utilization rate in the 610 NPA was 60% and in the 484 NPA it was 12%. Since the 610/484 NPAs cover the same area, all these utilization rates were added together and then averaged. Note that this data is based on reporting from the carriers prior to the FCC's March 31, 2000 national pooling order; therefore, reportedly "used" NXX codes presumable include those numbers now defined by the FCC as assigned, intermediate, reserved, aging, and administrative numbers. See *Report and Order and Further Notice of Proposed Rulemaking in the Matter of Numbering Resource Optimization, CC Docket No. 99-200*, 15 FCC Rcd 7574 ¶¶ 11-36 (2000).

Once the interim PA is chosen, the interim PA and the industry[16] will negotiate a contract regarding cost allocation and cost recovery. The Commission will be involved with those negotiations and will issue an order at a later date finalizing the cost recovery and cost allocation associated with its interim 1K pooling trial. The Commission, however, can continue forward with implementation of its the 1K pooling trial without the specific details of this issue being finalized.

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 implement its first interim 1K pooling trial on March 1, 2001. By taking this step to conserve and more efficiently use valuable numbering resources, the Commission will better ensure that telecommunications carriers have adequate numbering resources to operate in Pennsylvania; *Therefore,*

It Is Ordered That:

1. Comments regarding this tentative order be filed with the Commission no later than 20 days after this tentative order is published in the *Pennsylvania Bulletin*. No reply comments will be permitted.

2. A copy of this order be served on all jurisdictional telecommunications carriers, wireless carriers, the Office of Consumer Advocate, the Office of Small Business Advocate, the North American Number Plan Administrator and Telecordia Technologies, Inc. c/o Michael Knapp, Executive Director, 2020 K Street, NW Suite 400, Washington, DC 20006.

3. A copy of this tentative order shall be published both in the *Pennsylvania Bulletin* and on the Commission's website.

JAMES. J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1891. Filed for public inspection October 27, 2000, 9:00 a.m.]

Telecommunications Without Hearing

A-310923F0002AMD. Adelphia Business Solutions Operations, Inc. Application of Adelphia Business Solutions Operations, Inc., for approval to offer, render, furnish or supply telecommunications services as a competitive local exchange carrier to the public in the Commonwealth of Pennsylvania in the areas served by Pymatuning Independent Telephone Company. 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 November 13, 2000, under 52 Pa. Code (relating to public utilities).

Applicant: Adelphia Business Solutions Operations, Inc.

Through and By Counsel: Kathleen Misturak-Gingrich, Esquire, David L. Bricker, Esquire, Eckert Seamans Cherin and Mellott, LLC, 213 Market Street, 8th Floor, P. O. Box 1248, Harrisburg, PA 17101.

JAMES. J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1892. Filed for public inspection October 27, 2000, 9:00 a.m.]

Telecomunications

A-310513F0002. Denver and Ephrata Telephone and Telegraph Company d/b/a D&E Telephone Company and Sprint Spectrum L. P. d/b/a Sprint PCS. Joint Petition of Denver and Ephrata Telephone and Telegraph Company d/b/a D&E Telephone Company and Sprint Spectrum L.P. d/b/a Sprint PCS for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Denver and Ephrata Telephone and Telegraph Company d/b/a D&E Telephone Company and Sprint Spectrum L.P. d/b/a Sprint PCS, by its counsel, filed on October 16, 2000, at the Pennsylvania Public Utility 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 Denver and Ephrata Telephone and Telegraph Company d/b/a D&E Telephone Company and Sprint Spectrum L.P. d/b/a Sprint PCS Joint Petition are on file with the Pennsylvania Public Utility 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. 00-1893. Filed for public inspection October 27, 2000, 9:00 a.m.]

Transfer by Sale Without Hearing

A-212285 F0077; A-230073 F0003; A-211770 F2000; and A-230242 F2000. Pennsylvania-American Water Company and LP Water and Sewer Company. Joint Application of Pennsylvania-American Water Company and LP Water and Sewer Company for Approval of 1) The Transfer, By Sale, of the Water Works Property and Rights of LP Water and Sewer Company to Pennsylvania-American Water Company; 2) the Commencement by Pennsylvania-American Water Company to Begin to Offer or Furnish Water Service and Wastewater Service in the Certificated Service Territory of LP Water and Sewer

[16]The industry will be represented by the LLC which is an industry group established in each of the original Bell Operating Companies to manage the local number portability administrators and cost recovery mechanisms.

Company; 3) the Commencement of Pennsylvania-American Water Company to Begin to Offer or Furnish Water Service and Wastewater Service to the Public in Additional Portions of Lehman Township, Pike County, and Middle Smithfield Township, Monroe County, Pennsylvania, and 4) the Abandonment by LP Water and Sewer Company of all Water Service and all Wastewater Service to the Public. 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 November 13, 2000, under 52 Pa. Code (relating to public utilities).

Applicant: Pennsylvania-American Water Company, LP Water and Sewer Company.

Through and By Counsel: Velma A. Redmond, Esquire, Susan D. Simms, Esquire, 800 West Hersheypark Drive, Hershey, PA 17033, and Thomas V. Casale, Esquire, Route 209 North, P. O. Box 447, Bushkill, PA 18324.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-1894. Filed for public inspection October 27, 2000, 9:00 a.m.]

STATE ATHLETIC COMMISSION

Change of Meeting

The Pennsylvania State Athletic Commission (Commission) has changed their meeting from October 30, 2000 to November 6, 2000 at 11 a.m. at the Commission Offices, 116 Pine Street, 3rd Floor.

If there are any questions concerning this change, call the Commission at (717) 787-5720.

GREGORY P. SERB,
Executive Director

[Pa.B. Doc. No. 00-1895. Filed for public inspection October 27, 2000, 9:00 a.m.]

STATE BOARD FOR VOCATIONAL EDUCATION

Petition for Change in Area Vocational Technical School Attendance Areas

The State Board for Vocational Education (Board) has received a portion from the Upper Adams School District (School District), requesting a change in the area vocatonal technical school (AVTS) attendance areas so that the School district might become eligible to participte as a member district of the Cumberland Perry Area Vocational Technical School. This applicaiton has been made under section 1849 of the Public School Code of 1949 (24 P. S. § 18-1849) and 22 Pa. Code § 4.35(a).

Please note that the Board will take action on the application at its next public meeting, November 16, 2000, unless it should receive a written request for public hearing, along with a notice of intervention, a petition to intervene or protest, filed 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). Interested persons are also invited to submit written comments on the request to the Board.

Public comment, requests for public hearing, petitions to intervene, and protest shall be filed with the Board within 14 days of pubication of this notice in the *Pennsyvlania Bulletin* and addressed to Dr. Peter H. Garland, Executive Director, State Board of Education, First Floor, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-3787. Copies of the application can be obtained from Dr. Garland.

Persons with a disability who wish to attend the Board meeting, or hearing if one is held, and require auxiliary aid, service or other accommodations to participate should contact Dr. Garland to discuss how the Board may best accommodate their needs.

PETER H. GARLAND,
Executive Director

[Pa.B. Doc. No. 00-1896. Filed for public inspection October 27, 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—040

1209350 Various Laboratory Equipment. For a copy of bid package fax request to (717) 787-0725.
Department: Environmental Protection
Location: Harrisburg, PA
Duration: FY 2000-01
Contact: Vendor Services, (717) 787-2199

1190150 Furnish materials, equipment and labor to replace chilled water pumps, motors & baseplates, condenser water pumps, motors & baseplates, etc. For a copy of bid package fax request to (717) 787-0725.
Department: General Services
Location: Harrisburg, PA
Duration: FY 2000-01
Contact: Vendor Services, (717) 787-2199

9905-05 Sheets, Ink & Supplies, Reflective. For a copy of bid package fax request to (717) 787-0725.
Department: General Services
Location: Various
Duration: FY 2000-01
Contact: Vendor Services, (717) 787-2199

FL—1126500 The PA Veterinary Laboratory is looking to purchase one-Leica ST 5050, Histo Immuno stainer or equal. Equal histo immuno stainers being, DAKO S3400 or Biogenex Optimax.
Department: Agriculture
Location: PA Dept. of Agriculture, Pennyslvania Veterinary Laboratory, 2305 N. Cameron Street, Harrisburg, PA 17110
Duration: 3 months
Contact: Pamela Dailey, (717) 787-5647

7110-01 Visible Filing Equipment. For a copy of bid package fax request to (717) 787-0725.
Department: General Services
Location: Various, PA
Duration: FY 2000-01
Contact: Vendor Services, (717) 787-2199

1141230 John Deere 450H Crawler/Dozer. No Substitute. For a copy of bid package fax request to (717) 787-0725.
Department: Game Commission
Location: Various, PA
Duration: FY 2000-01
Contact: Vendor Services, (717) 787-2199

SERVICES

Advertising—001

RFP 00-001 The successful contractor will design and implement a public relations campaign for the College that includes radio and TV advertisements, as well as the creation, design and printing of flyers, brochures, viewbooks, and catalogs,etc.
Department: Education
Location: Thaddeus Stevens College of Technology, 750 East King Street, Lancaster, PA 17602
Duration: Original contract year beginning December 1, 2000 and ending June 30, 2001. The contract will include the option to renew four additional years if offered by the college and accepted by the contractor.
Contact: Betty Tompos, (717) 299-7749

Barber Services—005

10973409 Contractor, licensed by the Pennsylvania Board of Cosmetology, to provide professional beautician services.
Department: Public Welfare
Location: Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111
Duration: 07/01/01—06/30/05
Contact: Linda J. Zoskey, (724) 459-4547

LBP-2000-33 To provide Cosmetology Services to the Northeastern Veterans' Center.
Department: Military Affairs
Location: Northeastern Veterans' Center, 401 Penn Avenue, Scranton, PA 18503
Duration: January 1, 2001 to December 31, 2003
Contact: Robert J. Casey, (570) 961-4317

Computer Related Services—008

01141001 Provide keypunch and document imaging services to the Office of Income Maintenance, Bureau of Child Support Enforcement (OIM/BCSE). Complete information will be specified in bid proposal package. Request a copy by faxing your name/address/bid number to the attention of Doylene Shull at (717) 787-3560.
Department: Public Welfare
Location: DPW-OIM-BCSE, Bureau of Child Support Enforcement, 1303 North 7th Street, Harrisburg, PA 17101
Duration: Anticipated term of contract is December 1, 2000 through September 30, 2003 with a 2 year renewal.
Contact: Doylene Shull, (717) 787-7585

Construction—009

IN-790 Field Lighting South Campus: Work included under this project consists of sports lighting at IUP varsity softball and intramural fields on the South Campus, located on University Drive. Work shall include, but is not necessarily limited to, furnishing of all labor, superintendence, materials, tools and equipment and performing all work necessary to complete all Electrical construction at the satisfaction of, and subject to the approval of IUP Engineering and Construction Group and State System of Higher Education. Notice to Contractors may be requested from IUP. Phone: (724) 357-2289 Fax: (724) 357-6480 Internet: http://www.iup.edu/engcons
Department: State System of Higher Education
Location: Indiana University of Pennsylvania, Indiana, PA 15705-1087
Duration: Six (6) Months
Contact: Ronald E. Wolf, Procurement Specialist, (724) 357-4851

DGS570-27IN2 (REBID) Project Title: SCI Western PA. Brief Description: All work necessary to provide rough carpentry work not included in other contracts; the Prison Industries building elevator; Div 10 Specialties (including gym lockers and benches); loading dock equipment; unit kitchens and cabinets; casework; foot grilles, X-ray radiation protection equipment and furnish and install all gym lockers and benches. Estimated Range: $1,000,000 TO $2,000,000. Carpentry Construction. Plans Deposit: $610 per set payable to: P. J. Dick Inc. Refundable upon return of plans and specifications in reusable condition (no marks allowed) 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 $135 per set or provide your express mail account number to the office listed below. Mail requests to: P. J. Dick Inc., SCI Western PA, 421 LaBelle Rd., East Millsboro, PA 15433, Attn: Cindy Nichols. Tel: (724) 785-2066. Bid Date: Wednesday, November 1, 2000 at 11 a.m. A Prebid Conference has been scheduled for Tuesday, October 24, 2000 at 10 a.m. at the P. J. Dick Field Office located at the job site, 421 LaBelle Rd., Luzerne Township, Fayette County, PA. For Directions, please call (724) 785-2066. All Contractors who have received Contract Documents are invited and urged to attend this Prebid Conference.
Department: General Services
Location: SCI Western PA, 421 LaBelle Rd. (State Route 4020), Luzerne Township, Fayette County, PA
Duration: 470 Calendar days from date of initial job conference
Contact: Contract and Bidding Unit, (717) 787-6556

DGS570-27IN5REBID Project Title: SCI Western PA. Brief Description: All work necessary to furnish and install all ceramic and quarry tile. This work includes substrate preparation, within the limits identified in the Specifications. Where this Contractor's work abuts or otherwise meets the work of other contractors, this Contractor shall install the termination strips, or other items as specified. Such work is not this Contractor's responsibility only when the Specifications or Drawings clearly state that another Contractor is responsible. Estimated Range: $100,000 to $500,000. Ceramic and Quarry Tile Construction. Plans Deposit: $610 per set payable to: P. J. Dick Inc. Refundable upon return of plans and specifications in reusable condition (no marks allowed) 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 $135 per set or provide your express mail account number to the office listed below. Mail requests to: P. J. Dick Inc., SCI Western PA, 421 LaBelle Rd., East Millsboro, PA 15433, Attn: Cindy Nichols. Tel: (724) 785-2066. Bid Date: Wednesday, November 1, 2000 at 11 a.m. A Prebid Conference has been scheduled for Tuesday, October 24, 2000 at 10 a.m. at the P. J. Dick Field Office located at the job site, 421 LaBelle Rd., Luzerne Township, Fayette County, PA. For directions, please call (724) 785-2066. All Contractors who have received Contract Documents are invited and urged to attend this Prebid Conference.
Department: General Services
Location: SCI Western PA, 421 LaBelle Rd (State Route 4020), Luzerne Township, Fayette County, PA
Duration: 470 Calendar days from date of initial job conference.
Contact: Contract and Bidding Unit, (717) 787-6556

DGSA251-545 Project Title: Replace Roof and Entire Heating System. Brief Description: Remove existing roof system, install new single ply EPDM roof system, new insulation and replace coping system. Abate asbestos, remove entire heating system, provide new heating, ventilating and air conditioning system and new acoustic tile ceilings. Replace main electric service, panel boards and circuits. Provide new lighting fixtures and lighting and power circuits for new lighting fixtures in renovated areas and new HVAC equipment. Estimated Range: $500,000 to $1,000,000. General, HVAC and Electrical 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, (717) 787-3923. Bid Date: Wednesday, November 15, 2000 at 11 a.m.
Department: General Services
Location: PennDOT Maintenance District Office 10-5, Punxsutawney, Jefferson County, PA
Duration: 180 Calendar days from date of initial job conference.
Contact: Contract and Bidding Unit, (717) 787-6556

Elevator Maintenance—013

TSCT00-0013 Skyjack lift—Aerial Work platform with all standard equipment and including 3' deck extension 110 v/ac wiring to the platform, proportional controls, non-marking tires and pot hole protection.
Department: Education
Location: Thaddeus Stevens College of Technology, 750 East King Street, Lancaster, PA 17602
Duration: October 16 to December 31, 2000
Contact: Earla Ament, (717) 396-7163

10973402 Labor, material, equipment, parts, etc. required to service various types of elevator equipment.
Department: Public Welfare
Location: Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111
Duration: 07/01/01—06/30/05
Contact: Linda J. Zoskey, (724) 459-4547

Engineering Services—014

08430AG2630 A multi-phase project specific agreement to provide preliminary engineering, environmental documentation, final design and services during construction for S. R. 4003, Section 01B in Monroe 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 via Retention of Engineering Firm Data.
Department: Transportation
Location: Engineering District 5-0
Duration: Thirty (30) days after construction completion
Contact: N/A

08430AG2626 To provide construction inspection for S. R. 0070, Section 10R and S. R. 0070, Section A20 in Washington 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 via Retention of Engineering Firm Data.
Department: Transportation
Location: Engineering District 12-0
Duration: Thirty (30) days after construction completion
Contact: N/A

08430AG2627 To provide final design and services during construction on S. R. 0022, Section B10 in Westmoreland 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 via Retention of Engineering Firm Data.
Department: Transportation
Location: Engineering District 12-0
Duration: Thirty (30) days after construction completion
Contact: N/A

08430AG2629 A multi-phase project specific agreement to provide preliminary engineering, environmental documentation, final design and services during construction for S. R. 0309, Section 02B in Schuylkill 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 via Retention of Engineering Firm Data.
Department: Transportation
Location: Engineering District 5-0
Duration: Thirty (30) days after construction completion
Contact: N/A

08430AG2631 To provide preliminary engineering, environmental studies, final design and services during construction on four (4) projects to close three (3) crossings on the AMTRAK Keystone Corridor—Philadelphia to Harrisburg line in Lancaster County. Details concerning this project may be found under Department of Transportation—Retention of Engineering Firms in the *Pennsylvania Bulletin*, or www.state contracts.com under via Retention of Engineering Firm Data.
Department: Transportation
Location: Engineering District 8-0
Duration: Thirty (30) days after construction completion
Contact: N/A

08430AG2632 To provide preliminary engineering, environmental services, final design and services during construction for S. R. 0079, Section A23, in Allegheny County. Details concerning this project may be found under Department of Transportation—Retention of Engineering Firms in the *Pennsylvania Bulletin*, or www.state contracts.com under Retention of Engineering Firm data.
Department: Transportation
Location: Engineering District 11-0
Duration: Thirty (30) days after construction completion
Contact: N/A

08430AG2633 To provide preliminary engineering, environmental documentation, final design and services during construction for S. R. 0054, Section 05M in Schuylkill County. Details concerning this project may be found under Department of Transportation—Retention of Engineering Firms in the *Pennsylvania Bulletin*, or www.state contracts.com under via Retention of Engineering Firm Data.
Department: Transportation
Location: Engineering District 5-0
Duration: Thirty (30) days after construction completion
Contact: N/A

08430AG2628 To provide final design and services during construction on S. R. 0022, Section B09 in Westmoreland 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 via Retention of Engineering Firm Data.
Department: Transportation
Location: Engineering District 12-0
Duration: Thirty (30) days after construction completion
Contact: N/A

Environmental Maintenance—015

BF 469 Under Act 181 of 1984, the Department of Environmental Protection solicits letters of interest from the landowners and/or licensed mine operators for the reclamation of the following abandoned strip mine projects. Letters of interest must be received by Roderick A. Fletcher, P.E., Director, Bureau of Abandoned Mine Reclamation, Department of Environmental Protection, 400 Market Street, P. O. Box 8476, Harrisburg, PA 17105-8476, no later than 4 p.m., Local Time, November 27, 2000, to be considered.
Department: Environmental Protection
Location: 35 acres of reclamation in Wayne and Cowanshannock Townships
Duration: N/A
Contact: Robert A. Deardorff, (717) 787-9893

Financial & Insurance—017

RFP No. 2000-3 The Legislative Budget and Finance Committee requires an economic/actuarial study of the Medical Assistance Program administered by the PA Department of Public Welfare (DPW) to evaluate the adequacy of rates for inpatient and outpatient services provided by acute, psychiatric and rehabilitation hospitals and contributions of additional Commonwealth payments to hospitals. The study is to ascertain the adequacy of these rates to ensure the continued availability and accessibility of hospital care in the Commonwealth. The RFP will be available for distribution on October 16, 2000. Responses are due by 2 p.m. on November 9, 2000.
Department: Legislative Budget and Finance Committee
Location: Room 400 Finance Building, Harrisburg, PA 17120
Duration: November 2000 through April 2001
Contact: Philip Durgin, Executive Director, (717) 783-1600

Food—019

F-5-00 Miscellaneous Frozen Food.
Department: Public Welfare
Location: White Haven Center, RR # 2, Box 2195, White Haven, PA 18661
Duration: January 1, 2001 to March 31, 2001
Contact: Sandra A. Repak, P.A., (570) 443-4232

F-4-00 Meat & Meat Products.
Department: Public Welfare
Location: White Haven Center, RR # 2, Box 2195, White Haven, PA 18661
Duration: January 1, 2001 to March 31, 2001
Contact: Sandra A. Repak, P.A., (570) 443-4232

405557 Frozen Fruits & Vegetables.
Department: Public Welfare
Location: Warren State Hospital, 33 Main Dr., N. Warren, PA 16365-5099
Duration: January, February, March 2001
Contact: John Sample, PA I, (814) 726-4448

240-000b Miscellaneous frozen food.
Department: Military Affairs
Location: Southwestern Veterans Center, 7060 Highland Drive, Pittsburgh, PA 15206
Duration: December 2000
Contact: Ken Wilson, (412) 665-6727

240-000a Meat and meat products.
Department: Military Affairs
Location: Southwestern Veterans Center, 7060 Highland Drive, Pittsburgh, PA 15206
Duration: December 2000
Contact: Ken Wilson, (412) 665-6727

117-00 Fresh Baked Goods, various items for delivery January, 2001 through March, 2001. For more specifics, request bid proposal inq. # 117-00.
Department: Public Welfare
Location: Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401
Duration: January 2001 through March 2001
Contact: Sue Brown, Purchasing Agent, (610) 313-1026

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580 Bread and Bread Products.
Department: Public Welfare
Location: Polk Center, P. O. Box 94, Polk, PA 16342
Duration: January 1, 2001 through June 30, 2001
Contact: Patty Frank, Purchasing Agent, (814) 432-0229

08820042 Miscellaneous Foods: Puree Meats (American Institutional), Vegetables (National), & Custards (Cliffdale). Puree Meats: 42 Cs-Chicken; 14 Cs-Ham; 22 Cs-Roast Pork; 20 Cs-Turkey; 42 Cs-Beef Patty; 12 Cs-Sausage. Puree Vegetables: 30 Cs- Green Beans, 32 Cs-Carrots; 18 Cs-Peas; 28 Cs-Broccoli; 20 Cs-Corn. Custards: 12 Cs-Apple Cinnamon; 12 Cs-Vanilla; 9 Cs-Banana; 10 Cs-Orange; 18 Cs-Peach; 6 Cs-Ice Cream. All items to be delivered monthly, except Green Beans, Carrots, and Broccoli are bi-weekly.
Department: Public Welfare
Location: South Mountain Restoration Center, 10058 South Mountain Road, South Mountain, PA 17261
Duration: January 1, 2001 through March 31, 2001
Contact: Rodney L. Wagaman, Purchasing, (717) 749-4032

08820043 Frozen Fruits, Vegetables, and Juices: 360 Lbs-Asparagus; 60 Lbs-Baby Lima Beans; 300 Lbs-Green Beans; 288 Lbs-Wax Beans; 940 Lbs-Broccoli, chopped; 240 Lbs-Carrots, diced; 960 Lbs-Leafy Greens, Spinach; 144 Lbs-Mixed Vegetables; 120 Lbs-Onions; 96 Lbs-Peas; 72 Lbs-Peas & Carrots; 120 Lbs-Peppers, green; 420 Lbs-Potatoes, French Fried, Crinkle Cut; 120 Lbs-Potatoes, White, Puffs; 600 Lbs-Potatoes, White, diced; 288 Lbs-Squash, cooked; 450 Lbs-Squash, Zucchini; 90 Lbs-Succotash; 72 Lbs-Vegetable Blends/Country; 180 Lbs-Vegetable Blends/California; 180 Lbs-Vegetable Blends/Winter; 2,646 Lbs-Strawberries; Frozen Juices-793 Total Cases, 4 oz-48/case. Various juices to be delivered weekly, other items delivered bi-weekly.
Department: Public Welfare
Location: South Mountain Restoration Center, 10058 South Mountain Road, South Mountain, PA 17261
Duration: January 1, 2001 through March 31, 2001
Contact: Rodney L. Wagaman, Purchasing, (717) 749-4032

114-00 Poultry & poultry products, various items for delivery during the period of January 2001 through March 2001. For more specifics, request bid proposal inq. # 114-00.
Department: Public Welfare
Location: Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401
Duration: January 2001 through March 2001
Contact: Sue Brown, Purchasing Agent, (610) 313-1026

115-00 Meat & meat products, various items for delivery January, 2001 through March, 2001. For more specifics, request bid proposal inq. # 115-00.
Department: Public Welfare
Location: Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401
Duration: January 2001 through March 2001
Contact: Sue Brown, Purchasing Agent, (610) 313-1026

120-00 Fresh Vegetables & Fruits, various items for delivery January, 2001 through March, 2001. For more specifics, request bid proposal inq. # 120-00.
Department: Public Welfare
Location: Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401
Duration: January 2001 through March 2001
Contact: Sue Brown, Purchasing Agent, (610) 313-1026

116-00 Miscellaneous Frozen Foods, various items for delivery January, 2001 through March, 2001. For more specifics, request bid proposal inq. # 116-00.
Department: Public Welfare
Location: Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401
Duration: January 2001 through March 2001
Contact: Sue Brown, Purchasing Agent, (610) 313-1026

122-00 Beverages, various items for delivery January, 2001 through March, 2001. For more specifics, request bid proposal inq. # 122-00.
Department: Public Welfare
Location: Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401
Duration: January 2001 through March 2001
Contact: Sue Brown, Purchasing Agent, (610) 313-1026

118-00 Bread, rolls, etc., various items for delivery January, 2001 through March, 2001. For more specifics, request bid proposal, inq. # 118-00.
Department: Public Welfare
Location: Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401
Duration: January 2001 through March 2001
Contact: Sue Brown, Purchasing Agent, (610) 313-1026

120500 Vendors to supply Perishable foods to the YDC New Castle for the quarter—January, February, March, 2001. Shell eggs; Fresh Bread, Rolls, & Related products; Fresh Pastries; Fresh Pies & Cakes; Fresh Fruits & Vegetables; Fresh Prepared Fruits & Vegetables; Frozen Fruits & Vegetables; Ice Cream & Ice Cream Products; Fresh Cheese & Dairy Products; Fresh Meats; Miscellaneous Prepared Foods; Fresh Poultry; and Fresh Fish.
Department: Public Welfare
Location: Youth Development Center, RR 6 Box 21A, Frew Mill Road, New Castle PA 16101
Duration: January 1, 2001 through March 31, 2001
Contact: Kathleen A Zeigler, (724) 656-7308

119-00 Frozen Vegetables & Fruits, various items for delivery January, 2001 through March, 2001. For more specifics, request bid proposal inq. # 119-00.
Department: Public Welfare
Location: Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401
Duration: January 2001 through March 2001
Contact: Sue Brown, Purchasing Agent, (610) 313-1026

405558 Meat & Meat Products
Department: Public Welfare
Location: Warren State Hospital, 33 Main Street, N. Warren, PA 16365-5099
Duration: January, February & March 2001
Contact: John Sample, PA I, (814) 726-4448

121-00 Dairy Products, various items for delivery January, 2001 through March, 2001. For more specifics, request bid proposal inq. # 121-00.
Department: Public Welfare
Location: Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401
Duration: January 2001 through March 2001
Contact: Sue Brown, Purchasing Agent, (610) 313-1026

HVAC—022

1101200006 Contractor to provide cleaning/inspection service of 14 kitchen hood exhaust systems in the Dietary Department.
Department: Corrections
Location: State Correctional Institution at Albion, 10745 Rt 18, Albion, Pa. 16475-0001
Duration: 3 years
Contact: Lesley S. Jarrett, Purchasing Agent II, (814) 756-5778

SP1345001022 Renovation of a PA State property located at 755 Brown Drive, Spring City, PA 19475. The work will include extensive electrical, plumbing and drywall work. This is a large residential type property. For technical information, please call Tom Schmidt, Maintenance Manager at (610) 948-2430. For bid packages (when available), please fax your request to Theresa Barthel, P.A. at (610) 948-2461.
Department: Military Affairs
Location: Southeastern Veterans Center, 1 Veterans Drive, Spring City, PA 19475
Duration: January 1, 2001 through June 30, 2001
Contact: Theresa Barthel, P.A., (610) 948-2493

0870PLM Plumbing service and/or repair/replace contract at PA Department of Transportation's Maintenance Building, located at 2105 Lincoln Highway East, Lancaster, PA 17602. Note: Fax request for bid package to (717) 299-7635, Attention Jeralyn)
Department: Transportation
Location: 2105 Lincoln Highway East, Lancaster, PA 17602
Duration: One (1) year with two (2) renewals
Contact: Jeralyn L. Rettew, (717) 299-7621, Ext. 322

10973405 Labor and parts necessary to repair, adjust and calibrate various electric motors.
Department: Public Welfare
Location: Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111
Duration: 07/01/01—06/30/05
Contact: Linda J. Zoskey, (724) 459-4547

10973400 Labor, materials, equipment, parts, etc. to service various types of air conditioning equipment.
Department: Public Welfare
Location: Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111
Duration: 07/01/01—06/30/05
Contact: Linda J. Zoskey, (724) 459-4547

10973407 Labor, materials, equipment, parts, etc., to service/repair various refrigeration equipment.
Department: Public Welfare
Location: Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111
Duration: 07/01/01—06/30/05
Contact: Linda J. Zoskey, (724) 459-4547

Janitorial Services—023

Bid No. 8204 Furnish all materials, equipment & labor to perform janitorial services three visits per week at the PA State Police, Tunkhannock Station, 915 SR6W, Tunkhannock, PA 18657-6148. Detailed Work Schedule & Bid must be obtained from Facility Management Division, (717) 783-5484.
Department: State Police
Location: Tunkhanock Station, 915 SR6W, Tunkhannock, PA 18657-6148
Duration: 1/1/01 to 6/30/03
Contact: Donna Enders, (717) 783-5484

Laboratory Services—024

10973406 Water testing on sewage treatment water, drinking water and swimming pool water in accordance with standards/regulations of the Federal Safe Drinking Water Act, DEP and PA Department of Health.
Department: Public Welfare
Location: Torrance State Hospital, State Route 1014, Torrance. PA 15779-0111
Duration: 07/01/01—06/30/05
Contact: Linda J. Zoskey, (724) 459-4547

Lodging/Meeting—027

SP3590013847 Provide meeting facilities to include eight, 1-week sessions for the Department of Environmental Protection, Bureau of Personnel.
Department: Environmental Protection
Location: Within a 15-mile radius of the Capitol Complex, downtown, Harrisburg, PA.
Duration: Through 12/31/01, with option to renew.
Contact: Sharon Peterson, (717) 787-2471

461903 A facility in Pennsylvania within 10 miles of Gettysburg, PA, May 6—10, 2001. With "Classroom Style" room for 100 attendees and three breakout rooms for 30 attendees each. All rooms to be equipped with required A/V equipment; break-out rooms to have one telephone each room; two breakout rooms to have 30 Personal Computers with Windows 95, 98 or NT4.0 loaded; and Internet Access. Lunches and Breaks (a.m. & p.m.) for 100 attendees. Picnic pavilion available for 100 attendees (Committee sponsored cookout)."Hospitality Style" room for 50 attendees is to be available. Twenty single lodging rooms (early arrivals) May 6, 2001. Ninety single lodging rooms for May 7, 8 & 9, 2001, with 1 p.m. check-out. Adequate "No cost" parking must be available. Fax request for Bid Package to Wendy Heberlig, (717) 783-4438, include Proper Business Name and Mailing Address with Contact Person and Telephone Number.
Department: Transportation
Location: In Pennsylvania, Gettysburg, PA
Duration: May 06 through 10, 2001
Contact: Wendy Heberlig, (717) 787-4299

Medical Services—029

SP 01200012 The Office of the Medical Director, Office of Medical Assistance Programs, is soliciting bids for a conference organizer with a proven track record to arrange for annual, two-day Best Practice Master's Seminars. The vendor should be able to arrange for Continuing Medical Education credits and Continuing Education Units for the physicians and professional licensed staff who will attend these conferences. The Organizer will be required to assist in the development of the course description and learning objectives, arrange for appropriate speakers, choose a conference site, and provide other logistical support. A detailed description is available to interested vendors; fax your request to the following number: (717) 787-3560.
Department: Public Welfare
Location: Office of Medical Assistance Programs, Office of the Medical Director, Room 515 Health and Welfare Building, Harrisburg, PA 17120
Duration: January 1, 2001, thru June 30, 2003
Contact: Ed Blandy, Purchasing Agent, (717) 772-4883

SP1300380007 Clinical Psychologist—Must have experience in evaluating, consulting, testing, individual and group counseling, crisis intervention, in- services for grades 3-12 for approximately 350 students. An understanding of all current laws and regulations pertaining to clinical psychological services is required. Contractor shall provide a Clinical Psychologist two, half days a week (3.25 hours = 1/2 day) Requirements: A. Counseling and therapy of individual student and groups of students. B. Diagnosis of individual students. C. Consult with parent/physician and make recommendation. D. Make medication recommendation to physician. E. Clinical psychologist may be used for court cases requiring expert witness. F. Respond to referrals made by counseling, staff and parent, superintendent and/ or school psychologist. G. Make referral to appropriate treatment facility when needed. H. Prevention strategies of students at risk. This will be a multi-year contract beginning March 1, 2001 and extending through June 30, 2004. The contract will only be used during the school year—August through June, but initially starting in March of 2001.
Department: Military Affairs
Location: Scotland School for Veterans' Children, 3583 Scotland Road, Scotland, PA 17254-0900
Duration: March 1, 2001 through June 30, 2004
Contact: Marion E. Jones, (717) 264-7187, ext. 661

lbp-2000-32 Vendor to supply complete radiological coverage for all residents of the Northeastern Veterans' Center. All services to be performed on site at the Northeastern Veterans' Center with portable equipment. For complete specifications please send fax request to (570) 961-4400. Attn: Barbara Partyka
Department: Military Affairs
Location: Northeastern Veterans Center, 401 Penn Avenue, Scranton, PA 18503-1213
Duration: July 1, 2001 through June 30, 2004 with renewal option
Contact: Barbara Partyka, Purchasing Agent, (570) 961-4354

LBP-2000-34 Vendor to supply psychiatric and psychological services to all residents of the Northeastern Veterans Center. For complete specifications, please send fax request to (570) 961-4400 Attn: Barbara Partyka.
Department: Military Affairs
Location: Northeastern Veterans Center, 401 Penn Avenue, Scranton, PA 18503-1213
Duration: July 1, 2001 through June 30, 2004 with renewal option
Contact: Barbara Partyka, Purchasing Agent, (570) 961-4354

SP4004700009 Provide ambulance service for the 2001 Farm Show from January 5, 2001 to January 11, 2001.
Department: Agriculture
Location: Farm Show Complex, Harrisburg, PA
Duration: 1-5-2001 to 1-11-2001
Contact: Mike Mesaris, (717) 787-5674

Property Maintenance—033

SP 3864060003 Provide labor and materials for pressure washing and application of wood preservative to ten state park modern cabins. Process to be completed between June 1, 2001 and June 14, 2001

Department: Conservation and Natural Resources
Location: Bureau of State Parks, French Creek State Park, 843 Park Road, Elverson, PA 19520-9523
Duration: Process to be completed between June 1, 2001 and June 14, 2001.
Contact: Lewis H. Williams, Asst. Park Manager, (610) 582-9680

10-E-00 Snow Removal Services: Provide snow clearance and removal as needed upon 3″ or more accumulation of snow. To be performed prior to 8 a.m. or after 4:30 p.m. Snow removal areas include parking lot, 15,965 square feet; driveway 462 square feet and sidewalks 3,905 square feet. 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, Team PA CareerLink Hazleton, 75 North Laureel Street, Hazleton, PA 18201
Duration: December 1, 2000 thru April 30, 2001 This is a 1 year contract with three 1 year renewal options.
Contact: Cherianita Thomas/BF, (717) 787-2877

SP 00781020 Repair/replace roofs on three buildings. For detailed information contact the Purchasing Office at Wernersville State Hospital.

Department: Public Welfare
Location: Wernersville State Hospital, Route 422, P. O. Box 300, Wernersville, PA 19565-0300
Duration: Anticipated Start Date: February 1, 2001.
Contact: Nancy Deininger, Purchasing Agent, (610) 670-4129

10-D-00 Snow Removal Services: Provide snow clearance and removal as needed upon 3″ or more accumulation of snow. To be removed in accordance with the City of Allentown snow removal ordinances. To be performed prior to 7:30 a.m. or after 5:15 p.m. Snow removal areas include: 1 lot, approximately 34,344 square feet next to building; 1 lot, approximately 24,822 square feet catty-corner to the building at 2nd and Hamilton. One sidewalk around building and adjoining sidewalks measuring approximately 1,012 feet and one sidewalk around the parking lot at 2nd and Hamilton Streets measuring approximately 517 feet. To request a bid package, please call (717) 787-2877 for fax request to (717) 787-0688.

Department: Labor and Industry
Location: Department of Labor and Industry, Bureau of Employer Tax Operations/FAS, One S. Second Street, Suite 400, Allentown, PA 18102
Duration: December 1, 2000 thru April 30, 2001 Four 1 year renewal options beginning November 1.
Contact: Cherianita Thomas/BF, (717) 787-2877

Railroad/Airline—034

350A02 (Amended) The Department of Transportation is issuing a correction to the publication appearing in the October 7, 2000 PA Bulletin regarding the Invitation to Qualify (ITQ #350A02) to prequalify contractors interested in providing Aircraft Charter Services for all Commonwealth Agencies including the Governor's Office and General Assembly. In the initial publication, it stated that ″The initial enrollment period will close on October 27, 2000.″ This date has been amended and a new date has been established which is contained in the ITQ application package. All contractors must complete an application to be considered for future work with the Department. Interested contractors may request a copy of the ITQ by Faxing their name, company name, address, telephone number, and FAX number to Vikki Mahoney at (717) 783-7971. Please reference ITQ #350A02 on your request.

Department: Transportation
Location: Throughout the United States
Duration: 5 years
Contact: Darlene Greenawald, (717) 705-6476

SP 3800132 Services required of contractor to provide airtanker service for wildfire suppression throughout Pennsylvania during the 2001 wildfire season (months of March through May, 2001). Aircraft must be capable of carrying a minimum of 800 gallon or more of fire retardant (liquid). Pilots must be fully qualified to conduct air attack flights against wildfires.

Department: Conservation and Natural Resources
Location: Throughout Pennsylvania. Plane will be based in Hazleton, Luzerne County.
Duration: Through June 30, 2001 with 2 year renewable option
Contact: Pamela Stouffer, (717) 783-0760

SP 3800133 Services required of contractor to provide airtanker services for wildfire suppression throughout Pennsylvania during the 2001 wildfire season (months of March through May, 2001). Aircraft must be capable of carrying a minimum of 500 gallons or more of fire retardant (liquid). Pilots must be fully qualified to conduct air attack fights against wildfires.

Department: Conservation and Natural Resources
Location: Throughout Pennsylvania. Plane will be based at Hazleton, Luzerne County
Duration: Through June 30, 2001 with 2 year renewable option
Contact: Pamela Stouffer, (717) 783-0760

SP 3800131 Services required of contractor to provide airtanker services for wildfire suppression throughout Pennsylvania during the 2001 wildfire season (months of March through May, 2001). Aircraft must be capable of carrying a minimum of 800 gallons or more of fire retardant (liquid). Pilots must be fully qualified to conduct air attack fights against wildfires.

Department: Conservation and Natural Resources
Location: Throughout Pennsylvania—Based at Hazleton, Luzerne County
Duration: Through June 30, 2001 with 2 year renewable option
Contact: Pamela Stouffer, (717) 783-0760

Real Estate Services—035

93113 Lease multi-use space to the Commonwealth of PA. 55,902 sq.ft. of multi-use space with 375 parking spaces, in Blair County, within the Borough of Hollidaysburg. The Department of Transportation, District 9-0 Engineering Office will occupy the space. Downtown locations will be considered. For more information on Solicitation # 93113 which is due on November 27, 2000 visit www.dgs.state.pa.us or call (717) 787-4394.

Department: Transportation
Location: 505 North Office Building, Harrisburg, PA 17125
Duration: N/A
Contact: Jennings K. Ward, (717) 787-7412

93095 Lease space to the Commonwealth of PA. Proposals are invited to provide the Department of Health with 2,288 useable square feet of office/clinic space in Blair County, PA. with a minimum parking for 8 vehicles, in the Altoona City Limits. In areas where street or public parking is not available, an additional 10 parking spaces are required. For more information on SFP #93095 which is due on December 4, 2000 visit www.dgs.state.pa.us or call (717) 787-4394.

Department: Health
Location: 505 North Office Building, Harrisburg, PA 17125
Duration: N/A
Contact: John Hocker, (717) 787-4396

93112 Lease office space to the Commonwealth of PA. 11,402 sq. ft. of office space with 75 parking spaces, in Clarion County, within a 3.5 mile radius of the Clarion Courthouse. The Department of Public Welfare, Clarion County Assistance Office will occupy the space. Downtown locations will be considered. For more information on Solicitation #93112 which is due on December 11, 2000 visit www.dgs.state.pa.us or call (717) 787-4394.

Department: Public Welfare
Location: 505 North Office Building, Harrisburg, PA 17125
Duration: N/A
Contact: Cynthia T. Lentz, (717) 787-0952

93111 Lease space to the Commonwealth of PA. Proposals are invited to provide the Pennsylvania Board of Probation & Parole with 3,266 useable square feet of office space in Westmoreland County, PA. with minimum parking for 8 vehicles, within a 5 mile radius of the intersection of Route 30 & Route 66. Downtown locations will be considered. For more information on SFP # 93111 which is due on December 18, 2000 visit www.dgs.state.pa.us or call (717) 787-4394.

Department: Probation and Parole Board
Location: 505 North Office Building, Harrisburg, PA 17125
Duration: N/A
Contact: John Hocker, (717) 787-4396

Sanitation—036

SP386109001 Provide disposal of solid waste for Hills Creek State Park. Bids will be received at Hills Creek State Park, RR #2, Box 328, Wellsboro, PA 16901-9676. Bid opening will be at 2 p.m. on November 17, 2000.
Department: Conservation and Natural Resources
Location: Hills Creek State Park, RR # 2, Box 328, Wellsboro, PA 16901-9676
Duration: 3 Years—January 1, 2001—December 31, 2003
Contact: Robert L. Cross, (570) 724-4246

SP386115001 Provide disposal of solid waste for Lyman Run State Park Complex. Bids will be received at Lyman Run State Park, 454 Lyman Run Road, Galeton, PA 16922. Bid opening will be at 2 p.m. on November 17, 2000
Department: Conservation and Natural Resources
Location: Lyman Run State Park Complex, 454 Lyman Run Road, Galeton, PA 16922
Duration: 3 Years—January 1, 2001—December 31, 2003
Contact: Harry (Chip) Harrison, (814) 435-5010

SP386205001 Sealed bids will be received at Dept. of Conservation and Natural Resources, Park Region # 2, 195 Park Road, P. O. Box 387, Prospect, PA 16052-0387, and then publicly opened and read. For Solid Waste Collection and Disposal at Keystone State Park. A bid proposal containing all pertinent information must be obtained from the office of the Park Manager, Keystone State Park. A bid opening date has not yet been set.
Department: Conservation and Natural Resources
Location: Dept. of Conservation and Natural Resources, Keystone State Park, R. D. 2, Box 101, Derry, PA 15627-9617
Duration: January 1, 2001 to December 31, 2003
Contact: Keystone State Park, (724) 668-2939

SP386113001 Provide disposal of solid waste for Leonard Harrison/Colton Point State Parks. Bids will be received at Leonard Harrison State Park, RR # 6, Box 199, Wellsboro, PA 16901-8970. Bid opening will be at 2 p.m. on November 17, 2000.
Department: Conservation and Natural Resources
Location: Leonard Harrison/Colton Point State Parks, RR # 6, Box 199, Wellsboro, PA 16901-8970
Duration: 3 Years—January 1, 2001—December 31, 2003
Contact: Robert L. Cross, (570) 724-3061

Security Services—037

10048001 This service is for one security guard at the Northampton County Assistance Office, 201 Larry Holmes Drive, Easton, PA 18042 from 8:30 a.m. to 5 p.m., Monday through Friday, (holidays excluded). Complete details and specifications may be obtained by either contracting the procurement office or faxing your request to (717) 787-3560.
Department: Public Welfare
Location: Northampton County Assistance Office, 201 Larry Holmes Drive, Easton, PA 18042
Duration: 07/01/2001—06/30/2006
Contact: Rose Wadlinger, (717) 783-3767

Miscellaneous—039

1101200007 Contractor to provide service/preventative maintenance on several pieces of dietary/food equipment.
Department: Corrections
Location: State Correcitonal Institution at Albion, 10745 Rt 18, Albion, PA 16475-0001
Duration: 3 years
Contact: Lesley S. Jarrett, Purchasing Agent II, (814) 756-5778

SO-214 The State Correctional Institution at Somerset will be issuing bid proposals for Folger Adam Locks and Hardware. Vendors interested in bidding should contact the institution directly for bid package.
Department: Corrections
Location: State Correctional Institution, 1590 Walters Mill Road, Somerset, PA 15510-0001
Duration: 10/23/00 through 01/01/01
Contact: Jackie Albright, Purchasing Agent, (814) 443-8100, ext. 313

SP3500013331 Provide a two (2)-day training course on Toxicology to Department of Environmental Protection (DEP) employees.
Department: Environmental Protection
Location: The training site shall be in the Pittsburgh, Pennsylvania area.
Duration: Through June 30, 2001
Contact: Sharon Peterson, (717) 787-2471

0332 Furnish and Install: Six Complete Exterior Door Units. Please send a fax to (570) 587-7108 to request a bid package. Bid packages cannot be faxed. Proof of Visit Required.
Department: Public Welfare
Location: Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, PA 18411-9505
Duration: 11/30/00—01/30/01
Contact: Stanley Rygelski, P.A., (570) 587-7291

157653 Ten LP/Gas, direct vent, stoves. With natural gas conversion kits. Delivered FOB to Clear Creek State Park maintenance building.
Department: Conservation and Natural Resources
Location: Clear Creek State Park, R.R. 1 Box 82, Sigel, PA 15860
Duration: N/A
Contact: Greg Burkett, Park Manager, (814) 752-2368

B0000357 Millersville University is soliciting bidders who can provide the University with a Mitsubishi RV-M1 (Industry Grade) robot arm and associated VR Robot software. Interested vendors should fax their requests to be place on a bidders list to Anna Stauffer (Fax: (717) 871-2000) no later than 2 p.m., Friday, November 3, 2000.
Department: State System of Higher Education
Location: Millersville University, Millersville PA 17551
Duration: Must be in place by 1/1/01
Contact: Anna Stouffer, (717) 872-3041

WSS-00 Supply and install water softening system—To be Culligan Hi-Flo 55E or approved equal.
Department: Military Affairs
Location: Southeastern Veterans Center, 1 Veterans Center, Spring City, PA 19475
Duration: November 1, 2000 through January 31, 2001
Contact: Theresa Barthel, P.A., (610) 948-2493

00974011 Periodical Subscription Services.
Department: Public Welfare
Location: Warren State Hospital, 33 Main Drive, N. Warren, PA 16365-5099
Duration: 1 year from start of subscription
Contact: Ms. Bobbie Muntz, PA III, (814) 726-4496

00780135 Furnish & Install Automatic Detectors. All new fire alarm devices, such as smoke & heat detectors, shall be addressable-type automatic detectors. The new detectors shall be interfaced with the existing Edwards Systems Technology fire alarm & detection system.
Department: Public Welfare
Location: White Haven Center, White Haven, PA 18661
Duration: 12/1/00—6/30/01
Contact: Sandra A. Repak, Purchasing Agent, (570) 443-4232

PGC-2662 The Commission is seeking a contractor to perform non-commercial tree felling on State Game Lands No. 264, Dauphin County, State Game Lands No. 52, Berks County, and State Game Lands No. 225, Lebanon County. All tree felling to be done in accordance with specifications included in the bid package. Bid prices should include all costs necessary for material, equipment and labor. Specifications and bid package can be obtained through agency (see below). Each State Game Land area will be considered a separate project site. Bid will be awarded by line item basis (project site) to the lowest responsible bidder. Tree felling to be completed by June 15, 2001, but, due to hunting seasons, there will be various non-work days.

Department: Game Commission
Location: Pennsylvania Game Commission, Bureau of Administrative Services, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797
Duration: Clearing must be completed by June 15, 2001.
Contact: Diane Shultz or Linda Beaver, (717) 787-6594

N/A Daily Number/Big 4 Ping Pong Ball Sets (10 Balls per Set). Total of 54 Sets. Cash 5/Super 6 Lotto Ping Pong Ball Sets (69 Balls per Set). Total of 15 Sets. Specifications, delivery instructions and any other pertinent information will be included in the Invitation to Bid package.

Department: Revenue
Location: Pennsylvania Lottery, 2850 Turnpike Industrial Drive, Middletown, PA 17057, Door # 5
Duration: December 31, 2000
Contact: (Supply) Carol Kirkpatrick, (717) 772-0506

B0000356 Millersville University is seeking qualified bidders who can provide the University with 25 Apple computers (Power MAC G4's). Interested vendors should fax their requests to be placed on a bidders list to Anna Stauffer (Fax: (717) 871-2000) no later than 2 p.m., Friday, November 4, 2000.

Department: State System of Higher Education
Location: Millersville University
Duration: N/A
Contact: Anna Stauffer, (717) 872-3041

M0370001 Heavy Duty Tire Changer. Make: Corghi. Model No.: AG 52 L. Warranty: Twelve (12) months minimum on parts. Ninety (90) days minimum on rubber pads, air lines, swabs and air gauges. Six (6) months labor and travel for repairs. Training: One (1) four hour training session.

Department: Transportation
Location: Maintenance District 3-7, 6 Berwart Street, Wellsboro, Pa 16901
Duration: N/A
Contact: Mark Foust, Equipment Manager, (570) 724-4261

[Pa.B. Doc. No. 00-1897. Filed for public inspection October 27, 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 #	PR Award Date or Contract Effective Date	To	In the Amount Of
9985-05 sup #1	10/19/00	Nancy C. Adelis d/b/a Adelis Development Systems	30,000.00
9985-05 sup #1	10/19/00	Arthur Andersen LLP.	30,000.00
9985-05 sup #1	10/19/00	Mary Maloney Cronin d/b/a Cronin Communications	30,000.00
9985-05 sup #1	10/19/00	HGM Management and Technologies Inc.	30,000.00
9985-05 sup #1	10/19/00	Paradigm Learning Inc.	30,000.00
9985-05 sup #1	10/19/00	Power Prez Inc.	30,000.00
9985-05 sup #1	10/19/00	Proforma Corp.	30,000.00
9985-05 sup #1	10/19/00	Pryor Resources Inc.	30,000.00
9985-05 sup #1	10/19/00	The Team Approach	30,000.00
9985-07 sup #1	10/19/00	3Sis Inc. d/b/a Geiger & Loria Reporting Service	75,000.00
9985-07 sup #1	10/19/00	Filius & McLucas Reporting Service Inc.	75,000.00
1054210-01	10/13/00	Enterprise Messaging Services Inc.	27,945.00
1121110-01	10/13/00	Chemtick Coated Fabrics Inc.	31,200.00
1122110-01	10/13/00	Frankford Leather Co. Inc.	25,668.00
1134070-01	10/13/00	Moore North America Inc.	51,901.00
159159-01	10/13/00	RIS Paper Co.	47,320.00

GARY E. CROWELL,
Secretary

[Pa.B. Doc. No. 00-1898. Filed for public inspection October 27, 2000, 9:00 a.m.]

NOTICES

OFFICE OF THE ATTORNEY GENERAL

Tobacco Settlement

MASTER SETTLEMENT AGREEMENT

MASTER SETTLEMENT AGREEMENT

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MASTER SETTLEMENT AGREEMENT

This Master Settlement Agreement is made by the undersigned Settling State officials (on behalf of their respective Settling States) and the undersigned Participating Manufacturers to settle and resolve with finality all Released Claims against the Participating Manufacturers and related entities as set forth herein. This Agreement constitutes the documentation effecting this settlement with respect to each Settling State, and is intended to and shall be binding upon each Settling State and each Participating Manufacturer in accordance with the terms hereof.

I. RECITALS

WHEREAS, more than 40 States have commenced litigation asserting various claims for monetary, equitable and injunctive relief against certain tobacco product manufacturers and others as defendants, and the States that have not filed suit can potentially assert similar claims;

WHEREAS, the Settling States that have commenced litigation have sought to obtain equitable relief and damages under state laws, including consumer protection and/or antitrust laws, in order to further the Settling States' policies regarding public health, including policies adopted to achieve a significant reduction in smoking by Youth;

WHEREAS, defendants have denied each and every one of the Settling States' allegations of unlawful conduct or wrongdoing and have asserted a number of defenses to the Settling States' claims, which defenses have been contested by the Settling States;

WHEREAS, the Settling States and the Participating Manufacturers are committed to reducing underage tobacco use by discouraging such use and by preventing Youth access to Tobacco Products;

WHEREAS, the Participating Manufacturers recognize the concern of the tobacco grower community that it may be adversely affected by the potential reduction in tobacco consumption resulting from this settlement, reaffirm their commitment to work cooperatively to address concerns about the potential adverse economic impact on such community, and will, within 30 days after the MSA Execution Date, meet with the political leadership of States with grower communities to address these economic concerns;

WHEREAS, the undersigned Settling State officials believe that entry into this Agreement and uniform consent decrees with the tobacco industry is necessary in order to further the Settling States' policies designed to reduce Youth smoking, to promote the public health and to secure monetary payments to the Settling States; and

WHEREAS, the Settling States and the Participating Manufacturers wish to avoid the further expense, delay, inconvenience, burden and uncertainty of continued litigation (including appeals from any verdicts), and, therefore, have agreed to settle their respective lawsuits and potential claims pursuant to terms which will achieve for the Settling States and their citizens significant funding for the advancement of public health, the implementation of important tobacco-related public health measures, including the enforcement of the mandates and restrictions related to such measures, as well as funding for a national Foundation dedicated to significantly reducing the use of Tobacco Products by Youth;

NOW, THEREFORE, BE IT KNOWN THAT, in consideration of the implementation of tobacco-related health measures and the payments to be made by the Participating Manufacturers, the release and discharge of all claims by the Settling States, and such other consideration as described herein, the sufficiency of which is hereby acknowledged, the Settling States and the Participating Manufacturers, acting by and through their authorized agents, memorialize and agree as follows:

II. DEFINITIONS

(a) "Account" has the meaning given in the Escrow Agreement.

(b) "Adult" means any person or persons who are not Underage.

(c) "Adult-Only Facility" means a facility or restricted area (whether open-air or enclosed) where the operator ensures or has a reasonable basis to believe (such as by checking identification as required under state law, or by checking the identification of any person appearing to be under the age of 27) that no Underage person is present. A facility or restricted area need not be permanently restricted to Adults in order to constitute an Adult-Only Facility, provided that the operator ensures or has a reasonable basis to believe that no Underage person is present during the event or time period in question.

(d) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more,

and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(e) "Agreement" means this Master Settlement Agreement, together with the exhibits hereto, as it may be amended pursuant to subsection XVIII(j).

(f) "Allocable Share" means the percentage set forth for the State in question as listed in Exhibit A hereto, without regard to any subsequent alteration or modification of such State's percentage share agreed to by or among any States; or, solely for the purpose of calculating payments under subsection IX(c)(2) (and corresponding payments under subsection IX(i)), the percentage disclosed for the State in question pursuant to subsection IX(c)(2)(A) prior to June 30, 1999, without regard to any subsequent alteration or modification of such State's percentage share agreed to by or among any States.

(g) "Allocated Payment" means a particular Settling State's Allocable Share of the sum of all of the payments to be made by the Original Participating Manufacturers in the year in question pursuant to subsections IX(c)(1) and IX(c)(2), as such payments have been adjusted, reduced and allocated pursuant to clause "First" through the first sentence of clause "Fifth" of subsection IX(j), but before application of the other offsets and adjustments described in clauses "Sixth" through "Thirteenth" of subsection IX(j).

(h) "Bankruptcy" means, with respect to any entity, the commencement of a case or other proceeding (whether voluntary or involuntary) seeking any of (1) liquidation, reorganization, rehabilitation, receivership, conservatorship, or other relief with respect to such entity or its debts under any bankruptcy, insolvency or similar law now or hereafter in effect; (2) the appointment of a trustee, receiver, liquidator, custodian or similar official of such entity or any substantial part of its business or property; (3) the consent of such entity to any of the relief described in (1) above or to the appointment of any official described in (2) above in any such case or other proceeding involuntarily commenced against such entity; or (4) the entry of an order for relief as to such entity under the federal bankruptcy laws as now or hereafter in effect. Provided, however, that an involuntary case or proceeding otherwise within the foregoing definition shall not be a "Bankruptcy" if it is or was dismissed within 60 days of its commencement.

(i) "Brand Name" means a brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any domestic brand of Tobacco Products. Provided, however, that the term "Brand Name" shall not include the corporate name of any Tobacco Product Manufacturer that does not after the MSA Execution Date sell a brand of Tobacco Products in the States that includes such corporate name.

(j) "Brand Name Sponsorship" means an athletic, musical, artistic, or other social or cultural event as to which payment is made (or other consideration is provided) in exchange for use of a Brand Name or Names (1) as part of the name of the event or (2) to identify, advertise, or promote such event or an entrant, participant or team in such event in any other way. Sponsorship of a single national or multi-state series or tour (for example, NASCAR (including any number of NASCAR races)), or of one or more events within a single national or multi-state series or tour, or of an entrant, participant, or team taking part in events sanctioned by a single approving organization (e.g., NASCAR or CART), constitutes one Brand Name Sponsorship. Sponsorship of an entrant, participant, or team by a Participating Manufacturer using a Brand Name or Names in an event that is part of a series or tour that is sponsored by such Participating Manufacturer or that is part of a series or tour in which any one or more events are sponsored by such Participating Manufacturer does not constitute a separate Brand Name Sponsorship. Sponsorship of an entrant, participant, or team by a Participating Manufacturer using a Brand Name or Names in any event (or series of events) not sponsored by such Participating Manufacturer constitutes a Brand Name Sponsorship. The term "Brand Name Sponsorship" shall not include an event in an Adult-Only Facility.

(k) "Business Day" means a day which is not a Saturday or Sunday or legal holiday on which banks are authorized or required to close in New York, New York.

(l) "Cartoon" means any drawing or other depiction of an object, person, animal, creature or any similar caricature that satisfies any of the following criteria:

(1) the use of comically exaggerated features;

(2) the attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or

(3) the attribution of unnatural or extrahuman abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds or transformation.

The term "Cartoon" includes "Joe Camel," but does not include any drawing or other depiction that on July 1, 1998, was in use in any State in any Participating Manufacturer's corporate logo or in any Participating Manufacturer's Tobacco Product packaging.

(m) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "Cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). Except as provided in subsections II(z) and II(mm), 0.0325 ounces of "roll-your-own" tobacco shall constitute one individual "Cigarette."

(n) "Claims" means any and all manner of civil (i.e., non-criminal): claims, demands, actions, suits, causes of action, damages (whenever incurred), liabilities of any nature including civil penalties and punitive damages, as well as costs, expenses and attorneys' fees (except as to the Original Participating Manufacturers' obligations under section XVII), known or unknown, suspected or unsuspected, accrued or unaccrued, whether legal, equitable, or statutory.

(o) "Consent Decree" means a state-specific consent decree as described in subsection XIII(b)(1)(B) of this Agreement.

(p) "Court" means the respective court in each Settling State to which this Agreement and the Consent Decree are presented for approval and/or entry as to that Settling State.

(q) "Escrow" has the meaning given in the Escrow Agreement.

(r) "Escrow Agent" means the escrow agent under the Escrow Agreement.

(s) "Escrow Agreement" means an escrow agreement substantially in the form of Exhibit B.

(t) "Federal Tobacco Legislation Offset" means the offset described in section X.

(u) "Final Approval" means the earlier of:

(1) the date by which State-Specific Finality in a sufficient number of Settling States has occurred; or

(2) June 30, 2000.

For the purposes of this subsection (u), "State-Specific Finality in a sufficient number of Settling States" means that State-Specific Finality has occurred in both:

(A) a number of Settling States equal to at least 80% of the total number of Settling States; and

(B) Settling States having aggregate Allocable Shares equal to at least 80% of the total aggregate Allocable Shares assigned to all Settling States. Notwithstanding the foregoing, the Original Participating Manufacturers may, by unanimous written agreement, waive any requirement for Final Approval set forth in subsections (A) or (B) hereof.

(v) "Foundation" means the foundation described in section VI.

(w) "Independent Auditor" means the firm described in subsection XI(b).

(x) "Inflation Adjustment" means an adjustment in accordance with the formulas for inflation adjustments set forth in Exhibit C.

(y) "Litigating Releasing Parties Offset" means the offset described in subsection XII(b).

(z) "Market Share" means a Tobacco Product Manufacturer's respective share (expressed as a percentage) of the total number of individual Cigarettes sold in the fifty United States, the District of Columbia and Puerto Rico during the applicable calendar year, as measured by excise taxes collected by the federal government and, in the case of sales in Puerto Rico, arbitrios de cigarillos collected by the Puerto Rico taxing authority. For purposes of the definition and determination of "Market Share" with respect to calculations under subsection IX(i), 0.09 ounces of "roll your own" tobacco shall constitute one individual Cigarette; for purposes of the definition and determination of "Market Share" with respect to all other calculations, 0.0325 ounces of "roll your own" tobacco shall constitute one individual Cigarette.

(aa) "MSA Execution Date" means November 23, 1998.

(bb) "NAAG" means the National Association of Attorneys General, or its successor organization that is directed by the Attorneys General to perform certain functions under this Agreement.

(cc) "Non-Participating Manufacturer" means any Tobacco Product Manufacturer that is not a Participating Manufacturer.

(dd) "Non-Settling States Reduction" means a reduction determined by multiplying the amount to which such reduction applies by the aggregate Allocable Shares of those States that are not Settling States on the date 15 days before such payment is due.

(ee) "Notice Parties" means each Participating Manufacturer, each Settling State, the Escrow Agent, the Independent Auditor and NAAG.

(ff) "NPM Adjustment" means the adjustment specified in subsection IX(d).

(gg) "NPM Adjustment Percentage" means the percentage determined pursuant to subsection IX(d).

(hh) "Original Participating Manufacturers" means the following: Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated and R.J. Reynolds Tobacco Company, and the respective successors of each of the foregoing. Except as expressly provided in this Agreement, once an entity becomes an Original Participating Manufacturer, such entity shall permanently retain the status of Original Participating Manufacturer.

(ii) "Outdoor Advertising" means (1) billboards, (2) signs and placards in arenas, stadiums, shopping malls and Video Game Arcades (whether any of the foregoing are open air or enclosed) (but not including any such sign or placard located in an Adult-Only Facility), and (3) any other advertisements placed (A) outdoors, or (B) on the inside surface of a window facing outward. Provided, however, that the term "Outdoor Advertising" does not mean (1) an advertisement on the outside of a Tobacco Product manufacturing facility; (2) an individual advertisement that does not occupy an area larger than 14 square feet (and that neither is placed in such proximity to any other such advertisement so as to create a single "mosaic"-type advertisement larger than 14 square feet, nor functions solely as a segment of a larger advertising unit or series), and that is placed (A) on the outside of any retail establishment that sells Tobacco Products (other than solely through a vending machine), (B) outside (but on the property of) any such establishment, or (C) on the inside surface of a window facing outward in any such establishment; (3) an advertisement inside a retail establishment that sells Tobacco Products (other than solely through a vending machine) that is not placed on the inside surface of a window facing outward; or (4) an outdoor advertisement at the site of an event to be held at an Adult-Only Facility that is placed at such site during the period the facility or enclosed area constitutes an Adult-Only Facility, but in no event more than 14 days before the event, and that does not advertise any Tobacco Product (other than by using a Brand Name to identify the event).

(jj) "Participating Manufacturer" means a Tobacco Product Manufacturer that is or becomes a signatory to this Agreement, provided that (1) in the case of a Tobacco Product Manufacturer that is not an Original Participating Manufacturer, such Tobacco Product Manufacturer is bound by this Agreement and the Consent Decree (or, in any Settling State that does not permit amendment of the Consent Decree, a consent decree containing terms identical to those set forth in the Consent Decree) in all Settling States in which this Agreement and the Consent Decree binds Original Participating Manufacturers (provided, however, that such Tobacco Product Manufacturer need only become bound by the Consent Decree in those Settling States in which the Settling State has filed a Released Claim against it), and (2) in the case of a Tobacco Product Manufacturer that signs this Agreement after the MSA Execution Date, such Tobacco Product

Manufacturer, within a reasonable period of time after signing this Agreement, makes any payments (including interest thereon at the Prime Rate) that it would have been obligated to make in the intervening period had it been a signatory as of the MSA Execution Date. "Participating Manufacturer" shall also include the successor of a Participating Manufacturer. Except as expressly provided in this Agreement, once an entity becomes a Participating Manufacturer such entity shall permanently retain the status of Participating Manufacturer. Each Participating Manufacturer shall regularly report its shipments of Cigarettes in or to the fifty United States, the District of Columbia and Puerto Rico to Management Science Associates, Inc. (or a successor entity as set forth in subsection (mm)). Solely for purposes of calculations pursuant to subsection IX(d), a Tobacco Product Manufacturer that is not a signatory to this Agreement shall be deemed to be a "Participating Manufacturer" if the Original Participating Manufacturers unanimously consent in writing.

(kk) "Previously Settled States Reduction" means a reduction determined by multiplying the amount to which such reduction applies by 12.4500000%, in the case of payments due in or prior to 2007; 12.2373756%, in the case of payments due after 2007 but before 2018; and 11.0666667%, in the case of payments due in or after 2018.

(ll) "Prime Rate" shall mean the prime rate as published from time to time by the Wall Street Journal or, in the event the Wall Street Journal is no longer published or no longer publishes such rate, an equivalent successor reference rate determined by the Independent Auditor.

(mm) "Relative Market Share" means an Original Participating Manufacturer's respective share (expressed as a percentage) of the total number of individual Cigarettes shipped in or to the fifty United States, the District of Columbia and Puerto Rico by all the Original Participating Manufacturers during the calendar year immediately preceding the year in which the payment at issue is due (regardless of when such payment is made), as measured by the Original Participating Manufacturers' reports of shipments of Cigarettes to Management Science Associates, Inc. (or a successor entity acceptable to both the Original Participating Manufacturers and a majority of those Attorneys General who are both the Attorney General of a Settling State and a member of the NAAG executive committee at the time in question). A Cigarette shipped by more than one Participating Manufacturer shall be deemed to have been shipped solely by the first Participating Manufacturer to do so. For purposes of the definition and determination of "Relative Market Share," 0.09 ounces of "roll your own" tobacco shall constitute one individual Cigarette.

(nn) "Released Claims" means:

(1) for past conduct, acts or omissions (including any damages incurred in the future arising from such past conduct, acts or omissions), those Claims directly or indirectly based on, arising out of or in any way related, in whole or in part, to (A) the use, sale, distribution, manufacture, development, advertising, marketing or health effects of, (B) the exposure to, or (C) research, statements, or warnings regarding, Tobacco Products (including, but not limited to, the Claims asserted in the actions identified in Exhibit D, or any comparable Claims that were, could be or could have been asserted now or in the future in those actions or in any comparable action in federal, state or local court brought by a Settling State or a Releasing Party (whether or not such Settling State or Releasing Party has brought such action)), except for claims not asserted in the actions identified in Exhibit D for outstanding liability under existing licensing (or similar) fee laws or existing tax laws (but not excepting claims for any tax liability of the Tobacco-Related Organizations or of any Released Party with respect to such Tobacco-Related Organizations, which claims are covered by the release and covenants set forth in this Agreement);

(2) for future conduct, acts or omissions, only those monetary Claims directly or indirectly based on, arising out of or in any way related to, in whole or in part, the use of or exposure to Tobacco Products manufactured in the ordinary course of business, including without limitation any future Claims for reimbursement of health care costs allegedly associated with the use of or exposure to Tobacco Products.

(oo) "Released Parties" means all Participating Manufacturers, their past, present and future Affiliates, and the respective divisions, officers, directors, employees, representatives, insurers, lenders, underwriters, Tobacco-Related Organizations, trade associations, suppliers, agents, auditors, advertising agencies, public relations entities, attorneys, retailers and distributors of any Participating Manufacturer or of any such Affiliate (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing). Provided, however, that "Released Parties" does not include any person or entity (including, but not limited to, an Affiliate) that is itself a Non-Participating Manufacturer at any time after the MSA Execution Date, unless such person or entity becomes a Participating Manufacturer.

(pp) "Releasing Parties" means each Settling State and any of its past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions; and also means, to the full extent of the power of the signatories hereto to release past, present and future claims, the following: (1) any Settling State's subdivisions (political or otherwise, including, but not limited to, municipalities, counties, parishes, villages, unincorporated districts and hospital districts), public entities, public instrumentalities and public educational institutions; and (2) persons or entities acting in a parens patriae, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer, or any other capacity, whether or not any of them participate in this settlement, (A) to the extent that any such person or entity is seeking relief on behalf of or generally applicable to the general public in such Settling State or the people of the State, as opposed solely to private or individual relief for separate and distinct injuries, or (B) to the extent that any such entity (as opposed to an individual) is seeking recovery of health-care expenses (other than premium or capitation payments for the benefit of present or retired state employees) paid or reimbursed, directly or indirectly, by a Settling State.

(qq) "Settling State" means any State that signs this Agreement on or before the MSA Execution Date. Provided, however, that the term 'settling State" shall not include (1) the States of Mississippi, Florida, Texas and Minnesota; and (2) any State as to which this Agreement has been terminated.

(rr) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianas.

(ss) "State-Specific Finality" means, with respect to the Settling State in question:

(1) this Agreement and the Consent Decree have been approved and entered by the Court as to all Original

Participating Manufacturers, or, in the event of an appeal from or review of a decision of the Court to withhold its approval and entry of this Agreement and the Consent Decree, by the court hearing such appeal or conducting such review;

(2) entry by the Court has been made of an order dismissing with prejudice all claims against Released Parties in the action as provided herein; and

(3) the time for appeal or to seek review of or permission to appeal ("Appeal") from the approval and entry as described in subsection (1) hereof and entry of such order described in subsection (2) hereof has expired; or, in the event of an Appeal from such approval and entry, the Appeal has been dismissed, or the approval and entry described in (1) hereof and the order described in subsection (2) hereof have been affirmed in all material respects by the court of last resort to which such Appeal has been taken and such dismissal or affirmance has become no longer subject to further Appeal (including, without limitation, review by the United States Supreme Court).

(tt) "Subsequent Participating Manufacturer" means a Tobacco Product Manufacturer (other than an Original Participating Manufacturer) that: (1) is a Participating Manufacturer, and (2) is a signatory to this Agreement, regardless of when such Tobacco Product Manufacturer became a signatory to this Agreement. subsequent Participating Manufacturer" shall also include the successors of a Subsequent Participating Manufacturer. Except as expressly provided in this Agreement, once an entity becomes a Subsequent Participating Manufacturer such entity shall permanently retain the status of Subsequent Participating Manufacturer, unless it agrees to assume the obligations of an Original Participating Manufacturer as provided in subsection XVIII(c).

(uu) "Tobacco Product Manufacturer" means an entity that after the MSA Execution Date directly (and not exclusively through any Affiliate):

(1) manufactures Cigarettes anywhere that such manufacturer intends to be sold in the States, including Cigarettes intended to be sold in the States through an importer (except where such importer is an Original Participating Manufacturer that will be responsible for the payments under this Agreement with respect to such Cigarettes as a result of the provisions of subsections II(mm) and that pays the taxes specified in subsection II(z) on such Cigarettes, and provided that the manufacturer of such Cigarettes does not market or advertise such Cigarettes in the States);

(2) is the first purchaser anywhere for resale in the States of Cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the States; or

(3) becomes a successor of an entity described in subsection (1) or (2) above. The term "Tobacco Product Manufacturer" shall not include an Affiliate of a Tobacco Product Manufacturer unless such Affiliate itself falls within any of subsections (1)—(3) above.

(vv) "Tobacco Products" means Cigarettes and smokeless tobacco products.

(ww) "Tobacco-Related Organizations" means the Council for Tobacco Research—U.S.A., Inc., The Tobacco Institute, Inc. ("TI"), and the Center for Indoor Air Research, Inc. ("CIAR") and the successors, if any, of TI or CIAR.

(xx) "Transit Advertisements" means advertising on or within private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, transportation waiting area, train station, airport or any similar location. Notwithstanding the foregoing, the term "Transit Advertisements" does not include (1) any advertisement placed in, on or outside the premises of any retail establishment that sells Tobacco Products (other than solely through a vending machine) (except if such individual advertisement (A) occupies an area larger than 14 square feet; (B) is placed in such proximity to any other such advertisement so as to create a single "mosaic"-type advertisement larger than 14 square feet; or (C) functions solely as a segment of a larger advertising unit or series); or (2) advertising at the site of an event to be held at an Adult-Only Facility that is placed at such site during the period the facility or enclosed area constitutes an Adult-Only Facility, but in no event more than 14 days before the event, and that does not advertise any Tobacco Product (other than by using a Brand Name to identify the event).

(yy) "Underage" means younger than the minimum age at which it is legal to purchase or possess (whichever minimum age is older) Cigarettes in the applicable Settling State.

(zz) "Video Game Arcade" means an entertainment establishment primarily consisting of video games (other than video games intended primarily for use by persons 18 years of age or older) and/or pinball machines.

(aaa) "Volume Adjustment" means an upward or downward adjustment in accordance with the formula for volume adjustments set forth in Exhibit E.

(bbb) "Youth" means any person or persons under 18 years of age.

III. PERMANENT RELIEF

(a) *Prohibition on Youth Targeting.* No Participating Manufacturer may take any action, directly or indirectly, to target Youth within any Settling State in the advertising, promotion or marketing of Tobacco Products, or take any action the primary purpose of which is to initiate, maintain or increase the incidence of Youth smoking within any Settling State.

(b) *Ban on Use of Cartoons.* Beginning 180 days after the MSA Execution Date, no Participating Manufacturer may use or cause to be used any Cartoon in the advertising, promoting, packaging or labeling of Tobacco Products.

(c) *Limitation of Tobacco Brand Name Sponsorships.*

(1) *Prohibited Sponsorships.* After the MSA Execution Date, no Participating Manufacturer may engage in any Brand Name Sponsorship in any State consisting of:

(A) concerts; or

(B) events in which the intended audience is comprised of a significant percentage of Youth; or

(C) events in which any paid participants or contestants are Youth; or

(D) any athletic event between opposing teams in any football, basketball, baseball, soccer or hockey league.

(2) *Limited Sponsorships.*

(A) No Participating Manufacturer may engage in more than one Brand Name Sponsorship in the States in any twelve-month period (such period measured from the date of the initial sponsored event).

(B) Provided, however, that

(i) nothing contained in subsection (2)(A) above shall require a Participating Manufacturer to breach or terminate any sponsorship contract in existence as of August 1, 1998 (until the earlier of (x) the current term of any

existing contract, without regard to any renewal or option that may be exercised by such Participating Manufacturer or (y) three years after the MSA Execution Date); and

(ii) notwithstanding subsection (1)(A) above, Brown & Williamson Tobacco Corporation may sponsor either the GPC country music festival or the Kool jazz festival as its one annual Brand Name Sponsorship permitted pursuant to subsection (2)(A) as well as one Brand Name Sponsorship permitted pursuant to subsection (2)(B)(i).

(3) *Related Sponsorship Restrictions.* With respect to any Brand Name Sponsorship permitted under this subsection (c):

(A) advertising of the Brand Name Sponsorship event shall not advertise any Tobacco Product (other than by using the Brand Name to identify such Brand Name Sponsorship event);

(B) no Participating Manufacturer may refer to a Brand Name Sponsorship event or to a celebrity or other person in such an event in its advertising of a Tobacco Product;

(C) nothing contained in the provisions of subsection III(e) of this Agreement shall apply to actions taken by any Participating Manufacturer in connection with a Brand Name Sponsorship permitted pursuant to the provisions of subsections (2)(A) and (2)(B)(i); the Brand Name Sponsorship permitted by subsection (2)(B)(ii) shall be subject to the restrictions of subsection III(e) except that such restrictions shall not prohibit use of the Brand Name to identify the Brand Name Sponsorship;

(D) nothing contained in the provisions of subsections III(f) and III(i) shall apply to apparel or other merchandise: (i) marketed, distributed, offered, sold, or licensed at the site of a Brand Name Sponsorship permitted pursuant to subsections (2)(A) or (2)(B)(i) by the person to which the relevant Participating Manufacturer has provided payment in exchange for the use of the relevant Brand Name in the Brand Name Sponsorship or a third-party that does not receive payment from the relevant Participating Manufacturer (or any Affiliate of such Participating Manufacturer) in connection with the marketing, distribution, offer, sale or license of such apparel or other merchandise; or (ii) used at the site of a Brand Name Sponsorship permitted pursuant to subsection (2)(A) or (2)(B)(i) (during such event) that are not distributed (by sale or otherwise) to any member of the general public; and

(E) nothing contained in the provisions of subsection III(d) shall: (i) apply to the use of a Brand Name on a vehicle used in a Brand Name Sponsorship; or (ii) apply to Outdoor Advertising advertising the Brand Name Sponsorship, to the extent that such Outdoor Advertising is placed at the site of a Brand Name Sponsorship no more than 90 days before the start of the initial sponsored event, is removed within 10 days after the end of the last sponsored event, and is not prohibited by subsection (3)(A) above.

(4) *Corporate Name Sponsorships.* Nothing in this subsection (c) shall prevent a Participating Manufacturer from sponsoring or causing to be sponsored any athletic, musical, artistic, or other social or cultural event, or any entrant, participant or team in such event (or series of events) in the name of the corporation which manufactures Tobacco Products, provided that the corporate name does not include any Brand Name of domestic Tobacco Products.

(5) *Naming Rights Prohibition.* No Participating Manufacturer may enter into any agreement for the naming rights of any stadium or arena located within a Settling State using a Brand Name, and shall not otherwise cause a stadium or arena located within a Settling State to be named with a Brand Name.

(6) *Prohibition on Sponsoring Teams and Leagues.* No Participating Manufacturer may enter into any agreement pursuant to which payment is made (or other consideration is provided) by such Participating Manufacturer to any football, basketball, baseball, soccer or hockey league (or any team involved in any such league) in exchange for use of a Brand Name.

(d) *Elimination of Outdoor Advertising and Transit Advertisements.* Each Participating Manufacturer shall discontinue Outdoor Advertising and Transit Advertisements advertising Tobacco Products within the Settling States as set forth herein.

(1) *Removal.* Except as otherwise provided in this section, each Participating Manufacturer shall remove from within the Settling States within 150 days after the MSA Execution Date all of its (A) billboards (to the extent that such billboards constitute Outdoor Advertising) advertising Tobacco Products; (B) signs and placards (to the extent that such signs and placards constitute Outdoor Advertising) advertising Tobacco Products in arenas, stadiums, shopping malls and Video Game Arcades; and (C) Transit Advertisements advertising Tobacco Products.

(2) *Prohibition on New Outdoor Advertising and Transit Advertisements.* No Participating Manufacturer may, after the MSA Execution Date, place or cause to be placed any new Outdoor Advertising advertising Tobacco Products or new Transit Advertisements advertising Tobacco Products within any Settling State.

(3) *Alternative Advertising.* With respect to those billboards required to be removed under subsection (1) that are leased (as opposed to owned) by any Participating Manufacturer, the Participating Manufacturer will allow the Attorney General of the Settling State within which such billboards are located to substitute, at the Settling State's option, alternative advertising intended to discourage the use of Tobacco Products by Youth and their exposure to second-hand smoke for the remaining term of the applicable contract (without regard to any renewal or option term that may be exercised by such Participating Manufacturer). The Participating Manufacturer will bear the cost of the lease through the end of such remaining term. Any other costs associated with such alternative advertising will be borne by the Settling State.

(4) *Ban on Agreements Inhibiting Anti-Tobacco Advertising.* Each Participating Manufacturer agrees that it will not enter into any agreement that prohibits a third party from selling, purchasing or displaying advertising discouraging the use of Tobacco Products or exposure to second-hand smoke. In the event and to the extent that any Participating Manufacturer has entered into an agreement containing any such prohibition, such Participating Manufacturer agrees to waive such prohibition in such agreement.

(5) *Designation of Contact Person.* Each Participating Manufacturer that has Outdoor Advertising or Transit Advertisements advertising Tobacco Products within a Settling State shall, within 10 days after the MSA Execution Date, provide the Attorney General of such Settling State with the name of a contact person to whom the Settling State may direct inquiries during the time such Outdoor Advertising and Transit Advertisements are

being eliminated, and from whom the Settling State may obtain periodic reports as to the progress of their elimination.

(6) *Adult-Only Facilities.* To the extent that any advertisement advertising Tobacco Products located within an Adult-Only Facility constitutes Outdoor Advertising or a Transit Advertisement, this subsection (d) shall not apply to such advertisement, provided such advertisement is not visible to persons outside such Adult-Only Facility.

(e) *Prohibition on Payments Related to Tobacco Products and Media.* No Participating Manufacturer may, beginning 30 days after the MSA Execution Date, make, or cause to be made, any payment or other consideration to any other person or entity to use, display, make reference to or use as a prop any Tobacco Product, Tobacco Product package, advertisement for a Tobacco Product, or any other item bearing a Brand Name in any motion picture, television show, theatrical production or other live performance, live or recorded performance of music, commercial film or video, or video game ("Media"); provided, however, that the foregoing prohibition shall not apply to (1) Media where the audience or viewers are within an Adult-Only Facility (provided such Media are not visible to persons outside such Adult-Only Facility); (2) Media not intended for distribution or display to the public; or (3) instructional Media concerning non-conventional cigarettes viewed only by or provided only to smokers who are Adults.

(f) *Ban on Tobacco Brand Name Merchandise.* Beginning July 1, 1999, no Participating Manufacturer may, within any Settling State, market, distribute, offer, sell, license or cause to be marketed, distributed, offered, sold or licensed (including, without limitation, by catalogue or direct mail), any apparel or other merchandise (other than Tobacco Products, items the sole function of which is to advertise Tobacco Products, or written or electronic publications) which bears a Brand Name. Provided, however, that nothing in this subsection shall (1) require any Participating Manufacturer to breach or terminate any licensing agreement or other contract in existence as of June 20, 1997 (this exception shall not apply beyond the current term of any existing contract, without regard to any renewal or option term that may be exercised by such Participating Manufacturer); (2) prohibit the distribution to any Participating Manufacturer's employee who is not Underage of any item described above that is intended for the personal use of such an employee; (3) require any Participating Manufacturer to retrieve, collect or otherwise recover any item that prior to the MSA Execution Date was marketed, distributed, offered, sold, licensed, or caused to be marketed, distributed, offered, sold or licensed by such Participating Manufacturer; (4) apply to coupons or other items used by Adults solely in connection with the purchase of Tobacco Products; or (5) apply to apparel or other merchandise used within an Adult-Only Facility that is not distributed (by sale or otherwise) to any member of the general public.

(g) *Ban on Youth Access to Free Samples.* After the MSA Execution Date, no Participating Manufacturer may, within any Settling State, distribute or cause to be distributed any free samples of Tobacco Products except in an Adult-Only Facility. For purposes of this Agreement, a "free sample" does not include a Tobacco Product that is provided to an Adult in connection with (1) the purchase, exchange or redemption for proof of purchase of any Tobacco Products (including, but not limited to, a free offer in connection with the purchase of Tobacco Products, such as a "two-for-one" offer), or (2) the conducting of consumer testing or evaluation of Tobacco Products with persons who certify that they are Adults.

(h) *Ban on Gifts to Underage Persons Based on Proofs of Purchase.* Beginning one year after the MSA Execution Date, no Participating Manufacturer may provide or cause to be provided to any person without sufficient proof that such person is an Adult any item in exchange for the purchase of Tobacco Products, or the furnishing of credits, proofs-of-purchase, or coupons with respect to such a purchase. For purposes of the preceding sentence only, (1) a driver's license or other government-issued identification (or legible photocopy thereof), the validity of which is certified by the person to whom the item is provided, shall by itself be deemed to be a sufficient form of proof of age; and (2) in the case of items provided (or to be redeemed) at retail establishments, a Participating Manufacturer shall be entitled to rely on verification of proof of age by the retailer, where such retailer is required to obtain verification under applicable federal, state or local law.

(i) *Limitation on Third-Party Use of Brand Names.* After the MSA Execution Date, no Participating Manufacturer may license or otherwise expressly authorize any third party to use or advertise within any Settling State any Brand Name in a manner prohibited by this Agreement if done by such Participating Manufacturer itself. Each Participating Manufacturer shall, within 10 days after the MSA Execution Date, designate a person (and provide written notice to NAAG of such designation) to whom the Attorney General of any Settling State may provide written notice of any such third-party activity that would be prohibited by this Agreement if done by such Participating Manufacturer itself. Following such written notice, the Participating Manufacturer will promptly take commercially reasonable steps against any such non-de minimis third-party activity. Provided, however, that nothing in this subsection shall require any Participating Manufacturer to (1) breach or terminate any licensing agreement or other contract in existence as of July 1, 1998 (this exception shall not apply beyond the current term of any existing contract, without regard to any renewal or option term that may be exercised by such Participating Manufacturer); or (2) retrieve, collect or otherwise recover any item that prior to the MSA Execution Date was marketed, distributed, offered, sold, licensed or caused to be marketed, distributed, offered, sold or licensed by such Participating Manufacturer.

(j) *Ban on Non-Tobacco Brand Names.* No Participating Manufacturer may, pursuant to any agreement requiring the payment of money or other valuable consideration, use or cause to be used as a brand name of any Tobacco Product any nationally recognized or nationally established brand name or trade name of any non-tobacco item or service or any nationally recognized or nationally established sports team, entertainment group or individual celebrity. Provided, however, that the preceding sentence shall not apply to any Tobacco Product brand name in existence as of July 1, 1998. For the purposes of this subsection, the term "other valuable consideration" shall not include an agreement between two entities who enter into such agreement for the sole purpose of avoiding infringement claims.

(k) *Minimum Pack Size of Twenty Cigarettes.* No Participating Manufacturer may, beginning 60 days after the MSA Execution Date and through and including December 31, 2001, manufacture or cause to be manufactured for sale in any Settling State any pack or other container of Cigarettes containing fewer than 20 Cigarettes (or, in

the case of roll-your-own tobacco, any package of roll-your-own tobacco containing less than 0.60 ounces of tobacco). No Participating Manufacturer may, beginning 150 days after the MSA Execution Date and through and including December 31, 2001, sell or distribute in any Settling State any pack or other container of Cigarettes containing fewer than 20 Cigarettes (or, in the case of roll-your-own tobacco, any package of roll-your-own tobacco containing less than 0.60 ounces of tobacco). Each Participating Manufacturer further agrees that following the MSA Execution Date it shall not oppose, or cause to be opposed (including through any third party or Affiliate), the passage by any Settling State of any legislative proposal or administrative rule applicable to all Tobacco Product Manufacturers and all retailers of Tobacco Products prohibiting the manufacture and sale of any pack or other container of Cigarettes containing fewer than 20 Cigarettes (or, in the case of roll-your-own tobacco, any package of roll-your-own tobacco containing less than 0.60 ounces of tobacco).

(l) *Corporate Culture Commitments Related to Youth Access and Consumption.* Beginning 180 days after the MSA Execution Date each Participating Manufacturer shall:

(1) promulgate or reaffirm corporate principles that express and explain its commitment to comply with the provisions of this Agreement and the reduction of use of Tobacco Products by Youth, and clearly and regularly communicate to its employees and customers its commitment to assist in the reduction of Youth use of Tobacco Products;

(2) designate an executive level manager (and provide written notice to NAAG of such designation) to identify methods to reduce Youth access to, and the incidence of Youth consumption of, Tobacco Products; and

(3) encourage its employees to identify additional methods to reduce Youth access to, and the incidence of Youth consumption of, Tobacco Products.

(m) *Limitations on Lobbying.* Following State-Specific Finality in a Settling State:

(1) No Participating Manufacturer may oppose, or cause to be opposed (including through any third party or Affiliate), the passage by such Settling State (or any political subdivision thereof) of those state or local legislative proposals or administrative rules described in Exhibit F hereto intended by their terms to reduce Youth access to, and the incidence of Youth consumption of, Tobacco Products. Provided, however, that the foregoing does not prohibit any Participating Manufacturer from (A) challenging enforcement of, or suing for declaratory or injunctive relief with respect to, any such legislation or rule on any grounds; (B) continuing, after State-Specific Finality in such Settling State, to oppose or cause to be opposed, the passage during the legislative session in which State-Specific Finality in such Settling State occurs of any specific state or local legislative proposals or administrative rules introduced prior to the time of State-Specific Finality in such Settling State; (C) opposing, or causing to be opposed, any excise tax or income tax provision or user fee or other payments relating to Tobacco Products or Tobacco Product Manufacturers; or (D) opposing, or causing to be opposed, any state or local legislative proposal or administrative rule that also includes measures other than those described in Exhibit F.

(2) Each Participating Manufacturer shall require all of its officers and employees engaged in lobbying activities in such Settling State after State-Specific Finality, contract lobbyists engaged in lobbying activities in such Settling State after State-Specific Finality, and any other third parties who engage in lobbying activities in such Settling State after State-Specific Finality on behalf of such Participating Manufacturer ("lobbyist" and "lobbying activities" having the meaning such terms have under the law of the Settling State in question) to certify in writing to the Participating Manufacturer that they:

(A) will not support or oppose any state, local or federal legislation, or seek or oppose any governmental action, on behalf of the Participating Manufacturer without the Participating Manufacturer's express authorization (except where such advance express authorization is not reasonably practicable);

(B) are aware of and will fully comply with this Agreement and all laws and regulations applicable to their lobbying activities, including, without limitation, those related to disclosure of financial contributions. Provided, however, that if the Settling State in question has in existence no laws or regulations relating to disclosure of financial contributions regarding lobbying activities, then each Participating Manufacturer shall, upon request of the Attorney General of such Settling State, disclose to such Attorney General any payment to a lobbyist that the Participating Manufacturer knows or has reason to know will be used to influence legislative or administrative actions of the state or local government relating to Tobacco Products or their use. Disclosures made pursuant to the preceding sentence shall be filed in writing with the Office of the Attorney General on the first day of February and the first day of August of each year for any and all payments made during the six month period ending on the last day of the preceding December and June, respectively, with the following information: (1) the name, address, telephone number and e-mail address (if any) of the recipient; (2) the amount of each payment; and (3) the aggregate amount of all payments described in this subsection (2)(B) to the recipient in the calendar year; and

(C) have reviewed and will fully abide by the Participating Manufacturer's corporate principles promulgated pursuant to this Agreement when acting on behalf of the Participating Manufacturer.

(3) No Participating Manufacturer may support or cause to be supported (including through any third party or Affiliate) in Congress or any other forum legislation or rules that would preempt, override, abrogate or diminish such Settling State's rights or recoveries under this Agreement. Except as specifically provided in this Agreement, nothing herein shall be deemed to restrain any Settling State or Participating Manufacturer from advocating terms of any national settlement or taking any other positions on issues relating to tobacco.

(n) *Restriction on Advocacy Concerning Settlement Proceeds.* After the MSA Execution Date, no Participating Manufacturer may support or cause to be supported (including through any third party or Affiliate) the diversion of any proceeds of this settlement to any program or use that is neither tobacco-related nor health-related in connection with the approval of this Agreement or in any subsequent legislative appropriation of settlement proceeds.

(o) *Dissolution of The Tobacco Institute, Inc., the Council for Tobacco Research-U.S.A., Inc. and the Center for Indoor Air Research, Inc.*

(1) The Council for Tobacco Research-U.S.A., Inc. ("CTR") (a not-for-profit corporation formed under the

laws of the State of New York) shall, pursuant to the plan of dissolution previously negotiated and agreed to between the Attorney General of the State of New York and CTR, cease all operations and be dissolved in accordance with the laws of the State of New York (and with the preservation of all applicable privileges held by any member company of CTR).

(2) The Tobacco Institute, Inc. ("TI") (a not-for-profit corporation formed under the laws of the State of New York) shall, pursuant to a plan of dissolution to be negotiated by the Attorney General of the State of New York and the Original Participating Manufacturers in accordance with Exhibit G hereto, cease all operations and be dissolved in accordance with the laws of the State of New York and under the authority of the Attorney General of the State of New York (and with the preservation of all applicable privileges held by any member company of TI).

(3) Within 45 days after Final Approval, the Center for Indoor Air Research, Inc. ("CIAR") shall cease all operations and be dissolved in a manner consistent with applicable law and with the preservation of all applicable privileges (including, without limitation, privileges held by any member company of CIAR).

(4) The Participating Manufacturers shall direct the Tobacco-Related Organizations to preserve all records that relate in any way to issues raised in smoking-related health litigation.

(5) The Participating Manufacturers may not reconstitute CTR or its function in any form.

(6) The Participating Manufacturers represent that they have the authority to and will effectuate subsections (1) through (5) hereof.

(p) *Regulation and Oversight of New Tobacco-Related Trade Associations.*

(1) A Participating Manufacturer may form or participate in new tobacco-related trade associations (subject to all applicable laws), provided such associations agree in writing not to act in any manner contrary to any provision of this Agreement. Each Participating Manufacturer agrees that if any new tobacco-related trade association fails to so agree, such Participating Manufacturer will not participate in or support such association.

(2) Any tobacco-related trade association that is formed or controlled by one or more of the Participating Manufacturers after the MSA Execution Date shall adopt by-laws governing the association's procedures and the activities of its members, board, employees, agents and other representatives with respect to the tobacco-related trade association. Such by-laws shall include, among other things, provisions that:

(A) each officer of the association shall be appointed by the board of the association, shall be an employee of such association, and during such officer's term shall not be a director of or employed by any member of the association or by an Affiliate of any member of the association;

(B) legal counsel for the association shall be independent, and neither counsel nor any member or employee of counsel's law firm shall serve as legal counsel to any member of the association or to a manufacturer of Tobacco Products that is an Affiliate of any member of the association during the time that it is serving as legal counsel to the association; and

(C) minutes describing the substance of the meetings of the board of directors of the association shall be prepared and shall be maintained by the association for a period of at least five years following their preparation.

(3) Without limitation on whatever other rights to access they may be permitted by law, for a period of seven years from the date any new tobacco-related trade association is formed by any of the Participating Manufacturers after the MSA Execution Date the antitrust authorities of any Settling State may, for the purpose of enforcing this Agreement, upon reasonable cause to believe that a violation of this Agreement has occurred, and upon reasonable prior written notice (but in no event less than 10 Business Days):

(A) have access during regular office hours to inspect and copy all relevant non-privileged, non-work-product books, records, meeting agenda and minutes, and other documents (whether in hard copy form or stored electronically) of such association insofar as they pertain to such believed violation; and

(B) interview the association's directors, officers and employees (who shall be entitled to have counsel present) with respect to relevant, non-privileged, non-work-product matters pertaining to such believed violation.

Documents and information provided to Settling State antitrust authorities shall be kept confidential by and among such authorities, and shall be utilized only by the Settling States and only for the purpose of enforcing this Agreement or the criminal law. The inspection and discovery rights provided to the Settling States pursuant to this subsection shall be coordinated so as to avoid repetitive and excessive inspection and discovery.

(q) *Prohibition on Agreements to Suppress Research.* No Participating Manufacturer may enter into any contract, combination or conspiracy with any other Tobacco Product Manufacturer that has the purpose or effect of: (1) limiting competition in the production or distribution of information about health hazards or other consequences of the use of their products; (2) limiting or suppressing research into smoking and health; or (3) limiting or suppressing research into the marketing or development of new products. Provided, however, that nothing in this subsection shall be deemed to (1) require any Participating Manufacturer to produce, distribute or otherwise disclose any information that is subject to any privilege or protection; (2) preclude any Participating Manufacturer from entering into any joint defense or joint legal interest agreement or arrangement (whether or not in writing), or from asserting any privilege pursuant thereto; or (3) impose any affirmative obligation on any Participating Manufacturer to conduct any research.

(r) *Prohibition on Material Misrepresentations.* No Participating Manufacturer may make any material misrepresentation of fact regarding the health consequences of using any Tobacco Product, including any tobacco additives, filters, paper or other ingredients. Nothing in this subsection shall limit the exercise of any First Amendment right or the assertion of any defense or position in any judicial, legislative or regulatory forum.

IV. PUBLIC ACCESS TO DOCUMENTS

(a) After the MSA Execution Date, the Original Participating Manufacturers and the Tobacco-Related Organizations will support an application for the dissolution of any protective orders entered in each Settling State's lawsuit identified in Exhibit D with respect only to those documents, indices and privilege logs that have been produced as of the MSA Execution Date to such Settling State and (1) as to which defendants have made no claim, or have withdrawn any claim, of attorney-client privilege, attor-

ney work-product protection, common interest/joint defense privilege (collectively, "privilege"), trade-secret protection, or confidential or proprietary business information; and (2) that are not inappropriate for public disclosure because of personal privacy interests or contractual rights of third parties that may not be abrogated by the Original Participating Manufacturers or the Tobacco-Related Organizations.

(b) Notwithstanding State-Specific Finality, if any order, ruling or recommendation was issued prior to September 17, 1998 rejecting a claim of privilege or trade-secret protection with respect to any document or documents in a lawsuit identified in Exhibit D, the Settling State in which such order, ruling or recommendation was made may, no later than 45 days after the occurrence of State-Specific Finality in such Settling State, seek public disclosure of such document or documents by application to the court that issued such order, ruling or recommendation and the court shall retain jurisdiction for such purposes. The Original Participating Manufacturers and Tobacco-Related Organizations do not consent to, and may object to, appeal from or otherwise oppose any such application for disclosure. The Original Participating Manufacturers and Tobacco-Related Organizations will not assert that the settlement of such lawsuit has divested the court of jurisdiction or that such Settling State lacks standing to seek public disclosure on any applicable ground.

(c) The Original Participating Manufacturers will maintain at their expense their Internet document websites accessible through "TobaccoResolution.com" or a similar website until June 30, 2010. The Original Participating Manufacturers will maintain the documents that currently appear on their respective websites and will add additional documents to their websites as provided in this section IV.

(d) Within 180 days after the MSA Execution Date, each Original Participating Manufacturer and Tobacco-Related Organization will place on its website copies of the following documents, except as provided in subsections IV(e) and IV(f) below:

(1) all documents produced by such Original Participating Manufacturer or Tobacco-Related Organization as of the MSA Execution Date in any action identified in Exhibit D or any action identified in section 2 of Exhibit H that was filed by an Attorney General. Among these documents, each Original Participating Manufacturer and Tobacco-Related Organization will give the highest priority to (A) the documents that were listed by the State of Washington as trial exhibits in the *State of Washington* v. *American Tobacco Co., et al.*, No. 96-2-15056-8 SEA (Wash. Super. Ct., County of King); and (B) the documents as to which such Original Participating Manufacturer or Tobacco-Related Organization withdrew any claim of privilege as a result of the re-examination of privilege claims pursuant to court order in *State of Oklahoma* v. *R.J. Reynolds Tobacco Company, et al.*, CJ-96-2499-L (Dist. Ct., Cleveland County);

(2) all documents that can be identified as having been produced by, and copies of transcripts of depositions given by, such Original Participating Manufacturer or Tobacco-Related Organization as of the MSA Execution Date in the litigation matters specified in section 1 of Exhibit H; and

(3) all documents produced by such Original Participating Manufacturer or Tobacco-Related Organization as of the MSA Execution Date and listed by the plaintiffs as trial exhibits in the litigation matters specified in section 2 of Exhibit H.

(e) Unless copies of such documents are already on its website, each Original Participating Manufacturer and Tobacco-Related Organization will place on its website copies of documents produced in any production of documents that takes place on or after the date 30 days before the MSA Execution Date in any federal or state court civil action concerning smoking and health. Copies of any documents required to be placed on a website pursuant to this subsection will be placed on such website within the later of 45 days after the MSA Execution Date or within 45 days after the production of such documents in any federal or state court action concerning smoking and health. This obligation will continue until June 30, 2010. In placing such newly produced documents on its website, each Original Participating Manufacturer or Tobacco-Related Organization will identify, as part of its index to be created pursuant to subsection IV(h), the action in which it produced such documents and the date on which such documents were added to its website.

(f) Nothing in this section IV shall require any Original Participating Manufacturer or Tobacco-Related Organization to place on its website or otherwise disclose documents that: (1) it continues to claim to be privileged, a trade secret, confidential or proprietary business information, or that contain other information not appropriate for public disclosure because of personal privacy interests or contractual rights of third parties; or (2) continue to be subject to any protective order, sealing order or other order or ruling that prevents or limits a litigant from disclosing such documents.

(g) Oversized or multimedia records will not be required to be placed on the Website, but each Original Participating Manufacturers and Tobacco-Related Organizations will make any such records available to the public by placing copies of them in the document depository established in *The State of Minnesota, et al.* v. *Philip Morris Incorporated, et al.*, C1-94-8565 (County of Ramsey, District Court, 2d Judicial Cir.).

(h) Each Original Participating Manufacturer will establish an index and other features to improve searchable access to the document images on its website, as set forth in Exhibit I.

(i) Within 90 days after the MSA Execution Date, the Original Participating Manufacturers will furnish NAAG with a project plan for completing the Original Participating Manufacturers' obligations under subsection IV(h) with respect to documents currently on their websites and documents being placed on their websites pursuant to subsection IV(d). NAAG may engage a computer consultant at the Original Participating Manufacturers' expense for a period not to exceed two years and at a cost not to exceed $100,000. NAAG's computer consultant may review such plan and make recommendations consistent with this Agreement. In addition, within 120 days after the completion of the Original Participating Manufacturers' obligations under subsection IV(d), NAAG's computer consultant may make final recommendations with respect to the websites consistent with this Agreement. In preparing these recommendations, NAAG's computer consultant may seek input from Settling State officials, public health organizations and other users of the websites.

(j) The expenses incurred pursuant to subsection IV(i), and the expenses related to documents of the Tobacco-Related Organizations, will be severally shared among

the Original Participating Manufacturers (allocated among them according to their Relative Market Shares). All other expenses incurred under this section will be borne by the Original Participating Manufacturer that incurs such expense.

V. TOBACCO CONTROL AND UNDERAGE USE LAWS

Each Participating Manufacturer agrees that following State-Specific Finality in a Settling State it will not initiate, or cause to be initiated, a facial challenge against the enforceability or constitutionality of such Settling State's (or such Settling State's political subdivisions') statutes, ordinances and administrative rules relating to tobacco control enacted prior to June 1, 1998 (other than a statute, ordinance or rule challenged in any lawsuit listed in Exhibit M).

VI. ESTABLISHMENT OF A NATIONAL FOUNDATION

(a) *Foundation Purposes.* The Settling States believe that a comprehensive, coordinated program of public education and study is important to further the remedial goals of this Agreement. Accordingly, as part of the settlement of claims described herein, the payments specified in subsections VI(b), VI(c), and IX(e) shall be made to a charitable foundation, trust or similar organization (the "Foundation") and/or to a program to be operated within the Foundation (the "National Public Education Fund"). The purposes of the Foundation will be to support (1) the study of and programs to reduce Youth Tobacco Product usage and Youth substance abuse in the States, and (2) the study of and educational programs to prevent diseases associated with the use of Tobacco Products in the States.

(b) *Base Foundation Payments.* On March 31, 1999, and on March 31 of each subsequent year for a period of nine years thereafter, each Original Participating Manufacturer shall severally pay its Relative Market Share of $25,000,000 to fund the Foundation. The payments to be made by each of the Original Participating Manufacturers pursuant to this subsection (b) shall be subject to no adjustments, reductions, or offsets, and shall be paid to the Escrow Agent (to be credited to the Subsection VI(b) Account), who shall disburse such payments to the Foundation only upon the occurrence of State-Specific Finality in at least one Settling State.

(c) *National Public Education Fund Payments.*

(1) Each Original Participating Manufacturer shall severally pay its Relative Market Share of the following base amounts on the following dates to the Escrow Agent for the benefit of the Foundation's National Public Education Fund to be used for the purposes and as described in subsections VI(f)(1), VI(g) and VI(h) below: $250,000,000 on March 31, 1999; $300,000,000 on March 31, 2000; $300,000,000 on March 31, 2001; $300,000,000 on March 31, 2002; and $300,000,000 on March 31, 2003, as such amounts are modified in accordance with this subsection (c). The payment due on March 31, 1999 pursuant to this subsection (c)(1) is to be credited to the Subsection VI(c) Account (First). The payments due on or after March 31, 2000 pursuant to this subsection VI(c)(1) are to be credited to the Subsection VI(c) Account (Subsequent).

(2) The payments to be made by the Original Participating Manufacturers pursuant to this subsection (c), other than the payment due on March 31, 1999, shall be subject to the Inflation Adjustment, the Volume Adjustment and the offset for miscalculated or disputed payments described in subsection XI(i).

(3) The payment made pursuant to this subsection (c) on March 31, 1999 shall be disbursed by the Escrow Agent to the Foundation only upon the occurrence of State-Specific Finality in at least one Settling State. Each remaining payment pursuant to this subsection (c) shall be disbursed by the Escrow Agent to the Foundation only when State-Specific Finality has occurred in Settling States having aggregate Allocable Shares equal to at least 80% of the total aggregate Allocable Shares assigned to all States that were Settling States as of the MSA Execution Date.

(4) In addition to the payments made pursuant to this subsection (c), the National Public Education Fund will be funded (A) in accordance with subsection IX(e), and (B) through monies contributed by other entities directly to the Foundation and designated for the National Public Education Fund ("National Public Education Fund Contributions").

(5) The payments made by the Original Participating Manufacturers pursuant to this subsection (c) and/or subsection IX(e) and monies received from all National Public Education Fund Contributions will be deposited and invested in accordance with the laws of the state of incorporation of the Foundation.

(d) *Creation and Organization of the Foundation.* NAAG, through its executive committee, will provide for the creation of the Foundation. The Foundation shall be organized exclusively for charitable, scientific, and educational purposes within the meaning of Internal Revenue Code section 501(c)(3). The organizational documents of the Foundation shall specifically incorporate the provisions of this Agreement relating to the Foundation, and will provide for payment of the Foundation's administrative expenses from the funds paid pursuant to subsection VI(b) or VI(c). The Foundation shall be governed by a board of directors. The board of directors shall be comprised of eleven directors. NAAG, the National Governors' Association ("NGA"), and the National Conference of State Legislatures ("NCSL") shall each select from its membership two directors. These six directors shall select the five additional directors. One of these five additional directors shall have expertise in public health issues. Four of these five additional directors shall have expertise in medical, child psychology, or public health disciplines. The board of directors shall be nationally geographically diverse.

(e) *Foundation Affiliation.* The Foundation shall be formally affiliated with an educational or medical institution selected by the board of directors.

(f) *Foundation Functions.* The functions of the Foundation shall be:

(1) carrying out a nationwide sustained advertising and education program to (A) counter the use by Youth of Tobacco Products, and (B) educate consumers about the cause and prevention of diseases associated with the use of Tobacco Products;

(2) developing and disseminating model advertising and education programs to counter the use by Youth of substances that are unlawful for use or purchase by Youth, with an emphasis on reducing Youth smoking; monitoring and testing the effectiveness of such model programs; and, based on the information received from such monitoring and testing, continuing to develop and disseminate revised versions of such model programs, as appropriate;

(3) developing and disseminating model classroom education programs and curriculum ideas about smoking and substance abuse in the K-12 school system, including

specific target programs for special at-risk populations; monitoring and testing the effectiveness of such model programs and ideas; and, based on the information received from such monitoring and testing, continuing to develop and disseminate revised versions of such model programs or ideas, as appropriate;

(4) developing and disseminating criteria for effective cessation programs; monitoring and testing the effectiveness of such criteria; and continuing to develop and disseminate revised versions of such criteria, as appropriate;

(5) commissioning studies, funding research, and publishing reports on factors that influence Youth smoking and substance abuse and developing strategies to address the conclusions of such studies and research;

(6) developing other innovative Youth smoking and substance abuse prevention programs;

(7) providing targeted training and information for parents;

(8) maintaining a library open to the public of Foundation-funded studies, reports and other publications related to the cause and prevention of Youth smoking and substance abuse;

(9) tracking and monitoring Youth smoking and substance abuse, with a focus on the reasons for any increases or failures to decrease Youth smoking and substance abuse and what actions can be taken to reduce Youth smoking and substance abuse;

(10) receiving, controlling, and managing contributions from other entities to further the purposes described in this Agreement; and

(11) receiving, controlling, and managing such funds paid by the Participating Manufacturers pursuant to subsections VI(b) and VI(c) above.

(g) *Foundation Grant-Making.* The Foundation is authorized to make grants from the National Public Education Fund to Settling States and their political subdivisions to carry out sustained advertising and education programs to (1) counter the use by Youth of Tobacco Products, and (2) educate consumers about the cause and prevention of diseases associated with the use of Tobacco Products. In making such grants, the Foundation shall consider whether the Settling State or political subdivision applying for such grant:

(1) demonstrates the extent of the problem regarding Youth smoking in such Settling State or political subdivision;

(2) either seeks the grant to implement a model program developed by the Foundation or provides the Foundation with a specific plan for such applicant's intended use of the grant monies, including demonstrating such applicant's ability to develop an effective advertising/education campaign and to assess the effectiveness of such advertising/education campaign;

(3) has other funds readily available to carry out a sustained advertising and education program to (A) counter the use by Youth of Tobacco Products, and (B) educate consumers about the cause and prevention of diseases associated with the use of Tobacco Products; and

(4) is a Settling State that has not severed this section VI from its settlement with the Participating Manufacturers pursuant to subsection VI(i) below, or is a political subdivision in such a Settling State.

(h) *Foundation Activities.* The Foundation shall not engage in, nor shall any of the Foundation's money be used to engage in, any political activities or lobbying, including, but not limited to, support of or opposition to candidates, ballot initiatives, referenda or other similar activities. The National Public Education Fund shall be used only for public education and advertising regarding the addictiveness, health effects, and social costs related to the use of tobacco products and shall not be used for any personal attack on, or vilification of, any person (whether by name or business affiliation), company, or governmental agency, whether individually or collectively. The Foundation shall work to ensure that its activities are carried out in a culturally and linguistically appropriate manner. The Foundation's activities (including the National Public Education Fund) shall be carried out solely within the States. The payments described in subsections VI(b) and VI(c) above are made at the direction and on behalf of Settling States. By making such payments in such manner, the Participating Manufacturers do not undertake and expressly disclaim any responsibility with respect to the creation, operation, liabilities, or tax status of the Foundation or the National Public Education Fund.

(i) *Severance of this Section.* If the Attorney General of a Settling State determines that such Settling State may not lawfully enter into this section VI as a matter of applicable state law, such Attorney General may sever this section VI from its settlement with the Participating Manufacturers by giving written notice of such severance to each Participating Manufacturer and NAAG pursuant to subsection XVIII(k) hereof. If any Settling State exercises its right to sever this section VI, this section VI shall not be considered a part of the specific settlement between such Settling State and the Participating Manufacturers, and this section VI shall not be enforceable by or in such Settling State. The payment obligation of subsections VI(b) and VI(c) hereof shall apply regardless of a determination by one or more Settling States to sever section VI hereof; provided, however, that if all Settling States sever section VI hereof, the payment obligations of subsections (b) and (c) hereof shall be null and void. If the Attorney General of a Settling State that severed this section VI subsequently determines that such Settling State may lawfully enter into this section VI as a matter of applicable state law, such Attorney General may rescind such Settling State's previous severance of this section VI by giving written notice of such rescission to each Participating Manufacturer and NAAG pursuant to subsection XVIII(k). If any Settling State rescinds such severance, this section VI shall be considered a part of the specific settlement between such Settling State and the Participating Manufacturers (including for purposes of subsection (g)(4)), and this section VI shall be enforceable by and in such Settling State.

VII. ENFORCEMENT

(a) *Jurisdiction.* Each Participating Manufacturer and each Settling State acknowledge that the Court: (1) has jurisdiction over the subject matter of the action identified in Exhibit D in such Settling State and over each Participating Manufacturer; (2) shall retain exclusive jurisdiction for the purposes of implementing and enforcing this Agreement and the Consent Decree as to such Settling State; and (3) except as provided in subsections IX(d), XI(c) and XVII(d) and Exhibit O, shall be the only court to which disputes under this Agreement or the Consent Decree are presented as to such Settling State. Provided, however, that notwithstanding the foregoing, the Escrow Court (as defined in the Escrow Agreement)

shall have exclusive jurisdiction, as provided in section 15 of the Escrow Agreement, over any suit, action or proceeding seeking to interpret or enforce any provision of, or based on any right arising out of, the Escrow Agreement.

(b) *Enforcement of Consent Decree.* Except as expressly provided in the Consent Decree, any Settling State or Released Party may apply to the Court to enforce the terms of the Consent Decree (or for a declaration construing any such term) with respect to alleged violations within such Settling State. A Settling State may not seek to enforce the Consent Decree of another Settling State; provided, however, that nothing contained herein shall affect the ability of any Settling State to (1) coordinate state enforcement actions or proceedings, or (2) file or join any amicus brief. In the event that the Court determines that any Participating Manufacturer or Settling State has violated the Consent Decree within such Settling State, the party that initiated the proceedings may request any and all relief available within such Settling State pursuant to the Consent Decree.

(c) *Enforcement of this Agreement.*

(1) Except as provided in subsections IX(d), XI(c), XVII(d) and Exhibit O, any Settling State or Participating Manufacturer may bring an action in the Court to enforce the terms of this Agreement (or for a declaration construing any such term ("Declaratory Order")) with respect to disputes, alleged violations or alleged breaches within such Settling State.

(2) Before initiating such proceedings, a party shall provide 30 days' written notice to the Attorney General of each Settling State, to NAAG, and to each Participating Manufacturer of its intent to initiate proceedings pursuant to this subsection. The 30-day notice period may be shortened in the event that the relevant Attorney General reasonably determines that a compelling time-sensitive public health and safety concern requires more immediate action.

(3) In the event that the Court determines that any Participating Manufacturer or Settling State has violated or breached this Agreement, the party that initiated the proceedings may request an order restraining such violation or breach, and/or ordering compliance within such Settling State (an "Enforcement Order").

(4) If an issue arises as to whether a Participating Manufacturer has failed to comply with an Enforcement Order, the Attorney General for the Settling State in question may seek an order for interpretation or for monetary, civil contempt or criminal sanctions to enforce compliance with such Enforcement Order.

(5) If the Court finds that a good-faith dispute exists as to the meaning of the terms of this Agreement or a Declaratory Order, the Court may in its discretion determine to enter a Declaratory Order rather than an Enforcement Order.

(6) Whenever possible, the parties shall seek to resolve an alleged violation of this Agreement by discussion pursuant to subsection XVIII(m) of this Agreement. In addition, in determining whether to seek an Enforcement Order, or in determining whether to seek an order for monetary, civil contempt or criminal sanctions for any claimed violation of an Enforcement Order, the Attorney General shall give good-faith consideration to whether the Participating Manufacturer that is claimed to have violated this Agreement has taken appropriate and reasonable steps to cause the claimed violation to be cured, unless such party has been guilty of a pattern of violations of like nature.

(d) *Right of Review.* All orders and other judicial determinations made by any court in connection with this Agreement or any Consent Decree shall be subject to all available appellate review, and nothing in this Agreement or any Consent Decree shall be deemed to constitute a waiver of any right to any such review.

(e) *Applicability.* This Agreement and the Consent Decree apply only to the Participating Manufacturers in their corporate capacity acting through their respective successors and assigns, directors, officers, employees, agents, subsidiaries, divisions, or other internal organizational units of any kind or any other entities acting in concert or participation with them. The remedies, penalties and sanctions that may be imposed or assessed in connection with a breach or violation of this Agreement or the Consent Decree (or any Declaratory Order or Enforcement Order issued in connection with this Agreement or the Consent Decree) shall only apply to the Participating Manufacturers, and shall not be imposed or assessed against any employee, officer or director of any Participating Manufacturer, or against any other person or entity as a consequence of such breach or violation, and the Court shall have no jurisdiction to do so.

(f) *Coordination of Enforcement.* The Attorneys General of the Settling States (through NAAG) shall monitor potential conflicting interpretations by courts of different States of this Agreement and the Consent Decrees. The Settling States shall use their best efforts, in cooperation with the Participating Manufacturers, to coordinate and resolve the effects of such conflicting interpretations as to matters that are not exclusively local in nature.

(g) *Inspection and Discovery Rights.* Without limitation on whatever other rights to access they may be permitted by law, following State-Specific Finality in a Settling State and for seven years thereafter, representatives of the Attorney General of such Settling State may, for the purpose of enforcing this Agreement and the Consent Decree, upon reasonable cause to believe that a violation of this Agreement or the Consent Decree has occurred, and upon reasonable prior written notice (but in no event less than 10 Business Days): (1) have access during regular office hours to inspect and copy all relevant non-privileged, non-work-product books, records, meeting agenda and minutes, and other documents (whether in hard copy form or stored electronically) of each Participating Manufacturer insofar as they pertain to such believed violation; and (2) interview each Participating Manufacturer's directors, officers and employees (who shall be entitled to have counsel present) with respect to relevant, non-privileged, non-work-product matters pertaining to such believed violation. Documents and information provided to representatives of the Attorney General of such Settling State pursuant to this section VII shall be kept confidential by the Settling States, and shall be utilized only by the Settling States and only for purposes of enforcing this Agreement, the Consent Decree and the criminal law. The inspection and discovery rights provided to such Settling State pursuant to this subsection shall be coordinated through NAAG so as to avoid repetitive and excessive inspection and discovery.

VIII. CERTAIN ONGOING RESPONSIBILITIES OF THE SETTLING STATES

(a) Upon approval of the NAAG executive committee, NAAG will provide coordination and facilitation for the

implementation and enforcement of this Agreement on behalf of the Attorneys General of the Settling States, including the following:

(1) NAAG will assist in coordinating the inspection and discovery activities referred to in subsections III(p)(3) and VII(g) regarding compliance with this Agreement by the Participating Manufacturers and any new tobacco-related trade associations.

(2) NAAG will convene at least two meetings per year and one major national conference every three years for the Attorneys General of the Settling States, the directors of the Foundation and three persons designated by each Participating Manufacturer. The purpose of the meetings and conference is to evaluate the success of this Agreement and coordinate efforts by the Attorneys General and the Participating Manufacturers to continue to reduce Youth smoking.

(3) NAAG will periodically inform NGA, NCSL, the National Association of Counties and the National League of Cities of the results of the meetings and conferences referred to in subsection (a)(2) above.

(4) NAAG will support and coordinate the efforts of the Attorneys General of the Settling States in carrying out their responsibilities under this Agreement.

(5) NAAG will perform the other functions specified for it in this Agreement, including the functions specified in section IV.

(b) Upon approval by the NAAG executive committee to assume the responsibilities outlined in subsection VIII(a) hereof, each Original Participating Manufacturer shall cause to be paid, beginning on December 31, 1998, and on December 31 of each year thereafter through and including December 31, 2007, its Relative Market Share of $150,000 per year to the Escrow Agent (to be credited to the Subsection VIII(b) Account), who shall disburse such monies to NAAG within 10 Business Days, to fund the activities described in subsection VIII(a).

(c) The Attorneys General of the Settling States, acting through NAAG, shall establish a fund ("The States' Antitrust/Consumer Protection Tobacco Enforcement Fund") in the form attached as Exhibit J, which will be maintained by such Attorneys General to supplement the Settling States' (1) enforcement and implementation of the terms of this Agreement and the Consent Decrees, and (2) investigation and litigation of potential violations of laws with respect to Tobacco Products, as set forth in Exhibit J. Each Original Participating Manufacturer shall on March 31, 1999, severally pay its Relative Market Share of $50,000,000 to the Escrow Agent (to be credited to the Subsection VIII(c) Account), who shall disburse such monies to NAAG upon the occurrence of State-Specific Finality in at least one Settling State. Such funds will be used in accordance with the provisions of Exhibit J.

IX. PAYMENTS

(a) *All Payments Into Escrow.* All payments made pursuant to this Agreement (except those payments made pursuant to section XVII) shall be made into escrow pursuant to the Escrow Agreement, and shall be credited to the appropriate Account established pursuant to the Escrow Agreement. Such payments shall be disbursed to the beneficiaries or returned to the Participating Manufacturers only as provided in section XI and the Escrow Agreement. No payment obligation under this Agreement shall arise (1) unless and until the Escrow Court has approved and retained jurisdiction over the Escrow Agreement or (2) if such approval is reversed (unless and until such reversal is itself reversed). The parties agree to proceed as expeditiously as possible to resolve any issues that prevent approval of the Escrow Agreement. If any payment (other than the first initial payment under subsection IX(b)) is delayed because the Escrow Agreement has not been approved, such payment shall be due and payable (together with interest at the Prime Rate) within 10 Business Days after approval of the Escrow Agreement by the Escrow Court.

(b) *Initial Payments.* On the second Business Day after the Escrow Court approves and retains jurisdiction over the Escrow Agreement, each Original Participating Manufacturer shall severally pay to the Escrow Agent (to be credited to the Subsection IX(b) Account (First)) its Market Capitalization Percentage (as set forth in Exhibit K) of the base amount of $2,400,000,000. On January 10, 2000, each Original Participating Manufacturer shall severally pay to the Escrow Agent its Relative Market Share of the base amount of $2,472,000,000. On January 10, 2001, each Original Participating Manufacturer shall severally pay to the Escrow Agent its Relative Market Share of the base amount of $2,546,160,000. On January 10, 2002, each Original Participating Manufacturer shall severally pay to the Escrow Agent its Relative Market Share of the base amount of $2,622,544,800. On January 10, 2003, each Original Participating Manufacturer shall severally pay to the Escrow Agent its Relative Market Share of the base amount of $2,701,221,144. The payments pursuant to this subsection (b) due on or after January 10, 2000 shall be credited to the Subsection IX(b) Account (Subsequent). The foregoing payments shall be modified in accordance with this subsection (b). The payments made by the Original Participating Manufacturers pursuant to this subsection (b) (other than the first such payment) shall be subject to the Volume Adjustment, the Non-Settling States Reduction and the offset for miscalculated or disputed payments described in subsection XI(i). The first payment due under this subsection (b) shall be subject to the Non-Settling States Reduction, but such reduction shall be determined as of the date one day before such payment is due (rather than the date 15 days before).

(c) *Annual Payments and Strategic Contribution Payments.*

(1) On April 15, 2000 and on April 15 of each year thereafter in perpetuity, each Original Participating Manufacturer shall severally pay to the Escrow Agent (to be credited to the Subsection IX(c)(1) Account) its Relative Market Share of the base amounts specified below, as such payments are modified in accordance with this subsection (c)(1):

Year	*Base Amount*
2000	$4,500,000,000
2001	$5,000,000,000
2002	$6,500,000,000
2003	$6,500,000,000
2004	$8,000,000,000
2005	$8,000,000,000
2006	$8,000,000,000
2007	$8,000,000,000
2008	$8,139,000,000
2009	$8,139,000,000
2010	$8,139,000,000
2011	$8,139,000,000
2012	$8,139,000,000
2013	$8,139,000,000

Year	*Base Amount*
2014	$8,139,000,000
2015	$8,139,000,000
2016	$8,139,000,000
2017	$8,139,000,000
2018 and each year thereafter	$9,000,000,000

The payments made by the Original Participating Manufacturers pursuant to this subsection (c)(1) shall be subject to the Inflation Adjustment, the Volume Adjustment, the Previously Settled States Reduction, the Non-Settling States Reduction, the NPM Adjustment, the offset for miscalculated or disputed payments described in subsection XI(i), the Federal Tobacco Legislation Offset, the Litigating Releasing Parties Offset, and the offsets for claims over described in subsections XII(a)(4)(B) and XII(a)(8).

(2) On April 15, 2008 and on April 15 of each year thereafter through 2017, each Original Participating Manufacturer shall severally pay to the Escrow Agent (to be credited to the Subsection IX(c)(2) Account) its Relative Market Share of the base amount of $861,000,000, as such payments are modified in accordance with this subsection (c)(2). The payments made by the Original Participating Manufacturers pursuant to this subsection (c)(2) shall be subject to the Inflation Adjustment, the Volume Adjustment, the NPM Adjustment, the offset for miscalculated or disputed payments described in subsection XI(i), the Federal Tobacco Legislation Offset, the Litigating Releasing Parties Offset, and the offsets for claims over described in subsections XII(a)(4)(B) and XII(a)(8). Such payments shall also be subject to the Non-Settling States Reduction; provided, however, that for purposes of payments due pursuant to this subsection (c)(2) (and corresponding payments by Subsequent Participating Manufacturers under subsection IX(i)), the Non-Settling States Reduction shall be derived as follows: (A) the payments made by the Original Participating Manufacturers pursuant to this subsection (c)(2) shall be allocated among the Settling States on a percentage basis to be determined by the Settling States pursuant to the procedures set forth in Exhibit U, and the resulting allocation percentages disclosed to the Escrow Agent, the Independent Auditor and the Original Participating Manufacturers not later than June 30, 1999; and (B) the Non-Settling States Reduction shall be based on the sum of the Allocable Shares so established pursuant to subsection (c)(2)(A) for those States that were Settling States as of the MSA Execution Date and as to which this Agreement has terminated as of the date 15 days before the payment in question is due.

(d) *Non-Participating Manufacturer Adjustment.*

(1) *Calculation of NPM Adjustment for Original Participating Manufacturers.* To protect the public health gains achieved by this Agreement, certain payments made pursuant to this Agreement shall be subject to an NPM Adjustment. Payments by the Original Participating Manufacturers to which the NPM Adjustment applies shall be adjusted as provided below:

(A) Subject to the provisions of subsections (d)(1)(C), (d)(1)(D) and (d)(2) below, each Allocated Payment shall be adjusted by subtracting from such Allocated Payment the product of such Allocated Payment amount multiplied by the NPM Adjustment Percentage. The "NPM Adjustment Percentage" shall be calculated as follows:

(i) If the Market Share Loss for the year immediately preceding the year in which the payment in question is due is less than or equal to 0 (zero), then the NPM Adjustment Percentage shall equal zero.

(ii) If the Market Share Loss for the year immediately preceding the year in which the payment in question is due is greater than 0 (zero) and less than or equal to 16 2/3 percentage points, then the NPM Adjustment Percentage shall be equal to the product of (x) such Market Share Loss and (y) 3 (three).

(iii) If the Market Share Loss for the year immediately preceding the year in which the payment in question is due is greater than 16 2/3 percentage points, then the NPM Adjustment Percentage shall be equal to the sum of (x) 50 percentage points and (y) the product of (1) the Variable Multiplier and (2) the result of such Market Share Loss minus 16 2/3 percentage points.

(B) Definitions:

(i) "Base Aggregate Participating Manufacturer Market Share" means the result of (x) the sum of the applicable Market Shares (the applicable Market Share to be that for 1997) of all present and former Tobacco Product Manufacturers that were Participating Manufacturers during the entire calendar year immediately preceding the year in which the payment in question is due minus (y) 2 (two) percentage points.

(ii) "Actual Aggregate Participating Manufacturer Market Share" means the sum of the applicable Market Shares of all present and former Tobacco Product Manufacturers that were Participating Manufacturers during the entire calendar year immediately preceding the year in which the payment in question is due (the applicable Market Share to be that for the calendar year immediately preceding the year in which the payment in question is due).

(iii) "Market Share Loss" means the result of (x) the Base Aggregate Participating Manufacturer Market Share minus (y) the Actual Aggregate Participating Manufacturer Market Share.

(iv) "Variable Multiplier" equals 50 percentage points divided by the result of (x) the Base Aggregate Participating Manufacturer Market Share minus (y) 16 2/3 percentage points.

(C) On or before February 2 of each year following a year in which there was a Market Share Loss greater than zero, a nationally recognized firm of economic consultants (the "Firm") shall determine whether the disadvantages experienced as a result of the provisions of this Agreement were a significant factor contributing to the Market Share Loss for the year in question. If the Firm determines that the disadvantages experienced as a result of the provisions of this Agreement were a significant factor contributing to the Market Share Loss for the year in question, the NPM Adjustment described in subsection IX(d)(1) shall apply. If the Firm determines that the disadvantages experienced as a result of the provisions of this Agreement were not a significant factor contributing to the Market Share Loss for the year in question, the NPM Adjustment described in subsection IX(d)(1) shall not apply. The Original Participating Manufacturers, the Settling States, and the Attorneys General for the Settling States shall cooperate to ensure that the determination described in this subsection (1)(C) is timely made. The Firm shall be acceptable to (and the principals responsible for this assignment shall be acceptable to) both the Original Participating Manufacturers and a majority of those Attorneys General who are both the Attorney General of a Settling State and a member of the NAAG executive committee at the time in question (or in

the event no such firm or no such principals shall be acceptable to such parties, National Economic Research Associates, Inc., or its successors by merger, acquisition or otherwise ("NERA"), acting through a principal or principals acceptable to such parties, if such a person can be identified and, if not, acting through a principal or principals identified by NERA, or a successor firm selected by the CPR Institute for Dispute Resolution). As soon as practicable after the MSA Execution Date, the Firm shall be jointly retained by the Settling States and the Original Participating Manufacturers for the purpose of making the foregoing determination, and the Firm shall provide written notice to each Settling State, to NAAG, to the Independent Auditor and to each Participating Manufacturer of such determination. The determination of the Firm with respect to this issue shall be conclusive and binding upon all parties, and shall be final and non-appealable. The reasonable fees and expenses of the Firm shall be paid by the Original Participating Manufacturers according to their Relative Market Shares. Only the Participating Manufacturers and the Settling States, and their respective counsel, shall be entitled to communicate with the Firm with respect to the Firm's activities pursuant to this subsection (1)(C).

(D) No NPM Adjustment shall be made with respect to a payment if the aggregate number of Cigarettes shipped in or to the fifty United States, the District of Columbia and Puerto Rico in the year immediately preceding the year in which the payment in question is due by those Participating Manufacturers that had become Participating Manufacturers prior to 14 days after the MSA Execution Date is greater than the aggregate number of Cigarettes shipped in or to the fifty United States, the District of Columbia, and Puerto Rico in 1997 by such Participating Manufacturers (and any of their Affiliates that made such shipments in 1997, as demonstrated by certified audited statements of such Affiliates' shipments, and that do not continue to make such shipments after the MSA Execution Date because the responsibility for such shipments has been transferred to one of such Participating Manufacturers). Measurements of shipments for purposes of this subsection (D) shall be made in the manner prescribed in subsection II(mm); in the event that such shipment data is unavailable for any Participating Manufacturer for 1997, such Participating Manufacturer's shipment volume for such year shall be measured in the manner prescribed in subsection II(z).

(2) *Allocation among Settling States of NPM Adjustment for Original Participating Manufacturers.*

(A) The NPM Adjustment set forth in subsection (d)(1) shall apply to the Allocated Payments of all Settling States, except as set forth below.

(B) A Settling State's Allocated Payment shall not be subject to an NPM Adjustment: (i) if such Settling State continuously had a Qualifying Statute (as defined in subsection (2)(E) below) in full force and effect during the entire calendar year immediately preceding the year in which the payment in question is due, and diligently enforced the provisions of such statute during such entire calendar year; or (ii) if such Settling State enacted the Model Statute (as defined in subsection (2)(E) below) for the first time during the calendar year immediately preceding the year in which the payment in question is due, continuously had the Model Statute in full force and effect during the last six months of such calendar year, and diligently enforced the provisions of such statute during the period in which it was in full force and effect.

(C) The aggregate amount of the NPM Adjustments that would have applied to the Allocated Payments of those Settling States that are not subject to an NPM Adjustment pursuant to subsection (2)(B) shall be reallocated among all other Settling States pro rata in proportion to their respective Allocable Shares (the applicable Allocable Shares being those listed in Exhibit A), and such other Settling States" Allocated Payments shall be further reduced accordingly.

(D) This subsection (2)(D) shall apply if the amount of the NPM Adjustment applied pursuant to subsection (2)(A) to any Settling State plus the amount of the NPM Adjustments reallocated to such Settling State pursuant to subsection (2)(C) in any individual year would either (i) exceed such Settling State's Allocated Payment in that year, or (ii) if subsection (2)(F) applies to the Settling State in question, exceed 65% of such Settling State's Allocated Payment in that year. For each Settling State that has an excess as described in the preceding sentence, the excess amount of NPM Adjustment shall be further reallocated among all other Settling States whose Allocated Payments are subject to an NPM Adjustment and that do not have such an excess, pro rata in proportion to their respective Allocable Shares, and such other Settling States' Allocated Payments shall be further reduced accordingly. The provisions of this subsection (2)(D) shall be repeatedly applied in any individual year until either (i) the aggregate amount of NPM Adjustments has been fully reallocated or (ii) the full amount of the NPM Adjustments subject to reallocation under subsection (2)(C) or (2)(D) cannot be fully reallocated in any individual year as described in those subsections because (x) the Allocated Payment in that year of each Settling State that is subject to an NPM Adjustment and to which subsection (2)(F) does not apply has been reduced to zero, and (y) the Allocated Payment in that year of each Settling State to which subsection (2)(F) applies has been reduced to 35% of such Allocated Payment.

(E) A "Qualifying Statute" means a Settling State's statute, regulation, law and/or rule (applicable everywhere the Settling State has authority to legislate) that effectively and fully neutralizes the cost disadvantages that the Participating Manufacturers experience vis-´a-vis Non-Participating Manufacturers within such Settling State as a result of the provisions of this Agreement. Each Participating Manufacturer and each Settling State agree that the model statute in the form set forth in Exhibit T (the "Model Statute"), if enacted without modification or addition (except for particularized state procedural or technical requirements) and not in conjunction with any other legislative or regulatory proposal, shall constitute a Qualifying Statute. Each Participating Manufacturer agrees to support the enactment of such Model Statute if such Model Statute is introduced or proposed (i) without modification or addition (except for particularized procedural or technical requirements), and (ii) not in conjunction with any other legislative proposal.

(F) If a Settling State (i) enacts the Model Statute without any modification or addition (except for particularized state procedural or technical requirements) and not in conjunction with any other legislative or regulatory proposal, (ii) uses its best efforts to keep the Model Statute in full force and effect by, among other things, defending the Model Statute fully in any litigation brought in state or federal court within such Settling State (including litigating all available appeals that may affect the effectiveness of the Model Statute), and (iii) otherwise complies with subsection (2)(B), but a court of competent jurisdiction nevertheless invalidates or renders

unenforceable the Model Statute with respect to such Settling State, and but for such ruling the Settling State would have been exempt from an NPM Adjustment under subsection (2)(B), then the NPM Adjustment (including reallocations pursuant to subsections (2)(C) and (2)(D)) shall still apply to such Settling State's Allocated Payments but in any individual year shall not exceed 65% of the amount of such Allocated Payments.

(G) In the event a Settling State proposes and/or enacts a statute, regulation, law and/or rule (applicable everywhere the Settling State has authority to legislate) that is not the Model Statute and asserts that such statute, regulation, law and/or rule is a Qualifying Statute, the Firm shall be jointly retained by the Settling States and the Original Participating Manufacturers for the purpose of determining whether or not such statute, regulation, law and/or rule constitutes a Qualifying Statute. The Firm shall make the foregoing determination within 90 days of a written request to it from the relevant Settling State (copies of which request the Settling State shall also provide to all Participating Manufacturers and the Independent Auditor), and the Firm shall promptly thereafter provide written notice of such determination to the relevant Settling State, NAAG, all Participating Manufacturers and the Independent Auditor. The determination of the Firm with respect to this issue shall be conclusive and binding upon all parties, and shall be final and non-appealable; provided, however, (i) that such determination shall be of no force and effect with respect to a proposed statute, regulation, law and/or rule that is thereafter enacted with any modification or addition; and (ii) that the Settling State in which the Qualifying Statute was enacted and any Participating Manufacturer may at any time request that the Firm reconsider its determination as to this issue in light of subsequent events (including, without limitation, subsequent judicial review, interpretation, modification and/or disapproval of a Settling State's Qualifying Statute, and the manner and/or the effect of enforcement of such Qualifying Statute). The Original Participating Manufacturers shall severally pay their Relative Market Shares of the reasonable fees and expenses of the Firm. Only the Participating Manufacturers and Settling States, and their respective counsel, shall be entitled to communicate with the Firm with respect to the Firm's activities pursuant to this subsection (2)(G).

(H) Except as provided in subsection (2)(F), in the event a Qualifying Statute is enacted within a Settling State and is thereafter invalidated or declared unenforceable by a court of competent jurisdiction, otherwise rendered not in full force and effect, or, upon reconsideration by the Firm pursuant to subsection (2)(G) determined not to constitute a Qualifying Statute, then such Settling State's Allocated Payments shall be fully subject to an NPM Adjustment unless and until the requirements of subsection (2)(B) have been once again satisfied.

(3) *Allocation of NPM Adjustment among Original Participating Manufacturers.* The portion of the total amount of the NPM Adjustment to which the Original Participating Manufacturers are entitled in any year that can be applied in such year consistent with subsection IX(d)(2) (the "Available NPM Adjustment") shall be allocated among them as provided in this subsection IX(d)(3).

(A) The "Base NPM Adjustment" shall be determined for each Original Participating Manufacturer in such year as follows:

(i) For those Original Participating Manufacturers whose Relative Market Shares in the year immediately preceding the year in which the NPM Adjustment in question is applied exceed or are equal to their respective 1997 Relative Market Shares, the Base NPM Adjustment shall equal 0 (zero).

(ii) For those Original Participating Manufacturers whose Relative Market Shares in the year immediately preceding the year in which the NPM Adjustment in question is applied are less than their respective 1997 Relative Market Shares, the Base NPM Adjustment shall equal the result of (x) the difference between such Original Participating Manufacturer's Relative Market Share in such preceding year and its 1997 Relative Market Share multiplied by both (y) the number of individual Cigarettes (expressed in thousands of units) shipped in or to the United States, the District of Columbia and Puerto Rico by all the Original Participating Manufacturers in such preceding year (determined in accordance with subsection II(mm)) and (z) $20 per each thousand units of Cigarettes (as this number is adjusted pursuant to subsection IX(d)(3)(C) below).

(iii) For those Original Participating Manufacturers whose Base NPM Adjustment, if calculated pursuant to subsection (ii) above, would exceed $300 million (as this number is adjusted pursuant to subsection IX(d)(3)(C) below), the Base NPM Adjustment shall equal $300 million (or such adjusted number, as provided in subsection IX(d)(3)(C) below).

(B) The share of the Available NPM Adjustment each Original Participating Manufacturer is entitled to shall be calculated as follows:

(i) If the Available NPM Adjustment the Original Participating Manufacturers are entitled to in any year is less than or equal to the sum of the Base NPM Adjustments of all Original Participating Manufacturers in such year, then such Available NPM Adjustment shall be allocated among those Original Participating Manufacturers whose Base NPM Adjustment is not equal to 0 (zero) pro rata in proportion to their respective Base NPM Adjustments.

(ii) If the Available NPM Adjustment the Original Participating Manufacturers are entitled to in any year exceeds the sum of the Base NPM Adjustments of all Original Participating Manufacturers in such year, then (x) the difference between such Available NPM Adjustment and such sum of the Base NPM Adjustments shall be allocated among the Original Participating Manufacturers pro rata in proportion to their Relative Market Shares (the applicable Relative Market Shares to be those in the year immediately preceding such year), and (y) each Original Participating Manufacturer's share of such Available NPM Adjustment shall equal the sum of (1) its Base NPM Adjustment for such year, and (2) the amount allocated to such Original Participating Manufacturer pursuant to clause (x).

(iii) If an Original Participating Manufacturer's share of the Available NPM Adjustment calculated pursuant to subsection IX(d)(3)(B)(i) or IX(d)(3)(B)(ii) exceeds such Original Participating Manufacturer's payment amount to which such NPM Adjustment applies (as such payment amount has been determined pursuant to step B of clause 'seventh" of subsection IX(j)), then *(1)* such Original Participating Manufacturer's share of the Available NPM Adjustment shall equal such payment amount, and *(2)* such excess shall be reallocated among the other Original Participating Manufacturers pro rata in proportion to their Relative Market Shares.

(C) Adjustments:

(i) For calculations made pursuant to this subsection IX(d)(3) (if any) with respect to payments due in the year 2000, the number used in subsection IX(d)(3)(A)(ii)(z) shall be $20 and the number used in subsection IX(d)(3)(A)(iii) shall be $300 million. Each year thereafter, both these numbers shall be adjusted upward or downward by multiplying each of them by the quotient produced by dividing (x) the average revenue per Cigarette of all the Original Participating Manufacturers in the year immediately preceding such year, by (y) the average revenue per Cigarette of all the Original Participating Manufacturers in the year immediately preceding such immediately preceding year.

(ii) For purposes of this subsection, the average revenue per Cigarette of all the Original Participating Manufacturers in any year shall equal (x) the aggregate revenues of all the Original Participating Manufacturers from sales of Cigarettes in the fifty United States, the District of Columbia and Puerto Rico after Federal excise taxes and after payments pursuant to this Agreement and the tobacco litigation Settlement Agreements with the States of Florida, Mississippi, Minnesota and Texas (as such revenues are reported to the United States Securities and Exchange Commission ("SEC") for such year (either independently by the Original Participating Manufacturer or as part of consolidated financial statements reported to the SEC by an Affiliate of the Original Participating Manufacturers) or, in the case of an Original Participating Manufacturer that does not report income to the SEC, as reported in financial statements prepared in accordance with United States generally accepted accounting principles and audited by a nationally recognized accounting firm), divided by (y) the aggregate number of the individual Cigarettes shipped in or to the United States, the District of Columbia and Puerto Rico by all the Original Participating Manufacturers in such year (determined in accordance with subsection II(mm)).

(D) In the event that in the year immediately preceding the year in which the NPM Adjustment in question is applied both (x) the Relative Market Share of Lorillard Tobacco Company (or of its successor) ("Lorillard") was less than or equal to 20.0000000%, and (y) the number of individual Cigarettes shipped in or to the United States, the District of Columbia and Puerto Rico by Lorillard (determined in accordance with subsection II(mm)) (for purposes of this subsection (D), "Volume") was less than or equal to 70 billion, Lorillard's and Philip Morris Incorporated's (or its successor's) ("Philip Morris") shares of the Available NPM Adjustment calculated pursuant to subsections (3)(A)—(C) above shall be further reallocated between Lorillard and Philip Morris as follows (this subsection (3)(D) shall not apply in the year in which either of the two conditions specified in this sentence is not satisfied):

(i) Notwithstanding subsections (A)—(C) of this subsection (d)(3), but subject to further adjustment pursuant to subsections (D)(ii) and (D)(iii) below, Lorillard's share of the Available NPM Adjustment shall equal its Relative Market Share of such Available NPM Adjustment (the applicable Relative Market Share to be that in the year immediately preceding the year in which such NPM Adjustment is applied). The dollar amount of the difference between the share of the Available NPM Adjustment Lorillard is entitled to pursuant to the preceding sentence and the share of the Available NPM Adjustment it would be entitled to in the same year pursuant to subsections (d)(3)(A)—(C) shall be reallocated to Philip Morris and used to decrease or increase, as the case may be, Philip Morris's share of the Available NPM Adjustment in such year calculated pursuant to subsections (d)(3)(A)—(C).

(ii) In the event that in the year immediately preceding the year in which the NPM Adjustment in question is applied either (x) Lorillard's Relative Market Share was greater than 15.0000000% (but did not exceed 20.0000000%), or (y) Lorillard's Volume was greater than 50 billion (but did not exceed 70 billion), or both, Lorillard's share of the Available NPM Adjustment calculated pursuant to subsection (d)(3)(D)(i) shall be reduced by a percentage equal to the greater of *(1)* 10.0000000

for each percentage point (or fraction thereof) of excess of such Relative Market Share over 15.0000000% (if any), or *(2)* 2.5000000% for each billion (or fraction thereof) of excess of such Volume over 50 billion (if any). The dollar amount by which Lorillard's share of the Available NPM Adjustment is reduced in any year pursuant to this subsection (D)(ii) shall be reallocated to Philip Morris and used to increase Philip Morris's share of the Available NPM Adjustment in such year.

(iii) In the event that in any year a reallocation of the shares of the Available NPM Adjustment between Lorillard and Philip Morris pursuant to this subsection (d)(3)(D) results in Philip Morris's share of the Available NPM Adjustment in such year exceeding the greater of (x) Philip Morris's Relative Market Share of such Available NPM Adjustment (the applicable Relative Market Share to be that in the year immediately preceding such year), or (y) Philip Morris's share of the Available NPM Adjustment in such year calculated pursuant to subsections (d)(3)(A)—(C), Philip Morris's share of the Available NPM Adjustment in such year shall be reduced to equal the greater of (x) or (y) above. In such instance, the dollar amount by which Philip Morris's share of the Available NPM Adjustment is reduced pursuant to the preceding sentence shall be reallocated to Lorillard and used to increase Lorillard's share of the Available NPM Adjustment in such year.

(iv) In the event that either Philip Morris or Lorillard is treated as a Non-Participating Manufacturer for purposes of this subsection IX(d)(3) pursuant to subsection XVIII(w)(2)(A), this subsection (3)(D) shall not be applied, and the Original Participating Manufacturers" shares of the Available NPM Adjustment shall be determined solely as described in subsections (3)(A)—(C).

(4) *NPM Adjustment for Subsequent Participating Manufacturers.* Subject to the provisions of subsection IX(i)(3), a Subsequent Participating Manufacturer shall be entitled to an NPM Adjustment with respect to payments due from such Subsequent Participating Manufacturer in any year during which an NPM Adjustment is applicable under subsection (d)(1) above to payments due from the Original Participating Manufacturers. The amount of such NPM Adjustment shall equal the product of (A) the NPM Adjustment Percentage for such year multiplied by (B) the sum of the payments due in the year in question from such Subsequent Participating Manufacturer that correspond to payments due from Original Participating Manufacturers pursuant to subsection IX(c) (as such payment amounts due from such Subsequent Participating Manufacturer have been adjusted and allocated pursuant to clauses "First" through "Fifth" of subsection IX(j)). The NPM Adjustment to payments by each Subsequent Participating Manufact-

urer shall be allocated and reallocated among the Settling States in a manner consistent with subsection (d)(2) above.

(e) *Supplemental Payments.* Beginning on April 15, 2004, and on April 15 of each year thereafter in perpetuity, in the event that the sum of the Market Shares of the Participating Manufacturers that were Participating Manufacturers during the entire calendar year immediately preceding the year in which the payment in question would be due (the applicable Market Share to be that for the calendar year immediately preceding the year in which the payment in question would be due) equals or exceeds 99.0500000%, each Original Participating Manufacturer shall severally pay to the Escrow Agent (to be credited to the Subsection IX(e) Account) for the benefit of the Foundation its Relative Market Share of the base amount of $300,000,000, as such payments are modified in accordance with this subsection (e). Such payments shall be utilized by the Foundation to fund the national public education functions of the Foundation described in subsection VI(f)(1), in the manner described in and subject to the provisions of subsections VI(g) and VI(h). The payments made by the Original Participating Manufacturers pursuant to this subsection shall be subject to the Inflation Adjustment, the Volume Adjustment, the Non-Settling States Reduction, and the offset for miscalculated or disputed payments described in subsection XI(i).

(f) *Payment Responsibility.* The payment obligations of each Participating Manufacturer pursuant to this Agreement shall be the several responsibility only of that Participating Manufacturer. The payment obligations of a Participating Manufacturer shall not be the obligation or responsibility of any Affiliate of such Participating Manufacturer. The payment obligations of a Participating Manufacturer shall not be the obligation or responsibility of any other Participating Manufacturer. Provided, however, that no provision of this Agreement shall waive or excuse liability under any state or federal fraudulent conveyance or fraudulent transfer law. Any Participating Manufacturer whose Market Share (or Relative Market Share) in any given year equals zero shall have no payment obligations under this Agreement in the succeeding year.

(g) *Corporate Structures.* Due to the particular corporate structures of R.J. Reynolds Tobacco Company ("Reynolds") and Brown & Williamson Tobacco Corporation ("B&W") with respect to their non-domestic tobacco operations, Reynolds and B&W shall be severally liable for their respective shares of each payment due pursuant to this Agreement up to (and their liability hereunder shall not exceed) the full extent of their assets used in and earnings derived from, the manufacture and/or sale in the States of Tobacco Products intended for domestic consumption, and no recourse shall be had against any of their other assets or earnings to satisfy such obligations.

(h) *Accrual of Interest.* Except as expressly provided otherwise in this Agreement, any payment due hereunder and not paid when due (or payments requiring the accrual of interest under subsection XI(d)) shall accrue interest from and including the date such payment is due until (but not including) the date paid at the Prime Rate plus three percentage points.

(i) *Payments by Subsequent Participating Manufacturers.*

(1) A Subsequent Participating Manufacturer shall have payment obligations under this Agreement only in the event that its Market Share in any calendar year exceeds the greater of *(1)* its 1998 Market Share or *(2)* 125 percent of its 1997 Market Share (subject to the provisions of subsection (i)(4)). In the year following any such calendar year, such Subsequent Participating Manufacturer shall make payments corresponding to those due in that same following year from the Original Participating Manufacturers pursuant to subsections VI(c) (except for the payment due on March 31, 1999), IX(c)(1), IX(c)(2) and IX(e). The amounts of such corresponding payments by a Subsequent Participating Manufacturer are in addition to the corresponding payments that are due from the Original Participating Manufacturers and shall be determined as described in subsections (2) and (3) below. Such payments by a Subsequent Participating Manufacturer shall (A) be due on the same dates as the corresponding payments are due from Original Participating Manufacturers; (B) be for the same purpose as such corresponding payments; and (C) be paid, allocated and distributed in the same manner as such corresponding payments.

(2) The base amount due from a Subsequent Participating Manufacturer on any given date shall be determined by multiplying (A) the corresponding base amount due on the same date from all of the Original Participating Manufacturers (as such base amount is specified in the corresponding subsection of this Agreement and is adjusted by the Volume Adjustment (except for the provisions of subsection (B)(ii) of Exhibit E), but before such base amount is modified by any other adjustments, reductions or offsets) by (B) the quotient produced by dividing (i) the result of (x) such Subsequent Participating Manufacturer's applicable Market Share (the applicable Market Share being that for the calendar year immediately preceding the year in which the payment in question is due) minus (y) the greater of *(1)* its 1998 Market Share or *(2)* 125 percent of its 1997 Market Share, by (ii) the aggregate Market Shares of the Original Participating Manufacturers (the applicable Market Shares being those for the calendar year immediately preceding the year in which the payment in question is due).

(3) Any payment due from a Subsequent Participating Manufacturer under subsections (1) and (2) above shall be subject (up to the full amount of such payment) to the Inflation Adjustment, the Non-Settling States Reduction, the NPM Adjustment, the offset for miscalculated or disputed payments described in subsection XI(i), the Federal Tobacco Legislation Offset, the Litigating Releasing Parties Offset and the offsets for claims over described in subsections XII(a)(4)(B) and XII(a)(8), to the extent that such adjustments, reductions or offsets would apply to the corresponding payment due from the Original Participating Manufacturers. Provided, however, that all adjustments and offsets to which a Subsequent Participating Manufacturer is entitled may only be applied against payments by such Subsequent Participating Manufacturer, if any, that are due within 12 months after the date on which the Subsequent Participating Manufacturer becomes entitled to such adjustment or makes the payment that entitles it to such offset, and shall not be carried forward beyond that time even if not fully used.

(4) For purposes of this subsection (i), the 1997 (or 1998, as applicable) Market Share (and 125 percent thereof) of those Subsequent Participating Manufacturers that either (A) became a signatory to this Agreement more than 60 days after the MSA Execution Date or (B) had no Market Share in 1997 (or 1998, as applicable), shall equal zero.

(j) *Order of Application of Allocations, Offsets, Reductions and Adjustments.* The payments due under this

Agreement shall be calculated as set forth below. The "base amount" referred to in clause "First" below shall mean (1) in the case of payments due from Original Participating Manufacturers, the base amount referred to in the subsection establishing the payment obligation in question; and (2) in the case of payments due from a Subsequent Participating Manufacturer, the base amount referred to in subsection (i)(2) for such Subsequent Participating Manufacturer. In the event that a particular adjustment, reduction or offset referred to in a clause below does not apply to the payment being calculated, the result of the clause in question shall be deemed to be equal to the result of the immediately preceding clause. (If clause "First" is inapplicable, the result of clause "First" will be the base amount of the payment in question prior to any offsets, reductions or adjustments.)

First: the Inflation Adjustment shall be applied to the base amount of the payment being calculated;

Second: the Volume Adjustment (other than the provisions of subsection (B)(iii) of Exhibit E) shall be applied to the result of clause "First";

Third: the result of clause "second" shall be reduced by the Previously Settled States Reduction;

Fourth: the result of clause "Third" shall be reduced by the Non-Settling States Reduction;

Fifth: in the case of payments due under subsections IX(c)(1) and IX(c)(2), the results of clause "Fourth" for each such payment due in the calendar year in question shall be apportioned among the Settling States pro rata in proportion to their respective Allocable Shares, and the resulting amounts for each particular Settling State shall then be added together to form such Settling State's Allocated Payment. In the case of payments due under subsection IX(i) that correspond to payments due under subsections IX(c)(1) or IX(c)(2), the results of clause "Fourth" for all such payments due from a particular Subsequent Participating Manufacturer in the calendar year in question shall be apportioned among the Settling States pro rata in proportion to their respective Allocable Shares, and the resulting amounts for each particular Settling State shall then be added together. (In the case of all other payments made pursuant to this Agreement, this clause "Fifth" is inapplicable.);

Sixth: the NPM Adjustment shall be applied to the results of clause "Fifth" pursuant to subsections IX(d)(1) and (d)(2) (or, in the case of payments due from the Subsequent Participating Manufacturers, pursuant to subsection IX(d)(4));

Seventh: in the case of payments due from the Original Participating Manufacturers to which clause "Fifth" (and therefore clause "Sixth") does not apply, the result of clause "Fourth" shall be allocated among the Original Participating Manufacturers according to their Relative Market Shares. In the case of payments due from the Original Participating Manufacturers to which clause "Fifth" applies: (A) the Allocated Payments of all Settling States determined pursuant to clause "Fifth" (prior to reduction pursuant to clause "Sixth") shall be added together; (B) the resulting sum shall be allocated among the Original Participating Manufacturers according to their Relative Market Shares and subsection (B)(iii) of Exhibit E hereto (if such subsection is applicable); (C) the Available NPM Adjustment (as determined pursuant to clause "sixth") shall be allocated among the Original Participating Manufacturers pursuant to subsection IX(d)(3); (D) the respective result of step (C) above for each Original Participating Manufacturer shall be subtracted from the respective result of step (B) above for such Original Participating Manufacturer; and (E) the resulting payment amount due from each Original Participating Manufacturer shall then be allocated among the Settling States in proportion to the respective results of clause "Sixth" for each Settling State. The offsets described in clauses "Eighth" through "Twelfth" shall then be applied separately against each Original Participating Manufacturer's resulting payment shares (on a Settling State by Settling State basis) according to each Original Participating Manufacturer's separate entitlement to such offsets, if any, in the calendar year in question. (In the case of payments due from Subsequent Participating Manufacturers, this clause "Seventh" is inapplicable.)

Eighth: the offset for miscalculated or disputed payments described in subsection XI(i) (and any carry-forwards arising from such offset) shall be applied to the results of clause "Seventh" (in the case of payments due from the Original Participating Manufacturers) or to the results of clause "Sixth" (in the case of payments due from Subsequent Participating Manufacturers);

Ninth: the Federal Tobacco Legislation Offset (including any carry-forwards arising from such offset) shall be applied to the results of clause "Eighth";

Tenth: the Litigating Releasing Parties Offset (including any carry-forwards arising from such offset) shall be applied to the results of clause "Ninth";

Eleventh: the offset for claims over pursuant to subsection XII(a)(4)(B) (including any carry-forwards arising from such offset) shall be applied to the results of clause "Tenth";

Twelfth: the offset for claims over pursuant to subsection XII(a)(8) (including any carry-forwards arising from such offset) shall be applied to the results of clause "Eleventh"; and

Thirteenth: in the case of payments to which clause "Fifth" applies, the Settling States' allocated shares of the payments due from each Participating Manufacturer (as such shares have been determined in step (E) of clause "seventh" in the case of payments from the Original Participating Manufacturers or in clause "sixth" in the case of payments from the Subsequent Participating Manufacturers, and have been reduced by clauses "Eighth" through "Twelfth") shall be added together to state the aggregate payment obligation of each Participating Manufacturer with respect to the payments in question. (In the case of a payment to which clause "Fifth" does not apply, the aggregate payment obligation of each Participating Manufacturer with respect to the payment in question shall be stated by the results of clause "Eighth.")

X. EFFECT OF FEDERAL TOBACCO-RELATED LEGISLATION

(a) If federal tobacco-related legislation is enacted after the MSA Execution Date and on or before November 30, 2002, and if such legislation provides for payment(s) by any Original Participating Manufacturer (whether by settlement payment, tax or any other means), all or part of which are actually made available to a Settling State ("Federal Funds"), each Original Participating Manufacturer shall receive a continuing dollar-for-dollar offset for any and all amounts that are paid by such Original Participating Manufacturer pursuant to such legislation and actually made available to such Settling State (except as described in subsections (b) and (c) below). Such offset shall be applied against the applicable Original Participating Manufacturer's share (determined as described in

step E of clause "Seventh" of subsection IX(j)) of such Settling State's Allocated Payment, up to the full amount of such Original Participating Manufacturer's share of such Allocated Payment (as such share had been reduced by adjustment, if any, pursuant to the NPM Adjustment and has been reduced by offset, if any, pursuant to the offset for miscalculated or disputed payments). Such offset shall be made against such Original Participating Manufacturer's share of the first Allocated Payment due after such Federal Funds are first available for receipt by such Settling State. In the event that such offset would in any given year exceed such Original Participating Manufacturer's share of such Allocated Payment: (1) the offset to which such Original Participating Manufacturer is entitled under this section in such year shall be the full amount of such Original Participating Manufacturer's share of such Allocated Payment, and (2) all amounts not offset by reason of subsection (1) shall carry forward and be offset in the following year(s) until all such amounts have been offset.

(b) The offset described in subsection (a) shall apply only to that portion of Federal Funds, if any, that are either unrestricted as to their use, or restricted to any form of health care or to any use related to tobacco (including, but not limited to, tobacco education, cessation, control or enforcement) (other than that portion of Federal Funds, if any, that is specifically applicable to tobacco growers or communities dependent on the production of tobacco or Tobacco Products). Provided, however, that the offset described in subsection (a) shall not apply to that portion of Federal Funds, if any, whose receipt by such Settling State is conditioned upon or appropriately allocable to:

(1) the relinquishment of rights or benefits under this Agreement (including the Consent Decree); or

(2) actions or expenditures by such Settling State, unless:

(A) such Settling State chooses to undertake such action or expenditure;

(B) such actions or expenditures do not impose significant constraints on public policy choices; or

(C) such actions or expenditures are both: (i) related to health care or tobacco (including, but not limited to, tobacco education, cessation, control or enforcement) and (ii) do not require such Settling State to expend state matching funds in an amount that is significant in relation to the amount of the Federal Funds made available to such Settling State.

(c) Subject to the provisions of subsection IX(i)(3), Subsequent Participating Manufacturers shall be entitled to the offset described in this section X to the extent that they are required to pay Federal Funds that would give rise to an offset under subsections (a) and (b) if paid by an Original Participating Manufacturer.

(d) Nothing in this section X shall (1) reduce the payments to be made to the Settling States under this Agreement other than those described in subsection IX(c) (or corresponding payments under subsection IX(i)) of this Agreement; or (2) alter the Allocable Share used to determine each Settling State's share of the payments described in subsection IX(c) (or corresponding payments under subsection IX(i)) of this Agreement. Nothing in this section X is intended to or shall reduce the total amounts payable by the Participating Manufacturers to the Settling States under this Agreement by an amount greater than the amount of Federal Funds that the Settling States could elect to receive.

XI. CALCULATION AND DISBURSEMENT OF PAYMENTS

(a) *Independent Auditor to Make All Calculations.*

(1) Beginning with payments due in the year 2000, an Independent Auditor shall calculate and determine the amount of all payments owed pursuant to this Agreement, the adjustments, reductions and offsets thereto (and all resulting carry-forwards, if any), the allocation of such payments, adjustments, reductions, offsets and carry-forwards among the Participating Manufacturers and among the Settling States, and shall perform all other calculations in connection with the foregoing (including, but not limited to, determining Market Share, Relative Market Share, Base Aggregate Participating Manufacturer Market Share and Actual Aggregate Participating Manufacturer Market Share). The Independent Auditor shall promptly collect all information necessary to make such calculations and determinations. Each Participating Manufacturer and each Settling State shall provide the Independent Auditor, as promptly as practicable, with information in its possession or readily available to it necessary for the Independent Auditor to perform such calculations. The Independent Auditor shall agree to maintain the confidentiality of all such information, except that the Independent Auditor may provide such information to Participating Manufacturers and the Settling States as set forth in this Agreement. The Participating Manufacturers and the Settling States agree to maintain the confidentiality of such information.

(2) Payments due from the Original Participating Manufacturers prior to January 1, 2000 (other than the first payment due pursuant to subsection IX(b)) shall be based on the 1998 Relative Market Shares of the Original Participating Manufacturers or, if the Original Participating Manufacturers are unable to agree on such Relative Market Shares, on their 1997 Relative Market Shares specified in Exhibit Q.

(b) *Identity of Independent Auditor.* The Independent Auditor shall be a major, nationally recognized, certified public accounting firm jointly selected by agreement of the Original Participating Manufacturers and those Attorneys General of the Settling States who are members of the NAAG executive committee, who shall jointly retain the power to replace the Independent Auditor and appoint its successor. Fifty percent of the costs and fees of the Independent Auditor (but in no event more than $500,000 per annum), shall be paid by the Fund described in Exhibit J hereto, and the balance of such costs and fees shall be paid by the Original Participating Manufacturers, allocated among them according to their Relative Market Shares. The agreement retaining the Independent Auditor shall provide that the Independent Auditor shall perform the functions specified for it in this Agreement, and that it shall do so in the manner specified in this Agreement.

(c) *Resolution of Disputes.* Any dispute, controversy or claim arising out of or relating to calculations performed by, or any determinations made by, the Independent Auditor (including, without limitation, any dispute concerning the operation or application of any of the adjustments, reductions, offsets, carry-forwards and allocations described in subsection IX(j) or subsection XI(i)) shall be submitted to binding arbitration before a panel of three neutral arbitrators, each of whom shall be a former Article III federal judge. Each of the two sides to the dispute shall select one arbitrator. The two arbitrators so

selected shall select the third arbitrator. The arbitration shall be governed by the United States Federal Arbitration Act.

(d) *General Provisions as to Calculation of Payments.*

(1) Not less than 90 days prior to the scheduled due date of any payment due pursuant to this Agreement ("Payment Due Date"), the Independent Auditor shall deliver to each other Notice Party a detailed itemization of all information required by the Independent Auditor to complete its calculation of (A) the amount due from each Participating Manufacturer with respect to such payment, and (B) the portion of such amount allocable to each entity for whose benefit such payment is to be made. To the extent practicable, the Independent Auditor shall specify in such itemization which Notice Party is requested to produce which information. Each Participating Manufacturer and each Settling State shall use its best efforts to promptly supply all of the required information that is within its possession or is readily available to it to the Independent Auditor, and in any event not less than 50 days prior to such Payment Due Date. Such best efforts obligation shall be continuing in the case of information that comes within the possession of, or becomes readily available to, any Settling State or Participating Manufacturer after the date 50 days prior to such Payment Due Date.

(2) Not less than 40 days prior to the Payment Due Date, the Independent Auditor shall deliver to each other Notice Party (A) detailed preliminary calculations ("Preliminary Calculations") of the amount due from each Participating Manufacturer and of the amount allocable to each entity for whose benefit such payment is to be made, showing all applicable offsets, adjustments, reductions and carry-forwards and setting forth all the information on which the Independent Auditor relied in preparing such Preliminary Calculations, and (B) a statement of any information still required by the Independent Auditor to complete its calculations.

(3) Not less than 30 days prior to the Payment Due Date, any Participating Manufacturer or any Settling State that disputes any aspect of the Preliminary Calculations (including, but not limited to, disputing the methodology that the Independent Auditor employed, or the information on which the Independent Auditor relied, in preparing such calculations) shall notify each other Notice Party of such dispute, including the reasons and basis therefor.

(4) Not less than 15 days prior to the Payment Due Date, the Independent Auditor shall deliver to each other Notice Party a detailed recalculation (a "Final Calculation") of the amount due from each Participating Manufacturer, the amount allocable to each entity for whose benefit such payment is to be made, and the Account to which such payment is to be credited, explaining any changes from the Preliminary Calculation. The Final Calculation may include estimates of amounts in the circumstances described in subsection (d)(5).

(5) The following provisions shall govern in the event that the information required by the Independent Auditor to complete its calculations is not in its possession by the date as of which the Independent Auditor is required to provide either a Preliminary Calculation or a Final Calculation.

(A) If the information in question is not readily available to any Settling State, any Original Participating Manufacturer or any Subsequent Participating Manufacturer, the Independent Auditor shall employ an assumption as to the missing information producing the minimum amount that is likely to be due with respect to the payment in question, and shall set forth its assumption as to the missing information in its Preliminary Calculation or Final Calculation, whichever is at issue. Any Original Participating Manufacturer, Subsequent Participating Manufacturer or Settling State may dispute any such assumption employed by the Independent Auditor in its Preliminary Calculation in the manner prescribed in subsection (d)(3) or any such assumption employed by the Independent Auditor in its Final Calculation in the manner prescribed in subsection (d)(6). If the missing information becomes available to the Independent Auditor prior to the Payment Due Date, the Independent Auditor shall promptly revise its Preliminary Calculation or Final Calculation (whichever is applicable) and shall promptly provide the revised calculation to each Notice Party, showing the newly available information. If the missing information does not become available to the Independent Auditor prior to the Payment Due Date, the minimum amount calculated by the Independent Auditor pursuant to this subsection (A) shall be paid on the Payment Due Date, subject to disputes pursuant to subsections (d)(6) and (d)(8) and without prejudice to a later final determination of the correct amount. If the missing information becomes available to the Independent Auditor after the Payment Due Date, the Independent Auditor shall calculate the correct amount of the payment in question and shall apply any overpayment or underpayment as an offset or additional payment in the manner described in subsection (i).

(B) If the information in question is readily available to a Settling State, Original Participating Manufacturer or Subsequent Participating Manufacturer, but such Settling State, Original Participating Manufacturer or Subsequent Participating Manufacturer does not supply such information to the Independent Auditor, the Independent Auditor shall base the calculation in question on its best estimate of such information, and shall show such estimate in its Preliminary Calculation or Final Calculation, whichever is applicable. Any Original Participating Manufacturer, Subsequent Participating Manufacturer or Settling State (except the entity that withheld the information) may dispute such estimate employed by the Independent Auditor in its Preliminary Calculation in the manner prescribed in subsection (d)(3) or such estimate employed by the Independent Auditor in its Final Calculation in the manner prescribed in subsection (d)(6). If the withheld information is not made available to the Independent Auditor more than 30 days prior to the Payment Due Date, the estimate employed by the Independent Auditor (as revised by the Independent Auditor in light of any dispute filed pursuant to the preceding sentence) shall govern the amounts to be paid on the Payment Due Date, subject to disputes pursuant to subsection (d)(6) and without prejudice to a later final determination of the correct amount. In the event that the withheld information subsequently becomes available, the Independent Auditor shall calculate the correct amount and shall apply any overpayment or underpayment as an offset or additional payment in the manner described in subsection (i).

(6) Not less than five days prior to the Payment Due Date, each Participating Manufacturer and each Settling State shall deliver to each Notice Party a statement indicating whether it disputes the Independent Auditor's Final Calculation and, if so, the disputed and undisputed amounts and the basis for the dispute. Except to the extent a Participating Manufacturer or a Settling State

delivers a statement indicating the existence of a dispute by such date, the amounts set forth in the Independent Auditor's Final Calculation shall be paid on the Payment Due Date. Provided, however, that (A) in the event that the Independent Auditor revises its Final Calculation within five days of the Payment Due Date as provided in subsection (5)(A) due to receipt of previously missing information, a Participating Manufacturer or Settling State may dispute such revision pursuant to the procedure set forth in this subsection (6) at any time prior to the Payment Due Date; and (B) prior to the date four years after the Payment Due Date, neither failure to dispute a calculation made by the Independent Auditor nor actual agreement with any calculation or payment to the Escrow Agent or to another payee shall waive any Participating Manufacturer's or Settling State's rights to dispute any payment (or the Independent Auditor's calculations with respect to any payment) after the Payment Due Date. No Participating Manufacturer and no Settling State shall have a right to raise any dispute with respect to any payment or calculation after the date four years after such payment's Payment Due Date.

(7) Each Participating Manufacturer shall be obligated to pay by the Payment Due Date the undisputed portion of the total amount calculated as due from it by the Independent Auditor's Final Calculation. Failure to pay such portion shall render the Participating Manufacturer liable for interest thereon as provided in subsection IX(h) of this Agreement, in addition to any other remedy available under this Agreement.

(8) As to any disputed portion of the total amount calculated to be due pursuant to the Final Calculation, any Participating Manufacturer that by the Payment Due Date pays such disputed portion into the Disputed Payments Account (as defined in the Escrow Agreement) shall not be liable for interest thereon even if the amount disputed was in fact properly due and owing. Any Participating Manufacturer that by the Payment Due Date does not pay such disputed portion into the Disputed Payments Account shall be liable for interest as provided in subsection IX(h) if the amount disputed was in fact properly due and owing.

(9) On the same date that it makes any payment pursuant to this Agreement, each Participating Manufacturer shall deliver a notice to each other Notice Party showing the amount of such payment and the Account to which such payment is to be credited.

(10) On the first Business Day after the Payment Due Date, the Escrow Agent shall deliver to each other Notice Party a statement showing the amounts received by it from each Participating Manufacturer and the Accounts credited with such amounts.

(e) *General Treatment of Payments.* The Escrow Agent may disburse amounts from an Account only if permitted, and only at such time as permitted, by this Agreement and the Escrow Agreement. No amounts may be disbursed to a Settling State other than funds credited to such Settling State's State-Specific Account (as defined in the Escrow Agreement). The Independent Auditor, in delivering payment instructions to the Escrow Agent, shall specify: the amount to be paid; the Account or Accounts from which such payment is to be disbursed; the payee of such payment (which may be an Account); and the Business Day on which such payment is to be made by the Escrow Agent. Except as expressly provided in subsection (f) below, in no event may any amount be disbursed from any Account prior to Final Approval.

(f) *Disbursements and Charges Not Contingent on Final Approval.* Funds may be disbursed from Accounts without regard to the occurrence of Final Approval in the following circumstances and in the following manner:

(1) *Payments of Federal and State Taxes.* Federal, state, local or other taxes imposed with respect to the amounts credited to the Accounts shall be paid from such amounts. The Independent Auditor shall prepare and file any tax returns required to be filed with respect to the escrow. All taxes required to be paid shall be allocated to and charged against the Accounts on a reasonable basis to be determined by the Independent Auditor. Upon receipt of written instructions from the Independent Auditor, the Escrow Agent shall pay such taxes and charge such payments against the Account or Accounts specified in those instructions.

(2) *Payments to and from Disputed Payments Account.* The Independent Auditor shall instruct the Escrow Agent to credit funds from an Account to the Disputed Payments Account when a dispute arises as to such funds, and shall instruct the Escrow Agent to credit funds from the Disputed Payments Account to the appropriate payee when such dispute is resolved with finality. The Independent Auditor shall provide the Notice Parties not less than 10 Business Days prior notice before instructing the Escrow Agent to disburse funds from the Disputed Payments Account.

(3) *Payments to a State-Specific Account.* Promptly following the occurrence of State-Specific Finality in any Settling State, such Settling State and the Original Participating Manufacturers shall notify the Independent Auditor of such occurrence. The Independent Auditor shall promptly thereafter notify each Notice Party of such State-Specific Finality and of the portions of the amounts in the Subsection IX(b) Account (First), Subsection IX(b) Account (Subsequent), Subsection IX(c)(1) Account and Subsection IX(c)(2) Account, respectively (as such Accounts are defined in the Escrow Agreement), that are at such time held in such Accounts for the benefit of such Settling State, and which are to be transferred to the appropriate State-Specific Account for such Settling State. If neither the Settling State in question nor any Participating Manufacturer disputes such amounts or the occurrence of such State-Specific Finality by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the preceding sentence, the Independent Auditor shall promptly instruct the Escrow Agent to make such transfer. If the Settling State in question or any Participating Manufacturer disputes such amounts or the occurrence of such State-Specific Finality by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the second sentence of this subsection (f)(3), the Independent Auditor shall promptly instruct the Escrow Agent to credit the amount disputed to the Disputed Payments Account and the undisputed portion to the appropriate State-Specific Account. No amounts may be transferred or credited to a State-Specific Account for the benefit of any State as to which State-Specific Finality has not occurred or as to which this Agreement has terminated.

(4) *Payments to Parties other than Particular Settling States.*

(A) Promptly following the occurrence of State-Specific Finality in one Settling State, such Settling State and the Original Participating Manufacturers shall notify the Independent Auditor of such occurrence. The Independent

Auditor shall promptly thereafter notify each Notice Party of the occurrence of State-Specific Finality in at least one Settling State and of the amounts held in the Subsection VI(b) Account, Subsection VI(c) Account (First), and Subsection VIII(c) Account (as such Accounts are defined in the Escrow Agreement), if any. If neither any of the Settling States nor any of the Participating Manufacturers disputes such amounts or disputes the occurrence of State-Specific Finality in one Settling State, by notice delivered to each Notice Party not later than ten Business Days after delivery by the Independent Auditor of the notice described in the preceding sentence, the Independent Auditor shall promptly instruct the Escrow Agent to disburse the funds held in such Accounts to the Foundation or to the Fund specified in subsection VIII(c), as appropriate. If any Settling State or Participating Manufacturer disputes such amounts or the occurrence of such State-Specific Finality by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the second sentence of this subsection (4)(A), the Independent Auditor shall promptly instruct the Escrow Agent to credit the amounts disputed to the Disputed Payments Account and to disburse the undisputed portion to the Foundation or to the Fund specified in subsection VIII(c), as appropriate.

(B) The Independent Auditor shall instruct the Escrow Agent to disburse funds on deposit in the Subsection VIII(b) Account and Subsection IX(e) Account (as such Accounts are defined in the Escrow Agreement) to NAAG or to the Foundation, as appropriate, within 10 Business Days after the date on which such amounts were credited to such Accounts.

(C) Promptly following the occurrence of State-Specific Finality in Settling States having aggregate Allocable Shares equal to at least 80% of the total aggregate Allocable Shares assigned to all States that were Settling States as of the MSA Execution Date, the Settling States and the Original Participating Manufacturers shall notify the Independent Auditor of such occurrence. The Independent Auditor shall promptly thereafter notify each Notice Party of the occurrence of such State-Specific Finality and of the amounts held in the Subsection VI(c) Account (Subsequent) (as such Account is defined in the Escrow Agreement), if any. If neither any of the Settling States nor any of the Participating Manufacturers disputes such amounts or disputes the occurrence of such State-Specific Finality, by notice delivered to each Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the preceding sentence, the Independent Auditor shall promptly instruct the Escrow Agent to disburse the funds held in such Account to the Foundation. If any Settling State or Participating Manufacturer disputes such amounts or the occurrence of such State-Specific Finality by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the second sentence of this subsection (4)(C), the Independent Auditor shall promptly instruct the Escrow Agent to credit the amounts disputed to the Disputed Payments Account and to disburse the undisputed portion to the Foundation.

(5) *Treatment of Payments Following Termination.*

(A) *As to amounts held for Settling States.* Promptly upon the termination of this Agreement with respect to any Settling State (whether or not as part of the termination of this Agreement as to all Settling States) such State or any Participating Manufacturer shall notify the Independent Auditor of such occurrence. The Independent Auditor shall promptly thereafter notify each Notice Party of such termination and of the amounts held in the Subsection IX(b) Account (First), the Subsection IX(b) Account (Subsequent), the Subsection IX(c)(1) Account, the Subsection IX(c)(2) Account, and the State-Specific Account for the benefit of such Settling State. If neither the State in question nor any Participating Manufacturer disputes such amounts or the occurrence of such termination by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the preceding sentence, the Independent Auditor shall promptly instruct the Escrow Agent to transfer such amounts to the Participating Manufacturers (on the basis of their respective contributions of such funds). If the State in question or any Participating Manufacturer disputes the amounts held in the Accounts or the occurrence of such termination by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the second sentence of this subsection (5)(A), the Independent Auditor shall promptly instruct the Escrow Agent to transfer the amount disputed to the Disputed Payments Account and the undisputed portion to the Participating Manufacturers (on the basis of their respective contributions of such funds).

(B) *As to amounts held for others.* If this Agreement is terminated with respect to all of the Settling States, the Original Participating Manufacturers shall promptly notify the Independent Auditor of such occurrence. The Independent Auditor shall promptly thereafter notify each Notice Party of such termination and of the amounts held in the Subsection VI(b) Account, the Subsection VI(c) Account (First), the Subsection VIII(b) Account, the Subsection VIII(c) Account and the Subsection IX(e) Account. If neither any such State nor any Participating Manufacturer disputes such amounts or the occurrence of such termination by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the preceding sentence, the Independent Auditor shall promptly instruct the Escrow Agent to transfer such amounts to the Participating Manufacturers (on the basis of their respective contributions of such funds). If any such State or any Participating Manufacturer disputes the amounts held in the Accounts or the occurrence of such termination by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the second sentence of this subsection (5)(B), the Independent Auditor shall promptly instruct the Escrow Agent to credit the amount disputed to the Disputed Payments Account and transfer the undisputed portion to the Participating Manufacturers (on the basis of their respective contribution of such funds).

(C) *As to amounts held in the Subsection VI(c) Account (Subsequent).* If this Agreement is terminated with respect to Settling States having aggregate Allocable Shares equal to more than 20% of the total aggregate Allocable Shares assigned to those States that were Settling States as of the MSA Execution Date, the Original Participating Manufacturers shall promptly notify the Independent Auditor of such occurrence. The Independent Auditor shall promptly thereafter notify each Notice Party of such termination and of the amounts held in the Subsection VI(c) Account (Subsequent) (as defined in the Escrow Agreement). If neither any such State with respect to which this Agreement has terminated nor any Participat-

ing Manufacturer disputes such amounts or the occurrence of such termination by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the preceding sentence, the Independent Auditor shall promptly instruct the Escrow Agent to transfer such amounts to the Participating Manufacturers (on the basis of their respective contributions of such funds). If any such State or any Participating Manufacturer disputes the amounts held in the Account or the occurrence of such termination by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the second sentence of this subsection (5)(C), the Independent Auditor shall promptly instruct the Escrow Agent to credit the amount disputed to the Disputed Payments Account and transfer the undisputed portion to the Participating Manufacturers (on the basis of their respective contribution of such funds).

(6) *Determination of amounts paid or held for the benefit of each individual Settling State.* For purposes of subsections (f)(3), (f)(5)(A) and (i)(2), the portion of a payment that is made or held for the benefit of each individual Settling State shall be determined: (A) in the case of a payment credited to the Subsection IX(b) Account (First) or the Subsection IX(b) Account (Subsequent), by allocating the results of clause "Eighth" of subsection IX(j) among those Settling States who were Settling States at the time that the amount of such payment was calculated, pro rata in proportion to their respective Allocable Shares; and (B) in the case of a payment credited to the Subsection IX(c)(1) Account or the Subsection IX(c)(2) Account, by the results of clause "Twelfth" of subsection IX(j) for each individual Settling State. Provided, however, that, solely for purposes of subsection (f)(3), the Settling States may by unanimous agreement agree on a different method of allocation of amounts held in the Accounts identified in this subsection (f)(6).

(g) *Payments to be Made Only After Final Approval.* Promptly following the occurrence of Final Approval, the Settling States and the Original Participating Manufacturers shall notify the Independent Auditor of such occurrence. The Independent Auditor shall promptly thereafter notify each Notice Party of the occurrence of Final Approval and of the amounts held in the State-Specific Accounts. If neither any of the Settling States nor any of the Participating Manufacturers disputes such amounts, disputes the occurrence of Final Approval or claims that this Agreement has terminated as to any Settling State for whose benefit the funds are held in a State-Specific Account, by notice delivered to each Notice Party not later than 10 Business Days after delivery by the Independent Auditor of such notice of Final Approval, the Independent Auditor shall promptly instruct the Escrow Agent to disburse the funds held in the State-Specific Accounts to (or as directed by) the respective Settling States. If any Notice Party disputes such amounts or the occurrence of Final Approval, or claims that this Agreement has terminated as to any Settling State for whose benefit the funds are held in a State-Specific Account, by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of such notice of Final Approval, the Independent Auditor shall promptly instruct the Escrow Agent to credit the amounts disputed to the Disputed Payments Account and to disburse the undisputed portion to (or as directed by) the respective Settling States.

(h) *Applicability to Section XVII Payments.* This section XI shall not be applicable to payments made pursuant to section XVII; provided, however, that the Independent Auditor shall be responsible for calculating Relative Market Shares in connection with such payments, and the Independent Auditor shall promptly provide the results of such calculation to any Original Participating Manufacturer or Settling State that requests it do so.

(i) *Miscalculated or Disputed Payments.*

(1) *Underpayments.*

(A) If information becomes available to the Independent Auditor not later than four years after a Payment Due Date, and such information shows that any Participating Manufacturer was instructed to make an insufficient payment on such date ("original payment"), the Independent Auditor shall promptly determine the additional payment owed by such Participating Manufacturer and the allocation of such additional payment among the applicable payees. The Independent Auditor shall then reduce such additional payment (up to the full amount of such additional payment) by any adjustments or offsets that were available to the Participating Manufacturer in question against the original payment at the time it was made (and have not since been used) but which such Participating Manufacturer was unable to use against such original payment because such adjustments or offsets were in excess of such original payment (provided that any adjustments or offsets used against such additional payment shall reduce on a dollar-for-dollar basis any remaining carry-forward held by such Participating Manufacturer with respect to such adjustment or offset). The Independent Auditor shall then add interest at the Prime Rate (calculated from the Payment Due Date in question) to the additional payment (as reduced pursuant to the preceding sentence), except that where the additional payment owed by a Participating Manufacturer is the result of an underpayment by such Participating Manufacturer caused by such Participating Manufacturer's withholding of information as described in subsection (d)(5)(B), the applicable interest rate shall be that described in subsection IX(h). The Independent Auditor shall promptly give notice of the additional payment owed by the Participating Manufacturer in question (as reduced and/or increased as described above) to all Notice Parties, showing the new information and all calculations. Upon receipt of such notice, any Participating Manufacturer or Settling State may dispute the Independent Auditor's calculations in the manner described in subsection (d)(3), and the Independent Auditor shall promptly notify each Notice Party of any subsequent revisions to its calculations. Not more than 15 days after receipt of such notice (or, if the Independent Auditor revises its calculations, not more than 15 days after receipt of the revisions), any Participating Manufacturer and any Settling State may dispute the Independent Auditor's calculations in the manner prescribed in subsection (d)(6). Failure to dispute the Independent Auditor's calculations in this manner shall constitute agreement with the Independent Auditor's calculations, subject to the limitations set forth in subsection (d)(6). Payment of the undisputed portion of an additional payment shall be made to the Escrow Agent not more than 20 days after receipt of the notice described in this subsection (A) (or, if the Independent Auditor revises its calculations, not more than 20 days after receipt of the revisions). Failure to pay such portion shall render the Participating Manufacturer liable for interest thereon as provided in subsection IX(h). Payment of the disputed portion shall be governed by subsection (d)(8).

(B) To the extent a dispute as to a prior payment is resolved with finality against a Participating Manufacturer: (i) in the case where the disputed amount has been paid into the Disputed Payments Account pursuant to subsection (d)(8), the Independent Auditor shall instruct the Escrow Agent to transfer such amount to the applicable payee Account(s); (ii) in the case where the disputed amount has not been paid into the Disputed Payments Account and the dispute was identified prior to the Payment Due Date in question by delivery of a statement pursuant to subsection (d)(6) identifying such dispute, the Independent Auditor shall calculate interest on the disputed amount from the Payment Due Date in question (the applicable interest rate to be that provided in subsection IX(h)) and the allocation of such amount and interest among the applicable payees, and shall provide notice of the amount owed (and the identity of the payor and payees) to all Notice Parties; and (iii) in all other cases, the procedure described in subsection (ii) shall apply, except that the applicable interest rate shall be the Prime Rate.

(2) *Overpayments.*

(A) If a dispute as to a prior payment is resolved with finality in favor of a Participating Manufacturer where the disputed amount has been paid into the Disputed Payments Account pursuant to subsection (d)(8), the Independent Auditor shall instruct the Escrow Agent to transfer such amount to such Participating Manufacturer.

(B) If information becomes available to the Independent Auditor not later than four years after a Payment Due Date showing that a Participating Manufacturer made an overpayment on such date, or if a dispute as to a prior payment is resolved with finality in favor of a Participating Manufacturer where the disputed amount has been paid but not into the Disputed Payments Account, such Participating Manufacturer shall be entitled to a continuing dollar-for-dollar offset as follows:

(i) offsets under this subsection (B) shall be applied only against eligible payments to be made by such Participating Manufacturer after the entitlement to the offset arises. The eligible payments shall be: in the case of offsets arising from payments under subsection IX(b) or IX(c)(1), subsequent payments under any of such subsections; in the case of offsets arising from payments under subsection IX(c)(2), subsequent payments under such subsection or, if no subsequent payments are to be made under such subsection, subsequent payments under subsection IX(c)(1); in the case of offsets arising from payments under subsection IX(e), subsequent payments under such subsection or subsection IX(c); in the case of offsets arising from payments under subsection VI(c), subsequent payments under such subsection or, if no subsequent payments are to be made under such subsection, subsequent payments under any of subsection IX(c)(1), IX(c)(2) or IX(e); in the case of offsets arising from payments under subsection VIII(b), subsequent payments under such subsection or, if no subsequent payments are to be made under such subsection, subsequent payments under either subsection IX(c)(1) or IX(c)(2); in the case of offsets arising from payments under subsection VIII(c), subsequent payments under either subsection IX(c)(1) or IX(c)(2); and, in the case of offsets arising from payments under subsection IX(i), subsequent payments under such subsection (consistent with the provisions of this subsection (B)(i)).

(ii) in the case of offsets to be applied against payments under subsection IX(c), the offset to be applied shall be apportioned among the Settling States pro rata in proportion to their respective shares of such payments, as such respective shares are determined pursuant to step E of clause "seventh" (in the case of payments due from the Original Participating Manufacturers) or clause "sixth" (in the case of payments due from the Subsequent Participating Manufacturers) of subsection IX(j) (except where the offset arises from an overpayment applicable solely to a particular Settling State).

(iii) the total amount of the offset to which a Participating Manufacturer shall be entitled shall be the full amount of the overpayment it made, together with interest calculated from the time of the overpayment to the Payment Due Date of the first eligible payment against which the offset may be applied. The applicable interest rate shall be the Prime Rate (except that, where the overpayment is the result of a Settling State's withholding of information as described in subsection (d)(5)(B), the applicable interest rate shall be that described in subsection IX(h)).

(iv) an offset under this subsection (B) shall be applied up to the full amount of the Participating Manufacturer's share (in the case of payments due from Original Participating Manufacturers, determined as described in the first sentence of clause "seventh" of subsection IX(j) (or, in the case of payments pursuant to subsection IX(c), step D of such clause)) of the eligible payment in question, as such payment has been adjusted and reduced pursuant to clauses "First" through "sixth" of subsection IX(j), to the extent each such clause is applicable to the payment in question. In the event that the offset to which a Participating Manufacturer is entitled under this subsection (B) would exceed such Participating Manufacturer's share of the eligible payment against which it is being applied (or, in the case where such offset arises from an overpayment applicable solely to a particular Settling State, the portion of such payment that is made for the benefit of such Settling State), the offset shall be the full amount of such Participating Manufacturer's share of such payment and all amounts not offset shall carry forward and be offset against subsequent eligible payments until all such amounts have been offset.

(j) *Payments After Applicable Condition.* To the extent that a payment is made after the occurrence of all applicable conditions for the disbursement of such payment to the payee(s) in question, the Independent Auditor shall instruct the Escrow Agent to disburse such payment promptly following its deposit.

XII. SETTLING STATES' RELEASE, DISCHARGE AND COVENANT

(a) *Release.*

(1) Upon the occurrence of State-Specific Finality in a Settling State, such Settling State shall absolutely and unconditionally release and forever discharge all Released Parties from all Released Claims that the Releasing Parties directly, indirectly, derivatively or in any other capacity ever had, now have, or hereafter can, shall or may have.

(2) Notwithstanding the foregoing, this release and discharge shall not apply to any defendant in a lawsuit settled pursuant to this Agreement (other than a Participating Manufacturer) unless and until such defendant releases the Releasing Parties (and delivers to the Attorney General of the applicable Settling State a copy of such release) from any and all Claims of such defendant relating to the prosecution of such lawsuit.

(3) Each Settling State (for itself and for the Releasing Parties) further covenants and agrees that it (and the

Releasing Parties) shall not after the occurrence of State-Specific Finality sue or seek to establish civil liability against any Released Party based, in whole or in part, upon any of the Released Claims, and further agrees that such covenant and agreement shall be a complete defense to any such civil action or proceeding.

(4)(A) Each Settling State (for itself and for the Releasing Parties) further agrees that, if a Released Claim by a Releasing Party against any person or entity that is not a Released Party (a "non-Released Party") results in or in any way gives rise to a claim-over (on any theory whatever other than a claim based on an express written indemnity agreement) by such non-Released Party against any Released Party (and such Released Party gives notice to the applicable Settling State within 30 days of the service of such claim-over (or within 30 days after the MSA Execution Date, whichever is later) and prior to entry into any settlement of such claim-over), the Releasing Party: (i) shall reduce or credit against any judgment or settlement such Releasing Party may obtain against such non-Released Party the full amount of any judgment or settlement such non-Released Party may obtain against the Released Party on such claim-over; and (ii) shall, as part of any settlement with such non-Released Party, obtain from such non-Released Party for the benefit of such Released Party a satisfaction in full of such non-Released Party's judgment or settlement against the Released Party.

(B) Each Settling State further agrees that in the event that the provisions of subsection (4)(A) do not fully eliminate any and all liability of any Original Participating Manufacturer (or of any person or entity that is a Released Party by virtue of its relation to any Original Participating Manufacturer) with respect to claims-over (on any theory whatever other than a claim based on an express written indemnity agreement) by any non-Released Party to recover in whole or in part any liability (whether direct or indirect, or whether by way of settlement (to the extent that such Released Party has given notice to the applicable Settling State within 30 days of the service of such claim-over (or within 30 days after the MSA Execution Date, whichever is later) and prior to entry into any settlement of such claim-over), judgment or otherwise) of such non-Released Party to any Releasing Party arising out of any Released Claim, such Original Participating Manufacturer shall receive a continuing dollar-for-dollar offset for any amounts paid by such Original Participating Manufacturer (or by any person or entity that is a Released Party by virtue of its relation to such Original Participating Manufacturer) on any such liability against such Original Participating Manufacturer's share (determined as described in step E of clause "seventh" of subsection IX(j)) of the applicable Settling State's Allocated Payment, up to the full amount of such Original Participating Manufacturer's share of such Allocated Payment each year, until all such amounts paid on such liability have been offset. In the event that the offset under this subsection (4) with respect to a particular Settling State would in any given year exceed such Original Participating Manufacturer's share of such Settling State's Allocated Payment (as such share had been reduced by adjustment, if any, pursuant to the NPM Adjustment, and has been reduced by offsets, if any, pursuant to the offset for miscalculated or disputed payments, the Federal Tobacco Legislation Offset and the Litigating Releasing Parties Offset): (i) the offset to which such Original Participating Manufacturer is entitled under this subsection in such year shall be the full amount of such Original Participating Manufacturer's share of such Allocated Payment; and (ii) all amounts not offset by reason of subsection (i) shall carry forward and be offset in the following year(s) until all such amounts have been offset.

(C) Each Settling State further agrees that, subject to the provisions of section IX(i)(3), each Subsequent Participating Manufacturer shall be entitled to the offset described in subsection (B) above to the extent that it (or any person or entity that is a Released Party by virtue of its relationship with such Subsequent Participating Manufacturer) has paid on liability that would give rise to an offset under such subsection if paid by an Original Participating Manufacturer.

(5) This release and covenant shall not operate to interfere with a Settling State's ability to enforce as against any Participating Manufacturer the provisions of this Agreement, or with the Court's ability to enter the Consent Decree or to maintain continuing jurisdiction to enforce such Consent Decree pursuant to the terms thereof. Provided, however, that neither subsection III(a) or III(r) of this Agreement nor subsection V(A) or V(I) of the Consent Decree shall create a right to challenge the continuation, after the MSA Execution Date, of any advertising content, claim or slogan (other than use of a Cartoon) that was not unlawful prior to the MSA Execution Date.

(6) The Settling States do not purport to waive or release any claims on behalf of Indian tribes.

(7) The Settling States do not waive or release any criminal liability based on federal, state or local law.

(8) Notwithstanding the foregoing (and the definition of Released Parties), this release and covenant shall not apply to retailers, suppliers or distributors to the extent of any liability arising from the sale or distribution of Tobacco Products of, or the supply of component parts of Tobacco Products to, any non-Released Party.

(A) Each Settling State (for itself and for the Releasing Parties) agrees that, if a claim by a Releasing Party against a retailer, supplier or distributor that would be a Released Claim but for the operation of the preceding sentence results in or in any way gives rise to a claim-over (on any theory whatever) by such retailer, supplier or distributor against any Released Party (and such Released Party gives notice to the applicable Settling State within 30 days of the service of such claim-over (or within 30 days after the MSA Execution Date, whichever is later) and prior to entry into any settlement of such claim-over), the Releasing Party: (i) shall reduce or credit against any judgment or settlement such Releasing Party may obtain against such retailer, supplier or distributor the full amount of any judgment or settlement such retailer, supplier or distributor may obtain against the Released Party on such claim-over; and (ii) shall, as part of any settlement with such retailer, supplier or distributor, obtain from such retailer, supplier or distributor for the benefit of such Released Party a satisfaction in full of such retailer's, supplier's or distributor's judgment or settlement against the Released Party.

(B) Each Settling State further agrees that in the event that the provisions of subsection (8)(A) above do not fully eliminate any and all liability of any Original Participating Manufacturer (or any person or entity that is a Released Party by virtue of its relationship to an Original Participating Manufacturer) with respect to claims-over (on any theory whatever) by any such retailer, supplier or distributor to recover in whole or in part any liability (whether direct or indirect, or whether by way of settle-

ment (to the extent that such Released Party has given notice to the applicable Settling State within 30 days of the service of such claim-over (or within 30 days after the MSA Execution Date, whichever is later) and prior to entry into any settlement of such claim-over), judgment or otherwise) of such retailer, supplier or distributor to any Releasing Party arising out of any claim that would be a Released Claim but for the operation of the first sentence of this subsection (8), such Original Participating Manufacturer shall receive a continuing dollar-for-dollar offset for any amounts paid by such Original Participating Manufacturer (or by any person or entity that is a Released Party by virtue of its relation to such Original Participating Manufacturer) on any such liability against such Original Participating Manufacturer's share (determined as described in step E of clause "seventh" of subsection IX(j)) of the applicable Settling State's Allocated Payment, up to the full amount of such Original Participating Manufacturer's share of such Allocated Payment each year, until all such amounts paid on such liability have been offset. In the event that the offset under this subsection (8) with respect to a particular Settling State would in any given year exceed such Original Participating Manufacturer's share of such Settling State's Allocated Payment (as such share had been reduced by adjustment, if any, pursuant to the NPM Adjustment, and has been reduced by offsets, if any, pursuant to the offset for miscalculated or disputed payments, the Federal Tobacco Legislation Offset, the Litigating Releasing Parties Offset and the offset for claims-over under subsection XII(a)(4)(B)): (i) the offset to which such Original Participating Manufacturer is entitled under this subsection in such year shall be the full amount of such Original Participating Manufacturer's share of such Allocated Payment; and (ii) all amounts not offset by reason of clause (i) shall carry forward and be offset in the following year(s) until all such amounts have been offset.

(C) Each Settling State further agrees that, subject to the provisions of subsection IX(i)(3), each Subsequent Participating Manufacturer shall be entitled to the offset described in subsection (B) above to the extent that it (or any person or entity that is a Released Party by virtue of its relationship with such Subsequent Participating Manufacturer) has paid on liability that would give rise to an offset under such subsection if paid by an Original Participating Manufacturer.

(9) Notwithstanding any provision of law, statutory or otherwise, which provides that a general release does not extend to claims which the creditor does not know or suspect to exist in its favor at the time of executing the release, which if known by it must have materially affected its settlement with the debtor, the releases set forth in this section XII release all Released Claims against the Released Parties, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, that the Releasing Parties may have against the Released Parties, and the Releasing Parties understand and acknowledge the significance and consequences of waiver of any such provision and hereby assume full responsibility for any injuries, damages or losses that the Releasing Parties may incur.

(b) *Released Claims Against Released Parties.* If a Releasing Party (or any person or entity enumerated in subsection II(pp), without regard to the power of the Attorney General to release claims of such person or entity) nonetheless attempts to maintain a Released Claim against a Released Party, such Released Party shall give written notice of such potential claim to the Attorney General of the applicable Settling State within 30 days of receiving notice of such potential claim (or within 30 days after the MSA Execution Date, whichever is later) (unless such potential claim is being maintained by such Settling State). The Released Party may offer the release and covenant as a complete defense. If it is determined at any point in such action that the release of such claim is unenforceable or invalid for any reason (including, but not limited to, lack of authority to release such claim), the following provisions shall apply:

(1) The Released Party shall take all ordinary and reasonable measures to defend the action fully. The Released Party may settle or enter into a stipulated judgment with respect to the action at any time in its sole discretion, but in such event the offset described in subsection (b)(2) or (b)(3) below shall apply only if the Released Party obtains the relevant Attorney General's consent to such settlement or stipulated judgment, which consent shall not be unreasonably withheld. The Released Party shall not be entitled to the offset described in subsection (b)(2) or (b)(3) below if such Released Party failed to take ordinary and reasonable measures to defend the action fully.

(2) The following provisions shall apply where the Released Party is an Original Participating Manufacturer (or any person or entity that is a Released Party by virtue of its relationship with an Original Participating Manufacturer):

(A) In the event of a settlement or stipulated judgment, the settlement or stipulated amount shall give rise to a continuing offset as such amount is actually paid against the full amount of such Original Participating Manufacturer's share (determined as described in step E of clause "seventh" of subsection IX(j)) of the applicable Settling State's Allocated Payment until such time as the settlement or stipulated amount is fully credited on a dollar-for-dollar basis.

(B) Judgments (other than a default judgment) against a Released Party in such an action shall, upon payment of such judgment, give rise to an immediate and continuing offset against the full amount of such Original Participating Manufacturer's share (determined as described in subsection (A)) of the applicable Settling State's Allocated Payment, until such time as the judgment is fully credited on a dollar-for-dollar basis.

(C) Each Settling State reserves the right to intervene in such an action (unless such action was brought by the Settling State) to the extent authorized by applicable law in order to protect the Settling State's interest under this Agreement. Each Participating Manufacturer agrees not to oppose any such intervention.

(D) In the event that the offset under this subsection (b)(2) with respect to a particular Settling State would in any given year exceed such Original Participating Manufacturer's share of such Settling State's Allocated Payment (as such share had been reduced by adjustment, if any, pursuant to the NPM Adjustment, and has been reduced by offsets, if any, pursuant to the Federal Tobacco Legislation Offset and the offset for miscalculated or disputed payments): (i) the offset to which such Original Participating Manufacturer is entitled under this subsection (2) in such year shall be the full amount of such Original Participating Manufacturer's share of such Allocated Payment; and (ii) all amounts not offset by reason of clause (i) shall carry forward and be offset in the following year(s) until all such amounts have been offset.

(3) The following provisions shall apply where the Released Party is a Subsequent Participating Manufact-

urer (or any person or entity that is a Released Party by virtue of its relationship with a Subsequent Participating Manufacturer): Subject to the provisions of subsection IX(i)(3), each Subsequent Participating Manufacturer shall be entitled to the offset as described in subsections (2)(A)—(C) above against payments it otherwise would owe under section IX(i) to the extent that it (or any person or entity that is a Released Party by virtue of its relationship with such Subsequent Participating Manufacturer) has paid on a settlement, stipulated judgment or judgment that would give rise to an offset under such subsections if paid by an Original Participating Manufacturer.

XIII. CONSENT DECREES AND DISMISSAL OF CLAIMS

(a) Within 10 days after the MSA Execution Date (or, as to any Settling State identified in the Additional States provision of Exhibit D, concurrently with the filing of its lawsuit), each Settling State and each Participating Manufacturer that is a party in any of the lawsuits identified in Exhibit D shall jointly move for a stay of all proceedings in such Settling State's lawsuit with respect to the Participating Manufacturers and all other Released Parties (except any proceeding seeking public disclosure of documents pursuant to subsection IV(b)). Such stay of a Settling State's lawsuit shall be dissolved upon the earlier of the occurrence of State-Specific Finality or termination of this Agreement with respect to such Settling State pursuant to subsection XVIII(u)(1).

(b) Not later than December 11, 1998 (or, as to any Settling State identified in the Additional States provision of Exhibit D, concurrently with the filing of its lawsuit):

(1) each Settling State that is a party to a lawsuit identified in Exhibit D and each Participating Manufacturer will:

(A) tender this Agreement to the Court in such Settling State for its approval; and

(B) tender to the Court in such Settling State for entry a consent decree conforming to the model consent decree attached hereto as Exhibit L (revisions or changes to such model consent decree shall be limited to the extent required by state procedural requirements to reflect accurately the factual setting of the case in question, but shall not include any substantive revision to the duties or obligations of any Settling State or Participating Manufacturer, except by agreement of all Original Participating Manufacturers); and

(2) each Settling State shall seek entry of an order of dismissal of claims dismissing with prejudice all claims against the Participating Manufacturers and any other Released Party in such Settling State's action identified in Exhibit D. Provided, however, that the Settling State is not required to seek entry of such an order in such Settling State's action against such a Released Party (other than a Participating Manufacturer) unless and until such Released Party has released the Releasing Parties (and delivered to the Attorney General of such Settling State a copy of such release) (which release shall be effective upon the occurrence of State-Specific Finality in such Settling State, and shall recite that in the event this Agreement is terminated with respect to such Settling State pursuant to subsection XVIII(u)(1) the Released Party agrees that the order of dismissal shall be null and void and of no effect) from any and all Claims of such Released Party relating to the prosecution of such action as provided in subsection XII(a)(2).

XIV. PARTICIPATING MANUFACTURERS" DISMISSAL OF RELATED LAWSUITS

(a) Upon State-Specific Finality in a Settling State, each Participating Manufacturer will dismiss without prejudice (and without costs and fees) the lawsuit(s) listed in Exhibit M pending in such Settling State in which the Participating Manufacturer is a plaintiff. Within 10 days after the MSA Execution Date, each Participating Manufacturer and each Settling State that is a party in any of the lawsuits listed in Exhibit M shall jointly move for a stay of all proceedings in such lawsuit. Such stay of a lawsuit against a Settling State shall be dissolved upon the earlier of the occurrence of State-Specific Finality in such Settling State or termination of this Agreement with respect to such Settling State pursuant to subsection XVIII(u)(1).

(b) Upon State-Specific Finality in a Settling State, each Participating Manufacturer will release and discharge any and all monetary Claims against such Settling State and any of such Settling State's officers, employees, agents, administrators, representatives, officials acting in their official capacity, agencies, departments, commissions, divisions and counsel relating to or in connection with the lawsuit(s) commenced by the Attorney General of such Settling State identified in Exhibit D.

(c) Upon State-Specific Finality in a Settling State, each Participating Manufacturer will release and discharge any and all monetary Claims against all subdivisions (political or otherwise, including, but not limited to, municipalities, counties, parishes, villages, unincorporated districts and hospital districts) of such Settling State, and any of their officers, employees, agents, administrators, representatives, officials acting in their official capacity, agencies, departments, commissions, divisions and counsel arising out of Claims that have been waived and released with continuing full force and effect pursuant to section XII of this Agreement.

XV. VOLUNTARY ACT OF THE PARTIES

The Settling States and the Participating Manufacturers acknowledge and agree that this Agreement is voluntarily entered into by each Settling State and each Participating Manufacturer as the result of arm's-length negotiations, and each Settling State and each Participating Manufacturer was represented by counsel in deciding to enter into this Agreement. Each Participating Manufacturer further acknowledges that it understands that certain provisions of this Agreement may require it to act or refrain from acting in a manner that could otherwise give rise to state or federal constitutional challenges and that, by voluntarily consenting to this Agreement, it (and the Tobacco-Related Organizations (or any trade associations formed or controlled by any Participating Manufacturer)) waives for purposes of performance of this Agreement any and all claims that the provisions of this Agreement violate the state or federal constitutions. Provided, however, that nothing in the foregoing shall constitute a waiver as to the entry of any court order (or any interpretation thereof) that would operate to limit the exercise of any constitutional right except to the extent of the restrictions, limitations or obligations expressly agreed to in this Agreement or the Consent Decree.

XVI. CONSTRUCTION

(a) No Settling State or Participating Manufacturer shall be considered the drafter of this Agreement or any Consent Decree, or any provision of either, for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

(b) Nothing in this Agreement shall be construed as approval by the Settling States of any Participating Manufacturer's business organizations, operations, acts or practices, and no Participating Manufacturer may make any representation to the contrary.

XVII. RECOVERY OF COSTS AND ATTORNEYS' FEES

(a) The Original Participating Manufacturers agree that, with respect to any Settling State in which the Court has approved this Agreement and the Consent Decree, they shall severally reimburse the following "Governmental Entities": (1) the office of the Attorney General of such Settling State; (2) the office of the governmental prosecuting authority for any political subdivision of such Settling State with a lawsuit pending against any Participating Manufacturer as of July 1, 1998 (as identified in Exhibit N) that has released such Settling State and such Participating Manufacturer(s) from any and all Released Claims (a "Litigating Political Subdivision"); and (3) other appropriate agencies of such Settling State and such Litigating Political Subdivision, for reasonable costs and expenses incurred in connection with the litigation or resolution of claims asserted by or against the Participating Manufacturers in the actions set forth in Exhibits D, M and N; provided that such costs and expenses are of the same nature as costs and expenses for which the Original Participating Manufacturers would reimburse their own counsel or agents (but not including costs and expenses relating to lobbying activities).

(b) The Original Participating Manufacturers further agree severally to pay the Governmental Entities in any Settling State in which State-Specific Finality has occurred an amount sufficient to compensate such Governmental Entities for time reasonably expended by attorneys and paralegals employed in such offices in connection with the litigation or resolution of claims asserted against or by the Participating Manufacturers in the actions identified in Exhibits D, M and N (but not including time relating to lobbying activities), such amount to be calculated based upon hourly rates equal to the market rate in such Settling State for private attorneys and paralegals of equivalent experience and seniority.

(c) Such Governmental Entities seeking payment pursuant to subsection (a) and/or (b) shall provide the Original Participating Manufacturers with an appropriately documented statement of all costs, expenses and attorney and paralegal time for which payment is sought, and, solely with respect to payments sought pursuant to subsection (b), shall do so no earlier than the date on which State-Specific Finality occurs in such Settling State. All amounts to be paid pursuant to subsections (a) and (b) shall be subject to reasonable verification if requested by any Original Participating Manufacturer; provided, however, that nothing contained in this subsection (c) shall constitute, cause, or require the performance of any act that would constitute any waiver (in whole or in part) of any attorney-client privilege, work product protection or common interest/joint prosecution privilege. All such amounts to be paid pursuant to subsections (a) and (b) shall be subject to an aggregate cap of $150 million for all Settling States, shall be paid promptly following submission of the appropriate documentation (and the completion of any verification process), shall be paid separately and apart from any other amounts due pursuant to this Agreement, and shall be paid severally by each Original Participating Manufacturer according to its Relative Market Share. All amounts to be paid pursuant to subsection (b) shall be paid to such Governmental Entities in the order in which State-Specific Finality has occurred in such Settling States (subject to the $150 million aggregate cap).

(d) The Original Participating Manufacturers agree that, upon the occurrence of State-Specific Finality in a Settling State, they will severally pay reasonable attorneys' fees to the private outside counsel, if any, retained by such Settling State (and each Litigating Political Subdivision, if any, within such Settling State) in connection with the respective actions identified in Exhibits D, M and N and who are designated in Exhibit S for each Settling State by the relevant Attorney General (and for each Litigating Political Subdivision, as later certified in writing to the Original Participating Manufacturers by the relevant governmental prosecuting authority of each Litigating Political Subdivision) as having been retained by and having represented such Settling State (or such Litigating Political Subdivision), in accordance with the terms described in the Model Fee Payment Agreement attached as Exhibit O.

XVIII. MISCELLANEOUS

(a) *Effect of Current or Future Law.* If any current or future law includes obligations or prohibitions applying to Tobacco Product Manufacturers related to any of the provisions of this Agreement, each Participating Manufacturer shall comply with this Agreement unless compliance with this Agreement would violate such law.

(b) *Limited Most-Favored Nation Provision.*

(1) If any Participating Manufacturer enters into any future settlement agreement of other litigation comparable to any of the actions identified in Exhibit D brought by a non-foreign governmental plaintiff other than the federal government ("Future Settlement Agreement"):

(A) before October 1, 2000, on overall terms more favorable to such governmental plaintiff than the overall terms of this Agreement (after due consideration of relevant differences in population or other appropriate factors), then, unless a majority of the Settling States determines that the overall terms of the Future Settlement Agreement are not more favorable than the overall terms of this Agreement, the overall terms of this Agreement will be revised so that the Settling States will obtain treatment with respect to such Participating Manufacturer at least as relatively favorable as the overall terms provided to any such governmental plaintiff; provided, however, that as to economic terms this Agreement shall not be revised based on any such Future Settlement Agreement if such Future Settlement Agreement is entered into after: (i) the impaneling of the jury (or, in the event of a non-jury trial, the commencement of trial) in such litigation or any severed or bifurcated portion thereof; or (ii) any court order or judicial determination relating to such litigation that (x) grants judgment (in whole or in part) against such Participating Manufacturer; or (y) grants injunctive or other relief that affects the assets or on-going business activities of such Participating Manufacturer in a manner other than as expressly provided for in this Agreement; or

(B) on or after October 1, 2000, on non-economic terms more favorable to such governmental plaintiff than the non-economic terms of this Agreement, and such Future Settlement Agreement includes terms that provide for the implementation of non-economic tobacco-related public health measures different from those contained in this Agreement, then this Agreement shall be revised with respect to such Participating Manufacturer to include

terms comparable to such non-economic terms, unless a majority of the Settling States elects against such revision.

(2) If any Settling State resolves by settlement Claims against any Non-Participating Manufacturer after the MSA Execution Date comparable to any Released Claim, and such resolution includes overall terms that are more favorable to such Non-Participating Manufacturer than the terms of this Agreement (including, without limitation, any terms that relate to the marketing or distribution of Tobacco Products and any term that provides for a lower settlement cost on a per pack sold basis), then the overall terms of this Agreement will be revised so that the Original Participating Manufacturers will obtain, with respect to that Settling State, overall terms at least as relatively favorable (taking into account, among other things, all payments previously made by the Original Participating Manufacturers and the timing of any payments) as those obtained by such Non-Participating Manufacturer pursuant to such resolution of Claims. The foregoing shall include but not be limited: (a) to the treatment by any Settling State of a Future Affiliate, as that term is defined in agreements between any of the Settling States and Brooke Group Ltd., Liggett & Myers Inc. and/or Liggett Group, Inc. ("Liggett"), whether or not such Future Affiliate is merged with, or its operations combined with, Liggett or any Affiliate thereof; and (b) to any application of the terms of any such agreement (including any terms subsequently negotiated pursuant to any such agreement) to a brand of Cigarettes (or tobacco-related assets) as a result of the purchase by or sale to Liggett of such brand or assets or as a result of any combination of ownership among Liggett and any entity that manufactures Tobacco Products. Provided, however, that revision of this Agreement pursuant to this subsection (2) shall not be required by virtue of the subsequent entry into this Agreement by a Tobacco Product Manufacturer that has not become a Participating Manufacturer as of the MSA Execution Date. Notwithstanding the provisions of subsection XVIII(j), the provisions of this subsection XVIII(b)(2) may be waived by (and only by) unanimous agreement of the Original Participating Manufacturers.

(3) The parties agree that if any term of this Agreement is revised pursuant to subsection (b)(l) or (b)(2) above and the substance of such term before it was revised was also a term of the Consent Decree, each affected Settling State and each affected Participating Manufacturer shall jointly move the Court to amend the Consent Decree to conform the terms of the Consent Decree to the revised terms of the Agreement.

(4) If at any time any Settling State agrees to relieve, in any respect, any Participating Manufacturer's obligation to make the payments as provided in this Agreement, then, with respect to that Settling State, the terms of this Agreement shall be revised so that the other Participating Manufacturers receive terms as relatively favorable.

(c) *Transfer of Tobacco Brands.* No Original Participating Manufacturer may sell or otherwise transfer or permit the sale or transfer of any of its Cigarette brands, Brand Names, Cigarette product formulas or Cigarette businesses (other than a sale or transfer of Cigarette brands or Brand Names to be sold, product formulas to be used, or Cigarette businesses to be conducted, by the acquiror or transferee exclusively outside of the States) to any person or entity unless such person or entity is an Original Participating Manufacturer or prior to the sale or acquisition agrees to assume the obligations of an Original Participating Manufacturer with respect to such Cigarette brands, Brand Names, Cigarette product formulas or businesses. No Participating Manufacturer may sell or otherwise transfer any of its Cigarette brands, Brand Names, Cigarette product formulas or Cigarette businesses (other than a sale or transfer of Cigarette brands or Brand Names to be sold, Cigarette product formulas to be used, or businesses to be conducted, by the acquiror or transferee exclusively outside of the States) to any person or entity unless such person or entity is or becomes prior to the sale or acquisition a Participating Manufacturer. In the event of any such sale or transfer of a Cigarette brand, Brand Name, Cigarette product formula or Cigarette business by a Participating Manufacturer to a person or entity that within 180 days prior to such sale or transfer was a Non-Participating Manufacturer, the Participating Manufacturer shall certify to the Settling States that it has determined that such person or entity has the capability to perform the obligations under this Agreement. Such certification shall not survive beyond one year following the date of any such transfer. Each Original Participating Manufacturer certifies and represents that, except as provided in Exhibit R, it (or a wholly owned Affiliate) exclusively owns and controls in the States the Brand Names of those Cigarettes that it currently manufactures for sale (or sells) in the States and that it has the capacity to enter into an effective agreement concerning the sale or transfer of such Brand Names pursuant to this subsection XVIII(c). Nothing in this Agreement is intended to create any right for a State to obtain any Cigarette product formula that it would not otherwise have under applicable law.

(d) *Payments in Settlement.* All payments to be made by the Participating Manufacturers pursuant to this Agreement are in settlement of all of the Settling States' antitrust, consumer protection, common law negligence, statutory, common law and equitable claims for monetary, restitutionary, equitable and injunctive relief alleged by the Settling States with respect to the year of payment or earlier years, except that no part of any payment under this Agreement is made in settlement of an actual or potential liability for a fine, penalty (civil or criminal) or enhanced damages or is the cost of a tangible or intangible asset or other future benefit.

(e) *No Determination or Admission.* This Agreement is not intended to be and shall not in any event be construed or deemed to be, or represented or caused to be represented as, an admission or concession or evidence of (1) any liability or any wrongdoing whatsoever on the part of any Released Party or that any Released Party has engaged in any of the activities barred by this Agreement; or (2) personal jurisdiction over any person or entity other than the Participating Manufacturers. Each Participating Manufacturer specifically disclaims and denies any liability or wrongdoing whatsoever with respect to the claims and allegations asserted against it by the Attorneys General of the Settling States and the Litigating Political Subdivisions. Each Participating Manufacturer has entered into this Agreement solely to avoid the further expense, inconvenience, burden and risk of litigation.

(f) *Non-Admissibility.* The settlement negotiations resulting in this Agreement have been undertaken by the Settling States and the Participating Manufacturers in good faith and for settlement purposes only, and no evidence of negotiations or discussions underlying this Agreement shall be offered or received in evidence in any action or proceeding for any purpose. Neither this Agreement nor any public discussions, public statements or

public comments with respect to this Agreement by any Settling State or Participating Manufacturer or its agents shall be offered or received in evidence in any action or proceeding for any purpose other than in an action or proceeding arising under or relating to this Agreement.

(g) *Representations of Parties.* Each Settling State and each Participating Manufacturer hereby represents that this Agreement has been duly authorized and, upon execution, will constitute a valid and binding contractual obligation, enforceable in accordance with its terms, of each of them. The signatories hereto on behalf of their respective Settling States expressly represent and warrant that they have the authority to settle and release all Released Claims of their respective Settling States and any of their respective Settling States' past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions, and that such signatories are aware of no authority to the contrary. It is recognized that the Original Participating Manufacturers are relying on the foregoing representation and warranty in making the payments required by and in otherwise performing under this Agreement. The Original Participating Manufacturers shall have the right to terminate this Agreement pursuant to subsection XVIII(u) as to any Settling State as to which the foregoing representation and warranty is breached or not effectively given.

(h) *Obligations Several, Not Joint.* All obligations of the Participating Manufacturers pursuant to this Agreement (including, but not limited to, all payment obligations) are intended to be, and shall remain, several and not joint.

(i) *Headings.* The headings of the sections and subsections of this Agreement are not binding and are for reference only and do not limit, expand or otherwise affect the contents or meaning of this Agreement.

(j) *Amendment and Waiver.* This Agreement may be amended by a written instrument executed by all Participating Manufacturers affected by the amendment and by all Settling States affected by the amendment. The terms of any such amendment shall not be enforceable in any Settling State that is not a signatory to such amendment. The waiver of any rights conferred hereunder shall be effective only if made by written instrument executed by the waiving party or parties. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, nor shall such waiver be deemed to be or construed as a waiver by any other party.

(k) *Notices.* All notices or other communications to any party to this Agreement shall be in writing (including, but not limited to, facsimile, telex, telecopy or similar writing) and shall be given at the addresses specified in Exhibit P (as it may be amended to reflect any additional Participating Manufacturer that becomes a party to this Agreement after the MSA Execution Date). Any Settling State or Participating Manufacturer may change or add the name and address of the persons designated to receive notice on its behalf by notice given (effective upon the giving of such notice) as provided in this subsection.

(l) *Cooperation.* Each Settling State and each Participating Manufacturer agrees to use its best efforts and to cooperate with each other to cause this Agreement and the Consent Decrees to become effective, to obtain all necessary approvals, consents and authorizations, if any, and to execute all documents and to take such other action as may be appropriate in connection herewith. Consistent with the foregoing, each Settling State and each Participating Manufacturer agrees that it will not directly or indirectly assist or encourage any challenge to this Agreement or any Consent Decree by any other person, and will support the integrity and enforcement of the terms of this Agreement and the Consent Decrees. Each Settling State shall use its best efforts to cause State-Specific Finality to occur as to such Settling State.

(m) *Designees to Discuss Disputes.* Within 14 days after the MSA Execution Date, each Settling State's Attorney General and each Participating Manufacturer shall provide written notice of its designation of a senior representative to discuss with the other signatories to this Agreement any disputes and/or other issues that may arise with respect to this Agreement. Each Settling State's Attorney General shall provide such notice of the name, address and telephone number of the person it has so designated to each Participating Manufacturer and to NAAG. Each Participating Manufacturer shall provide such notice of the name, address and telephone number of the person it has so designated to each Settling State's Attorney General, to NAAG and to each other Participating Manufacturer.

(n) *Governing Law.* This Agreement (other than the Escrow Agreement) shall be governed by the laws of the relevant Settling State, without regard to the conflict of law rules of such Settling State. The Escrow Agreement shall be governed by the laws of the State in which the Escrow Court is located, without regard to the conflict of law rules of such State.

(o) *Severability.*

(1) Sections VI, VII, IX, X, XI, XII, XIII, XIV, XVI, XVIII(b), (c), (d), (e), (f), (g), (h), (o), (p), (r), (s), (u), (w), (z), (bb), (dd), and Exhibits A, B, and E hereof ("Nonseverable Provisions") are not severable, except to the extent that severance of section VI is permitted by Settling States pursuant to subsection VI(i) hereof. The remaining terms of this Agreement are severable, as set forth herein.

(2) If a court materially modifies, renders unenforceable, or finds to be unlawful any of the Nonseverable Provisions, the NAAG executive committee shall select a team of Attorneys General (the "Negotiating Team") to attempt to negotiate an equivalent or comparable substitute term or other appropriate credit or adjustment (a "Substitute Term") with the Original Participating Manufacturers. In the event that the court referred to in the preceding sentence is located in a Settling State, the Negotiating Team shall include the Attorney General of such Settling State. The Original Participating Manufacturers shall have no obligation to agree to any Substitute Term. If any Original Participating Manufacturer does not agree to a Substitute Term, this Agreement shall be terminated in all Settling States affected by the court's ruling. The Negotiating Team shall submit any proposed Substitute Term negotiated by the Negotiating Team and agreed to by all of the Original Participating Manufacturers to the Attorneys General of all of the affected Settling States for their approval. If any affected Settling State does not approve the proposed Substitute Term, this Agreement in such Settling State shall be terminated.

(3) If a court materially modifies, renders unenforceable, or finds to be unlawful any term of this Agreement other than a Nonseverable Provision:

(A) The remaining terms of this Agreement shall remain in full force and effect.

(B) Each Settling State whose rights or obligations under this Agreement are affected by the court's decision in question (the "Affected Settling State") and the Participating Manufacturers agree to negotiate in good faith a Substitute Term. Any agreement on a Substitute Term reached between the Participating Manufacturers and the Affected Settling State shall not modify or amend the terms of this Agreement with regard to any other Settling State.

(C) If the Affected Settling State and the Participating Manufacturers are unable to agree on a Substitute Term, then they will submit the issue to non-binding mediation. If mediation fails to produce agreement to a Substitute Term, then that term shall be severed and the remainder of this Agreement shall remain in full force and effect.

(4) If a court materially modifies, renders unenforceable, or finds to be unlawful any portion of any provision of this Agreement, the remaining portions of such provision shall be unenforceable with respect to the affected Settling State unless a Substitute Term is arrived at pursuant to subsection (o)(2) or (o)(3) hereof, whichever is applicable.

(p) *Intended Beneficiaries.* No portion of this Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Settling State or a Released Party. No Settling State may assign or otherwise convey any right to enforce any provision of this Agreement.

(q) *Counterparts.* This Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date affixed, although the original signature pages shall thereafter be appended.

(r) *Applicability.* The obligations and duties of each Participating Manufacturer set forth herein are applicable only to actions taken (or omitted to be taken) within the States. This subsection (r) shall not be construed as extending the territorial scope of any obligation or duty set forth herein whose scope is otherwise limited by the terms hereof.

(s) *Preservation of Privilege.* Nothing contained in this Agreement or any Consent Decree, and no act required to be performed pursuant to this Agreement or any Consent Decree, is intended to constitute, cause or effect any waiver (in whole or in part) of any attorney-client privilege, work product protection or common interest/joint defense privilege, and each Settling State and each Participating Manufacturer agrees that it shall not make or cause to be made in any forum any assertion to the contrary.

(t) *Non-Release.* Except as otherwise specifically provided in this Agreement, nothing in this Agreement shall limit, prejudice or otherwise interfere with the rights of any Settling State or any Participating Manufacturer to pursue any and all rights and remedies it may have against any Non-Participating Manufacturer or other non-Released Party.

(u) *Termination.*

(1) Unless otherwise agreed to by each of the Original Participating Manufacturers and the Settling State in question, in the event that (A) State-Specific Finality in a Settling State does not occur in such Settling State on or before December 31, 2001; or (B) this Agreement or the Consent Decree has been disapproved by the Court (or, in the event of an appeal from or review of a decision of the Court to approve this Agreement and the Consent Decree, by the court hearing such appeal or conducting such review), and the time to Appeal from such disapproval has expired, or, in the event of an Appeal from such disapproval, the Appeal has been dismissed or the disapproval has been affirmed by the court of last resort to which such Appeal has been taken and such dismissal or disapproval has become no longer subject to further Appeal (including, without limitation, review by the United States Supreme Court); or (C) this Agreement is terminated in a Settling State for whatever reason (including, but not limited to, pursuant to subsection XVIII(o) of this Agreement), then this Agreement and all of its terms (except for the non-admissibility provisions hereof, which shall continue in full force and effect) shall be canceled and terminated with respect to such Settling State, and it and all orders issued by the courts in such Settling State pursuant hereto shall become null and void and of no effect.

(2) If this Agreement is terminated with respect to a Settling State for whatever reason, then (A) the applicable statute of limitation or any similar time requirement shall be tolled from the date such Settling State signed this Agreement until the later of the time permitted by applicable law or for one year from the date of such termination, with the effect that the parties shall be in the same position with respect to the statute of limitation as they were at the time such Settling State filed its action, and (B) the parties shall jointly move the Court for an order reinstating the actions and claims dismissed pursuant to sections XIII and XIV hereof, with the effect that the parties shall be in the same position with respect to those actions and claims as they were at the time the action or claim was stayed or dismissed.

(v) *Freedom of Information Requests.* Upon the occurrence of State-Specific Finality in a Settling State, each Participating Manufacturer will withdraw in writing any and all requests for information, administrative applications, and proceedings brought or caused to be brought by such Participating Manufacturer pursuant to such Settling State's freedom of information law relating to the subject matter of the lawsuits identified in Exhibit D.

(w) *Bankruptcy.* The following provisions shall apply if a Participating Manufacturer both enters Bankruptcy and at any time thereafter is not timely performing its financial obligations as required under this Agreement:

(1) In the event that both a number of Settling States equal to at least 75% of the total number of Settling States and Settling States having aggregate Allocable Shares equal to at least 75% of the total aggregate Allocable Shares assigned to all Settling States deem (by written notice to the Participating Manufacturers other than the bankrupt Participating Manufacturer) that the financial obligations of this Agreement have been terminated and rendered null and void as to such bankrupt Participating Manufacturer (except as provided in subsection (A) below) due to a material breach by such Participating Manufacturer, whereupon, with respect to all Settling States:

(A) all agreements, all concessions, all reductions of Releasing Parties' Claims, and all releases and covenants not to sue, contained in this Agreement shall be null and void as to such Participating Manufacturer. Provided, however, that (i) all reductions of Releasing Parties' Claims, and all releases and covenants not to sue, contained in this Agreement shall remain in full force and effect as to all persons or entities (other than the bankrupt Participating Manufacturer itself or any person or entity that, as a result of the Bankruptcy, obtains domestic tobacco assets of such Participating Manufact-

urer (unless such person or entity is itself a Participating Manufacturer)) who (but for the first sentence of this subsection (A)) would otherwise be Released Parties by virtue of their relationship with the bankrupt Participating Manufacturer; and (ii) in the event a Settling State asserts any Released Claim against a bankrupt Participating Manufacturer after the termination of this Agreement with respect to such Participating Manufacturer as described in this subsection (1) and receives a judgment, settlement or distribution arising from such Released Claim, then the amount of any payments such Settling State has previously received from such Participating Manufacturer under this Agreement shall be applied against the amount of any such judgment, settlement or distribution (provided that in no event shall such Settling State be required to refund any payments previously received from such Participating Manufacturer pursuant to this Agreement);

(B) the Settling States shall have the right to assert any and all claims against such Participating Manufacturer in the Bankruptcy or otherwise without regard to any limits otherwise provided in this Agreement (subject to any and all defenses against such claims);

(C) the Settling States may exercise all rights provided under the federal Bankruptcy Code (or other applicable bankruptcy law) with respect to their Claims against such Participating Manufacturer, including the right to initiate and complete police and regulatory actions against such Participating Manufacturer pursuant to the exceptions to the automatic stay set forth in section 362(b) of the Bankruptcy Code (provided, however, that such Participating Manufacturer may contest whether the Settling State's action constitutes a police and regulatory action); and

(D) to the extent that any Settling State is pursuing a police and regulatory action against such Participating Manufacturer as described in subsection (1)(C), such Participating Manufacturer shall not request or support a request that the Bankruptcy court utilize the authority provided under section 105 of the Bankruptcy Code to impose a discretionary stay on the Settling State's action. The Participating Manufacturers further agree that they will not request, seek or support relief from the terms of this Agreement in any proceeding before any court of law (including the federal bankruptcy courts) or an administrative agency or through legislative action, including (without limitation) by way of joinder in or consent to or acquiescence in any such pleading or instrument filed by another.

(2) Whether or not the Settling States exercise the option set forth in subsection (1) (and whether or not such option, if exercised, is valid and enforceable):

(A) In the event that the bankrupt Participating Manufacturer is an Original Participating Manufacturer, such Participating Manufacturer shall continue to be treated as an Original Participating Manufacturer for all purposes under this Agreement except (i) such Participating Manufacturer shall be treated as a Non-Participating Manufacturer (and not as an Original Participating Manufacturer or Participating Manufacturer) for all purposes with respect to subsections IX(d)(1), IX(d)(2) and IX(d)(3) (including, but not limited to, that the Market Share of such Participating Manufacturer shall not be included in Base Aggregate Participating Manufacturer Market Share or Actual Aggregate Participating Manufacturer Market Share, and that such Participating Manufacturer's volume shall not be included for any purpose under subsection IX(d)(1)(D)); (ii) such Participating Manufacturer's Market Share shall not be included as that of a Participating Manufacturer for the purpose of determining whether the trigger percentage specified in subsection IX(e) has been achieved (provided that such Participating Manufacturer shall be treated as an Original Participating Manufacturer for all other purposes with respect to such subsection); (iii) for purposes of subsection (B)(iii) of Exhibit E, such Participating Manufacturer shall continue to be treated as an Original Participating Manufacturer, but its operating income shall be recalculated by the Independent Auditor to reflect what such income would have been had such Participating Manufacturer made the payments that would have been due under this Agreement but for the Bankruptcy; (iv) for purposes of subsection XVIII(c), such Participating Manufacturer shall not be treated as an Original Participating Manufacturer or as a Participating Manufacturer to the extent that after entry into Bankruptcy it becomes the acquiror or transferee of Cigarette brands, Brand Names, Cigarette product formulas or Cigarette businesses of any Participating Manufacturer (provided that such Participating Manufacturer shall continue to be treated as an Original Participating Manufacturer and Participating Manufacturer for all other purposes under such subsection); and (v) as to any action that by the express terms of this Agreement requires the unanimous agreement of all Original Participating Manufacturers.

(B) In the event that the bankrupt Participating Manufacturer is a Subsequent Participating Manufacturer, such Participating Manufacturer shall continue to be treated as a Subsequent Participating Manufacturer for all purposes under this Agreement except (i) such Participating Manufacturer shall be treated as a Non-Participating Manufacturer (and not as a Subsequent Participating Manufacturer or Participating Manufacturer) for all purposes with respect to subsections IX(d)(1), (d)(2) and (d)(4) (including, but not limited to, that the Market Share of such Participating Manufacturer shall not be included in Base Aggregate Participating Manufacturer Market Share or Actual Aggregate Participating Manufacturer Market Share, and that such Participating Manufacturer's volume shall not be included for any purpose under subsection IX(d)(1)(D)); (ii) such Participating Manufacturer's Market Share shall not be included as that of a Participating Manufacturer for the purpose of determining whether the trigger percentage specified in subsection IX(e) has been achieved (provided that such Participating Manufacturer shall be treated as a Subsequent Participating Manufacturer for all other purposes with respect to such subsection); and (iii) for purposes of subsection XVIII(c), such Participating Manufacturer shall not be treated as a Subsequent Participating Manufacturer or as a Participating Manufacturer to the extent that after entry into Bankruptcy it becomes the acquiror or transferee of Cigarette brands, Brand Names, Cigarette product formulas or Cigarette businesses of any Participating Manufacturer (provided that such Participating Manufacturer shall continue to be treated as a Subsequent Participating Manufacturer and Participating Manufacturer for all other purposes under such subsection).

(C) Revision of this Agreement pursuant to subsection XVIII(b)(2) shall not be required by virtue of any resolution on an involuntary basis in the Bankruptcy of Claims against the bankrupt Participating Manufacturer.

(x) *Notice of Material Transfers.* Each Participating Manufacturer shall provide notice to each Settling State at least 20 days before consummating a sale, transfer of title or other disposition, in one transaction or series of

related transactions, of assets having a fair market value equal to five percent or more (determined in accordance with United States generally accepted accounting principles) of the consolidated assets of such Participating Manufacturer.

(y) *Entire Agreement.* This Agreement (together with any agreements expressly contemplated hereby and any other contemporaneous written agreements) embodies the entire agreement and understanding between and among the Settling States and the Participating Manufacturers relating to the subject matter hereof and supersedes (l) all prior agreements and understandings relating to such subject matter, whether written or oral, and (2) all purportedly contemporaneous oral agreements and understandings relating to such subject matter.

(z) *Business Days.* Any obligation hereunder that, under the terms of this Agreement, is to be performed on a day that is not a Business Day shall be performed on the first Business Day thereafter.

(aa) *Subsequent Signatories.* With respect to a Tobacco Product Manufacturer that signs this Agreement after the MSA Execution Date, the timing of obligations under this Agreement (other than payment obligations, which shall be governed by subsection II(jj)) shall be negotiated to provide for the institution of such obligations on a schedule not more favorable to such subsequent signatory than that applicable to the Original Participating Manufacturers.

(bb) *Decimal Places.* Any figure or percentage referred to in this Agreement shall be carried to seven decimal places.

(cc) *Regulatory Authority.* Nothing in section III of this Agreement is intended to affect the legislative or regulatory authority of any local or State government.

(dd) *Successors.* In the event that a Participating Manufacturer ceases selling a brand of Tobacco Products in the States that such Participating Manufacturer owned in the States prior to July 1, 1998, and an Affiliate of such Participating Manufacturer thereafter and after the MSA Execution Date intentionally sells such brand in the States, such Affiliate shall be considered to be the successor of such Participating Manufacturer with respect to such brand. Performance by any such successor of the obligations under this Agreement with respect to the sales of such brand shall be subject to court-ordered specific performance.

(ee) *Export Packaging.* Each Participating Manufacturer shall place a visible indication on each pack of Cigarettes it manufactures for sale outside of the fifty United States and the District of Columbia that distinguishes such pack from packs of Cigarettes it manufactures for sale in the fifty United States and the District of Columbia.

(ff) *Actions Within Geographic Boundaries of Settling States.* To the extent that any provision of this Agreement expressly prohibits, restricts, or requires any action to be taken "within" any Settling State or the Settling States, the relevant prohibition, restriction, or requirement applies within the geographic boundaries of the applicable Settling State or Settling States, including, but not limited to, Indian country or Indian trust land within such geographic boundaries.

(gg) *Notice to Affiliates.* Each Participating Manufacturer shall give notice of this Agreement to each of its Affiliates.

IN WITNESS WHEREOF, each Settling State and each Participating Manufacturer, through their fully authorized representatives, have agreed to this Agreement.

STATE OF ALABAMA

By: _____
Bill Pryor
Attorney General

Date: _____

STATE OF ALASKA

By: _____
Bruce M. Botelho
Attorney General

Date: _____

AMERICAN SAMOA

By: _____
Tauese P. Sunia
Governor

Date: _____

By: _____
Toetagata Albert Mailo
Attorney General

Date: _____

STATE OF ARIZONA

By: _____
Grant Woods
Attorney General

Date: _____

By: _____
John H. Kelley
Director
Arizona Health Care Cost
Containment System

Date: _____

STATE OF ARKANSAS

By: _____
Winston Bryant
Attorney General

Date: _____

STATE OF CALIFORNIA

By: _____
Daniel E. Lungren
Attorney General

Date: _____

By: _____
Kimberly Belshe
Director
California Department of Health Services

Date: _____

STATE OF COLORADO

By: _____
Gale A. Norton
Attorney General

Date: _____

STATE OF CONNECTICUT

By: _____
Richard Blumenthal
Attorney General

Date: _____

STATE OF DELAWARE

By: _____
M. Jane Brady
Attorney General

Date: _____

DISTRICT OF COLUMBIA

By: _____
John M. Ferren
Corporation Counsel

Date: _____

By: _____
Marion Barry, Jr.
Mayor

Date: _____

STATE OF GEORGIA

By: _____
Zell Miller
Governor

Date: _____

By: _____
Thurbert E. Baker
Attorney General

Date: _____

GUAM

By: _____
Carl T.C. Gutierrez
Governor

Date: _____

By: _____
Robert H. Kono
Acting Attorney General

Date: _____

STATE OF HAWAII

By: _____
Margery S. Bronster
Attorney General

Date: _____

STATE OF IDAHO

By: _____
Alan G. Lance
Attorney General

Date: _____

STATE OF ILLINOIS

By: _____
Jim Ryan
Attorney General

Date: _____

STATE OF INDIANA

By: _____
Frank L. O'Bannon
Governor

Date: _____

By: _____
Jeffrey A. Modisett
Attorney General

Date: _____

STATE OF IOWA

By: _____
Tom Miller
Attorney General

Date: _____

STATE OF KANSAS

By: _____
Carla J. Stovall
Attorney General

Date: _____

COMMONWEALTH OF KENTUCKY

By: _____
Albert Benjamin "Ben" Chandler III
Attorney General

Date: _____

STATE OF LOUISIANA

By: _____
Richard P. Ieyoub
Attorney General

Date: _____

STATE OF MAINE

By: _____
Andrew Ketterer
Attorney General

Date: _____

STATE OF MARYLAND

By: _____
J. Joseph Curran, Jr.
Attorney General

Date: _____

COMMONWEALTH OF MASSACUSETTS

By: _____
Scott Harshbarger
Attorney General

Date: _____

STATE OF MICHIGAN

By: _____
Frank J. Kelley
Attorney General

Date: _____

STATE OF MISSOURI

By: _____
Jeremiah W. (Jay) Nixon
Attorney General

Date: _____

STATE OF MONTANA

By: _____
Joseph P. Mazurek
Attorney General

Date: _____

STATE OF NEBRASKA

By: _____
Don Stenberg
Attorney General

Date: _____

STATE OF NEVADA

By: _____
Frankie Sue Del Papa
Attorney General

Date: _____

STATE OF NEW HAMPSHIRE

By: _____
Philip T. McLaughlin
Attorney General

Date: _____

STATE OF NEW JERSEY

By: _____
Peter Verniero
Attorney General

Date: _____

STATE OF NEW MEXICO

By: _____
Tom Udall
Attorney General

Date: _____

STATE OF NEW YORK

By: _____
Dennis C. Vacco
Attorney General

Date: _____

STATE OF NORTH CAROLINA

By: _____
Michael F. Easley
Attorney General

Date: _____

STATE OF NORTH DAKOTA

By: _____
Heidi Heitkamp
Attorney General

Date: _____

NORTHERN MARIANA ISLANDS

By: _____
Maya B. Kara
(Acting) Attorney General

Date: _____

STATE OF OHIO

By: _____
Betty D. Montgomery
Attorney General

Date: _____

STATE OF OKLAHOMA

By: _____
W.A. Drew Edmondson
Attorney General

Date: _____

STATE OF OREGON

By: _____
Hardy Myers
Attorney General

Date: _____

COMMONWEALTH OF PENNSYLVANIA

By: _____
Mike Fisher
Attorney General

Date: _____

COMMONWEALTH OF PUERTO RICO

By: _____
José A. Fuentes-Agostini
Attorney General

Date: _____

STATE OF RHODE ISLAND

By: _____
Jeffrey B. Pine
Attorney General

Date: _____

STATE OF SOUTH CAROLINA

By: _____
Charlie Condon
Attorney General

Date: _____

STATE OF SOUTH DAKOTA

By: _____
William J. Janklow
Governor

Date: _____

By: _____
Mark Barnett
Attorney General

Date: _____

STATE OF TENNESSEE

By: _____
John Knox Walkup
Attorney General

Date: _____

STATE OF UTAH

By: _____
Jan Graham
Attorney General

Date: _____

STATE OF VERMONT

By: _____
William H. Sorrell
Attorney General

Date: _____

COMMONWEALTH OF VIRGINIA

By: _____
Mark L. Earley
Attorney General

Date: _____

THE VIRGIN ISLANDS OF THE UNITED STATES

By: _____
Julio A. Brady
Attorney General

Date: _____

STATE OF WASHINGTON

By: _____
Christine O. Gregoire
Attorney General

Date: _____

STATE OF WEST VIRGINIA

By: _____
Darrell V. McGraw Jr.
Attorney General

Date: _____

STATE OF WISCONSIN

By: _____
Tommy G. Thompson
Governor

Date: _____

By: _____
James E. Doyle
Attorney General

Date: _____

STATE OF WYOMING

By: _____
Jim Geringer
Governor

Date: _____

By: _____
Gay Woodhouse
(Acting) Attorney General

Date: _____

PHILIP MORRIS INCORPORATED

By: _____
Martin J. Barrington
General Counsel

Date: _____

By: _____
Meyer G. Koplow
Counsel

Date: _____

R.J. REYNOLDS TOBACCO COMPANY

By: _____
Charles A. Blixt
Executive Vice President and General Counsel

Date: _____

By: _____
Arthur F. Golden
Counsel

Date: _____

BROWN & WILLIAMSON TOBACCO CORPORATION

By: _____
F. Anthony Burke
Vice President and General Counsel

Date: _____

By: _____
Stephen R. Patton
Counsel

Date: _____

LORILLARD TOBACCO COMPANY

By: _____
Ronald S. Milstein
General Counsel

Date: _____

By: _____
Herbert M. Wachtell
Counsel

Date: _____

LIGGETT GROUP INC.

By: _____
Bennett S. LeBow
Director

Date: _____

By: _____
Marc E. Kasowitz
Counsel

Date: _____

COMMONWEALTH BRANDS, INC.

By: _____
Brad Kelley
Chairman of the Board

Date: _____

By: _____
William Jay Hunter, Jr.
Counsel

Date: _____

EXHIBIT A

STATE ALLOCATION PERCENTAGES

State	*Percentage*
Alabama	1.6161308
Alaska	0.3414187
Arizona	1.4738845
Arkansas	0.8280661
California	12.7639554
Colorado	1.3708614
Connecticut	1.8565373
Delaware	0.3954695
D.C.	0.6071183
Florida	0.0000000
Georgia	2.4544575
Hawaii	0.6018650
Idaho	0.3632632
Illinois	4.6542472
Indiana	2.0398033
Iowa	0.8696670
Kansas	0.8336712
Kentucky	1.7611586
Louisiana	2.2553531
Maine	0.7693505
Maryland	2.2604570
Massachusetts	4.0389790
Michigan	4.3519476
Minnesota	0.0000000
Mississippi	0.0000000
Missouri	2.2746011
Montana	0.4247591
Nebraska	0.5949833
Nevada	0.6099351
New Hampshire	0.6659340
New Jersey	3.8669963
New Mexico	0.5963897
New York	12.7620310
North Carolina	2.3322850
North Dakota	0.3660138
Ohio	5.0375098
Oklahoma	1.0361370
Oregon	1.1476582
Pennsylvania	5.7468588
Rhode Island	0.7189054
South Carolina	1.1763519
South Dakota	0.3489458
Tennessee	2.4408945
Texas	0.0000000
Utah	0.4448869
Vermont	0.4111851
Virginia	2.0447451
Washington	2.0532582
West Virginia	0.8864604
Wisconsin	2.0720390
Wyoming	0.2483449
American Samoa	0.0152170
N. Mariana Isld.	0.0084376
Guam	0.0219371
U.S. Virgin Isld.	0.0173593
Puerto Rico	1.1212774
Total	100.0000000

EXHIBIT B

FORM OF ESCROW AGREEMENT

This Escrow Agreement is entered into as of _____, 1998 by the undersigned State officials (on behalf of their respective Settling States), the undersigned Participating Manufacturers and _____ as escrow agent (the "Escrow Agent").

WITNESSETH:

WHEREAS, the Settling States and the Participating Manufacturers have entered into a settlement agreement entitled the "Master Settlement Agreement" (the "Agreement"); and

WHEREAS, the Agreement requires the Settling States and the Participating Manufacturers to enter into this Escrow Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. *Appointment of Escrow Agent.*

The Settling States and the Participating Manufacturers hereby appoint _____ to serve as Escrow Agent under this Agreement on the terms and conditions set forth herein, and the Escrow Agent, by its execution hereof, hereby accepts such appointment and agrees to perform the duties and obligations of the Escrow Agent set forth herein. The Settling States and the Participating Manufacturers agree that the Escrow Agent appointed under the terms of this Escrow Agreement shall be the Escrow Agent as defined in, and for all purposes of, the Agreement.

SECTION 2. *Definitions.*

(a) Capitalized terms used in this Escrow Agreement and not otherwise defined herein shall have the meaning given to such terms in the Agreement.

(b) "Escrow Court" means the court of the State of New York to which the Agreement is presented for approval, or such other court as agreed to by the Original Participating Manufacturers and a majority of those Attorneys General who are both the Attorney General of a Settling State and a member of the NAAG executive committee at the time in question.

SECTION 3. *Escrow and Accounts.*

(a) All funds received by the Escrow Agent pursuant to the terms of the Agreement shall be held and disbursed in accordance with the terms of this Escrow Agreement. Such funds and any earnings thereon shall constitute the "Escrow" and shall be held by the Escrow Agent separate and apart from all other funds and accounts of the Escrow Agent, the Settling States and the Participating Manufacturers.

(b) The Escrow Agent shall allocate the Escrow among the following separate accounts (each an "Account" and collectively the "Accounts"):

Subsection VI(b) Account
Subsection VI(c) Account (FIRST)
Subsection VI(c) Account (SUBSEQUENT)
Subsection VIII(b) Account
Subsection VIII(c) Account
Subsection IX(b) Account (FIRST)
Subsection IX(b) Account (SUBSEQUENT)
Subsection IX(c)(1) Account
Subsection IX(c)(2) Account
Subsection IX(e) Account
Disputed Payments Account
State-Specific Accounts with respect to each Settling State in which State-Specific Finality Occurs.

(c) All amounts credited to an Account shall be retained in such Account until disbursed therefrom in accordance with the provisions of this Escrow Agreement pursuant to (i) written instructions from the Independent Auditor; or (ii) written instructions from all of the following: all of the Original Participating Manufacturers; all of the Subsequent Participating Manufacturers that contributed to such amounts in such Account; and all of the Settling States (collectively, the "Escrow Parties"). In the event of a conflict, instructions pursuant to clause (ii) shall govern over instructions pursuant to clause (i).

(d) On the first Business Day after the date any payment is due under the Agreement, the Escrow Agent shall deliver to each other Notice Party a written statement showing the amount of such payment (or indicating that no payment was made, if such is the case), the source of such payment, the Account or Accounts to which such payment has been credited, and the payment instructions received by the Escrow Agent from the Independent Auditor with respect to such payment.

(e) The Escrow Agent shall comply with all payment instructions received from the Independent Auditor unless before 11:00 a.m. (New York City time) on the scheduled date of payment it receives written instructions to the contrary from all of the Escrow Parties, in which event it shall comply with such instructions.

(f) On the first Business Day after disbursing any funds from an Account, the Escrow Agent shall deliver to each other Notice Party a written statement showing the amount disbursed, the date of such disbursement and the payee of the disbursed funds.

SECTION 4. *Failure of Escrow Agent to Receive Instructions.*

In the event that the Escrow Agent fails to receive any written instructions contemplated by this Escrow Agreement, the Escrow Agent shall be fully protected in refraining from taking any action required under any section of this Escrow Agreement other than Section 5 until such written instructions are received by the Escrow Agent.

SECTION 5. *Investment of Funds by Escrow Agent.*

The Escrow Agent shall invest and reinvest all amounts from time to time credited to the Accounts in either (i) direct obligations of, or obligations the principal and interest on which are unconditionally guaranteed by, the United States of America; (ii) repurchase agreements fully collateralized by securities described in clause (i) above; (iii) money market accounts maturing within 30 days of the acquisition thereof and issued by a bank or trust company organized under the laws of the United States of America or of any of the 50 States thereof (a "United States Bank") and having combined capital, surplus and undistributed profits in excess of $500,000,000; or (iv) demand deposits with any United States Bank having combined capital, surplus and undistributed profits in excess of $500,000,000. To the extent practicable, monies credited to any Account shall be invested in such a manner so as to be available for use at the times when monies are expected to be disbursed by the Escrow Agent and charged to such Account. Obligations purchased as an investment of monies credited to any Account shall be deemed at all times to be a part of such Account and the income or interest earned, profits realized or losses suffered with respect to such investments (including, without limitation, any penalty for any liquidation of an investment required to fund a disbursement to be charged to such Account), shall be credited or charged, as the case may be, to, such Account and shall be for the benefit of, or be borne by, the person or entity entitled to payment from such Account. In choosing among the investment options described in clauses (i) through (iv) above, the Escrow Agent shall comply with any instructions received from time to time from all of the Escrow Parties. In the absence of such instructions, the Escrow Agent shall invest such sums in accordance with clause (i) above. With respect to any amounts credited to a State-Specific Account, the Escrow Agent shall invest and reinvest all amounts credited to such Account in accordance with the law of the applicable Settling State to the extent such law is inconsistent with this Section 5.

SECTION 6. *Substitute Form W-9; Qualified Settlement Fund.*

Each signatory to this Escrow Agreement shall provide the Escrow Agent with a correct taxpayer identification number on a substitute Form W-9 or if it does not have such a number, a statement evidencing its status as an entity exempt from back-up withholding, within 30 days of the date hereof (and, if it supplies a Form W-9, indicate thereon that it is not subject to backup withholding). The escrow established pursuant to this Escrow Agreement is intended to be treated as a Qualified Settlement Fund for federal tax purposes pursuant to Treas. Reg. § 1.468B-l. The Escrow Agent shall comply with all applicable tax filing, payment and reporting requirements, including, without limitation, those imposed under Treas. Reg.

§ 1.468B, and if requested to do so shall join in the making of the relation-back election under such regulation.

SECTION 7. *Duties and Liabilities of Escrow Agent.*

The Escrow Agent shall have no duty or obligation hereunder other than to take such specific actions as are required of it from time to time under the provisions of this Escrow Agreement, and it shall incur no liability hereunder or in connection herewith for anything whatsoever other than any liability resulting from its own gross negligence or willful misconduct. The Escrow Agent shall not be bound in any way by any agreement or contract between the Participating Manufacturers and the Settling States (whether or not the Escrow Agent has knowledge thereof) other than this Escrow Agreement, and the only duties and responsibilities of the Escrow Agent shall be the duties and obligations specifically set forth in this Escrow Agreement.

SECTION 8. *Indemnification of Escrow Agent.*

The Participating Manufacturers shall indemnify, hold harmless and defend the Escrow Agent from and against any and all losses, claims, liabilities and reasonable expenses, including the reasonable fees of its counsel, which it may suffer or incur in connection with the performance of its duties and obligations under this Escrow Agreement, except for those losses, claims, liabilities and expenses resulting solely and directly from its own gross negligence or willful misconduct.

SECTION 9. *Resignation of Escrow Agent.*

The Escrow Agent may resign at any time by giving written notice thereof to the other parties hereto, but such resignation shall not become effective until a successor Escrow Agent, selected by the Original Participating Manufacturers and the Settling States, shall have been appointed and shall have accepted such appointment in writing. If an instrument of acceptance by a successor Escrow Agent shall not have been delivered to the resigning Escrow Agent within 90 days after the giving of such notice of resignation, the resigning Escrow Agent may, at the expense of the Participating Manufacturers (to be shared according to their pro rata Market Shares), petition the Escrow Court for the appointment of a successor Escrow Agent.

SECTION 10. *Escrow Agent Fees and Expenses.*

The Participating Manufacturers shall pay to the Escrow Agent its fees as set forth in Appendix A hereto as amended from time to time by agreement of the Original Participating Manufacturers and the Escrow Agent. The Participating Manufacturers shall pay to the Escrow Agent its reasonable fees and expenses, including all reasonable expenses, charges, counsel fees, and other disbursements incurred by it or by its attorneys, agents and employees in the performance of its duties and obligations under this Escrow Agreement. Such fees and expenses shall be shared by the Participating Manufacturers according to their pro rata Market Shares.

SECTION 11. *Notices.*

All notices, written instructions or other communications to any party or other person hereunder shall be given in the same manner as, shall be given to the same person as, and shall be effective at the same time as provided in subsection XVIII(k) of the Agreement.

SECTION 12. *Setoff; Reimbursement.*

The Escrow Agent acknowledges that it shall not be entitled to set off against any funds in, or payable from, any Account to satisfy any liability of any Participating Manufacturer. Each Participating Manufacturer that pays more than its pro rata Market Share of any payment that is made by the Participating Manufacturers to the Escrow Agent pursuant to Section 8, 9 or 10 hereof shall be entitled to reimbursement of such excess from the other Participating Manufacturers according to their pro rata Market Shares of such excess.

SECTION 13. *Intended Beneficiaries; Successors.*

No persons or entities other than the Settling States, the Participating Manufacturers and the Escrow Agent are intended beneficiaries of this Escrow Agreement, and only the Settling States, the Participating Manufacturers and the Escrow Agent shall be entitled to enforce the terms of this Escrow Agreement. Pursuant to the Agreement, the Settling States have designated NAAG and the Foundation as recipients of certain payments; for all purposes of this Escrow Agreement, the Settling States shall be the beneficiaries of such payments entitled to enforce payment thereof. The provisions of this Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto and, in the case of the Escrow Agent and Participating Manufacturers, their respective successors. Each reference herein to the Escrow Agent or to a Participating Manufacturer shall be construed as a reference to its successor, where applicable.

SECTION 14. *Governing Law.*

This Escrow Agreement shall be construed in accordance with and governed by the laws of the State in which the Escrow Court is located, without regard to the conflicts of law rules of such state.

SECTION 15. *Jurisdiction and Venue.*

The parties hereto irrevocably and unconditionally submit to the continuing exclusive jurisdiction of the Escrow Court for purposes of any suit, action or proceeding seeking to interpret or enforce any provision of, or based on any right arising out of, this Escrow Agreement, and the parties hereto agree not to commence any such suit, action or proceeding except in the Escrow Court. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in the Escrow Court and hereby further irrevocably waive and agree not to plead or claim in the Escrow Court that any such suit, action or proceeding has been brought in an inconvenient forum.

SECTION 16. *Amendments.*

This Escrow Agreement may be amended only by written instrument executed by all of the parties hereto that would be affected by the amendment. The waiver of any rights conferred hereunder shall be effective only if made in a written instrument executed by the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Escrow Agreement, nor shall such waiver be deemed to be or construed as a waiver by any other party.

SECTION 17. *Counterparts.*

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery by facsimile of a signed counterpart shall be deemed delivery for purposes of acknowledging acceptance hereof; however, an original executed Escrow Agreement must promptly thereafter be delivered to each party.

SECTION 18. *Captions.*

The captions herein are included for convenience of reference only and shall be ignored in the construction and interpretation hereof.

SECTION 19. *Conditions to Effectiveness.*

This Escrow Agreement shall become effective when each party hereto shall have signed a counterpart hereof. The parties hereto agree to use their best efforts to seek an order of the Escrow Court approving, and retaining continuing jurisdiction over, the Escrow Agreement as soon as possible, and agree that such order shall relate back to, and be deemed effective as of, the date this Escrow Agreement became effective.

SECTION 20. *Address for Payments.*

Whenever funds are under the terms of this Escrow Agreement required to be disbursed to a Settling State, a Participating Manufacturer, NAAG or the Foundation, the Escrow Agent shall disburse such funds by wire transfer to the account specified by such payee by written notice delivered to all Notice Parties in accordance with Section 11 hereof at least five Business Days prior to the date of payment. Whenever funds are under the terms of this Escrow Agreement required to be disbursed to any other person or entity, the Escrow Agent shall disburse such funds to such account as shall have been specified in writing by the Independent Auditor for such payment at least five Business Days prior to the date of payment.

SECTION 21. *Reporting.*

The Escrow Agent shall provide such information and reporting with respect to the escrow as the Independent Auditor may from time to time request.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the day and year first hereinabove written.

[signature blocks]

APPENDIX A

Schedule Of Fees And Expenses

EXHIBIT C

FORMULA FOR CALCULATING INFLATION ADJUSTMENTS

(1) Any amount that, in any given year, is to be adjusted for inflation pursuant to this Exhibit (the "Base Amount") shall be adjusted upward by adding to such Base Amount the Inflation Adjustment.

(2) The Inflation Adjustment shall be calculated by multiplying the Base Amount by the Inflation Adjustment Percentage applicable in that year.

(3) The Inflation Adjustment Percentage applicable to payments due in the year 2000 shall be equal to the greater of 3% or the CPI%. For example, if the Consumer Price Index for December 1999 (as released in January 2000) is 2% higher than the Consumer Price Index for December 1998 (as released in January 1999), then the CPI% with respect to a payment due in 2000 would be 2%. The Inflation Adjustment Percentage applicable in the year 2000 would thus be 3%.

(4) The Inflation Adjustment Percentage applicable to payments due in any year after 2000 shall be calculated by applying each year the greater of 3% or the CPI% on the Inflation Adjustment Percentage applicable to payments due in the prior year. Continuing the example in subsection (3) above, if the CPI% with respect to a payment due in 2001 is 6%, then the Inflation Adjustment Percentage applicable in 2001 would be 9.1800000% (an additional 6% applied on the 3% Inflation Adjustment Percentage applicable in 2000), and if the CPI% with respect to a payment due in 2002 is 4%, then the Inflation Adjustment Percentage applicable in 2002 would be 13.5472000% (an additional 4% applied on the 9.1800000% Inflation Adjustment Percentage applicable in 2001).

(5) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics of the U.S. Department of Labor (or other similar measures agreed to by the Settling States and the Participating Manufacturers).

(6) The "CPI%" means the actual total percent change in the Consumer Price Index during the calendar year immediately preceding the year in which the payment in question is due.

(7) *Additional Examples.*

(A) Calculating the Inflation Adjustment Percentages:

Payment Year	Hypothetical CPI%	*Percentage to be applied on the Inflation Adjustment Percentage Payment for the prior year (i.e., the* greater of 3% or the CPI%	*Inflation* Adjustment Percentage
2000	2.4%	3.0%	3.0000000%
2001	2.1%	3.0%	6.0900000%
2002	3.5%	3.5%	9.8031500%
2003	3.5%	3.5%	13.6462603%
2004	4.0%	4.0%	18.1921107%
2005	2.2%	3.0%	21.7378740%
2006	1.6%	3.0%	25.3900102%

(B) Applying the Inflation Adjustment:

Using the hypothetical Inflation Adjustment Percentages set forth in section (7)(A):

—the subsection IX(c)(1) base payment amount for 2002 of $6,500,000,000 as adjusted for inflation would equal $7,137,204,750;

—the subsection IX(c)(1) base payment amount for 2004 of $8,000,000,000 as adjusted for inflation would equal $9,455,368,856;

—the subsection IX(c)(1) base payment amount for 2006 of $8,000,000,000 as adjusted for inflation would equal $10,031,200,816.

EXHIBIT D

LIST OF LAWSUITS

1. *Alabama*
   Blaylock et al. v. American Tobacco Co. et al., Circuit Court, Montgomery County, No. CV-96-1508-PR
2. *Alaska*
   State of Alaska v. Philip Morris, Inc., et al., Superior Court, First Judicial District of Juneau, No. IJU-97915 CI (Alaska)
3. *Arizona*
   State of Arizona v. American Tobacco Co., Inc., et al., Superior Court, Maricopa County, No. CV-96-14769 (Ariz.)

4. *Arkansas*
State of Arkansas v. The American Tobacco Co., Inc., et al., Chancery Court, 6th Division, Pulaski County, No. IJ 97-2982 (Ark.)

5. *California*
People of the State of California et al. v. Philip Morris, Inc., et al., Superior Court, Sacramento County, No. 97-AS-30301

6. *Colorado*
State of Colorado et al., v. R.J. Reynolds Tobacco Co., et al., District Court, City and County of Denver, No. 97CV3432 (Colo.)

7. *Connecticut*
State of Connecticut v. Philip Morris, et al., Superior Court, Judicial District of Waterbury No. X02 CV96-0148414S (Conn.)

8. *Georgia*
State of Georgia et al. v. Philip Morris, Inc., et al., Superior Court, Fulton County, No. CA E-61692 (Ga.)

9. *Hawaii*
State of Hawaii v. Brown & Williamson Tobacco Corp., et al., Circuit Court, First Circuit, No. 97-0441-01 (Haw.)

10. *Idaho*
State of Idaho v. Philip Morris, Inc., et al., Fourth Judicial District, Ada County, No. CVOC 9703239D (Idaho)

11. *Illinois*
People of the State of Illinois v. Philip Morris et al., Circuit Court of Cook County, No. 96-L13146 (Ill.)

12. *Indiana*
State of Indiana v. Philip Morris, Inc., et al., Marion County Superior Court, No. 49D 07-9702-CT-000236 (Ind.)

13. *Iowa*
State of Iowa v. R.J. Reynolds Tobacco Company et al., Iowa District Court, Fifth Judicial District, Polk County, No. CL71048 (Iowa)

14. *Kansas*
State of Kansas v. R.J. Reynolds Tobacco Company, et al., District Court of Shawnee County, Division 2, No. 96-CV-919 (Kan.)

15. *Louisiana*
Ieyoub v. The American Tobacco Company, et al., 14th Judicial District Court, Calcasieu Parish, No. 96-1209 (La.)

16. *Maine*
State of Maine v. Philip Morris, Inc., et al., Superior Court, Kennebec County, No. CV 97-134 (Me.)

17. *Maryland*
Maryland v. Philip Morris Incorporated, et al., Baltimore City Circuit Court, No. 96-122017-CL211487 (Md.)

18. *Massachusetts*
Commonwealth of Massachusetts v. Philip Morris Inc., et al., Middlesex Superior Court, No. 95-7378 (Mass.)

19. *Michigan*
Kelley v. Philip Morris Incorporated, et al., Ingham County Circuit Court, 30th Judicial Circuit, No. 96-84281-CZ (Mich.)

20. *Missouri*
State of Missouri v. American Tobacco Co., Inc. et al., Circuit Court, City of St. Louis, No. 972-1465 (Mo.)

21. *Montana*
State of Montana v. Philip Morris, Inc., et al., First Judicial Court, Lewis and Clark County, No. CDV 9700306-14 (Mont.)

22. *Nebraska*
State of Nebraska v. R.J. Reynolds Tobacco Co., et al., District Court, Lancaster County, No. 573277 (Neb.)

23. *Nevada*
Nevada v. Philip Morris, Incorporated, et al., Second Judicial Court, Washoe County, No. CV97-03279 (Nev.)

24. *New Hampshire*
New Hampshire v. R.J. Reynolds, Tobacco Co., et al., New Hampshire Superior Court, Merrimack County, No. 97-E-165 (N.H.)

25. *New Jersey*
State of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior Court, Chancery Division, Middlesex County, No. C-254-96 (N.J.)

26. *New Mexico*
State of New Mexico, v. The American Tobacco Co., et al., First Judicial District Court, County of Santa Fe, No. SF-1235 c (N.M.)

27. *New York State*
State of New York et al. v. Philip Morris, Inc., et al., Supreme Court of the State of New York, County of New York, No. 400361/97 (N.Y.)

28. *Ohio*
State of Ohio v. Philip Morris, Inc., et al., Court of Common Pleas, Franklin County, No. 97CVH055114 (Ohio)

29. *Oklahoma*
State of Oklahoma, et al. v. R.J. Reynolds Tobacco Company, et al., District Court, Cleveland County, No. CJ-96-1499-L (Okla.)

30. *Oregon*
State of Oregon v. The American Tobacco Co., et al., Circuit Court, Multnomah County, No. 9706-04457 (Or.)

31. *Pennsylvania*
Commonwealth of Pennsylvania v. Philip Morris, Inc., et al., Court of Common Pleas, Philadelphia County, April Term 1997, No. 2443

32. *Puerto Rico*
Rossello, et al. v. Brown & Williamson Tobacco Corporation, et al., U.S. District Court, Puerto Rico, No. 97-1910JAF

33. *Rhode Island*
State of Rhode Island v. American Tobacco Co., et al., Rhode Island Superior Court, Providence, No. 97-3058 (R.I.)

34. *South Carolina*
State of South Carolina v. Brown & Williamson Tobacco Corporation, et al., Court of Common Pleas, Fifth Judicial Circuit, Richland County, No. 97-CP-40-1686 (S.C.)

35. *South Dakota*
State of South Dakota, et al. v. Philip Morris, Inc., et al., Circuit Court, Hughes County, Sixth Judicial Circuit, No. 98-65 (S.D.)

36. *Utah*
State of Utah v. R.J. Reynolds Tobacco Company, et al., U.S. District Court, Central Division, No. 96 CV 0829W (Utah)

37. *Vermont*
State of Vermont v. Philip Morris, Inc., et al., Chittenden Superior Court, Chittenden County, No. 744-97 (Vt.) and 5816-98 (Vt.)

38. *Washington*
State of Washington v. American Tobacco Co. Inc., et al., Superior Court of Washington, King County, No. 96-2-1505608SEA (Wash.)

39. *West Virginia*
McGraw, et al. v. The American Tobacco Company, et al., Kanawha County Circuit Court, No. 94-1707 (W. Va.)

40. *Wisconsin*
State of Wisconsin v. Philip Morris Inc., et al., Circuit Court, Branch 11, Dane County, No. 97-CV-328 (Wis.)

Additional States

For each Settling State not listed above, the lawsuit or other legal action filed by the Attorney General or Governor of such Settling State against Participating Manufacturers in the Court in such Settling State prior to 30 days after the MSA Execution Date asserting Released Claims.

EXHIBIT E

FORMULA FOR CALCULATING VOLUME ADJUSTMENTS

Any amount that by the terms of the Master Settlement Agreement is to be adjusted pursuant to this Exhibit E (the "Applicable Base Payment") shall be adjusted in the following manner:

(A) In the event the aggregate number of Cigarettes shipped in or to the fifty United States, the District of Columbia, and Puerto Rico by the Original Participating Manufacturers in the Applicable Year (as defined hereinbelow) (the "Actual Volume") is greater than 475,656,000,000 Cigarettes (the "Base Volume"), the Applicable Base Payment shall be multiplied by the ratio of the Actual Volume to the Base Volume.

(B) In the event the Actual Volume is less than the Base Volume,

i. The Applicable Base Payment shall be reduced by subtracting from it the amount equal to such Applicable Base Payment multiplied both by 0.98 and by the result of (i) 1(one) minus (ii) the ratio of the Actual Volume to the Base Volume.

ii. Solely for purposes of calculating volume adjustments to the payments required under subsection IX(c)(1), if a reduction of the Base Payment due under such subsection results from the application of subparagraph (B)(i) of this Exhibit E, but the Original Participating Manufacturers' aggregate operating income from sales of Cigarettes for the Applicable Year in the fifty United States, the District of Columbia, and Puerto Rico (the "Actual Operating Income") is greater than $7,195,340,000 (the "Base Operating Income") (such Base Operating Income being adjusted upward in accordance with the formula for inflation adjustments set forth in Exhibit C hereto beginning December 31, 1996 to be applied for each year after 1996) then the amount by which such Base Payment is reduced by the application of subsection (B)(i) shall be reduced (but not below zero) by the amount calculated by multiplying (i) a percentage equal to the aggregate Allocable Shares of the Settling States in which State-Specific Finality has occurred by (ii) 25% of such increase in such operating income. For purposes of this Exhibit E, "operating income from sales of Cigarettes" shall mean operating income from sales of Cigarettes in the fifty United States, the District of Columbia, and Puerto Rico: (a) before goodwill amortization, trademark amortization, restructuring charges and restructuring related charges, minority interest, net interest expense, non-operating income and expense, general corporate expenses and income taxes; and (b) excluding extraordinary items, cumulative effect of changes in method of accounting and discontinued operations—all as such income is reported to the United States Securities and Exchange Commission ("SEC") for the Applicable Year (either independently by the Participating Manufacturer or as part of consolidated financial statements reported to the SEC by an Affiliate of such Participating Manufacturer) or, in the case of an Original Participating Manufacturer that does not report income to the SEC, as reported in financial statements prepared in accordance with U.S. generally accepted accounting principles and audited by a nationally recognized accounting firm. For years subsequent to 1998, the determination of the Original Participating Manufacturers' aggregate operating income from sales of Cigarettes shall not exclude any charges or expenses incurred or accrued in connection with this Agreement or any prior settlement of a tobacco and health case and shall otherwise be derived using the same principles as were employed in deriving such Original Participating Manufacturers' aggregate operating income from sales of Cigarettes in 1996.

iii. Any increase in a Base Payment pursuant to subsection (B)(ii) above shall be allocated among the Original Participating Manufacturers in the following manner:

(1) only to those Original Participating Manufacturers whose operating income from sales of Cigarettes in the fifty United States, the District of Columbia and Puerto Rico for the year for which the Base Payment is being adjusted is greater than their respective operating income from such sales of Cigarettes (including operating income from such sales of any of their Affiliates that do not continue to have such sales after the MSA Execution Date) in 1996 (as increased for inflation as provided in Exhibit C hereto beginning December 31, 1996 to be applied for each year after 1996); and

(2) among the Original Participating Manufacturers described in paragraph (1) above in proportion to the ratio of (x) the increase in the operating income from sales of Cigarettes (as described in paragraph (1)) of the Original Participating Manufacturer in question, to (y) the aggregate increase in the operating income from sales of Cigarettes (as described in paragraph (1)) of those Original Participating Manufacturers described in paragraph (1) above.

(C) "Applicable Year" means the calendar year immediately preceding the year in which the payment at issue is due, regardless of when such payment is made.

(D) For purposes of this Exhibit, shipments shall be measured as provided in subsection II(mm).

EXHIBIT F

POTENTIAL LEGISLATION NOT TO BE OPPOSED

1. Limitations on Youth access to vending machines.

2. Inclusion of cigars within the definition of tobacco products.

3. Enhancement of enforcement efforts to identify and prosecute violations of laws prohibiting retail sales to Youth.

4. Encouraging or supporting use of technology to increase effectiveness of age-of-purchase laws, such as, without limitation, the use of programmable scanners, scanners to read drivers' licenses, or use of other age/ID data banks.

5. Limitations on promotional programs for non-tobacco goods using tobacco products as prizes or give-aways.

6. Enforcement of access restrictions through penalties on Youth for possession or use.

7. Limitations on tobacco product advertising in or on school facilities, or wearing of tobacco logo merchandise in or on school property.

8. Limitations on non-tobacco products which are designed to look like tobacco products, such as bubble gum cigars, candy cigarettes, etc.

EXHIBIT G

OBLIGATIONS OF THE TOBACCO INSTITUTE UNDER THE MASTER SETTLEMENT AGREEMENT

(a) Upon court approval of a plan of dissolution The Tobacco Institute ("TI") will:

(1) *Employees.* Promptly notify and arrange for the termination of the employment of all employees; provided, however, that TI may continue to engage any employee who is (A) essential to the wind-down function as set forth in section (g) herein; (B) reasonably needed for the sole purpose of directing and supporting TI's defense of ongoing litigation; or (C) reasonably needed for the sole purpose of performing the Tobacco Institute Testing Laboratory's (the "TITL") industry-wide cigarette testing pursuant to the Federal Trade Commission (the "FTC") method or any other testing prescribed by state or federal law as set forth in section (h) herein.

(2) *Employee Benefits.* Fund all employee benefit and pension programs; provided, however, that unless ERISA or other federal or state law prohibits it, such funding will be accomplished through periodic contributions by the Original Participating Manufacturers, according to their Relative Market Shares, into a trust or a like mechanism, which trust or like mechanism will be established within 90 days of court approval of the plan of dissolution. An opinion letter will be appended to the dissolution plan to certify that the trust plan is not inconsistent with ERISA or employee benefit pension contracts.

(3) *Leases.* Terminate all leaseholds at the earliest possible date pursuant to the leases; provided, however, that TI may retain or lease anew such space (or lease other space) as needed for its wind-down activities, for TITL testing as described herein, and for subsequent litigation defense activities. Immediately upon execution of this Agreement, TI will provide notice to each of its landlords of its desire to terminate its lease with such landlord, and will request that the landlord take all steps to re-lease the premises at the earliest possible date consistent with TI's performance of its obligations hereunder. TI will vacate such leasehold premises as soon as they are re-leased or on the last day of wind-down, whichever occurs first.

(b) *Assets/Debts.* Within 60 days after court approval of a plan of dissolution, TI will provide to the Attorney General of New York and append to the dissolution plan a description of all of its assets, its debts, tax claims against it, claims of state and federal governments against it, creditor claims against it, pending litigation in which it is a party and notices of claims against it.

(c) *Documents.* Subject to the privacy protections provided by New York Public Officers Law §§ 91-99, TI will provide a copy of or otherwise make available to the State of New York all documents in its possession, excluding those that TI continues to claim to be subject to any attorney-client privilege, attorney work product protection, common interest/joint defense privilege or any other applicable privilege (collectively, "privilege") after the re-examination of privilege claims pursuant to court order in *State of Oklahoma* v. *R.J. Reynolds Tobacco Company, et al.*, CJ-96-2499-L (Dist. Ct., Cleveland County) (the "Oklahoma action"):

(1) TI will deliver to the Attorney General of the State of New York a copy of the privilege log served by it in the Oklahoma action. Upon a written request by the Attorney General, TI will deliver an updated version of its privilege log, if any such updated version exists.

(2) The disclosure of any document or documents claimed to be privileged will be governed by section IV of this Agreement.

(3) At the conclusion of the document production and privilege logging process, TI will provide a sworn affidavit that all documents in its possession have been made available to the Attorney General of New York except for documents claimed to be privileged, and that any privilege logs that already exist have been made available to the Attorney General.

(d) *Remaining Assets.* On mutual agreement between TI and the Attorney General of New York, a not-for-profit health or child welfare organization will be named as the beneficiary of any TI assets that remain after lawful transfers of assets and satisfaction of TI's employee benefit obligations and any other debts, liabilities or claims.

(e) *Defense of Litigation.* Pursuant to Section 1006 of the New York Not-for-Profit Corporations Law, TI will have the right to continue to defend its litigation interests with respect to any claims against it that are pending or threatened now or that are brought or threatened in the future. TI will retain sole discretion over all litigation decisions, including, without limitation, decisions with respect to asserting any privileges or defenses, having privileged communications and creating privileged documents, filing pleadings, responding to discovery requests, making motions, filing affidavits and briefs, conducting party and non-party discovery, retaining expert witnesses and consultants, preparing for and defending itself at trial, settling any claims asserted against it, intervening or otherwise participating in litigation to protect interests that it deems significant to its defense, and otherwise directing or conducting its defense. Pursuant to existing joint defense agreements, TI may continue to assist its current or former members in defense of any litigation brought or threatened against them. TI also may enter into any new joint defense agreement or agreements that it deems significant to its defense of pending or threatened claims. TI may continue to engage such employees as reasonably needed for the sole purpose of directing and supporting its defense of ongoing litigation. As soon as TI has no litigation pending against it, it will dissolve completely and will cease all functions consistent with the requirements of law.

(f) *No public statement.* Except as necessary in the course of litigation defense as set forth in section (e)

above, upon court approval of a plan of dissolution, neither TI nor any of its employees or agents acting in their official capacity on behalf of TI will issue any statements, press releases, or other public statement concerning tobacco.

(g) *Wind-down.* After court approval of a plan of dissolution, TI will effectuate wind-down of all activities (other than its defense of litigation as described in section (e) above) expeditiously, and in no event later than 180 days after the date of court approval of the plan of dissolution. TI will provide monthly status reports to the Attorney General of New York regarding the progress of wind-down efforts and work remaining to be done with respect to such efforts.

(h) *TITL.* Notwithstanding any other provision of this Exhibit G or the dissolution plan, TI may perform TITL industry-wide cigarette testing pursuant to the FTC method or any other testing prescribed by state or federal law until such function is transferred to another entity, which transfer will be accomplished as soon as practicable but in no event more than 180 days after court approval of the dissolution plan.

(i) *Jurisdiction.* After the filing of a Certificate of Dissolution, pursuant to Section 1004 of the New York Not-for-Profit Corporation Law, the Supreme Court for the State of New York will have continuing jurisdiction over the dissolution of TI and the winding-down of TI's activities, including any litigation-related activities described in subsection (e) herein.

(j) *No Determination or Admission.* The dissolution of TI and any proceedings taken hereunder are not intended to be and shall not in any event be construed as, deemed to be, or represented or caused to be represented by any Settling State as, an admission or concession or evidence of any liability or any wrongdoing whatsoever on the part of TI, any of its current or former members or anyone acting on their behalf. TI specifically disclaims and denies any liability or wrongdoing whatsoever with respect to the claims and allegations asserted against it by the Attorneys General of the Settling States.

(k) *Court Approval.* The Attorney General of the State of New York and the Original Participating Manufacturers will prepare a joint plan of dissolution for submission to the Supreme Court of the State of New York, all of the terms of which will be agreed on and consented to by the Attorney General and the Original Participating Manufacturers consistent with this schedule. The Original Participating Manufacturers and their employees, as officers and directors of TI, will take whatever steps are necessary to execute all documents needed to develop such a plan of dissolution and to submit it to the court for approval. If any court makes any material change to any term or provision of the plan of dissolution agreed upon and consented to by the Attorney General and the Original Participating Manufacturers, then:

(1) the Original Participating Manufacturers may, at their election, nevertheless proceed with the dissolution plan as modified by the court; or

(2) if the Original Participating Manufacturers elect not to proceed with the court-modified dissolution plan, the Original Participating Manufacturers will be released from any obligations or undertakings under this Agreement or this schedule with respect to TI; provided, however, that the Original Participating Manufacturers will engage in good faith negotiations with the New York Attorney General to agree upon the term or terms of the dissolution plan that the court may have modified in an effort to agree upon a dissolution plan that may be resubmitted for the court's consideration.

EXHIBIT H

DOCUMENT PRODUCTION

Section 1.

(a) *Philip Morris Companies, Inc., et al.*, v. *American Broadcasting Companies, Inc., et al.*, At Law No. 760CL94X00816-00 (Cir. Ct., City of Richmond)

(b) *Harley-Davidson* v. *Lorillard Tobacco Co.*, No. 93-947 (S.D.N.Y.)

(c) *Lorillard Tobacco Co.* v. *Harley-Davidson*, No. 93-6098 (E.D. Wis.)

(d) *Brown & Williamson* v. *Jacobson and CBS, Inc.*, No. 82-648 (N.D. Ill.)

(e) The FTC investigations of tobacco industry advertising and promotion as embodied in the following cites:

1. 46 FTC 706
2. 48 FTC 82
3. 46 FTC 735
4. 47 FTC 1393
5. 108 F. Supp. 573
6. 55 FTC 354
7. 56 FTC 96
8. 79 FTC 255
9. 80 FTC 455
10. Investigation #8023069
11. Investigation #8323222

Each Original Participating Manufacturer and Tobacco-Related Organization will conduct its own reasonable inquiry to determine what documents or deposition testimony, if any, it produced or provided in the above-listed matters.

Section 2.

(a) *State of Washington* v. *American Tobacco Co., et al.*, No. 96-2-15056-8 SEA (Wash. Super. Ct., County of King)

(b) *In re Mike Moore, Attorney General, ex rel, State of Mississippi Tobacco Litigation*, No. 94-1429 (Chancery Ct., Jackson, Miss.)

(c) *State of Florida* v. *American Tobacco Co., et al.*, No. CL 95-1466 AH (Fla. Cir. Ct., 15th Judicial Cir., Palm Beach Co.)

(d) *State of Texas* v. *American Tobacco Co., et al.*, No. 5-96CV-91 (E.D. Tex.)

(e) *Minnesota* v. *Philip Morris et al.*, No. C-94-8565 (Minn. Dist. Ct., County of Ramsey)

(f) *Broin* v. *R.J. Reynolds*, No. 91-49738 CA (22) (11th Judicial Ct., Dade County, Florida)

EXHIBIT I

INDEX AND SEARCH FEATURES FOR DOCUMENT WEBSITE

(a) Each Original Participating Manufacturer and Tobacco-Related Organization will create and maintain on its website, at its expense, an enhanced, searchable index, as described below, using Alta-Vista or functionally comparable software, for all of the documents currently on its website and all documents being placed on its website pursuant to section IV of this Agreement.

(b) The searchable indices of documents on these websites will include:

(1) all of the information contained in the 4(b) indices produced to the State Attorneys General (excluding fields specific only to the Minnesota action other than "request number");

(2) the following additional fields of information (or their substantial equivalent) to the extent such information already exists in an electronic format that can be incorporated into such an index:

Document ID	Master ID
Other Number	Document Date
Primary Type	Other Type
Person Attending	Person Noted
Person Author	Person Recipient
Person Copied	Person Mentioned
Organization Author	Organization Recipient
Organization Copied	Organization Mentioned
Organization Attending	Organization Noted
Physical Attachment 1	Physical Attachment 2
Characteristics	File Name
Site	Area
Verbatim Title	Old Brand
Primary Brand	Mentioned Brand
Page Count	

(c) Each Original Participating Manufacturer and Tobacco-Related Organization will add, if not already available, a user-friendly document retrieval feature on the Website consisting of a "view all pages" function with enhanced image viewer capability that will enable users to choose to view and/or print either "all pages" for a specific document or "page-by-page".

(d) Each Original Participating Manufacturer and Tobacco-Related Organizations will provide at its own expense to NAAG a copy set in electronic form of its website document images and its accompanying subsection IV(h) index in ASCII-delimited form for all of the documents currently on its website and all of the documents described in subsection IV(d) of this Agreement. The Original Participating Manufacturers and Tobacco-Related Organizations will not object to any subsequent distribution and/or reproduction of these copy sets.

EXHIBIT J

TOBACCO ENFORCEMENT FUND PROTOCOL

The States" Antitrust/Consumer Protection Tobacco Enforcement Fund ("Fund") is established by the Attorneys General of the Settling States, acting through NAAG, pursuant to section VIII(c) of the Agreement. The following shall be the primary and mandatory protocol for the administration of the Fund.

Section A

Fund Purpose

Section 1

The monies to be paid pursuant to section VIII(c) of the Agreement shall be placed by NAAG in a new and separate interest bearing account, denominated the States' Antitrust/ Consumer Protection Tobacco Enforcement Fund, which shall not then or thereafter be commingled with any other funds or accounts. However, nothing herein shall prevent deposits into the account so long as monies so deposited are then lawfully committed for the purpose of the Fund as set forth herein.

Section 2

A committee of three Attorneys General ("Special Committee") shall be established to determine disbursements from the account, using the process described herein. The three shall be the Attorney General of the State of Washington, the Chair of NAAG's antitrust committee, and the Chair of NAAG's consumer protection committee. In the event that an Attorney General shall hold either two or three of the above stated positions, that Attorney General may serve only in a single capacity, and shall be replaced in the remaining positions by first, the President of NAAG, next by the President-Elect of NAAG and if necessary the Vice-President of NAAG.

Section 3

The purpose of the Fund is: (1) to enforce and implement the terms of the Agreement, in particular, by partial payment of the monetary costs of the Independent Auditor as contemplated by the Agreement; and (2) to provide monetary assistance to the various states" attorneys general: (A) to investigate and/or litigate suspected violations of the Agreement and/or Consent Decree; (B) to investigate and/or litigate suspected violations of state and/or federal antitrust or consumer protection laws with respect to the manufacture, use, marketing and sales of tobacco products; and (C) to enforce the Qualifying Statute ("Qualifying Actions"). The Special Committee shall entertain requests only from Settling States for disbursement from the fund associated with a Qualifying Action ("Grant Application").

Section B

Administration Standards Relative to Grant Applications

Section 1

The Special Committee shall not entertain any Grant Application to pay salaries or ordinary expenses of regular employees of any Attorney General's office.

Section 2

The affirmative vote of two or more of the members of the Special Committee shall be required to approve any Grant Application.

Section 3

The decision of the Special Committee shall be final and non-appealable.

Section 4

The Attorney General of the State of Washington shall be chair of the Special Committee and shall annually report to the Attorneys General on the requests for funds from the Fund and the actions of the Special Committee upon the requests.

Section 5

When a Grant Application to the Fund is made by an Attorney General who is then a member of the Special Committee, such member will be temporarily replaced on the Committee, but only for the determination of such Grant Application. The remaining members of the Special Committee shall designate an Attorney General to replace the Attorney General so disqualified, in order to consider the application.

Section 6

The Fund shall be maintained in a federally insured depository institution located in Washington, D.C. Funds may be invested in federal government-backed vehicles.

The Fund shall be regularly reported on NAAG financial statements and subject to annual audit.

Section 7

Withdrawals from and checks drawn on the Fund will require at least two of three authorized signatures. The three persons so authorized shall be the executive director, the deputy director, and controller of NAAG.

Section 8

The Special Committee shall meet in person or telephonically as necessary to determine whether a grant is sought for assistance with a Qualifying Action and whether and to what extent the Grant Application is accepted. The chair of the Special Committee shall designate the times for such meetings, so that a response is made to the Grant Application as expeditiously as practicable.

Section 9

The Special Committee may issue a grant from the Fund only when an Attorney General certifies that the monies will be used in connection with a Qualifying Action, to wit: (A) to investigate and/or litigate suspected violations of the Agreement and/or Consent Decree; (B) to investigate and/or litigate suspected violations of state and/or federal antitrust or consumer protection laws with respect to the manufacture, use, marketing and sales of tobacco products; and (C) to enforce the Qualifying Statute. The Attorney General submitting such application shall further certify that the entire grant of monies from the Fund will be used to pay for such investigation and/or litigation. The Grant Application shall describe the nature and scope of the intended action and use of the funds which may be granted.

Section 10

To the extent permitted by law, each Attorney General whose Grant Application is favorably acted upon shall promise to pay back to the Fund all of the amounts received from the Fund in the event the state is successful in litigation or settlement of a Qualifying Action. In the event that the monetary recovery, if any, obtained is not sufficient to pay back the entire amount of the grant, the Attorney General shall pay back as much as is permitted by the recovery. In all instances where monies are granted, the Attorney General(s) receiving monies shall provide an accounting to NAAG of all disbursements received from the Fund no later than the 30th of June next following such disbursement.

Section 11

In addition to the repayments to the Fund contemplated in the preceding section, the Special Committee may deposit in the Fund any other monies lawfully committed for the precise purpose of the Fund as set forth in section A(3) above. For example, the Special Committee may at its discretion accept for deposit in the Fund a foundation grant or court-ordered award for state antitrust and/or consumer protection enforcement as long as the monies so deposited become part of and subject to the same rules, purposes and limitations of the Fund.

Section 12

The Special Committee shall be the sole and final arbiter of all Grant Applications and of the amount awarded for each such application, if any.

Section 13

The Special Committee shall endeavor to maintain the Fund for as long a term as is consistent with the purpose of the Fund. The Special Committee will limit the total amount of grants made to a single state to no more than $500,000.00. The Special Committee will not award a single grant in excess of $200,000.00, unless the grant involves more than one state, in which case, a single grant so made may not total more than $300,000.00. The Special Committee may, in its discretion and by unanimous vote, decide to waive these limitations if it determines that special circumstances exist. Such decision, however, shall not be effective unless ratified by a two-thirds majority vote of the NAAG executive committee.

Section C

Grant Application Procedures

Section 1

This Protocol shall be transmitted to the Attorneys General within 90 days after the MSA Execution Date. It may not be amended unless by recommendation of the NAAG executive committee and majority vote of the Settling States. NAAG will notify the Settling States of any amendments promptly and will transmit yearly to the attorneys general a statement of the Fund balance and a summary of deposits to and withdrawals from the Fund in the previous calendar or fiscal year.

Section 2

Grant Applications must be in writing and must be signed by the Attorney General submitting the application.

Section 3

Grant Applications must include the following:

(A) A description of the contemplated/pending action, including the scope of the alleged violation and the area (state/regional/multi-state) likely to be affected by the suspected offending conduct.

(B) A statement whether the action is actively and currently pursued by any other Attorney General or other prosecuting authority.

(C) A description of the purposes for which the monies sought will be used.

(D) The amount requested.

(E) A directive as to how disbursements from the Fund should be made, e.g., either directly to a supplier of services (consultants, experts, witnesses, and the like), to the Attorney General's office directly, or in the case of multi-state action, to one or more Attorneys General's offices designated as a recipient of the monies.

(F) A statement that the applicant Attorney(s) General will, to the extent permitted by law, pay back to the Fund all, or as much as is possible, of the monies received, upon receipt of any monetary recovery obtained in the contemplated/pending litigation or settlement of the action.

(G) A certification that no part of the grant monies will be used to pay the salaries or ordinary expenses of any regular employee of the office of the applicant(s) and that the grant will be used solely to pay for the stated purpose.

(H) A certification that an accounting will be provided to NAAG of all monies received by the applicant(s) by no later than the 30th of June next following any receipt of such monies.

Section 4

All Grant Applications shall be submitted to the NAAG office at the following address: National Association of Attorneys General, 750 1st Street, NE, Suite 1100, Washington D.C. 20002.

Section 5

The Special Committee will endeavor to act upon all complete and properly submitted Grant Applications within 30 days of receipt of said applications.

Section D

Other Disbursements from the Fund

Section 1

To enforce and implement the terms of the Agreement, the Special Committee shall direct disbursements from the Fund to comply with the partial payment obligations set forth in section XI of the Agreement relative to costs of the Independent Auditor. A report of such disbursements shall be included in the accounting given pursuant to section C(1) above.

Section E

Administrative Costs

Section 1

NAAG shall receive from the Fund on July 1, 1999 and on July 1 of each year thereafter an administrative fee of $100,000 for its administrative costs in performing its duties under the Protocol and this Agreement. The NAAG executive committee may adjust the amount of the administrative fee in extraordinary circumstances.

EXHIBIT K

MARKET CAPITALIZATION PERCENTAGES

Philip Morris Incorporated	68.0000000%
Brown & Williamson Tobacco Corporation	17.9000000%
Lorillard Tobacco Company	7.3000000%
R.J. Reynolds Tobacco Company	6.8000000%
Total	100.0000000%

EXHIBIT L

MODEL CONSENT DECREE

IN THE [XXXXXX] COURT OF THE STATE OF [XXXXXX]IN AND FOR THE COUNTY OF [XXXXX]

- - - - - - - - - - - - - - - - - -	x	CAUSE NO. XXXXXX
	:	
STATE OF [XXXXXXXXXXX],	:	
	:	
Plaintiff,	:	CONSENT DECREE AND
v.	:	FINAL JUDGMENT
	:	
[XXXXXX XXXXX XXXX], et al.,	:	
	:	
Defendants.	:	
	:	
- - - - - - - - - - - - - - - - - -	x	

WHEREAS, Plaintiff, the State of [name of Settling State], commenced this action on [date], [by and through its Attorney General [name]], pursuant to [her/his/its] common law powers and the provisions of [state and/or federal law];

WHEREAS, the State of [name of Settling State] asserted various claims for monetary, equitable and injunctive relief on behalf of the State of [name of Settling State] against certain tobacco product manufacturers and other defendants;

WHEREAS, Defendants have contested the claims in the State's complaint [and amended complaints, if any] and denied the State's allegations [and asserted affirmative defenses];

WHEREAS, the parties desire to resolve this action in a manner which appropriately addresses the State's public health concerns, while conserving the parties' resources, as well as those of the Court, which would otherwise be expended in litigating a matter of this magnitude; and

WHEREAS, the Court has made no determination of any violation of law, this Consent Decree and Final Judgment being entered prior to the taking of any testimony and without trial or final adjudication of any issue of fact or law;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:

I. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action and over each of the Participating Manufacturers. Venue is proper in this [county/district].

II. DEFINITIONS

The definitions set forth in the Agreement (a copy of which is attached hereto) are incorporated herein by reference.

III. APPLICABILITY

A. This Consent Decree and Final Judgment applies only to the Participating Manufacturers in their corporate capacity acting through their respective successors and assigns, directors, officers, employees, agents, subsidiaries, divisions, or other internal organizational units of any kind or any other entities acting in concert or participation with them. The remedies, penalties and sanctions that may be imposed or assessed in connection with a violation of this Consent Decree and Final Judgment (or any order issued in connection herewith) shall only apply to the Participating Manufacturers, and shall not be imposed or assessed against any employee, officer or director of any Participating Manufacturer, or against any other person or entity as a consequence of such violation, and there shall be no jurisdiction under this Consent Decree and Final Judgment to do so.

B. This Consent Decree and Final Judgment is not intended to and does not vest standing in any third party with respect to the terms hereof. No portion of this Consent Decree and Final Judgment shall provide any rights to, or be enforceable by, any person or entity other than the State of [name of Settling State] or a Released Party. The State of [name of Settling State] may not assign or otherwise convey any right to enforce any provision of this Consent Decree and Final Judgment.

IV. VOLUNTARY ACT OF THE PARTIES

The parties hereto expressly acknowledge and agree that this Consent Decree and Final Judgment is voluntarily entered into as the result of arm's-length negotiation, and all parties hereto were represented by counsel in deciding to enter into this Consent Decree and Final Judgment.

V. INJUNCTIVE AND OTHER EQUITABLE RELIEF

Each Participating Manufacturer is permanently enjoined from:

A. Taking any action, directly or indirectly, to target Youth within the State of [name of Settling State] in the advertising, promotion or marketing of Tobacco Products, or taking any action the primary purpose of which is to initiate, maintain or increase the incidence of Youth smoking within the State of [name of Settling State].

B. After 180 days after the MSA Execution Date, using or causing to be used within the State of [name of Settling State] any Cartoon in the advertising, promoting, packaging or labeling of Tobacco Products.

C. After 30 days after the MSA Execution Date, making or causing to be made any payment or other consideration to any other person or entity to use, display, make reference to or use as a prop within the State of [name of Settling State] any Tobacco Product, Tobacco Product package, advertisement for a Tobacco Product, or any other item bearing a Brand Name in any Media; provided, however, that the foregoing prohibition shall not apply to (1) Media where the audience or viewers are within an Adult-Only Facility (provided such Media are not visible to persons outside such Adult-Only Facility); (2) Media not intended for distribution or display to the public; (3) instructional Media concerning non-conventional cigarettes viewed only by or provided only to smokers who are Adults; and (4) actions taken by any Participating Manufacturer in connection with a Brand Name Sponsorship permitted pursuant to subsections III(c)(2)(A) and III(c)(2)(B)(i) of the Agreement, and use of a Brand Name to identify a Brand Name Sponsorship permitted by subsection III(c)(2)(B)(ii).

D. Beginning July 1, 1999, marketing, distributing, offering, selling, licensing or causing to be marketed, distributed, offered, sold, or licensed (including, without limitation, by catalogue or direct mail), within the State of [name of Settling State], any apparel or other merchandise (other than Tobacco Products, items the sole function of which is to advertise Tobacco Products, or written or electronic publications) which bears a Brand Name. Provided, however, that nothing in this section shall (1) require any Participating Manufacturer to breach or terminate any licensing agreement or other contract in existence as of June 20, 1997 (this exception shall not apply beyond the current term of any existing contract, without regard to any renewal or option term that may be exercised by such Participating Manufacturer); (2) prohibit the distribution to any Participating Manufacturer's employee who is not Underage of any item described above that is intended for the personal use of such an employee; (3) require any Participating Manufacturer to retrieve, collect or otherwise recover any item that prior to the MSA Execution Date was marketed, distributed, offered, sold, licensed or caused to be marketed, distributed, offered, sold or licensed by such Participating Manufacturer; (4) apply to coupons or other items used by Adults solely in connection with the purchase of Tobacco Products; (5) apply to apparel or other merchandise used within an Adult-Only Facility that is not distributed (by sale or otherwise) to any member of the general public; or (6) apply to apparel or other merchandise (a) marketed, distributed, offered, sold, or licensed at the site of a Brand Name Sponsorship permitted pursuant to subsection III(c)(2)(A) or III(c)(2)(B)(i) of the Agreement by the person to which the relevant Participating Manufacturer has provided payment in exchange for the use of the relevant Brand Name in the Brand Name Sponsorship or a third-party that does not receive payment from the relevant Participating Manufacturer (or any Affiliate of such Participating Manufacturer) in connection with the marketing, distribution, offer, sale or license of such apparel or other merchandise, or (b) used at the site of a Brand Name Sponsorship permitted pursuant to subsections III(c)(2)(A) or III(c)(2)(B)(i) of the Agreement (during such event) that are not distributed (by sale or otherwise) to any member of the general public.

E. After the MSA Execution Date, distributing or causing to be distributed within the State of [name of Settling State] any free samples of Tobacco Products except in an Adult-Only Facility. For purposes of this Consent Decree and Final Judgment, a "free sample" does not include a Tobacco Product that is provided to an Adult in connection with (1) the purchase, exchange or redemption for proof of purchase of any Tobacco Products (including, but not limited to, a free offer in connection with the purchase of Tobacco Products, such as a "two-for-one" offer), or (2) the conducting of consumer testing or evaluation of Tobacco Products with persons who certify that they are Adults.

F. Using or causing to be used as a brand name of any Tobacco Product pursuant to any agreement requiring the payment of money or other valuable consideration, any nationally recognized or nationally established brand name or trade name of any non-tobacco item or service or any nationally recognized or nationally established sports team, entertainment group or individual celebrity. Provided, however, that the preceding sentence shall not apply to any Tobacco Product brand name in existence as of July 1, 1998. For the purposes of this provision, the term "other valuable consideration" shall not include an agreement between two entities who enter into such agreement for the sole purpose of avoiding infringement claims.

G. After 60 days after the MSA Execution Date and through and including December 31, 2001, manufacturing or causing to be manufactured for sale within the State of [name of Settling State] any pack or other container of Cigarettes containing fewer than 20 Cigarettes (or, in the case of roll-your-own tobacco, any package of roll-your-own tobacco containing less than 0.60 ounces of tobacco); and, after 150 days after the MSA Execution Date and through and including December 31, 2001, selling or distributing within the State of [name of Settling State] any pack or other container of Cigarettes containing fewer than 20 Cigarettes (or, in the case of roll-your-own tobacco, any package of roll-your-own tobacco containing less than 0.60 ounces of tobacco).

H. Entering into any contract, combination or conspiracy with any other Tobacco Product Manufacturer that has the purpose or effect of: (1) limiting competition in the production or distribution of information about health hazards or other consequences of the use of their products; (2) limiting or suppressing research into smoking and health; or (3) limiting or suppressing research into the marketing or development of new products. Provided, however, that nothing in the preceding sentence shall be deemed to (1) require any Participating Manufacturer to produce, distribute or otherwise disclose any information that is subject to any privilege or protection; (2) preclude any Participating Manufacturer from entering into any joint defense or joint legal interest agreement or arrangement (whether or not in writing), or from asserting any privilege pursuant thereto; or (3) impose any affirmative obligation on any Participating Manufacturer to conduct any research.

I. Making any material misrepresentation of fact regarding the health consequences of using any Tobacco Product, including any tobacco additives, filters, paper or other ingredients. Provided, however, that nothing in the preceding sentence shall limit the exercise of any First Amendment right or the assertion of any defense or position in any judicial, legislative or regulatory forum.

VI. MISCELLANEOUS PROVISIONS

A. Jurisdiction of this case is retained by the Court for the purposes of implementing and enforcing the Agreement and this Consent Decree and Final Judgment and enabling the continuing proceedings contemplated herein. Whenever possible, the State of [name of Settling State] and the Participating Manufacturers shall seek to resolve any issue that may exist as to compliance with this Consent Decree and Final Judgment by discussion among the appropriate designees named pursuant to subsection XVIII(m) of the Agreement. The State of [name of Settling State] and/or any Participating Manufacturer may apply to the Court at any time for further orders and directions as may be necessary or appropriate for the implementation and enforcement of this Consent Decree and Final Judgment. Provided, however, that with regard to subsections V(A) and V(I) of this Consent Decree and Final Judgment, the Attorney General shall issue a cease and desist demand to the Participating Manufacturer that the Attorney General believes is in violation of either of such sections at least ten Business Days before the Attorney General applies to the Court for an order to enforce such subsections, unless the Attorney General reasonably determines that either a compelling time-sensitive public health and safety concern requires more immediate action or the Court has previously issued an Enforcement Order to the Participating Manufacturer in question for the same or a substantially similar action or activity. For any claimed violation of this Consent Decree and Final Judgment, in determining whether to seek an order for monetary, civil contempt or criminal sanctions for any claimed violation, the Attorney General shall give good-faith consideration to whether: (1) the Participating Manufacturer that is claimed to have committed the violation has taken appropriate and reasonable steps to cause the claimed violation to be cured, unless that party has been guilty of a pattern of violations of like nature; and (2) a legitimate, good-faith dispute exists as to the meaning of the terms in question of this Consent Decree and Final Judgment. The Court in any case in its discretion may determine not to enter an order for monetary, civil contempt or criminal sanctions.

B. This Consent Decree and Final Judgment is not intended to be, and shall not in any event be construed as, or deemed to be, an admission or concession or evidence of (1) any liability or any wrongdoing whatsoever on the part of any Released Party or that any Released Party has engaged in any of the activities barred by this Consent Decree and Final Judgment; or (2) personal jurisdiction over any person or entity other than the Participating Manufacturers. Each Participating Manufacturer specifically disclaims and denies any liability or wrongdoing whatsoever with respect to the claims and allegations asserted against it in this action, and has stipulated to the entry of this Consent Decree and Final Judgment solely to avoid the further expense, inconvenience, burden and risk of litigation.

C. Except as expressly provided otherwise in the Agreement, this Consent Decree and Final Judgment shall not be modified (by this Court, by any other court or by any other means) unless the party seeking modification demonstrates, by clear and convincing evidence, that it will suffer irreparable harm from new and unforeseen conditions. Provided, however, that the provisions of sections III, V, VI and VII of this Consent Decree and Final Judgment shall in no event be subject to modification without the consent of the State of [name of Settling State] and all affected Participating Manufacturers. In the event that any of the sections of this Consent Decree and Final Judgment enumerated in the preceding sentence are modified by this Court, by any other court or by any other means without the consent of the State of [name of Settling State] and all affected Participating Manufacturers, then this Consent Decree and Final Judgment shall be void and of no further effect. Changes in the economic conditions of the parties shall not be grounds for modification. It is intended that the Participating Manufacturers will comply with this Consent Decree and Final Judgment as originally entered, even if the Participating Manufacturers' obligations hereunder are greater than those imposed under current or future law (unless compliance with this Consent Decree and Final Judgment would violate such law). A change in law that results, directly or indirectly, in more favorable or beneficial treatment of any one or more of the Participating Manufacturers shall not support modification of this Consent Decree and Final Judgment.

D. In any proceeding which results in a finding that a Participating Manufacturer violated this Consent Decree and Final Judgment, the Participating Manufacturer or Participating Manufacturers found to be in violation shall pay the State's costs and attorneys' fees incurred by the State of [name of Settling State] in such proceeding.

E. The remedies in this Consent Decree and Final Judgment are cumulative and in addition to any other remedies the State of [name of Settling State] may have at law or equity, including but not limited to its rights under the Agreement. Nothing herein shall be construed to prevent the State from bringing an action with respect to conduct not released pursuant to the Agreement, even though that conduct may also violate this Consent Decree and Final Judgment. Nothing in this Consent Decree and Final Judgment is intended to create any right for [name of Settling State] to obtain any Cigarette product formula that it would not otherwise have under applicable law.

F. No party shall be considered the drafter of this Consent Decree and Final Judgment for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter. Nothing in this Consent Decree and Final Judgment shall be construed as approval by the State of [name of Settling State] of the Participating Manufacturers' business organizations, operations, acts or practices, and the Participating Manufacturers shall make no representation to the contrary.

G. The settlement negotiations resulting in this Consent Decree and Final Judgment have been undertaken in good faith and for settlement purposes only, and no evidence of negotiations or discussions underlying this Consent Decree and Final Judgment shall be offered or received in evidence in any action or proceeding for any purpose. Neither this Consent Decree and Final Judgment nor any public discussions, public statements or public comments with respect to this Consent Decree and Final Judgment by the State of [name of Settling State] or any Participating Manufacturer or its agents shall be offered or received in evidence in any action or proceeding for any purpose other than in an action or proceeding arising under or relating to this Consent Decree and Final Judgment.

H. All obligations of the Participating Manufacturers pursuant to this Consent Decree and Final Judgment (including, but not limited to, all payment obligations) are, and shall remain, several and not joint.

I. The provisions of this Consent Decree and Final Judgment are applicable only to actions taken (or omitted to be taken) within the States. Provided, however, that the preceding sentence shall not be construed as extending the territorial scope of any provision of this Consent Decree and Final Judgment whose scope is otherwise limited by the terms thereof.

J. Nothing in subsection V(A) or V(I) of this Consent Decree shall create a right to challenge the continuation, after the MSA Execution Date, of any advertising content, claim or slogan (other than use of a Cartoon) that was not unlawful prior to the MSA Execution Date.

K. If the Agreement terminates in this State for any reason, then this Consent Decree and Final Judgment shall be void and of no further effect.

VII. FINAL DISPOSITION

A. The Agreement, the settlement set forth therein, and the establishment of the escrow provided for therein are hereby approved in all respects, and all claims are hereby dismissed with prejudice as provided therein.

B. The Court finds that the person[s] signing the Agreement have full and complete authority to enter into the binding and fully effective settlement of this action as set forth in the Agreement. The Court further finds that entering into this settlement is in the best interests of the State of [name of Settling State].

LET JUDGMENT BE ENTERED ACCORDINGLY

DATED this _____ day of , 1998.

EXHIBIT M

LIST OF PARTICIPATING MANUFACTURERS' LAWSUITSAGAINST THE SETTLING STATES

1. *Philip Morris, Inc., et al. v. Margery Bronster, Attorney General of the State of Hawaii, In Her Official Capacity*, Civ. No. 96-00722HG, United States District Court for the District of Hawaii

2. *Philip Morris, Inc., et al. v. Bruce Botelho, Attorney General of the State of Alaska, In His Official Capacity*, Civ. No. A97-0003CV, United States District Court for the District of Alaska

3. *Philip Morris, Inc., et al. v. Scott Harshbarger, Attorney General of the Commonwealth of Massachusetts, In His Official Capacity*, Civ. No. 95-12574-GAO, United States District Court for the District of Massachusetts

4. *Philip Morris, Inc., et al. v. Richard Blumenthal, Attorney General of the State of Connecticut, In His Official Capacity*, Civ. No. 396CV01221 (PCD), United States District Court for the District of Connecticut

5. *Philip Morris, et al. v. William H. Sorrell, et al.*, No. 1:98-ev-132, United States District Court for the District of Vermont

EXHIBIT N

LITIGATING POLITICAL SUBDIVISIONS

1. *City of New York, et al. v. The Tobacco Institute, Inc. et al.*, Supreme Court of the State of New York, County of New York, Index No. 406225/96

2. *County of Erie v. The Tobacco Institute, Inc. et al.*, Supreme Court of the State of New York, County of Erie, Index No. I 1997/359

3. *County of Los Angeles v. R.J. Reynolds Tobacco Co. et al.*, San Diego Superior Court, No. 707651

4. *The People v. Philip Morris, Inc. et al.*, San Francisco Superior Court, No. 980864

5. *County of Cook v. Philip Morris, Inc. et al.*, Circuit Court of Cook County, Ill., No. 97-L-4550

EXHIBIT O

MODEL STATE FEE PAYMENT AGREEMENT

This STATE Fee Payment Agreement (the "STATE Fee Payment Agreement") is entered into as of _____, _____ between and among the Original Participating Manufacturers and STATE Outside Counsel (as defined herein), to provide for payment of attorneys' fees pursuant to Section XVII of the Master Settlement Agreement (the "Agreement").

WITNESSETH:

WHEREAS, the State of STATE and the Original Participating Manufacturers have entered into the Agreement to settle and resolve with finality all Released Claims against the Released Parties, including the Original Participating Manufacturers, as set forth in the Agreement; and

WHEREAS, Section XVII of the Agreement provides that the Original Participating Manufacturers shall pay reasonable attorneys' fees to those private outside counsel identified in Exhibit S to the Agreement, pursuant to the terms hereof;

NOW, THEREFORE, BE IT KNOWN THAT, in consideration of the mutual agreement of the State of STATE and the Original Participating Manufacturers to the terms of the Agreement and of the mutual agreement of STATE Outside Counsel and the Original Participating Manufacturers to the terms of this STATE Fee Payment Agreement, and such other consideration described herein, the Original Participating Manufacturers and STATE Outside Counsel agree as follows:

SECTION 1. *Definitions.*

All definitions contained in the Agreement are incorporated by reference herein, except as to terms specifically defined herein.

(a) "*Action*" means the lawsuit identified in Exhibit D, M or N to the Agreement that has been brought by or against the State of STATE [or Litigating Political Subdivision].

(b) "*Allocated Amount*" means the amount of any Applicable Quarterly Payment allocated to any Private Counsel (including STATE Outside Counsel) pursuant to section 17 hereof.

(c) "*Allocable Liquidated Share*" means, in the event that the sum of all Payable Liquidated Fees of Private Counsel as of any date specified in section 8 hereof exceeds the Applicable Liquidation Amount for any payment described therein, a percentage share of the Applicable Liquidation Amount equal to the proportion of (i) the amount of the Payable Liquidated Fee of STATE Outside Counsel to (ii) the sum of Payable Liquidated Fees of all Private Counsel.

(d) "*Applicable Liquidation Amount*" means, for purposes of the payments described in section 8 hereof—

(i) for the payment described in subsection (a) thereof, $125 million;

(ii) for the payment described in subsection (b) thereof, the difference between (A) $250 million and (B) the sum

of all amounts paid in satisfaction of all Payable Liquidated Fees of Outside Counsel pursuant to subsection (a) thereof;

(iii) for the payment described in subsection (c) thereof, the difference between (A) $250 million and (B) the sum of all amounts paid in satisfaction of all Payable Liquidated Fees of Outside Counsel pursuant to subsections (a) and (b) thereof;

(iv) for the payment described in subsection (d) thereof, the difference between (A) $250 million and (B) the sum of all amounts paid in satisfaction of all Payable Liquidated Fees of Outside Counsel pursuant to subsections (a), (b) and (c) thereof;

(v) for the payment described in subsection (e) thereof, the difference between (A) $250 million and (B) the sum of all amounts paid in satisfaction of all Payable Liquidated Fees of Outside Counsel pursuant to subsections (a), (b), (c) and (d) thereof;

(vi) for each of the first, second and third quarterly payments for any calendar year described in subsection (f) thereof, $62.5 million; and

(vii) for each of the fourth calendar quarterly payments for any calendar year described in subsection (f) thereof, the difference between (A) $250 million and (B) the sum of all amounts paid in satisfaction of all Payable Liquidated Fees of Outside Counsel with respect to the preceding calendar quarters of the calendar year.

(e) "*Application*" means a written application for a Fee Award submitted to the Panel, as well as all supporting materials (which may include video recordings of interviews).

(f) "*Approved Cost Statement*" means both (i) a Cost Statement that has been accepted by the Original Participating Manufacturers; and (ii) in the event that a Cost Statement submitted by STATE Outside Counsel is disputed, the determination by arbitration pursuant to subsection (b) of section 19 hereof as to the amount of the reasonable costs and expenses of STATE Outside Counsel.

(g) "*Cost Statement*" means a signed and attested statement of reasonable costs and expenses of Outside Counsel for any action identified on Exhibit D, M or N to the Agreement that has been brought by or against a Settling State or Litigating Political Subdivision.

(h) "*Designated Representative*" means the person designated in writing, by each person or entity identified in Exhibit S to the Agreement [by the Attorney General of the State of STATE or as later certified in writing by the governmental prosecuting authority of the Litigating Political Subdivision], to act as their agent in receiving payments from the Original Participating Manufacturers for the benefit of STATE Outside Counsel pursuant to sections 8, 16 and 19 hereof, as applicable.

(i) "*Director*" means the Director of the Private Adjudication Center of the Duke University School of Law or such other person or entity as may be chosen by agreement of the Original Participating Manufacturers and the Committee described in the second sentence of paragraph (b)(ii) of section 11 hereof.

(j) "*Eligible Counsel*" means Private Counsel eligible to be allocated a part of a Quarterly Fee Amount pursuant to section 17 hereof.

(k) "*Federal Legislation*" means federal legislation that imposes an enforceable obligation on Participating Defendants to pay attorneys' fees with respect to Private Counsel.

(l) "*Fee Award*" means any award of attorneys' fees by the Panel in connection with a Tobacco Case.

(m) "*Liquidated Fee*" means an attorneys' fee for Outside Counsel for any action identified on Exhibit D, M or N to the Agreement that has been brought by or against a Settling State or Litigating Political Subdivision, in an amount agreed upon by the Original Participating Manufacturers and such Outside Counsel.

(n) "*Outside Counsel*" means all those Private Counsel identified in Exhibit S to the Agreement.

(o) "*Panel*" means the three-member arbitration panel described in section 11 hereof.

(p) "*Party*" means (i) STATE Outside Counsel and (ii) an Original Participating Manufacturer.

(q) "*Payable Cost Statement*" means the unpaid amount of a Cost Statement as to which all conditions precedent to payment have been satisfied.

(r) "*Payable Liquidated Fee*" means the unpaid amount of a Liquidated Fee as to which all conditions precedent to payment have been satisfied.

(s) "*Previously Settled States*" means the States of Mississippi, Florida and Texas.

(t) "*Private Counsel*" means all private counsel for all plaintiffs in a Tobacco Case (including STATE Outside Counsel).

(u) "*Quarterly Fee Amount*" means, for purposes of the quarterly payments described in sections 16, 17 and 18 hereof—

(i) for each of the first, second and third calendar quarters of any calendar year beginning with the first calendar quarter of 1999 and ending with the third calendar quarter of 2008, $125 million;

(ii) for each fourth calendar quarter of any calendar year beginning with the fourth calendar quarter of 1999 and ending with the fourth calendar quarter of 2003, the sum of (A) $125 million and (B) the difference, if any, between *(1)* $375 million and *(2)* the sum of all amounts paid in satisfaction of all Fee Awards of Private Counsel during such calendar year, if any;

(iii) for each fourth calendar quarter of any calendar year beginning with the fourth calendar quarter of 2004 and ending with the fourth calendar quarter of 2008, the sum of (A) $125 million; (B) the difference between *(1)* $375 million; and *(2)* the sum of all amounts paid in satisfaction of all Fee Awards of Private Counsel during such calendar year, if any; and (C) the difference, if any, between *(1)* $250 million and *(2)* the product of *(a)* .2 (two tenths) and *(b)* the sum of all amounts paid in satisfaction of all Liquidated Fees of Outside Counsel pursuant to section 8 hereof, if any;

(iv) for each of the first, second and third calendar quarters of any calendar year beginning with the first calendar quarter of 2009, $125 million; and

(v) for each fourth calendar quarter of any calendar year beginning with the fourth calendar quarter of 2009, the sum of (A) $125 million and (B) the difference, if any, between *(1)* $375 million and *(2)* the sum of all amounts paid in satisfaction of all Fee Awards of Private Counsel during such calendar year, if any.

(v) "*Related Persons*" means each Original Participating Manufacturer's past, present and future Affiliates, divisions, officers, directors, employees, representatives, insurers, lenders, underwriters, Tobacco-Related Organizations, trade associations, suppliers, agents, auditors,

advertising agencies, public relations entities, attorneys, retailers and distributors (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing).

(w) "*State of STATE*" means the [applicable Settling State or the Litigating Political Subdivision], any of its past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and subdivisions.

(x) "*STATE Outside Counsel*" means all persons or entities identified in Exhibit S to the Agreement by the Attorney General of State of STATE [or as later certified by the office of the governmental prosecuting authority for the Litigating Political Subdivision] as having been retained by and having represented the STATE in connection with the Action, acting collectively by unanimous decision of all such persons or entities.

(y) "*Tobacco Case*" means any tobacco and health case (other than a non-class action personal injury case brought directly by or on behalf of a single natural person or the survivor of such person or for wrongful death, or any non-class action consolidation of two or more such cases).

(z) "*Unpaid Fee*" means the unpaid portion of a Fee Award.

SECTION 2. *Agreement to Pay Fees.*

The Original Participating Manufacturers will pay reasonable attorneys' fees to STATE Outside Counsel for their representation of the State of STATE in connection with the Action, as provided herein and subject to the *Code of Professional Responsibility* of the American Bar Association. Nothing herein shall be construed to require the Original Participating Manufacturers to pay any attorneys' fees other than (i) a Liquidated Fee or a Fee Award and (ii) a Cost Statement, as provided herein, nor shall anything herein require the Original Participating Manufacturers to pay any Liquidated Fee, Fee Award or Cost Statement in connection with any litigation other than the Action.

SECTION 3. *Exclusive Obligation of the Original Participating Manufacturers.*

The provisions set forth herein constitute the entire obligation of the Original Participating Manufacturers with respect to payment of attorneys' fees of STATE Outside Counsel (including costs and expenses) in connection with the Action and the exclusive means by which STATE Outside Counsel or any other person or entity may seek payment of fees by the Original Participating Manufacturers or Related Persons in connection with the Action. The Original Participating Manufacturers shall have no obligation pursuant to Section XVII of the Agreement to pay attorneys' fees in connection with the Action to any counsel other than STATE Outside Counsel, and they shall have no other obligation to pay attorneys" fees to or otherwise to compensate STATE Outside Counsel, any other counsel or representative of the State of STATE or the State of STATE itself with respect to attorneys' fees in connection with the Action.

SECTION 4. *Release.*

(a) Each person or entity identified in Exhibit S to the Agreement by the Attorney General of the State of STATE [or as certified by the office of the governmental prosecuting authority for the Litigating Political Subdivision] hereby irrevocably releases the Original Participating Manufacturers and all Related Persons from any and all claims that such person or entity ever had, now has or hereafter can, shall or may have in any way related to the Action (including but not limited to any negotiations related to the settlement of the Action). Such release shall not be construed as a release of any person or entity as to any of the obligations undertaken herein in connection with a breach thereof.

(b) In the event that STATE Outside Counsel and the Original Participating Manufacturers agree upon a Liquidated Fee pursuant to section 7 hereof, it shall be a precondition to any payment by the Original Participating Manufacturers to the Designated Representative pursuant to section 8 hereof that each person or entity identified in Exhibit S to the Agreement by the Attorney General of the State of STATE [or as certified by the office of the governmental prosecuting authority for the Litigating Political Subdivision] shall have irrevocably released all entities represented by STATE Outside Counsel in the Action, as well as all persons acting by or on behalf of such entities (including the Attorney General [or the office of the governmental prosecuting authority] and each other person or entity identified on Exhibit S to the Agreement by the Attorney General [or the office of the governmental prosecuting authority]) from any and all claims that such person or entity ever had, now has or hereafter can, shall or may have in any way related to the Action (including but not limited to any negotiations related to the settlement of the Action). Such release shall not be construed as a release of any person or entity as to any of the obligations undertaken herein in connection with a breach thereof.

SECTION 5. *No Effect on STATE Outside Counsel's Fee Contract.*

The rights and obligations, if any, of the respective parties to any contract between the State of STATE and STATE Outside Counsel shall be unaffected by this STATE Fee Payment Agreement except (a) insofar as STATE Outside Counsel grant the release described in subsection (b) of section 4 hereof; and (b) to the extent that STATE Outside Counsel receive any payments in satisfaction of a Fee Award pursuant to section 16 hereof, any amounts so received shall be credited, on a dollar-for-dollar basis, against any amount payable to STATE Outside Counsel by the State of STATE [or the Litigating Political Subdivision] under any such contract.

SECTION 6. *Liquidated Fees.*

(a) In the event that the Original Participating Manufacturers and STATE Outside Counsel agree upon the amount of a Liquidated Fee, the Original Participating Manufacturers shall pay such Liquidated Fee, pursuant to the terms hereof.

(b) The Original Participating Manufacturers' payment of any Liquidated Fee pursuant to this STATE Fee Payment Agreement shall be subject to (i) satisfaction of the conditions precedent stated in section 4 and paragraph (c)(ii) of section 7 hereof; and (ii) the payment schedule and the annual and quarterly aggregate national caps specified in sections 8 and 9 hereof, which shall apply to all payments made with respect to Liquidated Fees of all Outside Counsel.

SECTION 7. *Negotiation of Liquidated Fees.*

(a) If STATE Outside Counsel seek to be paid a Liquidated Fee, the Designated Representative shall so notify the Original Participating Manufacturers. The Original Participating Manufacturers may at any time make an offer of a Liquidated Fee to the Designated Representative in an amount set by the unanimous agreement, and at the sole discretion, of the Original

Participating Manufacturers and, in any event, shall collectively make such an offer to the Designated Representative no more than 60 Business Days after receipt of notice by the Designated Representative that STATE Outside Counsel seek to be paid a Liquidated Fee. The Original Participating Manufacturers shall not be obligated to make an offer of a Liquidated Fee in any particular amount. Within ten Business Days after receiving such an offer, STATE Outside Counsel shall either accept the offer, reject the offer or make a counteroffer.

(b) The national aggregate of all Liquidated Fees to be agreed to by the Original Participating Manufacturers in connection with the settlement of those actions indicated on Exhibits D, M and N to the Agreement shall not exceed one billion two hundred fifty million dollars ($1,250,000,000).

(c) If the Original Participating Manufacturers and STATE Outside Counsel agree in writing upon a Liquidated Fee—

(i) STATE Outside Counsel shall not be eligible for a Fee Award;

(ii) such Liquidated Fee shall not become a Payable Liquidated Fee until such time as (A) State-Specific Finality has occurred in the State of STATE; (B) each person or entity identified in Exhibit S to the Agreement by the Attorney General of the State of STATE [or as certified by the office of the governmental prosecuting authority of the Litigating Political Subdivision] has granted the release described in subsection (b) of section 4 hereof; and (C) notice of the events described in subparagraphs (A) and (B) of this paragraph has been provided to the Original Participating Manufacturers.

(iii) payment of such Liquidated Fee pursuant to sections 8 and 9 hereof together with payment of costs and expenses pursuant to section 19 hereof), shall be STATE Outside Counsel's total and sole compensation by the Original Participating Manufacturers in connection with the Action.

(d) If the Original Participating Manufacturers and STATE Outside Counsel do not agree in writing upon a Liquidated Fee, STATE Outside Counsel may submit an Application to the Panel for a Fee Award to be paid as provided in sections 16, 17 and 18 hereof.

SECTION 8. *Payment of Liquidated Fee.*

In the event that the Original Participating Manufacturers and STATE Outside Counsel agree in writing upon a Liquidated Fee, and until such time as the Designated Representative has received payments in full satisfaction of such Liquidated Fee—

(a) On February 1, 1999, if the Liquidated Fee of STATE Outside Counsel became a Payable Liquidated Fee before January 15, 1999, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the lesser of (i) the Payable Liquidated Fee of STATE Outside Counsel, (ii) $5 million or (iii) in the event that the sum of all Payable Liquidated Fees of all Outside Counsel as of January 15, 1999 exceeds the Applicable Liquidation Amount, the Allocable Liquidated Share of STATE Outside Counsel.

(b) On August 1, 1999, if the Liquidated Fee of STATE Outside Counsel became a Payable Liquidated Fee on or after January 15, 1999 and before July 15, 1999, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the lesser of (i) the Payable Liquidated Fee of STATE Outside Counsel, (ii) $5 million or (iii) in the event that the sum of all Payable Liquidated Fees of all Outside Counsel that became Payable Liquidated Fees on or after January 15, 1999 and before July 15, 1999 exceeds the Applicable Liquidation Amount, the Allocable Liquidated Share of STATE Outside Counsel.

(c) On December 15, 1999, if the Liquidated Fee of STATE Outside Counsel became a Payable Liquidated Fee on or after July 15, 1999 and before December 1, 1999, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the lesser of (i) the Payable Liquidated Fee of STATE Outside Counsel, (ii) $5 million or (iii) in the event that the sum of all Payable Liquidated Fees of all Outside Counsel that became Payable Liquidated Fees on or after July 15, 1999 and before December 1, 1999 exceeds the Applicable Liquidation Amount, the Allocable Liquidated Share of STATE Outside Counsel.

(d) On December 15, 1999, if the Liquidated Fee of STATE Outside Counsel became a Payable Liquidated Fee before December 1, 1999, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the lesser of (i) the Payable Liquidated Fee of STATE Outside Counsel, or (ii) $5 million or (iii) in the event that the sum of all Payable Liquidated Fees of all Outside Counsel that become Payable Liquidated Fees before December 1, 1999 exceeds the Applicable Liquidation Amount, the Allocable Liquidated Share of STATE Outside Counsel.

(e) On December 15, 1999, if the Liquidated Fee of STATE Outside Counsel became a Payable Liquidated Fee before December 1, 1999, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the lesser of (i) the Payable Liquidated Fee of STATE Outside Counsel or (ii) in the event that the sum of all Payable Liquidated Fees of all Outside Counsel that became Payable Liquidated Fees before December 1, 1999 exceeds the Applicable Liquidation Amount, the Allocable Liquidated Share of STATE Outside Counsel.

(f) On the last day of each calendar quarter, beginning with the first calendar quarter of 2000 and ending with the fourth calendar quarter of 2003, if the Liquidated Fee of STATE Outside Counsel became a Payable Liquidated Fee at least 15 Business Days prior to the last day of each such calendar quarter, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the lesser of (i) the Payable Liquidated Fee of STATE Outside Counsel or (ii) in the event that the sum of all Payable Liquidated Fees of all Outside Counsel as of the date 15 Business Days prior to the date of the payment in question exceeds the Applicable Liquidation Amount, the Allocable Liquidated Share of STATE Outside Counsel.

SECTION 9. *Limitations on Payments of Liquidated Fees.*

Notwithstanding any other provision hereof, all payments by the Original Participating Manufacturers with respect to Liquidated Fees shall be subject to the following:

(a) Under no circumstances shall the Original Participating Manufacturers be required to make any payment that would result in aggregate national payments of Liquidated Fees:

(i) during 1999, totaling more than $250 million;

(ii) with respect to any calendar quarter beginning with the first calendar quarter of 2000 and ending with

the fourth calendar quarter of 2003, totaling more than $62.5 million, except to the extent that a payment with respect to any prior calendar quarter of any calendar year did not total $62.5 million; or

(iii) with respect to any calendar quarter after the fourth calendar quarter of 2003, totaling more than zero.

(b) The Original Participating Manufacturers' obligations with respect to the Liquidated Fee of STATE Outside Counsel, if any, shall be exclusively as provided in this STATE Fee Payment Agreement, and notwithstanding any other provision of law, such Liquidated Fee shall not be entered as or reduced to a judgment against the Original Participating Manufacturers or considered as a basis for requiring a bond or imposing a lien or any other encumbrance.

SECTION 10. *Fee Awards.*

(a) In the event that the Original Participating Manufacturers and STATE Outside Counsel do not agree in writing upon a Liquidated Fee as described in section 7 hereof, the Original Participating Manufacturers shall pay, pursuant to the terms hereof, the Fee Award awarded by the Panel to STATE Outside Counsel.

(b) The Original Participating Manufacturers' payment of any Fee Award pursuant to this STATE Fee Payment Agreement shall be subject to the payment schedule and the annual and quarterly aggregate national caps specified in sections 17 and 18 hereof, which shall apply to:

(i) all payments of Fee Awards in connection with an agreement to pay fees as part of the settlement of any Tobacco Case on terms that provide for payment by the Original Participating Manufacturers or other defendants acting in agreement with the Original Participating Manufacturers (collectively, "Participating Defendants") of fees with respect to any Private Counsel, subject to an annual cap on payment of all such fees; and

(ii) all payments of attorneys' fees (other than fees for attorneys of Participating Defendants) pursuant to Fee Awards for activities in connection with any Tobacco Case resolved by operation of Federal Legislation.

SECTION 11. *Composition of the Panel.*

(a) The first and the second members of the Panel shall both be permanent members of the Panel and, as such, will participate in the determination of all Fee Awards. The third Panel member shall not be a permanent Panel member, but instead shall be a state-specific member selected to determine Fee Awards on behalf of Private Counsel retained in connection with litigation within a single state. Accordingly, the third, state-specific member of the Panel for purposes of determining Fee Awards with respect to litigation in the State of STATE shall not participate in any determination as to any Fee Award with respect to litigation in any other state (unless selected to participate in such determinations by such persons as may be authorized to make such selections under other agreements).

(b) The members of the Panel shall be selected as follows:

(i) The first member shall be the natural person selected by Participating Defendants.

(ii) The second member shall be the person jointly selected by the agreement of Participating Defendants and a majority of the committee described in the fee payment agreements entered in connection with the settlements of the Tobacco Cases brought by the Previously Settled States. In the event that the person so selected is unable or unwilling to continue to serve, a replacement for such member shall be selected by agreement of the Original Participating Manufacturers and a majority of the members of a committee composed of the following members: Joseph F. Rice, Richard F. Scruggs, Steven W. Berman, Walter Umphrey, one additional representative, to be selected in the sole discretion of NAAG, and two representatives of Private Counsel in Tobacco Cases, to be selected at the sole discretion of the Original Participating Manufacturers.

(iii) The third, state-specific member for purposes of determining Fee Awards with respect to litigation in the State of STATE shall be a natural person selected by STATE Outside Counsel, who shall notify the Director and the Original Participating Manufacturers of the name of the person selected.

SECTION 12. *Application of STATE Outside Counsel.*

(a) STATE Outside Counsel shall make a collective Application for a single Fee Award, which shall be submitted to the Director. Within five Business Days after receipt of the Application by STATE Outside Counsel, the Director shall serve the Application upon the Original Participating Manufacturers and the STATE. The Original Participating Manufacturers shall submit all materials in response to the Application to the Director by the later of (i) 60 Business Days after service of the Application upon the Original Participating Manufacturers by the Director, (ii) five Business Days after the date of State-Specific Finality in the State of STATE or (iii) five Business Days after the date on which notice of the name of the third, state-specific panel member described in paragraph (b)(iii) of section 11 hereof has been provided to the Director and the Original Participating Manufacturers.

(b) The Original Participating Manufacturers may submit to the Director any materials that they wish and, notwithstanding any restrictions or representations made in any other agreements, the Original Participating Manufacturers shall be in no way constrained from contesting the amount of the Fee Award requested by STATE Outside Counsel. The Director, the Panel, the State of STATE, the Original Participating Manufacturers and STATE Outside Counsel shall preserve the confidentiality of any attorney work-product materials or other similar confidential information that may be submitted.

(c) The Director shall forward the Application of STATE Outside Counsel, as well as all written materials relating to such Application that have been submitted by the Original Participating Manufacturers pursuant to subsection (b) of this section, to the Panel within five Business Days after the later of (i) the expiration of the period for the Original Participating Manufacturers to submit such materials or (ii) the earlier of (A) the date on which the Panel issues a Fee Award with respect to any Application of other Private Counsel previously forwarded to the Panel by the Director or (B) 30 Business Days after the forwarding to the Panel of the Application of other Private Counsel most recently forwarded to the Panel by the Director. The Director shall notify the Parties upon forwarding the Application (and all written materials relating thereto) to the Panel.

(d) In the event that either Party seeks a hearing before the Panel, such Party may submit a request to the Director in writing within five Business Days after the forwarding of the Application of STATE Outside Counsel to the Panel by the Director, and the Director shall promptly forward the request to the Panel. If the Panel

grants the request, it shall promptly set a date for hearing, such date to fall within 30 Business Days after the date of the Panel's receipt of the Application.

SECTION 13. *Panel Proceedings.*

The proceedings of the Panel shall be conducted subject to the terms of this Agreement and of the Protocol of Panel Procedures attached as an Appendix hereto.

SECTION 14. *Award of Fees to STATE Outside Counsel.*

The members of the Panel will consider all relevant information submitted to them in reaching a decision as to a Fee Award that fairly provides for full reasonable compensation of STATE Outside Counsel. In considering the amount of the Fee Award, the Panel shall not consider any Liquidated Fee agreed to by any other Outside Counsel, any offer of or negotiations relating to any proposed liquidated fee for STATE Outside Counsel or any Fee Award that already has been or yet may be awarded in connection with any other Tobacco Case. The Panel shall not be limited to an hourly-rate or lodestar analysis in determining the amount of the Fee Award of STATE Outside Counsel, but shall take into account the totality of the circumstances. The Panel's decisions as to the Fee Award of STATE Outside Counsel shall be in writing and shall report the amount of the fee awarded (with or without explanation or opinion, at the Panel's discretion). The Panel shall determine the amount of the Fee Award to be paid to STATE Outside Counsel within the later of 30 calendar days after receiving the Application (and all related materials) from the Director or 15 Business Days after the last date of any hearing held pursuant to subsection (d) of section 12 hereof. The Panel's decision as to the Fee Award of STATE Outside Counsel shall be final, binding and non-appealable.

SECTION 15. *Costs of Arbitration.*

All costs and expenses of the arbitration proceedings held by the Panel, including costs, expenses and compensation of the Director and of the Panel members (but not including any costs, expenses or compensation of counsel making applications to the Panel), shall be borne by the Original Participating Manufacturers in proportion to their Relative Market Shares.

SECTION 16. *Payment of Fee Award of STATE Outside Counsel.*

On or before the tenth Business Day after the last day of each calendar quarter beginning with the first calendar quarter of 1999, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the Allocated Amount for STATE Outside Counsel for the calendar quarter with respect to which such quarterly payment is being made (the "Applicable Quarter").

SECTION 17. *Allocated Amounts of Fee Awards.*

The Allocated Amount for each Private Counsel with respect to any payment to be made for any particular Applicable Quarter shall be determined as follows:

(a) The Quarterly Fee Amount shall be allocated equally among each of the three months of the Applicable Quarter. The amount for each such month shall be allocated among those Private Counsel retained in connection with Tobacco Cases settled before or during such month (each such Private Counsel being an "Eligible Counsel" with respect to such monthly amount), each of which shall be allocated a portion of each such monthly amount up to (or, in the event that the sum of all Eligible Counsel's respective Unpaid Fees exceeds such monthly amount, in proportion to) the amount of such Eligible Counsel's Unpaid Fees. The monthly amount for each month of the calendar quarter shall be allocated among those Eligible Counsel having Unpaid Fees, without regard to whether there may be Eligible Counsel that have not yet been granted or denied a Fee Award as of the last day of the Applicable Quarter. The allocation of subsequent Quarterly Fee Amounts for the calendar year, if any, shall be adjusted, as necessary, to account for any Eligible Counsel that are granted Fee Awards in a subsequent quarter of such calendar year, as provided in paragraph (b)(ii) of this section.

(b) In the event that the amount for a given month is less than the sum of the Unpaid Fees of all Eligible Counsel:

(i) in the case of the first quarterly allocation for any calendar year, such monthly amount shall be allocated among all Eligible Counsel for such month in proportion to the amounts of their respective Unpaid Fees.

(ii) in the case of a quarterly allocation after the first quarterly allocation, the Quarterly Fee Amount shall be allocated among only those Private Counsel, if any, that were Eligible Counsel with respect to any monthly amount for any prior quarter of the calendar year but were not allocated a proportionate share of such monthly amount (either because such Private Counsel's applications for Fee Awards were still under consideration as of the last day of the calendar quarter containing the month in question or for any other reason), until each such Eligible Counsel has been allocated a proportionate share of all such prior monthly payments for the calendar year (each such share of each such Eligible Counsel being a "Payable Proportionate Share"). In the event that the sum of all Payable Proportionate Shares exceeds the Quarterly Fee Amount, the Quarterly Fee Amount shall be allocated among such Eligible Counsel on a monthly basis in proportion to the amounts of their respective Unpaid Fees (without regard to whether there may be other Eligible Counsel with respect to such prior monthly amounts that have not yet been granted or denied a Fee Award as of the last day of the Applicable Quarter). In the event that the sum of all Payable Proportionate Shares is less than the Quarterly Fee Amount, the amount by which the Quarterly Fee Amount exceeds the sum of all such Payable Proportionate Shares shall be allocated among each month of the calendar quarter, each such monthly amount to be allocated among those Eligible Counsel having Unpaid Fees in proportion to the amounts of their respective Unpaid Fees (without regard to whether there may be Eligible Counsel that have not yet been granted or denied a Fee Award as of the last day of the Applicable Quarter).

(c) Adjustments pursuant to subsection (b)(ii) of this section 17 shall be made separately for each calendar year. No amounts paid in any calendar year shall be subject to refund, nor shall any payment in any given calendar year affect the allocation of payments to be made in any subsequent calendar year.

SECTION 18. *Credits to and Limitations on Payment of Fee Awards.*

Notwithstanding any other provision hereof, all payments by the Original Participating Manufacturers with respect to Fee Awards shall be subject to the following:

(a) Under no circumstances shall the Original Participating Manufacturers be required to make payments that would result in aggregate national payments and credits by Participating Defendants with respect to all Fee Awards of Private Counsel:

(i) during any year beginning with 1999, totaling more than the sum of the Quarterly Fee Amounts for each calendar quarter of the calendar year, excluding certain payments with respect to any Private Counsel for 1998 that are paid in 1999; and

(ii) during any calendar quarter beginning with the first calendar quarter of 1999, totaling more than the Quarterly Fee Amount for such quarter, excluding certain payments with respect to any Private Counsel for 1998 that are paid in 1999.

(b) The Original Participating Manufacturers' obligations with respect to the Fee Award of STATE Outside Counsel, if any, shall be exclusively as provided in this STATE Fee Payment Agreement, and notwithstanding any other provision of law, such Fee Award shall not be entered as or reduced to a judgment against the Original Participating Manufacturers or considered as a basis for requiring a bond or imposing a lien or any other encumbrance.

SECTION 19. *Reimbursement of Outside Counsel's Costs.*

(a) The Original Participating Manufacturers shall reimburse STATE Outside Counsel for reasonable costs and expenses incurred in connection with the Action, provided that such costs and expenses are of the same nature as costs and expenses for which the Original Participating Manufacturers ordinarily reimburse their own counsel or agents. Payment of any Approved Cost Statement pursuant to this STATE Fee Payment Agreement shall be subject to (i) the condition precedent of approval of the Agreement by the Court for the State of STATE and (ii) the payment schedule and the aggregate national caps specified in subsection (c) of this section, which shall apply to all payments made with respect to Cost Statements of all Outside Counsel.

(b) In the event that STATE Outside Counsel seek to be reimbursed for reasonable costs and expenses incurred in connection with the Action, the Designated Representative shall submit a Cost Statement to the Original Participating Manufacturers. Within 30 Business Days after receipt of any such Cost Statement, the Original Participating Manufacturers shall either accept the Cost Statement or dispute the Cost Statement, in which event the Cost Statement shall be subject to a full audit by examiners to be appointed by the Original Participating Manufacturers (in their sole discretion). Any such audit will be completed within 120 Business Days after the date the Cost Statement is received by the Original Participating Manufacturers. Upon completion of such audit, if the Original Participating Manufacturers and STATE Outside Counsel cannot agree as to the appropriate amount of STATE Outside Counsel's reasonable costs and expenses, the Cost Statement and the examiner's audit report shall be submitted to the Director for arbitration before the Panel or, in the event that STATE Outside Counsel and the Original Participating Manufacturers have agreed upon a Liquidated Fee pursuant to section 7 hereof, before a separate three-member panel of independent arbitrators, to be selected in a manner to be agreed to by STATE Outside Counsel and the Original Participating Manufacturers, which shall determine the amount of STATE Outside Counsel's reasonable costs and expenses for the Action. In determining such reasonable costs and expenses, the members of the arbitration panel shall be governed by the Protocol of Panel Procedures attached as an Appendix hereto. The amount of STATE Outside Counsel's reasonable costs and expenses determined pursuant to arbitration as provided in the preceding sentence shall be final, binding and non-appealable.

(c) Any Approved Cost Statement of STATE Outside Counsel shall not become a Payable Cost Statement until approval of the Agreement by the Court for the State of STATE. Within five Business Days after receipt of notification thereof by the Designated Representative, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the Payable Cost Statement of STATE Outside Counsel, subject to the following—

(i) All Payable Cost Statements of Outside Counsel shall be paid in the order in which such Payable Cost Statements became Payable Cost Statements.

(ii) Under no circumstances shall the Original Participating Manufacturers be required to make payments that would result in aggregate national payments by Participating Defendants of all Payable Cost Statements of Private Counsel in connection with all of the actions identified in Exhibits D, M and N to the Agreement, totaling more than $75 million for any given year.

(iii) Any Payable Cost Statement of Outside Counsel not paid during the year in which it became a Payable Cost Statement as a result of paragraph (ii) of this subsection shall become payable in subsequent years, subject to paragraphs (i) and (ii), until paid in full.

(d) The Original Participating Manufacturers" obligations with respect to reasonable costs and expenses incurred by STATE Outside Counsel in connection with the Action shall be exclusively as provided in this STATE Fee Payment Agreement, and notwithstanding any other provision of law, any Approved Cost Statement determined pursuant to subsection (b) of this section (including any Approved Cost Statement determined pursuant to arbitration before the Panel or the separate three-member panel of independent arbitrators described therein) shall not be entered as or reduced to a judgment against the Original Participating Manufacturers or considered as a basis for requiring a bond or imposing a lien or any other incumbrance.

SECTION 20. *Distribution of Payments among STATE Outside Counsel.*

(a) All payments made to the Designated Representative pursuant to this STATE Fee Payment Agreement shall be for the benefit of each person or entity identified in Exhibit S to the Agreement by the Attorney General of the State of STATE [or as certified by the governmental prosecuting authority of the Litigating Political Subdivision], each of which shall receive from the Designated Representative a percentage of each such payment in accordance with the fee sharing agreement, if any, among STATE Outside Counsel (or any written amendment thereto).

(b) The Original Participating Manufacturers shall have no obligation, responsibility or liability with respect to the allocation among those persons or entities identified in Exhibit S to the Agreement by the Attorney General of the State of STATE [or as certified by the governmental prosecuting authority of the Litigating Political Subdivision], or with respect to any claim of misallocation, of any amounts paid to the Designated Representative pursuant to this STATE Fee Payment Agreement.

SECTION 21. *Calculations of Amounts.*

All calculations that may be required hereunder shall be performed by the Original Participating Manufacturers, with notice of the results thereof to be given promptly to the Designated Representative. Any disputes as to the

correctness of calculations made by the Original Participating Manufacturers shall be resolved pursuant to the procedures described in Section XI(c) of the Agreement for resolving disputes as to calculations by the Independent Auditor.

SECTION 22. *Payment Responsibility.*

(a) Each Original Participating Manufacturer shall be severally liable for its share of all payments pursuant to this STATE Fee Payment Agreement. Under no circumstances shall any payment due hereunder or any portion thereof become the joint obligation of the Original Participating Manufacturers or the obligation of any person other than the Original Participating Manufacturer from which such payment is originally due, nor shall any Original Participating Manufacturer be required to pay a portion of any such payment greater than its Relative Market Share.

(b) Due to the particular corporate structures of R. J. Reynolds Tobacco Company ("Reynolds") and Brown & Williamson Tobacco Corporation ("Brown & Williamson") with respect to their non-domestic tobacco operations, Reynolds and Brown & Williamson shall each be severally liable for its respective share of each payment due pursuant to this STATE Fee Payment Agreement up to (and its liability hereunder shall not exceed) the full extent of its assets used in, and earnings and revenues derived from, its manufacture and sale in the United States of Tobacco Products intended for domestic consumption, and no recourse shall be had against any of its other assets or earnings to satisfy such obligations.

SECTION 23. *Termination.*

In the event that the Agreement is terminated with respect to the State of STATE pursuant to Section XVIII(u) of the Agreement (or for any other reason) the Designated Representative and each person or entity identified in Exhibit S to the Agreement by the Attorney General of the State of STATE [or as certified by the governmental prosecuting authority of the Litigating Political Subdivision] shall immediately refund to the Original Participating Manufacturers all amounts received under this STATE Fee Payment Agreement.

SECTION 24. *Intended Beneficiaries.*

No provision hereof creates any rights on the part of, or is enforceable by, any person or entity that is not a Party or a person covered by either of the releases described in section 4 hereof, except that sections 5 and 20 hereof create rights on the part of, and shall be enforceable by, the State of STATE. Nor shall any provision hereof bind any non-signatory or determine, limit or prejudice the rights of any such person or entity.

SECTION 25. *Representations of Parties.*

The Parties hereto hereby represent that this STATE Fee Payment Agreement has been duly authorized and, upon execution, will constitute a valid and binding contractual obligation, enforceable in accordance with its terms, of each of the Parties hereto.

SECTION 26. *No Admission.*

This STATE Fee Payment Agreement is not intended to be and shall not in any event be construed as, or deemed to be, an admission or concession or evidence of any liability or wrongdoing whatsoever on the part of any signatory hereto or any person covered by either of the releases provided under section 4 hereof. The Original Participating Manufacturers specifically disclaim and deny any liability or wrongdoing whatsoever with respect to the claims released under section 4 hereof and enter into this STATE Fee Payment Agreement for the sole purposes of memorializing the Original Participating Manufacturers' rights and obligations with respect to payment of attorneys' fees pursuant to the Agreement and avoiding the further expense, inconvenience, burden and uncertainty of potential litigation.

SECTION 27. *Non-admissibility.*

This STATE Fee Payment Agreement having been undertaken by the Parties hereto in good faith and for settlement purposes only, neither this STATE Fee Payment Agreement nor any evidence of negotiations relating hereto shall be offered or received in evidence in any action or proceeding other than an action or proceeding arising under this STATE Fee Payment Agreement.

SECTION 28. *Amendment and Waiver.*

This STATE Fee Payment Agreement may be amended only by a written instrument executed by the Parties. The waiver of any rights conferred hereunder shall be effective only if made by written instrument executed by the waiving Party. The waiver by any Party of any breach hereof shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this STATE Fee Payment Agreement.

SECTION 29. *Notices.*

All notices or other communications to any party hereto shall be in writing (including but not limited to telex, facsimile or similar writing) and shall be given to the notice parties listed on Schedule A hereto at the addresses therein indicated. Any Party hereto may change the name and address of the person designated to receive notice on behalf of such Party by notice given as provided in this section including an updated list conformed to Schedule A hereto.

SECTION 30. *Governing Law.*

This STATE Fee Payment Agreement shall be governed by the laws of the State of STATE without regard to the conflict of law rules of such State.

SECTION 31. *Construction.*

None of the Parties hereto shall be considered to be the drafter hereof or of any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

SECTION 32. *Captions.*

The captions of the sections hereof are included for convenience of reference only and shall be ignored in the construction and interpretation hereof.

SECTION 33. *Execution of STATE Fee Payment Agreement.*

This STATE Fee Payment Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this STATE Fee Payment Agreement.

SECTION 34. *Entire Agreement of Parties.*

This STATE Fee Payment Agreement contains an entire, complete and integrated statement of each and every term and provision agreed to by and among the Parties with respect to payment of attorneys' fees by the Original Participating Manufacturers in connection with the Action and is not subject to any condition or covenant, express or implied, not provided for herein.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this STATE Fee Payment Agreement as of this _____ th day of _____ , 1998.

[SIGNATURE BLOCK]

APPENDIX

to MODEL FEE PAYMENT AGREEMENT

PROTOCOL OF PANEL PROCEEDINGS

This Protocol of procedures has been agreed to between the respective parties to the STATE Fee Payment Agreement, and shall govern the arbitration proceedings provided for therein.

SECTION 1. *Definitions.*

All definitions contained in the STATE Fee Payment Agreement are incorporated by reference herein.

SECTION 2. *Chairman.*

The person selected to serve as the permanent, neutral member of the Panel as described in paragraph (b)(ii) of section 11 of the STATE Fee Payment Agreement shall serve as the Chairman of the Panel.

SECTION 3. *Arbitration Pursuant to Agreement.*

The members of the Panel shall determine those matters committed to the decision of the Panel under the STATE Fee Payment Agreement, which shall govern as to all matters discussed therein.

SECTION 4. *ABA Code of Ethics.*

Each of the members of the Panel shall be governed by the *Code of Ethics for Arbitrators in Commercial Disputes* prepared by the American Arbitration Association and the American Bar Association (the "*Code of Ethics*") in conducting the arbitration proceedings pursuant to the STATE Fee Payment Agreement, subject to the terms of the STATE Fee Payment Agreement and this Protocol. Each of the party-appointed members of the Panel shall be governed by Canon VII of the *Code of Ethics*. No person may engage in any *ex parte* communications with the permanent, neutral member of the Panel selected pursuant to paragraph (b)(ii) of section 11, in keeping with Canons I, II and III of the *Code of Ethics.*

SECTION 5. *Additional Rules and Procedures.*

The Panel may adopt such rules and procedures as it deems necessary and appropriate for the discharge of its duties under the STATE Fee Payment Agreement and this Protocol, subject to the terms of the STATE Fee Payment Agreement and this Protocol.

SECTION 6. *Majority Rule.*

In the event that the members of the Panel are not unanimous in their views as to any matter to be determined by them pursuant to the STATE Fee Payment Agreement or this Protocol, the determination shall be decided by a vote of a majority of the three members of the Panel.

SECTION 7. *Application for Fee Award and Other Materials.*

(a) The Application of STATE Outside Counsel and any materials submitted to the Director relating thereto (collectively, 'submissions") shall be forwarded by the Director to each of the members of the Panel in the manner and on the dates specified in the STATE Fee Payment Agreement.

(b) All materials submitted to the Director by either Party (or any other person) shall be served upon all Parties. All submissions required to be served on any Party shall be deemed to have been served as of the date on which such materials have been sent by either (i) hand delivery or (ii) facsimile and overnight courier for priority next-day delivery.

(c) To the extent that the Panel believes that information not submitted to the Panel may be relevant for purposes of determining those matters committed to the decision of the Panel under the terms of the STATE Fee Payment Agreement, the Panel shall request such information from the Parties.

SECTION 8. *Hearing.*

Any hearing held pursuant to section 12 of the STATE Fee Payment Agreement shall not take place other than in the presence of all three members of the Panel upon notice and an opportunity for the respective representatives of the Parties to attend.

SECTION 9. *Miscellaneous.*

(a) Each member of the Panel shall be compensated for his services by the Original Participating Manufacturers on a basis to be agreed to between such member and the Original Participating Manufacturers.

(b) The members of the Panel shall refer all media inquiries regarding the arbitration proceeding to the respective Parties to the STATE Fee Payment Agreement and shall refrain from any comment as to the arbitration proceedings to be conducted pursuant to the STATE Fee Payment Agreement during the pendency of such arbitration proceedings, in keeping with Canon IV(B) of the *Code of Ethics.*

EXHIBIT P

NOTICES

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EXHIBIT Q

1996 AND 1997 DATA

(1) *1996 Operating Income*

Original Participating Manufacturer	*Operating Income*
Brown & Williamson Tobacco Corp.	$801,640,000
Lorillard Tobacco Co.	$719,100,000
Philip Morris Inc.	$4,206,600,000
R.J. Reynolds Tobacco Co.	$1,468,000,000
Total (Base Operating Income)	$7,195,340,000

(2) *1997 volume (as measured by shipments of Cigarettes)*

Original Participating Manufacturer	*Number of Cigarettes*
Brown & Williamson Tobacco Corp.*	78,911,000,000
Lorillard Tobacco Co.	42,288,000,000
Philip Morris Inc.	236,203,000,000
R.J. Reynolds Tobacco Co.	118,254,000,000
Total (Base Volume)	475,656,000,000

(3) *1997 volume (as measured by excise taxes)*

Original Participating Manufacturer	*Number of Cigarettes*
Brown & Williamson Tobacco Corp.*	78,758,000,000
Lorillard Tobacco Co.	42,315,000,000
Philip Morris Inc.	236,326,000,000
R.J. Reynolds Tobacco Co.	119,099,000,000

* The volume includes 2,847,595 pounds of "roll your own" tobacco converted into the number of Cigarettes using 0.0325 ounces per Cigarette conversion factor.

EXHIBIT R

EXCLUSION OF CERTAIN BRAND NAMES

Brown & Williamson Tobacco Corporation

GPC
State Express 555
Riviera

Philip Morris Incorporated

Players
B&H
Belmont
Mark Ten
Viscount
Accord
L&M
Lark
Rothman's
Best Buy
Bronson
F&L
Genco
GPA
Gridlock
Money
No Frills
Generals
Premium Buy
Shenandoah
Top Choice

Lorillard Tobacco Company

None

R.J. Reynolds Tobacco Company

Best Choice
Cardinal
Director's Choice
Jacks
Rainbow
Scotch Buy
Slim Price
Smoker Friendly
Valu Time
Worth

EXHIBIT S

DESIGNATION OF OUTSIDE COUNSEL

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State of Alabama v. Philip Morris, et al., No. CV-98-2941-GR, pending in the Circuit Court of Montgomery County.
Blaylock et al. v. American Tobacco Co. et al., Circuit Court, Montgomery County, No. CV-96-1508-PR.
The *State* case has been consolidated with *Blaylock* and both cases will be settled pursuant to the Master Settlement Agreement.

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Wyoming	None	

EXHIBIT T

MODEL STATUTE

Section ___. Findings and Purpose.[1]

(a) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts.

(e) On _____, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

Section ___. Definitions.

(a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(b) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more,

[1] [A State may elect to delete the "findings and purposes" section in its entirety. Other changes or substitutions with respect to the "findings and purposes" section (except for particularized state procedural or technical requirements) will mean that the statute will no longer conform to this model.

and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(e) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on _____, 1998 by the State and leading United States tobacco product manufacturers.

(f) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with section _____ (b)—(c) of this Act.

(g) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(h) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(i) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) becomes a successor of an entity described in paragraph (1) or (2). The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (1)—(3) above.

(j) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the State. The [fill in name of responsible state agency] shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Section ___. Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b)(1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)—

1999: $.0094241 per unit sold after the date of enactment of this Act;[2]

2000: $.0104712 per unit sold after the date of enactment of this Act;[3] for each of 2001 and 2002: $.0136125 per unit sold after the date of enactment of this Act;

for each of 2003 through 2006: $.0167539 per unit sold after the date of enactment of this Act;

for each of 2007 and each year thereafter: $.0188482 per unit sold after the date of enactment of this Act.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances—

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating

[2] [All per unit numbers subject to verification]

[3] [The phrase "after the date of enactment of this Act" would need to be included only in the calendar year in which the Act is enacted.]

manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General [or other State official] that it is in compliance with this subsection. The Attorney General [or other State official] may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall—

(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty [to be paid to the general fund of the state] in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty [to be paid to the general fund of the state] in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.[4]

EXHIBIT U

STRATEGIC CONTRIBUTION FUND PROTOCOL

The payments made by the Participating Manufacturers pursuant to section IX(c)(2) of the Agreement ("Strategic Contribution Fund") shall be allocated among the Settling States pursuant to the process set forth in this Exhibit U.

Section 1

A panel committee of three former Attorneys General or former Article III judges ("Allocation Committee") shall be established to determine allocations of the Strategic Contribution Fund, using the process described herein. Two of the three members of the Allocation Committee shall be selected by the NAAG executive committee. Those two members shall choose the third Allocation Committee member. The Allocation Committee shall be geographically and politically diverse.

Section 2

Within 60 days after the MSA Execution Date, each Settling State will submit an itemized request for funds from the Strategic Contribution Fund, based on the criteria set forth in Section 4 of this Exhibit U.

Section 3

The Allocation Committee will determine the appropriate allocation for each Settling State based on the criteria set forth in Section 4 below. The Allocation Committee shall make its determination based upon written documentation.

Section 4

The criteria to be considered by the Allocation Committee in its allocation decision include each Settling State's contribution to the litigation or resolution of state tobacco litigation, including, but not limited to, litigation and/or settlement with tobacco product manufacturers, including Liggett and Myers and its affiliated entities.

Section 5

Within 45 days after receiving the itemized requests for funds from the Settling States, the Allocation Committee will prepare a preliminary decision allocating the Strategic Contribution Fund payments among the Settling States who submitted itemized requests for funds. All Allocation Committee decisions must be by majority vote. Each Settling State will have 30 days to submit comments on or objections to the draft decision. The Allocation Committee will issue a final decision allocating the Strategic Contribution Fund payments within 45 days.

Section 6

The decision of the Allocation Committee shall be final and non-appealable.

Section 7

The expenses of the Allocation Committee, in an amount not to exceed $100,000, will be paid from disbursements from the Subsection VIII(c) Account.

[4] [A State may elect to include a requirement that the violator also pay the State's costs and attorney's fees incurred during a successful prosecution under this paragraph (3).]

MASTER SETTLEMENT AGREEMENT AMENDMENTS 1—14

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Amendment 13

Amendment 14

AMENDMENT TO THE MASTER SETTLEMENT AGREEMENT

Pursuant to Section XVIII(J) of the Master Settlement Agreement, the undersigned parties hereby agree that Section IX(i)(4)(A) of the Master Settlement Agreement is amended to read as follows:

"(A) became a signatory to this Agreement more than 90 days after the MSA Execution Date or"

ADDENDUM TO THE MASTER SETTLEMENT AGREEMENT

The undersigned Settling States and Participating Manufacturers hereby agree as follows:

1. That the following companies are signatories to the Master Settlement Agreement ("MSA") as amended herein. In the case of a company that had not previously enacted the MSA, the signature below shall also be treated as execution of the MSA as amended herein.

A. Liggett Group Inc.

B. Commonwealth Brands, Inc.

C. Sante Fe Natural Tobacco Company, Inc.

D. [Space intentionally left blank]

E. ITL (USA) Limited

F. Japan Tobacco International U.S.A., Inc.

G. King Maker Marketing, Inc.

H. Lane Limited

I. Lignum-2, Inc.

J. LTD Corporation

K. The Medallion Company, Inc.

L. [Space intentionally left blank]

M. [Space intentionally left blank]

N. Premier Marketing Incorporated

O. P. T. Djarum

P. Sherman's 1400 Broadway N.Y.C. Ltd.

Q. Société Nationale d'Exploitation Industrielle des Tabacs et Allumettes

R. Tobacco Exporters International (USA) Ltd.

S. Top Tobacco, L.P.

2. The MSA is hereby amended as set forth in the attached Amendments No. 2 through and including No. 11.

3. Revision of the MSA pursuant to subsection XVIII(b)(2) shall not be required by virtue of any of the amendments set forth herein.

4. All capitalized terms used in this Addendum and attached Amendments not otherwise defined have the meaning given such terms in the MSA.

IN WITNESS WHEREOF, each Settling State and each Participating Manufacturer, through their fully authorized representatives, have agreed to this Addendum and Amendments.

PHILIP MORRIS INCORPORATED
Date: February 19, 1999

R. J. REYNOLDS TOBACCO COMPANY
Date: February 15, 1999

BROWN & WILLIAMSON TOBACCO CORPORATION
Date: February 17, 1999

LORILLARD TOBACCO COMPANY
Ronald S. Milstein
Vice President, General Counsel
Date: February 17, 1999

LIGGETT GROUP INC.
Consenting only to Amendments 2, 3, 9 and 10 to the MSA.Date: February 21, 1999

COMMONWEALTH BRANDS, INC.
Date: February 18, 1999

SANTA FE NATURAL TOBACCO COMPANY, INC.
Date: February 15, 1999

CROSSLINE DISTRIBUTORS, LTD.
Date:

ITL (USA) LIMITED
Date: February 15, 1999

JAPAN TOBACCO INTERNATIONAL U.S.A., INC.
Masayuki Hamada, President
Date: February 16, 1999

KING MAKER MARKETING, INC.
Date: February 12, 1999

LANE LIMITED
Date: February 15, 1999

LIGNUM-2, INC.
Date: February 16, 1999

LTD CORPORATION
Date: February 12, 1999

THE MEDALLION COMPANY, INC.
Date: February 15, 1999

PREMIER MARKETING INCORPORATED
Date: February 15, 1999

P. T. DIARIUM
Date: February 15, 1999

SOCIETE NATIONALE d'EXPLOITATION INDUSTRIELLE des TABACS et ALLUMETTES
Date: February 17, 1999

SHERMAN'S 1400 BROADWAY N.Y.C., LTD.
Date: February 12, 1999

TOBACCO EXPORTERS INTERNATIONAL (USA) LTD.
Date: February 15, 1999

TOP TOBACCO, L.P.
Seth I. Gold, Executive Vice President
Date: February 12, 1999

[ATTORNEY GENERAL SIGNATORIES OMITTED]

AMENDMENT NO 2 TO MASTER SETTLEMENT AGREEMENT

Section XVIII(b)(2) of the Master Settlement Agreement is hereby amended by deleting the sentence beginning with the word "The" on the second to last line of page 128 and ending with the word "Products" on the ninth line of page 129 [The Attachment reads as follows:

Manufacturer in a manner other than as expressly provided for in this Agreement; or

(b) on or after October 1, 2000, on non-economic terms more favorable to such governmental plaintiff than the non-economic terms of this Agreement, and such Future Settlement Agreement includes terms that provide for the implementation of non-economic tobacco-related public health measures different from those contained in this Agreement, then this Agreement shall be revised with respect to such Participating Manufacturer to include terms comparable to such non-economic terms, unless a majority of the Settling States elects against such revision.

(2) If any Settling State resolves by settlement Claims against any Non-Participating Manufacturer after the MSA Execution Date comparable to any Released Claim, and such resolution includes overall terms that are more favorable to such Non-Participating Manufacturer than the terms of this Agreement (including, without limitation, any terms that relate to the marketing or distribution of Tobacco Products and any term that provides for a lower settlement cost on a per pack sold basis), then the overall terms of this Agreement will be revised so that the Original Participating Manufacturers will obtain, with respect to that Settling State, overall terms at least as relatively favorable (taking into account, among other things, all payments previously made by the Original Participating Manufacturers and the timing of any payments) as those obtained by such Non-Participating Manufacturer pursuant to such resolution of Claims. Provided, however, that revision of this Agreement pursuant to this subsection (2) shall not be required by virtue of the subsequent entry into this Agreement by a Tobacco Product Manufacturer that has not become a Participating Manufacturer as of the MSA Execution Date. Notwithstanding the provisions of subsection XVIII(j), the provisions of this subsection XVIII(b)(2) may be waived by (and only by) unanimous agreement of the Original Participating Manufacturers.

(3) The parties agree that if any term of this Agreement is revised pursuant to subsection (b)(l) or (b)(2) above and the substance of such term before it was revised was also a term of the Consent Decree, each affected Settling State and each affected Participating Manufacturer shall jointly move the Court to amend the Consent Decree to conform the terms of the Consent Decree to the revised terms of the Agreement.

(4) If at any time any Settling State agrees to relieve, in any respect, any Participating Manufacturer's obligation to make the payments as provided in this]

AMENDMENT NO. 3 TO MASTER SETTLEMENT AGREEMENT

Section XII(a)(4)(A) of the Master Settlement Agreement is hereby amended by deleting the parenthetical phrase beginning on the 16th line of page 111 and ending on the 19th line of page 111 stating: "(and such Released Party gives notice to the applicable Settling State within 30 days of the service of such claim-over (or within 30 days after the MSA Execution Date, whichever is later) and prior to entry into any settlement of such claim-over)" and adding in place of such parenthetical phrase the following parenthetical phrase: "(and such Released Party gives notice to the applicable Settling State at the end of the calendar quarter (the quarterly periods to end on February 20, May 20, August 20, and November 20 of each year) in which service of such claim-over is received (or within 30 days after the MSA Execution Date, whichever is later) and prior to entry into any settlement of such claim-over; provided, however, that service of any claims received within 15 days before the end of any quarterly period shall be deemed to have been received during the subsequent calendar quarter)"

Section XII(a)(4)(B) of the Master Settlement Agreement is hereby amended by deleting the parenthetical phrase beginning after the word "settlement" on the 10th line of page 112 and ending on the 14th line of page 112 before the work "judgment" stating: "(to the extent that such Released Party has given notice to the applicable Settling State within 30 days of the service of such claim-over (or within 30 days after the MSA Execution Date, whichever is later) and prior to entry into any settlement of such claim-over)," and adding in place of such parenthetical phrase the following parenthetical phrase: "(to the extent that such Released Party has given notice to the applicable Settling State at the end of the calendar quarter in which service of such claim-over is received (or within 30 days after the MSA Execution Date, whichever is later), the end of the quarterly periods and the date on which service is deemed to have been received being those set forth in section XII(a)(4)(A) (as amended by this amendment), and prior to entry into any settlement of such claim-over),"

Section XII(a)(8)(A) of the Master Settlement Agreement is hereby amended by deleting the parenthetical phrase beginning on the 19th line of page 114 and ending on the 22nd line of page 114 stating: "(and such Released Party gives notice to the applicable Settling State within 30 days of service of such claim-over (or within 30 days after the MSA Execution Date, whichever is later) and prior to entry into any settlement of such claim-over)" and adding in place of such parenthetical phrase the following parenthetical phrase: "(and such Released Party gives

notice to the applicable Settling State at the end of the calendar quarter (the quarterly periods to end on February 20, May 20, August 20, and November 20 of each year) in which service of such claim-over is received (or within 30 days after the MSA Execution Date, whichever is later) and prior to entry into any settlement of such claim-over; provided, however, that service of any claims received within 15 days before the end of any quarterly period shall be deemed to have been received during the subsequent calendar quarter)"

Section XII(a)(8)(B) of the Master Settlement Agreement is hereby amended by deleting the parenthetical phrase beginning after the word "settlement" on the 15th line of page 115 and ending on the 18th line of page 115 stating: "(to the extent that such Released Party has given notice to the applicable Settling State within 30 days of the service of such claim-over (or within 30 days after the MSA Execution Date, whichever is later) and prior to entry into any settlement of such claim-over)" and adding in place of such parenthetical phrase the following parenthetical phrase: "(to the extent that such Released Party has given notice to the applicable Settling State at the end of the calendar quarter in which service of such claim-over is received (or within 30 days after the MSA Execution Date, whichever is later), the end of the quarterly periods and the date on which service is deemed to have been received being those set forth in section XII(a)(8)(A) (as amended by this amendment), and prior to entry into any settlement of such claim-over)"

Section XII(b) of the Master Settlement Agreement is hereby amended by deleting the first sentence of that section beginning with the word "If" on the 16th line of page 117 and ending with the word "state" on the last line of page 117 and adding in place of such sentence the following sentence: "If a Releasing Party (or any person or entity enumerated in section II(pp), without regard to the power of the Attorney General to release claims of such person or entity) nonetheless attempts to maintain a Released Claim against a Released Party, such Released Party shall give written notice of such potential claim to the Attorney General of the applicable Settling State at the end of the calendar quarter (the quarterly periods to end on February 20, May 20, August 20, and November 20 of each year) in which service of such claim is received (or within 30 days after the MSA Execution Date, whichever is later) (unless such potential claim is being maintained by such Settling State); provided, however, that service of any claims received within 15 days before the end of any quarterly period shall be deemed to have been received during the subsequent calendar quarter."

AMENDMENT NO. 4 TO MASTER SETTLEMENT AGREEMENT

Notwithstanding sections II(jj) and II(uu) of the Master Settlement Agreement ("MSA"), ITL (USA) Limited ("ITL (USA)") shall be considered to be a Tobacco Product Manufacturer and a Participating Manufacturer, and Imperial Tobacco Limited and Imasco Limited (collectively "Imperial") shall for purposes of the MSA not be considered to be a Tobacco Product Manufacturer at any time after the MSA Execution Date (and Imperial shall, for purposes of the Model Statute set forth in Exhibit T to the MSA only, be considered to be a Participating Manufacturer), provided that:

(1) ITL (USA) signs the MSA within 90 days after the MSA Execution Date and is bound by the MSA in all Settling States in which such Agreement binds Original Participating Manufacturers;

(2) Any Cigarettes manufactured by Imperial, or under trademarks owned by or licensed to Imperial, that Imperial intends to be sold in the States (collectively, "Imperial Cigarettes") are sold in the States only through one or more importer (collectively, "Imperial Importers") each of whom: (A) is a Participating Manufacturer; (B) will be responsible for the payments under the MSA with respect to the Imperial Cigarettes that it imports, is obligated to pay the taxes specified in subsection II(z) of the MSA on the Imperial Cigarettes that it imports, and is obligated to report the Imperial Cigarettes that it imports (if shipped in or to the fifty United States, the District of Columbia and Puerto Rico) as its shipments in the manner prescribed in subsection II(jj) of the MSA; (c) is obligated, after the date of this Amendment, not to import, sell or distribute Cigarettes manufactured (or purchased for resale in the States) by a Non-Participating Manufacturer; and (D) is either an Original Participating Manufacturer or a present or future Affiliate of Imperial (provided that, in calculating payment obligations under section of IX(I) of the MSA attributable to Imperial Cigarettes imported by a future Affiliate of Imperial that is itself a Subsequent Participating Manufacturer as of February 22, 1999 (other than preexisting brands of the future Affiliate itself), the 1997 and 1998 Market Shares (and 125 percent thereof) of such Affiliate shall be deemed to equal zero);

(3) Imperial fulfills the responsibilities and obligations set forth in paragraph 2(B) to the extent that an Imperial Importer fails to do so and Imperial undertakes good-faith efforts to enforce the obligation set forth in paragraph 2(C);

(4) Neither Imperial nor any other manufacturer of Imperial Cigarettes advertises or markets Imperial Cigarettes in the States;

(5) (A) The Supplemental Import and Distribution Agreement dated February 10, 1999 among ITL (USA), Imasco Limited and Imperial Tobacco Limited attached hereto as Exhibit A remains in full force and effect and the parties are in full compliance therewith (unless ITL (USA) ceases to import and does not import Imperial Cigarettes); and (B) Imperial enters into similar agreements with every Imperial Importer (except for ITL (USA) or an Imperial Importer that is an Original Participating Manufacturer) each of which agreements contains all of the substantive terms set forth in the Supplemental Import and Distribution Agreement attached hereto as Exhibit A, and the parties thereto are in full compliance with such terms (unless the Imperial Importer in question ceases to import and does not import Imperial Cigarettes); provided, however, that it shall also be deemed to be full compliance with this paragraph (5) if Imperial (A) ceases to manufacture and does not manufacture Cigarettes that Imperial intends to be sold in the States; and (B) ceases to intend and does not intend that Cigarettes manufactured under trademarks owned by or licensed to Imperial be sold in the States;

(6) For purposes of sections IX(i) and IX(d)(l)(B) of the Master Settlement Agreement, ITL (USA)'s 1997 and 1998 Market Share: (A) shall not include cigarettes manufactured (or purchased for resale in the States) by any Non-Participating Manufacturer; and (B) shall include the Market Share for 1997 or 1998, whichever is in question, of Imperial, if any, with respect to brands of Imperial Cigarettes as to which ITL (USA) has exclusive import and distribution rights in the States with respect to the entire calendar year immediately preceding the year in which the calculation in question is being made

(but only if and so long as the conditions specified in paragraphs (1)-(5) above are and continue to be met).

All capitalized terms not otherwise defined shall have the meaning given such terms in the Master Settlement Agreement, except that "Affiliate" shall mean: "a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person." Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 50 percent or more, and the term "person" means "an individual, partnership, committee, association, corporation or any other organization of group of persons."

Dated: February 10, 1999
New York, N.Y.

ITL (USA) LIMITED

By: _____
BILL ROSE
VICE PRESIDENT

EXHIBIT A TO AMENDMENT NO. 4 TO MASTER SETTLEMENT AGREEMENT

SUPPLEMENTAL IMPORT AND DISTRIBUTION AGREEMENT

This Supplemental Import and Distribution Agreement dated February 10, 1999 made by and between Imperial Tobacco Limited, a company duly incorporated under the Canada Business Corporation Act with its principal office at 3810 St. Antoine Street West, Montreal, Quebec, Canada H4C 1B5, Montreal, Canada, and Imasco Limited, a company duly incorporated under the Canada Business Corporation Act with its principal office at 600 de Maisonneuve Blvd. West, 20th floor, Montreal, Quebec, H3A 3K7, Montreal, Canada (collectively, the "Manufacturer/Exporter"), as the first party and ITL (USA) Limited (the "Importer"), a company duly incorporated under the laws of the State of Delaware, U.S.A. with its principal office at Heritage on the Garden, 75 Park Plaza, Boston, Massachusetts 02116, as the second party.

WITNESSETH:

WHEREAS, the Manufacturer/Exporter is engaged in the business, among other things, of exporting from Canada and selling to persons in the territory of the U.S.A. Cigarettes manufactured by and under trademarks owned by or licensed to the Manufacturer/Exporter;

WHEREAS, the Importer maintains a marketing organization and markets cigarettes in the area defined below as the Territory;

WHEREAS, the Manufacturer/Exporter and the Importer desire to promote the sale of said Cigarettes in said Territory;

WHEREAS, the Manufacturer/Exporter and the Importer have previously entered into and currently conduct business pursuant to a Supply Agreement dated April 5, 1993 (the 'supply Agreement") providing that the Importer is the exclusive importer and distributor for effecting the import and distribution in said Territory of said Cigarettes under the brand names listed in Appendix A, and now wish to supplement the terms of said agreement in order to permit ITL (USA) to execute an amendment to the Master Settlement Agreement of November 23, 1998 (the "MSA") in order to become a Participating Manufacturer under that agreement (the "Amendment");

WHEREAS, the Manufacturer/Exporter desires to continue the appointment of the Importer on the terms and conditions set forth in the Supply Agreement (and as hereinafter set forth) as its exclusive importer and distributor for effecting the import and distribution of said Cigarettes under said brand names in the Territory;

WHEREAS, the Importer remains willing to act under such appointment as importer and distributor of said Cigarettes subject to terms and conditions; and

WHEREAS, the parties hereto intend that the Settling States and the Original Participating Manufacturers (as those terms are defined in the MSA) be deemed third-party beneficiaries of this Supplemental Import and Distribution Agreement.

Now, therefore, in consideration of the mutual covenants and acknowledgments herein made, the parties hereto agree that the following terms amend and control the terms of the Supply Agreement between the Importer and the Manufacturer/Exporter:

1. APPOINTMENT

The Manufacturer/Exporter hereby reaffirms its appointment of the Importer as its exclusive importer and distributor for sale in the territory of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa and the Northern Marianas (the "Territory") of any and all Cigarettes (as such term is defined in the MSA) under any of the brand names listed in Appendix A which are and will be manufactured by the Manufacturer/Exporter or any licensee or Affiliate of the Manufacturer/Exporter and exported for intended sale in the Territory (and any other brand names as may be added from time to time, of which the Manufacturer/Exporter shall give notice to the Notice Parties as soon as reasonably practicable after their addition), subject to the terms and conditions appearing in this Agreement. The term "Affiliate" as used herein shall mean a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another person. Solely for purpose of this definition, the terms "owns", "is owned" and "ownership" mean ownership of any equity interest, or the equivalent thereof, of 50 percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization of group of persons.

2. EXCLUSIVITY

Subject to the provisions of section 4 below, the Manufacturer/Exporter shall not appoint any person other than the Importer as an additional importer and distributor for sale within the Territory of the Cigarettes described in section 1 above and shall not sell or distribute such Cigarettes in the Territory except through the Importer. The Manufacturer/Exporter shall not market or advertise such Cigarettes in the Territory.

3. COMPLIANCE WITH LAW

The Manufacturer/Exporter shall supply Cigarettes which comply with the requirements and applicable regulations effective in the Territory.

The Importer shall obtain all the governmental certification, license, permit or approval necessary to import and distribute Cigarettes in the Territory and shall sell the Cigarettes in the Territory in strict compliance with any and all laws, regulations and other requirements of federal, state, and local governments and their agencies. The Importer shall be responsible for the payments under the MSA with respect to the Cigarettes described in section 1 above, shall pay the taxes specified in subsection II(z) of the MSA on such Cigarettes, and shall report such Cigarettes (if shipped in or to the fifty United States, the District of Columbia and Puerto Rico) as its shipments in the manner prescribed in subsection II(jj) of the MSA.

4. DURATION AND TERMINATION

This Agreement shall be effective on the day and year first above written and shall continue for an initial period of two years. Thereafter this Agreement shall be automatically renewed upon the same terms and conditions, for successive additional terms of two years each, unless at least ninety (90) days prior to the expiration of the initial or renewal term, as the case may be, one party shall give the other party written notice of its desire to terminate this Agreement upon the expiration of the term then in effect; provided, however, that as long as the MSA remains in effect, this Agreement shall not be terminated by any party under this paragraph, any other paragraph hereof or any provision of the Supply Agreement unless the Manufacturer/Exporter has appointed another entity or entities meeting the requirements set forth in paragraph (2)(A)-(D) of the Amendment as importer(s) for the Territory of the Cigarettes described in section 1 above pursuant to an agreement with like terms as this Agreement. Provided, however, that the Manufacturer/Exporter may terminate this Agreement without appointing a new importer if both Imperial Tobacco Limited and Imasco Limited cease to manufacture and do not manufacture Cigarettes that either company intends to be sold in the States, and cease to intend and does not intend that Cigarettes manufactured under trademarks owned by or licensed to either Imperial Tobacco Limited or Imasco Limited be sold in the States.

All capitalized terms not otherwise defined shall have the meaning given such terms in the MSA.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the day and year first above written.

ITL (USA) Limited
By BILL ROSE, VICE PRESIDENT

Imperial Tobacco Limited
By D. R. BROWN, PRESIDENT, CHAIRMAN AND CHIEF EXECUTIVE OFFICER

Imasco Limited
By ROY R. SCHWARTZ, SENIOR VICE PRESIDENT

AMENDMENT TO SUPPLEMENTAL IMPORT AND DISTRIBUTION AGREEMENT DATED FEBRUARY 10, 1999.

The Supplemental Import and Distribution Agreement entered into among ITL (USA) Limited, Imasco Limited, and Imperial Tobacco Limited dated February 10, 1999 is hereby amended so that Appendix A, being the list of brands distributed through ITL (USA) Limited, is replaced by the Appendix A-1 attached hereto.

MONTREAL, February 19, 1999.

Bill Rose

ITL (USA) LIMITED

D. R. Brown

IMASCO LIMITED

D. R. Brown

IMPERIAL TOBACCO LIMITED

Appendix A-1 To Supplemental Import & Distribution Agreement

CIGARETTES

Avanti 100 mm 10x20
Matinee Slims Menthol 100 mm 10x20
Avanti 100 mm 8x25
Matinee Slims Menthol 100 mm 8x25
Avanti KS 10x20
Matinee Slims Menthol KS 10x20
Avanti KS 8x25
Matinee Slims Menthol KS 8x25
Avanti Light 100 mm 10x20
Medallion Ultra Mild KS 10x20
Avanti Light 100 mm 8x25
Medallion Ultra Mild KS 8x25
Avanti Light KS 10x20
Peter Jackson Extra Light KS 10x20
Avanti Light KS 8x25
Peter Jackson Extra Light KS 8x25
Cameo Extra Mild KS 10x20
Peter Jackson KS 10x20
Cameo Extra Mild K.S. 8x25
Peter Jackson KS 8x25
Cameo KS 10x20
Peter Jackson Light KS 8x25
Cameo KS SS 8x25
Sweet Caporal Filter KS 8x25
Matinee Extra Mild KS 10x20
Sweet Caporal Plain 8x25
Matinee Extra Mild KS 8x25
du Maurier Extra Light KS 10x20
Matinee Extra Mild Regular 10x20
du Maurier Extra Light KS 8x25
Matinee Extra Mild Regular 8x25
du Maurier Extra Light Regular 10x20
Matinee KS 10x20
du Maurier Extra Light Regular 8x25
Matinee KS 8x25
du Maurier KS 10x20
Matinee Regular 10x20
du Maurier KS 8x25
Matinee Regular 8x25
du Maurier Light KS 10x20
Matinee Slims 100 mm 10x20
du Maurier Light KS 8x25
Matinee Slims 100 mm 8x25
du Maurier Light Regular 10x20
Matinee Slims KS 10x20
du Maurier Light Regular 8x25
Matinee Slims KS 8x25
du Maurier Regular 10x20
du Maurier Regular 8x25
du Maurier Special Mild 100 mmm 10x20
du Maurier Special Mild 100 mm 8x25
du Maurier Special Mild KS 10x20
du Maurier Special Mild KS 8x25

du Maurier Ultra Light KS 10x20
du Maurier Ultra Light KS 8x25
du Maurier Ultra Light Regular 10x20
du Maurier Ultra Light Regular 8x25
Mercer Full Flavour
Mercer Full Flavour 100's
Mercer Light
Mercer Light 100's

FINE CUT

Admiral/Goldcrest 6x25
Ambassador/Diplomat 6x25
Belair 6x25
Broadway/Flair 6x25
Buckingham 6x25
Cameo Extra Blend 6x25
Cameo 1x200
Cameo 6x50
Cameo Special Cut 50 Bonus 1x200
Cameo Special Cut 50 Bonus 5x50
Canadian Gold 6x25
Capri 6x25
Cardinal/Royalty 6x25
Casino/Swinger 6x25
Continental 6x25
Cortina/Formula 1 6x25
Falcon 6x25
Grand Prix/GP 6x25
HB 6x25
Herbert Taryton Fine/Winchester 6x25
Heritage/Westminster 6x25
Imperial Special Blend 6x25
Imperial Tobacco/ITL Fine Cut 6x25
Insta-Kit 6x25
Lambert & Butler 6x25
Marguerite/Valu-Pack 6x25
Matinee Ex. Mild Spec. Cut 50 Bonus 1x200
Matinee Ex. Mild Spec. Cut 50 Bonus 5x50
Matinee Extra Blend 6x25
Matinee Extra Mild Extra Blend 6x25
Matinee Extra Mild 1x200
Matinee Extra Mild 6-50
Matinee 1x200
Matinee 6x50
Minister 6x25
Imperial Special Blend 50 gram
Old Friend Shag/Compag 6x25
Imperial Special Blend 200 gram
Old Gold 6x25
Senior Service 6x25
Turret 6x25
Vogue 1x200
Vogue 6x50
Wills 6x25

AMENDMENT NO. 5 TO MASTER SETTLEMENT AGREEMENT

Notwithstanding sections II(jj) and II(uu) of the Master Settlement Agreement, Japan Tobacco International, U.S.A. Inc. shall be considered to be a Tobacco Product Manufacturer and a Participating Manufacturer, and Japan Tobacco Inc. shall not be considered to be a Tobacco Product Manufacturer (and shall, for purposes of the Model Statute set forth in Exhibit T to the Master Settlement Agreement only, be considered to be a Participating Manufacturer), provided that:

(1) Japan Tobacco International U.S.A., Inc. signs the Master Settlement Agreement within 90 days after the MSA Execution Date and is bound by such Agreement in all Settling States in which such Agreement binds Original Participating Manufacturers;

(2) The agreement dated January 13, 1999 between Japan Tobacco Inc. and Japan Tobacco International Corp., on the one hand, and Japan Tobacco International U.S.A., Inc., on the other hand, attached hereto as Exhibit A remains in full force and effect and both parties thereto fully perform their obligations thereunder;

(3) Japan Tobacco International, U.S.A. Inc. does not, after the date of this agreement, import, sell or distribute cigarettes manufactured (or purchased for resale in the States) by a Non-Participating Manufacturer; and

(4) For purposes of sections IX(i) and IX(d)(1)(B) of the Master Settlement Agreement, Japan Tobacco International U.S.A., Inc.'s 1997 and 1998 Market Share: (A) shall not include cigarettes manufactured (or purchased for resale in the States) by any Non-Participating Manufacturer; and (B) shall include the Market Share for 1997 or 1998, whichever is in question, of Japan Tobacco Inc. (but only so long as the conditions specified in paragraphs (1)—(3) above are met).

All capitalized terms shall have the meaning given such terms in the Master Settlement Agreement.

Dated: February 5, 1999
New York, N.Y.

JAPAN TOBACCO INTERNATIONAL
U.S.A., INC.

By: _____

Name: Masayuki Hamada
Title: President

EXHIBIT A TO AMENDMENT NO. 5
IMPORT AND DISTRIBUTION AGREEMENT

This Import and Distribution Agreement dated 13th day of January, 1999 made by and between JT International Corp. (the "Exporter"), a company duly incorporated according to the laws of Japan with its principal office at JT Building, 2-l Toranomon 2-chome, Minato-ku, Tokyo, Japan, and Japan Tobacco Inc. (the "Manufacturer"), a company duly incorporated according to the laws of Japan with its principal office at JT Building, 2-l Toranomon 2-chome, Minato-ku, Tokyo, Japan, jointly and severally, as the first party (the "Manufacturer/Exporter") and Japan Tobacco International U.S.A., Inc. ("the Importer"), a company duly incorporated according to the laws of the State of California, U.S.A. with its principle office at 2441 205th Street, Suite C-102, Torrance, CA 90501, U.S.A., as the second party.

WITNESSETH:

WHEREAS, the Exporter is exclusively engaged in the business, among other things, of exporting from Japan and selling to the territory of the U.S.A. all cigarettes manufactured by and under trademarks of the Manufacturer;

WHEREAS, the Importer maintains a market organization and markets cigarettes in the area as defined as the Territory below;

WHEREAS, the Manufacturer/Exporter and the Importer desire to promote the sale of said cigarettes in said Territory;

WHEREAS, the Manufacturer/Exporter desires to continue the appointment of the Importer on the terms and

conditions hereinafter set forth as its exclusive importer and distributor for effecting the import and distribution of said cigarettes; and

WHEREAS, the Importer is willing to accept such appointment as exclusive importer and distributor of said cigarettes subject to such terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants and acknowledgments herein made the parties hereto agree as follows:

1. IMPORTER

1.1 Appointment

The Manufacturer/Exporter hereby appoints the Importer as its exclusive importer and distributor for sale in the territory of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianas (the "Territory") of any and all Cigarettes (as such term is defined in the Master Settlement Agreement dated November 23, 1998 referred to hereinafter as the "MSA") which are and will be manufactured by the Manufacturer or any Affiliate thereof and exported for intended sale in the Territory, subject to the terms and conditions appearing in this Agreement. The term "Affiliate" as used herein shall mean a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purpose of this definition, the terms "owns", "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 50 percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization of group of persons.

1.2 Exclusivity

The Manufacturer/Exporter shall not appoint any person other than the Importer as an additional importer and distributor for sale of the Cigarettes within the Territory nor shall the Manufacturer/Exporter sell or distribute the Cigarettes in the Territory except through the Importer or market or advertise the Cigarettes in the Territory.

1.3 Sub-distributor/Sub-importer

The Importer may appoint sub-distributor(s) and/or sub-importer(s) without the prior written consent of the Manufacturer/Exporter. Such appointment shall not constitute any commitment by the Manufacturer/Exporter to any contractual relationship with the sub-distributor(s) and the sub-importer(s). The Importer shall keep the Manufacturer/Exporter informed as to the identities of all such the sub-distributor(s) and sub-importer(s).

2. RELATIONS BETWEEN PARTIES

2.1 Legal relationship

The Importer shall conduct its business on its own account, at its own risk and in its own name and shall not act as an agent or legal representative of the Manufacturer/Exporter nor give any warranty or make or agree to any condition on behalf of the Manufacturer/Exporter nor incur any obligation or other commitment for or otherwise act in the same name of the Manufacturer/Exporter unless expressly authorized in writing by the Manufacturer/Exporter.

2.2 Report

To ensure the smooth operation of this Agreement and successful business arrangements between the parties, the Importer shall furnish the Manufacturer/Exporter, on a regular basis, reports showing the quantity of sale, retail price and stock of the Cigarettes and market condition in the Territory with supporting data.

3. NAME AND TRADEMARK

3.1 Trademark right

It is acknowledged by both parties hereto that the words "JT", "Japan Tobacco", "Japan Tobacco Inc." and "JT Inc." whether used as brand names or trade names as well as any of the trademarks under or in relation to which the Cigarettes are distributed and sold (the "Names and Marks"), shall be the property of the Manufacturer. Nothing herein contained shall be construed as transferring any patent, utility model, trademark, design or copyright in the Cigarettes or the Names and Marks; all such rights are expressly reserved to the true and lawful owners thereof. This Agreement shall not be construed to grant to the Importer the right of using the Names and Marks of their owners except for the purpose of advertising and selling the Cigarettes in the Territory. The Importer shall not register any of the Names and Marks without written consent by their owners under any circumstances.

3.2 Infringement by a third party

If the Importer has found that trademarks, copyrights or other intellectual property rights in terms of the Cigarettes or the Names and Marks are disputed or infringed upon by a third party, the Importer shall promptly inform the Manufacturer/Exporter thereof and assist the Manufacturer/Exporter to take steps necessary to protect its rights.

4. DISTRIBUTION

4.1 Manner of business

The Importer shall conduct its business in a manner that will reflect favorably at all times on the Manufacturer/Exporter, the Cigarettes and the good name, goodwill and reputation thereof, and shall avoid in every way any deceptive, misleading, unlawful or unethical practice that is or might be detrimental to the Manufacturer/Exporter or the Cigarettes.

4.2 Stocks

The Importer shall always carry in stock an adequate quantity of the Cigarettes to the extent commercially appropriate to actively promote demand for the Cigarettes within the Territory.

4.3 Information on sub-distributor(s)/sub-importer(s)

The Importer shall supply to Manufacturer/Exporter full names of sub-distributor(s) and/or sub-importer(s)

appointed by the Importer within the Territory together with volume of the Cigarettes dealt with by each of such sub-distributor(s) and sub-importer(s) with such additional details as the Manufacturer/Exporter may reasonably request. All changes to the information so supplied shall be notified in writing by the Importer to the Manufacturer/Exporter as they occur.

5. COMPLIANCE WITH LAW

The Manufacturer/Exporter shall supply the Cigarettes which comply with the requirements or applicable regulations effective in the Territory. The Importer shall obtain all the governmental certification, license, permit or approval necessary to import and distribute the Cigarettes in Territory and shall sell the Cigarettes in the Territory in strict compliance with any and all laws, regulations and other requirements of federal, state, and local governments and their agencies. The Importer shall be responsible for the payments under the MSA with respect to the Cigarettes and shall pay the taxes specified in subsection II(z) of the MSA on the Cigarettes.

6. SALES CONTRACT

6.1 Individual contract

The Importer agrees to purchase the Cigarettes from the Manufacturer/Exporter under individual sales contracts to be agreed upon separately between the Importer and the Manufacturer/Exporter. The Manufacturer/Exporter may accept orders or not, at its option and discretion; provided, however, that such acceptance shall not be unreasonably withheld. The Manufacturer/Exporter will not be held liable for loss or damage caused by its non-acceptance of orders or by any delay in making delivery.

6.2 Prices

All orders from the Importer will be priced at the then current prices of the Manufacturer/Exporter as of the date of order placement. The Manufacturer/Exporter reserves the right to change its prices for the Cigarettes at any time. Provided, that price changes shall not apply to orders for the Cigarettes which have been accepted by the Manufacturer/Exporter.

6.3 Payment

Payment for prices from the Importer to the Manufacturer/Exporter shall be effected by a wire transfer of net cash to the bank account designated by the Manufacturer/Exporter.

6.4 Title

Title to each of the Cigarettes purchased by the Importer shall pass to the Importer in accordance with the terms of F.O.B. (Incoterms 1990) at the port of Tokyo or Yokohama, Japan.

7. DURATION AND TERMINATION

7.1 Duration

This Agreement shall be effective on the day and year first above written and shall continue for an initial period of two years. Thereafter this Agreement shall be automatically renewed upon the same terms and conditions, for successive additional terms of two years each, unless at least ninety (90) days prior to the expiration of the initial or renewal term, as the case may be, one party shall give the other party written notice of its desire to terminate this Agreement upon the expiration of the term then in effect; provided, however, that this Agreement shall not be terminated by either party under this paragraph or any other paragraph hereof unless Manufacturer/Exporter have appointed another signatory to the MSA as exclusive importer for the Territory pursuant to an agreement with like terms insofar as related to the MSA as long as the MSA remains in effect. It is hereby acknowledged that the Original Participating Manufacturers and the Settling States to the MSA are third party beneficiaries of this and any other provision herein relating to the MSA.

7.2 Termination

Each party may terminate without prejudice to any other remedies available to it, this Agreement by written notice given to the other party, effective immediately, in any one of the following events:

a) in the event the other party fails to cure the breach of one or more of its material obligations under the terms of this Agreement within 30 days after the receipt of a notice specifying the nature of the breach and requiring the other party to make it good; or

b) in the event the other party becomes insolvent or bankrupt, or has made an assignment for the benefit of its creditors, or a trustee or receiver of the other party is appointed for all or substantial part of its property, or petition for commencement of bankruptcy, reorganization, dissolution or other similar proceeding has been filed;

c) in the event any change in the substantial interest in the direct or indirect ownership of the other party by sale, transfer or relinquishment, voluntary or involuntary, by operation of law or otherwise, of such interest, which would impair the trustful relationship between the parties hereto.

7.3 Effect of Termination

Upon termination of the Agreement, the terminating party may at its option wholly or partly cancel or immediately fulfill any outstanding order. Neither the Manufacturer/Exporter nor the Importer is, by reason of the termination of this Agreement, liable to the others for compensation, reimbursement of damages on account of expenditures, investments or commitments made in connection therewith or in connection with the establishment, development or maintenance of the business or goodwill of the Manufacturer/Exporter or the Importer or on account of any other cause whatsoever, provided, however, that such termination does not affect the Importer's obligation to pay in full for all the Cigarettes previously sold hereunder to the Importer. It is also explicitly agreed by both parties that should this Agreement be terminated by the written notice by one party upon the expiration of term in effect pursuant to paragraph 7.1 above, neither party shall claim any compensation, reimbursement of damages or otherwise any monetary nature against the other party for any reason except the payment for the price of the Cigarettes, if outstanding as of the date of the termination, which were delivered prior thereto.

8. GENERAL

8.1 Nonassignability

The Importer shall not assign this Agreement or any rights herein conferred on the Importer without the prior written consent of the Manufacturer/Exporter.

8.2 Secrecy

During the term of this Agreement and thereafter, the Importer and the Manufacturer/Exporter shall maintain in strict confidence any and all matters relating to the transactions covered by this Agreement unless authorized otherwise by the other party in writing.

8.3 Governing Law

This Agreement shall be deemed to be a contract made under and shall be governed solely by and construed in accordance with the laws of Japan.

8.4 Arbitration

All disputes, controversies, or differences which may arise among the parties hereto, in connection with this Agreement or for the breach thereof, shall be settled by arbitration in Tokyo, Japan in accordance with the rules of the Japan Commercial Arbitration Association. The award rendered by the arbitrators shall be final and binding upon the parties.

8.5 Entire Agreement

This Agreement contains the entire and only agreement by and among the Manufacturer/Exporter and the Importer with respect to the subject matter hereof.

8.6 Amendment

Except as provided in paragraph 6.2 above hereof no change, modification or amendment of this Agreement shall be binding upon the Manufacturer/Exporter or the Importer unless made in writing and signed by the Manufacturer/Exporter and the Importer.

8.7 Force Majeure

No party shall be responsible to the others for failure to conform to this Agreement for reasons beyond their control; including but not limited to force majeure such as strikes, labor disputes, floods, civil commotion, war, riot, act of God, governmental rules, laws or actions, fires, embargoes, quotas or other unavoidable causes.

8.8 Waiver

No delay or omission or failure to exercise any right or remedy provided for herein shall be deemed to be a waiver thereof or acquiescence in the event giving rise to such right or remedy.

8.9 Notice

Any notice given under this Agreement shall be made by prepaid registered airmail, cable, telex or fax to the address mentioned below or to such address as is notified in writing by the parties hereto. If any one of the parties changes its address, a written notice thereof shall be given to the other party. All notices by registered airmail shall be deemed to have been given on the tenth (10th) business day following the date of posting thereof. All notices by cable or telex, which shall become effective when it arrives at the addressee, shall be followed by a copy thereof sent by prepaid registered airmail:

To: Japan Tobacco Inc. and JT International Corp.
JT Building, 2-l Toranomon 2-chome, Minato-ku, Tokyo, Japan

To: Japan Tobacco International U.S.A., Inc.
2441 205th Street, Suite C-102, Torrance, CA 90501, U.S.A.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the day and year first above written.

Japan Tobacco Inc.
By: _____
Hidoshi Fujishiro
Managing Director, Tobacco Business Planning

JT International Corp.
By: _____
Toshio Kikuma
President

Japan Tobacco International U.S.A., Inc.
By: _____
Masayuki Hamada
President

AMENDMENT NO. 6 TO MASTER SETTLEMENT AGREEMENT

Tobacco Exporters International (USA) Ltd. ("TEI") hereby signs and executes the Master Settlement Agreement ("MSA").

In addition, notwithstanding sections II(jj) and II(uu) of the MSA, TEI shall have the rights specified in paragraph (4) below, and each of the companies specified in Exhibit A to this Amendment (collectively the "Foreign Manufacturers/Exporters") shall not be considered to be a Tobacco Product Manufacturer (and each Foreign Manufacturer/Exporter shall, for the purposes of the Model Statute set forth in Exhibit T to the MSA only, be considered to be a Participating Manufacturer), provided that:

(1) TEI signs the MSA within 90 days after the MSA Execution Date and is bound by such Agreement in all Settling States in which such Agreement binds Original Participating Manufacturers;

(2) On or before March 31, 1999, TEI enters into an agreement (an "Exclusive Distribution Agreement") with each of the Foreign Manufacturers/Exporters, such Exclusive Distribution Agreements remain in full force and effect, and all the parties to each respective Exclusive Distribution Agreement fully perform their obligations thereunder. Each Exclusive Distribution Agreement must contain the following terms:

(a) The Foreign Manufacturer/Exporter appoints TEI as its exclusive importer and distributor (other than as set forth in paragraph (D) below) for sale in the territory of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa and the Northern Marianas

(the "Territory") of any and all Cigarettes which are and will be manufactured by the Foreign Manufacturer/Exporter or any licensee or Affiliate of the Foreign Manufacturer/Exporter under trademarks owned by the Foreign Manufacturer/Exporter (or as to which trademarks the Foreign Manufacturer/Exporter has a manufacturing or license agreement with the trademark owner) and exported for intended sale in the Territory, subject to the terms and conditions appearing in the Exclusive Distribution Agreement (insofar as such terms and conditions are not inconsistent with paragraphs (A) through (F)). The term "Affiliate" as used herein shall mean a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for the purpose of this definition, the terms "owns," "is owned" and "ownership" means ownership of an equity interest, or the equivalent thereof, of 50 percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization of group of persons.

(b) Other than as specified in paragraph (D) below, the Foreign Manufacturer/Exporter shall not appoint any person other than TEI as an additional importer and distributor for sale of the Cigarettes within the Territory, nor shall the Foreign Manufacturer/Exporter sell or distribute the Cigarettes in the Territory except through TEI or market or advertise the Cigarettes in the Territory.

(c) The Foreign Manufacturer/Exporter shall supply the Cigarettes, which shall comply with the requirements or applicable regulations effective in the Territory. TEI shall obtain all the governmental certification, license, permit or approval necessary to import and distribute the Cigarettes in the Territory and shall sell the Cigarettes in the Territory in strict compliance with any and all laws, regulations and other requirements of federal, state, and local governments and their agencies. TEI shall be responsible for the payments under the MSA with respect to the Cigarettes, shall pay the taxes specified in subsection II(z) of the MSA on the Cigarettes, and shall report the Cigarettes as its shipments in the manner prescribed in subsection II(mm) of the MSA.

(d) The Foreign Manufacturer/Exporter may sell brands of Cigarettes in the Territory through an importer other than TEI if such importer is an Original Participating Manufacturer that will be responsible for the payments under the MSA with respect to such Cigarettes as a result of the provisions of subsections II(mm) of the MSA and that pays the taxes specified in subsection II(z) on such Cigarettes, and provided that the Foreign Manufacturer/Exporter does not market or advertise such Cigarettes in the States.

(e) Each Exclusive Distribution Agreement between each Foreign Manufacturer/Exporter and TEI shall be effective on the date of execution of that agreement (which shall be on or before March 31, 1999) and shall not be terminated by either party to that agreement unless the Foreign Manufacturer/Exporter in question has appointed another signatory to the MSA as importer for the Territory as long as the MSA remains in effect.

(F) The Settling States and the Original Participating Manufacturers are third-party beneficiaries of each Exclusive Distribution Agreement.

(3) TEI does not, after the date TEI becomes a signatory to the MSA, import, sell or distribute Cigarettes manufactured (or purchased for resale in the States) by a Non-Participating Manufacturer;

(4) For purposes of sections IX(i) and IX(d)(1)(B) of the MSA, TEI's 1997 and 1998 Market Share: (A) shall not include Cigarettes manufactured (or purchased for resale in the States) by any Non-Participating Manufacturer; and (B) shall include the Market Share for 1997 and 1998, whichever is in question, of each of the Foreign Manufacturers/Exporters, if any, with respect to brands of Cigarettes as to which TEI has exclusive import and distribution rights in the States with respect to the entire calendar year immediately preceding the year in which the calculation in question is being made (but only so long as the conditions specified in paragraphs (1)-(3) above for each Foreign Manufacturer/Exporter are met);

(5) Notwithstanding paragraph (4), if any Foreign Manufacturer/Exporter becomes an Affiliate of an Original Participating Manufacturer, TEI does not import the Cigarettes of such Foreign Manufacturer/Exporter unless TEI assumes the payment obligations under the MSA of an Original Participating Manufacturer with respect to all Cigarettes manufactured by (or under trademarks owned by or licensed to) such Foreign Manufacturer/Exporter and imported by TEI; and

(6) Notwithstanding paragraph (4), if TEI becomes an Affiliate of an Original Participating Manufacturer, TEI assumes the payment obligations under the MSA of an Original Participating Manufacturer with respect to all Cigarettes shipped by TEI in or to the Territory.

All capitalized terms not otherwise defined shall have the meaning given such terms in the MSA.

Dated: February 11, 1999
New York, N.Y.

TOBACCO EXPORTERS INTERNATIONAL (USA) LTD.

By: _____

Robert S. Pless
Vice President and General Counsel

EXHIBIT A TO AMENDMENT NO. 6

	Foreign Manufacturer:	*Foreign Exporter:*
1.	Rothmans of Pall Mall (International) Limited Green Lane Industrial Estate Spennymoor Co. Durham DL 16 6YA England	Tobacco Exporters International Limited Oxford Road Aylesbury Bucks HP21 8SZ England
2.	Rothmans of Pall Mall (International) Limited P. O. Box 41 McMullen Road Darlington C. Durham DL1 YS England	Tobacco Exporters International Limited Oxford Road Aylesbury Bucks HP21 8SZ England
3.	Rothmans Manufacturing (The Netherlands) b.v. Kerkstraat 27 6901 AA Zevenaar The Netherlands	Tobacco Exporters International Limited Oxford Road Aylesbury Bucks HP21 8SZ England

	Foreign Manufacturer:	*Foreign Exporter:*
4.	Rothmans, Benson & Hedges Inc. 1500 Don Mills Road North York Ontario M3B 3L1 Canada	Rothmans, Benson & Hedges Inc. 1500 Don Mills Road North York Ontario M3B 3L1 Canada
5.	Cigarette Company of Jamaica Limited Twickenham Park P. O. Box 100 Spanish Town Jamaica W.I.	Cigarette Company of Jamaica Limited Twickenham Park P. O. Box 100 Spanish Town Jamaica W.I.

AMENDMENT NO. 7 TO MASTER SETTLEMENT AGREEMENT

Lane Limited ("Lane") hereby signs and executes the Master Settlement Agreement ("MSA").

In addition, notwithstanding sections II(jj) and II(uu) of the MSA, Lane shall have the rights specified in paragraph (4) below, and the companies specified in Exhibit A to this Amendment (collectively the "Foreign Manufacturer/Exporter") shall not be considered to be a Tobacco Product Manufacturer (and the Foreign Manufacturer/Exporter shall, for the purposes of the Model Statute set forth in Exhibit T to the MSA only, be considered to be a Participating Manufacturer), provided that:

(1) Lane signs the MSA within 90 days after the MSA Execution Date and is bound by such Agreement in all Settling States in which such Agreement binds Original Participating Manufacturers;

(2) On or before March 31, 1999, Lane enters into an agreement (an "Exclusive Distribution Agreement") with the Foreign Manufacturer/Exporter, such Exclusive Distribution Agreement remains in full force and effect, and all the parties to the Exclusive Distribution Agreement fully perform their obligations thereunder. The Exclusive Distribution Agreement must contain the following terms:

(a) The Foreign Manufacturer/Exporter appoints Lane as its exclusive importer and distributor (other than as set forth in paragraph (D) below) for sale in the territory of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa and the Northern Marianas (the "Territory") of any and all Cigarettes which are and will be manufactured by the Foreign Manufacturer/Exporter or any licensee or Affiliate of the Foreign Manufacturer/Exporter under trademarks owned by the Foreign Manufacturer/Exporter (or as to which trademarks the Foreign Manufacturer/Exporter has a manufacturing or license agreement with the trademark owner) and exported for intended sale in the Territory, subject to the terms and conditions appearing in the Exclusive Distribution Agreement (insofar as such terms and conditions are not inconsistent with paragraphs (A) through (F)). The term "Affiliate" as used herein shall mean a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for the purpose of this definition, the terms "owns," "is owned" and "ownership" means ownership of an equity interest, or the equivalent thereof, of 50 percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization of group of persons.

(b) Other than as specified in paragraph (D) below, the Foreign Manufacturer/Exporter shall not appoint any person other than Lane as an additional importer and distributor for sale of the Cigarettes within the Territory, nor shall the Foreign Manufacturer/Exporter sell or distribute the Cigarettes in the Territory except through Lane or market or advertise the Cigarettes in the Territory.

(c) The Foreign Manufacturer/Exporter shall supply the Cigarettes, which shall comply with the requirements or applicable regulations effective in the Territory. Lane shall obtain all the governmental certification, license, permit or approval necessary to import and distribute the Cigarettes in the Territory and shall sell the Cigarettes in the Territory in strict compliance with any and all laws, regulations and other requirements of federal, state, and local governments and their agencies. Lane shall be responsible for the payments under the MSA with respect to the Cigarettes, shall pay the taxes specified in subsection II(z) of the MSA on the Cigarettes, and shall report the Cigarettes as its shipments in the manner prescribed in subsection II(mm) of the MSA.

(d) The Foreign Manufacturer/Exporter may sell brands of Cigarettes in the Territory through an importer other than Lane if such importer is an Original Participating Manufacturer that will be responsible for the payments under the MSA with respect to such Cigarettes as a result of the provisions of subsections II(mm) of the MSA and that pays the taxes specified in subsection II(z) on such Cigarettes, and provided that the Foreign Manufacturer/Exporter does not market or advertise such Cigarettes in the States.

(e) The Exclusive Distribution Agreement between the Foreign Manufacturer/Exporter and Lane shall be effective on the date of execution of that agreement (which shall be on or before March 31, 1999) and shall not be terminated by either party to that agreement unless the Foreign Manufacturer/Exporter has appointed another signatory to the MSA as importer for the Territory as long as the MSA remains in effect.

(F) The Settling States and the Original Participating Manufacturers are third-party beneficiaries of the Exclusive Distribution Agreement.

(3) Lane does not, after the date Lane becomes a signatory to the MSA, import, sell or distribute Cigarettes manufactured (or purchased for resale in the States) by a Non-Participating Manufacturer;

(4) For purposes of sections IX(i) and IX(d)(1)(B) of the MSA, Lane's 1997 and 1998 Market Share: (A) shall not include Cigarettes manufactured (or purchased for resale in the States) by any Non-Participating Manufacturer; and (B) shall include the Market Share for 1997 and 1998, whichever is in question, of the Foreign Manufacturer/Exporter, if any, with respect to brands of Cigarettes as to which Lane has exclusive import and distribution rights in the States with respect to the entire calendar year immediately preceding the year in which the calculation in question is being made (but only so long as the conditions specified in paragraphs (1)-(3) above for the Foreign Manufacturer/Exporter are met);

(5) Notwithstanding paragraph (4), if the Foreign Manufacturer/Exporter becomes an Affiliate of an Original Participating Manufacturer, Lane does not import the Cigarettes of such Foreign Manufacturer/Exporter unless Lane assumes the payment obligations under the MSA of an Original Participating Manufacturer with respect to all Cigarettes manufactured by (or under trademarks

owned by or licensed to) the Foreign Manufacturer/ Exporter and imported by Lane; and

(6) Notwithstanding paragraph (4), if Lane becomes an Affiliate of an Original Participating Manufacturer, Lane assumes the payment obligations under the MSA of an Original Participating Manufacturer with respect to all Cigarettes shipped by Lane in or to the Territory.

All capitalized terms not otherwise defined shall have the meaning given such terms in the MSA.

Dated: February 11, 1999
New York, N.Y.

LANE LIMITED

By: _____
Robert S. Pless
Assistant Secretary and General Counsel

EXHIBIT A TO AMENDMENT NO. 7

	Foreign Manufacturer:	*Foreign Exporter:*
1.	Koninklijke Theodorus Niemeyer B. V. 43 Paterswoldseweg P. O. Box 41 9700 AA Groningen The Netherlands	Rothmans International Tobacco Products (Export) B. V. De Boelelaan 32 1083 HJ Amsterdam The Netherlands

AMENDMENT NO. 8 TO MASTER SETTLEMENT AGREEMENT

WHEREAS, Lignum-2, Inc. ("Lignum") owns the trademark to a group of cigarette brands (the Rave brands) which are currently manufactured outside the United States and then imported by Lignum for sale in the United States. Lignum also imports and sells in the United States other brands (the Sampoerna brands) which are owned and manufactured by a foreign manufacturer, PT Hanjaya Mandala Sampoerna Tbk ("Sampoerna") and/or its subsidiaries. In practice, Lignum has been the exclusive importer and first purchaser for resale in the United States of Sampoerna brands;

Lignum hereby signs and executes the Master Settlement Agreement ("MSA").

In addition, notwithstanding sections II(jj) and II(uu) of the MSA, Sampoerna shall not be considered to be a Tobacco Product Manufacturer (and shall, for the purposes of the Model Statute set forth in Exhibit T to the MSA only, be considered to be a Participating Manufacturer) and Lignum shall have the rights specified in paragraph (4) below, in the event that:

(1) Lignum signs the MSA within 90 days after the MSA Execution Date and is bound by such Agreement in all Settling States in which such Agreement binds Original Participating Manufacturers;

(2) On or before March 31, 1999, Lignum enters into an agreement with Sampoerna (an "Exclusive Distribution Agreement"), such Exclusive Distribution Agreement remains in full force and effect, and both parties thereto fully perform their obligations thereunder. The Exclusive Distribution Agreement must contain the following terms:

(A) Sampoerna appoints Lignum as its exclusive importer and distributor for sale in the territory of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa and the Northern Marianas (the "Territory") of any and all Cigarettes which are and will be manufactured by Sampoerna or any licensee or Affiliate of Sampoerna under trademarks owned by Sampoerna and exported for intended sale in the Territory, subject to the terms and conditions appearing in the Exclusive Distribution Agreement (so long as such terms and conditions are not inconsistent with paragraphs (A) through (E)). The term "Affiliate" as used herein shall mean a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for the purpose of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 50 percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization of group of persons.

(B) Sampoerna shall not appoint any person other than Lignum as an additional importer and distributor for sale of the Cigarettes within the Territory, nor shall Sampoerna sell or distribute the Cigarettes in the Territory except through Lignum or market or advertise the Cigarettes in the Territory.

(C) Sampoerna shall supply the Cigarettes, which shall comply with the requirements or applicable regulations effective in the Territory. Lignum shall obtain all the governmental certification, license, permit or approval necessary to import and distribute the Cigarettes in the Territory and shall sell the Cigarettes in the Territory in strict compliance with any and all laws, regulations and other requirements of federal, state, and local governments and their agencies. Lignum shall be responsible for the payments under the MSA with respect to the Cigarettes, shall pay the taxes specified in subsection II(z) of the MSA on the Cigarettes, and shall report the Cigarettes as its shipments in the manner prescribed in subsection II(mm) of the MSA.

(D) The Exclusive Distribution Agreement between Sampoerna and Lignum shall be effective on the date of execution of that agreement (which shall be on or before March 31, 1999) and shall not be terminated by either party to the Exclusive Distribution Agreement as long as the MSA remains in effect unless (a) Sampoerna has appointed another signatory to the MSA as importer for the Territory, or (b) Sampoerna ceases manufacturing and exporting Cigarettes for sale in the Territory, and Sampoerna does not manufacture and export Cigarettes for sale in the Territory.

(E) The Settling States and the Original Participating Manufacturers are third-party beneficiaries of the Exclusive Distribution Agreement.

(3) Lignum does not, after the date Lignum becomes a signatory to the MSA, import, sell or distribute Cigarettes manufactured (or purchased for resale in the States) by a Non-Participating Manufacturer; and

(4) For purposes of sections IX(i) and IX(d)(1)(B) of the MSA, Lignum's 1997 and 1998 Market Share: (A) shall not include Cigarettes manufactured (or purchased for resale in the States) by any Non-Participating Manufacturer; and (B) shall include the Market Share for 1997 and 1998, whichever is in question, of Sampoerna (but only so long as the conditions specified in paragraphs (1)-(3) above are met).

All capitalized terms not otherwise defined shall have the meaning given such terms in the MSA.

Dated: February 11, 1999
San Leandro, California

LIGNUM-2, INC.

By: _____
Kenneth J. Irinaga
President

AMENDMENT NO. 9 TO THE MASTER SETTLEMENT AGREEMENT

WHEREAS, Top Tobacco, L.P. ("Top Tobacco") desires to execute the Master Settlement Agreement ("MSA") among the Settling States and certain Tobacco Product Manufacturers, and the Settling States and such Tobacco Product Manufacturers desire that Top Tobacco execute the MSA;

WHEREAS, the MSA contains provisions necessitating the determination of Top Tobacco's 1997 and 1998 Market Share;

WHEREAS, Top Tobacco manufactures "roll your own" tobacco, on which federal excise taxes were not collected in 1997 or 1998 and will not be collected in 1999;

WHEREAS, Top Tobacco has audited records of its volume of sales of Tobacco Products during 1997 and 1998 only on the basis of fiscal years beginning on November 1 running through October 31 of the subsequent year;

IT IS THEREFORE AGREED THAT,

Top Tobacco hereby signs and executes the Master Settlement Agreement subject to the following:

(a) For purposes of section IX(i) of the MSA, the greater of (1) Top Tobacco's 1998 Market Share or (2) 125 percent of Top Tobacco's 1997 Market Share shall be Top Tobacco's 1998 Market Share. Top Tobacco's 1998 Market Share shall be determined by dividing (and expressing as a percentage): (1) 125 percent of the audited number of individual Cigarettes sold by Top Tobacco in the fifty United States, the District of Columbia and Puerto Rico during Top Tobacco's fiscal year 1997 (i.e., November 1, 1997 through October 31, 1998); by (2) the total number of individual Cigarettes sold in the fifty United States, the District of Columbia and Puerto Rico during calendar year 1998, as measured in the manner described in section II(z) of the MSA. For purposes of these calculations, and pursuant to section II(z) of the MSA, 0.09 ounces of "roll your own" tobacco shall constitute one individual Cigarette. Top Tobacco hereby represents and warrants that 125 percent of the audited number of individual Cigarettes sold by Top Tobacco in the fifty United States, the District of Columbia and Puerto Rico during Top Tobacco's fiscal year 1997 does not exceed the number of individual Cigarettes sold by Top Tobacco in the fifty United States, the District of Columbia and Puerto Rico during calendar year 1998 (based on the best available information).

(b) For purposes of section IX(d)(1) of the MSA, Top Tobacco's 1997 Market Share shall be determined by dividing (and expressing as a percentage): (1) the audited number of individual Cigarettes sold by Top Tobacco in the fifty United States, the District of Columbia and Puerto Rico during Top Tobacco's fiscal year 1997 (i.e., November 1, 1997 through October 31, 1998); by (2) the total number of individual Cigarettes sold in the fifty United States, the District of Columbia and Puerto Rico during calendar year 1997, as measured in the manner described in section II(z) of the MSA. For purposes of these calculations, and pursuant to section II(z) of the MSA, 0.0325 ounces of "roll your own" tobacco shall constitute one individual Cigarette.

(c) Top Tobacco represents and warrants that it will obtain audited records of its sales of Tobacco Products during calendar year 1999. Top Tobacco's 1999 Market Share shall be determined by dividing (and expressing as a percentage): (1) the audited number of individual Cigarettes sold by Top Tobacco in the fifty United States, the District of Columbia and Puerto Rico during calendar year 1999; by (2) the total number of individual Cigarettes sold in the fifty United States, the District of Columbia and Puerto Rico during calendar year 1999, as measured in the manner described in section II(z) of the MSA. Pursuant to section II(z) of the MSA: 0.09 ounces of "roll your own" tobacco shall constitute one individual Cigarette when performing these calculations for purposes of section IX(j) of the MSA; and 0.0325 ounces of "roll your own" tobacco shall constitute one individual Cigarette when performing these calculations for purposes of section IX(d)(1) of the MSA.

(d) Pursuant to section II(z) of the MSA, bulk sales of tobacco by Top Tobacco to another Tobacco Product Manufacturer that is to be used by such other Tobacco Product Manufacturer in manufacturing Cigarettes intended for sale to consumers (whether directly or through a retailer, distributor or other intermediary or intermediaries) will not be included either: (1) in the audited number of individual Cigarettes sold by Top Tobacco in the fifty United States, the District of Columbia and Puerto Rico during Top Tobacco's fiscal year 1997 (i.e., November 1, 1997 through October 31, 1998); or (2) in calculating Top Tobacco's Market Share for any year.

All capitalized terms not otherwise defined have the meaning given such terms in the MSA.

Dated: New York, New York
February 10, 1999

TOP TOBACCO, L.P.

By: _____
Seth I. Gold, Executive V.P.

AMENDMENT NO. 10 TO MASTER SETTLEMENT AGREEMENT

1. Notwithstanding section II(ii) of the Master Settlement Agreement ("MSA"), the term Outdoor Advertising does not mean the current signs on the outside of Sherman's 1400 Broadway N.Y.C. Ltd.'s and/or its Affiliates" ("Sherman's 1400") retail establishment at 42nd Street and 5th Avenue in New York City ("Nat Sherman's Retail Establishment"), or any replacement signs outside Nat Sherman's Retail Establishment in so far as they are of a similar nature, size, and wording.

2. Notwithstanding sections II(i) of the MSA, neither the phrase "Nat Sherman" nor the phrase "Nat Sherman Tobacconist to the World" (collectively "Nat Sherman") shall be considered a Brand Name; provided however:

a. Sherman's 1400 does not manufacture, make, market, distribute, offer, sell, license, or import any brand of Cigarettes that use "Nat Sherman" to identify that specific brand of Cigarettes as its brand name; and

b. nothing in this paragraph shall create an exception to the prohibitions contained in section III (a) of the MSA; and

c. nothing in this paragraph shall allow Sherman's 1400 to engage in Outdoor Advertising except as provided in paragraph 1 above.

3. If in the future Sherman's 1400 is sold or transferred to a person or entity outside of the Sherman family, or the name "Nat Sherman" is licensed to a person or entity outside of the Sherman family, then paragraph 2 above shall be inapplicable unless the size of the name "Nat Sherman" contained on any Tobacco Product package is less than the size of any other print on the package, but in no event shall the size of the name "Nat Sherman" be in excess of 5/16th of an inch in height.

AMENDMENT NO. 11 TO MASTER SETTLEMENT AGREEMENT

King Maker Marketing, Inc., ("King Maker") hereby signs and executes the Master Settlement Agreement ("MSA").

In addition, notwithstanding sections II(jj) and II(uu) of the MSA, King Maker shall have the rights specified in paragraph (4) below and ITC Limited, India ("ITC") shall not be considered to be a Tobacco Product Manufacturer (and ITC shall, for the purposes of the Model Statute set forth in Exhibit T to the MSA only, be considered to be a Participating Manufacturer), provided that:

(1) King Maker signs the MSA within 90 days after the MSA Execution Date and is bound by such Agreement in all Settling States in which such Agreement binds Original Participating Manufacturers;

(2) On or before March 31, 1999, King Maker enters into an agreement (an "Exclusive Distribution Agreement") with ITC, such Exclusive Distribution Agreement remains in full force and effect, and both parties to the Exclusive Distribution Agreement fully perform their obligations thereunder. The Exclusive Distribution Agreement must contain the following terms:

(a) ITC appoints King Maker as its exclusive importer and distributor for sale in the territory of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa and the Northern Marianas (the "Territory") of any and all Cigarettes which are and will be manufactured by ITC or any licensee or Affiliate of ITC under trademarks owned by ITC and exported for intended sale in the Territory, subject to the terms and conditions appearing in the Exclusive Distribution Agreement (insofar as such terms and conditions are not inconsistent with paragraphs (A) through (E)). The term "Affiliate" as used herein shall mean a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for the purpose of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 50 percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization of group of persons.

(b) ITC shall not appoint any person other than King Maker as an additional importer and distributor for sale of the Cigarettes within the Territory, nor shall ITC sell or distribute the Cigarettes in the Territory except through King Maker or market or advertise the Cigarettes in the Territory except through King Maker.

(c) ITC shall supply the Cigarettes, which shall comply with the requirements or applicable regulations effective in the Territory. King Maker shall obtain all the governmental certification, license, permit or approval necessary to import and distribute the Cigarettes in the Territory and shall sell the Cigarettes in the Territory in strict compliance with any and all laws, regulations and other requirements of federal, state, and local governments and their agencies. King Maker shall be responsible for the payments under the MSA with respect to the Cigarettes, shall pay the taxes specified in subsection II(z) of the MSA on the Cigarettes, and shall report the Cigarettes as its shipments in the manner prescribed in subsection II(mm) of the MSA.

(d) The Exclusive Distribution Agreement between ITC and King Maker shall be effective on the date of execution of that agreement (which shall be on or before March 31, 1999) and shall not be terminated by either party to that agreement as long as the MSA remains in effect unless (a) ITC has appointed another signatory to the MSA as importer for the Territory or (b) ITC ceases manufacturing and exporting Cigarettes bearing trademarks owned by ITC for sale in the Territory, and ITC does not manufacture and export Cigarettes bearing trademarks owned by ITC for sale in the Territory.

(e) The Settling States and the Original Participating Manufacturers are third-party beneficiaries of those provisions of the Exclusive Distribution Agreement relating to the MSA.

(3) King Maker does not, after the date King Maker becomes a signatory to the MSA, import, sell or distribute Cigarettes manufactured (or purchased for resale in the States) by a Non-Participating Manufacturer; and

(4) For purposes of sections IX(i) and IX(d)(1)(B) of the MSA, King Maker's 1997 and 1998 Market Share: (A) shall not include Cigarettes manufactured (or purchased for resale in the States) by any Non-Participating Manufacturer; and (B) shall include the Market Share for 1997 and 1998, whichever is in question, of ITC, if any, with respect to brands of Cigarettes as to which King Maker has exclusive import and distribution rights in the States with respect to the entire calendar year immediately preceding the year in which the calculation in question is being made (but only so long as the conditions specified in paragraphs (1)-(3) above for ITC are met).

All capitalized terms not otherwise defined shall have the meaning given such terms in the MSA.

Dated: February 11, 1999
New York, N.Y.

KING MAKER MARKETING, INC.

By: _____
Mark Finkle, President

AMENDMENT NO. 12 TO THE MASTER SETTLEMENT AGREEMENT

Section 5 of Exhibit U of the Master Settlement Agreement is hereby amended to read as follows:

Section 5

Within 45 days after receiving the itemized requests for funds from the Settling States, the Allocation Committee will prepare a preliminary decision allocating the Strategic Contribution Fund payments among the Settling States that submitted itemized requests for funds. All Allocation Committee decisions must be by majority vote. Each Settling State will have 45 days to submit comments on or objections to the draft decision. The Allocation Committee will issue a final decision allocating the Strategic Contribution Fund payments within 30 days.

AMENDMENT NO. 13 TO THE MASTER SETTLEMENT AGREEMENT

Section 6 of Section B of Exhibit J of the Master Settlement Agreement is hereby amended to read as follows:

Section 6

The Fund shall be managed jointly by the following entities and employees of NAAG: the Executive Committee, the Executive Director and the Controller. The Fund shall be managed pursuant to the written investment policy statement established and maintained by NAAG. The Fund shall be regularly reported on NAAG financial statements and subject to annual audit.

[SIGNATURES OMITTED]

AMENDMENT NO. 14 TO THE MASTER SETTLEMENT AGREEMENT

Section XVII of the Master Settlement Agreement is hereby amended by deleting all of subsections XVII(a), XVII(b) and XVII(c), which are hereby void and of no further force and effect, and substituting in place of such subsections the following:

(a) No later than the fifth Business Day after this Amendment No. 14 to the Agreement has been executed by all of the Settling States and all of the Original Participating Manufacturers, each Original Participating Manufacturer shall severally pay its Relative Market Share of $150,000,000 to NAAG. The payment to be made by each Original Participating Manufacturer pursuant to this subsection (a) shall be paid separately and apart from any other amounts due pursuant to this Agreement, shall be subject to no adjustments, reductions, or offsets, and shall be paid to an account (the "Costs and Fees Account") previously established by NAAG at a federally or State chartered financial institution to be designated by the President of NAAG (with notice of such designation and account information to be provided to the Original Participating Manufacturers by NAAG no later than the second Business Day after this Amendment No. 14 to the Agreement has been executed by all of the Settling States and all of the Original Participating Manufacturers). The amounts paid pursuant to this subsection (a) shall be used by the Attorneys General of the Settling States, pursuant to procedures and guidelines established by such Attorneys General through NAAG (as such procedures and guidelines may be supplemented, interpreted and applied by a committee of three Attorneys General (the "Review Committee") selected pursuant to such procedures), as follows:

(1) to reimburse, with respect to any Settling State in which the Court has approved this Agreement and the Consent Decree, the following "Governmental Entities": (A) the office of the Attorney General of such Settling State; (B) the office of the governmental prosecuting authority for any political subdivision of such Settling State with a lawsuit pending against any Participating Manufacturer as of July 1, 1998 (as identified in Exhibit N) that has released such Settling State and such Participating Manufacturer(s) from any and all Released Claims (a "Litigating Political Subdivision"); and (C) other appropriate agencies of such Settling State and such Litigating Political Subdivision, for reasonable costs and expenses incurred in connection with the litigation or resolution of claims asserted by or against the Participating Manufacturers in the actions set forth in Exhibits D, M and N; provided that such costs and expenses are of the same nature as costs and expenses for which the Original Participating Manufacturers would reimburse their own counsel or agents (but not including costs and expenses relating to lobbying activities);

(2) to pay the Governmental Entities in any Settling State in which State-Specific Finality has occurred an amount sufficient to compensate such Governmental Entities for time reasonably expended by attorneys and paralegals employed in such offices in connection with the litigation or resolution of claims asserted against or by the Participating Manufacturers in the actions identified in Exhibits D, M and N (but not including time relating to lobbying activities), such amount to be calculated based upon hourly rates equal to the market rate in such Settling State for private attorneys and paralegals of equivalent experience and seniority; and

(3) as otherwise directed by the Attorneys General of the Settling States, acting through NAAG (but not including the reimbursement or payment of costs, expenses or time relating to lobbying activities).

(b) Each Original Participating Manufacturer shall, in addition to the payment it makes pursuant to subsection (a), severally pay its Relative Market Share of:

(1) the reasonable fees and reasonable costs and expenses incurred by any consultant or accounting firm retained by the Review Committee, acting through NAAG, in connection with the review, reimbursement and/or payment of costs, expenses and attorney and paralegal time for which the Governmental Entities seek reimbursement or payment pursuant to subsection (a)(1) or (a)(2); and

(2) the reasonable costs and expenses incurred by the three members of the Review Committee in connection with the review, reimbursement and/or payment of costs, expenses and attorney and paralegal time for which the Governmental Entities seek reimbursement or payment pursuant to subsection (a)(1) or (a)(2).

Provided, however, that all amounts to be paid pursuant to this subsection (b) shall be subject to an aggregate cap of $300,000, and shall be paid promptly following submission by the Review Committee to the Original Participating Manufacturers of a statement setting forth the costs, expenses and fees for which payment is sought (but in no event shall such statements be submitted more frequently than once per month).

(c) (1) Effective immediately upon deposit in the Costs and Fees Account of the $150,000,000 referred to in subsection (a), each Settling State (on behalf of itself and all Releasing Parties and all Governmental Entities in such Settling State, including, without limitation, any Litigating Political Subdivisions in such Settling State) absolutely and unconditionally releases and forever discharges the Original Participating Manufacturers and all other Released Parties from the following "Cost and Fee Claims": any and all claims, demands, actions, suits, causes of action, damages (whenever incurred), liabilities of any nature including civil penalties and punitive damages, as well as costs, expenses and attorneys fees, known or unknown, suspected or unsuspected, accrued or unaccrued, whether legal, equitable or statutory, that such Settling State, Releasing Parties and Governmental Entities directly, indirectly, derivatively or in any other capacity ever had (including, without limitation, pursuant to subsections XVII(a), (b) or (c) of this Agreement prior to this Amendment No. 14), now have, or hereafter can, shall or may have with respect to or arising out of costs and expenses incurred by any such Settling State, Releas-

ing Party or Governmental Entity, or time expended by attorneys and paralegals employed in the offices of any such Settling State, Releasing Party or Governmental Entity, in connection with the litigation or resolution of claims asserted (or that could have been asserted) by or against the Participating Manufacturers in the actions identified in Exhibits D, M and N. Each Settling State (on behalf of itself and all Releasing Parties and all Governmental Entities in such Settling State, including, without limitation, any Litigating Political Subdivisions in such Settling State) further covenants and agrees that after the deposit in the Costs and Fees Account of the $150,000,000 referred to in subsection (a) neither it nor any such Releasing Party or Governmental Entity shall sue or otherwise seek to recover from any Original Participating Manufacturer or any other Released Party based, in whole or in part, upon any Cost and Fee Claim, and further agrees that such covenant and agreement shall be a complete defense to any such action, claim or proceeding.

(2) Notwithstanding any provision of law, statutory or otherwise, which provides that a general release does not extend to claims which the creditor does not know or suspect to exist in its favor at the time of executing the release, which if known by it must have materially affected its settlement with the debtor, the release set forth in this section XVII(c) releases all Cost and Fee Claims against the Original Participating Manufacturers and all other Released Parties, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, that the Settling States, Releasing Parties and Governmental Entities (including, without limitation, Litigating Political Subdivisions) may have against the Original Participating Manufacturers or any other Released Parties, and the Settling States (on behalf of themselves and the Releasing Parties and Governmental Entities) understand and acknowledge the significance and consequences of waiver of any such provision and hereby assume full responsibility for any injuries, damages or losses that the Settling States, Releasing Parties or Governmental Entities may incur with respect to or arising out of Cost and Fee Claims.

[SIGNATURES OMITTED]

[Pa.B. Doc. No. 00-1899. Filed for public inspection October 27, 2000, 9:00 a.m.]