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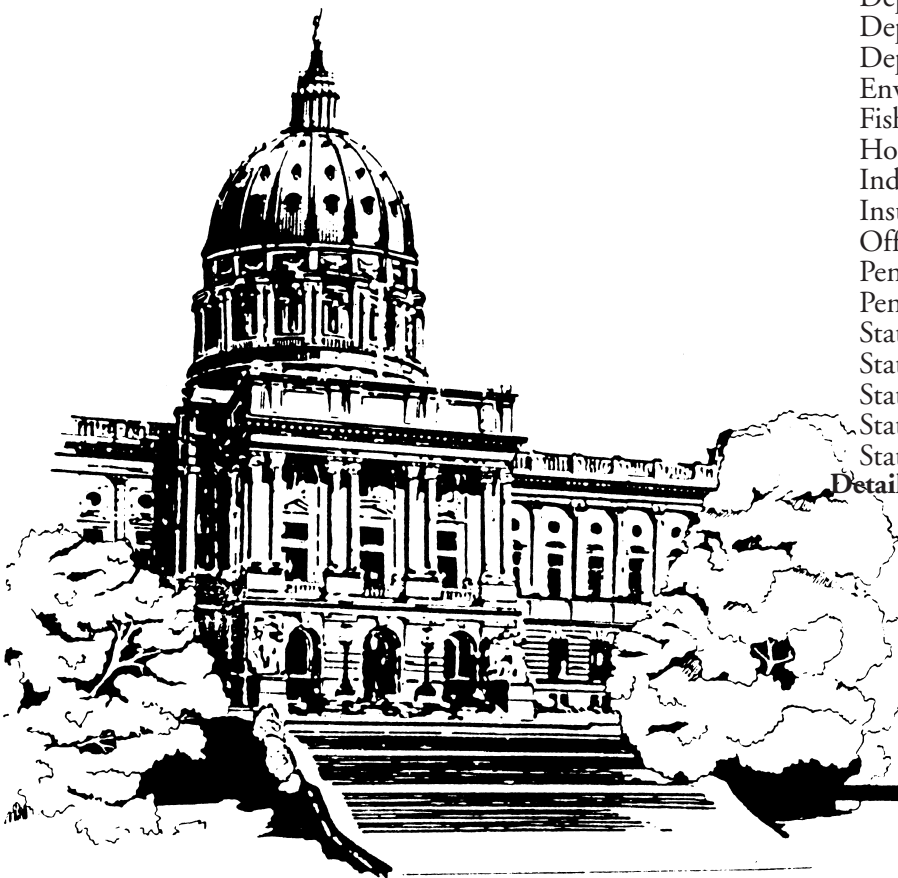
PENNSYLVANIA BULLETIN

Volume 39
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Number 50
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**Latest Pennsylvania Code Reporters
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No. 421, December 2009

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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 re-propose.

Citation to the *Pennsylvania Bulletin*

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

Pennsylvania Code

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

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

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

How to Find Documents

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

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

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

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Printing Format

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

Fiscal Notes

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

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

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List of Pa. Code Chapters Affected

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THE COURTS

Title 255—LOCAL COURT RULES

BUCKS COUNTY
Clerk of Courts; Criminal Division

Administrative Order

And Now, this 23rd day of November, 2009, the Clerk of Courts' FEE BILL, effective January 1, 2010, attached hereto and incorporated herein is hereby approved by Susan D. Scott, President Judge, in accordance with Act 36 of 2000—Clerk of Courts' Fee Law effective August 21, 2000.

By the Court

SUSAN D. SCOTT,
President Judge

FEE BILL 2010

Adopted pursuant to Act No. 36 of 2000
Effective January 1, 2010

MISDEMEANORS AND FELONIES DISPOSED OF BEFORE TRIAL *

For each case ** \$193.00

MISDEMEANORS AND FELONIES DISPOSED OF DURING OR AFTER TRIAL *

For each case ** \$237.75

SUMMARY MATTERS

For each Summary case \$ 27.25

Notes:

* For purposes of this Fee Bill, a trial begins in a non-jury trial when the prosecution begins its opening statement and in a jury trial when the jury is sworn.

** A "case" is each separate complaint, transcript, or Bill of Information unless consolidated for trial by Order of Court.

Fees set by:

Mary K. Smithson, Clerk of Courts

**Additional Charges on Each Information
or Transcript Whether Disposed of
Before, During, or After Trial**

(Not totally inclusive of ALL state-mandated ACTS)

Charges Mandated by Act 113 of 2001: (portion to County; and portion to State)

FELONY INFORMATION	\$57.50
MISDEMEANOR INFORMATION	\$50.00
SUMMARY CONVICTION except Motor Vehicle	\$43.50
SUMMARY CONVICTION—Motor Vehicle Case	\$34.50
SUMMARY CONVICTION—Motor Vehicle Case with Hearing Demanded	\$41.50

Note: If multiple convictions are involved, only one set of costs will be assessed (highest amount) for each case.

Charges mandated by Act 35 of 1991

Defendants sentenced to County Probation supervision or placed on County Parole	\$25.00 per month
Defendants subject to A.R.D. agreement or Probation pursuant to Section 17	\$100 TOTAL
ADMINISTRATIVE MANAGEMENT FEE cost of handling money paid into court	\$30.00
BENCH WARRANT (Certification)	\$9.00
DRIVERS LICENSE CERTIFICATION (Notification to PA Department of Transportation)	\$9.00

WITNESS FEE (For Commonwealth Witnesses)	7 cents per mileage plus \$5.00 per witness per day
CONSTABLE COSTS (from D. J. level)	ACTUAL COST
SHERIFF FEE	\$5.00
TRANSPORTATION Costs	ACTUAL COSTS
Cost of CRIME LAB fees for Commonwealth	ACTUAL COSTS
PAROLE VIOLATION Additional Hearings	\$44.70
ARD VIOLATION Additional Hearings	\$44.70
AUTOMATION FEE (for each initial action or initial legal proceeding)	\$5.00
LAW LIBRARY	\$10.00
BOOKING CENTER FEE	\$150.00

Additional Fees

All Certifications	\$9.00
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EXPUNGEMENT FOR CASES PLACED ON ARD & Section 17 (Automatic)	\$55.00

Bail Processing Fees

BAIL ADMINISTRATIVE FEE (entering and servicing bail (includes Bond)—See Rule 4007 (e)(2). If less than \$75, no refund; except for ROR	\$75.00
R.O.R BAIL BOND (1 Certification)	\$9.00
REAL ESTATE BAIL (2 Certifications)	\$18.00

Juvenile Matters

Initial Hearing (Each Case)	\$44.70
ADDITIONAL HEARING (per juvenile)	\$33.80

Petitions For Private Detective License

FILING FEE	\$42.00
INITIAL LICENSE—INDIVIDUAL (2 YEARS)	\$200.00
INITIAL LICENSE—CORPORATION (2 YEARS)	\$300.00
RENEWAL OF LICENSE PROCESSING FEE	\$17.00
RENEWED LICENSE—INDIVIDUAL (3 YEARS)	\$300.00
RENEWED LICENSE—CORPORATION (3 YEARS)	\$450.00
FEE for PROCESSING FINGERPRINT CARDS (NOTE: Check payable to Commonwealth of Pennsylvania (per fingerprint card)—\$17.50 Check payable to Clerk of Courts—\$ 9.00)	\$26.50

[Pa.B. Doc. No. 09-2269. Filed for public inspection December 11, 2009, 9:00 a.m.]

LANCASTER COUNTY

**Adoption of Rules of Criminal Procedure; No. 536;
AD 18-2009; CPJ. No. 7 Page 1357**

Administrative Order

And Now, this 23rd day of November, 2009, it is hereby *Ordered* that new Lancaster County Rule of Criminal Procedure No. 536 is adopted as follows:

The Court Administrator is directed to:

1. File one (1) certified copy of this Order and Rule with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified paper copies and one (1) diskette or CD-ROM containing this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. Publish a copy of this Order and Rule on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.
4. Keep continuously available for public inspection copies of the Order and Rule in the Prothonotary and Clerk of Courts Office.

This order shall become effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

LOUIS J. FARINA,
President Judge

Rule 536. Bail Pieces.

A. In all cases where a bail piece is lodged, the case shall proceed in accordance with the following procedures:

1. In all cases where the Defendant is lodged in the Lancaster County Prison pursuant to a bail piece, the Warden or his designee shall notify the District Court Administrator within twelve (12) hours of commitment.
2. After notice from the Warden or his designee, the District Court Administrator shall schedule a hearing to take place within seven (7) days of the date the bail piece was lodged.

3. The District Court Administrator shall give prompt notice of the hearing to the Office of the Public Defender, District Attorney's Office, the Clerk of Courts of Lancaster County, and any surety involved in the matter. The District Attorney and Public Defender shall each assign an attorney for the hearing.

4. The daily Business Judge shall conduct hearings on bail proceedings held pursuant to this Rule.

5. A copy of the Court's Order following the hearing shall be promptly forwarded to the Lancaster County Prison.

6. At any hearing conducted pursuant to this Rule, the only determination shall be whether to dismiss the bail piece or whether bail shall be reset. No decision regarding the exoneration of any surety shall be made at a hearing conducted pursuant to this Rule.

This Rule shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

[Pa.B. Doc. No. 09-2270. Filed for public inspection December 11, 2009, 9:00 a.m.]

YORK COUNTY

**Local Rules of Judicial Administration; No. 2009-
MI-000171-55; Doc. No. CP-67-AD-0000030-2009**

**Administrative Order Adopting Local Rules of
Judicial Administration**

And Now, this 17th day of November, 2009, it is hereby *Ordered and Decreed* that the following York County Local Rules of Judicial Administration are hereby adopted to govern administration of the Court of Common Pleas of York County, Pennsylvania.

The adoption of York County Rules of Judicial Administration shall become effective January 1, 2010. Any prior local rules, and any prior administrative order or any part of a prior administrative order which is in conflict with any portion of these Rules is vacated and repealed.

It Is Further Ordered that in accordance with Pa.R.J.A. 103(c), the District Court Administrator shall:

(a) File ten (10) certified copies thereof with the Administrative Office of Pennsylvania Courts, for distribution as set forth in Pa.R.J.A. 103(c)(2);

(b) Distribute a diskette hereof to the Legislative Reference Bureau for Publication in the *Pennsylvania Bulletin*;

(c) Send electronic copies of the Rules to each of the following committees of the Supreme Court of Pennsylvania:

1. The Advisory Committee on Appellate Court Rules
2. Civil Procedural Rules Committee
3. Criminal Procedural Rules Committee
4. Minor Court Civil Procedural Rules Committee
5. Juvenile Rules Committee

(e) Distribute one (1) certified copy of the York County Rules of Judicial Administration to the Prothonotary and to the Clerk of Courts of York County, to be kept continuously available for public inspection and for copying. Upon request and payment of reasonable fees for reproduction and mailing, the Prothonotary shall furnish to any person a copy of any local rule.

(f) Cause the York County Local Rules of Civil Procedure to be posted conspicuously on the web site of the County of York and cause copies to be made in digital format, for distribution, upon payment of reasonable costs of reproduction.

(e) Supervise the distribution thereof to all Judges, Magisterial District Judges, and all members of the Bar of this Court.

By the Court

RICHARD K. RENN,
President Judge

York County Rules of Judicial Administration

(Effective January 1, 2010)

CONSTRUCTION AND APPLICATION OF RULES

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YCJA 11:	Effective Date:
YCJA 12:	Definitions:
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COURT REPORTERS AND STENOGRAPHIC TRANSCRIPTS

YCJA 4000:	Supervision of Court Reporters:
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COURT INTERPRETERS

YCJA 4800:	Court Interpreters:
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MISCELLANEOUS PROVISIONS

YCJA 7010:	Restriction on Removal of Files and Documents:
YCJA 7020:	Designation of Legal Newspaper:

CONSTRUCTION AND APPLICATION OF RULES

YCJA 10: Title and Citation of Rules:

These Rules shall be known as the York County Rules of Judicial Administration, and may be cited as "YCJA _____".

YCJA 11: Effective Date:

A. These Rules, and any amendments to these Rules, shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin* as provided in Pennsylvania Rule of Judicial Administration 103(c).

B. These Rules, and any amendments to these Rules, shall apply to all actions of any kind pending on the effective date, and to those filed thereafter.

YCJA 12: Definitions:

Unless otherwise expressly stated, as used in these Rules,

"Action" means any action or proceeding of any nature pending before the Court of Common Pleas of York County or any Magisterial District Court in the 19th Judicial District.

"Application" means, unless otherwise noted, any motion, petition, request, or other document requesting or requiring the signature of a judge or action by the court. The term does not include a complaint as set forth in Pa.R.Civ.P. 1017.

"Clerk of Courts" means the Clerk of the Court of Common Pleas of York County, the Office of the Clerk of Courts, and deputies and employees thereof.

"Counsel" means an attorney at law, in good standing, admitted to practice to the bar of this Commonwealth, and may further refer to any party to an action pending before the Court who is unrepresented.

"County" means York County;

"Court" means the Court of Common Pleas of York County, and Magisterial District Courts of the 19th Judicial District, or a judge thereof;

"Courtroom" means a courtroom, hearing room, grand jury room, or other room in which judicial proceedings are conducted, whether located in the York County Judicial Center, in a Magisterial District Court, or any other location within the 19th Judicial District.

"Court Administrator" means the District Court Administrator for the Court of Common Pleas of York County, the Office of the District Court Administrator, and deputies and employees thereof.

"Motion" means any application to the court for an order, except those otherwise designated by these local rules or by Pa.R.Civ.P. 208.1(b).

“Party”, whether used in the singular or plural, and whether used in these Rules or in any court order, means the party or parties appearing in the action pro se, or the attorney or attorneys of record for such party or parties, where appropriate, unless otherwise indicated;

“Prothonotary” means the Prothonotary of the Court of Common Pleas of York County and the Office of the Prothonotary and deputies and employees thereof.

YCJA 13: Liberal Construction and Application of Rules:

A. These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action.

B. The court at every stage of any action may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

C. The court may suspend the application of these Rules in individual cases by written order. When the court issues any order in a specific case which is not consistent with these rules, such order shall constitute a suspension of these rules for such case only and only to the extent that the order is inconsistent.

JUDICIAL CENTER, COURTROOMS AND ENVIRONS

YCJA 100: Prohibited Items In Judicial Center, Magisterial District Justice Courts:

A. All persons are prohibited from bringing the following items into the York County Judicial Center, into any courtroom in which a court proceeding is taking place, and into any Magisterial District Justice Court:

(1) Food or beverages of any kind, including water in any container.

a. Employee Exception: The prohibition in Section (1) above shall not apply to those individuals employed in the Judicial Center, Magisterial District Court, or employed by the County of York, who clearly display an identification badge issued by the County of York, provided, however, that no food or beverages, other than water supplied by court employees, shall be permitted in a courtroom, hearing room, or grand jury room.

b. Juror Exception: The prohibition in Section (1) above shall not apply to those individuals who are serving as jurors summoned by the Court Administrator, who clearly display an identification badge issued by the County of York, provided, however, that no food or beverages shall be permitted in a courtroom, hearing room, or grand jury room.

(2) Weapons of any kind. This prohibition shall not apply to those individuals employed by the Sheriff's Department, County Detectives or Adult and Juvenile Probation Departments, who are specifically authorized to carry weapons and who are on duty. As to Magisterial District Courts, this prohibition shall not apply to those individuals specifically permitted by the Magisterial District Judge of that district to possess weapons.

B. Any prohibited items confiscated by officers in charge of security are subject to being retained and disposed of by such officers.

YCJA 112: Photography, Recording, Broadcasting and Electronic Equipment:

A. The taking of photographs, including video pictures and recording, and the use of audio and video broadcast and audio recording equipment and any other device capable of capturing or transmitting sound or images, in

a courtroom or hearing room or its environs during the progress of or in connection with any action, whether or not court is actually in session, is prohibited.

B. Environs Defined: Environs of a courtroom or hearing room shall include the entire floor on which is located any courtroom, hearing room, jury room, grand jury room, sheriff's office or station, Prothonotary's or Clerk of Courts office, office of the District Attorney, or any lockup or prisoner holding area. Environs also includes the corridor or lobby on the main floor or street floor, any elevator area and any area constituting an interior entrance area to the building of any courtroom, hearing room or grand jury room.

C. Cellular Telephones Prohibited: Cameras, cellular telephones, portable electronic data devices and any other device capable of capturing or transmitting images or sound are prohibited inside of the York County Judicial Center, and prohibited inside a Magisterial District Court at the discretion of the Magisterial District Judge.

(1) Employee Exception: The prohibition in Section C above shall not apply to those individuals employed in the Judicial Center, a Magisterial District Court or employed by the County of York, who clearly display an identification badge issued by the County of York, provided, however, that the device shall be in a “silent” or “vibrate only” mode when the employee enters a courtroom, hearing room, or grand jury room.

(2) Attorney Exception: The prohibition in Section C above shall not apply to an attorney at law who enters the Judicial Center or a Magisterial District Court on business related to the representation of a client, provided, however, that the device shall have the power switched “off” when the attorney enters a courtroom, hearing room, or grand jury room.

(3) Emergency Responder Exception: The prohibition in Section C above shall not apply to emergency medical or other personnel responding to a call within the Judicial Center or Magisterial District Court.

(4) Other Exceptions: The prohibition in Section C above may be waived by a judge, Court Administrator, or the Sheriff or his designee, in special circumstances.

D. Special Proceedings: In the discretion of any judge, photographing, making video or audio recordings, or televising or broadcasting any special proceedings, such as investiture, naturalization, or ceremonial proceedings, in a courtroom or its environs may be permitted under such conditions as the judge may prescribe, consistent with the proscriptions of Canon 3A(7) of the Code of Judicial Conduct.

E. Stenographic Recordings: Except as permitted by law or rule of court, the recording by any means of any judicial proceedings by anyone other than the official court stenographer in a court case, for any purpose, is prohibited.

F. Special Permission: The President Judge may, upon application, make exception to the prohibitions contained in this Rule under such circumstances and subject to such conditions as the President Judge may prescribe.

(1) The application shall include the reason for the request, the type of electronic medium intended to be used, the locations at which the electronic medium is to be used, and the date and times of the day for which the exception is being sought.

(2) If the exception is being sought in connection with any judicial proceeding, the caption and case number of the proceeding shall be included in the application.

G. Special Cases: The court may make such orders as may be necessary in connection with any specific case to protect the rights of all parties and the public.

ATTORNEYS

YCJA 200: Admission to Practice:

A. An attorney at law admitted to practice to the bar of this Commonwealth, and who is in good standing, may practice before the Court.

B. An attorney who is not admitted to practice to the bar of this Commonwealth and who seeks special admission to practice before this Court shall cause to be filed a motion for admission *pro hac vice* pursuant to Pa.R.Civ.P. 1012.1, Pa.B.A.R. 301 and YCCiv. 208.3(a).

(1) A motion for admission *pro hac vice* shall be in the form required by YCCiv. 205.2.

(2) A motion for admission *pro hac vice* shall contain all information required by Pa.R.Civ.P. 1012.1, Pa.B.A.R. 301, and the information required in 204 Pa. Code Sec. 81.503.

C. An attorney who is not admitted to practice to the bar of this Commonwealth and who seeks special admission to practice before a Magisterial District Justice shall cause to be filed a motion for admission *pro hac vice* pursuant to 204 Pa.Code 81.501 et seq. and applicable rules of civil and criminal procedure.

YCJA 210: Court Appointed Counsel; Fees; Fee Petitions:

A. The Court Administrator shall maintain lists of counsel available for appointment by the court to represent individuals in various matters. Separate lists of available counsel shall be maintained for criminal cases, civil cases, juvenile dependency cases, and juvenile delinquency cases.

(1) At least annually, by the last day of June, the Court Administrator shall solicit requests for attorneys, with a principal office located in York County, who will accept cases by court appointment.

(2) Those attorneys responding to the solicitation shall warrant that they have experience in the areas for which they seek appointment, and shall include a copy of their professional liability insurance declarations page, or other proof of professional liability insurance, now in effect, with the response.

(3) An attorney who has previously been on a list for appointments shall also respond to the solicitation with updated information, or the attorney shall be removed from all lists for court appointments.

B. Appointment to represent an individual in a particular matter is limited to representation in that matter only to its conclusion, including proceedings on direct appeal, absent further order of court.

C. Fee petitions in cases in which an attorney has been appointed by the court shall be submitted, with supporting documentation and an original proposed order with sufficient copies to conform, to the Court Administrator for assignment to a judge. In criminal cases, the fee petition shall be assigned to the judge to whom the case was assigned.

D. General Requirements for All Fee Petitions:

(1) Unless otherwise stated, all fee petitions must be presented to the Court Administrator for assignment to a

judge within thirty (30) days of the date of last service rendered at the trial level, and within (30) days of final decision for any appeal.

(2) The fee petition shall set forth the caption of the case, the manner of disposition of the case, and if disposed of by trial, the number of days spent in trial.

(3) An itemized billing reflecting the dates, time spent and nature of the services shall be included in or attached to the petition.

(4) An appropriate hourly rate consistent with administrative orders in effect at the time the service was rendered shall be displayed, along with a subtotal of the dollar amounts for the services, and a final dollar total being requested.

(5) Time spent by administrative assistants, paralegals, employees or agents other than the appointed attorney may not be billed without leave of court.

(6) Reimbursement may be sought, without leave of court, for travel time, except to and from the Judicial Center, long distance phone charges, printing and extraordinary copying costs for preparation of exhibits and documents for appeals, extraordinary postage, extraordinary travel mileage, and, with prior court approval, expert fees for investigators and other experts. Routine expenses such as mileage, to the York County Prison, the Judicial Center, or to preliminary hearings, photocopying, telephone bills, postage, and other such expenses, may not be claimed for reimbursement.

E. Criminal Cases: Counsel appointed to represent individuals in criminal cases shall not represent the individual in any probation or parole proceedings unless re-appointed by the Court to do so.

F. Complex Criminal Cases: All homicide cases, and other cases which will likely take a year or more or will require an inordinate amount of attorney time to resolve may be subject to interim fee petitions.

(1) The petition shall set forth a brief statement asserting the grounds for considering the case for interim billing, and shall request that interim billing be permitted.

(2) Interim fee petitions shall contain, in addition to the matters set forth in YCCiv. 210C above, a recitation of the total of the preceding fee petition, the date when the preceding fee petition was submitted, the amount approved, and shall indicate whether the amount approved has been paid and the date paid.

G. Juvenile Dependency Proceedings: Fee petitions in juvenile dependency cases shall be submitted at least quarterly, and may be submitted monthly, and shall be for services rendered only in the preceding period.

(1) The petitions may include requests for reimbursement in multiple cases, so long as each case is clearly identified by caption and number, and the supporting billing information only pertains to each individual case.

(2) Such petitions, along with an original proposed order and sufficient copies to conform, shall be submitted to the Court Administrator for assignment to a judge.

(3) The fee petitions shall contain, in addition to the matters set forth in YCCiv. 210C above, a recitation of the total of the preceding fee petition, the date when the preceding fee petition was submitted, the amount approved, and shall indicate whether the amount approved has been paid and the date paid.

(4) An additional appointment must be sought and approved before taking an appeal to any federal court, or undertaking representation before any governmental agency.

YCJA 211: Applications for Court Appointed Counsel; *In Forma Pauperis*:

A. Applications for court appointed counsel, or to proceed *in forma pauperis*, shall be verified by the individual seeking to proceed or to be represented by court appointed counsel, and shall be submitted to the Court Administrator for assignment to a judge for consideration.

(1) The judge to whom the matter has been assigned shall initially evaluate the applicant's eligibility for counsel using guidelines to be determined by reference to 125% of the poverty level for a family of a particular size as determined by the U.S. Department of Health and Human Services and duly published from time to time.

(2) Should the judge determine that the applicant is eligible for court appointed counsel, because of the application of the guidelines set forth above, or because the individual is otherwise unable to employ counsel, the judge shall promptly notify the applicant and appointed counsel.

B. The judge assigned to consider the application may request the Solicitor for the County of York to respond to any application, and may schedule a hearing before an assigned judge to consider the merits of any application.

YCJA 250: Appointments:

A. The President Judge shall, from time to time, and as required by law or rule of court, appoint the following to serve the following terms at rates of pay, if any, which shall be set from time to time by administrative action or order, or other process:

(1) Viewers to serve on boards of view for a term of five years, pursuant to conduct proceedings pursuant to the Eminent Domain Code, the Private Road Act, and otherwise pursuant to law.

(2) Visitors to serve on a board of visitors pursuant to 16 P. S. Sec. 1980, for a term of one year;

(3) Custody conciliators; who shall serve at will;

(4) Custody mediators, who shall have met the requirements of Pa.R.Civ.P. 1940.4, and who shall serve at will;

(5) Divorce mediators pursuant to YCCiv. 1971, and who shall serve at will;

(6) Adult and juvenile probation officers;

(7) Domestic Relations enforcement officers;

(8) Mental Health Review Officers to serve a one year term pursuant to 42 Pa.C.S. Sec. 3152(c);

(9) The Administrative Judge of the Orphans' Court Division;

(10) A representative to the Prison Board;

(11) A representative to the Criminal Justice Advisory Board;

(12) A representative to the County of York Salary Board;

(13) Judges to supervise various aspects of court operations.

B. The President Judge shall, from time to time, appoint others to positions as required or permitted by law or rule of court, upon motion presented.

COURT PERSONNEL

YCJA 300: District Court Administrator:

A. The District Court Administrator shall have the following duties, in addition to those established in law or by rule of court, and in consultation with the President Judge:

(1) To make schedules and assign magisterial district judges, including senior magisterial district judges, to districts and to duty schedules;

(2) To make schedules, assign judges of the Court of Common Pleas to schedules, cases and courtrooms;

(3) To manage the flow of cases through the various court divisions;

(4) To establish and oversee a system of management of court-employed and court-related personnel; and

(5) To hire and terminate court-employed personnel pursuant to established policies.

B. The District Court Administrator shall, in consultation with the President Judge, annually prepare an appropriate budget for the courts so that the courts are sufficiently funded to carry out their judicial duties.

YCJA 509: Requests to Inspect Records and Records Manager:

A. A request to inspect or obtain copies of records accessible pursuant to Pa.R.J.A. 509 or any other public law, which are in the possession or control of a court of this Judicial District, and which are not otherwise privileged or protected from disclosure by law, rule of procedure, or court order, shall be made in writing and addressed to the District Court Administrator, who is designated as the Records Manager for the 19th Judicial District. A request to inspect records maintained by a Magisterial District Judge may be referred by the District Court Administrator to the judge whose court is subject to the request.

(1) The request shall identify the person making the request, the person's address and telephone number, and whether the request is to copy records and if so, in what format, and shall identify or describe the records with sufficient specificity to enable the Court Administrator to ascertain which records are being requested.

(2) The Court Administrator shall charge reasonable fees for granting access to the records requested, including but not limited to, photocopying or printing from electronic media at the rate of \$.25 per page, costs of postage, copying onto electronic media, or other means of duplication.

B. Upon receipt of a written request for access to records pursuant to section A above, the Court Administrator shall send a copy of the request to the President Judge and to the solicitor for the County of York.

C. If the Court Administrator denies a written request for access to records, the denial may be appealed in writing to the President Judge within 15 business days of the mailing date of the response or within 15 days of the deemed denial.

D. A final decision on the appeal shall be mailed to all interested parties within twenty (20) business days from the receipt of the appeal or as otherwise provided by law.

YCJA 509.1 Appeals from Determinations Concerning Open Records:

A. Appeals from determinations of an Open Records Appeals Officer, or the Office of Open Records shall be

filed in the Office of the Prothonotary within the time limits set forth in 65 P. S. Sec. 67.1302.

B. An appeal shall be in writing and shall contain the following information:

(1) The Appellant's full name, address, telephone and facsimile number; and

(2) A concise statement of relevant facts including, but not limited to:

a. The name, title, address, telephone and facsimile numbers, if known, of the agency and any agency official alleged to have acted on a request under the Right to Know Law;

b. A description of the records requested;

c. The date of the Right to Know request;

d. The date of any response or the date the response was deemed denied;

e. A statement of the grounds upon which the requester asserts that the record is a public record;

f. A statement addressing any grounds stated by the agency for delaying or denying the request, including any unusual circumstances or emergency situations that may have contributed to the delay;

g. A copy of any pertinent correspondence, hearing transcripts, or other documents; and

h. A statement that all material provided by the agency has been submitted with the appeal.

(3) A copy of the appeal and attached documents shall be sent to all parties to the proceedings, to the open records officer and to the open records appeals officer of the agency whose action is being appealed. A statement setting forth the date and method of service shall be filed with the appeal documents.

C. The petition for review shall be presented to the Court pursuant to YCCiv. 205.1 et seq., during a session of motions court, upon proper notice to all parties to the proceedings.

D. The respondent/appellee shall file a response as directed by the Court, which response shall include a statement of the legal basis for the agency's position.

E. A final decision on the appeal shall be mailed to all interested parties within 30 days of the receipt of the appeal.

JUDGES and MAGISTERIAL DISTRICT JUDGES

YCJA 702: Assignments of Judges of the Court of Common Pleas:

A. Assignment of judicial duties:

(1) Judicial assignments shall become effective each year on January 2, or at such time preceding that date as is necessary to ensure a smooth transition of judicial duties.

(2) The President Judge or the President Judge's designee shall assign judicial duties annually prior to July 1 of the year preceding the year that judicial assignments shall become effective.

(3) Judicial assignments shall be made with due regard for the following:

a. The need for proper allocation of judicial resources to cover all necessary judicial duties;

b. The experience of a judge with a particular judicial assignment. A judge shall serve a minimum of two (2) years in a particular judicial assignment;

c. Due deference to a judge's seniority.

d. The desirability of having periodic changes of judicial assignments;

e. The desirability of maintaining continuity of judicial experience within various areas of judicial duties; and

f. The desires of individual judges.

B. Procedure for periodic rotation of judicial assignments:

(1) Prior to July 1 of the year preceding the year that judicial assignments become effective, rotation of various judicial duties and assignments among the judges shall take place as follows:

a. Each judge shall have the ability to designate whether he or she wishes to keep that judge's current assignments or switch assignments to another judicial position.

b. The designation shall be made first by the most senior judge, and then by each judge in succession, according to seniority.

c. In the event there is more than one judicial position with substantially similar judicial assignments, positions with judges occupying a judicial position the longest shall be filled first, and thereafter, in inverse order of seniority.

(2) Should a judge elect to stay in his or her current assignment area, that judge will be subject to being displaced from those assignments by a judge making a subsequent designation of assignments.

a. Once a judge has made a designation of assignments different than those currently held by that judge, that judge is not subject to being displaced from those assignments so designated.

b. A judge who has been displaced from his or her assignments by a judge making a subsequent designation of assignments shall take over the assignments of the judge who displaced him or her, and shall be subject to further displacement by a judge making a subsequent designation of assignments.

(3) A judge may not designate a judicial assignment substantially similar to an assignment which that judge previously held unless no other judge has designated that judicial assignment.

(4) No more than 50% of the judges in the following assignments shall be displaced in any one year: criminal court; juvenile dependencies; juvenile delinquencies; and child support.

(5) Judges with assignments which include juvenile delinquencies or juvenile dependencies shall maintain those duties for a minimum of three (3) years, but may elect to designate other judicial assignments not inconsistent with those duties, nor disruptive of another judge's assignments.

(6) Regardless of the assignments noted above, a judge who has been assigned to a complex matter, including PCRA matters, appeals of complex civil matters, and complex juvenile matters, shall retain assignment to that matter until the conclusion of all proceedings associated with that matter.

C. The above scheme for rotation of assignments is subject to modification or change by the President Judge or the President Judge's designee in order to provide

appropriate judicial resources for judicial assignments, to fill vacancies in the event of the disability of a judge to perform judicial functions, or for other necessary reasons.

YCJA 706: Procedure for Succession of Judicial Authority:

A. In the event of the inability of the President Judge to perform the functions of that office because of absence, death, extended illness, or other disability, or in the event of a vacancy in the office of President Judge for any reason, the duties of President Judge shall devolve to the judge who last served as President Judge, and if such previous President Judge is no longer an active commissioned judge, or is otherwise unable to serve, then, in the following order: to the Supervising Judge of the Criminal Division, the Supervising Judge of the Family Division, the Orphans Court Administrative Judge, then to each judge in order of seniority, until such time as the President Judge is able to resume those duties, or until such time as a new President Judge is selected pursuant to Pa. Rule of Judicial Administration 706(f).

B. Pursuant to Pa. Rule of Judicial Administration 706(e)(2)(ii), should the disability of the President Judge or vacancy of that position extend longer than thirty (30) consecutive calendar days, then the Court shall select a new President Judge pursuant to the procedures set forth in Pa. Rule of Judicial Administration 706(f).

C. The President Judge may, from time to time, designate in writing, a judge to temporarily act as president judge during brief absences, with due regard to the succession of authority set forth in section A above.

YCJA 710: Duty Judges, Bench Warrants:

A. A judge shall be available twenty-four hours a day, each day of the year, for the purpose of considering judicial matters pursuant to law, court order or rule of procedure.

B. The District Court Administrator shall maintain a list of "duty" judges which shall be updated from time to time and circulated among the Judges of the Court of Common Pleas of York County. The District Court Administrator shall assign such hearings and matters to the appropriate judge from that list if the judge assigned to a matter is not available.

C. Judges who are "on duty" for the designated time period shall ensure their availability or the availability of another common pleas judge, during normal Court business hours, for the purpose of conducting hearings and for addressing other matters which may need the attention of the Court and for which the judge who would ordinarily be assigned to a matter may not be available.

D. Individuals arrested on bench warrants of any kind issued by a Judge of the Court of Common Pleas shall promptly, and in any event within 72 hours of their apprehension or by the close of the next business day, if the 72 hours expires on a non-business day, be brought before the Judge who issued the bench warrant, who shall conduct such hearing and take such action with regard to the bench warrant as the law requires.

(1) In the event that an individual has been arrested on more than one bench warrant issued by different judges of the court of common pleas, the individual may be taken before any judge who issued a warrant, who shall conduct a hearing on all of the bench warrants pursuant to which the individual was arrested.

(2) In the event that the judge or judges who issued a bench warrant are unavailable to conduct a hearing

within the time limits set forth in applicable rules and law, then the hearing shall be conducted by the designated "duty" judge.

(3) At the conclusion of the bench warrant hearing following the disposition of the matter, the judge immediately shall dispose of the status of the bench warrant, using an appropriate order.

YCJA 800: Magisterial District Judges, Offices; Bench Warrants:

A. Regular Business Hours of Magisterial District Judges:

(1) The offices of a Magisterial District Judge shall be open throughout the year, excluding any court holidays, for at least a total of 35 hours per week and on at least four of the weekdays, shall be open between the hours of 8:30 a.m. and 4:00 p.m., unless a different schedule is specifically approved by the President Judge.

(2) Magisterial District Judges shall submit their proposed yearly schedule of office hours to the President Judge for approval prior to December 1 of the preceding year, unless there are no changes from the preceding year, and shall post the schedule at least annually in a conspicuous place at the office, pursuant to Rule 103 of the Pennsylvania Rules of Conduct for Magisterial District Justices. Schedules of office hours of all Magisterial District Judges shall also be maintained in the office of the District Court Administrator.

(3) Applications for a change in office hours from those previously approved shall be made to the President Judge, through the District Court Administrator, prior to any change being instituted. Any changes in office hours, whether temporary or permanent, shall be maintained in the District Court Administrator's office and shall be conspicuously posted at the Magisterial District Court so as to be visible from the outside.

B. Availability of Magisterial District Judges During Regular Business Hours:

(1) Magisterial District Judges shall be available to conduct judicial business during regular business hours, without unnecessary delay.

(2) Should a Magisterial District Judge for a particular district not be available during regular business hours, any matter requiring immediate judicial attention shall be referred to the nearest available Magisterial District Judge.

(3) A Magisterial District Judge may designate the personnel in that office to make a referral and designate the manner of referring matters to the nearest available Magisterial District Judge.

(4) A Magisterial District Judge shall inform the District Court Administrator, and York County E-911, as soon as reasonably practical, of that Magisterial District Judge's scheduled or unscheduled unavailability during regular business hours.

C. Availability of Magisterial District Judges After Regular Business Hours:

(1) A Magisterial District Judge, known as the "Duty MDJ" shall be on continuous duty after regular business hours for the purpose of conducting judicial business requiring immediate attention, without unnecessary delay.

a. The District Court Administrator shall designate and publish the annual schedule of Duty MDJs prior to November 1 of the preceding year.

b. A Duty MDJ who is scheduled for a particular time may exchange duty times with another Magisterial District Judge, and shall make such change known to the District Court Administrator and York County E-911 as soon as is reasonably practical.

(2) An office, known as a "Duty Office" shall be maintained for the Duty MDJ to conduct judicial business after regular business hours.

a. Such office may be at a "central booking" facility, or another office suitable for the conduct of judicial business after hours.

b. Such office shall be equipped with suitable electronic communications to enable simultaneous visual and audio communication with the York County Prison and a Duty MDJ.

(3) The Duty MDJ shall be available at all times when assigned after regular business hours to conduct judicial business without unnecessary delay.

a. Such judicial business, including preliminary arraignments, setting of bail, and processing individuals arrested or otherwise detained, may be conducted by suitable electronic communications which provides simultaneous audio and visual contact between the Duty MDJ and the Duty Office or central booking facility.

b. In the event such business is conducted remotely by electronic communications, suitable electronic methods of transmitting required paperwork without unnecessary delay may be utilized, including computer or facsimile transmittal.

D. Bench Warrants Issued by Magisterial District Judges:

(1) Hearings for individuals arrested on bench warrants issued by a Magisterial District Judge shall be heard by the Magisterial District Judge who issued the bench warrant.

(2) In the event that an individual has been arrested on more than one bench warrant issued by different Magisterial District Judges, the individual may be taken before any Magisterial District Judge who issued a warrant, who may conduct a hearing on all of the bench warrants pursuant to which the individual was arrested.

(3) In the event that the Magisterial District Judge or Judges who issued a bench warrant are unavailable to conduct a hearing within the time limits set forth in law or by rule of court, or if an individual is arrested after normal business hours on a bench warrant, then the matter or matters shall proceed pursuant to YCCrim- 117.

ASSESSMENT OF FEES, PAYMENTS OF MONEY TO COURT:

YCJA 1100: Countywide Booking Center:

A. The County of York shall maintain the countywide Booking Center established pursuant to 42 Pa.C.S. Sec. 1725.6.

B. The President Judge shall, from time to time, establish by administrative order the amount of fees to be charged to individuals processed through the Booking Center who meet the requirements set forth in 42 Pa.C.S. Sec. 1725.5.

C. Fees collected pursuant to section B above shall be maintained and used pursuant to 42 Pa.C.S. Sec. 1725.5(b) and other applicable laws or rules of court.

YCJA 1200: Disposition of Fines, Costs, Restitution, and Other Fees Collected:

A. The Clerk of Courts and the York County Department of Probation shall be the designated entities respon-

sible for the collection and allocation of all costs, fines, reparation, restitution, penalties and other remittances imposed and collected as a result of criminal cases in the Court of Common Pleas of York County.

B. All criminal cases requiring payment of costs, fines, reparation, restitution, penalties and other remittances by a single defendant shall be placed into a single individualized payment plan within the Common Pleas Criminal Court Case Management System (CPCMS), unless directed otherwise by court order.

(1) Such payment plans shall be created by the Office of the Clerk of Courts or the Department of Adult Probation.

(2) Any criminal cases requiring payment of costs, fines, reparation, restitution, penalties and other remittances by a defendant who has a pre-existing payment plan, shall be incorporated into the defendant's pre-existing payment plan, whereby one payment plan may include multiple cases, unless otherwise ordered by the Court.

(3) Each payment of costs, fines, reparation, restitution, penalties and other remittances made by a defendant or by the PA Department of Corrections or the York County Prison as per Act 84 of 1998 on behalf of the defendant to the Office of the Clerk of Courts or the Department of Probation shall be distributed according to the defendant's individualized payment plan within CPCMS, whereby each payment shall be applied to the defendant's individual payment plan and shall then be divided and applied equally among each of the cases within the payment plan.

(4) In accordance with the CPCMS Uniform Disbursement Schedule (UDS) the Criminal Division of the Courts of Common Pleas Using the Common Pleas Criminal Court Case Management System (CPCMS) found in 204 Pa. Code § 29.405, the Clerk of Courts and the Department of Probation shall distribute all fines costs, reparations, restitution, penalties and other remittances imposed and collected in the prioritized order as set forth in the above mentioned schedule.

(5) Each payment of costs, fines, reparation, restitution, penalties and other remittances made by a defendant that is equally distributed among all of the defendant's cases within that defendant's individualized CPCMS payment plan, shall be allocated in the order proscribed by the CPCMS UDS.

YCJA 1300: Taxation of Costs in Civil Matters:

A. Bill of Costs. Form:

(1) A bill of costs as to attendance of witnesses shall include the names of the witnesses, the date of their attendance in court, the number of miles actually traveled by them and the place from which mileage is claimed.

(2) The bill shall be verified by the party filing it or his attorney. The verification shall state that the bill of costs is correct, that the witnesses named were actually present in court and that in the opinion of the affiant they were material witnesses.

B. A bill of costs shall be filed with the Prothonotary within five (5) days after the action has been tried or an appeal has been taken from an award of arbitrators or a report of viewers.

C. Upon presentation of the bill of costs by the party entitled thereto, the Prothonotary shall tax the costs in

accordance with the bill, unless manifest error of law or fact is apparent on the face of the bill.

D. Within five (5) days after the taxation of costs, any party may file exceptions thereto with the Prothonotary, with copies to all other parties. The Prothonotary shall then retax the costs within five (5) days of the receipt of exceptions.

(1) Within three (3) days after the retaxation of costs, any party may file an appeal therefrom, by filing a motion which specifies the items objected to. The motion shall be filed and served on all parties pursuant to YCCiv. 205.1 and shall be resolved pursuant to YCCiv. 208.3(b).

(2) The taking of an appeal shall not stay execution on the judgment, but any sum collected on execution which represents the items of costs which are the subject of the appeal shall be paid to the Prothonotary to be held by the Prothonotary pending the determination of the appeal.

YCJA 1400: Other Money Paid Into Court:

A. When appropriate, the court, on its own motion or on the petition of any party, may direct the payment of money into court.

(1) The Prothonotary, Clerk of Court, or Clerk of the Orphans' Court shall have custody of all money paid into court until withdrawn.

(2) The Prothonotary, Clerk of Court, or Clerk of the Orphans' Court shall deposit the funds specially to the credit of the court in a bank or banks in which deposits are insured by the Federal Deposit Insurance Corporation, in such accounts as may earn interest at prevailing rates.

a. The party or parties to benefit shall provide the Prothonotary with a fully completed IRS W-9 form or other similar form required by the bank where the money is to be deposited.

b. The Prothonotary shall not deposit such moneys into an account which earns interest until the parties have complied with this provision.

(3) Upon the petition of a person who appears from the record to be *prima facie* entitled to money paid into court, the court may direct the Prothonotary, Clerk of Court, or Clerk of the Orphans' Court to invest the fund in such manner and upon such terms as the court may specify.

B. Money paid into court may be withdrawn only on order of the court or by written stipulation signed by all parties to a matter and filed with the Prothonotary, Clerk of Courts, or Clerk of the Orphans' Court, as the case may be.

COURT REPORTERS AND STENOGRAPHIC TRANSCRIPTS

YCJA 4000: Supervision of Court Reporters:

A. The Court Administrator shall employ a sufficient number of full-time or part-time qualified court reporters so as to insure the timely recording and, if necessary, transcription, of all judicial proceedings. Proceedings may be recorded electronically, without the presence of a court reporter, at the discretion of the Court Administrator and the presiding judge.

B. Court reporters shall receive reasonable compensation for their services pursuant to law and applicable rules of court.

(1) Requests by court reporters for compensation, in addition to any salary, for services performed and for which compensation is due and owing by statute or rule

of court shall be made to the Court Administrator monthly, and in any event, within thirty (30) days after the service was rendered.

(2) Requests for compensation shall be submitted on such forms as the Court Administrator shall require, and shall be specific as to the case number, day and date the service was performed, a description of the service rendered, and at whose request the service was rendered.

[The remainder of this section is reserved until enactment of revisions to Pennsylvania's rules for court reporting.]

COURT INTERPRETERS

YCJA 4800: Court Interpreters:

A. The Court Administrator shall employ interpreters, or shall have interpreters readily available, upon reasonable notice, for parties and witnesses with limited English proficiency in judicial proceedings, pursuant to 42 Pa.C.S. Sec. 4401, et seq.

(1) If the person with limited English proficiency is a principal party in interest in a judicial proceeding for a criminal matter, juvenile proceeding, or other matter in which the right to counsel applies to the individual needing an interpreter, then the payment of the cost of providing the interpreter shall be the responsibility of the County of York.

(2) If the person with limited English proficiency is compelled to appear as a witness in a judicial proceeding for a criminal matter, or a juvenile proceeding, then the payment of the cost of providing the interpreter shall be the responsibility of the County of York.

(3) In any other civil case or other proceeding, responsibility for payment of interpreter services is upon the party requesting the services. Final allocation of all or part of the cost of providing interpreter services shall be in the discretion of the presiding judicial officer unless the principal party in interest requesting the services is indigent. If the principal party in interest requesting the services is indigent, then some or all of the cost of providing interpreter services shall be the responsibility of the County of York. The presiding judicial officer may order reimbursement to the County for its responsibilities under this section.

B. The Court Administrator shall employ interpreters, or shall have interpreters readily available, upon reasonable notice, for parties and witnesses who may be deaf or hard of hearing, pursuant to 42 Pa.C.S. Sec. 4431, et seq.

(1) Disposition of all or part of the cost of providing an interpreter appointed shall be in the discretion of the court that has jurisdiction over the judicial proceeding. In no event shall the cost of providing interpreter services be the responsibility of the person who is deaf or hard of hearing.

(2) If the principal party in interest is indigent, then the cost of providing interpreter services shall be the responsibility of the County of York. The presiding judicial officer may order reimbursement to the County for its responsibilities under this section.

C. The party requesting interpreter services shall provide reasonable notice to the Court Administrator of the need for such services. Any party or witness may use an interpreter secured by that individual so long as the interpreter is on the approved list maintained by the Administrative Office of Pennsylvania Courts or otherwise meets the requirements of 42 Pa.C.S. Sec. 4401 et seq.

MISCELLANEOUS PROVISIONS**YCJA 7010: Restriction on Removal of Files and Documents:**

A. No file containing original documents, nor any original document contained therein, may be removed from the Offices of the Prothonotary, Clerk of Courts, or Clerk of the Orphans' Court, except by special written permission of the Court, by anyone other than the following:

- (1) A judge of the court or a judge's authorized representative;
- (2) The District Court Administrator;
- (3) The Prothonotary, Clerk of Courts, and Clerk of the Orphans' Court and regularly employed and duly authorized employees of that office;
- (4) A master in divorce or conciliator in child custody cases for use in connection with official duties;
- (5) A chairperson of a board of arbitrators for use in connection with official duties;

(6) A chairman of a Board of View appointed by the Court in connection with official duties;

B. Every person authorized to remove a file or document shall at the time of removal give to the Prothonotary, Clerk of Courts, or Clerk of the Orphans' Court a written receipt for the same identifying the person by whom, or on whose behalf, the item is removed, and such person shall be personally responsible for the custody and return of the item.

YCJA 7020: Designation of Legal Newspaper:

The *York Legal Record* is designated as the legal newspaper for the publication of court and legal notices.

YCJA 7030: Date and Time of Filing:

The Prothonotary, Clerk of Courts, and Clerk of the Orphans' Court shall endorse the date and time of filing upon all papers filed in their respective offices and shall note the date and fact of filing on the case docket.

[Pa.B. Doc. No. 09-2271. Filed for public inspection December 11, 2009, 9:00 a.m.]

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

COAL AND CLAY MINE SUBSIDENCE INSURANCE BOARD

[25 PA. CODE CH. 401] Mine Subsidence Fund

The Mine Subsidence Insurance Board (Board) by this order amends 25 Pa. Code Chapter 401 (relating to mine subsidence fund). Chapter 401 addresses the administration of the Mine Subsidence Insurance (MSI) Program. The amendments clarify the regulations concerning issuance of MSI policies. There are new regulations codifying the insurance producer program, as well as, explicitly authorizing the issuance of grants and loans to foster the development of new technologies or services that will benefit the Board and the Department of Environmental Protection (Department).

This order was adopted by the Board at its meeting of July 29, 2009.

A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. *Contact Persons*

For further information contact Lawrence Ruane, Administrator, Mine Subsidence Program, P. O. Box 8462, Rachel Carson State Office Building, Harrisburg, PA 17105-8462, (717) 783-9590; or Marc A. Roda, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This notice of final-form rulemaking is available electronically through the Department's web site www.depweb.state.pa.us.

C. *Statutory Authority*

The final-form rulemaking is being made under the authority of section 19 of the act of August 23, 1961 (P. L. 1068, No. 484) (52 P. S. § 3219) (act) which provides, *inter alia*, that the Board shall have the power to make rules and regulations.

The Coal and Clay Mine Subsidence Insurance Fund (Fund) was created in 1961, to provide a reliable source of compensation for damage to structures caused by underground coal and clay mine subsidence, a risk excluded from standard property and casualty insurance policies. This insurance pool of moneys for compensating owners of structures damaged by underground coal or clay mine subsidence is vital to the economic well being of this Commonwealth's coal mining regions.

D. *Background of the Amendments*

The amendments clarify the regulations concerning issuance of MSI policies by: (1) revising some of the definitions to ensure consistency with the MSI insuring agreement and insurance industry standards; (2) codifying standards for issuing MSI policies for multiple unit structures owned either conventionally, or as a condominium, or cooperative; (3) simplifying and expanding the

criteria for covering multiple purpose structures at the residential rate; and (4) codifying the Board's recently adopted policy for issuing MSI policies for damaged structures. The standard for waiving the loss deductible is amended to be consistent with current practice. This final-form rulemaking also establishes new regulations: (1) codifying the submission of MSI applications by insurance producers; and (2) authorizing the issuance of grants and loans to foster the development of new technologies or services which can assist the Board and Department in administering the Fund.

The Board adopted the proposed rulemaking at its meeting of September 4, 2008. The proposed rulemaking was subsequently published at 38 Pa.B. 6931 (December 20, 2008), with a 31-day comment period that concluded on January 20, 2009. The Insurance Agents and Brokers of Pennsylvania (IA&B), the trade association representing insurance producers, submitted comments. Due to the minor and uncontroversial nature of the proposed amendments, no public meetings or hearings were held. The proposed rulemaking was provided to the Independent Regulatory Review Commission (IRRC) on December 10, 2008. IRRC provided its comments to the Board on February 19, 2009.

E. *Summary of Changes to the Proposed Rulemaking*

§ 401.1. *Definitions.*

The proposed definition for "commissions" and the proposed revision to the definition for "structure" are revised. The proposed definition for "commissions" is modified to be a payment to insurance producers rather than fees paid to insurance producers. This change was made for clarity. A commentator expressed the concern that using the term "fees" could be confusing because insurance producers receive fees for a number of different services. The same commentator also noted that the proposed amendment to the definition for "structure" created circularity because the term structure was being used in the revised definition. This circularity has been removed.

§ 401.11. *Eligibility for insurance.*

There are a number of revisions to subsection (b). First, in subparagraph (b)(1) the term "policyholder" is changed to "insured." The term "policyholder" was used to identify the person to be responsible for billing. One commentator noted that this proposed revision improved the regulation's clarity. However, the commentator suggested using the term "insured" because it better defines the insurance relationship. To ensure consistency, the term "policyholder" is changed to "insured" throughout the regulations. Also, the requirement to list all additional owners in the application is revised to clarify that the additional owners are to be listed as an additional insured. This revision is for consistency with the Board's practice of insuring all owners of a structure.

Second, subsection (b)(2) is revised to accurately state who is eligible to acquire insurance covering a structure owned as either a condominium or cooperative. When the association is insuring the structure, it must insure the entire structure, that is all common elements and units. Requiring an association to insure all the units, as well as the common elements, is the most effective method of ensuring a structure owned as a condominium or cooperative from subsidence damage. Subsidence damage primarily occurs to the structure's roof, foundation, walls and

floors. Usually, some or all of the walls, foundation, roof, and floors related to a particular unit, as well as the appurtenances, are owned by the association as common elements.

Another change is that only the association can buy insurance coverage if the structure is vertically configured with units stacked on top of each other. This change ensures consistency with subsection (f) which requires that vertically configured multiple unit structures be covered by one policy.

This subsection is further revised to clarify that where the association is not requiring insurance and the structure is not vertically configured, unit owner can only insure their units and the, common elements that are closely related to the units value and use, for example the unit's walls, floors, roof and foundation. Other common elements such as common rooms and laundry facilities are for the benefit of all the members of the association. This clarification is in response to the concerns raised by one commentator that it is highly unusual for a unit owner to insure common elements to the benefit of the whole association. The coverage is now limited to those common elements that are critical to the unit's value and use. It is recognized that it is unusual for a unit owner insurance covering common elements. However, the Board believes that, where the association does not acquire the insurance coverage, a unit owner should be able to acquire insurance coverage equivalent to a person owning a unit in a conventionally owned multiple unit structure such as a row home.

Finally, the unit owner and not the association will be the named insured when the unit owner purchases coverage. This is because it is the unit owner who is acquiring and maintaining the insurance coverage. However, the association must be listed as an additional insured in the application if the unit has related common elements. This is because the common elements are owned by the association and only a structure owner can own mine subsidence insurance. These revisions are in response to a commentator questioning making the association the insured and asking what was meant by naming the unit owner in the application. Originally, the association was to be the policyholder/insured because of concerns relating to insuring common elements. The unit owner was to be listed in the application because that is the mechanism for naming an additional owner as an additional insured. This revised approach of naming the unit owner as the insured and only listing the association as an additional insured to the extent the unit has related common elements is the better method of issuing insurance coverage to unit owners.

Subsection (d) is revised in two ways. First, the process for insuring structures with preexisting damage is clarified. The Board, based upon an inspection, will identify to the structure owner the repairs to be made or whose cost is to be estimated. As noted by a commentator, the proposed amendment was vague and did not provide any guidance as to the repairs to be made or whose cost is to be estimated. Second, structures with preexisting damage that jeopardizes the structures integrity must be repaired before insurance will be issued. Where the structure's integrity is jeopardized, either the damage will become more extensive over time or any subsequent subsidence damage will be more significant, or both.

§§ 401.15 and 401.32. Cancellation of an insurance policy; and Obligations after claim settlement.

The term "policyholder" has been changed to "insured" in these sections to be consistent with the change that was made in § 401.11 (relating to eligibility for insurance). As previously noted, the term "insured" better defines the insurance relationship. The changes are being made in response to comments and for consistency in the regulations to avoid ambiguity or confusion.

§ 401.42. Commission rates.

This section is revised by clarifying that the Board's approval of a change in commission rates will be made at a Board meeting. Also, commission rates will be posted on the Fund's web site. These changes are made in response to a commentator's concern as to how the Board establishes commission rates and how the regulated community will be notified.

§ 401.43. Payment of commissions.

This section is revised to clarify that the Board's decision to make an alternative method of payment available to insurance producers will be made at a Board meeting. Also, the availability of an alternative method of payment will be placed on the Fund's web site. These changes are made in response to a commentator's concern as to how the Board will make its determination and how the regulated community will be notified.

§ 401.44. Repayment of commissions.

This section is revised to specify that repayment of commissions for canceled policies shall occur within 60 days of the issuance of a written demand. This change is in response to one commentator's concern that the regulation should specify the amount of time an insurance producer has to submit the repayment.

§ 401.45. Confidentiality of insureds information.

This section is revised by limiting the insured's confidentiality requirement to compliance with the Insurance Department's confidentiality requirements. To require absolute confidentiality is an unnecessary burden on the insurance producer. Also, the term "policyholder" is revised to "insured." Both commentators were concerned that the proposed regulation was too broad.

F. Summary of Other Comments to the Proposed Rule-making

§ 401.11(f). Eligibility for insurance.

This subsection addresses the issuance of policies for multiple unit structures. With respect to nonvertically configured multiple unit structures, one commentator asked whether there is intent to have single policy coverage for the entire structure or will individual policies for individual units be sought. Also, how will this work when applied to structures owned as condominiums or cooperatives? The Department is equally willing to sell either one policy covering the entire structure or individual policies covering individual units. When the structure is owned as a condominium or cooperative and the association will not by coverage, individual unit owners can acquire coverage for their units and any related common elements, such as the walls, floors, foundation and roof.

§ 401.51. Loans and grants.

One commentator questioned the statutory authority for this regulation. It was also recommended that the regulation should be revised to provide more detail on how the loan and grant program is to be administered,

that is, application process, review criteria and time frames. This issue was also raised by the Office of the Attorney General before it approved the proposed regulation for form and legality. In approving the proposed regulation for form and legality, the Office of the Attorney General agreed that the Board has the authority to adopt regulations authorizing the issuance of loans and grants.

The statutory authority for the Board to issue grants and loans is implied in the Board's rulemaking authority. The power and authority of an administrative agency must be conferred by the Legislature, and it must be either expressly conferred or given by necessary implication. For example, *Butler County Mushroom Farm v. DER*, 454 A.2d 1 (Pa. 1982). The Board is authorized to promulgate rules and regulations the Board deems just and expedient to fulfill the purposes of the act. The general grant of rulemaking authority extends, by necessary implication, to authorize the promulgation of regulations to allow the issuance of grants and loans. See *Section 19 of the Act (52 P. S. § 3219)*.

Regulations authorizing the issuance of grants and loans to foster the development of new technologies will assist the Board and the Department in administering the Fund. These are technologies and services such as robotic sensing devices or geographic information systems that the Department may wish to make use of, to evaluate a claim of subsidence damage, but do not want to own. A grant or loan, rather than a service purchase contract, can provide financial assistance to encourage the development of these technologies and services and provide the Department with access to these new technologies and services. The limitation on the amount of excess moneys that can be used to finance the loans or grants ensures the Fund's financial integrity will be maintained.

The Board does not believe that this regulation needs to be revised to specify additional administrative procedures, criteria or time frames. The regulatory language provides the criteria for the types of technologies and services whose development can be funded through a grant or loan. As an initial matter, the Department will follow the Commonwealth's policies for issuing grants and loans. The Department needs the flexibility to develop the appropriate administrative process, any additional criteria and time frames based on the types of services or technologies being sought.

G. Benefits, Costs and Compliance

Benefits

The amendment to § 401.11(c) (relating to eligibility for insurance) makes the residential rate, about 1/2 of the commercial rate, available to more structures used for both residential and commercial purposes. Section 401.43 (relating to payment of commission) benefits insurance producers because the commission is retained from the premium payment, that is, immediately paid, rather than waiting 3 months to receive a payment from the Board. Learning institutions and other entities developing technologies and services potentially valuable to the Board will benefit from the availability of grants or loans to foster those developments.

Compliance Costs

There are no costs associated with this final-form rulemaking.

Compliance Assistance Plan

The Department will notify policyholders at the time of policy renewal of the broader application of residential rates to mixed-use structures. Insurance producers registered to submit MSI applications will also be notified of changes in procedures and their obligations due to this final-form rulemaking. Finally, a link to the *Pennsylvania Bulletin* notice of the final-form rulemaking will be placed on the MSI web site (www.paMSI.org).

Paperwork Requirements

This final-form rulemaking will not impose any additional paperwork requirements on MSI policyholders or insurance producers.

H. Pollution Prevention

The regulations affected by this final-form rulemaking address the administration of the Commonwealth's MSI Program. They do not address pollution prevention.

I. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

J. Regulatory Review

In accordance with section 5(a) and (f) of the Regulatory Review Act (71 P. S. §§ 745.5(a) and (b)), on December 10, 2008, the Department submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 6931 (December 20, 2008), to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* and to IRRC. In accordance with section 5(f) of the Regulatory Review Act, on February 9, 2009, the Department submitted the proposed regulations and the required material to the House Environmental Resources and Energy Committee and the Senate Environmental Resources and Energy Committee (Committees).

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 21, 2009, these final-form regulations were deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 22, 2009, and approved the final-form regulations.

K. Findings of the Board

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968, (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 38 Pa.B. 6931.
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

L. Order of the Board

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

(a) The regulations of the Department, 25 Pa. Code Chapter 401, are amended by amending §§ 401.1, 401.11, 401.13, 401.15, 401.22, 401.32 and by adding §§ 401.41—401.45 and 401.51 to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Committees as required by the Regulatory Review Act.

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

(e) This order shall take effect immediately.

JOHN HANGER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 6524 (November 7, 2009).)

Fiscal Note: Fiscal Note 7-424 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART III. COAL AND CLAY MINE SUBSIDENCE INSURANCE BOARD

CHAPTER 401. MINE SUBSIDENCE FUND

GENERAL PROVISIONS

§ 401.1. Definitions.

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

Act—The act of August 23, 1961 (P. L. 1068, No. 484) (52 P. S. §§ 3201—3226).

Agent—Employees of the Department who work on behalf of the Board.

Association—One of the following:

(i) The unit owners' association organized under 68 Pa.C.S. § 3301 (relating to organization of unit owners' association) for condominiums.

(ii) The proprietary lessees' association organized under 68 Pa.C.S. § 4301 (relating to organization of association) for cooperatives.

Board—The Coal and Clay Mine Subsidence Insurance Board.

Commissions—Payment to insurance producers as compensation for the applications they submit to the Board.

Common elements—All portions of a condominium or cooperative other than the units.

Condominium—Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners. Ownership of the real estate is in accordance with 68 Pa.C.S., Subpart B (relating to Uniform Condominium Act).

Cooperative—Real estate owned by an association, each of whose members is entitled, by virtue of an ownership interest in the association, to exclusive possession of a unit. Ownership of the real estate is in accordance with 68 Pa.C.S., Subpart C (relating to Real Estate Cooperative Act).

Fund—The Coal and Clay Mine Subsidence Insurance Fund established by the act.

Insurance policy—An insurance certificate, an insuring agreement, and application for mine subsidence insurance and endorsements to the insurance policy.

Insurance producer—A person that sells, solicits or negotiates contracts of insurance.

Mine subsidence—The movement of the ground's surface as a result of the collapse of underground coal or clay mine workings.

Mine workings—The roof, floor or pillars within an underground coal or clay mine.

Owner of structure—A person, corporation, organization or association holding title to a structure within the anthracite or bituminous coal or clay mine region as defined by the Board.

Structure—A complete building, which contains a roof, walls and a foundation that firmly attaches the building to the earth, and its appurtenances as defined in the insurance policy.

Units—

(i) Specific areas of a building that are separate and distinct from other areas of the building, having an individual entrance accessing either a common entry or the building's exterior.

(ii) For the purposes of the definition of "common elements" and § 401.11(b)(2) (relating to eligibility for insurance), the following apply:

(A) Units in a condominium are portions of the condominium designated for separate ownership, the boundaries of which are described in the condominium declaration.

(B) Units in a cooperative are physical portions of the cooperative designated for separate occupancy under a proprietary lease.

INSURANCE POLICIES

§ 401.11. Eligibility for insurance.

(a) Structures located within the coal and clay regions of this Commonwealth are eligible for coverage.

(b) Only an owner of a structure may be named as the insured.

(1) If there is more than one owner of a structure, the owners shall designate one owner whose name shall appear on the insurance policy for billing purposes. The other owners shall be listed in the application for insurance as additional insureds.

(2) For a structure owned as a condominium or a cooperative:

(i) The insurance must cover all the common elements and units when the association is acquiring the insurance.

(ii) Only an association can acquire insurance covering a structure comprised of vertically stacked units.

(iii) For otherwise configured structures when the association does not acquire insurance coverage, unit owner

may purchase coverage for their unit and the related common elements necessary for the owner's use of the unit. Related common elements include the unit's roof, walls, floors, foundation, as well as, a fence, retaining wall, paved or improved patio, walk, or driveway. However, the association shall be listed in the application as an additional insured. Renewals will be sent to the unit owner.

(c) Structures which are at least 50% residential are eligible for residential rates.

(d) If a structure is damaged by mine subsidence or by another cause, and the Board, based upon an inspection of the structure, determines that either:

(1) The damage jeopardizes the structure's integrity, the Board will not issue a policy until the damages identified by the inspection have been repaired as directed by the Board.

(2) The damage could not be separated or apportioned from subsequent damage and the damage does not jeopardize the structure's integrity, the Board will issue a policy if the applicant either:

(i) First repairs the damages identified by the inspection as directed by the Board.

(ii) Submits to the Board an estimate, prepared by a reputable expert, of the cost to repair the damages to the Board's satisfaction. The cost to repair, adjusted for inflation, would be excluded from any damage claim settlement. However, a policy would not be issued if the cost to repair exceeded the replacement cost of the structure or the policy limit, whichever is less, because the policy would have no value.

(e) The Board may refuse to issue a policy while the structure to be covered is being damaged by mine subsidence or by another cause, until the Fund determines that the cause of damage has ceased.

(f) Multiple unit structures are insured as follows:

(1) Structures comprised of vertically stacked units are only insurable under a single policy.

(2) Other unit configurations are insurable under a single or multiple policy at the owner's discretion.

§ 401.13. Coverage limits and premiums for insurance.

(a) The maximum amount of insurance, the term or duration of the policy, and the premium rate will be determined by the Board.

(b) An insurance policy is effective upon the date a complete application and its premium are received by the Board or its agent and provided that the applicant and structure meet the eligibility requirements in the act and in § 401.11 (relating to eligibility for insurance).

§ 401.15. Cancellation of an insurance policy.

An insurance policy cannot be canceled by the Board, or its agents, or by the insured during the term of coverage except as provided in the insurance policy or the act. When the Board, or its agents, cancels an insurance policy, it will send a written notice of the cancellation to the insured.

INSURANCE COVERAGE

§ 401.22. Loss deductible amount.

Every insurance policy must include a loss deductible amount for which the Fund is not liable. The amount will be determined by the Board and may be changed as

experience may warrant, and will be included in the schedule of premium rates adopted by the Board. The loss deductible will be waived if the cost to repair the damage exceeds the amount of coverage under the policy.

CLAIMS

§ 401.32. Obligations after claim settlement.

Insureds shall contact the Board, or its agents, within 1 year of the claim settlement and permit an inspection of the insured structure to verify that the damage described in the claim settlement has been repaired. If the insured fails to contact the Board, or its agents, or refuses to permit the inspection the Board or its agents, may refuse to issue or renew an insurance policy for the insured structure.

INSURANCE PRODUCERS

§ 401.41. Submission of applications.

Insurance producers may only submit applications for mine subsidence insurance to the Board electronically from the Board's web site.

§ 401.42. Commission rates.

The Board, at an open meeting, will annually establish commission rates. The commission rate will be posted on the Fund's web site (www.pamsi.org).

§ 401.43. Payment of commissions.

The insurance producer shall retain the commission from the premium collected. The Board, at an open meeting, may authorize other forms of payment. Alternative forms of paying commissions will be posted on the Fund's web site (www.pamsi.org).

§ 401.44. Repayment of commissions.

Commissions in excess of \$5 that are unearned due to the Board's rejection of a mine subsidence insurance application or the cancellation of a policy shall be repaid to the Board upon its demand. Failure by an insurance producer to repay commissions within 60 days of the Board's written request may result in exclusion from participation with the Fund. The Board's decision to exclude an insurance producer from participating with the Fund is appealable to the Environmental Hearing Board under to the Environmental Hearing Board Act (35 P. S. §§ 75.11—75.16).

§ 401.45. Confidentiality of insureds information.

Insurance producers are responsible to safeguard all applicant and insureds information in accordance with the Insurance Department's regulations found in 31 Pa. Code Chapters 146a and 146c (relating to privacy of consumer information) and standards for safeguarding information). Failure by an insurance producer to safeguard applicant and insureds information may result in exclusion from participation with the Fund. The Board's decision to exclude an insurance producer from participating with the Fund is appealable to the Environmental Hearing Board under the Environmental Hearing Board Act (35 P. S. §§ 75.11—75.16).

LOANS AND GRANTS

§ 401.51. Loans and grants.

Each year the Board may authorize up to 1% of the Fund's Unreserved Fund Balance, as declared by the Board under section 10(c) of the act (52 P. S. § 3210(c)), to be used to provide loans and grants to entities that develop technologies, perform services or engage in other activities that benefit the Fund by improving its ability to

provide mine subsidence insurance coverage or to improve the efficiency, economy and effectiveness of the Fund's operations.

[Pa.B. Doc. No. 09-2272. Filed for public inspection December 11, 2009, 9:00 a.m.]

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 611]

Home Care Agencies and Home Care Registries

The Department of Health (Department) hereby amends 28 Pa. Code by adding Subpart H, Chapter 611 (relating to home care agencies and home care registries), to govern licensure of home care agencies and home care registries. The regulations are set forth in Annex A.

Purpose of The Regulations

The final regulations set minimum standards for the operation of home care agencies and home care registries. Act 2006-69 (Act 69), signed by Governor Rendell on July 7, 2006, amended the Health Care Facilities Act (act) (35 P. S. §§ 448.101—448.904b) to require the Department to license home care agencies and home care registries. Home care agencies employ direct care workers to provide home care services to individuals in their place of residence or other independent living environment. Home care registries refer direct care workers who are independent contractors to provide home care services to individuals in their place of residence or other independent living environment. Home care services include assistance with bathing, dressing and feeding, housekeeping, shopping, meal planning and preparation and transportation, and also include companionship services, respite care and specialized care.

Section 803(1) of the act, (35 P. S. § 448.803(1)) (regarding powers of the department of health), authorizes the Department, after consultation with the Health Policy Board, to promulgate regulations necessary to carry out the purposes and provisions of the act. The Act 69 amendments also included a provision expressly authorizing the Department to promulgate regulations to implement sections 806(d.1) and 806.3 of the act (35 P. S. §§ 488.806(d.2) and 448.806c regarding licensure standards and consumer protections. Act 69 requires the Department to develop regulations in consultation with the Department of Public Welfare and other advisory groups that represent persons in the home health care industry, persons with physical disabilities and the aging community, and to take into consideration the preferences and philosophies of persons with physical disabilities who receive home and community-based services through Medicaid waiver or other publicly funded programs.

The Department distributed a set of draft regulations to the Department of Public Welfare, the Department of Aging, other designated stakeholders and interested persons in advance of stakeholder meetings in Harrisburg on December 7, 2006, in Muhlenberg on December 12, 2006, and in Pittsburgh on December 15, 2006. The Department also met on January 26, 2007, with representatives of what was, at that time, the Pennsylvania Protection and Advocacy, Inc. (PP&A), and is now the Disability Rights

Network of Pennsylvania, and with other individuals representing organizations serving the disability community. Following meetings with stakeholders, and receipt of comments on the draft regulations, the Department revised the draft based on comments received and presented the proposed regulations to the Department's Health Policy Board on March 14, 2007. The Department published notice of proposed rulemaking at 37 Pa.B. 4198 (August 4, 2007). The Department provided a 30-day public comment period. After preparation of the regulations in final, the Department presented the regulations to the Department's Health Policy Board at a public meeting on July 30, 2008.

Discussion of Comments

During the public comment period, the Department received over 200 individual comments from more than 40 commentators, including members of the Legislature, the public, advocacy groups serving the disability community, and trade associations representing providers of home care services. Many of the comments were critical of some aspect of the Department's proposed regulations, although some commentators did express support for specific provisions of the proposed regulations.

While the bulk of the comments received were in response to the substantive requirements for licensure as a home care agency or home care registry (that is, hiring and training or testing of direct care workers employed or on contract, background checks, child abuse clearances, health evaluations and consumer protection), the Department also received a number of comments on the Department's proposed procedural provisions addressing the licensure process for home care agencies and registries, inspection and survey activities, and sanctions and corrective actions. The three proposed sections addressing the procedural aspects of the licensure process were intended to incorporate and expand upon the requirements in 28 Pa. Code Chapter 51 (relating to general provisions), promulgated in 1998, applicable to all health care facilities required to be licensed under the act, and to clarify procedural requirements for home care agencies and registries.

Upon further consideration, the Department has determined not to address in these regulations the Department's practices and protocols for licensure and enforcement of licensure standards as applied, specifically, to home care agencies and home care registries. The act addresses the application process, issuance of a license, inspections, notice of violations, and possible sanctions as a result of violations for all "health care facilities" required to be licensed by the Department. See 35 P. S. §§ 448.807—448.814. Moreover, the Department plans a comprehensive revision of Chapter 51 to address the licensure process for all health care facilities.

For these reasons, the Department has deleted the provisions under "Licensure," "Inspection and Survey Activities," and "Sanctions and Corrective Actions." Portions of what had been included in §§ 611.11 and 611.12 (relating to licensed required; and application for license) are now in § 611.2 (relating to license required). The remaining regulations in the "General" section have been renumbered accordingly. Section 611.2 advises of the licensure requirement generally as applied to new and to existing home care agencies and home care registries, states that the licensure requirement applies to all physical locations of home care agencies and home care registries, and informs the reader where to submit the application and the application fee of \$100.

Because the Department has chosen not to adopt the bulk of the provisions under the proposed regulations labeled "Licensure," "Inspections and Survey Activities," and "Sanctions and Corrective Actions," this preamble does not include a discussion of comments received in response to those proposed provisions.

The Department received comments on each of the provisions in the proposed "Governance and Management" section, but most comments focused on the proposed § 611.55 (relating to competency requirements) that dealt with training and on the proposed § 611.56 (relating to health screening) that dealt with health evaluations. Many commentators expressed concern that if the Department required all direct care workers to receive training or establish competency in all 16 subject areas listed in the proposed regulation, the pool of individuals willing to become a direct care worker and provide home care services would decline dramatically and the cost of home care services to the consumer would increase. Commentators explained that many potential direct care workers are individuals who have been homemakers for many years who wish to earn an income by providing some, but not all, levels of home care services. These individuals have little interest in providing the kind of hands-on care for which more intensive training is required. According to the commentators, if these individuals are required to become trained or establish competency in skills they do not intend to use, they will decline the training and the work-for-pay opportunity being offered to them.

In response to the comments received, the Department reevaluated the statute and determined that it allows for differing levels of competency; one for persons who will provide the full gamut of home care services, up to and including personal care, and another for those who will provide only companionship and assistance with tasks such as laundry, shopping, making and keeping appointments, paying bills, and engaging in social and leisure activities. Therefore, the final regulation, § 611.55, includes a list of ten mandatory subject matter areas to be included in any training program or competency examination developed by a home care agency or home care registry. If, however, the direct care worker will provide personal care, including assistance with eating, ambulating, transferring, positioning, toileting and with personal hygiene and with self-administration of medications, § 611.55 provides that the direct care worker must receive training, or establish competency through testing, in six additional subject matter areas.

The Department retained other options, per the statute, for ensuring competency, prior to assignment or referral if the agency or registry does not choose to create its own training program or competency examination; for example, a current nurse's license, the home health aide training program outlined in 42 CFR 484.36 (relating to condition of participation: Home health aide services) or the nurse aid certification and training program offered by the Department of Education. In response to a suggestion from a commentator, the Department also added, in § 611.55, as an additional method for ensuring competency, training that conforms to training standards imposed on the agency or registry by virtue of the agency's or registry's participation as a provider of home and community based services funded by a Medicaid waiver or other publicly funded program. Thus, if the direct care worker is trained to provide services funded through the Medicaid waiver or other publicly funded program, the direct care worker is competent to provide home care services.

Commentators also almost unanimously objected to the proposed health evaluation section, which would have required a screening assessment to establish that the individual had been screened, and tested as necessary, for tuberculosis, and for five other communicable diseases or conditions which were listed in the proposed regulation. There was widespread confusion regarding the meaning of the term "screening assessment" and consternation that direct care workers would need to undergo more onerous scrutiny as to their health status than other workers actually engaged in providing health care services.

In response to comments received, the Department has revised the regulation in § 611.56 (relating to health screening) to require the direct care worker and other office staff or contractors with direct consumer contact to provide documentation that the individual was screened for and is free from active tuberculosis. The individual need not be screened for other communicable diseases.

The Department's response to the comments received on the specific provisions of the proposed regulation follows:

General

§ 611.1. (legal base)

The Independent Regulatory Review Commission (IRRC) suggested that the references in this section to "subpart" should be changed to "chapter." The Department agreed and made the suggested change in this section and elsewhere within the regulation where the term "subpart" was used.

§ 611.2. (licensure required)

This section contains portions of what had been included in proposed §§ 611.11 and 611.12 (relating to license required; and application for license). This section alerts new and existing home care agencies and home care registries of the need to obtain a license for each physical location of the agency or registry, where to obtain the application, where to submit the completed application and the amount of the application fee. In accordance with a suggestion from IRRC, the Department inserted the actual fee amount for an initial license or license renewal in the final regulation. The Department also included a statement that the Department will conduct an inspection prior to issuing an initial license or a license renewal.

Several commentators suggested that the Department eliminate the requirement that each physical location of the home care agency or home care registry be separately licensed. One commentator suggested that the "central office" for the agency or registry be licensed, and that license would cover or include all physical locations of the agency or registry. IRRC has asked the Department to explain why it is necessary to separately license each physical location of an agency or registry.

The act contemplates that the Department will separately license each health care facility. See section 808 of the act (35 P. S. § 448.808). The Department, under the statute, prior to issuing a license, must determine that the entity that will provide services is a responsible person; that the entity will provide safe and efficient services which are adequate for the care, treatment and comfort of patients; and that there is substantial compliance with the rules and regulations adopted by the Department under the act. 35 P. S. § 448.808. For health care facilities that have a physical plant at which health care services are delivered, the Department also must establish that the

place to be used as a health care facility is adequately constructed, equipped, maintained and operated to safely and efficiently render the services offered.

The act also states that a separate license will not be required for different services within a single health care facility except that home health care, home care, hospice or long-term nursing care will require separate licenses. Thus, the act contemplates a license for each physical location of a health care facility, and specifically requires a separate license for home care services even though services might be offered in conjunction with services provided by, or located in, a facility also required to be licensed under the act.

The Department does allow branch offices of home health care agencies, and does not require the branch offices to be separately licensed, provided the licensure requirements specifically applicable to branch offices are met. The Department's licensure regulations for home health care agencies mirror the Federal requirements for participation in the Federal Medicare and Medicaid Programs. Both Federal certification standards and the State licensure standards permitting branch offices assume that a parent home health care agency will operate within a limited geographic area within this Commonwealth, and that the branch offices are in close physical proximity to the parent agency such that the parent agency can and does exercise administrative control and supervision, as defined in the regulations, over the branch offices. If the home health care agency has branch offices or "subunits," appropriate administrative records must be maintained for each subunit. 28 Pa. Code § 601.21(a) (relating to organization, services and administration). If the subunit, by virtue of the lack of accessibility between it and the parent agency, is not capable of sharing administration, supervision and services with the parent agency, the subunit must be separately licensed. *Id.*

The act does not give the Department authority to impose geographical limits on home care agencies or registries. The Department may permit branch offices at some point, if the Department is granted the authority to impose administrative and oversight responsibilities to a parent home care agency or registry, which would operate, along with its branch offices, within a defined geographic area within this Commonwealth.

Senator Corman suggested that a standardized fee schedule could be implemented to avoid escalating cost if a company has an agency and a registry and satellite offices of each. The act contains a fee schedule and requires a fee of \$100 to accompany each application for a license to operate a home care agency or home care registry. The act does not permit an alternate fee schedule.

One commentator asked how the Department will determine geographic limits for each agency. As pointed out previously, the act does not authorize the Department to, and thus the regulations do not, set geographic limits for an agency or registry. An agency or registry licensed in the State will be permitted to provide or offer home care services throughout this Commonwealth. The agency or registry will determine its geographic limits, and the business and organizational structure needed to serve the chosen geographic area.

§ 611.3. (*affected home care agencies and home care registries*)

IRRC suggested that the Department should move to this section that portion of the definitions of "home care agency" and "home care registry" that exceeds the statu-

tory definitions and attempts to distinguish covered from noncovered entities. In accordance with the suggestion from IRRC, the Department incorporated within this section a listing of those entities to which this chapter does not apply. Thus, this section now states that the chapter does not apply to a home health care agency, a durable medical equipment provider, a volunteer provider, or an entity providing financial management services or supports coordination services or both. The Department added "supports coordination services" in response to a comment received that the regulations should include a specific exemption for financial management and other supports coordination services for consumer/employers who self-direct their services. The Department agreed the language was necessary to accomplish a more complete description of the kinds of services potentially offered by the noncovered entity. The definitional section also has been revised to include a definition of "supports coordination services."

One commentator suggested that the proposed definitions of "home care agency" and "home care registry" should be revised to delete the word "only" used in reference to "financial management services." Upon relocating the language referred to in this comment, the Department has accepted the suggestion, and the word "only" prior to "financial management services" has been deleted. The Department determined that use of the term is inferred. In other words, an entity that supplies services in addition to financial management services or supports coordination services, as those terms are defined, is no longer an excluded entity, and that entity will have to examine its operations to determine whether it meets the definition of home care agency or home care registry, and, therefore, needs to apply for a license.

One commentator inquired whether the licensure requirement applies only to organizations, and not to consumer employers. The licensure requirements apply to entities that meet the definition of home care agency or home care registry. The licensure requirements, per the statute, do not apply to a private contract or arrangement entered into by a consumer and caregiver, provided that the caregiver was not supplied, arranged, scheduled or referred to the consumer by a home care agency or home care registry. See 35 P.S. § 448.903a. Thus, if the consumer enters into an arrangement with a caregiver not supplied, arranged, scheduled or referred by a home care agency or home care registry, the caregiver is not subject to the requirements in this chapter. If, however, the consumer enters into an arrangement with a caregiver supplied, arranged, scheduled or referred by a home care agency or home care registry, the caregiver is, in essence, a direct care worker subject to the requirements of this chapter. Ensuring that the direct care worker meets the requirements of this chapter, however, is the responsibility of the home care agency or registry that employed or rostered the direct care worker.

Two commentators suggested that the regulations do not address the unique place of consumer-driven organizations nor the philosophies that oppose medical oppression in personal assistance services. In any set of regulations that a Commonwealth agency, such as the Department, promulgates to accomplish the objective set out by the General Assembly in the authorizing legislation, the agency must strive to address the safety and well-being of all individuals the regulations are intended to reach. Moreover, regulations promulgated must be objective in their application. Regulations must include the requirements to meet the statutory objectives. When the regulations regulate licensure, they must specify the

minimum standards that need to be met to qualify for and retain a license. Thus, these regulations address minimum requirements for licensure of entities that provide or supply direct care workers to provide home care services. Every consumer receiving home care services supplied, arranged, scheduled or referred by a home care agency or registry must receive those services from an individual who has had a background check, is competent to provide home care services, and has been screened for tuberculosis. Moreover, every consumer receiving services is entitled to certain basic consumer protections including notice of services to be provided, the cost of those services, and the identity of the individual who will provide the services. These are basic protections to which all consumers are entitled.

One commentator commented that the Department failed to meet the statutory requirement that the Department take into consideration the preferences and philosophies of persons with physical disabilities. The Department met on January 26, 2007, with representatives of what was, at that time, the Pennsylvania Protection and Advocacy, Inc. (PP&A), and is now the Disability Rights Network of Pennsylvania, and with other individuals representing organizations serving the disability community. The Department sought input from the individuals present at that meeting and engaged in an on-going dialogue in the process of drafting language to ensure the regulations were not more far-reaching than had been intended. The language exempting entities that supply financial management services or supports coordination services or both to consumers of home and community-based services through Medicaid waiver or other publicly funded programs was developed through dialogue with representatives of organizations serving the disability community. Other changes included in these regulations, such as inclusion of a training program meeting training standards for providers participating in the Medicaid waiver or other publicly funded programs as an option for satisfying competency requirements, are a direct result of input from the disability community through the public comment process.

§ 611.4. (*requirements for home care agencies and home care registries*)

IRRC commented that proposed subsection (b) references other Federal, State and local standards and recommended that, to clearly guide the regulated community, the Department should identify the specific standards in the final-form regulations or maintain a list of applicable standards on the Department's web site. The Department cannot list all applicable Federal, State and local standards in the final-form regulations or on the Department's web site. It is the home care agency's or registry's responsibility to be aware of all the laws that affect the agency or registry, and any changes to those standards. The Department, in its regulations for health care facilities governed by the act, routinely requires compliance with all applicable Federal, State and local standards, in accordance with section 813 of the act (35 P. S. § 448.813). This requirement is included to apprise facilities that the inspection process could encompass a requirement included in another law to which the facility is subject. For example, the Department uses this provision in order to cite facilities subject to but not in compliance with the requirements of the Older Adult Protective Services Act (OAPSA) (35 P. S. §§ 10225.101—10225.5102). The Department of Aging, assigned responsibility for implementation of OAPSA, does not have the authority to conduct inspections of facilities to confirm compliance. Compliance is confirmed by the State agency

required to conduct facility licensure inspections. The Department confirms compliance with OAPSA by nursing facilities, home health care agencies and hospices. Any deficiencies in compliance are cited pursuant to the provision in the applicable licensure regulations requiring the facility to be in compliance with all applicable Federal, State and local standards.

One commentator inquired whether a home care office needs to be ADA compliant. The Department believes the reference is to the Americans With Disabilities Act, 42 U.S.C. §§ 12101—12213, which prohibits discrimination on the basis of disability in defined sectors of the economy. As noted previously, it is the responsibility of each home care agency and home care registry to be aware of all Federal, State and local standards that apply.

One commentator inquired whether a home care agency seeking to be licensed in this Commonwealth must have a physical office in this Commonwealth. Since this regulation requires inspection to determine compliance with regulatory requirements, which is confirmed through, among other means, review of required documentation, a physical office in Pennsylvania is necessary.

§ 611.5. (*definitions*)

IRRC commented that the terms "activities of daily living" and "instrumental activities of daily living" are defined in the act but are not found in this section and that they should be added to this section with a cross-reference to the statutory definition. One commentator also suggested that the terms should be defined in the regulation as they are defined in the act.

The term "instrumental activities of daily living" has been added to the definitional section and the definition references the act. The term "activities of daily living" has not been defined because it is not used in the regulation. The term is not used in the regulation because the statutory definition is not in accord with the industry standard. The statutory definition states that "activities of daily living" include home management activities, respite care, companionship services and personal care, including, but not limited to, assistance with self-administered medications, feeding, oral, skin and mouth care, shaving, assistance with ambulation, bathing, hair care and grooming, dressing, toileting and transfer activities. The statutory definition also states that the term "activities of daily living" includes "instrumental activities of daily living." The industry standard is that assistance with activities of daily living means assistance with self-administered medications, feeding, oral skin and mouth care, assistance with ambulation, bathing, hair care, grooming, dressing, toileting and transfer activities. The industry standard for assistance with activities of daily living does not include assistance with instrumental activities of daily living. Similarly, respite care and companionship services are separate from assistance with activities of daily living. To avoid confusion created by the statutory definition that is at odds with the industry standard, the Department has included the term "home care services" to refer to the gamut of services referenced in the statutory definition of "activities of daily living." Because the term "activities of daily living" has a particular meaning, per the statute, the Department has selected the term "personal care" to refer to those services routinely associated, per the industry, with the term "assistance with activities of daily living." The definition of the term "personal care" in this section reflects this meaning. Throughout the regulation, the term "personal care" is

used when referring to the kinds of hands-on care associated with “assistance with activities of daily living.”

IRRC also commented that the definition of “direct care worker” uses the term “services.” IRRC suggested that the term “services” should be defined. The Department elected to use the term “home care services” instead, and a definition of that term has been included. As stated above, the Department has defined “home care services” to include one or more of the range of services referenced in the statutory term “activities of daily living.” Thus, “home care services” has been defined to include “personal care,” “assistance with instrumental activities of daily living,” “respite care,” “companionship services,” and “specialized care.” Each of the terms used in the definition of “home care services” has been separately defined, as suggested by a commentator, and requested by IRRC.

As mentioned in the discussion under § 611.3 (relating to affected home care agencies and home care registries) previously, IRRC also suggested that the definitions of “home care agency” and “home care registry” should be revised to mirror the statutory definitions of the terms. IRRC suggested that the portions of the definitions seeking to distinguish covered entities from noncovered entities should be moved to § 611.2 (relating to affected home care agencies and home care registries). The Department followed IRRC’s suggestion and deleted subparagraph (ii) from each definition. The information provided in proposed subparagraph (ii) is now provided in § 611.2(a). The definitions, as revised, do include language not included in the statutory definitions, however. Both definitions clarify that the home care agency or registry supplies, arranges, schedules or refers direct care workers to provide home care services as directed by the consumer or the consumer’s representative. The Department added this language to acknowledge that consumers must be permitted to self-direct their home care services.

The Department also added definitions of “consumer control” and “independent living philosophy” in accordance with the suggestion of a commentator. The same commentator also suggested defining the terms “consumer direction” and “disability cultural competency.” The Department has determined not to add a definition of “consumer direction” as the concept has been incorporated with the definitions of “consumer control” and “independent living philosophy.” The Department also has determined not to add a definition of “disability cultural competency.” The Department is aware of the considerable impact and effect of the competency requirements imposed by this regulation and has determined not to add a requirement for cultural competency, generally, or disability cultural competency, specifically, at this time. The Department will continue to monitor the need to add this competency requirement.

One commentator, voicing overall approval and support of regulation of the home care industry, has suggested that the definitions of home care agency and home care registry are overly broad to the extent that they encompass organizations that may supply, arrange, or schedule employees to provide assistance to residents or consumers who live on the same campus as the supplying entity; for example nursing homes or personal care homes.

If an entity with a personal care home license or a nursing care facility license provides health care services (including skilled nursing care) or home care services to individuals that do not reside in the personal care home or nursing care facility, the entity will need to obtain a home health care agency license or a home care agency or home care registry license, as applicable.

One commentator suggested that the Department revise the definition of “financial management services” to reference “other supports coordination services.” The Department addressed this concern by adding the reference to “supports coordination services” in § 611.2, addressing affected home care agencies and home care registries. That section now indicates that, as discussed, the licensure requirements in Chapter 611 do not apply to entities that provide financial management services or supports coordination services or both to consumers of home and community-based services through Medicaid waiver or other publicly funded programs. A definition of the term “supports coordination services,” based on a suggested definition included in comments received, has been incorporated in the definitional section.

The Department has deleted the definition of “qualified health professional” in accordance with revisions to § 611.56 (relating to health screening). That section has been revised to delete the requirement for a “health evaluation” by a “qualified health professional.” The health care agency or registry must ensure the direct care worker is screened for tuberculosis in accordance with *CDC Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Settings*.

Finally, the Department revised the definition of “inspection” to address issues raised by IRRC in response to proposed § 611.31 (relating to inspections). In response to proposed § 611.31, IRRC recommended that the regulation make clear whether inspections would be announced or unannounced. IRRC also recommended that the Department state in the regulation that inspections would be conducted during regular business hours, in accordance with section 806.4 of the act (35 P. S. § 448.806d).

The Department, historically, in accordance with its longstanding inspection authority under section 812 of the act (35 P. S. § 448.812), has conducted unannounced and announced inspections. The act, since its inception, has required the Department to conduct inspections to determine the adequacy of the care and treatment provided or the continuing conformity of the licensees to the act and to applicable local, State and Federal regulations. The act gives the Department full and free access to the records of the facility, to persons served by the facility, and to the individuals providing services and their records. The act permits the Department to interview, inspect and examine the licensee as necessary to determine the licensee’s compliance with law and regulations. The act does not address whether the entity being inspected should be apprised that the inspection will occur. The Department believes that the integrity of the inspection process is dependent, to a great extent, on its ability to conduct unannounced inspections. An entity that is aware that it will undergo an inspection is able, at least to some limited extent, to affect the outcome of the inspection. The Department must have the ability to assess compliance without the complications introduced by the knowledge of when the inspection will take place. At the same time, there are situations in which the Department must give at least minimal notice that the inspection will occur so that representatives of the business are available to provide the Department the access it requires and is entitled to, under the act, to determine compliance. Therefore, the Department will, on occasion, give the licensee 2 to 3 days notice of an impending inspection so that the Department is assured that representatives of the licensee will be available when the Department’s inspectors arrive for the inspection. Also, on those occasions when the Department determines to review records only, it may ask the licensee to forward

copies of records essential to the inspection, in which case the licensee will be aware in advance of the inspection.

Accordingly, the Department has revised the definition of inspection to apprise licensees that an inspection may be scheduled or unscheduled. The Department also has added language to address the IRRC's concern that the requirement in section 806.4 of the act that inspections occur "during regular business hours" be included in the regulation. Lastly, the Department, to eliminate confusion, has eliminated language stating that the inspection may or may not be onsite. The language of the regulation as revised allows the Department to conduct an inspection by means of record review only. If the Department conducts a record review, the Department may opt to require the licensee to forward those records essential to the review to the Department. The Department will review the records and then inform the licensee of the results of its review.

§ 611.51. (*hiring or rostering of direct care workers*)

The act, in section 806.3(b)(7) (35 P. S. § 448.806c(b)(7)) regarding listing information to be provided to a consumer prior to commencement of services requires "documentation from the home care agency or home care registry that demonstrates personal face-to-face interviews with all employees from a home care agency or independent contractors referred by the home care registry and documentation of at least two satisfactory reference checks prior to referral to the consumer." In accordance with the act's requirements, the Department published a proposed regulation listing hiring or rostering prerequisites, including a face-to-face interview with the direct care worker and "satisfactory references." Many commentators questioned what was a "satisfactory reference." IRRC also has suggested that the Department explain what qualifies as a "satisfactory reference."

Commentators who questioned the meaning of the term also offered suggestions; sometimes, the suggestions also included questions or points for consideration. Several commentators suggested that a satisfactory reference should consist of dates of employment from a previous employer and personal references, and that home care agencies and registries should be permitted to obtain verbal, as opposed to written, references, that are then documented in the direct care worker's file. One commentator suggested that the applicant should have documentation of 2 years continuous prior employment. Another commentator suggested that because many employers have adopted policies to confirm only employment dates, requiring more could be problematic. Another commentator questioned how to proceed if there is no prior employer. One commentator suggested that references could be supervisory or personal references, but should not come from family.

In response to IRRC's suggestion, and after considering public comments, questions and suggestions, the Department has inserted in the regulation language establishing what constitutes a satisfactory reference. The reference need not be from a prior employer, in the event there is no prior employer, and can, but need not, include dates of employment. The reference, either verbal or written, and either supervisory or personal, must be from someone not related to the individual, must be verifiable, and must confirm the ability of the individual to provide home care services.

Commentators also were concerned with the way in which this requirement would impact and affect existing direct care workers, and how documentation of a face-to-

face interview and satisfactory references could be included in the file for a direct care worker employed or rostered prior to the effective date of the regulations. One commentator asked how to handle documentation of direct care workers already on the roster for the registry.

Regulations have only prospective effect, unless the regulation specifically states that it applies retroactively. If the regulation applies retroactively, there must be support in the statute for the requirement. Thus, the requirement of a face-to-face interview and of documentation of at least two satisfactory references will be applied prospectively only. Files for direct care workers hired prior to the effective date of the regulations that do not contain evidence of a face-to-face interview or of two satisfactory references will not constitute a violation of the regulations. However, those files must contain documentation of completion of requirements for establishing competency, a criminal background check, and a child abuse clearance, as applicable, since the regulations (in §§ 611.55, 611.52 and 611.53, respectively) each require, per the statute, the agency or registry to meet the applicable requirements, within the time frame specified, for existing direct care workers.

One commentator was concerned with the use of "personnel" as the modifier for "file," because the term "personnel," in the commentator's view, connotes an employment relationship between the individual and the entity maintaining the file. Since registries do not employ direct care workers, the connotation, in the commentator's view, is not appropriate. *Webster's* defines "personnel" as "a body of persons usually employed (as in a factory, office, or organization)." Thus, employment is the usual, but not requisite, connection between the person and the organization. While continued use of the term "personnel" would not be wrong, it may lead to some confusion. Therefore, in this section, the Department has determined to substitute the modifier "direct care worker" for "personnel." The file required to be maintained for each caregiver being supplied, arranged, scheduled or referred by a home care agency or home care registry to provide home care services will be referred to as a "direct care worker file." The commentator recommended deletion of the term "personnel" in subsequent sections as well. The Department accepted the recommendation and has deleted the term "personnel" from subsequent sections.

A commentator has suggested that this section must require that files for direct care workers must include all documentation required under § 611.54 (relating to provisional hiring), and that the regulation must require the agency or registry to maintain in the file any other documentation required under the act or any of its implementing regulations or rules. The commentator also suggested that the Department should include a reference with this section to the proposed retention of records provision.

The Department has accepted the commentator's first suggestion and has included within subsection (b) of § 611.51 a reference to § 611.54 (relating to provisional hiring). Direct care worker files must contain documentation related to the worker's provisional hire, if applicable. The Department elected not to include language in the regulation requiring the agency to include in direct care worker files any and all other documentation that might be required under the act or any of its implementing regulations. To the extent the act or any other regulations promulgated under the act and applicable to a home care agency and home care registry require the agency or registry to maintain certain documentation, the agency or

registry will be required to comply with the regulation. The agency and registry will be required to have the documentation, and be able to produce the documentation if requested by a representative of the Department conducting an inspection, but the Department will not require the agency or registry to keep the requisite documentation in direct care worker files. If the information is pertinent to the individual, and the agency or registry chooses to maintain that information in the individual's file, it is within the agency's or registry's discretion to do so, but will not be dictated by the Department in this regulation. Finally, the Department elected not to include a reference to the proposed retention of records provision, as that provision has not been included in the final-form regulation.

Finally, one commentator suggested that the prerequisites for hiring or rostering of direct care workers should be revised to require, as an additional prerequisite, that the direct care worker hold a GED test credential or be a certified nursing assistant. The Department does not have the authority, per the statute, to impose this additional requirement. The statute does require training or testing prior to assignment or referral of a direct care worker, but no minimum level of education is dictated. Thus, the regulation lists options for training and includes mandatory content for training or testing programs developed by the agency or registry, but does not dictate a minimum education level for all direct care workers. As stated previously, these regulations contain minimum requirements that all agencies and registries must meet to be licensed. Certainly, it is within the agency's or registry's discretion to require, as a matter of policy, that any direct care worker employed or rostered by the agency or registry must meet a minimum education requirement as determined by the agency or registry.

§ 611.52. (*criminal background checks*)

IRRC inquired regarding the need for subsection (d) which states that an agency or registry may require an applicant to furnish proof of residency. IRRC stated that, if this provision is needed, that the circumstances when proof of residency would be required should be included in the final-form regulation.

The act requires the Department, prior to licensing a home care agency or registry, to determine that all individuals employed by an agency or referred by a registry, staff working within each entity and the owner or owners have obtained criminal history record information, in accordance with the requirements of section 503 of the OAPSA (350.5 § 10225.503) and maintain that information on file in the home care agency or registry office. Thus, the Department proposed regulations that mirror the existing background check provisions and prohibitions applicable to other health care providers under the OAPSA. OAPSA, in section 502, (35 P. S. § 10225.502), requires the following information in connection with a criminal background check: (1) a report of criminal history record information from the State Police or a statement from the State Police that their central repository contains no information relating to the individual; and (2) when the individual is not and for the 2 years immediately preceding the date of application has not been a resident of this Commonwealth, a report of Federal criminal history record information. Under the statute, the Department of Aging is the intermediary for purposes of the second method of conducting a criminal background check. See 35 P. S. § 10225.502(a)(2).

Therefore, regulations in 6 Pa. Code Chapter 15 (relating to protective services for older adults), promulgated by the Department of Aging to implement the statutory requirements under OAPSA, require the individual to submit a State Police criminal history record, unless the individual is not and, for the 2 years immediately preceding the date of application, has not been a resident of this Commonwealth, in which case the individual must submit a Federal Criminal History record. See 6 Pa. Code § 15.141 (relating to prospective facility personnel). The same section states that facilities may require the individual to furnish proof of residency by submitting one of the documents listed in the regulation.

When the Department promulgated these regulations, the requirements in OAPSA and in Department of Aging regulations were purposefully mirrored. These regulations also dictate the type of criminal history record that must be obtained based on the length of time the individual seeking to be employed or rostered has been a resident of this Commonwealth. These regulations also permit, but do not require, the agency or registry to require the individual to submit proof of residency. It is the agency or registry that will be inspected for compliance with the criminal background check requirements. Allowing the agency or registry to obtain proof of residency will allow the agency or registry to take steps to ensure compliance, if the agency or registry chooses to do so.

IRRC also inquired whether a State-issued identification would suffice to prove residency. A commentator also suggested adding a State-issued identification as another method by which residency could be established. The Department agreed with the suggestion, and has added State-issued identification as an optional method of establishing residency.

One commentator pointed out that the act requires a criminal background check not only for direct care workers, but also staff working within a home care agency or registry, and the owners. The Department agreed and, therefore, revised the regulation to include in the final form regulations a statement affirming the applicability of the criminal background check requirement to staff and the owners. Because the criminal background check requirement has wider applicability than to an "applicant for employment or referral," the Department changed the reference to "individual required to submit or obtain a criminal history report."

The commentator also suggested that the Department clarify § 611.52(2), addressing requirements for individuals currently employed or rostered, to affirm the applicability of subsection (f), addressing records maintained. The commentator suggested that the regulation, in subsection (j), should state that the criminal background check information obtained for existing employees must be included in the direct care worker's file. The Department elected not to revise subsection (j) because subsection (f) applies to all individuals employed or rostered, regardless whether they were employed or rostered before or after the effective date of the regulations.

The commentator also suggested that subsection (j) should state that a person currently employed whose State Police criminal history record reveals a prohibited conviction listed in 6 Pa. Code § 15.143 (relating to facility responsibilities), or whose Department of Aging letter of determination states that the individual is not eligible for hire or roster must be immediately terminated from the agency's employment or removed from the registry's roster. In response to this comment, the Department revised subsection (e) to state that a home care

agency or home care registry may not hire, roster or retain an individual if the State Police criminal history record reveals a prohibited conviction listed at 6 Pa. Code § 15.143.

The commentator also pointed out that OAPSA, in section 508(1) (35 P. S. § 10225.508(1)), exempts from the act's criminal background check requirement existing employees employed for one year or longer. The commentator suggested subsection (j) should be revised to exempt from the criminal background check requirement direct care workers who have been employed or rostered for 1 year or more.

The Department notes that the Legislature did not amend OAPSA to include home care agencies and home care registries as covered entities; rather, the Legislature amended the act to include home care agencies and home care registries as facilities that must be licensed by the Department and imposed a criminal background check requirement for workers, staff and owners, in accordance with section 503 of OAPSA, as one of the licensure criteria. The Legislature did not include, by reference, other sections of OAPSA. The Legislature did not incorporate by reference the section of OAPSA that limits the applicability of the criminal background check requirement and provides an exemption for existing employees employed for more than one year. Accordingly, the Department did not include an exemption for existing employees in its regulations.

A commentator inquired whether, for workers who have not been a resident of this Commonwealth for 2 years, if both the Federal criminal history record and the Department of Aging letter of determination were required, or whether the Department of Aging letter of determination "includes" the Federal criminal history record. The Department of Aging letter of determination is a letter advising the agency or registry, based on the Federal criminal history record, whether the individual for whom the report was prepared may be hired or rostered as a direct care worker. In effect, the Department of Aging letter "includes" the Federal criminal history record.

A commentator inquired how often criminal background checks must be conducted. Another commentator suggested that criminal background checks should be repeated every 2 to 3 years. Once a criminal background check is completed, the criminal background check need not be repeated. Of course, if the agency or registry has reason to know that another check should be conducted, the agency or registry is advised to conduct the check. The regulation, however, does not require routine or repeated background checks.

One commentator recommended deletion of the modifier "personnel" in the term "personnel file" for the same reasons outlined in prior paragraphs of this preamble. The Department made the recommended revision. The commentator also recommended that the Department substitute the term "direct care workers" for the phrase "individuals employed or rostered." The Department agreed with the recommendation and made the substitution where appropriate.

§ 611.53. (*child abuse clearance*)

Numerous commentators stated that they support the concept of a child abuse clearance for direct care workers who will provide care to a child, and even for office staff who have access to the child's personal and medical information. Commentators insisted that direct care workers who have no contact with children and staff who have no access to the child's records should not be

required to obtain a child abuse clearance. Commentators also expressed concern over the expense to the agency or registry or to the individual associated with obtaining the clearance. Finally, commentators suggested that this requirement will lead agencies and registries to refuse to extend the scope of the agency's or registry's consumer base to persons under 18 years of age.

The Department has no power to vary the requirement clearly imposed by statute. The act requires that "prior to licensing a home care agency or home care registry which provides services to persons under 18 years of age, the department shall determine that all individuals employed by an agency or referred by a registry, all office staff working within each entity and the owner or owners have obtained clearance from the child abuse registry, in accordance with 23 Pa.C.S. Chapter 63 (relating to child protective services) and maintain that information on file in the home care agency or registry office."

The rules that govern promulgation of regulations do not permit the Department to promulgate a regulation with language less stringent than the language in the act on which the regulation is based.

A commentator recommended that the Department substitute the term "registrant" for "applicant" when referring to registries. Thus, the commentator would have the Department revise subsection (a) to state that an agency or registry shall "require each applicant for employment *or* registrant for referral as a direct care worker . . . to request a ChildLine verification regarding whether the applicant or member is named in the Statewide Central Register as the perpetrator of a founded or indicated report of child abuse. . . ." (Emphasis added.) The Department has not accepted this recommendation because the term "applicant" has been used elsewhere in the regulations, "applicant" does not necessarily infer "for employment," and introduction of a new term in this section would be unnecessarily confusing to the reader.

The Disability Rights Network pointed out that the requirement for a child abuse clearance applies to direct care workers, staff working within each entity, and to owners. Subsection (a) makes clear that the agency or registry must require each applicant for employment or referral as a direct care worker, and each member of the agency or registry office staff to request a ChildLine verification. Subsection (c) requires that the records maintained by the agency or registry for each individual employed or rostered include a copy of the ChildLine verification. Subsection (c) also requires the agency or registry to maintain copies of the ChildLine verification for the agency or registry owners and to make those copies available to the Department for inspection. Thus the regulation requires a child abuse clearance for direct care workers, staff, and owners.

The same commentator also recommended clarification of subsection (d) to state that the subsection applies to direct care workers, office staff, and owners. The Department accepted the recommendation and revised subsection (d) to incorporate a reference to member of the agency or registry office staff. The Department did not include a reference to owners, since subsection (c) states that a copy of the verification for the owners shall be available for inspection.

Finally, the same commentator recommended that subsection (d) must clarify that a person currently employed or rostered, including an office staff member, who is named in the Statewide Central Register as the perpetra-

tor of a founded or indicated report of child abuse must be immediately terminated by the home care agency or immediately removed from the home care registry's roster. To meet the commentator's concern, the Department revised subsection (b) to state that the home care agency or home care registry may not employ, roster, or retain an individual named in the Statewide Central Register as the perpetrator of a founded or indicated report of child abuse.

§ 611.54. (*provisional hiring*)

IRRC requested that the Department explain its authority for including this section in the regulation. IRRC also questioned how the Department determined that 120 days is the appropriate length of time for provisional hire. More than one commentator also questioned the length of time for provisional hire, and one commentator suggested that the provisional hiring of someone who may have a criminal history could allow such a person to move from employer to employer with no tracking or consequences for them. The commentator believed that the potential threat to consumers is too great, and that, based on the speed with which criminal background check information may be obtained, that, at a minimum, the Department should shorten the period of permitted provisional hire. Another commentator pointed out that OAPSA permits only a 30 or 90-day period of provisional hire, depending upon whether the individual being provisionally hired is and has been a resident of this Commonwealth for at least 2 years. The commentator is correct, and the Department has revised the appropriate length of time for provisional hire to mirror requirements in OAPSA and in the Child Protective Services Law, on which the Department's provisional hire provisions are based. The explanation of the Department's statutory basis for the provisional hire provision follows.

The act requires the Department to ensure for each direct care worker, a criminal background check in accordance with OAPSA and a child abuse clearance, as applicable, in accordance with 23 Pa.C.S. chapter 63 (relating to child protective services). Both statutes referenced in the act permit provisional hiring. The Department relied upon the statutes referenced in the act for statutory authority for provisional hiring.

Section 506 of OAPSA (35 P.S. § 10225.506) permits provisional hiring for a period of 30 or 90 days, depending upon whether the applicant is and has been, for at least 2 years, a resident of this Commonwealth. Thus, OAPSA expects that a resident of this Commonwealth will obtain the results of a criminal history report within 30 days, and allows an applicant who is not a resident of this Commonwealth and has not, for the 2 years preceding the date of application, been a resident of this Commonwealth, who must therefore obtain a criminal history record from the Federal Bureau of Investigation, 90 days to obtain the report. OAPSA imposes conditions upon provisional hiring; those conditions have been incorporated in the Department's regulation on provisional hiring.

The provisions of 23 Pa.C.S. § 6344(m) (relating to information relating to prospective child-care personnel) permits provisional employment for a single period not to exceed 30 days, or for out-of-State applicants, a period of 90 days, provided certain conditions are met. Those conditions have been incorporated in the Department's regulation on provisional hiring. Specifically, the Child Protective Services Law does not permit the provisionally hired individual to work alone with children; the individual must work "in the immediate vicinity of a perma-

nent employee." Thus, the Department's regulation requires the home care agency or home care registry to supervise, or assign another direct care worker to accompany, a provisionally hired individual who will provide home care services to a consumer less than 18 years of age.

IRRC inquired, as did a number of commentators, whether the Department's conditions for provisional hire prohibit the hire of someone on a provisional basis until the individual has received the necessary training or testing. One commentator suggested revision of the regulation to make clear that the training or testing was required prior to assignment or referral, but not prior to hiring on a provisional basis. The Department agreed with the comment, and revised the condition applicable to establishing competency for a provisionally hired individual to clarify that the individual may be provisionally hired before receiving the requisite training or testing but cannot be assigned or referred to provide home care services until the individual has received the requisite training or testing to establish competency.

One commentator inquired whether the provisional hiring provision allows an agency or registry to hire someone who has not yet obtained a criminal background check and child abuse clearance, as applicable, and that the direct care worker then has the period of permitted provisional hire to obtain the necessary background check and child abuse clearance. The commentator's summary of the provision is correct.

One commentator stated that the period for provisional hire, even for an applicant who has not resided in this Commonwealth for at least 2 years, should be 30 days. The commentator believes that agency or registry should be required to submit a request for a letter of determination, for an individual who has not been a resident of this Commonwealth for at least 2 years, to the Department of Aging within 30 days of the application.

The Department agrees that the process for obtaining the criminal history report should start almost immediately after the application for employment or referral is submitted. The Department anticipates, as did the Legislature when it enacted OAPSA, that a criminal history report for a resident of this Commonwealth may be obtained from the Pennsylvania State Police within 30 days, provided there is not a significant backlog. Because, however, a criminal history report for an individual who has not been a resident of this Commonwealth for the requisite 2-year period must be obtained from the Federal Bureau of Investigation and the Department of Aging must review the report to determine whether the report contains any convictions that are prohibited convictions the Commonwealth's law, it is likely that process could very well take more than 30 days, which is the reason that both OAPSA and the Child Protective Services Law, and, as a result, the Department's regulations, permit a longer period of provisional hire for an individual who has not been a resident of this Commonwealth for the requisite 2-year period. The provisional hire provisions do impose certain conditions meant to protect the consumer, however, including supervision or oversight of the individual who has not yet obtained a criminal background check or child abuse clearance.

As the Department stated when it proposed the provisional hire provision, this provision permits, but does not require, provisional hiring. A home care agency or registry is free to assess the risks associated with provisional hiring and determine that the risks outweigh the benefits. If the agency or registry chooses to hire individuals

on a provisional basis, however, this regulation establishes the parameters for provisional hiring.

Finally, a commentator suggested the addition of the word “immediately” at the end of the second sentence in subsection (b), to mirror the wording in the first sentence. The Department agreed with the comment, and made the suggested change.

§ 611.55. (competency requirements)

The first, and most immediately obvious, change to this regulation from proposed to final is the substitution of the term “competency” for “training” in the title and in the body of the regulation. The Department made this change not because the act uses the term “competency,” not “training,” as was suggested by one commentator (the statutory provision does refer to training in section 806(d.1)(2) of the act, but because the Department agreed that the statutory provision is directed at requiring competency, not training, prior to assignment or referral of a direct care worker. Training, received prior to or after hire or roster, is simply one method by which competency may be established. The act also permits the agency or registry to verify, by means of a competency examination, that the individual is competent to provide services. Regardless of the method used, however, basic competency is the goal.

The Department also agreed with the commentator who suggested the Department substitute “direct care worker” for “individual,” eliminate references to “personnel,” and substitute “review” for “reassessment” of competency. In the commentator’s view, “reassessment” implies oversight. The suggested changes have been incorporated. The same commentator suggested the Department add “consumer feedback” as a method of reviewing the direct care worker’s competency to provide home care services, and the Department accepted the recommendation.

As for the substantive requirements of the regulation, IRRC pointed out that Representatives Mundy and Hennessey and other commentators suggested that not all direct care workers should be required to establish competency for tasks listed in the proposed regulation in subsection (d), paragraphs (10)—(15) (for example, bathing, shaving, grooming and dressing, hair, skin and mouth care, assistance with ambulation and transferring, meal preparation and feeding, toileting, and assistance with self-administered medications). Many commentators commented that ensuring that all direct care workers are able to provide personal care is an unnecessary expense, as many direct care workers prefer not to provide personal or “hands-on” care. One commentator said that the depth and scope of the subjects listed in the proposed rulemaking is excessive for care-givers who provide only homemaker-companion care. Commentators also pointed out that the already strained workforce would shrink, as potential direct care workers will decline the work opportunity if required to participate in training or be tested for skills the direct care worker has no intention of using. Several commentators stated that the requirements as set forth in the proposed regulation would force agencies and registries to hire only individuals who had received training, or were certified, as certified nursing assistants. One commentator said that the scheme set forth in the proposed regulation would drastically reduce the number of people who will be able to provide care to clients, that it would eliminate older caregivers who might be willing to provide care for their peers but have no interest in training or competency examinations. The commentator inquired what might happen to the client who is very

comfortable with her older caregiver who is not willing to take a competency examination.

As noted previously, the Department agreed with comments suggesting that not all direct care workers must be competent to provide every possible home care service and revised the regulation accordingly. As revised, the training provision allows a direct care worker to establish competency by: (1) having a valid nurse’s license in this Commonwealth; (2) demonstrating competency by passing a competency examination developed by the home care agency or home care registry in accordance with regulatory requirements; or (3) successfully completing a training program developed by the agency or registry in accordance with regulatory requirements, the home health training program outlined in 42 CFR 484.36, the nurse aid certification and training program sponsored by the Department of Education, the training program meeting the training standards of the Medicaid waiver or other publicly funded program, or other program identified by the Department by subsequent publication in the *Pennsylvania Bulletin* and on the Department’s web site.

Stakeholders and advocacy groups had inquired whether the competency requirements in these regulations would supersede the training requirements for providers serving clients of the Medicaid waiver programs. An advocacy group also requested that the Department list the Medicaid waiver training programs in the regulation as an approved method of establishing competency. The Department reviewed the training requirements for the Medicaid waiver programs and determined that the training meets or exceeds the Department’s minimum requirements to establish competency to provide home care services. Therefore, a training program meeting the training standards of the Medicaid waiver or other publicly funded program was added as another training program option.

The Department also has included language permitting the Department to add to the list of approved training programs without having to revise the regulation. The Department will be able to identify other training programs, as they are developed, by publishing notice in the *Pennsylvania Bulletin* and on the Department’s web site.

The Department did not include, in its listing of approved training programs, “a personal care worker training credentialing program.” The act includes “successful completion of a personal care worker training credentialing program approved by the department” as an optional method for meeting the Act’s competency requirements. 35 P. S. § 448.806(d.1)(1)(iv). The Department was not able to locate a personal care worker training credentialing program for the Department to approve or disapprove; thus, that option was not included in the regulation.

If the agency or registry establishes its own training program or competency examination, the agency must ensure the direct care worker is competent in the home care services the direct care worker will provide. The final regulation now states that a competency examination or training program developed by the agency or registry must address, at a minimum, the following subject areas: confidentiality; consumer control and the independent living philosophy; instrumental activities of daily living; recognizing changes in the consumer that need to be addressed; basic infection control; universal precautions; handling of emergencies; documentation; recognizing and reporting abuse and neglect; and dealing with difficult behaviors. These subject areas, with the exception of “instrumental activities of daily living,” were listed in the

proposed regulation in subsection (d), paragraphs (1)—(9). The term “instrumental activities of daily living” was substituted for the term “home management,” listed in the proposed regulation as paragraph (16). The competency examination or training program for a direct care worker who will provide personal care also must address the following subject areas pertinent to personal care: bathing, shaving, grooming and dressing; hair skin and mouth care; assistance with ambulation and transferring; meal preparation and feeding; toileting; and assistance with self-administered medications. These are the subject areas that had been listed in the proposed regulation in subsection (d), paragraphs (10)—(15).

The term “assistance with instrumental activities of daily living” was substituted for the term “home management” in response to questions from commentators regarding the meaning of the term “home management.” Since the intent was to refer to some portion of the services included in “instrumental activities of daily living,” the Department elected to use that term rather than create another term. “Instrumental activities of daily living” is defined in the regulation by reference to the act. The act defines the term to include meal preparation, shopping and errands, telephone use, light housework, laundry and transportation. 35 P. S. § 448.802a.

An advocacy group commented that the topics to be covered for all direct care workers should be expanded to include, in addition to “consumer control” and “independent living philosophy,” “consumer direction” and “disability cultural competency.” The Department has defined “consumer control” to incorporate the concepts embraced by the term “consumer direction.” The Department has determined not to require cultural competency training, generally, or disability cultural competency, specifically, at this time, for the reasons given in § 611.5 (relating to definitions).

The advocacy group also asserted that “consumer control” and the “independent living philosophy” not only must be separate mandatory subject areas for purposes of establishing competency of a direct care worker, they must be incorporated into every other subject area. The advocacy group proposed that “recognizing changes in the consumer that need to be addressed” should be revised to state that any recognized change will be communicated promptly to the consumer and that consumer control will be followed. The advocacy group also proposed that, because aspects of a person’s disability are often wrongly interpreted as difficult or confrontational, “dealing with difficult behaviors” should include communication skills. The advocacy group also commented that the regulation should make clear that the purpose for establishing competency in “home management” is to ensure that the consumer’s instructions regarding home management can be implemented. Finally, the advocacy group stated that it anticipated that the Department may develop guidelines for ensuring competency in each of the mandated subject areas and requested to have input in the development of those guidelines.

Home care agencies and registries are required to ensure competency in consumer control and the independent living philosophy. The Department has determined, at this juncture, to leave to agencies and registries the best method for ensuring competency in both areas. Certainly, neither topic can be addressed in a vacuum. The Department fully anticipates that both topics will be addressed in the context of providing home care services, and that once competency is established, direct care

workers will understand how these concepts affect the manner in which home care services are provided to consumers. Compliance will be monitored during the Department’s licensure inspections. If, subsequently, the Department determines that more direction is needed, the Department may consider preparing guidelines and will seek input and advice from stakeholders at that time.

The Department believes that the final-form regulation addresses the needs and concerns of the industry, as expressed in comments the Department received. The final-form regulation accommodates the commentator who said she would like the ability to create her own training program to reduce costs and the commentator who stressed that the agency or registry should have the ability to develop its own program to ensure competency prior to assignment or referral. The regulation meets the concern of the commentator who said that his agency did not have the physical space to provide training and suggested that the Department simply require a competency examination that could be designed by the home care agency or registry. The final-form regulation also accommodates the commentator who suggested that there be the option for an examination or training geared to the individual who will provide homemaker/companion services, since getting the caregiver to the client in a timely fashion is crucial.

The final-form regulation on training makes clear that there are options available to the agency or registry. If the individual is licensed as a nurse or is a certified nursing assistant, that individual is already qualified to provide home care services. If the individual is not already trained, the agency or registry can provide training, by means of its own program or another program listed in the regulation, or the agency or registry can administer a competency examination. The training provided or competency examination administered can vary depending upon the nature of the home care services the individual will provide.

The Department was not able to address all concerns raised by commentators. Many commentators had concerns regarding the cost to the agency or registry associated with ensuring direct care workers are competent to provide the care they are assigned or referred to provide. One commentator stated that it is cost prohibitive to pay future caregivers for hours of training before the agency or registry could begin to bill for the services to be provided by the caregiver. Another commentator suggested that if extensive classroom training is required, the result will be overbearing expense to the agency or registry that will be not reimbursed by public payment sources such as the Medicaid waiver programs. Another commentator was concerned that the agency or registry would incur the expenses associated with the training of a direct care worker who, once trained, would then leave the agency or registry to go to another agency or registry. Another commentator stated that if individuals must be paid to be trained, the administrative costs for the agency will rise, which would mean an increase in costs to the consumer.

Commentators also raised other concerns that the Department was not able to address. One commentator said that hours of training will cause too long a delay from the date of hire or roster to the date when the individual can be assigned or referred in an environment in which agencies and registries struggle to find individuals to provide the care that is requested. Another commentator stated that individuals who intend to work only part-time, who might have one or more other part-time

jobs, cannot commit to long training periods. Another commentator suggested that the most valuable training is training that occurs over a period of time as the direct care worker gains experience.

The Department concurs that as a direct care worker gains on-the-job experience, the worker will become more skilled. In addition, the agency or registry may wish to offer additional training, to hone skills and teach new ones, as part of overall direct care worker retention goals for the agency or registry. The Department encourages those efforts. Ongoing training, however, is not required by the regulation. Ensuring basic competency upon hire or roster prior to assignment or referral, either through training or a competency examination, and yearly review of skills, is required. As noted, ongoing training could make the review process go more smoothly.

The regulation, under the statute, requires the agency or registry to ensure that each direct care worker, prior to being assigned or referred to provide direct care services, has the basic skills needed to provide the home care services the worker has been assigned or referred to provide. The Department acknowledges there are costs associated with ensuring basic competency. The regulation, in accordance with the statute, contains options for meeting that requirement. Different options mean different costs. Providing training will mean more time and higher costs, but may be the better way to ensure competency. Agency and registry owners will need to weigh options and associated costs and make the decision that is best for the agency or registry. Owners will need to decide whether the agency or registry will pay a direct care worker to be trained. That issue, like the issue of how to accommodate a part-time worker, will be a matter of discretion for the owner of the agency or registry, based upon the agency's or registry's own recruitment and retention goals or difficulties. The Department recognizes, as did the Legislature when it amended the act to license agencies and registries and impose certain requirements in connection with licensure, that ensuring competency of a direct care worker, through training or testing, prior to assignment or referral, may mean increased costs for industry as a whole, which may be passed onto the consumer. The ultimate goal, however, is to promote the health, safety and adequate care of the consumers of services provided by home care agencies and home care registries and to assure safe, adequate and efficient home care agencies and home care registries.

IRRC pointed out that the proposed regulation required a competency examination to be "approved by the Department." IRRC inquired how approval would be accomplished. IRRC also pointed out that Senator Corman commented that it was not clear whether there would be a Statewide test, and if so, how it would be graded or administered in a timely fashion so that new employees or contractors could begin employment. IRRC stated it agreed with Senator Corman's comment and requested that these issues should be clarified in the final-form regulation.

Other commentators made similar inquiries. One commentator inquired regarding a competency examination "approved by the Department," and asked whether there was an examination available that had been approved by the Department. Another commentator inquired whether there will be guidelines, outlines, formats and suggested subject matter made available to agencies and registries by the Department. Another commentator asked that there be a list of accepted training programs and requested that the industry be involved in reviewing pro-

grams and assembling the list of accepted training programs. Another commentator inquired whether the Department has training programs or competency examinations that are available to agencies or registries to use. One of the trade associations recommended that the Department offer at least three preapproved competency examinations to assist agencies and registries, and the trade association offered to assist in the preparation of the preapproved competency examinations.

Commentators also inquired how to submit a competency examination for approval by the Department. One commentator inquired whether the competency examination could be a written examination. Another commentator asked if a written multi-question quiz on the topics listed as required subject matter would suffice.

In the final-form regulation addressing competency requirements, the Department deleted language indicating the training program or competency examination developed by the agency or registry must be "approved by the Department." The Department seeks to eliminate the notion that the training program or competency examination must be reviewed and approved by the Department prior to use. An agency or registry planning to develop its own training program or competency examination need not submit the training program or competency examination to the Department for approval prior to use. A training program or competency examination developed by the agency or registry that meets requirements of the regulation is an approved training methodology. If an agency or registry opts to develop its own training program or competency examination, the Department will make the determination during inspection whether the training program or competency examination meets requirements of the regulation and whether direct care workers are appropriately trained prior to assignment or referral. If, upon inspection, the Department discovers that a direct care worker did not successfully complete the training or competency examination, or that the training program or competency examination does not meet the requirements of the regulation, or both, then the Department will cite the agency or registry for failure to comply with the competency regulation.

The agency or registry need not develop its own training program or competency examination. Under the statute, the Department has indicated in the regulation the existing programs which have the Department's approval, that the agency or registry may use as the agency's or registry's mechanism to ensure competency. An advocacy group has suggested that, because each training program option listed in the statute includes the language "approved by the department," the Department has the authority and must require each of those training programs to include, as part of the training program curriculum, training in consumer control and the independent living philosophy. The advocacy group also commented that the nurse aide program, per the statute, must be approved by the Department of Health, not the Department of Education, the agency referred to in the proposed regulation in connection with the nurse aide training program.

In the final-form regulation, the Department identifies the nurse aide training curriculum as one "sponsored" by the Department of Education, because it is the Department of Education that offers the curriculum. The Department of Health has no training programs appropriate for direct care workers. The nurse aide training curriculum sponsored by the Department of Education is "approved" by the Department by virtue of its inclusion in the regulation.

The other training programs are also "approved" by the Department by virtue of their inclusion in the regulation. The Department has determined that the training programs will ensure the competency of the individual to provide home care services. No further action is anticipated. The Department has no authority to dictate the curriculum content for those training programs.

The Department also has given agencies and registries the parameters for development of the agency's or registry's own training or testing mechanism which will be examined upon inspection of the agency or registry. The Department will not be developing optional competency examinations for use by agencies or registries. The Department is willing, however, to receive recommendations of competency examinations or training programs that meet the requirements of the regulation that could be made available to all home care agencies and home care registries. If, upon review of the recommendation, the Department determines that the training program or competency examination does meet the requirements of the regulation, the Department will publish notice in the *Pennsylvania Bulletin*, for the benefit of the home care industry as a whole, of the availability of the competency examination or training program. Certainly, if a trade association wishes to develop a model competency examination or training program, the Department will review the examination or program developed by the trade association, and if the Department determines that the examination or program meets the requirements of the regulation, it will publish, for the benefit of the home care industry as a whole, notice of the availability of the training program or competency examination.

A commentator asked whether new caregivers will have 2 years to take and pass a competency examination since new caregivers cannot be on the caregiver roster until they have passed a competency examination and there is no approved examination. As the Department stated, the Department will not be supplying an "approved" competency examination. If an agency or registry chooses to establish competency through administration of a competency examination, the agency or registry will need to develop or identify a competency examination that meets the regulatory criteria. This regulation takes effect upon publication. After December 12, 2009, no new direct care worker may be assigned or referred to provide home care services prior to satisfying the competency requirement. Direct care workers employed or rostered prior to the effective date have 2 years from December 12, 2009, to satisfy the competency requirement.

A commentator pointed out that the regulation does not specify the number of hours of training that must be provided. The commentator stated that her agency requires its direct care workers to have 40 hours of orientation and an additional 12 hours of training each year. The commentator is correct; the regulation does not require a specific number of hours of training that must be provided, if the agency or registry chooses to provide its own training. The Department's concern is that the required subject matter is covered. The Department will not dictate the time it should take to cover the required subject matter.

A commentator suggested that the regulation should require all direct care workers to meet the competency requirements within 30 days of the individual's hire or roster date. The Department has declined to impose a time frame within which the competency requirement must be accomplished after an individual is hired or rostered. The time frame within which the mandatory

training or testing must be accomplished is within the discretion of the agency or registry.

An advocacy group has suggested that the regulation should be revised to state that the competency requirement applies to any person that has direct contact with a consumer, including specifically, an owner or member of the administrative staff for the agency or registry who, in an emergency, substitutes for the direct care worker who is unavailable. The Department has elected not to include an explicit statement in the regulation to this effect. If an office staff member is assigned or referred to provide care to a consumer, or the owner takes on the responsibility to provide care, the office staff member or owner becomes a direct care worker. Under the regulation, a direct care worker cannot provide home care services until he or she is competent to do so.

A commentator requested clarification of the provision that states that documentation of satisfactory completion of competency requirements is transferable from one home care agency or registry to another home care agency or registry. The commentator inquired how the documentation would be transferred from one agency or registry to another. The Department suggests that the direct care worker seeking to be employed or rostered by another agency or registry need simply provide a photocopy of what was included in the direct care worker's file maintained by the prior agency or registry. Another alternative is for the prior agency or registry to supply a letter either to the new agency or registry or to the direct care worker, verifying successful completion of competency requirements.

Lastly, a commentator stated that this section does not address those activities that the direct care worker is prohibited from providing; for example, eye drops, fleet enemas, suppositories, and the like. This set of regulations establishes rules for licensure of home care agencies and registries that provide home care services. Home care services are defined to include personal care, assistance with instrumental activities of daily living, companionship services, respite care, and specialized care. Each term included in the definition of home care services also is defined. Home care services do not include nursing services or skilled care. If a home care agency or home care registry seeks to provide or offer nursing or skilled care, the agency or registry would need to be licensed as a home health care agency.

§ 611.56. (health screening)

Commentators almost unanimously objected to the proposed regulation requiring a health screening prior to referral or assignment of a direct care worker. The regulation as proposed would have required a "screening assessment" to establish that the individual had been screened for tuberculosis, and for five other communicable diseases or conditions which were listed in the proposed regulation. Commentators have inquired regarding the meaning of the term "screening assessment" and expressed concern that direct care workers would need to undergo more onerous scrutiny as to their health status than other workers in the health care field.

IRRC commented that Representatives Mundy and Hennessey, Senator Corman and several other commentators question how the "screening assessment" required by the proposed regulation would be accomplished. IRRC inquired whether a laboratory test would be required or whether a physical examination by a doctor would be sufficient. Many commentators expressed concern that the Department was proposing an invasive procedure

necessitating the use of blood and stool samples to detect communicable disease. Several commentators inquired whether the screening assessment could consist of a questionnaire. IRRC recommended that the Department amend this section to clearly state how the "screening assessment" must be completed.

IRRC also pointed out that commentators asserted that the list of conditions which must be screened for, far exceed the screening required for employees of other licensed health care facilities. IRRC inquired how the Department determined that the health screenings in the proposed regulation are appropriate for use with agency or registry direct care workers.

One commentator said that prospective direct care workers do not have access to clinics that would provide the necessary health evaluation, and that home care agencies and registries do not have qualified health professionals on staff to perform the evaluation. The commentator said that lack of access to a qualified health professional would further exacerbate the growing shortage of direct care workers.

The act requires that "prior to referral to consumers, all individuals and any other office staff or contractors with direct consumer contact must obtain documentation from a physician or other appropriate health care professional that the individual is free from communicable disease, including, at a minimum, a tuberculosis screening as outlined by the screening guidelines of the department." 35 P. S. § 448.806(d.1)(5). Thus, in the draft regulations, circulated prior to publication of proposed regulations, the Department suggested that the direct care worker should be screened for tuberculosis, in accordance with guidelines issued by the Federal Centers for Disease Control and Prevention (since these are the guidelines routinely used by the Department), and tested as necessary, and screened for "other communicable diseases." Although the draft regulation did not provoke a great number of questions during the stakeholder process, the Department anticipated that once the regulations were in effect, the Department would receive questions about the kind of communicable diseases for which the individual must be screened, and the kind of communicable diseases for which the direct care worker must be screened.

In the process of revising the draft regulation dealing with health evaluations prior to publication of the regulation as proposed, the Department considered incorporating by reference a regulation included with the Department's communicable disease regulations in 28 Pa. Code Chapter 27, such as § 27.155 (relating to restrictions on health care practitioners) or § 27.71 (relating to exclusion of children, and staff having contact with children, for specified diseases and infectious conditions). The Department ultimately rejected incorporating by reference one of its communicable disease regulations. Ruling out infectious conjunctivitis, for example, listed in 28 Pa. Code § 27.71 during a physical examination conducted prior to the individual's start date would not provide any assurance regarding the individual's actual condition on the start date. Requiring a complete physical and potential testing of blood and stool samples to rule out all of the conditions listed in 28 Pa. Code § 27.155 would be cost prohibitive.

Ultimately, the Department included in the proposed regulation a list of communicable diseases for which the individual would be screened at the same time the individual was screened for tuberculosis risk factors. These diseases and conditions put the consumer at significant risk, and screening for these diseases and condi-

tions sometime prior to the direct care worker's start date, in the Department's view, constituted a valuable and useful exercise.

As stated previously, stakeholders were consistent in their criticism of the proposed regulation, although much of the criticism stemmed from the confusion over the meaning of the term "screening assessment." The County Commissioner Association of Pennsylvania supported the Department's attempt to protect consumers from workers with communicable diseases or conditions but believed that the proposed rulemaking applicable to annual screenings was excessive, intrusive and too expensive to implement. They pointed out, as did many other commentators, that the proposed screening far exceeded the kind of screenings required in other health care facilities licensed under the act. The Association requested that the Department adopt a more broadly based regulation that would require home care agencies or home care registries to assure that employees do not have communicable disease or conditions but would not prescribe the process for doing so.

The Department also received many comments regarding the 180-day time frame in the proposed regulation. Several commented that achieving compliance was going to be challenging. Several commented that the health evaluation should be obtained in the one year prior to the start date.

As requested, the Department has revised the regulation. The final regulation has been titled "Health screening" and states that the home care agency or home care registry shall insure that each direct care worker and other office staff or contractors with direct consumer contact, prior to consumer contact, provide documentation that the individual is free from active mycobacterium tuberculosis. The regulation instructs that the determination regarding the individual's status for tuberculosis should be made using the current *CDC Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Settings*. The documentation must be dated not more than 1 year prior to the individual's start date. The requirement that the direct care worker must obtain the documentation every 12 months has been deleted.

One commentator inquired whether a registered nurse could perform the health evaluation. A "health evaluation" is no longer required. The regulation now merely requires a health screening for tuberculosis. CDC guidelines do not require a physician, physician's assistant, or certified registered nurse practitioner to conduct the screening for tuberculosis. Therefore, the Department has deleted the requirement that a "qualified health professional" provide the documentation regarding the direct care worker's health status and deleted the definition of "qualified health professional" from the definitional section in § 611.5.

One commentator inquired whether the Commonwealth has a standard form that should be completed for the direct care worker. The Department will not be supplying a standard form or requiring a standard format. As long as the documentation establishes that the individual was screened for and is free from active tuberculosis, the documentation will suffice.

One commentator suggested the regulation should require agencies and registries to have a policy that workers should not present themselves for work if they have symptoms of acute illnesses such as fever, jaundice

or diarrhea. The Department considered the suggestion and determined not to impose the requirement for a policy as suggested by the commentator. The Department will not require the policy; however, the Department is in favor of such a policy and would encourage agencies and registries to put such policies in place.

One commentator said that if the agency must bear the cost of "testing," the administrative costs for the agency will increase which will raise the hourly rate to the client. Other commentators also commented on the cost to the agency or registry. The regulation does not assign the cost of the health screening to the agency or registry. The regulation merely prohibits the agency or registry from assigning or referring a direct care worker to provide services until the documentation that the screening has been conducted has been obtained. If, in the interest of having the direct care worker prepared to begin providing services in a more prompt fashion, the agency or registry wishes to arrange and pay for the health screening, that is within the discretion of the agency or registry. The agency or registry also can choose to impose the obligation on the direct care worker to obtain and supply the necessary documentation to the agency or registry, as a condition of employment or roster.

Several commentators inquired whether the regulation will address the agency's or registry's obligations with regard to existing employees. After December 12, 2009, the home care agency or home care registry cannot assign or refer a direct care worker to provide home care services unless documentation of the health screening meeting the requirements of the regulation is part of the individual's file. In accordance with the recommendation of one or more commentators, the regulation gives the agency or registry 180 days to obtain the necessary documentation for direct care workers employed or rostered as of December 12, 2009.

A commentator requested the Department delete references to "personnel." The Department made the changes as requested. The commentator also suggested that the Department replace "180 days" with "one year" prior to the individual's start date. The time frame, if not the exact wording, has been inserted in the final regulation. The commentator suggested the Department delete the five communicable diseases, in addition to tuberculosis, listed in the proposed regulation. The Department accepted this recommendation. The commentator suggested that the Department replace the reference in subsection (c) to "individual employed or rostered by the agency or registry" with "direct care worker." The Department accepted this recommendation.

§ 611.57. (*consumer protections*)

IRRC pointed out that commentators stated that there are situations when there is not time to get an information packet to the consumer or the consumer's family member prior to the start of services, when, for example, the consumer is being discharged from the hospital and is in immediate need of services and the family member requesting the services lives out of town. IRRC inquired whether the family member could give verbal permission for services to begin without having first received the required information, and asked that this be clarified in the final form regulation.

The act requires that "each consumer or the consumer's legal representative or responsible family member shall receive an information packet from the home care agency or home care registry prior to the commencement of services..." 35 P. S. § 448.806c(b). The information

packet is to include a listing of available services that will be provided to the consumer, the hours when the services will be provided, fees and costs for the services on an hourly or weekly basis, Department contact information for agency and registry licensure requirements and for compliance information, information regarding the Department's 24-hour hotline and the local ombudsman program, and information about the direct care worker who will be providing home care services, including information about the hiring process and training or testing to ensure competency. The information packet, per the statute, also must include a disclosure whether the direct care worker is an employee or an independent contractor and information regarding the respective employment and tax obligations of the consumer and the agency or registry.

The Department has no authority to alter the statutory requirement for written notice of the requisite items prior to the commencement of services.

One commentator suggested that the language in subsection (c)(6) of the proposed regulation requiring an agency or registry to provide, in advance of services, information regarding hiring and competency requirements applicable to direct care workers, a description of the manner and frequency of periodic reassessment of direct care worker competency, and information regarding documentation maintained by the home care agency or home care registry to confirm compliance with hiring and training requirements was not likely to be helpful to the consumer. The commentator suggested that the regulation should require the agency or registry to provide information specific to the skills and abilities of the direct care worker and to list the services the direct care worker can and cannot provide.

Another commentator also commented on the awkward language in proposed subsection (c)(6), and suggested that the Department merely require the agency or registry to confirm for the consumer, prior to commencement of services, that all direct care workers referred have: (1) successfully completed a competency examination approved by the Department of Health; (2) acceptable reference checks; (3) a face-to-face interview; (4) a health screen completed by a licensed health care professional; and (5) a criminal background review conducted by the Pennsylvania State Police or the Federal Bureau of Investigation.

The Department agreed with the comments and has revised the proposed regulation to require general information regarding hiring and competency requirements applicable to direct care workers, and information about the specific services the direct care worker assigned to the consumer will provide. While the Department did not add language to the regulation requiring the agency or registry to include information about services the direct care worker will not provide, it is certainly within the discretion of the agency or registry to include this information in the packet to be given to the consumer or the consumer's family member or legal representative.

The same commentator also suggested that the Department clarify subsection (c)(2) which requires the agency or registry to provide information, in advance of the service start date, regarding the hours when direct care services would be provided. The commentator suggested that the Department add the following language to the subsection: "Such hours that are requested by and agreed to by the consumer."

The final-form regulation now requires the agency or registry to provide the consumer or the consumer's family member or legal representative a listing of the actual home care services to be provided to the consumer and the hours during which the services will be provided. The hours identified when services will be provided are those mutually agreed upon by the consumer and the agency or registry. The notice will serve as confirmation for the consumer.

One commentator suggested that the home care agency or registry, prior to commencement of services, must provide a full disclosure statement acknowledging the responsibilities of the agency or registry. The commentator went on to list the items the commentator believed should be included in the disclosure statement: the employment status of the direct care worker, specifically, an explanation of which party is responsible for payment the wages or salary of the direct care worker, paying Federal social security taxes and state and Federal unemployment taxes for the direct care worker, and procuring worker's compensation or liability insurance covering injury to the direct care worker. The commentator also suggested that the disclosure statement should identify which party is responsible for supervising the direct care worker, assigning duties to the direct care worker, and for hiring, firing and discipline of the direct care worker. The commentator stated that the disclosure statement should identify the party responsible and liable if a direct care worker is hurt on the job.

The commentator stated that it is critical that the disclosure form include a place for the consumer's signature and that the regulation require the consumer's signature on the disclosure form as a mechanism for acknowledging receipt and understanding of the information on the disclosure statement. The commentator stated that the home care agency or registry should be required to keep a copy of the signed disclosure statement in agency or registry files. Another commentator suggested that the regulation should require documentation of when consumer information was provided as well as dates informational packets were mailed.

The regulation states that information provided to the consumer must include a disclosure addressing the employee or independent contractor status of the direct care worker providing services to the consumer, and the resultant respective tax and insurance obligations and other responsibilities of the consumer and the home care agency and home care registry. The regulation states that the disclosure must be in the format as published by the Department in the *Pennsylvania Bulletin* by February 10, 2010. As indicated by the outline of information required to be included in the disclosure statement, the Department fully intends that the disclosure statement will address the points listed by the commentator.

As for the suggestion that the Department should require the agency or registry to obtain the consumer's signature on the disclosure form, the Department will take into consideration the suggestion when drafting the disclosure form to be published in the *Pennsylvania Bulletin* following publication of the final-form regulations. As for the suggestion that the regulation should require the agency or registry to maintain documentation to establish compliance with the requirements applicable to consumer protections, the Department has added a subsection (e) to the regulation to require the agency or registry to maintain documentation on file at the agency or registry for verification by the Department of compliance with the requirements in the regulation.

One commentator requested that disclosure form to be drafted by the Department should be made available for public comment prior to publication in the *Pennsylvania Bulletin*. The Department will make every effort to obtain stakeholder input on the disclosure form prior to publication. The comment process will be brief, however, in light of the Department's obligation, per the language of the regulation, to publish the form by February 10, 2010. The regulations are effective December 12, 2009.

One commentator inquired whether the requirement that consumers be informed of tax obligations and employment responsibilities was pertinent only to registries and consumer employers. The responsibility to provide information listed above applies to home care agencies and registries. If a home care agency will assume all employment responsibilities and tax obligations associated with employment, this is information that should be provided to the consumer. The regulations do not apply to "consumer employers." "Consumer employer" is a term used in the Medicaid waiver and other publicly funded programs to refer to the individual receiving services who has elected to serve as employer of the individual providing the services to the consumer. A "consumer employer," most likely, does not meet the definition of a "home care agency" or "home care registry" as set forth in the act and in the definitional section in these regulations. Only those entities who meet the definition, and are not excluded under the terms of the act or these regulations (see § 611.3, need to obtain a license and comply with the requirements set forth in the act and these regulations.

Another commentator inquired whether the requirement that information be provided to consumers concerning the services to be provided, the hours when services will be provided, and fees and costs for services applies only to private pay clients and not to clients whose services are paid by the Medicaid waiver or other publicly funded program. The requirement applies to all home care agencies and registries, regardless of the payment source for the services. For those clients or consumers whose services are paid by a Medicaid waiver or other publicly funded program, the information about specific fees and costs for the specific services to be provided to the client or consumer should reference the Medicaid waiver or other publicly funded program.

The Disability Rights Network commented that when a publicly funded program, such as the Medicaid Home and Community Based Waiver or the Act 150 Attendant Care Program, is involved, the home care agency or home care registry already is required to provide certain types of information and notices prior to the commencement of services. The commentator suggested that the regulation, therefore, also should require the home care agency or home care registry receiving public funds to comply with all information and notice requirements of the publicly-funded program.

The Disability Rights Network also commented that the Medicaid waiver and other publicly funded programs include due process requirements for reduction or termination of services. The commentator suggested that, to avoid confusion, the Department should revise the regulation to require agencies and registries providing services to the publicly funded program recipients to follow the publicly funded program's due process requirements for termination of services. The commentator suggested that the requirements applicable to termination of services in

the proposed regulation should apply only to agencies and registries with private-pay clients.

The Department cannot impose through regulations, having the force and effect of law, the requirements imposed by the Medicaid waiver or other publicly funded program through contract with the provider. Further, the Department can only promulgate regulations authorized by the statute. The Legislature has determined that all recipients of services provided by a licensed home care agency or home care registry are entitled to at least 10 days notice of termination of services, unless lack of payment or an immediate threat to the health or safety of the consumer or provider warrants less notice. If the home care agency or home care registry provides services to individuals who are beneficiaries of a publicly funded program, there may be additional or other requirements connected with termination or reduction of services to these individuals. A publicly funded program, subject to laws requiring due process in the event of termination or reduction of a public benefit, may require a participating provider to offer certain due process to the client or consumer as a condition of the provider's participation in the program. The Department has no authority to impose those requirements. Thus, an entity meeting the definition of a "home care agency" or "home care registry" that provides services to individuals and receives payment through the Medicaid waiver or other publicly funded program will need to be aware of and comply with licensure requirements in the act and in these regulations, and they will need to be aware of and comply with any requirements imposed by the Medicaid waiver or other publicly funded program as a condition of participation as a provider in the program.

Fiscal Impact

State Government.

The licensure program for home care agencies and home care registries will cost approximately \$1,060,000 for the first full year of the program. This projection is based on the approximate cost to survey a home care agency or registry and the projected number of home care agencies and home care registries (650).

The Department also will incur certain start-up costs associated with hiring and training of surveyors or inspectors and updating the Department's electronic Survey Agency Information System (SAIS) through which the Department coordinates and manages its licensure functions. Through SAIS, the Department schedules and tracks surveys or inspections of all facilities, tracks surveyor time and efforts, and tracks complaints about facilities. The SAIS system also includes a function through which a statement of deficiencies, in the event of regulatory violations identified during an inspection, can be generated. The system also allows the facilities to submit its plan of correction electronically. The SAIS system will need to be revised to include the home care agency and home care registry licensing function.

Local Government.

There would be no cost to local government.

Public.

There may be a cost to the public in the form of higher charges for care because the home care agency or home care registry would need to recoup start-up and ongoing costs of compliance with licensure criteria.

Regulated Entity.

Home care agencies and home care registries would incur costs as a result of these regulations. To the extent

an agency or registry currently does not have hiring policies and procedures in place equal to or more stringent than the hiring prerequisites contained in the proposed rulemaking, the agency or registry would incur the one-time cost of establishing systems and procedures that comply with the proposed regulation and the ongoing cost of doing business in the manner dictated by the regulation. The proposed rulemaking would permit choices, however, and the choice made by an agency or registry would have an impact on overall costs. Establishing competency of a direct care worker through a competency examination, for example, might cost less than establishing competency through a training program. The agency or registry also would be required to pay the annual licensing fee of \$100.

Paperwork Requirements

State Government.

The Department will have additional paperwork responsibilities connected with its role as the licensing agency. Much of the licensing paperwork is handled electronically through the Department's SAIS system. The Department will issue a hard copy license to the agency or registry. The Department also will issue a hard copy statement of deficiencies.

Local Government.

There would be no additional paperwork requirements for local government.

Public.

Consumers of home care services will receive paperwork as a result of these regulations. Consumers will receive written notice of termination of services. Consumers also will receive written notice of services to be provided, the hours when those services will be provided, fees and costs associated with the services, and who to contact with complaints. Consumers also will receive a written description of the hiring and training requirements applicable to direct care workers and a written disclosure of the worker's status as an employee or independent contractor and the resultant respective tax and insurance obligations of the consumer and the agency or registry.

Regulated Entity.

Home care agencies and home care registries will be required to submit paperwork to receive or renew a license. Home care agencies and home care registries would need to respond to any identified regulatory deficiencies in the form of a plan of correction. They will need to create and maintain files for direct care workers containing documentation of a face-to-face interview, references, a criminal history report and ChildLine verification, if necessary, and documentation of satisfactory completion of the competency prerequisites and the annual competency review. The files also will be required to contain documentation of a health evaluation obtained prior to employment or roster.

Home care agencies and home care registries will be required to provide written notice to the consumer of the intent to terminate services. Finally, home care agencies and home care registries will be required to provide written documentation to the consumer listing services to be provided, the hours when those services would be provided, fees and costs associated with the services, and who to contact with complaints. The written documentation also must describe the hiring and training requirements applicable to the direct care worker being sent to the consumer's home or other independent living environ-

ment and disclose the worker's status as an employee or independent contractor and the resultant respective tax and insurance obligations of the consumer and the agency or registry.

Effective Date

These regulations will take effect immediately upon publication as final-form rulemaking.

Sunset Date

These regulations will be continually monitored for their effectiveness and updated as needed. Therefore, no sunset date has been established.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of a notice of proposed rulemaking, published at 37 Pa.B. 4431 to IRRC and to the House Committee on Health and Human Services, the Senate Committee on Public Health and Welfare, the House Older Adult Services Committee, and the Senate Aging and Youth Committee (Committees). In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of all comments received during the formal comment period, as well as other documentation.

In compliance with section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), the Department provided IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

In preparing these final-form regulations, the Department has considered all comments received from IRRC, the Committees and the public.

This final-form regulations were deemed approved by the Committees on September 30, 2009. IRRC met on October 1, 2009, and approved the regulations in accordance with section 5.1(e) of the Regulatory Review Act.

Contact Person

Questions regarding these regulations should be submitted to Janice Staloski, Director, Bureau of Community Program Licensure and Certification, 132 Kline Plaza, Suite A, Harrisburg, PA 17104-1579, (717) 783-8665. Persons with a disability may submit questions in alternative format such as by audio tape, Braille, or by using V/TT (717) 783-6514, or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT]. Persons who require an alternative format of this document may contact Janice Staloski at the previous address or telephone number so that necessary arrangements may be made.

Findings

The Department, after consultation with the Health Policy Board, finds that:

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

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

(3) The adoption of regulations in the manner provided by this order is necessary and appropriate for the administration of the authorizing statute.

Order

The Department, after consultation with the Health Policy Board, acting under the authorizing statute, orders that:

(1) The regulations of the Department, 28 Pa. Code, are amended by adding §§ 611.1—611.5 and 611.51—611.57 to read as set forth in Annex A.

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

(3) The Secretary of Health shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, the Committees for their review and action as required by law.

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

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

(Editor's Note: The proposal to add §§ 611.11—611.21, included in the proposed rulemaking at 37 Pa.B. 4198 (August 4, 2007) has been withdrawn. For a notice relating to this rulemaking, see 39 Pa.B. 7064 (December 12, 2009).)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 6204 (October 17, 2009).)

Fiscal Note: 10-184. (1) General Fund; (2) Implementing Year 2008-09 is \$1.060 M; (3) 1st Succeeding Year 2009-10 is \$1.114 M; 2nd Succeeding Year 2010-11 is \$1.171 M; 3rd Succeeding Year 2011-12 is \$1.232 M; 4th Succeeding Year 2012-13 is \$1.297 M; 5th Succeeding Year 2013-14 is \$1.366 M; (4) 2007-08 Program—\$17.308 M; 2006-07 Program—\$15.557 M; 2005-06 Program—\$16.057 M; (7) Quality Assurance; (8) recommends adoption. Funds have been included in the budget to cover this increase.

Annex A

TITLE 28. HEALTH AND SAFETY

PART IV. HEALTH FACILITIES

Subpart H. HOME CARE AGENCIES AND HOME CARE REGISTRIES

CHAPTER 611. HOME CARE AGENCIES AND HOME CARE REGISTRIES

GENERAL

§ 611.1. Legal base.

(a) This chapter is promulgated by the Department under the powers granted and the duties mandated under sections 803 and 809.1 of the act (35 P. S. §§ 448.803 and 448.804a).

(b) The Department has the power and its duty is to promulgate the regulations necessary to implement the provisions of Chapter 8 of the act (35 P. S. §§ 448.801a—448.820) and to assure that its regulations and the act are enforced.

(c) The purpose of this chapter is to protect and promote the public health and welfare through the establishment and enforcement of regulations setting minimum standards for the operation of home care agencies and home care registries. The standards are intended by the Department to assure safe, adequate and efficient home care agencies and home care registries, and to

promote the health, safety and adequate care of the consumers of services provided by home care agencies and home care registries.

§ 611.2. License required.

(a) Except as set forth in subsection (c), no entity or organization may operate, maintain, or hold itself out as operating or maintaining a home care agency or home care registry without first having obtained a license from the Department in accordance with this chapter. Each physical location of the home care agency or home care registry must be separately licensed. The Department will conduct an inspection prior to issuing an initial license or a license renewal.

(b) The license will specify whether the entity is licensed as a home care agency, a home care registry, or both, the term of the license, and any conditions or limitations imposed on the license.

(c) An entity operating a home care agency or home care registry, or both, as of December 12, 2009, may continue to operate after December 12, 2009, provided it submits an application for a license to the Department in accordance with instructions published in the *Pennsylvania Bulletin* and posted on the Department's web site by February 10, 2010. An entity that has submitted an application for licensure in accordance with the requirements of this subsection may continue to operate the home care agency or home care registry until a date that the Department may refuse the application for licensure. If the Department grants the application for licensure, the home care agency or home care registry may continue operation of the agency or registry in accordance with this chapter.

(d) The applicant shall obtain the application for a license to operate a home care agency or home care registry from the Department of Health, Division of Home Health.

(e) The applicant shall submit an application or renewal form to the Department with the fee of \$100. The applicant shall submit a renewal form at least 60 days prior to the expiration date on the license. There will be no rebate, refund, or prorating of the application fee. The applicant shall complete a separate application and pay a separate application fee for each separately licensed home care agency or home care registry that it intends to operate.

(f) The applicant shall specify on its application the type of facility for which it is seeking a license.

§ 611.3. Affected home care agencies and home care registries.

(a) This chapter applies to home care agencies, home care registries and to entities that meet both definitions, profit or nonprofit, operated in this Commonwealth, as defined in this chapter. This chapter does not apply to a home health care agency, a durable medical equipment provider, a volunteer provider, or an organization or business entity designated under section 3504 of the Internal Revenue Code (26 U.S.C.A. § 3504) regarding acts to be performed by agents and either IRS revenue procedure 70-6 or IRS revenue procedure 80-4, that provides financial management services or supports coordination services, or both, to consumers of home and community-based services through Medicaid Waiver or other publicly funded programs.

(b) Existing home care agencies and home care registries which were home care agencies or home care registries prior to December 12, 2009, shall be required to

meet the same standards as home care agencies and home care registries created after December 12, 2009.

§ 611.4. Requirements for home care agencies and home care registries.

(a) A current copy of this chapter shall be maintained at the home care agency or home care registry.

(b) Chapter 51 (relating to general information), applicable to all entities licensed as health care facilities under the act, applies to home care agencies and home care registries licensed under this chapter.

(c) Home care agencies and home care registries licensed under this chapter shall comply with applicable environmental, health, sanitation and professional licensure standards which are required by Federal, State and local authorities.

(d) If there is a difference in applicable State or local standards, the standards established under State statutes apply for the purpose of compliance with this chapter.

§ 611.5. Definitions.

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

Act—The Health Care Facilities Act (35 P. S. §§ 448.101—448.904b).

ChildLine—An organizational unit of the Department of Public Welfare which operates a State-wide toll-free system for receiving reports of suspected child abuse established under 23 Pa.C.S. 6332 (relating to establishment of Statewide toll-free telephone number), refers the reports for investigation and maintains the reports in the appropriate file.

ChildLine verification—Confirmation regarding whether an applicant for employment or referral by a home care agency or home care registry is named in the Department of Public Welfare's Statewide Central Register as the perpetrator of a founded or indicated report of child abuse (as defined in 55 Pa. Code § 3490.4 (relating to definitions)).

Companionship services—Socialization, support and assistance with instrumental activities of daily living.

Consumer—An individual to whom services are provided.

Consumer control—Control and direction by the consumer in identifying, exercising choice of, and managing home care services in accordance with the consumer's needs and personal preferences.

Criminal history report—A State Police criminal history record or a Department of Aging letter of determination of eligibility for hire or roster based on a review of a Federal criminal history record.

Department—The Department of Health of the Commonwealth.

Department of Aging letter of determination—A written decision supplied by the Department of Aging regarding whether, based on the criminal history report from the Federal Bureau of Investigation, the applicant for employment by a home care agency or referral by a home care registry may be employed or rostered.

Direct care worker—The individual employed by a home care agency or referred by a home care registry to provide home care services to a consumer.

Direct consumer contact—Face-to-face interaction with the consumer in the consumer’s place of residence or other independent living environment.

Financial management services—One or more of the following services:

- (i) Managing payroll including Federal, State and local employment taxes for direct care workers recruited and retained by the consumer.
- (ii) Processing the payment of workers’ compensation, health and other insurance benefits for the direct care worker.
- (iii) Assisting consumers in calculating and managing individual budgets for Medicaid Waiver and other publicly funded home and community based services.
- (iv) Monitoring the consumer’s spending of public funds and any underage or overage in accordance with the consumer’s approved budget.
- (v) Collecting, processing and maintaining time sheets for direct care workers.
- (vi) Providing training to consumers related to employer-related tasks (for example, recruiting, hiring, training, managing and discharging direct care workers and managing payroll and bill paying).

Home care agency—An organization that supplies, arranges or schedules employees to provide home care services, as directed by the consumer or the consumer’s representative, in the consumer’s place of residence or other independent living environment for which the organization receives a fee, consideration or compensation of any kind.

Home care registry—An organization or business entity or part of an organization or business entity that supplies, arranges or refers independent contractors to provide home care services, as directed by the consumer or the consumer’s representative, in the consumer’s place of residence or other independent living environment for which the registry receives a fee, consideration or compensation of any kind.

Home care services—The term encompasses the following activities:

- (i) Personal care.
- (ii) Assistance with instrumental activities of daily living.
- (iii) Companionship services.
- (iv) Respite care.
- (v) Specialized care.

Independent living philosophy—A system of beliefs, concepts and attitudes that emphasize self-direction, control, peer support and community integration for individuals with disabilities.

Inspection—A scheduled or unscheduled examination or assessment of a home care agency or home care registry during regular business hours, to determine compliance with requirements for licensure using one or more of the following means: inspection of records, interviews with office staff, consumers and direct care workers, and observation of the provision of services to consumers who have consented in advance to observation.

Instrumental activities of daily living—As defined in section 802.1 of the act (35 P. S. § 448.802a).

Nurse—A registered nurse or a licensed practical nurse.

Personal care—The term includes, but is not limited to, assistance with self-administered medications, feeding, oral, skin and mouth care, shaving, assistance with ambulation, bathing, hair care and grooming, dressing, toileting and transfer activities.

Respite care—Personal care and assistance with instrumental activities of daily living provided on a short term basis because of the absence or need for relief for those persons normally providing the services.

Roster—To place an individual on a list of individuals eligible to be referred by a home care registry to provide home care services to an individual in the individual’s place of residence or other independent living environment; or the list of individuals eligible to be referred by a home care registry to provide home care services to an individual in the individual’s place of residence or other independent living environment.

Specialized care—Nonskilled services unique to the consumer’s care needs that facilitate the consumer’s health, safety and welfare, and ability to live independently.

Statewide central register—A register of child abuse established in the Department of Public Welfare, which consists of founded and indicated reports of child abuse.

Supports coordination services—Services to consumers of home and community-based services through Medicaid Waiver or other publicly funded programs including intake services, needs assessment, and advocacy to ensure coordination of medical, social, educational and other services and maximum consumer independence.

GOVERNANCE AND MANAGEMENT

§ 611.51. Hiring or rostering of direct care workers.

(a) *Hiring or rostering prerequisites.* Prior to hiring or rostering a direct care worker, the home care agency or home care registry shall:

- (1) Conduct a face-to-face interview with the individual.
- (2) Obtain at least two satisfactory references for the individual. A satisfactory reference is a positive, verifiable reference, either verbal or written, from a former employer or other person not related to the individual that affirms the ability of the individual to provide home care services.

(3) Require the individual to submit a criminal history report, in accordance with § 611.52 (relating to criminal background checks), and a ChildLine verification, if applicable, in accordance with the requirements of § 611.53 (relating to child abuse clearance).

(b) *Direct care worker files.* Files for direct care workers employed or rostered must include documentation of the date of the face-to-face interview with the individual and of references obtained. Direct care worker files must also include other information as required under § 611.52, § 611.53, and if applicable, §§ 611.54, 611.55 and 611.56 (relating to provisional hiring; competency requirements; and health screening).

§ 611.52. Criminal background checks.

(a) *General rule.* The home care agency or home care registry shall require each applicant for employment or referral as a direct care worker to submit a criminal history report obtained at the time of application or within 1 year immediately preceding the date of applica-

tion. An applicant for employment as a member of the office staff for the home care agency or home care registry and the owner or owners of the home care agency or home care registry also are required to obtain a criminal history report in accordance with requirements contained in this section.

(b) *State Police criminal history record.* If the individual required to submit or obtain a criminal history report has been a resident of this Commonwealth for 2 years preceding the date of the request for a criminal history report, the individual shall request a State Police criminal history record.

(c) *Federal criminal history record.* If the individual required to submit or obtain a criminal history report has not been a resident of this Commonwealth for the 2 years immediately preceding the date of the request for a criminal history report, the individual shall obtain a Federal criminal history record and a letter of determination from the Department of Aging, based on the individual's Federal criminal history record, in accordance with 6 Pa. Code § 15.144(b) (relating to procedure).

(d) *Proof of residency.* The home care agency or home care registry may request an individual required to submit or obtain a criminal history record to furnish proof of residency through submission of any one of the following documents:

(1) Motor vehicle records, such as a valid driver's license or a State-issued identification.

(2) Housing records, such as mortgage records or rent receipts.

(3) Public utility records and receipts, such as electric bills.

(4) Local tax records.

(5) A completed and signed, Federal, State or local income tax return with the applicant's name and address preprinted on it.

(6) Employment records, including records of unemployment compensation.

(e) *Prohibition.* The home care agency or home care registry may not hire, roster or retain an individual if the State Police criminal history record reveals a prohibited conviction listed in 6 Pa. Code § 15.143 (relating to facility responsibilities), or if the Department of Aging letter of determination states that the individual is not eligible for hire or roster.

(f) *Records maintained.* The home care agency or home care registry shall maintain files for direct care workers and members of the office staff which include copies of State Police criminal history records or Department of Aging letters of determination regarding Federal criminal history records. The files shall be available for Department inspection. The agency or registry shall maintain copies of the criminal history report for the agency or registry owners, which shall be available for Department inspection.

(g) *Confidentiality.* The home care agency or home care registry shall keep the information obtained from State Police criminal history records and Department of Aging letters of determination regarding Federal criminal history records confidential and use it solely to determine an applicant's eligibility to be hired, rostered or retained.

(h) *Opportunity to appeal.* If the decision not to hire, roster or retain an individual is based in whole or in part on State Police criminal history records, Department of Aging letters of determination regarding Federal criminal

history records, or both, the home care agency or home care registry shall provide an affected individual with information on how to appeal to the sources of criminal history records if the individual believes the records are in error.

(i) *Exceptions.* A direct care worker who has complied with this section and who transfers to another agency or registry owned and operated by same entity is not required to obtain another criminal history report. A direct care worker employed or rostered by an entity that undergoes a change of ownership is not required to obtain another criminal history report to submit to the new owner.

(j) *Individuals currently employed or rostered.* A direct care worker and each member of the agency or registry office staff who is employed by or rostered by a home care agency or home care registry as of December 12, 2009, shall obtain and submit a State Police criminal history record or Department of Aging letter of determination, as applicable, to the home care agency or home care registry by April 12, 2010. This subsection does not apply if the home care agency or home care registry obtained a criminal history report meeting the requirements of this subsection when the direct care worker or office staff member was hired or rostered and a copy of the report is included in the individual's file.

§ 611.53. Child abuse clearance.

(a) *General rule.* A home care agency or home care registry that serves persons under 18 years of age shall require each applicant for employment or referral as a direct care worker, each applicant for employment as a member of the agency or registry office staff to request a ChildLine verification regarding whether the applicant is named in the Statewide Central Register as the perpetrator of a founded or indicated report of child abuse as defined in 55 Pa. Code § 3490.4 (relating to definitions).

(b) *Prohibition.* A home care agency or home care registry may not employ, roster or retain an individual where ChildLine has verified that the individual is named in the Statewide Central Register as the perpetrator of a founded or indicated report of child abuse.

(c) *Records maintained.* The files maintained by the home care agency or home care registry for each individual employed or rostered and for each member of the office staff must include copies of the ChildLine verification. The agency or registry shall maintain copies of the ChildLine verification for the agency or registry owners, which shall be available for Department inspection.

(d) *Individuals currently employed or rostered.* A person who is employed by or rostered by the home care agency or home care registry, including each member of the agency or registry office staff, as of December 12, 2009, shall obtain and submit a ChildLine verification to the home care agency or home care registry by April 12, 2010. This subsection does not apply if the home care agency or home care registry obtained a ChildLine verification when the individual was hired or rostered and a copy of the verification is included in the individual's file.

§ 611.54. Provisional hiring.

(a) *General rule.* The home care agency or home care registry may hire an applicant for employment or referral on a provisional basis, pending receipt of a criminal history report or a ChildLine verification, as applicable, if the following conditions are met:

(1) The applicant shall have applied for a criminal history report and ChildLine verification, as applicable, and provided the home care agency or home care registry with a copy of the completed request forms.

(2) The home care agency or home care registry shall have no knowledge about the applicant that would disqualify the applicant under 18 Pa.C.S. § 4911 (relating to tampering with public record information).

(3) The applicant shall swear or affirm in writing that the applicant is not disqualified from employment or referral under this chapter.

(4) The home care agency or home care registry may not assign or refer the provisionally hired applicant until that person has met the requirements of § 611.55 (relating to competency requirements).

(5) The home care agency or home care registry shall monitor the provisionally hired applicant awaiting a criminal background check through random, direct observation and consumer feedback. The results of monitoring shall be documented in the individual's file.

(6) The home care agency or home care registry shall directly supervise, or assign another direct care worker to accompany, a provisionally hired applicant awaiting a child abuse clearance who will provide home care services to a consumer less than 18 years of age.

(7) The period of provisional hire of an individual who is and has been, for a period of 2 years or more, a resident of this Commonwealth, may not exceed 30 days. The period of provisional hire of an individual who has not been a resident of this Commonwealth for 2 years or more may not exceed 90 days.

(b) *Termination.* If the information obtained from the criminal history report or ChildLine verification, or both, reveals that the individual is disqualified from employment or referral under § 611.52 (relating to criminal background checks) or under § 611.53 (relating to child abuse clearance), the individual shall be terminated by the home care agency or removed from the home care registry's roster immediately. If the individual fails to provide the ChildLine verification or criminal history report, or both, within the time period permitted for provisional hire, the individual shall be terminated by the home care agency or removed from the home care registry's roster immediately.

§ 611.55. Competency requirements.

(a) Prior to assigning or referring a direct care worker to provide services to a consumer, the home care agency or home care registry shall ensure that the direct care worker has done one of the following:

(1) Obtained a valid nurse's license in this Commonwealth.

(2) Demonstrated competency by passing a competency examination developed by the home care agency or home care registry which meets the requirements of subsections (b) and (c).

(3) Successfully completed one of the following:

(i) A training program developed by a home care agency, home care registry, or other entity which meets the requirements of subsections (b) and (c).

(ii) A home health aide training program meeting the requirements of 42 CFR 484.36 (relating to the conditions of participation; home health aide services).

(iii) The nurse aid certification and training program sponsored by the Department of Education and located at www.pde.state.pa.us.

(iv) A training program meeting the training standards imposed on the agency or registry by virtue of the agency's or registry's participation as a provider in a Medicaid Waiver or other publicly funded program providing home and community based services to qualifying consumers.

(v) Another program identified by the Department by subsequent publication in the *Pennsylvania Bulletin* or on the Department's web site.

(b) A competency examination or training program developed by an agency or registry for a direct care worker must address, at a minimum, the following subject areas:

- (1) Confidentiality.
- (2) Consumer control and the independent living philosophy.
- (3) Instrumental activities of daily living.
- (4) Recognizing changes in the consumer that need to be addressed.
- (5) Basic infection control.
- (6) Universal precautions.
- (7) Handling of emergencies.
- (8) Documentation.
- (9) Recognizing and reporting abuse or neglect.
- (10) Dealing with difficult behaviors.

(c) A competency examination or training program developed by an agency or registry for a direct care worker who will provide personal care must address the following additional subject areas:

- (1) Bathing, shaving, grooming and dressing.
- (2) Hair, skin and mouth care.
- (3) Assistance with ambulation and transferring.
- (4) Meal preparation and feeding.
- (5) Toileting.
- (6) Assistance with self-administered medications.

(d) The home care agency or home care registry shall include documentation of the direct care worker's satisfactory completion of competency requirements in the direct care worker's file. If the direct care worker has a nurse's license or other licensure or certification as a health professional, the individual's file shall include a copy of the current license or certification. Documentation of satisfactory completion of competency requirements is transferable from one home care agency or registry to another home care agency or registry, provided the break in the individual's employment or roster status does not exceed 12 months.

(e) The home care agency or home care registry also shall include documentation in the direct care worker's file that the agency or registry has reviewed the individual's competency to perform assigned duties through direct observation, testing, training, consumer feedback or other method approved by the Department or through a combination of methods. The competency review must occur at least once per year after initial competency is established, and more frequently when discipline or other sanction, including, for example, a verbal warning or suspension, is imposed because of a quality of care infraction.

(f) A direct care worker employed by a home care agency or rostered by the home care registry on December

12, 2009, shall achieve compliance with the competency requirements imposed by this chapter by December 12, 2011.

§ 611.56. Health screening.

(a) A home care agency or home care registry shall insure that each direct care worker and other office staff or contractors with direct consumer contact, prior to consumer contact, provide documentation that the individual has been screened for and is free from active mycobacterium tuberculosis. The screening shall be conducted in accordance with CDC guidelines for preventing the transmission of mycobacterium tuberculosis in health care settings. The documentation must indicate the date of the screening which may not be more than 1 year prior to the individual's start date.

(b) A home care agency or home care registry shall require each direct care worker, and other office staff or contractors with direct consumer contact, to update the documentation required under subsection (a) at least every 12 months and provide the documentation to the agency or registry. The 12 months must run from the date of the last evaluation. The documentation required under subsection (a) shall be included in the individual's file.

(c) A direct care worker employed by a home care agency or rostered by the home care registry on December 12, 2009, shall achieve compliance with the health evaluation requirements imposed by this chapter by June 10, 2010.

§ 611.57. Consumer protections.

(a) *Consumer rights.* The consumer of home care services provided by a home care agency or through a home care registry shall have the following rights:

(1) To be involved in the service planning process and to receive services with reasonable accommodation of individual needs and preferences, except where the health and safety of the direct care worker is at risk.

(2) To receive at least 10 calendar days advance written notice of the intent of the home care agency or home care registry to terminate services. Less than 10 days advance written notice may be provided in the event the consumer has failed to pay for services, despite notice, and the consumer is more than 14 days in arrears, or if the health and welfare of the direct care worker is at risk.

(b) *Prohibitions.* No individual as a result of the individual's affiliation with a home care agency or home care registry may assume power of attorney or guardianship over a consumer utilizing the services of that home care agency or home care registry. The home care agency or home care registry may not require a consumer to endorse checks over to the home care agency or home care registry.

(c) *Information to be provided.* Prior to the commencement of services, the home care agency or home care registry shall provide to the consumer, the consumer's legal representative or responsible family member an information packet containing the following information in a form that is easily read and understood:

(1) A listing of the available home care services that will be provided to the consumer by the direct care worker and the identity of the direct care worker who will provide the services.

(2) The hours when those services will be provided.

(3) Fees and total costs for those services on an hourly or weekly basis.

(4) Who to contact at the Department for information about licensure requirements for a home care agency or home care registry and for compliance information about a particular home care agency or home care registry.

(5) The Department's complaint Hot Line (1-866-826-3644) and the telephone number of the Ombudsman Program located with the local Area Agency on Aging (AAA).

(6) The hiring and competency requirements applicable to direct care workers employed by the home care agency or referred by the home care registry.

(7) A disclosure, in a format to be published by the Department in the *Pennsylvania Bulletin* by February 10, 2010, addressing the employee or independent contractor status of the direct care worker providing services to the consumer, and the resultant respective tax and insurance obligations and other responsibilities of the consumer and the home care agency or home care registry.

(d) *Documentation.* The home care agency or home care registry shall maintain documentation on file at the agency or registry of compliance with the requirements of this section which shall be available for Department inspection.

[Pa.B. Doc. No. 09-2273. Filed for public inspection December 11, 2009, 9:00 a.m.]

Title 37—LAW

Office of Victims' Services

[37 PA. CODE CH. 411]

Crime Victims Compensation

The Office of Victims' Services (OVS) of the Pennsylvania Commission on Crime and Delinquency (PCCD) amends §§ 411.2, 411.17 and 411.42 to read as set forth at 39 Pa.B. 2591 (May 23, 2009) and amends § 411.1 to read as set forth in Annex A. This final-form rulemaking has been submitted with no revisions to the proposed rulemaking.

Statutory Authority

This final-form rulemaking is authorized under section 312(3) of the Crime Victims Act (act) (18 P. S. § 11.312(3)).

Purpose of Chapter

Chapter 411 sets forth regulations governing the processing of crime victim compensation claims, providing for reimbursement to crime victims of crime related expenses when no other resources are available.

Purpose of the Final-Form Rulemaking

The purpose of the final-form rulemaking is to increase reimbursement to crime victims in accordance with rising costs, expand eligibility for reimbursement and simplify claims processing procedures, while reducing the percentage that OVS may reimburse hospitals and other licensed health care providers to conform to the practice of other third party payors.

Summary of Amendments

Section 411.1 (relating to scope) has been amended to establish the effective date for the amendments.

Section 411.2 (relating to definitions) has been amended to increase the number of days a victim has to relocate under the definition of "immediate need" from 30 days to 120 days.

Section 411.17 (relating to emergency awards) has been amended to increase the maximum compensation allowed for an emergency award from \$1,500 to \$5,000 per claim.

Section 411.42 (relating to out-of-pocket loss) has been amended as follows:

Subsection (b) has been amended to reduce the percentage of the usual and customary charge for services rendered that OVS may reimburse to providers from 70% to 65% and to set the effective date for this percentage change. This reduction conforms to the practice of other third-party payors. This section has also been amended to allow reimbursement to a victim who has been billed in error for a forensic rape exam. The reimbursement for a forensic rape exam billed in error will be subject to the \$1,000 monetary limit.

Subsection (c) has been amended to increase the total award for funeral expenses from \$5,000 to \$6,500 and eliminate caps on individual expenses. The elimination of individual caps will allow the claimant flexibility in submitting expenses and increase the reimbursement to claimant on individual expenses within the \$6,500 maximum award. This section is also amended to add the cost of an "urn" as an eligible funeral expense.

Subsection (f) has been amended to increase the total reimbursement amount from \$1,000 per crime incident per household to \$1,000 for each direct victim within the household, when immediate relocation is necessary as a result of the crime. Since there may be more than one direct victim of a crime, this amendment allows each direct victim to receive compensation up to \$1,000 per household.

Subsection (g) has been amended to include travel reimbursement associated with attendance or participation in court proceedings and other circumstances if good cause is shown and for attendance of funeral services. The addition of "good cause" allows OVS discretion if a travel expense is not specifically listed in the regulation, but the travel was necessary as a result of the crime.

Subsection (h) has been amended to include food, paint or other materials used to deface property as eligible for crime scene cleanup reimbursement.

Comments and Responses

Notice of the proposed rulemaking was published at 39 Pa.B. 2591 (May 23, 2009) with a 30-day comment period. During the 30-day comment period, comments were received from Alice Paul House in Indiana County and the Network of Victim Assistance in Bucks County.

Comment

Alice Paul House expressed that the \$100 minimum out of pocket loss requirement for filing a claim for compensation should be eliminated.

Response

The \$100 minimum out of pocket loss requirement is a statutory requirement and cannot be addressed through regulations. Alice Paul House commented in support of the proposed amendments.

The Network of Victim Assistance commented in support of the proposed amendments.

The House and Senate Judiciary Committees (Committees) had no objections, comments or recommendations on these amendments.

The Independent Regulatory Review Commission (IRRC) had no objections, comments or recommendations on these amendments.

Persons and Entities Affected

Victims of crimes, as defined in the act, will benefit from the increase in reimbursement for funeral expenses in keeping with current costs for services and allowing flexibility for reimbursement within the \$6,500 maximum award. The number of days, as defined in immediate need, expands the relocation time frame, allowing victims sufficient time to relocate to become or remain safe.

Medical providers will be adversely affected because they will receive less reimbursement with the 65% rate. However, the 65% reimbursement rate conforms to the practice of other third-party payors.

Fiscal Impact

It is estimated that the recommended changes will aid 1,149 victims by increasing benefits that are available through victim's compensation. The fiscal impact to PCCD will consist of an estimated annual net savings of \$143,739. This calculation takes into account the estimated costs to PCCD from increased benefits of \$151,261 and savings to PCCD resulting from reducing the awards to medical providers from a 70% reimbursement rate to 65% on behalf of the victim (\$295,000).

Summary of Costs, Savings and Federal Reimbursements

Year One (2009-2010)—It is estimated that implementation of this schedule will take place by December 1, 2009, therefore statistics are included for that part of State Fiscal Year 2009-2010. As the average time from the date of a crime incident until the date a claim is filed is 92 days, or 3 months, the costs have been projected for 4 months (March 1, 2010 to June 30, 2010). The savings from the reduction in the reimbursement rate for medical providers affects benefits for claims relating to services rendered on or immediately after the effective date of the regulation; therefore, the savings have been projected for the entire 7 months (December 1, 2009 to June 30, 2010). Costs are estimated at \$126,051; savings are projected at \$172,083; or an overall savings of \$46,033.

Year Two (2010-2011)—First full year of implementation. For this period, costs are projected at \$378,152 with savings estimated at \$295,000, or an overall cost of \$83,152.

Year Three (2011-2012)—For this period, costs are projected at \$397,060 with savings estimated at \$309,750, or an overall cost of \$87,310.

Victims of Crime Act (VOCA) Reimbursement—State victims compensation programs enjoy a 60% reimbursement that is eventually returned by the United States Department of Justice (DOJ) under VOCA funding stream for allowable benefits paid under the program. As all of the rates set by the Office under the act are for benefits allowable under VOCA, the cost figures would need to be adjusted downward to reflect the 60% reimbursement that will be paid to PCCD by DOJ. Costs paid in 2009-2010 will be reimbursed by VOCA in 2011-2012; costs paid in 2010-2011 will be reimbursed in 2012-2013, and the like.

For year one (2009-2010), the VOCA reimbursement will be \$75,630 resulting in an overall savings of \$121,663 (\$126,051 at 60% = \$75,630 reimbursement) which will be paid by the DOJ in 2011-2012. Therefore, the real cost of the increased benefits will actually be a savings of \$121,663 (\$46,033 + DOJ VOCA reimbursement of \$75,630 = \$121,663).

For year two (2010-2011), the VOCA reimbursement will be \$226,891 resulting in an overall cost savings of

\$143,739 (\$378,152 at 60% = \$226,891 reimbursement) which will be paid by VOCA in 2012-2013. Therefore, the real cost of the increased benefits will actually be a savings of \$143,739 (\$83,152 + DOJ VOCA reimbursement of \$226,891 = \$143,739).

For year three (2011-2012), the VOCA reimbursement will be \$238,236 resulting in an overall cost savings of \$150,926 (\$397,060 at 60% = \$238,236 reimbursement) which will be paid by VOCA in 2013-2014. Therefore, the real cost of the increased benefits will actually be a savings of \$150,926 (\$87,310 + DOJ VOCA reimbursement of \$238,236 = \$150,926).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)) on May 13, 2009, OVS submitted a copy of these proposed amendments, published at 39 Pa.B. 2591 (May 23, 2009), to IRRC and to the Committees. In addition to submitting the proposed amendments, OVS has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form.

In compliance with section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period. The public comments were supportive of the amendments. IRRC had no comments or objections to the amendments. The Committees provided no comments.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the Committees effective October 21, 2009. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective October 21, 2009. The Attorney General approved the final-form rulemaking on November 23, 2009.

Effective Date

This final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

No sunset date has been assigned. These regulations will be reviewed annually.

Contact Person

The contact person for additional information regarding this final-form rulemaking is Lynn Shiner, Deputy Director, Office of Victims' Services at (717) 265-8736.

Findings

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

(2) A public comment period was provided as required by law and all comments were considered and forwarded to IRRC and the Committees.

(3) No modifications to these regulations in response to comments received were necessary or made and therefore there is no enlargement of the purpose of the proposed regulation published at 39 Pa.B. 2591.

(4) The adoption of this final-form rulemaking in the manner provided by this order is necessary and appropriate for administration and enforcement of the authorizing statute.

Order

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

(a) The Crime Victims Compensation regulations, 37 Pa. Code Chapter 411, are amended by amending §§ 411.2, 411.17 and 411.42 to read as set forth at 39 Pa.B. 2591 and by amending § 411.1 to read as set forth in Annex A.

(b) The Commission shall submit this order, 39 Pa.B. 2591, and Annex A to the Office of General Counsel and the Office of Attorney General for approval as required by law.

(c) The Commission shall submit this order, 39 Pa.B. 2591, Annex A and a Regulatory Analysis Form to IRRC and the Committees for their review and action as required by law.

(d) The Commission shall certify this order, 39 Pa.B. 2591, and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

MICHAEL J. KANE,
Executive Director

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 6524 (November 7, 2009).)

Fiscal Note: Fiscal Note 35-31 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 37. LAW

PART VI. COMMISSION ON CRIME AND DELINQUENCY

CHAPTER 411. CRIME VICTIMS COMPENSATION GENERAL PROVISIONS

§ 411.1 Scope.

Except as otherwise provided, this chapter applies to claims for compensation relating to crime injuries occurring on or after December 12, 2009.

[Pa.B. Doc. No. 09-2274. Filed for public inspection December 11, 2009, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

Dental Hygiene Scope of Practice; Local Anesthesia

The State Board of Dentistry (Board) hereby amends §§ 33.1, 33.3, 33.102, 33.205, 33.301, 33.302 and 33.402, and adds §§ 33.115, 33.116 and 33.205b (relating to local anesthesia permit; certification of public health dental hygiene practitioners; and practice as a public health dental hygiene practitioner) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Under section 3(d), (j.2) and (o) of the Dental Law (law) (63 P. S. § 122(d), (j.2) and (o)), the Board has authority to adopt, promulgate and enforce regulations for the general supervision, scope of practice and continuing education of dental hygienists. The act of July 20, 2007 (P. L. 376, No. 51) (Act 51) requires amendments to the regulations to implement a new class of certificate for “public health dental hygiene practitioners.”

Background and Purpose

The final-form rulemaking accomplishes three goals: to implement a new classification of Board-regulated practitioner created by Act 51—the public health dental hygiene practitioner; to make revisions to the scope of practice of dental hygienists, including the addition of the administration of local anesthesia; and to revise the supervision requirements for dental hygienists.

Summary of Comments and the Board’s Response

Notice of proposed rulemaking was published at 38 Pa.B. 4777 (August 30, 2008), followed by 30 days of public comment. During the public comment period, the Board received numerous public comments. In addition, as part of their review under the Regulatory Review Act, the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) submitted comments. The following represents a summary of the comments received and the Board’s response.

Comments from the House Professional Licensure Committee

The only comment received from the HPLC requested that the Board clarify whether a newly graduated dental hygienist can apply for an initial license and a local anesthesia permit simultaneously. If an applicant meets the qualifications for licensure and for a local anesthesia permit, the applicant can apply for both credentials simultaneously. The Board will consider the application for a dental hygiene license first, and once that license is issued, will then consider the application for local anesthesia permit. The Board must review the applications sequentially because one of the requirements for issuance of a local anesthesia permit is that the applicant hold a current license in good standing to practice as a dental hygienist in this Commonwealth.

Comments from the Independent Regulatory Review Commission

IRRC first asked the Board to generally address the Board’s statutory authority for allowing dental hygienists to administer local anesthesia, and how allowing them to do so protects the public health, safety and welfare. Answering this question requires an overview of the legislative and regulatory scheme in the practice of dentistry. The definition of the practice of dentistry in section 2 of the law (63 P. S. § 121) is a very broad definition—it includes treating any disease, pain or injury, or regulating any deformity or physical condition of the human teeth, jaws or associated structures. It also includes the administration of ionizing radiation. Every procedure performed in a dental office is “the practice of dentistry.” Some of the procedures require the professional competence and skill of a dentist. Those dental procedures that do not require the professional compe-

tence and skill of a dentist may be delegated to others. Dental hygiene encompasses a subset of dental procedures that do not require the professional competence and skill of a dentist. Specifically, there are certain “intraoral” procedures that licensed dental hygienists are educated to perform. There is another subset of dental procedures that may only be performed by expanded function dental assistants. It is all “the practice of dentistry.” Some of it is reserved for dentists, some of it may be done by dental hygienists, some of it may be done by EFDAs, and some of it may be delegated to any competent person under section 11.8 of the law (63 P. S. § 130i).

The law also provides the authority to the Board to determine by regulation which dental procedures may be performed by dental hygienists, including the necessary education and level of supervision required. IRRC noted that the definition of the practice of dentistry includes administering anesthetic agents, a broad term which encompasses a wide range of agents from topical anesthetics (such as a gel one might use on a teething baby or to dull the pain of a toothache) through general anesthesia. IRRC also pointed out that the law further limits the administration of general anesthesia, deep sedation, conscious sedation and nitrous oxide/oxygen analgesia to licensed dentists. It is significant to note that there is no statutory limitation placed on the administration of local anesthesia or topical anesthetics. The Board is of the opinion that, if the General Assembly had meant to limit local anesthesia to be performed only by dentists, it would have done so when section 11.2 of the law (63 P. S. § 130c), pertaining to anesthesia, was amended in 2002. Therefore, it is left to the Board to determine whether local anesthesia falls within the range of procedures that may be performed by a dental hygienist.

Clearly, the Board may only permit dental hygienists to perform those procedures they are educated to perform. At the time of this writing, 41 states and the District of Columbia permit dental hygienists to administer local anesthesia. Therefore, many dental hygienists currently practicing have been educated to perform this procedure. However, because dental hygienists in this Commonwealth have not been permitted to perform the procedure for a number of years, most dental hygiene programs located in this Commonwealth do not include the administration of local anesthesia in the dental hygiene curriculum. For these reasons, the Board determined that the administration of local anesthesia could only be delegated to those dental hygienists who meet the educational criteria in § 33.115 or have been administering local anesthesia lawfully under the laws and regulations of another jurisdiction. In addition, the administration of local anesthesia may only be performed by a dental hygienist under the direct supervision of a licensed dentist who has examined the patient, has authorized the procedure to be performed and takes full professional responsibility for it. Therefore, if a dentist does not believe the dental hygienist can safely perform the procedure, the dentist should not authorize it. Finally, the Board has placed additional safeguards in the regulation by limiting dental hygienists to using local infiltration anesthesia and intraoral nerve block anesthesia limited to the 2nd (maxillary) and 3rd (mandibular) divisions of the trigeminal nerve. The Board believes these limitations, along with the education and supervision requirements, properly safeguard the public health, safety and welfare.

Additionally, as noted by many of the commentators, the Board believes this change will in many instances increase access to and enhance the quality of dental care

in this Commonwealth. As an example, the removal of subgingival calculus is often painful for the patient. If a patient needs to have local anesthesia to tolerate the procedure, currently a dentist must administer it. This means that if the dentist is not available to administer the local anesthesia because the dentist is involved in the treatment of another patient, the choices are to either terminate the treatment and reschedule, or to continue with the treatment in spite of the pain to the patient. In either event, the patient may not return to complete the treatment. Even if the dentist were able to administer the local anesthesia, it would require the dentist to interrupt the treatment of another patient, causing delays and inefficiencies in offering dental services to all patients. Therefore, the Board believes this change to the scope of practice for hygienists, as appropriately limited in these regulations, does not pose a significant risk to the public health, safety and welfare, and in the long run, will increase access to and enhance the quality of oral health care being delivered by dentists and dental hygienists.

With regard to § 33.1 (relating to definitions), IRRC asked the Board to add the term “public health dental hygiene practitioner” to the existing definition of “board-regulated practitioner.” After receiving this comment, the Board’s final-form rulemaking pertaining to “sexual misconduct” was published at 38 Pa.B. 6279 (November 15, 2008), which included the requested amendment. IRRC also asked that the second sentence of the definition of “local anesthesia” be moved to § 33.115 because it applies only to that section. The Board has made the requested change.

IRRC noted that § 33.115(c)(3) requires a dental hygienist seeking a local anesthesia permit to provide “acceptable documentation” to the Board, and recommended that the final-form regulation specify the type of documentation that would be acceptable to the Board. IRRC also noted that this section also requires dental hygienists to certify certain information to the Board and recommended that the final-form regulation specify how that information can be “certified.” The Board has amended § 33.115 to specify what type of documentation must be submitted for each of the three avenues to obtaining a local anesthesia permit and to clarify the certification process. Specifically, a dental hygienist seeking a local anesthesia permit based on having graduated from a CODA-accredited dental hygiene program which included the successful completion of a course in the administration of local anesthesia would need to provide a “certificate of education” completed by the dental hygiene program on a form provided by the Board. Similarly, if the dental hygienist was seeking the permit based on completion of a 30-hour course sponsored by a dental or dental hygiene program, a “certificate of education” would be required from the dental or dental hygiene program. Finally, if the dental hygienist is seeking the local anesthesia permit based on similar authority issued by the proper licensing authority of another state, territory or district of the United States, or of a province or territory of Canada, the dental hygienist would have to submit a certificate or letter of good standing from that jurisdiction verifying that the jurisdiction required completion of a course in the administration of local anesthesia as a prerequisite and that there had been no disciplinary action against the dental hygienist related to the administration of local anesthesia. The Board also clarified that the dental hygienist is required to sign a “certification statement” on the application for local anesthesia permit verifying that the dental hygienist actively engaged in the administration of local anesthesia under a

current license or permit within the 5 years immediately preceding the filing of the application for local anesthesia permit, and that the dental hygienist at all times administered local anesthesia in accordance with all applicable laws and regulations of that jurisdiction.

IRRC raised four concerns regarding the requirement in § 33.116(b)(3) which requires professional liability insurance. First, IRRC asks what is the Board’s statutory authority for requiring public health dental hygiene practitioners to obtain professional liability insurance. Section 4 of Act 51 amended the law by adding section 11.9, which sets forth the requirements for public health dental hygiene practitioners. See 63 P.S. § 130; Section 11.9(a)(3) establishes the statutory requirement that a public health dental hygiene practitioner “purchase a malpractice policy in an amount determined to be adequate by the board.” IRRC noted that no other practitioner regulated by the Board is required by statute or regulation to obtain professional liability insurance and asked why public health dental hygiene practitioners are required to do so. In response, the Board notes that it is a statutory requirement provided by Act 51, and that the only discretion the Board had was in the “amount determined to be adequate by the board.” However, the Board believes the policy behind the requirement was one of public protection because public health dental hygiene practitioners are authorized to practice on the public without the “authorization, assignment or examination of a dentist” who would normally “take full professional responsibility” for the acts of those dental hygienists under the dentist’s supervision. Additionally, although the law does not require dentists to obtain professional liability insurance, all prudent dentists would have such coverage.

IRRC also noted that some employers of public health dental hygiene practitioners provide liability coverage for their employees and asked if the Board would consider the coverage provided by the employer acceptable. In response, the Board amended the rulemaking to require applicants for certification as a public health dental hygiene practitioner to provide documentation demonstrating that the dental hygienist has obtained professional liability insurance or is a named insured covered by a group policy. IRRC also asked what would be considered acceptable proof of coverage. The Board has clarified in the final-form rulemaking that this documentation may include a certificate of insurance issued by the insurer, or a copy of the declarations page of the professional liability insurance policy. Finally, IRRC asked if coverage provided by an employer is less than the minimum amount specified in the regulation, would supplemental coverage for the difference be required. A dental hygienist must demonstrate coverage in the minimum amount of \$1,000,000 per occurrence and \$3,000,000 per annual aggregate. The Board has surveyed a number of insurance providers and determined that the average annual premium for such a policy for dental hygienists in this Commonwealth is currently approximately \$100—\$125. Even if coverage by the employer is less than the minimum amount required, the Board does not believe that the cost of obtaining a conforming policy is prohibitive. Otherwise, the Board would have no objection to a dental hygienist meeting this requirement by combining two or more professional liability policies.

With regard to § 33.205 (relating to practice as a dental hygienist), IRRC asked the Board to define “subgingival agents.” As noted in the preamble to the proposed rulemaking, dental hygienists are qualified to administer a wide range of antimicrobial, antibiotic,

antiseptic or anesthetic agents below the gum line. These agents may be delivered by a variety of methods, including injectable systems for pastes, ointments and gels, as well as degradable and non-degradable fibers, films, strips, spheres, discs or chips. In response to IRRC's comment, the Board has added a definition of the term to § 33.1.

IRRC also raised three concerns with proposed § 33.205b. First, IRRC asked the Board to define what it means by schools, correctional facilities, and Federally-qualified health centers. In response the Board has clarified those terms in the final-form rulemaking. IRRC also asked the Board to ensure that the final-form rulemaking is consistent with existing statutory and regulatory provisions that apply to dental hygienists that practice in school districts. The Board believes that, with regard to permitting public health dental hygiene practitioners to practice in "schools," the intent was to cover any public or private educational institution that provides elementary or secondary instruction to school aged children, which are required under Article XIV of the Public School Code of 1949 to provide dental and dental hygiene services to their students (see 24 P.S. §§ 14-401 and 14-403). Additionally, in response to IRRC and the various school dental hygienists who commented, the Board does not believe the intent was to relieve anyone of their responsibilities under the Public School Code or the regulations of the State Board of Education to be certified as an educational specialist. In addition, under the regulations of the Department of Health in 28 Pa. Code § 23.35 (relating to dental hygienists), a dental hygienist providing dental hygiene services in schools must be licensed by the Board and certified by the Department of Education. This has not changed. The only change is that if a dental hygienist wants to work in the schools without the supervision of a dentist, the dental hygienist must also be certified as a public health dental hygiene practitioner. Otherwise, the dental hygienist must be under the general supervision of a dentist as set forth in § 33.205(d)(2).

The Board has also provided a definition of correctional facilities, which the Board intends to cover all Federal, State, regional, county and local prisons, jails, detention facilities and correctional institutions located within this Commonwealth. Finally, the Board provided a cross reference to the definition of "federally qualified health center" in section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. § 1369d(1)(2)(B)). In addition, in response to a number of comments, the Board clarified that this term includes Federally-qualified health center look-alikes, which qualify for, but do not receive, grants under section 330 of the Public Health Service Act (42 U.S.C.A. § 254b).

Thirdly, IRRC noted that under § 33.205b(d), public health dental hygiene practitioners are required to maintain dental records for 5 years, but that the regulation does not specify whether the records are required to be maintained in written form, or if electronic records are acceptable. The Board would also point out that the Board's regulations in § 33.209 (relating to preparing, maintaining and retaining patient records), which require dentists to maintain dental records for 5 years also does not dictate the format of those records. To date, the Board has not determined it necessary to distinguish between formats in which the records may be maintained, so long as they are accurate, legible and complete. However, due to the increase in the utilization of electronic records in medical and dental practice, the Board is considering the possibility of future regulations relating to standards for

electronic recordkeeping, which would apply to dentists and public health dental hygiene practitioners.

With regard to § 33.302 (relating to requirements for personnel performing radiologic procedures), IRRC asked what the Board's statutory authority is for allowing public health dental hygiene practitioners to perform radiologic procedures without the supervision of a dentist and whether the health and safety of the public is adequately protected if a public health dental hygiene practitioner is allowed to perform these procedures. Section 3 of Act 51 amended Section 11.4 of the law (63 P.S. § 130c) pertaining to radiologic procedures by adding subsection (e), which specifically states that, "[n]otwithstanding the supervision requirements of this act, a public health dental hygiene practitioner may perform radiological procedures in any setting without supervision of a dentist on or after the effective date of this subsection." Additionally, in response to a related comment by the Pennsylvania Academy of General Dentistry (PAGD), to protect patients from unnecessary exposure to ionizing radiation and to enhance the public health and safety, the Board has added a provision that requires a public health dental hygiene practitioner to provide to the patient a copy of any radiograph taken, along with a referral to a dentist.

Finally, IRRC pointed out an error in § 33.116(c), which inadvertently referred to biennial renewal of the local anesthesia permit, rather than the public health dental hygiene practitioner certificate. This has been corrected in the final-form rulemaking.

Comments from the Pennsylvania Dental Hygienists' Association

The Pennsylvania Dental Hygienists' Association (PDHA) was generally supportive of the proposed amendments, but asked the Board to consider certain amendments in the final-form rulemaking. PDHA recommended that the Board insert the words "and the dental hygienist" into § 33.205(d)(1)(ii) and (iii) to include dental hygienists in the decision making process regarding the level of supervision required. In response, the Board elected to leave the final decision with the dentist, "with input from the dental hygienist" and has made that amendment to the final-form rulemaking. PDHA also asked the Board to consider an alternate definition of "direct supervision" for the administration of local anesthesia by dental hygienists, which would not include the requirement that the dentist re-examine the patient after the completed injection procedure. After extensive discussion, the Board agreed with the PDHA that their intent was not to require the dentist to "directly supervise" the individual injection procedure, but rather to "directly supervise" the dental hygienist's overall provision of dental hygiene services, including the administration of local anesthesia. Therefore, the Board revised the definition of direct supervision for purposes of the administration of local anesthesia to mean supervision by a dentist who has examined the patient and authorized the procedure to be performed, is physically present in the dental facility and available during the performance of the procedure, and takes full professional responsibility for the completed procedure.

PDHA was among the numerous commentators that asked the Board to include "federally qualified health center look-alikes" as sites where public health dental hygiene practitioners may practice without the supervision of a dentist. As noted previously, the Board has made this change. In addition, PDHA asked the Board to consider adding free and reduced-fee nonprofit clinics.

The Board considered this request and agreed to add it to the rulemaking in § 33.205b(c)(10).

PDHA also asked the Board to consider a change in the heading of Subchapter D and of § 33.302 by deleting the references to “auxiliary personnel” in that public health dental hygiene practitioners who work without the supervision of a dentist do not fit the definition of “auxiliary personnel.” The Board has made these amendments. PDHA also suggested that the Board consider amending the proposed rulemaking in § 33.402(c) (relating to continuing education subject areas) to permit both dental hygienists and dentists to complete at least three of the required continuing education credit hours in communications. The Board considered, but rejected, this suggestion. Generally, the regulations require that continuing education credit hours must be completed in subjects that contribute to the Board-regulated practitioner’s clinical competence and specifically excludes courses in nonclinical subjects such as communication skills. The proposed amendment to subsection (c) provided an exception for dental hygienists, who are permitted to complete up to 3 hours in communications. This exception was based on the very definition of “dental hygienist” included in the law, which provides that a dental hygienist is licensed to perform “educational, preventive, and therapeutic services and procedures.” The essence of an educator is the ability to communicate information to one’s patients. Therefore, the exception for dental hygienists, which permits, but does not require, courses in communications is directly related to the professional services being provided by dental hygienists. While the Board agrees with PDHA that the dentist-patient relationship could benefit from courses in communications, the Board has elected to continue to require that all 30 hours of required continuing education must be in areas that contribute to the dentist’s clinical competence. However, the Board notes that the required 30 hours is a minimum requirement and joins PDHA in encouraging dentists to acquire additional continuing education in the area of communications.

Comments from the Pennsylvania Academy of General Dentistry

The PAGD expressed concerns about public health dental hygiene practitioners treating patients with severe or life-threatening systemic disease (ASA Class III—ASA Class V) without supervision. Historically, the Board determined the level of supervision required for dental hygienists based on the American Society of Anesthesiologists (ASA) classification of the health status of the patient. However, when the General Assembly adopted Act 51, it required the Board to reconsider the supervision requirements in their entirety. (See section 5 of Act 51, which abrogated the Board’s supervision regulations.) By definition, a public health dental hygiene practitioner provides dental hygiene services in certain public health settings without the authorization, assignment or examination of a dentist. The legislature did not provide any exceptions based on the health status of the patient.

The PAGD also expressed concern about public health dental hygiene practitioners performing radiologic procedures without the supervision of a dentist. As noted previously, Act 51 provides specifically that “[n]otwithstanding the supervision requirements of this act, a public health dental hygiene practitioner may perform radiologic procedures in any setting without supervision of a dentist.” The Board has no statutory authority to require any supervision with regard to public health dental hygiene practitioners when they are providing

services in the enumerated public health settings set forth in section 11.9 of the law. However, the PAGD suggested that the Board include a requirement that any radiograph taken by a public health dental hygiene practitioner be reviewed by a dentist within 1 week to determine the absence or presence of any diagnosable conditions. Inasmuch as all dental hygienists, including public health dental hygiene practitioners, are specifically prohibited from diagnosis or treatment planning, and considering the fact that it is considered unprofessional conduct for a dentist or dental hygienist to unnecessarily expose a patient to ionizing radiation under the Board’s existing regulations in § 33.211(a)(6) and (b)(5) (relating to unprofessional conduct), the Board found this suggestion reasonable. However, after extensive discussion and public comment at its March 20, 2009, Board meeting, the Board determined that the 1 week time frame suggested by the PAGD was unduly restrictive and elected to require radiographs taken by public health dental hygiene practitioners to be reviewed by a dentist within 1 month. Subsequently, the Board received correspondence dated June 11, 2009, from the Pennsylvania Dental Association (PDA) suggesting alternative language to that suggested by the PAGD. Rather than simply require the radiograph to be reviewed by a dentist within 30 days, PDA suggested that the public health dental hygiene practitioner provide to the patient a copy of the radiograph and a referral to a dentist with instructions to consult the dentist. Thereafter, upon presentation of the patient, the dentist would be required to examine the patient, review the radiograph and report any findings to the patient and the public health dental hygiene practitioner. The PDHA sent a letter to the Board on July 26, 2009, indicating that while they did not object to the content of the recommendation of the PDA, they felt that it was not necessary to amend the final rulemaking because standard dental hygiene protocols would require a public health dental hygiene practitioner to refer a patient to a dentist with a copy of any radiograph taken if the public health dental hygiene practitioner observed a need for further evaluation and treatment. The Board considered PDA’s proposal at its meeting on July 31, 2009, and based on the input received at that meeting from representatives of the PDA, PAGD and PDHA, voted to incorporate PDA’s proposal into the final rulemaking. The language requiring referral has been added to § 33.302(a).

Finally, the PAGD suggested that the Board consider a requirement for all dental hygienists administering local anesthesia to complete at least 3 hours of continuing education in pharmacology or other related courses, instead of courses relating to communication skills. The Board considered this comment and has amended § 33.402 to add subsection (f) which requires a dental hygienist who holds a local anesthesia permit to complete at least 3 hours of continuing education in courses relating to the administration of local anesthesia, including pharmacology. However, because the 3 credit hours in communications skills are permitted, but not required, the Board did not make a change in that aspect of the proposed rulemaking.

Comments from other public commentators

Dr. Dino Angelici, Chief of Dentistry for the Department of Corrections (DOC), raised a concern about the need for public health dental hygiene practitioners who work in correctional facilities to maintain professional liability insurance. He indicated that employees of the DOC are already covered by the DOC for their dental practice within the Commonwealth’s correctional system.

He also suggested that many insurance companies will not provide coverage for dentists and dental hygienists for correctional practice due to the fact that inmates can be extremely litigious, even though most claims are determined to be frivolous and are subsequently dismissed. Unfortunately, the Board does not believe it has the statutory authority to waive the requirement for malpractice insurance. The Board would, however, support an amendment to the act if the DOC determines one is warranted.

A number of certified school dental hygienists commented in opposition to the proposed rulemaking because they believed that the Board intended to permit public health dental hygiene practitioners to work in public schools without meeting the requirements of the Department of Health and the Department of Education, which require school dental hygienists to hold both a license issued by the Board and a certificate issued by the Department of Education. The Board believes the amendments to § 33.205b(c)(1) described previously clarify that a public health dental hygiene practitioner may only practice in schools in accordance with the applicable laws and regulations of the Department of Health and the Department of Education.

Dr. Charles M. Ludwig, a former member of the Board, commented in opposition to the proposed amendments. He suggested that because in 1993, the Board unsuccessfully tried to add the administration of local anesthesia and nitrous oxide/oxygen conscious sedation to the scope of practice for dental hygienists, the Board may not again propose to add the administration of local anesthesia at this point in time. The Board would point out that, in amending the act in 2002, the General Assembly specifically addressed the administration of anesthesia. The 2002 amendments to section 11.4 of the law reserve the administration of general anesthesia, deep sedation, conscious sedation and nitrous oxide/oxygen analgesia to dentists. The General Assembly did not at that time restrict the administration of local anesthesia. The Board believes that had the General Assembly intended to restrict the administration of local anesthesia to dentists, it would have done so at that time. Because it did not, it is within the authority of the Board to determine whether the administration of local anesthesia is a procedure that may be safely delegated to dental hygienists.

Dr. Ludwig also suggested that Act 51 is unconstitutional because it creates conflicting provisions in the law. Specifically, he suggested that a public health dental hygiene practitioner is prohibited from diagnosis and treatment planning, yet they would need to do a certain amount of diagnosis and treatment planning to determine what dental hygiene services to provide to a patient. The Board is without the authority to rule on the constitutionality of a statute passed by the General Assembly and signed by the Governor. The Board's role is to implement the provisions of Act 51. These regulations are intended to implement the law in accordance with the legislative mandate. Dr. Ludwig also opposed the amendment to § 33.102 (relating to professional education) to license dental hygienists who have graduated from a dental hygiene program accredited by an approved United States Department of Education-recognized regional accrediting agency. However, this amendment was made by Act 51, and the Board is simply amending its regulations to conform to the amendment to the act. Dr. Ludwig further objects to the Board's proposed amendment to the definition of "general supervision." The Board believes that Dr.

Ludwig misapprehends the amendment's intent. This provision does not give the hygienist up to 1 year to schedule a procedure assigned by the dentist as the hygienist sees fit, as Dr. Ludwig would suggest. It is not a "wait period" added for the convenience of the hygienist. It is not intended to delay treatment for up to 1 year. It essentially gives the dentist the authority to assign up to 1 year's worth of dental hygiene procedures to a dental hygienist, which could then be completed by the dental hygienist even if the dentist is not physically present in the facility at the time the procedures are performed. The dentist is still responsible for examining the patient, developing the treatment plan, authorizing the dental hygienist to perform the procedures, and taking full professional responsibility for the completed procedures. The Board believes this change, allowing the dentist the flexibility to authorize dental hygiene services up to 1 year in advance, rather than 90 days, will provide more efficiency in the delivery of dental hygiene services and increase access to care for this Commonwealth's citizens.

Finally, Dr. Ludwig objects to the creation of two standards of dental hygiene care—one for patients in private dental offices, and one for patients in public health settings. The Board disagrees with Dr. Ludwig's assessment. The standard of care for the delivery of dental hygiene services is the same regardless of the setting in which it is performed. A dental hygienist shall always conform to the standards of acceptable and prevailing dental hygiene practice in this Commonwealth. The only difference is how closely the hygienist is supervised by a dentist in the provision of those services.

On the other hand, some licensed dentists commented in favor of the proposed rulemaking. One dentist commented that the proposed amendments are needed because dental hygienists are well-educated and clinically competent dental professionals and an integral part of the dental health team. For the most part, those dentists who supported the proposed rulemaking felt that local anesthesia should be included in the scope of practice of a dental hygienist. They also noted that the changes would enable dental hygienists to improve the oral health of the citizens of this Commonwealth by providing necessary preventive oral health care.

A large number of commentators from the dental hygiene community, including educators, practicing dental hygienists and students currently enrolled in dental hygiene programs throughout this Commonwealth, wrote in support of the proposed amendments. They believe that the proposed amendments will expand public access to early and essential preventative dental health services and ultimately lead to the reduction in more complex and costly dental care. They also believe that the changes will keep this Commonwealth from losing the best and the brightest hygienists due to lack of career choices and autonomy. Many of those who work in the public health field urged the Board to consider adding Federally-qualified health center look-alikes and free and reduced-fee nonprofit dental clinics to the practice sites for public health dental hygiene practitioners. The Board has responded by making these changes. Many of the dental hygienists who commented joined the PDHA in recommending input from the dental hygienist into the decision of the level of supervision required. As noted previously, the Board has responded by making amendments to the final-form rulemaking.

Description of Amendments

The definition of "general supervision" in § 33.1 is amended to extend general supervision to dental hygiene services to be performed within 1 year of an examination by a dentist, instead of the current standard of 90 days. Section 33.1 is also amended to define the terms "local anesthesia," "public health dental hygiene practitioner" and "subgingival agents."

Section 33.3 (relating to fees) is amended to include the fees necessary for processing applications for and biennial renewal of local anesthesia permits and public health dental hygiene practitioner certificates.

Section 33.102 is amended to comport with changes made by Act 51.

Section 33.115 is added to set forth the requirement for a dental hygienist to secure a permit prior to administering local anesthesia. This section also sets forth the qualifications required by the Board for a dental hygienist to both secure and maintain a local anesthesia permit. This section has been amended in the final-form rulemaking to include the substantive language that had been included in the definition of "local anesthesia" in the proposed rulemaking and to clarify the types of documentation necessary to support an application for a local anesthesia permit.

Section 33.116 is added to implement the provisions of Act 51. This section has also been amended in the final-form rulemaking to clarify the types of documentation necessary to demonstrate the qualifications for a public health dental hygiene practitioner certificate and to correct a typographical error in the proposed rulemaking.

Section 33.205 is amended to make some minor changes to the description of certain dental hygiene services and to include the administration of local anesthesia by regional injection within the scope of practice of a dental hygienist in accordance with § 33.115. In addition, subsection (d)(1) pertaining to supervision requirements for dental hygienists in dental offices is amended in its entirety as a result of Act 51 which abrogated the prior language. In the final-form rulemaking, this section has been amended to include input from the dental hygienist into the decision regarding the level of supervision required, and to define "direct supervision" with regard to the administration of local anesthesia.

The Board adds § 33.205b to set forth the standards for public health dental hygiene practitioners in accordance with Act 51. Subsection (a) addresses the scope of practice of public health dental hygiene practitioners. Subsection (b) incorporates the requirement of referral set forth in Act 51. Subsection (c) establishes the practice settings in which a public health dental hygiene practitioner would be authorized to practice without supervision. This subsection has been amended in the final-form rulemaking to further define "schools," "correctional facilities" and "federally qualified health centers" and to add Federally-qualified health center look-alikes, and free and reduced-fee health clinics to the list of practice sites for public health dental hygiene practitioners. It has also been amended to clarify that public health dental hygiene practitioners who wish to work in public schools must continue to comply with the regulations of the Department of Health and Department of Education, that is, they must hold a license from the Board and a certifica-

tion from the Department of Education. In subsection (d), the Board establishes minimum standards for recordkeeping by public health dental hygiene practitioners.

The Board also is amending its regulations relating to the performance of radiologic procedures in Subchapter D. Section 33.301 is amended to establish the Radiation Health and Safety examination administered by the Dental Assisting National Board (DANB) as the required examination for auxiliary personnel who wish to administer ionizing radiation in a dental office. Section 33.302 is amended to comport with changes made by Act 51. In the final-form rulemaking, this section and the title of subchapter D have been renamed to reflect the fact that public health dental hygiene practitioners are not "auxiliary personnel" as that term is defined in § 33.1. In addition, at the suggestion of the PAGD and PDA, this section has been amended to include a requirement that public health dental hygiene practitioners provide to the patient a copy of the radiograph and a referral to a dentist for further evaluation and possible treatment. The amendment would also require dentists to review the radiograph, examine the patient and report any findings to the patient and the public health dental hygiene practitioner.

Finally, the Board is amending § 33.402 to permit dental hygienists to complete no more than three of the required 20 hours of continuing education in courses relating to communication skills; to require public health dental hygiene practitioners to complete five of the required 20 hours in public health-related courses; to permit public health dental hygiene practitioners who are also certified educational specialists by the Department of Education to submit evidence of compliance with section 1205.2 of the Public School Code (24 P. S. § 12-1205.2) to meet the 20-hour continuing education requirement; and to require dental hygienists who hold anesthesia permits to complete three of the required 20 hours in courses related to the administration of local anesthesia, including pharmacology or related courses.

Fiscal Impact and Paperwork Requirements

The amendments should have no fiscal impact on the Commonwealth or its political subdivisions because the costs associated with processing the local anesthesia permits and public health dental hygiene practitioner certificates will be borne by applicants. Dental hygienists who apply for local anesthesia permits will incur some costs associated with the permit application and renewal fees and possibly the costs of completing a local anesthesia course. Dental hygienists who wish to obtain certification as public health dental hygiene practitioners will incur costs associated with the permit application and biennial renewal fees. There are currently approximately 8,163 licensed dental hygienists in this Commonwealth. The Board has no way of knowing how many dental hygienists will apply for the local anesthesia permit or the public health dental hygiene practitioner certificate.

The amendments will require the Board to develop applications for the local anesthesia permit, public health dental hygiene practitioner certificate, and biennial renewal forms for each of these credentials, but should not result in any additional legal, accounting or reporting requirements for the Commonwealth or the regulated community.

Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 4777, to IRRC, the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the HPLC for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC, the SCP/PLC and the HPLC with copies of comments received as well as other documents when requested. In preparing the final-form regulations, the Board has considered the comments received from IRRC, the HPLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), these final-form regulations were approved by the HPLC on October 7, 2009, and deemed approved by the SCP/PLC on November 4, 2009. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 5, 2009, and approved the final-form regulation.

Contact Person

Further information may be obtained by contacting Cynthia Montgomery, Regulatory Counsel, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The State Board of Dentistry finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

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

(3) The amendments to the final form rulemaking do not enlarge the purpose of proposed rulemaking published at 38 Pa.B. 4777.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this preamble.

Order

The State Board of Dentistry, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 33, are amended by amending §§ 33.1, 33.3, 33.102, 33.205, 33.301, 33.302 and 33.402, and by adding §§ 33.115, 33.116 and 33.205b to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

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

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

JOHN V. REITZ, D.D.S.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 6705 (November 21, 2009).)

Fiscal Note: Fiscal Note 16A-4617 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 33. STATE BOARD OF DENTISTRY

Subchapter A. GENERAL PROVISIONS

§ 33.1. Definitions.

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

* * * * *

General supervision—In a dental facility, supervision by a dentist who examines the patient, develops a treatment plan, authorizes the performance of dental hygiene services to be performed within 1 year of the examination, and takes full professional responsibility for the performance of the dental hygienist. In facilities identified in § 33.205(c)(2) and (3) (relating to practice as a dental hygienist), general supervision is defined in § 33.205(d)(2).

* * * * *

Local anesthesia—The elimination of sensations, especially pain, in one part of the body by regional injection of an anesthetic agent.

* * * * *

Public health dental hygiene practitioner—A licensed dental hygienist who is certified by the Board as having met the requirements of section 11.9 of the act (63 P. S. § 130j), and who is authorized to perform dental hygiene services in accordance with § 33.205b (relating to practice as a public health dental hygiene practitioner) without the authorization, assignment or examination of a dentist.

* * * * *

Subgingival agents—Therapeutic agents, including antimicrobials, antibiotics, antiseptics or anesthetics, placed below the free margin of the gingiva by a local delivery system or device, including injectable systems for ointments, gels or pastes, and degradable or nondegradable devices, such as fibers, films, strips, slabs, spheres, discs or chips.

§ 33.3. Fees.

(a) Following is the schedule of fees charged by the Board:

Application fee—dentists, dental hygienists and expanded function dental assistants.....	\$20
Application fee—certificate of public health dental hygiene practitioner.....	\$20
Application fee—local anesthesia permit.....	\$20
Criteria approval application fee—dentists, dental hygienists and expanded function dental assistants	\$35
Fictitious name registration fee.....	\$35
Verification of license, permit or registration fee—dentists, dental hygienists and expanded function dental assistants.....	\$15
Certification of scores, permit or registration fee—dentists, dental hygienists and expanded function dental assistants.....	\$25
Biennial renewal fee—dentists (for the renewal period beginning April 1, 2005, and thereafter)	\$250
Biennial renewal fee—dental hygienists	\$40
Biennial renewal fee—expanded function dental assistants	\$25
Biennial renewal fee—certificate of public health dental hygiene practitioner	\$40
Biennial renewal fee—local anesthesia permit	\$40
Temporary permit—expanded dental assistants	\$15
Application fee—dental radiology authorization	\$20
Notification application—postgraduate training or faculty member.....	\$25

(b) For fees related to anesthesia permits, refer to § 33.339 (relating to fees for issuance of permits).

Subchapter B. LICENSURE OF DENTISTS AND DENTAL HYGIENISTS

§ 33.102. Professional education.

(a) *Dentists.*

(1) Candidates for licensure as dentists shall show compliance with section 3(c) of the act (63 P. S. § 122(c)) which requires a diploma from an “approved institution or college,” by submitting certification of graduation from a dental school accredited or provisionally accredited by the Commission on Accreditation of the American Dental Association.

(2) Candidates for licensure who received their professional education outside the United States in a nonaccredited school may satisfy the education requirement by submitting their credentials to an accredited or provisionally accredited school and obtaining additional preclinical and clinical training that will lead to the awarding of the D.M.D. or D.D.S. degree by that school.

(b) *Dental hygienists.*

(1) Candidates for licensure as dental hygienists shall show compliance with section 3(d) of the act by submitting certification of graduation from a dental hygiene school accredited or provisionally accredited by an approved United States Department of Education-recognized regional accrediting agency or the Commission on Dental Accreditation (CODA) of the American Dental Association, if the school’s dental hygiene course of study comprises a minimum of 2 years of at least 32 weeks of at least 30 hours each week or its equivalent.

(2) Candidates for licensure who received their professional education outside the United States in a nonac-

credited school may satisfy the education requirement by submitting their credentials to an accredited or provisionally accredited school and obtaining additional training that will lead to the awarding of a degree in dental hygiene by that school.

(c) *Expanded function dental assistants.*

(1) Candidates for certification as expanded function dental assistants shall show compliance with section 3(d.1) of the act by submitting verification of one of the following:

(i) Graduation from an expanded function dental assisting program at a 2-year college or other institution accredited or provisionally accredited by an accrediting agency approved by the United States Department of Education Council on Postsecondary Accreditation which offers an Associate Degree.

(ii) Graduation from a dental hygiene school which required the successful completion of at least 75 hours of clinical and didactic instruction in restorative functions accredited or provisionally accredited by the Commission on Accreditation of the American Dental Association.

(iii) Completion of a certification program in expanded function dental assisting of at least 200 hours of clinical and didactic instruction from a dental assisting program accredited by one of the following:

(A) The Commission on Dental Accreditation of the American Dental Association.

(B) An accrediting agency approved by the United States Department of Education Council on Postsecondary Accreditation whose expanded function educational standards are approved by the Board.

(2) Candidates for certification who receive their professional education outside the United States or from a nonaccredited program may satisfy the education requirement by submitting their credentials to a program listed in paragraph (1) and obtaining additional training that will lead to the awarding of a degree by that school.

(3) This subsection does not apply to persons who are not required to meet the educational requirements under section (3)(d.1)(2) of the act.

§ 33.115. Local anesthesia permit.

(a) *Permit required.* A dental hygienist shall possess a current permit issued by the Board under this section before administering local anesthesia to a patient in a dental office. For purposes of this section, the term “local anesthesia” includes local infiltration anesthesia and intraoral nerve block anesthesia limited to the 2nd (maxillary) and 3rd (mandibular) divisions of the trigeminal nerve.

(b) *Application.* A dental hygienist who desires to obtain a permit to administer local anesthesia shall submit an application on a form provided by the Board, pay the permit fee prescribed in § 33.3 (relating to fees) and meet the qualifications for the permit as prescribed in this section.

(c) *Qualifications.* To obtain a local anesthesia permit, a dental hygienist shall:

(1) Hold a current license in good standing to practice as a dental hygienist in this Commonwealth.

(2) Hold current certification in Basic Life Support (BLS).

(3) Provide to the Board one of the following:

(i) Certification of education by the dental hygiene program on a form provided by the Board verifying that the dental hygienist graduated, within the 5 years immediately preceding the filing of the application for local anesthesia permit, from a dental hygiene program that meets the following criteria:

(A) The dental hygiene program is accredited by the American Dental Association's Commission on Dental Accreditation (CODA).

(B) The dental hygiene program included the successful completion of a didactic and clinical course in the administration of local anesthesia.

(ii) Certification of education by the dental or dental hygiene program on a form provided by the board verifying that the dental hygienist successfully completed, within the 5 years immediately preceding the filing of the application for local anesthesia permit, a course consisting of a minimum of 30 hours of didactic and clinical instruction in the administration of local anesthesia sponsored by a dental or dental hygiene education program accredited by CODA.

(iii) A certificate or letter of good standing from the proper licensing authority of another state, territory or district of the United States, or of a province or territory of Canada, verifying that the dental hygienist possesses a current license or permit issued by the proper licensing authority of another state, territory or district of the United States, or by the proper licensing authority of a province or territory of Canada, where the dental hygienist is authorized under the laws of that jurisdiction to administer local anesthesia, provided that the following additional conditions are met:

(A) The jurisdiction where the dental hygienist is so licensed or permitted requires completion of a course in the administration of local anesthesia accredited by CODA or by the Commission on Dental Accreditation of Canada (CDAC) prior to obtaining certification, endorsement or other such authority.

(B) The dental hygienist signs a certification statement on the application for a local anesthesia permit verifying that the dental hygienist actively engaged in the administration of local anesthesia under a current license or permit within the 5 years immediately preceding the filing of the application for a local anesthesia permit.

(C) The dental hygienist signs a certification statement on the application for a local anesthesia permit verifying that, at all times prior to filing the application for local anesthesia permit, the dental hygienist administered local anesthesia in accordance with all applicable laws and regulations of the jurisdiction where the dental hygienist is so licensed or permitted.

(D) The jurisdiction where the dental hygienist is so licensed or permitted verifies that there has been no disciplinary action taken against the dental hygienist relating to the administration of local anesthesia.

(d) *Expiration and biennial renewal.* A local anesthesia permit issued by the Board under this section will expire at the same time as the permit holder's dental hygiene license but may be renewed biennially at the same time the dental hygiene license is renewed. A dental hygienist who desires to renew a local anesthesia permit shall submit the following:

(1) A renewal application on a form provided by the Board.

(2) The permit renewal fee set forth in § 33.3.

(3) Proof of current certification in BLS.

§ 33.116. Certification of public health dental hygiene practitioners.

(a) *Application.* A licensed dental hygienist who desires to obtain certification as a public health dental hygiene practitioner shall submit an application on a form provided by the Board, pay the application fee prescribed in § 33.3 (relating to fees) and meet the qualifications for certification as prescribed in this section.

(b) *Qualifications.* To qualify for certification as a public health dental hygiene practitioner, a dental hygienist shall:

(1) Hold a current license in good standing to practice as a dental hygienist in this Commonwealth.

(2) Provide to the Board a certification statement signed by a licensed dentist verifying that the dental hygienist has completed 3,600 hours of practice as a licensed dental hygienist under the supervision of the licensed dentist.

(3) Provide to the Board documentation demonstrating that the dental hygienist has obtained professional liability insurance or is a named insured covered by a group policy in the minimum amount of \$1,000,000 per occurrence and \$3,000,000 per annual aggregate. This documentation may include a certificate of insurance issued by the insurer, or a copy of the declarations page of the professional liability insurance policy.

(c) *Expiration and biennial renewal.* A certificate issued by the Board under this section will expire at the same time as the certificate holder's dental hygiene license but may be renewed biennially at the same time the dental hygiene license is renewed. A dental hygienist who desires to renew a public health dental hygiene practitioner certificate shall submit the following:

(1) A renewal application on a form provided by the Board.

(2) The permit renewal fee set forth in § 33.3.

Subchapter C. MINIMUM STANDARDS OF CONDUCT AND PRACTICE

§ 33.205. Practice as a dental hygienist.

(a) *Scope of professional practice.* A dental hygienist may offer to perform or perform services that involve:

(1) Placement of subgingival agents.

(2) Periodontal probing, scaling, root planning, polishing or another procedure required to remove calculus deposits, accretions, excess or flash restorative materials and stains from the exposed surfaces of the teeth and beneath the gingiva.

(3) Evaluation of the patient to collect data to identify dental hygiene care needs.

(4) The application of fluorides and other recognized topical agents for the prevention of oral diseases.

(5) Conditioning of teeth for and application of sealants.

(6) Taking of impressions of the teeth for athletic appliances.

(7) Administration of local anesthesia by regional injection in accordance with § 33.115 (relating to local anesthesia permit).

(b) *Prohibition against independent practice.* A dental hygienist is prohibited from establishing or maintaining an office or other workplace for the provision of dental hygiene services separate or independent from the office or other workplace in which the supervision of a dentist is provided.

(c) *Practice sites.* A dental hygienist may engage in professional practice at the following sites under the supervision of a dentist as required in subsection (d):

(1) In dental facilities.

(2) In public or private institutions such as schools, hospitals, public health care agencies, nursing homes, mobile health units and homes for juveniles, the elderly and the handicapped.

(3) In institutions under the jurisdiction of Federal, State or local health agencies.

(d) *Supervision.*

(1) In subsection (c)(1) practice sites (dental facilities), a dental hygienist shall provide professional services as follows:

(i) A dental hygienist may provide the professional services identified in subsection (a)(1) under the direct supervision of a dentist, except that these services may be provided under general supervision if the dentist has reviewed the patient's dental records and medical history and has written a prescription or given an order for the placement of subgingival agents by the dental hygienist.

(ii) A dental hygienist may provide the professional services identified in subsection (a)(2) under the general supervision of a dentist when the patient is free of systemic disease or suffers from mild systemic disease, as determined by the dentist with input from the dental hygienist and upon review of the patient's medical history.

(iii) A dental hygienist may provide the professional services identified in subsection (a)(2) under the direct supervision of a dentist when the patient is suffering from systemic disease which is severe, incapacitating, or life threatening, as determined by the dentist with input from the dental hygienist and upon review of the patient's medical history.

(iv) A dental hygienist may provide the professional services identified in subsection (a)(3)—(6) under the general supervision of a dentist.

(v) A dental hygienist may provide the professional services identified in subsection (a)(7) only under the direct supervision of a dentist. For purposes of this subparagraph, direct supervision means supervision by a dentist who has examined the patient and authorized the procedure to be performed, is physically present in the dental facility and available during the performance of the procedure, and takes full professional responsibility for the completed procedure.

(2) In subsection (c)(2) and (3) practice sites (public and private institutions and institutions under the jurisdiction of Federal, State or local health agencies), a dental hygienist shall provide professional services as follows:

(i) A dental hygienist may provide the professional services identified in subsection (a)(1) under the direct supervision of a dentist, except that these services may be provided under general supervision if a dentist has

reviewed the patient's dental records and medical history and has written a prescription or given an order for the placement of subgingival agents by the dental hygienist.

(ii) A dental hygienist may provide the professional services identified in subsection (a)(3)—(6) under the general supervision of a dentist. For the purposes of this paragraph, general supervision is defined as supervision by a dentist who authorizes and takes full professional responsibility for the provision of the services. A single authorization may, when appropriate, apply to one or more classes or categories of students/patients.

(iii) A dental hygienist may provide the professional service identified in subsection (a)(7) only under the direct supervision of a dentist. For purposes of this subparagraph, direct supervision means supervision by a dentist who has examined the patient and authorized the procedure to be performed, is physically present and available during the performance of the procedure, and takes full professional responsibility for the completed procedure.

(3) For professional services not identified in subsection (a)(1)—(7) or § 33.302 (relating to auxiliary personnel performing radiologic procedures), the dentist shall compare the listed services and the supervision required with the unlisted service and utilize the appropriate supervision. Supervision for noncomparable services will be determined by the Board on a modality basis.

(4) Notwithstanding the supervision requirements in this subsection, a dental hygienist may provide oral health education and perform preliminary dental screenings in any setting without the supervision of a dentist.

§ 33.205b. Practice as a public health dental hygiene practitioner.

(a) *Scope of professional practice.* A public health dental hygiene practitioner may perform the dental hygiene services set forth in § 33.205(a)(2)—(6) (relating to practice as a dental hygienist) in the practice settings identified in subsection (c) without the authorization, assignment or examination by a dentist. A public health dental hygiene practitioner may perform the dental hygiene services set forth § 33.205(a)(1) and (7) in accordance with § 33.205(d).

(b) *Requirement of referral.* A public health dental hygiene practitioner shall refer each patient to a licensed dentist on an annual basis. Documentation of the referral must be maintained in the patient's dental record. The failure of the patient to see a dentist as referred will not prevent the public health dental hygiene practitioner from continuing to provide dental hygiene services to the patient within the scope of professional practice set forth in subsection (a).

(c) *Practice settings.* A public health dental hygiene practitioner may perform dental hygiene services without the supervision of a dentist in the following practice settings:

(1) Public and private educational institutions that provide elementary and secondary instruction to school aged children under the jurisdiction of the State Board of Education, and in accordance with all applicable provisions of the Public School Code of 1949 (24 P. S. §§ 1-101—27-2702.), the regulations relating to the certification of professional personnel in 22 Pa. Code Chapter 49 (relating to certification of professional personnel), and the regulations of the Department of Health in 28 Pa. Code § 23.35 (relating to dental hygienists).

(2) Correctional facilities. For purposes of this section, correctional facilities include Federal prisons and other institutions under the jurisdiction of the United States Department of Justice, Bureau of Prisons which are located within this Commonwealth; institutions, motivational boot camps and community corrections centers operated or contracted by the Department of Corrections; and jails, prisons, detention facilities or correctional institutions operated or contracted by local, county or regional prison authorities within this Commonwealth.

(3) Health care facilities, as defined in section 802.1 of the Health Care Facilities Act (35 P. S. § 802a).

(4) Personal care homes, as defined in section 1001 Public Welfare Code (62 P. S. § 1001).

(5) Domiciliary care facilities, as defined in section 2202-A of The Administrative Code of 1929 (71 P. S. § 581-2).

(6) Older adult daily living centers, as defined in section 2 of the Older Adult Daily Living Centers Licensing Act (62 P. S. § 10225.102).

(7) Continuing-care provider facilities, as defined in section 3 of the Continuing-Care Provider Registration and Disclosure Act (40 P. S. § 3203).

(8) *Federally-qualified health centers*, as defined in section 1905(1)(2)(B) of the Social Security Act (42 U.S.C.A. § 1369(1)(2)(B)). For purposes of this section, the term includes Federally-qualified health center lookalikes that do not receive grant funds under section 330 of the Public Health Service Act (42 U.S.C.A. § 254b).

(9) Public or private institutions under the jurisdiction of a Federal, State or local agency.

(10) Free and reduced-fee nonprofit health clinics.

(d) *Recordkeeping*. A public health dental hygiene practitioner shall maintain a dental record which accurately, legibly and completely reflects the dental hygiene services provided to the patient. The dental record must be retained for at least 5 years from the date of the last treatment entry. The dental record must include, at a minimum, the following:

(1) The name and address of the patient and, if the patient is a minor, the name of the patient's parents or legal guardian.

(2) The date dental hygiene services are provided.

(3) A description of the treatment or services rendered at each visit.

(4) The date and type of radiographs taken, if any, and documentation demonstrating the necessity or justification for taking radiographs, as well as the radiographs themselves.

(5) Documentation of the annual referral to a dentist.

Subchapter D. PERFORMANCE OF RADIOLOGIC PROCEDURES

§ 33.301. Definitions.

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

Ionizing radiation—

(i) Gamma rays and X-rays; alpha and beta particles, high-speed electrons, neutrons, protons and other nuclear particles.

(ii) The term does not include ultrasound, sound or radio waves or visible, infrared or ultraviolet light.

Premises of the dentist—A location at which a dentist practices dentistry, other than a health care facility regulated by the Department of Health, Department of Public Welfare or the Federal government.

Radiologic procedure—A dental diagnostic procedure that utilizes ionizing radiation.

Radiologic procedure examination—The Radiation Health and Safety examination administered by The Dental Assisting National Board, Inc. (DANB).

§ 33.302. Requirements for personnel performing radiologic procedures.

(a) Public health dental hygiene practitioners may perform radiologic procedures in those settings set forth in § 33.205b(c) (relating to practice as a public health dental hygiene practitioner) without the supervision of a dentist. Public health dental hygiene practitioners shall take radiographs under this section in accordance with the following:

(1) Within 30 days of taking a radiograph, the public health dental hygiene practitioner shall provide to the patient a copy of the radiograph and a referral to a dentist indicating the reason the radiograph was taken and any observations noted by the public health dental hygiene practitioner.

(2) The public health dental hygiene practitioner shall instruct the patient to consult with the dentist as indicated on the referral form.

(3) Upon presentation by the patient, the dentist shall perform an examination of the patient, review the radiograph and report any diagnosis to the public health dental hygiene practitioner and the patient.

(b) Dental hygienists may perform radiologic procedures in any setting under the general supervision of a licensed dentist. For the purpose of this subsection, "general supervision" means supervision by a dentist who examines the patient, develops a dental treatment plan, authorizes the performance of the radiologic services to be performed within 1 year of the examination, and takes full professional responsibility for performance of the dental hygienist.

(c) Auxiliary personnel who have passed the radiologic procedure examination adopted by the Board may perform radiologic procedures on the premises of a dentist under the direct supervision of a dentist. The dentist shall be on the premises when a radiologic procedure is performed, but is not required to personally observe performance of the procedure.

Subchapter F. CONTINUING DENTAL EDUCATION

§ 33.402. Continuing education subject areas.

(a) Except as provided in subsections (c)—(e), the required credit hours shall be completed in subjects which contribute directly to the maintenance of clinical competence of a dentist, dental hygienist, public health dental hygiene practitioner or expanded function dental assistant. Examples of acceptable subjects include:

(1) Diagnosis and treatment of oral pathosis.

(2) Clinical and technological subjects.

(3) Emergency procedures excluding hours required for cardiopulmonary resuscitation (CPR) certification.

(4) Infection control.

(5) Abuse and neglect.

(6) Medical and scientific subjects.

(7) Laws and regulations pertaining to dentists, dental hygienists and expanded function dental assistants.

(b) Credit hours will not be awarded in nonclinical subjects, including:

- (1) Billing.
- (2) Office management.
- (3) Practice building.
- (4) Insurance reimbursement.
- (5) Communication skills, except as provided in subsection (c).

(c) A dental hygienist may complete no more than three of the required 20 hours of continuing education in courses relating to communication skills.

(d) A public health dental hygiene practitioner shall complete five of the required 20 hours of continuing education in public health-related courses.

(e) A school dental hygienist who is certified as a public health dental hygiene practitioner and who, as a certified educational specialist is required to obtain continuing professional education under the act and under section 1205.2 of the act Public School Code of 1949 (24 P. S. § 12-1205.2) may submit evidence of the completion of education courses approved for certification by the school district to meet the 20-hour continuing education requirement.

(F) A dental hygienist who holds a local anesthesia permit shall complete three of the required 20 hours of continuing education in courses related to the administration of local anesthesia, including pharmacology or other related courses.

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STATE BOARD OF NURSING [49 PA. CODE CH. 21]

Certified Registered Nurse Practitioners; General Revisions

The State Board of Nursing (Board) amends Chapter 21, Subchapter C (relating to certified registered nurse practitioners), to read as set forth in Annex A.

Effective Date

The amendments will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

The amendments are authorized under sections 2.1(k) and (l) and 8.1—8.3 of The Professional Nursing Law (act) (63 P. S. §§ 212.1(k) and (l) and 218.1—218.3).

Background and Purpose

The Board and the State Board of Medicine jointly promulgated regulations regarding certified registered nurse practitioner (CRNP) practice at 30 Pa.B. 5943 (November 18, 2000), under statutory provisions that provided for joint regulation of CRNPs by the Board and the State Board of Medicine. The act of December 9, 2002 (P. L. 1567, No. 206) (Act 206), amended the act to give the Board exclusive jurisdiction over the regulation of CRNPs. The act was further amended by the act of July 20, 2007 (P. L. 318, No. 48) (Act 48). The Board's proposed

rulemaking implementing the 2002 and 2007 amendments to the act was published at 38 Pa.B. 6161 (November 8, 2008).

During the 30-day public comment period, the Board received 218 letters from the general public and 471 letters from nurses supporting the proposed amendments. The Board received about 20 letters from nursing and hospital groups supporting the proposed rulemaking and about 53 letters from physicians and pharmacists supporting the proposed rulemaking. The Board also received about 23 letters from physicians and pharmacists opposed to the proposed rulemaking and letters from five physician groups opposed to the proposed rulemaking. In addition to considering all of the comments received from the public, the Board met with representatives from the Pennsylvania Coalition of Nurse Practitioners and the Pennsylvania Medical Society regarding amendments to the final-form rulemaking.

The existing regulations prevented the effective use of CRNPs to the full extent of their education, skills and abilities, thereby depriving the citizens of this Commonwealth necessary, high quality care. More than half of states' laws permit CRNPs to practice with fewer restrictions on their ability to order diagnostic tests, treat illnesses and prescribe medications to patients. *The Pearson Report*, *The American Journal for Nurse Practitioners*, vol. 13, no. 2, February 2009. To the Board's knowledge, every study completed has concluded that CRNPs provide safe and effective care, even when practicing independently from physicians. *Cochrane Database of Systematic Reviews* 2004, Issue 4, Art. NO.: CD00127. DOI: 10.1002/14651858.CD00127.pub2. There is no evidence that expanded CRNP prescribing endangers the public. The Board's final-form rulemaking increases access to care while protecting the public.

Response to Comments

Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee did not comment. The following is a summary of the comments and the Board's response.

Approximately 53 physicians and pharmacists wrote letters in support of the proposed rulemaking. Of this number, 49 noted that the proposed amendments would benefit patients and that the current regulations, specifically the limitations on CRNPs' prescription of controlled substances, create a financial hardship to patients and are unnecessary for patient safety. Thirteen physicians specifically noted that removing the physician—CRNP ratio will improve healthcare and allow more CRNPs to serve some of the neediest patients. Sixteen of the group noted that the education and training of CRNPs prepares CRNPs to complete medical examinations and to effectively diagnose and treat patients. These physicians practice successfully with CRNPs.

About 20 nursing and health care organizations and facility groups wrote in support of the proposed rulemaking. The Hospital and Healthsystem Association of Pennsylvania (HAP) noted that the Board had substantially improved the existing regulations by reiterating that a CRNP can issue written and oral orders for medical, diagnostic and therapeutic measures. HAP also supported the deletion of the provisions related to CRNP identification and the Board's proposed revision on the restrictions on CRNPs prescribing controlled substances and dispensing professional drug samples.

Several health systems wrote in support of the proposed rulemaking. The College of Health Professions at Temple University applauded the Board's deletion of the ratio of nurse practitioners to physicians, stating: "Please eliminate false ratios that restrict the number of nurse practitioners that any one physician can collaborate with—these health teams must be unhindered in their work." The Safe Harbor Behavioral Health organization applauded the Board's elimination of the CRNP-physician ratio and the elimination of the 72-hour restriction on prescribing Schedule II controlled substances and 30-day restriction on Schedule III—IV controlled substances. This organization stated that the current restrictions on CRNPs negatively impacts children with ADHD who are prescribed Schedule II medications and patients with chronic anxiety disorders that are prescribed schedule IV medications.

The Rothman Institute in Philadelphia wrote in support of the 30-day prescriptive privileges for Schedule II controlled substances, noting that CRNPs determine post-surgical discharge pain medications for patients based on the CRNPs frequent evaluation and adjustment of the medication during the hospital stay. Rothman Institute wrote that the current restriction on Schedule III and IV controlled substances are "barriers [that] create an unnecessary burden on the patients." These views were echoed consistently throughout the comments received from members of the public.

The Pennsylvania Medical Society (PMS) submitted comprehensive comments. The Board met with representatives from PMS twice to discuss their concerns and specific language in the regulation. Most of the issues raised by PMS were resolved through these meetings and amendments to the proposed rulemaking reflect these resolutions. PMS expressed to the Board its continuing concern with the provision related to the length of treatment with Schedule II controlled substances and the deletion of the ratio limiting the number of CRNPs with which a physician may collaborate. The Board's rationale in maintaining the rulemaking as proposed on these issues is discussed fully below.

The comments submitted by the HPLC and IRRC reflect and summarize many of the comments made by physician groups in opposition to some provisions of the proposed rulemaking. The HPLC first commented that eliminating the regulatory restriction that requires that all collaborative agreements be in writing "does not provide any consumer protection, cannot be proven if called into question, does not protect the physician or the CRNP, and could cause problems with discipline by the board." IRRC noted that while it did not question the Board's authority to allow oral collaborative agreements, it questioned the reasonableness of permitting oral collaborative agreements. The Board believes that the act requires a written collaborative agreement only for CRNPs who have prescriptive authority. Nevertheless, in light of the comments by the HPLC and IRRC, the Board has amended its proposed rulemaking to require that all collaborative agreements be in writing.

The HPLC next urged the Board "to continue to specify the minimum requirements for what needs to be contained within the non-prescriptive authority collaborative agreement" by including the definition of "collaborative agreement" or specifying the terms in a separate section. The Board has repeated the statutory definition for "collaboration" and has added a definition for "collaborative agreement," which references the minimum requirements of collaboration. IRRC suggested that the details

found in section 8.3(a)(2)(i)—(iii) of the act (63 P.S. § 218.3(a)(2)(i)—(iii)) addressing minimum requirements for a prescriptive authority collaborative agreement, be repeated in the Board's regulations. The Board does not believe it is necessary to repeat these statutory provisions because CRNPs are required to submit their prescriptive authority collaborative agreements on a form provided by the Board and the form includes the three provisions found in section 8.3(a)(2)(i)—(iii) of the act, as well as additional information that must be submitted to the Board.

The HPLC noted that § 21.261(c) (relating to use of title; authorization to practice) should refer to "individuals" rather than "persons". The Board amended its proposal to refer to an individual.

Regarding § 21.282a (relating to CRNP practice), the HPLC suggested that the section be amended to specify that a CRNP may only perform the listed tasks if the CRNP is acting within the scope of the CRNP's specialty and collaborative agreement. Because section 8.2(a) and (b) of the act (63 P.S. § 218.2(a) and (b)) provide that CRNPs may only act in the expanded role in their specialties and in accordance with their collaborative agreements, the Board had thought it redundant to repeat these statutory provisions. Given the concerns raised by the commentators, the Board has amended § 21.282a(b) to repeat the statutory limitations, and apply the limitations to all of the enumerated functions of a CRNP.

In addition, it was strongly suggested that the Board should repeat, in its regulation, the list of tasks that a CRNP may perform enumerated by the Legislature in section 8.2(c.1) of the act. Based on this urging, the Board reproduced the list from section 8.2(c.1) in § 21.282a(b)(8)—(15). After the Board added the list, the Department of Public Welfare suggested that the Board should mention in this preamble that Federal Medicaid or Medicare, or both, law currently only allows providers of home health and hospice care to receive reimbursement for patients whose initial order and recertification order was written by a physician. CRNPs and their collaborating physicians should consider whether these providers can obtain Federal reimbursement when writing these initial or recertification orders.

Regarding § 21.284(e) (relating to prescribing and dispensing parameters), the HPLC asked if the changes in the length of time for which a CRNP may prescribe controlled substances is a change that must be submitted to the Drug Review Committee (DRC). IRRC asked why the changes proposed by the Board are not additions or deletions to the categories of drugs. Section 8.4 of the act (63 P.S. § 218.4), requires the Board to submit "any proposed change to the categories of drugs that CRNPs were authorized to prescribe under the board regulations in effect on the effective date of this section. The board shall not change, by addition or deletion, the categories of authorized drugs without prior approval of the Drug Review Committee." The categories of drugs were identified in § 21.284(a) of the jointly promulgated regulations—the categories identified in the American Hospital Formulary Service Pharmacologic-Therapeutic Classification.

In the fall of 2007, the Board proposed to the DRC to amend the regulations to provide for a negative formulary rather than a positive formulary, and to increase the treatment time periods for controlled substances. The proposal was deemed approved. The Board then decided to maintain the positive formulary and submitted the

version published as proposed to the Department of Health (Department). Upon review by the Department, the Board was advised that the DRC approval was not required. The Office of Attorney General (OAG) was fully apprised of this matter by both the Board and the Department during its review of the proposed rule-making, and the OAG approved the legality of the proposal.

The HPLC asked about the current acceptable standards for prescribing controlled substances and the justifications the Board used to suggest the changes proposed in the proposed rulemaking. CRNPs possess the knowledge and skills to safely prescribe controlled substances for up to these longer time frames. Board research has found that every academic study that has been conducted has concluded that CRNPs prescribe safely. CRNPs have been prescribing for these longer periods without issue in many other states for years. The current restrictions are unnecessary and cause significant and unnecessary delays in treatment and expenses to the public.

The HPLC next questioned the deletion of § 21.286(a) and (c) (relating to identification of the CRNP), and the changes to § 21.286(b). Section 21.286(a) provided that a patient must be informed at the time the patient makes an appointment that the patient will be seen by a CRNP. The Board is deleting this subsection. Clerical staff makes patient appointments; therefore, it would be unfair to discipline a CRNP for an inadvertent omission by a staff member employed by a facility or office. Similarly, the State Board of Medicine's regulations do not provide for disciplining a physician assistant for a misstatement by clerical staff.

Section 21.286(b) provided that a CRNP wear a name tag with the title "certified registered nurse practitioner." The title for a CRNP is "CRNP." CRNPs working in pediatrics are unable to wear name tags because pediatric patients try to pull them off and can be injured by a name tag or its pin. In consultation with the PMS, the Board proposes to delete this provision and provide instead that CRNPs comply with State, Federal and facility regulations regarding identification of personnel to provide up-to-date provisions applicable to all personnel.

Section 21.286(c) regarding identification of CRNPs who hold doctoral degrees. CRNPs are already required, under subsection (b) to be appropriately identified. The Board finds it unnecessary to have a second provision regarding the identification of CRNPs. The Board's proposed amendment is consistent with regulations of other healthcare practitioners, such as optometrists and podiatrists, which require the practitioners to use their title in addition to "Dr."

The HPLC next commented on the Board's rescission of § 21.287 (relating to physician supervision). This section was promulgated under the old statutory scheme, wherein physicians supervised CRNPs. Section 21.287 provided that a physician could not supervise more than four CRNPs who prescribe and dispense drugs at any one time. In its December 2002 amendments to the act, the General Assembly deleted the physician supervision provisions. Under the new statutory scheme, CRNPs practice in the expanded role of an advanced practice nurse in collaboration with physicians. Section 21.287 is outdated and contrary to the statutory scheme enacted in December 2002.

The HPLC stated that it "believes [the § 21.287] restriction is necessary for patient safety and to ensure

the quality of care." The HPLC did not explain the basis of this belief. Many nurses, physicians, group practices and organizations submitted comments to the contrary, and provided examples of ways that the § 21.287 restriction created a situation where patients were unable to receive the care that they needed and increased the risk of harm to patients. The Board is not aware of any research that has demonstrated that a limitation on the number of CRNPs collaborating with one physician increases patient safety or quality of care. No group or individual who submitted comments objecting to the proposed amendment cited evidence in any research that suggests that deleting this provision would compromise patient safety or quality of care. CRNPs practice in many other states without this arbitrary restriction, and there is no evidence that patients in these states receive a lower quality of care than patients in this Commonwealth. The Board respectfully rejects the HPLC's recommendation.

The HPLC next addressed § 21.288 (relating to CRNP standards of conduct), and suggested that the section should specify that practice by a CRNP must be within the specifications of the CRNP's collaborative agreement. The Board has adopted the recommendation.

The HPLC next questioned the rescission of §§ 21.291—21.294. These provisions purported to place requirements on health care facilities. Health care facilities are regulated by the Department of Health. The Board does not have any regulatory authority over health care facilities. The HPLC commented that "[s]ince the statutory requirement on which these sections are based continues to apply, the Committee suggests retaining these sections." By Act 48 of 2007, the General Assembly provided that section 8.2(c.2) of the act could not be construed to "[s]upersede the authority of the Department of Health and the Department of Public Welfare to regulate the types of health care professionals who are eligible for medical staff membership or clinical privileges" or to "[r]estrict the authority of a health care facility to determine the scope of practice and supervision or other oversight requirements for health care professionals practicing within the facility." (63 P. S. § 218.2(c.2)). The Board does not believe that these provisions give the Board the authority to direct the formation, composition, meeting dates or duties of committees that may operate within a health care facility to make determinations about staff within the facility. Finally, the Hospital and Healthsystem Association of Pennsylvania supports the deletion of these provisions. The Board respectfully declines the HPLC's suggestion.

The HPLC noted that the Board used, in § 21.351(1) (relating to penalties for violation), both the abbreviation CRNP and the words certified registered nurse practitioner, and suggested that the Board be consistent. Although the Board submitted the proposed rulemaking to the HPLC using both the abbreviation and the words, the Legislative Reference Bureau corrected this error and only the abbreviation was used in the published version of the proposed rulemaking. The HPLC next noted that § 21.351 did not require CRNP practice to be consistent with the collaborative agreement. The Board has added a provision explaining that a CRNP may be subject to discipline if the Board finds that the CRNP practiced in violation of the collaborative agreement.

Finally, the HPLC suggested that the Board require a CRNP to only form collaborative agreements with a physician who holds an unrestricted license. The Board

understands the Committee's concern, and has added to § 21.282a(a) a provision that a CRNP may only collaborate with physicians who hold a current license. Physicians who hold a current license are authorized by the State Board of Medicine or State Board of Osteopathic Medicine to practice in this Commonwealth. At the meeting held by the Board on April 2, 2009, the PMS recommended that the Board prohibit CRNPs from collaborating with certain types of medical and osteopathic medical license holders, such as physicians participating in residency programs. The Board believes that the State Boards of Medicine and Osteopathic Medicine are in a better position to determine which of their licensee classes may enter into collaborative agreements with CRNPs.

In addition to voicing some of the same concerns as the HPLC, IRRC asked why the definition of "direction" was being deleted from the Board's regulations. Act 206 amended the act by deleting the definition of "direction" and replacing that definition with the definition of "collaboration." The amendment to the Board's regulations conforms the regulations to the statute.

IRRC suggested that the Board specify in § 21.273(a) (relating to application for certification) the kinds of documents that a CRNP may submit to the Board with the application for certification as a CRNP to verify compliance with the statutory provision mandating liability insurance. CRNPs, like physicians, will not be required to submit any documents. When Act 48 of 2007 became effective, the Board added a verification statement to its application that was modeled after the verification statement used on the application for physicians.

IRRC suggested that the Board list the eight activities set forth in section 8.2(c.1) of the act that a CRNP may perform in its list of permissible activities in § 21.282a(b). The Board has added the statutory provisions to its regulation. IRRC noted that it found the term "other laws and regulations" and "pharmaceutical treatments" vague terms. The Board has replaced the reference to other laws and regulations with a reference to the collaborative agreement. The Board has determined that it need not amend the term pharmaceutical treatments, that is, treatments utilizing pharmaceutical agents or drugs, because the term is not vague to health care practitioners.

Regarding § 21.283, IRRC asked what was meant by the term "oral orders" and recommended that the term be defined. The term "oral order" is already defined in § 21.141 (relating to definitions) as a "spoken order issued by a practitioner authorized by law and by facility policy to issue orders for medical and therapeutic measures." The definition was added to the regulations related to Licensed Practical Nurses (LPNs) when those regulations were amended at 33 Pa.B 6219 (December 20, 2008) because LPNs had not previously been permitted to take oral orders. Because professional nurses (RNs) have always been permitted to take oral orders, the term is not new to CRNPs and a definition is not required.

IRRC recommended that the Board add a definition for the term "categories of drugs" to avoid further confusion if this section is amended in the future. Section 21.284(a) provides that the categories are those identified in the American Hospital Formulary Service Pharmacologic-Therapeutic Classification.

IRRC next recommended that the Board retain the language in existing § 21.284(d), which mandates certain

conduct by physicians. The Board does not believe that it has the statutory authority to mandate conduct by physicians. The Board's regulations already mandate that CRNPs act to safeguard patients. This mandate would, of course, require a CRNP to take action to safeguard a patient for whom a prescription was erroneously issued, regardless of whether the prescription was erroneously issued by the CRNP, another CRNP or a physician.

Regarding the new time periods for which a CRNP is permitted to write a prescription for controlled substances, IRRC asked the Board to further explain why it was deleting the requirement that a CRNP notify the collaborating physician of the prescription and address why it believes CRNPs have the appropriate education and training to administer these provisions without the oversight of a physician.

In considering the comments to § 21.284(d), specifically the notification provision, the Board held two meetings with representatives from PMS. After the first meeting, at which the representatives raised their concerns about the deletion of the provision, the Board agreed to include a provision requiring that CRNPs notify their collaborating physician within 24 hours when a CRNP prescribes a Schedule II drug for a 30-day period or a Schedule III—IV drug for a 90-day period. The PMS representatives then advised the Board that they objected to the notification provision because it might increase physician liability. At the second meeting held with the PMS representatives, the representatives and the Board agreed that the period of time for which a CRNP may prescribe controlled substances, subject to the 30-day and 90-day limitations, is a matter that could be addressed individually between CRNPs and physicians. Therefore, the Board added language to the revised subsection (d) to provide that the CRNP may prescribe controlled substances "as identified in the collaborative agreement." When the regulation becomes final, the Board will amend the prescriptive authority collaborative agreement form consistent with this provision.

IRRC asked what education was required for CRNPs. CRNPs must complete a minimum of a master's degree or post-master's degree certificate in nursing that prepared the nurse to practice as a CRNP. In addition, CRNPs must obtain and maintain National certification in their specialty by an organization that requires passing an examination. To maintain National certification requires significant continuing education in the specialty. CRNPs have expertise as clinicians and have an excellent record of providing effective and safe care to patients.

In response to IRRC's inquiry whether CRNPs can safely administer these provisions "without the oversight of a physician," the Board points out that CRNPs practice safely and effectively in most other states without the level of physician involvement as is in this Commonwealth. The qualifications met by CRNPs in this Commonwealth are similar to the qualifications to practice as a prescribing CRNP in the other 50 states, all of which, plus the District of Columbia and the United States Virgin Islands, have prescriptive authorization for CRNPs. The prescriptive authority granted to CRNPs varies from state to state. Seven states and this Commonwealth restrict CRNP prescribing to a formulary, 12 states authorize CRNPs to prescribe consistent with protocols, 27 states authorize CRNPs to prescribe consistent with their collaborative agreements, 16 states authorize CRNPs to prescribe independently within their specialty, and seven states authorize CRNPs to prescribe independently both within and outside their specialty.

CRNPs were authorized to prescribe in 48 states prior to obtaining prescriptive authority authorization in this Commonwealth.

A comprehensive study of disciplinary actions imposed on CRNPs, conducted over a 2-year period from data from 38 boards of nursing that license or certify 86,940 CRNPs, found that 0.12% of CRNPs were disciplined for exceeding their scope of practice. Hudspeth, R., (2007). *Advanced Practice Registered Nurse Discipline 2003-2004*. Institute of Regulatory Excellence, National Council of State Boards of Nursing. In this Commonwealth, CRNPs have held prescriptive authority since 2000. There are approximately 4,150 CRNPs with prescriptive authority in this Commonwealth. From 2000 to date, three CRNPs have been charged with improper prescribing and found guilty by the Board. Each case involved a single instance of improper prescribing as an accommodation to a relative or friend.

The extremely low rate of improper prescribing cases brought in this Commonwealth echoes the findings of numerous research studies—that CRNPs practice—including prescribing—safely, and with virtually identical patient outcomes. According to a study published in the *Journal of the American Medical Association in 2000*, the data “strongly supported the hypothesis that, using the traditional medical model of primary care, patient outcomes for nurse practitioner and physician delivery of primary care do not differ.” *Primary care outcomes in patients treated by nurse practitioners or physicians*. JAMA 2000; 283(1):59-68. Other studies have reached a similar conclusion in particular fields. (For example, *Prescribing patterns for gerontological nurse practitioners in the United States*; Journal of the American Academy of Nurse Practitioners 20 (2008) 28-34; *Quality of HIV care provided by nurse practitioners, physician assistants, and physicians*; Annals of Internal Medicine 2005; 143(10):729-735; *Improving the effectiveness of screening for colorectal cancer by involving nurse clinicians*. Medical Care 1991; 29(1):1-5; and *Pediatric trauma nurse practitioners provide excellent care with superior patient satisfaction for injured children*; Journal of Pediatric Surgery (2006) 41, 277-281). A comprehensive survey of 4,253 articles related to nurse practitioner care, including nurse practitioner prescribing, concluded that “appropriately trained nurses can produce as high quality care as primary doctors and achieve as good health outcomes for patients.” Substitution of doctors by nurses in primary care. *Cochrane Database of Systematic Reviews* 2004, Issue 4, Art. NO.: CD00127. DOI: 10.1002/14651858.CD00127.pub2.

IRRC asked the Board to consider alternative language offered by some of the commentators to this subsection, specifically the suggestion by PMS that CRNPs be permitted to write a prescription for a 7-day dosage, with proper notification to the physician and for 30-day dosage for ongoing therapy as approved by the collaborating physician. The Board considered the suggestions. In the face of the many comments from physicians, nurses and patients applauding the Board’s proposal as necessary to ensure adequate access to safe and effective healthcare for this Commonwealth’s citizens, the Board determined that it should not amend its proposal.

IRRC noted that the preamble and proposed Annex were inconsistent regarding whether the prescription blanks of CRNPs must identify the collaborating physician. IRRC asked what was the Board’s intention for § 21.284a(b)(1) and suggested that the name of the collaborating physician should be on the prescription as

finally written. Section 21.284a(b)(1) requires prescriptions to bear the name, title and Pennsylvania CRNP certification number of the CRNP. Because CRNPs often collaborate with multiple physicians, it would be both impractical and confusing to patients and pharmacists for CRNPs to have multiple prescription pads. The Board has made available, on its public verification web site, information on the certification of CRNPs, including, where applicable, the identity of a CRNP’s collaborating physician.

IRRC next addressed § 21.285 (relating to prescriptive authority collaborative agreements) and expressed concern that the Board proposed to delete subsections (a)(4) and (6). IRRC asked the Board to further explain why it is in the public interest to delete these two sections. Section 21.285(a)(4) required physicians to attest to the physician’s knowledge and experience with drugs that a CRNP may prescribe. The Board does not believe it is the appropriate body to require physicians to attest to their knowledge of drugs. Section 21.285(a)(6) provided that the collaborative agreement specify the conditions under which a CRNP could prescribe Schedule II controlled substances. A similar provision has been added to § 21.284(d).

IRRC also noted that subsection (a)(6) is being amended to limit access to a prescriptive authority collaborative agreement to any license pharmacist or pharmacy and asked why the Board would not maintain the existing regulatory language to allow patients access to information they may need. The Board’s proposed rulemaking required CRNPs to make the collaborative agreement available for inspection, including to patients. In addition, the Board’s proposed rulemaking required CRNPs to provide a copy of the collaborative agreement to pharmacists and pharmacies at no charge. The Board has added additional language to clarify its original intent.

The Board approved the final version of the rulemaking for promulgation at its meeting on May 5, 2009. On May 6, 2009, the Board received communication from the Pennsylvania Society of Anesthesiology (Society), expressing concern that § 21.17 (relating to anesthesia), which prohibits all nurses except Certified Registered Nurse Anesthetists (CRNAs) and certain nurse anesthesia students and graduates from administering anesthesia, might not be considered applicable to CRNPs in light of the deletion from § 21.284(b)(7) of the prior prohibition on CRNPs’ prescribing general anesthetic drugs. Through discussions between representatives of the Board and representatives of the Society, it was determined that the Board and the Society agreed on the interaction of these sections of the regulations. It was also agreed that the preamble to this final-form rulemaking should further explain the role of CRNPs in the administration of general anesthetic drugs, but that the final rulemaking should not be amended. The Pennsylvania Coalition of Nurse Practitioners also provided input on this matter. The Board approved this addition to the preamble at its June 4, 2009, meeting.

In accordance with sections 8.2(a), (b) and (c)(1) and (2), and 8.3(a)(2) of the act, CRNPs practice within their specialty, consistent with their collaborative agreements, subject to other statutes and regulations, and in accordance with the policies of health care facilities in which they practice. The amendment to § 21.284(b)(7) does not alter the § 21.17 provisions that limit the administration of anesthesia by licensed nurses to CRNAs. The amendment to § 21.284(b)(7) also does not affect the provisions

of § 21.413(d) (relating to interpretations regarding the administration of drugs—statement of policy), which set forth the scope of practice of the professional nurse related to administering intravenous conscious sedation medications during minor therapeutic and diagnostic procedures.

CRNPs may administer central nervous system agents classified as general anesthetics to intubated patients in a health care facility and, when credentialed by their employer, may administer central nervous system agents classified as general anesthetics for sedation in connection with procedures being performed in a health care facility in collaboration with a physician trained in airway management or with the immediate availability of a CRNA or anesthesiologist.

Fiscal Impact and Paperwork Requirements

The amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions, because the costs of the Board’s activities are supported by fees charged to licensees and others who benefit from specific activities of the Board. The amendments will impose no additional paperwork requirements upon the Commonwealth or political subdivisions.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of this proposed rulemaking, published at 38 Pa.B. 6161, to IRRC and the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 4, 2009, the final-form rulemaking was deemed approved by the HPLC and SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 5, 2009, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Board finds that:

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

(2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

(3) The amendments made to the final-form rulemaking do not enlarge the original purpose of the proposed rulemaking as published at 38 Pa.B. 6161.

(4) These amendments to the regulations of the Board are necessary and appropriate for the regulation of the practice of CRNPs in this Commonwealth.

Order

The Board therefore orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by amending §§ 21.251, 21.261, 21.271, 21.283—21.286, 21.331, 21.332, 21.332a, 21.333, 21.334 and 21.351; by adding §§ 21.273, 21.282a, 21.284b and 21.288; and by deleting §§ 21.252, 21.272, 21.281, 21.282, 21.287, 21.291—21.294, 21.311 and 21.321 to read as set forth in Annex A.

(b) The Board shall submit a copy of this order and Annex A to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

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

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

ANN L. O’SULLIVAN, PhD, FAAN, CRNP,
Chairperson

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 6705 (November 21, 2009).)

Fiscal Note: Fiscal Note 16A-5124 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter C. CERTIFIED REGISTERED NURSE PRACTITIONERS

GENERAL PROVISIONS

§ 21.251. Definitions.

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

Act—The Professional Nursing Law (63 P. S. §§ 211—225.5).

Board—The State Board of Nursing of the Commonwealth.

CRNP—Certified Registered Nurse Practitioner—A professional nurse licensed in this Commonwealth who is certified by the Board in a specialty and who, while functioning in the expanded role as a professional nurse, performs acts of medical diagnosis or prescription of medical therapeutic or corrective measures in collaboration with a physician licensed to practice in this Commonwealth and in accordance with the act and this subchapter. Nothing in this subchapter is to be deemed to limit or prohibit a professional nurse from engaging in those activities which constitute the practice of professional nursing as defined in section 2 of the act (63 P. S. § 212).

Certification—The authorization granted by the Board to a professional nurse who has demonstrated the qualifications for recognition as a CRNP.

Collaboration—A process in which a CRNP works with one or more physicians to deliver health care services within the scope of the CRNP's expertise. The process includes the following:

(i) Immediate availability of a licensed physician to a CRNP through direct communications or by radio, telephone or telecommunications.

(ii) A predetermined plan for emergency services.

(iii) A physician available to a CRNP on a regularly scheduled basis for referrals, review of the standards of medical practice incorporating consultation and chart review, drug and other medical protocols within the practice setting, periodic updating in medical diagnosis and therapeutics and cosigning records when necessary to document accountability by both parties.

Collaborative agreement—The written and signed agreement between a CRNP and a collaborating physician in which they agree to the details of their collaboration including the elements in the definition of collaboration.

Initial certification—The first certification or licensure as a nurse practitioner that an individual receives in any jurisdiction.

National certification—Certification by a Board-recognized National certification organization which required passing a nurse practitioner National certifying examination in a specialty.

Prescriptive authority collaborative agreement—The written and signed agreement between a CRNP with prescriptive authority and a collaborating physician in which they agree to the details of their collaboration.

Specialty—The area of practice or population in which a CRNP is certified by the Board.

§ 21.252. (Reserved).

LEGAL RECOGNITION

§ 21.261. Use of title; authorization to practice.

(a) A professional nurse who has satisfactorily met the requirements set forth in the act and this subchapter and holds current certification as a CRNP or whose certification is maintained on inactive status may use the designation CRNP.

(b) The Board will identify the specialty in which a CRNP is certified on the certification issued to the CRNP.

(c) Only an individual who holds current active certification may practice or offer to practice as a CRNP in this Commonwealth.

(d) A professional nurse may not practice or offer to practice as a CRNP in a specialty in this Commonwealth during the time the professional nurse's certification in that specialty or the professional nurse's RN license is inactive, lapsed or expired. A professional nurse may not practice or offer to practice as a CRNP in this Commonwealth if the professional nurse's certification or RN license is revoked or suspended.

CERTIFICATION REQUIREMENTS

§ 21.271. Certification requirements.

(a) *Initial certification*. An applicant for initial certification shall meet the following requirements:

(1) *Registered nurse license*. An applicant for certification shall hold a current, unrestricted license as a professional nurse in this Commonwealth.

(2) *Education*. An applicant for certification shall have completed an accredited, Board-approved master's or postmaster's nurse practitioner program or other Board-approved program that awarded an advanced degree or a course of study considered by the Board to be equivalent to that required for certification in this Commonwealth at the time the course was completed.

(3) *National certification*. An applicant for initial certification after February 7, 2005, shall hold current National certification in the specialty in which the professional nurse is seeking certification.

(b) *Certification by endorsement*. An applicant for certification who holds a current, unrestricted license or certificate as a nurse practitioner from another state, territory or possession of the United States or a foreign country, shall meet the certification requirements that were effective at the time the applicant was licensed or certified as a nurse practitioner by the other jurisdiction. Applicants who were initially licensed or certified by another state, territory or possession of the United States or a foreign country after February 7, 2005, shall hold current National certification in the specialty in which the nurse is seeking certification. Nurse practitioners applying for certification from a jurisdiction that does not designate the nurse practitioner's specialty will be required to present evidence satisfactory to the Board to demonstrate the nurse practitioner's specialty.

(c) *Addition of a specialty*. A CRNP who holds an unrestricted certification to practice may apply for certification in an additional specialty. To be granted certification in an additional specialty, the CRNP shall meet the educational and National certification requirements for the specialty in which the CRNP is applying for certification.

§ 21.272. (Reserved).

§ 21.273. Application for certification.

(a) Applicants for certification shall pay a fee set forth in § 21.253 (relating to fees), and submit an application form provided by the Board to the Board for its review and approval. Applicants shall verify compliance with section 8.7 of the act (63 P. S. § 218.7) regarding professional liability coverage.

(b) An applicant for initial certification shall include documentation satisfactory to the Board of the following:

(1) Proof of completion of a Board-approved education program or proof of completion and official transcript from another course of study that meets the requirements of § 21.271(a)(2) (relating to certification requirements).

(2) Proof of current National certification as set forth in § 21.271(a)(3).

(c) An applicant for certification by endorsement shall include documentation satisfactory to the Board of the following:

(1) Verification of current, unrestricted licensure or certification as a nurse practitioner issued by the proper licensing authority of another state, territory or possession of the United States or a foreign country.

(2) Copy of the licensure or certification requirements at the time the applicant was initially licensed or certified by another jurisdiction and a copy of the criteria under

which the applicant was initially licensed or certified, obtained from the jurisdiction's board of nursing or licensing authority.

(3) Official transcript from the applicant's nurse practitioner program, including degree awarded.

(4) Proof of current National certification in the specialty in which the nurse is seeking certification by the Board, if the applicant obtained initial certification or licensure after February 7, 2005.

(5) Proof of specialty designation, for a nurse practitioner who obtained initial certification in a specialty before February 7, 2005, and who does not hold current National certification, the specialty designation shall be demonstrated by certification from the nurse practitioner's original state of certification. For a nurse practitioner whose certification is from a state that does not designate a specialty, the specialty designation shall be demonstrated by the nurse practitioner's educational program.

(d) An applicant who holds certification who is applying for certification in another specialty shall submit documentation of the following:

(1) Official transcript from the applicant's nurse practitioner program and any additional educational programs, including degree awarded, demonstrating a concentration in the specialty in which the applicant is seeking certification.

(2) Proof of current National certification in the specialty in which the nurse is seeking certification by the Board.

(e) Applicants shall remit the fee set forth in § 21.253.

(f) Applicants shall submit additional information as identified on the application or as requested by the Board. Applications will remain on file for 12 months.

(g) All forms are available on the Board's web site or by contacting the Board.

§ 21.281. (Reserved).

§ 21.282. (Reserved).

CRNP PRACTICE

§ 21.282a. CRNP Practice.

(a) A CRNP may collaborate only with physicians who hold a current license to practice in this Commonwealth.

(b) When acting in collaboration with a physician as set forth in a collaborative agreement and within the CRNP's specialty, a CRNP may:

(1) Perform comprehensive assessments of patients and establish medical diagnoses.

(2) Order, perform and supervise diagnostic tests for patients and, to the extent the interpretation of diagnostic tests is within the scope of the CRNP's specialty and consistent with the collaborative agreement, may interpret diagnostic tests.

(3) Initiate referrals to and consultations with other licensed professional health care providers, and consult with other licensed professional health care providers at their request.

(4) Develop and implement treatment plans, including issuing orders to implement treatment plans. However, only a CRNP with current prescriptive authority approval may develop and implement treatment plans for pharmaceutical treatments.

(5) Complete admission and discharge summaries.

(6) Order blood and blood components for patients.

(7) Order dietary plans for patients.

(8) Order home health and hospice care.

(9) Order durable medical equipment.

(10) Issue oral orders to the extent permitted by the health care facilities' by-laws, rules, regulations or administrative policies and guidelines.

(11) Make physical therapy and dietitian referrals.

(12) Make respiratory and occupational therapy referrals.

(13) Perform disability assessments for the program providing temporary assistance to needy families (TANF).

(14) Issue homebound schooling certifications.

(15) Perform and sign the initial assessment of methadone treatment evaluations, provided that any order for methadone treatment shall be made only by a physician.

(c) The provisions of this section are subject to limitation as set forth in section 8.2(c.2) of the act (63 P. S. § 218.2(c.2)), regarding the authority of state agencies and health care facilities.

§ 21.283. Authority and qualifications for prescribing, dispensing and ordering drugs.

(a) A CRNP with prescriptive authority approval may, when acting in collaboration with a physician as set forth in a prescriptive authority collaborative agreement and within the CRNP's specialty, prescribe and dispense drugs and give written or oral orders for drugs and other medical therapeutic or corrective measures. These orders may include:

(1) Orders for drugs, total parenteral nutrition and lipids, in accordance with §§ 21.284 and 21.285 (relating to prescribing and dispensing parameters; and prescriptive authority collaborative agreements).

(2) Disposables and devices adjunctive to a treatment plan.

(b) To obtain prescriptive authority approval, a CRNP shall:

(1) Successfully complete at least 45 hours of course work specific to advanced pharmacology in accordance with the following:

(i) The course work in advanced pharmacology may be either part of the CRNP education program or, if completed outside of the CRNP education program, an additional course or courses taken from an educational program or programs approved by the Board.

(ii) The course work shall be at an advanced level above a pharmacology course required by a professional nursing (RN) education program.

(iii) The course work shall have been completed within 5 years immediately preceding the date the applicant applies for initial prescriptive authority approval.

(2) Submit an application for prescriptive authority approval to the Board.

(3) Pay the fee set forth in § 21.253 (relating to fees).

(c) A CRNP who has prescriptive authority shall complete at least 16 hours of Board-approved continuing education in pharmacology in the 2 years prior to the

biennial renewal date of the certification. The CRNP shall verify completion of the continuing education when submitting a biennial renewal.

§ 21.284. Prescribing and dispensing parameters.

(a) The Board adopts the American Hospital Formulary Service Pharmacologic-Therapeutic Classification to identify drugs which the CRNP may prescribe and dispense subject to the parameters identified in this section.

(b) A CRNP with current prescriptive authority approval from the Board may prescribe, dispense and administer drugs and therapeutic or corrective measures consistent with the prescriptive authority collaborative agreement and relevant to the CRNP's specialty from the following categories:

- (1) Antihistamines.
- (2) Anti-infective agents.
- (3) Antineoplastic agents, unclassified therapeutic agents, devices and pharmaceutical aids.
- (4) Autonomic drugs.
- (5) Blood formation, coagulation and anticoagulation drugs, and thrombolytic and antithrombolytic agents.
- (6) Cardiovascular drugs.
- (7) Central nervous system agents.
- (8) Contraceptives including foams and devices.
- (9) Diagnostic agents.
- (10) Disinfectants for agents used on objects other than skin.
- (11) Electrolytic, caloric and water balance.
- (12) Enzymes.
- (13) Antitussive, expectorants and mucolytic agents.
- (14) Gastrointestinal drugs.
- (15) Local anesthetics.
- (16) Eye, ear, nose and throat preparations.
- (17) Serums, toxoids and vaccines.
- (18) Skin and mucous membrane agents.
- (19) Smooth muscle relaxants.
- (20) Vitamins.
- (21) Hormones and synthetic substitutes.

(c) A CRNP may not prescribe or dispense a drug from the following categories:

- (1) Gold compounds.
- (2) Heavy metal antagonists.
- (3) Radioactive agents.
- (4) Oxytocics.
- (5) Schedule I controlled substances as defined by section 4 of The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. § 780-104).

(d) Restrictions on CRNP prescribing and dispensing practices are as follows:

- (1) A CRNP may write a prescription for a Schedule II controlled substance for up to a 30-day supply as identified in the collaborative agreement.
- (2) A CRNP may prescribe a Schedule III or IV controlled substance for up to a 90 day supply as identified in the collaborative agreement.
- (e) A CRNP may not delegate prescriptive authority.

§ 21.284a. Prescribing and dispensing drugs.

(a) *Professional samples.* A CRNP who holds current prescriptive authority approval may request, receive and sign for professional samples and may dispense professional samples to patients.

(b) *Prescriptions.*

(1) Prescriptions must bear the name, title and Pennsylvania CRNP certification number of the CRNP.

(2) When appropriate, the CRNP's National Provider Identifier (NPI) number must appear on the prescription.

(3) Prescriptions may not be prescribed.

(c) *Documentation requirements.* When prescribing or dispensing a drug, the CRNP shall document in the patient's medical record the name, amount and dosage of the drug, instructions for taking the drug, the number of refills, the date and the CRNP's name.

(d) *Packaging.* Prescription drugs shall be dispensed in accordance with Federal regulations pertaining to packaging. (See 16 CFR Part 1700 (relating to poison prevention packaging).)

(e) *Labeling of dispensed drugs.*

(1) The label on a dispensed drug container must include the name of the drug, using abbreviations if necessary; the quantity; and the name of the manufacturer if the drug is a generic drug. If a CRNP specifically indicates that the name of the drug may not appear on the label, the recognized National drug code number shall be placed on the label if the number is available for the product. The label shall also bear the name and address of the CRNP, the date dispensed, the name of the patient and the directions for use of the drug by the patient.

(2) Drugs that, at the time of their dispensing, have full potency for less than 1 year, as determined by the expiration date placed on the original label by the manufacturer, may only be dispensed with a label that indicates the expiration date. The label must include the statement, "Do not use after manufacturer's expiration date," or similar wording.

(f) *Compliance with regulations relating to prescribing, administering, dispensing, packaging and labeling of drugs.* A CRNP shall comply with this section, § 21.284b (relating to prescribing, administering and dispensing controlled substances) and regulations of the Department of Health in 28 Pa. Code §§ 25.51—25.58, 25.61—25.63, 25.72, 25.81 and 25.91—25.95.

§ 21.284b. Prescribing, administering and dispensing controlled substances.

(a) A CRNP authorized to prescribe or dispense, or both, controlled substances shall register with the Drug Enforcement Administration.

(b) A CRNP shall carry out the following minimum standards when prescribing, administering or dispensing controlled substances:

- (1) *Initial evaluation.* In a health care facility regulated by the Department of Health, the Department of Public Welfare or the Federal government, an initial medical history shall be taken and an initial physical examination shall be conducted to the extent required by the Department of Health in 28 Pa. Code (relating to health and safety) or Department of Public Welfare in 55 Pa. Code (relating to public welfare) or the Federal government in appropriate Federal regulations, whichever is applicable, and bylaws of the health care facility and its medical staff. In other practice settings, before commencing treat-

ment that involves prescribing, administering or dispensing a controlled substance, an initial medical history shall be taken and an initial physical examination shall be conducted unless emergency circumstances justify otherwise. Alternatively, medical history and physical examination information recorded by another health care provider may be considered if the medical history was taken and the physical examination was conducted within the immediately preceding 30 days. The physical examination must include an evaluation of the heart, lungs, vital signs, pain level, and body functions that relate to the patient's specific complaint.

(2) *Reevaluations.* Among the factors to be considered in determining the number and frequency of follow-up evaluations that should be recommended to the patient are the condition diagnosed, the controlled substance involved, expected results and possible side effects. For chronic conditions, periodic follow-up evaluations shall be recommended to monitor the effectiveness of the controlled substance in achieving the intended results.

(3) *Patient counseling.* Appropriate counseling shall be given to the patient regarding the condition diagnosed and the controlled substance prescribed, administered or dispensed. Unless the patient is in an inpatient care setting, the patient shall be specifically counseled about dosage levels, instructions for use, frequency and duration of use and possible side effects.

(4) *Medical records.* In a health care facility regulated by the Department of Health, the Department of Public Welfare or the Federal government, information pertaining to the prescription, administration or dispensation of a controlled substance shall be entered in the medical records of the patient and the health care facility under 28 Pa. Code or 55 Pa. Code or appropriate Federal regulations, whichever is applicable, and bylaws of the health care facility and its medical staff. In other practice settings, certain information shall be recorded in the patient's medical record on each occasion when a controlled substance is prescribed, administered or dispensed. This information must include the name of the controlled substance, its strength, the quantity and the date it was prescribed, administered or dispensed. On the initial occasion when a controlled substance is prescribed, administered or dispensed to a patient, the medical record must also include a specification of the symptoms observed and reported, the diagnosis of the condition for which the controlled substance is being given and the directions given to the patient for the use of the controlled substance. If the same controlled substance continues to be prescribed, administered or dispensed, the medical record must reflect changes in the symptoms observed and reported, in the diagnosis of the condition for which the controlled substance is being given and in the directions given to the patient.

(5) *Emergency prescriptions.* In the case of an emergency contact by a known patient, a prudent, short-term prescription for a controlled substance may be issued. Neither a refill nor a consecutive issuance of this emergency prescription may be given unless a physical examination and evaluation of the patient are first conducted. The results of this examination and evaluation must be set forth in the patient's medical record together with the diagnosis of the condition for which the controlled substance is being prescribed. An emergency oral prescription for a Schedule II controlled substance shall be covered by a written prescription delivered to the pharmacist within 72 hours. In certain health care facilities regulated by the Department of Health, the Department of Public Welfare

and the Federal government, an order for the immediate, direct administration of a Schedule II controlled substance to a patient is not considered a prescription and is, therefore, not subject to the requirements in this paragraph. Further information regarding this exclusion can be found in The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§ 780-101—780-144) and 28 Pa. Code Chapter 25 (relating to controlled substances, drugs, devices, and cosmetics).

(c) This section establishes minimum standards for the prescription, administration and dispensation of controlled substances by a CRNP. This section does not restrict or limit the application of The Controlled Substance, Drug, Device and Cosmetic Act or of another statute or regulation, and does not relieve a CRNP from complying with more stringent standards that may be imposed by another statute or regulation, or policy of the CRNP's employer or facility in which the CRNP is employed.

(d) Compliance with this section will not be treated as compliance with the standards of acceptable and prevailing practice as a CRNP when medical circumstances require that the CRNP exceed the requirements of this section.

§ 21.285. Prescriptive authority collaborative agreements.

(a) The prescriptive authority collaborative agreement between a physician and a CRNP who will prescribe and dispense drugs and other medical therapeutic or corrective measures, as set forth in § 21.283(a) (relating to authority and qualifications for prescribing, dispensing and ordering drugs) must satisfy the following requirements. The agreement must:

(1) Be in writing, identify the parties, including the collaborating physician, the CRNP, and at least one substitute physician who will provide collaboration if the collaborating physician is unavailable, include the signature of the CRNP and the collaborating physician, and contain the date that the agreement is signed and the date that the agreement is effective.

(2) Identify the specialty in which the CRNP is certified.

(3) Identify the categories of drugs from which the CRNP may prescribe or dispense in accordance with section 8.3 (a)(2)(ii) of the act (63 P.S. § 218.3(a)(2)(ii)).

(4) Specify the circumstances and how often the collaborating physician will personally see the patient.

(5) Be kept at the primary practice location of the CRNP and a copy filed with the Bureau of Professional and Occupational Affairs.

(6) Be made available for inspection to anyone who requests it and be provided, without charge, to any licensed pharmacist or pharmacy upon request.

(7) Be reviewed and updated by the parties at least once every 2 years or whenever the agreement is changed.

(8) Specify the amount of professional liability insurance that covers the CRNP.

(b) The CRNP shall notify the Board, in writing, whenever a prescriptive authority collaborative agreement is updated or terminated, and, when appropriate, shall file the "Change Of Prescriptive Authority Collaborative Agreement" form and the amended prescriptive authority collaborative agreement with the Board and pay the fee set forth in § 21.253 (relating to fees).

§ 21.286. Identification of the CRNP.

(a) A CRNP shall comply with State, Federal and federal regulations regarding identification of personnel.

(b) The listing of a CRNP in an advertisement or publicly displayed sign shall identify CRNPs who use the designation "Dr." as CRNPs by using the title CRNP following the individual's name.

§ 21.287. (Reserved).**§ 21.288. CRNP standards of conduct.**

A CRNP shall undertake a specific practice or procedure only if the CRNP has the necessary knowledge, preparation, experience and competency to properly execute the practice or procedure and the practice is within the scope of the CRNP's specialty and consistent with the CRNP's collaborative agreement. A CRNP shall comply with § 21.18 (relating to standards of nursing conduct).

§ 21.291. (Reserved).**§ 21.292. (Reserved).****§ 21.293. (Reserved).****§ 21.294. (Reserved).****§ 21.311. (Reserved).****§ 21.321. (Reserved).****MAINTENANCE OF CERTIFICATION****§ 21.331. Biennial renewal of certification.**

(a) The certification, and prescriptive authority approval, if applicable, of a CRNP will expire at the same time as the CRNP's registered nurse license as provided in § 21.29 (relating to expiration and renewal of license).

(b) Notice of application for renewal will be forwarded biennially to each active CRNP at the CRNP's address of record with the Board prior to the expiration date of the current biennial period.

(c) As a condition of biennial renewal, a CRNP shall:

(1) Renew the CRNP's registered nurse license.

(2) Verify completion of a minimum of 30 hours of Board-approved continuing education in the 2 years prior to renewal. As a condition of biennial renewal of prescriptive authority approval, a CRNP shall complete a minimum of 16 of the 30 hours of Board-approved continuing education in pharmacology in the 2 years prior to renewal.

(3) Demonstrate current National certification, if the CRNP was certified by the Board after February 7, 2005

(4) Pay the required biennial renewal fee set forth in § 21.253 (relating to fees).

(5) Verify compliance with section 8.7 of the act (63 P. S. § 218.7) regarding liability coverage.

(d) Any written communication with the Board must be typed or printed and include the CRNP's full name, including former names, the current address and certification number.

§ 21.332. Requirement of continuing education.

(a) A CRNP shall comply with this section and §§ 21.332a—21.337.

(b) Continuing education requirements shall be completed each biennial renewal cycle.

(1) A CRNP who does not meet the continuing education requirements for a biennial period will be subject to formal disciplinary action under section 14(a)(3) of the act (63 P. S. 244(a)(3)).

(2) The Board may waive the requirements of continuing education in cases of illness or undue hardship. It is the duty of each CRNP who seeks a waiver to notify the Board in writing and request the waiver at least 90 days prior to the end of the renewal period. The Board will grant, deny or grant in part the request for waiver.

(3) A CRNP who requests a waiver may not prescribe or dispense drugs after the expiration of his current prescriptive authority until the Board grants the waiver request or the prescriptive authority approval has been renewed.

§ 21.332a. Inactive status and reactivation.

(a) A CRNP who places his certification on inactive status is not required to meet the continuing education requirements in section 8.1(c) of the act (63 P. S. § 218.1(c)) during the period the certification is on inactive status. Upon application for reactivation of certification, the CRNP shall show proof of meeting the continuing education requirements for the biennial period immediately preceding the request for reactivation, and, if the certification has been lapsed or on inactive status for 5 years or longer, the CRNP must have a current, active professional nurse license, reactivated in accordance with the continued competency requirements in § 21.30a (related to continued competency), and at least one of the following:

(1) Proof of current National certification in the specialty in which the nurse is seeking reactivation, if the CRNP is subject to section 8.1(b) of the act.

(2) Evidence that the applicant has practiced as a nurse practitioner in another jurisdiction at some period of time within the last 5 years under a current license or certification during that time.

(b) A CRNP who places his prescriptive authority approval on inactive status for less than 3 years is not required to meet the continuing education requirements in § 21.332(b)(2) (relating to requirement of continuing education) during the period the prescriptive authority approval is on inactive status. Upon application for reactivation of prescriptive authority approval, the CRNP shall show proof of meeting the continuing education requirements for the biennial period immediately preceding the request for reactivation.

(c) A CRNP who places his prescriptive authority approval on inactive status for 3 years or longer or whose prescriptive authority approval is lapsed for 3 years or longer, may reactivate the prescriptive authority approval by meeting one of the following conditions:

(1) Complete the requirement in § 21.283(b)(1) (relating to authority and qualifications for prescribing, dispensing and ordering drugs) by taking at least 45 hours of course work in advanced pharmacology.

(2) Provide evidence to the Board that:

(i) The CRNP has practiced, for at least 1 of the last 3 years, as a CRNP with prescriptive authority in another jurisdiction.

(ii) The scope of the prescriptive authority in the other jurisdiction is equivalent to prescriptive authority in this Commonwealth.

(iii) The CRNP was required, as a condition for continued practice in the other jurisdiction, to complete continu-

ing education that is substantially equivalent to the requirements of § 21.283(b)(1).

(iv) The CRNP met the continuing education requirements of the other jurisdiction within 1 year of the request for reactivation of prescriptive authority.

(d) A CRNP whose certification has been suspended for 5 years or longer shall meet the requirements in § 21.332(b), and any other requirements set forth by Board order. A CRNP whose prescriptive authority approval has been suspended for 3 years or longer shall, in addition to meeting the requirements to renew the CRNP certification, meet the requirements in subsection (c), and any other requirements set forth by Board order.

(e) A CRNP whose certification has been revoked shall meet all of the requirements for certification in § 21.271(a) (relating to certification requirements), the requirements in § 21.332(b), and any other requirements set forth by Board order. A CRNP whose prescriptive authority approval has been revoked shall, in addition to meeting the requirements to reinstate the CRNP certification, meet the requirements in subsection (c), and any other requirements by Board order.

§ 21.333. Continuing education content.

(a) Continuing education activities must address the CRNP's specialty.

(b) Pharmacology continuing education activities must provide the knowledge and skills to understand the pharmacokinetics and pharmacodynamics of broad categories of drugs or drugs used in the CRNP's specialty and to analyze the relationship between pharmacologic agents and physiologic/pathologic responses.

§ 21.334. Sources of continuing education.

(a) The following providers of continuing education and credentialing organizations have currently met the standards for approval for continuing education. Therefore, all activities offered by these providers are approved for continuing education hours required for biennial license renewal.

(1) Board-approved CRNP educational programs and CRNP educational programs approved by other state boards of nursing or that hold current accreditation issued by a National nursing accreditation organization.

(2) National and international nursing organizations and their state and local affiliates.

(3) National and international medical and osteopathic organizations and their state and local affiliates.

(4) National pharmaceutical organizations and their state and local affiliates.

(5) National nursing specialty organizations.

(6) Continuing education programs approved by other state boards of nursing for advanced practice nurses or nurse practitioners.

(b) CRNPs may obtain hours for continuing education activities offered by providers not indicated in subsection (a)(1)—(6) if the provider receives approval of the activity under § 21.336 (relating to continuing education course approval) prior to its implementation.

(c) CRNPs may obtain credit for continuing education hours on an individual basis if the CRNP, prior to attendance at the course, obtains Board approval by submitting a request for course approval and supporting documentation listed in § 21.336(b).

(d) CRNPs may obtain credit for correspondence courses, taped study courses and other independent study courses if the course is Board approved.

(e) Up to 4 hours will be credited for service as a teacher, preceptor, lecturer or speaker and for publication in a refereed journal or other scholarly publication relating to pharmacology or the CRNP's area of practice. Application shall be made prior to the service or within 90 days of the publication to assure that the Board will approve the service or publication and to allow the Board to determine the number of contact hours that will be granted.

(f) An hour for purposes of nurse practitioner continuing education is 50 minutes.

PENALTIES FOR VIOLATION

§ 21.351. Penalties for violation.

Certification as a CRNP may be suspended, revoked or otherwise restricted or subjected to remedial measures when, after notice and opportunity to be heard, the Board finds that:

(1) The CRNP has engaged in the performance of medical functions and tasks beyond the scope of practice permitted for a CRNP, beyond the scope of the CRNP's specialty, or in violation of the CRNP's collaborative agreement, as provided in the act and this subchapter.

(2) The CRNP has performed a medical task or function which the CRNP does not have the necessary knowledge, preparation, experience and competency to perform properly or is not qualified under the act and this subchapter to perform.

(3) The CRNP has violated the act or this subchapter, or engaged in any conduct prohibited for professional nurses.

[Pa.B. Doc. No. 09-2276. Filed for public inspection December 11, 2009, 9:00 a.m.]

**STATE BOARD OF PHARMACY
[49 PA. CODE CH. 27]
Pharmacist Breaks**

The State Board of Pharmacy (Board) amends §§ 27.11 and 27.16 (relating to pharmacy permit and pharmacist manager; and construction and equipment requirements) to read as set forth in Annex A.

Description and Need for the Rulemaking

Currently, the Board does not have regulations pertaining to when and how a sole pharmacist on duty may take a break while the pharmacy remains open. The Board's regulations only state that a pharmacy may not be open without a licensed pharmacist present and on duty. This has created a disparity among different types of pharmacies. In traditional "drug stores" the entire building is licensed as a pharmacy, therefore a pharmacist may take a break anywhere in the store and still be in the pharmacy. However, in large retail establishments only the area containing the pharmacy is licensed. Retail establishments include large wholesale stores, grocery stores and retail stores. Because the regulation mandates that the pharmacy must be closed when the pharmacist is not present in the pharmacy, the pharmacy must close if the pharmacist leaves the pharmacy to take a break in

another area of the retail store. This has put retail establishments at a disparity with the more traditional drug stores.

The Board proposed to amend § 27.11(c) to state that the prescription area of a pharmacy may not be open without a licensed pharmacist on duty at all times. This would clarify that the retail area in a traditional drug store where the whole building is licensed as a pharmacy may still be open when the prescription area is closed. The prescription area is already defined in § 27.1 (relating to definitions) as the area of the pharmacy used for compounding, legend drug storage and other activities necessary to the practice of pharmacy. The term "prescription area" does not include waiting counters or display space attached to the waiting counters.

The Board also proposed to amend § 27.11(c) to allow a sole pharmacist on duty in a pharmacy to take up to a 30-minute break. The proposed amendment would not affect multiple pharmacists on duty taking staggered breaks. If only one pharmacist is on duty the pharmacist must remain in the building containing the pharmacy during the break. For pharmacies where the entire building is licensed this would not change current practice. However for pharmacies located in large retail establishments and institutions, the pharmacist shall remain in the immediate building. The term "immediate building" is defined as the physical structure that contains the pharmacy. For example in a large retail, wholesale or grocery store, the pharmacist shall remain in that store. In an institution, the pharmacist shall remain in the building containing the pharmacy, so that in institutions on a campus with multiple buildings, the pharmacist could not go to another building during his break. Pharmacies located in malls are not included in the class of pharmacies that only have a portion of the store licensed, as those pharmacies are typically the traditional retail pharmacy where the entire store is licensed. If a large retail establishment with a pharmacy inside is attached to a mall then the restriction that the pharmacist shall remain in the retail establishment applies. The pharmacist should not leave the store to go into the mall while the pharmacy remains open.

The Board proposed to add § 27.11(c)(2) to allow a pharmacy to remain open during a sole pharmacist's break to receive new written prescriptions, prepare prescriptions for final verification by the pharmacist and to deliver prescription medications that have already been verified by the pharmacist.

Finally, the Board proposed to amend § 27.16(b)(2)(iii) to cross reference § 27.11(c)(1) and add and define the term "immediate building."

With the implementation of these standards, the Board intends to allow pharmacists to take breaks as needed while still being available for counseling or other emergencies. The public is protected because while the pharmacist is away from the pharmacy, no prescriptions could be delivered to a patient that were not first verified by the pharmacist; however new written prescriptions could be accepted and pharmacy technicians and pharmacy interns may prepare prescriptions for final verification.

Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 38 Pa.B. 351 (January 19, 2008) with a 30-day public comment period. The Board received comments from the Pennsylvania Pharmacists Association (PPA), but from no other members of the public. The Board received com-

ments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Board did not receive any comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The PPA supported the proposed rulemaking.

The HPLC first questioned whether a break of 30 minutes is consistent with labor law and policies of the large pharmacies. The HPLC, joined by IRRC, also questioned whether the break was a single break or multiple breaks totaling up to 30 minutes throughout the entire shift. This rulemaking does not set standards for how often or for how long a pharmacy may or must permit a pharmacist to go on break; rather it provides the opportunity for a pharmacy to remain open when the sole pharmacist on duty is on a break of 30 minutes or less. Therefore, the amendment will not conflict with labor laws or policies.

The HPLC also questioned what protocol should be followed for requested counseling during a pharmacist's break. Would a customer seeking counseling from a pharmacist be expected to wait until the pharmacist returned from break, or would the pharmacist have to cut the break short. Proposed § 27.11(c)(1) provides that the pharmacist "shall be accessible for emergencies or for counseling, if requested." The implication of this provision is that the pharmacist would return to the prescription area as needed during this period.

The Board has not found a need to revise its rulemaking in response to the comments. However, in the course of reviewing these comments, the Board noticed that the phrase "while working in a pharmacy" in § 27.11(c) was not consistent with the language of the general rule of that section. Accordingly, the Board has replaced this phrase with "while the pharmacy is open."

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The final-form rulemaking is authorized under sections 4(2) and 6(k)(1) and (9) of the Pharmacy Act (act) (63 P. S. §§ 390-4(j), 390-6(k)(1) and (9)).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 9, 2008, the Board submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 351, to IRRC and the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 7, 2009, the final-form rulemaking was approved by the HPLC. On November 4, 2009, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 5, 2009, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to the Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, or (717) 783-7156, or st-pharmacy@state.pa.us.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

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

(3) The amendments to this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 38 Pa.B. 351.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 27, are amended, by amending §§ 27.11 and 27.16 to read as set forth in Annex A.

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

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

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

MICHAEL A. PODGURSKI, R.Ph.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 6705 (November 21, 2009).)

Fiscal Note: Fiscal Note 16A-5420 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 27. STATE BOARD OF PHARMACY STANDARDS

§ 27.11. Pharmacy permit and pharmacist manager.

(a) A permit to conduct a pharmacy issued under section 4 of the act (63 P. S. § 390-4) shall show the name

and address of the pharmacy, the name of the current owner and the name of the current pharmacist manager.

(b) A pharmacy may not display, advertise or use any name other than the name in which it is registered.

(c) The prescription area of a pharmacy may not be open without a licensed pharmacist on duty at all times. A sole pharmacist on duty may take up to a 30-minute break while the pharmacy remains open consistent with the following:

(1) The pharmacist shall remain in the pharmacy, or in the case of a pharmacy located within a retail establishment or institution, in the immediate building containing the pharmacy, and shall be accessible for emergencies or for counseling, if requested. For purposes of this paragraph, the term "immediate building" means the physical structure that contains the pharmacy. A pharmacy located at a complex consisting of multiple retail and other business establishments, such as a mall, is not considered to be "located within a retail establishment." In that case, the entire store containing the pharmacy is licensed, and the pharmacist shall remain in the store during a break.

(2) The pharmacy may remain open during the pharmacist's break for patient-related services, including:

(i) The receipt of new written prescriptions.

(ii) The preparation of prescriptions for final verification by the pharmacist.

(iii) The delivery of prescription medications that have been verified by the pharmacist.

(d) A change in name or ownership or controlling interest of the pharmacy shall require a new permit. Applications for new permits shall be filed within 30 days of the change in name, ownership or controlling interest.

(e) A person or entity holding a certificate, license, permit or registration as a licensed pharmacist or pharmacy may not post or display in public view a current certificate, license, permit, registration or renewal of a person not lawfully employed by the licensee.

(f) A pharmacy which closes or otherwise ceases operation shall immediately return to the Board its current permit and shall immediately inform the Board of the disposition of the prescription files and nonproprietary drugs. After 30 days, neither prescription files nor nonproprietary drugs may be sold, transferred or disposed of without prior permission from the Board. When a pharmacy closes or ceases operation, signs, symbols or other indications of a pharmacy shall immediately be removed from both the interior and exterior of the premises.

(g) If the pharmacist manager ceases to hold that position, the pharmacy permit holder shall inform the Board in writing of this fact and of the new pharmacist manager not more than 15 days later. If the Board does not object within 30 days of notification, the new pharmacist manager may be deemed approved. If the permit holder is unable to replace the pharmacist manager within those 15 days, the permit holder may request in writing an extension of up to 30 additional days to obtain a replacement. A pharmacy may not operate without a pharmacist manager for more than 15 days unless the pharmacy first obtains from the Board an extension of time for obtaining a replacement.

(h) A pharmacist may not serve as the pharmacist manager of more than one pharmacy at any given time. The holder of a permit to operate a pharmacy which has

lost the services of a pharmacist manager and cannot obtain a suitable replacement may apply in writing to the Board for a temporary waiver of this subsection. The Board may grant a waiver which would authorize a pharmacist manager to serve as pharmacist manager of more than one pharmacy for up to 60 days after the initial 15 days permitted under subsection (g).

(i) Each pharmacy in this Commonwealth will require a separate permit regardless of ownership unless the pharmacy is a satellite pharmacy as defined in § 27.1 (relating to definitions).

§ 27.16. Construction and equipment requirements.

(a) *Approval of plans.* The following requirements are applicable to approval of plans:

(1) *New pharmacy or change-of-location.* Plans for construction of a new pharmacy or new location for an existing pharmacy may be submitted to the Board for approval prior to proceeding with construction. Within 90 days of receiving the plans, the Board will notify the applicant of its approval of the planned pharmacy or of its disapproval and the reasons for disapproval. The plans, including dimensions, must demonstrate compliance with applicable regulations and show the layout and fixtures for the prescription area and the immediately adjacent area.

(2) *Alterations.* The practice of pharmacy shall cease while substantial alterations in the layout or fixtures of an approved pharmacy are being made unless:

(i) The pharmacy makes the alterations and takes adequate precautions so that the health and safety of professionals, employees and the public is protected during the continuing operation of the pharmacy.

(ii) The plans for the alterations and a description of the precautions are submitted to the Board at least 30 days before the beginning of alteration work. If the Board raises no objection during that time, the pharmacy is authorized to proceed with the alterations as planned.

(b) *Building standards.* The following apply to building standards:

(1) *Minimum size.*

(i) The minimum size of the prescription area must be at least 250 square feet, and must be large enough, considering the level of activity, to carry on the practice of pharmacy in a manner that protects the health and safety of professionals, employees and the public. Within the prescription area, there must be a prescription working counter of at least 10 linear feet in length and 2 linear feet in width. If more than two pharmacists are on duty simultaneously, the minimum counter length shall be increased by 5 linear feet for an additional pharmacist. Institutions with special considerations may apply to the Board for a waiver.

(ii) A pharmacy operating as a central processing center need not conform to the minimum space requirements in subparagraph (i).

(2) *Pharmacies in retail establishments.* Pharmacies located within retail establishments whose business hours differ shall adhere to the following standards:

(i) The pharmacy can be securely sealed off from the remainder of the retail establishment.

(ii) The barrier devices which seal off the pharmacy must be capable of providing security for the pharmacy. The barrier devices must reach from floor to ceiling, shall

be impenetrable by hand or the use of a reach extender, and be securely locked whenever a licensed pharmacist is not present and on duty.

(iii) The pharmacy shall be closed whenever a licensed pharmacist is not present in the immediate building and on duty. For purposes of this section, the term "immediate building" has the same meaning given to it in § 27.11(c)(1) (relating to pharmacy permit and pharmacist manager).

(iv) Safes, electrical equipment or other facilities of the retail establishment may not be located in or approached through the pharmacy unless a pharmacist is on duty whenever staff from the retail establishment need access to these facilities.

(v) The hours of the pharmacy shall be posted at all points of public access.

(vi) Protocols for access to the pharmacy when it is closed by nonpharmacist staff for bona fide emergencies, such as fires, natural disasters or police matters, must include notification to the pharmacist manager.

(3) *Locked compartment.* Space shall be provided in the prescription area for a substantially constructed cabinet or safe to contain controlled substances unless the pharmacy disperses controlled substances throughout the stock of noncontrolled substances in a manner that obstructs the theft of controlled substances. If the pharmacy stocks Schedule I controlled substances, these substances shall be stored in a securely locked, substantially constructed cabinet or safe.

(4) *Telephone.* At least one telephone shall be accessible in the prescription area, and the telephone number must be the telephone number printed on the prescription label.

(5) *Sanitary facilities.* Except for pharmacies operating as central processing centers, pharmacies shall be equipped with a sink within the prescription area to be used solely for pharmaceutical purposes. The sink must be connected properly to supply hot and cold water. Restroom facilities for employees of the pharmacy shall be provided reasonably close to, but outside of the prescription area.

(6) *Lighting and ventilation.* The pharmacy must be well lighted and ventilated.

(7) *Television set.* A television set may not be placed within the prescription area or so situated in the pharmacy that its viewing screen may be seen when looking at it from within the prescription area.

(8) *Physical arrangement.* The prescription area must be arranged so that prescription drugs and devices are inaccessible to an unlicensed or unauthorized person. The prescription area may not be used for storage of merchandise or other items other than those used in the preparation, dispensing or delivery of drugs. Animals may not be allowed in a prescription area except for security reasons.

(9) *Existing pharmacies.* Existing pharmacies licensed by the Board prior to the effective date of this chapter may continue if they reasonably conform, or are made to reasonably conform, to the intent of this chapter. The Board will determine what constitutes reasonable conformity consonant with the public interest, health, safety and welfare.

[Pa.B. Doc. No. 09-2277. Filed for public inspection December 11, 2009, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 69]

Fishing in Lake Erie and Boundary Lakes

Corrective Amendment to 58 Pa. Code § 69.12(f)

The Fish and Boat Commission has discovered a discrepancy between the agency text of 58 Pa. Code § 69.12(f) (relating to seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries), as deposited with the Legislative Reference Bureau, and the official text published at 39 Pa.B. 1860, 1865 and 1866 (April 11, 2009) and codified in the June 2009 *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 415) and as currently appearing in the *Pennsylvania Code*. The table in § 69.12(f) was printed incorrectly.

Therefore, under 45 Pa.C.S. § 901: The Fish and Boat Commission has deposited with the Legislative Reference Bureau a corrective amendment to 58 Pa. Code § 69.12(f). The corrective amendment to 58 Pa. Code § 69.12(f) is effective as of April 11, 2009, the date the defective text in § 69.12(f) was printed in the *Pennsylvania Bulletin*.

The correct version of 58 Pa. Code § 69.12(f) appears in Annex A, with ellipses referring to the existing text of § 69.12.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

Subchapter B. SPORT FISHING AND ANGLING

§ 69.12. Seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries.

* * * * *

(f) Subject to the provisions of subsections (d) and (e), the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
MUSKELLUNGE and MUSKELLUNGE HYBRIDS	Inland seasons apply. See § 61.1 (relating to Commonwealth inland waters).	40 inches	1
PIKE Northern	Inland seasons apply. See § 61.1 (relating to Commonwealth inland waters).	24 inches	2
WALLEYE	January 1 to midnight March 15 and 12:01 a.m. the first Saturday in May to December 31.	15 inches	6
BASS Largemouth Smallmouth	January 1 to first Saturday after April 11 and first Saturday after June 11 until December 31.	15 inches	4 (combined species)
	First Saturday after April 11 until first Saturday after June 11.*	20 inches	1
TROUT and SALMON	First Saturday after April 11 until midnight Labor Day.	9 inches	5 (combined species only 2 of which may be lake trout).
	12:01 a.m. the day after Labor Day until midnight on the Friday before the first Saturday after April 11.	15 inches	3 (combined species only 2 of which may be lake trout).
STURGEON	No open season	ENDANGERED SPECIES	
YELLOW PERCH	From December 1 through March 31	7 inches	30

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
	From April 1 through November 30	None	30
SUNFISH, CRAPPIES, CATFISH, ROCK BASS, SUCKERS, EELS, CARP, WHITE BASS	Open year-round	None	50 (combined species)
BURBOT (when taken by hook and line)	Open year-round	None	5
BURBOT (when taken by scuba divers by use of nonmechanical spears or gigs at a depth of at least 60 feet)	June 1 to September 30	None	5
SMELT (when taken by hook and line)	Open year-round	None	None
BAIT FISH FISH BAIT	Open year-round	None	50 (combined species)
ALL OTHER SPECIES	Inland Regulations apply. (See § 61.1.)		

* It is unlawful to conduct or participate in a fishing tournament (as defined in § 63.40 (relating to seasons for fishing tournaments)) for bass on Lake Erie, Lake Erie tributaries or Presque Isle Bay during the period from the first Saturday after April 11 until the first Saturday after June 11.

[Pa.B. Doc. No. 09-2278. Filed for public inspection December 11, 2009, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 401a, 435a AND 441a]

Employee Revisions and Pennsylvania Race Horse Development Fund

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and specific authority in 4 Pa.C.S. §§ 1311, 1311.1, 1311.2, 1321 and 1406, amends Chapters 401a, 435a and 441a to read as set forth at 39 Pa.B. 3459 (July 11, 2009).

Purpose of the Final-Form Rulemaking

The final-form rulemaking makes minor revisions to provisions related to employees to improve the clarity and effectiveness of the Board's regulations. It also revises the time frame within which distributions of funds received by Category 1 slot machine licensees from the Pennsylvania Race Horse Development Fund must be made.

Explanation of Amendments to Chapters 401a, 435a and 441a

In § 401a.3 (relating to definitions), the definition of "gaming employee" has been amended to include employees of certified vendors whose duties require the employee to be on the gaming floor or in a restricted area. This makes the definition consistent with the existing requirement pertaining to these employees in § 437a.7(b) (relating to registered and certified vendor responsibilities).

In § 435a.1 (relating to general provisions), a new subsection (n) has been added which requires licensees and certified vendors to contact the Bureau of Licensing to verify that the license, permit or registration of an individual who currently holds a license, permit or registration is still valid before the individual is allowed to work in a licensed facility. Licenses, permits and registrations are not licensed facility specific. This allows the individuals to seek employment at other licensed facilities without having to obtain a new license, permit

or registration. Requiring licensees and certified vendors to contact the Bureau of Licensing will insure that an individual's license, permit or registration is in good standing.

In § 441a.18 (relating to employee status report), subsection (b) has been amended to require that the monthly status report prepared by a slot machine licensee also include the expiration date of the license or permit held by employees who hold a license or a permit. This is being done so that the slot machine licensees can more easily track when renewal applications should be filed by these employees.

Section 441a.19 (relating to notice of employee misconduct and offenses and employee resignations) has been amended to simplify the process for reporting terminations of slot machine licensee's employees. Currently, slot machine licensees must report individual terminations within 5 days. This has resulted in slot machine licensees having to file multiple reports throughout any given week. By changing to weekly reporting, slot machine licensees will have to make fewer filings and will be less likely to inadvertently fail to report a termination.

In § 441a.22 (relating to Category 1 slot machine licensees), subsection (b)(3)(i) and (ii) has been amended. Currently, these subparagraphs require the transfer of funds received for purses or health and pension benefits to occur within 36 hours of receipt. However, if the funds are received late in the day prior to a weekend or holiday, slot machine licensees have sometimes not been able to comply with the 36-hour requirement. To remedy this problem, the language in both of these subparagraphs has been changed to require that the transfer of funds be completed by the close of the next business day.

Comment and Response Summary

Notice of proposed rulemaking was published at 39 Pa.B. 3459.

During the public comment period, the Board did not receive any public comments. By letter dated September

9, 2009, the Independent Regulatory Review Commission (IRRC) notified the Board that it had no comments, recommendations or objections to the proposed rule-making.

The Board has made no changes to the proposed amendments in the final-form version of this rulemaking.

Affected Parties

This final-form rulemaking will affect slot machine licensees, manufacturers, manufacturer designees, suppliers and certified vendors.

Fiscal Impact

Commonwealth

Under this final-form rulemaking, the Bureau of Licensing will have to respond to additional inquiries from licensees and certified vendors seeking to confirm the status of individuals who were employed by another licensee or certified vendor. The Bureau of Licensing will also receive fewer employee termination reports. Neither of these changes is anticipated to have any significant fiscal impact on the Board.

Political Subdivisions

This final-form rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

Private Sector

Slot machine licensees, manufacturers, manufacturer designees, suppliers and certified vendors will have to verify the status of new employees that already hold a license, permit or registration. However, the Board intends to allow the verification to be done by telephone or email, so the costs associated with completing these verifications should be minimal.

The change in the timing for slot machine licensees to transfer funds received for purses or health and pension benefits will eliminate the potential for any sanctions related to noncompliance with the existing requirement.

General Public

This final-form rulemaking will have no fiscal impact on the general public.

Paperwork Requirements

This final-form rulemaking will result in a reduction in the number of termination reports that will have to be filed by slot machine licensees and reviewed by the Bureau of Licensing.

Effective Date

The final-form rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Contact Person

The contact person for questions about this final-form rulemaking is Richard Sandusky, Director of Regulatory Review at (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 29, 2009, the Board submitted a copy of this proposed rulemaking, published at 39 Pa.B. 3459 and a copy of the Regulatory Analysis Form to IRRC and to the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee (Committees).

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the Committees on November 4, 2009. Under section 5(g) of the Regulatory Review Act (71 P. S. § 745.5a(e)) the final-form rulemaking was deemed approved by IRRC, effective November 4, 2009.

Findings

The Board finds that:

(1) Public notice of intention to adopt these amendments was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II (relating to gaming).

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(a) The regulations of the Board, 58 Pa. Code Chapters 401a, 435a and 441a, are amended by amending §§ 401a.3, 435a.1, 441a.18, 441a.19 and 441a.22 to read as set forth at 39 Pa.B. 3459.

(b) The Chairperson of the Board shall certify this order and 39 Pa.B. 3459 and deposit them with the Legislative Reference Bureau as required by law.

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

GREGORY C. FAJT,
Chairperson

Fiscal Note: Fiscal Note 125-104 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 09-2279. Filed for public inspection December 11, 2009, 9:00 a.m.]

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 123]

Notice of Additional Public Hearing Outdoor Wood-Fired Boilers

The Environmental Quality Board (Board) has scheduled an additional public hearing for the purpose of accepting comments on the proposed rulemaking to amend 25 Pa. Code Chapters 121 and 123 (relating to general provisions; and standards for contaminants) to add requirements for the control of particulate matter emissions from outdoor wood-fired boilers, published at 39 Pa.B. 6068 (October 17, 2009). The public hearing will be held as follows:

January 13, 2010 Coudersport High School
6 p.m. 698 Dwight Street
 Coudersport, PA 16915

The proposed rulemaking will add provisions to Chapter 123 that will establish emission standards and setback requirements for newly installed outdoor wood-fired boilers, written notice and recordkeeping requirements for outdoor wood-fired boilers sold or leased after the effective date of the proposed regulation, and stack height and fuel requirements for all new and existing outdoor wood-fired boilers operated in this Commonwealth. The proposed rulemaking will apply to a person, manufacturer, supplier or distributor who sells, offers for sale, leases or distributes an outdoor wood-fired boiler for use in this Commonwealth or a person who installs, purchases, receives, leases, owns, uses or operates an outdoor wood-fired boiler.

The proposed rulemaking will also add definitions to Chapter 121 for the following four new terms—"Btu," "clean wood," "outdoor wood-fired boiler" and "phase 2 outdoor wood-fired boiler." The proposed rulemaking, if adopted by the Board as a final-form rulemaking, will be submitted to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan.

The previously-referenced hearing is in addition to other hearings held by the Board in Harrisburg on November 30, 2009, Wilkes-Barre on December 1, 2009, Cranberry Township on December 2, 2009, and Williamsport on December 3, 2009, to receive comments from the public on the proposed rulemaking.

Written Comments

The comment period for the proposed rulemaking will be extended from the deadline published at 39 Pa.B. 6068. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market

Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by February 12, 2010. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by February 12, 2010. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments

Comments may be submitted electronically to the Board at RegComments@state.pa.us and must be received by the Board by February 12, 2010. A subject heading of the proposal and a return name and address must be included in each transmission. If the sender does not receive an acknowledgement of electronic comments within 2 working days, the comments should be retransmitted to ensure receipt.

Public Hearings

Persons wishing to present testimony at the previously-referenced hearing in Meadville are requested to contact the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Board can best accommodate their needs.

Copies of the Proposal

The full text of the proposed rulemaking was published in the *Pennsylvania Bulletin* on October 17, 2009 and is available at <http://www.pabulletin.com> as well as on the Department of Environmental Protection's web site at <http://www.depweb.state.pa.us> (Quick Access: "Public Participation"; then choose "Proposals Open for Comment"). Copies of the proposal are also available from Yvette House, Department of Environmental Protection, Bureau of Air Quality, Rachel Carson State Office Building, 12th Floor, 400 Market Street, P. O. Box 8468, Harrisburg, PA 17105-8468, by phone at (717) 787-9495, or by email at yhouse@state.pa.us.

JOHN HANGER
Chairperson

[Pa.B. Doc. No. 09-2280. Filed for public inspection December 11, 2009, 9:00 a.m.]

NOTICES

DEPARTMENT OF BANKING

Actions on Applications

The Department of Banking (Department), 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 9 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 December 1, 2009.

Under section 503.E of the Department of Banking Code (71 P. S. § 733-503.E), any person wishing to comment on the following applications, with the exception of branch applications, may file their comments in writing with the Department of Banking, Corporate Applications Division, 17 North Second Street, Suite 1300, Harrisburg, PA 17101-2290. Comments must be received no later than 30 days from the date notice regarding receipt of the application is published in the *Pennsylvania Bulletin*. The nonconfidential portions of the applications are on file at the Department and are available for public inspection, by appointment only, during regular business hours. To schedule an appointment, contact the Corporate Applications Division at (717) 783-2253. Photocopies of the nonconfidential portions of the applications may be requested consistent with the Department's Right-to-Know Law Records Request policy.

BANKING INSTITUTIONS

Branch Applications

De Novo Branches

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
11-16-2009	Northwest Savings Bank Warren Warren County	413 South Logan Boulevard Suite 3 Altoona Blair County	Opened
11-25-2009	Landmark Community Bank Pittston Luzerne County	383 South Poplar Street Hazleton Luzerne County	Approved
11-30-2009	Graystone Tower Bank Lancaster Lancaster County	197 Rocherty Road Lebanon Lebanon County	Opened

Branch Relocations

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
10-5-2009	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	<i>To:</i> 100 Settlers Ridge Center Drive Pittsburgh Allegheny County <i>From:</i> 6511 Steubenville Pike Pittsburgh Allegheny County	Effective

Branch Discontinuances

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
11-30-2009	Graystone Tower Bank Lancaster Lancaster County	130 Mullen Street Fort Loudon Franklin County	Filed
11-30-2009	Graystone Tower Bank Lancaster Lancaster County	1574 Buchanan Trail East Greencastle Franklin County	Filed
12-1-2009	Earthstar Bank Southampton Bucks County	8910 Frankford Avenue Philadelphia Philadelphia County	Withdrawn

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS

No activity.

The Department's web site at www.banking.state.pa.us includes public notices for more recently filed applications.

STEVEN KAPLAN,
Secretary

[Pa.B. Doc. No. 09-2281. Filed for public inspection December 11, 2009, 9:00 a.m.]

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

Consolidated Plan for Federal Fiscal Year

The Department of Community and Economic Development (Department) proposes to adopt the Commonwealth's Action Plan for Federal Fiscal Year (FFY) 2010 and the Program Year that starts on January 1, 2010. The 2010 Action Plan (Plan) is an update of the Commonwealth's Consolidated Plan for FFY 2009-2013.

The Plan updates documents previously submitted to the United States Department of Housing and Urban Development (HUD). These documents include the nonhousing community development plan and any changes that the Department may have implemented concerning the HUD programs administered by the Commonwealth. The programs administered by the Department are the Community Development Block Grant (CDBG), HOME Investment Partnerships, Emergency Shelter Grant, Housing Opportunities for People with AIDS, Homelessness Prevention and Rapid Re-housing Program (HPRP), Neighborhood Stabilization Program, and Community Development Block Grant—Recovery (CDBG-R).

This summary is designed to provide an opportunity for citizens, local governmental officials and interested organizations of the Commonwealth to comment about the Action Plan. Written comments should be submitted to Karen Overly Smith, Center for Community Development, Department of Community and Economic Development, 400 North Street, 4th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120-0225. Written comments must be received by January 12, 2010 to be included as testimony in the Action Plan.

Public Hearing

The public hearing on December 22, 2009, will be conducted electronically by means of the Internet, allowing greater accessibility for persons wishing to make comments or discuss policy. Internet access to the public meeting will be held from 9 a.m. to 11 a.m.

Individuals or organization may give testimony or comments by means of the Internet. Comments will be accepted about topics related to community development, housing, and the content of the Commonwealth's Draft Action Plan for FFY 2010, and the process by which public input is gathered. The Commonwealth encourages public participation in this process.

Persons who want to participate must register in advance, by contacting Karen Overly Smith at (717) 214-5340, to receive registration instructions for the

Internet meeting at least 24 hours prior to the meeting date. During the hearing, if support is required, call (717) 214-5340. The hearing will be shortened if no one testifies or if there is minimal response.

Persons with a disability who wish to attend the public hearing should contact Karen Overly Smith, 4th Floor, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120-0225, or at (717) 214-5340, to discuss how the Department can accommodate their needs. Text telephone calls can be placed through the Pennsylvania AT&T Relay System at (800) 654-5984. Calls will be relayed to the Department's number listed previously.

Purpose

The Commonwealth's Plan is the annual update to the Five Year Consolidated Plan for FFY 2009-2013. This Action Plan will describe how the programs will be administered in 2010. HUD must approve this Plan for the Commonwealth and organizations within the Commonwealth to receive funding under most HUD housing and community development programs. Applicants for funding from Federal housing programs must obtain certification describing that their proposed use of HUD assistance will be consistent with the applicable Plan for the area. The Consolidated Plan creates a unified strategy for housing and community development programs, as well as the necessary linkages for building successful neighborhoods and communities.

The Plan will have a major impact on the type, location and number of affordable housing units generated and preserved in the Commonwealth, as well as the infrastructure and public facilities, services and other economic and community development initiatives that Pennsylvania communities will undertake.

Content

The Consolidated Plan for FFY 2009-2010 will be updated through this document. The most significant change is the inclusion of the Neighborhood Stabilization Program, which is a component of CDBG, and is designed to support neighborhood sustainability and address the housing foreclosure crisis. Funding was provided during FFY 2009 and the Department anticipates using much of those funds during 2010. The Plan also discusses anticipated use of funds under the CDBG-R Program as well as the HPRP. In addition, the Commonwealth will conduct an analysis of impediments to Fair Housing and will update its Commonwealth Fair Housing Plan.

Public Review

The Consolidated Plan is available on the Internet or in hardcopy for public comment December 12, 2009, through January 12, 2010, at the locations listed:

1. County Offices, the Department's Regional Offices, and Pennsylvania's 27 District Libraries: Call (717) 214-5340 for the locations.

2. Audio Cassette copies of the Consolidated Plan can be obtained by contacting the Tri-County Branch of the Pennsylvania Association of the Blind: Harrisburg Area Radio Reading Services, 1800 North Second Street, Harrisburg, PA 17102, (717) 238-2531.

3. The Draft Action Plan 2010 can be viewed on the Internet at <http://www.newpa.com/strengthen-your-community/technical-assistance/index.aspx>. The final plan will be made available again at these same locations following HUD approval.

GEORGE E. CORNELIUS
Secretary

[Pa.B. Doc. No. 09-2282. Filed for public inspection December 11, 2009, 9:00 a.m.]

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Revisions to Schedule of Prices for State Parks

A. Summary and Background

Under section 314 of the Conservation and Natural Resources Act (71 P. S. § 1340.314) and 17 Pa. Code § 11.224 (relating to prices), the Department of Conservation and Natural Resources (Department) will revise its price schedule for State Park activities, uses and privileges effective January 1, 2010. The new schedule, which is in Section D, includes a new pricing structure for State Parks Nature Inns along with some changes to utility prices for campgrounds and organized group cabin camps, instituting ranges for certain facilities to allow for market based pricing and adding some new miscellaneous fees.

The Nature Inn at Bald Eagle State Park is currently scheduled to open in late spring of 2010. The primary reason for the proposed fee package is to institute a fee structure for the Nature Inn to accept reservations by the end of January. A range is needed to accommodate the different room types, seasons and high demand weekends.

The remaining changes are needed to compensate the Bureau of State Parks for increased utility costs at our electric campsites and fine tune our existing rate structure. For example, the changes to the boat launch and firewood permits are needed to conform to the current fees of the Fish and Boat Commission and the Bureau of Forestry. The camping fee changes include both increasing and decreasing fees at specific campgrounds that reflect market conditions and are comparable with surrounding states current pricing practices.

For comparison purposes, the current price schedule along with the new price schedule can be found at the State Parks web site at <http://www.dcnr.state.pa.us/stateparks/findinfo/2010prices.pdf>. It can also be obtained by calling State Parks Reservations and Information at (888) PA-PARKS. When the new price schedule becomes effective, it will be posted on the DCNR—State Parks web site, <http://www.dcnr.state.pa.us/stateparks/findinfo/prices.aspx>.

B. Contact Person

Any questions may be directed to, David Sariano, Assistant Director, Bureau of State Parks, Rachel Carson State Office Building, P. O. Box 8551, Harrisburg, PA 17105-8551, (717) 787-6640 or e-mail at dsariano@state.pa.us. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users).

C. Effective Date

The effective date of the new price schedule is January 1, 2010.

D. Fee Schedule

Facility Type Unit	Unit	2009 Resident and Nonresident	2010 Resident and Nonresident	2011 Resident and Nonresident	2012 Resident and Nonresident
MISCELLANEOUS					
Accident Report Copying Services	Per Request	No Current Fee	10.00—35.00	11.00—35.00	12.00—35.00
Firewood Permit	Per Cord	10.00	15.00—25.00	15.00—25.00	15.00—25.00
Houseboats—Presque Isle	Per Year	500.00	600.00	750.00	900.00
Late Fee for Payments	Per Instance	No Current Fee	20.00—100.00	20.00—100.00	20.00—100.00
NATURE INNS					
Rooms	Per Night	No Current Fee	70.00—220.00	70.00—240.00	70.00—260.00
Suites	Per Night	No Current Fee	80.00—360.00	80.00—380.00	80.00—395.00
Facility Type Unit	Unit	2009 Resident	2010 Resident	2009 Nonresident	2010 Nonresident
OTHER BOATING					
Boat Docks—Private	Per Season	50.00	50.00—100.00	60.00	60.00—120.00
Boat Winter Storage	Per Season	130.00	130.00—250.00	135.00	135.00—250.00
Boating Dry Storage	Per Season	125.00	125.00—250.00	140.00	140.00—250.00
Boat Launching Permit	1 Year	10.00	10.00—12.00	15.00	15.00—18.00
Boat Launching Permit	2 Year	18.00	18.00—22.00	28.00	28.00—34.00
Boat Launching Permit	Seven Day	5.00	5.00—7.00	5.00	5.00—7.00

<i>Facility Type Unit</i>	<i>Unit</i>	<i>2009 Resident</i>	<i>2010 Resident</i>	<i>2009 Nonresident</i>	<i>2010 Nonresident</i>
CAMPING					
Camping—base price	Per Night	15.00	14.00—16.00	17.00	16.00—18.00
CAMPING— ADDITIONAL CHARGES					
Adirondack Shelter— Poe Paddy	Per Night	N/A	2.00—3.00	N/A	2.00—3.00
Electric	Per Night	5.00	5.00—8.00	5.50	5.00—8.00
PAVILIONS— PICNIC GROVES					
Picnic Groves	Per Day	30.00—65.00	30.00—125.00	45.00—150.00	45.00—165.00
ORGANIZED GROUP CABIN CAMPS					
Org. Group Cabin Camps Capacity < = 30 persons	Per Night with Utilities	88.00	88.00—104.00	127.00	127.00—150.00
Org. Group Cabin Camps Capacity 31— 50 persons	Per Night Minimum	88.00	88.00—104.00	127.00	127.00—150.00
Org. Group Cabin Camps Capacity 51 to 125 person	Per Night Minimum	108.00	108.00—127.00	153.00	153.00—180.00
Org. Group Cabin Camps Cap. 126 person and greater	Per Night Minimum	128.00	128.00—151.00	178.00	178.00—210.00
Hickory Run / French Creek Utilities Org. Group Camp	Per Night add	51.00	51.00—100.00	51.00	51.00—100.00

The specialized pricing listed as follows for the Adirondack Shelters at Poe Paddy State Park is eliminated.

CAMPING—OTHER					
Adirondack Shelter—Poe Paddy—Sunday—Thursday	Per Night	13.00	N/A	14.00	N/A
Adirondack Shelter—Poe Paddy—Friday—Saturday	Per Night	15.50	N/A	16.50	N/A
Adirondack Shelter—Poe Paddy—Week	Per Week	76.00	N/A	88.00	N/A

JOHN QUIGLEY,
Acting Secretary

[Pa.B. Doc. No. 09-2283. Filed for public inspection December 11, 2009, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a general permit. The applications concern, but are not limited to, discharges related to industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFOs). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal waste; discharge into groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

For NPDES renewal applications in Section I, the Department of Environmental Protection (Department) has made a tentative determination to reissue these permits for 5 years, subject to effluent limitations and monitoring and reporting requirements in their current permits, with appropriate and necessary updated requirements to reflect new and changed regulations and other requirements.

For applications for new NPDES permits and renewal applications with major changes in Section II, as well as applications for MS4 individual permits and individual stormwater construction permits in Sections IV and VI, the Department, based upon preliminary reviews, has made a tentative determination of proposed effluent limitations and other terms and conditions for the permit applications. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the Environmental Protection Agency (EPA) Region III Administrator has waived the right to review or object to proposed NPDES permit actions under the waiver provision in 40 CFR 123.24(d).

Persons wishing to comment on an NPDES application are invited to submit a statement to the regional office noted before an application within 30 days from the date of this public notice. Persons wishing to comment on a WQM permit application are invited to submit a statement to the regional office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the applications. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests for a public hearing on applications. A public hearing may be held if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. The Department will postpone its final determination until after a public hearing is held.

Persons with a disability who require an auxiliary aid, service, including TDD users, or other accommodations to seek additional information should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

I. NPDES Renewal Applications

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0060445 (Sewage)	Historical and Museum Commission Eckley Miners' Village 2 Eckley Main Street Weatherly, PA 18255	Foster Township Luzerne County	Black Creek #5D	Y

Chesapeake Bay nutrient monitoring requirements for Ammonia Nitrogen, Kjeldahl Nitrogen, Nitrite-Nitrate as N, Total Nitrogen and Total Phosphorus are being added to this permit.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0043494 (IW)	Loysville Village Municipal Authority P. O. Box 133 Loysville, PA 17047	Perry County Tyrone Township	7-A Muddy Run	Y
PA0081213 (Sew)	Clay Township Supervisors Hopeland Village STP 870 Durlach Road Stevens, PA 17578	Lancaster County Clay Township	7-J UNT Middle Creek	Y
PA0081647 (Sew)	White Run Regional Municipal Authority 2001 Baltimore Pike Gettysburg, PA 17325-7015	Adams County Mount Joy Borough	13-D White Run	Y

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0088331 (Sew)	Todd A. Librandi (Lot #1) 93 Airport Drive Middletown, PA 17057	Dauphin County Londonderry Township	7-G UNT Conewago Creek	Y
PA0088293 (Sew)	Todd A. Librandi (Apartments) 93 Airport Drive Middletown, PA 17057	Dauphin County Londonderry Township	7-G UNT Conewago Creek	Y
PA0081655 (IW)	Philadelphia Mixing Solutions 1221 East Main Street Palmyra, PA 17078	Lebanon County Palmyra Borough	7-D Killinger Creek	Y

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PAS214801	Little Lisa, Inc., d/b/a Wayne Concrete Products 262 Route 44 Shinglehouse, PA 16748	Eulalia Township Potter County	Mill Creek 16C	Y
PA0208922 (Sewage)	Punkin Hollow Wastewater Treatment Plant 131 Punkin Hollow Drive Houtzdale, PA 16651	Woodward Township Clearfield County	Whiteside Run 8D	Y

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0100510	Greenville Metals, Inc. 99 Crestview Drive Extension Transfer, PA 15154-1709	Pymatuning Township Mercer County	Unnamed tributaries to Shenango River 20-A	Y

II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Applications

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

PA0057029 A1, Industrial Waste, **Hewlett Packard Company**, 10375 Park Meadows Drive, Suite 150, Littleton, CO 80124. This existing facility is located in New Garden Township, **Chester County**.

Description of Proposed Activity: This application requests amendment of the NPDES permit for the existing discharge from a groundwater remediation system for Hewlett Packard Company Avondale GWCU. A Summary Report submitted with the amendment request, as required in Part C, No. 11 of the renewal permit issued in October 2007, presented the results of 2 years of quarterly monitoring for CBOD₅, NH₃N, Total Phosphorus, and Total Nitrogen, to demonstrate that the discharge is consistent with the Christina River Basin TMDL allocations, and is supportive of the removal of the monitoring requirements for these parameters. OR 11 has been satisfied and can also be removed from the permit.

The receiving stream, an unnamed tributary to Egypt Run, is in the State Water Plan watershed 3I and is classified for cold water fishes, aquatic life, water supply, and recreation. Egypt Run is a tributary to East Branch White Clay Creek, which flows into White Clay Creek. There are no public water supply intakes identified downstream of the discharge.

Existing effluent limits for Outfall 001 which will remain in the permit, based on an average flow of 0.144 mgd, are as follows:

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Chloroform	0.006		0.012	0.015
1,1-Dichloroethylene	0.001		0.002	0.0025
1,2-Cis-Dichloroethylene	Monitor/Report	Monitor/Report		Monitor/Report
1,2-Trans-Dichloroethylene	0.7	1.4		1.75
Tetrachloroethylene	0.001		0.002	0.0025
Trichloroethylene	0.005		0.01	0.012
pH	Within limits of 6.0-9.0 Standard Units at all times			

In addition to the effluent limits, the permit contains the following major special conditions:

1. Notification of Designation of Operator.
2. Remedial Measures if Unsatisfactory Effluent.
3. Discharge to Dry/Intermittent Stream.
4. BAT/ELG Reopener.
5. Test Methods.
6. Change of Ownership.
7. Sludge Disposal Requirement.
8. Groundwater Monitoring Requirements.
9. Summary Reports Evaluating Operation.
10. No Stripper Tower Cleaning Water Discharge.

PA0051951, Sewage, SIC 8811, **David W. Chapman**, 51 Grays Lane, Elverson, PA 19520-9715. Facility Name: Chapman SRSTP. This proposed facility is located in Warwick Township, **Chester County**.

Description of Proposed Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, unnamed tributary to French Creek, is in the State Water Plan watershed 3-D and is classified for Exceptional Value Waters.

The proposed effluent limits for Outfall 001 are based on a design flow of 400 GPD.

Parameter	Mass Loading (lbs/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Instantaneous Minimum	Average Monthly	Daily Maximum	Instantaneous Maximum
CBOD ₅ (05-01 to 10-31)				10		20
(11-01 to 04-30)				20		40
Total Suspended Solids				10		20
Fecal Coliform				# 200/100 ml		
Total Residual Chlorine				Non-Detect		Non-Detect
pH (STD)			6.0			9.0

In addition to the effluent limits, the permit contains the following major special conditions:

1. Dechlorination Required.
2. EPA Approved Test Methods for TRC.

The EPA Waiver is in effect.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

Application No. PA 0021636, Sewage, **Fleetwood Borough**, 110 West Arch Street, Fleetwood, Pennsylvania 19522. This facility is located in Richmond Township, **Berks County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Willow Creek, is in Watershed 3-B, and classified for cold water fishery, water supply, recreation, and fish consumption. The nearest downstream public water supply intake for Borough of Pottstown Water and Sewer Authority is located on the Schuylkill River, approximately 36 miles downstream. The discharge is not expected to affect the water supply.

The proposed interim effluent limits for Outfall 001 for a design flow of 0.7 MGD are:

Parameter	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
CBOD ₅ (5-1 to 10-31)	14	22	30
(11-1 to 4-30)	25	40	50
Total Suspended Solids	30	45	60
NH ₃ -N (5-1 to 10-31)	1.4		2.8
(11-1 to 4-30)	4.2		8.4
Total Residual Chlorine	0.17		0.55
Total Copper	Report		
Total Phosphorus	Report		
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)		200/100 ml as a geometric average 2,000/100 ml as a geometric average	

The proposed final effluent limits for Outfall 001 for a design flow of 0.7 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅ (5-1 to 10-31) (11-1 to 4-30)	14 25	22 40	30 50
Total Suspended Solids	30	45	60
NH ₃ -N (5-1 to 10-31) (11-1 to 4-30)	1.4 4.2		2.8 8.4
Total Residual Chlorine	0.008		0.026
Total Copper	0.024		
Total Phosphorus	Report		
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)		200/100 ml as a geometric average 2,000/100 ml as a geometric average	

You may make an appointment to review the Department of Environmental Protection's files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA waiver is not in effect.

Application No. PA 0020834, Sewage, **Greencastle Franklin County Authority**, 60 North Washington Street, Greencastle, Pennsylvania 17225-1230. This facility is located in Antrim Township, **Franklin County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, UNT to Conococheague Creek, is in Watershed 13-C, and classified for warm water fishery, water supply, recreation, and fish consumption. The nearest downstream public water supply intake for Hagerstown is located on the Potomac River, approximately 10 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.95 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	40	50
Total Suspended Solids	30	45	60
NH ₃ -N (5-1 to 10-31) (11-1 to 4-30)	3.3 9.9		6.6 19.8
Total Residual Chlorine	0.19		0.64
Total Phosphorus	Report		
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)		200/100 ml as a geometric average 2,000/100 ml as a geometric average	

Chesapeake Bay Requirements

	<i>Concentration (mg/L)</i>		<i>Mass (lbs)</i>	
	<i>Monthly Average</i>	<i>Monthly</i>	<i>Monthly</i>	<i>Annual</i>
Ammonia-N	Report	Report	Report**	Report**
Kjeldahl-N	Report	Report	Report	XXX
Nitrate-Nitrite as N	Report	Report	Report	XXX
Total Nitrogen	Report	Report	Report	Report
Total Phosphorus	Report	Report	Report	Report
Net Total Nitrogen	XXX	Report	Report	17,351*
Net Total Phosphorus	XXX	Report	Report	2,314*

* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

** Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by September 30, 2013.

You may make an appointment to review the Department’s files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA waiver is not in effect.

Application No. PA 0044113, Sewage, **South Middleton Township Municipal Authority**, 345 Criswell Drive, Boiling Springs, Pennsylvania 17007-0008. This facility is located in South Middleton Township, **Cumberland County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Yellow Breeches Creek, is in Watershed 7-E, and classified for high quality cold water fishes, water supply, recreation, and fish consumption. The nearest downstream public water supply intake for United Water Company is located on the Yellow Breeches Creek, approximately 19.5 miles downstream. The discharge is not expected to affect the water supply.

The proposed interim effluent limits for Outfall 001 for a design flow of 0.75 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅ (5-1 to 10-31)	20	30	40
(11-1 to 4-30)	25	40	50
Total Suspended Solids	30	45	60
Total Residual Chlorine	1.0		2.0
Total Phosphorus	2.0		4.0
Dissolved Oxygen	Minimum of 5.0 at all times		
pH	From 6.0 to 9.0 inclusive		
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric average		
(10-1 to 4-30)	2,000/100 ml as a geometric average		

The proposed final effluent limits for Outfall 001 for a design flow of 1.50 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅ (5-1 to 10-31)	15	22	30
(11-1 to 4-30)	17.5	26	35
Total Suspended Solids	20	30	40
NH ₃ -N (5-1 to 10-31)	8.0		16
(11-1 to 4-30)	9.5		19
Total Residual Chlorine	0.5		1.6
Total Phosphorus	1.5		3.0
Dissolved Oxygen	Minimum of 5.0 at all times		
pH	From 6.0 to 9.0 inclusive		
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric average		
(10-1 to 4-30)	2,000/100 ml as a geometric average		

Chesapeake Bay Requirements

	<i>Concentration (mg/L)</i>	<i>Mass (lbs)</i>	
	<i>Monthly Average</i>	<i>Monthly</i>	<i>Annual</i>
Ammonia-N	Report	Report	Report**
Kjeldahl-N	Report	Report	XXX
Nitrate-Nitrite as N	Report	Report	XXX
Total Nitrogen	Report	Report	Report
Total Phosphorus	Report	Report	Report
Net Total Nitrogen	XXX	Report	29,322*
Net Total Phosphorus	XXX	Report	3,653*

* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection’s (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2014. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the Supplemental DMR—Annual Nutrient Summary by November 28, 2015. The facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until September 30, 2014.

** Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2010.

You may make an appointment to review the Department's files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA waiver is not in effect.

Application No. PA 0044471, Industrial Waste, **SIC Code 2032 and 2033**, Hanover Foods Corporation, P. O. Box 334, Hanover, PA 17331-0334. This facility is located in Penn Township, **York County**.

Description of activity: The application is for renewal of an NPDES permit for existing discharge of treated industrial waste.

The receiving stream, Oil Creek, is in Watershed 7-H, and classified for warm water fishery, water supply, recreation, and fish consumption. The nearest downstream public water supply intake is Wrightsville Water Supply Company located on the Susquehanna River, approximately 40.09 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 based on a design flow of 0.643 MGD are:

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
CBOD ₅					
(5/1 to 10/31)	53.0	105.0	10	20	xxx
(11/1 to 4/30)	160.0	320.0	30	60	xxx
Fecal Coliform					
(5/1 to 9/30)	xxx	xxx	200	xxx	xxx
(10/1 to 4/30)	xxx	xxx	2000	xxx	xxx
NH ₃ -N					
(5/1 to 10/31)	8.0	16.0	1.5	3.0	xxx
(11/1 to 4/30)	24.0	48.0	4.5	9.0	xxx
TSS	53.0	105.0	10	20	xxx
TRC	xxx	xxx	0.1	M&R	xxx
Total Nitrogen	M&R	xxx	M&R	xxx	xxx
Total Kjeldahl Nitrogen	M&R	xxx	M&R	xxx	xxx
Total Phosphorus	2.5	5.0	0.5	1.0	xxx
Temperature	xxx	xxx	xxx	M&R	xxx

You may make an appointment to review the Department of Environmental Protection's files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA waiver is in effect.

Application No. PA 0085511, Sewage, **West Hanover Township Water and Sewer Authority**, 7901 Jonestown Road, Harrisburg, Pennsylvania 17112. This facility is located in West Hanover Township, **Dauphin County**.

Description of activity: The application is for issuance of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, UNT Manada Creek, is in Watershed 7-D, and classified for warm water fishes, water supply, recreation, and fish consumption. The nearest downstream public water supply intake for Pennsylvania American Water Company is located on the Manada Creek, approximately 8.5 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.78 MGD are:

Parameter	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
CBOD ₅	25	40	50
Total Suspended Solids	30	45	60
NH ₃ -N			
(5-1 to 10-31)	2.0		4.0
(11-1 to 4-30)	6.0		12
Total Phosphorus	2.0		4.0
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		2,000/100 ml as a geometric average	

Chesapeake Bay Requirements

	<i>Concentration (mg/L)</i>		<i>Mass (lbs)</i>	
	<i>Monthly Average</i>	<i>Monthly</i>	<i>Monthly</i>	<i>Annual</i>
Ammonia-N	Report	Report	Report	Report
Kjeldahl-N	Report	Report	Report	XXX
Nitrate-Nitrite as N	Report	Report	Report	XXX
Total Nitrogen	Report	Report	Report	Report
Total Phosphorus	Report	Report	Report	Report
Net Total Nitrogen	XXX	Report	Report	14,246*
Net Total Phosphorus	XXX	Report	Report	1,900*

* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports submitted to the Department.

You may make an appointment to review the Department's files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA waiver is not in effect.

Application No. PA 0044911, Industrial Waste, SIC Codes 2023 and 2021, 405 Park Drive, Carlisle, Pennsylvania 17015-9270. This facility is located in South Middleton Township, **Cumberland County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated industrial waste.

The receiving stream, Mountain Creek, is in Watershed 7-E, and classified for trout stocking fishes, water supply, recreation, and fish consumption. The nearest downstream public water supply intake is United Water Company located on the Yellow Breeches Creek, approximately 24.5 miles downstream. The discharge is not expected to affect the water supply.

The proposed Interim effluent limits for Outfall 001 based on a design flow of 0.81 MGD are:

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
pH (S.U.)	XXX	XXX	6.0 min	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0 min	XXX	XXX
BOD ₅	90	180	Report	Report	33
Total Suspended Solids	115	226	Report	Report	42
Total Phosphorus	13.5	27	2.0	4.0	5.0
NH ₃ -N					
(5/1 to 10/31)	10	20	1.5	3.0	3.75
(8/1 to 6/30)	30	60	4.5	9.0	11
Temperature					
(7/1 to 7/31)	XXX	XXX	Report	82° F	XXX
(8/1 to 6/30)	XXX	XXX	Report	110° F	XXX

The proposed Interim effluent limits for Internal Monitoring Point 101 are:

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
pH (S.U.)	XXX	XXX	XXX	XXX	9.0
Influent (BOD ₅ and TSS)	Report	Report	Report	Report	XXX
BOD ₅	Report	Report	Report	Report	XXX
Total Suspended Solids	Report	Report	Report	Report	XXX
Total Phosphorus	Report	Report	Report	Report	XXX
NH ₃ -N	Report	Report	Report	Report	XXX
Temperature ° F	XXX	XXX	Report	Report	XXX

The proposed Interim influent limits for Internal Monitoring Point 102 are:

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
pH (S.U.)	XXX	XXX	Report	XXX	Report
BOD ₅	Report	Report	Report	Report	XXX
Total Suspended Solids	Report	Report	Report	Report	XXX
NH ₃ -N	Report	Report	Report	Report	XXX

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Total Phosphorus	Report	Report	Report	Report	XXX
Temperature	XXX	XXX	Report	Report	XXX

The proposed Final effluent limits for Outfall 001 based on a design flow of 0.81 MGD are:

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
pH (S.U.)	XXX	XXX	6.0 min	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0 min	XXX	XXX
CBOD ₅	Report	Report	Report	Report	XXX
Total Suspended Solids	Report	Report	Report	Report	XXX
Total Phosphorus	Report	Report	Report	Report	XXX
NH ₃ -N	Report	Report	Report	Report	XXX
Temperature					
(7/1 to 7/31)	XXX	XXX	Report	93° F	XXX
(8/1 to 6/30)	XXX	XXX	Report	110° F	XXX

The proposed Final effluent limits for Internal Monitoring Point 101 are:

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
pH (S.U.)	XXX	XXX	Report min	XXX	Report
Dissolved Oxygen	XXX	XXX	Report min	XXX	XXX
Influent (BOD ₅ and TSS)	Report	Report	Report	Report	XXX
CBOD ₅	23	47	10	20	25
Total Suspended Solids	23	47	10	20	25
Total Phosphorus	2.3	4.7	1.0	2.0	2.5
NH ₃ -N					
(5/1 to 10/31)	3.5	7.1	1.5	3.0	3.7
(11/1 to 4/30)	10	21	4.5	9.0	11
Temperature	XXX	XXX	Report	Report	XXX

The proposed Final effluent limits for Internal Monitoring Point 102 are:

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
pH (S.U.)	XXX	XXX	Report min	XXX	Report
Dissolved Oxygen	XXX	XXX	Report min	XXX	XXX
CBOD ₅	8.7	17	Report	Report	XXX
Total Suspended Solids	8.7	17	Report	Report	XXX
Total Phosphorus	4.3	8.7	Report	Report	XXX
NH ₃ -N	6.5	13	Report	Report	XXX
Temperature	XXX	XXX	Report	Report	XXX

You may make an appointment to review the Department of Environmental Protection's files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA waiver is in effect.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

PA0233871, SIC 4952, Scott Davies, 112 Whites Church Road, Bloomsburg, PA 17815. This proposed facility is located in Mount Pleasant Township, **Columbia County**.

Description of Proposed Activity: The existing SFTF is malfunctioning and in need of replacement. A new SFTF with a proposed flow of 500 GPD will be constructed so the existing facility can be decommissioned.

The receiving stream, Unnamed Tributary to Fishing Creek, is in the State Water Plan watershed 5C and is classified for: Cold Water Fishes (CWF). The nearest downstream public water supply intake for United Water Pennsylvania Bloomsburg is located on Fishing Creek and is 4.5 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0005 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum mg/l
Flow (GPD)			Monitor Only		Monitor Only
BOD ₅			10		20
Total Suspended Solids			10		20
Total Residual Chlorine			Monitor and Report		
pH (Standard Units)			Not < 6.0 nor > than 9.0		
Fecal Coliform			200/100 mL		

In addition to the effluent limits, the permit contains the following major special conditions.

1. COMPLIANCE SCHEDULES

The permittee shall achieve compliance with the effluent limitations and monitoring requirements established in Part A.1.b. of this permit and the Annual Maintenance Report form, or terminate this discharge, in accordance with the following schedule:

Effluent Limits/Monitoring Requirements Established On:	Date Effective
Page 2	Immediately

The permittee shall achieve compliance with all other terms and conditions of this permit, and the associated Annual Maintenance Report form, upon the effective date of the permit (unless otherwise specified).

2. ANNUAL MAINTENANCE REPORT FORMS

Properly completed and signed Annual Maintenance Reports (AMRs), in lieu of the Discharge Monitoring Report (DMR) and Supplemental DMR as described in Part A, III, B of this permit, shall be received by the Department of Environmental Protection (Department) on June 30 of each year at the following address: Department of Environmental Protection, Water Management Program, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701.

3. PRIOR APPROVALS

The approval herein given is specifically made contingent upon the permittee acquiring all necessary property rights by easement or otherwise, providing for the satisfactory construction, operation, maintenance and replacement of all sewers or sewerage structures associated with the herein approved discharge in, along, or across private property, with full rights of ingress, egress and regress.

4. MALFUNCTIONING TREATMENT SYSTEM OR CHANGE IN CONDITIONS

If, in the opinion of the Department, the small flow treatment facility (SFTF) is not operated in compliance with the conditions of this permit, or if the character of the waste changes, there is an increased load into the SFTF, the use or condition of the receiving stream changes, the effluent ceases to be satisfactory, or the discharge otherwise creates a nuisance, then upon notice from the Department, the right to discharge pursuant to this permit will cease. The Department may allow persons with such discharges a specified time period to implement remedial measures which will result in a satisfactory effluent discharge into the receiving stream.

5. AVAILABILITY OF PUBLIC SEWERAGE

Should municipal sewerage facilities become available, the permittee shall provide for the conveyance of its sewage to the municipal sewerage facilities, abandon the use of the SFTF, and notify the appropriate the Department's regional office accordingly. This permit shall then, upon notice from the Department, terminate and become null and void, and shall be relinquished to the Department.

6. TREATMENT TANK CLEANING REQUIREMENT

The permittee shall measure the depth of sludge and scum in septic (treatment) tanks at least once a year, and must clean the septic tank whenever the top of the sludge layer in the tank or any compartment of the tank is found to be less than 12 inches below the bottom of the outlet baffle, or if the bottom of the scum layer is within 3 inches of the outlet baffle. Annual pumping may be substituted for measurement. Annual pumping of aerobic treatment units and dosing tanks is required. All septic tanks must be pumped and cleaned at least once every 3 years and the permittee shall submit copies of pumping records to the Department, when requested. Certification of such cleaning must be presented to the Department if the person operating the SFTF wishes to continue permit coverage. The Department will not renew any permit if such proof is not presented in the AMR or at the request of the Department.

7. PROHIBITION OF STORMWATER DISCHARGES

No storm water from pavements, area ways, roofs, foundation drains or other sources shall be admitted to the treatment system associated with the herein approved discharge.

8. EFFLUENT CHLORINE MINIMIZATION

A. The permittee will ensure that applied chlorine dosages used for disinfection are optimized to the degree necessary to minimize the level of total residual chlorine (TRC) in the effluent.

B. If the Department finds levels of TRC in the permittee's effluent are causing adverse water quality impacts in the receiving water, the permittee will be required to institute additional steps to reduce or eliminate such impact.

C. The permittee shall maintain the disinfection unit and ensure that it functions properly at all times.

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

PA0218138, Sewage, **Armstrong County Industrial Development Authority**, 402 Market Street, Kittanning, PA 16201. This application is for renewal of an NPDES permit to discharge treated sewage from Armstrong County Industrial Development Authority STP in North Buffalo Township, **Armstrong County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Nicholson Run, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply, and recreation. The first downstream potable water supply intake from this facility is the Buffalo Township Municipal Authority at Freeport.

Outfall 001: existing discharge, design flow of 0.4 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD ₅	25	37.5		50
Suspended Solids	30	45		60
Ammonia Nitrogen				
May 1 to Oct 31	2.0	3.0		4.0
Nov 1 to Apr 30	6.0	9.0		12.0
Fecal Coliform				
May 1 to Sep 30	200/100 ml as a geometric mean			
Oct 1 to Apr 30	2,000/100 ml as a geometric mean			
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			
CBOD ₅	25	37.5		50
Suspended Solids	30	45		60
Ammonia Nitrogen				
May 1 to Oct 31	2.0	3.0		4.0
Nov 1 to Apr 30	4.0	6.0		8.0
Fecal Coliform				
May 1 to Sep 30	200/100 ml as a geometric mean			
Oct 1 to Apr 30	2,000/100 ml as a geometric mean			
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

PA0263648, Sewage, NAICS Code 814000, **Don Thompson**, 605 Old Farm Lane, State College, PA 16803-1224. Facility Name: Don Thompson SFTF. This proposed facility is located in Conewango Township, **Warren County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated sewage.

The receiving stream(s), an Unnamed Tributary to Morse Run, is located in State Water Plan watershed 16-B and is classified for High Quality Waters—Cold Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0004 MGD.

Parameter	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instantaneous Maximum
Flow (MGD)	Report					
pH (S.U.)			6.0		9.0	
Total Residual Chlorine	Report					
CBOD ₅				10		20
Total Suspended Solids				10		20
Fecal Coliform (CFU/100 ml)				200		
				Geo Mean		

You may make an appointment to review the Department of Environmental Protection's files on this case by calling the File Review Coordinator at 814-332-6340.

The EPA Waiver is in effect.

III. WQM Industrial Waste and Sewerage Applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

WQM Permit No. 1509411, Sewerage, **West Vincent Township**, 729 St. Matthews Road, Chester Springs, PA 19425-3301. This proposed facility is located in West Vincent Township, **Chester County**.

Description of Action/Activity: Construction and operation of a wastewater treatment plant and drip dispersal fields.

WQM Permit No. 2309410, Sewerage, **BPG Land Partners VIII, LLC and FC Pennsylvania Stadium, LLC**, 322 A Street, Suite 300, Wilmington, DE 19428. This proposed facility is located in City of Chester, **Delaware County**.

Description of Action/Activity: Clean up and redevelopment of existing brownfield sites along the Delaware River.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

WQM Permit No. 1909403, Sewerage 4952, **Scott Davies**, 112 Whites Church Road, Bloomsburg, PA 17815. This proposed facility is located in Mount Pleasant Township, **Columbia County**.

Description of Proposed Action/Activity: The existing SFTF is malfunctioning and in need of replacement. A new SFTF with a proposed flow of 500 GPD will be constructed so the existing facility can be decommissioned.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WQM Permit No. 6209401, Sewerage, **Don Thompson**, 605 Old Farm Lane, State College, PA 16803-1224. This proposed facility is located in Conewango Township, **Warren County**.

Description of Proposed Action/Activity: A Single Residence Sewage Treatment Plant.

IV. NPDES Applications for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

V. Applications for NPDES Wavier Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

VI. NPDES Individual Permit Applications for Discharges of Stormwater Associated with Construction Activities

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI01 1509039	Jack E. Kazangian 2235 Sproul Road Broomall, PA 19008	Chester	Willistown Township	West Branch Crum Creek (EV)
PAI01 0909009	Edward McArdle 3291 Church School Road Doylestown, PA 18901	Bucks	Springfield Township	Cooks Creek (EV)

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Lehigh County Conservation District: Lehigh Agricultural Center, Suite 102, 4184 Dorney Park Road, Allentown, PA 18104, 610-391-9583.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023909019	Country Meadows Associates Attn: George Leader 830 Cherry Dr. Hershey, PA 17033	Lehigh	Lower Macungie and Upper Macungie Twps.	Little Cedar Creek HQ-CWF, MF

Wayne County Conservation District: Agricultural Service Center, 648 Park St., Honesdale, PA 18431, 570-253-0930.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI026409008	USACE Philadelphia Dist. 100 Penn Square East Wanamaker Bldg. Philadelphia, PA 19107	Wayne	Prompton Boro.	West Branch Lackawaxen River HQ-TSF, MF

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Centre County Conservation District: 414 Holmes Avenue, Suite 4, Bellefonte, PA 16823, (814) 355-6817.

NPDES Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI041409013	Ed Poprick State College Area School District 131 West Nittany Avenue State College, PA 16801	Centre	College and Harris Townships	Spring Creek HQ-CWF

VII. List of NOIs for NPDES and/or Other General Permit Types

PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

STATE CONSERVATION COMMISSION

NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO)

This notice provides information about agricultural operations that have submitted nutrient management plans (NMPs) for approval under the act of July 6, 2005 (Act 38 of 2005, 3 Pa.C.S. §§ 501—522) (hereinafter referred to as Act 38), and that have or anticipate submitting applications for new, amended or renewed NPDES permits, or Notices of Intent (NOIs) for coverage under a general permit, for CAFOs, under 25 Pa. Code Chapter 92. This notice is provided in accordance with 25 Pa. Code Chapter 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

Based upon preliminary reviews, the State Conservation Commission (SCC), or County Conservation Districts (CCD) working under a delegation agreement with the SCC, have completed an administrative review of NMPs described. These NMPs are published as proposed plans for comment prior to taking final actions. The NMPs are available for review at the CCD office for the county where the agricultural operation is located. A list of CCD office locations is available at www.pacd.org/districts/directory.htm or can be obtained from the SCC at the office address listed or by calling (717) 787-8821.

Persons wishing to comment on an NMP are invited to submit a statement outlining their comments on the plan to the CCD, with a copy to the SCC for each NMP, within 30 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the NMPs. Comments should include the name, address and telephone number of the writer and a concise statement to inform the SCC of the exact basis of the comments and the relevant facts upon which they are based.

The address for the SCC is Agriculture Building, Room 407, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons with a disability who require an auxiliary aid, service, including TDD users or other accommodations to seek additional information should contact the SCC through the Pennsylvania AT&T Relay Service at (800) 654-5984.

NUTRIENT MANAGEMENT PLAN—PUBLIC NOTICE SPREADSHEET—APPLICATIONS

Agricultural Operation Name and Address	County	Total Acres	Animal Equivalent Units	Animal Type	Special Protection Waters (HQ or EV or NA)	Renewal/New
Jay Hess Bacon Acres 151 Pequea Creek Road Conestoga, PA 17516	Lancaster	180	495.5	Hogs, beef & broilers	None	Renewal

PUBLIC WATER SUPPLY (PWS) PERMIT

Under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), the following parties have applied for a PWS permit to construct or substantially modify a public water system.

Persons wishing to comment on a permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice. Comments received within the 30-day comment period will be considered in the formulation of the final determinations regarding the application. Comments should include the name, address and telephone number of the

writer and a concise statement to inform the Department of Environmental Protection (Department) of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and any related documents are on file at the office listed before the application and are

available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability who require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

SAFE DRINKING WATER

Applications Received under the Pennsylvania Safe Drinking Water Act

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Application No. 3509503, Public Water Supply.

Applicant **Aqua Pennsylvania, Inc.**
50 E. Woodhaven Dr.
White Haven, PA 18661

Township or Borough South Abington Township

Responsible Official Patrick R. Burke
Aqua Pennsylvania, Inc.
50 E. Woodhaven Dr.
White Haven, PA 18661

Type of Facility PWS

Consulting Engineer William LaDieu, P. E.
CET Engineering Services
1240 N. Mountain Rd.
Harrisburg, PA 17112

Application Received Date 11/09/2009

Description of Action Applicant requests approval to construct a replacement well station at the existing Chinchilla I well site and modify the existing well station.

Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Application No. 1409503—Construction, Public Water Supply.

Applicant **Miles Township Water Authority—East**

Township or Borough Miles Township

County **Centre**

Responsible Official Phil Meyer, Chairperson
Miles Township Water Authority—East
Box 157
Rebersburg, PA 16872

Type of Facility Public Water Supply—Construction

Consulting Engineer David M. Swisher, P. E.
Herbert, Rowland and Grubic, Inc.
474 Windmere Drive
Suite 100
State College, PA 16801

Application Received November 23, 2009

Description of Action Addition of Spring #1, construction of a raw waterline and associated appurtenances.

Application No. 5909501—Construction, Public Water Supply.

Applicant **Mansfield University**

Township or Borough Mansfield Borough

County **Tioga**

Responsible Official Richard Nelson
Utility Plant Manager
115 Sherwood Street
Mansfield, PA 16933

Type of Facility Public Water Supply—Construction

Consulting Engineer Mark V. Glenn, P. E.
Gwin, Dobson & Foreman, Inc.
3121 Fairway Drive
Altoona, PA 16602

Application Received November 30, 2009

Description of Action Construction of a new physical/chemical water treatment facility, utilizing microfiltration membrane technology.

MINOR AMENDMENT

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Application No. 3909510MA, Minor Amendment.

Applicant **Green Acres Limited Partnership**
8785 Turkey Ridge Rd.
Breinigsville, PA 18031

Township or Borough Upper Macungie Township

Responsible Official Tim Buechel
Green Acres Limited Partnership
8785 Turkey Ridge Rd.
Breinigsville, PA 18301

Type of Facility PWS

Consulting Engineer Douglas Kern, P. E.
ACES Inc
P. O. Box 260
New Ringgold, PA 17960

Application Received Date 11/17/09

Description of Action Applicant requests approval of two existing pressure maintenance pumps, which were installed to replace the originally specified pump package. The pumps were installed to provide more reliable system pressure maintenance.

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Application No. 3909506MA, Minor Amendment.

Applicant **Lehigh County Authority**
1053 Spruce St.
P. O. Box 3348
Allentown, PA 18106

Township or Borough	Upper Milford Township
Responsible Official	Aurel M. Arndt, General Manager Lehigh County Authority 1053 Spruce St. P. O. Box 3348 Allentown, PA 18106
Type of Facility	PWS
Consulting Engineer	Charles E. Volk, P. E. ARRO Consulting, Inc. 1150 Glenlivet Dr. Suite A19 Allentown, PA 18106
Application Received Date	5/26/09
Description of Action	Applicant proposes treatment system upgrades including the addition of a 20,000 gallon storage tank and a change from soda ash to caustic soda for pH adjustment.

WATER ALLOCATIONS

Applications received under the Act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the Acquisition of Rights to Divert Waters of the Commonwealth

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448.

WA 41-1001, Water Allocations. Lycoming County Water and Sewer Authority, 216 Old Cement Road, P. O. Box 186, Montoursville, PA 17754, Montoursville Borough, **Lycoming County**. LCWSA is requesting an allocation on average of 5,000 gallons per day from Muncy Borough and Muncy Borough Municipal Authority. Expected demand on current system is expected to increase due to Lycoming Mall's expected connection to the system. Back-up is needed to provide redundancy within the water system and ensure reliable and continuous water service to the Authority's customers. While the terms of the draft interconnection agreement limits the allocation capacity to 20,000 gpd, there are provisions to increase the interconnection capacity in the event that the water demands warrant such an increase.

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 Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to

use the Background Standard, Statewide Health Standard, the Site-Specific Standard or who intend to remediate a site as a special industrial area must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, a combination of the cleanup standards or who receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a Site-Specific Standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified, proposed for remediation to a Site-Specific Standard or as a special industrial area, the municipality within which the site is located may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period, the municipality may request that the person identified as the remediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office before 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. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

Northeast Region: Ronald S. Brezinski, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Cragle Property, 27 Winola Road, Tunkhannock Borough, **Wyoming County**. **James Sposito, James P. Sposito Associates**, 11 Archbald Street, Carbondale, PA 18407 has submitted a Notice of Intent to Remediate (on behalf of his client, Ginger Cragle, 27 Winola Road, Tunkhannock, PA 18657), concerning the remediation of soil found to have been impacted by No. 2 heating oil as a result of an overflow of fuel being dispensed into a 275-gallon aboveground storage tank. The applicant proposes to remediate the site to meet the Statewide Health Standard. The intended future use of the property is residential. A summary of the Notice of Intent to Remediate is expected to be published in a local newspaper serving the general area sometime in the near future.

Aden Property, 1828 Valley Forge Road, South Whitehall Township, **Lehigh County**. **Gregg J. Walters, MEA, Inc.**, 1365 Ackermanville Road, Bangor, PA 18013

has submitted a Notice of Intent to Remediate (on behalf of his clients, LaRoy and Ruth Aden, 1828 Valley Forge Road, Allentown, PA 18104), concerning the remediation of soil found to have been impacted by No. 2 fuel oil as a result of a release from a leaking pressure gauge from a furnace/275-gallon aboveground storage tank system. The applicants propose to remediate the site to meet the Statewide Health Standard. The site will remain a residential dwelling in the future. A summary of the Notice of Intent to Remediate was published in *The Morning Call* on October 16, 2009.

Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Former BP Site No. 07038, City of Erie, Erie County. Shaw Environmental, Inc., 2790 Mosside Boulevard, Monroeville, PA 15146 on behalf of BP Products North America, Inc., 1 West Pennsylvania Avenue, Suite 440, Towson, MD 21204 has submitted a Notice of Intent to Remediate. The site is a former BP retail gasoline station. Prior to 1989 two 8,000-gallon underground storage tanks, one 4,000-gallon underground storage tank, and one waste oil UST of unspecified size, dispenser islands, and associated piping were removed from the site. A subsurface assessment of the property was conducted in 1989. In October 2008 soil borings were installed and converted to monitoring wells. The September 2009 groundwater analytical data indicates all constituents of potential concern are below the Statewide Health Standard Medium-Specific Concentrations. The current and intended future use of the property is nonresidential. The Notice of Intent to Remediate was published in the *The Erie-Times News* on October 25, 2009, and October 27, 2009. The site will be remediated to the Statewide Health Standard.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

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 Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401.

Permit Application No. 101549. Bucks County Resource Recovery, Inc., 701 Penn Avenue, Marcus Hook, PA 19061-4604. This permit application is for 10-year renewal of the existing permit for continued operation of the Bucks County Resource Recovery, an infectious waste processing facility, located in Marcus Hook Borough, **Delaware County**. The application was received by the Southeast Regional Office on November 16, 2009.

Northcentral Region: Regional Solid Waste Manager, 208 West Third Street, Williamsport, PA 17701.

Permit Application No. 101649. Phoenix Resources, Inc., 782 Antrim Road, Wellsboro, PA 16901, Duncan Township, **Tioga County**. An application for the conversion of an existing construction/demolition waste facility to a municipal waste disposal facility was submitted to the Northcentral Regional Office on November 13, 2009. A Local Municipal Involvement Process meeting will be scheduled.

Comments concerning the application should be directed to Lisa Houser, P. E., Facilities Manager, Northcentral Regional Office, 208 West Third Street,

Suite 101, Williamsport, PA 17701. Persons interested in obtaining more information about the permit application may contact the Williamsport Regional Office, Telephone 570-327-3740. TDD users may contact the Department of Environmental Protection through the Pennsylvania AT&T 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.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Telephone 412-442-4000.

Permit ID #300657. Allegheny Ludlum Corporation, 100 River Road, Brackenridge, PA 15014-1597. Route 356 Landfill, State Route 356, Allegheny Township, PA 15656. An application for the permit renewal of a residual waste landfill in Allegheny Township, **Westmoreland County** was received in the Regional Office on November 20, 2009.

AIR QUALITY

PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

NEW SOURCES AND MODIFICATIONS

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

The Department has received applications for plan approvals and/or operating permits from the following facilities.

Copies of the applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the regional office identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

Persons wishing to receive a copy of a proposed plan approval or operating permit must indicate their interest to the Department regional office within 30 days of the date of this notice and must file protests or comments on a proposed plan approval or operating permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Comments or protests filed with the Department regional offices must include a concise statement of the objections to the issuance of the Plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

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

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121—143, the Federal Clean Air Act (act) and regulations adopted under the act.

PLAN APPROVALS

Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Mark Gorog, New Source Review Chief—Telephone: 814-332-6940.

24-083R: Carbone of America Industries Corp. (215 Stackpole Street, St. Marys, PA 15857) for modification of the plan approval 24-083M condition regarding testing of the electric furnace in St. Marys City, **Elk County**. This is a Title V facility.

Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401. Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920.

23-0012A: Sunoco Chemicals, Inc. (1735 Market Street, Philadelphia, PA 19103) for modification of three (3) silos of their existing Plant II in Marcus Hook Borough, **Delaware County**. This facility is a Title V facility. This modification will result in VOC emission increase of 4.64 tpy. The Plan Approval and Operating Permit will contain recordkeeping requirements designed to keep the facility operating within all applicable air quality requirements.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701. Contact: David Aldenderfer, Program Manager—Telephone: 570-327-3637.

59-00017A: Hitachi Metals Automotive Components USA, LLC (P. O. Box 68, Blossburg, PA 16912-0068) for construction of a phenolic urethane cold box core-making machine in Lawrence Township, **Tioga County**.

The Department of Environmental Protection's (Department) review of the information submitted by Hitachi Metals Automotive Components USA, LLC indicates that the air contamination source to be constructed will comply with all regulatory requirements pertaining to air contamination sources and the emission of air contaminants including the particulate matter emission limitation of 25 Pa. Code § 123.13 and the best available technology requirement (BAT) of 25 Pa. Code §§ 127.1 and 127.12. Based on this finding, the Department proposes to issue a plan approval for the proposed construction.

The total combined volatile organic compound (VOC) and hazardous air pollutants (HAPs) emissions from all three core-making machine will not exceed 6.30 tons and 1.00 ton in any 12 consecutive month period, respectively.

The total combined VOC emissions from all sources at the facility will not exceed 42.25 tons in any 12 consecutive month period.

In addition to the emission limitations, the following is a summary of the types of conditions the Department intends place in the plan approval to ensure compliance with all applicable regulatory requirements including the best available technology requirements of 25 Pa. Code §§ 127.1 and 127.12.

Emission and material usage restrictions to limit the emission of volatile organic compounds and hazardous air pollutants.

Work practice requirements to install and operate the source and control device with good air pollution control practices.

Recordkeeping and Reporting conditions to verify compliance with the emission limitations and all applicable requirements.

A copy of the plan approval application and the Department's review is available for public review between 8 a.m. and 4 p.m. at the Department's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review may be made by calling the Department at 570-327-3693. Written comments or requests for a public hearing should be directed to Muhammad Q. Zaman, Manager, Facilities Permitting Section, Department of Environmental Protection, Air Quality Program, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, 570-327-0512.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Contact: B. Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226.

PA 30-00110A: Equitrans, LP (625 Liberty Avenue, Pittsburgh, PA 15222) to allow installation of Cooper-Bessemer CleanBurn Systems on two existing Cooper-Bessemer engines (each rated at 880 hp), at the Pratt Compressor Station in Franklin Township, **Greene County**.

In accordance with 25 Pa. Code §§ 127.44(b) and 127.45 the Department of Environmental Protection (Department) intends to issue a Plan Approval to allow the installation of Cooper-Bessemer CleanBurn Systems on two existing Cooper-Bessemer engines (each rated at 880 hp), at the Pratt Compressor Station located in Franklin Township, Greene County.

Plan Approval will include emission restrictions on the sources at this plant, making this facility a non-major site. Emissions from the facility shall not equal or exceed 100 tons NO_x, 100 tons CO, 50 tons VOCs, 25 tons all HAPs combined, or 10 tons of a single HAP, based on a 12-month rolling total basis. The proposed facility is subject to the applicable requirements of 25 Pa. Code Chapters 121—145. Plan Approval will include conditions relating to applicable emission restrictions, testing, monitoring, recordkeeping, reporting and work practice standards requirements.

Those who wish to provide the Department with additional written information that they believe should be considered prior to the issuance of the Plan Approval may submit the information to Barbara Hatch, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222. Written comments must contain the following:

Name, address and telephone number of the person submitting the comments.

Identification of the proposed Plan Approval (specify the Plan Approval number).

Concise statements regarding the relevancy of the information or objections to issuance of the Plan Approval.

All comments must be received prior to the close of business 30 days after the date of this publication.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Mark Gorog, New Source Review Chief—Telephone: 814-332-6940.

33-133A: HRI, Inc.—Brookville Plant 109 (785 Route 830, Brookville, PA 15825) for replacement of the existing baghouse and knock box with a new 65,000 CFM Baghouse and knock out box control as described in the applicant's application of August 18, 2009 in Pine Creek Township, **Jefferson County**.

Pursuant to 25 Pa. Code §§ 127.44(a) and 127.424(b) the Department of Environmental Protection (Department) intends to issue a Plan Approval for their plant located in Pine Creek Township, Jefferson County. This plan approval will authorize the applicant to replace the existing baghouse and knock box with a new 65,000 CFM Baghouse and knock out box control as described in the applicant's application of August 18, 2009. The Plan Approval will subsequently be incorporated into a State Only Operating Permit through an administrative amendment in accordance with 25 Pa. Code § 127.450.

The facility is a batch hot mix asphalt plant with a production limit of 300 tons per hour and 495,000 tons per year. The facility consists of the asphalt plant, rotary dryer and two asphalt oil heaters. The facility utilizes virgin No. 2, virgin No. 4 and virgin No. 5 fuel oil as well as WDLF (waste distilled liquid fuel) for the rotary drier. HRI does not process RAP but the facility is currently capable of accommodating RAP. RAP is introduced to the plant via conveyor and weight hopper into the mix at the batch tower therefore it does not come into contact with the open flame of the burner. The new equipment listed above will replace the existing baghouse and associated equipment and will not increase the production capacity or the emissions at the plant. HRI will be required to perform exhaust testing of the control device within 180 days of issuance of start up to determine compliance with, NO_x, SO_x and PM emission limits set forth in the plan approval using WDLF. The facility will demonstrate compliance with the restrictions by performing weekly visible observation, recording daily, monthly and annual throughputs as well as preventative maintenance.

Copies of the application, the Department's analysis, and other documents used in the evaluation are available for public inspection between the hours of 8 a.m. and 4 p.m. weekdays at the address shown below. To make an appointment, contact Records Management at 814-332-6340, for an appointment.

Anyone wishing to provide the Department with additional information they believe should be considered may submit the information to the address shown below. Comments must be received, by the Department, within 30 days of the last day of publication. Written comments should include the following:

1. Name, address, and telephone number of the person submitting comments.
2. Identification of the proposed Plan Approval; No. 33-133A.

3. Concise statement regarding the relevancy of the information or any objections to issuance of the Plan Approval.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted on the comments received during the public comment period. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in a local newspaper of general circulation or the *Pennsylvania Bulletin* or by telephone, where the Department determines such notification is sufficient. Written comments or requests for a public hearing should be directed to John Guth, Regional Air Quality Manager, Department of Environmental Protection, Northwest Regional Office, 230 Chestnut Street, Meadville, PA 16335, 814-332-6940.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104. Contact: Edward Braun, Chief—Telephone: 215-685-9476.

V09-019: Cardone Industries (5501 Whitaker Avenue, Philadelphia, PA 19124) for operation of an automotive parts re-manufacturing facility in the City of Philadelphia, **Philadelphia County**. The Title V facility's air emissions' sources include thirteen (13) Spraybooths, eighty-three (83) combustion units, twelve (12) burn out ovens, nineteen (19) cold cleaning degreasers, fifteen (15) shot blasting units.

The operating permit will be reissued under the Pennsylvania Code Title 25, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at AMS, 321 University Ave., Philadelphia, PA 19104. For further information, contact Mr. Edward Wiener (215) 685-9426.

Persons wishing to file protest or comments on the above operating permit must submit the protest or comments within 30 days from the date of this notice. Any protests or comments filed with AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least 30 days before the hearing.

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

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790. Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507.

40-00036: Indalex, Inc. (300 Elmwood Avenue, Crestwood Industrial Park, Mountain Top, PA 18707) a State Only Operating Permit for aluminum extruded product manufacturing, in Wright Township, **Luzerne County**. The proposed State Only Operating Permit

contains applicable requirements for emissions limitations, monitoring, record keeping, reporting, and work practice standards used to maintain facility compliance with Federal and State air pollution regulations.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Contact: William R. Weaver, New Source Review Chief—Telephone: 717-705-4702.

06-03118: UGI Utilities, Inc. (One UGI Center A-1, Wilkes-Barre, PA 18711) for operation of a natural gas fired electricity generator at their facility in the City of Reading, **Berks County**. This is a renewal of the State-only operating permit issued in 2005.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Contact: Barbara Hatch, Facilities Permitting Chief—Telephone: 412-442-4174.

26-00407: Mon River Energy Corp. (P. O. Box 466, Brier Hill, PA 15415) an operating permit for their Brier Hill Site in Redstone Township, **Fayette County**. Equipment at this facility includes front-end loaders, trucks, conveyers, screeners, and water cyclones. Annual emissions from the facility are estimated to be 15.2 tons particulate matter, 4.3 tons PM₁₀, and 0.5 tons PM_{2.5}. The facility is subject to the applicable requirements of 25 Pa. Code Chapters 121—145, as well as testing, monitoring, recordkeeping, reporting and work practice requirements.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Matthew Williams, New Source Review Chief—Telephone: 814-332-6940.

16-00002: RFI Energy, Inc.—Shannon Preparation Plant (P. O. Box 162, 1513 Shannon Tipple Road, Sligo, PA 16225-0162) for issuance of a Natural Minor Operating Permit to operate a coal preparation plant in Toby Township, **Clarion County**. The facility's primary emission sources include raw coal unloading, three (3) crushers, a conveying system, on site truck traffic, exposed coal piles, truck loading and fuel storage.

24-00119: Advanced Heat Treating, Inc. (1057 Trout Run Road, Saint Marys, PA 15857-3124), for an initial Natural Minor Permit to operate a metal heat treating facility in the City of Saint Marys, **Elk County**. The significant sources included, tempering furnaces (DF2, DF3 and DF4), heat treating furnaces (DF-8, DF-9 and DF-10) and miscellaneous natural gas usage. The emissions of pollutants from the facility are less than the Title V emission threshold and the facility had one previous plan approval. Therefore, the facility is a natural minor.

33-00151: Oak Heritage Furniture (124 Industrial Park Drive, Brockway, PA 15824-9001) for re-issuance of the Natural Minor Operating Permit for this wood furniture manufacturing and coating facility in Brockway Borough, **Jefferson County**. The facility's primary emissions are from surface coating operations.

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation

Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal 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 the certification.

Written comments or objections, or requests for an informal conference, or a public hearing, as applicable, on a mining permit application 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 address of the district mining office indicated above each application within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34.

Written comments or objections related to a mining permit application 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, or a public hearing, as applicable, on a mining permit application, as provided by 25 Pa. Code §§ 77.123 or 86.34, must contain the name, address and telephone number of the requestor; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

When a National Pollutant Discharge Elimination System (NPDES) number is listed, the mining activity permit application was accompanied by an application for an individual NPDES permit. The Department has made a tentative determination to issue the NPDES permit in conjunction with the mining activity permit, but the issuance of the NPDES permit is contingent upon the approval of the associated mining activity permit.

For coal mining activities, NPDES permits, when issued, will contain effluent limits that do not exceed the technology-based effluent limitations. The proposed limits are listed in Table 1.

For noncoal mining activities, the proposed limits are found in Table 2. Discharges from noncoal mines located in some geologic settings (for example, in the coal fields) may require additional effluent limits. If additional effluent limits are needed for an NPDES permit associated with a noncoal mining permit, then the permit descrip-

tion below specifies the parameters. The limits will be in the ranges specified in Table 1.

More restrictive effluent limitations, restrictions on discharge volume, or restrictions on the extent of mining that may occur, will be incorporated into an NPDES permit when necessary for compliance with water quality standards and antidegradation requirements (in accordance with 25 Pa. Code Chapters 91—96).

The procedures for determining the final effluent limits, using a mass-balance equation or model, are found in Technical Guidance Document 362-0600-001, NPDES Program Implementation—Memorandum of Understanding Concerning Water Quality Management, NPDES Program Implementation and Related Matters. Other specific factors to be considered include public comments and Total Maximum Daily Loads (TMDLs).

Persons wishing to comment on an NPDES permit application should submit a statement to the Department at the address of the district mining office indicated previously each application within 30 days of this public notice. Comments received within the comment period will be considered in the final determinations regarding the NPDES permit applications. Comments must include the name, address and telephone number of the writer

and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests or petitions for a public hearing on NPDES permit applications, as provided in 25 Pa. Code § 92.61. The request or petition for a public hearing shall be filed within 30 days of this public notice and shall contain the name, address, telephone number and the interest of the party filing the request, and shall state the reasons why a hearing is warranted. A public hearing may be held if the Department considers the public interest significant. If a hearing is scheduled, a notice of the hearing on the NPDES permit application will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. In the case where a public hearing is held, the Department will consider comments from the public hearing in the final determination on the NPDES permit application.

Coal Applications Received

Effluent Limits—The following range of effluent limits will apply to NPDES permits issued in conjunction with the associated coal mining activity permit and, in some cases, noncoal mining permits:

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (Total)	1.5 to 3.0 mg/l	3.0 to 6.0 mg/l	3.5 to 7.0 mg/l
Manganese (Total)	1.0 to 2.0 mg/l	2.0 to 4.0 mg/l	2.5 to 5.0 mg/l
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Aluminum (Total)	0.75 to 2.0 mg/l	1.5 to 4.0 mg/l	2.0 to 5.0 mg/l
pH ¹		greater than 6.0; less than 9.0	
Alkalinity greater than acidity ¹			

¹The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas; active areas disturbed by coal refuse disposal activities; and mined areas backfilled and revegetated; and drainage (resulting from a precipitation event of less than or equal to a 1-year 24-hour event) from coal refuse disposal piles.

California District Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100.

03851303 and NPDES Permit # PA0213462, McVilleville Mining Company, (301 Market Street, Kittanning, PA 16201-1504), to revise the permit for the Clementine Mine in North Buffalo and South Buffalo Townships, **Armstrong County** to add underground permit and subsidence control plan area acres. Underground Acres Proposed 4174.0, Subsidence Control Plan Acres Proposed 4174.0. No additional discharges. Application received: September 15, 2009.

30031301 and NPDES Permit # PA0235610, Dana Mining Company of PA, LLC, (308 Dents Run Road, Morgantown, WV 26501), to renew the permit for the 4 West Mine in Dunkard and Perry Townships, **Greene County** and related NPDES permit. No additional discharges. Application received: October 23, 2009.

56021301 and NPDES Permit # PA0235547, Elk Lick Energy, Inc., (P. O. Box 240, Friedens, PA 15541-

0240), to revise the permit for the Roytown Deep Mine in Lincoln Township, **Somerset County** to add underground permit and subsidence control plan area acres. Underground Acres Proposed 142.0, Subsidence Control Plan Acres Proposed 142.0. Application received: October 2, 2009.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

32990105 and NPDES No. PA0235083, Thomas J. Smith, Inc., R. D. #1, Box 260D, Shelocta, PA 15774, permit renewal for reclamation only of a bituminous surface and auger mine in Burrell Township, **Indiana County**, affecting 210.3 acres. Receiving stream(s): unnamed tributaries to Tom's Run classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: November 13, 2009.

56990103 and NPDES No. PA0235172, Future Industries, Inc., P. O. Box 157, Meyersdale, PA 15552, permit renewal for the continued operation and restoration of a bituminous surface mine in Brothersvalley Township, **Somerset County**, affecting 222.0 acres. Receiving stream(s): unnamed tributaries to/and Millers Run classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: November 18, 2009.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

24990102 and NPDES Permit No. PA0241580. Tamburlin Bros. Coal Co., Inc. (P. O. Box 1419, Clearfield, PA 16830) Renewal of an existing bituminous strip and auger operation in Fox Township, **Elk County** affecting 136.0 acres. Receiving streams: Limestone Run, classified for the following: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: November 19, 2009.

33010103 and NPDES Permit No. PA0241954. Sky Haven Coal, Inc. (5510 State Park Road, Penfield, PA 15849) Renewal of an existing bituminous strip operation in Winslow Township, **Jefferson County** affecting 103.0 acres. Receiving streams: Unnamed tributary to Sandy Lick Creek, classified for the following: CWF. There are no potable surface water supply intakes within 10 miles downstream. This renewal application is for reclamation only. Application received: November 23, 2009.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

54773017R5 and NPDES Permit No. PA0118770. KK Coal, LLC, (P. O. Box 8, Cumbola, PA 17930), renewal of an existing anthracite surface mine and NPDES Permit for discharge of treated mine drainage in East Norwegian and Blythe Townships, **Schuylkill County** affecting 243.1 acres, receiving stream: East Branch Schuylkill River. Application received: November 17, 2009.

54773017T and NPDES Permit No. PA0118770. KK Coal, LLC, (P. O. Box 8, Cumbola, PA 17930), transfer and correction to update permit boundary of an existing anthracite surface mine operation from K & K Coal Company in East Norwegian and Blythe Townships, **Schuylkill County** affecting 259.0 acres, receiving stream: East Branch Schuylkill River. Application received: November 17, 2009.

Noncoal Applications Received

Effluent Limits—The following effluent limits will apply to NPDES permits issued in conjunction with a noncoal mining permit:

<i>Parameter</i>	<i>Table 2</i>		
	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Alkalinity exceeding acidity* pH*		greater than 6.0; less than 9.0	

* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to surface runoff resulting from a precipitation event of less than or equal to a 10-year 24-hour event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

44930301 and NPDES No. PA0595985. Eastern Industries, Inc., 4401 Camp Meeting Road, Suite 200, Center Valley, PA 18034, revision of an existing limestone surface mine to add 2.7 acres for a boundary correction to permit the remining and reclamation of an existing waste pile in Armagh Township, **Mifflin County**. Total SMP acres goes to 173.8 acres. Receiving stream: Laurel Creek, classified for the following uses(s): high quality cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: November 20, 2007. Permit issued: November 24, 2009.

6875SM3 and NPDES No. PA0612383. Eastern Industries, Inc., 4401 Camp Meeting Road, Suite 200, Center Valley, PA 18034, revision of an existing limestone surface mine to add 11.1 acres for a boundary correction. This will permit the remining and reclamation of an existing waste pile. In addition it is requested that the permit be revised to allow mining to the 655 MSL from the current 675 permitted elevation in Armagh Township, **Mifflin County**. Total SMP acres go to 114.7. Receiving stream: Honey Creek classified for the following use(s): high quality cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: November 20, 2007. Permit issued: November 24, 2009.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) requires the State to certify that the involved projects will not violate the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA or to the issuance of a Dam Permit, Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment must submit comments, suggestions or objections within 30 days of the date of this notice, as well as questions, to the regional office noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Individuals will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on each working day at the regional office noted before the application.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Floodplain Management Act (32 P. S. § 679.302) and requests for certification under section 401(a) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, Telephone 570-826-2511.

E48-409. City of Easton, One South Third Street, Easton, PA 18042, in City of Easton, **Northampton County**, U.S. Army Corps of Engineers, Philadelphia District.

To construct and maintain various site improvements of Scott Park and Riverside Park within the floodplains of the Delaware River and the Lehigh River. Site improvements include landscape improvements and various other site amenities. The project begins on the east side of North Riverside Drive (SR 0611), approximately 0.25 mile from the intersection of SR 0115 and U.S. Route 22 and ends on the south side of Larry Holmes Drive (SR 0611), (Easton, PA Quadrangle Latitude: 40° 41' 16"; Longitude: -75° 12' 28") approximately 0.30 miles from the intersection of SR 0611 and SR 0248 in the City of Easton, Lehigh County (Easton, PA Quadrangle Latitude: Begins 40° 41' 38" N; Ends 40° 41' 16", Longitude: Begins -75° 12' 17" W; Ends -75° 12' 28").

E39-499. Northeastern ITS, 6779 Engle Road, Middleburg Heights, OH, in Heidelberg Township, Lynn Township, North Whitehall Township, Whitehall Township, **Lehigh County**, U.S. Army Corps of Engineers, Philadelphia District.

To authorize the following water obstructions and encroachments associated with the construction of a 450 mile conduit fiber optic system consisting of three 1.5-inch HDPE ducts:

1. To construct and maintain a utility line crossing of Unnamed Tributary to Ontelaunee Creek (EV, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 5-linear feet.

2. To construct and maintain a utility line crossing of Ontelaunee Creek (EV, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 8-linear feet.

3. To construct and maintain a utility line crossing of School Creek (EV, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 10-linear feet.

4. To construct and maintain a utility line crossing of Unnamed Tributary to School Creek (EV, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 3-linear feet.

5. To construct and maintain a utility line crossing of Unnamed Tributary to School Creek (EV, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 3-linear feet.

6. To construct and maintain a utility line crossing of Unnamed Tributary to Jordan Creek (HQ-CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 8-linear feet.

7. To construct and maintain a utility line crossing of Unnamed Tributary to Jordan Creek (HQ-CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 6-linear feet.

8. To construct and maintain a utility line crossing of Jordan Creek (TSF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 40-linear feet.

9. To construct and maintain a utility line crossing of Unnamed Tributary to Jordan Creek (HQ-CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 10-linear feet.

10. To construct and maintain a utility line crossing of Unnamed Tributary to Jordan Creek (HQ-CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 4-linear feet.

11. To construct and maintain a utility line crossing of Unnamed Tributary to Mill Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 8-linear feet.

12. To construct and maintain a utility line crossing of Mill Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 9-linear feet.

13. To construct and maintain a utility line crossing of Unnamed Tributary to Mill Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 10-linear feet.

14. To construct and maintain a utility line crossing of Coplay Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 4-linear feet.

15. To construct and maintain a utility line crossing of Unnamed Tributary to Coplay Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 2-linear feet.

16. To construct and maintain a utility line crossing of Unnamed Tributary to Coplay Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 5-linear feet.

17. To construct and maintain a utility line crossing of Lehigh River (TSF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 8-linear feet.

The project begins approximately 0.50 mile east of the intersection of SR 329 and Main Street and continues eastward for approximately 18.7 miles to the intersection of North Riverside Drive and Northampton Street (Slatedale, Cementon, Catasaqua, PA Quadrangle Latitude: 40° 41' 39"; Longitude: -75° 29' 28").

E54-343. Northeastern ITS, 6779 Engle Road, Middleburg Heights, OH, in Butler Township, New Castle Township, West Mahanoy Township, Mahanoy Township, Ryan Township, Schuylkill Township, Walker Township, West Penn Township, Frackville Borough, **Schuylkill County**, U.S. Army Corps of Engineers, Philadelphia District.

To authorize the following water obstructions and encroachments associated with the construction of a 450 mile conduit fiber optic system consisting of three 1.5-inch HDPE ducts:

1. To construct and maintain a utility line crossing of Unnamed Tributary to Mahanoy Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 5-linear feet.

2. To construct and maintain a utility line crossing of Unnamed Tributary to Mahanoy Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 12-linear feet.

3. To construct and maintain a utility line crossing of Mahanoy Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 200-linear feet.

4. To construct and maintain a utility line crossing of Little Mahanoy Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 150-linear feet.

5. To construct and maintain a utility line crossing of Stony Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 10-linear feet.

6. To construct and maintain a utility line crossing of Unnamed Tributary to Mill Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 6-linear feet.

7. To construct and maintain a utility line crossing of Unnamed Tributary to Mill Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 3-linear feet.

8. To construct and maintain a utility line crossing of Unnamed Tributary to Codorus Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 6-linear feet.

9. To construct and maintain a utility line crossing of Locust Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 75-linear feet.

10. To construct and maintain a utility line crossing of Unnamed Tributary to Locust Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 8-linear feet.

11. To construct and maintain a utility line crossing of Unnamed Tributary to Locust Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 8-linear feet.

12. To construct and maintain a utility line crossing of Schuylkill River (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 15-linear feet.

13. To construct and maintain a utility line crossing of Little Schuylkill River (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 85-linear feet.

14. To construct and maintain a utility line crossing of Unnamed Tributary to Little Schuylkill River (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 10-linear feet.

15. To construct and maintain a utility line crossing of Unnamed Tributary to Little Schuylkill River (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 1.5-linear feet.

16. To construct and maintain a utility line crossing of Lizard Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 15-linear feet.

17. To construct and maintain a utility line crossing of Lizard Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 95-linear feet.

18. To construct and maintain a utility line crossing of Unnamed Tributary to Lizard Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 8-linear feet.

The project begins approximately 0.13 mile west of the intersection of State Highway 4027 (Lavell Road) and Main Street and continues eastward for approximately

41.2 miles to the intersection of SR 309 and Blue Mountain Road (Mount Carmel, Ashland, Shenandoah, Delano, Tamaqua, New Ringgold, New Tripoli, PA Quadrangle Latitude: 40° 46' 38"; Longitude: -76° 22' 27").

E48-407. Northeastern ITS, 6779 Engle Road, Middleburg Heights, OH, in Allen Township, East Allen Township, Hanover Township, Lower Nazareth Township, Palmer Township, Forks Township, Easton City, Northampton Borough, **Northampton County**, U.S. Army Corps of Engineers, Philadelphia District.

To authorize the following water obstructions and encroachments associated with the construction of a 450 mile conduit fiber optic system consisting of three 1.5-inch HDPE ducts:

1. To construct and maintain a utility line crossing of Indian Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 100-linear feet.

2. To construct and maintain a utility line crossing of a Water Filled Quarry in the Hokendauqua Creek Watershed (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning approximately 110-linear feet.

3. To construct and maintain a utility line crossing of Unnamed Tributary to Lehigh River (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 10-linear feet.

4. To construct and maintain a utility line crossing of Catasaqua Creek (CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 8-linear feet.

5. To construct and maintain a utility line crossing of East Branch Monocacy Creek (HQ-CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 40-linear feet.

6. To construct and maintain a utility line crossing of Unnamed Tributary to Bushkill Creek (HQ-CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 8-linear feet.

7. To construct and maintain a utility line crossing of Bushkill Creek (HQ-CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 55-linear feet.

8. To construct and maintain a utility line crossing of Bushkill Creek (HQ-CWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 75-linear feet.

9. To construct and maintain a utility line crossing of Delaware River (WWF, MF) consisting of three 1.5-inch HDPE fiber optic conduits spanning 500-linear feet.

The project begins approximately 0.70 miles northwest of the intersection of SR 309 and SR 4024 and continues eastward for approximately 18.3 miles to the intersection of SR 329 and SR 1027 (Cementon, Catasaqua, Nazareth, Easton, PA Quadrangle Latitude: 40° 42' 55"; Longitude: -75° 46' 04").

ENVIRONMENTAL ASSESSMENT

Northcentral Region: Program Manager, Watershed Management Program, 208 West Third Street, Williamsport, PA 17701.

EA17-007. Clearfield Creek Watershed Association, Inc., 216 Beldin Hollow Road, Ashville, PA 16613.

Decatur Township, **Clearfield County**, ACOE Baltimore District.

Acid mine drainage abatement project on an Unnamed Tributary to Morgan Run.

The applicant has requested a restoration waiver to construct, operate, and maintain the MR Ross AMD abatement project. The project will consist of two vertical flow treatment cells, two settling basins and appurtenant structures to remediate an impacted UNT to Morgan Run. The designated use for the UNT to Morgan Run is Cold Water Fishes. Project construction will result in 8 acres of disturbance, 0.13 acre of PEM wetland impacts, and 290 linear feet of stream impacts to both intermittent and perennial streams (Wallaceton Quadrangle Latitude: N: 40° 54' 52"; Longitude: W: 78° 20' 51").

DAM SAFETY

Central Office: Bureau of Waterways Engineering, 400 Market Street, Floor 3, P. O. Box 8554, Harrisburg, PA 17105-8554.

D15-395. Osborne Lagoon Dam. Oxford Area Sewer Authority, 401 East Market Street, P. O. Box 380, Oxford, PA 19363. Reissue of expired permit to construct, operate, and maintain Osborne Lagoon Dam located in the watershed of Leech Run (TSF, MF), for the purpose of providing additional wastewater storage capacity in order to meet 80-day storage requirements per a Consent Order and Agreement with the Department of Environmental Protection (Oxford, PA Quadrangle N: 9.85 inches; W: 16.35 inches) in Lower Oxford Township, **Chester County**.

ACTIONS

**THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT
FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE
ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY
MANAGEMENT (WQM) PERMITS**

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOI) for coverage under general permits. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal wastes; discharges to groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOIs for coverage under general NPDES permits. The approval for coverage under general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. Permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

I. NPDES Renewal Permit Actions

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PAS202208	Kraft Foods Global, Inc. 7352 Industrial Boulevard Allentown, PA 18106	Lehigh County Upper Macungie Township	Iron Run (2C)	Y

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PAG2003604079R	Creek, LLC 214A Willow Valley Lakes Drive Willow Street, PA 17584	Lancaster County Penn Township	Little Conestoga Creek WWF	Y
PAG2003604080R	DDP Enterprises, Inc. 3850 Continental Drive Columbia, PA 17512	Lancaster County West Hempfield Township	UNT Susquehanna River WWF	Y
PA0087971 (IW)	Bedford Borough Water Authority 244 West Penn Street Bedford, PA 15522	Bedford County Bedford Township	UNT Ratystown Branch 11-C	Y
PA0024384 (SEW)	North Middleton Authority 240 Clearwater Drive Carlisle, PA 17013-1185	Cumberland County North Middleton Township	Conodoguinet Creek 7-B	Y
PA0085863 (IW)	SC Holdings, Inc. (Harmony Grove Landfill) 1000 New Ford Mill Road Morrisville, PA 19067	York County Dover Township	UNT Davidsburg Run 7-F	Y

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N ?</i>
PAS804803 (Sewerage)	Dominion Transmission, Inc. Harrison Compressor Station 1001 Pleasant Valley Road Harrison Valley, PA 16827	Harrison Township Potter County	North Br. Cowanesque River 4A	Y
PA0228095 (Sewage)	Tulpehocken Spring Water Co., Inc. 750 Point Township Drive Northumberland, PA 17857	Point Township Northumberland County	Catawissa/Roaring Creeks 5E	Y

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0102822	Robert and Ronald Krenitsky, d/b/a Rolling Valley Estates 385 Eagle Mill Road Butler, PA 16001	Connoquenessing Township Butler County	Unnamed tributary to Little Connoquenessing Creek 20-C	Y

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

NPDES Permit No. PA0011282, Industrial Waste, **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010. This proposed facility is located in Springfield Township, **Delaware County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge industrial wastewaters from a facility known as Crum Creek Water Filtration Plant into Crum Creek in Watershed 3G.

NPDES Permit No. PA0054402, Industrial Waste, **Emerson Electric Co.**, 8000 West Florissant Avenue, St. Louis, MO 63136. This proposed facility is located in Hatfield Township, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge treated groundwater from an air stripper treatment unit located at 407 West Vine Street, Hatfield, PA 19440. Into the West Branch Neshaminy Creek in Watershed 2F.

NPDES Permit No. PA0055913, Industrial Waste, **Corco Chemical Corporation**, Tyburn Road and Cedar Lane, Fairless Hills, PA 19030. This proposed facility is located in Falls Township, **Bucks County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge treated groundwater and non-contact cooling water into Corco Lakes Nos. 1 and 2 in Watershed 2E.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

NPDES Permit No. PA0261360, Sewage, **Jerold Martin, Martin Leasing, Inc.**, 303 Middle Road, Lititz, PA 17543. This proposed facility is located in Elizabeth Township, **Lancaster County**.

Description of Proposed Action/Activity: Authorization to discharge to UNT Hammer Creek in Watershed 7-J.

NPDES Permit No. PA0261327, Industrial Waste, **Texas Eastern Transmission, LP**, 890 Winter Street, Suite 300, Waltham, MA 02451. This proposed facility is located in Juniata and Harrison Townships, **Bedford County**; Ayr Township, **Fulton County**; and Peters Township, **Franklin County**.

Description of Proposed Action/Activity: Texas Eastern—TEMAX and TIME III Projects—Uprate Hydrostatic Testing Discharges located in Juniata Township, Bedford County to the UNT of Little Wills Creek in Watershed 13-A; Juniata Township, Bedford County to the Little Wills Creek in Watershed 13-A; Harrison Township, Bedford County to the UNT of Little Wills Creek in Watershed 13-A; Ayr Township, Fulton County to the Big Cove Creek in Watershed 13-B; UNT to West Branch Conococheague Creek in Watershed 13-C.

NPDES Permit No. PA0008150, Industrial Waste, **Mount Holly Springs Specialty Paper, Inc.**, One Mountain Street, Mount Holly Springs, PA 17065. This proposed facility is located in Mount Holly Springs Borough, **Cumberland County**.

Description of Size and Scope of Proposed Operation/Activity: Transfer of Permit/Authorization to discharge to Mountain Creek in Watershed 7-E.

NPDES Permit No. PAS113501, Stormwater, **DME Company, LLC**, 977 Loop Road, Lewistown, PA 17044. This proposed facility is located in Granville Township, **Mifflin County**.

Description of Size and Scope of Proposed Operation/Activity: Transfer of Permit/Authorization to discharge to UNT Juniata River/12-A.

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

NPDES Permit No. PA0254045, Industrial Waste, **Chestnut Ridge Beverage Company**, 11 Lloyd Avenue, Latrobe, PA 15650. This proposed facility is located in Latrobe Borough, **Westmoreland County**.

Description of Proposed Action/Activity: Permit issuance authorizing the discharge of reverse Osmosis backwash water, carbon filtration backwash water and storm water runoff to Loyalhanna Creek.

III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA.

WQM Permit No. WQG02090909, Sewerage, **Richland Meadows**, 1590 Canary Road, Quakertown, PA 18951. This proposed facility is located in Richland Township, **Bucks County**.

Description of Action/Activity: Construction and operation of a manufactured home community with privately operated sewage collection and treatment facilities.

WQM Permit No. 1598425, Sewerage, **Upper Uwchlan Township Municipal Authority**, 140 Pottstown Pike, Chester Springs, PA 19425. This proposed facility is located in Upper Uwchlan Township, **Chester County**.

Description of Action/Activity: A bar screen, a sequencing batch reactor, chlorination, aerobic digestion tank, aerated lagoon and seven spray field zones.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

WQM Permit No. 2105402, Amendment 09-1, Sewage, **Shippensburg Borough Authority**, 111 North Fayette Street, Shippensburg, PA 17257-0129. This proposed facility is located in Shippensburg Borough, **Cumberland County**.

Description of Proposed Action/Activity: Permit Amendment approval for the construction/operation of sewerage facilities consisting of: Three cloth disk filters and UV disinfection.

WQM Permit No. 0585402, Sewage, **Debra and Eugene Smith**, 575 Carberry Road, Saxton, PA 16678. This proposed facility is located in Liberty Township, **Bedford County**.

Description of Proposed Action/Activity: Transfer of Permit.

WQM Permit No. WQG01280901, Sewage, **William Yaukey**, 879 Forest Road, Chambersburg, PA 17201. This proposed facility is located in Antrim Township, **Franklin County**.

Description of Proposed Action/Activity: Permit approval for a Small Flow Treatment Plant.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

WQM Permit No. 1409202, Industrial Waste, **Glenn O. Hawbaker**, 1952 Waddle Road, State College, PA 16803. This proposed facility is located in Spring Township, **Centre County**.

Description of Proposed Action/Activity: The applicant is approved to construct a 102,000 cubic feet lined impoundment to store runoff at a proposed paved railcar stockpiling facility. The stock piling will be of salt and/or coal. There will be no associated discharge of stormwater. When the impoundment becomes full, the stormwater will be trucked to a treatment facility.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WQM Permit No. 3309201, Industrial Waste, **Brookville Municipal Authority**, 18 Western Avenue, Suite A, Brookville, PA 15825-1540. This proposed facility is located in Rose Township and Brookville Borough, **Jefferson County**.

Description of Proposed Action/Activity: Issuance of a permit to construct industrial wastewater facilities.

WQM Permit No. WQG018726, Sewerage, **James L. Reiser**, 9723 PA Route 18, Cranesville, PA 16410. This proposed facility is located in Elk Creek Township, **Erie County**.

Description of Proposed Action/Activity: Issuance of a single Residence Sewage Treatment Plant.

WQM Permit No. WQG018721, Sewerage, **Greg Nanz**, 265 Buckley Road, Mercer, PA 16137-5907. This proposed facility is located in Findley Township, **Mercer County**.

Description of Proposed Action/Activity: Issuance of a single Residence Sewage Treatment Plant.

IV. NPDES Stormwater Discharges from MS4 Permit Actions

V. NPDES Waiver Stormwater Discharges from MS4 Actions

VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI01 1506024	West Vincent Township 729 Saint Matthews Road Chester Springs, PA 19425	Chester	West Vincent Township	Birch Run (EV)
PAI01 1509022	Tel Hai Retirement Community 1200 Tel Hai Circle P. O. Box 190 Honey Brook, PA 19344	Chester	Honey Brook Township	Two Log Run (HQ-TSF)
PAI01 1509029	Sweetwater Business Properties, LP 5051 Horseshoe Pike Honey Brook, PA 19453	Chester	Honey Brook Township	West Branch Brandywine Creek (HQ-TSF-MF)
PAI01 1509031	Morphotek, Inc. 210 Welsh Pool Road Exton, PA 19341	Chester	Uwchlan Township	Pickering Creek (HQ-TSF)
PAI01 1509036	Redevelopment Authority of Coatesville One City Hall Place Coatesville, PA 19320	Chester	City of Coatesville and Valley Township	West Branch Brandywine Creek (WWF)

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI021304002R	Blue Ridge Real Estate P. O. Box 707 Blakeslee, PA 18610	Carbon	Kidder Twp.	Lehigh River HQ-CWF, MF
PAI024808016	Dept. of General Services 18th & Herr Streets Harrisburg, PA 17120	Northampton	Bushkill Twp.	Bushkill Creek HQ-CWF, MF

Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI 0633 09 001	Brookville Municipal Authority 30 Darrah Street Brookville, PA 15825	Jefferson	Brookville Borough	North Fork Creek HQ-CWF

VII. Approvals to Use NPDES and/or Other General Permits

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From Small Flow Treatment Facilities
PAG-5	General Permit for Discharges From Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges From Combined Sewer Systems (CSO)
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest, or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

General Permit Type—PAG-2
Facility Location:

<i>Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Plumstead Township Bucks County	PAG200 0904033-R	John Werner, Inc. 4952 Gloucester Drive Doylestown, PA 18902	Geedes Run Tohickon Creek (CWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Hilltown Township Bucks County	PAG200 0904156-R	David Brooke Rush Builders 732 East Creamery Road Perkasie, PA 18944	Deep Run (WWF-CWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Warrington Township Bucks County	PAG200 0909028	John L. Ball 961 Lower State Road Chalfont, PA 18914	Mill Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Middletown Township Bucks County	PAG200 0909097	CSX Transportation 2000 West Cabot Blvd Ste 120 Langhorne, PA 19407	Mill Creek (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Concord Township Delaware County	PAG200 2304060-R	William Dalusio 1244 West Chester Pike West Chester, PA 19382	Tributary West Branch Chester Creek (TSF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Thornbury Township Delaware County	PAG200 2309021	Donald F. Kaiser 179 Glen Mills Road Glen Mills, PA 19342	Unnamed Tributary Chester Creek (TSF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Montgomery Township Montgomery County	PAG200 4604170-R	WB Commons, LP 404 Summneytown Pk Ste 200 North Wales, PA 19454	West Branch Neshaminy Creek (WWF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Worcester Township Montgomery County	PAG200 4604167-R	Bell/Kumpf, LP 1030 West Germantown Pike Fairview Village, PA 19409	Stoney and Zacharas Creeks (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Conshohocken Borough Montgomery County	PAG200 4609060	Ratoskey and Trainer, Inc. 396 East Schuylkill River Road Bridgeport, PA 19405	Plymouth Creek (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Lower Providence Township Montgomery County	PAG200 4608171	Montgomery County Correction Facility 60 Eagleville Road Norristown, PA 19403	Unnamed Tributary Skippack Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Upper Providence Township Montgomery County	PAG200 4603114-R	Ridgewood Partnership 409 Riverview Road Plymouth Meeting, PA 19462	Mingo Creek (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Upper Dublin Township Montgomery County	PAG200 4606055-1	BT Limekiln LP-BET Investments, Inc. Witmer Road, #200 Horsham, PA 19044	Pine Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Collegeville Borough Montgomery County	PAG200 4609049	St. Eleanor Parish 647 Locust Street Collegeville, PA 19426	Donny Brook (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
East Norriton Township Montgomery County	PAG200 4603148-R	Glen Farms, LP 1030 West Germantown Pike Fairview Village, PA 19409	Unnamed Tributary Stony Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Upper Merion Township Montgomery County	PAG200 4608018	Stout's Ferry Preparation Co. P. O. Box 279 300 Industrial Park Road St. Clair, PA 17970	Schuylkill River (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Upper Providence Township Montgomery County	PAG200 4609083	Michael Frost P. O. Box 187 209 Brower Avenue Oaks, PA 19456	Unnamed Tributary Schuylkill River (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Horsham Township Montgomery County	PAG200 4609015-1	Horsham Township 1025 Horsham Road Horsham, PA 19044	Park Creek (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
City of Philadelphia Philadelphia County	PAG201 5109035	Philadelphia Development Associates, LLC 5219 Germantown Avenue Philadelphia, PA 19144	Unnamed Tributary Schuylkill River (CWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Wayne Twp. Schuylkill Co.	PAG2005408017	Schuylkill Christian Church Attn: Steve Letcavage 134 Lake Front Dr. Deer Lake, PA 17961	Little Swatara Creek CWF, MF	Schuylkill Co. Cons. Dist. 570-622-3742
Franklin Twp. Carbon Co.	PAG2001309005	Wayne Redline 860 Interchange Rd. Lehighton, PA 18235	Tar Run CWF	Carbon Co. Cons. Dist. 610-377-4894

NOTICES

7045

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Williams Twp. Northampton Co.	PAG2004804030R	Ashley Partners, L.P. Attn: Lewis Ronca 179 Mikron Rd. Bethlehem, PA 18020	Delaware River WWF, MF	Northampton Co. Cons. Dist. 610-746-1971
Bridgewater Twp. Susquehanna Co.	PAG2005809004	Monroe Montrose, LLC Attn: Gerald Raymond 801 Monroe Ave. Scranton, PA 18510	Snake Creek CWF, MF	Susquehanna Co. Cons. Dist. 570-278-4600
Morris Township Clearfield County	PAG2001709011	Scott Kucharcik 115 Rosewood Love Bellefonte, PA 16823	Alder Run CWF	Clearfield County Conservation District 650 Leonard Street Clearfield, PA 16830 (814) 765-2629
Sandy Township Clearfield County	PAG2001709012	Wayne Daugherty 1 1/2 Evergreen Street DuBois, PA 15801	UNT to Pentz Run CWF	Clearfield County Conservation District 650 Leonard Street Clearfield, PA 16830 (814) 765-2629
Greene County Franklin Township	PAG2003009002	Armstrong Development 2100 Wharton Street Pittsburgh, PA 15203	South Fork Ten Mile (WWF)	Greene County CD 724-852-5278
Adams Township Butler County	PAG2 0010 09 015	Mr. Donald Aiken, Chairperson Board of Supervisors Adams Township 690 Valencia Road Mars, PA 16045	Unt Breakneck Creek WWF	Butler County Conservation District 724-284-5270
Limestone Township Clarion County	PAG2101609004	BAMR P. O. Box 8476 Harrisburg, PA 17105-8476	Runaway Run (CWF) to Redbank Creek	BAMR P. O. Box 8476 Harrisburg, PA 17105-8476 717-783-1311

General Permit Type—PAG-3

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
York County Newberry Township	PAR603516	Aumiller's West, Inc. 964 Old Rossville Road Lewisberry, PA 17339	Unt Bennett Run WWF	DEP—SCRO—WQ 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707
O'Hara Township Allegheny County	PAR236127	Matthews International Corporation Two NorthShore Center Pittsburgh, PA 15212	UNT of the Beaver River	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 412-442-4000
Millcreek Township Erie County	PAR808347	United Parcel Services, Inc. 521 North Center Avenue New Stanton, PA 15672	Municipal storm water tributaries to Walnut Creek	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942
Sandycreek Township Venango County	PAR208347	Latrobe Steel Company, d/b/a Latrobe Specialty Steel Company	Unnamed tributary of Morrison Run	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Wilmington Township Lawrence County	PAR808343	UPS, Inc. UPS New Castle Distribution Center 521 North Center Avenue New Stanton, PA 15672	Unnamed tributary to Neshannock Creek	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942
Wetmore Township McKean County	PAR808344	UPS, Inc. UPS New Castle Distribution Center 521 North Center Avenue New Stanton, PA 15672	Unnamed tributary to Hubert Run	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942
Vernon Township Crawford County	PAR808345	UPS, Inc. UPS New Castle Distribution Center 521 North Center Avenue New Stanton, PA 15672	Unnamed tributary to Watson Run	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942

General Permit Type—PAG-4

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Upper Frederick Township Montgomery County	PAG040135	Gina M. Bryan Joseph A. Kuroski 113 Church Road East Greenville, PA 18041	UNT to Perkiomen Creek Watershed 3E	Southeast Regional Office 2 East Main Street Norristown, PA 19401
Pocopson Township Chester County	PAG040136	Sarah B. Mims 814 Denton Hollow Road West Chester, PA 1932	Pocopson Creek Watershed 3H	Southeast Regional Office 2 East Main Street Norristown, PA 19401
East Fallowfield Township Chester County	PAG040137	Nadine Keil 7 Beck Road Coatesville, PA 19320	UNT to Dennis Run Watershed 3H	Southeast Regional Office 2 East Main Street Norristown, PA 19401
Marlborough Township Montgomery County	PAG040138	Linda Copenhaver 200 West Montgomery Avenue North Wales, PA19454	UNT to Macoby Creek Watershed 3E	Southeast Regional Office 2 East Main Street Norristown, PA 19401
New Hanover Township Montgomery County	PAG040139	Perry Godshall 830 Kulp Road Perkiomenville, PA 18074	UNT of Deep Creek Watershed 3E Perkiomen Creek	Southeast Regional Office 2 East Main Street Norristown, PA 19401
Franklin County Antrim Township	PAG043894	William Yaukey 879 Forest Road Chambersburg, PA 17201	UNT to West Branch Conococheague Creek WWF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707
Elk Creek Township Erie County	PAG049549	James L. Reiser 9723 PA Route 18 Cranesville, PA 16410	Unnamed tributary to the East Branch of Conneaut Creek 15	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942
Washington Township Erie County	PAG048506	Brian G. and Stacie E. Waldo 12302 Hamilton Road Edinboro, PA 16412	Unnamed tributary to Conneauttee Creek 16A	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942
Findley Township Mercer County	PAG049543	Greg Nanz 265 Buckley Road Mercer, PA 16137-5907	Unnamed tributary to Mill Creek 20-A	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942

*General Permit Type—PAG-8 (SSN)**Facility Location:**Municipality & County**Permit No.**Applicant Name & Address**Site Name & Location**Contact Office & Phone No.*Monroe Township
Cumberland County

PAG083603

South Middleton
Township
Municipal Authority
P. O. Box 8 345
Creswell Drive
Boiling Springs, PA
17007Jay Wickard Farm
Monroe Township
Cumberland CountyDEP—SCRO
909 Elmerton Avenue
Harrisburg, PA
17110-8200
717-705-4707Mount Pleasant
Township
Westmoreland
CountyA Plus Affordable, LLD
AA Septic Tank Service
P. O. Box 246
Donegal, PA 15628Halversen Tree Farm
Biosolids SiteSouthwest
Regional Office:
Water Management
Program Manager
400 Waterfront Drive
Pittsburgh, PA
15222-4745
(412) 442-4000*General Permit Type—PAG-12**Facility Location:**Municipality & County**Permit No.**Applicant Name & Address**Receiving Water/Use**Contact Office & Phone No.*Lebanon County
Union Township

PAG123688

Eugene Weiler
Weiler Farm Partnership
Weiler Farm #1
350 Mill Avenue
Myerstown, PA 17067Tulpehocken Creek
TSF
3-CDEP—SCRO—
Watershed Management
909 Elmerton Avenue
Harrisburg, PA 17110
717-705-4802Lebanon County
Union Township

PAG123688

Eugene Weiler
Weiler Farm Partnership
Weiler Farm #3
350 Mill Avenue
Myerstown, PA 17067Trout Run
CWF
7-DDEP—SCRO—
Watershed Management
909 Elmerton Avenue
Harrisburg, PA 17110
717-705-4802Lebanon County
South Londonderry
Township

PAG123551

Eugene Weiler
Weiler Farm Partnership
Weiler Farm #2
350 Mill Avenue
Myerstown, PA 17067UNT Little
Conewago Creek
TSF
7GDEP—SCRO—
Watershed Management
909 Elmerton Avenue
Harrisburg, PA 17110
717-705-4802**STATE CONSERVATION COMMISSION****NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO)**

The State Conservation Commission has taken the following actions on previously received applications for nutrient management plans under the act of July 6, 2005 (Act 38 of 2005, 3 Pa.C.S. §§ 501—522) (hereinafter referred to as Act 38), for agricultural operations that have or anticipate submitting applications for new, amended or renewed NPDES permits, or Notices of Intent for coverage under a general permit, for CAFOs, under 25 Pa. Code Chapter 92. This notice is provided in accordance with 25 Pa. Code Chapter 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

Persons aggrieved by any action may appeal under section 517 of Act 38, section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) to the Environmental Hearing Board, Second Floor, Rachael Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service at (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary of the Board at (717) 787-3483 for more information.

NUTRIENT MANAGEMENT PLAN—PUBLIC NOTICE SPREADSHEET—ACTIONS

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>Animal Equivalent Units</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Approved or Disapproved</i>
GNH Farms, LLC 224 White Church Road Elysburg, PA 17824	Columbia	325.9	343.88	Layers, Beef, Horses	HQ	Approved

PUBLIC WATER SUPPLY (PWS) PERMITS

The Department of Environmental Protection has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act

Southeast Region: Water Supply Management Program Manager, 2 East Main Street, Norristown, PA 19401.

Permit No. 1509512, Public Water Supply.

Applicant	Pennsylvania American Water Company 800 West Hersheypark Drive Hershey, PA 17033
Township	East Vincent
County	Chester
Type of Facility	PWS
Consulting Engineer	Pennsylvania-American Water Company 4 Wellington Boulevard Wyomissing, PA 19610

Permit to Construct Issued October 30, 2009

Permit No. 2309506, Public Water Supply.
Applicant **Aqua Pennsylvania, Inc.**
762 West Lancaster Avenue
Bryn Mawr, PA 19010-3402

Township Nether Providence
County **Delaware**
Type of Facility PWS
Consulting Engineer Hatch Mott McDonald
27 Bleeker Street
Millburn, NJ 07041-1008

Permit to Construct Issued July 24, 2009

Operations Permit No. 4609503 issued to **Exelon Nuclear Limerick Generating Station**, 1697 Swamp Pike, Gilbertsville, PA 19525.

(PWSID No. 1460847) Limerick Township, **Montgomery County** on February 11, 2009, for the operation of Facilities approved under construction permit No. 4609503 for an additional filter to the existing Arsenic treatment system at Alley Deep Well No.1.

Operations Permit No. 4609522 issued to **Saint Luke Knolls**, 1697 Swamp Pike, Gilbertsville, PA 19525.

(PWSID No. 4609518) Douglass Township, **Montgomery County** on June 22, 2009, for the operation of Facilities approved under construction permit No. 4609518 for the water softening system at Saint Luke Knolls.

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Permit No. 3390062, **Operations Permit**, Public Water Supply.

Applicant	Salisbury Township 2900 South Pike Ave. Allentown, PA 18103
Borough or Township	Salisbury Township
County	Lehigh
Type of Facility	PWS
Consulting Engineer	David Tetteimer, P. E. Keystone Consulting Engineers, Inc. 6235 Hamilton Boulevard Wecosville, PA 18106

Permit to Operate Issued 11/16/2009

Permit No. 3540032, Operations Permit, Public Water Supply.

Applicant **Pennsylvania American Water**
800 West Hersheypark Dr.
Hershey, PA 17033

Borough or Township Frackville Borough

County **Schuylkill**

Type of Facility PWS

Consulting Engineer Joel Mitchell, P. E.
Pennsylvania American Water
852 Wesley Dr.
Mechanicsburg, PA 17055

Permit to Operate Issued 11/16/09

Responsible Official David Foreman, President
Walker Township
Water Authority
P. O. Box 160
Mingoville, PA 16856

Type of Facility Public Water Supply—
Construction

Consulting Engineer David A. McCullough, P. E.
Uni-Tec Consulting
Engineers, Inc.
2007 Cato Avenue
State College, PA 16801

Permit Issued Date November 23, 2009

Description of Action Installation of the Snyderstown
pressure reducing valve vault.

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 6708508, Public Water Supply.

Applicant **United Water Pennsylvania**

Municipality Newberry Township

County **York**

Type of Facility New Paddletown Well
with treatment for the
ewberry System.

Consulting Engineer Edward A. Ellinger, P. E.
Herbert Rowland Grubic, Inc.
369 East Park Drive
Harrisburg, PA 17111

Permit to Construct Issued: 11/25/2009

Permit No. 4909503—Construction, Public Water Supply.

Applicant **Eyer's Manor Personal Care Home**

Township or Borough Point Township

County **Northumberland**

Responsible Official Ms. Beverly Cook-Trego
Eyer's Manor Personal
Care Home
3196 Ridge Road
Northumberland, PA 17857

Type of Facility Public Water Supply—
Construction

Consulting Engineer Chris Beidler, P. E.
Larson Design Group
1000 Commerce Park Drive
Williamsport, PA 17701

Permit Issued Date November 24, 2009

Description of Action Installation of a new public
water supply including Well
Nos. 1 and 2, disinfection, iron
and manganese removal,
softening, detention piping and
distribution system.

Permit No. 3609508, Public Water Supply.

Applicant **Manheim Borough Authority**

Municipality Manheim Borough

County **Lancaster**

Type of Facility Addition of sequestering
chemical to reduce
tuberculation and scaling.

Consulting Engineer Yves E. Pollart BCEE, P. E.
Rettew Associates, Inc.
2500 Gettysburg Road
Camp Hill, PA 17011

Permit to Construct Issued: 11/25/2009

Permit Issued Date November 24, 2009

Description of Action Installation of a new public
water supply including Well
Nos. 1 and 2, disinfection, iron
and manganese removal,
softening, detention piping and
distribution system.

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

Permit No. 6309502, Public Water Supply.

Applicant **Authority of the Borough of Charleroi**
3 McKean Avenue
P. O. Box 211
Charleroi, PA 15022

Borough or Township Speers Borough

County **Washington**

Type of Facility Waterline rehabilitation

Consulting Engineer KLH Engineers, Inc.
5173 Campbells Run Road
Pittsburgh, PA 15205

Permit to Construct Issued November 22, 2009

Operations Permit issued to: **Masonic Village,** 7360025, West Donegal Township, **Lancaster County** on 11/20/2009 for the operation of facilities approved under Construction Permit No. 3609518 MA.

Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Permit No. M.A. (1407503)—Construction, Public Water Supply.

Applicant **Walker Township Water Authority**

Township or Borough Walker Township

County **Centre**

Operations Permit issued to: **Borough of Ambridge Water Authority,** P. O. Box 257, 600 Eleventh Street, Ambridge, PA 15003-2377, (PWSID No. 5040008) Economy Borough, **Beaver County** on November 29,

2009, for the operation of facilities approved under Construction Permit No. 0407505.

Permit No. 1108502MA, Minor Amendment, Public Water Supply.

Applicant	Nanty Glo Water Authority 827 Chestnut Street Nanty Glo, PA 15943
Borough or Township	Cambria Township
County	Cambria
Type of Facility	Nanty Glo/Ebensburg Borough interconnection
Consulting Engineer	Stiffler, McGraw & Associates, Inc. 19 N. Juniata St. P. O. Box 462 Hollidaysburg, PA 16648
Permit to Construct Issued	November 22, 2009

Permit No. 6509506MA, Minor Amendment, Public Water Supply.

Applicant	Municipal Authority of Westmoreland County 124 Park & Pool Road New Stanton, PA 15672
Borough or Township	Hempfield and Salem Townships
County	Westmoreland
Type of Facility	Waterline
Consulting Engineer	
Permit to Construct Issued	November 29, 2009

Permit No. 2609507MA, Minor Amendment, Public Water Supply.

Applicant	Municipal Authority of Westmoreland County 124 Park & Pool Road New Stanton, PA 15672
Borough or Township	Kiskiminetas Township
County	Armstrong
Type of Facility	Waterline
Consulting Engineer	
Permit to Construct Issued	November 29, 2009

Permit No. 0209517MA, Minor Amendment, Public Water Supply.

Applicant	Pennsylvania American Water Company 800 West Hersheypark Drive P. O. Box 888 Hershey, PA 17033
Borough or Township	Elizabeth Township
County	Allegheny
Type of Facility	Elizabeth Township water storage tank
Consulting Engineer	Gannett Fleming, Inc. 207 Senate Avenue Camp Hill, PA 17011-2316
Permit to Construct Issued	November 29, 2009

Permit No. 0409507MA, Minor Amendment, Public Water Supply.

Applicant	Beaver Falls Municipal Authority 1425 8th Avenue P. O. Box 400 Beaver Falls, PA 15010
Borough or Township	Eastvale Borough
County	Beaver
Type of Facility	Water treatment plant
Consulting Engineer	Michael Baker Jr., Inc. 4301 Dutch Ridge Road Beaver, PA 15009
Permit to Construct Issued	November 29, 2009

Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Permit No. 3309501, Public Water Supply.

Applicant	Brookville Municipal Authority
Township or Borough	Rose Township Brookville Borough
County	Jefferson County
Type of Facility	Public Water Supply
Consulting Engineer	Mark V. Glenn, P. E. Gwin Dobson & Foreman, Inc.
Permit to Construct Issued	11/25/2009

Construction/Operations Permit issued to Aqua PA Inc. for Aqua PA Emlenton Water System, PWSID No. 6610019, Emlenton Borough, Venango County, November 19, 2009, for the construction and operation of the new water system, including the consolidation of existing permits & water system improvements during the construction phase of a new treatment facility. Construction and Operations Permit No. 6109502 are issued simultaneously.

STORMWATER MANAGEMENT

Action on plans submitted under the Stormwater Management Act (32 P. S. § 680.9)

Bureau of Watershed Management, P. O. Box 8775, Harrisburg, PA 17105-8775.

The Act 167 Stormwater Management Plan for Tacony Creek (Frankford) Designated Watershed, submitted by Philadelphia and Montgomery Counties, was approved on November 23, 2009. This approval applies to the entire watershed within both Philadelphia and Montgomery Counties.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. § 750.5)

Southeast Region: Water Management Program Manager, 2 E. Main Street, Norristown, PA 19401.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
East Norriton Township	2501 Stanbridge Street East Norriton, PA 19401-1616	Montgomery County

Plan Description: On November 24, 2009, the Southeast Regional Office approved the sewage facilities planning module for the Albert Einstein Regional Medical Center (DEP Code 1-46926-153-3J), located at 559 West Germantown Pike, in East Norriton Township, Montgomery County.

The planning module provides for adequate sewage facilities planning to permit the development of a 5-story, 224-bed hospital and a 2-story, 75,000 square foot medical office building. This project will be connected to the East Norriton Township collection system and will generate 92,000 gallons of sewage per day to be treated at the East Norriton-Plymouth-Whitpain Joint Sewer Authority Wastewater Treatment Facility.

Plan Description: On November 24, 2009, the Southeast Regional Office approved East Norriton Township's Act 537 Special Study. The Special Study provides for the following:

A sewage pumping station ("Einstein Pumping Station") and a force main will be constructed, which will convey sewage flows from the Albert Einstein Regional Medical Center ("Medical Center") property to an existing manhole in Germantown Pike, west of North Wales Road. The pumping station will be located in the western corner of the Medical Center property, southeast of Whitehall Road, and will have average design flows of 142,600 gallons per day.

East Norriton Township commits to continuing its existing infiltration and inflow (I/I) reduction program and to rehabilitating the Germantown Pump Station force main as its comprehensive, long-term program to address capacity shortfalls in the Germantown Pump Station service area.

A 225,000 gallon surge storage tank will be constructed on the Medical Center property. Sewage will be pumped from the Einstein Pumping Station into the surge storage tank when the maximum flow rate in the upstream conveyance facilities exceeds 2,400 gallons per minute.

Sewage from the Sandra Lane Pumping Station will be diverted from the Germantown Pumping Station to the Einstein Pumping Station.

The approval is made specifically contingent upon the following:

This plan also proposes the decommissioning of the Marion Avenue Pumping Station and the rerouting of the sewage flows from this pumping station and from North Whitehall Road to the gravity sewers in Barbara Drive. The Einstein Pumping Station will be sized to anticipate these flows. The submission does not include all of the information required by Chapter 71, Section 71.31(c). Specifically, the public notice provided with the Special Study does not include the decommissioning of the Marion Avenue Pumping Station and the rerouting of this sewage. Therefore, this activity is not included as part of this approval.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Multiple	Multiple	Chester County

Municipalities—City of Coatesville, Parkesburg Borough, Caln, East Fallowfield, Highland, Sadsbury, Valley, West Brandywine, West Caln and West Sadsbury Townships.

Plan Description: On November 19, 2009, the Southeast Regional Office reissued and clarified its October 21, 2009, approval of the official sewage facilities plan titled *Sewage Facilities Plan Update—Tributary Municipalities of Pennsylvania American Water Company*, as prepared by URS Corporation dated August 2006, revised March 2009.

The reissued approval provides for the following:

1. The Pennsylvania American Water Company (PAWC) Coatesville wastewater treatment facility will be expanded from 3.85 million gallons per day (MGD) annual average flow to 7.0 MGD annual average flow. Capacity in the expanded facility will first be allocated to bulk customers consistent with the terms and conditions set forth in these municipalities' capacity agreements with PAWC, as presented in Appendix G of the plan. These bulk customers' capacity agreements are the partial basis of the sewage capacity needs projected in the plan. All other customers will be allocated capacity on a "first-come-first serve" basis.

2. The interceptor rehabilitation work approved as part of previous Corrective Action Plan/Connection Management Plan (CAP/CMP) quarterly updates is hereby memorialized through the Act 537 planning process. Additionally, the Department of Environmental Protection (Department) accepts the clarification by URS Corp. to the Department in its November 18, 2009, correspondence that the specific interceptor work identified in the CAP/CMP quarterly updates has been completed or is approved for completion.

The Department offers the following comments on this regional plan:

3. Future improvements to the collection and conveyance system not covered under previous CAP/CMP approvals will be driven largely by the needs of new land development. Additional Act 537 planning must be conducted to address this issue for all municipalities, depending on need. The plan(s) must document existing and future capacities in all major interceptors and pump stations, funding for any required facility expansion, PNDI, and PHMC requirements for any proposed construction projects. The required planning can be included in the sewage facilities planning modules for affected new land developments.

4. We note that PAWC has provided an assurance to the Department that it will work with its customer municipalities to initiate additional Act 537 planning once the annual average flows at the plant reach 80 percent of the 7.0 MGD.

5. The capacity in the expanded plant is currently available to those municipalities that have completed Act 537 planning for their individual municipalities. Specifically, the City of Coatesville and Parkesburg Borough, and Caln, Valley and West Sadsbury Townships may utilize capacity in the expanded PAWC facility. Additional capacity in the expanded facility will not be available to

East Fallowfield, Highland, Sadsbury, West Brandywine and West Caln Townships until the Department reviews and approves each municipality's individual Act 537 Plan.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Pine Township	309 Wintersteen School Road Millville, PA 17846	Columbia County

Plan Description: The approved plan proposes to extend sewer service to 30 existing homes and the American Legion along Legion Road. The sewage will be treated at the existing Millville Sewage Treatment Plant. Two routes to convey the sewage have been evaluated and approved; both will use grinder pumps and pressure sewers and both will follow the same collection route. The conveyance route will be selected during the design stage when more detailed information is available. Option 3C is estimated to cost \$1,235,725 and Option 3D is estimated to cost \$1,116,100. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of Pine Township as appropriate.

HAZARDOUS SITES CLEAN-UP UNDER THE ACT OF OCTOBER 18, 1988

Notice of Settlement under HSCA Quality Service Cleaners

HSCA Site Oxford Borough, Chester County

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (HSCA), 35 P.S. Sections 6020.101—6020.1305, has entered into a Prospective Purchaser Agreement ("Agreement") with Keystone Community Alliance, LLC and Keystone Community Alliance—Oxford, LP (collectively "KCA") regarding the Quality Service Cleaners HSCA Site.

The Quality Service Cleaners HSCA Site is a "site" within the meaning of Section 103 of HSCA, 35 P.S. § 6020.103, which is located at 642 Lincoln Street, near the intersection of Wheeler Boulevard and Lincoln Street, in the Borough of Oxford, Pennsylvania. The Site consists of soils and groundwater contamination associated with the former operation of a dry cleaning establishment and includes a parcel with an area of 26,000 +/- square feet (Property) and a plume of groundwater contamination that extends beyond the Property. The Property is owned by the Estate of Martha J. Skelton (Estate). The Department has implemented a HSCA response at the Site and has conducted site characterization activities in three phases to determine if additional response actions are needed to address hazardous substances at the Site, including soil and groundwater contamination.

KCA intends to acquire title to the Property from the Estate. KCA has asserted, and the Department has no information to indicate otherwise, that, other than potential liability associated with the purchase of this property, neither Keystone Community Alliance, LLC nor Keystone Community Alliance—Oxford, LP caused, contributed to, or is otherwise liable for any contamination at the Quality Service Cleaners HSCA Site. Under the terms of

the Agreement with the Department, KCA agrees: (1) to attain a standard or combination of standards under the Land Recycling Program with regard to the remaining soil contamination on the Property; (2) to partially or completely demolish an existing building on the Property, if necessary for the remediation of the soils and/or groundwater at the Site; (3) not to exacerbate any existing contamination at the Site; and (4) to provide access and right of entry to the Department for future performance of any potential response actions related to the Site, in exchange for a covenant not to sue and contribution protection from the Commonwealth.

The sole beneficiary of the Estate is Handi-Crafters Foundation, a tax-exempt public foundation under Sections 501(c)(3) and 509(A)(3) of the Internal Revenue Code (Handi-Crafters). The Department, the Executors of the Estate and Handi-Crafters have negotiated in good faith and it has been agreed that the amount of \$25,000.00 will be distributed to the Department from the corpus of the Estate on behalf of KCA, as reimbursement of certain response costs.

This notice is provided under Section 1113 of HSCA, 35 P.S. Section 6020.1113. The Agreement may be examined from 8 a.m. to 4 p.m. at the Department's Offices at 2 East Main Street, Norristown, PA 19401 by contacting either Ragesh Patel at (484) 250-5719 or William H. Blasberg at (484) 250-5865. Mr. Patel and Mr. Blasberg may also be contacted electronically at rapatel@state.pa.us and wblasberg@state.pa.us, respectively. A public comment period on the Agreement will extend for a period of 60 days from the date of publication of this Notice. Interested persons may submit written comments regarding the PPA to the Department by submitting them to Mr. Patel at the above address.

Public Notice of Proposed Consent Order and Agreement Quality Service Cleaners

HSCA Site Borough of Oxford, Chester County

The Department of Environmental Protection (Department), under the authority of the Pennsylvania Hazardous Sites Cleanup Act (HSCA), 35 P.S. § 6020.1113, has entered into a Consent Order and Agreement with Carole E. and Theodore G. Nichols, as Executors of the Estate of Martha J. Skelton (Estate), for reimbursement of certain response costs incurred to remediate hazardous substances released and threatened to be released at the Quality Service Cleaners HSCA Site in Chester County, PA ("the site").

The Quality Service Cleaners HSCA Site is a "site" within the meaning of Section 103 of HSCA, 35 P.S. § 6020.103, which is located at 642 Lincoln Street, near the intersection of Wheeler Boulevard and Lincoln Street, in the Borough of Oxford, Pennsylvania. The Site consists of soils and groundwater contamination associated with the former operation of a dry cleaning establishment and includes a parcel with an area of 26,000 +/- square feet (Property) and a plume of groundwater that extends beyond the Property. The Property is owned by the Estate. The Department has implemented a HSCA response at the Site and has conducted site characterization activities in three phases to determine if additional response actions are needed to address hazardous substances at the Site, including soil and groundwater contamination.

The Estate is a responsible party pursuant to Section 701 of HSCA, 35 P.S. § 6018.701. It is in the public interest for the Department to resolve its claim against the Estate. The sole beneficiary of the Estate is Handi-

Crafters Foundation, a tax-exempt public foundation under Sections 501(c)(3) and 509(A)(3) of the Internal Revenue Code (Handi-Crafters). The Department, the Executors and Handi-Crafters have negotiated in good faith and it has been agreed that the Department will be reimbursed for certain response costs in the amount of \$300,000 from the corpus of the Estate. The Estate shall receive contribution protection from claims related its ownership of the Site and related to ownership of the Site by Martha J. Skelton during her lifetime.

This notice is provided under Section 1113 of HSCA, 35 P. S. § 6020.1113, which states that, "settlement shall become final upon the filing of the Department's response to significant written comments." The Consent Order and Agreement, which contains the specific terms of the agreement is available for public review and comment. The agreement can be examined from 8 a.m. to 4 p.m. at the Department's Southeast Regional Office, located at 2 East Main Street in Norristown, PA by contacting either Ragesh Patel at (484) 250-5719 or William H. Blasberg. A public comment period on the Agreement will extend for a period of 60 days from the date of publication of this Notice. Interested persons may submit written comments regarding the PPA to the Department by submitting them to Mr. Patel at the above address.

Proposed Interim Response Lower Providence DCE

HSCA Site Lower Providence Township, Montgomery County

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305) (HSCA), is proposing an Interim Response at the Lower Providence DCE HSCA Site (Site) in Lower Providence Township, Montgomery County, Pennsylvania.

The Department, under the authority of HSCA, is conducting an investigation of the Site. This investigation includes the sampling of private drinking water supply wells located in the vicinity of Ridge Pike, Germantown Pike, and Evansburg Road in Lower Providence Township. Approximately 150 wells are contaminated or may potentially be contaminated with detectable levels of 1, 1-Dichloroethene (1, 1-DCE). Tetrachloroethene (PCE), Trichloroethene (TCE) and breakdown products of TCE were also detected in some of the wells, but 1, 1-DCE is the primary contaminant of concern.

To address the release and threat of hazardous substances at the Site, and corresponding threats to human health and the environment, the Department proposes a response action at the Site under section 501(a) of HSCA (35 P. S. § 6020.501(a)). The Department hereby proposes the installation of a waterline, including water mains and lateral connections to the public water supply. This proposed alternative complies with Applicable, Relevant and Appropriate Requirements (ARARs) and is feasible and cost-effective. Other possible alternatives include no action or the installation and continued monitoring and maintenance of whole-house carbon filtration units and/or supplying bottled water.

An Administrative Record, which contains more detailed information concerning this proposed response action, is available for public inspection. The Administrative Record may be examined from 8 a.m. until 4 p.m. at the Department's office at 2 East Main Street, Norristown, PA 19401. Those interested in examining the Administrative Record should contact David Ewald at (484) 250-5725 to arrange for an appointment. An additional copy of the

Administrative Record is available for review at the Lower Providence Community Library, 50 Park Lane Drive, Eagleville, PA 19403.

Under section 506(d) of HSCA (35 P. S. § 6020.506(d)), the Department shall conduct a public hearing on January 20, 2010, at 7:00 PM in the hearing room of the Lower Providence Township Building at 100 Parklane Drive, Eagleville, PA. Anyone who would like to present formal oral comments regarding this Interim Response may do so by registering with the Department before the meeting. Individuals may register by calling the Department's Community Relations Coordinator, Lynda Rebarchak, at (484) 250-5820.

Any person with a disability who wishes to attend the public hearing and will require an auxiliary aid, service or other accommodation to participate in the proceedings should contact Lynda Rebarchak at the telephone number listed previously or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs. The public may also submit written comments regarding the Department's proposed Interim Response action during the period of public comment. In accordance with section 506(c) of HSCA, the Department has established a period for public comment that is now open until close of business March 19, 2010. Written comments should be addressed to David Ewald, Project Officer, Department of Environmental Protection, 2 East Main Street, Norristown, PA 19401.

Anyone with questions regarding this notice should contact David Ewald at (484) 250 5725.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a Site-Specific Standard remediation. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media; benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated

substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the Environmental Cleanup Program manager in the Department regional office after which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Northeast Region: Ronald S. Brezinski, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Aden Property, 1828 Valley Forge Road, South Whitehall Township, **Lehigh County**. Gregg J. Walters, MEA, Inc., 1365 Ackermanville Road, Bangor, PA 18013 has submitted a Final Report (on behalf of his clients, LaRoy and Ruth Aden, 1828 Valley Forge Road, Allentown, PA 18104), concerning the remediation of soil found to have been impacted by No. 2 fuel oil as a result of a release from a leaking pressure gauge from a furnace/275-gallon aboveground storage tank system. The report was submitted to document attainment of the Statewide Health Standard. A public notice regarding the submission of the Final Report was published in *The Morning Call* on October 16, 2009.

Bethlehem Commerce Center (Entire Site), 1805 East 4th Street, Bethlehem City, **Northampton County**. William K. Ahlert, HDR Engineering, 1720 Spillman Drive, Suite 280, Bethlehem, PA 18015-2165 has submitted a combined Remedial Investigation Report/Final Report (on behalf of his client, Lehigh Valley Industrial Park, Inc., 1720 Spillman Drive, Suite 150, Bethlehem, PA 18015-2164), concerning the remediation of groundwater found to have been impacted by benzene, naphthalene, and TCE constituents as a result of historical operations at the former Bethlehem Steel Plant. The combined report was submitted to document attainment of the Site-Specific Standard for Groundwater. A public notice regarding the submission of the combined Remedial Investigation Report/Final Report was published in *The Morning Call* and *the Express Times* on October 30, 2009.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the

nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a Site-Specific Standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program manager in the Department regional office before which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Northeast Region: Ronald S. Brezinski, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Former Ballard/Kara Property, Route 309 and Interstate 80, Butler Township, **Luzerne County**. Richard C. Karr, MACTEC Engineering and Consulting, Inc., 1787 Sentry Parkway West, Suite 120, Blue Bell, PA 19422-2200 submitted a Final Report (on behalf of his client, Drums Fuel Stop, Inc., R. R. 1, Route 309 and I-80, Drums, PA 18222), concerning the remediation of soils and groundwater found to have been impacted by leaded/unleaded gasoline, chlorinated solvents and diesel fuel as a result of historic operations and offsite contribution. The report documented attainment of the Statewide Health Standard for soils and groundwater with the exception of Benzene, Methyl tertiary Butyl Ether (MtBE), Trichloroethene, cis-1,2-dichloroethene and Vinyl Chloride in groundwater, which will be covered under the Background Standard and was approved on November 16, 2009.

Gesford Property—Well No. 9, Carter Road, Dimock Township, **Susquehanna County**. Dawn L. Washo, Resource Environmental Management, Inc., 8 Ridge Street, Montrose, PA 18801 submitted a Final Report (on behalf of her client, Cabot Oil & Gas Corporation, 5 Penn Center

West, Suite 401, Pittsburgh, PA 15276-0120), concerning the remediation of soils found to have been impacted by diesel fuel as a result of a release from an overflow of a 50-gallon day tank and also the remediation of diesel fuel in soil, which was found during the Department of Environmental Protection's inspection of the area on August 21, 2009. The report documented attainment of the Residential Statewide Health Standard for soils and was approved on November 24, 2009.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Getz Residence, Swatara Township, **Lebanon County**. ATC Associates, Inc., 101 Allegheny Street, Suite B, Hollidaysburg, PA 16648, on behalf of Cindy and Ernie Getz, 3 Eve Avenue, Lebanon, PA 17042 and Kreiser Fuel Service, 122 Race Horse Drive, Jonestown, PA 17038, submitted a Final Report concerning site soils contaminated with home heating oil released from a ruptured tank. The Final Report demonstrated attainment of the Residential Statewide Health standard, and was approved by the Department of Environmental Protection on November 24, 2009.

Floyd & Beasley Transfer Company Diesel Fuel Spill, Susquehanna Township, **Dauphin County**. Taylor GeoServices, Inc., 38 Bishop Hollow Road, Suite 200, Newtown Square, PA 19073, on behalf of Floyd & Beasley Transfer Company, Inc., 18060 Alabama Highway 21, Sycamore, AL 35149, submitted a Final Report concerning remediation of site soils contaminated with diesel fuel from a ruptured saddle tank on a tractor trailer. The final report demonstrated attainment of the Residential Statewide Health standard, and was approved by the Department of Environmental Protection on November 24, 2009.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.

M/K Express-Altire, SR 322 West Accident, College Township, **Centre County**. Minuteman Spill Response, Inc., P. O. Box 10, Mifflinville, PA 18631 on behalf of M/K Express, P. O. Box 509, East Butler, PA 16029 has submitted a Final Report within 90 days of the release concerning remediation of site soil contaminated with diesel fuel. The Final report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on November 25, 2009.

Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Honeywell Wax Manufacturing Facility OLD, Emlenton Borough, **Venango County**. URS Corporation, Foster Plaza 4, 501 Holiday Drive, Suite 300, Pittsburgh, PA 15220 on behalf of Pennzoil-Quaker State Corporation, 700 Milam Street, 30th Floor, Houston, TX 77002 has submitted a Final Report concerning the remediation of site soil contaminated with carbon disulfide, chloromethane, ethylbenzene, hexane, isopropylbenzene, methylene chloride, naphthalene, sec-butylbenzene, tert-butylbenzene, trichloroethane xylenes, 2-butanone, acenaphthene, benzo[a]anthracene, benzo[b]fluoranthene, benzo[k]fluoranthene, benzo[g,h,i]perylene, biphenyl, chrysene, fluoranthene, fluorene, indeno pyrene, phenanthrene, pyrene, 2-methylnaphthalene, aluminum, antimony, barium, beryllium, cadmium, cobalt, copper, iron, manganese, nickel, selenium, silver, vanadium, benzene, 1,2,4-TMB, 1,3,5-TMB, cyclohexane, toluene, benzo[a]pyrene, dibenzofuran, arsenic, chromium, lead, mercury and site groundwater contaminated with acetone, benzene, isopropylbenzene, p-isopropyltoluene, sec-

butylbenzene, tert-butylbenzene, 2-butanone, hexane, 1,2,4-TMB, 1,3,5-TMB, cyclohexane, chloroethane, chloromethane, ethylbenzene, toluene, m,p,o-xylenes, aluminum, antimony, arsenic, barium, beryllium, chromium, cobalt, copper, iron, lead, manganese, mercury, nickel, selenium, vanadium, and zinc. The Final Report demonstrated attainment of the Site-Specific Standard and was approved by the Department of Environmental Protection on November 20, 2009.

REGISTRATION FOR GENERAL PERMIT—RESIDUAL WASTE

Registration Approved under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Residual Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and/or the Beneficial Use of Residual Waste Other Than Coal Ash.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.

Registration Under **General Permit No. WMGR 064R004**. Jefferson Township, 7407 Lamor Road, Mercer, PA 16137.

General Permit Number WMGR064 authorizes the beneficial use of natural gas well brines for roadway pre-wetting, anti-icing, and for roadway de-icing purposes to minimize the formation or development of bonded snow and ice to roadways and walkways. Central Office approved this registration for coverage under the general permit on December 1, 2009.

Persons interested in obtaining more information, or obtaining copies of the general permit may contact Ronald C. Hassinger, Chief, General Permits and Beneficial Use Section, Division of Municipal and Residual waste, Bureau of Land Recycling and Waste Management, Rachel Carson State Office Building, P.O. Box 8472, Harrisburg, PA 17105-8472, 717-787-7381. TDD users may contact the Department of Environmental Protection through the Pennsylvania AT&T Relay Service, (800) 654-5984.

AIR QUALITY

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

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401. Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920.

GP1-23-0148: PQ Corp. (1201 West Front Street, Chester, PA 19013) on December 1, 2009, to operate a dual-fuel fired boiler in the City of Chester, **Delaware County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Contact: Barb Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226.

GP5-30-00174C: CNX Gas Co., LLC (200 Evergreen Drive, Waynesburg, PA 15370) on November 23, 2009, to allow installation of one (1) new 150MM CFD Dehydration unit manufactured by ETI and operation of the unit and the following existing sources: three (3) Caterpillar G3516 LE lean burn engines, each rated at 1,340 bhp and one (1) 15MM CFD Dehydration plant, in Center Township, **Greene County**.

GP5-63-00941A: Laurel Mountain Midstream Operating, LLC—Robin Hill Gas Plant (1550 Coraopolis Heights Road, 2nd Floor, Moon Township, PA 15108) on November 24, 2009, the General Permit is being approved for use at this existing facility due to a change of ownership from the former Atlas Pipeline Pennsylvania, LLC in Robinson Township, **Washington County**. Additional changes at this facility include the installation of an enclosed, smokeless flare to control propane gas losses from propane compressor seals.

GP5-63-00948A: MarkWest Liberty Midstream & Resources, LLC (1515 Arapahoe Street, Tower 2, Suite 700, Denver, CO 80202-2126) on November 25, 2009, for authorization to install and operate a natural gas production facility under GP-5 which included changing the site name from Bedillion Day to Tupta Day and installation of one additional condensate/saltwater storage tank at their Tupta Day Compressor Station in Amwell Township, **Washington County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Mark Gorog, New Source Review Chief—Telephone: 814-332-6940.

GP-27-038B: Catalyst Energy, Inc.—Watson Farm Stripping Plant (Route 66, Sheffield, PA 16347) on November 25, 2009, to operate a natural gas fired compressor engines (BAQ-GPA/GP-5) in Howe Township, **Forest County**.

Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Contact: William R. Weaver, New Source Review Chief—Telephone: 717-705-4702.

06-05064B: Sunoco Partners Market & Terminal, LP (525 Fritztown Road, Sinking Spring, PA 19608-1509) on November 19, 2009, to install a vapor recovery unit at their Montello Terminal in Spring Township, **Berks County**.

06-05066H: Exide Technologies (P. O. Box 14294, Reading, PA 19612-4294) on November 25, 2009, to replace the afterburner for smelter system No. 1 in Muhlenberg Township, **Berks County**.

34-05001D: Armstrong Cabinet Products (R. R. 2, Box 171C, Thompsettown, PA 17094-9735) on November 15, 2009, to modify their wood cabinet surface coating operation in Delaware Township, **Juniata County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Contact: Mark Gorog and Barb Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226.

30-00108A: River Processing Corp. (158 Portal Road, Waynesburg, PA 15370) on November 24, 2009, for a plan approval to allow construction of a coal preparation facility consisting of equipment for transferring, crushing, screening, washing, and stockpiling of coal from the Freeport deep mine, at the RPC Coal Preparation Plant in Jefferson Township, **Greene County**.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401. Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920.

15-0039A: Highway Materials, Inc. (1750 Walton Road, Blue Bell, PA 19335) on November 23, 2009, to operate an asphalt paving mixtures and blocks in East Caln Township, **Chester County**.

09-0126C: Air Liquide Electronics US, LP (19 Steel Road, West, Morrisville, PA 19067) on November 23, 2009, to operate the manufacturing of industrial gases in Falls Township, **Bucks County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Contact: M. Gorog and B. Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226.

26-00573A: Johnson Matthey, Inc. (605 Mountain View Drive, Smithfield, PA 15478) on November 25, 2009, to extend the period of temporary operation of the catalyst production facility covered under plan approval 26-00573A until June 8, 2010, located in Smithfield Borough, **Fayette County**. The plan approval has been extended.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Contact: William R. Weaver, New Source Review Chief—Telephone: 717-705-4702.

22-03063: Chemetron Railway Products, Inc. (P. O. Box 1037, 1600 Progress Drive, Albertville, AL 35950-0017) on November 23, 2009, for their rail welding operation in Steelton Borough, **Dauphin County**. This is a renewal of the State-only operating permit.

36-05127: Martin Limestone, Inc. (P. O. Box 550, Blue Ball, PA 17506-0550) on November 24, 2009, for their Burkholder Asphalt Plant in East Earl Township, **Lancaster County**. This is a renewal of the State-only operating permit.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Matthew Williams, Facilities Permitting Chief—Telephone: 814-332-6940.

33-00157: National Fuel Gas Supply Corp.—Eldred Compressor Station (12797 Fisher Road, Eldred Township, PA 15860), on November 23, 2009, re-issued the Natural Minor Permit to operate a natural gas compressor station in Eldred Township, **Jefferson County**. The primary emissions are from the two 150 Hp compressor engines at the facility.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104. Contact: Edward Braun, Chief—Telephone: 215-685-9476.

S09-006: Thomas Jefferson University & Hospital (214 South 11th Street, Philadelphia, PA 19107) on November 24, 2009, for their university facility in the City of Philadelphia, **Philadelphia County**. The synthetic minor facilities emission sources include 13 (thirteen) emergency generators.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401. Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

46-00032: SPS Technologies, LLC, (301 Highland Avenue, Jenkintown, PA 19046) on December 1, 2009, a Title V facility located in Abington Township, **Montgomery County**. The Title V Operating Permit was revised to incorporate plan approval 46-0032C for a change from a throughput restriction on volatile organic compounds to an emission restriction on volatile organic compounds for an existing vapor degreaser located on the site. The Title V Permit includes limits on sources for volatile organic compound emissions and includes monitoring and recordkeeping requirements to demonstrate compliance with these applicable permit limits. All revisions to the Title V Operating Permit were made pursuant to 25 Pa. Code § 127.450.

09-00028: Fibermark North America, Inc. (45 North 4th Street, Quakertown, PA 18951) on December 1, 2009, for a minor modification of TVOP No. 09-00028 for their facility in Quakertown Borough, **Bucks County**. The minor modification reduces the monitoring and recordkeeping frequency of natural gas usage from weekly to monthly for Source ID 005, Source ID 006, Source ID 007; and daily to monthly for Source ID 102, Source ID 105, Source ID 301, Source ID 302, Source ID 303. The modified TVOP includes monitoring, recordkeeping, reporting, and work practice requirements designed to keep the facility operating within all applicable air quality requirements.

Minor modification of TVOP No. 09-00028 is issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.462.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Contact: Barbara Hatch, Facilities Permitting Chief—Telephone: 412-442-4174.

26-00032: Uniontown Hospital Association: (500 West Berkeley Street, Uniontown, PA 15401-5514) on November 20, 2009, to update Responsible Official and Contact person and to incorporate the applicable requirements of 40 CFR 63 WWWW for ethylene oxide sterilizers at the Uniontown Hospital in Uniontown City, **Fayette County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Matthew Williams, Facilities Permitting Chief—Telephone: 814-332-6940.

37-00268: Commercial Asphalt & Supply (P. O. Box 672, Valencia, PA 16059-2029) on October 24, 2009, issued

an administrative amendment to the Synthetic Minor Operating Permit to incorporate the plan approval conditions from 37-268B in **Lawrence County**.

43-00270: CCL Container (1 Llodio Drive, Hermitage, PA 16148-9015), on November 18, 2009, issued an administrative amendment to the Synthetic Minor Operating Permit to incorporate the change of Responsible Official for the permit in **Lawrence County**.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

Coal Permits Actions

California District Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100.

30841317 and NPDES Permit No. PA0213527, Consol Pennsylvania Coal Company, (P. O. Box J, 1525 Pleasant Grove Road, Claysville, PA 15323), to revise the permit and related NPDES permit for the Enlow Fork Mine in Morris Township, **Washington County** to add surface acreage to install the E22 Bleeder Airshaft and six boreholes. Surface Acres Proposed 15.0. Receiving stream: Unnamed Tributary to Craft Creek, classified for the following use: WWF. Application received: January 29, 2009. Permit issued: November 23, 2009.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500.

03090103 and NPDES Permit No. PA0531631. M & M Lime Company, Inc. (214 Nichola Road, Worthington, PA 16262). Permit issued for commencement, operation and reclamation of a bituminous surface mine, located in West Franklin Township, **Armstrong County**, affecting 8.2 acres. Receiving stream: Buffalo Creek. Application received: April 21, 2009. Permit issued: November 20, 2009.

03910115 and NPDES Permit No. PA0200174. Allegheny Mineral Corporation (P. O. Box 1022, Kittanning, PA 16201). Permit revised to add a road variance for SR-0422 at an existing bituminous surface/auger mining site located in West Franklin Township, **Armstrong County**, affecting 468.8 acres. Receiving streams: Buffalo Creek. Application received: September 23, 2009. Revision issued: November 24, 2009.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

10010101 and NPDES Permit No. PA0241873. Ancient Sun, Inc. (P. O. Box 129, Shippenville, PA 16254) Renewal of an existing bituminous strip operation in Muddy Creek Township, **Butler County** affecting 38.2 acres. This renewal is issued for reclamation only. Receiving streams: Unnamed tributaries to Cheeseman Run. Application received: September 29, 2009. Permit Issued: November 19, 2009.

33080108 and NPDES Permit No. PA0258679. P. and N. Coal Co., Inc. (P. O. Box 332, Punxsutawney, PA 15767) Commencement, operation and restoration of a bituminous strip and auger operation in Porter Township, **Jefferson County** affecting 422.0 acres. Receiving streams: Sugarcamp Run. Application received: October 14, 2008. Permit Issued: November 19, 2009.

1192-33080108-E-1. P. and N. Coal Co., Inc. (P. O. Box 332, Punxsutawney, PA 15767) Application for a stream encroachment to conduct mining activities within 100 feet of Sugarcamp Run and unnamed tributary "C" to Sugarcamp Run in Porter Township, **Jefferson County**. Receiving streams: Sugarcamp Run. Application received: October 14, 2008. Permit Issued: November 19, 2009.

1192-33080108-E-2. P. and N. Coal Co., Inc. (P. O. Box 332, Punxsutawney, PA 15767) Application for a stream encroachment to conduct mining activities within 100 feet of Hamilton Run in Porter Township, **Jefferson County**. Receiving streams: Sugarcamp Run. Application received: October 14, 2008. Permit Issued: November 19, 2009.

1192-33080108-E-3. P. and N. Coal Co., Inc. (P. O. Box 332, Punxsutawney, PA 15767) Application for a stream encroachment to conduct mining activities within 100 feet of unnamed tributary "C" to Hamilton Run in Porter Township, **Jefferson County**. Receiving streams: Sugarcamp Run. Application received: October 14, 2008. Permit Issued: November 19, 2009.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

17080102. Forcey Coal, Inc. (P. O. Box 225, Madera, PA 16661), commencement, operation and restoration of a bituminous surface mine located in Bigler Township, **Clearfield County** affecting 100.0 acres. Receiving stream(s): unnamed tributaries to/and Banian Run and to/and Muddy Run classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: February 28, 2008. Permit issued: November 16, 2009.

Noncoal Permits Actions

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

20090802. Leonard G. Austin (8993 W. Townline Road, Conneaut Lake, PA 16316) Commencement, operation and restoration of a small sand & gravel operation in East Fallowfield Township, **Crawford County** affecting 5.0 acres. Receiving streams: Unnamed tributary to Crooked Creek. Application received: July 22, 2009. Permit Issued: November 23, 2009.

Abandoned Mine Reclamation

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville PA 17901, Telephone (570) 621-3118.

Primacy Bond Forfeiture	PBF 54951301.1
Contract Awarded	
Location	Hegins Township Schuylkill County Pennsylvania
Description	Act 181 Bond Forfeiture Reclamation Project R & R Coal Company—Buck Mountain Mine Permit No. 54951301
Contractor	Rausch Creek Land LP 978 Gap Street Valley View, PA 17983-9749
Amount	\$5,000.00
Date of Award	November 23, 2009

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 (43 P. S. §§ 151—161); and 25 Pa. Code § 211.124 (relating to blasting activity permits). Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

Blasting Permits Actions

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500.

02094005. Trumbull Corporation (1020 Lebanon Road, West Mifflin, PA 15122). Blasting activity permit for construction at the McCandless Crossing, located in McCandless Township, **Allegheny County**. Duration of blasting is expected to be for 3 months. Blasting activity permit issued: November 23, 2009.

65094010. USA Valley Landfill (6015 Pleasant Valley Road, Irwin, PA 15642). Blasting activity permit for construction at the Valley Landfill, located in Penn Township, **Westmoreland County**. Duration of blasting is expected to be for 10 months. Blasting activity permit issued: November 23, 2009.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

08094111. Meshoppen Blasting, Inc. (P. O. Box 127, Frantz Road, Meshoppen, PA 18630), blasting for a well located in Albany Township, **Bradford County**. Permit issued: November 24, 2009. Permit expires: December 15, 2009.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

36094180. Keystone Blasting Service, (381 Reifsnyder Road, Lititz, PA 17543), construction blasting for Briar Rose Greenhouse in East Earl Township, **Lancaster County** with an expiration date of November 30, 2009. Permit issued: November 19, 2009.

40094117. Holbert Explosives, Inc., (237 Mast Hope Plank Road, Lackawaxen, PA 18435), construction blasting for St. John Estates Development in Butler Township, **Luzerne County** with an expiration date of November 10, 2010. Permit issued: November 19, 2009.

48094111. Austin Powder Northeast, LLC, (25800 Science Park Drive, Cleveland, OH 44122), construction blasting for The Hills at Greenock Development in Lehigh Township, **Northampton County** with an expiration date of January 1, 2011. Permit issued: November 19, 2009.

45094134. Explosive Services, Inc., (7 Pine Street, Bethany, PA 18431), construction blasting for Pocono Farms East in Coolbaugh Township, **Monroe County** with an expiration date of November 30, 2010. Permit issued: November 23, 2009.

45094135. Explosive Services, Inc., (7 Pine Street, Bethany, PA 18431), construction blasting for Winona Lakes in Middle Smithfield Township, **Monroe County** with an expiration date of November 30, 2010. Permit issued: November 23, 2009.

13094105. Explosive Services, Inc., (7 Pine Street, Bethany, PA 18431), construction blasting for Lehigh Walmart in Mahoning Township, **Carbon County** with an expiration date of November 20, 2010. Permit issued: November 25, 2009.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27), section 302 of the Floodplain Management Act (32 P.S. § 679.302) and The Clean Streams Law (35 P.S. §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).

Permits, Environmental Assessments and 401 Water Quality Certifications Issued:

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northeast Regional Office: Watershed Management Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.

E66-146. Department of Transportation Engineering District 4-0, 55 Keystone Industrial Park, Dunmore, PA 18512. Forkston Township, **Wyoming County**, Army Corps of Engineers Baltimore District.

To remove the existing structure and to construct and maintain a two-span, pre-stressed concrete PA Bulb T-beam bridge with each span measuring 80 feet with a minimum underclearance of 11 feet over Mehoopany Creek (HQ-CWF). The project is located at SR 0087, Segment 0130, Offset 1502, approximately 600 feet east of the intersection of SR 0087 and SR 3001 (Meshoppen, PA Quadrangle Latitude: N: 41° 32' 01"; Longitude: W: -76° 7' 24").

E45-547. Lake Naomi Club, Route 423, P. O. Box T. Tobyhanna Township, **Monroe County**, Army Corps of Engineers Philadelphia District.

To construct and maintain a pedestrian bridge having a single span of approximately 102 feet and a minimum underclearance of approximately 10 feet across Upper Tunkhannock Creek (HQ-CWF) and three (3) road crossings in a de minimus area of EV wetlands equal to 0.05 acre for the purpose of constructing a pedestrian walkway. The water obstructions and encroachments were previously authorized by Permit No. E45-461, which expired prior to commencement of construction. The project begins at a point 30 feet upstream of the SR 0423 bridge and includes approximately 2,600 feet of pedestrian walkway along SR 0423, northwest of Lake Naomi (Pocono Pines, PA Quadrangle Latitude: N: 41° 6' 34"; Longitude: W: -75° 28' 27").

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636.

E12-175. Ronald R. Tusing, 445 Sizerville Road, Emporium, PA 15834-3949. Ronald Tusing Carport in Portage Branch-Sinnemahoning Creek Floodway, Shippen Township, **Cameron County**, ACOE Baltimore District (Sinnemahoning, PA Quadrangle Latitude: 41° 30' 46.7"; Longitude: 78° 13' 06.7").

The applicant proposes to construct, operate and maintain a covered, open-sided carport that is located in the 100-year floodway of Portage Branch, Sinnemahoning Creek. Construction of the covered, opened-sided carport

shall be limited to 20-feet by 18-feet with no fill being placed that would diminish flood storage capacity in the Portage Branch floodway. The project is located along the western right-of-way of SR 0155 approximately 2100-miles north of SR 0120 and SR 0155 intersection. This permit was issued under Section 105.13(e) "Small Projects."

E57-116. Department of Transportation, Engineering District 3-0, 715 Jordan Ave, Montoursville, PA 17754. SR 4007, Section 002 Bridge Replacement, in Elkland Township, **Sullivan County**, ACOE Baltimore District (Overton, PA Quadrangle N: 41° 33' 22"; W: 76° 37' 20").

PA Dot Engineering District 3-0 proposes to completely replace the SR 4007 Section 002 bridge. The existing structure is currently a single span, concrete T-beam bridge, with a skew of 45 degrees. The existing structure has a normal span of 16.5 ft with an underclearance of 8 ft. It will be replaced with a single span pre-stressed concrete box culvert with a 44 degree skew. The proposed structure will have a normal span of 16 ft and an underclearance of 8 ft. The box culvert will be depressed one foot with baffles in accordance with the BD-632M. The bridge replacement will permanently impact 0.04 acre of jurisdictional wetlands. Additionally, a 36 inch pipe will be replaced adjacent to the bridge replacement. Kings Creek is classified as a High Quality-Cold Water Fishery by Title 25, Chapter 93 Water Quality Standards, and is classified as a Wild Trout Stream by the PA Fish and Boat Commission. This permit also includes 401 Water Quality Certification.

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

E02-1614. Fox Chapel Golf Club, 426 Fox Chapel Road, Pittsburgh, PA 15238 To construct and maintain surface water intake in Fox Chapel Borough, **Allegheny County**, Pittsburgh ACOE District (Glenshaw, PA Quadrangle North: 4.7"; West: 0.6", Latitude: 40° 30' 34.4"; Longitude: 79° 52' 59.8"). To construct and maintain a surface water intake on Glade Lake (tributary of Squaw Run, HQ-CWF), four water line/electrical line stream crossings on Glade Run (tributary of Squaw Run, HQ-CWF), one water line stream crossing on Glade Run (tributary of Squaw Run, HQ-CWF), one water line stream crossing on an unnamed tributary of Glade Run (unnamed tributary of Squaw Run, HQ-CWF), pipeline and sprinkler heads within the floodway of 4612.5LF of Glade Run (Tributary of Squaw Run, HQ-CWF), pipeline and sprinkler heads within the floodway of 450LF of an unnamed tributary of Glade Run (unnamed tributary of Squaw Run, HQ-CWF), pipeline and sprinkler heads within the floodway of 425LF of another unnamed tributary of Glade Run (unnamed tributary of Squaw Run, HQ-CWF), and the removal of an existing intake within Glade Lake all for the purpose of installing a golf course irrigation system.

ENVIRONMENTAL ASSESSMENTS

Cambria District: Environmental Program Manager, 286 Industrial Pk Rd, Ebensburg, PA 15931-4119.

EA1009-014. Department of Environmental Protection, Bureau of Abandoned Mine Reclamation, Division of Mine Hazards, P. O. Box 8476, Harrisburg, PA 17105. Abandoned Mine Land Reclamation Project, in

Muddy Creek Township, **Butler County**, Pittsburgh ACOE District.

The applicant proposes to backfill an abandoned surface mine, which includes the backfilling of a 3,300 linear foot dangerous highwall. The project will include the elimination of a 1.59 acre nonjurisdictional open waterbody and 0.14 acre PEM wetland that have developed within the open surface mine pit. 0.2 acre of replacement wetland will be constructed with the project (Prospect Quadrangle N: 9.5 inches; W: 16.5 inches).

EROSION AND SEDIMENT CONTROL

The following Erosion and Sediment Control Permits have been issued.

Any person aggrieved by these actions may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. Chapter 5, Subchapter A (relating to practice and procedure of Commonwealth agencies), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

If individuals want to challenge this action, their appeal must reach the Board within 30 days. Individuals do not need a lawyer to file an appeal with the Board. Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. If individuals cannot afford a lawyer, individuals may qualify for pro bono representation. Call the Secretary to the Board (717) 787-3483 for more information.

Southwest Region: Oil and Gas Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

11/9/09

ESCGP-1 No.: ESX09-125-0055

Applicant Name: Chesapeake Appalachia, LLC

Contact Person: Tal Oden

Address: P. O. Box 18496

City: Oklahoma City State: MI Zip Code: 73154-0496

County: Washington Township(s): Hanover

Receiving Stream(s) and Classifications: Unnamed Tributaries (WWF) to Harmon Creek (WWF) to W Virginia (WWF) to Raccoon Creek (WWF) to Ohio River (WWF), Other

11/9/09

ESCGP-1 No.: ESX09-125-0059

Applicant Name: Chesapeake Appalachia, LLC

Contact Person: Tal Oden

Address: P. O. Box 18496

City: Oklahoma City State: MI Zip Code: 73154-0496

County: Washington Township(s): Hanover

Receiving Stream(s) and Classifications: Unnamed Tributaries (WWF) to Raccoon Creek (WWF) to Ohio River (WWF), other

11/24/09
 ESCGP-1 No.: ESX09-125-0054
 Applicant Name: Range Resources—Appalachia, LLC
 Contact Person: Carla Suszkowski
 Address: 380 Southpointe Blvd, Ste 300
 City: Canonsburg State: PA Zip Code: 15317
 County: Washington Township(s): Hopewell
 Receiving Stream(s) and Classifications: UNT to Brush Run, HQ

11/24/09
 ESCGP-1 No.: ESX09-125-0003 Amendment
 Applicant Name: Range Resources—Appalachia, LLC
 Contact Person: Carla Suszkowski
 Address: 380 Southpointe Blvd, Ste 300
 City: Canonsburg State: PA Zip Code: 15317
 County: Washington Township(s): Cecil
 Receiving Stream(s) and Classifications: Brush Creek, other

Northwest Region: Oil and Gas Program Manager, 230 Chestnut St., Meadville, PA 16335.

ESCGP-1 #ESX09-123-0001
 Applicant: Sheffield Land & Timber
 Contact: Richard Cochran
 Address: P. O. Box 54
 Sheffield, PA 16347
 County: Warren Township(s): Watson
 Receiving Stream(s) and Classification(s): Tom Run HQ; West Branch Tionesta Creek HQ

ESCGP-1 #ESX09-065-0004
 Applicant: Exco—North Coast Energy Inc.
 Contact: Joel Heiser
 Address: 1 GOJO Plaza, Ste 325
 Akron, OH 44311-1057
 County: Jefferson Township(s): Pine Creek
 Receiving Stream(s) and Classification(s): Five Mile Run CWF; UNT to O'Donnell Run CWF

SPECIAL NOTICES

Notice of Certification to Perform Radon-Related Activities in Pennsylvania

In the month of November 2009 the Department of Environmental Protection, under the Radon Certification Act, (63 P. S. §§ 2001—2014) and regulations promulgated thereunder at 25 Pa. Code Chapter 240, has certified the persons listed to perform radon-related activities in this Commonwealth. The period of certification is 2 years. For a complete list of persons currently certified to perform radon-related activities in this Commonwealth and for information as to the specific testing devices that persons certified for testing or laboratory are certified to use, contact the Bureau of Radiation Protection, Radon Division, P. O. Box 8469, Harrisburg, PA 17105-8469, (800) 23RADON.

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Chad Albright	3810 Broad Avenue Altoona, PA 16601	Mitigation
Robert Anderson	282 Longstreet Drive Gettysburg, PA 17325	Mitigation
Keith Carpenter	124 Old Colony Drive Johnstown, PA 15904	Mitigation
Kent Christel	P. O. Box 651 Reading, PA 19607	Testing
Mark Droege	238 Pheasant Drive Columbia, PA 17512	Testing
Kimberly Fonos	1216 Edgewood Drive West Homestead, PA 15120	Testing
Gregory Gibson	P. O. Box 733 Tannersville, PA 18372	Mitigation
Tracey Gillespie	1820 Linglestown Road Harrisburg, PA 17110	Testing
Steven Gorman	282 Longstreet Drive Gettysburg, PA 17325	Testing
Joseph Hagarty	1315 Woodland Road West Chester, PA 19382	Testing
Catherine Hall	1195 Easton Road #6 Glenside, PA 19038	Testing
Donald Hart	613 Zimmermans Hollow Road Sunbury, PA 17801	Testing & Mitigation
Bo Hopkins	3692 Sheramy Drive Fairview, PA 16415	Testing
Greg Kopenhaver	P. O. Box 902 Blue Bell, PA 19422	Testing
Juan L. Lluna-Garces	1324 Crestmont Drive Downingtown, PA 19335	Testing & Mitigation

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Rob Lunny Radon Protection Systems	2370 York Road A9-C Jamison, PA 18929	Mitigation
Mason Dixon Home Inspection Services, Inc.	282 Longstreet Drive Gettysburg, PA 17325	Testing
Anthony Milone	351 W. Schuylkill Road Suite 10-441 Pottstown, PA 19465	Mitigation
Thomas Murphy	1323 Loblolly Street Trevose, PA 19053	Testing
Stephen Notwick	27 Jasmine Road Levittown, PA 19056	Testing
James Painter	780 Pierson Run Road Pittsburgh, PA 15234	Testing
Joseph Petrovich	466 West County Road Sugarloaf, PA 18249	Testing
Jook Ro	30 Sunset Drive Carlisle, PA 17013	Mitigation
Thomas Sebald	4638 Highview Boulevard Erie, PA 16509	Testing
Thomas Troutman	41 Beard Road Mechanicsburg, PA 17050	Testing
Malcolm Whipkey	1934 Overland Court Allison Park, PA 15101	Testing

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

Under the Environmental Good Samaritan Act (27 Pa.C.S.A. §§ 8001—8114), notice is hereby given that the Shoup's Run Watershed Association (SRWA) has submitted a proposal EGS No. 31001 to the Department of Environmental Protection (Department) for the Garden Road Acid Mine Drainage Treatment System Project located on SRWA's property along Township Road T-553 in Carbon Township, Huntingdon County. A copy of the proposal is on file for public review at the Cambria Office, 286 Industrial Park Road, Ebensburg, PA 15931-4119 between 9 a.m. and 4 p.m. Written comments or objections may be submitted to the Department within 30 days of this publication. The comment must include the person's name, address, telephone number.

CATEGORICAL EXCLUSION

Northeast Region: Water Management Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Project Information:

<i>Project Applicant</i>	<i>Project Applicant's Address</i>	<i>Project Location (Municipality)</i>	<i>Project Location (County)</i>
City of Allentown	641 South Tenth Street Allentown, PA 18103-3173	City of Allentown	Lehigh

Description: The Pennsylvania Infrastructure Investment Authority, which administers the Commonwealth's State Revolving Fund, is intended to be the funding source for this project. The City of Allentown proposes to replace a carbon steel floating cover on its existing Number 2 anaerobic digester located at the city's Kline's Island Wastewater Treatment Facility. The project is being undertaken since the existing cover has reached the end of its useful design life and has failed. The affected digester has been taken out of service until the floating cover can be replaced. The proposed project will provide for the safe and efficient storage and utilization of biogas generated through the anaerobic digestion of wastewater biosolids. The Department of Environmental Protection's (Department) review of the project and the information received has not identified any significant, adverse environmental impact resulting from this proposal. The Department hereby categorically excludes this project from the State Environmental Review Process.

Project Information:

<i>Project Applicant</i>	<i>Project Applicant's Address</i>	<i>Project Location (Municipality)</i>	<i>Project Location (County)</i>
Lower Lackawanna Valley Sanitary Authority	P. O. Box 2067 Duryea, PA 18642-2067	Old Forge Borough	Lackawanna

Description: The Pennsylvania Infrastructure Investment Authority, which administers the Commonwealth's State Revolving Fund, is intended to be the funding source for this project. The Lower Lackawanna Valley Sanitary Authority proposes to eliminate three (3) of its permitted combined sewer overflow (CSO) structures, No 17, 18 and 24. The project also proposes the construction of one new CSO structure that will provide wastewater treatment and disinfection prior to discharge to its receiving watercourse. The Department of Environmental Protection's (Department) review of the project and the information received has not identified any significant, adverse environmental impact resulting from this proposal. The Department hereby categorically excludes this project from the State Environmental Review Process.

Project Information:

<i>Project Applicant</i>	<i>Project Applicant's Address</i>	<i>Project Location (Municipality)</i>	<i>Project Location (County)</i>
Lower Lackawanna Valley Sanitary Authority	P. O. Box 2067 Duryea, PA 18642-2067	Avoca Borough	Luzerne

Description: The Pennsylvania Infrastructure Investment Authority, which administers the Commonwealth's State Revolving Fund, is intended to be the funding source for this project. The Lower Lackawanna Valley Sanitary Authority proposes to eliminate one (1) of its permitted combined sewer overflow (CSO) structures, No 28 through the implementation of a combined sewer separation construction project. The project will affect the west side of Main Street on Hawthorne Street, the 700 and 800 block, as well as a conveyance line passing through the former Kerr-McGee Corporation property and a section of McLean Street north from Hawthorne Street. The Department of Environmental Protection's (Department) review of the project and the information received has not identified any significant, adverse environmental impact resulting from this proposal. The Department hereby categorically excludes this project from the State Environmental Review Process.

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

Location: Emsworth Borough, 171 Center Avenue, Emsworth, PA 15202, East Emsworth Borough, Allegheny County.

Description: The Pennsylvania Infrastructure Investment Authority which administers Pennsylvania's State Revolving Fund is intended to be the funding source for this project.

The Borough proposes to replace the existing Route 65 Pump Station and existing sewers in an along paved streets to eliminate wet weather overflows.

The Department of Environmental Protection's (Department) review of the project and the information received has not identified any significant, adverse environmental impact resulting from this proposal. The Department hereby categorically excludes this project from the State Environmental Review Process.

[Pa.B. Doc. No. 09-2284. Filed for public inspection December 11, 2009, 9:00 a.m.]

Bid Opportunity

OSM 16(1049)101.1, Abandoned Mine Reclamation Project, Millerstown Northwest, Washington and Elk Townships, Clarion County. The principal items of work and approximate quantities include mobilization and demobilization; 383,840 cubic yards of grading; 40.2 acres of seeding; 1,890 ton of alkaline addition; 450 linear feet of permanent swale; and 850 linear feet of rock underdrain. This project issues on December 11, 2009, and bids will be opened on January 12, 2010, at 2 p.m. Bid documents cost \$10 per set and will not be mailed until payment has been received. This project is financed by the Federal Government under the authority given it by Pub. L. No. 95-87 dated August 3, 1977, The Surface Mining Control and Reclamation Act of 1977, and is subject to that Law, and to the Federal Grant for this project. Contact the Construction Contracts Section at (717) 787-7820 or joelmiller@state.pa.us for more information on this bid.

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 09-2285. Filed for public inspection December 11, 2009, 9:00 a.m.]

HCA's and HCR's, as defined in the regulations, must now be licensed by the Department of Health (Department) to provide home care services to individuals in their homes or other independent living environments.

Home care services include:

- Assistance with self-administered medications
- Personal care such as assistance with personal hygiene, dressing and feeding
- Homemaking such as assistance with household tasks housekeeping, shopping, meal planning and preparation and transportation
- Companionship
- Respite care such as assistance and support provided to the family
- Other non-skilled services

An entity that is currently operating a HCA or HCR, or both, may continue to operate provided it submits an application for a license to the Department no later than February 10, 2010. An entity that is currently operating a HCA or HCR that has submitted an application for licensure may continue to operate until such date as the Department may refuse the application for licensure. If the Department grants the application for licensure, the home care agency and/or home care registry may continue to operate in accordance with the requirements of the regulations at 28 Pa. Code Chapter 611.

An entity that is established after the effective date of the regulations must obtain a license prior to providing home care services.

Application packets may be obtained by contacting the Division of Home Health at (717) 783-1379 and supplying a mailing address, and the Division will mail the packet to the address supplied. Alternatively, application packets may be obtained electronically. The applicant should go to <http://www.health.state.pa.us> and click on the left side

DEPARTMENT OF HEALTH

Information Applicable to Licensure Under 28 Pa. Code Chapter 611, Home Care Agencies and Home Care Registries

The regulations governing licensure for home care agencies (HCAs) and home care registries (HCRs) effective December 12, 2009, is published at 39 Pa.B. 6958 (December 12, 2009).

navigation bar titled "Facilities, Providers & Managed Care Plans" then click the navigation bar titled "Home Care Licensure Information."

The Department's web site contains additional information and links that may be helpful to the applicant. The Department's web site contains a document addressing Frequently Asked Questions which may be accessed at <http://www.health.state.pa.us> by clicking on the left side navigation bar titled "Facilities, Providers & Managed Care Plans" then clicking on the navigation bar titled "Home Care Agencies/Home Care Registries" which contains a document link for "Frequently Asked Questions about Home Care Agencies/Home Care Registries." The applicant can also contact the Department for a copy of the document which will be included in the application packet.

To access information pertaining to criminal background checks, go to <http://www.aging.state.pa.us>, or contact the Department of Aging, Criminal History Background Check Unit at (717) 265-7887. To access information pertaining to child abuse clearances, go to www.dpw.state.pa.us, or contact the Department of Public Welfare, ChildLine at (717) 783-6211.

Persons with questions or who would like more information regarding home care agencies, home care registries, and/or the HCA/HCR licensure program, contact the Division of Home Health at (717) 783-1379.

Persons with a disability who require an alternative format of this notice (for example, large print, audiotope, Braille) should contact Janice Staloski, Director, Bureau of Community Program Licensure and Certification, 132 Kline Plaza, Suite A, Harrisburg, PA 17104, (717) 783-8665, or for speech and/or hearing impaired persons V/TT (717) 783-6514, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

EVERETTE JAMES,
Secretary

(Editorial Note: For a rulemaking relating to this notice, see 39 Pa.B. 6958 (December 12, 2009).)

[Pa.B. Doc. No. 09-2286. Filed for public inspection December 11, 2009, 9:00 a.m.]

Long-Term Care Nursing Facilities; Requests for Exception

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

Orangeville Nursing and Rehabilitation Center
200 Berwick Road
Orangeville, PA 17859
FAC ID 379502

This request is on file with the Department of Health (Department). Persons may receive a copy of a request for exception by requesting a copy from the Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax (717) 772-2163, ra-paexcept@state.pa.us.

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

Comments received by the Department within 15 days after the date of publication of this notice will be

reviewed by the Department before they decide 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 aid, service or other accommodation to do so, should contact V/TT (717) 783-6514 for speech and/or hearing impaired persons, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

EVERETTE JAMES,
Secretary

[Pa.B. Doc. No. 09-2287. Filed for public inspection December 11, 2009, 9:00 a.m.]

DEPARTMENT OF REVENUE

Annual Inflation Adjustment; Pennsylvania Gaming Cash Flow Management

In accordance with 61 Pa. Code § 1001.8 (relating to State Gaming Fund transfers), the Department of Revenue (Department) is required to publish notice of the annual inflation adjustment as proscribed in 4 Pa.C.S. § 1403(d) (relating to establishment of State Gaming Fund and net slot machine revenue distribution).

Section 1403(c) of 4 Pa.C.S. requires the Department to utilize the most recent consumer price index effective immediately prior to the date the adjustment is due to take effect. This adjustment will be published by the United States Department of Labor, Bureau of Labor Statistics in January 2010. Thereafter, the Department will publish an additional notice of the annual inflation adjustment.

STEPHEN H. STETLER,
Secretary

[Pa.B. Doc. No. 09-2288. Filed for public inspection December 11, 2009, 9:00 a.m.]

Pennsylvania Extreme Green 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 Extreme Green.

2. *Price:* The price of a Pennsylvania Extreme Green instant lottery game ticket is \$20.

3. *Play Symbols:* Each Pennsylvania Extreme Green instant lottery game ticket will contain one play area featuring an "EXTREME NUMBERS" area and a "YOUR NUMBERS" area. The play symbols and their captions located in the "EXTREME NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 11 (ELEVEN), 12 (TWELVE), 13 (THIRTY), 14 (FORTY), 15 (FIFTY), 16 (SIXTY), 17 (SEVENTY), 18 (EIGHTY), 19 (NINETY), 20 (TWENTY), 21 (TWENTYONE), 22 (TWENTYTWO), 23 (TWENTYTHREE), 24 (TWENTYFOUR), 25 (TWENTYSIX), 26 (TWENTYSIX), 27 (TWENTYSEVEN).

28 (TWYEGT), 29 (TWININ), 30 (THIRTY), 31 (THYONE), 32 (THYTWO), 33 (THYTHR), 34 (THYFOR), 35 (THYFIV), 36 (THYSIX), 37 (THYSVN), 38 (THYEGT), 39 (THYNIN) and 40 (FORTY). 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), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWININ), 30 (THIRTY), 31 (THYONE), 32 (THYTWO), 33 (THYTHR), 34 (THYFOR), 35 (THYFIV), 36 (THYSIX), 37 (THYSVN), 38 (THYEGT), 39 (THYNIN), 40 (FORTY), Extreme symbol (EXTREME), \$\$ symbol (DBL\$) and 10X symbol (10TIMES).

4. *Prize Symbols:* The prize symbols and their captions located in the "YOUR NUMBERS" area are: \$10⁰⁰ (TEN DOL), \$20⁰⁰ (TWENTY), \$40⁰⁰ (FORTY), \$50⁰⁰ (FIFTY), \$100 (ONE HUN), \$200 (TWO HUN), \$500 (FIV HUN), \$1,000 (ONE THO), \$10,000 (TEN THO), \$100,000 (ONEHUNTHO) and \$1MILL (ONE MIL).

5. *Prizes:* The prizes that can be won in this game are: \$10, \$20, \$40, \$50, \$100, \$200, \$500, \$1,000, \$10,000, \$100,000 and \$1,000,000. A player can win up to 20 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 4,800,000 tickets will be printed for the Pennsylvania Extreme Green instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "EXTREME NUMBERS" play symbols and a prize symbol of \$1MILL (ONE MIL) appears in the "Prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1,000,000. This prize shall be paid as a lump-sum cash payment.

(b) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "EXTREME NUMBERS" play symbols and a prize symbol of \$100,000 (ONEHUNTHO) appears in the "Prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100,000.

(c) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "EXTREME NUMBERS" play symbols and a prize symbol of \$10,000 (TEN THO) appears in the "Prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$10,000.

(d) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X symbol (10TIMES), and a prize symbol of \$1,000 (ONE THO) appears in the "Prize" area under the 10X symbol (10TIMES), on a single ticket, shall be entitled to a prize of \$10,000.

(e) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is an Extreme symbol (EXTREME), and a prize symbol of \$500 (FIV HUN) appears in twenty of the "Prize" areas, on a single ticket, shall be entitled to a prize of \$10,000.

(f) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "EXTREME NUMBERS" play symbols and a prize symbol of \$1,000 (ONE THO) appears in the "Prize" area under the

matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(g) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a \$\$ symbol (DBL\$), and a prize symbol of \$500 (FIV HUN) appears in the "Prize" area under the \$\$ symbol (DBL\$), on a single ticket, shall be entitled to a prize of \$1,000.

(h) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X symbol (10TIMES), and a prize symbol of \$100 (ONE HUN) appears in the "Prize" area under the 10X symbol (10TIMES), on a single ticket, shall be entitled to a prize of \$1,000.

(i) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is an Extreme symbol (EXTREME), and a prize symbol of \$50⁰⁰ (FIFTY) appears in twenty of the "Prize" areas, on a single ticket, shall be entitled to a prize of \$1,000.

(j) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "EXTREME NUMBERS" play symbols and a prize symbol of \$500 (FIV HUN) appears in the "Prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$500.

(k) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X symbol (10TIMES), and a prize symbol of \$50⁰⁰ (FIFTY) appears in the "Prize" area under the 10X symbol (10TIMES), on a single ticket, shall be entitled to a prize of \$500.

(l) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is an Extreme symbol (EXTREME), and a prize symbol of \$20⁰⁰ (TWENTY) appears in fifteen of the "Prize" areas, and a prize symbol of \$40⁰⁰ (FORTY) appears in five of the "Prize" areas, on a single ticket, shall be entitled to a prize of \$500.

(m) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is an Extreme symbol (EXTREME), and a prize symbol of \$10⁰⁰ (TEN DOL) appears in ten of the "Prize" areas, and a prize symbol of \$40⁰⁰ (FORTY) appears in ten of the "Prize" areas, on a single ticket, shall be entitled to a prize of \$500.

(n) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "EXTREME NUMBERS" play symbols and a prize symbol of \$200 (TWO HUN) appears in the "Prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$200.

(o) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a \$\$ symbol (DBL\$), and a prize symbol of \$100 (ONE HUN) appears in the "Prize" area under the \$\$ symbol (DBL\$), on a single ticket, shall be entitled to a prize of \$200.

(p) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X symbol (10TIMES), and a prize symbol of \$20⁰⁰ (TWENTY) appears in the "Prize" area under the 10X symbol (10TIMES), on a single ticket, shall be entitled to a prize of \$200.

(q) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is an Extreme symbol (EXTREME), and a prize symbol of \$10⁰⁰ (TEN DOL) appears in twenty of the "Prize" areas, on a single ticket, shall be entitled to a prize of \$200.

(r) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "EXTREME

NUMBERS” play symbols and a prize symbol of \$100 (ONE HUN) appears in the “Prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$100.

(s) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a \$\$ symbol (DBL\$), and a prize symbol of \$50.00 (FIFTY) appears in the “Prize” area under the \$\$ symbol (DBL\$), on a single ticket, shall be entitled to a prize of \$100.

(t) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 10X symbol (10TIMES), and a prize symbol of \$10.00 (TEN DOL) appears in the “Prize” area under the 10X symbol (10TIMES), on a single ticket, shall be entitled to a prize of \$100.

(u) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “EXTREME NUMBERS” play symbols and a prize symbol of \$50.00 (FIFTY) appears in the “Prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$50.

(v) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “EXTREME NUMBERS” play symbols and a prize symbol of \$40.00 (FORTY) appears in the “Prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$40.

(w) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a \$\$ symbol (DBL\$), and a prize symbol of \$20.00 (TWENTY) appears in the “Prize” area under the \$\$ symbol (DBL\$), on a single ticket, shall be entitled to a prize of \$40.

(x) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “EXTREME NUMBERS” play symbols and a prize symbol of \$20.00 (TWENTY) appears in the “Prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$20.

(y) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a \$\$ symbol (DBL\$), and a prize symbol of \$10.00 (TEN DOL) appears in the “Prize” area under the \$\$ symbol (DBL\$), on a single ticket, shall be entitled to a prize of \$20.

(z) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “EXTREME NUMBERS” play symbols and a prize symbol of \$10.00 (TEN DOL) appears in the “Prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

<i>When Any Of Your Numbers Match Any Of The Extreme Numbers, Win With Prize(s) Of:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 4,800,000 Tickets:</i>
\$10 × 2	\$20	20	240,000
\$10 w/\$\$	\$20	20	240,000
\$20	\$20	20	240,000
\$10 × 4	\$40	60	80,000
\$20 × 2	\$40	120	40,000
\$20 w/\$\$	\$40	60	80,000
\$40	\$40	24	200,000
\$10 × 5	\$50	120	40,000
(\$10 × 3) + \$20	\$50	120	40,000
(\$20 w/\$\$) + \$10	\$50	200	24,000
\$50	\$50	85.71	56,000
\$10 × 10	\$100	150	32,000
\$10 w/10X	\$100	150	32,000
\$20 × 5	\$100	150	32,000
\$50 w/\$\$	\$100	150	32,000
\$100	\$100	150	32,000
\$10 × 20	\$200	2,400	2,000
EXTREME w/(\$10 × 20)	\$200	2,400	2,000
\$20 w/10X	\$200	2,400	2,000
\$20 × 10	\$200	2,400	2,000
\$50 × 4	\$200	2,400	2,000
\$100 w/\$\$	\$200	2,400	2,000
\$200	\$200	2,182	2,200
EXTREME w/(\$10 × 10) + (\$40 × 10)	\$500	8,000	600
(\$20 × 15) + (\$40 × 5)	\$500	8,000	600
EXTREME w/(\$20 × 15) + (\$40 × 5)	\$500	8,000	600
\$50 w/10X	\$500	8,000	600
\$50 × 10	\$500	8,000	600
\$100 × 5	\$500	8,000	600
\$500	\$500	8,000	600
EXTREME w/(\$50 × 20)	\$1,000	9,231	520
\$50 × 20	\$1,000	9,231	520
\$100 w/10X	\$1,000	9,231	520
\$100 × 10	\$1,000	9,231	520
\$500 w/\$\$	\$1,000	9,231	520
\$500 × 2	\$1,000	9,231	520

When Any Of Your Numbers Match
Any Of The Extreme Numbers, Win
With Prize(s) Of:

Win:	Approximate Odds Are 1 In:	Approximate No. Of Winners Per 4,800,000 Tickets:
\$1,000	9,231	520
EXTREME w/(\$500 × 20)	120,000	40
\$1,000 w/10X	120,000	40
\$1,000 × 10	120,000	40
\$10,000	120,000	40
\$100,000	960,000	5
\$1,000,000	960,000	5

Get a "\$\$\$" (DBL\$) symbol, win double the prize under that symbol.

Get a "10X" (10TIMES) symbol, win 10 times the prize under that symbol.

Get an "EXTREME" (EXTREME) symbol, win all 20 prizes shown.

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Extreme Green instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentive).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Extreme Green, prize money from winning Pennsylvania Extreme Green 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 Extreme Green 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), 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 Extreme Green or through normal communications methods.

STEPHEN H. STETLER,
Secretary

[Pa.B. Doc. No. 09-2289. Filed for public inspection December 11, 2009, 9:00 a.m.]

Pennsylvania Queen of Hearts 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 Queen of Hearts.

2. *Price:* The price of a Pennsylvania Queen of Hearts instant lottery game ticket is \$2.

3. *Play and Prize Play Symbols:*

(a) Each Pennsylvania Queen of Hearts instant lottery game ticket will contain three play areas known as

"Queen's High," "We Three Queens" and "Queen Me" respectively. Each game has a different game play method and is played separately.

(b) The play area for "Queen's High" will consist of "HAND 1," "HAND 2," "HAND 3," "HAND 4," "HAND 5" and "HAND 6." Each "HAND" is played separately. Each "HAND" features a "YOUR" card area and a "DEALER" card area. The card play symbols printed in black ink and located in the "YOUR" card area are: 3 of Spades (THS), 4 of Spades (FRS), 5 of Spades (FVS), 6 of Spades (SXS), 7 of Spades (SNS), 8 of Spades (ETS), 9 of Spades (NIS), 10 of Spades (TNS), Jack of Spades (JKS), King of Spades (KGS), Ace of Spades (ACS), 3 of Clubs (THC), 4 of Clubs (FRC), 5 of Clubs (FVC), 6 of Clubs (SXC), 7 of Clubs (SNC), 8 of Clubs (ETC), 9 of Clubs (NIC), 10 of Clubs (TNC), Jack of Clubs (JKC), King of Clubs (KGC) and Ace of Clubs (ACC). The card play symbols printed in red ink and located in the "YOUR" card area are: 3 of Diamonds (THD), 4 of Diamonds (FRD), 5 of Diamonds (FVD), 6 of Diamonds (SXD), 7 of Diamonds (SND), 8 of Diamonds (ETD), 9 of Diamonds (NID), 10 of Diamonds (TND), Jack of Diamonds (JKD), King of Diamonds (KGD), Ace of Diamonds (ACD), 3 of Hearts (THH), 4 of Hearts (FRH), 5 of Hearts (FVH), 6 of Hearts (SXH), 7 of Hearts (SNH), 8 of Hearts (ETH), 9 of Hearts (NIH), 10 of Hearts (TNH), Jack of Hearts (JKH), Queen of Hearts (RQN), King of Hearts (KQH) and Ace of Hearts (ACH). The card play symbols printed in black ink and located in the "DEALER" card area are: 2 of Spades (TWS), 3 of Spades (THS), 4 of Spades (FRS), 5 of Spades (FVS), 6 of Spades (SXS), 7 of Spades (SNS), 8 of Spades (ETS), 9 of Spades (NIS), 10 of Spades (TNS), Jack of Spades (JKS), King of Spades (KGS), 2 of Clubs (TWC), 3 of Clubs (THC), 4 of Clubs (FRC), 5 of Clubs (FVC), 6 of Clubs (SXC), 7 of Clubs (SNC), 8 of Clubs (ETC), 9 of Clubs (NIC), 10 of Clubs (TNC), Jack of Clubs (JKC) and King of Clubs (KGC). The card play symbols printed in red ink and located in the "DEALER" card area are: 2 of Diamonds (TWD), 3 of Diamonds (THD), 4 of Diamonds (FRD), 5 of Diamonds (FVD), 6 of Diamonds (SXD), 7 of Diamonds (SND), 8 of Diamonds (ETD), 9 of Diamonds (NID), 10 of Diamonds (TND), Jack of Diamonds (JKD), King of Diamonds (KGD), 2 of Hearts (TWH), 3 of Hearts (THH), 4 of Hearts (FRH), 5 of Hearts (FVH), 6 of Hearts (SXH), 7 of Hearts (SNH), 8 of Hearts (ETH), 9 of Hearts (NIH), 10 of Hearts (TNH), Jack of Hearts (JKH) and King of Hearts (KQH). Cards are ranked in value from high to low: A, K, J, 10, 9, 8, 7, 6, 5, 4, 3, 2.

(c) The card play symbols and their captions printed in red ink and located in the play area for "We Three Queens" are: 2 of Hearts (TWH), 3 of Hearts (THH), 4 of Hearts (FRH), 5 of Hearts (FVH), 6 of Hearts (SXH), 7 of Hearts (SNH), 8 of Hearts (ETH), 9 of Hearts (NIH), 10 of

Hearts (TNH), Jack of Hearts (JKH), Queen of Hearts (RQN), King of Hearts (KGH) and Ace of Hearts (ACH).

(d) The prize play symbols and play symbols and their captions located in the play area for "Queen Me" are: \$2.⁰⁰ (TWO DOL), \$3.⁰⁰ (THR DOL), \$5.⁰⁰ (FIV DOL), \$9.⁰⁰ (NIN DOL), \$10.⁰⁰ (TEN DOL), \$15.⁰⁰ (FIFTN), \$20.⁰⁰ (TWENTY), \$30.⁰⁰ (THIRTY), \$50.⁰⁰ (FIFTY), \$100 (ONE HUN), \$300 (THR HUN), NO PRIZE (TRY AGAIN) and TRY AGAIN (NO PRIZE).

4. Prize Symbols:

(a) The play area for "Queen's High" will contain six "PRIZE" areas, one in each "HAND." The prize symbols and their captions located in the six "PRIZE" areas for "Queen's High" are: \$1.⁰⁰ (ONE DOL), \$2.⁰⁰ (TWO DOL), \$3.⁰⁰ (THR DOL), \$5.⁰⁰ (FIV DOL), \$9.⁰⁰ (NIN DOL), \$10.⁰⁰ (TEN DOL), \$15.⁰⁰ (FIFTN), \$20.⁰⁰ (TWENTY), \$30.⁰⁰ (THIRTY), \$50.⁰⁰ (FIFTY), \$100 (ONE HUN), \$300 (THR HUN), \$1,000 (ONE THO) and \$14,000 (FORTNTHO).

(b) The play area for "We Three Queens" will contain a "PRIZE" area. The prize symbols and their captions located in the "PRIZE" area for "We Three Queens" are: \$1.⁰⁰ (ONE DOL), \$2.⁰⁰ (TWO DOL), \$3.⁰⁰ (THR DOL), \$5.⁰⁰ (FIV DOL), \$9.⁰⁰ (NIN DOL), \$10.⁰⁰ (TEN DOL), \$15.⁰⁰ (FIFTN), \$20.⁰⁰ (TWENTY), \$30.⁰⁰ (THIRTY), \$50.⁰⁰ (FIFTY), \$100 (ONE HUN), \$300 (THR HUN), \$1,000 (ONE THO) and \$14,000 (FORTNTHO).

5. Prizes: The prizes that can be won in "Queen's High" are: \$1, \$2, \$3, \$5, \$9, \$10, \$15, \$20, \$30, \$50, \$100, \$300, \$1,000 and \$14,000. The prizes that can be won in "We Three Queens" are: \$1, \$2, \$3, \$5, \$9, \$10, \$15, \$20, \$30, \$50, \$100, \$300, \$1,000 and \$14,000. The prizes that can be won in the "Queen Me" are: \$2, \$3, \$5, \$9, \$10, \$15, \$20, \$30, \$50, \$100 and \$300. The player can win up to 8 times on a ticket.

6. Approximate Number of Tickets Printed For the Game: Approximately 5,400,000 tickets will be printed for the Pennsylvania Queen of Hearts instant lottery game.

7. Determination of Prize Winners:

(a) Determination of prize winners for "Queen's High" are:

(1) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$14,000 (FORTNTHO) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$14,000.

(2) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$1,000 (ONE THO) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$1,000.

(3) Holders of tickets with a Queen of Hearts (RQN) card play symbol with the symbol and caption printed in red ink, and a prize symbol of \$300 (THR HUN) appears in the "PRIZE" area to the right of that Queen of Hearts (RQN) card play symbol in the same "HAND," on a single ticket, shall be entitled to a prize of \$900.

(4) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$300 (THR HUN) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$300.

(5) Holders of tickets with a Queen of Hearts (RQN) card play symbol with the symbol and caption printed in red ink, and a prize symbol of \$100 (ONE HUN) appears in the "PRIZE" area to the right of that Queen of Hearts (RQN) card play symbol in the same "HAND," on a single ticket, shall be entitled to a prize of \$300.

(6) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$100 (ONE HUN) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$100.

(7) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$50.⁰⁰ (FIFTY) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$50.

(8) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$30.⁰⁰ (THIRTY) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$30.

(9) Holders of tickets with a Queen of Hearts (RQN) card play symbol with the symbol and caption printed in red ink, and a prize symbol of \$10.⁰⁰ (TEN DOL) appears in the "PRIZE" area to the right of that Queen of Hearts (RQN) card play symbol in the same "HAND," on a single ticket, shall be entitled to a prize of \$30.

(10) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$20.⁰⁰ (TWENTY) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$20.

(11) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$15.⁰⁰ (FIFTN) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$15.

(12) Holders of tickets with a Queen of Hearts (RQN) card play symbol with the symbol and caption printed in red ink, and a prize symbol of \$5.⁰⁰ (FIV DOL) appears in the "PRIZE" area to the right of that Queen of Hearts (RQN) card play symbol in the same "HAND," on a single ticket, shall be entitled to a prize of \$15.

(13) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$10.⁰⁰ (TEN DOL) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$10.

(14) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$9.⁰⁰ (NIN DOL) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$9.

(15) Holders of tickets with a Queen of Hearts (RQN) card play symbol with the symbol and caption printed in red ink, and a prize symbol of \$3.⁰⁰ (THR DOL) appears in the "PRIZE" area to the right of that Queen of Hearts (RQN) card play symbol in the same "HAND," on a single ticket, shall be entitled to a prize of \$9.

(16) Holders of tickets with a Queen of Hearts (RQN) card play symbol with the symbol and caption printed in red ink, and a prize symbol of \$2.⁰⁰ (TWO DOL) appears

in the "PRIZE" area to the right of that Queen of Hearts (RQN) card play symbol in the same "HAND," on a single ticket, shall be entitled to a prize of \$6.

(17) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$5⁰⁰ (FIV DOL) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$5.

(18) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$3⁰⁰ (THR DOL) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$3.

(19) Holders of tickets with a Queen of Hearts (RQN) card play symbol with the symbol and caption printed in red ink, and a prize symbol of \$1⁰⁰ (ONE DOL) appears in the "PRIZE" area to the right of that Queen of Hearts (RQN) card play symbol in the same "HAND," on a single ticket, shall be entitled to a prize of \$3.

(20) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$2⁰⁰ (TWO DOL) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$2.

(21) Holders of tickets where the "YOUR" card play symbol is greater than the "DEALER'S" card play symbol in the same "HAND," and a prize symbol of \$1⁰⁰ (ONE DOL) appears in the "PRIZE" area for that "HAND," on a single ticket, shall be entitled to a prize of \$1.

(b) Determination of prize winners for "We Three Queens" are:

(1) Holders of tickets with three matching Queen of Hearts (RQN) symbols with each symbol and caption printed in red ink in the same row, column or diagonal, and a prize symbol of \$14,000 (FORTNTHO) appears in the "PRIZE" area for that game, on a single ticket, shall be entitled to a prize of \$14,000.

(2) Holders of tickets with three matching Queen of Hearts (RQN) symbols with each symbol and caption printed in red ink in the same row, column or diagonal, and a prize symbol of \$1,000 (ONE THO) appears in the "PRIZE" area for that game, on a single ticket, shall be entitled to a prize of \$1,000.

(3) Holders of tickets with three matching Queen of Hearts (RQN) symbols with each symbol and caption printed in red ink in the same row, column or diagonal, and a prize symbol of \$300 (THR HUN) appears in the "PRIZE" area for that game, on a single ticket, shall be entitled to a prize of \$300.

(4) Holders of tickets with three matching Queen of Hearts (RQN) symbols with each symbol and caption printed in red ink in the same row, column or diagonal, and a prize symbol of \$100 (ONE HUN) appears in the "PRIZE" area for that game, on a single ticket, shall be entitled to a prize of \$100.

(5) Holders of tickets with three matching Queen of Hearts (RQN) symbols with each symbol and caption printed in red ink in the same row, column or diagonal, and a prize symbol of \$50⁰⁰ (FIFTY) appears in the "PRIZE" area for that game, on a single ticket, shall be entitled to a prize of \$50.

(6) Holders of tickets with three matching Queen of Hearts (RQN) symbols with each symbol and caption printed in red ink in the same row, column or diagonal,

and a prize symbol of \$30⁰⁰ (THIRTY) appears in the "PRIZE" area for that game, on a single ticket, shall be entitled to a prize of \$30.

(7) Holders of tickets with three matching Queen of Hearts (RQN) symbols with each symbol and caption printed in red ink in the same row, column or diagonal, and a prize symbol of \$20⁰⁰ (TWENTY) appears in the "PRIZE" area for that game, on a single ticket, shall be entitled to a prize of \$20.

(8) Holders of tickets with three matching Queen of Hearts (RQN) symbols with each symbol and caption printed in red ink in the same row, column or diagonal, and a prize symbol of \$15⁰⁰ (FIFTN) appears in the "PRIZE" area for that game, on a single ticket, shall be entitled to a prize of \$15.

(9) Holders of tickets with three matching Queen of Hearts (RQN) symbols with each symbol and caption printed in red ink in the same row, column or diagonal, and a prize symbol of \$10⁰⁰ (TEN DOL) appears in the "PRIZE" area for that game, on a single ticket, shall be entitled to a prize of \$10.

(10) Holders of tickets with three matching Queen of Hearts (RQN) symbols with each symbol and caption printed in red ink in the same row, column or diagonal, and a prize symbol of \$9⁰⁰ (NIN DOL) appears in the "PRIZE" area for that game, on a single ticket, shall be entitled to a prize of \$9.

(11) Holders of tickets with three matching Queen of Hearts (RQN) symbols with each symbol and caption printed in red ink in the same row, column or diagonal, and a prize symbol of \$5⁰⁰ (FIV DOL) appears in the "PRIZE" area for that game, on a single ticket, shall be entitled to a prize of \$5.

(12) Holders of tickets with three matching Queen of Hearts (RQN) symbols with each symbol and caption printed in red ink in the same row, column or diagonal, and a prize symbol of \$3⁰⁰ (THR DOL) appears in the "PRIZE" area for that game, on a single ticket, shall be entitled to a prize of \$3.

(13) Holders of tickets with three matching Queen of Hearts (RQN) symbols with each symbol and caption printed in red ink in the same row, column or diagonal, and a prize symbol of \$2⁰⁰ (TWO DOL) appears in the "PRIZE" area for that game, on a single ticket, shall be entitled to a prize of \$2.

(14) Holders of tickets with three matching Queen of Hearts (RQN) symbols with each symbol and caption printed in red ink in the same row, column or diagonal, and a prize symbol of \$1⁰⁰ (ONE DOL) appears in the "PRIZE" area for that game, on a single ticket, shall be entitled to a prize of \$1.

(c) Determination of prize winners for "Queen Me" are:

(1) Holders of tickets with a prize play symbol of \$300 (THR HUN) in the "Queen Me" play area, on a single ticket, shall be entitled to a prize of \$300.

(2) Holders of tickets with a prize play symbol of \$100 (ONE HUN) in the "Queen Me" play area, on a single ticket, shall be entitled to a prize of \$100.

(3) Holders of tickets with a prize play symbol of \$50⁰⁰ (FIFTY) in the "Queen Me" play area, on a single ticket, shall be entitled to a prize of \$50.

(4) Holders of tickets with a prize play symbol of \$30⁰⁰ (THIRTY) in the "Queen Me" play area, on a single ticket, shall be entitled to a prize of \$30.

(5) Holders of tickets with a prize play symbol of \$20⁰⁰ (TWENTY) in the “Queen Me” play area, on a single ticket, shall be entitled to a prize of \$20.

(6) Holders of tickets with a prize play symbol of \$15⁰⁰ (FIFTEEN) in the “Queen Me” play area, on a single ticket, shall be entitled to a prize of \$15.

(7) Holders of tickets with a prize play symbol of \$10⁰⁰ (TEN DOL) in the “Queen Me” play area, on a single ticket, shall be entitled to a prize of \$10.

(8) Holders of tickets with a prize play symbol of \$9⁰⁰ (NINE DOL) in the “Queen Me” play area, on a single ticket, shall be entitled to a prize of \$9.

(9) Holders of tickets with a prize play symbol of \$5⁰⁰ (FIVE DOL) in the “Queen Me” play area, on a single ticket, shall be entitled to a prize of \$5.

(10) Holders of tickets with a prize play symbol of \$3⁰⁰ (THREE DOL) in the “Queen Me” play area, on a single ticket, shall be entitled to a prize of \$3.

(11) Holders of tickets with a prize play symbol of \$2⁰⁰ (TWO DOL) in the “Queen Me” play area, 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:

<i>Queen Me</i>	<i>Queen’s High</i>	<i>We Three Queens</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 5,400,000 Tickets</i>
\$2			\$2	25	216,000
	\$2		\$2	25	216,000
		\$2	\$2	25	216,000
\$3			\$3	150	36,000
	\$3		\$3	150	36,000
		\$3	\$3	150	36,000
\$2	\$1		\$3	150	36,000
	\$2	\$1	\$3	150	36,000
\$2		\$1	\$3	150	36,000
	\$1 x 3		\$3	500	10,800
	\$1 w/QUEEN		\$3	150	36,000
\$5			\$5	300	18,000
	\$5		\$5	300	18,000
		\$5	\$5	300	18,000
\$2	\$1 x 3		\$5	150	36,000
	\$1 x 3	\$2	\$5	150	36,000
\$2	\$1 w/QUEEN		\$5	150	36,000
\$2	\$1	\$2	\$5	150	36,000
\$9			\$9	375	14,400
	\$9		\$9	375	14,400
		\$9	\$9	375	14,400
\$3	\$3	\$3	\$9	375	14,400
	\$2 x 3	\$3	\$9	375	14,400
	\$3 w/QUEEN		\$9	375	14,400
\$10			\$10	300	18,000
	\$10		\$10	300	18,000
		\$10	\$10	300	18,000
\$2	\$1 x 6	\$2	\$10	300	18,000
\$2	\$2 w/QUEEN	\$2	\$10	300	18,000
\$15			\$15	1,500	3,600
	\$15		\$15	1,500	3,600
		\$15	\$15	1,500	3,600
	\$3 x 5		\$15	1,500	3,600
	\$5 w/QUEEN		\$15	1,500	3,600
\$5	\$5	\$5	\$15	500	10,800
\$20			\$20	1,500	3,600
	\$20		\$20	1,500	3,600
		\$20	\$20	1,500	3,600
	\$5 x 3	\$5	\$20	1,500	3,600
\$5	\$5 w/QUEEN		\$20	1,500	3,600
\$30			\$30	3,000	1,800
	\$30		\$30	3,000	1,800
		\$30	\$30	3,000	1,800
\$10	\$10	\$10	\$30	3,000	1,800
\$15		\$15	\$30	3,000	1,800
\$5	\$5 x 3	\$10	\$30	3,000	1,800
	\$5 w/QUEEN	\$15	\$30	3,000	1,800
\$3	\$9 x 3		\$30	3,000	1,800
\$9	\$3 x 6	\$3	\$30	3,000	1,800
	\$5 x 6		\$30	2,857	1,890

<i>Queen Me</i>	<i>Queen's High</i>	<i>We Three Queens</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 5,400,000 Tickets</i>
\$50			\$50	8,000	675
	\$50		\$50	8,000	675
		\$50	\$50	8,000	675
\$10	\$20	\$20	\$50	8,000	675
\$5	\$15 × 2	\$15	\$50	8,000	675
\$10	\$10 × 3	\$10	\$50	8,000	675
\$10	\$5 × 6	\$10	\$50	8,000	675
\$10	\$10 w/QUEEN	\$10	\$50	8,000	675
\$20	\$15	\$15	\$50	8,000	675
\$20	\$20	\$10	\$50	8,000	675
\$100			\$100	15,000	360
	\$100		\$100	15,000	360
		\$100	\$100	15,000	360
\$10	\$30 × 3		\$100	15,000	360
	\$30 × 3	\$10	\$100	15,000	360
\$20	\$10 × 6	\$20	\$100	15,000	360
\$5	\$15 × 6	\$5	\$100	12,000	450
\$300			\$300	120,000	45
	\$300		\$300	120,000	45
		\$300	\$300	120,000	45
	\$100 × 3		\$300	120,000	45
	\$100 w/QUEEN		\$300	120,000	45
	\$1,000		\$1,000	1,080,000	5
		\$1,000	\$1,000	1,080,000	5
\$100	\$300 × 3		\$1,000	1,080,000	5
	\$300 w/QUEEN	\$100	\$1,000	1,080,000	5
	\$14,000		\$14,000	1,080,000	5
		\$14,000	\$14,000	1,080,000	5

Queen's High—If YOUR card beats the DEALER'S card in the same HAND, win prize for that HAND. Reveal a red "Queen of Hearts" Queen of Hearts (RQN) symbol and win triple the prize shown for that hand. Note: Only the highest prize won for each HAND will be paid.

We Three Queens—Get three red "Queen of Hearts" Queen of Hearts (RQN) symbols in any row, column or diagonal, win prize shown in the PRIZE box.

Queen Me—Reveal a prize amount from \$2 to \$300 to win that prize.

Prizes, including the top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Queen of Hearts instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentive).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Queen of Hearts, prize money from winning Pennsylvania Queen of Hearts 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 Queen of Hearts 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), 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 Queen of Hearts or through normal communications methods.

STEPHEN H. STETLER,
Secretary

[Pa.B. Doc. No. 09-2290. Filed for public inspection December 11, 2009, 9:00 a.m.]

Rates of Tax on Aviation Gasoline and Jet Fuel for 2010; Oil Company Franchise Tax Rate for 2010; Alternative Fuels Tax Rates for 2010

Aviation Gasoline and Jet Fuels

Aviation Gasoline Rate for 2010

Under 74 Pa.C.S. § 6121(b) (relating to tax on aviation fuels), the Secretary of Revenue (Secretary) announces that for calendar year 2010 the rate of tax on aviation gasoline and all other liquid fuels used or sold and delivered by distributors within this Commonwealth for use as fuel in propeller-driven piston engine aircraft or aircraft engines decreases to the new rate of 5.4¢¹ per gallon or fractional part thereof.

¹The rate of 5.4¢ per gallon consists of the 1.5¢ per gallon tax imposed by the Liquid Fuels and Fuels Tax Act, 75 Pa.C.S. § 9004(c)(1), and the 3.9¢ per gallon additional

Jet Fuel Rate for 2010

Under 74 Pa.C.S. § 6131(b) (relating to tax on jet fuels), the Secretary announces that for calendar year 2010 the rate of tax on jet fuels used or sold and delivered by distributors within this Commonwealth for use as fuel in turbine-propeller jet, turbojet and jet-driven aircraft and aircraft engines decreases to the new rate of 1.6¢ per gallon or fractional part thereof.

Calculating the 2010 Aviation Gasoline and Jet Fuel Rates

The rate of tax on aviation gasoline is adjusted annually beginning on January 1, 1985, and each January 1 thereafter. The rate of tax on jet fuels is adjusted annually beginning on January 1, 1986, and each January 1 thereafter. Under 74 Pa.C.S. §§ 6121(b) and 6131(b) the rate of each tax increases or decreases 0.1¢ per gallon for each 10% increase or decrease in the producer price index for jet fuel as determined by the U.S. Department of Labor, Bureau of Labor Statistics, for the most recent 12-month period available as of November 1, subject to a maximum rate of 6.0¢ per gallon for aviation gasoline and 2.0¢ per gallon for jet fuels.

On November 1, 2009, the most recently available 12-month period was September 2008 to September 2009, as reported in Bureau of Labor Statistics, U.S. Department of Labor, Producer Price Indexes, September 2009, USDL 09-1269, released October 20, 2009, for which the percentage change was (-)43.9%. Accordingly, the aviation gasoline tax rate decreases from the 2009 rate of 5.8¢ per gallon to the new 2010 rate of 5.4¢ per gallon; the jet fuel tax rate also decreases from the 2009 rate of 2.0¢ per gallon to the new 2010 rate of 1.6¢ per gallon.

Oil Company Franchise Tax*Oil Company Franchise Tax Rate for 2010*

The Secretary announces that for the calendar year 2010 the rate of the oil company franchise tax remains at the current rate of 19.2¢ per gallon on all liquid fuels and 26.1¢ per gallon on all fuels used or sold and delivered by distributors within this Commonwealth under 75 Pa.C.S. § 9004(b) (relating to imposition of tax, exemptions and deductions).

Calculating the 2010 Oil Company Franchise Tax Rate

The rate of the oil company franchise tax imposed under 75 Pa.C.S. Chapter 95 (relating to taxes for highway maintenance and construction), 75 Pa.C.S. § 9502 (relating to imposition of tax), and collected under 75 Pa.C.S. Chapter 90 (relating to liquid fuels and fuels tax), 75 Pa.C.S. § 9004(b), is determined annually by the Department of Revenue (Department) and announced by each December 15 for the following calendar year. The tax rate is determined on a "cents per gallon equivalent basis," which is defined by 75 Pa.C.S. § 9002 (relating to definitions) as:

The average wholesale price per gallon multiplied by the decimal equivalent of any tax imposed by section 9502 (relating to imposition of tax), the product of which is rounded to the next highest tenth of a cent per gallon. The rate of tax shall be determined by the Department of Revenue on an annual basis beginning every January 1 and shall be published as a notice in the *Pennsylvania Bulletin* no later than the preceding December 15. In the event of a change in the rate of

tax imposed by 74 Pa.C.S. § 6121(a). As limited by 74 Pa.C.S. § 6121(b), the combined rate of these two component taxes may never exceed 6¢ per gallon or be less than 3¢ per gallon.

tax imposed by section 9502, the Department shall redetermine the rate of tax as of the effective date of such change and give notice as soon as possible.

"Average wholesale price" as used previously is defined as:

The average wholesale price per gallon of all taxable liquid fuels and fuels, excluding the Federal excise tax and all liquid fuels taxes, as determined by the Department of Revenue for the 12-month period ending on the September 30 immediately prior to January 1 of the year for which the rate is to be set. In no case shall the average wholesale price be less than 90¢ nor more than \$1.25 per gallon.

For the 12-month period ending September 30, 2009, the Department has determined that the average wholesale price of liquid fuels and fuels was \$1.72 per gallon, which exceeds the statutory maximum of \$1.25; therefore, an average wholesale price of \$1.25 is used to compute the tax rate for 2010.

The oil company franchise tax imposed under 75 Pa.C.S. § 9502 in terms of mills applicable to each gallon is:

<i>Imposition Section</i>	<i>Liquid Fuels</i>	<i>Fuels</i>
75 Pa.C.S. § 9502(a)(1)	60.0	60.0
75 Pa.C.S. § 9502(a)(2)	55.0	55.0
75 Pa.C.S. § 9502(a)(3)	38.5	38.5
75 Pa.C.S. § 9502(a)(4)	<u>00.0</u>	<u>55.0</u>
Total Mills per Gallon:	153.5	208.5
Decimal Equivalent:	.1535	.2085
Multiply by Average Wholesale Price:	× <u>\$1.25</u>	× <u>\$1.25</u>
Product:	19.188¢	26.063¢
Oil Company Franchise Tax per Gallon (Rounded Up to Next Highest Tenth):	19.2¢	26.1¢

Collection of Oil Company Franchise Tax

The act of April 17, 1997 (P. L. 6, No. 3) provides that the oil company franchise tax as computed above is collected at the same time as the liquid fuels and fuels tax of 12¢ per gallon; therefore, effective January 1, 2010, the combined rate of tax for liquid fuels (primarily gasoline) is 31.2¢ per gallon and for fuels (primarily undyed diesel fuel) is 38.1¢ per gallon.

Alternative Fuels Tax Rates for 2010

Under 75 Pa.C.S. § 9004(d) the Secretary is required to compute the rate of tax applicable to each alternative fuel on a gallon-equivalent-basis. Under 75 Pa.C.S. § 9002 "gallon-equivalent-basis" is defined as the "amount of any alternative fuel as determined by the Department to contain 114,500 BTUs." The amount determined on a "gallon-equivalent-basis" for each alternative fuel is subject to the liquid fuels and oil company franchise taxes currently imposed on one gallon of gasoline. The rate of tax on one gallon of gasoline during the period of this notice is 12.0¢ for the liquid fuels tax and 19.2¢ for the oil company franchise tax for a total tax of 31.2¢ per gallon of gasoline.

The Secretary announces that the 2010 tax rates for alternative fuels are as follows:

<i>Alternative Fuel</i>	<i>Rate of Conversion (BTU/gal of alternative fuel)</i>	<i>Amount Equivalent to One Gallon of Gasoline @ 114,500 BTU per gallon</i>	<i>Tax Rate per Gallon of Alternative Fuel</i>
Ethanol	76,400	1.499	\$.208
Methanol	56,560	2.024	\$.154
Propane/LPG	83,500	1.371	\$.228
E-85	80,460	1.423	\$.219
M-85	65,350	1.752	\$.178
Compressed Natural Gas (CNG)	29,000 @ 3,000 PSI	3.948	\$.079
Liquefied Natural Gas (LNG)	66,640	1.718	\$.182
Electricity	3,412 Btu/KWH	33.558 KWH	\$.0093/KWH

STEPHEN H. STETLER,
Secretary

[Pa.B. Doc. No. 09-2291. Filed for public inspection December 11, 2009, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Finding Armstrong County

Under section 2002(b) of The Administration Code of 1929 (71 P.S. § 575(b)), the Director of the Bureau of Design as delegated by the Secretary of Transportation makes the following written finding:

The Federal Highway Administration and the Department of Transportation (Department) are planning to replace the Cochran's Mills Bridge which carries SR 2025 over Crooked Creek in Burrell Township, Armstrong County. Therefore, this project will require the use of the Cochran's Mills Bridge which is eligible for the National Register of Historic Places, qualifying as a section 4(f) and section 2002 resource.

In accordance with section 2002 of Pennsylvania Act 120 establishing the Department, a Level-2 Categorical Exclusion Evaluation (CEE) has been developed for the subject project along with a "Nationwide/Programmatic Section 4(f) Evaluation for Projects that Necessitate the Use of Historic Bridges" document to evaluate the potential environmental impacts caused by the subject project. The document also serves as the section 2002 Evaluation. The approved documents are available in the CE/EA Expert System.

Based upon studies, there is no feasible and prudent alternative to the proposed action. Mitigation measures will be taken to minimize harm as stipulated in the

Level-2 CEE and the "Nationwide/Programmatic Section 4(f) Evaluation for Projects that Necessitate the use of Historic Bridges."

The environmental, economic, social and other effects of the proposed project, as enumerated in section 2002 of The Administrative Code of 1929 have been considered. It has been concluded that there is no feasible and prudent alternative to the project as designed, and all reasonable steps have been taken to minimize such effects.

BRIAN G. THOMPSON, P. E.,
*Director
Bureau of Design*

[Pa.B. Doc. No. 09-2292. Filed for public inspection December 11, 2009, 9:00 a.m.]

HOUSING FINANCE AGENCY

Homeowner's Emergency Mortgage Assistance Program (HEMAP); Interest Rate for HEMAP Loans Closed in 2010

Under section 406-C of the Housing Finance Agency Law (35 P.S. § 1680.406c) the House Finance Agency (Agency) is to determine prior to the end of each calendar year, the rate of interest for HEMAP loans closed in the next calendar year, which rate is not to exceed the rate of interest established by the Department of Banking under section 301 of the act of January 30, 1974 (P.L. 13, No. 6), referred to as the Loan Interest and Protection Law, and referred to commonly as the "Usury Law."

The Agency has determined that the rate of interest for HEMAP loans closed during calendar year 2010 shall be 5.25%.

This Notice shall take effect immediately.

BRIAN A. HUDSON, Sr.,
Executive Director

[Pa.B. Doc. No. 09-2293. Filed for public inspection December 11, 2009, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Action Taken by the Commission

The Independent Regulatory Review Commission met publicly at 10:30 a.m., Thursday, November 19, 2009, and announced the following:

Action Taken—Regulation Disapproved:

State Board of Funeral Directors #16A-4816: Preneed Activities of Unlicensed Employee (adds Section 13.206a to 49 Pa. Code)

Disapproval Order

Public Meeting held
November 19, 2009

Commissioners Voting: Arthur Coccodrilli, Chairperson; George D. Bedwick, Vice Chairperson; S. David Fine-man, Esq.; Silvan B. Lutkewitte, III; John F. Mizner, Esq., by Phone, Dissenting

State Board of Funeral Directors—Preneed Activities of Unlicensed Employee; Regulation No. 16A-4816 (#2639)

On September 19, 2007, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Funeral Directors (Board). This rulemaking adds Section 13.206a to 49 Pa. Code. The proposed regulation was published in the September 29, 2007 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on October 6, 2009.

The regulation sets forth procedures and requirements for the utilization of unlicensed employees by funeral directors and funeral entities. Permissible activities for unlicensed employees would include furnishing customers with general price lists and printed materials, and communicating with customers in ways “not otherwise prohibited by the act or this chapter.” Prohibited activities are divided into seven areas. Unlicensed employees would not be allowed to communicate with customers about the “actual selection” of services or merchandise, or payment arrangements. They also may not represent more than one funeral business at a time.

This rulemaking is the Board’s response to two court decisions. First, the Pennsylvania Commonwealth Court in *Ferguson v. State Bd. of Funeral Directors*, 768 A.2d 393 (2001) (*Ferguson*) upheld the Board’s interpretation of the state Funeral Director Law as prohibiting unlicensed individuals from helping customers select and purchase preneed contracts. Subsequently, the Federal court in *Walker v. Flitton*, 364 F.Supp.2d 503 (USDC, MD Pa. 2005) (*Walker*) also accepted Commonwealth Court’s interpretation that state law prohibited unlicensed individuals from selling or executing preneed funeral contracts. However, the court held that the Board’s actions to enforce the state statute infringed upon the commercial free speech rights of unlicensed employees of funeral businesses. A key distinction between the two cases was that the *Walker* plaintiffs were employees whose activities were supervised by the licensed funeral director. Accordingly, such activities can include the following:

- Interacting with consumers,
- Disseminating accurate price information, and
- Discussing preneed plans with consumers so long under the auspices, employment, direction, and control of a licensed funeral director.

364 F.Supp.2d at 526—527. The *Walker* court also cited the lack of clarifying regulations as a significant issue to be addressed by the Board.

During our review of this regulation, we received many letters from licensed funeral directors and other affected parties. Members of the General Assembly submitted letters expressing support for or opposition to the regulation as well as remaining concerns.

In determining whether a regulation is in the public interest, the Commission is directed by the Regulatory Review Act (Act) to consider criteria set forth in eight separate categories. See 71 P. S. § 745.5b. Based on these criteria, there are substantive concerns and objections

that form the basis for our vote to disapprove and provide the Board with an opportunity to clarify and improve the regulation.

Need for the regulation, Fiscal impact, Compliance with the provisions of the Act or the regulations of the Commission (71 P. S. § 745.5b(b)(1), (3)(iii) and (6))

As a part of its response to our action, the Board should review page five of our comments dated November 28, 2007, on the proposed regulation. In our comments, we asked the Board to respond to the guidance provided by *Walker* that prohibitions on commercial speech should be “narrowly tailored” to achieve a governmental interest or purpose. See 364 F.Supp.2d at 525-526. We also stated that the Board should explain how each provision is “deemed necessary or proper to safeguard the interests of the public and the standards of the profession” pursuant to Section 16(a) of the Funeral Director Law (63 P. S. § 479.16(a)) (Law). The Board replied with a reiteration of the Law. This was insufficient. The Federal court asked the Board to clarify the Law not repeat it. Both *Ferguson* and *Walker* indicated there was no record of consumer complaints or harm related to the activities of unlicensed individuals. See 768 A.2d at 393 (note 5) and 364 F.Supp.2d at 511—513. Despite this lack of a record, a need and purpose for the regulation must still be identified. To properly respond to the court in *Walker* and the criteria of our Act, the Board needs to identify and thoroughly explain the need or harm to be resolved by each provision. The harm must be real rather than “speculative.” See 364 F.Supp.2d at 521. This work will assist the Board in developing clear, fair and reasonable provisions that are the basis of an effective regulation.

A similar concern is the lack of a substantive response to requests for fiscal impact estimates by the House Professional Licensure Committee in its letter dated November 14, 2007, and this Commission in its comments on the proposed regulation. The Board needs to provide a detailed fiscal impact analysis of the regulation.

Statutory authority, Legislative intent, Pertinent opinions of courts; Reasonableness; Clarity (71 P. S. §§ 745.5b(a) and (b)(3)(ii) and (iv))

We acknowledge that the Board is confronted by a difficult quandary. On the one hand, there is the Law and on the other, there is the *Walker* decision and the First Amendment of the United States Constitution. The rules of statutory construction at 1 Pa.C.S. § 1922(3) require the presumption that a statute was not intended to violate the Constitution of the United States or of this Commonwealth. Therefore, any interpretation of a statute must be balanced with the rights established under the First Amendment. This was the task set for the Board by the court in *Walker*.

At our public meeting, the Board’s counsel indicated that it was the Board’s intent to allow unlicensed employees to go beyond just handing out general price lists and printed materials. Their actions could include discussing or answering questions about prices for various services or combinations of services, selling funeral merchandise, handing out samples of unsigned contracts, and arranging alternative forms of payment, especially if they are licensed insurance producers. However, the final-form regulation does not reflect the Board’s intent.

The Board needs to memorialize its intent and fully develop and clarify the list of permissible actions in the final-form regulation. We urge Board members to meet with affected parties to discuss regulatory language that

will address the commercial free speech concerns raised by *Walker* while maintaining the central role of licensed funeral directors as envisioned in the Law.

In the final-form regulation, the Board requires the use of a disclosure form as suggested by commentators, including this Commission, in our comments on the proposed rulemaking. However, the form serves little to no purpose if there are severe limits on unlicensed employees. The purpose is to inform the consumer of the unlicensed status of an employee and of the accessibility and responsibility of the licensed funeral director. The provisions for this form in Section 13.206a(a)(5) should be revised to clarify the role of the unlicensed employees in assisting consumers; notify consumers that they have a right to contact or meet with licensed funeral directors; provide direct contact information for the supervising funeral directors; and state that a licensed funeral director is responsible for and must review, approve and sign agreements and contracts. The Board could also require that the form include contact information for consumer complaints to it or the Bureau of Professional and Occupational Affairs, and thereby develop a record of any problems or concerns.

In the case of licensed insurance producers, the regulation should make it clear that licensed insurance producers employed by funeral entities or directors are not restrained in their work as insurance producers. The regulation should avoid interfering with any compensation or commissions received as legitimate payments for work by insurance producers who are also licensed funeral directors or work for funeral entities or directors. As noted in *Ferguson*, nothing in the state court's ruling prevents insurance licensees from selling policies to cover preneed expenses. See *Ferguson*, 768 A.2d 402 (note 14). Section 13.206a(d) is another area in need of additional clarification. Again, the need and purpose of the new language is unclear. Placing requirements on insurance producers may also be beyond the Board's authority. The last sentence of the subsection may cause unnecessary

confusion in situations when the supervising funeral director is also a licensed insurance producer.

We support the Board's decision to allow a telephone call, email, fax or postal service delivery to substitute for a "face-to-face meeting" between the customer and funeral director. To further clarify this provision, the definition of "direct personal contact" in Section 13.206a(e) should be amended to include other paper delivery options beyond "postal service mail" including private delivery services (e.g., Federal Express) or hand-delivery by an unlicensed employee.

Possible conflict with other statutes (71 P. S. § 745.5b(b)(3)(i))

Finally, the regulation needs to recognize that any person may sell merchandise under Act 1059 of 1963 (63 P. S. §§ 480.1—480.11) (Act 1059), also known as the Future Interment Law. This is another issue that we raised as a question on page five of our comments. Currently, unlicensed vendors legally sell funeral merchandise in Pennsylvania. The *Walker* court also observed that unlicensed individuals may sell funeral merchandise. 364 F.Supp.2d at 525-526. The regulation should be amended to allow unlicensed employees to sell merchandise for their employing funeral entity.

Therefore, based upon the information presented to us and after considering the criteria of the Regulatory Review Act discussed above, we find that promulgation of this regulation is not in the public interest.

By Order of the Commission:

The regulation #16A-4816 (IRRC #2639) from the State Board of Funeral Directors was disapproved on 11/19/09.

ARTHUR COCCODRILLI,
Chairperson

[Pa.B. Doc. No. 09-2294. Filed for public inspection December 11, 2009, 9:00 a.m.]

Notice of Comments Issued

Section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)) provides that the Independent Regulatory Review Commission (Commission) may issue comments within 30 days of the close of the public comment period. The Commission comments are based upon the criteria contained in section 5.2 of the Regulatory Review Act (71 P. S. § 645.5b).

The Commission has issued comments on the following proposed regulations. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted within 2 years of the close of the public comment period or it will be deemed withdrawn.

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Close of the Public Comment Period</i>	<i>IRRC Comments Issued</i>
7-437	Environmental Quality Board Lead and Copper Rule Short Term Revisions 39 Pa.B. 5581 (September 26, 2009)	10/26/09	11/25/09
16-44	Department of State Schedule of Civil Penalties—Chiropractors 39 Pa.B. 5580 (September 26, 2009)	10/26/09	11/25/09
16A-4318	State Board of Chiropractic Continuing Education Violations 39 Pa.B. 5594 (September 26, 2009)	10/26/09	11/25/09

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Close of the Public Comment Period</i>	<i>IRRC Comments Issued</i>
2-149	Department of Agriculture Pesticides 39 Pa.B. 5564 (September 26, 2009)	10/26/09	11/25/09
2-170	Department of Agriculture Canine Health Board Standards for Commercial Kennels 39 Pa.B. 5315 (September 12, 2009)	10/27/09	11/30/09

Environmental Quality Board

Regulation #7-437 (IRRC #2790)

Lead and Copper Rule Short Term Revisions

November 25, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the September 26, 2009 *Pennsylvania Bulletin*. Our comments are based on criteria in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)) directs the Environmental Quality Board (Board) to respond to all comments received from us or any other source.

1. Section 109.1103. Monitoring requirements.—Need; Fiscal impact; Clarity.

Subsection (e)—Reduced monitoring.

The Preamble to the proposed rulemaking states that certain provisions of § 109.1103(e) are more stringent than the Federal rule on which this proposal is based. The specific provisions are: §§ 109.1103(e)(1)(i)(B) and (C); 109.1103(e)(1)(ii)(B); and 109.1103(e)(3). The Board has explained that these provisions are more protective of the public health than the Federal rule. We ask the Board to explain why the Federal rule is not sufficient to protect the health of the citizens of this Commonwealth.

In addition, a commentator has questioned if these provisions increase the cost for compliance for public water systems. We ask the Board to quantify the costs associated with the provisions that are more stringent than the Federal rule.

Subsection (g)—Sample site location plan.

Subsection (g)(2)(iv) pertains to site selection for community and nontransient noncommunity facilities that operate continuously. The second sentence of this subsection states the following: “These systems shall collect ***as many first-draw samples from appropriate taps as possible*** and identify sampling times and locations that ***would likely*** result in the longest standing time for the remaining sites.” (Emphasis added.) This sentence is vague because it does not establish a binding norm that could be evenly applied to all members of the regulated community and enforced by the Department of Environmental Protection in a uniform manner. We recommend that the sentence be amended to provide more definite parameters for testing.

2. Section 109.1104. Public education and notification.—Implementation procedures; Need; Clarity.

Subsection (a)(2)(i)(B)

This subsection pertains to the delivery of education materials. It is being amended to read as follows:

The water supplier shall deliver education materials meeting the content requirements of paragraph (1) to local public health agencies, such as the county or State Health Department, even if they are not located within the water system’s service area, along with an informational notice that encourages distribution to all the potentially affected consumers. The water supplier shall contact the local public health agencies directly by phone or in person. The local public health agencies may provide a specific list of additional community based organizations serving target populations which may include organizations outside the service area of the water system. If a list is provided, the water supplier shall deliver education materials that meet the content requirements of paragraph (1) to all the organizations on the list.

We have three concerns. First, the term “local public health agencies” is unclear. We recognize that the Preamble to the rulemaking lists the agencies that must be contacted and that additional guidance will be provided by the Department. However, as noted above, regulations establish binding norms and also have the full force and effect of law. We recommend that the term either be defined or that the final-form regulation include a reference to a specific guidance document that lists the agencies that must be contacted. This term also appears in Subsection (a)(2)(i)(D).

Second, what is the need for contacting local public health agencies, even if they are not located with the water system’s service area? This requirement also appears in Subsection (a)(2)(i)(D).

Third, we find the third and fourth sentence of this subsection to be problematic. Under these sentences, the Board is delegating its rulemaking authority to local public health agencies and members of the regulated community will be required to comply with the additional requirements. This approach does not establish a binding norm that could be applied evenly to the regulated community. If the Board believes that other community based organizations should be contacted, those organizations should be listed in the guidance document.

Subsection (a)(2)(i)(D)

This subsection requires water suppliers to make a good faith effort to reach certain organizations. It states that the good faith effort “may” include requesting information from a local public health

agency. The use of the word “may” is problematic because it is nonregulatory language which indicates that this provision is optional. It is inappropriate to include optional provisions in a regulation. If the Board believes this provision is necessary, it should change the word “may” to “shall.” If it is not necessary, the provision should be deleted from the regulation.

—
Department of State
Regulation #16-44 (IRRC #2791)
Schedule of Civil Penalties—Chiropractors
November 25, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the September 26, 2009 *Pennsylvania Bulletin*. Our comments are based on criteria in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)) directs the Department of State (Department) to respond to all comments received from us or any other source.

House Professional Licensure Committee comment—Protection of the public health, safety and welfare; Clarity.

In a letter dated October 21, 2009, the House Professional Licensure Committee commented on the following issues:

- How were the amounts of the new civil penalties determined?
- Is the licensee sanctioned for falsifying a biennial registration as well as failing to comply with the continuing education requirements?
- The Department should explain the failure to address a sanction for a second offense relating to the violation for “practice on a lapsed license in compliance with CE and malpractice insurance requirements.”
- How is a licensee monitored for compliance after a civil penalty is imposed for a deficiency in continuing education?

We will review the Department’s responses to these issues in our consideration of whether the final-form regulation is in the public interest.

—
State Board of Chiropractic
Regulation #16A-4318 (IRRC #2792)
Continuing Education Violations
November 25, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the September 26, 2009 *Pennsylvania Bulletin*. Our comments are based on criteria in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)) directs the State Board of Chiropractic (Board) to respond to all comments received from us or any other source.

1. House Professional Licensure Committee comment—Protection of the public health, safety and welfare; Clarity.

In a letter dated October 21, 2009, the House Professional Licensure Committee commented on the following issues:

- Is the licensee sanctioned for falsifying a biennial registration as well as failing to comply with the continuing education requirements?
- The Board should explain how a licensee makes up a continuing education deficiency after renewing a license.
- How is a licensee monitored for compliance after a civil penalty is imposed for a deficiency in continuing education?

We will review the Board’s responses to these issues in our consideration of whether the final-form regulation is in the public interest.

2. Certification to use adjunctive procedures.—Need; Reasonableness; Clarity.

The second sentence of Section 5.77(d) states:

Within 6 months after the end of the renewal period during which the required amount of continuing education was not completed, the licensee shall make up the deficiency and provide proof of attendance at continuing education courses as required under section 507 of the act (63 P. S. § 625.507) **and § 5.14 (relating to certification to use adjunctive procedures) for the previous biennial registration period.** (Emphasis added.)

Section 5.14 does not require continuing education courses “for the previous biennial registration period.” The portion of Section 5.14 that addresses continuing education is Paragraph (b)(3) which states:

An applicant for certification to use adjunctive procedures shall present evidence of one of the following qualifications:

* * * * *

(3) Utilization of adjunctive procedures in the practice of chiropractic continuously since December 16, 1983. An application for certification under this subsection shall have been received by the Board by September 1, 1988. **To maintain this certification, the licensee shall have completed, by September 30, 1988, 36 hours of additional study in the use of adjunctive procedures as part of the continuing education required for the 1988 biennial registration.** (Emphasis added.)

Section 5.14 only addresses the 1988 biennial registration. It does not place continuing education requirements on subsequent biennial registrations. The Board should review and amend the second sentence of Subsection (d) as appropriate.

—
Department of Agriculture
Regulation #2-149 (IRRC #2793)
Pesticides
November 25, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the September 26, 2009 *Pennsylvania Bulletin*. Our comments are based on criteria in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)) directs the Department of Agriculture (Department) to respond to all comments received from us or any other source.

1. Sections 128.2. Definitions; 128.3. Fees; 128.10. Licensing requirements for pesticide dealer; and 128.12. Licensing of a pesticide dealer manager.—Consistency with statute.

Pesticide dealer manager

The statute defines “pesticide dealer” at 3 P. S. § 111.24(32) and sets forth details of pesticide dealer licensure at 3 P. S. § 111.32, including a \$10 annual fee. The Department’s existing regulation includes the \$10 fee in § 128.3(a) and specifies recordkeeping requirements in § 128.11.

The Department is proposing to add a category of licensure of “pesticide dealer manager.” Section 128.2 defines the term “pesticide dealer manager.” Paragraph 128.3(a)(1) sets an annual fee of \$15 for licensure. Section 128.10 specifies further licensure requirements, including Subsection (b) which requires each pesticide dealer to employ at least one pesticide dealer manager. Section 128.12 sets forth details for licensing a pesticide dealer manager.

We have two concerns. First, since the statute only addresses “pesticide dealer,” how is it consistent with the statute to create in regulation the new licensure category of “pesticide dealer manager”? Second, why does the \$15 annual fee for “pesticide dealer manager” exceed the \$10 annual fee for “pesticide dealer,” as contained in 3 P. S. § 111.32(b)?

2. Section 128.53. Recordkeeping.—Need; Protection of the public welfare; Clarity.

Personal identification records

Subsection (b) requires the pesticide application business to keep and maintain copies of personal information, such as driver’s licenses, valid passports, military identification or Social Security cards. It is not clear what purpose this requirement serves under the Pennsylvania Pesticide Control Act of 1973. Also, if a pesticide application business is required to maintain these records, how must the records be secured to protect against identity theft? The Department should explain the need to copy and maintain these personal identification records. In addition, it is unclear whose records the business is required to maintain: employees, management or both. The final-form regulation should clarify this issue.

3. Section 128.85a. Ornamental or turf application notification.—Protection of the public health, safety and welfare; Reasonableness; Need; Clarity.

Notification

The notification process in Subsection 128.85a(a) raises five concerns. First, the written request for notification process in Paragraph (a)(1) is not clear. Does “a person” refer to the person receiving the pesticide application, a neighboring property owner or any other person who would want notification from local pesticide businesses? Also, how would a person know that he or she is required to submit a written request for notification? What responsibility does the pesticide application business have if that request is not made? Can the pesticide be applied if the list of property owners required under Subparagraph (a)(1)(i) is not provided?

Second, Subparagraph (a)(1)(i) is confusing regarding to whom notice should be given. It is not a complete sentence. In addition, the provision itself is circuitous, as it is unclear what is the actual “subject” of the provision. Is it the notice itself or the owners of the relevant

properties? Also, how would the pesticide business know or verify that the list provided is complete and accurate?

Third, under Subparagraph (a)(1)(ii) it is not clear what is implied by the statement “The notification requirement becomes effective 7 days following receipt of the request. . . .” What was the status of the notification requirement prior to the seven days?

Fourth, Paragraph (a)(2) only requires a 12-hour notice “upon receiving a written request at least 7 days prior to the application date.” Would the 12-hour notice be required if a written request was received less than seven days before the date of application?

Finally, Paragraph (a)(3) requires the application business to provide a copy of pesticide labels within ten days of receiving a request for them. The ten-day period could allow the application of the pesticide before the labels are provided. There are many circumstances that could raise concerns with the application of a pesticide by a neighbor, including its effects on pregnancies, children, well water and pets. The ten-day period may not allow a neighbor sufficient time to question the application of a pesticide.

We recommend that the Department review Subsection (a) so that it provides a logical notice process and sufficient notice to neighbors who may be concerned about the application of a pesticide near their dwelling.

Mutual border/contiguous lands

Subparagraph (a)(1)(i) would require the written request for notification to list the “premises sharing a mutual border.” A commentator states this could be onerous for a large property owner. The commentator notes the existing definition of “land contiguous to a restricted use pesticide application site” excludes premises located more than 100 feet from the application site. The Department should explain why all premises sharing a mutual border must be notified.

In addition, Paragraph (a)(2) requires constructive notice of application on “contiguous lands.” Is this different than “premises sharing a mutual border”? We recommend that the Department use one clearly defined term in Subsection (a).

Request for notification shall expire on December 31

Subsection (b) states that “A request for notification made under this subchapter shall expire on December 31 in the year in which it is made.” We question the practicality of this deadline. If a person needs to exterminate pests in December, for example, why should the notice request expire in just a few weeks, particularly after the applicant did all of the work to determine who must be notified? Would the applicant have to re-apply on January 1st? We recommend that the Department consider a different method of expiration, such as twelve months after the written request is received.

Department of Agriculture

Regulation #2-170 (IRRC #2785)

Canine Health Board Standards for Commercial Kennels

November 30, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the September 12, 2009 *Pennsylvania Bulletin*. Our comments are based on criteria in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)) directs the

Department of Agriculture (Department) to respond to all comments received from us or any other source.

1. General—Statutory authority; Legislative intent; Fiscal impact; Need; Consistency with statute.

Fiscal impact

Several commentators, including legislators, expressed concerns over the fiscal impact of this proposed regulation on both the Department and the regulated community. The Preamble of the proposed regulation provides no cost estimates but it does refer to the Department's estimates in the Regulatory Analysis Form (RAF) that was submitted with this proposed regulation. In item #17 on page five of the RAF, the Department offers a total cost estimate of \$12,955 for commercial kennels. In contrast, the Pennsylvania Farm Bureau (PFB) stated that the total costs for the required upgrades could range from \$200,000 to over \$1 million.

Another aspect of increased costs that is not mentioned in the RAF is kennel staff costs. The statutory requirements for flooring and exercise areas do not allow kennel operators to rely on wire floors to allow for easy removal of dog wastes and fluids. In order to clean and maintain the dogs, and floors or flat surfaces in primary enclosures and exercise areas, there may be a need for additional staff at kennels which will increase costs. The Department needs to include these factors in its cost estimates for commercial kennels.

The feasibility and fiscal impact of certain provisions in the proposed regulation, particularly those in the areas of ventilation and lighting, are of particular concern. As expressed by Representative Michael K. Hanna in his letter dated October 27, 2009, and by Senator Mike Brubaker in his remarks on the Senate floor urging his colleagues to support the legislation that became Act 119 (see *Senate Journal*, October 8, 2008, p. 2636), the intent of the 2008 amendments to the Dog Law was that commercial kennels would continue to operate successfully in Pennsylvania.

The Department needs to estimate the full economic impact of this proposed regulation.

Rulemaking authority

Senator Brubaker, by letter dated October 27, 2009, and Representatives Sam Smith, John Maher (Republican Chairman of the House Agriculture and Rural Affairs Committee), Jerry Stern, Sam Rohrer, Scott Hutchinson, Jim Cox, Gordon Denlinger, Mark Keller, David Millard, Tina Pickett, Jeffrey Pyle, Michele Brooks, Michael Fleck, Carl Walker Metzgar, Richard Stevenson and Martin Causer via a joint letter dated October 27, 2009, (Representatives' comments) submitted objections and recommendations on the proposed regulation. Both Senator Brubaker and the Representatives' comments expressed concern with the roles of the Department and Canine Health Board (Board) in the development of this proposed regulation and in receiving comments on the rulemaking.

Section 221(g) of the Dog Law (Law) (3 P.S. § 459-221(g)) gave the Board the task of issuing guidelines. However, it placed the task of issuing the regulation with the Department. Section 902 of the Law gives authority to the Secretary of Agriculture to promulgate rules and regulations to carry out the provisions and intent of the statute. It is clear that the Department is the sole entity with the authority to promulgate and enforce regulations. Unlike some other boards, such as the Environmental Quality Board which is empowered with rulemaking authority by statute, Act 119 did not give such authority

to this Board. The Department needs to provide a statement with the final-form regulation that fully explains its authority in rulemaking and the functions of the Board.

Public interest

Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) directs the Independent Regulatory Review Commission (Commission) to determine whether a regulation is in the public interest. When making this determination, we consider criteria relating to economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the Preamble and proposed regulation and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide in the Regulatory Analysis Form pursuant to Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)).

This proposed rulemaking is a comprehensive set of provisions under the Law. The Preamble included with the proposal does not provide an adequate description of the numerous sections of the rulemaking and the rationale behind the language. Without this information, this Commission is unable to determine if the regulation is in the public interest. In the Preamble submitted with the final-form rulemaking, the Department should provide more detailed information, including a description of the language proposed for each section of the regulation and why the language is required.

2. Section 28a.1. Definitions.—Reasonableness; Possible conflict with other regulations; Implementation procedure; Clarity.

The definition of "excessive light" is vague. There is no indication of what levels and types of light would be excessive or cause harm or discomfort to dogs. The Department needs to clarify the purpose and intent of this definition and its related provision at Section 28a.3(1)(iii). Depending on how this term is defined, interpreted or applied, Sections 28a.3(1)(i) and (ii), relating to dogs' required exposure to natural light, may be in conflict with Section 28a.3(1)(iii) if natural sunlight is determined to be excessive. If the intent is that primary enclosures should provide shade from direct light regardless of whether it is natural or artificial, then such a statement should be included in the final-form regulation and this definition could be deleted.

3. Section 28a.2. Ventilation.—Statutory authority; Fiscal impact; Need; Reasonableness; Consistency with statute; Feasibility; Implementation procedure.

Ambient air temperature

Please explain the authority for the Department to require, in Paragraph (1), that the ambient air temperature be kept below 85° F. Section 207(h)(7) of the Law reads: "The Canine Health Board shall determine auxiliary ventilation to be provided if the ambient air temperature is 85 degrees F or higher." Furthermore, Senator Brubaker expresses concern that the definition of "mechanical ventilation" is "subjective enough that an inspector may have the ability to demand air conditioning." While the Department has the authority to require mechanical ventilation when the temperature goes above 85 degrees, the Senator asserts that the Department does not have the authority to require temperature reduction. We agree.

Based upon a meeting with Department staff, we understand that air conditioning was not intended to be required by this proposed regulation. This provision

should be amended in the final-form regulation to clearly state the Department's intent. Also, what is the Department's authority to require dogs to be removed from a facility when the ambient air temperature goes above 85 degrees?

Finally, numerous commentators assert that there are situations where it is important for the ambient air temperature to be well above 85 degrees in certain portions of a kennel. For instance, numerous commentators indicated that newborn puppies cannot regulate their own body temperature until they are 10-14 days old and need ambient air temperatures in the mid 90s. However, this proposed regulation appears to prohibit the necessary temperatures in this circumstance. The Department should add a provision that would address these concerns.

Recirculation of air

Subsection (8)(i) requires a kennel to "... provide between 8-20 air changes of **100% fresh air** per hour..." (Emphasis added.) However, Subsection (11) requires a specific type of air filter "when employing mechanical means of ventilation and **recirculating air**..." (Emphasis added.) It is unclear how a kennel would be able to recirculate air, while using 100% fresh air for its air changes. These provisions appear to conflict with one another. The Department should clearly indicate how these provisions work together. If they do conflict, these provisions should be amended in the final-form regulation to reflect the Department's intent with regard to the circulation of air.

In addition, compliance with the requirement for "100% fresh air" in the air changes could be prohibitively expensive. We question the fiscal impact and feasibility of this requirement.

Paragraphs (2) and (3)

Commentators, including the Pennsylvania Veterinary Medical Association, state that the humidity levels established in this proposed regulation are not always attainable, unless the kennel is hermetically sealed. They further state that these humidity levels required by the regulation may not necessarily be the most beneficial to the dogs. The Department should justify how these humidity levels can reasonably be attained and how these are the best levels for the benefit of dogs.

Paragraph (4)

Commentators assert that the ammonia levels required in Subsection (4) are too difficult to achieve and the technology for monitoring ammonia at this level does not exist. How did the Department arrive at the 10 ppm requirement for ammonia? How is this level achievable for kennels, in light of commentators' assertions that it is extremely difficult to monitor it at this level?

Paragraph (5)

This paragraph establishes requirements with regard to carbon monoxide, including the installation of carbon monoxide detectors. Senator Brubaker and the Representatives' comments both assert that the authority to establish these requirements is lacking and the entire paragraph should be deleted. The Department should set forth its authority to require carbon monoxide monitoring or it should delete these provisions. Similar concerns apply to Paragraphs (7) (relating to particulate matter) and (10) (relating to odor, stale air, moisture condensation or lack of air flow).

Paragraph (6)

This paragraph requires the kennel to contact the Bureau of Dog Law "in the event of a mechanical system malfunction." This provision lacks clarity. First, in what time frame should this contact be made? Second, how should a kennel owner contact the Bureau if a malfunction occurs during the night or weekend when the Bureau is not open? Will the Bureau establish a 24-hour contact number? These items should be clarified and set forth in the final-form regulation.

Paragraph (8)

The Representatives' comments raised several questions with regard to this paragraph. These questions include calculation methods and several clarity concerns. We will evaluate the Department's response to these questions in our consideration of whether the final-form regulation is in the public interest.

Subparagraph (8)(v)

This subparagraph states that the "Department may hire or consult with an engineer to recommend improvements be made to kennels to meet compliance..." Senator Brubaker and the Representatives' comments both assert that the Department is not authorized to hire or consult with an engineer to inspect kennels. They further state that only State Dog Wardens and employees of the Department are authorized to inspect kennels and enforce provisions of the Law. The Department should state its authority to allow engineers to inspect a kennel under this subparagraph, or this provision should be deleted.

Paragraph (9)

This paragraph lists several conditions that are associated with poor ventilation. However, numerous commentators indicate that poor ventilation is not the only cause of these conditions. The Department should clearly explain why it is appropriate to tie these symptoms to poor ventilation or this subsection should be deleted.

4. Section 28a.3. Lighting.—Statutory authority; Fiscal impact; Need; Reasonableness; Consistency with statute; Feasibility; Implementation procedure; Clarity.

Natural light

Senator Brubaker and the Representatives' comments assert that any reference to natural light must be removed from this regulation, including Subparagraphs (1)(i), (ii) and (v). They point out that the Law specifically states, at Section 207(h)(8), that dogs should be provided with natural **or artificial** light.

What is the Department's authority to require a kennel to provide both natural and artificial light to its dogs? Another question is why would it be necessary to have natural light inside the kennels if the dogs have access to outdoor exercise areas? These should be clearly explained in the final-form regulation.

Excessive lighting

Subsection (1)(ii) sets a minimum amount of external windows and skylights in order to aid in meeting the lighting standards in this section. However, Subsection (1)(iii) states, "Dogs shall be protected from **excessive light**" (Emphasis added). Excessive light is defined as "direct, undiffused light, from either the sun or a lighting fixture placed in a manner that the light is shining directly into a primary enclosure of a dog." As noted earlier, it appears that these two provisions conflict with each other. A dog is not to be exposed to "excessive light,"

yet a kennel will be required to allow sunlight to beam into the rooms where dogs are housed. The Department should clearly explain its intent and amend the regulation accordingly.

“Full spectrum lighting”

Senator Brubaker suggests that this term, used in Subsections (1)(vi) and (2)(i), be defined. We agree.

Subparagraph (1)(ii)

The first sentence of this subparagraph is long and confusing. There are two questions. First, regarding the phrases “within each room where dogs are housed may not be less than 8% of the floor space,” it is unclear which floor space is being referenced. Is it the total floor space of each room or the whole kennel? Second, does the Department intend to apply the “external opening” requirement to existing kennels? If so, the Department should clearly explain its authority to retroactively apply this standard to kennels that were in place and operating prior to the effective date of this regulation. The Department should also examine the fiscal impact of this requirement.

Subparagraph (2)(i)

This subsection requires the kennel to provide “full spectrum lighting between 50-80 foot candles” during the daytime. Commentators have expressed concern that this would be too bright for the dogs. Why must lighting be 50-80 foot candles during the day? How did the Department determine this was reasonable? Is this requirement based on animal husbandry practices, as required by the Law?

Subparagraph (2)(iv)

Under this subsection, lighting sources “may not have a visible flicker.” It is not clear how the elimination of flickering lights will benefit dogs. Further, Senator Brubaker asserts that the prohibition of a “visible flicker” is not in the scope of the Law and should be removed from this regulation. The Department should explain its authority for banning lighting with a “visible flicker” or delete the provision. If the Department does provide adequate statutory authority, it should explain how the prohibition of flickering lights benefits dogs.

5. Section 28a.4. Flooring.—Consistency with statute; Reasonableness; Clarity.

Identifiable options for flooring in primary enclosures

Section 207(i)(3) of the Law (3 P.S. § 459-207(i)(3)) provides detailed specifications for the required flooring in primary enclosures. Section 207(i)(3)(iii) states that “additional flooring options that meet the provisions of subparagraph (i) may be approved by the Canine Health Board.” Given the statute, the structure and provisions of this section are confusing.

In order to clearly delineate the primary enclosure flooring options, the reference to the statutory requirements in Section 207(i)(3) of the Law should be listed by itself in one subsection as the initial flooring option provided by the statute. A second subsection could set forth the requirements for the option of solid flooring. In this format, provisions such as those in Subsections (2) and (3) of this proposed regulation would be moved to be subparagraphs in the second subsection on solid floors.

This section should also include a process and procedure whereby kennels could submit proposals for new flooring options to the Department and Board for review and approval in the future. This would invite technological innovation which could reduce costs while improving

the health and welfare of dogs. It would also allow for the full realization of the statutory provision allowing for additional floor options.

Vague terms and phrases

In Paragraph (4), what is considered “high thermal conductance”? The intent is unclear. Another concern is in Paragraph (6). Who would determine if a floor surface provides “the dogs with good footing”? How will such a standard be measured and enforced? The Department needs to re-write these subsections as requirements that can be easily measured, assessed and enforced, or delete them from the final-form regulation.

Paragraph (7) is also vague and it is unnecessary. The insertion of the words “and may be subject to microbial assessment” serves no purpose because no standard is established. The statutory basis for this vague phrase should be explained. As written, this is non-regulatory language because the regulated community is not notified when a “microbial assessment” will be required, how it will be performed, or what standard will be enforced. This should be set forth in the final-form regulation or this phrase should be deleted.

6. Miscellaneous—Reasonableness; Clarity.

Nonregulatory language

The first sentences in Sections 28a.2, 28a.3 and 28a.4 are nonregulatory language and should be deleted. For example, the first sentence in Section 28a.2 reads: “Proper ventilation helps ensure that dogs are healthy and not stressed.” This is not a prescriptive standard, directive or requirement, and therefore, it serves no purpose in the text of a regulation. It is a supportive statement which belongs in the narrative in the Preamble of a rulemaking.

The term “satisfactory” in Section 28a.2(8)(iv) also is nonregulatory language and should be amended.

Applicable codes

Sections 28a.2(12), 28a.3(3) and 28a.4(5) in this proposed regulation state that the ventilation systems, lighting and floors and drains “must comply with the latest edition of applicable codes.” To which codes are these subsections referring? To properly notify the regulated community of the standards required for compliance, the final-form regulation should specifically identify the “applicable codes.”

ARTHUR COCCODRILLI,
Chairperson

[Pa.B. Doc. No. 09-2295. Filed for public inspection December 11, 2009, 9:00 a.m.]

Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulations. They are scheduled to be considered on the date noted. The Commission’s public meetings are held at 333 Market Street, 14th Floor, Harrisburg, PA at 10:30 a.m. To obtain a copy of the regulation, interested parties should first contact the promulgating agency. If a copy cannot be obtained from the promulgating agency, the Commission will provide a copy or a copy can be obtained on the web site, www.irrc.state.pa.us.

Final-Form

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>	<i>Public Meeting</i>
31-8	State Employees' Retirement Board Definitions	11/24/09	1/7/10
31-10	State Employees' Retirement Board Termination of Annuities	11/24/09	1/7/10

ARTHUR COCCODRILLI,
Chairperson

[Pa.B. Doc. No. 09-2296. Filed for public inspection December 11, 2009, 9:00 a.m.]

INSURANCE DEPARTMENT

Alleged Violation of Insurance Laws; Richard A. Kroope; Doc. No. SC09-12-005

Notice is hereby given of the Order to Show Cause issued on December 2, 2009, by the Deputy Insurance Commissioner of the Commonwealth in the previously-referenced matter. Violation of the following is alleged: sections 611-A(1), (3), (7), (13) and (20) of the Insurance Department Act of 1921 (40 P. S. § 310.11-A(1) and (20)).

Respondent was ordered to file a written answer to the Order to Show Cause within 20 days. If Respondent files a timely answer, a formal administrative hearing shall be held in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) and 31 Pa. Code §§ 56.1—56.3 (relating to special rules of administrative practice and procedure) and other relevant procedural provisions of law.

Answers, motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed in writing with the Hearings Administrator, Insurance Department, Administrative Hearings Office, 901 North 7th Street, Harrisburg, PA. 17102.

Persons with a disability who wish to attend the previously-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing, should contact Donna Fleischauer, Disability Services Coordinator at (717) 787-4298.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 09-2297. Filed for public inspection December 11, 2009, 9:00 a.m.]

Application and Request for a Certificate of Authority to Provide a Continuing Care Retirement Community by The Lutheran Home at Kane

The Lutheran Home at Kane has applied for a Certificate of Authority to operate a Continuing Care Retirement Community at The Lutheran Home in Kane, PA. The initial filing was received on December 1, 2009, and

was made under the requirements set forth under the Continuing Care Provider Registration and Disclosure Act (40 P. S. §§ 3201—3225).

Persons wishing to comment on the grounds of public or private interest to the issuance of a Certificate of Authority are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include 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 to inform the Department of the exact basis of the statement. Written statements should be directed to Steven L. Yerger, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, or syerger@state.pa.us.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 09-2298. Filed for public inspection December 11, 2009, 9:00 a.m.]

Highmark Blue Cross Blue Shield; Large Group Experience Rating and Small Group Demographic Rating Methodologies; Applicability—Group Size 2+; Rate Filing

On November 13, 2009, the Insurance Department (Department) received a filing from Highmark Blue Cross Blue Shield requesting approval of a Claim Allowance Continuance Table for High Deductible Plans, with an individual deductible of \$1,000 and a family deductible of \$2,000 or more, with an Integrated Prescription Drug Benefit for the Non-Gatekeeper Preferred Provider Organization Program. This filing will apply to Demographically Rated and Experience Rated Business. The requested effective dates vary based on group size and new or renewing status.

Unless formal administrative action is taken prior to February 25, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's web site at www.ins.state.pa.us. Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg Office.

Interested parties are invited to submit written comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation and Administration, Room 1311, Strawberry Square, Harrisburg, PA 17120, csandersjo@state.pa.us, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 09-2299. Filed for public inspection December 11, 2009, 9:00 a.m.]

Highmark Blue Cross Blue Shield; Large Group Experience Rating and Small Group Demographic Rating Methodologies; Applicability—Group Size 2+; Rate Filing

On November 13, 2009, the Insurance Department (Department) received a filing from Highmark Blue Cross Blue Shield requesting approval for cost per claim, distribution tables, pooling factors and other benefit adjustment factors for the Preferred Provider Organization Program. This filing will apply to Demographically Rated and Experience Rated Business. The requested effective dates vary based on group size and new or renewing status.

Unless formal administrative action is taken prior to February 25, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's web site at www.ins.state.pa.us. Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg Office.

Interested parties are invited to submit written comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation and Administration, Room 1311, Strawberry Square, Harrisburg, PA 17120, csandersjo@state.pa.us, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 09-2300. Filed for public inspection December 11, 2009, 9:00 a.m.]

Jefferson Regional Medical Center; Prehearing

Appeal of Jefferson Regional Medical Center under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM09-11-019

The proceedings in this matter will be governed by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law); 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure); and 31 Pa. Code Chapter 56 (relating to special rules of administrative practice and procedure).

On or before December 18, 2009, the appellant shall file a concise statement setting forth the factual and/or legal basis for the disagreement with MCARE's October 19, 2009, determination. The statement may be in narrative form or in numbered paragraphs, but in either event shall not exceed two pages. A prehearing telephone conference initiated by this office is scheduled for December 22, 2009, at 10 a.m. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before December 18, 2009. A hearing date shall be determined, if necessary, at the prehearing telephone conference.

Persons with a disability who wish to attend the previously-referenced administrative hearing and require an auxiliary aid, service or other accommodation to

participate in the hearing, contact Donna R. Fleischauer, Human Resources Director, at (717) 705-4194.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 09-2301. Filed for public inspection December 11, 2009, 9:00 a.m.]

Jefferson Regional Medical Center; Prehearing

Appeal of Jefferson Regional Medical Center under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM09-11-020

The proceedings in this matter will be governed by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law); 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure); and 31 Pa. Code Chapter 56 (relating to special rules of administrative practice and procedure).

On or before December 18, 2009, the appellant shall file a concise statement setting forth the factual and/or legal basis for the disagreement with MCARE's October 19, 2009, determination. The statement may be in narrative form or in numbered paragraphs, but in either event shall not exceed two pages. A prehearing telephone conference initiated by this office is scheduled for December 22, 2009, at 10 a.m. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before December 18, 2009. A hearing date shall be determined, if necessary, at the prehearing telephone conference.

Persons with a disability who wish to attend the previously-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing, contact Donna R. Fleischauer, Human Resources Director, at (717) 705-4194.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 09-2302. Filed for public inspection December 11, 2009, 9:00 a.m.]

Keystone Health Plan West; Large Group Experience Rating and Small Group Demographic Rating Methodologies; Applicability—Group Size 2+; Rate Filing

On November 13, 2009, the Insurance Department (Department) received a filing from Keystone Health Plan West requesting approval of cost per claim, distribution tables, pooling factors and other benefit adjustment factors for the HMO. This filing will apply to Demographically Rated and Experience Rated Business. The requested effective dates vary based on group size and new or renewing status.

Unless formal administrative action is taken prior to February 25, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's web site at www.ins.state.pa.us. Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg Office.

Interested parties are invited to submit written comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation and Administration, Room 1311, Strawberry Square, Harrisburg, PA 17120, csandersjo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 09-2303. Filed for public inspection December 11, 2009, 9:00 a.m.]

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insured has requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68) (Act 68) in connection with the termination of the insured's automobile policies. The hearing will be held in accordance with the requirements of Act 68; 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearing will be held in the Insurance Department's regional office in Philadelphia, PA. Failure by an appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Bureau of Consumer Services, Philadelphia Regional Office, Room 6062, 801 Market Street, Philadelphia, PA 19107.

Appeal of Curt Gammer; file no. 09-188-79063; State Farm Mutual Automobile Insurance; Doc No. P09-11-027; January 12, 2010, 3 p.m.

Parties may appear with or without counsel and offer relevant testimony or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the previously-referenced administrative hearing and require

an auxiliary aid, service or other accommodation to participate in the hearing, contact Donna R. Fleischauer, Human Resources Director, at (717) 705-4194.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 09-2304. Filed for public inspection December 11, 2009, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Telecommunications Services

A-2009-2144489, A-2009-2144511 and A-2009-2144513. Sprint Communications Company, LP. Application of Sprint Communications Company, LP for approval to offer, render, furnish or supply telecommunications services to the public as a Competitive Local Exchange Carrier in the service territories of North Penn Telephone Company, The Denver and Ephrata Telephone & Telegraph Company, and The Conestoga Telephone and Telegraph Company.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before December 28, 2009. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: Sprint Communications Company, LP

Through and By Counsel: Benjamin A. Aron, Sprint Nextel Corporation, 2001 Edmund Halley Drive, Reston, VA 20191, Mailstop Varesp0201 A208, (703) 592-7618, fax (703) 592-7404, e-mail benjamin.aron@sprint.com

JAMES J. McNULTY,
Secretary

[Pa.B. Doc. No. 09-2305. Filed for public inspection December 11, 2009, 9:00 a.m.]

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant by December 28, 2009. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

Applications of the following for approval to begin operating as common carriers for transportation of persons as described under each application.

A-2009-2145010. Ruth Ann Bubb (3739 Stull Road, McClure, Snyder County, PA 17841)—persons in paratransit service, whose personal convictions prevent them from owning or operating motor vehicles, from points in the Counties of Snyder and Mifflin, to points in Pennsylvania, and return.

A-2009-2145012. Marrema Doing Business As Great Valley Cab Company, LLC, (13 Landmark Drive, Malvern, Chester County, PA 19355—a limited liability company of the Commonwealth—persons upon call or demand in that portion of Chester County on and north of Old U.S. Highway Route 30.

Application of the following for the approval of the right and privilege to discontinue/abandon operating as common carriers by motor vehicle and for cancellation of the certificate of public convenience as described under the application.

A-2009-2143176. Road Scholar Limousine Service, Inc. (1997 Pleasant Hill Road, Cogan Station, Lycoming County, PA 17728), a corporation of the Commonwealth, for the discontinuance of service and cancellation of its Certificate of Public Convenience as a common carrier, by motor vehicle, at A-00119247, to transport persons in limousine service between points in the Counties of Centre, Clinton and Lycoming and from points in said counties to points in Pennsylvania, and return.

JAMES J. McNULTY,
Secretary

[Pa.B. Doc. No. 09-2306. Filed for public inspection December 11, 2009, 9:00 a.m.]

STATE BOARD OF FUNERAL DIRECTORS

Bureau of Professional and Occupational Affairs v. James V. Williams, FD; File No. 06-48-07867

On October 15, 2009, James V. Williams, FD, license nos. FD-013751-L and FS-015333, of Philadelphia, Philadelphia County, had his licenses revoked and was ordered to pay civil penalties totaling \$5,000, based upon his professional misconduct in the practice of funeral directing.

Individuals may obtain a copy of the order by writing to Christopher McNally, Board Counsel, State Board of Funeral Directors, P. O. Box 2649, Harrisburg, PA 17105-2649.

This final order represents the State Board of Funeral Directors' (Board) final decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court, must serve the Board with a copy of their petition for review. The Board contact for receiving service of the appeals is the previously-named Board Counsel.

MICHAEL J. YEOSOCK,
Chairperson

[Pa.B. Doc. No. 09-2307. Filed for public inspection December 11, 2009, 9:00 a.m.]

STATE POLICE

Mobile Video Recording System Equipment Standards and Approved Mobile Video Recording Systems

The State Police, under 18 Pa.C.S. §§ 5704(16)(ii)(C) and 5706(b)(4) (relating to exceptions to prohibition of interception and disclosure of communications; and exceptions to prohibitions in possession, sale, distribution, manufacture or advertisement of electronic, mechanical or other devices), published at 34 Pa.B. 1304 (February 28, 2004) a notice of Mobile Video Recording System Equipment Standards and Approved Mobile Video Recording Systems for use until the next comprehensive list is published.

As an addendum to the listing of approved mobile video recording systems published at 34 Pa.B. 1304, the State Police, under the authority cited previously, has approved for use, until the next comprehensive list is published, subject to interim amendment, the following additional approved mobile video recording system, which meets the minimum equipment standards published at 34 Pa.B. 1304:

Panasonic Arbitrator 360 Mobile Video Recorder, Panasonic Corporation of North America, Secaucus, NJ

Comments, suggestions or questions should be directed to State Police, Bureau of Patrol, Department Headquarters, 1800 Elmerton Avenue, Harrisburg, PA 17110.

COLONEL FRANK E. PAWLOWSKI,
Commissioner

[Pa.B. Doc. No. 09-2308. Filed for public inspection December 11, 2009, 9:00 a.m.]

