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Volume 32 (2002)

Pennsylvania Bulletin  
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7-6-2002

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# PENNSYLVANIA BULLETIN

Volume 32

Number 27

Saturday, July 6, 2002 • Harrisburg, Pa.

Pages 3191—3378

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the Subject Index  
for January—June 2002

## Part I

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Independent Regulatory Review Commission  
Insurance Department  
Navigation Commission for the Delaware  
River and Its Navigable Tributaries  
Pennsylvania Public Utility Commission  
State Board of Medicine  
State Board of Osteopathic Medicine

**Detailed list of contents appears inside.**



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

**No. 332, July 2002**

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**BULLETIN**

(ISSN 0162-2137)

published weekly by Fry Communications, Inc. for the Commonwealth of Pennsylvania, Legislative Reference Bureau, 647 Main Capitol Building, State & Third Streets, Harrisburg, Pa. 17120, under the policy supervision and direction of the Joint Committee on Documents pursuant to Part II of Title 45 of the Pennsylvania Consolidated Statutes (relating to publication and effectiveness of Commonwealth Documents). Subscription rate \$82.00 per year, postpaid to points in the United States. Individual copies \$2.50. Checks for subscriptions and individual copies should be made payable to "Fry Communications, Inc." Periodicals postage paid at Harrisburg, Pennsylvania.

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# READER'S GUIDE TO THE PENNSYLVANIA BULLETIN AND PENNSYLVANIA CODE

## ***Pennsylvania Bulletin***

The *Pennsylvania Bulletin* is the official gazette of the Commonwealth of Pennsylvania. It is published every week and includes a table of contents. A cumulative subject matter index is published quarterly.

The *Pennsylvania Bulletin* serves several purposes. First, it is the temporary supplement to the *Pennsylvania Code*, which is the official codification of agency rules and regulations and other statutorily authorized documents. Changes in the codified text, whether by adoption, amendment, repeal or emergency action must be published in the *Pennsylvania Bulletin*. Further, agencies proposing changes to the codified text do so in the *Pennsylvania Bulletin*.

Second, the *Pennsylvania Bulletin* also publishes: Governor's Executive Orders; State Contract Notices; Summaries of Enacted Statutes; Statewide and Local Court Rules; Attorney General Opinions; Motor Carrier Applications before the Public Utility Commission; Applications and Actions before the Department of Environmental Protection; Orders of the Independent Regulatory Review Commission; and other documents authorized by law.

The text of certain documents published in the *Pennsylvania Bulletin* is the only valid and enforceable text. Courts are required to take judicial notice of the *Pennsylvania Bulletin*.

## **Adoption, Amendment or Repeal of Regulations**

Generally an agency wishing to adopt, amend or repeal regulations must first publish in the *Pennsylvania Bulletin* a Notice of Proposed Rulemaking. There are limited instances where the agency may omit the proposal step; they still must publish the adopted version.

The Notice of Proposed Rulemaking contains the full text of the change, the agency contact person, a fiscal note required by law and background for the action.

The agency then allows sufficient time for public comment before taking final action. An adopted proposal must be published in the *Pennsylvania*

*Bulletin* before it can take effect. If the agency wishes to adopt changes to the Notice of Proposed Rulemaking to enlarge the scope, they must re-propose.

## **Citation to the *Pennsylvania Bulletin***

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

## ***Pennsylvania Code***

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

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

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

## **How to Find Documents**

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

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

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

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### Printing Format

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

### Fiscal Notes

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

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

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## List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2002.

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# THE GOVERNOR

## Title 4—ADMINISTRATION

### PART II. GOVERNOR'S OFFICE

[4 PA. CODE CH. 7]

[EXECUTIVE ORDER NO. 2002-7]

#### Integrating Mediation Into State Government

June 14, 2002

*Whereas*, traditional adjudicatory processes have become increasingly costly, time consuming, and contentious; and

*Whereas*, this Administration is committed to ensuring that state departments, boards, commissions, and agencies utilize more efficient and less expensive methods of resolving disputes; and

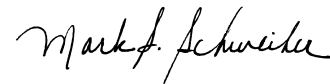
*Whereas*, mediation is a voluntary (unless otherwise ordered), informal process through which a neutral third party (the mediator) assists the parties in reaching a mutually acceptable resolution of their dispute, and the parties themselves control the outcome as opposed to having the outcome determined by an adjudicator; and

*Whereas*, mediation offers an efficient, less expensive, and more satisfactory method for resolving disputes, and allows the process to be tailored to the disputants' needs; and

*Whereas*, an increased use of mediation by state departments, boards, commissions, and agencies will enhance the operation of state government and better serve the public; and

*Whereas*, the Commonwealth of Pennsylvania has an interest in promoting and modeling the values, understanding, public awareness, and practice of mediation and collaborative problem solving.

*Now, therefore*, I, Mark S. Schweiker, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby adopt the policy of integrating mediation into state government.



Governor

**Fiscal Note:** GOV 02-7. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 4. ADMINISTRATION**  
**PART I. GOVERNOR'S OFFICE**  
**CHAPTER 7. MISCELLANEOUS PROVISIONS**  
**Subchapter VV. INTEGRATING MEDIATION INTO STATE**  
**GOVERNMENT**

Sec.

7.791. Use of mediation.

7.792. Mediation coordinator.

**§ 7.791. Use of mediation.**

Each department, board, commission, council and agency under the jurisdiction of the Governor shall become familiar with mediation, when and how it might be used and regularly explore, encourage and facilitate its use.

**§ 7.792. Mediation coordinator.**

Each department, board, commission, council and agency under the jurisdiction of the Governor shall designate a mediation coordinator who shall encourage and facilitate the use of mediation and report directly to the secretary, director, commissioners or other designated officials.

[Pa.B. Doc. No. 02-1167. Filed for public inspection July 5, 2002, 9:00 a.m.]

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# RULES AND REGULATIONS

## Title 4—ADMINISTRATION Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[4 PA. CODE CH. 259]

[28 PA. CODE CHS. 701 AND 703]

### Drug and Alcohol Facilities and Services— Standards for Approval of Prevention and Inter- vention Activities

The Department of Health (Department) deletes 4 Pa. Code §§ 259.1 and 259.2 and 28 Pa. Code § 701.13 and Chapter 713 and amends 28 Pa. Code § 701.1 to read as set forth in Annex A. The provisions being deleted pertain to standards for approval of drug and alcohol abuse prevention and intervention activities. These activities are generally referred to as prevention activities.

#### *Purpose of the Amendments*

This final-form rulemaking deletes the regulations relating to approval of prevention and intervention activities. A key benefit of this final-form rulemaking is that Department staff and other limited resources will no longer be needed to review prevention and intervention activities and, therefore, may be directed toward oversight of entities providing substance abuse treatment services. This final-form rulemaking will increase the efficiency of the Division of Drug and Alcohol Program Licensure in carrying out its regulatory oversight of the substance abuse treatment delivery system. It will also enhance the redirection of State government efforts from general prevention activities to specific treatment activities to ensure the safe and effective delivery of substance abuse treatment services.

The Department is deleting these provisions because regulation of the substance abuse service delivery system has changed significantly over the past few years, rendering these regulations obsolete. More changes are predicted in the coming years based on current plans to change the health care delivery system at both the State and Federal levels. Even now, much is being done in the field of substance abuse prevention which does not fit within the regulatory definitions of prevention activities that are being deleted. Hence, those activities are not regulated. Nonetheless, they are appropriate and relevant prevention activities. Moreover, the lack of Department approval of these activities under a regulatory scheme has not compromised their quality or effectiveness. Further, much of what has been defined and regulated is no longer being conducted due to the evolving nature of drug and alcohol abuse prevention services.

To better address the needs of the substance abuse service delivery system and maximize benefits from existing resources, it is necessary to modify regulatory oversight and cease the approval of prevention activities. This elimination will reduce the overload on survey staff resources and enable the Department to focus its attention on the oversight of activities that actually provide treatment to the substance abusing client.

The prevention activities that the Department will no longer approve do not provide treatment to clients. The

Department's resources will be better used by focusing on activities through which specific substance abuse treatment services are being provided. Prevention activities and services generally provide to the general population and special high risk groups only, information regarding the nature and extent of alcohol and other drug abuse and addictions and their effects on individuals, families and communities.

The Department has been approving approximately 100 prevention activities. Notwithstanding the elimination of the approved processes effected by the deletion of the regulations, the Department will continue to impact these activities, but at less cost and with greater efficiency.

Within the Department, the Bureau of Drug and Alcohol Programs (BDAP), which funds and monitors prevention programs through contracts, and provides counties with funding to provide drug and alcohol services for the citizens of this Commonwealth who do not have insurance or resources to pay for treatment. Single County Authorities (SCAs) prepare prevention plans tailored to the needs of their respective geographic areas. The Department approves these plans and formulates a Statewide plan based on the plans prepared by the SCAs.

Statewide prevention programs provide current information on the effects of drugs and alcohol and assist individuals in developing or improving skills that will enable them to choose a lifestyle free of substance abuse. Educational sessions, workshops and media presentations are used. Also, an information clearinghouse is funded by the Department. Primary emphasis has been given to youth, and a special curriculum is now used in school districts to provide drug and alcohol prevention programs.

The Student Assistance Program (SAP), which encompasses all 501 Commonwealth school districts, provides school personnel with the knowledge and skills needed to identify students using alcohol or drugs. Students are referred to professional evaluators and, if needed, receive treatment services. Special services are designed to divert certain criminal offenders into rehabilitation programs.

The funding of prevention activities by the Department is accomplished through contracts with the SCAs. After the plans referred to previously are submitted, reviewed and approved, the Department funds the SCAs according to a previously established funding formula. The SCAs then provide the prevention services or subcontract to other prevention providers. While for the most part, SCA funding is given to approved prevention providers, the drug and alcohol prevention services being performed are generally not activities that fit within the obsolete definitions of prevention activities that are being deleted. Nevertheless, these funded activities are in line with the current best practices in prevention. Clearly, the provision of these services is appropriate. What this underscores is that since the current activities being performed do not fit within the old definitions, the deletion of some of those definitions is necessary. What it also underscores is that licensure of defined prevention activities is no longer feasible or necessary. The rapid evolution of prevention activities would necessitate a constant revision of the regulations. The funding processes are better suited to deal with the pace of change. The Department's role in those processes ensures its continuing involvement and impact on prevention activities.

The monitoring of the prevention activities is adequately accomplished by the staff of BDAP's Division of

Prevention, which provides up-front technical assistance in the planning of prevention activities and continues prevention assistance and monitoring, and its Division of Program Monitoring, which performs post-performance review and audit to determine compliance with the terms of the entire contract with the SCAs, including the terms addressing prevention.

Almost every Federal and State dollar that is spent on prevention in this Commonwealth passes through the State and counties to prevention providers. The small amount that does not pass through the State is distributed directly by the Federal government to counties or providers through grants. That grant process requires application and review by the Federal government and, in most cases, requires the recipient to have prior prevention experience. Thus, this process contains the necessary checks and balances to ensure that unqualified operators do not receive funds. As for the remainder of the public dollars, the Department, through its agreements with the counties, monitors the services that are being provided, the amounts that are being spent and the results of the services. There is very little chance, if any, that these funds will be provided to individuals or entities that are unscrupulous or unqualified operators.

#### *Current Prevention System*

Because of the dramatic change in procedures, at least as they have been identified by regulation, a detailed discussion of how the prevention system works without the regulations may be helpful.

#### *A. Prevention Plan Contractual Requirements*

First, prevention funds provided to the county must be used to develop and implement a comprehensive system of resources that includes a broad array of prevention strategies directed at individuals not identified to be in need of treatment. The services are to be provided either directly by the county or through one or more public or nonprofit private entities. Prevention program activities are to be provided in a variety of settings to targeted populations that are severely affected by risk factors associated with substance abuse, determined through community-wide biannual needs/risk assessments.

Second, the delivery of comprehensive prevention services has been formalized into six major categories of strategies to meet Federal Substance Abuse Prevention and Treatment (SAPT) Block Grant requirements. Services that were previously fragmented as singular activities are now identified by agencies as part of their overall plan for the comprehensive provision of prevention programming to impact their targeted populations. As a management agency for drug and alcohol services, the county must budget for and implement prevention strategies under each category as appropriate to meet the unique needs of its community and fulfill Federal SAPT requirements for this Commonwealth.

Third, the county must submit written reports to the Department at times the Department requires in accordance with the BDAP Report Schedule. The reports need to contain information identified by the Department relating to the activities and categories already discussed.

#### *B. Performance Based Prevention Services*

The county is required to plan, deliver and evaluate prevention services using BDAP's Performance Based Prevention System. The services must focus on the reduction of risk factors that contribute to substance abuse and the development or enhancement of protective factors

that build resilience among individuals, families and communities to reduce targeted risk factors.

The county must ensure that all prevention and early intervention services funded by the county are included in the county's plan to deliver performance based prevention services. The county's prevention plan and annual updates as approved by the Department are incorporated into the county agreement and serve as the county's work statement for prevention and early intervention services.

The county must also ensure that the following criteria are adhered to in the implementation of performance based prevention:

(1) Prevention and early intervention services shall be directed towards reducing risk factors identified by the county through a needs/risk assessment of its service area.

(2) Needs/risk assessment shall be conducted at least every 2 years using the Department's needs/risk assessment survey instrument and its methodologies for obtaining statistical data.

(3) Risk factors deemed by the needs/risk assessments to be most seriously affecting substance abuse within targeted areas shall be identified in the development of long-term (3-5 year) goals, using the Department's performance based prevention process.

(4) Baseline data shall be gathered to determine the current level or risk factors existing within the targeted areas and establish a maximum achievable percentage by which each risk factor is to be reduced.

(5) Standardized indicators established for each risk factor in the performance based prevention software (PBPS) shall be used to measure the reduction of risk and utilized by the county periodically to assess the reduction of risk factors.

(6) A comprehensive structure of measurable objectives, using the six Federal categories of prevention identified in the agreement, shall be developed as a framework for planning and delivering program services that build protective factors for reducing risks associated with substance abuse.

Following are the six Federal categories and examples of activities that comprise the overall concept of prevention services to reduce the abuse of alcohol, tobacco and other drugs:

(1) *Information dissemination.* This category provides awareness and knowledge on the nature and extent of alcohol, tobacco and drug use, abuse and addiction and the effect on individuals, families and communities. It also provides knowledge and awareness of available prevention programs and services. Information dissemination is characterized by one-way communication from the source to the audience, with limited contact between the two. Examples of acceptable activities include, but are not limited to:

- Clearinghouse/information resource centers.
- Resource directories.
- Media campaigns.
- Brochures.
- Radio/TV public service announcements.
- Speaking engagements.
- Health fairs/health promotion.
- Information line.

(2) *Education.* This category involves two-way communication which is distinguished from information dissemination by the fact that interaction between the education/facilitator and the participants is the basis of its activities. Activities under this category are to affect critical life and social skills, including decision-making, refusal skills, critical analysis (such as media messages) and systematic judgment abilities. Examples of acceptable activities include, but are not limited to:

- Classroom or small group sessions (spanning all age groups).
- Parenting and family management classes.
- Peer leader/helper programs.
- Education programs for youth groups.
- Education groups for children of substance abusers.

(3) *Alternative activities.* This category operates under the assumption that healthy activities will deter participants from the use of alcohol, tobacco and other drugs. The assumption is that constructive and healthy activities offset the attraction to, or otherwise meet, the needs usually filled by alcohol, tobacco and other drugs and would, therefore, minimize or obviate resort to the latter. The BDAP will not fund alternative activities unless they are linked to educational or skill-building activities. Examples of acceptable activities include, but are not limited to:

- Drug free dances/parties.
- Youth/adult leadership activities.
- Community service activities.

(4) *Problem identification and referral.* This category targets those persons who have experienced first use of illicit/age-inappropriate use of tobacco, and those individuals who have indulged in the first use of illicit drugs and alcohol, to assess if their behavior can be reversed through education. Examples of acceptable activities include, but are not limited to:

- Employee assistance programs (EAP).
- SAP.
- Driving Under the Influence programs.

(5) *Community-based process.* This category aims directly at building community capacity to enhance the ability of communities to more effectively provide prevention and treatment services for alcohol, tobacco and drug abuse disorders. Activities include organizing, planning, enhancing efficiency and effectiveness of services, inter-agency collaboration, coalition building and networking. Examples of acceptable activities include, but are not limited to:

- Community and volunteer training.
- Training key leaders, staff/officials.
- Multiagency coordination and collaboration
- Systematic planning.
- Accessing service and funding.
- Community team building.

(6) *Environmental.* This category establishes or changes written and unwritten community standards, codes, ordinances and attitudes thereby influencing incidence and prevalence of the abuse of alcohol, tobacco and other drugs used in the population. This category is divided into two subcategories to permit distinction between activities that center on legal and regulatory

initiatives and those that relate to action-oriented initiatives. Examples of acceptable activities include, but are not limited to:

- Promoting establishment or review, or both, of alcohol, tobacco and other drug use policies in schools.
- Technical assistance to communities to maximize law enforcement procedures governing the availability and distribution of alcohol, tobacco and other drugs.
- Modifying advertising practices.
- Product pricing strategies.

The county must ensure that its contracted providers plan, develop, deliver and evaluate science-based program services that coincide with the specific objectives and Federal categories of prevention. Program services must reflect strategies and practices proven to build protective factors within the targeted populations or communities in which they are delivered. The selection of appropriate instruments for evaluating program services must be planned by the county and its contracted providers during the planning of services and shall be applied to evaluate the process, outcomes and impact of prevention services.

Evaluation methodologies may include tracking and assessment of individuals participating in prevention program services. These methodologies must be administered to determine changes in attitudes or behaviors and awareness, knowledge and skills achieved as a result of the services received by participants. This data must be recorded within the appropriate modules of the PBPS data collection system.

The county must monitor, analyze and collect data, as determined by the Department, from its providers monthly. The county must require service providers to collect and analyze service data for quality improvements and submit monthly recommendations to the county. Data must be collected and maintained using the Department's PBPS. The county must aggregate data and submit quarterly data to the Department in accordance with the BDAP Report Schedule.

The county must also evaluate the PBPS data produced by its providers and use it to determine compliance in meeting its annual objectives and to develop methods for improvements in program services. Specific data requested by the Department shall be aggregated through quarterly reports. The Department will monitor the county, evaluate quarterly reports, and provide technical assistance as needed to assist the county in achieving its annual objectives and outcomes toward the reduction of risk factors.

The county must collaborate with agencies and organizations within its service area to establish, deliver and measure comprehensive strategies for reducing identified risk factors that contribute to substance abuse. Data generated by these collaborative efforts shall be used to study and measure the reduction of risk factors within the service area. The county and its contracted providers must cooperate with the BDAP and its evaluators in conducting sample impact studies in communities they serve to determine changes in risk factors.

C. *Reduction of Youth Access to Tobacco*

The county must address the reduction of tobacco use among youth within its prevention plan to comply with Federal requirements. These activities must be in addition to the county's goals, objectives and provision of services for reducing identified risk factors, when the assessment of risk factors does not indicate tobacco use as

severely impacting substance abuse within the county's service area. In addressing the requirements to reduce tobacco use among youth in the county's service area, the county shall at a minimum perform the following functions:

(1) The county must conduct or otherwise secure contracted services in its service area to provide merchant education activities for over-the-counter retailers and establishments having vending machines. These activities must include educating retailers and vending machine operators of their responsibilities and obligations under State and Federal laws relating to youth tobacco sales, youth access to tobacco, as well as emphasizing the health effects of tobacco use. Activities may include, but are not limited to, direct contact with merchants, use of media (that is, TV, radio, newspapers, billboards), educating through vehicles such as trade associations, as well as through community and business responsibility initiatives.

(2) The county must conduct or otherwise ensure that merchant compliance checks are conducted within its geographic area. It must also participate with health district office personnel in conducting semiannual compliance activities.

(3) The county must coordinate with community partners to encourage local efforts to develop strategies to reduce the sales of tobacco products to youth. Partners may include, but are not limited to, the district tobacco prevention consultant, the district chronic disease team of consultants, State Health Improvement Plan, Pennsylvania Tobacco Prevention Network tobacco coalitions, the American Cancer Society, the American Heart Association, the American Lung Association, health care providers and other voluntary organizations. Coordination efforts shall address, but not be limited to, youth access to tobacco product issues, education and cessation initiatives.

(4) The county must address the foregoing requirements as an addendum to the County's Prevention Plan when the assessment of risk factors does not indicate tobacco use as severely impacting substance abuse within the county's service area.

#### D. Student Assistance Programs

The Department provides the county with money under the Safe and Drug Free Schools and Communities Act of 1986, Pub.L. No. 100-297, as amended by the Anti-Drug Abuse Act of 1988, Pub.L. No. 100-690, 20 U.S.C.A. § 3171 et seq., as amended by the Safe and Drug Free Schools and Communities (SDFSC) Act of 1994. The county must use the SDFSC funds for consultation services to school district personnel and core team members, and for assessment and group intervention services for those students involved in SAP. The SDFSC funds may not be used for the provision of treatment services.

The Department also provides the county with State funds and the SAPT Block Grant funds to support SAP. The Department provides the county with State funds annually for consultation, assessment, group intervention or treatment services. The SAPT Block Grant funds provided for SAP under the contract must be used for treatment services only. The amounts provided are for drug treatment services and for alcohol treatment services.

The county must use these funds to provide or arrange for the provision of programs offering drug abuse education, prevention or counseling to students at compulsory school age, including:

(1) Programs to provide drug abuse counseling in a school by trained personnel.

(2) Programs that stress the use of peers to combat student abuse of drugs and alcohol.

(3) Programs that stress community involvement in combating student abuse of drugs and alcohol.

(4) Programs that train Core Team members and teachers to encourage parent involvement in SAP.

(5) Other appropriate programs that target students and parent involvement in SAP.

The programs provided with these funds must be designed to prevent or eliminate student abuse of drugs or alcohol.

The county must use funds provided to expand, extend or replicate a program that has a proven record of success at either the State or local level in preventing or eliminating student abuse of drugs and alcohol.

The county must also ensure that the program to be expanded, extended or replicated is appropriate for the students to be served, based on an assessment of their most important needs.

The county, prior to receiving the funds must provide to the Department, at a time and in a manner and containing or accompanied by other information and assurances the Department may reasonably require, the following:

(1) A discussion of why the particular program is appropriate for and responds to the particular needs of the students to be served.

(2) A complete description of the success of the program in reducing or eliminating drug or alcohol abuse of compulsory school age students.

(3) An assurance that funds shall be used to supplement, not supplant, other Federal, State and local funds expended.

Quarterly SAP Statistical and Fiscal Report Forms and semiannual SAP Treatment Report Forms must be submitted as prescribed by the Department and in accordance with the BDAP Report Schedule. These reports will be used by the Department to monitor the use of the funds received and activities performed. This monitoring of activities and use of funds will be performed to assure compliance with applicable Federal requirements and to assure that performance goals are being achieved. Monitoring will cover each program function or activity. The county must assure the accuracy of those reports.

#### Comments

Proposed rulemaking was published at 31 Pa.B. 2125 (April 21, 2001). A 30-day comment period was provided. The Department received comments from five commentators. The commentators were the Independent Regulatory Review Commission (IRRC), the Council on Alcohol and Drug Abuse (CADA), the Lackawanna County Commission on Drug and Alcohol Abuse, the County of Chester and the Pennsylvania Association of County Drug and Alcohol Administrators, Inc. (PACDAA). The letters from the County of Chester and PACDAA were nearly identical.

The comments are directed toward the rescission in general and not toward any particular section. Thus, it is not possible to list the comments according to sections. Therefore, the Department will summarize the comments in their entirety and respond, without relating them to a particular section or sections being deleted.

*Comment:*

The proposed rulemaking deleted the standards for approval of prevention and intervention activities for drug and alcohol facilities and services. We question the impact on the public health and the reasonableness of deleting these regulations without proffering any proposed rulemaking to take their place. Item #16 of the Regulatory Analysis Form states that a workgroup was convened to develop an alternative to the current regulations. However, the alternative is not discussed in the Preamble to the proposed rulemaking.

With the deletion of these regulations, how will the Department provide oversight of drug and alcohol prevention services and programs? The Department should also explain what alternative will be in place when the Department submits its final-form rulemaking.

*Response:*

There will be no impact on the public health by deleting these regulations even though there are no new regulations to replace them. As already discussed, the deleted regulations have been ineffective and without value to the field of prevention for some time. In fact, through the BDAP's Division of Prevention, the standards of prevention services have been remarkably advanced and improved, despite the current obsolete regulations. The Department currently provides oversight of drug and alcohol services and programs through its contracts with the local SCAs and their subcontracts. This alternative form of monitoring prevention services has been in place for some time. This monitoring and oversight allows for more flexible program services which are in line with current standards of practice, provides for better and more regular monitoring of programs and services, and protects the public health in this area far better than the deleted regulations did.

The comment regarding the workgroup will be discussed in responding to another comment.

*Comment:*

There is no alternate approval process proposed to take the place of the current standards, leaving prevention activities an unregulated activity in this Commonwealth. While the rescission of the current process is necessary, to do so with no alternative process in place presents a window of opportunity for anyone to claim they deliver such services. This will possibly do harm to the field of substance abuse prevention.

*Response:*

While it is true that there will be no regulatory approval process upon rescission of the current regulations, no regulatory process is necessary because of the funding process, as has already been explained. The lack of regulation does not hamper quality prevention services. The services will still be monitored.

As previously explained, monitoring is performed by two different divisions within the BDAP. Contract review, evaluation and notification of the programs is taking place. Whenever certain activities within an SCA are found to be deficient, the divisions provide assistance to allow for correction. If continued problems exist, the contracts allow for the withholding of funds for the period of time until deficiencies are corrected.

This area is one that lends itself less to regulation by the Division of Drug and Alcohol Program Licensure and more to monitoring by the Division of Prevention.

The Department disagrees that the lack of regulation presents a "window of opportunity." In fact, almost anyone can claim to deliver prevention services now. Much of what is appropriate and considered current practice in the field of prevention is already outside the scope of the regulations. For example, Drug Abuse Resistance and Education (D.A.R.E.) is a longstanding prevention program which, because of the archaic definitions in the regulation, is completely outside the scope of regulation by the Department. There are many other worthy programs that provide valuable prevention services which are not regulated.

The Division of Prevention monitors these prevention services and their funding through the SCA contracts and thus ensures that "fly-by-night" operations will not suddenly appear and receive funds. All subcontracts are subject to review by the BDAP, either prior to execution or during the term by the BDAP's Divisions of Treatment and Program Monitoring. If programs are not providing the appropriate quality services, and thus causing the SCA to not comply with the contractual terms, the BDAP has the ability to mandate prompt changes. Further, the SCAs are also required to monitor their own subcontractors. The regular and continuous monitoring of prevention providers and the services and activities they are conducting, by both the Department and SCAs, assures that only quality, experienced prevention programs will receive funds.

*Comment:*

Until a time as an alternative process is in place which will preserve the integrity and professionalism of the prevention field, the Department should continue its regulation of prevention programs.

*Response:*

The alternative process already in place through the BDAP's contracting process does more to preserve the integrity and professionalism of the prevention field than the obsolete regulations did. In fact, prior to this rescission, there were very few prevention services being delivered which were covered by the regulations. The quality and integrity of prevention services is measured and preserved by the outcomes and results as currently monitored by the BDAP. The quality and integrity of the prevention field is not maintained simply because programs are able to comply with some minimal, obsolete standards and thereby secure a certificate of approval to hang on a facility wall. Compliance with the repealed regulations indicated nothing regarding the quality of the prevention services being offered.

*Comment:*

While the Department agrees that the existing regulations are not relevant to and do not reflect current drug and alcohol prevention practice in this Commonwealth, we believe these deletions will put at great risk drug and alcohol prevention services and significant public dollars used to fund the services.

A large amount of State, Federal and local public funding supports drug and alcohol prevention services throughout this Commonwealth. These services touch on most segments of our communities. Therefore it is essential that we ensure a baseline standard is met. By eliminating standards, without any alternative to replace them, it appears that the Department is devaluing prevention and the need for these services.

There has been a great deal of work done on an alternative by many stakeholders. However, there has yet



to be a finished product distributed that has had any, much less adequate, time for comment from affected parties. There should be no elimination of the current prevention regulations until an alternative, which has been commented on by affected parties, has been definitively established.

Finally, adequate financial resources for implementation must accompany whatever alternative is established. The transfer of this responsibility from licensing to another entity results in a shift in costs that must be addressed. The fiscal impact note for the proposed rule-making states that there would be "no measurable fiscal impact on the Commonwealth, local government, the private sector or the general public." We strongly disagree with this statement.

Whatever alternative is established will require oversight. If this occurs by means of the SCA contracts, it will require new staff at the county level. If it occurs by means of an independent certification body, it will require funding to the selected body from the State, a new fee from prevention providers, or both. As many prevention organizations are grass-roots nonprofits, the need to pay this fee may also have the unintended effect of eliminating effective resources. If no alternative is established then large amounts of taxpayer funds are put at risk for ineffective use.

*Response:*

This comment is a combination of the comments submitted by two commentators. Because both comments were virtually identical, the Department combined them. Both commentators begin their comments by stating that the current regulations do not reflect, and are not relevant to, the current drug and alcohol prevention practice. Given that statement, there can be no greater reason for eliminating the regulations being deleted. These commentators are recommending that the Department keep in place something they admit serves no useful function in the prevention field. The reasons for this position are unclear.

The remainder of the comment makes assertions of alleged potential harm due to the deletion of the regulations without an explanation of the harm that would occur. The first assertion is that the lack of regulation will put at risk prevention services and significant public dollars used to fund these services. The comment provides no explanation for this assertion; however, it is the Department's position that this statement is not accurate in any event. Almost every Federal and State dollar that is spent on prevention in this Commonwealth passes through the Commonwealth and counties to prevention providers. The small amount that does not is distributed directly by the Federal government to counties or providers through grants. That grant process requires application to and review by the Federal government and in most cases requires the recipient to have prior prevention experience. Thus, the funding processes contain the necessary checks and balances to ensure that unqualified operators do not receive funds, spend them inappropriately and harm the field. As for the remainder of the public dollars, the Department, through its agreements with the counties, currently monitors the services that are being provided, the amounts that are being spent and the results of the services. There is very little chance, if any, that these funds will be provided to individuals or entities that are unscrupulous or unqualified operators.

The second point of the comment suggests that regulations are needed to assure that the "baseline" standard is

met. Apparently, it is the thought that this "baseline" can be established by regulation. Again, this assertion is unfounded. Under the current method of funding and delivering prevention services, counties are required to submit plans to the BDAP, which are tailored to the specific needs of the counties. These needs vary from county to county. It is not possible to establish a State-wide "baseline" for prevention services when each geographical region differs in its needs and varies in its approach to the delivery of prevention services. To try to hold the entire State to one minimal standard in prevention actually undermines the objective of prevention as it is defined today.

Rather than enhancing prevention, the deleted regulations undermine the quality and innovation by holding providers to outdated standards. Moreover, the deleted regulations did not regulate every prevention provider. The prevention system that is in place through the agreements between the BDAP and the counties actually enhances prevention by allowing for individualized delivery of services specifically addressing the counties' needs. Prevention has been brought to the forefront of the battle against drug and alcohol addiction by the BDAP funding and monitoring system which may evolve and change as the need arises.

The next point in the comment relates to the workgroup. The workgroup first met in the Spring of 1998 and met regularly thereafter for 2 years. It has not met since the Spring of 2000. The purpose of the workgroup was to establish minimal criteria for the provision of prevention services. Accomplishing this objective is not dependent on the deleted regulatory scheme. The deleted regulations were not effective or useful and served no practical or functional purpose in advancing the cause of prevention. Therefore, maintaining them would have served no legitimate purpose irrespective of whether an "alternative" has been established. Maintaining outdated regulations, which are used to approve only a small number of entities actually providing preventive services, would only continue to divert valuable and limited public resources away from other necessary areas of regulation and reduce the overall effectiveness of those public resources.

The next part of this comment discusses resources for implementation of "whatever alternative is established." That alternative is already established and resources have already been transferred to accommodate this system. The current process of monitoring prevention is performed by the BDAP and the SCAs through the funding processes. Personnel are already engaged in this work at both the State and local levels. The processes will continue, as they are now, with no further "shift in costs" necessary when the regulations are rescinded. The rescission of the regulations will not have any measurable fiscal impact on the Commonwealth, local government, the private sector or the general public. Even if there is a shift in costs as alleged, that shift would be just that. It would be a shift or reallocation, not an increase. Thus, again, there still would be no measurable fiscal impact. Dollars spent by the Department and the SCAs will, however, be used in a way that will yield better results.

The last point in the comment restates those previously made and already addressed. Whether adjustments to the current funding system will require new staff, which the Department believes will not be the case, and whether independent certification will eliminate grass-roots nonprofit organizations, which the Department believes should not be the case, these issues are not a function of

the repeal of ineffective regulations. The deletion does not affect these concerns one way or the other. As discussed previously, the lack of regulation in no way puts large amounts of taxpayer funds at risk of ineffective use. The current oversight system in place adequately protects against any alleged risks.

All of the commentators are in agreement with the Department that the regulations the Department is deleting need to be deleted. The disagreement is whether there is a need to replace them with new regulations. New regulations are not necessary. Upgrading the regulatory scheme, as opposed to terminating the regulatory scheme, would be inconsistent with the objectives and goals articulated in Executive Order 1996-1.

The prevention services delivery system currently in place through agreement between the Department and the SCAs is quite extensive. To receive the Federal and State prevention funds, the SCAs are required to comply with the contractual provisions of their agreements with the Department. This is the most effective system for the Department to monitor and influence the delivery of prevention services in this Commonwealth.

#### *Fiscal Impact*

The deletion of the regulations for approval of drug and alcohol abuse prevention and intervention activities will have no measurable adverse fiscal impact on the Commonwealth, local government, the private sector or the general public. The major issues of concern raised by comments were increased personnel costs and risk of public dollars being spent ineffectively. These concerns are not substantiated. With the current prevention system, which operates through agreements between the BDAP and the local authorities, the State and local personnel are already in place. The deletion of the regulations will not cause an increase in personnel requirements. The deletion of the regulations will decrease costs of regulatory compliance by providers, thereby allowing them to reallocate their resources to other areas, such as the provision of additional prevention services.

Additionally, the Commonwealth will be able to redirect its limited regulatory resources to areas needing greater regulatory oversight and achieve a more efficient use of those resources.

#### *E. Paperwork Estimate*

A prevention service monitoring system is already in place through the BDAP. Therefore, there will be no additional paperwork requirements for the Commonwealth, local governments or the private sector resulting from the deletions of the regulations. There will be a decrease in paperwork resulting from the discontinuation of the approvals. Applications for approval will be eliminated, as will the paperwork relating to the annual reviews.

#### *F. Effective Date/Sunset Date*

The deletion of the regulations will be effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking. No sunset date is necessary. The Department will monitor the effectiveness of retained regulations and alternative initiatives on an ongoing basis.

#### *G. Statutory Authority*

The Department was authorized by the General Assembly under Reorganization Plan No. 2 of 1977 (71 P. S. § 751-25), Reorganization Plan No. 4 of 1981 (71 P. S. § 751-31) and the Pennsylvania Drug and Alcohol Abuse Control Act (71 P. S. §§ 1690.101—1690.115) (Act 63), to

assume the functions and responsibilities of the Governor's Council on Drug and Alcohol Abuse (Council). The Council's authority to regulate and promulgate rules and regulations was transferred to the Department through those reorganization plans. See Reorganization Plan No. 2 of 1977 (transferring duties under the Public Welfare Code with regard to regulation, supervision and licensing of drug and alcohol facilities to the Council), Reorganization Plan No. 4 of 1981 (transferring the functions of the Council to the Department and establishing the Council as an advisory council) and the 1985 Amendments to Act 63, as amended by act of December 20, 1985 (P. L. 529, No. 119) (amending Act 63 to reference the Pennsylvania Advisory Council on Drug and Alcohol Abuse). This final-form rulemaking was promulgated under these provisions.

#### *H. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 11, 2001, the Department submitted a copy of the proposed rulemaking to IRRC and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of all comments received. In preparing this final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on May 1, 2002, this final-form rulemaking was deemed approved by the Committees. IRRC met on May 9, 2002, and approved this final-form rulemaking in accordance with section 5.1 (e) of the Regulatory Review Act. The Office of Attorney General approved this final-form rulemaking on June 14, 2002.

#### *I. Contact Person*

Questions regarding this final-form rulemaking may be submitted to John C. Hair, Director, Bureau of Community Program Licensure and Certification, 132 Kline Plaza, Suite A, Harrisburg, PA 17104, (717) 783-8665. Persons with a disability may also submit questions regarding the final-form rulemaking by using V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT]. Persons with a disability who need this document in an alternative format (that is, large print, audio tape or Braille) should contact John Hair so that necessary arrangements may be made.

#### *Findings*

The Department finds that:

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

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

(3) The adoption of this final-form rulemaking in the manner provided by this order is necessary and appropriate.

#### *Order*

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

(a) The regulations of the Department are amended by deleting 4 Pa. Code §§ 259.1 and 259.2 and 28 Pa. Code §§ 701.13 and 713.1—713.5, 713.11—713.18, 713.21—713.29 and 713.41—713.43; and by amending 28 Pa. Code § 701.1 to read as set forth in Annex A.

(b) 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.

(c) The Secretary of Health shall submit this order, Annex A, a Regulatory Analysis Form and a Repeal Analysis Form to IRRC, the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for their review and action as required by law.

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

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

ROBERT S. ZIMMERMAN, Jr.,  
Secretary

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 2646 (May 25, 2002).)*

**Fiscal Note:** Fiscal Note 10-164 remains valid for the final adoption of the subject regulations.

#### Annex A

### TITLE 4. ADMINISTRATION

#### PART XI. GOVERNOR'S COUNCIL ON DRUG AND ALCOHOL ABUSE

##### CHAPTER 259. (Reserved)

§ 259.1. (Reserved).

§ 259.2. (Reserved).

### TITLE 28. HEALTH AND SAFETY

#### PART V. DRUG AND ALCOHOL FACILITIES AND SERVICES

##### CHAPTER 701. GENERAL DEFINITIONS

###### Subchapter A. DEFINITIONS

§ 701.1. General definitions.

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

*Act*—The Pennsylvania Drug and Alcohol Abuse Control Act (71 P. S. §§ 1690.101—1690.115).

*Active client*—A client in any phase of treatment.

*Administration activity*—The provision of planning, organizing, funding and control of the SCA drug and alcohol program.

*Aftercare plan*—A plan for clients to follow after they leave formal treatment. It is the client's individual plan for the future, including an identification of the client's personal goals and objectives.

*Budgeted capacity*—The maximum number of active clients a project is funded to treat for each activity or activity/approach combination.

*Caseload*—The number of clients who are receiving direct counseling services on a regular basis at least twice per month. The number of clients does not include clients who are seen by a counselor only for intake evaluations.

*Case management*—An organized system of coordinative activities developed and administered by the SCA to ensure client continuity of service, efficient and effective utilization of available resources, and appropriateness of service to meet the needs of the client.

*Certificate of compliance*—A certificate which indicates that the Department has found a drug and alcohol treatment activity, which is part of a health care facility, to be in full or substantial compliance with standards established by the Department.

*Client*—An individual who is or has been the recipient of the services of a project. A client may be receiving drug services, alcohol services, or both.

*Client records*—The medical, psychological, social, occupational and financial data obtained as part of the diagnosis, classification and treatment of a client.

*Clinical supervisor*—The director of treatment services who supervises counselors and counselor assistants and who meets the education and experience requirements in Chapter 704 (relating to staffing requirements for drug and alcohol treatment activities).

*Close supervision*—Formal documented case review and an additional hour of direct observation by a supervising counselor or a clinical supervisor once a week.

*Correctional institution activity*—The provision of drug or alcohol services within or under the jurisdiction of a State or county correctional facility.

*Counselor*—An individual who provides a wide variety of treatment services which may include performing diagnostic assessments for chemical dependency, developing treatment plans, providing individual and group counseling and other treatment modes and who meets the education and experience requirements in Chapter 704.

*Counselor assistant*—An entry level position for an individual without counseling experience who provides treatment services under the direct supervision of a trained counselor or clinical supervisor. This individual shall complete a structured supervision and training program as delineated in §§ 704.9 and 704.11(g) (relating to supervision of counselor assistant; and staff development program). The length of time spent in assistant status is dependent upon previous education and clinical experience and satisfactory completion of the performance evaluation completed during the assistant status.

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

*Department-approved curriculum*—Training courses developed or funded by the National Institute on Drug Abuse (NIDA), the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the Office for Substance Abuse Prevention (OSAP), the Department or other Federal or State agencies.

*Detoxification approach*—The process whereby a drug- or alcohol-intoxicated or dependent client is assisted through the period of time necessary to eliminate, by metabolic or other means, the presence of the intoxicating substance or dependency factors, while keeping the physiological or psychological risk to the client at a minimum. This process should also include efforts to motivate and support the patient to seek formal treatment after the detoxification process.

*Direct observation*—In person observation of staff working in a clinical setting for the purpose of planning, oversight, monitoring and evaluating their activities.

*Driving under the influence activity*—The provision of services aimed at the reduction of alcohol related motor vehicle offenses through education, information and consultation; identification of individuals in need of treatment; and referral to other resources.

*Drug*—A substance:

(i) Recognized in the official or supplement to either the United States Pharmacopeia or official National Formulary.

(ii) Intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals.

(iii) Other than food, intended to affect the structure or function of the body of man or other animals.

(iv) Intended for use as a component of any article specified in subparagraph (i), (ii) or (iii), but not including devices or their components, parts or accessories.

*Drug and alcohol specialist*—The administrator of a drug and alcohol planning council.

*Drug dependent person*—A person who is using a drug, controlled substance or alcohol, and who is in a state of psychic or physical, or both, dependence arising from administration of that drug, controlled substance or alcohol, on a continuing basis.

*Drug free approach*—The provision of guidance, advice, and psychological treatment as a means to deal with the client's emotional structure and concurrent problems without the use of a maintenance substance. Temporary medication for treatment of physiological conditions or as an adjunct to psychosocial treatment may be utilized in this approach.

*Drug screening*—A clinical test to detect a drug or its metabolites in human biological fluid.

*Dynamic capacity*—The maximum number of clients that can be treated in 1 year in each activity or activity/approach combination.

*Evaluation activity*—The systematic collection, analysis and interpretation of objective data pertaining to the measurement of success in achieving goals and objectives or to the development of a needs assessment.

*Executive director*—The administrator of a drug and alcohol commission.

*Experimental approach*—An innovative treatment approach not generally utilized for treatment of drug and alcohol clients.

*Facility*—The physical location in which ongoing, structured and systematic drug and alcohol services are delivered. A facility may have more than one activity.

*Facility director*—The administrator of the treatment facility who is responsible for the overall management of the facility and staff and who meets the education and experience requirements in Chapter 704.

*Follow-up*—The procedure by which a project determines the status of a client who has been referred to an outside service provider for services or who has been discharged from the project.

*Freestanding treatment facility*—The setting in which drug and alcohol treatment services take place that is not located in a health care facility.

*Governing body*—The persons with full legal responsibility for the overall operation of the project.

*Health care facility*—

(i) A general, tuberculosis, chronic disease or other type of hospital—but not hospitals caring exclusively for the mentally ill—a skilled nursing facility, home health care agency, intermediate care facility, ambulatory surgical facility or birth center—regardless of whether the health care facility is created for profit, nonprofit, or by an agency of the Commonwealth or local government.

(ii) The term does not include an office used primarily for the private practice of medicine, osteopathy, optometry, chiropractic, podiatry or dentistry; nor a program which renders treatment or care for drug or alcohol abuse or dependence, unless located within a health facility; nor a facility providing treatment solely on the basis of prayer or spiritual means.

(iii) The term does not include a mental retardation facility except to the extent that it provides skilled nursing care.

(iv) The term does not apply to a facility which is conducted by a religious organization for the purpose of providing health care services exclusively to clergymen or other persons in a religious profession who are members of a religious denomination.

*Inpatient hospital activity*—The provision of detoxification or treatment and rehabilitation services, or both, 24 hours a day, in a hospital. The hospital shall be licensed by the Department as an acute care or general hospital, or approved by the Department of Public Welfare as a psychiatric hospital.

*Inpatient nonhospital activity*—A nonhospital, residential facility, providing one of the following drug and alcohol services:

- (i) Residential treatment and rehabilitation services.
- (ii) Transitional living services.
- (iii) Short-term detoxification.

*Intake, evaluation and referral activity*—The provision of intake and referral by a facility designated by the SCA to perform those services centrally for two or more facilities within that SCA.

*Intervention level*—The provision of services aimed at assisting the client in coping with a specific crisis or other situation in his life for which his customary modes of adaptation have proved inadequate. This level is aimed at assisting in decision making and supporting the client until he can cope with the situation independently. Referral is provided if the need for a structured treatment regimen or other services is indicated.

*Joinder*—A drug and alcohol administrative unit whose geographic area consists of two or more counties.

*License*—A certificate which indicates that the Department has found a freestanding treatment facility to be in full or substantial compliance with standards established under this part.

*Local authority*—The elected executive officials of a county.

*Long-term residential facilities*—Facilities where the average length of stay exceeds 90 days.

*Maintenance approach*—The prescription of methadone or other Department approved substance in sufficient doses to achieve stabilization or prevent withdrawal symptoms. This approach differs from the drug free approach in that a maintenance substance is utilized throughout the treatment regimen. Slow withdrawal or

outpatient detoxification of the client from the maintenance substance is considered as a part of maintenance. The ultimate goal of maintenance is to assist the client in permanently discontinuing the use of dependency producing substances.

*Maintenance substance*—Methadone or other Department approved substance used in sufficient doses to achieve stabilization or prevent withdrawal symptoms.

*Medication*—A prescription drug ordered by a licensed physician.

*MH/MR administrator*—The person appointed by the local authority to carry out duties, as provided in the Mental Health and Mental Retardation Act of 1966 (50 P. S. §§ 4101—4704), within a county MH/MR Program.

*Nonresidential facility*—A facility that does not provide sleeping accommodations and provides one or more of the following activities: outpatient, partial hospitalization, intake, evaluation or referral activities.

*Occupational program activity/employee assistance programs*—The provision of consultation, education, training and referral services to industry to assist employees whose job performance is deteriorating due to substance abuse.

*Other chemotherapy approach*—A treatment approach that includes chemotherapy using a primary medication for other than detoxification purposes. The term implies continued doses of medication. If a client receives only short-term medication for temporary symptomatic relief, the client is entered under the drug free or the detoxification approach, as appropriate.

*Outpatient activity*—The provision of counseling or psychotherapeutic services on a regular and predetermined schedule. The client resides outside the facility.

*Outreach*—Identifying persons who are in need of services, and alerting them to the availability and location of the services.

*Paraprofessional*—An individual, currently serving in a clinical capacity in a drug or alcohol treatment intervention or prevention project, whose performance closely relates to the technical or ethical standards normally ascribed to a professional.

*Partial hospitalization activity*—The provision of psychiatric, psychological, social and other therapies on a planned and regularly scheduled basis. Partial hospitalization is designed for those clients who would benefit from more intensive services than are offered in outpatient treatment projects, but who do not require 24-hour inpatient care.

*Performance audit*—An examination of the total fiscal and program operations of the SCA and its drug and alcohol projects.

*Physician*—An individual licensed under the statutes of the Commonwealth to engage in the practice of medicine and surgery, in its branches, or in the practice of osteopathy or osteopathic surgery, as defined in 1 Pa.C.S. § 1991 (relating to definitions).

*Planning council/executive commission*—A body of individuals appointed to plan, approve and coordinate the county drug and alcohol program.

*Primary care hours*—The primary hours of operation during which primary care services are provided as established by the facility and approved by the Department.

*Primary care services*—Medical, psychological, counseling and support services provided by primary care staff in a treatment and rehabilitation activity as defined in this chapter.

*Primary care staff*—The group of individuals, including clinical supervisors, counselors, physicians, physician's assistants, psychologists, registered nurses and licensed practical nurses who provide primary care services and those individuals who are responsible for developing and implementing the treatment plan.

*Program*—The aggregate of drug and alcohol projects under the jurisdiction of an SCA. This aggregation may be by type (SCA alcohol program), by level (SCA prevention program) or may include drug and alcohol projects (SCA drug and alcohol program).

*Project*—The public or private organization responsible for the administration and delivery of drug or alcohol services, or both, through one or more facilities. A project is a component of an SCA drug and alcohol program.

*Project approval*—The process for determining a project's compliance with published standards and certifying that the project is in compliance.

*Project director*—The administrator of the treatment project who is responsible for the overall management of the project and staff and who meets the education and experience requirements in Chapter 704.

*Project staff*—Persons performing the activities necessary for the operation of the project or facility.

*Psychologist*—A person licensed to practice psychology under the Professional Psychologists Practice Act (63 P. S. §§ 1201—1218).

*Residential facility*—An inpatient, nonhospital facility or inpatient freestanding psychiatric hospital that provides sleeping accommodations and provides one or more of the following activities: residential treatment and rehabilitation services, transitional living services or short-term detoxification services, 24 hours a day.

*SCA—Single County Authority*—The agency designated by the local authorities in a county or joinder to plan, fund and administer drug and alcohol activities in that county or joinder. The SCA consists of the planning council/executive commission, the specialist/executive director, and, in the case of the planning council option, the MH/MR administrator. The local authorities are the final fiscal and management authority.

*SCA level*—Those activities conducted by the SCA which do not involve direct contact with clients or participants.

*SCA plan*—The annual drug and alcohol prevention, intervention and treatment plan of the SCA.

*Secretary*—The Secretary of the Department.

*Short-term detoxification activity*—The provision of detoxification services in a residential facility, not to exceed 7 days.

*Training activity*—The provision of necessary education and experience used to prepare those who will work or are currently working in the drug or alcohol field.

*Transitional living activity*—The provision of supportive services in a semiprotected home-like environment to assist a client in his gradual reentry into the community. No formal treatment—counseling/psychotherapy—takes place at the facility. This is a live-in/work-out situation.

*Treatment*—Activities carried out specifically to effect the reduction or alleviation of the dysfunctions or disability of the client.

*Treatment and rehabilitation activity*—Following the physiological detoxification phase, a full range of treatment and supportive services carried out specifically to alleviate the dysfunction of the patient. This includes the systematic application of social, psychological or medical service methods to assist individuals to deal with the causative effects or consequences of drug or alcohol abuse. These services can be provided either in a hospital or residential nonhospital setting licensed/approved by the Department.

*Treatment level*—The activities aimed at the systematic application of social, psychological or medical service methods to assist individuals to deal with negative effects or consequences of drug and alcohol use or abuse.

*UDCS*—Uniform Data Collection System—Includes the client management facet, the fiscal management facet, and the program management facet set of forms developed and maintained by the Department.

**§ 701.13. (Reserved).**

**CHAPTER 713. (Reserved)**

**Subchapter A. (Reserved)**

**§§ 713.1—713.5. (Reserved).**

**Subchapter B. (Reserved)**

**§§ 713.11—713.18. (Reserved).**

**Subchapter C. (Reserved)**

**§§ 713.21—713.29. (Reserved).**

**Subchapter D. (Reserved)**

**§§ 713.41—713.43. (Reserved).**

[Pa.B. Doc. No. 02-1168. Filed for public inspection July 5, 2002, 9:00 a.m.]

**Title 4—ADMINISTRATION**

**NAVIGATION COMMISSION FOR THE DELAWARE RIVER AND ITS NAVIGABLE TRIBUTARIES**

**[4 PA. CODE CHS. 401—403 AND 405]**

**Navigation Licensure and Renewal**

The Navigation Commission for the Delaware River and its Navigable Tributaries (Commission) amends Chapters 401—403 and 405. These amendments revise and update four of the six chapters of the Commission's regulations in the first revision of the regulations since 1977.

*I. Statutory Authority*

The Commission has authority to promulgate regulations under section 4 of the act of March 29, 1803 (P. L. 542, 4 Sm.L. 67) (55 P. S. § 31); and section 2504-B(4) of The Administrative Code of 1929 (71 P. S. § 670.2(4)).

*II. Responses to Comments*

The notice of proposed rulemaking was published at 30 Pa.B. 3179 (June 24, 2000) and was subject to a 30-day public comment period. The Commission received no public comments. The House Professional Licensure Committee (HPLC) filed its comments on August 11, 2000. The Independent Regulatory Review Commission (IRRC)

filed its comments on August 24, 2000. Because the Preamble for the proposed rulemaking was previously printed in the *Pennsylvania Bulletin* and described the amendments in detail, this Preamble will only address the amendments that the Commission made as a result of the comments that the HPLC and IRRC provided, and changes to the statute made on these same subjects in May and June of 2001.

The comments made by the HPLC related to the validity or reliability of proposed procedural changes, or both, as well as consistency with statutory provisions. The comments made by the HPLC are addressed in the particular amendments to the regulations, as referenced in this Preamble.

The comments made by IRRC related to clarity, reasonableness, implementation procedure, consistency and statutory authority. These comments are noted in specific amendments to the regulations, as referenced in this Preamble.

*III. Purpose*

These amendments enhance the navigational safety on the Delaware River through the implementation of requirements for state-licensed pilots, such as random drug testing, continuing education, special training in bridge resource management and automatic radar plotting aids, as well as mandatory pilotage trips to maintain current knowledge of river conditions (recency-of-route). The amendments eliminate regulations which are obsolete because of statutory changes affecting the Commission and state-licensed pilots or which are unnecessary because their subject matter is adequately covered by statute.

The amendments on final rulemaking also give those regulations retained by the Commission better organization and clarity. A description of the revisions and changes appears as follows:

*IV. Responses to Statutory Changes*

The amendments also articulate those changes made by the General Assembly and signed into law in 2001. The act of June 22, 2001 (P. L. 582, No. 41) (Act 41) restates the membership of the Commission, as previously designated in section 475(a) of The Administrative Code of 1929 (71 P. S. § 180.5(a)), and removes the requirement that the principal office of the Commission be in Philadelphia. This change is discussed further in Section V, § 401.2 (relating to Commission office), of this Preamble. Act 41 also provides for the Commission's meetings to be held in Philadelphia or at a location determined by a majority vote of the Commission. Additionally, Act 41 requires public notice of the time and place of the Commission's meetings to comport with 65 Pa.C.S. Chapter 7 (relating to Sunshine Law). These changes are discussed in Section V, § 402.11 (relating to meetings), of this Preamble.

The act of May 17, 2001 (P. L. 98, No. 11) (Act 11) changed the reporting requirement to a recordkeeping requirement for those pilots who train an apprentice. This change is discussed further in Section V, § 405.9(b) (relating to apprentices), of this Preamble.

*V. Description of Revisions*

*Chapter 401 (relating to general provisions)*

*§ 401.2 (relating to Commission office)*

Section 401.2 includes the full address for the Commission's office including state and zip code in accordance with IRRC's suggestion. At the suggestion of IRRC, the

Commission also designated this office as the location where potential applicants can obtain all necessary forms. When Act 11 removed the requirement that the principal office of the Commission must be in Philadelphia, the Commission designated the Department of State (Department) in Harrisburg as its office.

*Chapter 402 (relating to administration)*

*§ 402.11 (relating to meetings)*

A new subsection (c) provides for the Commission's meetings to be held in Philadelphia or at a location determined by a majority vote of the Commission, as authorized by Act 41.

*Chapter 405 (relating to pilots and pilotage)*

*§ 405.3 (relating to application for licensure or apprenticeship)*

At the suggestion of IRRC, the Commission inserted the address and phone number of the Department (the Commission's administrative office), and clearly designated this as the location where potential applicants can obtain all necessary forms.

*§ 405.4 (relating to examination for sixth-class license)*

The Commission articulated, with specificity, the precise format and requirements for passage of the entry-level oral or written examination, as suggested by both the HPLC and IRRC. The initial examination, administered by three first-class pilots designated by the Commission, consists of four parts: (i) rules of the road; (ii) chart work; (iii) shiphandling and anchoring; and (iv) local knowledge. A passing grade is set as obtaining 90% of the questions correct on parts (i) and (ii) and 80% correct on parts (iii) and (iv). The written examinations will consist of at least 50 questions on each part, except for chart work. On the chart work portion of the examination, an apprentice is given a blank chart to place labels appropriately for landmarks such as channel depths, shoals, rocks, obstructions, buoys, range lights, overhead bridge clearances, specific geographic features and anchorages.

Regarding the validation of the examination, most of the questions on rules of the road come from the United States Coast Guard (USCG). The source for the information on chart work comes from chart publications of the USCG and the National Oceanographic and Atmospheric Administration (NOAA). The questions on shiphandling and anchoring come from the pilots and relevant textbooks. Local knowledge questions come from the quarterly subjects that the apprentices study, including instructions from the licensed pilots, as well as local regulations and guidelines, along with publications of the USCG, NOAA, the United States Army Corps of Engineers and the Mariners Advisory Committee of the Port of Philadelphia.

If an applicant does not successfully pass on the first attempt, this final-form rulemaking provides for additional opportunities for an applicant to pass the written exam. An oral examination, which is recorded and filed with the Commission, may be administered if an applicant's existing medical condition so requires. After three examinations, the Commission may determine if additional examination opportunities may be provided to the applicant. In addition, the original copies of all written examinations are filed with the Commission as part of its permanent records.

*§ 405.5 (relating to classification of pilots)*

To facilitate reference to the applicable statutory provision designating the classes of pilots and defining them as suggested by IRRC, § 405.5 lists the appropriate citation as "section 17 of the act of March 29, 1803 (P. L. 542, Sm.L. 67) (55 P. S. § 42(a))."

*§ 405.7 (relating to qualifications for license)*

Section 405.7(a)(3) strikes the phrase "any cause" and replaces it with the specific criteria of when a physical examination may be ordered by the Commission, as suggested by IRRC. In this same paragraph, the Commission added the term "applicant," addressing IRRC's suggestion by clarifying that this section applies to both initial applicants and to pilots who renew their licenses. Also, the Commission believes that the second sentence in subsection (a)(3) should remain in § 405.7 because it is a major qualification for licensure. A reference to § 405.8 (relating to physical examination qualifications) is provided in the first sentence of subsection (a)(3). Furthermore, § 405.12 (relating to renewal of license) references this and other subsections of § 405.7. Finally, at the suggestion of IRRC, the Commission included as an option the submission of the current or successor form of the "Merchant Marine Personnel Physical Examination Report" of the USCG as proof of a physical examination.

In subsection (a)(4), the Commission made several changes to this final-form rulemaking, as suggested by IRRC. First, the Commission added a procedure in which the random drug testing will be conducted by a testing agency satisfactory to the Commission. Second, a pilot who tests positive for the presence of drugs shall be immediately reported to the Commission. Finally, all other test results shall be filed with the Commission prior to March 1 of each year. This verifies compliance and clarifies what documentation is required and where it is to be filed.

As suggested by IRRC, subsection (a)(9) references § 405.15 (relating to initial license and license renewal fee), which sets the applicable license fee.

Subsection (c) references § 405.4, which relates to the specific examination requirements necessary to obtain a pilot's license and addresses the details concerning the exam's format, which was a question raised by IRRC. Section 405.4 contains precise language expressing what is considered a "passing grade," what is done if an applicant fails the examination, the circumstances under which additional examinations may be administered, and the conditions in which oral examinations may be given.

*§ 405.8 (relating to physical examination qualifications)*

At the suggestion of the HPLC, the United States standard system of visual acuity replaced the metric system as the means of measurement, and the term "examination" was added to the heading of § 405.8. The Commission also amended this section to include the use of information provided in the current or successor form of the "Merchant Marine Personnel Physical Examination Report" of the USCG to determine the presence of any medical condition that may directly affect one's ability to pilot a ship safely, as suggested by IRRC.

*§ 405.9 (relating to apprentices)*

To determine if an applicant is of "good moral character," the Commission added specific provisions to subsection (a)(1), as suggested by IRRC, including: letters of reference, questions regarding the criminal record of the applicant on application forms and information within the

possession of the USCG since some applicants may have obtained a USCG license, as provided in subsection (a)(2)(ii).

Section 405.9(a)(3)(ii) was amended to refer to vessels of 1,600 tons to track the statutory language in section 17(b) of the act of March 29, 1803. Tracking the statutory language was also an issue in subsection (b)(1). The HPLC and IRRC suggested that the language of subsection (b)(1) should be consistent with the enabling statute (section 17(b) of the act of March 29, 1803). The Commission added language to subsection (b)(1) that mirrors the enabling statute, stating that an apprentice who, "at the time of appointment, holds at least a third mate's license need be an apprentice no longer than 3 years."

At the suggestion of IRRC, the Commission clarified the requirements under subsection (b)(4) of how many and at what intervals reports are required to be filed by pilots who train apprentices. This final subsection, in accordance with Act 11, requires pilots to maintain an activity record of each trip on an apprentice's weekly activity record. The final subsection also articulates the specific information that shall be incorporated with the apprentice's weekly activity record including: the date of the trip; the name of the vessel; where the trip began and ended; and any other information requested by the Commission. In addition to the weekly activity records, at least one pilot evaluation of each apprentice's performance shall be filed on a quarterly basis with the joint Pennsylvania/Delaware Apprentice Pilot Training Program Administrator. An exception for the required evaluation is made for the first two quarters of an apprentice's program because during that initial time frame, the apprentice is primarily observing the piloting of vessels, so there are not sufficient opportunities to evaluate the apprentice's performance. The Commission placed in subsection (b)(5) the requirement that the joint Pennsylvania/Delaware Apprentice Pilot Training Program Administrator report to the Commission, at each meeting, the activities and performance of the Pennsylvania apprentices in the program.

*§ 405.12 (relating to renewal of license)*

At the suggestion of IRRC, § 405.12 references § 405.15 for payment of the required license renewal fee.

*§ 405.19a (relating to docking, undocking and anchoring of vessels)*

At the suggestion of IRRC, the Commission deleted any reference to Delaware state-licensed pilots from the language of § 405.19a. The reference to Pennsylvania was deleted for clarity to remain consistent with the terminology used elsewhere to refer to state-licensed pilots.

*§ 405.21 (relating to accident reports)*

The Commission inserted the language "within 5 days of the accident" to describe the length of time a pilot has to submit a written report of an accident, as suggested by IRRC. The Commission also altered the provision to read, "a pilot involved in a marine accident while on duty . . ." to clarify this point, as suggested by IRRC. Also at the suggestion of IRRC, the required number to make a telephonic report is clearly stated as the number listed at the issuance of each license or on the annual license renewal notice. This number is (717) 783-7200, which is the primary extension of the Department's Bureau of Professional and Occupational Affairs. This number is staffed by an operator at all times during normal business hours and has voice-mail capabilities at all other times, including weekends.

VI. *Compliance with Executive Order 1996-1*

In accordance with Executive Order 1996-1, "Regulatory Review and Promulgation," the Commission invited comments from the regulated community and interested parties. In drafting the proposed rulemaking, the Commission had extensive consultations with, and input from The Pilots' Association for the Bay and River Delaware, a business association representing the interests of all state-licensed pilots in this Commonwealth and Delaware. In addition, the Commission consulted with the American Pilots' Association, the USCG and the National Transportation Safety Board. When the rulemaking was proposed, the Commission received no public comments.

VII. *Fiscal Impact*

The final-form rulemaking promulgated by the Commission will have no measurable fiscal impact on the Commonwealth, its political subdivisions or the private sector because fees paid by licensees support the Commission. The changes are in harmony with current Federal regulations and recommendations as well as with stricter regulations now present in Delaware. Although these changes will not have a substantial fiscal impact because Pennsylvania pilots have already implemented many of them, there may be a minimal fiscal impact, which cannot be calculated at this time.

VIII. *Paperwork Requirements*

This final-form rulemaking will require the Commission to update its license renewal forms and its application forms for pilot's licenses and for apprentice appointments. However, this final-form rulemaking does not create new paperwork for other agencies of the Commonwealth, political subdivisions of the Commonwealth or the general public.

IX. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 14, 2000, the Commission submitted a copy of the proposed rulemaking to IRRC, the Senate Consumer Protection and Professional Licensure Committee and the HPLC.

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 required. In preparing this final-form rulemaking, the Commission has considered comments from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on May 7, 2002, this final-form rulemaking was approved by the HPLC and deemed approved by the Senate Consumer Protection and Professional Licensure Committee on May 21, 2002. IRRC met on May 30, 2002, and approved the final-form rulemaking under section 5.1(e) of the Regulatory Review Act.

X. *Contact Person*

Interested persons may contact Louis Lawrence Boyle, Deputy Chief Counsel, Department of State and Counsel to the Navigation Commission for the Delaware River and its Navigable Tributaries, 302 North Office Building, Harrisburg, PA 17120-0029.

XI. *Findings*

The Commission 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.

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

(3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 30 Pa.B. 3179.

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

## XII. Order

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

(a) The regulations of the Commission, 4 Pa. Code Chapters 401—403 and 405, are amended by amending §§ 401.1, 401.2, 402.4, 402.11, 405.3—405.5, 405.7—405.12 and 405.21; by adding § 405.19a; and by deleting §§ 402.5, 402.9, 402.10, 403.1—403.5, 403.11—403.14, 403.21—403.25, 405.2, 405.6, 405.14, 405.16—405.18, 405.27—405.29, 405.31 and 405.33 to read as set forth in Annex A.

(b) The Commission 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 Commission 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*.

C. MICHAEL WEAVER,  
*Secretary of the Commonwealth*  
*Chairperson of the Commission*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 2954 (June 15, 2002).)*

**Fiscal Note:** Fiscal Note 16A-662 remains valid for the final adoption of the subject regulations.

### Annex A

## TITLE 4. ADMINISTRATION

### PART XIII. NAVIGATION COMMISSION FOR THE DELAWARE RIVER AND ITS NAVIGABLE TRIBUTARIES

#### CHAPTER 401. GENERAL PROVISIONS

##### § 401.1. Definitions.

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

*Chairperson*—The Chairperson of the Commission.

*Commission*—The Navigation Commission for the Delaware River and its navigable tributaries.

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

*Navigable tributaries*—Tidal portions of the navigable tributaries are defined as follows:

- (i) Schuylkill River below Fairmount Dam.
- (ii) Chester Creek below Ninth Street.
- (iii) Crum Creek below Route 291 (Industrial Highway) bridge.

(iv) Darby Creek below 84th Street.

(v) Neshaminy Creek below Route 13 bridge.

(vi) Pennypack Creek below Frankford Avenue Bridge.

(vii) Ridley Creek below Baltimore and Ohio Railroad Bridge in Chester.

*River*—Tidal portions of the Delaware River, from the Delaware border in the South to the Railroad Bridge at Morrisville in the North, and its navigable tributaries within this Commonwealth.

*Secretary*—The Secretary of the Commonwealth.

##### § 401.2. Commission office.

The office of the Commission is located at the Department of State, 302 North Office Building, Harrisburg, Pennsylvania 17120-0029. Forms may be obtained from the Department or by calling (717) 787-6802.

#### CHAPTER 402. ADMINISTRATION

##### § 402.4. Department of State Commission.

The Commission will be a departmental commission of the Department.

##### § 402.5. (Reserved).

##### § 402.9. (Reserved).

##### § 402.10. (Reserved).

##### § 402.11. Meetings.

(a) The regular meetings of the Commission will be held semiannually after public notice as required by 65 Pa.C.S. Chapter 7 (relating to Sunshine Act).

(b) Special meetings may be called by the Chairperson after 3 days notice to the Commission and after public notice as required by 65 Pa.C.S. Chapter 7.

(c) Meetings of the Commission will be held in Philadelphia or at a location determined by a majority vote of the Commission.

#### CHAPTER 403. (Reserved)

##### §§ 403.1—403.5. (Reserved).

##### §§ 403.11—403.14. (Reserved).

##### §§ 403.21—403.25. (Reserved).

#### CHAPTER 405. PILOTS AND PILOTAGE

##### § 405.2. (Reserved).

##### § 405.3. Application for licensure or apprenticeship.

An applicant for initial issuance of a pilot's license, for renewal of a pilot's license or for appointment as an apprentice shall submit an application on a form provided by the Commission. Forms may be obtained from the Department of State, 302 North Office Building, Harrisburg, Pennsylvania 17120 or by calling (717) 787-6802.

##### § 405.4. Examination for sixth-class license.

(a) The Commission will designate at least three first-class pilots to conduct or develop an oral or written examination of an applicant for a sixth-class pilot's license for the purpose of ascertaining the applicant's fitness to perform the duties of a pilot. The Commission will fix the date, time, manner and place of the examination.

(b) Applicants for a sixth class license shall pass an initial written examination that is comprised of the following four parts:

- (1) Rules of the road.
- (2) Chart work.
- (3) Shiphandling and anchoring.
- (4) Local knowledge.

(c) A passing grade on the parts in subsection (b)(1) and (2) is 90%, and a passing grade on the parts in subsection (b)(3) and (4) is 80%. The written examinations will consist of at least 50 questions on each part except chart work. Applicants who do not attain a passing score on any part of the initial exam shall be given another written examination on that part that the applicant did not pass. If an applicant fails to pass the second written examination on any part, the applicant shall be given a third written examination on that part that the applicant did not pass. When an applicant is unable for a medical reason, such as dyslexia, to successfully pass two different written examinations, the Commission may approve an oral administration of the examination. After three examinations, the Commission may determine if additional examination opportunities will be provided to any applicant. The examination for a sixth-class pilot's license may consist of the following topics:

- (1) Inland and pilot rules.
- (2) Aids to navigation.
- (3) Courses, distances and distances passed abeam at change of course points between given points.
- (4) Important and essential cable areas.
- (5) Dredged channel widths and depths.
- (6) Bridge signals, widths, regulations and closing periods.
- (7) Ship handling, docking problems, seamanship by actual observation, use of tow boats and anchors.
- (8) Regulations of the Commission.
- (9) Anchorage locations.
- (10) Duties of a pilot.
- (11) Relationship between master and pilot.
- (12) Practical operation and use of marine radar, including use of maneuvering board.
- (13) Currents and tides.
- (14) Dock headings, lengths, depths of water alongside, pier locations and berth numbers.
- (15) United States Government Public Health Quarantine regulations.
- (16) Prohibited areas, restricted areas, explosive anchorages.
- (17) Chart knowledge, including chart symbols and abbreviations.
- (18) Use of navigational and bridge instruments.
- (19) Engine order and rudder commands for the following:
  - (i) United States Merchant vessels.
  - (ii) United States Naval vessels.
  - (iii) Foreign flag merchant vessels.
- (20) Ranges for determining error in channel ranges.
- (d) Each oral examination shall be tape-recorded, and the original copy of the recording shall be filed with the Commission as part of its permanent records. If a written

examination is given, the original copy of the written examination shall be filed with the Commission as part of its permanent records.

**§ 405.5. Classifications of pilots.**

For classifications of pilots, see section 17 of the act of March 29, 1803 (P. L. 542, 4 Sm.L. 67) (55 P. S. § 42).

**§ 405.6. (Reserved).**

**§ 405.7. Qualifications for license.**

(a) An applicant for the initial issuance of a pilot's license in any class shall:

(1) Except for first-time applicants for a sixth class license, have served at least 1 year in each of the license classes below the class of license applied for.

(2) Have complied with subsection (d).

(3) Have passed a physical examination within 6 months of the date of application based on the requirements of § 405.8 (relating to physical qualifications), as evidenced by a physician's statement. As proof of a physical examination, pilots may submit the current or successor form of the "Merchant Marine Personnel Physical Examination Report" of the United States Coast Guard. Physical examinations may also be ordered by the Commission for any pilot or applicant at any time that there is cause to believe that the physical condition of the pilot or applicant may be so impaired as to impact the pilot or applicant's ability to discharge his duties.

(4) Have participated in a program of random drug testing during the preceding calendar year that meets the standards of Coast Guard Regulations under 46 CFR Part 16 (relating to chemical testing). The random drug testing shall be performed by a testing agency satisfactory to the Commission. The testing agency conducting this random drug testing shall submit to the Commission documentation of the results immediately for any pilot who tests positive. The testing agency conducting this random drug testing shall submit to the Commission documentation of the results for all other pilots prior to March 1 of each year.

(5) Have been qualified as a radar observer, as evidenced by one of the following:

(i) A radar observer endorsement on a current Federal pilot's license.

(ii) A certificate issued by a Coast Guard-approved authority reflecting that the certificateholder satisfactorily completed a course of instruction for radar observers, within 5 years of the date of application.

(6) Have completed a Commission-approved course in bridge resource management within 3 years of the date of application or renewal.

(7) Have completed a Commission-approved course in automatic radar plotting aids (ARPA) once in a pilot's career.

(8) Post a surety bond that satisfies the requirements of § 405.13 (relating to bonding).

(9) Pay the required license fee, as specified in § 405.15 (relating to initial license and license renewal fee).

(b) In addition to meeting the requirements of subsection (a), a first-time applicant for a first-class pilot's license shall:

(1) Have completed 40 hours of Commission-approved continuing education in navigation, ship handling or

related topics within the preceding 5 years. Courses in the required areas of radar observer, ARPA and bridge resource management may count towards the 40-hour total. The Commission will approve the education facilities that qualify to provide this education. This continuing education requirement becomes effective July 6, 2004.

(2) Have appeared before the Commission for a personal interview.

(c) In addition to meeting the requirements of subsection (a), an applicant for a sixth-class pilot's license shall score a passing grade or better on an examination, as provided in § 405.4(b) (relating to examination for sixth-class license). Prior to taking the examination, the applicant shall:

(1) Be at least 21 years of age.

(2) Be within 3 months of completing a Commission-approved apprenticeship.

(3) Have acquired a current Federal pilot's license for the Delaware River issued by the Coast Guard.

(d) In addition to meeting the requirements of subsection (a), applicants for a pilot's license:

(1) Shall have piloted at least 52 vessels during the preceding license period, if the applicant is a current license-holder, unless waived by the Commission under paragraph (2).

(2) May seek a waiver from the Commission of the requirement of paragraph (1), in whole or in part, for illness, disability or other good cause that prevents a pilot from piloting the required number of vessels. If a waiver is granted, the Commission may condition the issuance of the license on the applicant's completion of refresher trips up or down the river as may be necessary to ensure that the applicant is familiar with current conditions along the route. Refresher trips shall be made in the company of a first-class pilot.

#### § 405.8. Physical examination qualifications.

The physical qualifications for a pilot or apprentice are as follows:

(1) Visual acuity of 20/30 in one eye and 20/80 in the other—correctable to 20/20 and 20/30, respectively—and normal color perception.

(2) Hearing acuity to the extent of correctly repeating, with eyes closed, words or numbers spoken by the examiner in an ordinary conversational tone of voice from a distance of 20 feet. Each ear shall be tested separately; the ear being tested shall be turned in the direction of the examiner while the other ear is plugged.

(3) The absence of any medical condition that may directly affect one's ability to pilot a ship safely, as noted on the current or successor form of the "Merchant Marine Personnel Physical Examination Report" of the United States Coast Guard.

#### § 405.9. Apprentices.

(a) *Apprentice qualifications.* An applicant for an apprenticeship as a pilot shall:

(1) Be of good moral character. The Commission may use any of the following methods to determine moral character:

(i) Letters of reference.

(ii) Questions regarding the criminal record of the applicant on application forms.

(iii) Relevant information within the possession of the United States Coast Guard such as any action taken against the applicant's Coast Guard license, if applicable.

(2) Have acquired one of the following:

(i) A baccalaureate degree from a recognized and certified college or university or from a maritime academy operated by the United States or any state.

(ii) A Coast Guard-issued license to serve as a third mate on all oceans aboard vessels of 1,600 tons, or a higher class of license.

(3) Have passed a physical examination within 6 months of the date of application based on the requirements of § 405.8 (relating to physical examinations), as evidenced by a physician's statement.

(b) *Conduct of apprenticeship.* An apprenticeship shall provide the theoretical education and supervised practical experience required for licensure as a sixth-class pilot and shall be conducted as follows:

(1) Every apprentice shall serve an apprenticeship of 4 years, except that an apprentice who, at the time of appointment, holds at least a third mate's license under subsection (a)(2)(ii) need be an apprentice no longer than 3 years.

(2) The theoretical aspect of an apprenticeship shall cover, but not be limited to, the topics in § 405.4 (relating to examination for license).

(3) An apprentice shall make at least 500 trips up or down the river in vessels with a pilot licensed by Pennsylvania or Delaware.

(4) The pilots who train an apprentice shall maintain a record of each trip on the apprentice's weekly activity record with the joint Pennsylvania/Delaware Apprentice Pilot Training Program Administrator. Each apprentice's weekly activity record shall include: the date of the trip, the name of the vessel, where the trip began and ended and other information requested by the Commission. At least one pilot who trains an apprentice shall also conduct an evaluation of each apprentice's performance on at least a quarterly basis, except during the first two quarters of the apprentice's program, and shall file the evaluation with the Joint Pennsylvania/Delaware Apprentice Pilot Training Program Administrator.

(5) The Joint Pennsylvania/Delaware Apprentice Pilot Training Program Administrator shall file summary reports with the Commission at each meeting on the activities and performance of the Pennsylvania apprentices in the apprentice program.

#### § 405.10. Term of license.

A license shall be for a term of 1 year, subject to renewal by the Commission.

#### § 405.11. Nondiscrimination.

The Commission will comply with applicable State and Federal laws prohibiting discrimination in licensing or apprenticeship opportunities. A person will not be denied a license, refused an apprenticeship indenture, refused sponsorship for a pilot's license or discriminated against in the provision of pilotage services because of race, religion, national origin, sex or age.

#### § 405.12. Renewal of license.

(a) An applicant for renewal of a pilot's license in any class shall:

(1) Have satisfied the requirements of § 405.7(a)(1)—(6) and (8) (relating to qualifications for license).

(2) Pay the required renewal fee, as specified in § 405.15 (relating to initial license and license renewal fee).

(b) In addition to meeting the requirements of subsection (a), an applicant for renewal of a first class pilot's license shall have completed 40 hours of Commission-approved continuing education in navigation, ship handling or related topics within the preceding 5 years. Courses in the required areas of radar observer, automatic radar plotting aids (ARPA) and bridge resource management may count towards the 40-hour total. The Commission will approve the education facilities that qualify to provide this education. This continuing education requirement shall become effective July 6, 2004.

**§ 405.14. (Reserved).**

**§§ 405.16—405.18. (Reserved).**

**§ 405.19a. Docking, undocking and anchoring of vessels.**

When a vessel which has taken aboard a state-licensed pilot is docking, undocking or anchoring, the state-licensed pilot shall remain on the bridge, attentive to duty, until the vessel has at least one ship's line secured to the dock or until the vessel is anchored properly and firmly within a designated anchorage area or until the state-licensed pilot is discharged at the pilot station area upon the vessel's departure to sea. This section does not prohibit the master of a vessel from employing the services of a docking master.

**§ 405.21. Accident reports.**

(a) *Written report.* A pilot involved in a marine accident while on duty shall submit a written report of the accident within 5 days of the accident to the Commission at the address or facsimile number listed at the issuance of each license or license renewal notice if the accident results in one of the following:

- (1) Actual physical damage to property in excess of \$1,500.
- (2) Material damage affecting the seaworthiness or efficiency of a vessel.
- (3) Stranding or grounding.
- (4) Loss of life.
- (5) Injury causing a person to remain hospitalized in excess of 72 hours.

(b) *Telephonic report.* In addition to submitting a written report under subsection (a), a pilot involved in a marine accident while on duty shall make a telephonic report of the accident to the Commission to telephone numbers listed at the issuance of each license or on the annual license renewal notice within 24 hours of the accident if the accident results in one of the following:

- (1) Loss of life.
- (2) Collision or grounding.
- (3) Oil spill.
- (c) *Contents of report.* An accident report, whether written or telephonic, shall set forth the following:
  - (1) Vessels and objects involved in the accident.
  - (2) Location, date and time of the accident.
  - (3) Weather and sea conditions when the accident occurred.
  - (4) Events and circumstances leading to the accident.
  - (5) Nature of the accident.

(6) Nature of loss or damage resulting from the accident.

(d) *Coast Guard Report.* A pilot may submit a copy of a completed Coast Guard Report of Vessel Casualty or Accident Form, along with any attachments to satisfy the requirements of subsections (a) and (c).

**§§ 405.27—405.29. (Reserved).**

**§ 405.31. (Reserved).**

**§ 405.33. (Reserved).**

[Pa.B. Doc. No. 02-1169. Filed for public inspection July 5, 2002, 9:00 a.m.]

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

### STATE BOARD OF MEDICINE

#### [49 PA. CODE CH. 16]

#### Biennial Renewal Fees

The State Board of Medicine (Board) amends § 16.13 (relating to licensure, certification, examination and registration fees) by increasing the biennial renewal fee for physicians to read as set forth in Annex A.

*A. Effective Date*

This final-omitted rulemaking is effective upon publication in the *Pennsylvania Bulletin*. The new fee will take effect for the biennial renewal period January 2003—December 2004.

*B. Statutory Authority*

This final-omitted rulemaking is authorized under section 6 of the Medical Practice Act (act) (63 P. S. § 422.6).

*C. Background and Purpose*

Section 6(a) of the act requires the Board to increase fees by regulation if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period. The Board raises virtually all its revenue through fees. The biennial license renewal fee is the most substantial revenue-generating fee of the fees charged by the Board. If the Board anticipates that its revenue will not meet its expenditures, the Board must increase its revenue. The Board last increased its biennial renewal fees on September 18, 1998.

The act mandates that the Board protect the public by adopting rules and regulations that govern the practice of medicine. In addition, the Board is mandated to promote public health, safety and welfare through Board initiatives and coordination with other agencies and departments in this Commonwealth.

The Medical Care Availability and Reduction of Error Act (Mcare Act) (40 P. S. §§ 1303.101—1303.910), amended the act in several significant ways that will increase the operational costs of the Board. The additional duties assigned to the Board include the obligation to commence investigations within 4 years of receipt of notice of a complaint with regard to a medical professional liability action that is filed against the physician; information regarding disciplinary action taken against the physician by a health care licensing authority of

another state; information regarding sentencing of the physician for an offense as provided in section 41 of the act (63 P. S. § 422.41); or information regarding an arrest of the physician for any of the following offenses in this Commonwealth or another state: 18 Pa.C.S. Chapter 25 (relating to criminal homicide); 18 Pa.C.S. § 2702 (relating to aggravated assault); 18 Pa.C.S. Chapter 31 (relating to sexual offenses); or a violation of The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144).

Importantly, the Board will have authority to initiate disciplinary action against a physician for a single act of negligence. Currently the Board's authority is limited to multiple acts of negligence or a single act of gross negligence. Additionally the Board is charged with regulating physicians with regard to the completion of mandatory continuing medical education.

During 2000, the Bureau of Professional and Occupational Affairs (BPOA) received 1,046 complaints against physicians. During the consideration of the Mcare Act, the Insurance Federation of Pennsylvania estimated that approximately 7,000 medical malpractice civil complaints were filed in 2001. Enforcement of the notification and continuing medical education requirements is expected to generate an additional 1,000 cases. Accordingly, the Board

anticipates a substantial increase in complaints filed against physicians under the Mcare Act provisions.

Consequently the Board will require additional resources to fulfill its additional obligations under the act. During the development of the Mcare Act, the General Assembly was aware additional Board resources would be necessary to implement the requirements under the act. These resources include staff, equipment, space, supplies, furniture and support resources such as contracts for expert witnesses. These additional resources will be needed in the Board's Administrative Office, the Bureau of Enforcement and Investigations, the Complaints Office, the Legal Office and the Office of Hearing Examiner. It is estimated that the additional operational resources and complement necessary to implement the Mcare Act will result in \$5,379,031 in increased costs per year between the Board and the State Board of Osteopathic Medicine.

At its April 23, 2002, Board meeting, the Board reviewed a summary of its revenues and expenses. The summary, prepared by the BPOA Revenue Office and the Bureau of Finance and Operations and presented in the format as follows, shows that for the Board to support its pro rata portion of the increase, the Board must raise the biennial renewal fee to meet or exceed projected expenditures and thereby comply with section 6 of the act.

<i>FINANCIAL STATUS</i>	<i>ACTUAL FY 00-01</i>	<i>PROJECTED FY 01-02</i>	<i>PROJECTED FY 02-03</i>	<i>PROJECTED FY 03-04</i>	<i>PROJECTED FY 04-05</i>	<i>PROJECTED FY 05-06</i>
Beginning Balance:	\$1,222,431.15	\$4,151,604.96	\$1,625,719.95	\$990,175.95	(\$6,690,824.05)	(\$9,072,973.05)
Revenue:	6,110,851.25	525,000.00	6,110,851.00	525,000.00	6,110,851.25	525,000.00
Prior Yr. Returned Funds:	0.00	472,114.99	0.00	0.00	0.00	0.00
Total Revenue:	7,333,282.40	5,148,719.95	7,736,570.95	1,515,175.95	(579,973.05)	(8,547,973.05)
Expenses:	3,181,677.44	3,523,000.00	6,746,395.00	8,206,000.00	8,493,000.00	8,790,000.00
Remaining Balance:	4,151,604.96	1,625,719.95	990,175.95	(6,690,824.05)	(9,072,973.05)	(17,337,973.05)

As the foregoing indicates, a deficit of \$6,690,824.05 is projected by the end of Fiscal Year 2003-2004. Without the fee increase the deficit grows to over \$9 million by the end of Fiscal Year 2004-2005, and over \$17.3 million by the end of Fiscal Year 2005-2006. This deficit is compounded and more critical since this Board fiscally stands on its own and is not contained within the Professional Licensure Augmentation Account (PLAA). Since this Board is not a part of the PLAA, it cannot utilize any fiscal backing to carry it through budget shortfalls. The Board anticipates that the new fee would enable it to meet its estimated expenditures.

The biennial renewal period for the Board begins January 2003. To meet the requirements of the act and the Mcare Act, fees must be raised for this period. Accordingly, the Board finds that under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL), good cause exists to adopt the new fee and that publication as proposed rulemaking in this circumstance is impractical and contrary to the public interest as identified by the General Assembly in the Mcare Act.

*D. Description of Amendments*

The following table outlines the affected fee and change:

	<i>Current Fee</i>	<i>New Fee</i>
Biennial renewal fee	\$125	\$360

*E. Compliance with Executive Order 1996-1*

In compliance with Executive Order 1996-1, "Regulatory Review and Promulgation," the Board considered this final-omitted rulemaking as both required by law and the least restrictive means of covering the costs of services required to be performed by the Board.

*F. Fiscal Impact and Paperwork Requirements*

This final-omitted rulemaking increases the biennial renewal fee for physicians in this Commonwealth, but, otherwise, should have no fiscal impact on the private sector, the general public or political subdivisions.

This final-omitted rulemaking requires the Board to alter some of its forms to reflect the new biennial renewal fees; however, it should create no additional paperwork for the private sector.

*G. Sunset Date*

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

*H. Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on May 22, 2002, the Board submitted

a copy of this amendment with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). On the same date, the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, on June 11, 2002, the HPLC and SCP/PLC deemed approved the final-omitted rulemaking. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 13, 2002, and the final-omitted rulemaking was approved.

*I. Additional Information*

Interested persons are invited to submit inquiries regarding this rulemaking to Joanne Troutman, Board Administrator, State Board of Medicine, Post Office Box 2649, Harrisburg, PA 17105-2649, joatrouma@state.pa.us.

*J. Findings*

The Board finds that:

(1) Public notice of its intention to amend its regulation as adopted in this order under sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) has been omitted under section 204(3) of the CDL, because the Board has, for good cause, found that the procedures specified in sections 201 and 202 of the CDL are, in this circumstance, impractical and contrary to the public interest as identified by the General Assembly in the Mcare Act because the Board must increase revenues immediately to meet the obligations imposed on it by the Mcare Act.

(2) The adoption of the amendment in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

*K. Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 16, are amended by amending § 16.13 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 approval as to form and legality as required by law.

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

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*.

CHARLES D. HUMMER, Jr., M.D.,  
Chairperson

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 3183 (June 29, 2002).)*

**Fiscal Note:** 16A-4913. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS**

**Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS**

**§ 16.13. Licensure, certification, examination and registration fees.**

*(a) Medical Doctor License:*

*License Without Restriction:*

Application, graduate of accredited medical college	\$35
Application, graduate of unaccredited medical college	\$85
Biennial renewal	\$360

*Extraterritorial License:*

Application	\$30
Biennial renewal	\$80

*Graduate License:*

Application, graduate of accredited medical college	\$30
Application, graduate of unaccredited medical college	\$85
Annual renewal	\$15

*Interim Limited License:*

Application	\$30
Biennial renewal	\$10

*Miscellaneous:*

Application, institutional license	\$35
Application, temporary license	\$45
Biennial renewal, limited license (permanent)	\$25

*(b) Midwife License:*

Application	\$30
Biennial renewal	\$40

*(c) Physician Assistant Certificate:*

Application	\$30
Biennial renewal	\$40
Registration, physician assistant supervisor	\$35
Registration of additional supervisors	\$ 5
Satellite location approval	\$25

*(d) Acupuncturist Registration:*

Application	\$30
Biennial renewal	\$40
Registration, acupuncture supervisor	\$30

*(e) Drugless Therapist License:*

Biennial renewal	\$35
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*(f) Radiology Technician:*

Application for examination	\$25
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*(g) Respiratory Care Practitioner Certificate:*

Application, temporary permit	\$30
Application, initial certification	\$30

Biennial renewal	\$25
(h) <i>Verification or Certification:</i>	
Verification of status	\$15
Certification of records	\$25
(i) <i>Examination Fees:</i>	

The State Board of Medicine has adopted Nationally recognized examinations in each licensing class. Fees are established by the National owners/providers of the examinations and are indicated in the examination applications.

[Pa.B. Doc. No. 02-1170. Filed for public inspection July 5, 2002, 9:00 a.m.]

**STATE BOARD OF OSETOPATHIC MEDICINE**  
**[49 PA. CODE CH. 25]**  
**Biennial Renewal Fees**

The State Board of Osteopathic Medicine (Board) amends § 25.231 (relating to schedule of fees), by increasing the biennial renewal fee for physicians to read as set forth in Annex A.

**A. Effective Date**

This final-omitted rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The new fee will take effect for the biennial renewal period November 2002—October 2004.

**B. Statutory Authority**

The statutory authority for this final-omitted rulemaking is section 13.1 of the Osteopathic Medical Practice Act (act) (63 P. S. § 271.13a).

**C. Background and Purpose**

Section 13.1(a) of the act requires the Board to increase fees by regulation if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period. The Board raises virtually all its revenue through fees. The biennial license renewal fee is the most substantial revenue-generating fee of the fees charged by the Board. If the Board anticipates that its revenue will not meet its expenditures, the Board must increase its revenue. The Board last increased its biennial renewal fees on November 1, 1996.

The act mandates that the Board protect the public by adopting rules and regulations that govern the practice of medicine. In addition, the Board is generally mandated to promote public health, safety and welfare, which are accomplished through Board initiatives and coordination with other agencies and departments in the Commonwealth.

The Medical Care Availability and Reduction of Error

Act (Mcare Act) (40 P. S. §§ 1303.101—1303.910), amended the act in several significant ways that will increase the operational costs of the Board. The additional duties assigned to the Board include the obligation to commence investigations within 4 years of receipt of notice of: a complaint with regard to a medical professional liability action that is filed against the physician; information regarding disciplinary action taken against the physician by a health care licensing authority of another state; information regarding sentencing of the physician for an offense as provided in section 15 of the act (63 P. S. § 271.15); or information regarding an arrest of the physician for any of the following offenses in this Commonwealth or another state: 18 Pa.C.S. Chapter 25 (relating to criminal homicide); 18 Pa.C.S. § 2702 (relating to aggravated assault); 18 Pa.C.S. Chapter 31 (relating to sexual offenses); or a violation of The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144). Importantly, the Board will have authority to initiate disciplinary action against a physician for a single act of negligence. Currently the Board's authority is limited to multiple acts of negligence or a single act of gross negligence.

During 2000, the Bureau of Professional and Occupational Affairs (BPOA) received 1,046 complaints against physicians. During the consideration of the Mcare Act, the Insurance Federation of Pennsylvania estimated that approximately 7,000 medical malpractice civil complaints were filed in 2001. Enforcement of the notification requirements is expected to generate additional cases. Accordingly, the Board anticipates a substantial increase in complaints filed against physicians under the Mcare Act provisions.

Consequently the Board will require additional resources to fulfill its additional obligations under the act. During the development of the Mcare Act, the General Assembly was aware additional Board resources were necessary to implement the requirements under the act. These resources include staff, equipment, space, supplies, furniture and support resources such as contracts for expert witnesses. These additional resources will be needed in the Board's Administrative Office, the Bureau of Enforcement and Investigations, the Complaints Office, the Legal Office and the Office of Hearing Examiner. The additional operational resources and complement necessary to implement the Mcare Act are estimated to result in \$5,379,031 in increased costs per year between the State Board of Medicine and the Board.

At its May 8, 2002, Board meeting, the Board reviewed a summary of its revenues and expenses. The summary, prepared by the BPOA Revenue Office and the Bureau of Finance and Operations, shows that for the Board to support its pro rata portion of the increase, the Board must raise the biennial renewal fee to meet or exceed projected expenditures and thereby comply with section 13.1 of the act.

<i>FINANCIAL STATUS</i>	<i>ACTUAL FY 00-01</i>	<i>PROJECTED FY 01-02</i>	<i>PROJECTED FY 02-03</i>	<i>PROJECTED FY 03-04</i>	<i>PROJECTED FY 04-05</i>	<i>PROJECTED FY 05-06</i>
Beginning Balance:	\$366,411.48	\$752,043.78	\$320,515.94	\$98,910.94	(\$1,175,089.06)	(\$1,660,089.06)
Revenue:	946,451.00	112,000.00	950,000.00	112,000.00	950,000.00	112,000.00
Prior Yr. Returned Funds:	0.00	88,472.16	0.00	0.00	0.00	0.00
Total Revenue:	1,312,862.48	952,515.94	1,270,515.94	210,910.94	(225,089.06)	(1,548,089.06)

<i>FINANCIAL STATUS</i>	<i>ACTUAL FY 00-01</i>	<i>PROJECTED FY 01-02</i>	<i>PROJECTED FY 02-03</i>	<i>PROJECTED FY 03-04</i>	<i>PROJECTED FY 04-05</i>	<i>PROJECTED FY 05-06</i>
Expenses:	560,818.70	632,000.00	1,171,605.00	1,386,000.00	1,469,000.00	1,485,000.00
Remaining Balance:	752,043.78	320,515.94	98,910.94	(1,175,089.06)	(1,660,089.06)	(3,033,089.06)

As the foregoing indicates, a significant deficit of \$1.17 million is projected by the end of Fiscal Year 2003-2004. Without the fee increase the deficit grows to over \$1.66 million by the end of Fiscal Year 2004-2005 and over \$3.03 million by the end of Fiscal Year 2005-2006. This deficit is compounded and more critical since this Board fiscally stands on its own and is not contained within the Professional Licensure Augmentation Account (PLAA).

The biennial renewal period for the Board begins November 2002. To meet the requirements of the act and the Mcare Act, fees must be raised for this period. Accordingly, the Board finds that under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL) good cause exists to adopt the new fee and that publication as proposed rulemaking in this circumstance is impractical and contrary to the public interest as identified by the General Assembly in the Mcare Act.

*D. Description of Proposed Amendments*

The following table outlines the affected fee and change:

<i>Application</i>	<i>Current Fee</i>	<i>New Fee</i>
Biennial renewal fee	\$140	\$440

*E. Compliance with Executive Order 1996-1*

In compliance with Executive Order 1996-1, "Regulatory Review and Promulgation," the Board considered the regulation as both required by law and the least restrictive means of covering the costs of services required to be performed by the Board.

*F. Fiscal Impact and Paperwork Requirements*

The final-omitted rulemaking would increase the biennial renewal fee for physicians in this Commonwealth, but, otherwise, should have no fiscal impact on the private sector, the general public or political subdivisions.

The final-omitted rulemaking would require the Board to alter some of its forms to reflect the new biennial renewal fees; however, the final-omitted rulemaking should create no additional paperwork for the private sector.

*G. Sunset Date*

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

*H. Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on May 22, 2002, the Board submitted a copy of the final-omitted rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). On the same date, the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), the final-omitted rulemaking was

deemed approved by the HPLC and the SCP/PLC on June 11, 2002, 2002. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 13, 2002, and approved the final-omitted regulation.

*I. Additional Information*

Interested persons are invited to submit inquiries regarding this final-omitted rulemaking to Gina Bittner, Board Administrator, State Board of Osteopathic Medicine, Post Office Box 2649, Harrisburg, PA 17105-2649, gbittner@state.pa.us.

*J. Findings*

The Board finds that:

(1) Public notice of its intention to amend its regulations as adopted in this order under sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) has been omitted under the authority contained in section 204(3) of the CDL, because the Board has, for good cause, found that the procedures specified in sections 201 and 202 of the CDL are, in this circumstance, impractical and contrary to the public interest as identified by the General Assembly in the Mcare Act because the Board must increase revenues immediately to meet the obligations imposed on it by the Mcare Act.

(2) The amendment of the regulation of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

*K. Order*

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 25, are amended by amending § 25.231 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 approval as to form and legality as required by law.

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

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*.

DANIEL D. DOWD, Jr. D.O.,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Commission, relating to this document, see 32 Pa.B. 3183 (June 29, 2002).)*

**Fiscal Note:** 16A-5311. No fiscal impact; (8) recommends adoption.



**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 25. STATE BOARD OF OSTEOPATHIC MEDICINE**

**Subchapter F. FEES**

**§ 25.231. Schedule of fees.**

An applicant for a license, certificate, registration or service shall pay the following fees at the time of application:

Application for unrestricted license to practice as osteopathic physician—original, reciprocal, boundary or by endorsement .....	\$45
Application for short-term camp license as osteopathic physician .....	\$30
Osteopathic Manipulative Therapy Examination .....	\$87
Temporary training license or graduate training certificate .....	\$30
Annual renewal of temporary training license or graduate training certificate .....	\$25
Application for physician assistant certificate .....	\$30
Application for supervising physician .....	\$95

Uncertified verification of any license or permit .....	\$15
Certification of any licenses, examination grades or hours .....	\$25
Biennial renewal—physicians .....	\$440
Biennial renewal—physician assistants .....	\$10
Penalty for late biennial renewal—per month or part of month .....	\$5
Duplicate license or certificate .....	\$5
Application for radiology (ARRT) examinations .....	\$25
ARRT Examination in Radiography .....	\$20
ARRT Examination in Nuclear Medicine Technology .....	\$20
ARRT Examination in Radiation Therapy Technology .....	\$20
ARRT Limited Examination in Radiography—Thorax and Extremities .....	\$25
ARRT Limited Examination in Radiography—Skull and Sinuses .....	\$25
Application for acupuncturist registration .....	\$30
Biennial renewal—acupuncturists .....	\$25
Application for acupuncturist supervisor registration .....	\$30

[Pa.B. Doc. No. 02-1171. Filed for public inspection July 5, 2002, 9:00 a.m.]

# PROPOSED RULEMAKING

## DEPARTMENT OF HEALTH

[28 PA. CODE CH. 25]

### Hearing Aid Sales and Registration

The Department of Health (Department) proposes to amend Chapter 25 (relating to controlled substances, drugs, devices and cosmetics). The proposed amendments are set forth in Annex A.

#### A. Purpose and Procedure

The proposed amendments are intended to facilitate implementation of amendments made to the Hearing Aid Sales Registration Law (act) (35 P. S. §§ 6700-101—6700-802) by the act of December 21, 1998 (P. L. 1190, No. 153) (Act 153), and to otherwise bring up to date the regulations promulgated under the act. The act governs the sale of hearing aids and regulates the related activities of hearing aid dealers and fitters. It imposes duties upon, and prohibits certain acts by, hearing aid dealers and fitters, and provides for penalties that may include denial, suspension, or revocation of a dealer's or fitter's registration. The changes made by Act 153 included imposing continuing education requirements upon hearing aid fitters and making failure to comply with those requirements a cause for denial, suspension or revocation of a registration certificate. Act 153 also raised the fees for registration certificates, and required disclosure agreements and money-back-guarantees to be provided to purchasers and prospective purchasers of hearing aids.

The proposed amendments are also responsive to Federal preemption of certain portions of the act due to regulations promulgated by the Federal Food and Drug Administration (FDA) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C.A. §§ 301—397) specifically section 521 (21 U.S.C.A. § 360k). The Federal regulations regarding hearing aids are published at 21 CFR 801.420 and 801.421 (relating to hearing aid devices; professional and patient labeling; and hearing aid devices; conditions for sale). A few Commonwealth requirements that conflict with the Federal regulations were conditionally exempted from preemption under the final rule issued by the FDA in Docket No. 77N-0333, dated October 10, 1980 (45 FR 67321) (Final Rule). These will be discussed. Other amendments are proposed for the sake of clarity or correctness, to fix typographical errors, or to bring the regulations into compliance with the *Pennsylvania Code and Bulletin Style Manual*. Proposed grammatical changes will not be discussed. A number of amendments have been proposed to ensure that terms are used consistently, including the use of "registrant" to refer to dealers and fitters, and "prospective hearing aid user" to refer to one who is being evaluated but who has not purchased a hearing aid. Additionally, the term "authorized representative" would be defined and used to clarify that one who fits the definition of "authorized representative" may act for a prospective hearing aid user. Also proposed is the addition of a "Subchapter B" heading for §§ 25.201—25.221, entitled "Hearing Aid Sales and Registration," to differentiate the hearing aid regulations from regulations in proposed new "Subchapter A," entitled "Controlled Substances, Drugs, Devices and Cosmetics."

Following the passage of Act 153, stakeholders began contacting the Department with suggestions and ideas for the revised regulations, and draft proposed regulations

were formulated. In drafting the proposed changes to the regulations, the Department has taken into account the recommendations of the Hearing Aid Advisory Council (Council), as well as the written and oral comments that have been made in response to the draft proposed regulations by stakeholders, primarily members of the regulated community. Changes made in response to this input include the proposed updating or removal of archaic technical requirements, and proposed changes to more accurately reflect the procedures followed by the Department in administering examinations to hearing aid fitters and in registering both dealers and fitters.

In addition to enforcement responsibilities this act confers upon the Department, the act also confers enforcement responsibilities upon the Office of Attorney General and district attorneys offices. In developing the proposed amendments, the Department consulted with the Office of Attorney General, in particular, its Bureau of Consumer Protection.

#### B. Summary of the Proposed Amendments.

It is proposed that the chapter be divided into Subchapters A and B to separate the hearing aid regulations from the other regulations in the chapter. Proposed Subchapter B would include regulations adopted under the act, while proposed Subchapter A would include regulations adopted under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144).

##### Section 25.201. Application.

This section sets out the scope of the regulations that would comprise Subchapter B and the Department's authority to adopt these regulations. The proposed changes are made to enhance clarity and to substitute a reference to Subchapter B for the present reference to the span of regulations that would comprise that subchapter. Removal of the term "surgeon" is proposed in this section and throughout the regulations, as that term is encompassed by the term "physician." This change was suggested by a stakeholder during the drafting process.

##### Section 25.202. Definitions.

This section defines the relevant terms used in the regulations that would comprise Subchapter B. The Department proposes several amendments to this section. The Department seeks to clarify that information or documentation required to be provided to a prospective hearing aid user must also be provided to a person authorized to act on behalf of the prospective user. The Department, therefore, proposes to include the term "authorized representative," and to define that term as being a person who is authorized by law to make a decision for a hearing aid user or prospective user. Defining the term "physician," as proposed, will provide consistency with regulations in other chapters of the Department's regulations, and clarify that the term refers to a medical or osteopathic medical doctor who has a currently registered license to practice in this Commonwealth.

The definition of "advertise and any of its variants" would be revised to include the use of the Internet for advertising purposes. This change is certainly a necessary one, given the ubiquity and ease of Internet marketing and advertising.

The proposed addition of the term "used hearing aid" is made under an FDA requirement. Federal regulations

require that a statement identifying a used or rebuilt hearing aid must appear on the package and on a tag attached to the hearing aid, and may also appear in the "User Instructional Brochure." (See 21 CFR 801.420(c)(5)). The Commonwealth's requirement that the receipts provided to hearing aid purchasers must also identify used or reconditioned hearing aids as such could, therefore, have been preempted. However, the FDA decided to exempt the Commonwealth's requirement from preemption contingent on the Commonwealth applying the Federal definition of "used hearing aid." To comply with this directive, the proposed definition of "used hearing aid" is included. It is substantially the same as the Federal definition.

The definition of "continuing education program" is included to label a program that the Department will recognize towards satisfaction of the continuing education requirements effected by Act 153. Hearing aid fitters are now required to secure continuing education credits to renew their registrations. Finally, a new definition of the term "audiologist" is proposed to more accurately reflect the regulatory scheme governing that profession.

*Section 25.203. Advisory Council.*

This section sets out the requirements for the Council, established under section 201 of the act (35 P. S. § 6700-201). It is proposed that subsection (c)(2), which pertains to Council meetings, be removed. The requirements of the paragraph are too rigid and relate to internal Department matters that do not need to be addressed by regulation. The Department will, of course, coordinate with Council members to schedule Council meetings and make every effort to give Council members timely notice of meetings far in advance. The few remaining proposed changes are to improve clarity and consistency of language.

*Section 25.204. Application for and renewal of registration.*

This section sets out the process of applying for or renewing a registration, as required by sections 301 and 312 of the act (35 P. S. §§ 6700-301 and 6700-312). The proposed change in the title of the section simply gives the reader notice that the requirements of the section apply to both registration and renewal of registration.

A proposed change to subsection (b) would clarify that the \$50 registration fee for an apprentice hearing aid fitter is separate from the initial \$150 fee to take the fitter's examination, and that the amounts may be paid separately. As specified in proposed § 25.207(g) (relating to categories of registrations; fee schedule), an apprentice hearing aid fitter, or the holder of a temporary fitter's registration, who has failed the fitter's examination need only pay an additional examination fee of \$50 to take the examination again. The applicant does not have to pay an additional \$150 each time the exam is taken. Additional proposed changes to subsections (b) and (c) allow for the Department to approve payment methods other than check or money order to pay registration fees and other amounts that may be due.

The proposed requirement in subsection (b) that a completed application for registration as an apprentice hearing aid fitter shall be filed with the Department at least 30 days prior to the examination applies when an apprentice fitter failed the examination the first time and must reregister as an apprentice. The 30-day requirement does not apply to an apprentice fitter who is applying for a registration certificate for the first time. An apprentice is required to serve in an apprenticeship for at least 4 months prior to taking the exam for the first time. An

apprentice cannot even begin the apprenticeship prior to being registered. Therefore, the apprentice fitter who has never been registered previously would already have applied for registration more than 4 months prior to taking the fitter's examination, far in excess of the required 30 days. The 30-day requirement does ensure that an apprentice fitter who is retaking the fitter's examination will reapply for a registration certificate at least 30 days prior to retaking the examination.

Some registrants apply for renewals of registration certificates only a few days before their certificates are due to expire. This creates an unreasonable administrative burden for the Department to process these applications within a few days to prevent the registrations from lapsing. The addition of the proposed requirement in subsection (d) that a renewal must be applied for at least 30 days prior to the expiration of a registration certificate, and the proposed addition of subsection (g), which states that a renewal applied for after that time may not be approved before the certificate expires, are intended to ensure that the Department has a reasonable period of time to process renewal requests. This is especially reasonable in view of the fact that all registration certificates expire on the same date—April 15 of each year. The remaining changes the Department proposes in this section would revise fees to be consistent with changes made by Act 153, and relate that certain registrants must meet continuing education requirements to renew their registrations, which requirements are also imposed by Act 153.

*Section 25.205. Additional registration requirements.*

This section sets out the requirements for registration as a dealer, fitter or apprentice in addition to those set forth in § 25.204, as well as the requirements for reciprocal or temporary registration. The proposed addition of subsection (c)(3) is intended to address a practical problem. While the regulation allows for registration certificates by endorsement (by the Secretary) to be issued to persons licensed as dealers or fitters by states that maintain reciprocal practice privileges with the Commonwealth, there are no states that actually have those arrangements with the Commonwealth at this time. Therefore, there are no persons currently eligible for registration by endorsement. Proposed subsection (c) informs persons who believe they may be potential registrants by endorsement how they may register, given that registration by endorsement is not an option at this time.

The proposed additions to subsection (d)(2)(ii) are also intended to address a practical problem. The Hearing Aid Program staff receive frequent telephone calls from registrants who are preparing to sponsor an apprentice, asking what should be included in a training program, so that they may prepare the required outline. Section 302 of the act (35 P. S. § 6700-302) states that applicants shall demonstrate thorough knowledge of certain subject areas, which areas will be included on the examination. These subject areas are repeated in the proposed regulatory language. This should provide sufficient guidance for those registrants who are sponsoring apprentices to develop an effective training program.

The remaining changes to this section are proposed by the Department to promote clarity and consistency of language.

*Section 25.206. Examinations.*

This section deals with the qualifying examination for hearing aid fitters. It addresses matters such as the frequency with which the examination is given, obtaining

examination dates, and the determination of passing grades. The changes to this section are proposed by the Department to promote clarity and consistency of language.

*Section 25.207. Categories of registrations; fee schedule.*

This section sets out application and registration fees for dealers, fitters and apprentices, and other fees provided for by the act. The Department is proposing changes to this section to incorporate the increased registration fees adopted by Act 153. Other changes proposed by the Department include changes to subsections (b) and (c) to clarify that, if an initial registration certificate is issued during the second half of the registered year, only half of the registration fee will be charged. Because all registrations expire on April 15 (under section 311 of the act (35 P. S. § 6700-311)), initial dealer registrations issued between October 15 and April 14 are prorated so that the initial fee is \$100, rather than the full \$200. However, because initial fitter registrations are always preceded by an exam, and \$150 of the initial fee is associated with the exam, initial fees for fitter's registration certificates are not prorated. After an initial registration certificate is issued, all renewals are for a full year. Both dealer and fitter renewals will carry a fee of \$100.

Changes to subsection (e) have been proposed to clarify that the part of the registration fee which is charged to the applicant holder of a temporary fitter's registration certificate to take the hearing aid fitter's examination for the first time, which is currently \$150, will be refunded if the applicant is ineligible to take the exam. Because a considerable period of time may legitimately elapse between the issuance of a temporary fitter's registration certificate and the registrant taking the fitter's examination, subsection (e) would allow the examination fee to be paid separately from and later than the registration fee for the temporary fitter's certificate (as subsection (f) already explicitly allows apprentice fitters to do).

The proposed changes to subsection (g) serve to illustrate the difference between duplicate certificates, which are issued to replace an original certificate that has been lost or destroyed or so that a registrant has an official copy of the certificate for display in more than one location, and replacement certificates, which are issued upon a name change by the holder of the certificate.

Subsection (i) would state that a \$50 delinquency fee applies when an applicant applies for the renewal of a registration certificate more than 30 days after the registration certificate has expired. The act states that such a delinquency fee applies if the registration certificate is renewed more than 30 days after expiration (see section 312 of the act); the proposed language is intended simply to ensure that registrants are aware of that fact. Act 153 increases the delinquency fee from \$25 to \$50, and increases the fee for renewal of a suspended registration certificate from \$50 to \$100.

*Section 25.208. Display of registration certificates; offices.*

This section contains requirements for display and inspection of registration certificates. It also includes various requirements regarding a registrant's place or places of business.

The proposed rewrite of subsection (b) would make explicit the requirement that registrants display a duplicate certificate of registration in each branch office. The registrant would apply for and obtain the duplicate from the Department. In addition to the information contained on the original certificate, the address of the correct

branch office would appear on a certificate issued for that office. The change would ensure that the certificate on display shows that the location has been brought to the attention of the Department, as required by the act. An additional proposed change is to address the subject matter currently addressed in subsections (b) and (c), in subsections (c) and (d), respectively, due to the proposed repeal of the current text of subsection (d).

The proposed change to current subsection (b) (proposed subsection (c)) specifies that a registrant shall identify a fixed place of business in an application for registration. This protects the public both by preventing registrants from operating without any fixed place of business, and by ensuring that the Department and hearing aid purchasers can locate and contact registrants. The proposed requirement that a registrant operating out of a residence use a space that is set aside for office purposes protects the public health and safety by ensuring that there is a proper space for testing and for the comfort of the prospective hearing aid user. The deletion of the current text of subsection (d) is proposed because the Department no longer issues the cards bearing the expiration date of registration certificates that are the subject matter of subsection (d). The remaining changes to subsections (c)—(e) are proposed for greater clarity.

*Section 25.209. Facilities, procedures and instrumentation.*

This section identifies the facilities registrants must provide, the procedures that must be followed in fitting and selling a hearing aid, and the standards with which instruments must be in compliance. The proposed addition of the word "documented" in subsection (a)(1) serves to reinforce the requirement, stated in § 25.214(1)(i) (relating to recordkeeping), that records of the ambient noise levels of the test area must be maintained for 7 years as part of the registrant's records.

Several changes are proposed in subsection (b). A number of these are technical changes brought to the attention of the Department by stakeholders, and are intended to more closely reflect current technical standards for testing. They include the addition, in subsection (b)(2)(i), of 8000 Hz to the frequencies at which air conduction tests for hearing level thresholds can be performed, as 8000 Hz is a commonly tested frequency. The frequency of 250 Hz would be removed as an acceptable one for testing hearing level thresholds, as 250 Hz is not really a speech frequency, and is an unreliable test frequency that tends to indicate a greater hearing loss than actually exists. Suggested changes to subsection (b)(2)(iv) and (v) would allow additional methods to be used to determine how well an individual can hear speech. Other proposed changes include references to the use of both head and insert earphones in testing, and the inclusion of speech intelligibility as an area of hearing function that may be improved by the use of hearing aids.

An addition to subsection (b)(1) is proposed to supplement the present prohibition against registrants selling a hearing aid unless the prospective user has had specified hearing tests within the previous 6 months. The section currently exempts sales of identical replacement hearing aids from this requirement, thus enabling identical hearing aids to be sold indefinitely without the hearing aid user being retested. Because the needs of hearing aid users change periodically, it is reasonable to ensure that hearing aid users who wish to purchase an identical hearing aid are retested at least every 12 months.

*Section 25.210. Receipt, disclosure agreement and money back guarantee to purchaser—purchaser protection.*

This section sets out requirements for written receipts, disclosure agreements and money back guarantees. The Department proposes to divide this section into subsections to deal with additional subject matter. The existing regulation would be incorporated in subsection (a). A minor change to subsection (a) would address stakeholder queries as to whether the act requires receipts to be on a single sheet of paper. The proposed change clarifies that they are not required to be on a single sheet of paper.

The Department further proposes an addition to subsection (a)(2), which currently requires the serial number of the hearing aid to be on the receipt. The change, which allows another identification number to be used if a serial number is not available, addresses the sale of new disposable hearing aids, which do not have serial numbers.

Proposed subsections (b) and (c) are new. They are proposed in response to Act 153 requirements that fitters provide a written disclosure agreement and a written 30-day money back guarantee to hearing aid purchasers to allow them to return the hearing aids for a refund. In keeping with Act 153, the Department's proposed form is written in conformance with the Plain Language Consumer Contract Act (73 P. S. §§ 2201—2212). Proposed subsection (b) would require the disclosure agreement/money back guarantee to be printed in ten-point or larger type. It would further require the registrant to provide the disclosure agreement/money back guarantee prior to the provision of any service relating to the possible sale of a hearing aid and to explain it in detail, as required by the statute.

The Department proposes to require registrants to use a form disclosure agreement that includes the money back guarantee as part of the same document. The use of a single document is proposed because the money back guarantee is closely related to the fees that are a main part of the subject matter of the disclosure agreement. The Department is aware that there has been some confusion on the part of both registrants and hearing aid purchasers as to what fees may be retained by registrants when a hearing aid is returned, and how the cancellation fee is to be calculated. In fact, improper cancellation fees or disclosure agreements are among the leading causes of consumer complaints received by the Department in the last few years.

The Department believes that a very small number of registrants deliberately take advantage of a customer population that, due to the nature of the services offered, includes a large percentage of elderly persons, who are particularly vulnerable to bad practices. However, while some improper disclosure and cancellation practices may be deliberately utilized, there also seems to be genuine misunderstanding by some hearing aid dealers and fitters as to how the law in these areas is to be applied. The Department is therefore proposing that registrants be required to use the form disclosure agreement/money back guarantee the Department is proposing as part of the regulation. This would reduce confusion and protect vulnerable consumers by ensuring insofar as is possible that they receive a full explanation of what they must pay for services and goods and what part of that money may be refunded. This also would clarify the Department's interpretation of the act for the regulated parties and the public at large.

The primary problem that has arisen with regard to the money back guarantee is that, in practice, registrants

often charge, in addition to the charge for a hearing aid, fees for services associated with the fitting procedure, such as hearing testing, hearing evaluation, and fitting a hearing aid, and retain those fees in addition to the statutorily permitted cancellation fee when a hearing aid is returned. As a result, registrants sometimes retain several hundred dollars in addition to the statutorily permitted cancellation fee, whereas the purchasers returning the hearing aid believe that they would receive a refund of all money paid except for a maximum cancellation fee of \$150 per hearing aid. The Department interprets Act 153 to permit registrants to charge fees for services separately from the price of a hearing aid. The cancellation fee permitted by statute deals solely with, and is calculated based solely upon, the price of the hearing aid and accessories. In other words, the cancellation fee pertains solely to the goods sold, and registrants may properly charge additional fees for services. Those fees are separate from the price of the hearing aid. Because they are attributable to services that have already been rendered, they are not required to be refunded upon the return of a hearing aid.

Although the practice of charging separate fees for services is not necessarily illegal or improper, it has become evident that in many cases registrants have not been making clear to customers that charges for services may be retained or collected by them when a hearing aid is returned, in addition to the cancellation fee, which is calculated based upon the price of a hearing aid and accessories. Indeed, some registrants do not appear to grasp this distinction themselves, and incorrectly represent charges for services as being part of the price of the hearing aid. This misunderstanding on the part of registrants is evident in confusing practices such as stating a single price for a hearing aid on the receipt, which price in fact includes service fees that the registrant intends to retain if the hearing aid is returned. In these cases, even if the service fees are properly itemized on the disclosure agreement, consumers get mixed messages. This problem is compounded when registrants fail to fully explain the disclosure agreement, which no doubt occurs at times. In some cases, registrants add the amounts attributable to fees for services to the price of the hearing aid, and then calculate the cancellation fee based on that amount. The registrants then retain both that cancellation fee and the fees for the services. This is not in keeping with the statute in several respects. First, the cancellation fee is inflated by including amounts not attributable to the actual price of the hearing aid when calculating it. Second, although the statute requires registrants to explain disclosure agreements in detail, in some instances registrants are not giving consumers clear explanations of what amounts paid are attributable to fees for services and what the actual price is for the hearing aid.

Because the statute requires fees, including the cancellation fee, to be itemized and disclosed on the disclosure agreement, and because the frequent confusion as discussed previously implicates both the disclosure agreement and the money back guarantee provisions of the statute, the Department's proposed form addresses both matters. To address the lack of clarity which has been noted in the failure on the part of some registrants to distinguish the difference between fees for services and the price of hearing aids, the proposed form disclosure agreement/money back guarantee is divided into Parts A and B. Part A requires the registrant to list and describe the services offered in the first column, as the statute requires. Part A provides space for the registrant to state the fee for each service, and to clearly identify which

amounts are refundable if a hearing aid is returned, and which are not. Further, Part A requires registrants to state, along with the fee, whether the fee will be waived if a hearing aid is purchased. This is included because some registrants follow this practice, and stating it as such serves to clarify that the fees for services are not part of the price of the hearing aid.

Part B of the proposed disclosure agreement/money back guarantee form is devoted to stating the price of each hearing aid and the associated accessories. The only amounts that should be identified as being "not refundable" are the cancellation fees for the hearing aids and associated accessories, the combined amount of which is restricted by statute.

The proposed form has three separate places for the potential hearing aid purchaser to sign. Two of these must include the date and time of the signature. The signature required directly under Part B is intended to ensure that the registrant explained the disclosure agreement/money back guarantee, particularly the service fees that will be incurred and the cancellation fees that might be incurred, to the potential purchaser prior to the provision of any service, as required by the statute. Of course, Part B cannot be fully completed prior to providing some service, since the registrant cannot know what hearing aid may be necessary, let alone its price. However, it can and must be preliminarily explained. In any case, the customer's signature on the second signature line, indicating that a sale has been made, must be obtained following the sale. The registrant should be sure that the cancellation fees and money back guarantee are fully understood by the purchaser prior to the second signature being obtained. The customer should be provided with a completed copy of the disclosure agreement before leaving.

The customer should not be asked to sign or initial the box identifying the date of delivery until the customer picks up the hearing aid. At that time, as proposed, the date of delivery must be noted, the customer's initials or signature must be obtained in the block, and the registrant must provide another copy of the form to the purchaser with all purchaser signatures and initials. The Department is proposing to require this additional protection because consumers are often unsure as to when the 30-day return period will end, resulting in disputes between consumers and registrants as to whether a hearing aid was returned within the period allowed. The statute provides that the 30-day return period runs from the date of delivery of the hearing aid, not the date the sale was made. It is hoped that by bringing the date of delivery to the attention of both the registrant and consumer, these disputes will occur less often, as both parties should be clear as to the date by which the hearing aid must be returned to trigger a refund. Again, the registrant is expected to explain these matters clearly to the consumer.

Registrants should expand the form if necessary to fill in the proper information in the blanks provided. The form may also comprise more than one page if necessary; however, it should be clearly identified as being a single document.

The form should not be interpreted to require a charge for services. There are many registrants who charge no fee for fitting services. These registrants need only indicate that the price is zero. If registrants choose to give full refunds if a hearing aid is returned rather than retaining a cancellation fee, they may simply state the entire price of the hearing aids in the "refundable"

column of Part B. As stated in subsection (c)(3), registrants are certainly permitted to extend the money back guarantee period beyond the statutorily required minimum 30 days. The return period may not, of course, be made shorter than 30 days in contravention of Act 153.

The form disclosure agreement/money back guarantee provides that, if a purchaser cancels an order prior to taking delivery of the hearing aid, the purchaser is entitled to a full refund of the purchase price of hearing aids, and a refund of money paid for services not yet rendered. This rule is dictated by the act, which permits a registrant to charge a cancellation fee for the return of a hearing aid and accessories. If delivery never takes place, the hearing aid and accessories are not returned, so a cancellation fee is not applicable and may not be charged. Registrants do not suffer much, if any, financial impact due to giving full refunds in these circumstances, as hearing aid manufacturers generally give full credit to registrants when hearing aids are returned to the manufacturer prior to a customer having taken delivery. Inclusion of the statement on the disclosure agreement/money back guarantee telling the purchaser that orders cancelled prior to delivery are entitled to full refunds is intended to prevent registrants from representing to purchasers who attempt to cancel orders prior to taking delivery that the purchasers are not allowed to do so. The Department does not believe that this is a widespread practice, but it has occurred, most egregiously in cases when the intended user died shortly after purchase and prior to delivery.

#### *Section 25.211. Medical recommendations; waiver forms.*

This section addresses when a medical recommendation made by a physician is required prior to the sale of a hearing aid and sets out a waiver form for use when a written waiver of an exam is permitted. The heading of the section was changed to clarify that the section discusses both medical recommendations, and the right of a prospective hearing aid user to waive a medical exam. The proposed change to subsection (a), specifying that only prospective hearing aid users 18 years of age or older may waive a medical examination, is not a substantive change; that requirement would be moved from the current subsection (b). Proposed subsection (a) also clarifies that the medical waiver shall be signed before the sale of a hearing aid occurs. Note that proposed subsection (a) contains the waiver language mandated by the act as opposed to the Federal waiver language. Because the Commonwealth's waiver language was found by the FDA to be "substantially similar" to the Federal one, it was specifically exempted from preemption by the FDA.

The text of subsections (b) and (c) would be deleted; replacement language for both has been proposed. These proposed changes are made largely in response to the Federal preemption of certain portions of the act. Specifically, section 402 of the act (35 P. S. § 6700-402) was preempted to the extent it purports to prohibit registrants from fitting or selling a hearing aid to any person who exhibits certain enumerated physical symptoms without first having a written recommendation from a licensed physician stating that a hearing aid may be beneficial to the person. The FDA declared that contrary to the language of the act, the Commonwealth cannot restrict the right of persons 18 years of age or older to waive an exam based on whether they have certain physical symptoms. The current subsection (b) is invalid because it states that a waiver may not be used for persons having the conditions enumerated in section 402 of the act. The current subsection (c) states that subsection (b) cannot be

enforced unless the FDA exempted it from preemption. As stated previously, the FDA did not grant that exemption.

Proposed subsections (a) and (b) require a registrant either to obtain a medical recommendation prior to selling a hearing aid, or to ensure that a prospective user or authorized representative signs a waiver form indicating that the individual wishes to waive the medical examination. Proposed subsection (a) goes on to state when and in what form a waiver of a medical exam is required when dealing with prospective users over 18 years of age. A written waiver form which appears exactly as set out in subsection (a) is required if the prospective hearing aid user elects to waive a medical examination, unless the registrant is selling an identical replacement for a worn out or damaged hearing aid. In the latter event, the Federal waiver form is prescribed by Federal regulation, but use of the Commonwealth form is permitted.

Technically, the Federal waiver form (the language of which is somewhat different than the Commonwealth's, although substantially the same) applies when a registrant is selling a replacement hearing aid. Although the Commonwealth's waiver form was deemed by the FDA to be acceptable for the purposes for which its use is prescribed by the act, the Commonwealth's act provides that neither an examination by a physician nor a waiver are necessary if a registrant is selling replacement parts or accessories, or replacing a worn out or damaged hearing aid. This exception in the act is not mirrored in the Federal regulations. Therefore, although the Commonwealth does not require either a medical exam or waiver when selling replacements, the Federal requirement for a medical evaluation or waiver does apply when the registrant is replacing a worn out or damaged hearing aid. Since the requirement of a medical exam or waiver in those cases is Federal, the Federal waiver form technically would apply. However, because the FDA has stated that the Commonwealth's waiver form is acceptable, the Department encourages its use. It will generate less confusion to substitute the Commonwealth's waiver form for the Federal one when dealing with replacements, than to use the Commonwealth form in some cases and the Federal form in other cases.

Stakeholder input regarding the use of the Federal form indicated that there was some belief that including the full text of the Federal form in the regulations and stating that it could be used when selling a replacement for a worn-out or damaged hearing aid, would be very confusing for registrants. The Department agrees and has not reproduced it. However, the Department has no statutory authority to require registrants to use the Commonwealth form in all circumstances, even though it is acceptable in all circumstances. Therefore, subsection (b), rather than stating that either the Federal or State waiver form may be used, would state that a "legally proper" waiver form should be used. Again, it is hoped that registrants will use the Commonwealth waiver form in all circumstances; this is certainly easier for them than trying to remember when the Federal waiver is appropriate and when it is not.

Like proposed subsection (b), proposed subsection (c) clarifies current requirements given the interaction of Federal requirements with the Commonwealth law—in this case, when dealing with prospective hearing aid users that are 18 years of age or younger. The FDA exempted from preemption the Commonwealth's requirement that, for a registrant to sell a hearing aid to an individual 18 years of age or younger, a recommendation for a hearing aid must have been made within the

previous 6 months by a physician specializing in otology or otolaryngology. This requirement was not preempted even though it is more stringent than the Federal requirement, which permits the recommendation to be made by any physician. However, the Commonwealth's law does not require any medical examination and recommendation for a person 18 or younger (or any other person) when a hearing aid is being sold to replace an identical hearing aid within 6 months of the purchase of the original one. Conversely, the Federal regulations require a person under the age of 18 to be examined by a licensed physician within 6 months prior to the sale, regardless of whether the hearing aid is an identical replacement aid or not. Because the Commonwealth law is, therefore, less stringent where identical replacement hearing aids are concerned, the Federal requirement that a person under 18 years of age shall have a medical recommendation for a hearing aid from a licensed physician (as opposed to a specialist) applies when the hearing aid in question is an identical replacement being sold within 6 months.

Note that a medical examination be waived for a person under 18 years of age—a physician's (usually a specialist's) recommendation is always required in advance of a sale of a hearing aid for this person. Note also that the requirement for examination by a specialist found in the Commonwealth's law applies to children up to and including 18-year-olds, while the Federal regulations permit prospective hearing aid users who are 18 years of age or older to waive a medical examination. Eighteen-year-olds who are buying new hearing aids are therefore subject to the Commonwealth's requirement for examination by a specialist, but an 18-year-old buying an identical replacement hearing aid may waive a medical examination entirely. This explains the necessity for the potentially confusing (but accurate) use in subsection (a) of the phrase, "older than 18 years of age," while subsection (c) uses both "18 years of age or younger," and "younger than 18 years of age."

The requirement of section 402 of the act that registrants shall inform prospective users in writing that it would be in their best interest to consult a physician specializing in diseases of the ear if any of the enumerated conditions are present, survives, as the FDA granted a waiver of that requirement. Proposed subsection (d), therefore, requires registrants to advise prospective purchasers in writing that it would be in their best interest to consult a physician if they exhibit the enumerated conditions. Note that proposed subsection (d)(7) does not repeat the statutory language, which is "Significant air-bone gap, when generally accepted standards have been applied," but instead specifically identifies the current "generally accepted standards" in Hz.

*Section 25.212. Medical recommendations by examining physicians.*

This section provides a statement that is to appear in an equivalent or more detailed form in any medical recommendation for a hearing aid, and requires a birthdate to appear in any recommendation made for an individual 18 years of age or younger. It is proposed that subsection (a) be changed to clarify that a medical recommendation must be signed by an examining physician within 180 days prior to the sale of a hearing aid. Subsection (c) would be deleted as being redundant due to this clarification of subsection (a). The proposed changes to subsection (b) are also made for the purpose of clarity, and do not affect the substantive requirements of the section.

*Section 25.213. Consumer review.*

This section sets out those documents that a registrant must provide and explain to a prospective hearing aid user or to that individual's authorized representative, and covers additional rules that apply to sales made in a purchaser's residence. The proposed changes to this section promote clarity and consistency of language.

*Section 25.214. Recordkeeping.*

This section describes the records and information that must be kept and maintained by registrants for 7 years following the sale of a hearing aid. These requirements were not preempted. They were specifically given a waiver by the FDA even though they are more stringent than Federal requirements. The proposed change to paragraph (1)(i) ensures that records will be kept of the ambient noise level of the test area. This will enable the Department to better enforce the related regulatory requirement that registrants provide an appropriate test area, the ambient noise level of which may not exceed 55dB on the A scale of a sound level meter. The changes to paragraph (1)(v) are proposed to incorporate up-to-date technical testing requirements. The proposed changes to paragraph (2) are made in response to the statutory requirements of Act 153, that registrants are to provide purchasers with a disclosure agreement and a written money-back guarantee. These documents must also be retained as part of a registrant's records.

*Section 25.215. Denial, revocation or suspension of a registrant's certificate.*

This section specifies a number of causes for which the Secretary may deny, suspend, revoke or impose conditions upon registration certificates. The proposed change to paragraph (6) is made to clarify that a registrant's certificate is jeopardized if the registrant employs to perform fitter functions any person unauthorized by law to perform within a fitter's scope of practice. Paragraph (9) includes a proposed change clarifying that an audiologist or physician may legitimately function under a registrant's registration number. The Department proposes to add the phrase "and fees associated with those services or adjustments" to paragraph (13)(ii), to explicitly include misrepresentations having to do with fees for services among those offenses that may result in action being taken against a registrant's certificate.

Paragraph (23)(i) would prohibit registrants from making representations that a hearing aid is "new" when that is not the case, as when a hearing aid has been rebuilt, and would require registrants to identify used hearing aids as such. As stated previously in discussing the definition of "used hearing aid," the FDA required the Commonwealth to utilize the Federal definition of "used hearing aid" to avoid preemption of the act's requirement that used hearing aids be identified as such on sales receipts. Subsequently, Act 153 was adopted. Section 504.1 of the act (35 P. S. § 6700-504.1) appears to permit hearing aids that have been refinished or reconditioned by the hearing aid manufacturer or its agent to be identified as new rather than used, if the hearing aids are subject to all of the warranties and guarantees that would normally accompany a new hearing aid. This interpretation, however, does not comport with the requirement that the Commonwealth abide by the Federal definition of "used hearing aid," and must therefore be understood to be limited to making those hearing aids subject to the money back guarantee that is the subject matter of section 504.1 of the act. Those hearing aids must still be identified as required in paragraph (23)(i).

Proposed paragraph (24)(iv) would prohibit a registrant from making a false, misleading or deceptive representation about another registrant or manufacturer, which representation enhances or is likely to enhance the registrant's own hearing aid related business. Paragraph (27) is proposed in response to the addition of continuing education requirements by Act 153, and clarifies that failing to furnish evidence of having fulfilled those requirements or providing false information regarding continuing education obtained may result in denial, revocation, or suspension of a registrant's certificate.

*Section 25.216. Continuing education requirements.*

This section, as well as §§ 25.217—25.220, is proposed to facilitate implementation of the continuing education requirements imposed by Act 153.

This proposed section implements the continuing education requirements of Act 153, which provides that the continuing education requirement for renewal of a fitter's registration certificate is 20 hours of credit over the preceding 2 years. Proposed subsection (a) explains that requirements for applicants who have had a certificate for less than 2 years will be calculated by prorating the required credits over the number of months during which the applicant has held a certificate, counting only those months during which the applicant held the certificate for at least 15 days. Proposed subsection (b) states that an expired certificate can be renewed within 5 years of the expiration if 20 hours of continuing education credits have been obtained within the 2 years preceding the request for renewal. Proposed subsection (c) would require a fitter who has a suspended certificate to satisfy the continuing education requirement during the period of suspension so that the general requirements for number of credits are met.

Proposed subsection (d) clarifies that the 2-year period for which credits are required begins running as of April 15, 2002. Demonstrating the high standards to which they hold their profession, hearing aid fitters have already been voluntarily complying with the continuing education requirements of the statute. The program gratefully acknowledges their response, and anticipates that voluntary compliance will continue through the implementation period of the regulations.

Proposed subsection (e) states that acceptable subject matter for a continuing education program includes any subject that contributes directly to the competence, skills and education of a fitter. It further provides that at least one-half of all credits must be obtained in the listed "core subject" areas.

*Section 25.217. Approval of continuing education programs.*

This proposed section states how Department approval of continuing education programs may be obtained, the length of time for which that approval is valid, and how to renew it.

*Section 25.218. Credit for continuing education.*

This proposed section states how continuing education credits will be obtained and reported, and what credits will be accepted by the Department, including continuing education credits through endorsement, and for self-study, practical courses, and instruction.

*Section 25.219. Responsibilities of persons offering continuing education programs.*

This proposed section would impose requirements for persons offering continuing education programs, including reporting, course evaluation, record retention and monitoring requirements.



*Section 25.220. Right to enter, inspect and obtain records.*

This proposed section would require persons who offer continuing education programs to produce documents and other items for copying and inspection upon the request of the Department.

*Section 25.221. Exceptions.*

This proposed section would allow the Department to grant exceptions to any of the requirements in Subchapter B for good cause shown, except for statutory requirements repeated in the subchapter. This is intended to allow the Department and the regulated public some flexibility in dealing with each other and the requirements of Subchapter B.

*C. Statutory Authority*

The Department's general authority to promulgate regulations is established by section 2102(g) of The Administrative Code of 1929 (71 P.S. § 532(g)). The Department is given specific authority to promulgate rules and regulations to enforce the act in section 205 of the act (35 P.S. § 6700-205), which section was amended by Act 153 to include the authority to promulgate regulations to effect the new requirements of Act 153.

*D. Who is Affected by the Proposed Amendments*

The proposed changes would affect hearing aid users and prospective users. Hearing aid dealers and fitters are already required by Act 153 to comply with that statute's new requirements, including requirements that they provide disclosure agreements and money-back guarantees to hearing aid purchasers, and pay increased fees for registration certificates. Hearing aid fitters shall also comply with the act's continuing education requirements. Amending the regulations ensures that all requirements affecting the regulated parties will be in one place and also provides some clarification and updates to requirements that preexisted Act 153.

*E. Cost and Paperwork Estimates*

The proposed amendments repeat the increased registration fees for hearing aid dealers and fitters imposed by Act 153. Additionally, hearing aid fitters will incur costs to obtain the continuing education credits required by Act 153. Because the fees set forth in the regulations merely repeat the fees imposed by statute, and because the amount of continuing education required is also imposed by statute, virtually all costs directly attributable to the proposed amendments are costs that will be incurred by persons who need to meet regulatory requirements to offer continuing education courses. However, persons offering continuing education credits are permitted to charge persons who attend those courses and may recoup their costs through enrollment fees. One cost that is directly attributable to the regulations will be the cost incurred due to having to make a change to using the Department's proposed disclosure agreement/money back guarantee form. Registrants may also incur some costs due to the establishment, in Act 153, of a 30-day money-back guarantee to purchasers, which may enable purchasers to return hearing aids when registrants otherwise might not have permitted them to do so. However, Act 153 does allow registrants to retain the lesser of \$150 or 10% of the purchase price of the items, so it is unlikely that registrants will suffer actual financial loss due to the new requirement.

The proposed amendments will result in some additional paperwork for the Commonwealth in that the Department will be responsible for ensuring that hearing aid fitters have met their continuing education require-

ments. Hearing aid fitters will also need to retain records enabling them to establish that these requirements are met. Registrants will need to provide to each customer the disclosure agreement and money-back guarantee required by Act 153, and will also be required to retain copies of those documents in their records. Persons who offer continuing education courses will need to satisfy paperwork requirements.

*F. Effective/Sunset Dates*

The proposed amendments will become effective upon final publication in the *Pennsylvania Bulletin*. No sunset date is established. The Department will monitor the effectiveness of the regulations on a continuing basis and make changes as needed.

*G. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 24, 2002, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Health and Human Services Committee and the Senate Public Health and Welfare Committee. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under 5(g) of the Regulatory Review Act, if IRRC has any objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised prior to final publication of the regulations by the Department, the General Assembly and the Governor.

*H. Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to Theresa A. Ritchie, R. Ph., Director, Hearing Aid Program, Department of Health, P. O. Box 90, Harrisburg, PA 17108, (717) 783-1379, within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Persons with a disability who wish to submit comments, suggestions or objections regarding the proposed amendments may do so by using V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984[TT]. Persons who require an alternative format of this document may contact Theresa Ritchie so that necessary arrangements may be made.

ROBERT S. ZIMMERMAN, Jr.,  
*Secretary*

**Fiscal Note:** 10-165. (1) General Fund; (2) Implementing Year 2001-02 is \$Minimal; (3) 1st Succeeding Year 2002-03 is \$Minimal; 2nd Succeeding Year 2003-04 is \$Minimal; 3rd Succeeding Year 2004-05 is \$Minimal; 4th Succeeding Year 2005-06 is \$Minimal; 5th Succeeding Year 2006-07 is \$Minimal; (4) 2000-01 Program—\$11,958,000; 1999-00 Program—\$9,098,000; 1998-99 Program—\$8,832,000; (7) Quality Assurance; (8) recommends adoption. These proposed amendments govern the sale of hearing aids and the activities of hearing fitters and dealers and incorporates increased registration fees, continuing education and disclosure agreement requirements

made by Act 153. The additional costs, not expected to be significant, provide for verification and related activities of the Department and are offset by the registration fees.

**Annex A**

**TITLE 28. HEALTH AND SAFETY**

**PART III. PREVENTION OF DISEASES**

**CHAPTER 25. CONTROLLED SUBSTANCES, DRUGS, DEVICES AND COSMETICS.**

**Subchapter A. CONTROLLED SUBSTANCES, DRUGS, DEVICES AND COSMETICS**

**Subchapter B. HEARING AID SALES AND REGISTRATION**

**§ 25.201. Application.**

(a) *Scope.* [ **These §§ 25.201—25.215** ] **This subchapter** (relating to hearing aid sales and registration) [ **apply** ] **applies** to all persons engaged in the business of selling or fitting hearing aids in this Commonwealth; [ **provided however** ] **except** that physicians [ , **surgeons,** ] and audiologists are exempted from all provisions regarding hearing aid fitters.

(b) *Authority.* [ **These §§ 25.201—25.215 (relating to hearing aid sales and registration)** are issued pursuant to ] **This subchapter is adopted under the act [ 262 ]**.

**§ 25.202. Definitions.**

The following words and terms, when used in [ **these §§ 25.201—25.215 (relating to hearing aid sales and registration)** ] shall have [ **this subchapter** ] have the following [ **meaning** ] meanings, unless the context clearly indicates otherwise:

*Act [ 262 ]*—The Hearing Aid Sales Registration Law (35 P. S. §§ 6700-101—6700-802).

*Advertise and any of its variants*—The use of a newspaper, magazine or other publication, book, notice, circular, pamphlet, letter, handbill, poster, sign, placard, label, tag, window display, store sign, radio, television announcement, **Internet** or [ **any** ] other means or methods [ **now or hereafter** ] employed to bring to the attention of the public the practice of selling or fitting hearing aids.

*Audiologist*—A person [ **holding the Certificate of Clinical Competence in Audiology awarded by the American Speech and Hearing Association or any person who can provide evidence to the Secretary of having successfully completed equivalent academic training and clinical experience** ] who holds a current license as an audiologist issued by the State Board of Examiners in Speech-Language and Hearing, or a person who is permitted to practice audiology under an exemption to the audiologist licensure requirement under section 6(b) of the Speech-Language and Hearing Licensure Act (63 P. S. § 1706(b)).

*Authorized representative*—A person who is authorized by law to make a decision, required under this subchapter, for a hearing aid user or prospective hearing aid user.

*Business of selling hearing aids*—Selling, leasing [ , ] or offering for sale or lease new, used [ , ] or reconditioned hearing aids exclusive of parts, attachments [ , ] or acces-

sories, at retail, either as exact replacements for damaged or worn out units or [ **pursuant to** ] written specifications provided by an audiologist, otologist [ , ] or otolaryngologist; but not including fitting or the practice of fitting and selling [ **of** ] hearing aids.

*Continuing education program*—A program approved by the Department for credit towards the continuing education requirements for the renewal of the registration certificate of a hearing aid fitter.

*Conviction*—A plea or verdict of guilty, or a conviction following a plea of nolo contendere [ **made** ] to a charge of a crime involving moral turpitude.

\* \* \* \* \*

*Fitting*—Includes the physical acts of adjusting the hearing aid to the individual, taking audiograms, making ear molds, advising the individual with respect to hearing aids, making audiogram [ **interpretation,** ] **interpretations** and assisting in the selection of a suitable hearing aid [ **for the sole purpose of the sale of** ] to sell a hearing aid.

*Hearing aid*—[ **Any** ] A wearable instrument or device designed or offered [ **for the purpose of aiding or compensating** ] to aid or compensate for impaired human hearing together with any parts, attachments [ , ] or accessories for [ **such device** ] those **instruments or devices**, including ear molds but excluding batteries and cords.

*Hearing aid dealer*—[ **Any** ] A person engaged in the business of selling hearing aids.

*Hearing aid fitter*—[ **Any** ] An individual engaged in the practice of fitting and selling hearing aids.

*Physician*—An individual who has a currently registered license to practice medicine or osteopathic medicine in this Commonwealth.

\* \* \* \* \*

*Registrant*—A hearing aid dealer or fitter holding a current certificate of registration.

\* \* \* \* \*

*Sponsor*—[ **A** ] An individual registered in this Commonwealth as a hearing aid fitter who agrees to supervise an apprentice hearing aid fitter.

*Used hearing aid*—A hearing aid that has been worn for any period of time by a user. A hearing aid is not a used hearing aid if it has been worn only by a prospective user as part of a bona fide hearing aid evaluation conducted in the presence of the registrant or an individual selected by the registrant and authorized by law to assist the prospective user in making such an evaluation.

**§ 25.203. Advisory Council.**

(a) The Advisory Council (**Council**) will be composed as provided for under section 201 of the act [ **262** ] (35 P. S. § 6700-201).

(b) It will be the duty of the [ **Advisory** ] Council to advise the Secretary, to the best of its ability, on the administration of [ **Act 262** ] the act.

(c) [ **Meetings of the Advisory Council will be as follows:**

(1) ] The Council will hold at least one annual meeting at [ the ] a time and place designated by the Secretary for the purpose of providing information and advice to the Department.

[(2) Each Council member will be notified of scheduled meetings at least four weeks in advance; however, special or emergency meetings may be scheduled on shorter notice. ]

(d) [ No ] A Council member [ shall ] may convey the impression, either publicly or privately, that [ such ] the member is acting officially for the [ council without ] Council only with prior authorization from the [ council ] Council.

§ 25.204. Application for and renewal of registration.

(a) *Application.* [ Application ] An application for registration or renewal of registration as a hearing aid dealer, [ as a ] hearing aid fitter, [ as an ] apprentice hearing aid fitter[, ] or [ as a ] temporary hearing aid fitter can be obtained from the Division of [ Drugs, Devices and Cosmetics, Pennsylvania ] Home Health, Department of Health, [ P. O. Box 90, ] 132 Kline Plaza, Suite A, Harrisburg, Pennsylvania [ 17120 ] 17104.

(b) [ Hearing ] *Apprentice hearing aid fitter.* [ Completed applications ] A completed application for registration as [ a ] an apprentice hearing aid fitter shall be filed with the Department at least 30 days [ prior to ] before the [ schedule ] fitter's examination [ date ] that the applicant intends to take, together with a check [ or ], money order or other approved method of payment as the Department publishes in a notice in the *Pennsylvania Bulletin*, in the amount of [ the required application fee ] \$50. An additional \$150 shall be paid before taking the fitter's examination. The application fee is not refundable [ except to applicants ], but the \$150 fee for the examination will be refunded to an applicant who [ are ] is found to be ineligible to take the examination[, in which case a \$75 refund will be made ].

(c) *All other registrations.* [ Completed applications ] A completed application for any registration certificate, other than a registration certificate as an apprentice hearing aid fitter, may be filed at any time, together with a check [ or ], money order or other approved method of payment as the Department publishes in a notice in the *Pennsylvania Bulletin*, in the amount of the appropriate application fee.

(d) *Renewal of current certificate.* [ Prior to ] At least 30 days before the expiration of [ any ] a registration certificate, a registrant may apply to renew that certificate by submitting a completed renewal [ applications ] application, available from the Department, along with the renewal fee of [ \$50 ] \$100. To renew a hearing aid fitter's registration certificate the applicant shall also demonstrate satisfaction of the continuing education requirements under § 25.216 (relating to continuing education requirements).

(e) *Renewal of expired certificate.* An expired registration certificate may be renewed [ at any time ] within 5

years after its expiration date by filing an application for renewal, with payment of the renewal fee, and payment of the delinquency fee if the application is received more than 30 days after the expiration date. To renew an expired hearing aid fitter's registration certificate the applicant shall also demonstrate satisfaction of the continuing education requirements under § 25.216.

(f) *Renewal of fitter's temporary registration [ certificates ] certificate and apprentice [ certificates ] certificate.* Upon application, the Secretary may renew a temporary certificate or apprentice certificate for a period which shall expire 30 days after the next available fitter's qualifying examination has been given. The Secretary will not issue more than two renewals of these certificates, except upon petition of an applicant for good and sufficient cause shown.

(g) *Late application for renewal.* A person who files for renewal of a registration certificate less than 30 days before the expiration of the registration certificate may not receive the renewal before the registration certificate expires.

§ 25.205. [ Special application ] Additional registration requirements.

(a) *Hearing aid dealers.* No [ additional requirements need be met ] requirement is imposed in addition to those imposed under § 25.204(c) (relating to application for and renewal of registration).

(b) *Hearing aid fitters.* [ Hearing ] A hearing aid [ fitters ] fitter shall pass the qualifying examination as provided by [ Act 262 ] the act.

(c) *Reciprocal registration—certificate [ of ] by endorsement.*

(1) [ Applicants ] An applicant for registration to practice as a hearing aid dealer or as a hearing aid fitter who [ are ] is licensed or registered in any other state, which has requirements equal to or [ higher ] greater than [ Pennsylvania ] those in this Commonwealth for registration as a hearing aid dealer or fitter and which maintains reciprocal practice privileges with Pennsylvania, may be granted a registration certificate [ of ] by endorsement by the Secretary [ which ]. Being qualified to apply for a hearing aid fitter's registration certificate by endorsement relieves the applicant from having to take the qualifying examination otherwise required under [ Act 262 ] the act.

(2) In all other respects, the applicant for a registration certificate [ of ] by endorsement shall be registered in the same manner and meet the same requirements as other registrants.

(3) If Pennsylvania does not maintain reciprocal practice privileges with a state in which a person is registered or otherwise authorized to function as a hearing aid fitter or dealer, the person may apply for a temporary registration certificate under subsection (e).

(d) *Apprentice registration.* Apprentice registration shall conform [ with ] to the following:

(1) [ Applicants ] An applicant for registration as an apprentice hearing aid fitter shall have a sponsor responsible for the training and supervision of the [ apprentice trainee ] applicant.

(2) **[ Applications ]** An application shall be accompanied by a statement of the sponsor:

(i) Setting forth the type of supervision which shall be given the **[ trainee ] applicant**.

(ii) Providing an outline of the training program to be followed in preparing the **[ trainee ] applicant** for examination. **The training program shall include education and training in at least the following areas:**

(A) **The anatomy and physiology of the ear.**

(B) **The function of hearing aids.**

(C) **The grounds for revocation or suspension of a certificate of registration, or probation of a registrant, under the act.**

(D) **The violations and penalties under the act.**

(E) **The procedures and use of equipment established by the Department for the fitting and selling of hearing aids.**

(F) **The taking of ear mold impressions.**

(G) **The medical and rehabilitation facilities for children and adults that are available in the areas served.**

(H) **The criteria for medical referral when found to exist either from observation by the registrant or on the basis of information furnished by the prospective hearing aid user, to include those criteria listed in § 25.211(d) (relating to medical recommendations; waiver forms).**

(iii) Providing the registration number of the **[ employer who shall be licensed as a hearing aid fitter in this Commonwealth ] sponsor**.

(3) **[ A trainee ]** An apprentice hearing aid fitter desiring to change sponsors shall furnish the Department a sworn or affirmed request giving reasons for the change and a sworn or affirmed statement from the new sponsor setting forth the information required by paragraph (2), and accompanied by the **[ trainee's apprentice ] apprentice's** certificate of registration.

(4) A sponsor desiring to terminate responsibilities with regard to an apprentice shall give the apprentice 10 days written notice **[ giving ] of the** reasons for the action and shall notify the Department at the same time by certified mail.

(e) *Temporary registration.* Temporary registration shall conform **[ with ] to** the following:

(1) **[ An ]** A temporary fitter's registration certificate will be issued to an applicant who **[ proves to the satisfaction of the Department that he has ] satisfactorily demonstrates having** been engaged in the fitting and selling of hearing aids at an established place of business in a state other than **[ Pennsylvania ] this Commonwealth** for **[ a period of ]** 2 years within a 5-year period immediately **[ prior to his ] before making** application and who otherwise fulfills the requirements of **[ Act 262 ] the act** and **[ these §§ 25.201—25.215 will be issued a temporary fitter's registration certificate ] this subchapter**.

(2) The temporary registrant **[ must ] shall** take the hearing aid fitter's examination to qualify for a regular hearing aid fitter's registration certificate.

(3) The temporary registration certificate shall expire **[ no later than ]** 30 days after the administration of the qualifying examination **[ given not earlier than 90 days after the issuance of the certificate but not later than one year from the date of issue, whichever comes sooner ]** that the temporary registrant takes. The temporary registrant shall take the qualifying examination no earlier than 90 days after the date the temporary registration certificate was issued, and no later than 1 year after the date the temporary registration certificate was issued.

#### § 25.206. Examinations.

(a) **[ Examinations for ]** An examination to obtain registration as a hearing aid **[ fitters' registration certificates ] fitter** shall be held at least twice each year, at a time and place to be fixed by the Secretary **[ , ]** at least 45 days **[ in advance of ]** before the examination date.

(b) The date of **[ the examinations ] an examination** may be obtained by writing to the Department.

(c) The passing grade on **[ the ] an** examination will be determined by the Secretary.

#### § 25.207. Categories of registrations; fee schedule.

(a) **[ Regular ]** A registration **[ certificates ] certificate, other than a temporary or apprentice registration certificate,** shall expire at midnight of April 15 of each year, if not renewed.

(b) For a hearing aid **[ dealers ] dealer,** the initial registration fee **[ shall be \$100. From October 15 through April 14, the fee shall be \$50 ]** is \$200 if the Department issues the registration certificate between April 15 and October 14, and \$100 if the Department issues the registration certificate between October 15 and April 14. The annual renewal fee **[ shall be \$50 ]** is \$100 for both dealers and fitters.

(c) For a hearing aid **[ fitters ] fitter's registration certificate,** the initial registration fee **[ shall be \$100, \$75 ]** is \$200, \$150 of which will be refunded if the applicant is **[ found to be ]** ineligible to take the qualifying fitters' examination. **[ From October 15 through April 14, the fee shall be \$50. ]** The annual renewal fee **[ shall be \$50 ]** is \$100.

(d) For a registration **[ by reciprocity ] certificate [ of ] by endorsement,** the fees shall be the same as in **[ subsections (a) and ] subsection (b)[ , as applicable ]**.

(e) For a temporary hearing aid fitter's registration certificate, the initial registration fee **[ shall be \$100, \$75 ]** is \$200, \$150 of which **[ will be refunded ]** is for the examination. A refund of the \$150 will be

made if the applicant is [ found to be ] ineligible to take the qualifying examination for a fitter's registration certificate. **Instead of paying the full \$200 when making the application, the applicant may pay \$50 when making the initial application, and \$150 before taking the examination for the first time.** The renewal fee [ shall be \$50 ] is \$100.

(f) For an apprentice fitter's registration certificate, the fee shall be [ \$25 ] \$50 plus an additional [ \$75 prior to taking the qualifying ] \$150 before the apprentice takes the fitter's examination. The renewal fee [ shall be \$50 ] is \$100.

(g) For a duplicate or replacement registration certificate, the fee shall be [ \$5.00 ] \$10. [ A ] The registrant shall obtain a duplicate certificate [ shall be issued ] upon the loss of an original certificate [ , ] or for a branch office [ , or ]. The registrant shall obtain a replacement registration certificate upon a name change by the person holding a certificate.

(h) The fee to retake the fitter's examination for [ applicants ] an applicant for a fitter's registration certificate who [ have ] has failed a previous examination [ shall be \$25 ] is \$50 for each succeeding examination.

(i) A delinquency fee will be assessed if an applicant applies for renewal of a registration certificate more than 30 days after the registration certificate has expired. The delinquency fee [ shall be \$25 ] is \$50.

(j) For renewal of a suspended registration certificate, the fee [ shall be \$50 ] is \$100 plus the delinquency fee if one has otherwise accrued.

#### § 25.208. Display of registration certificates; offices.

(a) [ Each hearing aid dealer or fitter ] A registrant shall display [ his ] the dealer's or fitter's registration certificate at the place of business listed in the registrant's application.

(b) [ Offices which are part of a building normally used as a residence shall be in a space set aside for office purposes only. ] If a registrant maintains more than one place of business within this Commonwealth, the registrant shall apply for a duplicate registration certificate for each branch office. The registrant shall display the appropriate duplicate registration certificate in each office.

(c) [ Whenever a registrant desires to move his place of business, notice of the change shall be filed with the Department within 10 working days of such a change. ] The place of business identified in a registrant's application shall be an office at a fixed location. An office which is part of a building normally used as a residence shall be in a space set aside for office purposes only.

(d) [ When a hearing aid fitter's or temporary hearing aid fitter's registration certificate is issued and on each renewal thereof, the Department will issue a card bearing the expiration date to the

registrant, who shall keep it in his possession at all times during the performance of duties. ] A registrant shall file notice of a change in the registrant's place of business with the Department at least 10 work days before the change.

(e) [ The ] A registrant shall make the registration certificate [ or card, or both, shall be ] available for inspection on request of any client, prospective client, Department employe [ , ] or [ peace officer ] law enforcement official.

#### § 25.209. Facilities, procedures and instrumentation.

(a) *Facilities.* [ No ] A registrant shall engage in the practice of fitting or selling a hearing aid [ unless he ] only if the registrant provides:

(1) An appropriate test area, the ambient noise level of which [ must ] shall have a documented readout of 55 dB or lower on the A scale of a sound level [ matter ] meter.

(2) A selection of hearing aid models, supplies [ , ] and accessories to provide for the immediate needs of [ clients ] hearing aid users or prospective hearing aid users.

(b) *Procedures.* [ Procedures ] A registrant shall [ conform with ] satisfy the following:

(1) [ A ] The registrant shall sell a hearing aid [ shall not be sold unless ] only if within 6 months [ of ] before the sale an examination of the [ client ] prospective hearing aid user was conducted using pure tone air conduction, bone conduction [ , ] and speech audiometry tests [ has been conducted, or ], except this requirement does not apply when the registrant is replacing a hearing aid with another of the same make, model [ , ] and response. The registrant shall sell a hearing aid replacing another of the same make, model and response only if within 12 months before the sale an examination of the prospective hearing aid user was conducted using pure tone air conduction, bone conduction and speech audiometry tests. [ Such ] The registrant shall verify that the tests [ shall be ] were performed by [ a physician, surgeon, audiologist, or registered fitter or by an individual supervised by any of the aforementioned persons ] an individual authorized by law to do so.

(2) The [ fitter ] registrant shall [ , as a minimum ]:

(i) Perform air [ conductor ] conduction tests for hearing level thresholds at frequencies of 250 Hz, 500 Hz, 1,000 Hz, 2,000 Hz, 4,000 Hz [ , ] and 6,000 Hz or 8,000 Hz, with masking [ where ] if necessary.

(ii) Perform bone conduction tests for hearing level thresholds at frequencies of [ 250 Hz, ] 500 Hz, 1,000 Hz, 2,000 Hz [ , ] and 4,000 Hz, with masking [ where ] if necessary.

(iii) Maintain records of the test results for each ear for [ a period of ] 7 years.

(iv) Perform a speech reception or speech awareness threshold test using an electronic speech audiometer [ under ] with head or insert ear phones[; additional testing may be performed with other sound pressure instruments as needed ].

(v) Perform a word discrimination or other speech intelligibility test for conversational level speech using an electronic speech audiometer [ under ] with head or insert ear phones.

(3) [ No registered hearing aid fitter ] The registrant shall [ fit and ] sell a hearing aid [ to any individual unless the instrument ] only if the hearing aid is fitted to the wearer [ so as ] to [ insure ] ensure physical and operational comfort and [ unless documented ] improvement in hearing function is demonstrated and documented in [ one or more ] at least one of the following areas[;]: speech detection, speech awareness levels, [ sensitivity ] speech intelligibility, orientation or [ SRT changes ] speech reception threshold.

(c) Instrumentation. [ Instrumentation shall conform with ] A registrant shall satisfy the following:

(1) All test instruments shall be calibrated [ at least ] once each year or more often if necessary to meet current American National Standards Institute standards for pure tone and speech audiometry as identified by A.N.S.I. S3.6-1969 or as identified in [ revised forms ] succeeding A.N.S.I. standards.

(2) Instruments transported to test sites shall be calibrated to the standard set forth in paragraph (1) [ at least ] every 6 months, or more frequently as needed.

(3) Calibration [ will be ] shall be performed by a qualified individual other than the owner.

(4) A signed certificate [ indicating ] identifying the most recent date of calibration shall be maintained for inspection by the Department.

§ 25.210. Receipt, disclosure agreement and money back guarantee to purchaser—purchaser protection.

(a) Receipt. Upon the sale of [ any ] a hearing aid, the registrant shall provide the purchaser a signed

receipt [ containing ]. The receipt may be made out on more than one sheet of paper and shall contain the following:

\* \* \* \* \*

(2) The make, model[ , ] and serial number or, if no serial number is applicable, an identification number of the hearing aid.

\* \* \* \* \*

(4) If the hearing aid is used or reconditioned, a statement which [ indicates that fact ] provides that information and which meets the requirements of § 25.215(23) (relating to denial, revocation[ , ] or suspension of registrant's certificate).

\* \* \* \* \*

(7) A copy of the written forms as required by § 25.211 (relating to medical recommendations; waiver forms).

(8) A statement on or attached to the receipt, in no smaller than 10 point type, as follows: "The purchaser has been advised at the outset of his relationship with the hearing aid dealer that any examination or representation made by a registered hearing aid dealer and fitter in [ conjunction ] connection with the practice of fitting and selling of this hearing aid, is not an examination, diagnosis[ , ] or prescription by a person licensed to practice medicine in this Commonwealth and therefore must not be regarded as medical opinion."

(9) A statement on the face of the receipt, in no smaller than 10 point bold type, as follows: "If your rights are violated, you may contact the State Bureau of Consumer Protection [ or ], the Pennsylvania Department of Health in Harrisburg, or your local district attorney."

(b) Disclosure agreement and money back written guarantee. Before the provision of any service incidental to or connected with the potential sale of a hearing aid, the registrant shall provide a disclosure agreement and money back written guarantee to the prospective hearing aid user or authorized representative. This shall be in 10 point type or larger, and may be made out on more than one sheet of paper, but shall employ the following format:

(Editor's Note: The following form is proposed to be added. It is printed in regular type to enhance readability.)

**HEARING AID DISCLOSURE AGREEMENT/MONEY BACK GUARANTEE**

(Business Name) \_\_\_\_\_ (Business Address) \_\_\_\_\_

Telephone No. ( ) \_\_\_\_\_

**PART A.**

Description of services included in fitting procedure or process, and sale and delivery of hearing aid.	FEE (State whether fee is waived if hearing aid purchased)	REFUNDABLE (Upon return of hearing aids)	NOT REFUNDABLE

**PART B.**

HEARING AIDS & ACCESSORIES	DESCRIPTION of GOODS—include make, model, serial number(s)	PRICE	REFUNDABLE (upon return of hearing aid)	NOT REFUNDABLE (Cancellation Fee)
Hearing Aid(s)	Right			
	Left			
Accessories (Describe, if applicable)				
<b>TOTAL</b>				
Total maximum Cancellation Fee is lesser of 10% or \$150 per hearing aid <u>including</u> accessories.				

I RECEIVED THIS DISCLOSURE AGREEMENT, AND IT WAS EXPLAINED TO ME, INCLUDING PART A, FEES FOR SERVICES THAT ARE NOT PART OF THE PRICE OF THE HEARING AID, AND PART B, CANCELLATION FEES THAT WILL BE INCURRED IF I RETURN A HEARING AID FOR A REFUND UNDER THE 30 DAY MONEY BACK GUARANTEE BELOW, AT \_\_\_\_\_ (time) ON \_\_\_\_\_ (date), BEFORE ANY SERVICES WERE PROVIDED.

\_\_\_\_\_  
Customer's Signature

**30 Day Money Back Guarantee:** If a hearing aid is returned within 30 days of date of delivery in the same condition, ordinary wear and tear excluded, you are entitled to a refund of the portion of the purchase price of the hearing aid and accessories as itemized on the receipt and above, less the cancellation fee stated above. If a cancellation fee is imposed, the nonrefundable amount for each aid and accessories cannot exceed 10% of the purchase price of the hearing aid and accessories or \$150.00 per aid and accessories, whichever is less. You will, however, be responsible for all nonrefundable service fees listed in Part A. If you cancel your order prior to delivery, you are entitled to full refund of the purchase price of the aid and accessories, and a full refund for services not yet rendered.

\_\_\_\_\_  
Customer's Signature

\_\_\_\_\_  
Date and time of Sale

\_\_\_\_\_  
Registrant's Signature

\_\_\_\_\_  
Registration Number

\_\_\_\_\_  
DATE of DELIVERY

\_\_\_\_\_  
Customer's Signature or Initials

(c) *Additional responsibilities of registrant with respect to the disclosure agreement/money back guarantee.*

(1) The registrant shall fill in the appropriate spaces on the disclosure agreement/money back guarantee. The registrant shall include in Part A a complete description of what the fitting procedure or process includes, and shall itemize and disclose fees associated with the fitting procedure or process and the sale and delivery of the hearing aid. For each service provided, the registrant shall identify by dollar amount the portion of the fee that is refundable and the portion that is not refundable. If a fee will be waived if a hearing aid is purchased, that shall be stated. If the registrant charges no fees for services, Part A may be left blank.

(2) The registrant shall itemize in Part B any cancellation fee associated with the sale and delivery of a hearing aid and its accessories, by designating that amount as "not refundable."

(3) The registrant may revise the relevant portion of the disclosure agreement/money back guarantee form to disclose the registrant's policy of offering a money back guarantee return period longer than 30 days. The money back guarantee shall be for at least 30 days.

(4) The registrant shall explain in detail the entire disclosure agreement/money back guarantee to the prospective hearing aid user or authorized representative, before securing the signature of the purchaser.

(5) The registrant shall ensure that the prospective hearing aid user or authorized representative signs the disclosure agreement/money back guarantee under Part B, before the registrant provides any service incidental to the possible sale of a hearing aid to the prospective hearing aid user.

(6) The registrant shall ensure that the purchaser signs the bottom portion of the disclosure agreement/money back guarantee, directly under the money back guarantee provision, and inserts the date and time of sale on the appropriate line, after the decision to purchase a hearing aid is made.

(7) At the time the hearing aid is delivered to the hearing aid user or authorized representative, the registrant shall ensure that the signature or initials of the user or authorized representative is obtained and the date of delivery is inserted in the block provided for that purpose on the disclosure agreement/money back guarantee. After the block is completed with the initials or signature and date, the registrant shall provide a copy of the completed disclosure agreement/money back guarantee to the purchaser.

§ 25.211. [ Waiver ] Medical recommendations; waiver forms.

(a) [ Where a client wishes to waive a medical examination ] Except when selling a replacement of a worn out or damaged hearing aid, when selling a hearing aid for the use of a prospective hearing aid user who is 18 years of age, a registrant shall either obtain for the prospective user a medical recommendation that complies with § 25.212 (relating to medical recommendations by examining physi-

cians), or ensure that the prospective user or authorized representative signs a waiver form as provided under section 403 of the act [ 262 ] (35 P. S. § 6700-403) [ a ]. The waiver form [ must ] shall be prepared and used as follows:

(1) The waiver form [ must ] shall be in 10 point type or larger.

(2) The waiver [ must ] shall be read to the [ client ] prospective hearing aid user or authorized representative and explained in a manner [ such ] so that the [ client ] individual is not encouraged to waive a medical examination and so that the [ client ] individual will be thoroughly aware that signing the waiver will not be in [ his ] the prospective hearing aid user's best interest.

(3) The waiver form shall read as follows:

I have been advised that my best [ interest ] interests would be served if I had a medical examination by an otologist or otolaryngologist or any licensed physician before my purchase of a hearing aid.

\_\_\_\_\_  
(Registrant's Name)

has fully and clearly informed me of the value of such medical examination. After such explanation, I voluntarily [ signed ] sign this waiver [ , ]. I choose not to seek a medical examination [ for ] before the purchase of the hearing aid.

\_\_\_\_\_  
(Signature of [ registrant ] Registrant)

\_\_\_\_\_  
(Address of [ registrant ] Registrant)

\_\_\_\_\_  
(Signature of Purchaser)

\_\_\_\_\_  
(Date of Signature)

(b) [ The waiver set forth in subsection (a)(3) may not be used for any person 18 years of age or younger or for individuals having any of the following conditions.

(1) Visible congenital or traumatic deformity of the ear.

(2) Active drainage from the ear within the previous 90 days of history of this symptom.

(3) Sudden or rapidly progressive hearing loss within the previous 90 days of history of this symptom.

(4) Acute or chronic dizziness.

(5) Unilateral hearing loss of sudden or recent onset within the previous 90 days.

(6) Visible evidence of cerumen accumulation or a foreign body in the ear canal.

(7) Significant air-borne gap, when generally acceptable standards have been established.

(8) Pain in the ear within the previous 90 days. ]



When selling a replacement of a worn out or damaged hearing aid for the use of a prospective hearing aid user who is 18 years of age or older, a registrant shall either obtain for the prospective user a medical recommendation that complies with the requirements of § 25.212, or ensure that the prospective user or authorized representative signs a legally proper waiver of the medical examination.

(c) [ Subsection (b) shall not be enforced until such time as the Food and Drug Administration of the United States Department of Health, Education, and Welfare acts upon the Department of Health's application for exemption from preemption of less stringent Federal requirements on the same subject. The FDA has proposed to grant that exemption in a notice of proposed rule making found at 43 Fed. Reg. 33,180 (1970). ] Except when a registrant is selling a hearing aid to replace an identical hearing aid, the registrant may sell a hearing aid for the use of a prospective user 18 years of age or younger only if the registrant obtains a medical recommendation that complies with the requirements of § 25.212 and is signed by a physician specializing in otolaryngology or otology. When selling an identical replacement hearing aid for the use of an individual under 18 years of age, the registrant shall obtain a medical recommendation that complies with § 25.212.

(d) Before the sale of a hearing aid, a registrant shall inform the prospective hearing aid user or authorized representative, in writing, that it would be in the best interest of the prospective hearing aid user to consult a physician specializing in or qualified to deal with diseases of the ear if the prospective hearing aid user has any of the following conditions:

- (1) Visible congenital or traumatic deformity of the ear.
- (2) Active drainage from the ear within the previous 90 days or a history of this symptom.
- (3) Sudden or rapidly progressive hearing loss within the previous 90 days or a history of this symptom.
- (4) Acute or chronic dizziness.
- (5) Unilateral hearing loss of sudden or recent onset within the previous 90 days.
- (6) Visible evidence of cerumen accumulation or a foreign body in the ear canal.
- (7) Significant air-bone gap of 15dB or greater at 500 Hz, 1000 Hz and 2000 Hz.
- (8) Pain in the ear within the previous 90 days.

**§ 25.212. Medical recommendations by examining physicians.**

(a) Whenever a medical examination is performed [ pursuant to ] under the act [ 262 ] or Federal requirements, before fitting and selling a hearing aid the registrant shall ensure that a medical recommendation [ shall be ] has been signed by the examining physician, within 180 days before the sale, on a form which includes the following statement or its equivalent:

I have medically evaluated the hearing ability of

( [ patient's name ] Patient's Name )

and a hearing aid may be beneficial to this person.

(Signature of [ physician ] Physician)

(Date of Evaluation)

(b) [ Where ] If the [ client ] prospective hearing aid user is 18 years of age or younger, the [ patient's ] registrant shall ensure that the prospective user's date of birth [ shall be ] has been included on the medical recommendation form.

[ (c) Such form will be valid for up to 6 months from the date of signature. ]

**§ 25.213. Consumer review.**

(a) Before signing [ any statement ] a waiver form under § 25.211 (relating to medical recommendations; waiver forms) and before the sale of [ any ] a hearing aid to or for the use of a prospective hearing aid user, the [ hearing aid fitter or dealer ] registrant shall:

(1) Provide the prospective hearing aid user or authorized representative with a copy of the User Instructional Brochure for the hearing aid that has been or may be selected for the prospective user.

(2) Review the content of the User Instructional Brochure with the prospective hearing aid user or authorized representative orally or in the predominant method of communication used during the sale.

(3) Give the prospective hearing aid user or authorized representative an opportunity to read the User Instructional Brochure.

(b) [ Where ] If goods or services having a sale price of \$25 or more are sold or contracted to be sold to a [ buyer ] purchaser as a result of or in connection with a contact with or call on the [ buyer ] purchaser at [ his ] the purchaser's residence, the [ consumer ] purchaser may avoid the contract or sale by notifying [ , in writing, ] the [ seller ] registrant of that decision, in writing, within 3 full business days following the day on which the contract or sale was made and by returning or holding available for return to the [ seller ] registrant, in its original condition, any merchandise received under the contract or sale. [ Such ] The notice of rescission [ shall be ] is effective [ upon depositing the same ] when deposited in the United States mail or [ upon other ] when service is made in another manner which gives the [ seller ] registrant notice of rescission.

(c) Additional provisions relating to the sale of goods in the [ buyer's ] purchaser's home, including specific items [ , ] which [ must ] shall be included on the receipt, are hereby made a part of this section [ , ] by [ Incorporation ] incorporation of section 7 of the Unfair Trade Practices and Consumer Protection Law (73 P. S. § 201.7).

§ 25.214. Recordkeeping.

A registrant shall, upon the consummation of a sale of a hearing aid, keep and maintain records in [ his ] the registrant's office or place of business at all times. These records shall be kept for 7 years and shall include the following [ information ]:

(1) Results of all testing conducted [ pursuant to ] under § 25.209 (relating to facilities, procedures and instrumentation). The minimum acceptable test records shall be records of:

(i) Pure tone tests including air and bone conduction with masking where appropriate, and the ambient noise level of the test area.

\* \* \* \* \*

(v) Word discrimination test results expressed in percentage indicating the test words used, presentation level, masking level (if applicable) and signal to noise ratio (if applicable).

(2) A copy of the written receipt, disclosure agreement and money back guarantee required by § 25.210 (relating to receipt, disclosure agreement and money back guarantee to purchaser—purchaser protection).

(3) The written physician's recommendation required by § 25.212 (relating to medical [ recommendation ] recommendations by examining physicians) or the waiver form required by § 25.211 (relating to medical recommendations; waiver forms).

§ 25.215. Denial, revocation[, ] or suspension of registrant's certificate.

The Secretary may deny, suspend[, ] or revoke [ any ] a registration certificate provided under the act [ 262 ] or [ he ] the Secretary may impose conditions of probation upon a registrant for any of the following causes:

\* \* \* \* \*

(2) Conviction of [ any ] a felony or misdemeanor involving moral turpitude.

\* \* \* \* \*

(6) Employing [ any persons whose registration certificate has been suspended or who do not possess a valid registration certificate issued under act 262 to perform any function covered by the provisions of act 262 ] a person to perform a function within the scope of practice of a hearing aid fitter who is not authorized by law to perform the function.

\* \* \* \* \*

(9) Permitting another person to use the registration certificate for any purpose, except permitting an audiologist or physician employed by the registrant to sell hearing aids for the registrant.

(10) Violating or, with notice or knowledge permitting[, with notice or knowledge of its commission, the violation by any registered employee of any provision of] an employee to violate, the act [ 262 ] or [ these §§ 25.201—25.215 ] this subchapter.

(11) [ Any ] A cause which would be [ grounds ] a ground for denial of an application for a registration certificate.

(12) Having been enjoined from violating [ any provisions ] a provision of the Unfair Trade Practices and Consumer Protection Law (73 P. S. §§ 201-1—209-6) or being subject to a final order of the Federal Trade Commission, the Department, or the Food and Drug Administration of the United States Department of Health, Education and Welfare, concerning the sale or offering for sale of an unsafe, unhealthful[, ] or worthless hearing [ devices ] device or for engaging in conduct which has the tendency to mislead or deceive.

(13) Using, causing[, ] or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia[, ] or any other representation, however disseminated or published, which is misleading, deceiving, improbable[, ] or untruthful[. Included among the foregoing acts are misrepresentations ], such as a misrepresentation relating to:

(i) The grade, quality, quantity, origin, novelty, price, dealer cost, terms of sale, use, construction, size, composition, dimensions, type, design, development, visibility, durability, performance, fit, appearance, efficacy, benefits, cost of operation, resistance to climatic conditions, or physiological benefits of [ any ] a hearing aid or the psychological well-being induced by a hearing aid[ ; or ].

(ii) [ Any ] A service or adjustment offered, promised, or supplied to [ purchasers ] a purchaser of [ any ] a hearing aid, or the fee associated with the service or adjustment.

(14) Making [ representations in advertising or otherwise ] a representation that a hearing aid is "guaranteed," without clear and conspicuous disclosure of:

(i) The nature and extent of the guarantee[ ; ].

(ii) [ Any ] A material [ conditions or limitations in ] condition or limitation of the guarantee which [ are ] is imposed by the guarantor[ ; ].

(iii) The manner in which the guarantor will perform thereunder[ ; ].

(iv) The identity of the guarantor, with disclosure, [ where ] if applicable, that any guarantee made by the [ dealer ] registrant which is not backed up by the manufacturer is offered by the [ dealer ] registrant only.

\* \* \* \* \*

(15) Making [ guarantees, warranties, or any promises ] a guarantee, warranty or promise which, under normal conditions, [ are ] is impractical of fulfillment [ or ] of which [ are ] is for [ such ] a period of time or [ are otherwise of such ] of a nature [ as may have the tendency to mislead purchasers into the belief ] that may cause a purchaser to believe that the hearing aid has a greater degree of service ability, durability[, ] or performance capability in actual use than is [ in fact ] true.

(16) Making [ misrepresentations ] a misrepresentation as to the character of the business conducted by the registrant. Unless it is true, a [ hearing aid dealer shall ] registrant [ shall ] may not represent directly

or indirectly through the use of any word or term, in **[ his ]** the corporate or trade name, in **[ his ]** advertising, or otherwise, that **[ he ]** the registrant owns or maintains a laboratory devoted to hearing **[ and ]** aid research, testing, experimentation or development **[ ; nor shall a ]**. A **[ dealer ]** registrant may not misrepresent in any other material respect the character, extent **[ , ]** or type of **[ his ]** business **conducted by the registrant**.

(17) Causing deception that services or advice of a physician were used in the design or **[ manufacturer ]** manufacture of hearing aids. Unless it is true, a **[ hearing aid dealer shall ]** registrant may not represent, directly or by implication, that the services or advice of a physician have been used in the designing or manufacturing of hearing aids. The prohibitions of this paragraph are applicable to the use of the terms "doctor," "physician," "otologist **[ , ]**" or "otolaryngologist"; to the use of any abbreviations, variations or derivatives of **[ such ]** those terms; and to the use of any symbol, depiction, or representation having a medical connotation.

(18) Making a deceptive **[ representations ]** representation as to the visibility or the construction of a hearing aid. A **[ hearing aid dealer shall ]** registrant may not do any of the following:

\* \* \* \* \*

(ii) **[ Use in advertising, the words or expressions "no cord," "cordless," "100% cordless," "no unsightly cord dangling from your ear," "no tell-tale wires," or other words or expressions of similar import unless such representations are true and unless, in close connection therewith and with equal prominence, a clear and adequate disclosure is made that a plastic tube or similar device runs from the instrument to the ear if such is the fact.**

(iii) **[ Use in advertising the words or expressions "no button," "no ear button," "no buttons or receivers in either ear" or other words or expressions of similar import unless such representations are true and unless, in close connection therewith and with equal prominence, a clear and adequate disclosure is made that an ear mold or plastic tip is inserted in the ear if such is the fact.**

(iv) **[ Represent directly or by implication that a hearing aid utilizing bone conduction has [ certain ] a specified [ features ] feature such as the absence of anything in the ear or leading to the ear, or the like, without disclosing clearly and conspicuously that the instrument operates on the bone-conduction principle and that, in many cases of hearing loss, this type of instrument may not be suitable.**

(19) Making **[ advertisements ]** an advertisement or other **[ representations ]** representation which may have the tendency or effect of misleading or deceiving **[ purchasers ]** a purchaser or prospective **[ purchasers into the belief ]** purchaser to believe that **[ any ]** a hearing aid or device or part or accessory thereof is a new invention or involves a new mechanical or scientific principle, when **[ such ]** that is not **[ a fact ]** true. Representations of the following or similar types, when not fully justified by the facts, are among those prohibited by this paragraph: "amazing new discovery," "revolutionary new invention," "radically new and different," "sensa-

tional new laboratory development," "remarkable new electronic device," "brand new invention," "marvelous new hearing invention," "new scientific aid **[ , ]**" and "miracle."

(20) Misrepresenting the commercial nature of the registrant's business. A **[ hearing aid dealer shall ]** registrant may not represent, directly or by implication, that a commercial hearing aid establishment is a governmental or public one or is a nonprofit medical, educational **[ , ]** or research institution, through the use of **[ terms ]** a term having a medical, professional **[ , ]** or scientific connotation, such as "Hearing Center," "Hearing Institute," "Hearing Bureau," "Hearing Clinic," "State's Hearing Clinic," or "State's Speech and Hearing Center." Nothing in this paragraph **[ is meant to preclude ]** precludes a **[ hearing aid dealer ]** registrant from representing, if **[ such be the fact ]** true, that **[ he ]** the registrant owns, operates **[ , ]** or controls a "Hearing Aid Center" or from using other words or expressions which clearly and nondeceptively identify the **[ dealer's ]** registrant's establishment as a commercial hearing aid enterprise.

(21) Making a deceptive **[ advertisements ]** advertisement of a hearing aid **[ parts accessories ]** part, accessory or **[ components ]** component. A **[ hearing aid dealer shall ]** registrant may not use or cause to be used any type of advertising or promotional literature depicting or describing only a single part, accessory **[ , ]** or component of **[ any ]** a hearing aid or device, such as a battery on the finger or a transistor held in the hand, in **[ such ]** a manner **[ as ]** that may have the tendency to mislead or deceive **[ purchasers ]** a purchaser or prospective **[ purchasers into the erroneous belief ]** purchaser to believe that **[ such ]** the part, accessory **[ , ]** or component is all that **[ needs to ]** must be worn or carried.

(22) Making a deceptive **[ endorsements, testimonials, and so forth ]** testimonial or other endorsement. A **[ hearing aid dealer shall ]** registrant may not advertise or otherwise represent:

(i) That a particular individual, organization **[ , ]** or institution endorses, uses **[ , ]** or recommends **[ such dealer's ]** the registrant's hearing aids or devices when **[ such ]** that is not **[ a fact; or ]** true.

(ii) That a particular individual wears **[ such dealer's ]** the registrant's hearing aids or devices when **[ such ]** that is not **[ a fact ]** true.

(23) Making **[ representations ]** a representation either directly or indirectly that **[ any ]** a hearing aid or part thereof is new, unused **[ , ]** or rebuilt when **[ such ]** that is not **[ a fact. The term "new" shall mean a hearing aid which has not been previously sold at retail or used as a clinic demonstrator ]** true.

(i) In the marketing of a used hearing aid **[ which has been used ]** or a hearing aid which contains used parts, a **[ hearing aid dealer ]** registrant shall make full and nondeceptive disclosure of the fact in advertising and promotional literature relating to the product on the container, box or package in which the product is packed or enclosed. The required disclosure may be made by use

of [ the ] words such as "Used," "Second-hand," "Repaired[ , ]" or "Rebuilt," whichever [ is applicable ] applies to the product involved, and it shall appear on a tag physically attached to a hearing aid.

(ii) A [ hearing aid dealer ] registrant may not misrepresent the identity of the rebuilder of a hearing aid. If the rebuilding of a hearing aid was done by other than the original manufacturer, a [ hearing aid dealer may not fail to ] registrant shall disclose the fact wherever the original manufacturer is identified.

(24) Doing any of the following:

(i) Representing or using [ seals, emblems, shields ] a seal, emblem, shield or other insignia which [ represent ] represents, directly or by implication that a hearing aid or device has been tested, accepted or approved by an individual, concern, organization, group or association unless it is [ a ] true [ fact ] and unless the hearing aid or device has been [ so ] used in a manner as will reasonably [ insure ] ensure the quality and performance of the instrument in relation to its intended use and the fulfillment of a material [ claims ] claim made, implied or intended to be supported by the representation or insignia.

(ii) Representing that a hearing aid or device tested, accepted or approved by an individual, concern, organization, group or association has been subjected to [ tests ] a test based on a more severe [ standards ] standard of performance, workmanship and quality than is [ in fact ] true.

(iii) Making any other false, misleading or deceptive representation respecting the testing, acceptance or approval of a hearing aid device by an individual, concern, organization, group or association. It is not necessary for an individual hearing aid or device to be tested [ where ] if the method employed is a sample testing and full and nondeceptive disclosure of this fact is given in advertising and otherwise.

(iv) Making a false, misleading or deceptive representation regarding the practice of another registrant or the quality of a hearing aid product made by a hearing aid manufacturer, which enhances or is likely to enhance the registrant's business as a repairer, fitter or seller of hearing aids.

(25) Doing any of the following:

(i) [ Imitate ] Imitating or [ simulate ] simulating the [ trademarks, trade names, brands ] trademark, trade name, brand or [ labels ] label of [ competitors ] a competitor which may have the tendency or effect of misleading or deceiving [ purchasers ] a purchaser or prospective [ purchasers ] purchaser.

(ii) [ Use ] Using in advertising the name, model name or trademark of a particular manufacturer of hearing aids in a manner [ as to imply ] that implies a relationship with the manufacturer that does not exist or which otherwise may mislead or deceive [ purchasers ] a purchaser or prospective [ purchasers ] purchaser.

(iii) [ Use ] Using a trade name, corporate name, trademark or other designation which may have the tendency or effect of misleading or deceiving [ purchasers ] a purchaser or prospective [ purchasers ] purchaser

chaser as to the name, nature or origin of a hearing aid or of a material used therein or which is false, deceptive or misleading in another material respect.

(26) Advertising a particular model, type or kind of hearing aid for sale when [ purchasers ] a purchaser or prospective [ purchasers ] purchaser responding to the advertisement cannot purchase or [ are ] is dissuaded from purchasing the advertised model, type or kind, [ where ] if it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than that advertised.

(i) In determining whether there has been a violation of this paragraph, consideration will be given to acts or practices indicating that the offer was not made in good faith for the purpose of selling the advertised product but was made for the purpose of contacting prospective purchasers and selling them a product or products other than that offered. Among acts or practices which will be considered in making that determination are the following:

\* \* \* \* \*

(E) The refusal, in the event of sale of the product offered, to deliver the product to the [ buyer ] purchaser within a reasonable time thereafter.

\* \* \* \* \*

(27) Failing to furnish evidence of the required continuing education or truthful information regarding the continuing education secured when applying for renewal of a registration certificate as a hearing aid fitter.

§ 25.216. Continuing education requirements.

(a) General requirements. Except as provided in subsection (d), the continuing education requirement for renewal of a hearing aid fitter's registration certificate is 20 hours of continuing education credit in the 2 years immediately preceding the expiration of the current registration certificate. If the applicant for renewal has had a registration certificate for less than 2 years, the required number of continuing education hours shall be calculated by prorating the number of credit hours required over a 2-year period by the number of months in which the applicant for renewal had the registration certificate which is about to expire. Only months in which the applicant had the registration certificate for at least 15 days shall be considered in the calculations.

(b) Requirements for renewal of an expired registration certificate. Except as provided in subsection (d), the continuing education requirement for renewal of a hearing aid fitter's registration certificate that has expired is 20 hours of continuing education credit in the 2 years immediately preceding the filing of the application for renewal, provided that the application for renewal is filed within 5 years after expiration of the previous registration certificate. If more than 5 years have passed since the registration certificate expired, the registration certificate may not be renewed. Instead, the individual would need to repeat the hearing aid fitter's certification examination and satisfy other requirements then in effect for an original hearing aid fitter's registration certificate.

(c) *Requirements for renewal of a suspended registration certificate.* The continuing education requirement for renewal of a hearing aid fitter's registration certificate which has been suspended is the same as in subsections (a) and (d). If the individual does not satisfy the continuing education requirement during the period in which the hearing aid fitter's registration certificate is suspended, the suspended registration certificate shall be considered to have expired, and the continuing education requirements in subsection (b) shall apply for renewal of the expired registration certificate.

(d) *Phase-in requirements.* The first 2-year period for which continuing education requirements shall be required will begin on April 15, 2003.

(e) *Subject matter requirements.* Any subject matter that contributes directly to the professional competence, skills and education of a hearing aid fitter is acceptable subject matter for a continuing education program. At least one half of all continuing education credit hours by which the hearing aid fitter seeks to qualify for renewal of the registration certificate shall be secured in some combination of the following core subject matter: hearing evaluation, hearing instrumentation technology, ear mold technology, hearing aid repair and maintenance, technical devices to assist the hearing-impaired, psychology of the hearing-impaired, and office procedures and compliance with the act.

§ 25.217. Approval of continuing education programs.

(a) A person may apply to the Department for approval of a continuing education program by submitting to the Department an application on a form supplied by the Department. The applicant shall supply the information requested in the application, including specification of whether the program is fully or partially devoted to any of the core subjects specified in § 25.216(e) (relating to continuing education requirements). The Department will grant approval of a continuing education program and designate whether the program is assigned full or partial credit in one of the core subjects, if the applicant satisfies the Department that the program the applicant will offer will meet the following minimum standards:

(1) The program shall be of intellectual and practical content.

(2) The program shall contribute directly to the professional competence, skills and education of a hearing aid fitter.

(3) The program instructors shall possess the necessary practical and academic skills to conduct the program effectively.

(4) Program materials shall be well written, carefully prepared, readable and distributed to attendees at or before the time the program is offered whenever practical.

(5) The program shall be presented by a qualified responsible instructor in a suitable setting devoted to the educational purpose of the program.

(6) The program shall be open to all persons who have a current, suspended or expired hearing aid fitter's registration certificate.

(b) Approval of a continuing education program shall be effective for 3 years.

(c) If renewal of the Department's approval of a continuing education program is desired, at least 90 days before expiration of the 3-year period the person who offered the program shall apply to the Department to renew the Department's approval of that program. The criteria and process applicable to the Department's initial approval of a continuing education program shall apply to renewal of the approval of that program.

§ 25.218. Credit for continuing education.

(a) *Credit hour.* A hearing aid fitter shall receive 1 hour of credit for each 50 minutes of instruction in a continuing education program presented in a classroom setting. Credit will not be received if attendance or other participation in the program is not adequate to meet the educational objectives of the program as determined by the person offering the program. For completing a continuing education program that is not presented in a classroom setting, the hearing aid fitter shall receive the number of credit hours assigned to the program by the Department.

(b) *Program completion.* A hearing aid fitter shall receive no credit for a continuing education program not completed, as evidenced by satisfaction of the check-in/check-out process for a continuing education program presented in a classroom setting and the continuing education report verifying that the hearing aid fitter completed the program, both of which are submitted to the Department by the person who offered the program. The program will also not be considered completed if the hearing aid fitter does not satisfy other program completion requirements imposed by this subchapter and the continuing education provider.

(c) *Continuing education credit for instruction.* A hearing aid fitter shall receive credit equal to the number of hours served as an instructor in a continuing education program approved by the Department, or in a program that satisfies requirements for initial certification as a hearing aid fitter, except that only half of the credit hours necessary for renewal of a hearing aid fitter's registration certificate may be obtained through serving as an instructor. The remaining credits necessary to renew a certificate shall be obtained through attendance at continuing education programs.

(d) *Continuing education credit through endorsement.* A hearing aid fitter who attends or teaches a continuing education program offered outside this Commonwealth may apply to the Department to receive credit for the program. The hearing aid fitter shall have the burden of demonstrating to the Department that the course meets standards substantially equivalent to the standards imposed in this subchapter. The Department will assign credit to the program, including the possibility of no credit or partial credit, based upon considerations

of whether the program bears entirely upon appropriate subject matter and whether the method of presenting the program meets standards substantially equivalent to those prescribed in this subchapter.

(e) *Continuing education credit assigned to self-study courses.* Credit may be sought from the Department for a self-study continuing education program. The hearing aid fitter shall submit an application to the Department to approve the self-study program for credit before commencing the program and shall supply the Department with the materials the Department requests to conduct the evaluation. The Department will assign credit to the program based upon considerations of whether the program addresses appropriate subject matter and whether the method of completing the program meets standards substantially equivalent to those prescribed in this subchapter. The Department may require modifications to the proposed self-study as a precondition to approving it for credit.

(f) *Continuing education credit assigned to courses not presented in a classroom setting.* A hearing aid fitter shall be awarded credit for completing a continuing education program without the hearing aid fitter physically attending the program in a classroom setting, provided the program has been approved by the Department for credit when presented in that manner.

(g) *Repeat completion or teaching of a continuing education program.* The Department will not accept more than one completion or teaching of a continuing education program for credit towards renewal of a fitter's registration certificate, but will accept a subsequent completion or teaching of the same continuing education program for a subsequent renewal of a fitter's registration certificate.

(h) *Resolution of discrepancies.* The Department will resolve all discrepancies between the number of continuing education credits reported and the number of continuing education credits a hearing aid fitter alleges to have earned. To help resolve disputes, the hearing aid fitter should retain the original certificate of completion of a continuing education program if a certificate of completion has been received by the hearing aid fitter.

§ 25.219. Responsibilities of persons offering continuing education programs.

(a) *Record of attendance.* A person who offers a continuing education program shall maintain a record of attendance for a program presented in a classroom setting by maintaining a check-in/check-out process approved by the Department, and shall assign at least one person to ensure that all individuals attending the course check in when entering and check out when leaving. If an individual enters a course after the starting time, or leaves a course before the finishing time, the assigned person shall ensure that the time of arrival or departure is recorded for the individual.

(b) *Reporting attendance.* A person who offers a continuing education program shall report to the Department, in the manner and format prescribed by the Department, attendance at each continuing education program presented in a classroom setting.

(c) *Course evaluation.* A person who offers a continuing education program shall develop and implement methods to evaluate the program to determine its effectiveness. The methods of evaluation shall include providing a program evaluation form to each person who attends the continuing education program, and requesting each person to complete the form.

(d) *Record retention.* A person who offers a continuing education program shall retain the completed program evaluation forms and the check-in/check-out record for a program presented in a classroom setting. The person shall retain the records for at least 4 years from the presentation of the program.

(e) *Providing records.* A person who offers a continuing education program shall promptly provide the Department with complete and accurate records relating to the program as requested by the Department.

(f) *Program not presented in a classroom setting.* A person who offers a continuing education program shall be exempt from the requirements of subsections (a) and (b) for a program which is not presented in a classroom setting, if the program is approved by the Department for credit when presented in that manner. When presenting the program to the Department for approval for credit, the person shall present a procedure for monitoring, confirming and reporting hearing aid fitter participation in a manner that achieves the purposes of subsections (a) and (b).

(g) *Monitoring responsibilities.* A person who offers a continuing education program shall ensure that the program was presented in a manner that met all of the educational objectives for the program, and shall determine whether each hearing aid fitter who enrolled in the program met the requirements of this subchapter and of the continuing education program to receive credit for completing the program.

(h) *Program completion.* A person who offers a continuing education program shall report to the Department, in a manner and format prescribed by the Department, completion of a continuing education program by a hearing aid fitter who completes the program, and shall identify to the Department a hearing aid fitter who seeks credit for a program but who did not meet the requirements of the program or this subchapter to receive continuing education credit. The person who offers a continuing education program shall also provide a hearing aid fitter who completes the program with a document certifying completion of the program.

§ 25.220. Right to enter, inspect and obtain records.

Upon request of a Department representative during regular and usual business hours, or at other times when that representative possesses a reasonable belief that a violation of this subchapter may exist, and upon the representative presenting documentation to identify himself as a representative of the Department, a registrant or person who offers a continuing education program shall:

**(1) Produce for inspection equipment and supplies maintained under this subchapter.**

**(2) Produce for inspection, permit copying and provide within a reasonable period of time, records maintained under this subchapter.**

**§ 25.221. Exceptions.**

**The Department may grant an exception to a requirement of this subchapter for good cause shown, except for a statutory requirement that is repeated in this subchapter.**

[Pa.B. Doc. No. 02-1172. Filed for public inspection July 5, 2002, 9:00 a.m.]

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# NOTICES

## DEPARTMENT OF BANKING

### Action on Applications

The Department of Banking under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending June 25, 2002.

#### BANKING INSTITUTIONS

##### Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
6-19-02	AmeriServ Financial Bank Johnstown Cambria County	Corner of Benner Pike and Shiloh Rd. State College College Township Centre County	Approved
6-19-02	S & T Bank Indiana Indiana County	111 Resort Plaza Dr. Blairsville Indiana County	Approved
6-21-02	Northwest Savings Bank Warren Warren County	3140 Cape Horn Rd. Red Lion York County	Approved
6-21-02	Firsttrust Savings Bank Conshohocken Montgomery County	2nd Street Pike and Almshouse Rd. Richboro Bucks County	Approved
6-21-02	Keystone Savings Bank Bethlehem Northampton County	235 Main Street Emmaus Lehigh County	Approved

##### Branch Relocations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
6-21-02	Keystone Savings Bank Bethlehem Northampton County	<i>To:</i> Giant Store 301 Town Center Blvd. Forks Township Northampton County  <i>From:</i> Giant Store 1800 Sullivan Trail Forks Township Northampton County	Approved

#### SAVINGS INSTITUTIONS

No activity.

#### CREDIT UNIONS

##### Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Credit Union</i>	<i>Location</i>	<i>Action</i>
6-19-02	Rohm & Haas Del-Val Credit Union, Spring House, and Rohm & Haas Employees Federal Credit Union, Philadelphia Surviving Institution— Rohm & Haas Employees Federal Credit Union, Philadelphia	Spring House	Approved

FRANCES A. BEDEKOVIC,  
*Acting Secretary*

[Pa.B. Doc. No. 02-1173. Filed for public inspection July 5, 2002, 9:00 a.m.]



# DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

## Snowmobile and ATV Advisory Committee Meeting

The Snowmobile and ATV Advisory Committee of the Department of Conservation and Natural Resources (Department) will hold a meeting on Saturday, July 13, 2002. The meeting will be held at 8 a.m. at the Holiday Inn Warren, 210 Ludlow Street, Warren, PA.

Questions concerning this meeting or agenda items can be directed to GERALYN UMSTEAD at (717) 772-9087.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact GERALYN UMSTEAD at (717) 772-9087 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JOHN C. OLIVER,  
*Secretary*

[Pa.B. Doc. No. 02-1174. Filed for public inspection July 5, 2002, 9:00 a.m.]

# DEPARTMENT OF ENVIRONMENTAL PROTECTION

## Applications, Actions and Special Notices

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### APPLICATIONS

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## NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS

### NPDES APPLICATIONS

#### PART I PERMITS

Under the Federal Clean Water Act and The Clean Streams Law, the following parties have applied for an NPDES permit or to renew their current permit to discharge controlled wastewaters into the waters of this Commonwealth or to conduct other activities required by the NPDES permit. For renewal applications listed 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 all new permit applications, renewal application with major changes or applications for permits not waived by the EPA, the Department, based upon preliminary reviews, also made a tentative determination of proposed effluent limitations and other terms and conditions for the permit applications listed in Section II. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the EPA Region III Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the office noted before the application within 30 days from the date of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding this application. The 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. A public hearing may be held if the responsible office considers the public response significant. Following the comment period, the Department's Water Management Program Manager will make a final determination regarding these applications. 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 renewal application, including proposed effluent limitations and special conditions, is available on file. For new permit applications, information submitted with the applications is available on file. The information may be inspected and arrangements made for copying at the office indicated before the application.

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.

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#### I. NPDES Renewal Applications

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*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0034118	Blue Ridge Real Estate Co. P. O. Box 707 Blakeslee, PA 18610-0707	Carbon County Kidder Township	Porter Run 2A	Y

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0060518 Sewage	Hallstead Great Bend Joint Sewer Authority Spring Street P. O. Box 747 Great Bend, PA 18821-0747	Susquehanna County Great Bend Borough	Susquehanna River 4E	Y
PA0062715 Industrial Waste	Sunoco Partners Marketing & Terminals L.P. 1801 Market Street (10PC) Philadelphia, PA 19103-1699	Luzerne County Edwardsville Borough	Unnamed tributary of Toby Creek 5B	Y

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0033502 Sewerage Public	Bradford County R. R. 3, Box 322 Troy, PA 16947	Bradford West Burlington Township	Sugar Creek 4C	Y
PA0112925 Sewerage Nonpublic	Jemison Valley BIC Church R. D. 4, Box 720 Westfield, PA 16950	Tioga Westfield Township	Unnamed tributary of Jemison Creek 4A	Y
PA0100099 Sewerage Nonpublic	Harmony Area School District 5239 Ridge Road Westover, PA 16692-9616	Clearfield Burnside Township	Unnamed tributary of Beaver Run 8B	Y

**II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Applications**

*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**PA0062758**, Industrial, **Municipal Authority of Borough of Shenandoah**, P. O. Box 110, Shenandoah, PA 17976. This proposed facility is located in West Mahanoy Township, **Schuylkill County**.

Description of Proposed Activity: renew an NPDES permit.

The receiving stream, Lost Creek, is in the State Water Plan Watershed #6C and is classified for: CWF.

The proposed effluent limits for Outfall 001 based on a design flow of 0.128.

<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>
Total Suspended Solids			30.0	60.0
Total Aluminum			4.0	8.0
Total Iron			2.0	2.0
Total Manganese			1.0	1.0
pH			6.0 to 9.0 Standard Units	

**PA0053147**, Sewage, **Upper Saucon Sewage Treatment Authority**, 5500 Camp Meeting Road, Center Valley, PA 18034. This proposed facility is located in Upper Saucon Township, **Lehigh County**.

Description of Proposed Activity: to renew an existing NPDES permit with an increase in discharge flow from 2.0 MGD to 2.5 MGD.

The receiving stream, Saucon Creek, is in the State Water Plan Watershed #2C and is classified for: CWF. The nearest downstream public water supply intake for Keystone Water Company is located on the Delaware River, over 50 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 2.5 MGD.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>
CBOD <sub>5</sub> (5-1 to 10-31)	10.0	15.0	20.00
(11-1 to 4-30)	20.0	30.0	40.00

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>
Total Suspended Solids	30.0	45.0	60.00
NH <sub>3</sub> -N			
(5-1 to 10-31)	3.0	4.5	6.00
(11-1 to 4-30)	9.0	13.5	18.00
Dissolved Oxygen	A minimum of 5.0 mg/l at all times.		
Fecal Coliform	200/100 ml as a geometric mean		
pH	6.0 to 9.0 Standard Units at all times		
Total Residual Chlorine	0.27		0.90
Phosphorus as "P"	Quarterly Monitoring		

In addition to the effluent limits, the permit contains the following major special conditions: whole effluent toxicity testing.

**NPDES Stormwater Individual Permit**

The following parties have applied for an NPDES permit to discharge stormwater associated with a construction activity into waters of this Commonwealth. Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain limitations set forth in the permit conditions. These proposed determinations are tentative. Limitations are provided as erosion and sediment control best management practices which restrict the rate and quantity of sediment discharged.

Where indicated, the EPA Region III Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the appropriate Department Regional Office noted before the application within 30 days from the date of this public notice. Comments reviewed within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and relevant facts upon which it is based. A public hearing may be held after consideration of comments received by the appropriate Department Regional Office during the 30-day public comment period.

Following the 30-day comment period, the appropriate Regional Office Water Management Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in

the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, including the erosion and sediment control plan for the earth disturbance activity, are on file and may be inspected at the office identified in this notice.

Persons with a disability who require an auxiliary aid, service or other accommodation to participate during the 30-day public comment period should contact the specified Regional Office. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

*Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**NPDES Permit PAS10G530**, Stormwater, **Heritage Building Group**, 3326 Old York Road, Suite A100, Furlong, PA 18925, has applied to discharge stormwater associated with a construction activity located in Franklin Township, **Chester County** to Ways Run (HQ-TSF-MF).

**NPDES Permit PAS10G531**, Stormwater, **Heritage Building Group**, 3326 Old York Road, Suite A100, Furlong, PA 18925, has applied to discharge stormwater associated with a construction activity located in East Coventry Township, **Chester County** to an unnamed tributary to Schuylkill River (HQ-TSF) and Pigeon Creek (HQ-TSF).

**NPDES Permit PAS10G532**, Stormwater, **Lewis R. Frame**, P.O. Box 490, Honey Brook, PA 19565, has applied to discharge stormwater associated with a construction activity located in Honey Brook Township, **Chester County** to West Branch Brandywine Creek (HQ).

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

*Potter County Conservation District, 107 Market St., Coudersport, PA 16915; (814) 274-8411 Ext. 4.*

<i>NPDES No.</i>	<i>Applicant Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Receiving Water/Use</i>
PAS105509	Department of Conservation and Natural Resources Bureau of State Parks P. O. Box 8551 Harrisburg, PA 17105	Potter County West Branch Township	Lyman Run HQ-CWF

Clinton County Conservation District, 216 Spring Run Rd., Mill Hall, PA 17751; (570) 726-3798.

<i>NPDES No.</i>	<i>Applicant Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Receiving Water/Use</i>
PAS101922	Kettle Creek Watershed Assoc. Trout Unlimited Amy Gottesfeld 32 Longbow Lane Mill Hall, PA 17751	Clinton County Leidy and Noyes Townships	Kettle Creek EV

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

Washington County Conservation District: 100 West Beau Street, Suite 602, Washington, PA 15301-4402; (724) 228-6774.

**NPDES Permit PAS10W087**, Stormwater, **Faith United Presbyterian Church**, 97 East Chestnut Street, Washington, PA 15301 has applied to discharge stormwater associated with a construction activity located in South Strabane Township, **Washington County** to UNT of Little Chartiers Creek (HQ-WWF).

**PUBLIC WATER SUPPLY (PWS)  
PERMIT**

Under the Pennsylvania Safe Drinking Water Act, the following parties have applied for a PWS permit to construct or substantially modify a public water system.

Persons wishing to comment on the 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 this 30-day comment period will be considered in the formulation of the final determinations regarding this application. Comment responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held 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 available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability who require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

**SAFE DRINKING WATER**

**Applications Received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).**

Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

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**Permit No. 3302502**, Public Water Supply.

Applicant	<b>Brockway Borough Municipal Authority</b> 501 Main Street Brockway, PA 15824
Township or Borough	Brockway Borough <b>Jefferson County</b>
Responsible Official	Robert Fustine, Manager
Type of Facility	PWS
Consulting Engineer	Glace Associates, Inc. 3705 Trindle Road Camp Hill, PA 17011
Application Received Date	June 4, 2002
Description of Action	Construction of a water storage tank and booster station to serve Horton Township.

**MINOR AMENDMENT**

**Applications Received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).**

Central Office: Bureau Director, Water Supply and Wastewater Management, P. O. Box 8467, Harrisburg, PA 17105-8467.

**Permit No. 9996491**, Public Water Supply.

Applicant	<b>Great Spring Waters of America, Inc.</b>
Township or Borough	Hollis, ME
Responsible Official	Tamara Risser, Quality Control Manager
Type of Facility	Out-of-State Bottled Water System
Application Received Date	May 23, 2002
Description of Action	Applicant requesting Department approval to change company name from Great Spring Waters of America, Inc. to Nestle Waters North America, Inc. Applicant also requests approval to use a new well source. Bottled water to be sold in this Commonwealth under the brand names Deer Park Spring Water and Ice Mountain Natural Spring Water.

**Permit No. 9996402**, Public Water Supply.

Applicant	<b>Great Spring Waters of America, Inc.</b>
Township or Borough	Framingham, MA

Responsible Official Paul Koschnitzke, Quality Control Manager  
 Type of Facility Out-of-State Bottled Water System  
 Application Received Date May 23, 2002  
 Description of Action Applicant requesting Department approval to change company name from Great Spring Waters of America, Inc. to Nestle Waters North America, Inc. Bottled water to be sold in this Commonwealth under the brand name Great Bear Natural Spring Water.

**Permit No. 9996488**, Public Water Supply.

Applicant **Great Spring Waters of America, Inc.**  
 Township or Borough Hillard, OH  
 Responsible Official Cito Salapare, Operations Manager  
 Type of Facility Out-of-State Bottled Water System  
 Application Received Date May 23, 2002  
 Description of Action Applicant requesting Department approval to change company name from Great Spring Waters of America, Inc. to Nestle Waters North America, Inc. Bottled water to be sold in this Commonwealth under the brand name Deer Park Spring Water.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### UNDER ACT 2, 1995

#### PREAMBLE 1

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

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (Act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the background standard, Statewide health standard, the site-specific standard or who intend to remediate a site as a special industrial area, must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, or a combination of the cleanup standards or who receives approval of a special industrial area remediation identified under the Act, will be relieved of further liability for the remediation of the site for any

contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the Act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific standard, in whole or in part and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified, proposed for remediation to a site-specific standard or as a special industrial area, the municipality, within which the site is located, may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period the municipality may request that the person identified, as the remediator of the site, develop and implement a public involvement plan. Requests to be involved and comments, should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the Environmental Cleanup Program Manager in the Department Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

*Northeast Regional Field Office: Joseph A. Brogna, Environmental Cleanup Program Manager; 2 Public Square, Wilkes-Barre, PA 18711-0790; (570) 826-2511.*

**White Cap, LLC (350 Jaycee Drive)**, City of Hazleton, **Luzerne County**. Randy L. Shuler, Project Manager/Senior Scientist II, ERM, Princeton Crossroads Corporate Center, 250 Phillips Boulevard, Suite 280, Ewing, NJ 08618, has submitted a Notice of Intent to Remediate (on behalf of White Cap, LLC, 1819 N. Major Avenue, Chicago, IL 60639) concerning the remediation of groundwater found or suspected to have been contaminated with BTEX compounds and solvents. The applicant proposes to meet a combination of the background, Statewide health and site-specific standards. A summary of the Notice of Intent to Remediate was reportedly published in *The Standard Speaker* on July 31, 2002.

## 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 these 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 the proposed Plan Approval or Operating Permit must indicate their interest to the Department Regional Office within 30 days of the date of this notice and must file protests or comments on a Proposed Plan Approval or Operating Permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. 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. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121–143, the Federal Clean Air Act 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.**

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Ronald Davis, New Source Review Chief, (717) 705-4702.*

**28-05031: Borough of Chambersburg, Park Generating Center** (100 South Second Street, Chambersburg, PA 17201) for construction of five natural gas and #2 oil fired engine generators, each 5.6 megawatts, at its Shefler Drive site in Chambersburg Township, **Franklin County**.

**36-05122: Conectiv Mid-Merit, Inc.** (P. O. Box 6066, Newark, DE 19714-6066) for construction of a natural gas/liquid distillate fuel oil-fired combined cycle power generation facility in East Donegal Township, **Lancaster County**. The proposed facility will be capable of producing a nominal maximum 1,154 megawatts of electricity and will be controlled by low NO<sub>x</sub> combustion, selective catalytic reduction systems and oxidation catalyst systems. The facility will be subject to Subchapter D (Prevention of Significant Deterioration), Subchapter E (New Source Review), 40 CFR Part 60 Subpart GG—Standards of Performance for Stationary Gas Turbines, 40 CFR Part 60 Subpart Da—Standards of Performance for Electric Utility Steam Generating Units, 40 CFR Part 72 (Acid Rain Program), 40 CFR Part 68 (Accidental Release Prevention Program) and the NO<sub>x</sub> Budget Program.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: William Charlton, New Source Review Chief, (412) 442-4174.*

**32-00363: Spicer Energy II LLC** (50 Danbury Road, Wilton, CT 06897) for installation of facility to manufacture synthetic fuel at Conemaugh Station in West Wheatfield Township, **Indiana County**.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Contact: Thomas Barsley, Chief, (215) 685-9428.*

**02109: AT&T Corp.** (23 John Reading Road, Flemington, NJ 08822) for six 750 kW peak shaving generators at 500 South 27th Street, City of Philadelphia, **Philadelphia County**.

**02110: The Children's Hospital of Philadelphia** (34th Street and Civic Center Boulevard, Philadelphia, PA 19104) for two peak shaving generators in the City of Philadelphia, **Philadelphia County**.

**02113: EI Dupont De Nemours and Co., Inc.** (3401 Grays Ferry Avenue, Philadelphia, PA 19146) for installation of a natural gas fired chiller in the City of Philadelphia, **Philadelphia County**.

**02119: Scott Building Corp.** (2939 Felton Road, Norristown, PA 19401) for temporary installation of a concrete crusher at 11000 Roosevelt Boulevard, City of Philadelphia, **Philadelphia County**.

**Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001–4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.**

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Mark Wejkszner, Acting New Source Review Chief, (570) 826-2531.*

**35-399-038: Flexible Foam Products, Inc.** (P. O. Box 124, Spencerville, OH 45887) for construction of a polyurethane foam manufacturing facility at the PEI Industrial Park in Archbald Borough, **Lackawanna County**. VOC emissions from the manufacturing processes will be 39.04 tons per year. Recordkeeping and operating restrictions will be included in the plan approval to ensure the facility is operating within all applicable air quality requirements.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Ronald Davis, New Source Review Chief, (717) 705-4702.*

**21-03006A: Nestle Purina PetCare Co.** (6509 Brandy Lane, Mechanicsburg, PA 17050) for installation of a boiler and pet food processing line in Hampden Township, **Cumberland County**. The boiler is subject to 40 CFR Part 60, Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units. The primary pollutants of concern from the boiler are 4.12 tpy of NO<sub>x</sub> and 10.82 tpy of CO. The processing line has the potential to emit 7.49 tpy of particulate matter. The approval will include monitoring, recordkeeping, reporting and work practice requirements designed to keep the source operating within all applicable air quality requirements. The plan approval will be incorporated into the facility-wide permit.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Contact: Thomas Barsley, Chief, (215) 685-9428.*

**02072: G-Point Materials, Inc.** (2604 Penrose Ferry Road, Philadelphia, PA 19145) for unloading of bulk raw materials from ships and barges in the City of Philadelphia, **Philadelphia County**. This is a natural minor facility. The particulate matter emissions are expected to be 13.8 tons per year. The plan approval will contain operating and recordkeeping requirements to ensure operation within all applicable requirements.

**Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.**

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.*

**08-399-047B: OSRAM SYLVANIA Products, Inc.** (Hawes Street, Towanda, PA 18848-0504) for operation of four EL phosphor chemical vapor deposition (CVD) fluid bed coating reactors (ANE process) in North Towanda Township, **Bradford County**.

The four CVD coating reactors are used to coat phosphors with silicon nitride. The resultant emissions of ammonia, dimethylamine (a VOC) and nitrogen oxides (NOx) are controlled by a catalytic oxidizer and a selective catalytic reduction system operating in series. Stack testing has demonstrated ammonia, dimethylamine and NOx emission rates of .0015, .032 and .59 pound per hour, respectively.

The Department has determined that the four CVD coating reactors have been constructed and are operating, in accordance with all conditions of Plan Approvals 08-399-047, 08-399-047A and 08-399-047B, as well as in compliance with all applicable regulatory requirements pertaining to air contamination sources and the emission of air contaminants including the best available technology requirements of 25 Pa. Code §§ 127.1 and 127.12. The Department consequently intends to issue an operating permit for the operation of the respective coating reactors.

The following is a summary of the conditions the Department proposes to place in the operating permit to be issued to ensure compliance with all applicable requirements:

1. The air contaminants from the four CVD coating reactors shall be controlled by a catalytic oxidizer and a selective catalytic reduction system operating in series.
2. The air contaminant emission capture system associated with the four CVD coating reactors shall provide 100% capture of all air contaminants emitted from the reactors.
3. The amount of dimethylamine emitted from the selective catalytic reduction system shall not be greater than 1.3% (on a mass basis) of the amount of dimethylamine present in the inlet to the catalytic oxidizer.
4. The amount of ammonia emitted from the selective catalytic reduction system shall not be greater than 1% (on a mass basis) of the amount of ammonia present in the inlet to the catalytic oxidizer nor shall the ammonia concentration in the exhaust of the selective catalytic reduction system ever exceed 50 parts per million (volume basis).

5. The NOx emission rate from the selective catalytic reduction system shall not exceed 1.55 pounds per hour.

6. The exhaust gases from the CVD coating reactors shall be maintained at a temperature of at least 600°F prior to coming in contact with the catalyst bed in the catalytic oxidizer. Additionally, should the temperature drop below 600°F, the reactant feed to the CVD coating reactors shall automatically cease and an alarm shall sound.

7. The catalytic oxidizer shall be equipped with a continuous catalyst bed inlet and outlet temperature monitoring and recording system and a UV flame scanner. All temperature records shall be retained for at least 5 years and shall be made available upon request.

8. The selective catalytic reduction system shall be equipped with an NOx analyzer, which shall be used to control the ammonia injection rate, as well as with catalyst bed inlet and outlet low and high temperature alarms and a catalyst bed high NOx concentration alarm.

9. None of the conditions contained in this operating permit shall apply whenever the four CVD coating reactors are being used to coat phosphors using the CJ process.

**41-318-047: Reynolds Iron Works, Inc.** (157 Palmer Road, Williamsport, PA 17701) for operation of a surface coating operation in Woodward Township, **Lycoming County**.

The respective facility is a minor facility. The surface coating operation is used to coat various steel parts such as beams, pipes, columns, and the like, and will emit up to 6 tons of VOCs per 12 consecutive month period, of which less than 1 ton per 12 consecutive month period will be hazardous air pollutants.

The Department has determined that the surface coating operation has been constructed and is operating, in accordance with all conditions of Plan Approval 41-318-047 as well as in compliance with all applicable regulatory requirements pertaining to air contamination sources and the emission of air contaminants including the requirements of 25 Pa. Code § 129.52 and the best available technology requirements of 25 Pa. Code §§ 127.1 and 127.12. The Department consequently intends to issue an operating permit for the operation of the respective surface coating operation.

The following is a summary of the conditions the Department proposes to place in the operating permit to be issued to ensure compliance with all applicable requirements:

1. The spray booth in which the surface coating is performed shall be equipped with a full set of spray booth filters whenever surface coating is occurring.
2. The VOC content of any coating used in the surface coating operation shall not exceed 6.4 pounds per gallon of coating solids, as applied.
3. No additives or thinners shall be mixed with the coatings prior to application nor shall the company use more than 50 gallons of VOC-containing solvent or cleaning solution per 12 consecutive month period for cleanup associated with the surface coating operation.
4. The VOC emissions from the surface coating operation shall not exceed 6 tons per 12 consecutive month period and the total combined hazardous air pollutant emissions shall not equal or exceed 1 ton per 12 consecutive month period.

5. All spray guns shall utilize airless spray technology or an application technique having an equivalent transfer efficiency.

6. The company shall maintain records of all coating materials, cleaning solutions, and the like, associated with the use of the surface coating operation. These records shall be maintained on a monthly basis and shall contain the identity and amount of each material that was used, the VOC content of each material that was used and the hazardous air pollutant content of each material that was used.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Contact: Edward Braun, Chief, (215) 685-9476.*

**95-071: General Electric International, Inc.** (1040 East Erie Avenue, Philadelphia, PA 19124) for repair of industrial transformers, retrofitting and refilling of railroad transformers, large motor repair and rental of energy producing and HVAC equipment in the City of Philadelphia, **Philadelphia County**. The synthetic minor facility's air emission sources include four paint booths, rail bay open coating, surface coating operations outside paint booths for a motor generator department, nine particulate sources, nine combustion units each rated at 2 mmBtu/hr or less and a generator test stand. The facility's air emission control devices include two dust collectors, a cyclone and surface coating filters for particulate capture.

## MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of the application is available for inspection at the District Mining Office indicated before 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 certification.

Written comments, objections or requests for informal conferences on applications, may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the same address within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34 (relating to public notices of filing of permit applications, opportunity for comment and informal conferences).

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. NPDES

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

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

### *Coal Applications Received*

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.*

**54860205R3. Cass Contracting Company** (101 North Centre Street, Pottsville, PA 17901), renewal of an existing coal refuse reprocessing operation in Norwegian Township, **Schuylkill County** affecting 33.0 acres. Receiving stream: none. Application received June 19, 2002.

*Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.*

**04970101 and NPDES Permit No. PA0201910. Kerry Coal Company** (R. D. 2, Box 2139, Wampum, PA 16157). Renewal application for continuous operation and reclamation of a bituminous surface mine located in Darlington Township, **Beaver County**, affecting 316.6 acres. Receiving streams: unnamed tributaries to Coalbank Run, North Fork Little Beaver Creek and Dillworth Run, classified for the following use: CWF. The first downstream potable water supply intake from the point of discharge is Greif Brothers Corporation. Renewal application received June 17, 2002.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**56920108 and NPDES Permit No. PA0212181. Godin Brothers, Inc.** (5433 Front Street, Stoystown, PA 15563). Permit renewal for reclamation only and for continued restoration of a bituminous surface mine and treated mine drainage in Jenner Township, **Somerset County**, affecting 71.7 acres. Receiving streams: unnamed tributary to Hoffman Run, Hoffman Run and Quemahoning Creek, all to Quemahoning Creek to Stony Creek to Conemaugh River classified for the following uses: CWF and WWF. The first downstream potable water supply intake from the point of discharge is Cambria/Somerset Municipal Authority Stonycreek #1 (Border Dam). Application received June 14, 2002.



*Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.*

**10860118 and NPDES Permit No. PA 0107611. C & K Coal Company** (P. O. Box 69, Clarion, PA 16214). Renewal for an existing bituminous surface strip operation in Allegheny Township, **Butler County** affecting 124.0 acres. Receiving streams: unnamed tributary to North Branch Bear Creek to Bear Creek, classified for the following uses: Statewide water uses: CWF. No public water supplies are within 10 miles downstream of this proposed operation. Application received June 18, 2002.

*Noncoal Applications Received*

*Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.*

**25020305. Erie Aggregates, Inc.** (8923 Wattsburg Road, Erie, PA 16509). Commencement, operation and restoration of a sand, gravel and topsoil operation in Waterford and Amity Townships, **Erie County** affecting 97.4 acres. Receiving streams: six unnamed tributaries to French Creek, classified for the following uses: Statewide water uses: WWF. No public water supplies are within 10 miles downstream of this proposed operation. Application to include a land use change from unmanaged natural habitat to an unmanaged water impoundment on lands of Mervin Troyer. Application received June 14, 2002.

**2138-25020305-E-1. Erie Aggregates, Inc.** (8923 Wattsburg Road, Erie, PA 16509). Application for a stream encroachment to reconstruct an existing temporary stream crossing over unnamed tributary 8 to French Creek in Amity and Waterford Townships, **Erie County**. Receiving streams: French Creek. Application received June 14, 2002.

**2138-25020305-E-2. Erie Aggregates, Inc.** (8923 Wattsburg Road, Erie, PA 16509). Application for a stream encroachment to reconstruct an existing temporary stream crossing over unnamed tributary 9 to French Creek in Amity and Waterford Townships, **Erie County**. Receiving streams: French Creek. Application received June 14, 2002.

**2138-25020305-E-3. Erie Aggregates, Inc.** (8923 Wattsburg Road, Erie, PA 16509). Application for a stream encroachment to reconstruct an existing temporary stream crossing over unnamed tributary 1 to French Creek in Amity and Waterford Townships, **Erie County**. Receiving streams: French Creek. Application received June 14, 2002.

*Noncoal Applications Returned*

*Hawk Run District Mining Office: Empire Road, P. O. Box 209, Hawk Run, PA 16840-0209, (814) 342-8200.*

**53010804. Roger Long** (242 West Branch Road, Galeton, PA 16922). Commencement, operation and restoration of a Small Industrial Mineral (Flagstone) permit located in West Branch Township, **Potter County** affecting 3 acres. Receiving streams: Osgood Hollow, tributary to Pine Creek. Application received June 27, 2002. Application returned: June 20, 2002.

## FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications and requests for Environmental Assessment approval and requests for Water Quality Certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341(a)), 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. Initial requests for 401 Water Quality Certification will be published concurrently with the permit application. Persons objecting to approval of a request for certification under section 401 or to the issuance of a Dam Permit or Water Obstruction and Encroachment Permit, or the approval of an Environmental Assessment must submit any comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted 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. Each individual 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 the hours of 8 a.m. and 4 p.m. on each working day at the 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 may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

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**Applications Received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and Requests for Certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).**

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### WATER OBSTRUCTIONS AND ENCROACHMENTS

*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**E48-324. CTHL-1, Inc.**, 824 Eighth Avenue, Bethlehem, PA 18018, in Palmer Township, **Northampton County**, U. S. Army Corps of Engineers, Philadelphia District.

To construct and maintain a stormwater outfall structure consisting of a 10-foot x 5-foot concrete box culvert and associated energy dissipater in Bushkill Creek (HQ-CWF) for the purpose of conveying stormwater run-off from the proposed Tatamy Hunt and the Villages at Mill Race residential subdivision. The project is located approximately 1,500 feet north of the intersection of Bushkill Drive and Newlins Road (Easton, PA-NJ Quadrangle N: 19.5 inches; W: 17.0 inches).

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.*

**E12-130. Dominion Transmission, Inc.**, 445 West Main Street, Clarksburg, WV 263012. Dominion LN-50 Gas Transmission Line, in Gibson and Grove Townships, **Cameron County**, ACOE Baltimore District (Driftwood, PA Quadrangle N: 8.7 inches; W: 3.9 inches).

To replace, operate and maintain an existing 24-inch pipeline over 18 miles within an existing 75-foot right-of-way for the transmission of natural gas. Replacement or maintenance of the 24-inch diameter pipeline may require the four stream crossings that are as follows:

<i>Stream Name</i>	<i>Water Quality Designation</i>	<i>Pipeline Station Location</i>
Red Run	HQ-CWF	3721+82
Unnamed tributary to Sanders Draft	HQ-CWF	377+82
Laurel Draft	HQ-CWF	3935+25
Sinnemahoning Creek	WWF	4210+61

All gas transmission lines under streambeds shall be replaced so that there will be a minimum of 3 feet of cover between the top of the pipe and the lowest point in the streambed. Trench plugs or clay dikes shall be used at every waterway and wetland crossing to ensure the existing hydrology is not altered. If upon investigation the Department determines the gas transmission line approved by this permit is serving to degrade water quality, stream profile, meander pattern or channel geometries, then the permittee shall be required to implement all measures necessary to mitigate the degradation. This permit also authorizes the crossing of any wetland that may occur along the 14 mile pipeline right-of-way; during replacement and maintenance operations, the permittee shall take all precautions necessary to ensure that wetland impacts along the right-of-way are temporary. For the purposes of submerged lands of this Commonwealth, this permit incorporates the submerged land license agreement and its fees that are referenced by Permit No. 16655 by the former Department of Forest and Waters.

**E17-372. Pennsylvania Department of Transportation, Engineering District 2-0**, P. O. Box 342, Clearfield, PA 16830. SR 0219, Section 229 Bridge Replacement, in the City of DuBois and Sandy Township, **Clearfield County**, ACOE Pittsburgh District (Falls Creek, PA Quadrangle N: 0.9 inch; W: 4.8 inches).

To realign 66 feet of Clear Run, remove two existing bridges and construct, operate and maintain a single span concrete adjacent box beam bridge to carry SR 0219, Section 229 across Clear Run (CWF) to improve public highway safety. The prestressed concrete bridge shall be constructed with a minimum normal span of 32.8 feet, underclearance of 4.4 feet, skew of 83°. The bridge replacement project will not impact wetlands while impacting 136 feet of waterway that is located on SR 0219 approximately 1.1 mile east of SR 0830 and SR 0219 intersection.

**E18-146A. Dominion Transmission, Inc.**, 445 West Main Street, Clarksburg, WV 263012. Dominion LN-50 Gas Transmission Line, East Keating and Leidy Townships, **Clinton County**, ACOE Baltimore District (Hammersley, PA Quadrangle N: 5.2 inches; W: 8.2 inches).

A major amendment to Permit No. E18-146 to replace, operate and maintain an existing 24-inch pipeline over 14 miles within an existing 75 foot right-of-way for the transmission of natural gas. Replacement or maintenance of the 24-inch diameter pipeline may require the following ten stream crossings:

<i>Stream Name</i>	<i>Water Quality Designation</i>	<i>Pipeline Station Location</i>
Beaverdam Run	EV	4781+15
Kettle Creek	EV	4857+04
Hevner Run	EV	4964+76
Road Hollow	EV	5049+22
Turtle Point Hollow	EV	5094+62
Austin Hollow	EV	5156+18
Manning Hollow	EV	5191+93
Merriman Hollow	EV	5213+07
Renz Hollow	EV	5241+10
Scoval Hollow	HQ-CWF	5373+25

All gas transmission lines under streambeds shall be replaced so that there will be a minimum of 3 feet of cover between the top of the pipe and the lowest point in the streambed. Trench plugs or clay dikes shall be used at every waterway and wetland crossing to ensure the existing hydrology is not altered. If upon investigation the Department determines the gas transmission line approved by this permit is serving to degrade water quality, stream profile, meander pattern or channel geometries, then the permittee shall be required to implement all measures necessary to mitigate the degradation. This permit also authorizes the crossing of any wetland that may occur along the 14 mile pipeline right-of-way; during replacement and maintenance operations, the permittee shall take all precautions necessary to ensure that wetland impacts along the right-of-way are temporary. Since Beaverdam Run is a wild trout stream, no replacement or maintenance work shall be conducted in or along the stream channel between October 1 and April 1 without prior written approval from the Fish and Boat Commission. Since Kettle Creek is a TSF, no replacement or maintenance work shall be conducted in or along the stream channel between March 1 and June 15 without prior written approval from the Fish and Boat Commission.

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

**E02-1381. Township of Hampton**, 3101 McCully Road, Allison Park, PA 15101, Hampton Township, **Allegheny County**, ACOE Pittsburgh District. To remove the existing structures, to construct and maintain a Conspan Bridge having a span of 24 feet and underclearance of 8.5 feet and to construct and maintain an outfall structure to Crouse Run (TSF). The project is located on South Pioneer Road approximately 30 feet south of its intersection with West Bardoner Road (Glenshaw, PA Quadrangle N: 18.9 inches; W: 10.3 inches).

**E02-1382. Township of Hampton**, 3101 McCully Road, Allison Park, PA 15101, Hampton Township, **Allegheny County**, ACOE Pittsburgh District.

To remove the existing structures, to construct and maintain a Conspan Bridge having a span of 20 feet and underclearance of 5.2 feet and to construct and maintain an outfall structure to Crouse Run (TSF). The project is located on South Pioneer Road approximately 500 feet north of its intersection with West Bardoner Road (Glenshaw, PA Quadrangle N: 19.1 inches; W: 10.3 inches).

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**ACTIONS**


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**FINAL ACTIONS TAKEN UNDER  
THE CLEAN STREAMS LAW AND THE  
FEDERAL CLEAN WATER  
ACT—NPDES AND WQM PART II  
PERMITS**
**INDUSTRIAL WASTE AND  
SEWERAGE WASTEWATER**

The Department of Environmental Protection has taken the following actions on previously received permit applications and requests for plan approval.

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 may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary 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 decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

**I. Municipal and Industrial Permit Actions under  
The Clean Streams Law (35 P. S. §§ 691.1—  
691.1001).**

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**NPDES Permit No. PA0222046**, Sewage, **Rodger B. Conklin and Marcia J. McCormack**, 2398 West Washington Street, Bradford, PA 16701. This proposed facility is located in Corydon Township, **McKean County**.

Description of Proposed Action/Activity: This project is authorized to discharge to unnamed tributary to Willow Creek.

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**NPDES Permit No. PA0103586**, Sewage, **Keith A. Whittenberger**, 300 Three Degree Road, Renfrew, PA 16053-9732. This proposed facility is located in Penn Township, **Butler County**.

Description of Proposed Action/Activity: This project is authorized to discharge to unnamed tributary to Thorn Creek.

**NPDES Permit No. PA0238775**, Sewage, **Rob Kurczewski**, 8843 Ennis Drive, Erie, PA 16509. This proposed facility is located in Summit Township, **Erie County**.

Description of Proposed Action/Activity: This project is authorized to discharge to unnamed tributary of Walnut Creek.

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**WQM Permit No. 2502401**, Sewerage, **Rob Kurczewski**, 8843 Ennis Drive, Erie, PA 16509. This proposed facility is located in Summit Township, **Erie County**.

Description of Proposed Action/Activity: This project is authorized to discharge to unnamed tributary of Walnut Creek.

**APPROVALS TO USE NPDES AND/OR OTHER  
GENERAL PERMITS**

The following parties have submitted: (1) Notices of Intent for Coverage under (1) General NPDES Permits to Discharge Wastewater into the Waters of the Commonwealth. The approval for coverage under these general NPDES permits is subject to applicable effluent limitations. Monitoring, reporting requirements and other conditions set forth in the general permit; (2) General Permits for Beneficial Use of Sewage Sludge or Residential Septage by Land Application in this Commonwealth; (3) General NPDES Permit Authorizing the Discharge of Stormwater Associated with Construction Activities to Waters of the Commonwealth; (4) Notification for First Use Application of Sewage Sludge.

The approval of coverage for land application of sewage sludge or residential septage under these general permits is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. The Department of Environmental Protection approves the following coverage under the specific General Permit.

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).

The application and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted.

The application and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted.

**List of NPDES and/or Other General Permit Types**

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From Single Residence Sewage Treatment Plant
PAG-5	General Permit for Discharges From Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges From Combined Sewer Systems (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 Nonexceptional Quality Sewage Sludge 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)

*General Permit Type—PAG-2*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Telephone No.</i>
Carbon County Lower Towamensing Township	PAR101335	Stoney Ridge PRC c/o Glenn Hahn 595 Hahns Dairy Rd. Palmerton, PA 18071	Fireline Creek CWF	Carbon County Conservation District (610) 377-4894
Carbon County Towamensing Township	PAR101336	Jerusalem Evangelical Lutheran Church 545 Church Dr. Palmerton, PA 18071	Buckwha Creek CWF, MF	Carbon County Conservation District (610) 377-4894
Lackawanna County City of Scranton	PAR10N130	George Parker City of Scranton 340 N. Washington Scranton, PA 18503	Roaring Brook CWF	Lackawanna County Conservation District (570) 281-9495
Lackawanna County Jermyn Borough	PAR10N137	Ken Powell 1305 Justus Blvd. Clarks Summit, PA 18411	Lackawanna River CWF	Lackawanna County Conservation District (570) 281-9495
Northampton County Washington Township	PAR10U183	James Ohland 1070 Five Points Richmond Road Bangor, PA 18013	Martins Creek TSF, MF	Northampton County Conservation District (610) 746-1971
Northampton County Lehigh Township	PAR10U179	Robert Keegan, Jr. Carbon-Lehigh Intermediate Unit 21 4750 Orchard Road Schnecksville, PA 18078	Lehigh River WWF	Northampton County Conservation District (610) 746-1971

*General Permit Type—PAG-3*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Telephone No.</i>
Hatfield Township Montgomery County	PAR230067	Praxair, Inc. 2929 Township Line Rd. Souderton, PA 18964	Neshaminy Creek 2F Watershed	Southeast Region Lee Park, Suite 6010 555 North Lane Conshohocken, PA 19428 (610) 832-6131
Upper Merion Township Montgomery County	PAR800073	Federal Express Corporation 3620 Hacks Cross Rd. Bldg. B, 2nd Floor Memphis, TN 38125	Schuylkill River 3F Watershed	Southeast Region Lee Park, Suite 6010 555 North Lane Conshohocken, PA 19428 (610) 832-6131

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Telephone No.</i>
Whitpain Township Montgomery County	PAR200029	Yarway Corp. 480 Norristown Rd. Blue Bell, PA 19422	Plymouth Creek 3E Watershed	Southeast Region Lee Park, Suite 6010 555 North Lane Conshohocken, PA 19428 (610) 832-6131
Tredyffrin Township Chester County	PAR800063	United States Postal Service 2970 Market St. Philadelphia, PA 19104	UNT to Trout Creek 3F Watershed	Southeast Region Lee Park, Suite 6010 555 North Lane Conshohocken, PA 19428 (610) 832-6131
Herndon Borough Northumberland County	PAR324803	Creative Playthings, LTD P. O. Box 306 Rt. 147 Main Street Herndon, PA 17830	Susquehanna River WWF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3666

*General Permit Type—PAG-4*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Telephone No.</i>
Richmond Township Tioga County	PAG045144	William R. Adrian 1612 Petes Court Crofton, MD 21114	UNT to Canoe Camp Creek CWF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3666

## PUBLIC WATER SUPPLY PERMITS

The Department of Environmental Protection has taken the following actions on applications received under the Safe Drinking Water Act 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 may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary 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 decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

## SAFE DRINKING WATER

### Actions taken under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

*Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Operations Permit** issued to **Magic Chef Mobile Home Park**, 1977 Sheaffer Road, Elizabethtown, PA 17022, PWS #7360024, Mt. Joy Township, **Lancaster County** on May 23, 2002, for the operation of facilities approved under Construction Permit No. 3601514.

**Operations Permit** issued to **The Jay Group**, 2021 Horseshoe Road, Lancaster, PA 17062, PWS #7360324, East Lampeter Township, **Lancaster County** on June 10, 2002, for the operation of facilities approved under Construction Permit No. 3601516.

**Operations Permit** issued to **Regency Woods Mobile Home Park**, 107 Texaco Road, Mechanicsburg, PA 17055, PWS #7210057, Middlesex Township, **Cumberland County** on June 10, 2002, for the operation of facilities approved under Construction Permit No. 2101504.

*Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**Operations Permit** issued to **Erie City Water Authority**, 340 West Bayfront Parkway, Erie, PA 16507, PWS #6250028, Millcreek Township, **Erie County** on June 13, 2002, for the operation of facilities approved under Construction Permit 2570501-T1-MA2.

## 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) requires the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the Act. Plans and reports required by provisions of the Act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media; benefits of 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. A cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis 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. 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 under 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 listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following final reports:

*Northeast Region: Joseph A. Brogna, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790; (570) 826-2511.*

**Miller Property (3655 William Penn Highway), Palmer Township, Northampton County.** David A. Everitt, III, Senior Environmental Scientist, MEA Inc., 201 Center Street, Stockertown, PA 18083 submitted a Final Report (on behalf of Barry Miller, Zinfadel Court West, Easton, PA) concerning the remediation of soils found or suspected to have been contaminated with leaded and/or unleaded gasoline. The report demonstrated attainment of the Statewide health standard and was approved on June 18, 2002.

## HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

**Bonds reduced under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and Regulations to Operate a Hazardous Waste Treatment, Storage or Disposal Facility.**

### *Intent to Reduce a Bond*

*Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**Permit No. PAD004835146. MAX Environmental Technologies, Inc.,** R. D. 1, Box 135A, Cemetery Road, Yukon, PA 15698-9703, South Huntingdon Township, **Westmoreland County.** On May 21, 2002, the Department received a request for a bond reduction from MAX Environmental Technologies, Inc. for its closing of hazardous waste Impoundment No. 5. The Department has reviewed the request and has determined that it is consistent with 25 Pa. Code § 265a.165.

Persons wishing to comment on the proposed action are invited to submit a statement to the Regional Office indicated as the office responsible, within 45 days from the date of this public notice. Comments received within this 45-day period will be considered in the formulation of the final determination regarding this application. Responses should include the name, address and telephone number of the writer; and concise statement to inform the Regional Office of the exact basis of any comment and the relevant facts upon which it is based. A public hearing may be held if the Regional Office considers the public response significant.

Following the 45-day comment period and/or public hearing, the Department will make a final determination regarding the proposed permit action. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

## AIR QUALITY

**Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.**

*Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Thomas McGinley, New Source Review Chief, (610) 832-6242.*

**09-0123A: Better Materials Corp.** (262 Quarry Road, Ottsville, PA 18942) on June 18, 2002, for operation of a batch asphalt plant in Nockamixon Township, **Bucks County.**

**46-0037M: Cabot Performance Materials** (County Line Road, Boyertown, PA 19512) on June 20, 2002, for operation of a large scrubber in Douglass Township, **Montgomery County.**

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Ronald Davis, New Source Review Chief, (717) 705-4702.*

**01-05017B: Quebecor World Fairfield, Inc.** (100 North Miller Street, Fairfield, PA 17320) on June 17, 2002, for construction of a two-unit double web offset lithographic printing press with two natural gas-fired

heatset dryers (Web No. 7) at its Fairfield Plant in Fairfield Borough, **Adams County**.

**36-03074A: Colonial Metals Co.** (217 Linden Street, Columbia, PA 17512) on June 18, 2002, for modification of the existing scrap metal recycling facility in Columbia Borough, **Lancaster County**. This facility is subject to 40 CFR Part 60, Subpart M—Standards of Performance for Secondary Brass and Bronze Production Plants.

**36-05088A: Haines and Kibblehouse, Inc.** (P. O. Box 196, Skippack, PA 19474) on June 17, 2002, for installation of a fabric collector on an existing recycled asphalt pavement system of a batch asphalt plant at the Silver Hill Quarry in Brecknock Township, **Lancaster County**. This facility is subject to 40 CFR Part 60, Subpart OOO—Standards of Performance for Nonmetallic Mineral Processing Plants.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: William Charlton, New Source Review Chief, (412) 442-4174.*

**03-00023: Allegheny Energy Supply Co., LLC** (4350 Northern Pike, Monroeville, PA 15146) on June 19, 2002, for installation of NOx control system at the Armstrong Power Station in Washington Township, **Armstrong County**.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Contact: Thomas Barsley, Chief, (215) 685-9428.*

**02057: Thermo-Dopolymerization Process LLC** (4599 Basin Bridge Road, Philadelphia, PA 19112) for processing waste tires, mixed plastics and presorted municipal solid waste in their pilot plant in the City of Philadelphia, **Philadelphia County**.

**02040: Sun Co., Inc.—Belmont Terminal** (2700 West Passyunk Avenue, Philadelphia, PA 19145) for operation of an air stripper in the City of Philadelphia, **Philadelphia County**.

**02073: Gracie Corp.** (4000 Pulaski Street, Philadelphia, PA 19140) for operation of a temporary concrete crusher at 3700 South Broad Street, City of Philadelphia, **Philadelphia County**.

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**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.**

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*Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Thomas McGinley, New Source Review Chief, (610) 832-6242.*

**15-0027D: Johnson Matthey** (434 Devon Park Drive, Wayne, PA 19087) on June 12, 2002, for operation of Coating Line #7 and SCR in Tredyffrin Township, **Chester County**.

**46-0185: Fairhill Fabricators, Inc.** (831 West Fifth Street, Lansdale, PA 19446) on June 12, 2002, for operation of a paint spray booth in Lansdale Borough, **Montgomery County**.

**15-0115: QVC, Inc.** (1200 Wilson Drive, West Chester, PA 19380) on June 12 2002, for operation of two 12.55 mmBtu/hr gas/fuel boilers in West Goshen Township, **Chester County**.

**09-0063A: New Hope Crushed Stone Co.** (6970 Phillips Mill Road, New Hope, PA 18938) on June 17, 2002, for operation of a stone crushing plant in Solebury Township, **Bucks County**.

**09-320-050: Superpac, Inc.** (1220 Industrial Boulevard, Upper Southampton, PA 18966) on June 17, 2002, for operation of a flexographic printing press in Upper Southampton Township, **Bucks County**.

**09-0123: Better Materials Corp.** (262 Quarry Road, Ottsville, PA 18942) on June 14 2002, for operation of a batch asphalt plant in Nockamixon Township, **Bucks County**.

**23-0012: Epsilon Product Co., LLC** (Post Road and Blueball Avenue, Marcus Hook, PA 19061) on June 18, 2002, for operation of Plant 2 and a thermal oxidizer in Marcus Hook Borough, **Delaware County**.

**46-0015A: Occidental Chemical Corp.** (375 Armand Hammer Boulevard, Pottstown, PA 19464) on June 18, 2002, for operation of Process Line No. 6 in Lower Pottsgrove Township, **Montgomery County**.

**23-0001J: Sunoco, Inc. (R and M)** (Delaware Avenue and Green Street, Marcus Hook, PA 19061) on June 20, 2002, for operation of 21 storage tanks in Marcus Hook Borough, **Delaware County**.

**09-0007A: Waste Management Disposal Service of PA** (1513 Bordentown Road, Morrisville, PA 19067) on June 20, 2002, for operation of a solid waste landfill expansion in Falls Township, **Bucks County**.

**09-0087A: Air Products and Chemicals, Inc.** (351 Philadelphia Avenue, Morrisville, PA 19067) on June 20, 2002, for operation of an ammonia scrubber in Falls Township, **Bucks County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Ronald Davis, New Source Review Chief, (717) 705-4702.*

**21-05029A: Sunoco Partners Marketing and Terminals LP** (1801 Market Street (15/10 PC), Philadelphia, PA 19103) on June 15, 2002, for installation of a vapor combustion unit to control loading rack at its Mechanicsburg Terminal in Hampden Township, **Cumberland County**. This plan approval was extended.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.*

**53-0003D: Dominion Transmission Corp.** (625 Liberty Avenue, Pittsburgh, PA 15222-3199) on June 12, 2002, for operation of a 12.8 million Btu per hour natural gas-fired regeneration heater, two 3,200 horsepower natural gas-fired reciprocating internal combustion compressor engines, a 536 horsepower natural gas-fired emergency generator and a 3.0 million Btu per hour natural gas-fired boiler on a temporary basis until October 10, 2002, at the Greenlick Compressor Station in Stewardson Township, **Potter County**. This plan approval was extended.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: William Charlton, New Source Review Chief, (412) 442-4174.*

**03-055C: Homer City OL1—OL8 LLC** (1750 Power Plant Road, Homer City, PA 15748) on June 18, 2002, for change of ownership of the Unit 1, Unit 2 of the selective catalytic reduction units and Unit 3 flue gas desulfurization scrubber at Homer City Power Plant in Center Township, **Indiana County**.

**32-055D: Homer City OL1—OL8 LLC** (1750 Power Plant Road, Homer City, PA 15748) on June 18, 2002, for change of ownership of the anhydrous ammonia handling system at Homer City Power Plant in Center Township, **Indiana County**.

**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 Elmerston Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.*

**07-03036: Forscht Concrete Products** (R. R. 4 Box 568, Altoona, PA 16601-9710) for operation of a human crematory in Logan Township, **Blair 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); 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*

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**56010105. Godin Brothers, Inc.** (5433 Front Street, Stoystown, PA 15563), commencement, operation and restoration of a bituminous surface and auger mine in Jenner Township, **Somerset County**, affecting 34.8 acres. Receiving streams: Quemahoning Creek and unnamed tributaries to Quemahoning Creek classified for the following uses: CWF. The first downstream potable water supply intake from the point of discharge is the Quemahoning Reservoir. Application received September 7, 2001. Permit issued June 13, 2002.

**32010108 and NPDES Permit No. PA0249017, Britt Energies, Inc.**, 2450 Philadelphia Street, Indiana, PA 15701, commencement, operation and restoration of a bituminous surface and auger mine and for discharge of treated mine drainage, in Center Township, **Indiana County**, affecting 50.0 acres. Receiving streams: Yellow Creek and unnamed tributary to Yellow Creek; to Two Lick Creek to Blacklick Creek to Conemaugh River classified for the following uses: TSF. There are no potable water supply intakes within 10 miles downstream. Application received July 25, 2001. Permit issued June 13, 2002.

*Noncoal Permits Actions*

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.*

**8275SM5C5 and NPDES Permit #PA0595381. Martin Limestone, Inc.** (P. O. Box 550, Blue Ball, PA 17506), renewal of NPDES Permit in East Cocalico Township,

**Lancaster County**. Receiving stream: Stoney Run. Application received May 3, 2002. Renewal issued June 20, 2002.

*Hawk Run District Mining Office: Empire Road, P. O. Box 209, Hawk Run, PA 16840-0209, (814) 342-8200.*

**14022801. Two Rock Stone Company**, P. O. Box 496, Port Matilda, PA 16870. Commencement, operation and restoration of a Small Industrial Mineral (Sandstone) permit, located in Howard and Marion Townships, **Centre County** affecting 5 acres. Receiving streams: Lick Run and Bald Eagle Creek, tributary to Bald Eagle Creek. Application received February 4, 2002. Permit issued June 18, 2002.

**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*

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.*

**36024052. Keystone Blasting Service** (381 Reifsnyder Road, Lititz, PA 17543), construction blasting in Ephrata Township, **Lancaster County** with an expiration date of June 22, 2007. Permit issued June 17, 2002.

**15024017. Explo-Craft, Inc.** (P. O. Box 1332, West Chester, PA 19380), construction blasting in the City of Coatesville, **Chester County** with an expiration date of October 27, 2002. Permit issued June 17, 2002.

**36024053. Hall Explosives, Inc.** (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting in Manheim Township, **Lancaster County** with an expiration date of March 22, 2003. Permit issued June 17, 2002.

**09024017. AMROC, Inc.** (7531 Chestnut Street, Zionsville, PA 18092), construction blasting in Hilltown Township, **Bucks County** with an expiration date of June 27, 2003. Permit issued June 17, 2002.

**52024014. Explosive Services, Inc.** (7 Pine Street, Bethany, PA 18431), construction blasting in Lehman Township, **Pike County** with an expiration date of May 14, 2003. Permit issued June 17, 2002.

**45024034. Explosive Services, Inc.** (7 Pine Street, Bethany, PA 18431), construction blasting in Smithfield Township, **Monroe County** with an expiration date of May 14, 2003. Permit issued June 17, 2002.

**39024010. AMROC, Inc.** (7531 Chestnut Street, Zionsville, PA 18092), construction blasting in North Whitehall Township, **Lehigh County** with an expiration date of June 29, 2003. Permit issued June 17, 2002.

**38024014. Keystone Blasting Service** (381 Reifsnyder Road, Lititz, PA 17543), construction blasting in Heidelberg Township, **Lebanon County** with an expiration date of December 31, 2002. Permit issued June 17, 2002.

**35024012. Explosive Services, Inc.** (7 Pine Street, Bethany, PA 18431), demolition blasting in Ransom Township, **Lackawanna County** with an expiration date of May 18, 2003. Permit issued June 18, 2002.



**38024017. Keystone Blasting Service** (381 Reifsnyder Road, Lititz, PA 17543), construction blasting in North Lebanon Township, **Lebanon County** with an expiration date of December 31, 2002. Permit issued June 18, 2002.

**46024032. Labrador Construction** (P. O. Box 1379, Marshalls Creek, PA 18335), construction blasting in City of Pottstown, **Montgomery County** with an expiration date of July 4, 2002. Permit issued June 18, 2002.

**67024016. Hall Explosives, Inc.** (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting in Newberry Township, **York County** with an expiration date of July 29, 2002. Permit issued June 18, 2002.

**28024020. David H. Martin Excavating, Inc.** (4961 Cumberland Highway, Chambersburg, PA 17201), construction blasting in Guilford Township, **Franklin County** with an expiration date of September 5, 2002. Permit issued June 18, 2002.

**23024006. Explo-Craft, Inc.** (P. O. Box 1332, West Chester, PA 19380), construction blasting in Chaddsford Township, **Delaware County** with an expiration date of October 2, 2002. Permit issued June 18, 2002.

**28024019. Fayetteville Contractors, Inc.** (P. O. Box FCI, Fayetteville, PA 17222), construction blasting in Antrim Township, **York County** with an expiration date of April 30, 2003. Permit issued June 18, 2002.

**15024018. AMROC, Inc.** (7531 Chestnut Street, Zionsville, PA 18092), construction blasting in East Caln Township, **Chester County** with an expiration date of October 3, 2002. Permit issued June 19, 2002.

**48024009. AMROC, Inc.** (7531 Chestnut Street, Zionsville, PA 18092), construction blasting in Palmer Township, **Northampton County** with an expiration date of July 3, 2003. Permit issued June 19, 2002.

**35024013. EJW Corporation** (R. R. 2 Box 189, Kingsley, PA 18826), construction blasting in Moosic Borough, **Lackawanna County** with an expiration date of September 3, 2002. Permit issued June 19, 2002.

**52024013. Explosive Services, Inc.** (7 Pine Street, Bethany, PA 18431), construction blasting in Blooming Grove Township, **Pike County** with an expiration date of May 18, 2003. Permit issued June 19, 2002.

**36024054. ABEL Construction Company, Inc.** (3925 Columbia Avenue, Mountville, PA 17554), construction blasting in East Lampeter Township, **Lancaster County** with an expiration date of May 17, 2003. Permit issued June 19, 2002.

**09024018. Eastern Blasting Company, Inc.** (1292 Street Road, New Hope, PA 18938), construction blasting in Warrington Township, **Bucks County** with an expiration date of January 4, 2003. Permit issued June 19, 2002.

**09024019. Eastern Blasting Company, Inc.** (1292 Street Road, New Hope, PA 18938), construction blasting in Richland Township, **Bucks County** with an expiration date of January 4, 2003. Permit issued June 19, 2002.

**45024035. Explosive Services, Inc.** (7 Pine Street, Bethany, PA 18431), construction blasting in Stroud Township, **Monroe County** with an expiration date of May 22, 2003. Permit issued June 19, 2002.

**06024030. Schlouch Inc.** (Excelsior Industrial Park, P. O. Box 69, Blandon, PA 19510), construction blasting in Wernersville Borough, **Berks County** with an expiration date of June 30, 2003. Permit issued June 20, 2002.

**06024031. J. Roy's, Inc.** (Box 125, Bowmansville, PA 17507), construction blasting in Muhlenberg Township, **Berks County** with an expiration date of December 31, 2003. Permit issued June 20, 2002.

**67024017. J. Roy's, Inc.** (Box 125, Bowmansville, PA 17507), construction blasting in Conewago Township, **York County** with an expiration date of December 31, 2003. Permit issued June 20, 2002.

**28024021. J. Roy's, Inc.** (Box 125, Bowmansville, PA 17507), construction blasting in Guilford Township, **Franklin County** with an expiration date of December 31, 2003. Permit issued June 20, 2002.

**22024006. Hall Explosives, Inc.** (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting in East Hanover Township, **Dauphin County** with an expiration date of September 30, 2002. Permit issued June 20, 2002.

**45024036. Explosive Services, Inc.** (7 Pine Street, Bethany, PA 18431), construction blasting in Stroud Township, **Monroe County** with an expiration date of May 24, 2003. Permit issued June 20, 2002.

**21024035. Brubacher Excavating, Inc.** (825 Reading Road, Bowmansville, PA 17507), construction blasting in Silver Spring Township, **Cumberland County** with an expiration date of June 30, 2003. Permit issued June 20, 2002.

**15024019. Schlouch Inc.** (Excelsior Industrial Park, P. O. Box 69, Blandon, PA 19510), construction blasting in West Bradford Township, **Chester County** with an expiration date of July 6, 2003. Permit issued June 20, 2002.

**36024055. Warren's Excavating & Drilling, Inc.** (P. O. Box 189, Bowmansville, PA 17507-0189), construction blasting in Warwick Township, **Lancaster County** with an expiration date of June 30, 2007. Permit issued June 20, 2002.

**36024056. Warren's Excavating & Drilling, Inc.** (P. O. Box 189, Bowmansville, PA 17507-0189), construction blasting in Manor Township, **Lancaster County** with an expiration date of June 30, 2007. Permit issued June 20, 2002.

**36024057. Warren's Excavating & Drilling, Inc.** (P. O. Box 189, Bowmansville, PA 17507-0189), construction blasting in East Lampeter Township, **Lancaster County** with an expiration date of June 30, 2007. Permit issued June 20, 2002.

**36024058. Warren's Excavating & Drilling, Inc.** (P. O. Box 189, Bowmansville, PA 17507-0189), construction blasting in West Lampeter Township, **Lancaster County** with an expiration date of June 30, 2007. Permit issued June 20, 2002.

**36024059. Warren's Excavating & Drilling, Inc.** (P. O. Box 189, Bowmansville, PA 17507-0189), construction blasting in West Lampeter Township, **Lancaster County** with an expiration date of June 30, 2007. Permit issued June 20, 2002.

**36024060. Warren's Excavating & Drilling, Inc.** (P. O. Box 189, Bowmansville, PA 17507-0189), construction blasting in Manheim Township, **Lancaster County** with an expiration date of June 30, 2007. Permit issued June 20, 2002.

**38024015. Warren's Excavating & Drilling, Inc.** (P. O. Box 189, Bowmansville, PA 17507-0189), construction blasting in North Cornwall Township, **Lebanon County** with an expiration date of June 30, 2007. Permit issued June 20, 2002.

**49024001. Barletta Materials & Construction** (P. O. Box 550, Tamaqua, PA 18252), construction blasting in Rush and Mayberry Townships, **Northumberland and Montour Counties**, with an expiration date of November 30, 2002. Permit issued June 21, 2002.

**35024014. NAPCON, Inc.** (190 Mundy Street, Wilkes-Barre, PA 18702), construction blasting in Jessup Borough, **Lackawanna County** with an expiration date of January 12, 2003. Permit issued June 21, 2002.

*Hawk Run District Mining Office: Empire Road, P. O. Box 209, Hawk Run, PA 16840-0209, (814) 342-8200.*

**14024013. Triangle Construction** (1076 E. Bishop Street, Bellefonte, PA 16823), construction blasting located in Walker Township, **Centre County**, with an expected duration of 12 days. Permit issued June 14, 2002. Permit expires: June 28, 2002.

**14024014. Triangle Construction** (1076 E. Bishop Street, Bellefonte, PA 16823), construction blasting located in Spring Township, **Centre County** with an expected duration of 25 days. Permit issued June 18, 2002. Permit expires: July 24, 2002.

**14024015. H. R. I., Inc.** (P. O. Box 155, State College, PA 16804), construction blasting located in Patton Township, **Centre County**, with an expected duration of 2 years. Permit issued June 20, 2002. Permit expires: July 2004.

*Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.*

**02024004. Kozik Brothers, Inc.** (144 Martin Road, Gibsonia, PA 15044). Permit issued for Baymont Development Housing Plan, located in Collier Township, **Allegheny County**, with an expected duration of 6 months. Permit issued June 17, 2002.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**56024001. Mostoller Landfill, Inc.** (7095 Glades Pike, Somerset, PA 15501), construction blasting of overburden for a new cell in landfill, Somerset Township, **Somerset County** and expected duration is 70 days. Permit issued June 3, 2002.

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 may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the

*Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary 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 decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

## 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(a)).

Except as otherwise noted, the Department certifies that the construction and operation herein 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 may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary 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 decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

**Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and The Clean Streams Law (35 P. S. §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).** (Note: Water Obstruction and Encroachment Permits issued for Small Projects do not include 401 Certification, unless specifically stated in the description.)

*Permits Issued and Actions on 401 Certifications:*

#### **WATER OBSTRUCTIONS AND ENCROACHMENTS**

*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**E48-321. Brian and Sandra Lower**, One Cambridge Place, Catasauqua, PA 18032-1010. Allen Township, **Northampton County**, Army Corps of Engineers Philadelphia District.

To maintain a private footbridge having a single span of approximately 34 feet and a maximum underclearance of approximately 4.1 feet across Catasauqua Creek. The project is located 450 feet southeast of Township Road T482 (Bullshead Road), approximately 0.4 mile south of SR 3017 (Weaversville Road) (Catasauqua, PA Quadrangle N: 10.6 inches; W: 11.0 inches).

**E48-317. Ashley Development Corporation**, 559 Main Street, Bethlehem, PA 18018. Bethlehem Township, **Northampton County**, Army Corps of Engineers Philadelphia District.

To construct and maintain the following water obstructions and encroachments in or across a tributary to Bushkill Creek: (1) a stream enclosure consisting of three 36-inch diameter polyethylene pipes having a length of approximately 640 feet; (2) a channel change, downstream of the stream enclosure, consisting of a grass lined trapezoidal channel having a length of approximately 280 feet, a bottom width of 10 feet and 3:1 side slopes; (3) two 8-inch diameter water line stream crossings; and (4) an 8-inch diameter sanitary sewer line stream crossing. The project is associated with the Cross Hills Residential Development, a proposed 55-lot subdivision located at the northeast quadrant of the intersection of SR 0022 and SR 0033 (Nazareth, PA Quadrangle N: 11.9 inches; W: 4.5 inches).

**E48-322. Tatamy Borough**, 423 Broad Street, P. O. Box 218, Tatamy, PA 18085. Tatamy Borough, **Northampton County**, Army Corps of Engineers Philadelphia District.

To maintain two 36-inch diameter stormwater outfall structures projecting into Bushkill Creek. The projects are located approximately 1,200 feet apart, between SR 1002 and the Tatamy Borough boundary (Easton, PA-NJ Quadrangle N: 21.0 and 20.3 inches; W: 17.0 and 16.9 inches).

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**E17-371. Michael J. Errigo**, 619 Mill Road, Clearfield, PA 16830. Errigo dwelling in floodway of West Branch, Susquehanna River, in Clearfield Borough, **Clearfield County**, ACOE Baltimore District (Clearfield, PA Quadrangle N: 2.6 inches; W: 10.1 inches).

To construct, operate and maintain a single residential dwelling in the floodway of the West Branch,

Susquehanna River. The dwelling shall be constructed with a first floor elevation at or above an elevation of 1,107.5 feet. Backfilling around the completed dwelling shall be limited to the minimum required width and depth of fill needed to slope final grades away from the structure. The project is located along the northern right-of-way of SR 0879 approximately 400-feet north of Wells Street and SR 0879 intersection. This permit was issued under section 105.13(e) "Small Projects."

**E18-342. Aquilla Stoltzfus**, 122 Nate Lane, Mill Hall, PA 17751. Chesapeake Bay Waste Storage Structure, in Lamar, **Clinton County**, ACOE Baltimore District (Mill Hall, PA Quadrangle N: 13.38 inches; W: 14.50 inches).

To construct and maintain a 65-foot diameter 12-foot high concrete manure storage structure on the left 100-year floodway/floodfringe boundary of Fishing Creek located at the end of Nate Lane (Mill Hall, PA Quadrangle N: 13.38 inches; W: 14.50 inches) in Lamar Township, Clinton County. This permit was issued under section 105.13(e) "Small Projects."

**E49-260. Pennsylvania Department of Transportation, Engineering District 3-0**, P. O. Box 218, Montoursville, PA 17754-0218. Shamokin Creek SR 0054 bridge replacement, in Mount Carmel Township, **Northumberland County**, ACOE Susquehanna River Basin District (Mount Carmel, PA Quadrangle N: 6.2 inches; W: 9.0 inches).

To remove an existing structure and construct and maintain a four span prestressed concrete I-beam bridge on a 70° skew measuring 430-foot by 30-foot over Shamokin Creek and the defunct Lehigh Valley Railroad. The project is located along SR 0054 in the northern extent of the Borough of Mount Carmel, Mount Carmel Township, Northumberland County. This permit also authorizes the construction, operation, maintenance and removal of temporary cofferdams. All temporary structures shall be constructed of clean rock that is free of fines. Upon completion of culvert construction, all temporary structures shall be removed with the areas of river channel and floodplain restored to original geometry, contours and elevations.

**E53-374. Pennsylvania Department of Transportation, Engineering District 2-0**, P. O. Box 342, Clearfield, PA 16830. SR 0244, Section A03, Bridge Replacement, in Genesee Township, **Potter County**, ACOE Pittsburgh District (Ellisburg, PA Quadrangle N: 19.8 inches; W: 0.4 inch).

To remove an existing structure and construct, operate and maintain a single span prestressed concrete spread box beam bridge to carry SR 0244, Section A03, across Irish Settlement Brook to improve public highway safety. The single span bridge shall be constructed with a minimum clear span of 38.5 feet, underclearance of 2.92 feet and a skew of 90°. Since Irish Settlement Brook is a wild trout stream, no construction or future repair work shall be conducted in or along the stream channel from October 1 to April 1 without prior written approval of the Fish and Boat Commission. The bridge replacement project is located on SR 0244 approximately 330 feet west of SR 4016 and SR 0244 intersection. This permit also authorizes the construction, operation, maintenance and removal of temporary road crossings, cofferdams and stream diversions. All temporary structures shall be constructed with clean rock that is free of fines. Upon completion of the bridge construction, all temporary structures shall be removed and all areas of disturbance restored to original contours and elevations.

**E59-426. Babb Creek Watershed Association**, 2538 Highway Route 405, Muncy, PA 17756. Anna S. Mine Complex AMD Treatment (Babb Creek Watershed), in Morris Township, **Tioga County**, ACOE Baltimore District (Morris, PA Quadrangle N: 22 inches; W: 7.5 inches).

To construct, operate and maintain an acidic water collection system, which is in the Wilson Creek watershed. The system includes acid mine flows in Basswood Run, an unnamed tributary to Basswood Run and an unnamed tributary to Wilson Creek. The normal flows in Basswood Run and the unnamed tributary to Basswood Run will be collected, conveyed through an 8-inch collection conduit pipeline to the treatment facilities, allowed to filter through the facilities then directed to an unnamed tributary to Wilson Creek. The unnamed tributary to Wilson Creek normal flows will also be collected, routed to the treatment facilities, allowed to filter through the facilities then directed back into the unnamed tributary to Wilson Creek 900 linear feet southeast from its collection point. All flows greater than the treatment facility design will bypass and flow through the existing natural stream channels. This permit also authorizes stream impacts including placement of two 48-inch culvert pipes, upgrading an existing low flow crossing which are both located on Basswood Run and three temporary wetland impacts for installation of the conduit lines, which will transport the collected acidic water. This project also involves nonregulated activities for construction of wetland treatment facilities, which will filter the collected acidic water through a series of wetlands then release them into the unnamed tributary to Wilson Creek. The wetland treatment facilities shall be constructed on upland areas and will not be constructed in any floodways. This permit is located at the old Anna S. Mine Complex along SR 0287.

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

**E03-405. Wayne Township**, R. D. 1, Dayton, PA 16222. Wayne Township, **Armstrong County**, ACOE Pittsburgh District.

To remove the existing structure and to construct and maintain a 1.0-foot depressed 19.4 foot by 6.9 foot corrugated metal box culvert in Scrubgrass Creek (CWF) for the purpose of improving transportation safety and roadway standards. The project is located on T-633 (Distant, PA Quadrangle N: 4.6 inches; W: 14.87 inches).

**E04-278. Big Beaver Falls Area School District, Administrative Office**, 820 16th Street, Beaver Falls, PA 15010. City of Beaver Falls, **Beaver County**, ACOE Pittsburgh District.

To place and maintain fill within the left bank floodway and flood plain of Walnut Bottom Run (WWW) for the purpose of constructing new baseball and football fields and to provide additional parking. The project is located at the existing Beaver Falls Elementary School on the northwest side of the intersection of 8th Avenue and Fifteenth Street (Beaver Falls, PA Quadrangle N: 1.6 inches; W: 10.0 inches).

[Pa.B. Doc. No. 02-1175. Filed for public inspection July 5, 2002, 9:00 a.m.]

## Mineral Resources Advisory Board Meeting

The Mineral Resources Advisory Board (Board) will hold a meeting on Friday, July 12, 2002, at 8 a.m. in the Pottsville District Mining Office, 5 West Laurel Boulevard, Pottsville, PA.

Questions concerning these meetings or agenda items should be directed to Marylinda Freyermuth at (717) 783-5338 or e-mail at mfreyermt@state.pa.us.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Marylinda Freyermuth at (717) 783-5338 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Board may accommodate their needs.

DAVID E. HESS,  
*Secretary*

[Pa.B. Doc. No. 02-1176. Filed for public inspection July 5, 2002, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Application of Abington Memorial Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) hereby gives notice that Abington Memorial Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exemption from the following standard contained in this publication: 7.3E9 (relating to patient care space in Newborn Intensive Care Units).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax: (717) 772-2163, e-mail address: ra-paexcept@state.pa.us.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so, should contact Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT: (717) 783-6514 for speech and/or hearing impaired persons or the AT&T Relay Service at (800) 654-5984 (TT).

ROBERT S. ZIMMERMAN, Jr.,  
*Secretary*

[Pa.B. Doc. No. 02-1177. Filed for public inspection July 5, 2002, 9:00 a.m.]

**Application of Gettysburg Hospital for Exception**

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) hereby gives notice that Gettysburg Hospital has requested an exception to the requirements of 28 Pa. Code § 107.26(b)(2) (relating to additional committees).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax: (717) 772-2163, e-mail address: ra-paexcept@state.pa.us.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so, should contact Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT: (717) 783-6514 for speech and/or hearing impaired persons or the AT&T Relay Service at (800) 654-5984 (TT).

ROBERT S. ZIMMERMAN, Jr.,  
Secretary

[Pa.B. Doc. No. 02-1178. Filed for public inspection July 5, 2002, 9:00 a.m.]

**Application of Jeanes Hospital for Exception**

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) hereby gives notice that Jeanes Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exemption from the following standards contained in this publication: 10.6.A (relating to dining, recreation and day spaces for inpatients and residents), 10.15.A2 (relating to minimum room areas for patient rooms in nursing unit), 10.15.A6 (relating to patient access to toilets rooms) and 10.15.A7 (relating to wardrobe/closet/locker in patient rooms of nursing unit).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax: (717) 772-2163, e-mail address: ra-paexcept@state.pa.us.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so, should contact Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT: (717) 783-6514 for speech and/or hearing impaired persons or the AT&T Relay Service at (800) 654-5984 (TT).

ROBERT S. ZIMMERMAN, Jr.,  
Secretary

[Pa.B. Doc. No. 02-1179. Filed for public inspection July 5, 2002, 9:00 a.m.]

**Application of Phoenixville Hospital for Exception**

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) hereby gives notice that Phoenixville Hospital has requested an exception to the requirements of 28 Pa. Code § 51.23 (relating to positron emission tomography).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax: (717) 772-2163, e-mail address: ra-paexcept@state.pa.us.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so, should contact Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT: (717) 783-6514 for speech and/or hearing impaired persons or the AT&T Relay Service at (800) 654-5984 (TT).

ROBERT S. ZIMMERMAN, Jr.,  
Secretary

[Pa.B. Doc. No. 02-1180. Filed for public inspection July 5, 2002, 9:00 a.m.]

**Application of Sacred Heart Hospital for Exception**

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) hereby gives notice that Sacred Heart Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exemption from the following standard contained in this publication: 7.6.C (relating to seclusion treatment rooms).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax: (717) 772-2163, e-mail address: ra-paexcept@state.pa.us.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so, should contact Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT: (717) 783-6514 for speech and/or hearing impaired persons or the AT&T Relay Service at (800) 654-5984 (TT).

ROBERT S. ZIMMERMAN, Jr.,  
Secretary

[Pa.B. Doc. No. 02-1181. Filed for public inspection July 5, 2002, 9:00 a.m.]

## Infant Hearing Screening Advisory Committee Meeting

The Infant Hearing Screening Advisory Committee, established under Act 89 of 2001, will hold a public meeting on Friday, July 12, 2002. The meeting will be held in Conference Room B12, Department of Health, 7th and Forster Streets, Harrisburg, PA, in Conference Room 812, from 10 a.m. to 3 p.m.

For additional information, contact Karl Hoffman, Program Administrator, Hearing Program, Division of Newborn Disease Prevention and Identification, at (717) 783-8143.

Persons with a disability who desire to attend the meeting and require an auxiliary aid, service or other accommodation to do so, should contact the Newborn Hearing Screening Program at (717) 783-8143. Speech and/or hearing impaired persons should call V/TT (717) 783-6514 or the AT&T Relay Services at (800) 654-5984 (TT).

ROBERT S. ZIMMERMAN, Jr.,  
Secretary

[Pa.B. Doc. No. 02-1182. Filed for public inspection July 5, 2002, 9:00 a.m.]

# DEPARTMENT OF PUBLIC WELFARE

## Designated Exceptional Durable Medical Equipment

On February 9, 2002, the Department of Public Welfare (Department) announced the adoption of amendments to Chapter 1187 (relating to nursing facility services). These amendments were adopted under sections 201 and 443.1 of the Public Welfare Code (act) (62 P. S. §§ 201 and 443.1) and sections 1396a and 1396r of the Social Security Act (42 U.S.C.A. §§ 1396a and 1396r). The amendments expand the Department's exceptional payment policy to authorize additional payments to nursing facilities for nursing facility services provided to certain MA residents who require medically necessary exceptional durable medical equipment (DME). See 32 Pa.B 734 (February 9, 2002).

The amendments require the Department to publish an annual list of exceptional DME by notice in the *Pennsylvania Bulletin* in July of each year. The public may petition the Department to consider additions to the exceptional DME list by submitting a written request to the Department. Requests received on or before December 31 will be considered in developing the list for the following July.

Exceptional DME is defined as DME that has an acquisition cost of \$5,000 or more and is either specially adapted DME or other DME that is designated as exceptional DME by the Department annually by notice in the *Pennsylvania Bulletin*.

Specially adapted DME is DME that is uniquely constructed or substantially adapted or modified in accordance with the written orders of a physician for the

particular use of one resident, making its contemporaneous use by another resident unsuitable.

The list of Exceptional DME that has been designated by the Department is as follows.

### (1) Air fluidized beds

The pressure relief provided by this therapy uses a high rate of airflow to fluidize fine particulate material (for example, beads or sand) to produce a support medium that has characteristics similar to liquid. May have a Gortex cover.

### (2) Powered air flotation bed (low air loss therapy)

A semi-electric or total electric bed with a fully integrated powered pressure-reducing mattress which is characterized by all of the following:

(a) An air pump or blower with a series of interconnected woven fabric air pillows which provides sequential inflation and deflation of the air cells or a low interface pressure throughout the mattress allowing some air to escape through the support surface to the resident. May have a Gortex cover;

(b) Inflated cell height of the air cells through which air is being circulated is five inches or greater;

(c) Height of the air chambers, proximity of the air chambers to one another, frequency of air cycling (for alternating pressure mattresses) and air pressure provide adequate patient lift, reducing pressure and prevent bottoming out;

(d) A surface designed to reduce friction and shear;

(e) May be placed directly on a hospital bed frame; and

(f) Automatically re-adjusts inflation pressures with change in position of bed (for example, head elevation, and the like).

### (3) Augmentative communication devices

Used by residents who are unable to use natural oral speech as a primary means of communication. The specific device requested must be appropriate for use by the resident and the resident must demonstrate the abilities or potential abilities to use the device selected. Portable devices need to supplement, aid or serve as an alternative to natural speech for residents with severe expressive communication disorders. Nonportable devices may be covered only if required for visual enhancement or physical access needs that cannot be accommodated by a portable device.

### (4) Ventilators and related supplies

Used by residents 21 years of age and older who require full ventilator support for a minimum of 8 hours per day to sustain life.

Interested persons are invited to submit written comments regarding this notice to the Department within 30 days of publication in the *Pennsylvania Bulletin*. Public comments may be sent to: Gail Weidman, Long Term Care Policy Section, Department of Public Welfare, Division of Long Term Care Client Services, P. O. Box 2675, Harrisburg, PA 17105.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

FEATHER O. HOUSTOUN,  
*Secretary*

**Fiscal Note:** 14-NOT-324. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 02-1183. Filed for public inspection July 5, 2002, 9:00 a.m.]

## DEPARTMENT OF REVENUE

### Pennsylvania Magic Numbers 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 Magic Numbers.

2. *Price:* The price of a Pennsylvania Magic Numbers instant lottery game ticket is \$3.00.

3. *Play Symbols:*

(a) Each Pennsylvania Magic Numbers instant lottery game ticket will contain four play areas known as "Game 1," "Game 2," "Game 3" and "Game 4" respectively. Each game is played separately. Each Pennsylvania Magic Numbers instant lottery game ticket will also contain a "Bonus Game" area.

(b) The play symbols and their captions located in the "Magic Number" area and in the four play areas are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT) and 9 (NINE).

(c) The play symbols and their captions located in the "Bonus Game" area are: Clover Symbol (CLOVER), Leprechaun Symbol (LPCHN), Crystal Ball Symbol (BALL), Rabbit Symbol (RABBIT), Horse Shoe Symbol (SHOE), Rainbow Symbol (RNBOW), Wish Bone Symbol (WSHBN) and Penny Symbol (PENNY).

4. *Prize Play Symbols:* The prize play symbols and their captions located in the four "Prize" areas are: \$1<sup>00</sup> (ONE DOL), \$3<sup>00</sup> (THR DOL), \$6<sup>00</sup> (SIX DOL), \$9<sup>00</sup> (NIN DOL), \$12\$ (TWELV), \$15\$ (FIFTN), \$18\$ (EGHTN), \$24\$ (TWY FOR), \$30\$ (THIRTY), \$36\$ (TRY SIX), \$48\$ (FRY EGT), \$72\$ (SVY TWO), \$144 (HUNFRYFOR), \$288 (TWOEGTEGT) and \$30,000 (TRY THO).

5. *Prizes:* The prizes that can be won in "Game 1," "Game 2," "Game 3" and "Game 4" are \$1, \$3, \$6, \$9, \$12, \$15, \$18, \$24, \$30, \$36, \$48, \$72, \$144, \$288 and \$30,000. The prize that can be won in the "Bonus Game" is \$12 for each Rabbit Symbol uncovered. The player can win up to eight times on a ticket.

6. *Approximate Number of Tickets Printed for the Game:* Approximately 3,600,000 tickets will be printed for the Pennsylvania Magic Numbers instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets where three play symbols matching the "Magic Number" appear in the play area to form a row, column or diagonal in the same "Game," and a prize play symbol of \$30,000 (TRY THO) appears in the "Prize" area for that game, on a single ticket, shall be entitled to a prize of \$30,000.

(b) Holders of tickets where three play symbols matching the "Magic Number" appear in the play area to form a row, column or diagonal in the same "Game," and a prize play symbol of \$288 (TWOEGTEGT) appears in the "Prize" area for that game, on a single ticket, shall be entitled to a prize of \$288.

(c) Holders of tickets where three play symbols matching the "Magic Number" appear in the play area to form a row, column or diagonal in the same "Game," and a prize play symbol of \$144 (HUNFRYFOR) appears in the "Prize" area for that game, on a single ticket, shall be entitled to a prize of \$144.

(d) Holders of tickets where three play symbols matching the "Magic Number" appear in the play area to form a row, column or diagonal in the same "Game," and a prize play symbol of \$72\$ (SVY TWO) appears in the "Prize" area for that game, on a single ticket, shall be entitled to a prize of \$72.

(e) Holders of tickets where three play symbols matching the "Magic Number" appear in the play area to form a row, column or diagonal in the same "Game," and a prize play symbol of \$48\$ (FRY EGT) appears in the "Prize" area for that game, on a single ticket, shall be entitled to a prize of \$48.

(f) Holders of tickets where three play symbols matching the "Magic Number" appear in the play area to form a row, column or diagonal in the same "Game," and a prize play symbol of \$36\$ (TRY SIX) appears in the "Prize" area for that game, on a single ticket, shall be entitled to a prize of \$36.

(g) Holders of tickets where three play symbols matching the "Magic Number" appear in the play area to form a row, column or diagonal in the same "Game," and a prize play symbol of \$30\$ (THIRTY) appears in the "Prize" area for that game, on a single ticket, shall be entitled to a prize of \$30.

(h) Holders of tickets where three play symbols matching the "Magic Number" appear in the play area to form a row, column or diagonal in the same "Game," and a prize play symbol of \$24\$ (TWY FOR) appears in the "Prize" area for that game, on a single ticket, shall be entitled to a prize of \$24.

(i) Holders of tickets where three play symbols matching the "Magic Number" appear in the play area to form a row, column or diagonal in the same "Game," and a prize play symbol of \$18\$ (EGHTN) appears in the "Prize" area for that game, on a single ticket, shall be entitled to a prize of \$18.

(j) Holders of tickets where three play symbols matching the "Magic Number" appear in the play area to form a row, column or diagonal in the same "Game," and a prize play symbol of \$15\$ (FIFTN) appears in the "Prize" area for that game, on a single ticket, shall be entitled to a prize of \$15.

(k) Holders of tickets with a Rabbit Symbol (RABBIT) play symbol in the "Bonus Game" area, on a single ticket, shall be entitled to a prize of \$12.

(l) Holders of tickets where three play symbols matching the "Magic Number" appear in the play area to form a row, column or diagonal in the same "Game," and a prize play symbol of \$12<sup>00</sup> (TWELV) appears in the "Prize" area for that game, on a single ticket, shall be entitled to a prize of \$12.

(m) Holders of tickets where three play symbols matching the "Magic Number" appear in the play area to form a row, column or diagonal in the same "Game," and a prize play symbol of \$9<sup>00</sup> (NIN DOL) appears in the "Prize" area for that game, on a single ticket, shall be entitled to a prize of \$9.

(n) Holders of tickets where three play symbols matching the "Magic Number" appear in the play area to form a row, column or diagonal in the same "Game," and a prize play symbol of \$6<sup>00</sup> (SIX DOL) appears in the "Prize" area for that game, on a single ticket, shall be entitled to a prize of \$6.

(o) Holders of tickets where three play symbols matching the "Magic Number" appear in the play area to form a row, column or diagonal in the same "Game," and a prize play symbol of \$3<sup>00</sup> (THR DOL) appears in the "Prize" area for that game, on a single ticket, shall be entitled to a prize of \$3.

(p) Holders of tickets where three play symbols matching the "Magic Number" appear in the play area to form a row, column or diagonal in the same "Game," and a prize play symbol of \$1<sup>00</sup> (ONE DOL) appears in the "Prize" area for that game, on a single ticket, shall be entitled to a prize of \$1.

8. *Number and Description of Prizes and Approximate Odds.*

The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

<i>Win With Prize(s) Of:</i>	<i>Win</i>	<i>Approximate Odds</i>	<i>Approximate No. of Winners Per 3,600,000 Tickets</i>
\$1 × 3	\$3	1:10	360,000
\$3	\$3	1:14.29	252,000
\$3 × 2	\$6	1:100	36,000
\$6	\$6	1:100	36,000
\$3 × 3	\$9	1:100	36,000
\$9	\$9	1:100	36,000
\$3 × 4	\$12	1:100	36,000
\$6 × 2	\$12	1:333.33	10,800
\$12	\$12	1:1,000	3,600
1 Rabbit	\$12	1:38.46	93,600
\$15	\$15	1:500	7,200
\$1 × 3 + 1 Rabbit	\$15	1:333.33	10,800
\$3 + 1 Rabbit	\$15	1:200	18,000
\$6 × 3	\$18	1:500	7,200
\$9 × 2	\$18	1:500	7,200
\$18	\$18	1:1,000	3,600
\$3 × 2 + 1 Rabbit	\$18	1:200	18,000
\$6 × 4	\$24	1:1,000	3,600
\$12 × 2	\$24	1:1,000	3,600
\$24	\$24	1:1,000	3,600
2 Rabbits	\$24	1:1,000	3,600
\$6 × 2 + 1 Rabbit	\$24	1:1,000	3,600
\$15 × 2	\$30	1:3,333	1,080
\$30	\$30	1:3,333	1,080
\$3 × 2 + 2 Rabbits	\$30	1:1,714	2,100
\$6 + 2 Rabbits	\$30	1:1,714	2,100
\$6 × 3 + 1 Rabbit	\$30	1:1,714	2,100
\$18 + 1 Rabbit	\$30	1:1,714	2,100
\$9 × 4	\$36	1:24,000	150
\$12 × 3	\$36	1:24,000	150
\$18 × 2	\$36	1:24,000	150
\$36	\$36	1:24,000	150
3 Rabbits	\$36	1:24,000	150
\$3 × 4 + 2 Rabbits	\$36	1:24,000	150
\$6 × 2 + 2 Rabbits	\$36	1:24,000	150
\$6 × 4 + 1 Rabbit	\$36	1:24,000	150



<i>Win With Prize(s) Of:</i>	<i>Win</i>	<i>Approximate Odds</i>	<i>Approximate No. of Winners Per 3,600,000 Tickets</i>
\$12 × 2 + 1 Rabbit	\$36	1:24,000	150
\$24 + 1 Rabbit	\$36	1:24,000	150
\$12 × 4	\$48	1:60,000	60
\$24 × 2	\$48	1:60,000	60
\$48	\$48	1:120,000	30
4 Rabbits	\$48	1:30,000	120
\$6 × 2 + 3 Rabbits	\$48	1:30,000	120
\$12 + 3 Rabbits	\$48	1:30,000	120
\$6 × 4 + 2 Rabbits	\$48	1:30,000	120
\$24 + 2 Rabbits	\$48	1:30,000	120
\$18 × 4	\$72	1:120,000	30
\$24 × 3	\$72	1:120,000	30
\$36 × 2	\$72	1:120,000	30
\$72	\$72	1:120,000	30
\$6 × 4 + 4 Rabbits	\$72	1:60,000	60
\$12 × 2 + 4 Rabbits	\$72	1:120,000	30
\$24 + 4 Rabbits	\$72	1:120,000	30
\$36 × 4	\$144	1:120,000	30
\$48 × 3	\$144	1:120,000	30
\$72 × 2	\$144	1:120,000	30
\$144	\$144	1:120,000	30
\$48 × 2 + 4 Rabbits	\$144	1:120,000	30
\$72 × 4	\$288	1:600,000	6
\$144 × 2	\$288	1:600,000	6
\$288	\$288	1:1,200,000	3
\$30,000	\$30,000	1:1,200,000	3

Rabbit = Win \$12 instantly

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Magic Numbers instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Magic Numbers, prize money from winning Pennsylvania Magic Numbers 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 Magic Numbers instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-101—3761-314), the regulations contained in 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote

Pennsylvania Magic Numbers or through normal communications methods.

LARRY P. WILLIAMS,  
*Secretary*

[Pa.B. Doc. No. 02-1184. Filed for public inspection July 5, 2002, 9:00 a.m.]

### **Pennsylvania Powerball The Game Show 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 Powerball The Game Show.

2. *Price:* The price of a Pennsylvania Powerball The Game Show instant lottery game ticket is \$3.00.

3. *Play Symbols:* Each Pennsylvania Powerball The Game Show instant lottery game ticket will contain one play area featuring a "Powerball Numbers" area and a

“Your Numbers” area. The play symbols and their captions located in the “Powerball Numbers” area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN) and 20 (TWENT). The play symbols and their captions located in the “Your Numbers” area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT) and a Television Symbol (TV). Each Pennsylvania Powerball The Game Show instant lottery game ticket will also contain a “Power Play” area. The play symbols and their captions located in the “Power Play” area are: 2X (2 TIMES), 3X (3 TIMES), 4X (4 TIMES), 5X (5 TIMES) and NO BONUS.

4. *Prize Play Symbols:* The prize play symbols and their captions located in the “Your Numbers” area are: \$1<sup>00</sup> (ONE DOL), \$2<sup>00</sup> (TWO DOL), \$3<sup>00</sup> (THR DOL), \$4<sup>00</sup> (FOR DOL), \$5<sup>00</sup> (FIV DOL), \$6<sup>00</sup> (SIX DOL), \$9<sup>00</sup> (NIN DOL), \$12\$ (TWELV), \$15\$ (FIFTN), \$18\$ (EGHTN), \$24\$ (TWY FOR), \$30\$ (THIRTY), \$36\$ (TRY SIX), \$60\$ (SIXTY), \$120 (ONEHUNTWY), \$15,000 (FTN THO) and ENTRY (TV SHOW).

5. *Prizes:* The prizes that can be won in this game are \$1, \$2, \$3, \$4, \$5, \$6, \$9, \$12, \$15, \$18, \$24, \$30, \$36, \$60, \$120, \$15,000 and the ability to mail in for a chance to either appear on the weekly televised Powerball Instant Millionaire Game Show or be designated as an official at-home player. The player can win up to 10 times on a ticket.

6. *Television Entry Drawings:* The Pennsylvania Lottery will conduct drawings as necessary to provide sufficient contestants and at-home players for the Powerball Instant Millionaire television game show as provided in section 11.

7. *Approximate Number of Tickets Printed for the Game:* Approximately 3,240,000 tickets will be printed for the Pennsylvania Powerball The Game Show instant lottery game.

8. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the “Your Numbers” play symbols matches any of the “Powerball Numbers” play symbols and a prize play symbol of \$15,000 (FTN THO) appears under the matching “Your Numbers” play symbol, on a single ticket, shall be entitled to a prize of \$15,000.

(b) Holders of tickets upon which any one of the “Your Numbers” play symbols matches any of the “Powerball Numbers” play symbols, a prize play symbol of \$60\$ (SIXTY) appears under the matching “Your Numbers” play symbol and a 2X (2 TIMES) play symbol appears in the “Power Play” area, on a single ticket, shall be entitled to a prize of \$120.

(c) Holders of tickets upon which any one of the “Your Numbers” play symbols matches any of the “Powerball Numbers” play symbols, a prize play symbol of \$30\$ (THIRTY) appears under the matching “Your Numbers” play symbol and a 4X (4 TIMES) play symbol appears in the “Power Play” area, on a single ticket, shall be entitled to a prize of \$120.

(d) Holders of tickets upon which any one of the “Your Numbers” play symbols matches any of the “Powerball Numbers” play symbols, a prize play symbol of \$24\$

(TWY FOR) appears under the matching “Your Numbers” play symbol and a 5X (5 TIMES) play symbol appears in the “Power Play” area, on a single ticket, shall be entitled to a prize of \$120.

(e) Holders of tickets upon which any one of the “Your Numbers” play symbols matches any of the “Powerball Numbers” play symbols and a prize play symbol of \$120 (ONEHUNTWY) appears under the matching “Your Numbers” play symbol, on a single ticket, shall be entitled to a prize of \$120.

(f) Holders of tickets upon which any one of the “Your Numbers” play symbols matches any of the “Powerball Numbers” play symbols, a prize play symbol of \$30\$ (THIRTY) appears under the matching “Your Numbers” play symbol and a 2X (2 TIMES) play symbol appears in the “Power Play” area, on a single ticket, shall be entitled to a prize of \$60.

(g) Holders of tickets upon which any one of the “Your Numbers” play symbols matches any of the “Powerball Numbers” play symbols, a prize play symbol of \$15\$ (FIFTN) appears under the matching “Your Numbers” play symbol and a 4X (4 TIMES) play symbol appears in the “Power Play” area, on a single ticket, shall be entitled to a prize of \$60.

(h) Holders of tickets upon which any one of the “Your Numbers” play symbols matches any of the “Powerball Numbers” play symbols, a prize play symbol of \$12\$ (TWELV) appears under the matching “Your Numbers” play symbol and a 5X (5 TIMES) play symbol appears in the “Power Play” area, on a single ticket, shall be entitled to a prize of \$60.

(i) Holders of tickets upon which any one of the “Your Numbers” play symbols matches any of the “Powerball Numbers” play symbols and a prize play symbol of \$60\$ (SIXTY) appears under the matching “Your Numbers” play symbol, on a single ticket, shall be entitled to a prize of \$60.

(j) Holders of tickets upon which any one of the “Your Numbers” play symbols matches any of the “Powerball Numbers” play symbols, a prize play symbol of \$18\$ (EGHTN) appears under the matching “Your Numbers” play symbol and a 2X (2 TIMES) play symbol appears in the “Power Play” area, on a single ticket, shall be entitled to a prize of \$36.

(k) Holders of tickets upon which any one of the “Your Numbers” play symbols matches any of the “Powerball Numbers” play symbols, a prize play symbol of \$12\$ (TWELV) appears under the matching “Your Numbers” play symbol and a 3X (3 TIMES) play symbol appears in the “Power Play” area, on a single ticket, shall be entitled to a prize of \$36.

(l) Holders of tickets upon which any one of the “Your Numbers” play symbols matches any of the “Powerball Numbers” play symbols, a prize play symbol of \$9<sup>00</sup> (NIN DOL) appears under the matching “Your Numbers” play symbol and a 4X (4 TIMES) play symbol appears in the “Power Play” area, on a single ticket, shall be entitled to a prize of \$36.

(m) Holders of tickets upon which any one of the “Your Numbers” play symbols matches any of the “Powerball Numbers” play symbols and a prize play symbol of \$36\$ (TRY SIX) appears under the matching “Your Numbers” play symbol, on a single ticket, shall be entitled to a prize of \$36.

(n) Holders of tickets upon which any one of the “Your Numbers” play symbols matches any of the “Powerball



(hh) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Powerball Numbers" play symbols and a prize play symbol of \$3<sup>.00</sup> (THR DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$3.

(ii) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Powerball Numbers" play symbols and a prize play symbol of \$2<sup>.00</sup> (TWO DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$2.

(jj) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Powerball Numbers" play symbols and a prize play symbol of \$1<sup>.00</sup>

(ONE DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$1.

(kk) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Television Symbol (TV), on a single ticket, shall be entitled to mail their tickets in for a chance to appear on the weekly televised Powerball Instant Millionaire Game Show or be designated as an official at-home player.

9. *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:

*When Any of Your Numbers Match Any of the Powerball Numbers, Win With Prize(s) of:*

<i>Win</i>	<i>Approximate Odds</i>	<i>Approximate No. of Winners Per 3,240,000 Tickets</i>
TV Entry	1:10	324,000
\$3	1:41.67	77,760
\$1 x 3	1:47.62	68,040
\$1 (3 x PP)	1:22.22	145,800
\$4	1:34.48	93,960
\$1 x 4	1:34.48	93,960
\$1 (4 x PP)	1:37.04	87,480
\$6	1:200	16,200
\$1 x 6	1:200	16,200
\$3 (2 x PP)	1:100	32,400
\$9	1:500	6,480
\$1 x 9	1:500	6,480
\$3 x 3	1:500	6,480
\$3 (3 x PP)	1:250	12,960
\$12	1:1,000	3,240
\$2 x 6	1:1,000	3,240
\$3 x 4	1:1,000	3,240
\$4 x 3	1:1,000	3,240
\$9 + \$3	1:1,000	3,240
\$3 (4 x PP)	1:1,000	3,240
\$4 (3 x PP)	1:500	6,480
\$6 (2 x PP)	1:500	6,480
\$15	1:200	16,200
\$3 x 5	1:200	16,200
\$3 (5 x PP)	1:200	16,200
\$5 (3 x PP)	1:200	16,200
\$24	1:1,000	3,240
\$3 x 8	1:1,000	3,240
\$4 x 6	1:1,000	3,240
\$6 x 4	1:1,000	3,240
\$12 x 2	1:1,000	3,240
\$6 (4 x PP)	1:500	6,480
\$12 (2 x PP)	1:333.33	9,720
\$30	1:1,200	2,700
\$3 x 10	1:1,200	2,700
\$6 x 5	1:1,200	2,700
\$15 x 2	1:1,200	2,700
\$6 (5 x PP)	1:1,200	2,700
\$15 (2 x PP)	1:1,200	2,700
\$36	1:6,000	540
\$4 x 9	1:6,000	540
\$6 x 6	1:6,000	540
\$9 x 4	1:6,000	540
\$12 x 3	1:6,000	540
\$9 (4 x PP)	1:6,000	540
\$12 (3 x PP)	1:6,000	540

*When Any of Your  
Numbers Match Any  
of the Powerball  
Numbers, Win With  
Prize(s) of:*

<i>Prize(s) of:</i>	<i>Win</i>	<i>Approximate Odds</i>	<i>Approximate No. of Winners Per 3,240,000 Tickets</i>
\$18 (2 × PP)	\$36	1:6,000	540
\$60	\$60	1:17,143	189
\$6 × 10	\$60	1:20,000	162
\$15 × 4	\$60	1:20,000	162
\$30 × 2	\$60	1:20,000	162
\$12 (5 × PP)	\$60	1:20,000	162
\$15 (4 × PP)	\$60	1:20,000	162
\$30 (2 × PP)	\$60	1:20,000	162
\$120	\$120	1:120,000	27
\$12 × 10	\$120	1:30,000	108
\$15 × 8	\$120	1:120,000	27
\$24 × 5	\$120	1:120,000	27
\$30 × 4	\$120	1:120,000	27
\$60 × 2	\$120	1:120,000	27
\$24 (5 × PP)	\$120	1:120,000	27
\$30 (4 × PP)	\$120	1:120,000	27
\$60 (2 × PP)	\$120	1:120,000	27
\$15,000	\$15,000	1:1,080,000	3

PP = Multiplier of 2×, 3×, 4× or 5×

#### 10. Television Game Show Drawing Requirements:

(a) To qualify for a television game show drawing, the player must reveal a television symbol captioned by (TV) with a prize play symbol of ENTRY captioned by (TV SHOW) when the latex covering is removed from the Pennsylvania Powerball The Game Show instant lottery game ticket. Any tickets not containing a revealed television symbol captioned by (TV) with a prize play symbol of ENTRY captioned by (TV SHOW) will be ineligible for the television game show drawings.

(b) The back of the television game show entry ticket must be completed by the player in a legible manner, including the player's name, complete address, telephone number and signature.

(c) The player shall affix proper postage to the ticket and mail same to the Powerball The Television Game Show address shown in the lower right portion of the ticket back.

(d) Television game show entry tickets received in envelopes will be disqualified.

(e) Participants in the television game show shall be at least 18 years of age or older.

(f) Pennsylvania Powerball The Game Show instant lottery tickets that win cash prizes and that are submitted to the television game show address will not be paid or honored.

(g) Television game show entry tickets must be received by the Pennsylvania Lottery no later than the deadline announced by the Secretary.

#### 11. Television Game Show Drawing Procedures:

(a) Frequency. The television game show drawings will be held at Lottery Headquarters. The drawings will be held as required by the Multi-State Lottery Association (MUSL) to provide sufficient contestants and at-home players to satisfy the Powerball Instant Millionaire television game show requirements. For each Powerball Instant Millionaire television show produced, one on-air contes-

tant will be selected as well as a specific number of at-home players as predetermined by the MUSL.

(b) Eligibility for television game show drawings. To be eligible for the television game show drawings, a player must have complied with the requirements of section 10.

(1) The Lottery will make a reasonable effort to ensure that each television game show entry is entered into one of the drawings. The Lottery assumes no responsibility for a lost or misplaced entry not entered into the television game show drawing.

(2) A television game show entry is eligible for only one television game show drawing.

(3) If a television game show entry is rejected during or following a TV game show drawing, the sole remedy is to select another entry to replace the rejected entry in accordance with Lottery procedure.

(c) Manner of conducting the television game show entry drawings.

(1) Entries will be placed approximately equally by weight in a number of containers equal to the number of game shows to be staffed with contestants.

(2) The entry tickets in the container for the first show's contestants will be placed in a rotary drum mechanical drawing device. The rotary drum will be spun a number of times to ensure a random mix. An entry ticket will be selected, and if valid, the owner of the ticket will be the on-air contestant for the first show. Additional entry tickets equal to the predetermined number of at-home players for the first show will then be drawn in the same manner, and if valid, the owner of the ticket will be the at-home players.

(3) As each entry is selected, it will be verified. If the selected entry is declared invalid, another entry ticket will be selected from the same container until a valid entry has been chosen.

(4) In addition, a sufficient number of alternate entry tickets will be drawn and validated for each week's show, in the event there is need to replace ineligible players.

The alternates may become eligible to participate as on-air contestants or as at-home players.

(5) Duplicate tickets selected in the same week will be disqualified.

(6) When all examination and validation procedures are complete, the first set of tickets will be removed from the rotary drum mechanical drawing device and the entry tickets for the second week's container will be placed inside the drawing device and the drawing process repeated for the second week's game show.

(7) This process will be repeated until all the necessary on-air contestants and at-home players have been selected for the number of shows to be produced.

(d) The payment of a prize awarded in the television game show drawing to a person who dies before receiving the prize or to a person 17 years of age or younger shall be paid according to 61 Pa. Code §§ 811.16 and 811.27 (relating to prizes payable after death of a prize winner; and payment of prizes to persons under 18 years of age).

#### 12. *On-Air Contestants and At-Home Players:*

(a) An on-air contestant will receive air transportation to Las Vegas, lodging, \$750 expense money and a chance to win up to \$1,000,000 on the Powerball Instant Millionaire Game Show.

(b) An at-home player will win a minimum of \$100 and up to a maximum of \$10,000 based on the winnings of the Pennsylvania on-air contestant and MUSL rules.

#### 13. *Game Show Travel, Restrictions and Proxy Information:*

(a) Game show travel arrangements include:

(1) Coach air transportation for up to 2 persons, including the game show contestant. Contestant and guest must fly from the same airport on the same flight and must return under similar travel arrangements.

(2) Ground transportation from the arrival airport to the designated hotel, and return to the airport.

(3) One hotel room, double occupancy, for 3 nights.

(4) Ground transportation as necessary from the hotel to the game show taping and return to the hotel.

(5) A check in the amount of \$750 payable to the game show contestant that may be used for any other expenses incurred during the trip.

(b) Restrictions:

(1) Travel package is subject to hotel and coach class availability.

(2) If the on-air contestant fails to show at the designated time of departure, the entire travel portion may be forfeited, at the option of the Pennsylvania State Lottery.

(3) Gratuities, meals and all other incidentals are not included.

(4) On-air contestants are responsible for all taxes and governments filings that may be required associated with the travel package.

(5) The travel package is not transferable, cannot be redeemed for cash and may not be resold.

(6) The MUSL and the Pennsylvania Lottery shall not be responsible for cancelled or delayed travel due to causes beyond their control, including but not limited to inclement weather, act of God, war, civil disturbance, court order or action of any air carrier.

(c) Proxy:

(1) In the event that a contestant does not wish to or cannot participate on the game show, the contestant may select a proxy to act on their behalf. All proxy selections must be approved by the MUSL and the Pennsylvania State Lottery. If the contestant fails to select a proxy that is acceptable to the Pennsylvania State Lottery and the MUSL, then the Pennsylvania State Lottery or the MUSL shall appoint a proxy to act on the contestant's behalf.

(2) In the event that a contestant or a contestant's designated proxy does not appear by the required time prior to the television game show taping, the MUSL will appoint a proxy to act on behalf of the contestant. In the event a contestant is unable to continue play during the taping of the game show, the MUSL will appoint a proxy to act on behalf of the contestant.

(3) The proxy appointed by the game show contestant, the MUSL or the Pennsylvania State Lottery shall act on behalf of the selected game show contestant. By participating in the Pennsylvania Powerball The Game Show instant lottery game, the contestant agrees to accept all game show decisions made by the proxy. All prizes won by the proxy during the television game show will be awarded to the contestant.

14. *At-Home Player Information:* The Lottery will send each at-home player a letter outlining the details regarding the Powerball Instant Millionaire Game Show. Pennsylvania on-air contestant winner results for each week will be posted on the Lottery's website [www.palottery.com](http://www.palottery.com). Each at-home player will receive his or her winnings by mail from the Lottery.

15. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Powerball The Game Show instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

16. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Powerball The Game Show, prize money from winning Pennsylvania Powerball The Game Show 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 Powerball The Game Show 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.

17. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-101—3761-314), the regulations contained in 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

18. *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 Powerball The Game Show or through normal communications methods.

LARRY P. WILLIAMS,  
Secretary

[Pa.B. Doc. No. 02-1185. Filed for public inspection July 5, 2002, 9:00 a.m.]

# GOVERNOR'S OFFICE

## Regulatory Agenda

Executive Order 1996-1, which was signed by Governor Ridge on February 6, 1996, requires all agencies under the jurisdiction of the Governor to submit for publication an agenda of regulations under development or consideration. The following is the thirteenth publication of the Administration's regulatory agenda, grouped by agency. Subsequent agendas will be published on the first Saturdays in February and July.

The agendas are compiled to provide members of the regulated community advanced notice of regulatory activity. It is the intention of the Administration that these agendas will serve to increase public participation in the regulatory process.

Agency contacts should be contacted for more information regarding the regulation and the procedure for submitting comments.

This Agenda represents the Administration's present intentions regarding future regulations. The nature and complexity of an individual regulation obviously will determine whether and when any particular regulation listed below (as well as any considered subsequent to publication of this Agenda) is published.

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
<b>ADMINISTRATION</b>			
No regulations being developed or considered at this date.			
<b>AGING</b>			
PA Code Title VI Chapter 11 Older Adult Daily Living Centers	April 2003, as proposed.	This regulation is being reviewed for consolidation with regulations from DPW and DOH with the intent to publish as part of regulations to be proposed as Adolescent and Adult Part-Day Licensing Regulations. Review is also occurring as a result of Acts 169-96 and 13-97 amending the Older Adult Protective Services Act (35 P. S. §§ 10225.101—10225.5102) and of Executive Order 1996-1.	Robert Hussar 717-783-6207
PA Code Title VI Chapter 15 Protective Services For Older Adults	Published final rulemaking May 2002,	This regulation was reviewed as a result of Acts 169-96 and 13-97 amending the Older Adult Protective Services Act (35 P. S. §§ 10225.101—10225.5102) and of Executive Order 1996-1. Amendments were published as proposed rulemaking in the <i>Pennsylvania Bulletin</i> on November 27, 1999. On December 27, 2001, the Final Rulemaking package was submitted to IRRC and the legislative oversight committees. IRRC approved the final-form regulations at its public meeting on January 24, 2002. Published final rulemaking on May 18, 2002.	Robert Hussar 717-783-6207
PA Code Title VI Chapter 21 Domiciliary Care Services for Adults	June 2003, as proposed.	A review of these regulations will be coordinated with the Adult Residential Facilities initiative being led by the Office of Licensing and Regulatory Management, Department of Public Welfare.	Robert Hussar 717-783-6207
PA Code Title VI Chapter 3 Fair Hearings and Appeals	March 2003, as proposed.	This regulation has been initially reviewed by stakeholders in response to passage of Acts 169-96 and 13-97 amending the Older Adult Protective Services Act (35 P. S. §§ 10225.101—10225.5102) and of Executive Order 1996-1.	Robert Hussar 717-783-6207
<b>AGRICULTURE</b>			
Agricultural Conservation Easement Purchase Program/Agricultural Security Areas	August 2002, as final.	Act 138 of 1998 and Act 14 of 2001 amended the Agricultural Area Security Law. The regulations at 7 Pa. Code Chapter 138e must be revised to implement these statutory changes. This regulation would also replace the outdated regulations at 7 Pa. Code Chapter 138, relating to agricultural security areas.	Russell C. Redding (717) 787-3418

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
The Food Code	September 2002, as final.	This regulation would provide the retail food industry needed and requested guidance for the safe handling of food. The Food Act (31 P. S. §§ 20.1—20.18) and the Public Eating and Drinking Places Law (35 P. S. §§ 655.1—655.13) form the statutory basis for this regulation.	Sheri Dove (717) 772-8353
Maple Products	December 2002, as proposed.	This regulation is required by the Maple Products Act (3 Pa.C.S. §§ 6101—6112). This regulation would establish standards, product quality practices and facility requirements relating to the production of maple syrup and maple products.	Lenchen Radle (717) 772-3234
Amusement Rides	August 2002, as proposed.	This regulation will update the current regulation at 7 Pa. Code Chapter 139 to reflect changes to the Amusement Ride Inspection Act (4 P. S. §§ 401—418).	Charles Bruckner (717) 787-9089
Harness Racing Commission	September 2002, as proposed.	This regulation is necessary to update current regulations, make them more user-friendly and address conditions which exist in harness racing that did not exist when the current regulations were originally promulgated. This regulation is a long-term project and would amend 58 Pa. Code Chapters 181, 183, 185 and 186—190, including the general authority of the Commission and provisions relating to associations licensed to conduct pari-mutuel wagering, individual licensing, licensing of officials, rules of the conduct of races, veterinary practices, equine health and medication, wagering, due process and disciplinary action.	Anton J. Leppler (717) 787-5196
Land application of soil and groundwater contaminated with agricultural chemicals	October 2002, as final.	This regulation is required under the Land Recycling and Environmental Remediation Standards Act, at 35 P. S. § 6026.101 et seq. This regulation would allow soil and groundwater contaminated with agricultural chemicals to be treated and re-applied upon agricultural lands. Numerous comments have been received with respect to drafts of this regulation, and will be addressed as the regulation proceeds.	Phillip M. Pitzer (717) 772-5206
Fruit Tree Improvement Program	November 2004, as proposed.	This regulation would facilitate interstate and international export of Pennsylvania-grown fruit tree nursery stock. This regulation would amend 7 Pa. Code Chapter 120, which provides testing and inspection standards and procedures pursuant to which fruit tree nursery stock can be certified as to quality, consistency and disease/insect-free status. The regulation would be a technical update of current provisions, would bring this program into greater conformity with programs in other states and would provide more practical assistance to participating growers.	Ruth Welliver (717) 787-5609
Certification of Virus-Tested Geraniums	September 2004, as proposed.	This regulation would amend the current regulatory authority to update the voluntary program pursuant to which geranium producers may obtain the Department's certification of virus-tested geraniums. This amendment would establish an inspection fee to help cover the Department's costs in inspecting and testing geraniums offered for certification. This regulation would amend 7 Pa. Code Chapter 122 to: 1) expand the certification of virus-tested geraniums to include Culture-Indexed Geraniums, which are free from certain economically- important bacterial and fungal pathogens; and 2) establish a reasonable fee for the Department's inspection and certification services.	Ruth Welliver (717) 787-5609



<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Dog Law	September 2002, as proposed.	House Bill 397 of 1996 accomplished revisions of the Dog Law that will necessitate regulatory revisions. This regulation is a long-term project and would amend 7 Pa. Code Chapters 23,25 and 27 to bring them into greater conformity with statutory revisions. The Dog Law (3 P. S. §§ 459-10 et seq.) is the statutory basis for this regulation.	Richard Hess (717) 787-4833
Dog Law—Lifetime Licenses	August 2002, as final.	House Bill 397 of 1996 accomplished revisions of the Dog Law that will necessitate regulatory revisions. We are amending 7 Pa. Code §§ 21.51—21.57 to allow the Department to implement the use of microchipping for lifetime dog licenses.	Richard Hess (717) 787-4833
Domestic Animals	September 2002, as proposed.	This long-term project is intended to update the Department's regulatory authority to make it more consistent with the provisions of the Domestic Animal Law (3 Pa.C.S. §§ 2301—2389).	John Enck, DVM (717) 772-2852
Aquaculture Development	September 2002, as final.	The Aquacultural Development Law requires the Department to develop an "Aquaculture Development Plan" through regulation.	Leo Dunn (717) 783-8462
Pasteurized Milk "Sell by" Date	August 2002, as proposed.	This will extend the maximum "sell-by" date for pasteurized milk by three days, from its current 14 days from the date of pasteurization to 17 days from date of pasteurization.	James Dell (717) 787-4316
<b><i>BANKING</i></b>			
Amendments to Banking regulations in 10 Pa. Code Part II to comply with amendments to the Banking Code made by Act 89 of 2000	December 2002	Act 89 of 2000 substantially amended the Banking Code. Accordingly, some banking regulations need to be amended in order to conform to the statutory amendments.	Reginald S. Evans (717) 787-1471
<b><i>BUDGET</i></b>			
No regulations being developed or considered at this date.			
<b><i>COMMUNITY &amp; ECONOMIC DEVELOPMENT</i></b>			
Industrialized Housing and Components 12 Pa. Code Chapter 145 (proposed regulation)	Fall 2002	The regulation will further clarify and strengthen the Department's and third party's role in monitoring the installation of industrialized housing; adopt the ICC International Building Code; update definitions to bring them into conformance with current terminology and with proposed changes to the placement of insignia of certification; place the determination regarding the frequency of inspection reports on the inspection agency; require manufacturers to ensure that instructions for installation are given to those installing industrialized housing; and increase the fees charged by the Department to offset increases in the cost of administering and enforcing the industrialized housing program.	Jill B. Busch (717) 720-7314
Certified Provider (proposed new regulation)	Fall 2002	In accordance with the Job Enhancement Act of 1996, the regulation will establish professional and organizational standards that must be met in order for providers to continue packaging loans on behalf of the Department.	Jill B. Busch (717) 720-7314

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
<b>COMMISSION ON CRIME AND DELINQUENCY</b>			
Bureau of Victims' Services, Victims Compensation Division (formerly Crime Victim's Compensation Board)—Deletion of 37 Pa. Code Chapter 191, replacement with new Chapter 211	August 2002, as proposed	To create a new chapter reflecting elimination of Crime Victim's Compensation Board and inclusion of its functions under PCCD pursuant to Act 1995-27 of the Special Session on Crime; changes in terminology and operations brought about by that act and by section 4 of Act 1997-57; and citation changes resulting from Act 1998-111 and its relocation of the Crime Victims Act from Title 71 of Purdon's Statutes Title 18. The act at 18 P. S. § 11.312(3) gives the Bureau of Victims' Services the authority, subject to the approval of PCCD, to promulgate regulations to carry out the purposes of the act as it relates to compensation.	Lynn Shiner (717) 783-5153 ext. 3210
Constables' Education and Training Board—New Chapter 431 to Title 37 Pa. Code	September 2002, as final	To implement the authority of Act 1994-44, 42 Pa.C.S.A. §§ 2944—2948, as to program content and administration of basic training and continuing education, standards for qualification to carry firearms in the performance of constable duties, and qualification for schools and instructors.	John Pfau (717) 705-3693 ext. 3083
Deputy Sheriffs' Education and Training Board—Amendments to 37 Pa. Code Chapter 421	October 2002, as final	To amend existing regulation to further increase hours of basic training that were increased by Statement of Policy in 2000. Proposed pursuant to the Deputy Sheriffs' Education and Training Act, 71 P. S. §§ 2105—2106, this rulemaking would add 200 hours of new topics, including vehicle code enforcement, to the basic training curriculum.	Don Numer (717) 705-3693 ext. 3041
Commission on Crime and Delinquency—Amendments to 37 Pa. Code Chapter 401 (General Provisions), Chapter 405 (Grant Management) and Chapter 407 (Administrative Proceedings)	December 2002, as final omitted	To update existing regulations to reflect current operations and eliminate language that is obsolete due to operational or statutory change.	Gerard Mackarevich (717) 705-0888 ext 3034
<b>CONSERVATION &amp; NATURAL RESOURCES</b>			
Conservation of Native Wild Plants (Chapter 45)	Publish proposed rulemaking January 2004.	This proposal is being developed to update existing native wild plant regulations. The legal basis for these regulations is the Wild Resource Conservation Act of 1982. This update is necessary to change the status of various plants to reflect field work completed during the last three years. Recommendations of the Rare Plant Committee and the Vascular Plant Technical Committee will be considered during the development of this proposed rulemaking.	Chris Firestone, Mike Lester and Dan Devlin 717-783-3227
State Parks Rules and Regulations (Chapter 11)	Publish proposed rulemaking March 2002. Final rulemaking January 2003.	This revision to state parks rules and regulations will take place after extensive public outreach. Updates are necessary to reflect changes for more efficient operations, increase opportunities for public recreation, and an effort to improve visitor services and to promote good stewardship of public parks. Eight state-wide regional public meetings were held in the summer of 2000 to begin to gather input on possible regulatory changes. Parks also conducted roundtable discussions. Legal basis for these regulations is Act 18 of 1995.	Gary Smith 717-783-3303

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
State Forest Picnic Area Rules and Regulations (Chapter 23)	Publish proposed rulemaking June 2002. Final rulemaking May 2003.	General State Forest rules and regulations were updated in 1998. Chapter 23 pertaining to State Forest Picnic Areas needs to be updated and revised to conform with Title 17 general regulation changes.	Bill Slippey 717-783-7941
Snow & All Terrain Vehicle Registration and Operations (Chapter 51)	Publish proposed rulemaking September 2002. Final rulemaking August 2003.	This chapter needs to be updated to implement recent amendments to Chapter 77 of the Vehicle Code and to reflect the Department's current registration and titling procedures.	Bill Slippey 717-783-7941 Bureau of Forestry (Recreation) Lynn Loudenslager 717-783-3751 Bureau of Admin Services (Registration & Titling)
<b><i>CORRECTIONS</i></b>			
Revisions to regulations governing the Department, 37 Pa. Code Chapters 91, 93 and 94.	Fall, 2002, as proposed	The regulations will be revised to eliminate unnecessary regulations and to ensure that the Department's regulations are consistent with current legal standards concerning prison administration and operation. The legal basis for the action is found at Section 506 of the Administrative Code of 1929, 71 P. S. § 186, which grants the Secretary of Corrections the authority to prescribe regulations for the Department that are not inconsistent with law.	John S. Shaffer, Ph.D. (717) 975-4998
Revisions to the regulations governing county correctional facilities, 37 Pa. Code Chapter 95.	Fall, 2002, as proposed	The regulations will be revised to eliminate unnecessary regulations and modernize necessary regulations. The legal basis for the action is found at Section 506 of the Administrative Code of 1929, 71 P. S. § 186, which grants the Secretary of Corrections the authority to prescribe regulations for county correctional institutions that are not inconsistent with law.	William M. Reznor (717) 975-4876
<b><i>EDUCATION</i></b>			
22 Pa. Code Chapter 155—Board of State College and University Directors—Personnel  Chapter 161—School Administrators Handbook  Chapter 181—Mentally Retarded Exceptional Children  Chapter 251—Postsecondary Education Planning Commission—Rules & Regulations  Chapter 329—Computation of Subsidy	The State Board did not take action and therefore the regulations will be resubmitted to be published in January 2003, as final omitted.	Chapter 155—This chapter was issued under Section 2 of the Act of February 1970 (P. L. 24, No. 13) (24 P. S. § 20—2002) (Repealed). It was adopted June 12, 1975, 5 Pa. B. 1548.  Chapter 161—Statutory authority for this chapter is 71 P. S. § 352.  Chapter 181—Taken from the <i>PA Bulletin</i> (Vol. 3, No. 39-9/15/73, p. 2069), the authority was contained in the Act of January 14, 1970, P. L. (1969) 468 (24 P. S. § 13—1372).  Chapter 251—The Postsecondary Education Planning Commission, formerly known as the 1202 Commission and also known as the 1203 Commission, was authorized by 20 U.S.C., Section 1143 and established by the Governor upon recommendation of the State Board of Education through its resolution of March 15, 1974.  Chapter 329—This chapter provided procedures for calculating the instruction subsidy described in Sections 2502, 2502.5 and 2502.6 of the School Code.	Ernest Helling (717) 787-5500

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Pupil Personnel Services, Attendance and Students 22 Pa. Code, Chapters 7, 11, 12	July 2002, as proposed.	These regulations define the elements of student services programs, delineate the rights and responsibilities of students and establish provisions regarding school attendance. Specific revisions are necessary to make the regulations consistent with current statute and court decisions as well as current practices in student services. These regulations are promulgated under the authority of the Public School Code of 1949 (P. L. 30, No. 14), Article XXVI-B, §§ 26-2601-B—26-2606-B.	Jim Buckheit (717) 787-3787
Higher Education General Provisions, Foreign Corporation Standards, Institutional Approval, Program Approval 22 Pa. Code, Chapters 31, 36, 40, 42	December 2002, as proposed.	These regulations are necessary to establish procedures for the approval and operation of institutions of higher education in the Commonwealth. Specific revisions are necessary to clarify the intent of the chapters, modify the time frame during which new institutions must achieve accreditation, update provisions for library and learning resources, and amend regulations to accommodate for-profit baccalaureate and higher education. These regulations are promulgated under authority of the Public School Code of 1949 (P. L. 30, No.14), Article XXVI-B, §§ 26-2601-B—26-2606-B.	Jim Buckheit (717) 787-3787
Certification of Professional Personnel 22 Pa. Code, Chapter 49	December 2002, as final omitted.	Revisions to these regulations are necessary to incorporate provisions of Act 48 of 1999 which requires continuing professional development for all certificated educators. Since these revisions will be technical to incorporate a statutory change, they will be promulgated as final rulemaking with the public comment phase omitted.	Jim Buckheit (717) 787-3787
Charter School Services, General Provisions	November 2002, as proposed.	Working on statutory changes for charter schools, including cyber schools. Regulations are promulgated under the authority of the Charter School Law, 24 P. S. § 17-1701-A et seq. 1949, March 10, P. L. 30, No. 14, Article XVII-A, § 1701-A, added 1997, June 19, P. L. 225, No. 22, § 1.	Kerri McCarthy (717) 705-2558
Academic Standards (Civics and Government, Economics, Geography and History; Arts and Humanities; Family and Consumer Science; Health, Safety and Physical Education) 22 Pa. Code, Chapter 4	July 2002, as proposed.	Chapter 4 sets forth requirements for instruction, graduation, strategic planning, and assessment based on academic standards. These additional sets of standards will revise Chapter 4 by their inclusion. These regulations are promulgated under the authority of the Public School Code of 1949 (P. L. 30, No. 14), Article XXVI-B, §§ 26-2601-B—26-2606-B.	Jim Buckheit (717) 787-3787
General Vocational Education Standards 22 Pa. Code, Chapter 339	September 2002, as proposed.	Educational institutions offering vocational programming have evolved substantially since their inception. Many of the standards defining and governing those institutions were conceived over 30 years ago. A revision of Chapter 339 is necessary to assist schools in developing, funding and maintaining programs that will provide the Commonwealth with a competent workforce. Discussions with the State Board of Vocational Education, as well as practitioners in that field, will be initiated to revise these standards. These regulations are promulgated under the authority of the Pennsylvania School Code, Article 18 on Vocational Education and section 2502.8 on Vocational Education Funding. These standards are also provided for under Chapter 4 of Title 22 of the <i>Pennsylvania Code</i> , section 4.32(a).	John C. Foster (717) 787-5530

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
22 Pa. Code, Chapter 233 Professional Standards and Practices Commission By-Laws	June 2002, as proposed.	Revisions to the Commission's by-laws were published as final in the <i>Pa Bulletin</i> on May 4, 2002.	Carolyn Angelo (717) 787-6576
22 Pa. Code, Chapter 237 Professional Standards and Practices Commission Definitions	May 2002, as final.	These are proposed revisions to the definitions of terms used in the Professional Educator Discipline Act.	
22 Pa. Code, Chapter 21 School Facilities	July 2002, as proposed.	Proposed revisions to State Board of Education regulations on school facilities.	Jim Buckheit (717) 787-3787
Standards for Approved Private Schools 22 PA Code Chapter 171 Subchapters A & B	The Secretary intends to submit revised standards in the Regulatory Review Process in 2002 since the current standards are outdated. The revised standards will reflect the changes in Chapter 14 and IDEA.	These standards define the elements of Approved Private Schools and the Chartered Schools (schools for the deaf and blind). These standards contain general provisions and allowable expenses and costs. The standards are promulgated under the Authority of the Public School Code of 1949, as amended, PL 30, NO 14, March 16, 1949, P. S. Section 1-101, et. seq.	Richard Brown (717) 783-6906
Regulations of the State Board of Private Academic Schools 22 Pa. Code Chapters 51, 53, 55, 57, 61 and 63	The Board intends to adopt amendments as proposed in June 2002.	These regulations define the requirements for obtaining licensure as a Private Academic School. The Board plans to update the regulations which were promulgated in 1988. The regulations are promulgated under the Authority of the Private Academic Schools Act (24 P. S. section 6701 et. seq.)	Eugene Heyman (717) 783-5146
<b>EMERGENCY MANAGEMENT AGENCY</b>			
No regulations being developed or considered at this time.			
<b>ENVIRONMENTAL HEARING BOARD</b>			
PA Code Title 25 Chapter 1021 Practice and Procedure	June/July 2002, as final	Proposed rulemaking number 106-6 relates to the following: 1) electronic filing and service of legal documents; 2) withdrawal of appearance by counsel; 3) number of copies of documents to be filed with the Board; 4) attachment of proposed orders to motions and responses; 5) discovery; 6) reconsideration; and 7) composition of the certified record on appeal to the Commonwealth Court. In addition, the Board is proposing a reorganization of its rules of practice and procedure in order to make the rules more user-friendly for practitioners before the Board. Final rulemaking is expected to be published in the <i>Pennsylvania Bulletin</i> in June or July 2002.	Mary Anne Wesdock (412) 565-5245
PA Code Title 25 Chapter 1021 Practice and Procedure	October 2002	Proposed rulemaking number 106-7 relates to the following: 1) signing of documents; 2) dispositive motions; 3) applications for award of attorney's fees and costs; 4) special actions; 5) withdrawal of appeals; and 6) composition of the certified record on appeal to the Commonwealth Court. No. 106-7 was published as proposed rulemaking in the <i>Pennsylvania Bulletin</i> in April 2002.	Mary Anne Wesdock (412) 565-5245

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
<b>ENVIRONMENTAL PROTECTION</b>			
Stream Redesignations— Oysterville Creek, et al. Clean Streams Law	February 2003 as final	This stream redesignation package includes six streams or segments that were evaluated for redesignation as HQ or Exceptional Value (EV) Waters. Oysterville Creek and a portion of the West Branch Perkiomen Creek (Berks Co.) were petitioned by the Berks County Conservancy and District Township. Two private citizens submitted a rulemaking petition for Trout Run (York Co.). Another private citizen petitioned for the redesignation of an unnamed tributary to Chester Creek (Delaware Co.). Rambo Run (York Co.) was evaluated in response to a request from the PFBC. The lower reaches of Cove Creek (Bedford Co.), previously petitioned by Friends of Cove Creek, was restudied based on DEP's recent change to the Percent Dominant Taxon biological metric used in HQ/EV evaluations. A 45-day public comment period on the proposal closed on June 18, 2002. However, a public meeting/hearing has been scheduled for August 7 in Topton on the proposed redesignations for Oysterville and West Branch Perkiomen Creeks. Therefore, the public comment period for these two streams has been extended to August 21, 2002.	Bonita Moore 717-787-9637
Stream Redesignations— Brushy Meadow Creek, et al. Clean Streams Law	February 2003 as proposed	This stream redesignation package includes 13 streams or segments that were evaluated for redesignation as Cold Water Fishes (CWF), HQ or EV Waters. Brushy Meadow Creek in Northampton County was evaluated due to a request from DEP's Northeast Regional Office and the PFBC. Crum Creek in Chester and Delaware Counties, Frya Run in Northampton County, and Green Lick Run in Fayette County were evaluated as a result of petitions. Hay Creek in Berks County was evaluated due to public concern following a 1999 final rulemaking that resulted in an EV designation in portions of Hay Creek. The Little Juniata River in Blair and Huntingdon Counties and Spring Creek in Dauphin County were evaluated due to a request from DEP's Southcentral Regional Office. Pine Creek in Crawford and Warren Counties and Dunbar Creek in Fayette County were evaluated due to requests from the PFBC. In addition, four streams not currently listed in Chapter 93 were evaluated to determine proper use designations. A 45-day public comment period will be recommended.	Bonita Moore 717-787-9637
Stream Redesignations— Class A Wild Trout Streams Clean Streams Law	July 2002 as final	Nearly 70 streams were evaluated in response to a request from the Pennsylvania Fish and Boat Commission (PFBC) under Section 93.4b of DEP's antidegradation regulations, which includes in subsection (a)(2)(ii) that a surface water designated as a Class A wild trout stream by the PFBC following public notice and comment qualifies for High Quality (HQ) designation. DEP independently reviewed the trout biomass data in the PFBC reports for these streams to ensure that the Class A criteria were met. A 45-day public comment period on the proposed rulemaking closed January 22, 2002.	Bob Frey 717-787-9637

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Chapter 93—Great Lakes Initiative (GLI) Federal Clean Water Act	September 2002 as final	The amendment to Section 93.8a(j) (relating to requirements for the Great Lakes System) consists of the elimination of the words “except Subpart C” in the current GLI to provide consistency with the federal guidance promulgated by USEPA on November 15, 2000, for the Great Lakes System. The proposed rulemaking will provide greater protection for the Great Lakes System by eliminating the use of mixing areas for discharges of toxic and persistent chemicals known as bioaccumulative chemicals of concern (BCCs). Examples of BCCs are mercury, PCBs and dioxin. The proposed rulemaking was published on January 26, 2002, with a 45-day public comment period that closed on March 12, 2002. The Water Resources Advisory Committee (WRAC) reviewed the draft final rulemaking on May 8, 2002.	Carol Young 717-787-9637
Chapter 96—Water Quality Standards Implementation Clean Streams Law	September 2002 as final	Chapter 96 is being amended to make the application of the sulfate and chloride criteria consistent with that already provided for total dissolved solids, nitrate, phenol and fluoride under Section 96.3(d). The proposed rulemaking was published on January 26, 2002, with a 45-day public comment period that closed on March 12, 2002. A public hearing was held February 26 in Harrisburg. WRAC reviewed the draft final rulemaking on May 8, 2002.	Carol Young 717-787-9637
Radionuclides Rule Safe Drinking Water Act	November 2002 as proposed	This proposal will amend Chapter 109 to incorporate the provisions of the recently-published federal Radionuclides Rule, which establishes a new Maximum Contaminant Level (MCL) for uranium and retains the current existing MCLs for gross alpha, combined radium-226/228 and beta and photon activity and establishes new monitoring requirements. The Radionuclides Rule applies to community water systems and does not include radon. WRAC and the Small Water Systems Technical Assistance Center Board (TAC) will review drafts of the proposed amendments. A 30-day public comment period will be recommended.	John Wroblewski 717-772-4018
Arsenic Rule Safe Drinking Water Act	November 2002 as proposed	This proposal will lower the MCL for arsenic from 0.05 mg/L to 0.01 mg/L at public water systems in order to eliminate or minimize the harmful health effects that are caused by arsenic. The proposed Arsenic Rule will affect all community water systems (approximately 2,190) and nontransient noncommunity water systems (approximately 1,280) in Pennsylvania. WRAC and TAC will review drafts of the proposed amendments. A 30-day public comment period will be recommended.	John Wroblewski 717-772-4018

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Filter Backwash Recycling Rule Safe Drinking Water Act	November 2002 as proposed	This proposal will amend Chapter 109 to incorporate the provisions of the recently-promulgated federal Filter Backwash Recycling Rule, which governs the recycling of the filter backwash water within the treatment process of public water systems (PWSs). The Rule will apply to all PWSs that use a surface water source or groundwater under the direct influence of surface water, utilize direct or conventional filtration and recycle spent filter backwash water, sludge thickener supernatant or liquids from dewatering processes. WRAC and TAC will review drafts of the proposed amendments. A 30-day public comment period will be recommended.	John Wroblewski 717-772-4018
Microbial and Disinfection Byproducts (M/DBP) Corrective Amendments Safe Drinking Water Act	November 2002 as proposed	This proposal will amend various provisions of the recently promulgated Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Disinfectants and Disinfection Byproducts Rule (D/DBPR) for either clarification or to ensure consistency with federal regulations. The IESWTR and the D/DBPR were published in the <i>Pennsylvania Bulletin</i> on July 21, 2001. WRAC and TAC will review drafts of the proposed amendments. A 30-day public comment period will be recommended.	John Wroblewski 717-772-4018
Long Term 1 Enhanced Surface Water Treatment Rule Safe Drinking Water Act	May 2003 as proposed	This proposal will amend Chapter 109 to incorporate the provisions of the recently promulgated federal Long Term 1 Enhanced Surface Water Treatment Rule. The Rule is intended to improve the control of microbial pathogens at public water systems serving less than 10,000 people that use surface water or ground water under the direct influence of surface water. Key provisions include strengthened combined and individual filter effluent turbidity performance standards, and disinfection benchmark provisions. WRAC and TAC will review drafts of the proposed amendments. A 30-day public comment period will be recommended.	Phil Consonery 717-772-2184
Chapter 105—Dam Safety and Waterway Management Clean Streams Law; Dam Safety and Encroachments Act	July 2003 as proposed	Revisions will be proposed to simplify and clarify the regulations, streamline the process for minor wetland encroachments, establish discretion to issue expedited permit decisions during site visits, simplify the application fee schedule, and clarify the Chapters 105 and 106 programs by consolidating rules and procedures for stream channels, floodways and floodplains into one regulation. The Wetlands Protection Advisory Committee (WetPAC) is thoroughly reviewing the issues. The Agricultural Advisory Board (AAB) will also be briefed on developments.	Ken Reisinger 717-787-6827



<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Chapter 245—Storage Tank Amendments Storage Tank and Spill Prevention Act	December 2002 as proposed	With the exception of Subchapter D (Corrective Action Process), this proposal represents comprehensive amendments to all other aspects of the Storage Tank and Spill Prevention Program provisions of Chapter 245, which was last updated in 1997. The amendments have been identified through implementation of the program over the past five years. In addition, a general review of Chapter 245—which is necessary to obtain state program authorization for the underground storage tank program from the USEPA—occurred in the past year, and this review identified other potential revisions. The Storage Tank Advisory Committee (STAC) is reviewing the draft amendments.	Ray Powers 717-772-5551
Amendments to the Hazardous Waste Regulations Solid Waste Management Act; Clean Streams Law	September 2002 as final	This proposal includes minor modifications to the hazardous waste amendments that were finalized on May 1, 1999, to address changes in the federal regulations since that time and for EPA approval as a federally authorized program. The modifications include minor “housekeeping” issues such as exceptions to the blanket substitution of DEP for USEPA where the federal authority cannot be delegated to a state. Other changes include correcting typographical errors and adding clarification or consistency in certain sections. A 30-day public comment period on the proposed rulemaking closed on January 14, 2002. The Solid Waste Advisory Committee (SWAC) reviewed the draft final rulemaking.	Rick Shipman 717-787-6239
Provisions for the Management of Safe Fill Solid Waste Management Act; Clean Streams Law; Land Recycling and Environmental Remediation Standards Act	December 2002 as final	This proposal revises Chapter 287 of the residual waste regulations to address the unrestricted use of uncontaminated soil, including rock and stone, as safe fill provided that the soil has not been subject to a spill or release and there are no visible staining, odors or other sensory nuisances associated with the soil. The current definition of “clean fill” would be replaced with a new definition for “safe fill.” The proposal will also include permit-by-rule requirements allowing restricted use of contaminated soils resulting from urbanization, pesticide use in fruit orchards, historic fill materials and Act 2 remediated soils. The proposed rulemaking was published February 2, 2002, with a 60-day public comment period and 3 public meetings and 3 public hearings. SWAC will review the draft final rulemaking.	William Pounds 717-787-7381
Prohibition on Open Burning of Recyclable Materials Air Pollution Control Act	December 2002 as proposed	This proposal will revise the open burning provisions of Section 129.14(c) to prohibit the burning of leaves, yard wastes and other recyclable materials in areas that have curbside recycling programs. The Air Quality Technical Advisory Committee (AQTAC) is reviewing the draft proposal.	Terry Black 717-787-9495
Architectural and Industrial Maintenance (AIM) Coatings Air Pollution Control Act	December 2002 as final	This proposal will set specific volatile organic content (VOC) limits in grams/liter for 46 categories of AIM coating and require compliance by January 1, 2005. Compliance with these new limits would be reached through either reformulating products or substituting products with compliant coatings that are currently on the market. A 69-day public comment period on the proposed rulemaking concluded February 22, 2002. AQTAC will review the draft final rulemaking in September 2002.	Terry Black 717-787-9495

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Portable Fuel Containers Air Pollution Control Act	July 2002 as final	This proposal is part of Pennsylvania's strategy to attain and maintain the one-hour National Ambient Air Quality Standard (NAAQS) for ozone. Based on the Ozone Transport Commission rule and the California Air Resources Board (CARB) program, the proposal will control VOC emissions from portable fuel containers by establishing permeability requirements designed to reduce the loss of gasoline through fuel container walls. The proposal also reduces gasoline loss due to spillage by adding "no-spill" fill spout requirements. Manufacturers will be responsible for developing and distributing compliant products for sale in Pennsylvania by January 1, 2003. The proposal does not affect portable fuel containers currently in use. A 67-day public comment period on the proposed rulemaking closed January 16, 2002. AQTAC reviewed the draft final rulemaking.	Terry Black 717-787-9495
Consumer Products Air Pollution Control Act	July 2002 as final	This proposal is also part of Pennsylvania's strategy to attain and maintain the NAAQS for ozone. This proposal will set specific VOC content limits for approximately 80 consumer product categories, and it will apply more stringent VOC content limits than the Federal rule. The compliance date for the limits would be January 1, 2005. Manufacturers would ensure compliance with the limits by reformulating products and substituting products with compliant products that are currently available. The proposal will include some flexibility options. A 67-day public comment period on the proposed rulemaking closed January 16, 2002. AQTAC reviewed the draft final rulemaking.	Terry Black 717-787-9495
Chapter 121, 129 and 145 Small NO <sub>x</sub> , Stationary Internal Combustion Engines and Cement Kilns Air Pollution Control Act	September 2002 as proposed	This proposal will establish a program to limit NO <sub>x</sub> emissions from smaller boilers, turbines and stationary internal combustion engines in the southeast portion of Pennsylvania. These controls are needed to attain and maintain the health-based one-hour ozone standard. In addition, the proposal will establish control requirements on a statewide basis for large stationary internal combustion engines and cement kilns. These controls are needed to meet the Commonwealth's remaining obligation to reduce ozone transport throughout the eastern United States. AQTAC is reviewing the draft proposed regulations. A 60-day public comment period and three public hearings will be recommended.	Dean Van Orden 717-787-9495

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
New Source Review Air Pollution Control Act	Contingent on EPA action	The Department's existing new source review (NSR) regulations will be reorganized and reformatted to make the requirements clear to the regulated community and to facilitate the creation and use of emission reduction credits (ERCs). The Department will incorporate proposed changes in the Federal NSR requirements as necessary. Drafts of the proposal will be reviewed by the AQTAC. EPA has proposed in its draft NSR regulations a number of mechanisms related to generation and use of ERCs and the use of an "area wide" plant-wide applicability limit (PAL) to address trading issues. The proposed rules were issued in July 1996; however, EPA has not yet issued final rules. With the uncertainty of the nature of the final rules, the Department cannot proceed with revisions of the existing trading regulations until the final EPA rule is promulgated.	Terry Black 717-787-9495
Chapter 86—Coal Mining Amendments Surface Mine Conservation and Reclamation Act	January 2003 as final	This proposal adds new Section 86.6 to clarify existing statutory requirements and ensure the regulations are no more stringent than federal requirements. This amendment provides an exemption to the regulatory requirements for coal extraction incidental to federal, state and local government-financed highway construction and reclamation projects. The exemption currently exists in Pennsylvania's Surface Mine Conservation and Reclamation Act. A 45-day public comment period closed on June 18, 2002. The Mining and Reclamation Advisory Board (MRAB) will review the draft final rulemaking in September 2002.	Evan Shuster 717-783-9888
Chapter 207— Underground Noncoal Mines General Safety Law	September 2002 as final	This proposal consolidates the regulatory provisions implementing Section 2(f) of the General Safety Law, which regulates worker safety in noncoal mines, into Chapter 207 (Noncoal Mines). Most of these provisions were promulgated by the Department of Labor and Industry over 30 years ago and are found at Title 34, <i>Pennsylvania Code</i> , Chapter 33. DEP's Chapter 207 addresses the use of explosives at noncoal mines and has not been amended since its adoption in 1972. The amendments address effective safety practices in noncoal mines based on changes in the industry and DEP's administration of the program. The proposal incorporates by reference the U.S. Mine Safety and Health Administration's (MSHA) regulations found at 30 CFR Part 57 and includes provisions to address certification of foremen as well as the licensing and duties of blasters. A 60-day public comment period on the proposed rulemaking closed February 6, 2002.	Richard Stickler 724-439-7469
<b>GENERAL SERVICES</b>			
Responsibility 4 Pa. Code, Chapter 60	Fall, 2002, as proposed	This chapter must be amended to conform with the legislative changes required by Act 57 and to provide for uniform Commonwealth agency debarment and suspension procedures.	Gary Ankabrandt (717) 783-1982
Instructions to Bidders 4 Pa. Code, Chapter 61	Fall, 2002, as proposed	This chapter has been superseded and should be repealed because such instructions should not be set out in regulatory form. There is a need for flexibility which can be of benefit to the department as well as bidders.	Merle H. Ryan (717) 787-7095

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
General Conditions of the Construction Contract 4 Pa. Code, Chapter 63	Fall, 2002, as proposed	See comment for Chapter 61.	Merle H. Ryan (717) 787-7095
State Art Commission 4 Pa. Code, Chapter 65	Fall, 2002, as final	The legislation creating the State Art Commission was sunsetted.	Merle H. Ryan (717) 787-7095
Emergency Construction Repairs 4 Pa. Code, Chapter 67	Fall, 2002, as proposed	The regulation should be amended to more accurately reflect present practice and to delete contract provisions. Such provisions should not be in regulatory form and their deletion will serve the same purpose as noted for Chapter 61.	Merle H. Ryan (717) 787-7095
Contract Compliance 4 Pa. Code, Chapter 68	Fall, 2002, as proposed	Executive Order 1996-8 transferred the contract compliance responsibilities to the Department of General Services	Sheri Phillips (717) 783-8720
Methods of Awarding Contracts 4 Pa. Code, Chapter 69	Fall, 2003, as proposed	With the enactment of the Commonwealth Procurement Code (Act 57) it is necessary to confirm this chapter with the changes in the law and to address other procurement areas affected by Act 57.	Sharon P. Minnich (717) 787-5295
Commonwealth Parking Facilities 4 Pa. Code, Chapter 71	Fall, 2002, as proposed	Amendments are required because parking locations have been changed.	James W. Martin (717) 783-5028
Commonwealth Automotive Fleet 4 Pa. Code, Chapter 73	Fall, 2002, as proposed	The regulation will be amended to eliminate the requirement for a Pennsylvania license to drive a state vehicle and will permit out-of-state-licenses.	Sharon P. Minnich (717) 787-5295
Processing Subscriptions and Sales of <i>Pennsylvania Code</i> and Related Publications 4 Pa. Code, Chapter 81	Fall, 2002, as proposed	These regulations should be repealed since the Department of General Services' Bureau of Management Services no longer has responsibility for the processing of subscriptions and order for the <i>Pennsylvania Code</i> .	Sheri Phillips (717) 783-8720
First Amendment Rights 4 Pa. Code, Chapter 86	Fall, 2002, as proposed	The amendment will extend coverage of the statement of policy to the Philadelphia State Office Building, Pittsburgh State Office Building, Scranton State Office Building, and Reading State Office Building	Gregory C. Santoro (717) 787-5599
Prequalification 4 Pa. Code, Chapter 60	Fall, 2002, as proposed	Under the authority granted in the Commonwealth Procurement Code, the department will initiate prequalification of public works contractors for Commonwealth projects. The regulations will provide factors to be considered in determining whether to prequalify contractors as well as provisions for suspending or revoking prequalification if contractors do not comply with prequalification standards.	Jan Matthew Tamanini (717) 787-6789
<b>HEALTH</b>			
Testing Blood and Alcohol Specimens Taken From Persons Who Die as a Result of a Vehicle Accident 28 Pa. Code §§ 29.21 and 29.22	October 2002, as proposed.	The amendments to existing regulations will update testing procedures and make the regulations consistent with the authorizing statute. Pursuant to the section 3749 of the Vehicle Code, 75 Pa.C.S. § 3749, and Reorganization Plan No. 4 of 1981 (71 P. S. § 751-31).	Kenneth E. Brody 717-783-2500
Health Facility Licensure—General & Special Hospitals & Health Planning 28 Pa. Code § 301.1 et seq. 28 Pa. Code § 401.1 et seq.	November 2002, as final-omitted.	Existing regulations in chapters on health planning (federal program and certificate of need) will be repealed as statutory authority for both chapters has terminated. Pursuant to the Health Care Facilities Act, 35 P. S. §§ 448.101—448.904b.	James T. Steele, Jr. 717-783-2500

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Reporting of Certain HIV Test Results, CD4 T-Lymphocyte Counts Below a Certain Level, and Perinatal Exposure of Newborns to HIV 28 Pa. Code §§ 27.1—27-2, 27.21—27.22, 27.32, 27.32a—27.32d	July 2002, as final.	The amendments to existing regulations will add reporting of certain HIV test results, CD4 T-lymphocyte counts below a certain level, and perinatal exposure of newborns to HIV to the list of diseases, infections and conditions reportable to the Department of Health. The amendments will specify who is required to report these conditions and how the reporting is to be done. The amendments will also require clinical laboratories to report all reportable diseases, infections and conditions to the Department electronically. Pursuant to the Disease Prevention and Control Law of 1955, 35 P. S. §§ 521.1—521.21.	Yvette M. Kostelac 717-783-2500
Public Bathing Place Lifeguard Requirements 28 Pa. Code § 18.1; § 18.42	October 2002, as proposed.	The amendments to existing regulations will provide lifeguard requirements for recreational swimming establishments, and add requirements for lifeguard certification and factors to be considered in determining adequate lifeguard coverage. Pursuant to Act 75 of 1998, amending 35 P. S. §§ 672—680 (the Public Bathing Law).	Grace R. Schuyler 717-783-2500
Special Supplemental Food Program for Women, Infants and Children (WIC Program) 28 Pa. Code § 1101.1 et seq.	September 2002, as proposed.	The amendments to existing regulations will bring the State regulations into compliance with changes in the Federal regulations (7 C.F.R. § 246) published December 29, 2000, relating to vendor selection criteria, training requirements, monitoring requirements and compliance investigations, and the vendor appeals process.	Karin Simpson Gutshall 717-783-2500
Health Facility Licensure/Hospices 28 Pa. Code § 651.1 et seq.	April 2003, as proposed.	These new regulations will provide standards for the licensing and regulation of hospices. They will contain health and safety standards as well as standards set forth in Federal regulations for hospices certified as providers under the Medicare Program. Pursuant to Act 95 of 1998, amending the Health Care Facilities Act, 35 P. S. §§ 448.101—448.904b.	Karen Kroh 717-787-7425
Hearing Aid Sales and Registration/Continuing Education 28 Pa. Code § 25.201 et seq.	July 2002, as proposed.	The amendments to existing regulations will include continuing education requirements for hearing aid fitters, provide for 30-day money back written guarantees on hearing aids, and revise certification fees for consistency with the statute. Pursuant to Act 153 of 1998, amending the Hearing Aid Sales Registration Act, 35 P. S. §§ 6700-101—6700-802.	Tanya Leshko 717-783-2500
Narcotic Treatment Standards 28 Pa. Code §§ 701 and 715	September 2002, as final.	The amendments to existing regulations will repeal 4 Pa. Code § 263, transfer regulations to Title 28, and amend and update narcotic treatment standards, including methadone treatment standards. Pursuant to the Pennsylvania Drug and Alcohol Abuse Control Act, 71 P. S. §§ 1690-101—1690.115.	Keith Fickel 717-783-2500
Prevention Activities 28 Pa. Code §§ 701 and 713 (rescission)	July 2002, as final.	Existing regulations imposing standards for approval of drug and alcohol prevention activities will be repealed. Pursuant to the Pennsylvania Drug and Alcohol Abuse Control Act, 71 P. S. §§ 1690-101—1690.115.	Keith Fickel 717-783-2500
Optometric Drugs 28 Pa. Code § 6.2	July 2002, as final.	The amendments to existing regulations will add substances to the list of drugs that may be used by certain optometrists. Pursuant to section 244.2 of the Optometric Practice and Licensure Act, 63 P. S. § 244.2.	Keith Fickel 717-783-2500

**HOUSING FINANCE AGENCY**

No regulations being developed or considered at this date.

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
<b>INFRASTRUCTURE INVESTMENT AUTHORITY</b>			
No regulations being developed or considered at this date.			
<b>INSURANCE</b>			
Advertising of Insurance, 31 Pa. Code, Chapter 51, §§ 51.1—51.61	Winter 2002, as proposed.	Amend pursuant to Executive Order 1996-1.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Private Passenger Automobile Policy Forms, 31 Pa. Code, Chapter 64, §§ 64.1—64.14	Fall 2002, as proposed.	Repeal pursuant to Executive order 1996-1.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Motor Vehicle Financial Responsibility Law—Evidence of Financial Responsibility, 31 Pa. Code, Chapter 67, §§ 67.21—28	Winter 2002, as proposed.	Amend to make the regulation consistent with statutory requirements.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Replace Life Insurance Annuities, 31 Pa. Code, Chapter 81, §§ 81.1—91	Fall 2002, as proposed.	Amend pursuant to Executive Order 1996-1.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Variable Life Insurance, 31 Pa. Code, Chapter 82, §§ 82.1—91	Fall 2002, as proposed.	Amend pursuant to Executive Order 1996-1.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Disclosure in Solicitation of Life Insurance, 31 Pa. Code, Chapter 83, §§ 83.1—57	Fall 2002, as proposed.	Amend pursuant to Executive Order 1996-1.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Annuity Disclosure, (NEW Chapter 83a)	Summer/Fall 2002, as final.	A new regulation to eliminate misleading illustrations, make illustrations more understandable and to standardize the disclosure statement language to be use with the selling of annuities.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Variable Annuity & Accumulation Contracts, 31 Pa. Code, Chapter 85, §§ 85.1—85.40	Fall 2002, as proposed.	Amend pursuant to Executive Order 1996-1.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Requirements for Life Policies and Sales Practices, 31 Pa. Code, Chapter 87, §§ 87.1—87.42	Fall 2002, as proposed.	Amend pursuant to Executive Order 1996-1.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Life Insurance Illustrations (New Chapter 87a)	Summer 2002, as proposed.	Act 154 of 1996 provides for life insurance illustration requirements for life insurance policies. The statute sunsets when a life insurance illustration regulation becomes effective. A life insurance illustration regulation will eliminate misleading illustrations, make illustrations more understandable, and standardize terms and illustration formats for the entire life insurance industry. Further, it is more appropriate that technical requirements, such as these, appear in a regulation rather than in statutory form.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Individual Accident & Sickness Minimum Standards, 31 Pa. Code, Chapter 88, §§ 88.1—88.195	Winter 2002, as proposed.	Amend pursuant to Executive Order 1996-1.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Requirements for All Policies and Forms, 31 Pa. Code, Chapter 89, §§ 89.1—89.5, 89.11, 89.17 and 89.21—89.23 and new General Filing Requirements and General Contents of Forms §§ 89a.1—89a.6	Fall 2002, as final.	Changes will be promulgated regarding the deregulation of rates and forms filings for accident and health insurance, as a result of Act 159 of 1996. Changes will be made pursuant to the health care provisions of the Federal Health Insurance Portability and Accountability Act of 1996. Life, annuities and property and casualty general filing requirements are being combined in the new regulation.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Preparation of Forms, 31 Pa. Code, Chapter 89, §§ 89.12-16, 89.18—89.62	Fall 2002, as proposed.	Amend pursuant to Executive Order 1996-1.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Prior Approval of Forms Required, 31 Pa. Code, Chapter 89, § 89.101	Fall 2002, as proposed.	Amend pursuant to Executive Order 1996-1.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Public Adjusters, 31 Pa. Code, Chapter 115, §§ 115.1—115.8	Summer/Fall 2002, as final.	The regulation was initially promulgated to clarify the requirements of public adjuster contracts. The authorizing statute, Act 72, was amended in 1983 (63 P. S. §§ 1601—1608), and the Insurance Department seeks to modify Chapter 115 to be consistent with the revised statutory language. Licensing requirements are being proposed to be added to this regulation.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Description of Reserves—Prohibited Phrases, 31 Pa. Code, Chapter 139, §§ 139.1—139.3	Winter 2002, as proposed.	Amend pursuant to Executive Order 1996-1.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Unfair Insurance Practices; Unfair Claims Settlement Practices, 31 Pa. Code, Chapter 146, §§ 146.1—146.10	Fall 2002, as proposed.	Amend pursuant to Executive Order 1996-1.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Privacy of Consumer Health Information, 31 Pa. Code, Chapter 146b	Summer 2002, as final.	NEW. This implements the NAIC model privacy regulation with respect to health information in accordance with the health privacy regulations of the U.S. dept. of health and Human Services and the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.).	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Annual Audited Insurers' Financial Report Required, 31 Pa. Code, Chapter 147	Winter 2002, as proposed.	Amend to prohibit a person or firm from being recognized as a qualified independent certified public accountant if the person or firm has entered into an agreement of indemnity or release from liability with respect to an audit of an insurer.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Securities Held Under Custodial Agreements, 31 Pa. Code, Chapter 148, §§ 148.1—148.4	Summer/Fall 2002, as final.	Amend to eliminate unnecessary forms, add uniform requirements relating to custodial agreements and duties of custodians and update provisions relating to permissible custodians.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Health Maintenance Organizations, 31 Pa. Code , Chapters 301, §§ 301.1—301.126	Winter 2002, as proposed.	Amend pursuant to Executive order 1996-1.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Workers' Compensation Security Fund Assessment Regulation, 31 Pa. Code, Chapter 165 (new chapter)	Summer 2002, as proposed.	HB 1370 passed the GA in 2000 allowing the Fund to develop a regulatory scheme to finance the obligations of the Fund. The proposed regulation will establish reporting requirements for licensed worker's compensation carriers and assessment calculations.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
Premium Finance Companies (new chapter)	Fall 2002, as proposed.	New regulation addressing issues pertaining to Premium Finance Companies.	Peter J. Salvatore, Regulatory Coordinator 717-787-4429
<b>LABOR AND INDUSTRY</b>			
Workers' Compensation Bureau, Workers' Compensation Judges, and Workers' Compensation Appeal Board regulations at 34 Pa. Code Chapters 131, 121, and 111.	Proposed rulemaking was published on 3/23/02. Public comments have been received. Anticipate submission as final-form regulation by the end of 2002.	These rules have not been updated in many years and need to reflect the changes in the law and practice of workers' compensation.	Thomas J. Kuzma (717) 783-4467
Underground Storage Facilities	Anticipate submitting as proposed rulemaking in Fall, 2003.	This regulation will address requirements for natural or man-made caverns used for Liquefied Petroleum Gas storage.	Edward Leister (717) 787-3329
Unemployment Compensation Appeal Amendments	Signed by Secretary. Submitted as proposed rulemaking	The proposed rulemaking will update rules for filing and allow filings through private mail carriers, fax and electronic transmission.	Kelly Smith (717) 787-4186
Unemployment Compensation Regulations, Title 34. Labor & Industry Regulations	Final-form regulation sent to Secretary Butler for signature on 6/18/02.	The proposed regulation will clarify the meaning of reasonable assurance as it applies to the eligibility of the employees of educational institutions during regularly scheduled non-school periods.  Under Section 402.1 of the PA UC Law, a school employee is not eligible for benefits based on school employment during a regularly scheduled non-school period when the individual performed services for a school employer prior to the break and has a reasonable assurance of performing such services following the break.	Jeri Morris (717) 787-6337



<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Asbestos Occupations Accreditation and Certification	Published in proposed form. Received numerous comments. Rulemaking was withdrawn L&I re-writing in accordance with federal EPA Model Plan. Will resubmit as proposed rulemaking in early 2003.	Act of December 19, 1990, P. L. 05, No. 194, 64 P. S. §§ 2101—2112. This regulation established the Department's worker certification and training provider accreditation program. It also sets up training course requirements. It will be based on the Environmental Protection Agency's model plan.	Sharon Lawson (717) 772-3396
Uniform Construction Code (UCC) regulations. Act 45 of 1999.	The Training and Certification portion was published as a final form regulation and will take effect on 7-15-02. Anticipate submitting Administrative and Enforcement regulations as proposed rulemaking in Summer, 2002.	Act 45 of 1999, providing for a uniform statewide building code, requires the Dept. of L&I to promulgate regulations. Because this measure in effect repealed the Dry Cleaning Law, Elevator Law and Fire & Panic Act, the regulations relating to each (including those for Personal Care Homes), were withdrawn and will be addressed through regulations for Act 45. Personal Care Home regs, previously submitted to OGC, were withdrawn and its provisions not addressed in Act 45 regs will be addressed through legislative measure.	Edward L. Leister (717) 787-3323
<b>MEDICAL PROFESSIONAL LIABILITY CATASTROPHE LOSS FUND</b>			
No regulations being developed or considered at this date.			
<b>MILITARY AND VETERANS AFFAIRS</b>			
State Veterans Home 43 Pa. Code Section 7.1 et. seq.	July 2003, as proposed.	This regulation is necessary to update current regulations to make them more user-friendly. This regulation is a long-term project and would amend 43 Pa. Code Chapter 7.	Eclenus Wright, Jr. 717-861-8503
<b>BOARD OF PARDONS</b>			
No regulations being developed or considered at this time.			
<b>PENNSYLVANIA MUNICIPAL RETIREMENT SYSTEM</b>			
See Public School Employees' Retirement System.			
<b>PROBATION AND PAROLE</b>			
No regulations being developed or considered at this date.			
<b>PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM</b>			
22 Pa. Code Chapter 213	Became effective upon publication May 11, 2002	Conforms the board's regulations with the policy adopted by the board at its December 2, 1998 meeting allowing actuarial debt reduction for purchase of service.	Frank Ryder (717) 720-4733

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
<b><i>PUBLIC WELFARE</i></b>			
Child Protective Services Law 55 Pa. Code Chapter 3490	October 2002, as final	This regulation incorporates the amendments to the Child Protective Services Law as a result of Act 127 of 1998. The major changes include: convening of an investigative team for the investigation of suspected child abuse; increased communication between county agencies and law enforcement officials; increased requirements for multi-disciplinary teams; increasing the length of time unfounded reports are retained; and expanded reporting requirements by county agencies to law enforcement officials.	Ruth O'Brien (717) 783-2800
Adolescent and Adult Part Day Regulations 28 Pa. Code Chapters 704 and 709 (Subchapters C, H and I) (3 facility types) Staffing Requirements for Drug and Alcohol Treatment Facilities Standards for Licensure of Freestanding Treatment Facilities 55 Pa. Code Chapter 2390 Vocational Facilities 55 Pa. Code Chapter 2380 Adult Training Facilities 55 Pa. Code Chapter 5200 Psychiatric Outpatient Clinics 55 Pa. Code Chapter 5210 Partial Hospitalization 6 Pa. Code Chapter 11 Older Adult Daily Living Centers	February 2003, as proposed	DPW, DOH and PDA are consolidating nine sets of regulations into one chapter of regulations. Each agency will retain its statutory authority. Regulations will include common administrative standards and common health and safety standards for all facilities included, as well as unique program standards for each facility type.	Ruth O'Brien (717) 783-2800

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
<p>Adult Residential Regulations 28 Pa. Code Chapters 704 and 709 (Subchapters C and E) (2 facility types) Staffing Requirements for Drug and Alcohol Treatment Facilities Standards for Licensure of Freestanding Treatment Facilities 55 Pa. Code Chapter 6500 Family Living Homes 55 Pa. Code Chapter 5310 Community Residential Rehabilitation Services for the Mentally Ill 55 Pa. Code Chapter 5320 Long Term Structured Residence 55 Pa. Code Chapter 2620 Personal Care Home Licensure Also (no current regs.—regulated under Article X): Residential Treatment Facilities for Adults Residential Crisis Intervention</p>	<p>August 2002, as proposed</p>	<p>DPW and DOH are consolidating eight sets of regulations into one chapter of regulations. Each agency will retain its statutory authority. Regulations will include common administrative and health and safety standards for all facilities included, as well as unique program standards for each facility type. However, at this time, the Department has prioritized Personal Care Home Licensure regulations for proposed publication.</p>	<p>Ruth O'Brien (717) 783-2800</p>
<p>Subsidized Child Day Care Eligibility 55 Pa. Code Chapter 3040</p>	<p>October 2002, as proposed</p>	<p>This regulation is proposed in order to clarify existing regulations relating to eligibility requirements for day care subsidy.</p>	<p>Ruth O'Brien (717) 783-2800</p>
<p>Continuation of Medical Assistance Throughout Pregnancy 55 Pa. Code Chapters 140, 181</p>	<p>March 2003, as proposed</p>	<p>This regulation codifies the provision that Medical Assistance coverage will be continued for pregnant women throughout their pregnancy and postpartum period, regardless of changes in family income that occur after the authorization of MA or cash assistance. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.</p>	<p>Ruth O'Brien (717) 783-2800</p>
<p>Workfare/Community Service 55 Pa. Code Chapters 166, 275</p>	<p>June 2003, as proposed</p>	<p>The revisions clarify who may be assigned and the priority and factors to be considered in making Workfare program assignments, define responsibilities of county assistance offices and project operators regarding participation expenses and program requirements, and provide for grievance rights for Workfare recipients and regular employees. Provisions of Act 1995-20 will also be incorporated into this regulation package. This regulation will be reviewed by representatives of community legal services agencies, the welfare rights organization, and other similar client advocacy groups.</p>	<p>Ruth O'Brien (717) 783-2800</p>

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Real Property Liens 55 Pa. Code Chapters 101, 121, 177, 183, 257, 297	June 2003, as proposed	This regulation codifies the elimination of the requirement that applicants who own real property, including mobile homes, which are used as their primary residence, will no longer be required to sign a lien encumbering their residence as a condition of eligibility for cash assistance. The Department intends to rescind 55 Pa. Code Chapter 257, regarding Reimbursement. Instead, the Department will propose a new chapter governing reimbursement policy for cash assistance recipients and applicants who own personal property. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800
Criminal History * 55 Pa. Code Chapters 125, 133, 141	March 2003, as proposed	This regulation incorporates the Act 1995-20 provision that prohibits the granting of assistance to any person sentenced for a felony or misdemeanor who has not satisfied the penalty imposed by law by having completed the period of incarceration and by paying all fines, costs, and restitution. Act 1996-35 expands the satisfied penalty requirement to include compliance with an approved payment plan. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800
Act 1996-35—Provisions Effective March 3, 1997 * 55 Pa. Code Chapters 105, 125, 133, 140, 141, 145, 151, 153, 165, 168, 177, 178, 181, 183, 187, 255	August 2002, as final	This regulation incorporates provisions of the TANF program implemented 3/3/97 by NORC including establishing RESET; requiring applicants and recipients to enter into an agreement of mutual responsibility with the department; and further defining Title IV-D cooperation requirements and procedures for TANF and GA applicants and recipients. Act 1996-35 provisions applicable to the TANF program may not be implemented until federal approval is received. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800
Medical Support Rights 55 Pa. Code Chapter 187	March 2003, as proposed	This regulation will require Medical Assistance applicants/ recipients to assign their medical support rights to the Commonwealth and apply for Title IV-D support services as conditions of eligibility. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800

## NOTICES

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Annuity Rule 55 Pa. Code Chapter 178	February 2003, as proposed	This regulation codifies the provision that in addition to the current provision permitting the institutionalized spouse to provide part of his monthly income to the community spouse whose income is below the minimum monthly maintenance needs allowance, either the institutionalized spouse or their representative may file an appeal and seek an administrative order permitting the protection of additional resources to enable the community spouse to purchase an annuity that will generate sufficient income to bring her income up to the minimum monthly maintenance needs allowance. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800
Food Stamp Disqualification Penalties 55 Pa. Code Chapter 501	March 2003, as proposed	This regulation incorporates a revision to the Food Stamp disqualification penalties as required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). The revision increases the Food Stamp intentional program violation disqualification penalties from six months to one year for the first violation and from one year to two years for the second violation. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800
Employment Requirements for Two-Parent Households: Definition of Unemployment * 55 Pa. Code Chapters 153, 178	August 2002, as final	This regulation codifies the provision in the current Temporary Assistance for Needy Families (TANF) State Plan that DPW is revising the definition of unemployment so that working parents who meet financial eligibility requirements and are otherwise eligible may receive TANF until their income exceeds eligibility limits or they exhaust their 60 months of TANF. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800
Family Violence Option 55 Pa. Code Chapter 187	March 2003, as proposed	This regulation codifies the provision in the TANF State Plan to screen and identify victims of domestic violence, refer those individuals to counseling and supportive services, establish service plans, provide universal notification, and make appropriate referrals to social service agencies. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800
Lump Sum Income (Cash) 55 Pa. Code Chapter 183	December 2002, as Final	This regulation codifies provisions to specify that lump sum is considered income in the month of receipt and a resource in subsequent months. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
OBRA '90 55 Pa. Code Chapters 140, 178, and 181	February 2003, as proposed	This regulation codifies changes resulting from OBRA '90 that affect the SSI program and, therefore, the SSI-related program in the areas of income and resources. OBRA '90 also provides a mandatory change to the post-eligibility requirements for institutionalized Medicaid eligibles who will have their VA pension reduced to \$90 but that will now not be counted in determining cost of care. Thus, SSI and Medicaid recipients will be positively impacted. The reduction that veterans will contribute toward cost of care will increase federal/state costs but will not affect service delivery. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800
20% Hardship Exemption for TANF 55 Pa. Code Chapter 141	September 2002, as final	This regulation codifies provisions that extend TANF beyond 60 months to up to 20% of the average monthly caseload based on hardship or domestic violence issues. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800
Increases in Payment for Burial and/or Cremation* 55 Pa. Code Chapter 285	February 2003, as proposed	This regulation codifies an increase to the maximum payment for burial and/or cremation for eligible persons. A deceased person of any age who received or was eligible to receive a money payment—TANF, General Assistance, State Blind Pension, or Supplemental Security Income—may be eligible for a maximum burial and/or cremation payment of \$750, if there are no resources that reduce the payment. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800
Medical Assistance for Workers with Disabilities 55 PA. Code Chapter 140	October 2002, as proposed	This regulation provides Medicaid benefits to Workers with Disabilities who would otherwise not be eligible, effective January 1, 2002. The Ticket to Work and Work Incentives Improvement Act of 1999 (P. L. 106-170) gave states the option of providing categorically needy Non-Money Payment Medicaid benefits to workers with disabilities who have higher incomes and resources than the current Medicaid standards. Pennsylvania exercised this option by passing Act 2001-77 of June 26, 2001 (P. L. 755), also known as the Tobacco Settlement Act, which establishes MAWD. MAWD is intended to provide individuals with disabilities the opportunity to enter and remain in the workforce while receiving Medicaid coverage. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Breast and Cervical Cancer Prevention and Treatment Program 55 Pa. Code Chapter 140	October 2002, as proposed	This regulation provides Medicaid benefits to individuals diagnosed with Breast and Cervical Cancer, effective January 1, 2002. The BCCPT Act of 2000 amended Title XIX of the Social Security Act by giving states the option of providing full Medicaid benefits to a new group of individuals. This regulation provides healthcare coverage for treatment of breast and cervical cancer, including pre-cancerous conditions of the breast and cervix, in addition to full Medicaid benefits. Specifically, uninsured and underinsured women under the age of 65, screened and diagnosed with either breast or cervical cancer, including pre-cancerous conditions of the breast or cervix, by a provider or facility funded in full or part by the Centers for Disease Control and Prevention under its National Breast and Cervical Cancer Early Detection Program, will be eligible for Medicaid benefits. Pennsylvania has chosen the Department of Health Healthy Woman Project as the screening entity for this program. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800
Semi-annual Budgeting 55 Pa. Code Chapters 142, 168, 175, and 183	February 2003, as proposed	This regulation will change the manner of reporting and adjusting earned income for employed clients. Reporting of earned income will be required for specific periods within six-month intervals. Benefits will be adjusted on a post-adjustment basis so that income reported for period A will affect benefits received in period B, etc. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800
Establishment of Parental Income Limit—Children with Disabilities 55 Pa. Code Chapters 140, 178 and 181	October 2002, as proposed	This regulation will change the eligibility requirements to deem parental income to a child with a disability for the Medicaid Program. Previously, there was no provision to permit the use of parental income in the eligibility determination process for these children. This regulation will permit an income disregard under § 1902(r)(2) of the Social Security Act prior to deeming parental income using standard Supplemental Security Income deeming of income methodologies. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800
Limitations in Spend-down Eligibility 55 Pa. Code Chapter 181	October 2002, as proposed	This regulation will change the spend-down procedure within the Medicaid eligibility determination process. The change will affect the Nonmoney Payment category by the elimination of the spend-down process and the Medically Needy Only category by limiting unpaid medical expenses used as a deduction to those incurred during the retroactive period. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Minor Changes in Nursing Care Eligibility 55 Pa. Code Chapters 178 and 181	October 2002, as proposed	This regulation will change the eligibility requirements for applicants and recipients in long-term care facilities. Recipients of Medicaid Program benefits will be required to contribute more toward the cost of long-term care services. Applicants for Medicaid Program benefits will be required to use more of their own resources to pay for their care prior to being authorized eligible for the Medicaid Program. This regulation will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups.	Ruth O'Brien (717) 783-2800
Early and Periodic Screening Diagnosis Treatment (EPSDT) * 55 Pa. Code Chapters 1101, 1121, 1123, 1147, 1241	December 2003, as final omitted	This regulation relating to services provided as a follow-up to an EPSDT visit or encounter that are not currently recognized under the approved Medical Assistance (Medical Assistance) State Plan. This regulation will be reviewed by the medical assistance advisory committee (MAAC) which includes representatives of professional provider associations, providers, the health law project, the welfare rights organization, consumers, and client advocacy groups.	Ruth O'Brien (717) 783-2800
Medical Assistance Case Management Services * 55 Pa. Code Chapter 1239	January 2004, as final omitted	This final regulation codifies payment for medically necessary case management services as mandated by Omnibus Budget Reconciliation Act '89 to Medical Assistance recipients under the age of 21. This regulation will be reviewed by the MAAC, as noted above.	Ruth O'Brien (717) 783-2800
OMNIBUS MA * 55 Pa. Code Chapters 1101, 1121, 1149	March 2003, as final omitted	This final regulation codifies Act 1994-49 provisions that affect the medical benefits of General Assistance recipients over the age of 21 when these services are solely state funded. These recipients are no longer eligible for (1) dental services unless their medical condition or handicap requires services to be provided in an ambulatory surgical center, short procedures unit or inpatient hospital; (2) medical supplies and equipment except as prescribed for family planning or with home health agency service; and (3) prescription drugs except legend birth control drugs. This regulation also implements Act 1996-35 provisions imposing a \$150 deductible on inpatient and outpatient hospital services and ambulatory surgical center services, except laboratory and x-ray services for General Assistance and General Assistance-related Medical Assistance recipients. In addition, this regulation removes family planning clinics from the list of providers limited under the General Assistance Basic Health Care Package to 18 practitioner's office and clinic visits per year. This regulation will be reviewed by the MAAC, as noted above.	Ruth O'Brien (717) 783-2800
OMNIBUS Pharmacy * 55 Pa. Code Chapters 1121, 1126, 1129, 1141, 1163, 1221, 1225, 1243	December 2002, as final omitted	This final regulation codifies Act 1994-49 provisions that discontinue payment for all drugs, devices, products, services and procedures that are used or related to treating infertility, including surrogacy services, effective September 1, 1994. This regulation also provides that the medical assistance program provides drug coverage to medically needy only recipients receiving nursing facility services. This includes medically needy only recipients who reside in nursing facilities and intermediate care facilities/mental retardation (ICF/MR). This regulation will be reviewed by the MAAC, as noted above.	Ruth O'Brien (717) 783-2800



<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Residential Treatment Facilities (RTF) for Mental Health Services* 55 Pa. Code Chapters 1157, 1165	February 2003, as proposed	This regulation codifies coverage for mental health services to children under 21 years of age that are provided in a residential treatment facility. This regulation was reviewed by the MAAC on 3/28/02. The Department received comments from 6 agencies. These comments are currently under review by the Department.	Ruth O'Brien (717) 783-2800
Early Intervention Services* 55 Pa. Code Chapters 4225, 4226	December 2002, as final	This regulation will establish program regulations for early intervention services in keeping with the Federal regulations under the Individuals with Disabilities Education Act (IDEA) and Act 212 of 1990. Early intervention services regulations are called for by the Legislative Budget and Financing Committee Report on early intervention services.	Ruth O'Brien (717) 783-2800
Behavioral Health Rehabilitation Services* 55 Pa. Code Chapter 1154	January 2003, as proposed	This regulation codifies requirements necessary to receive reimbursement for medically necessary outpatient wraparound mental health services for individuals under 21 years of age with a diagnosis of mental illness or emotional disturbance. This regulation will be reviewed by the MAAC, as noted above.	Ruth O'Brien (717) 783-2800
Physician Assistant/Midwife* 55 Pa. Code Chapter 1141	December 2002, as final omitted	This final regulation codifies revised supervision requirements for physician assistants and midwives. This regulation will be reviewed by the MAAC, as noted above.	Ruth O'Brien (717) 783-2800
Discontinuance of the Mandatory Second Opinion Program* 55 Pa. Code Chapter 1150	December 2002, as final omitted	This final regulation removes the mandatory second opinion program requirement for certain surgical procedures. This regulation will be reviewed by the MAAC, as noted above.	Ruth O'Brien (717) 783-2800
Capital Component Payment for Replacement Beds 55 Pa. Code Chapter 1187	July 2003, as proposed	This regulation takes the policy as set forth in the Statement of Policy and promulgates it into the regulations. This regulation will be reviewed by the MAAC.	Ruth O'Brien (717) 783-2800
New Definition of "Emergency Medical Condition"* 55 Pa. Code Chapters 1101, 1141, 1150, 1221	December 2002, as final omitted	This final regulation codifies the revised definition of "emergency medical condition" contained in the Balanced Budget Act of 1997, effective July 1, 1998. This regulation will be reviewed by the MAAC, as noted above.	Ruth O'Brien (717) 783-2800
Definition of Medically Necessary 55 Pa. Code Chapter 1101	February 2003, as proposed	This proposed regulation replaces the current definition of "medically necessary" with the definition found in the HealthChoices Request for Proposal. This regulation will be reviewed by the MAAC, as noted above.	Ruth O'Brien (717) 783-2800
Provision of Drug and Alcohol Treatment 55 Pa. Code Chapter 1223	December 2002, as final omitted	This final regulation eliminates the need for the supervisory physician to perform a physical exam within 15 days following intake and before the provision of treatment. This regulation will be reviewed by the MAAC, as noted above.	Ruth O'Brien (717) 783-2800
Invoicing for Services 55 Pa. Code Chapter 1101	December 2002, as final omitted	This regulation revises the invoice submission requirements for nursing facilities. This regulation will be reviewed by the MAAC.	Ruth O'Brien (717) 783-2800
Tobacco Cessation and Nutritional Supplements 55 Pa. Code Chapter 1121	March 2003, as final omitted	This final regulation will provide coverage under the Medical Assistance Program for tobacco cessation products and counseling services and will extend coverage for nutritional supplements to eligible Medical Assistance recipients 21 years of age and older. This regulation will be reviewed by MAAC.	Ruth O'Brien (717) 783-2800
Dental Services 55 Pa. Code Chapter 1149	December 2002, as final omitted	This final regulation will provide coverage for core build-up and will revise the Medical Assistance Orthodontia Program. This regulation will be reviewed by MAAC.	Ruth O'Brien (717) 783-2800

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Preadmission Requirements for Nursing Facility Services (Mandatory 12 month spend-down) 55 Pa. Code Chapter 1187	September 2002, as proposed	This regulation will require nursing facilities to have all individuals applying for nursing facility services, evaluated by the Department or an independent assessor if it is likely that the applicant will use Medical Assistance as a payer source within 12 months of admission. The purpose of this regulation is to allow an individual to remain in the community by delaying or eliminating the need for admission to a nursing facility. This regulation will be reviewed by the MAAC.	Ruth O'Brien (717) 783-2800
<b>REVENUE</b>			
Cash 5/Super 6 Lotto 61 Pa. Code §§ 816.106, 816.110, 870.3, 870.5, 870.6, 870.8 and 870.9	December 2002, as final.	Amendment to the Cash 5 and Super 6 Lotto games will delete the provision that allows for the cancellation of a ticket after purchase but prior to the drawing. Amendment necessary to make the on-line games consistent with the Powerball game. Other minor amendments made for clarity.	Douglas A. Berguson 717-787-1382
Employer Returns and Other Withholding Provisions 61 Pa. Code §§ 113.2, 113.3, 113.3a, 113.3b, 113.3c, 113.4, 113.4a, 113.7 and 121.16	December 2002, as final.	The Department is proposing amendments to various withholding regulatory sections, including requiring an employer who is required to file 250 or more withholding statements, to forward to the Department the reconciliation statement with such withholding statements via electronic or magnetic media as specified in the instructions of the Department. In addition, § 121.16 is amended to delete language relating to the filing of a W-2 with Form PA-40 as evidence of taxes withheld.	Douglas A. Berguson 717-787-1382
File-by-phone (TeleFile) System and Federal and State Electronic Tax Filing Program 61 Pa. Code §§ 117.19—117.21	December 2002, as proposed.	The file-by-phone (TeleFile) program involves the filing of a Pennsylvania personal income tax return by phone. The Federal and State electronic tax filing program involves the filing of a Pennsylvania personal income tax return as part of the Federal and State Electronic Filing Program.	Douglas A. Berguson 717-787-1382
Master Settlement Agreement 61 Pa. Code §§ 71.31—71.33	December 2002, as final.	On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the Commonwealth. On June 22, 2000, Act 54-2000, known as the Tobacco Settlement Agreement Act, was signed into law. Pursuant to Act 54, the Department is proposing a regulation which describes the responsibilities for participating and nonparticipating tobacco product manufacturers and cigarette stamping agents.	Douglas A. Berguson 717-787-1382
Partial Refunds For Bad Debts 61 Pa. Code §§ 33.3 and 33.5	October 2002, as final.	This regulation explains the application of section 247.1 of the TRC (72 P. S. § 7247.1) relating to partial refund of sales tax attributed to bad debts.	Douglas A. Berguson 717-787-1382
Realty Transfer Tax Amendments 61 Pa. Code, Chapter 91	March 2003, as proposed.	The amendments to Chapter 91. Realty Transfer Tax, are made to address numerous legislative changes and to bring the regulatory provisions into conformity with Departmental policy.	Douglas A. Berguson 717-787-1382
Small Games of Chance Amendments 61 Pa. Code, Part VII	January 2003, as proposed.	The regulation contains comprehensive amendments to Part VII to incorporate legislative changes made to the Local Option Small Games of Chance Act (10 P. S. §§ 311—328) in 1990 and 2000 and to codify policy and administrative changes regarding games of chance.	Douglas A. Berguson 717-787-1382

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
Support Offset and Other Personal Income Tax Provisions	December 2002, as proposed	This regulatory change will amend certain regulatory provisions to provide for the intercept of income tax refunds from individuals who are delinquent in support payments and redirect the funds accordingly. Other amendments are proposed to update and/or clarify personal income tax provisions.	Douglas A. Berguson 717-787-1382
<b>SECURITIES COMMISSION</b>			
"Banking institution; savings and loan institution" 64 Pa. Code § 102.041 Proposed Rulemaking	December 2002	The Commission plans to amend this regulation to conform its provisions with federal law.	G. Philip Rutledge (717) 783-5130
"Institutional investor" 64 Pa. Code § 102.111 Proposed Rulemaking	December 2002	The Commission plans to amend this regulation to include a 1985 Interpretive Opinion on qualifications for IRAs, KEOGHs and SEPs to be an institutional investor.	G. Philip Rutledge (717) 783-5130
"Real property units" 64 Pa. Code § 102.202 Proposed Rulemaking	December 2002	The Commission plans to repeal this regulation which is overly narrow.	G. Philip Rutledge (717) 783-5130
"Exchange" 64 Pa. Code § 102.241 Proposed Rulemaking	December 2002	The Commission plans to revise language to make it conform to federal law.	G. Philip Rutledge (717) 783-5130
"Private activity bonds" 64 Pa. Code § 202.010 Proposed Rulemaking	December 2002	The Commission plans to amend this regulation to conform its requirements to the federal National Securities Markets Improvement Act of 1996.	G. Philip Rutledge (717) 783-5130
"Commercial paper" 64 Pa. Code § 202.030 Proposed Rulemaking	December 2002	The Commission plans to amend this regulation to conform its requirements to the federal National Securities Markets Improvement Act of 1996.	G. Philip Rutledge (717) 783-5130
"Commercial paper issued by bank holding companies" 64 Pa. Code § 202.032 Proposed Rulemaking	December 2002	The Commission plans to repeal this regulation in reliance a single regulation dealing with the commercial paper exemption.	G. Philip Rutledge (717) 783-5130
"Guaranties of debt securities exempt compensation" 64 Pa. Code § 304.051 Proposed Rulemaking	December 2002	The Commission plans to amend this regulation to conform its requirements to the federal National Securities Markets Improvement Act of 1996.	G. Philip Rutledge (717) 783-5130
<b>STATE</b>			
State Board of Accountancy—General Revisions— 49 Pa. Code, Chapter 11. (16A-559)	Summer 2002, as Proposed.	The regulation would repeal outdated and unnecessary requirements; clarify certain issues relating to examination, certification and practice; and make editorial changes. Statutory Authority: Section 3 of the C.P.A. Law, 63 P. S. § 9.3(10)—(12).	Dorna Thorpe (717) 783-1404
State Architects Licensure Board—Examination Fees and Annual Filing Fee for Registered Architecture Firms— 49 Pa. Code, Chapter 9. (16A-416)	Summer 2002, as Final.	The regulation would modify the Board's regulations regarding examinations. The regulation also would provide for a \$50 annual filing fee collected biennially for registered partnerships, professional associations, professional corporations or business corporations, which is permitted under the Architects Licensure Law, but has never been implemented. Statutory Authority: Sections 8 and 13(h) of the Law, 63 P. S. §§ 34.8, 34.13(h).	Dorna Thorpe (717) 783-3397
—Firm practice— 49 Pa. Code § 9.162 (16A-417)	Summer 2002, as Proposed.	The regulation would establish requirements for the practice of architecture as a limited liability company or limited liability partnership. Statutory Authority: 63 P. S. §§ 34.6(a) and 34.13(j).	

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
State Board of Auctioneer Examiners— Deletion of Reference to Examination Fees— 49 Pa. Code § 1.41. (16A-645)	Summer 2002, as Proposed.	The regulation would delete references to examination fees. Statutory Authority: Section 6(a) of the Act, 63 P. S. § 734.6(a)	Tammy Radel (717) 783-3397
State Board of Barber Examiners— Sanitation/General Revisions— 49 Pa. Code, Chapter 3. (16A-424)	Summer 2002, as Final.	The Board proposes to revise and update its entire chapter and repeal antiquated provisions, particularly with regard to standards for disinfection and sanitation. Statutory Authority: Section 15-A.4(b) of the Barber License Law, 63 P. S. § 566.4(b).	Sara Sulpizio (717) 783-3402
—Deletion of Examination Fees— 49 Pa. Code, Chapter 3. (16A-425)	Summer 2002, as Proposed.	The regulation would delete licensing examination fees. Statutory Authority: Section 14 of the Law, 63 P. S. § 564.	
State Board of Chiropractic— Chiropractic specialties— 49 Pa. Code Ch. 5 (number not yet assigned)	Summer 2002, as Proposed.	The Chiropractic Practice Act prohibits licensees from holding themselves out as specialists unless they possess a post-graduate certification in that specialty. See 63 P. S. §§ 625.506(a)(17) and 625.702(12). The regulation would identify the certifications acceptable to the Board. Statutory Authority: 63 P. S. § 625.302(3).	Deborah Smith (717) 783-7155
—Adjunctive procedures— 49 Pa. Code § 5.14 (number not yet assigned)	Summer 2002, as Proposed.	The regulation would clarify the types of procedures for which an adjunctive procedures certificate is required. Statutory Authority: 63 P. S. § 625.302(3).	
—Patient records— 49 Pa. Code § 5.51 (number not yet assigned)	Summer 2002, as Proposed.	The regulation would clarify the requirements for patient records. Statutory Authority: 63 P. S. § 625.302(3).	
Commissioner, BPOA— Schedule of Civil Penalties— 49 Pa. Code § 43b.8 (16-29)	Summer 2002, as Proposed.	The regulation would amend the schedule of civil penalties for the Real Estate Commission that was initially published as a Statement of Policy and later codified as a regulation pursuant to Act 48 of 1993. Statutory Authority: 63 P. S. § 2205(a).	Cynthia K. Montgomery (717) 783-7200
Bureau of Commissions, Elections & Legislation— Statewide Registry— 4 Pa. Code, Chap. 183	Summer/Fall, as Final, Proposed-Omitted.	These regulations would create a Statewide Uniform Registry of Electors, as required by Act 3 of 2002. Statutory Authority: Section 2 of Act 3 of 2002.	L. Lawrence Boyle (717) 787-6458

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
<p>State Board of Cosmetology— Deletion of Examination Fees— 49 Pa. Code § 7.2. (16A-4510)</p> <p>—Sanitation/ Disinfection— 49 Pa. Code §§ 7.90—7.101 (16A-454)</p> <p>—General Revisions— 49 Pa. Code §§ 7.1—7.142. (16A-459) (Includes previous 16A-457)</p> <p>—Act 48 of 1993 Civil Penalties— 49 Pa. Code, Chapter 43b. (16-29)</p>	<p>Fall 2002, as Final.</p> <p>Fall 2002, as Proposed.</p> <p>Winter 2002, as Proposed.</p> <p>Summer 2002, as Statement of Policy.</p>	<p>The regulation would amend the Board's fee schedule by deleting references to examination fees, which are determined by contract. Statutory Authority: Sections 11 and 16 of the Law, 63 P. S. §§ 517, 522.</p> <p>The proposed regulation would update the Board's sanitation and disinfection requirements for manicuring, cosmetician and cosmetology shops and schools. Statutory Authority: 63 P. S. §§ 517 and 520.</p> <p>The Board plans a comprehensive amendment to Chapter 7 to bring existing regulations up-to-date and to clarify requirements for sanitation and the provisions of advanced aesthetic services. Statutory Authority: Section 11 of the Law, 63 P. S. § 517.</p> <p>The regulation would establish a schedule of Act 48 of 1993 civil penalties for violations of the Beauty Culture Law and the Board's regulations. Statutory Authority: Section 5(a) of the Act, 63 P. S. § 2205(a).</p>	<p>Sara Sulpizio (717) 783-7130</p>
<p>State Board of Dentistry— Administration of General Anesthesia, Conscious Sedation and Nitrous Oxide/Oxygen Analgesia— 49 Pa. Code §§ 33.331—33.344. (16A-4610)</p> <p>—Sexual Misconduct— 49 Pa. Code, Chapter 33. (16A-4613)</p> <p>—Update of Application Fee for Dental Radiology— 49 Pa. Code, Chapter 33. (16A-4611)</p> <p>—Expanded Function Dental Assistants— 49 Pa. Code § 33.103. (16A-4612)</p>	<p>Fall 2002, as Final.</p> <p>Summer 2002, as Proposed.</p> <p>Fall 2002, as Final.</p> <p>Summer 2002, as Proposed.</p>	<p>This regulation would amend requirements for administration of anesthesia/analgesic in response to a Commonwealth Court case and legislative concerns. Statutory Authority: Section 3(o) of the Dental Law, 63 P. S. § 122(o).</p> <p>Through the monitoring of its disciplinary process, including consumer complaints and disciplinary actions, the Board believes that enforcement standards are needed to notify licensees of acts of a sexual nature which the Board deems unprofessional when occurring or resulting from a professional relationship. Statutory Authority: Section 3(o) of the Law, 63 P. S. § 122(o).</p> <p>This regulation would amend the Board's fee schedule to reflect the actual cost incurred by the Board to authorize applicants to perform radiologic services. Statutory Authority: Section 3(o) of the Law, 63 P. S. § 122(o).</p> <p>This regulation would eliminate the clinical examination component with respect to expanded function dental assistants. Statutory Authority: Section 3(o) of the Law, 63 P. S. § 122(o).</p>	<p>Lisa Burns (717) 783-7162</p>

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
State Board of Funeral Directors— Unprofessional Conduct— 49 Pa. Code § 13.201, 202. (16A-483)	Summer 2002, as Proposed.	The amendment would add to the Board's standards of practice and conduct. Statutory Authority: Section 16(a) of the Law, 63 P. S. § 479.16(a).	Michelle Demerice (717) 783-3397
—Advertising— 49 Pa. Code §§ 13.191 to 13.196 (16A-484)	Fall 2002, as Proposed.	The amendments would update the Board's regulations related to advertising. Statutory authority: Section 16(a) of the Law, 63 P. S. § 479.16(a).	
—Application— 49 Pa. Code, Chap. 13 (16A-485)	Summer 2002, as Proposed.	This regulation revises the procedures for applying for licensure as a funeral establishment. Statutory authority: 63 P. S. § 479.16(a).	
—Facility— 49 Pa. Code, Ch. 13 (16A-486)	Fall 2002, as Proposed.	The amendments would update facility requirements for funeral establishments. Statutory authority: 63 P. S. § 479.16(a).	
—Qualifications— 49 Pa. Code, Ch. 13 (16A-487)	Fall 2002, as Proposed.	The amendments would update qualifications for licensure under the Act. Statutory authority: 63 P. S. § 479.16(a).	
—Supervisor— 49 Pa. Code, Chap. 13 (16A-488)	Summer 2002, as Proposed.	This regulation amends the procedures for licensure as a supervisor and clarifies the responsibilities of a funeral supervisor. Statutory authority: 63 P. S. § 479.16(a).	
—Continuing Education— 49 Pa. Code, Ch. 13 (16A-489)	Summer 2002, as Proposed.	This regulation is being promulgated to comply with the requirement of Act 48 of 2000 that the Board promulgate regulations to implement continuing education, as now required by Section 10(b) of the Law. Statutory Authority: 63 P. S. § 479.10(b).	
—Limited License— 49 Pa. Code §§ 13.1, 13.12, and 13.77 (16A-4810)	Summer 2002, as Proposed.	This regulation is being promulgated to implement Act 48 of 200 that authorized the Board to enter into agreements with other states to issue limited licenses to funeral directors from other states. Statutory Authority: 63 P. S. § 479.9(c).	
—Renewal fees— 49 Pa. Code § 13.12 (16A-4811)	Summer 2002, as Proposed.	This regulation would update the Board's biennial renewal fee. Statutory Authority: 63 P. S. § 479.10(a).	
State Board of Landscape Architects— Deletion of Reference to Examination Fees— 49 Pa. Code § 15.12. (16A-616)	Fall 2002, as Proposed.	The regulation would delete references to examination fees. Statutory Authority: Section 4(2) of the Law, 63 P. S. § 904(2).	Shirley Klinger (717) 772-8528
—General Revisions— 49 Pa. Code, Chapter 15. (Number not yet assigned)	Fall 2002, as Proposed.	The regulation would entail general revisions of the Board's current regulations. Statutory Authority: 63 P. S. § 904(9).	

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
State Board of Medicine— General Delegation— 49 Pa. Code, Chap. 16 (16A-4912)	Fall 2002, as Final.	This regulation would establish standards for the delegation of medical services to qualified personnel. Statutory Authority: Section 17(b) of the Medical Practice Act, 63 P. S. § 422.17(b).	Joanne Troutman (717) 783-1400
—Sexual Misconduct— 49 Pa. Code, Chap. 16 (16A-497)	Summer 2002, as Final.	Through the monitoring of its disciplinary process, including consumer complaints and disciplinary actions, the Board believes that enforcement standards are needed to notify licensees of acts of a sexual nature which the Board deems unprofessional when occurring or resulting from a professional relationship. Statutory Authority: Section 8 of the Act, 63 P. S. § 422.8.	
—Continuing Medical Education— 49 Pa. Code, Chap. 16 (16A-4914)	Fall/Winter 2002, as Proposed.	This regulation would implement the act of March 20, 2002 (P. L. __, No. 13) (Act 13). Act 13 requires the Board to promulgate regulations establishing CME requirements for physicians, including training in patient safety and risk management. Statutory Authority: Section 910 of Act 13.	
—License Renewal Fees— 49 Pa. Code § 16.13 (16A-4913)	Summer 2002, as Final, Proposed-Omitted Regulation.	Act 13 of 2002 will significantly increase the Board's operating expenses, requiring the Board to raise the renewal fee from \$125 to \$360 to cover its increased costs. Statutory Authority: 63 P. S. § 422.6.	
—Athletic Trainers— 49 Pa. Code, Chap. 16 (16A-4915)	Fall 2002, as Proposed.	This regulation would implement Act 92 of 2001, which gave the Medical and Osteopathic Boards jurisdiction over athletic trainers (athletic trainers had formerly been overseen by the State Board of Physical Therapy). Statutory Authority: Section 3 of Act 92, 63 P. S. §	
Navigation Commission for the Delaware River and Its Navigable Tributaries— General Revisions— 13 Pa. Code, Chapters 201-209. (16A-662)	Summer 2002, as Final	Comprehensive revisions would enhance navigational safety, eliminate obsolete regulations and reflect statutory changes. Statutory Authority: 55 P. S. § 31 and 71 P. S. § 670.2(4).	L. Lawrence Boyle (717) 787-6458

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
State Board of Nursing— RN General Revisions— 49 Pa. Code §§ 21.1—21.126. (16A-516)	Summer 2002, as Final.	This regulation would update or repeal outdated provisions pertaining to registered nurses and consolidate all regulatory provisions pertaining to registered nurse education programs. Statutory Authority: Section 2.1(k) of the Professional Nursing Law, 63 P. S. § 212.1(k).	Ann Steffanic (717) 783-7142
—Conscious Sedation— 49 Pa. Code § 21.14. (16A-5114)	Summer 2002, as Proposed.	This regulation would embody the statement of policy on conscious sedation at 49 Pa. Code § 21.413(d). Statutory Authority: Section 2.1(k) of the Law, 63 P. S. § 212.1(k).	
—Oral Orders— 49 Pa. Code §§ 21.14; 21.145. (16A-5115)	Summer 2002, as Final.	This regulation would delete the prohibition on LPNs accepting oral orders in other than urgent circumstances. Statutory Authority: Section 2.1(k) of the Law, 63 P. S. § 212.1(k), and Section 17.6 of the Practical Nurse Law, 63 P. S. § 667.6.	
—CRNP Programs— 49 Pa. Code §§ 21.260-278, 286-289. (16A-5119)	Fall/Winter 2002, as Proposed.	This regulation would establish requirements for CRNP education programs approved by the Board. Statutory Authority: Section 2.1(k) of the Professional Nursing Law, 63 P. S. § 212.1(k).	
—Update of CRNP Prescriptive Authority Fees— 49 Pa. Code § 21.253. (16A-5116)	Summer 2002, as Proposed.	This regulation would revise the Board's schedule of fees to reflect the actual cost of the services provided. Statutory Authority: Section 11.2 of the Law, 63 P. S. § 221.2.	
—CRNP Prescriptive Authority Continuing Education— 49 Pa. Code § 21.253. (16A-5117)	Summer 2002, as Proposed.	This regulation pertains to continuing education requirements associated with the prescriptive authority of CRNPs. Statutory Authority: Section 2.1(k) of the Law, 63 P. S. § 212.1(k).	
—Act 48 of 1993 Civil Penalties— 49 Pa. Code, Chapter 43b. (16-29)	Summer 2002, as Statement of Policy.	The regulation would establish a schedule of Act 48 of 1993 civil penalties for violations of the Professional Nursing Law. Statutory Authority: 63 P. S. §§ 225.4 and 664(4).	
State Board of Examiners of Nursing Home Administrators— Deletion and Correction of Fees— 49 Pa. Code § 39.72. (16A-628)—	Summer 2002, as Proposed.	This regulation would delete licensing examination fees. Statutory Authority: Section 4(c) of the Nursing Home Administrators Licensing Act, 63 P. S. § 1104(c).	Christina Stuckey (717) 783-7155
—Requirements for Admission to Examination— 49 Pa. Code § 39.5. (16A-627)	Summer 2002, as Proposed.	This regulation would update and revise the requirements for admission to the licensing examination. Statutory Authority: Section 4(c) of the Act, 63 P. S. § 1104(c).	
State Board of Occupational Therapy Education and Licensure— Act 48 of 1993 Civil Penalties— 49 Pa. Code, Chapter 43b. (16-29)	Summer 2002, as Statement of Policy.	The regulation would establish a schedule of Act 48 of 1993 civil penalties for violations of the Occupational Therapy Practice Act and Board's regulations. Statutory Authority: Section 5(b) of the Act, 63 P. S. § 1505(b).	Lisa Burns (717) 783-1389
State Board of Optometry— General Revisions— 49 Pa. Code §§ 23.1, 23.33, 23.34, 23.42, 23.64, 23.71. (16A-528)	Winter 2002, as Proposed.	The Board proposes general revisions to its current regulations, including requirements that must be met for contact lens prescriptions provided at the discretion of the licensee. Statutory Authority: Sections 3(a)(2.1) and (b)(14) of the Optometric Practice and Licensure Act, 63 P. S. §§ 244.3(a)(2.1), (b)(14).	Deborah Smith (717) 783-7155



<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
—Continuing Education— 49 Pa. Code, §§ 23.82, 23.83, 23.87 (16A-529)	Fall 2002, as Proposed.	This regulation would amend the continuing education requirements of licensees. Statutory Authority: Section 3(b)(12) and Section 4.1(b) of the Act, 63 P. S. §§ 244.3(b)(12), 244.4a(b).	
State Board of Osteopathic Medicine— Sexual Misconduct— 49 Pa. Code, Chapter 25. (16A-539)	Fall 2002, as Final.	Through the monitoring of its disciplinary process, including consumer complaints and disciplinary actions, the Board believes that enforcement standards are needed to notify licensees of acts of a sexual nature which the Board deems unprofessional when occurring or resulting from a professional relationship. Statutory Authority: Section 16 of the Osteopathic Medical Practice Act, 63 P. S. § 271.16.	Gina Bittner (717) 783-4858
—Continuing Medical Education— 49 Pa. Code, Chap. 16 (16A-5313)	Fall/Winter 2002, as Proposed.	This regulation would implement the act of March 20, 2002 (P. L. __, No. 13) (Act 13). Act 13 requires the Board to promulgate regulations requiring osteopathic physicians to complete CME in patient safety and risk management. Statutory Authority: Section 910 of Act 13.	
—License Renewal Fees— 49 Pa. Code § 16.13 (16A-5311)	Summer 2002, as Final, Proposed- Omitted.	Act 13 of 2002 will significantly increase the Board's operating expenses, requiring the Board to raise the renewal fee from \$140 to \$440 to cover its increased costs. Statutory Authority: 63 P. S. § 271.13a.	
—Athletic Trainers— 49 Pa. Code, Chap. 16 (16A-5312)	Fall 2002, as Proposed.	This regulation would implement Act 92 of 2001, which gave the Medical and Osteopathic Boards jurisdiction over athletic trainers (athletic trainers had formerly been overseen by the State Board of Physical Therapy). Statutory Authority: Section 3 of Act 92, 63 P. S. §	
—Delegation— 49 Pa. Code, Chap. 16 (number not yet assigned)	Summer 2002, as Proposed.	This regulation would establish standards for the delegation of osteopathic medical services to qualified personnel. Statutory Authority: 63 P. S. § 271.16.	
State Board of Pharmacy— Technology Regulations— 49 Pa. Code, Chapter 27. (16A-5410)	Fall 2002, as Proposed.	The proposal would address issues raised by new technology now available in the field of pharmacy to allow the use of such technology while ensuring consumer safety. Statutory Authority: Sections 4(j) and 6(k)(1) and (9) of the Act, 63 P. S. §§ 390-4(j), 390-6(k)(1), (9).	Melanie Zimmerman (717) 783-7156

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
<p>State Board of Physical Therapy— Physical Therapists— 49 Pa. Code §§ 40.11, 40.13, 40.15, 40.17, 40.18 and 40.21-40.24. (16A-659)</p> <p>—Sexual Misconduct— 49 Pa. Code, Chapter 40. (16A-656)</p> <p>—Authorization to Practice Physical Therapy Without a Referral— 49 Pa. Code Chap. 40 (number not yet assigned)</p>	<p>Summer 2002, as Proposed.</p> <p>Summer 2002, as Final.</p> <p>Fall/Winter 2002, as Proposed.</p>	<p>The regulation would correct and revise existing regulations regarding physical therapists. Statutory Authority: Section 3(a) of the Physical Therapy Practice Act, 63 P. S. § 1303(a).</p> <p>Through the monitoring of its disciplinary process, including consumer complaints and disciplinary actions, the Board believes that enforcement standards are needed to notify licensees of acts of a sexual nature which the Board deems unprofessional when occurring or resulting from a professional relationship. Statutory Authority: Sections 3, 5 and 10.2 of the Act, 63 P. S. §§ 1303, 1305 and 1310.2.</p> <p>This regulation would implement the act of Feb. 21, 2002 (P. L. __, No. 6) (Act 6), which enables licensees to seek a certificate of authorization to practice physical therapy without a referral from a physician. Statutory Authority: Section 2 of Act 6 of 2002; 63 P. S. § 1303.</p>	<p>J. Robert Kline (717) 783-7134</p>
<p>State Board of Podiatry— Update of Biennial Renewal Fees— 49 Pa. Code, Chapter 29. (16A-445)</p> <p>—Continuing Education— 49 Pa. Code, Chapter 29. (16A-446)</p>	<p>Summer 2002, as Final.</p> <p>Summer 2002, as Proposed.</p>	<p>This regulation would increase the biennial license renewal from \$175 to \$395. Section 14(a) of the Act requires the Board to increase fees by regulation if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a two-year period. Section 14(b) of the Act requires the Board to increase fees by regulation in the amount that adequate revenues are raised to meet the required enforcement efforts, when the fees established by the Board are inadequate to meet the minimum enforcement efforts required by the Act. Statutory Authority: Sections 14(a) and (b) of the Act, 63 P. S. §§ 42.14(a), (b).</p> <p>This regulation would amend the current continuing education provision at 49 Pa. Code § 29.61 to include pre-approved course providers. Statutory Authority: Section 9 and 9.1 of the Act, 63 P. S. §§ 42.9 and 42.9a.</p>	<p>Gina Bittner (717) 783-4858</p>
<p>State Board of Psychology— Computerized Examination— 49 Pa. Code §§ 41.41, 41.42. (16A-6310)</p> <p>—Ethics Principles— 49 Pa. Code § 41.61. (Number not yet assigned.)</p> <p>—Doctoral Degrees in Psychology— 49 Pa. Code § 41.31 (16A-6313)</p>	<p>Summer 2002, as Final.</p> <p>Fall 2002, as Proposed.</p> <p>Fall 2002, as Proposed.</p>	<p>This regulation would update current regulations at Sections 41.41 and 41.42 to reflect changes associated with the computerization of the national and state examinations. Statutory Authority: Section 3.2 of the Act, 63 P. S. § 1203.2(2).</p> <p>This regulation would amend Principles 2(b) and 7(i) of the Board's Code of Ethics. Statutory Authority: 63 P. S. 1203.2(2).</p> <p>This proposed regulation would address the accreditation requirements for doctoral degrees in fields related to psychology. Statutory Authority: 63 P. S. §§ 1203.2(1) and 1206(a)(2)(ii).</p>	<p>Christina Stuckey (717) 783-7155</p>

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
State Board of Certified Real Estate Appraisers—Experience Options for Certification, Duties of Supervising Appraiser—49 Pa. Code §§ 36.13 and 36.14. (16A-706)	Summer 2002, as Proposed.	The regulation would revise qualifying experience for certification as an appraiser; impose supervisory and record-keeping duties on appraisers who supervise appraisal assistants; and require appraisal reports submitted as qualifying experience to conform to the Uniform Standards of Professional Appraisal Practice (USPAP). The regulations are consistent with standards established for state appraiser boards by the federal Appraiser Qualification Board (AQB). Statutory Authority: Section 5(2) of the Real Estate Appraisers Certification Act, 63 P. S. § 457.5(2).	Michelle Demerice (717) 783-4866
—Standards of Practice— 49 Pa. Code § 36.51. (16A-7012)	Summer 2002, as Proposed.	The regulation would require all certified general appraisers, residential appraisers and broker/appraisers to comply with the USPAP unless the Board has adopted supplemental practice standards. Statutory Authority: Section 5(2) of the Act, 63 P. S. § 457.5(2).	
—Update of Application and Related Fees— 49 Pa. Code § 36.6. (16A-7011)	Summer 2002, as Final.	The regulation would revise the Board's schedule of fees to reflect the actual costs of the services provided. Statutory Authority: Section 9 of the Act, 63 P. S. § 457.9.	
—Continuing Education— 49 Pa. Code § 36.41. (Number not yet assigned)	Fall 2002, as Final, Proposed-Omitted	The regulation would establish continuing education requirements for broker/appraisers pursuant to Act 103 of 2000 and revise existing continuing education requirements for appraisers pursuant to mandatory directives of the federal Appraiser Qualifications Board. Statutory Authority: Section 10(b) of the Real Estate Appraisers Certification Act, 63 P. S. § 457.10(b).	
—Biennial Renewal Fee— 49 Pa. Code § 36.6. (Number not yet assigned)	Summer 2002, as Proposed.	The regulation would establish a biennial renewal fee for broker/appraisers and a revised biennial renewal fee for broker/appraisers and revised biennial renewal fees for other certificate holders of the Board. Statutory Authority: Sections 5(6), 9 of the Real Estate Appraisers Certification Act, 63 P. S. §§ 457.5(6) and 457.9.	
—Act 48 of 1993 Civil Penalties— 49 Pa. Code, Chapter 43b. (16-29)	Summer 2002, as Statement of Policy.	The regulation would establish a schedule of Act 48 of 1993 civil penalties for violations of the Real Estate Appraisers Certification Act and the Board's regulations. Statutory Authority: Section 5(a) of Act 48 of 1993, 63 P. S. § 2205(a).	
State Real Estate Commission—Education— 49 Pa. Code, Chapter 35. (16A-561)	Summer 2002, as Proposed.	This regulation proposes changes to the current pre-Licensure and continuing education requirements and adds distance education. Statutory Authority: Section 404.1(a) of the Act, 63 P. S. §§ 455.404a.(a).	Deborah Sopko (717) 783-3658
—Act 48 of 1993 Civil Penalties— 49 Pa. Code, Chapter 43b. (16-29)	Summer 2002, as Statement of Policy.	The regulation would establish a schedule of Act 48 of 1993 civil penalties for violations of the Real Estate Licensing and Registration Act and the Commission's regulations. Statutory Authority: Section 5(a) of the Act, 63 P. S. § 2205(a).	

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
State Board of Social Workers, Marriage and Family Therapists and Professional Counselors— Update of Existing Fees and Establishment of Fees for New Licensure Classes— 49 Pa. Code, Ch. 47. (16A-695)	Summer 2002, as Final.	The regulation would update the schedule of fees for Licensed Social Workers and Continuing Education providers and establishes fees for Licensed Clinical Social Workers, Marriage and Family Therapists and Professional Counselors. Statutory Authority: Section 18(c) of the Act, 63 P. S. § 1918(c).	Clara Flinchum (717) 783-1389
—Exemption from Exam Requirement— 49 Pa. Code § 49.15 (16A-696)	Summer 2002, as Final-Omitted	The regulation would exempt from the examination requirement applicants for licensure who are certified as Master Addiction Counselors by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC). Statutory Authority: 63 P. S. §§ 1906(2) and 1909(c).	
State Board of Examiners in Speech—Language and Hearing— Continuing Education— 49 Pa. Code, Chapter 45. (Number not yet assigned)— Assistant Regulations— 49 Pa. Code §§ 45.301—308. (16A-6801)	Fall 2002, as Proposed.	This regulation would establish continuing education requirements to comply with Act 71 of 2000. Statutory Authority: Section 5(7) of the Speech-Language and Hearing Licensure Act, 63 P. S. § 1705(7).	Clara Flinchum (717) 783-1389
—Act 48 of 1993 Civil Penalties— 49 Pa. Code, Chapter 43b. (16-29)	Fall 2002, as Proposed.	This amendment would update the regulatory provisions pertaining to assistants. Statutory Authority: Section 5(8) of the Act, 63 P. S. § 1705(8).	
	Summer 2002, as Statement of Policy.	The regulation would establish a schedule of Act 48 of 1993 civil penalties for violations of the Speech-Language and Hearing Licensure Act and the Board's regulations. Statutory Authority: Section 5(2) of the Act, 63 P. S. § 1705(2).	
State Board of Vehicle Manufacturers, Dealers and Salespersons— Consignment Sales— 49 Pa. Code § 19.19. (16A-601)	Winter 2002, as Proposed.	This regulation would set forth the standards by which dealers may engage in consignment sales. Statutory Authority: Section 4(9) of the Board of Vehicles Act, 63 P. S. § 818.4(9).	Teresa Woodall (717)783-1697
—General Revisions— 49 Pa. Code § 19.1 et seq. (16A-602)	Summer 2002, as Final.	This regulation would update the Board's regulations consistent with the 1996 amendments to the Act. Statutory Authority: Section 4(9) of the Act, 63 P. S. § 818.4(9).	
—Auction License— 49 Pa. Code § 19.21. (16A-603)	Summer 2002, as Proposed.	This regulation would set out standards for licensure as a vehicle auction, a new category of licensure created by the 1996 amendments to the Act. Statutory Authority: Section 4(9) of the Act, 63 P. S. § 818.4(9).	
—Display Requirements— 49 Pa. Code § 19.18. (16A-604)	Summer 2002, as Proposed.	This regulation would create an exception in the Board's regulations to permit a vehicle dealer to display up to five vehicles in a non-conforming area so long as the public is not permitted to enter the non-conforming area. Statutory Authority: Section 4(9) of the Act, 63 P. S. § 818.4(9).	

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
—Unlicensed Locations— 49 Pa. Code § 19.18. (16A-605)	Winter 2002, as Proposed.	This regulation would define the term “display” as used in the Act to be consistent with the Commonwealth Court’s holding in <i>Spankey Auto Sales</i> , 773 A.2d 206 (Pa. Cmwlth. Ct. 2001). The regulation permits vehicle dealers to (1) display a single vehicle, or series of single vehicles, at an unlicensed location if no sales activity is occurring at that location and (2) store vehicles at an unlicensed location if no sales activity is occurring at that location. Statutory Authority: 63 P. S. §§ 818.2, 818.4(4), 818.4(9), and 818.5(e).	
—Emergency Vehicles— 49 Pa. Code Ch. 19 (16A-606)	Fall 2002, as proposed.	The proposed regulation would exempt dealers of emergency vehicles from complying with display area regulations. Statutory Authority: 63 P. S. § 818.4(9).	
—Act 48 of 1993 Civil Penalties— 49 Pa. Code, Chapter 43b. (16-29)	Summer 2002, as Statement of Policy.	The regulation would establish a schedule of Act 48 of 1993 civil penalties for violations of the Board of Vehicles Act and the Board’s regulations. Statutory Authority: Section 4(9) of the Board of Vehicles Act, 63 P. S. § 818.4(9).	
State Board of Veterinary Medicine— Prescription Drugs— 49 Pa. Code § 31.21, Principle 8. (16A-5712)	Summer 2002, as proposed.	This regulation would require veterinarians to meet specified standards regarding dispensing, packaging and labeling of prescription drugs and will mandate that veterinarians use only current, unexpired drugs. Statutory Authority: Section 5(1) and (2) of the Act, 63 P. S. §§ 485.5(1), 485.5(2).	J. Robert Kline (717) 783-7134
<b>STATE EMPLOYEES’ RETIREMENT SYSTEM</b>			
Revisions to Optional Alternate Retirement Program Regulations: 4 Pa. Code § 249.58	Winter 2002	Amend to eliminate language that permits current members of SERS to withdraw from SERS to join an alternate retirement plan established under Act 2001-35.	Brian McDonough Sean Sanderson 787-6293
<b>STATE POLICE</b>			
Vehicle Code Regulations, Title 75, Section 3328	The proposed regulation is expected to be completed and approved in final form by December 2003.	Promulgate regulations for the use of unmarked vehicles by police officers. The regulation establishes the procedure to be used by a police officer in an unmarked vehicle when stopping a motorist, require the use of audible and visual signals which meet the requirements and standards set forth in this title, establish requirements for the wearing of an official police uniform and display of official police identification.	Major Jeffrey B. Miller (717) 787-1426
Crimes Code Regulations, Title 18, Section 5704 (16) and 5706	The proposed regulation is expected to be completed and approved in final form by December 2003.	Promulgate regulations in consultation with the Attorney General setting forth the procedures to be followed by law enforcement officers regarding the interception, maintenance and destruction of recordings made under 5704 (16).	Major Jeffrey B. Miller (717) 787-1426
<b>TRANSPORTATION</b>			
177—Emission Inspection	July 2001	This regulation is currently under review and amendments are being drafted to address anticipated program changes.	Mark Navarro 717-783-8750
178—Enhanced Emission Inspection	July 1997	This regulation was reviewed in its entirety in 1997. It was repealed in October 97. Chapter is reserved.	Mark Navarro 717-783-8750
43—Temporary Registration Cards and Plates	April 2000	Due to changes in the temporary plate issuance program, revision will be required. Revisions have been advanced for consideration. Revisions currently in the Office of Chief Counsel.	Mark Navarro 717-783-8750

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
171—School Buses and School Vehicles	November 2001	This regulation was published in the <i>PA Bulletin</i> , March 16, 2002. This Regulation is anticipated to be fully promulgated by August 2002. IRRC has reviewed this Regulation and we are in the process of responding to their comments.	Mark Navarro 717-783-8750
175—Vehicle Equipment and Inspection	September 2001	Notice of intent to change was published July 2001. Comments received as a result of notice of intent indicate stakeholder input is needed before proceeding with notice of proposed rulemaking.	Mark Navarro 717-783-8750
73—Photographic Driver's License	September 1996	Sixty percent of this regulation has been reviewed. At this point, it is recommended that the regulation be repealed.	Mark Navarro 717-783-8750
75—Driver's License Exam	September 1996	Eighty percent of this regulation has been reviewed. No additional review required.	Mark Navarro 717-783-8750
79—Restrictions on Driver's License	October 1996	Twenty-five percent of this regulation has been reviewed—amendments are called for. This regulation should be reviewed every two years by the Medical Advisory Board.	Mark Navarro 717-783-8750
21—Odometer Read Disclosure Statements	December 1998	This regulation has been reviewed in its entirety as of December 1998. This regulation is recommended for full review in 2003.	Mark Navarro 717-783-8750
23—Delivery of Certificates of Title	April 2001	This regulation is recommended for full review in 2003.	Mark Navarro 717-783-8750
53—Manufacturers, Dealers and Misc. Motor Vehicle Business Registration Plates	December 2001	Legal Counsel is reviewing this regulation. Recommended for full review in 2002.	Mark Navarro 717-783-8750
95—Sale, Publication or Disclosure of Driver, Vehicle & Accident Records and	Information 2000	This regulation has been reviewed in its entirety as of June 2002. Chapter 95 is recommended for amendment. This regulation is recommended for full review in 2004.	Mark Navarro 717-783-8750
157—Established Sound Levels	December 1998	This regulation is recommended for review in 2002. This will be reviewed by 12/02 for possible changes.	Mark Navarro 717-783-8750
159—New Pneumatic Tires	December 1998	This regulation has been reviewed in its entirety as of December 1998.	Mark Navarro 717-783-8750
161—Glazing Materials	December 1998	This regulation has been reviewed in its entirety as of December 1998.	Mark Navarro 717-783-8750
163—Warning Devices	December 1998	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
165—Slow Moving Vehicle Identification Emblem	December 1998	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
169—Diesel Smoke Measurement Procedure	December 1998	This regulation is recommended for full review when EPA establishes cost effective means to test.	Mark Navarro 717-783-8750
227—Seizure of Registration Plate and Card and Driver License	December 1998	This regulation has been reviewed in its entirety as of December 1998. This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
251—Location of Replacement Vehicle Identification Number (VIN) Plates	December 2001	This regulation is recommended for full review in 2003.	Mark Navarro 717-783-8750
13—Special Mobile Equipment	December 2000	This regulation is scheduled for full review in 2002.	Mark Navarro 717-783-8750
17—Authorization to Verify ID Numbers	November 2000	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
11—Implements of Husbandry	November 2000	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
19—Specially Constructed Vehicles and Street Rods	December 1998	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
41—Registration Criteria	December 2001	This regulation is recommended for full review in 2003.	Mark Navarro 717-783-8750
47—Display of Registration Plates	January 2000	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
49—Personal Plates	November 2000	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
51—Transfer, Exchange & Reclassification of Registration	November 2000	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
55—Registration Class Stickers	May 2001	Recommended for full review in 2003.	Mark Navarro 717-783-8750
57—Staggered Registration	May 2001	This regulation is recommended for full review in 2003.	Mark Navarro 717-783-8750
59—Confidential Registration	October 2000	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
60—Permanent Registration of Fleet Vehicles	December 2000	Amendments prepared and are to be forwarded for review in 2002.	Mark Navarro 717-783-8750
63—Proportional Registration of Fleet Vehicles	December 2000	Amendments prepared and are to be forwarded for review in 2002.	Mark Navarro 717-783-8750
65—Permit Agents	May 2001	This regulation is recommended for full review in 2003.	Mark Navarro 717-783-8750
67—Antique and Classic Vehicles	June 2000	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
69—Temporary Weight Increase Registration Permits	My 2001	This regulation is recommended for full review in 2003.	Mark Navarro 717-783-8750
71—School Bus Drivers	November 2001	The regulation was published in the <i>PA Bulletin</i> , March 16, 2002. This Regulation is anticipated to be fully promulgated by August 2002. IRRC has reviewed this Regulation and we are in the process of responding to their comments.	Mark Navarro 717-783-8750
81—Reports to Bureau of Driver Licensing	December 2000	This regulation has been reviewed in its entirety as of June 2002. This regulation is recommended for full review in January 2004.	Mark Navarro 717-783-8750
83—Physical & Mental Criteria—Including Vision Standards Relating to the Licensing of Drivers	November 2001	This regulation is scheduled for notice publication in 2002. The draft is being reviewed by the Office of Chief Counsel and the program area.	Mark Navarro 717-783-8750
84—Dual Control Learner's Permit	December 2000	This regulation has been reviewed in its entirety as of December 2000. This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
85—Actual Name on Certificate of Title, Driver's License, and ID Card	November 1997	Sixty percent of this regulation was reviewed at this point it was determined that the correct course of action was to repeal this regulation.	Mark Navarro 717-783-8750
87—Special Driver Exam	December 2000	This regulation has been reviewed in it entirety as of December 2000. This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
89—Receipt of Driver's License	December 2000	This regulation has been reviewed in its entirety as of June 2002. This regulation is recommended for full review in 2004.	Mark Navarro 717-783-8750
91—ID Cards	December 2000	This regulation has been reviewed in its entirety as of December 2000. This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
93—Surrender & Cancellation of Driver's License	December 2000	Full review completed in 2000; next review should be 2002.	Mark Navarro 717-783-8750
97—Proof of Payment of Federal Heavy Vehicle Use Tax	May 2001	This regulation is recommended for full review in 2003.	Mark Navarro 717-783-8750
105—Mechanical Electrical and Electronic Speed Timing Devices	December 1998	This regulation is recommended for full review in 2003.	Mark Navarro 717-783-8750
107—Motor Cycle Helmets	December 2000	This regulation has been reviewed in its entirety as of December 2000. This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
153—Lamps, Reflective Devices & Associated Equipment	December 1998	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
155—Use & Display of Illuminated Signs	December 1998	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
167—Portable Emergency Warning Devices	December 1998	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
173—Flashing or Revolving Lights on Emergency and Authorized Vehicles	December 1998	This regulation is for review in 2003. Review will be done by PSP & PENNDOT.	Mark Navarro 717-783-8750
195—Tow Truck ID Signs	December 2001	This regulation is recommended for full review in 2003.	Mark Navarro 717-783-8750
207—Retention of Records	December 2000	This regulation is recommended for full review in 2004.	Mark Navarro 717-783-8750
219—Proof of Financial Responsibility	January 1999	This regulation has been recommended for full review in 2002.	Mark Navarro 717-783-8750
221—Obligations of Insurer and Vehicle Owner	January 2000	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
223—Self Insurance	December 2000	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
225—Installment Payment of Judgments	December 2000	This regulation has been reviewed in its entirety as of December 2000. Recommend Chapter 225 for amendment. This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
253—Salvors	February 2000	This regulation is recommended for full review in 2002.	Mark Navarro 717-783-8750
255—Messenger Services	June 2000	This regulation is currently being reviewed. Amendments will be required	Mark Navarro 717-783-8750
401—Mobile Home Titling	May 2001	Amendments to be prepared and forwarded for review.	Mark Navarro 717-783-8750
179—Oversize & Overweight Loads & Vehicles	January 2000	Complete—no action required	Dan Smyser 717-787-7445
181—Hold Down and Tie-Down Devices for Junked Vehicle Hulks	January 2000	Complete—To be published as proposed deletion in approximately 12/02	Dan Smyser 717-787-7445
183—Hold-Down and Tie-Down Devices for Metal Cargo and Logs	January 2000	Complete—To be published as proposed deletion in approximately 12/02	Dan Smyser 717-787-7445
185—Axle Weight Table	January 2000	Complete—no action required	Dan Smyser 717-787-7445
187—Movement of Special Vehicles Upon State Highways	January 2000	Complete—no action required	Dan Smyser 717-787-7445



<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
189—Hauling in Excess of Posted Weight Limit	January 2000	Complete—no action required	Dan Smyser 717-787-7445
191—Authorization to Use Bridges Posted Due to Traffic Conditions	January 2000	Complete—no action required	Dan Smyser 717-787-7445
193—Authorization to Use Highways Posted Due to Traffic Conditions	January 2000	Complete—no action required	Dan Smyser 717-787-7445
209—Requests for Reasonable Access to the Designated Network	January 2000	Complete—no action required	Dan Smyser 717-787-7445
213—Snow Emergency Routes	January 2000	Complete—no action required	Dan Smyser 717-787-7445
229—Interstate Motor Carrier Safety Requirements	December 1996	Complete—need to develop rulemaking notice due to changes in Federal Motor Carrier Safety Regulations. Anticipate proposed rulemaking approximately 12/02.	Dan Smyser 717-787-7445
231—Intrastate Motor Carrier Safety Requirements	December 1996	Complete—need to develop rulemaking notice due to changes in Federal Motor Carrier Safety Regulations. Anticipate proposed rulemaking approximately 12/02.	Dan Smyser 717-787-7445
403—Hazardous Materials Transportation	August 1996	Complete—need to develop rulemaking notice due to changes in Federal Motor Carrier Safety Regulations. Anticipate proposed rulemaking approximately 12/02.	Dan Smyser 717-787-7445
441—Access to & Occupancy of Highways by Driveways & Local Roads	December 1996	Complete—need to finalize details of proposed rulemaking. Anticipate publication approximately 12/02.	Dan Smyser 717-787-7445
443—Roadside Rest Area	February 1997	Complete—no further action.	Dan Smyser 717-787-7445
453—Distribution of Highway Maintenance Funds	December 1996	Complete—This regulation was deleted on 12/08/01.	Dan Smyser 717-787-7445
459—Occupancy of Highways by Utilities	June 1996	Complete—no further action.	Dan Smyser 717-787-7445
15—Authorized Vehicles and Special Operating Privileges	January 2000	Complete—some changes are recommended. Anticipate preparing proposed rulemaking by approximately 6/02.	Art Breneman 717-787-3620
77—Equipment and Training Required for Administering Chemical Tests	January 2000	Complete—no action required at this time.	Art Breneman 717-787-3620
101—Authorizing Appropriately Attired Persons to Direct, Control or Regulate Traffic	January 2000	Complete—some editing may be proposed.	Art Breneman 717-787-3620
103—Vehicles Required to Stop at Railroad Crossings	January 2000	Complete—This chapter will be published as proposed deletion.	Art Breneman 717-787-3620
104—School Bus Loading Zones	January 2000	Complete—some changes will be proposed.	Art Breneman 717-787-3620
201—Engineering & Traffic Studies	December 1998	Complete—This chapter to be published as proposed deletion approximately 12/02.	Art Breneman 717-787-3620
203—Work Zone Traffic Control	December 1998	Complete—This chapter to be published as proposed deletion approximately 12/02.	Art Breneman 717-787-3620
205—Municipal Traffic Engineering Certification	January 2000	Complete—no action required	Art Breneman 717-787-3620

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
211—Official Traffic Control Devices	December 1998	Complete—This chapter to be published as proposed deletion approximately 12/02.	Art Breneman 717-787-3620
215—Special Highway Conditions	January 2000	Complete—awaiting development of repeal.	Art Breneman 717-787-3620
217—Posting of Private Parking Lots	January 2000	Complete—no action required	Art Breneman 717-787-3620
447—Hazardous Walking Routes	January 2000	Complete—no action required	Art Breneman 717-787-3620
457—Pre-qualification of Bidders	October 2000	Complete—Notice of proposed rulemaking is on hold.	Art Breneman 717-787-3620
445—Outdoor Advertising Devices	November 2000	Complete—changes adopted on 7/28/01. No further action required.	Art Breneman 717-787-3620
451—Control of Junkyards & Automotive Dismantlers & Recyclers	November 2000	Complete—no action required	Art Breneman 717-787-3620
455—Consultant Highway Design Errors	February 2000	Complete—awaiting development of repeal rulemaking. Anticipate publication approximately 6/02.	Art Breneman 717-787-3620
495—Leasing of Real Property	November 2000	Complete—no action required	Art Breneman 717-787-3620
471—Airport Rating and Licensing	April 1997	The Bureau of Aviation is putting the finishing touches on its recommended changes to the regulation. The proposed regulation has been shared with key customers to obtain their input prior to publication in the <i>Pennsylvania Bulletin</i> for the official comment period. Scheduled publication will be August-September 2002.	Kathy Reitz 717-705-1234
473—Aviation Development Grants	April 1997	The Bureau of Aviation is putting the finishing touches on its recommended changes to the regulation. The proposed regulation has been shared with key customers to obtain their input prior to publication in the <i>Pennsylvania Bulletin</i> for the official comment period. Scheduled publication will be August-September 2002.	Kathy Reitz 717-705-1234
477—Local Real Estate Tax Reimbursement	April 1997	The Bureau of Aviation is putting the finishing touches on its recommended changes to the regulation. The proposed regulation has been shared with key customers to obtain their input prior to publication in the <i>Pennsylvania Bulletin</i> for the official comment period. Scheduled publication will be August-September 2002.	Kathy Reitz 717-705-1234
479—Obstruction to Aircraft	April 1997	The Bureau of Aviation is putting the finishing touches on its recommended changes to the regulation. The proposed regulation has been shared with key customers to obtain their input prior to publication in the <i>Pennsylvania Bulletin</i> for the official comment period. Scheduled publication will be August—September 2002.	Kathy Reitz 717-705-1234
257—Inspection & Certification of Electric Mass Transit Vehicles	February 1999	Review complete—no changes.	Joe Daversa/Sherri Zimmerman 717-787-3921/ 717-705-1331
425—Shared-Ride Transportation	December 1998	Department review is in process.	Joe Daversa/Sherri Zimmerman 717-787-3921/ 717-705-1331

<i>Regulation Being Considered</i>	<i>Proposed Date of Promulgation</i>	<i>Need and Legal Basis for Action</i>	<i>Agency Contact</i>
449—Liquid Fuels Tax	May 2002	Sent to Office of General Counsel for review. Still pending in the Office of General Counsel for review. Publication contingent on their approval.	Joe Daversa/ Sherri Zimmerman 717-787-3921/ 717-705-1331
491—Administrative Practice & Procedure	July 2001	Approved 3/13/01 by IRRC. Published as Final Rulemaking in July 2001.	Stephen F. J. Martin 717-787-6485
493—Service, Acceptance & Use of Legal Process & Legal Proceedings	August 2001	Completed	Stephen F. J. Martin 717-787-6485

[Pa.B. Doc. No. 02-1186. Filed for public inspection July 5, 2002, 9:00 a.m.]

## HEALTH CARE COST CONTAINMENT COUNCIL

### Meeting Scheduled

The following meetings of the Health Care Cost Containment Council (Council) have been scheduled: Wednesday, July 10, 2002, Data Systems Committee Meeting—9 a.m., Education Committee Meeting—10:30 a.m.; Thursday, July 11, 2002, Council Meeting—10 a.m. The meetings will be held in the conference room at the Council Office, 225 Market Street, Suite 400, Harrisburg, PA 17101. The public is invited to attend. Persons who need accommodations due to a disability and wish to attend the meetings should contact Cherie Elias, Health Care Cost Containment Council, 225 Market Street, Harrisburg, PA 17101 or call (717) 232-6787 at least 24 hours in advance so that arrangements can be made.

MARC P. VOLAVKA,  
*Executive Director*

[Pa.B. Doc. No. 02-1187. Filed for public inspection July 5, 2002, 9:00 a.m.]

## INDEPENDENT REGULATORY REVIEW COMMISSION

### Notice of Comments Issued

Section 5(d) of the Regulatory Review Act (71 P. S. § 745.5(d)) provides that the designated standing Committees may issue comments within 20 days of the close of the public comment period, and the Independent Regulatory Review Commission (Commission) may issue comments within 10 days of the close of the Committee comment period. The Commission comments are based upon the criteria contained in section 5.1(h) and (i) of the Regulatory Review Act (71 P. S. § 745.5a(h) and (i)).

The Commission 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>
#106-7	Environmental Hearing Board Practice and Procedure (32 Pa.B. 1980 (April 20, 2002))	5/20/02	6/20/02
#2-116	Department of Agriculture Application of Soil and Groundwater Contaminated with Agricultural Chemicals to Agricultural Lands (32 Pa.B. 1965 (April 20, 2002))	5/20/02	6/20/02
#7B-3	Department of Conservation and Natural Resources State Parks; General Provisions (32 Pa.B. 1611 (March 23, 2002))	5/22/02	6/21/02

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**Environmental Hearing Board Regulation No. 106-7**  
**Practice and Procedure**  
**June 20, 2002**

We submit for consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P. S. § 745.5a(h) and (i)) which have not been met. The Environmental Hearing Board (Board) must respond to these comments when it submits the final-form regulation. If the final-form regulation is not delivered within 2 years of the close of the public comment period, the regulation will be deemed withdrawn.

**1. General.—Clarity.**

Sections 1021.71—1021.73 (relating to complaints filed by the Department; complaints filed by other persons; and transferred matters) include the phrase “Service of the complaint or petition shall be by personal service or by any form of mail requiring a receipt . . . .” The Board should clarify the phrase “any form of mail,” what qualifies as “receipt” and what types of delivery services, aside from the United States Postal Service, would be acceptable for delivery of service.

**2. Section 1021.31. Signing.—Clarity.**

*Subsection (c)*

This subsection states, “The Board may impose an appropriate sanction for a bad faith violation of subsection (b).” What sanctions does the Board consider “appropriate”? For clarity, the Board should include a cross-reference or citation that outlines the Board’s sanctions.

**3. Section 1021.73. Transferred matters.—Clarity.**

*Subsection (b)*

This subsection provides that a party who initiates a transferred action shall file a complaint “Within the time period directed to do so by the Board.” This phrase is vague. What are the minimum and maximum amounts of time the Board will allow a party to file a complaint?

**4. Section 1021.94. Dispositive motions.—Clarity.**

*Service*

Subsection (c) includes the requirements for dispositive motions, including signatories, format and service. However, there are no instructions as to how service should be made. For clarity, the Board should include a cross-reference to § 1021.34 (relating to certificate of service). If there are special requirements for service in this section similar to those contained in § 1021.72(b) or § 1021.73(c), the Board should include those requirements.

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**Department of Agriculture Regulation No. 2-116**  
**Application of Soil and Groundwater Contaminated**  
**with Agricultural Chemicals to Agricultural Lands**  
**June 20, 2002**

We submit for consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P. S. § 745.5a(h) and (i)) which have not been met. The Department of Agriculture (Department) must respond to these comments when it submits the final-form regulation. If the

final-form regulation is not delivered within 2 years of the close of the public comment period, the regulation will be deemed withdrawn.

**1. Legislative Comment.—Legislative Intent; Reasonableness.**

Representatives Raymond Bunt and Peter Daley, Majority and Democratic Chairpersons of the House Agriculture and Rural Affairs Committee respectively, wrote to express concern with this regulation. Representative Bunt states that the regulation, as written, “unduly complicates . . . a very straightforward and scientifically defensible solution to a potential environmental problem.” He goes on to state that this complication was not envisioned when the legislation prompting this regulation was passed. Representative Daley asserts, “. . . this regulation is far in excess of what the legislature intended in drafting the bill.” He encourages the Department to change the regulation by simplifying the process.

We agree that this regulation, as drafted, establishes an overly complex manner of disposing of soil or groundwater contaminated with agricultural chemicals from the remediation of an agricultural chemical facility. Because of the additional burden this regulation imposes, we believe that this option will not be utilized, thus the beneficial use of the contaminated material will not be achieved. As written, the regulation would not accomplish the previously stated intent of the Legislature. The Department should address these concerns by creating a process that is less burdensome to those who may want to utilize the benefits of the regulation, but would not, due to its complexity.

**2. General.—Reasonableness; Clarity.**

As currently drafted, we believe that the Department could improve the reasonableness and clarity of this regulation by adding some clarifying language and changing the way it is organized. We offer the following suggestions:

- Commentators have noted that it is unclear which State agency has jurisdiction over decisions relating to the application of soil or groundwater contaminated with agricultural chemicals that are applied to agricultural lands. The final-form regulation should provide the applicant with a clear understanding of how this regulation will interact with the requirements of the regulations of the Department of Environmental Protection (DEP).

- The content of the regulation should be arranged in a streamlined, sequential manner that would mirror the requirements and duties of both the applicant and the Department. For example, a subchapter should be developed that consolidates the entire application process and outlines exactly what an applicant must do to meet all application requirements. We suggest organizing the regulation in the following manner:

- Subchapter A. General provisions.
- Subchapter B. Application requirements for permission to apply soil and groundwater contaminated with agricultural chemicals to agricultural land.
- Subchapter C. Application review procedures.
- Subchapter D. General operating requirements for land application of soil and groundwater contaminated with agricultural chemicals to agricultural land.
- Subchapter E. General requirements and exceptions for use and application of groundwater contaminated with agricultural chemicals as tank mix.
- Subchapter F. Closure.

*Advanced Notice of Final Rulemaking*

Commentators and our comments suggest major language and organization changes. To allow full consideration of amendments to this regulation, the Department should issue an advanced notice of final rulemaking. This would allow interested parties and the Department the opportunity to resolve as many concerns as possible prior to the submittal of the final-form regulation.

**3. Forms prepared by the Department.—Clarity.**

Four sections use a phrase similar to “on forms prepared by the Department.” The four sections are: §§ 130d.12(b), 130d.21(a), 130d.23(c) and 130d.51(a). However, the Department has not developed these forms. It is our understanding that these forms will dictate how this regulation is implemented. Before the final-form regulation is returned, those forms should be developed and the form names or numbers should be included in the regulation.

**4. Labs approved by the Department.—Need; Clarity.**

Under §§ 130d.13(d) and 130d.15(4), an applicant is required to use a lab approved by the Department and provide a record of the laboratory quality control procedures. We have three concerns.

First, how would an applicant know if a lab has been approved by the Department?

Second, since applicants must use laboratories approved by the Department, the requirement of submitting quality control procedures is not needed and should be deleted.

Third, Act 25 of 2002, the Environmental Laboratory Accreditation Act, was recently enacted. This law requires DEP to accredit all labs that wish to provide testing services to DEP or those that are regulated by DEP. Has the Department considered allowing testing to be performed by labs that are accredited by DEP?

**5. Other approvals by the Department.—Clarity.**

Sections 130d.16(c), 130d.62(7), 130d.63(a)(4) and (c), 130d.65(d) and 130d.68(8) refer to approvals of the Department and § 130d.66(a) refers to an authorization by the Department. The procedure for obtaining the approval or authorization of the Department is never specified. Are the approvals or authorizations part of the application process? If they are not, the final-form regulation should specify how an applicant would obtain the necessary approval or authorization and the criteria the Department will use to evaluate whether an approval or authorization is warranted.

**Subchapter A. GENERAL PROVISIONS****6. Section 130d.1. Definitions.—Clarity.***Agricultural chemical*

This definition cites 3 Pa.C.S. Chapter 67. However, 3 Pa.C.S. Chapter 67 was repealed. It appears that the appropriate citation would be 3 Pa.C.S. Chapter 68.

*Agricultural chemical facility*

This definition includes an address where one can obtain copies of cited material. This should be deleted from the definition and either moved to the body of the regulation or mentioned in the Preamble. In addition, it is our understanding that the United States Standard Industrial Classification (SIC) system has been replaced by the North American Industry Classification System (NAICS). While the Land Recycling and Environmental

Remediation Standards Act specifically references the SIC, we believe it would be useful to the regulated community if the final-form regulation also included the more current NAICS number for affected businesses.

*Agricultural land or farmland*

The definition includes the term “Land . . . that is capable of supporting . . .” The phrase “capable of supporting” is vague and could allow contaminated material to be applied to land not being used for farming. The final-form regulation should provide a more specific definition of where contaminated material can be applied.

*Cleanup or remediation*

The words “in order” should be inserted between “environment” and “to” to be consistent with the definition in the Act.

*General use pesticides*

This phrase is defined, but not used in the regulation. Therefore, it should be deleted.

*HAL*

The written definition of this term is “Health Advisory Level.” The Department should also define the phrase using the language from the definition in the Act.

*Land application proposal*

The phrase “agricultural facility” in this definition should be changed to “agriculture chemical facility” to be consistent with the defined term.

*MCL*

The written definition of this term is “Maximum contaminant level.” What is the maximum contaminant level? This should be included in the definition.

**7. Section 130d.2. Scope.—Reasonableness; Need; Clarity.**

We have two concerns. First, what is meant by the word “contaminated”? Does the mere presence of substances other than agricultural chemicals constitute contamination? If the nonagricultural chemicals detected are at a level less than the residential standards of the Land Recycling and Environmental Remediation Standards Act, is the material considered contaminated? The final-form regulation should include a definition of “contaminated.”

Second, subsection (c)(1)(i) and (ii) are not needed and should be deleted from the final-form regulation.

**Subchapter B. DUTIES OF APPLICATORS****8. Section 130d.11. Scope.—Need.**

This proposed Chapter already includes a “Scope” section at § 130d.2. If the Department believes the content of § 130d.11 is needed, it should be included in § 130d.2.

**9. Section 130d.12. Reports.—Need; Clarity.**

This section addresses filing requirements for the annual report and final report. We have five concerns. First, this section is out of sequence with the other requirements of the regulation. This section should be moved to a subchapter that follows the application requirements and the review process.

Second, this section does not specify when the reports must be submitted to the Department. The final-form regulation should include a time period for submitting the reports.

Third, subsection (a) requires a person who “solicits or receives approval from the Department” to file annual and final reports. However, these requirements would

only apply to someone whose application was approved. Therefore, the phrase “solicits or” should be deleted.

Fourth, subsection (b)(3) should provide a citation to the appropriate section that deals with the daily and annual records that are required.

Fifth, the information required in subsection (b)(4)(i) and (ii) is also required in the initial application. This requirement is duplicative and should be deleted.

**10. Section 130d.13. Chemical analysis of waste.—Clarity.**

This section addresses information that must be included in the land application proposal form. Therefore, it should be moved to that section.

Under subsection (e)(3), who decides that the material applied to the land at acceptable agronomic rates will not negatively affect productivity of the land or cause harm to the environment? How does one demonstrate this?

**11. Section 130d.14. Waste analysis plan.—Protection of public health; Clarity.**

Sections 130d.13 and 130d.14 address the analysis of waste at the remediation site. For clarity and to reduce repetition, the Department should combine these sections.

Remediation activities performed under the Act require extensive testing and analysis of the contaminated material. The testing and analysis requirements are outlined in current DEP regulations. To avoid possible conflict or duplication of existing DEP regulations, §§ 130d.13 and 130d.14 should cross reference the testing requirements of the relevant DEP regulations and add any additional requirements that may be necessary.

Paragraph (3) requires a sampling method to contain at least one sample from each soil pile or quantity of groundwater. DEP has sampling requirements in place, under Act 2. Paragraph (3) should be deleted and a cross-reference should be added to the appropriate section of DEP’s regulations.

**12. Section 130d.15. Application site analysis.—Need; Clarity.**

This section addresses information that must be included in the land application proposal form. Therefore, it should be moved to that section.

In addition, this section requires testing of soil in each field or plot on which material will be applied. What is considered a “field” or “plot”? How many samples will be required? Will more samples be required for larger fields or plots? Are the fields or plots predetermined before the results of the chemical analysis are obtained? Can the dimensions of the fields or plots be altered to better accommodate the material that is to be applied?

Paragraphs (1) and (2) address the same topic and should be consolidated into one paragraph.

Paragraphs (3) and (5) repeat information contained in the opening paragraph of this section. The duplicative information should be deleted from the opening paragraph.

Paragraph (4) requires the submittal of the quality control procedures of a lab approved by the Department to both the Department and the landowner. Since the Department has approved the lab, this requirement is unnecessary and should be deleted.

**13. Section 130d.16. Retained recordkeeping.—Need; Clarity.**

Subsection (b) says “shall be available for inspection or audit at *reasonable times* by the Department or its

authorized agents” (Emphasis added). What does the Department consider a “reasonable time”?

Subsection (c) contains the phrase, “5 years after the date on which the site closure plan and final report were submitted and approved by the Department.” With this language, there would be two different dates that could be used to determine when the 5-year clock starts. For clarity, the Department should clarify when the 5-year period begins.

In addition, why does the Department require the retention of records for 5 years?

**14. Section 130d.17. Public notice by applicant.—Clarity.**

This section states that an applicant must comply with the public notice requirements established by the Pennsylvania Pesticide Control Act of 1973 (Pesticide Control Act) (3 P. S. §§ 111.21–111.61) and the regulations in Chapter 128. The final-form regulation should include more specific citations to the relevant sections of the Pesticide Control Act and Chapter 128 pertaining to public notification.

**Subchapter C. GENERAL REQUIREMENTS FOR PERMISSION TO APPLY SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND**

**15. Section 130d.21. General requirements for land application proposal form.—Need; Clarity.**

Subsection (b) contains the phrase “and other data as may be required by the Department . . . .” What other data might the Department require that isn’t already set forth in the regulation? The final-form regulation should specify that any additional information needed by the Department will be requested in writing.

Subsection (c) is not needed because the requirements are in other sections.

The requirements of subsection (d) should be moved to §§ 130d.13 and 130d.14 (relating to chemical analysis of waste; and waste analysis plan) respectively.

The requirement of subsection (e) should be moved to § 130d.42 (relating to operating plan).

**16. Section 130d.22. Insurance.—Clarity**

This section states that an applicant must comply with the insurance requirements established by the Pesticide Control Act and the regulations in Chapter 128. The final-form regulation should include more specific citations to the relevant sections of the Pesticide Control Act and Chapter 128 pertaining to insurance.

**17. Section 130d.23. Right of entry and agreement with landowner.—Clarity**

Subsection (a) requires that a land application proposal shall contain a description of certain documents. The final-form regulation should allow the applicant to provide either a description or copies of those documents.

Subsections (a) and (b) require the same information to be included in the land application proposal. For clarity and to avoid repetition, these subsections should be consolidated into one subsection.

Subsection (b)(1) does not address a situation where the applicator and the landowner are the same person. However, § 130d.41(3) (relating to general requirements) states when the person responsible for the land applica-

tion of the contaminated material is the landowner, an agreement is not required. This section should contain a similar provision.

Subsection (c) addresses an “irrevocable written consent” that allows the Commonwealth and its authorized agents to enter the proposed application site. We have two concerns. First, why must a landowner grant access to the land “for up to 3 years after the final closure”?

Second, would the “irrevocable written consent” enable the Department to enter the proposed application site if the land was sold? If the land is sold, must the new owner be notified that agricultural chemicals from a remediation site were applied to the land?

**18. Section 130d.25. Compliance information.—Clarity.**

We have two concerns with this section.

First, what sort of documentation or information does the Department require to prove the land application will comply with all other Federal, State and local laws, rules and ordinances? The final-form regulation should require that the applicant attest or certify that they are in compliance with all applicable laws, rules and ordinances.

Second, what are the applicable Federal, State and local laws? If these can't be specified, this provision should be deleted.

**Subchapter D. LAND PROPOSAL REVIEW PROCEDURES**

**19. Section 130d.31. Criteria for approval or denial.—Clarity.**

There is a typographical error in subsection (a). The second sentence states, “. . . seek to apply soil of groundwater . . .” (Emphasis added). The word “of” should be changed to “or.”

Subsection (c) seems to conflict with the second paragraph of the Preamble which states, “The Department will not approve the land application of soil or groundwater contaminated with chemicals other than agricultural chemicals.” The Department should use consistent language throughout the regulation and the Preamble. Also, who is the “appropriate agency”? Is the Department referring to the DEP? Could there be any other agencies that would qualify as an “appropriate agency”?

**20. Section 130d.32. Receipt of land application proposal and completeness review.—Clarity.**

Subsection (c) states that an application is complete “if it contains all the necessary information, approvals, maps and other documents required by this chapter.” Similar to our concerns in our opening comment, the requirements in subsection (c) are found throughout this chapter. As currently drafted, an applicant would have a difficult time determining if all the forms, information, maps and other documents were included with the application. For clarity, these requirements should be listed in one place.

**21. Section 130d.33. Review period.—Clarity.**

Subsections (a) and (b) set forth a 60-day period for the Department to conduct its review of the land application proposal. However, subsection (c) states “Failure by the Department to comply with the timetable established in this section will not be construed or understood to constitute grounds for an automatic approval of a land application proposal.” What is the purpose of the 60-day period in subsections (a) and (b)?

Subsection (b) is entitled “Incomplete land application proposal.” For clarity, this subsection should be moved to § 130d.32 (relating to receipt of land application proposal and completeness review).

**22. Section 130d.34. Review process.—Clarity.**

Subsection (a)(2) states that if other chemicals are present in the material, the Department will review the application, but “will not give final approval to the land application proposal.” This conflicts with § 130d.31(c) which states “Where the soil or groundwater sought to be applied contains chemicals other than agricultural chemicals, the Department may approve the land application proposal contingent upon the applicant obtaining the necessary approvals or permits (when applicable) to land apply those chemicals from the appropriate agency.” The Department should use consistent language throughout the regulation.

We have three concerns with subsection (a)(3). First, the topics included in this subsection are different issues and should be in separate subsections.

Second, how will the Department notify the applicant of its decision? Will the Department issue an approval letter or order? Will DEP be issuing a permit or approval in conjunction with Departmental approval?

Third, if additional information is requested at this stage, does the applicant get 90 days to respond? Once the information is provided, does the Department get an additional 60 days to review the material?

Subsection (b) starts with “The decision of the Department to approve or deny a land application proposal is final . . .” There is no mention of an appeal process for a denied application in this regulation. The appeal process should be set forth in the regulations or by a cross reference to the applicable appeal procedures.

**Subchapter E. GENERAL REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS**

**23. Section 130d.41. General.—Clarity.**

This section describes general requirements that include compliance with other subchapters. Since this section does not provide any new information or requirements, it should be deleted.

**24. Section 130d.42. Operating plan.—Need; Clarity.**

The beginning of paragraph (3), which states, “The general operating plan for the proposed operation, including” is not needed, because the heading, under which it is located, already explains that. For clarity, it should be deleted.

Also, what is the meaning of the phrase “proposed life of the operation”?

Paragraph (8) states, “The use that will be made of the proposed application area and the crops that will be planted on each application plot for 3 years following the application.” We have two concerns.

First, will the Department monitor this to ensure compliance? What is the penalty for noncompliance?

Second, are there any prohibitions from the land being sold to a developer or rezoned for residential use?

**25. Section 130d.43. Maps and related information.—Clarity.**

Subsection (b) contains the phrase “other reliable data.” What does the Department consider to be “other reliable data”? This should be clearly set forth in the regulation.

**Subchapter F. GENERAL REQUIREMENTS AND EXCEPTIONS FOR USE AND APPLICATION OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS AS TANK MIX**

**26. Section 130d.51. General requirements.—Clarity.**

We have three concerns with this section. First, must an applicant “seeking approval to utilize and apply groundwater contaminated with agricultural chemicals generated as a result of remediation activities at an agricultural facility as tank mix” comply with all other requirements of this chapter? If not, what requirements must be met?

Second, how will the review process for this type of application work? Are the time frames and process the same as in Subchapter D?

Third, the word “with” should be inserted between the words “contaminated” and “agricultural” in subsection (b).

**27. Section 130d.52. General exceptions.—Clarity.**

This section allows the Department to waive certain requirements of this chapter. However, the procedure that must be followed by the applicant to obtain a waiver is not included. This should be set forth in the regulation.

**Subchapter G. GENERAL OPERATING REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS**

**28. Section 130d.61. General provisions.—Need.**

This section sets forth the fact that the applicant must comply with “. . . the act and this chapter. . .” This provision is not needed and should be deleted.

**29. Section 130d.62. Standards for land application of soil and groundwater contaminated with agricultural chemicals.—Need; Clarity.**

The introduction to this section begins, “Persons seeking to apply. . . .” For a person to apply the material, they must obtain the approval of the Department. Therefore, the opening phrase of the introduction should be changed to, “Persons approved to apply. . . .”

Paragraphs (4) and (9)—(11) contain criteria or provisions that will be used by the Department to determine whether a land application proposal will be approved or disapproved. Therefore, the requirements of these paragraphs should be moved to a section that addresses application requirements.

The requirements of paragraph (1) are repeated in paragraphs (2) and (3). Therefore, paragraphs (2) and (3) should be deleted.

Paragraph (1) states that the “Department may require a safety factor of one-half the label application rate.” What factors will the Department consider when determining if half the label application rate would be appropriate?

Paragraph (6) requires the landowner to “account for the amount of nutrients being applied to the land as set forth in the *Pennsylvania Agronomy Guide*.” This requirement is not clear. Does the amount of nutrients refer to the material being land applied? Does it also include any additional nutrients that might be applied? Is the landowner required to submit this information to the Department?

In paragraph (8), what does the Department consider “minor amounts”? This term is only used in this section and it should be defined here.

What is “any applicable nutrient management plan,” as mentioned in paragraph (9)? If there are nutrient management plans that one is to comply with, these should be cross-referenced in the regulation.

Paragraph (12) is very similar to § 130d.25 (relating to compliance information). The Department should delete § 130d.25.

Paragraph (13) repeats the requirements of § 130d.72 (relating to final reports). Therefore, this paragraph should be deleted.

**30. Section 130d.63. Land application rates and procedures.—Clarity.**

Under subsection (a)(7) and (8), the methodology used to determine application rates is confusing. The variables used in the formulas are not explained or defined. The final-form regulation should provide accurate formulas and a step-by-step process that would allow a person to accurately calculate an application rate.

Subsection (b) addresses application rate considerations and procedures that are to be included in the applicants operation plan. This information will be used by the Department to review all land application proposals. Therefore, the requirements of this subsection should be moved to a section that addresses application requirements.

Subsection (b)(2) and (6) both address the total amount of pesticides that may be present in material that is to be applied to agricultural land. The subsection should be consolidated.

Under subsection (b)(4), what does the Department consider “valuable topsoil”? Also, how does one “. . . assure that valuable topsoil will not be lost. . . .”? This should be set forth in the regulation.

**31. Section 130d.64. Additional application requirements.—Clarity.**

Will the Department monitor the landowner’s farming operation to ensure that the “crop rotation plan” and the “nutrient and pesticide management plan” are being followed? If one deviates from the plans submitted, what is the penalty? This should be set forth in the regulation.

**32. Section 130d.65. Limitations on land application of soil and groundwater contaminated with agricultural chemicals.—Need; Clarity.**

Under paragraph (6), if an applicator wants to employ spray irrigation equipment or aerial equipment, do they have to apply in writing, as is required for the application of contaminated groundwater via a tank mix process in Subchapter F?

Paragraph (8) prohibits the grazing of livestock on application areas for 5 years. Commentators have noted that livestock are commonly grazed on land on which agricultural chemicals have been applied. What is the reason for this prohibition? Since paragraph (9) requires that the application areas can only be used in a manner consistent with the labeling requirements of the pesticides contained in the contaminated material, paragraph (8) should be deleted.

**33. Section 130d.66. Prohibited applications.—Clarity.**

The term “water source” in subsection (b)(2) should be defined in § 130d.1 (relating to definitions).

The term “exceptional value wetland” in subsection (b)(4) should be defined in § 130d.1.



**34. Section 130d.68. Daily operational records.—Clarity.**

In subsection (a), what does the Department consider “generally accepted principles”? This phrase is also found in § 130d.69(a).

The term “generator” is used in subsection (b)(5). Who does the Department consider to be a “generator”? Is it the person who initially contaminated the material, the current owner of the remediation site or the person who excavated the contaminated material? For clarity, this term should be defined in § 130d.1. This term is also found in § 130d.69(b)(4).

**35. Section 130d.71. Site closure plan.—Clarity.**

We have two concerns with subsection (a). First, the Department does not define the “parties involved.” Does this apply to the landowner, the generator, the applicator and the hauler of the waste? For clarity, this term should be defined in this section.

Second, this subsection and subsection (b)(4) require the parties to report the results of the land application activity. The results to be reported should be moved to § 130d.72 (relating to final reports).

Also, this section does not state when the site closure plan is to be submitted to the Department. How long do the parties have to complete all required testing? For clarity, this should be set forth in the regulation.

**36. Section 130d.72. Final report.—Clarity.**

This section does not state when the final report must be submitted. Also, who is responsible for submitting the final report? These provisions should be set forth in the regulation.

**Department of Conservation and Natural Resources  
Regulation No. 7B-3**

**State Parks; General Provisions**

**June 21, 2002**

We submit for consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P. S. § 745.5a(h) and (i)) which have not been met. The Department of Conservation and Natural Resources (Department) must respond to these comments when it submits the final-form regulation. If the final-form regulation is not delivered within 2 years of the close of the public comment period, the regulation will be deemed withdrawn.

**1. Section 11.201. Definitions.—Reasonableness; Clarity.**

*Commercial activity*

Commentators contend that activities sponsored by charitable or nonprofit organizations are also defined as “commercial activity” if these organizations charge fees to cover their costs. The Department should consider adding a definition for activities sponsored by charitable or nonprofit organizations.

*Pet*

A pet is defined as “A dog, cat or other domestic animal.” It is unclear what other types of animals would qualify as domestic animals. For example, would the Department consider pet ferrets, birds and snakes as domestic animals? This definition should be amended to

clearly state which animals are considered pets and must meet the requirements of § 11.212.

**2. Section 11.203. State park waters.—Clarity; Consistency with statute.**

This section identifies areas of water that are under the jurisdiction of the Department. If this jurisdiction is established via statute, this section may be unnecessary. What new rules or procedures does this section establish that apply to members of the public? The Department should cite the specific statutory citations that provide for the jurisdiction described in paragraph (1) and for the specific bodies of water in paragraphs (2) and (3).

**3. General—Use of direct, positive statements.—Reasonableness; Clarity.**

The format of certain sections of the proposed regulation is confusing because the sections are written in the negative as lists of prohibitions. This negative format becomes even more complicated when an allowed activity is stipulated as an exception to the prohibition. Chapter 8 of the *Pennsylvania Code & Bulletin Style Manual (Manual)* recommends “directness” and the use of “positive ideas” rather than “exceptions” in drafting regulations. The Department should review these recommendations in the *Manual* as it develops the final-form regulation. The following sections are examples.

*Section 11.207. Traffic and parking.*

Section 11.207(a)(1) states, “Operation of a motor vehicle, as defined by the Vehicle Code, as follows is prohibited: On a State park road at a speed in excess of the posted limit or, where no speed limit is posted in excess of 25 miles per hour.” Alternatively, it could be direct, stand alone and read: “The maximum speed limit on a State park road is 25 miles per hour unless a different speed limit is posted.”

Similarly, subsection (b)(3) states, “The following activities are prohibited: . . . Parking a bus in an area that is posted as being closed for buses.” This could mean that every area in the park not intended for bus parking would need to be posted. As an alternative, the provision could be direct, stand alone and read: “Buses shall be parked only in posted bus parking areas or other areas designated by the State park.”

*Section 11.210. Fires.*

This section states, “The following activities are prohibited without the written permission of the Department: (1) Starting or maintaining a fire except in a fireplace, grill, stove or other facility designated by the Department for campfires. (2) Leaving a fire unattended. (3) Disposing hot charcoal except in a facility designated by the Department for charcoal disposal.” We have two concerns.

First, this section is confusing because the allowed activity is stated as an exception to the prohibition and the accompanying requirements are indirectly stated.

Second, the phrase “without written permission of the Department” is duplicative of the Department’s discretion stated in paragraphs (1) and (3). The phrase is also misleading because it implies the possibility the Department would grant written permission to leave a fire unattended.

This section would be clearer if it is written directly and in the positive. For example, it could state, “Fires are only permitted in fireplaces, grills, stoves or other facility designated by the Department. Fires must be attended at all times. Hot charcoal must be disposed in facilities designated by the Department for charcoal disposal.”

*Section 11.211. Natural resources.*

This section is confusing because subsection (1) is a prohibition that contains exceptions to the prohibition. The exceptions in paragraph (1)(i) and (ii) could stand alone as positive statements.

**4. Written permission of the Department.—Protection of public health and safety; Effect on natural resources; Reasonableness; Implementation procedure; Clarity.**

A number of provisions in this regulation include phrases such as “permission of the Department” or “approved by the Department.” However, there is no indication of how one may obtain this permission or approval. The regulation should inform the reader on how to apply for “approval” or indicate where this information is available. In certain cases, a reference to information on the Department’s website may be sufficient. The following sections are examples.

*Section 11.209. Miscellaneous activities.*

Subsection (a) is a list of activities, including commercial activities, that are prohibited without written permission of the Department. There is no indication of how this permission is obtained.

*Section 11.211. Natural resources.*

This section states that certain activities impacting natural resources are prohibited without written permission of the Department. There are two concerns.

First, it is unclear when and if written permission is required for activities listed in paragraph (1)(i) and (ii). This issue is similar to the format concern discussed in Issue #3.

Second, commentators expressed concerns with this provision. Is it the Department’s intent to allow removal of timber, plants, clay, sand or other natural resources from State parks? If so, what is the process for individuals or businesses to apply for permission? Is the public given notice and an opportunity to comment? What factors does the Department consider in determining whether to grant permission such as the extent of the project and its impact on recreational and natural resources?

*Section 11.213. Organized events; public assemblies; distribution of printed matter.*

This section prohibits organized events or exhibitions in State parks “without written permission of the Department.” To obtain this written permission, subsection (b) requires that an application be submitted on “a form prescribed by the Department.” The regulation should include information on how to obtain the application form.

*Section 11.217. Swimming.*

This section is a list of prohibitions. Subsection (3) prohibits the “use of underwater breathing apparatus or a snorkel” but adds the following caveat:

However, with *permission of the Department*, the equipment may be used by an emergency or rescue unit conducting a rescue operation or training or by a diver certified by an organization *approved by the Department*. (Emphasis added)

There are two concerns. First, the regulation provides no information on how these organizations may obtain or apply for permission of the Department. Second, does the Department maintain a list of approved organizations that certify divers? If so, how can one obtain a copy?

*Section 11.218. Camping; overnight facilities.*

This section states that camping or using a cabin or other overnight facility in a State park is prohibited without a valid permit. The regulation does not indicate how to obtain a valid permit.

*Section 11.224. Prices.*

Subsection (b) indicates that the Department may reduce or waive prices. There is no instruction on how to apply for a waiver or where applicants should submit a request for a waiver. The regulation should inform the reader of the process for obtaining a waiver or reduction.

**5. Section 11.207. Traffic and parking.—Reasonableness; Clarity.**

*Subsection (a) Traffic.*

This subsection references a “motor vehicle as defined in the Vehicle Code.” It should include the specific reference to this definition in section 102 of the Vehicle Code (75 Pa.C.S. § 102). As an alternative, the definition of a “motor vehicle” could be added to § 11.201 with a specific reference.

Subsection (a)(4) is vague. How will the Department interpret the phrase a “reasonable person of normal sensitivities”? This question also applies to § 11.209(b)(3).

Subsection (a)(5) is unclear and also needs a cross-reference to the Vehicle Code. It states, “Operation of a motor vehicle, as defined in the Vehicle Code, as follows is prohibited: . . . Not in obedience to traffic-control devices.” In addition to our concern with the negative format previously mentioned in Issue #3, this subsection should reference the definition of “official traffic-control devices” at 75 Pa.C.S. § 102.

*Subsection (b) Parking.*

Paragraph (1) uses the terms “a person with a disability” or “severely disabled veteran.” Paragraph (1)(i) and (ii) should be combined into one paragraph or subsection. The new subsection need only refer to a valid plate or placard issued in accordance with sections 1338 and 1342(a) and (b) of the Vehicle Code.

Paragraph (1)(i) and (ii) contain the phrase “or a substantially equivalent issuance from another state.” We have two concerns with this phrase. First, how would a person with an out-of-State plate know whether it is “substantially equivalent” to a Pennsylvania plate? Since other jurisdictions issue plates and placards, any valid plate or placard from another jurisdiction should be allowed. Our second concern is that the regulation should be expanded beyond “another state” to include jurisdictions such as Canadian provinces and the District of Columbia.

Paragraph (1)(iii) is confusing because it refers to a “placard . . . indicating issuance of authorization to operate the vehicle on State park land” with no reference to parking or people with disabilities. The paragraph does not include the word “disability.” It is our understanding that it is referring to a placard that is part of the Department’s policy for fostering greater access to State parks for persons with disabilities. People with disabilities who use a motor vehicle for personal mobility may obtain a placard from the Department to use their vehicle on pathways where other motor vehicles are prohibited. There are two concerns.

First, the Department should consider formalizing this policy by adding a new subsection to § 11.207 (relating to traffic and parking) indicating that persons with disabili-

ties who use this type of personal vehicle may apply to the Bureau of State Parks for this placard.

Second, subsection (b)(1)(iii) should be amended to explain that paragraph (1)(iii) is limited to people with disabilities that use a motor vehicle for personal mobility.

*Subsection (e) Parking tickets.*

Paragraphs (2) and (3) include citations to 234 Pa. Code. These should cite the specific rule(s) in 234 Pa. Code that apply.

*Subsection (f) Violations of parking provisions of the Vehicle Code.*

This subsection specifies that the fine for a parking ticket is \$15 and references sections 3351—3354 of the Vehicle Code. However, the minimum fine for parking in spaces reserved for a person with a disability is \$50 and fines may be greater under section 3354(f) and (g) of the Vehicle Code (75 Pa.C.S. §§ 3354(f) and (g)). The regulation should directly specify or reference the fines for violations of parking provisions of the Vehicle Code.

*Location of violations subsections*

Violations provisions are located separately in subsections (d) and (f). These violations provisions should be combined into one subsection that lists all violation provisions.

**6. Section 11.208. Schedule; closure.—Reasonableness.**

In the Preamble, the Department states:

New § 11.208 adds hunting, trapping and snowmobiling as activities that are permitted 24 hours a day. This provision reflects current Bureau policy.

There has been public comment questioning why these activities are allowed 24 hours per day when other activities are restricted to daylight hours. The Department should provide further explanation for why each of these activities should be allowed 24 hours per day. Does snowmobiling 24 hours per day have an impact on wildlife or overnight park visitors? Are snowmobiles limited to certain areas or designated trails? In addition, should this section include camping or use of overnight facilities as a 24-hour activity and reference § 11.218? Finally, what is the intent of subsection (h)? What types of activities may be prohibited? What notice will be provided to the public?

**7. Section 11.210. Fires.—Clarity.**

A State park may need to restrict fires in dry periods or drought to prevent forest fires. We recognize the general provisions to prohibit activities in § 11.208(h). We suggest that this section include notice that fires may be further restricted by a State park due to drought or dry forest conditions.

**8. Section 11.212. Pets.—Reasonableness; Clarity.**

Proposed subsection (d) states, “A pet is not permitted in an overnight area unless the area is designated by the Department for pets.” It appears that this is the same policy expressed in existing § 11.11(b). However, several commentators expressed concern that the Department is banning pets. The Department should explain whether the proposed regulation is a change in policy and what restrictions apply to pets in overnight areas. Additionally, if there is no change in policy, the Department should consider amending the language to state pets are permitted in overnight areas subject to restrictions.

Subsection (f) exempts hunting dogs from subsection (b)(1)—(5). Subsection (b)(3) does not allow a dog to “behave in a manner that may reasonably be expected to disturb or intimidate another person.” Subsection (b)(4) does not allow a pet to “behave in a manner that may cause damage to property.” Why are hunting dogs exempt from subsection (b)(3) and (4)?

**9. Section 11.213. Organized events; public assemblies; distribution of printed matter.—Reasonableness; Clarity.**

Subsection (a)(1) and (2) do not specify the minimum size of an event or group to which the restrictions in this section apply. For example, would a group of a dozen scouts be required to obtain permission 24 hours ahead as required by subsection (b)? There are two concerns.

First, subsection (a) should clearly state what specific activities require a permit. It should also specify the minimum number of people that constitute a group or event covered by this section.

Second, subsection (c) states that the Department “will grant or deny a permit without unreasonable delay.” What is “unreasonable delay”?

**10. Section 11.215. Weapons and hunting.—Consistency with other statutes; Public safety; Reasonableness; Clarity.**

Several subsections refer generally to the Game and Wildlife Code. The regulation should specifically reference the pertinent sections of the Game and Wildlife Code that apply.

Paragraphs (3) and (4) prohibit the use and possession of a firearm in a State park except for hunting or target shooting. However, section 6109 of the Pennsylvania Uniform Firearms Act of 1995 (18 Pa.C.S. § 6109) allows individuals to obtain a license to carry a firearm for purposes besides hunting or target shooting. The Department should consider including a reference to section 6109 of the Pennsylvania Uniform Firearms Act of 1995 in this section as an exception to the prohibition of using or possessing a firearm.

**11. Section 11.216. General recreational activity; horses; snowmobiles; all-terrain vehicles; mountain bikes.—Clarity.**

Greater clarity would be achieved by combining subsection (b)(1) and (4) rather than using the reference to paragraph (4) in paragraph (1).

Subsection (c) should specifically reference the pertinent section(s) of the Motor Vehicle Code.

**12. Section 11.219. Boating.—Clarity.**

*Subsection (b) General.*

Subsection (b)(1) and (3) do not need to be listed as separate provisions. They should be combined by adding the word impoundment to subsection (b)(1) and deleting subsection (b)(3).

In subsection (b)(4)(iv) and (v), what is the intent of using the word “novelty-type” for different kinds of watercraft. The term is vague. The regulation needs to clarify the types of watercraft covered by this term.

The description of an inflatable device in subsection (b)(4)(vi) differs from the one used for “whitewater boating” in § 11.220(a)(2)(ii). What is the reason for the difference?

Should a provision be added to prohibit annoying others by causing loud noises similar to § 11.207(a)(4)?

*Subsection (c) Motorboats.*

The language in subsection (c)(3) is unclear. The regulation does not define or explain the phrase "personal watercraft, regardless of horsepower." A description of this type of watercraft can be found in the regulations of the Fish and Boat Commission (FBC) in 58 Pa. Code § 109.3(a). This subsection should cross-reference the description of "personal watercraft" in 58 Pa. Code § 109.3(a).

The FBC also lists safety requirements for personal watercraft in 58 Pa. Code § 109.3, including a requirement for a Boating Safety Education Certificate (58 Pa. Code § 109.3(h)). This proposed regulation should include or cross-reference the safety requirements at 58 Pa. Code § 109.3.

*Subsection (e) Mooring, anchoring and storing.*

In subsection (e)(1)(ii), the meaning of "temporarily" is vague. The Department should indicate the maximum time limit for mooring watercraft along the river wall during the day.

**13. Section 11.220. Whitewater boating.—Public safety; Reasonableness; Clarity.***Subsection (a) General requirements.*

Subsection (a)(2)(ii) uses the phrases "tough durable construction," "tough laminated material" and "commercial grade" to describe the requirements for inflatable watercraft for whitewater boating at specific State parks. These are vague standards. The regulation should specifically describe the minimum standards for inflatable watercraft.

*Subsection (c) Ohiopyle State Park.*

In subsection (c)(1)(iii)(C), what is meant by "watercraft must be other than commercially rented watercraft"? The intent and structure of this subsection are unclear.

Subsection (c)(1)(iv)(A) and (2)(iii)(B) waive watercraft requirements for "state park-licensed concession watercraft." Assuming the watercraft requirements are for safety, why are "state park-licensed concession watercraft" exempt?

There are three concerns with subsection (c)(1)(iv)(B). First, the intent of "other than commercially-rented watercraft" is unclear. Second, the regulation should provide information on how watercraft operators or owners could obtain approval for high performance watercraft. Third, what are the size or performance standards that qualify as "high performance" and require Departmental approval?

There are two concerns with subsection (c)(3). First, the subsection is written broadly and it could apply to any waterfall in this State park. The subsection reads: "Waterfall running is prohibited without written permission of the Department." Numerous commentators from this Commonwealth and other states expressed concerns with this subsection. It is our understanding that this prohibition applies only to one particular stretch of river before and just below the "Ohiopyle Falls." The subsection should be amended to specifically identify the river segment for which waterfall running requires written permission.

Second, this provision should be amended to identify the process and procedures for obtaining written permission. Can representatives of a group obtain approval or

written permission for group members or must each individual apply separately?

*Subsection (d) Lehigh Gorge State Park.*

Inflatable canoes and kayaks are exempted from the requirements of subsection (d)(2)—(4). What is the purpose of this exemption? What are the minimal standards for these types of watercraft?

**14. Section 11.224. Prices.—Reasonableness; Consistency with statute; Clarity.***Subsection (a) Schedule of prices.*

This subsection states: "the Department will establish, by publication in the *Pennsylvania Bulletin*, a schedule of prices for activities, uses and privileges." There are two concerns.

First, the regulation should state that the schedule of prices will be posted on the Department's website and should include the website address.

Second, the final-form regulation should include a reference to section 314 of the Conservation and Natural Resources Act (71 P. S. § 1340.314) (act). This section of the act places limitations on the setting of fees by the Department including the limitation that charges and fees "shall be used solely for the acquisition, maintenance, operation or administration of the State Park system . . . ."

*Subsection (c) Prices for goods and services.*

Subsection (c) states: "The Department will set reasonable prices for the sale of goods and services to the public." What is meant by the word "reasonable"? What factors will the Department consider in determining what is "reasonable"?

JOHN R. MCGINLEY, Jr.,  
Chairperson

[Pa.B. Doc. No. 02-1188. Filed for public inspection July 5, 2002, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Independence Blue Cross; Basic Blue Cross Community-Rated Group Rate Increase; Filing No. 1-P-02

Independence Blue Cross requests Insurance Department approval for a 30.3% premium rate increase effective October 1, 2002, on the community-rated basic Blue Cross hospitalization program.

The proposed rate increase would impact approximately 3,657 contracts and produce additional annual premium income for IBC of \$5.3 million.

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Insurance Department's regional offices in Harrisburg and Philadelphia.

Interested parties are invited to submit written comments, suggestions or objections to Bharat Patel, Actuary,

Insurance Department, Accident and Health Bureau, Office of Rate and Policy Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Secretary*

[Pa.B. Doc. No. 02-1189. Filed for public inspection July 5, 2002, 9:00 a.m.]

### Provident Mutual Life Insurance Company Mutual-to-Stock Conversion and Subsequent Merger; Conclusion of Public Comment Period

The Insurance Department (Department) published notice of receipt of the previously-referenced filings and notice of a 30-day comment period published at 31 Pa.B. 7085 (December 29, 2001). Through a subsequent notice published at 32 Pa.B. 401 (January 19, 2002), the public comment period was extended for an indefinite period of time to afford persons ample opportunity to provide written comments on the filings to the Department. At the conclusion of the Department's public informational hearing on May 23, 2002, the Department announced that the public comment period would remain open for at least 30 days from the date of the hearing.

The purpose of this notice is to announce the conclusion of the public comment period. Persons wishing to comment on the grounds of public or private interest are invited to submit a written statement to the Department on or before July 19, 2002. Each written statement must include the name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Robert Brackbill, Chief, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120; fax (717) 787-8557; e-mail rbrackbill@state.pa.us. Comments received will be part of the public record regarding this filing.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 02-1190. Filed for public inspection July 5, 2002, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Telecommunications

**A-310633F7004. ALLTEL Pennsylvania, Inc. and Level 3 Communications, LLC.** Joint Petition of ALLTEL Pennsylvania, Inc. and Level 3 Communications, LLC for approval of an interconnection agreement under

section 252(e) of the Telecommunications Act of 1996.

ALLTEL Pennsylvania, Inc. and Level 3 Communications, LLC, by its counsel, filed on June 13, 2002, at the Pennsylvania Public Utility Commission (Commission), a Joint Petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the ALLTEL Pennsylvania, Inc. and Level 3 Communications, LLC Joint Petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 02-1191. Filed for public inspection July 5, 2002, 9:00 a.m.]

### Water Service Without Hearing

**A-210104F0019 and A-213440F2000. Pennsylvania Suburban Water Company and White Rock Water Corporation.** Joint Application of Pennsylvania Suburban Water Company and White Rock Water Corporation for approval of: 1) the acquisition by Pennsylvania Suburban Water of the water system assets of White Rock Water; 2) the right of Pennsylvania Suburban Water Company to begin to offer, render, furnish or supply water service to the public in a portion of Monroe and South Middleton Townships, Cumberland County, PA; and 3) the abandonment by White Rock Water Corporation of public water service within Monroe and South Middleton Townships, Cumberland County, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before July 22, 2002, under 52 Pa. Code (relating to public utilities).

*Applicant:* Pennsylvania Suburban Water Company and White Rock Water Corporation

*Through and By Counsel:* Mark J. Kropilak, Esquire, 762 West Lancaster Avenue, Bryn Mawr, PA 19010; and James D. Hughes, Esquire, Irwin, McKnight and Hughes, West Pomfret Professional Building, 60 West Pomfret Street, Carlisle, PA 17013-3222.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 02-1192. Filed for public inspection July 5, 2002, 9:00 a.m.]