RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 10]

Pseudorabies Disease

The Department of Agriculture (Department) amends Chapter 10 (relating to pseudorabies disease). These amendments are adopted under the authority of section 1702 of The Administrative Code of 1929 (71 P. S. § 442), sections 3 and 9 of the act of April 17, 1929 (P. L. 533, No. 236) (3 P. S. §§ 343 and 349) and sections 4 and 6 of the act of March 28, 1929 (P. L. 110, No. 117) (3 P. S. §§ 374 and 376), which authorize the Department to take measures to detect, prevent, contain and eradicate dangerous transmissible diseases of animals within this Commonwealth, to establish quarantines necessary to pursue these objectives and to regulate in these areas.

Pseudorabies is a contagious infectious viral disease of animals. Although it poses no threat to human health, it threatens the economic well-being of the swine industry in this Commonwealth. Pseudorabies disease reduces swine production profit as a result of reproductive failures, diminished feed conversion efficiency and interstate restrictions on the movement of infected or exposed swine.

Pennsylvania swine producers, represented by the Pennsylvania Pork Producers Council and the Pennsylvania Purebred Swine Breeders Association, have petitioned the Department to provide resources and regulatory support to eliminate pseudorabies virus from this Commonwealth. These producers have established an Advisory Committee to coordinate their pseudorabies eradication efforts with the Department, other state departments of agriculture, the National Pork Producers Council and the United States Department of Agriculture.

The primary purpose of these amendments is to coordinate the Department's pseudorabies containment and eradication efforts with the industry-driven Pseudorabies Eradication State-Federal-Industry Program (Eradication Program) developed by the United States Department of Agriculture Animal and Plant Health Inspection Service (USDA-APHIS) and set forth in USDA-APHIS publication no. 91-55-018, *Pseudorabies Eradication State-Federal-Industry Program Standards.*

These amendments amend existing authorities by adding provisions that require elimination of pseudorabies virus from infected premises, establish time frames for elimination of pseudorabies virus, provide for industry consultation and advice and in certain limited cases, provide for Department condemnation with indemnification of pseudorabies infected or exposed swine.

These amendments will allow Pennsylvania swine producers to systematically work through a five-stage State-Federal-industry prescribed process to achieve pseudorabies-free status. This will result in a more productive and profitable swine industry in this Commonwealth, and will facilitate the introduction of Commonwealth-produced swine into interstate and international commerce.

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Department reviewed this rulemaking and considered its purpose and likely impact in accordance with Executive Order 1996-1, Regulatory Review and Promulgation. This rulemaking addresses a compelling public interest, as described in this Preamble, and is otherwise in compliance with Executive Order 1996-1.

Comments

Notice of proposed rulemaking was published at 25 Pa.B. 4001 (September 23, 1995), and provided for a 30-day public comment period.

Comments were received from individual pork producers, the Pennsylvania State University College of Agricultural Sciences, a large-scale pork production operation, the House Agriculture and Rural Affairs Committee (House Committee) and the Independent Regulatory Review Commission (IRRC). Comments included concern for inadequate indemnity provisions, criticism of cost estimates of industry fiscal impact, recommendation for Department subsidy of vaccination costs, recommendations regarding appointment and consultation with an Advisory Committee and recommendations to clarify the regulations by altering the organization of the material and improving syntax. Response to these comments is organized by subject as follows.

Indemnity

The House Committee and IRRC requested an explanation of the Department's statutory authority to pay, or refrain from paying, indemnity with respect to swine depopulated from quarantined pseudorabies-exposed herds.

Pseudorabies is a dangerous transmissible disease of animals. The Department's authority to impose quarantines upon animals infected with pseudorabies, suspected of having pseudorabies, exposed to pseudorabies or susceptible to pseudorabies is set forth at sections 3 and 5 of the act of April 17, 1929.

Section 1702 of The Administrative Code of 1929 authorizes the Department to "... take such measures as may seem advisable concerning methods of preventing, controlling and eradicating disease of animals, to cause the disinfection of any premises, and, when deemed necessary to prevent the spread of disease, to cause the destruction of animals ..." This provision gives the Department broad discretion to act with respect to pseudorabies in swine. The Department believes it a reasonable and necessary exercise of its statutory authority to quarantine pseudorabies-exposed swine herds, to require the development and implementation of herd-cleanup plans and, under certain circumstances in Stage 3 or higher, to condemn infected or exposed animals, or both.

The Department is not statutorily required to pay indemnity to the owners of swine who voluntarily depopulate their herds under herd-cleanup plans. The Department has, historically, exercised its authority under section 1702 of The Administrative Code of 1929 and paid indemnity only when animals have been condemned. Exercise of this authority has been limited to dangerous transmissible disease agents that threaten public health and which cannot reasonably be tolerated by the public or the industry. For example, in a recent outbreak of bovine tuberculosis the Department elected to pay the owner of a quarantined herd indemnity in exchange for the herd owner's agreement to destroy its tuberculosis-exposed animals. In this instance, the tuberculosis-exposed herd was the only known reservoir of bovine tuberculosis in

this Commonwealth and the herd's destruction would be a major step forward in the Department's effort at protecting human health and regaining "tuberculosis-free" status for this Commonwealth.

The only situation where the payment of indemnity for swine is statutorily required, though, occurs when the Department condemns swine, as that term is defined in section 1 of the act of June 22, 1931 (P. L. 682), as amended (3 P. S. § 398).

In light of the foregoing, the Department concludes that although it may compensate the owner of quarantined pseudorabies test positive swine that are destroyed in accordance with a herd-cleanup plan, it is not obligated to pay indemnity since it has not condemned the animals in question.

Six commentators—the House Committee among them—offered comments to the effect that depopulation of pseudorabies test positive swine should be required in the absence of the payment of indemnity by the Department. Two of these commentators suggested the final amendments be revised to require the Department to pay indemnity whenever funds are available—regardless of the status of the particular herd-cleanup effort. One commentator suggested the General Assembly fund the Commonwealth's pseudorabies eradication effort as it funded the Avian Influenza eradication effort with respect to the Commonwealth's poultry industry several years ago. The commentator expressed an interest in eradicating pseudorabies in his infected swine herd, but reluctance to destroy his breeding stock which was "... too expensive to sell to the butcher," unless he was adequately compensated.

The Department gave careful consideration to the propriety of condemning pseudorabies infected or exposed swine and concluded that, in the context of an industry-conceived and driven program, and in the absence of human health risk, it was inappropriate to adopt condemnation as a routine pseudorabies eradication program measure. The Department, however, recognized that special circumstances could occur which might necessitate or make highly desirable condemnation action. Provision in these amendments for indemnity refers only to the latter circumstances. In any case, ability to pay indemnity will depend on the availability of enabling funding.

IRRC suggested the definition of "indemnity" at § 10.1 (relating to definitions) be rephrased to state that indemnity may be equal to "all or" a portion of the appraised value of condemned swine. The Department declines to implement this suggestion. The Department believes it might be misleading to suggest that indemnity is intended to cover "all" of a recipient's losses. The Department believes that section 2 of the act of June 22, 1931 sets forth the indemnity rates that the Department should offer: no more than $300-per-swine; and the Department's contribution, together with salvage value and compensation received from other sources, may not exceed 90% of the appraised value of the animal.

IRRC recommended the initial paragraph of § 10.26 (relating to indemnity) be rephrased for greater clarity.

The Department accepts this suggestion, and has amended that paragraph accordingly.

A commentator recommended that § 10.26(a)(1) be revised to clarify that indemnity may be paid by the Department if, despite a herd owner's concerted effort to implement an official pseudorabies herd-cleanup plan, pseudorabies virus is not eliminated from the herd within a reasonable period of time.

The Department accepts this suggestion, and has revised § 10.26(a)(1) accordingly.

Fiscal Impact

Six commentators, the House Committee among others disagreed with statements in the Preamble and regulatory analysis form with respect to the proposed amendments indicating that the proposed amendments were not expected to impose additional costs on the private sector. The House Committee summarized the commentators' points of disagreement as follows:

> The direct cost to individual producers subject to a herd-cleanup program will be substantial in the short term. The actual cost of a cleanup program, loss of income in the case of depopulation (both with or without indemnity), "down time" of a facility and other such actions all impose a cost on the individual producer. Likewise, additional recordkeeping and regulatory requirements impose an indirect cost on the entire industry.

In order to avoid confusion on the question of whether these regulatory revisions will impose additional costs upon producers, the Department has set forth a more detailed explanation in this Preamble under the heading addressing "Fiscal Impact—Private Sector," and has revised Answer No. 22 on the Regulatory Analysis Form. The Department does not believe that these final-regulations will significantly increase the costs which a herd owner must bear. A number of considerations went into this conclusion, among them: the costs imposed on a herd owner by the mere presence of the pseudorabies virus in a swine herd, the costs that are imposed or could be imposed on a herd owner under the Department's current statutory and regulatory authority, the average turnover time of a swine herd and the additional costs that these final-regulations might impose.

The presence of pseudorabies virus in a swine herd imposes costs on the herd owner, regardless of whether the virus has been detected or not. Swine afflicted with the virus suffer higher reproductive failures and diminished feed conversion efficiency.

Under current statutory and regulatory authority, the Department places a special quarantine upon any swine herd within which pseudorabies exposure has been detected. This requirement is set forth at § 10.6 (relating to quarantine required). The circumstances under which a pseudorabies-related quarantine may be released are detailed at § 10.8 (relating to quarantine release) and include depopulation/disinfection requirements and specific testing regimens. These quarantine restrictions result in diminished product value and increased production costs.

Under the current regulation an owner of a quarantined pseudorabies-exposed swine herd faces the following options, and the costs associated with each: (1) allow the herd to remain under quarantine, obtaining permits as needed to move swine directly to slaughter; (2) depopulate the entire herd and disinfect the premises in accordance with § 10.8(c)(1); (3) depopulate only those animals that are positive to an official test for pseudorabies, and test the remaining exposed animals in accordance with § 10.8(c)(2); or (4) take other measures to demonstrate to a pseudorabies epidemiologist that the swine herd meets Federal quarantine release requirements. In short, these final regulations would remove only the first of the foregoing four options and compel the development and implementation of herd-cleanup plans in infected herds. It does not compel a particular method of herd-cleanup,

but presents the herd owner with a number of options. These options are in accordance with guidelines established in the Eradication Program standards.

The Department agrees that there would be significant costs incurred by a herd owner who elects to completely depopulate his pseudorabies-exposed swine herd, disinfect the premises and allow a lapse of at least 30 days prior to herd repopulation, as described at § 10.8(c)(1). However, the amendments afford herd owners both the methodology and time (3 years) within which to accomplish herd-cleanup, with or without complete herd depopulation, with minimal resultant costs.

In many pseudorabies-exposed swine herds to date, the herd owner has opted for a method of herd-cleanup that involves the marketing of test positive animals and the systematic testing of the remaining animals, as described at § 10.8(c)(2) and (3). This allows the herd owner to make optimal use of the cycle of herd turnover. Swine herd populations are not static. The average life span of individual breeding animals in a swine herd is approximately 2.5 years; the average life span of swine fed for market is 5 to 6 months. Breeding replacement stock is obtained from herd progeny or by purchasing from outside sources.

Section 10.22(b)(2) (relating to objectives of plan) of the final regulations affords a herd owner 36 months, during Stage 3 of the Eradication Program, from the Department's approval of a herd-cleanup plan within which to eliminate pseudorabies virus from the herd. This 3-year period allows the herd-owner to utilize the 2.5 year herd turnover period, plus an additional 6 months, within which to systematically purge the herd of pseudorabies.

Under this herd cleanup plan, the herd owner would not be deprived of the value of his pseudorabies-infected swine. These animals are not marketable for purposes other than slaughter and the herd owner may market them for this purpose. If a particular test-positive swine had exceptional value as a breeding animal, and the herd owner is not immediately inclined to have this swine shipped to slaughter, he can segregate it from the herd and obtain the benefit of the swine's breeding value within the 36-month period for herd-cleanup plan completion. With respect to the swine that have been exposed to pseudorabies but are not pseudorabies test positive, the herd owner may continue to raise them within the herd. If these animals are ready for market while the herd quarantine remains in place, the herd owner may ship them to slaughter. Once the quarantine is lifted, the herd owner may dispose of swine as the owner deems appropriate. The only costs imposed by these final-regulations (as opposed to costs resulting from the presence of the pseudorabies virus within the herd or costs imposed under the current regulations) are the costs of testing, and these costs will be largely borne by the Department.

Several commentators offered general comments in support of these amendments.

A commentator from the Pennsylvania State University College of Agricultural Sciences states "The general intent of the proposed rulemaking is worthwhile and timely. New regulations should be implemented . . ."

The same commentator opined that costs imposed by this regulation ". . . should be far less than the cost to all Pennsylvania pork producers if the disease is not controlled or if interstate trade is adversely impacted because of the presence of . . . (pseudorabies virus) . . . in Pennsylvania."

Another commentator from the Pennsylvania State University College of Agricultural Sciences stated that ". . . there will be many circumstances in which the cost of eradicating the disease will outweigh the improvements in (swine) health and production." The commentator, while questioning the economic validity of embarking on a National pseudorabies eradication effort, supported the Eradication Program in light of its support among the industry and among owners of quarantined pseudorabies-exposed swine herds, the fact that neighboring states are further along in the five-stage cleanup process than the Commonwealth and the fact that Pennsylvania-produced feeder pigs are facing interstate marketing difficulties as a result. The commentator also observed that: ". . . many producers in Pennsylvania have already eradicated the virus from their herds with the understanding that other quarantined herd owners would make similar efforts. In fairness to those cooperating producers and to those who have made significant investments to minimize the threat of pseudorabies, acceptance of these regulations is needed."

In summary, the Department accepts the comments of the House Committee to the extent that a herd owner might incur some costs as a result of these final amendments if the owner opts for the total herd depopulation and disinfection procedures set forth at § 10.8(c)(1). These final regulations do not compel these procedures, though. A herd-cleanup plan may combine selective depopulation with selective herd repopulation, testing and monitoring procedures to allow the herd owner to systematically purge the owner's herd of pseudorabies during the natural herd turnover cycle. The final-regulations do not subject herd owners to any costs the owners were not already subject to under current regulatory authority.

Vaccine

One commentator suggested the Department distribute pseudorabies vaccine and initiate a thorough swine vaccination program in lieu of the procedures set forth in these final regulations.

The Department considered this proposal as it developed these amendments. Pseudorabies vaccine does not eliminate the pseudorabies virus within a swine herd nor does it prevent infection. Vaccine is useful in reducing virus shedding by infected animals and reduces the likelihood of spread within a herd or to other neighboring herds. The Department is aware of herd owners who used vaccination as the method of pseudorabies control within their swine herds and the Department has promoted the judicious use of vaccine. In most cases, vaccination alone was not enough to remove pseudorabies from the swine herd.

In addition, one of the goals of these final regulations is to bring the Commonwealth's pseudorabies eradication strategy in line with the Pseudorabies Eradication Program. That Program does not prescribe vaccination, by itself, to ensure pseudorabies eradication within a swine herd.

Although the Department believes that vaccination is a helpful tool in pseudorabies eradication, it must be used in combination with depopulation, sanitation measures and testing in order to achieve pseudorabies eradication within a swine herd. For the foregoing reasons, the Department declines to implement the suggestion that it use vaccination as the sole means by which to combat pseudorabies in swine.

Clarification

IRRC suggested the second sentence of the definition of "indemnity" at § 10.1 be relocated to § 10.26.

The Department accepts this suggestion, and has amended these sections accordingly.

IRRC also suggested the second sentence of the definition of "official pseudorabies epidemiologist" be relocated. The sentence at issue states that an official pseudorabies epidemiologist shall have special training in the diagnosis and epidemiology of pseudorabies, and otherwise meet the responsibilities of an "official pseudorabies epidemiologist," as that term is defined in the Eradication Program standards.

The Department is not inclined to implement IRRC's suggestion. The reference to "special training in the diagnosis and epidemiology of pseudorabies" comes verbatim from the definition of "official pseudorabies epidemiologist" in the Eradication Program standards. The reference to meeting the responsibilities assigned an official pseudorabies epidemiologist under those Eradication Program standards helps to demonstrate to other jurisdictions that the Commonwealth's pseudorabies eradication efforts are in accordance with the Eradication Program standards, and apprises persons seeking or holding that designation of the necessity of being knowledgeable with respect to the Eradication Program standards.

IRRC further suggested the definition of "official pseudorabies herd-cleanup plan" be revised by deleting all but the first sentence and relocating the deleted material elsewhere in the final regulation. For the same basic reasons set forth in the preceding paragraph, the Department declines to implement this suggestion.

The definition at issue restates the definition of "official pseudorabies herd-cleanup plan" set forth in the Eradication Program standards, and emphasizes that the link between these definitions is intentional on the Department's part.

IRRC and another commentator expressed concern with the requirement that a herd owner develop and implement a pseudorabies herd-cleanup plan within 60 days (or some shorter specified time period) of receiving written notice from the Department directing this action. This requirement is set forth at § 10.21(a) (relating to plan requirements-development and implementation). IRRC stated it was not clear that a herd owner had to develop and implement a herd-cleanup plan within the 60-day period.

For greater clarity, the Department has replaced "implement" with "put into effect" in both §§ 10.21 and 10.25.

IRRC also recommended proposed § 10.21 be reworked to clarify the steps which the Department takes in reviewing proposed herd-cleanup plans and communicating its approval, disapproval or requests for additional information to the herd owner.

The Department accepts this recommendation, and has revised § 10.21(a) and (c) accordingly. A 15-day review period is established, and any time beyond this will not be credited against the 60 days within which a herd owner shall develop and put into effect an official pseudorabies herd-cleanup plan.

Two commentators recommended the Department require owners of quarantined pseudorabies-exposed swine herds within a particular region to develop and implement herd-cleanup plans at the same time. Presumably, this would decrease the risk that pseudorabies would spread from an infected herd with respect to which a herd-cleanup plan had not been implemented to a herd with respect to which a herd-cleanup plan had been implemented.

The Department accepts this recommendation. The Department will impose herd-cleanup requirements upon known pseudorabies-exposed swine herds at the same time.

IRRC noted the use of the term "official pseudorabies herd-cleanup plan" in § 10.22 (relating to objectives of plan) and suggested replacing that term with "Department approved pseudorabies herd-cleanup plan."

The Department is reluctant to deviate from the terminology set forth in the Eradication Program standards. These standards use the term "official pseudorabies herd-cleanup plan." The overall purpose of the Eradication Program—to identify, contain and eliminate pseudorabies in swine Nationwide—is served by developing a common vocabulary among Federal and State animal health authorities. For these reasons, the Department elects to retain the term "official pseudorabies herd-cleanup plan" in the final amendments.

IRRC and several other commentators suggested that § 10.22(b)(2) (relating to objectives of plan) be revised by inserting the term "cleanup plan" in place of "cleanup program." This revision would make subsection (b)(2) consistent with subsection (b)(1) and (3), both of which use the term "cleanup plan," and with the definition of "official pseudorabies herd cleanup plan" at § 10.1.

The Department accepts this suggestion, and has amended § 10.22(b)(2) accordingly.

Advisory Committee

Several comments were received with respect to the composition and function of the Advisory Committee.

IRRC noted that proposed § 10.27(a) (relating to Advisory Committee) provided that the Secretary may appoint an Advisory Committee, and recommended that the final amendments use the word will instead.

The Department accepts this recommendation, and has amended § 10.27(a) accordingly.

Section 10.27(c), which describes Advisory Committee membership, does not specifically require that small-scale independent swine production operations be represented on that body. IRRC and three other commentators expressed concern over this fact. One commentator recommended the Advisory Committee contain producers who have successfully completed herd-cleanup plans. Another expressed skepticism that any nominee submitted by the Pennsylvania Pork Producers Council would adequately represent independent family producers who own pseudorabies-exposed swine herds. IRRC recommends the final amendments require independent family producer representation on the Advisory Committee.

The Department objects to the mandatory inclusion of a representative of small-scale independent family swine producers on the Advisory Committee, and notes that approximately 75% of the directors of the Pennsylvania Pork Producers Council are small or medium-sized independent producers. The Department has revised § 10.27(c)(2), though, to allow the Secretary of Agriculture greater discretion in selecting Advisory Committee members representing a fair cross-section of the Commonwealth's swine production industry. Nominees may be

submitted by any person involved in the Commonwealth's swine production industry, or by any group representing that industry.

The House Committee, IRRC and another commentator took issue with the role assigned the Advisory Committee under the proposed amendments. The House Committee asked whether the Department should have the sole power to require herd-cleanup plans, impose sanctions and decide whether to pay indemnity for swine depopulated from pseudorabies-exposed herds in accordance with herd-cleanup plans. The House Committee suggested the consent and agreement of the Advisory Committee be obtained in these matters. In related comments, two other commentators recommended that the Advisory Committee, rather than the Department, have authority to deal with pseudorabies-exposed swine herds.

One of the purposes of the final-regulations is to bring the Department's pseudorabies control efforts into conformity with the Pseudorabies Eradication Program developed by USDA-APHIS. That Eradication Program prescribes the responsibilities of a state pseudorabies committee. These responsibilities are repeated almost verbatim in § 10.27(b). The Department prefers to rely entirely on the Eradication Program standards for guidance in establishing and relating to program measures.

Furthermore, in the absence of specific statutory authority, the Department has no authority to abdicate its responsibility for the identification, containment and eradication of pseudorabies, or its duty with respect to the expenditure of the funds appropriated it by the General Assembly for indemnity payments, in favor of the Advisory Committee.

Both IRRC and the House Committee requested clarification of the manner in which the Department will consult with the Advisory Committee.

The Department agrees that the proposed amendments were ambiguous in this regard. The Department has added a new § 10.27(f) to the final regulations, and has redesignated proposed subsection (f) as subsection (g) in the final amendments. When practicable, the Department will convene a meeting of the Advisory Committee to consult with respect to issues arising under §§ 10.25 and 10.27(b). If, in the Department's discretion, there is insufficient time within which to convene a meeting of the Advisory Committee, the Department will take necessary action and subsequently call a meeting or individually poll the members of the Advisory Committee regarding the question at issue. The presence or participation of more than half of the Advisory Committee members is necessary to constitute a quorum of that body. The majority vote of a quorum constitutes the position of the Advisory Committee on a given issue.

Fiscal Impact

Commonwealth

These amendments are expected to impose costs of approximately $15,000 on the Department in FY-1996, progressively decreasing to less than $4,000 in FY-1999.

Political Subdivisions

These amendments will impose no costs and have no fiscal impact upon political subdivisions.

Private Sector

These amendments will not increase the costs of compliance which were imposed upon the private sector under pre-existing regulatory authority. The sole exception might occur with respect to the owner of a quarantined pseudorabies-exposed swine herd who implements a herd-cleanup plan under which the entire herd is depopulated, the premises disinfected and left unoccupied by swine for at least 30 days prior to the reintroduction of swine. These costs are not readily measurable. The quarantined pseudorabies-exposed swine herds in this Commonwealth (approximately 50) may implement herd-cleanup plans that may not result in additional costs to the herd owner.

General Public

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

Paperwork Requirements

These amendments are not expected to result in an appreciable increase in paperwork.

Contact Person

Further information is available by contacting the Department of Agriculture, Attention: Max A. Van Buskirk, Jr., Director, Bureau of Animal Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)) the Department submitted a copy of the notice of proposed rulemaking published at 25 Pa.B. 4001 (September 23, 1995) on September 12, 1995, to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

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

These final-form regulations were deemed approved by the House Committee on March 14, 1996, were deemed approved by the Senate Committee on March 14, 1996, and were approved by IRRC on March 21, 1996, in accordance with section 5(c) of the Regulatory Review Act.

Findings

The Department finds that:

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

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

(3) The modifications that were made to these regulations in response to comments received do not enlarge the purpose of the proposed amendments published at 25 Pa.B. 4001.

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

Order

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

(1) The regulations of the Department, 7 Pa. Code Chapter 10, are amended by amending §§ 10.1 and 10.8; and by adding §§ 10.21—10.27 to read as set forth in Annex A.

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

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

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

CHARLES C. BROSIUS,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 1603 (April 6, 1996).)

Fiscal Note: 2-91. (1) General Fund; (2) Implementing Year 1995-96 is $15,000; (3) 1st Succeeding Year 1996-97 is $15,000; 2nd Succeeding Year 1997-98 is $11,250; 3rd Succeeding Year 1998-99 is $7,500; 4th Succeeding Year 1999-00 is $3,750; 5th Succeeding Year 2000-01 is $3,750; (4) FY 1994-95 $514,282; FY 1993-94 $520,891; FY 1992-93 $811,425; (7) General Government Operations; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART I. BUREAU OF ANIMAL INDUSTRY

CHAPTER 10. PSEUDORABIES DISEASE

GENERAL

§ 10.1. Definitions.

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

Advisory Committee—The State Pseudorabies Advisory Committee.

Animal—An equine or bovine animal, sheep, goat, pig, dog or cat and any wild animal under domestication and embryo, ova and semen.

Animal market—A place approved by the Department other than the farm of origin where animals are offered for sale, barter or trade, on a public, private or commercial basis.

Breeding swine—Sexually intact domestic swine 6 months of age or older, sexually intact feral swine of all ages, and sexually intact swine 5 months of age or younger selected for producing offspring.

Common ground—The ground, areas, building or equipment communally shared by any specific group of livestock.

Condemned—The status of a quarantined swine, swine product, conveyance or other quarantined article that has been determined by the Department as having been exposed to pseudorabies virus so that destruction of the swine, swine product, conveyance or other article is necessary to prevent the spread of pseudorabies.

Cooperative agreement—A document signed by the animal owner, attending veterinarian and Department regarding participation in a specific disease control program.

Department—The Department of Agriculture of the Commonwealth.

Eradication Program—The Pseudorabies Eradication State-Federal-Industry Program developed by USDA-APHIS and set forth in the Eradication Program standards.

Eradication Program standards—Those standards set forth in the USDA-APHIS publication bearing No. 91-55-018 and entitled "Pseudorabies Eradication State-Federal-Industry Program Standards, effective January 1, 1994," or any applicable subsequent revision or codification thereof.

Farm of origin—A farm where the swine were born or the farm of most recent residence for at least 90 consecutive days immediately before movement.

Feeder swine—Domestic swine other than breeding swine.

Garbage—Putrescible animal and vegetable waste resulting from the handling, preparation, cooking and consumption of foods, including animal carcasses and parts thereof.

Herd—A group of livestock maintained on common ground for a purpose, or two or more groups of livestock between which members are interchanged regardless of separation.

Indemnity—Payment to the owner for a portion of the appraised value of condemned swine, swine products and other condemned articles that are slaughtered or destroyed by order of the Department to eradicate or prevent the spread of pseudorabies virus.

Licensed pseudorabies vaccine—A pseudorabies virus vaccine produced under license from the USDA-APHIS under the Virus, Serum and Toxin Act (21 U.S.C.A. §§ 151—159).

Official pseudorabies epidemiologist—A veterinarian employed by the Department or USDA-APHIS and designated by the Department and USDA-APHIS to investigate and diagnose suspected pseudorabies in animals. An official pseudorabies epidemiologist shall have special training in the diagnosis and epidemiology of pseudorabies, and shall otherwise meet the responsibilities of an "official pseudorabies epidemiologist," as that term is defined in the Eradication Program standards.

Official pseudorabies herd-cleanup plan—A written plan to eliminate pseudorabies from a swine herd. The plan shall:

(i) Be developed by an official pseudorabies epidemiologist in consultation with the herd owner and his veterinary practitioner, if applicable.

(ii) Be mutually acceptable to those parties.

(iii) Be approved by the Department.

(iv) Otherwise be in conformance with the definition of "official pseudorabies herd-cleanup plan," as that term is defined in the Eradication Program standards.

Owner-shipper statement—A statement signed by the owner or shipper of swine which states the following:

(i) The number of swine to be moved.

(ii) Official identification (complete eartag, tattoo or backtag number) of each swine.

(iii) The points of origin and destination.

(iv) The consignor and consignee.

(v) Additional information required by 9 CFR Part 85 (relating to pseudorabies).

Permit—A document issued by the Department or USDA-APHIS authorizing and establishing conditions under which a quarantined animal may be moved interstate or intrastate.

Pseudorabies—A contagious, infectious and communicable disease of animals caused by herpesvirus suis, also known as Aujeszky's disease, mad itch or infectious bulbar paralysis, that has been declared by the Department to be a dangerous transmissible disease.

Pseudorabies exposed animal—An animal that has been in contact with a pseudorabies infected animal. The term does not include an animal, other than swine, that has not been in contact for 10-consecutive days with an animal with symptoms of pseudorabies.

Pseudorabies restricted animal market—A quarantined animal market designated by the Department to conduct sales of swine originating from premises under Pennsylvania pseudorabies quarantine.

Pseudorabies test—A test for the diagnosis of pseudorabies approved by the Department that is conducted in a laboratory approved by the Department or USDA-APHIS to perform pseudorabies tests.

Pseudorabies vaccine—A product containing pseudorabies virus antigens.

Qualified pseudorabies negative herd—A swine herd enrolled in and in compliance with the qualified pseudorabies negative swine herd plan as defined in 9 CFR Part 85.

Quarantined feedlot—Premises where pseudorabies infected or exposed swine are fed and from which swine are moved by permit or owner shipper statement directly to a recognized slaughter establishment or directly through no more than one pseudorabies restricted animal market and then directly to a recognized slaughter establishment.

Quarantined herd—A herd in which pseudorabies infected or exposed swine are bred, reared or fed, and from which swine are moved only by permit directly to a recognized slaughter establishment or directly through no more than one pseudorabies restricted animal market and then directly to a recognized slaughter establishment.

Recognized slaughter establishment—A slaughter establishment operated under the Federal Meat Inspection Act (21 U.S.C.A. §§ 601—623, 641—645, 661, 671—680 and 691).

Secretary—The Secretary of the Department.

Stage I—The initial preparation stage of the Eradication Program, during which the basic procedures to control and eradicate pseudorabies are developed. This designation means that the Commonwealth has met the Stage I qualification standard set forth in the Eradication Program standards.

Stage II—The control stage of the Eradication Program, during which the Department participates on a cooperative basis with the Veterinary Services branch of USDA-APHIS to determine which herds are infected with pseudorabies and to begin herd-cleanup. This designation means that the Commonwealth, or a particular county thereof if so designated, has met the Stage II qualification standard set forth in the Eradication Program standards.

Stage III—The mandatory herd-cleanup stage of the Eradication Program, during which the cleanup of infected herds becomes mandatory and the Department, in consultation with the Advisory Committee, establishes time limits for developing and completing official pseudorabies herd-cleanup plans. This designation means that the Commonwealth, or a particular county thereof if so designated, has met the Stage III qualification standard set forth in the Eradication Program standards.

Stage IV—The surveillance stage of the Eradication Program, during which the Department monitors the Commonwealth, or any county thereof bearing this designation, to determine that cleanup programs have been effective, that any pseudorabies cases are attributable to importation of swine from out-of-State and that these outbreaks are contained. This designation means that the Commonwealth, or a particular county thereof if so designated, has met the Stage IV qualification standard set forth in the Eradication Program standards.

Stage V—The pseudorabies-free stage of the Eradication Program, during which the Commonwealth, or any county thereof bearing this designation, has been free of pseudorabies for at least 12 months and continues surveillance for cases of that disease. This designation means that the Commonwealth, or a particular county thereof if so designated, has met the Stage V qualification standard set forth in the Eradication Program standards.

USDA-APHIS—The United States Department of Agriculture, Animal and Plant Health Inspection Services.

§ 10.8. Quarantine release.

(a) Swine quarantined for noncompliance with importation health requirements shall be released from quarantine only when all importation requirements are met.

(b) Swine quarantined in accordance with § 10.6(c) (relating to quarantine required) may be released from quarantine when the swine are determined by the Department to be pseudorabies test negative.

(c) A quarantine imposed upon a pseudorabies infected swine herd may be released when one of the following conditions is met:

(1) The swine have been removed from the premises, the premises is thoroughly cleaned and disinfected with USDA-APHIS approved disinfection procedures in accordance with 9 CFR 85.12 and 85.13 (relating to cleaning and disinfecting means of conveyance; and cleaning and disinfecting livestock markets and other facilities) and swine have not been on the premises for 30 days or more.

(2) Swine positive to an official test for pseudorabies have been removed from the premises and exposed swine which remain in the herd are negative to two official pseudorabies tests. The first test may not be less than 30 days after the last positive swine has been removed from the premises and the second test not less than 60 days after the first test.

(3) Swine positive to an official test for pseudorabies have been removed from the premises and three successive random sample tests of the breeding herd and three successive random sample tests of other swine on the premises that are at least 4 months of age are negative for pseudorabies. The first test shall be done at least 30 days after removal of all positive swine; the second test shall be done at least 90 days after the first test and the third test shall be done at least 90 days after the second test. The number of swine composing a random sample for quarantine removal under this section is:

No. of swine in herd	*No. of swine to be tested*
1—10	All
11—35	10
36 or more	30% or 30, whichever is less

A random sample shall include all age groups including boars.

(4) An official pseudorabies epidemiologist has reviewed the herd history and determined the herd is free

of pseudorabies and the swine herd meets quarantine release requirements in 9 CFR Part 85 (relating to pseudorabies).

(d) Animals, other than swine not exposed to an animal with symptoms of pseudorabies or a test positive animal for 10 days may be released from quarantine.

ERADICATION PROGRAM

§ 10.21. Plan requirements.

(a) *Development and implementation*. The Department will provide the owner of a pseudorabies swine herd with written notice of the time period within which an official pseudorabies herd-cleanup shall be developed and put into effect. This notice shall set forth the identity, address and telephone number of the official pseudorabies epidemiologist who shall consult with the herd owner in the development of the official herd-cleanup plan. The period within which the official pseudorabies herd-cleanup plan shall be developed and put into effect may be no longer than 60 days from the date upon which the owner receives the written notice. The herd owner shall promptly submit a proposed herd-cleanup plan to the Department.

(b) *Subject matter*. The Department may require that an official pseudorabies herd-cleanup plan address any activity relevant to the detection, containment or eradication of pseudorabies within the infected swine herd, as well as the surveillance and testing of the herd once it appears to be pseudorabies-free, regardless of whether the area of the Commonwealth within which the herd is located has been designated Stage I, Stage II, Stage III, Stage IV or Stage V.

(c) *Review, approval and modification*.

(1) An official pseudorabies herd-cleanup plan shall be approved by the Department prior to being put into effect.

(2) The Department will conduct its review of a proposed herd-cleanup plan within 15 days of receiving it, and will mail the Department's written approval, disapproval or request for additional information to the herd owner within that 15-day period.

(3) A written request by the Department for additional information shall toll the running of the 15-day period described in paragraph (2).

(4) Subsection (a) notwithstanding, if the Department fails to meet the 15-day deadline described in paragraphs (2) and (3), the development and implementation period described in subsection (a) will be extended by the number of days by which the Department exceeded its 15-day deadline.

(5) The Department may require that an official pseudorabies herd-cleanup plan be modified, and will provide the affected herd owner with advance notice of any required modifications in the manner set forth in this section.

§ 10.22. Objectives of plan.

(a) *General objective*. The general objective of an official pseudorabies herd-cleanup plan shall be to qualify all quarantined animals, premises and articles for release from quarantine.

(b) *Specific objectives*.

(1) The objective of an official pseudorabies herd-cleanup plan for a herd that is in an area of the Commonwealth designated Stage II shall be to prevent the further spread of pseudorabies within the herd and to take surveillance, sanitation and other measures toward eliminating pseudorabies from the herd.

(2) The objective of an official pseudorabies herd-cleanup plan for a herd that is in an area of this Commonwealth designated Stage III shall be to eliminate pseudorabies virus within the herd no later than 36 months after the Department approves the plan.

(3) The objective of an official pseudorabies herd-cleanup plan for a herd that is in an area of the Commonwealth designated Stage IV or Stage V shall be to eliminate pseudorabies virus in the herd no later than 6 months after the Department approves the plan.

§ 10.23. Monitoring the plan.

The Department will monitor the progress of an official pseudorabies herd-cleanup plan. This monitoring will be conducted at the Department's expense.

§ 10.24. Progress report.

The owner of a pseudorabies infected swine herd that is subject to an official pseudorabies herd-cleanup plan shall cooperate with the Department in the preparation by the Department of periodic progress reports. This cooperation includes making herd records available for inspection and presenting herd animals for physical inspection and testing by the Department or its authorized representatives during daylight hours or at some mutually-agreeable time.

§ 10.25. Consequences of noncompliance by herd owner.

If an owner of a pseudorabies infected swine herd has received the written notice described in § 10.21 (relating to plan requirements), yet fails to develop and put into effect an official pseudorabies herd-cleanup plan within the time period in that written notice, the Department may order mandatory depopulation of the herd, and may revoke or deny permits to move quarantined animals. The determination that an owner has failed to develop and put into effect an official pseudorabies herd-cleanup plan shall be made by the Department, which will consult with the Advisory Committee in accordance with § 10.27(f) (relating to Advisory Committee), in making this determination.

§ 10.26. Indemnity.

(a) The Department may offer indemnity if funds for indemnity are available, and may require the depopulation of a herd if it determines that one or more of the following apply:

(1) The herd owner has made a concerted effort to implement an official pseudorabies herd-cleanup plan, but has been unable to eliminate the pseudorabies virus from the herd within the applicable objective time in § 10.22(b) (relating to objectives of plan).

(2) Failure to depopulate the herd would unreasonably impede the progress or jeopardize the pseudorabies status of the Commonwealth under the Eradication Program.

(b) An indemnity payment need not equal and may not exceed the appraised value of the animal or article condemned by the Department.

§ 10.27. Advisory Committee.

(a) *Establishment*. The Secretary will appoint an Advisory Committee.

(b) *Duties*. It is the responsibility of the Advisory Committee to do the following:

(1) Inform and educate all segments of the Commonwealth's swine industry regarding pseudorabies eradication activities.

(2) Review the Eradication Program and make recommendations to the Department and to USDA-APHIS officials.

(3) Consult with the Department, as appropriate, on the subjects of Eradication Program budgeting, regulations, the use of vaccine and the Commonwealth's progress through the various stages of the Eradication Program.

(4) Maintain a liaison with other states and the National Pseudorabies Eradication Program through the National Pork Producers Council, the United States Animal Health Association, the Livestock Conservation Institute and USDA-APHIS.

(5) Perform the duties of a "State pseudorabies committee," as that term is defined in the Eradication Program standards.

(c) *Membership.* The Secretary or a designee will be a member of the Advisory Committee. The Secretary will consider nominations for the Advisory Committee and will appoint the following:

(1) At least two but no more than four USDA-APHIS personnel from among nominees submitted by USDA-APHIS.

(2) At least six but no more than eight representatives of the Commonwealth's swine industry from among nominees submitted by persons engaged in the Commonwealth's swine industry or groups representing that industry.

(3) Two representatives of the Pennsylvania State University Extension Service.

(4) At least one but not more than two veterinary practitioners from among nominees submitted by the Pennsylvania Veterinary Medical Association.

(d) *Terms.* Appointed members of the Advisory Committee shall serve 2-year terms, and may be appointed to successive terms.

(e) *Chairperson; meetings.* At its first meeting of each calendar year, the Advisory Committee shall elect a chairperson, who shall serve in that capacity until the first meeting of the following calendar year or until his membership on the Advisory Committee ends, whichever occurs first. The Secretary or the chairperson may call meetings of the Advisory Committee, when appropriate.

(f) *Consultation.*

(1) If practicable, the Secretary will call and conduct a meeting of the Advisory Committee to consult that body on matters relating to the discharge of the Advisory Committee's duties under § 10.25 (relating to consequences of noncompliance by herd owner) and subsection (b).

(2) The presence of a majority of the Advisory Committee members shall constitute a quorum of the Advisory Committee. The majority vote of a quorum shall be considered the advice of the Advisory Committee.

(3) If the Department, in its discretion, determines a need for immediate action without first consulting the Advisory Committee, it will take action and, within 30 days thereof, the Secretary will call a meeting of the Advisory Committee or inform and poll that body regarding the action taken.

(g) *Disbanding the Advisory Committee.* The Secretary may disband the Advisory Committee if the Eradication Program standards no longer require such a body as a condition of participation in the Eradication Program.

[Pa.B. Doc. No. 96-758. Filed for public inspection May 10, 1996, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Stream Redesignations; Pine and Elk Creeks

The Environmental Quality Board (Board) by this order adopts amendments to § 93.9m (relating to Drainage List M) as set forth in Annex A.

This order was adopted by the Board at its meeting of January 16, 1996.

A. *Effective Date*

This amendment is effective upon publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Edward R. Brezina, Chief, Division of Assessment and Standards, Bureau of Water Quality Management, 10th Floor, Rachel Carson State Office Building, P. O. Box 8465, 400 Market Street, Harrisburg, PA 17105-8465, (717) 787-9637 or William J. Gerlach, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

C. *Statutory Authority*

This amendment is made under the authority of the following acts: sections 5(b)(1) and 402 of The Clean Streams Law (act) (35 P. S. §§ 691.5(b)(1) and 691.402) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grant to the Board the authority to develop and adopt rules and regulations to implement the provisions of the act.

D. *Background of the Amendment*

The Commonwealth's Water Quality Standards, which are set forth in part in Chapter 93 (relating to water quality standards), implement the provisions of sections 5 and 402 of the act and section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313). Water quality standards are in-stream water quality goals which are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution.

The Department of Environmental Protection (Department) considers waterbodies for special protection status and redesignation in its ongoing review of water quality standards. In general, special protection waters shall be maintained at their existing quality, and wastewater treatment requirements shall comply with § 95.1. Candidates may be identified by the Department based on routine waterbody investigations. Requests for consideration may also be initiated by other agencies, such as the Fish and Boat Commission, and the general public through a rulemaking petition to the Board.

The Pine and Elk Creek basins were evaluated in response to a petition submitted to the Board by the Penns Valley Conservation Association. A copy of the Department's evaluation report was forwarded to the petitioner on April 8, 1994, in accordance with § 23.7 (relating to response to report). In response to comments received from the petitioner on May 8, 1994, the Department conducted additional review and evaluation of data. Based upon the data collected in these surveys and information gathered from Department records and other sources, the Board has made the designations described in Section F of this Preamble.

Copies of the Department's aquatic survey evaluation report referred to in this Preamble are available from Edward Brezina whose address and telephone number are listed in Section B of this Preamble.

In reviewing whether waterbodies are subject to the Special Protection Waters Program, and meet the definitions of "High Quality Waters" or "Exceptional Value Waters" in § 93.3 (relating to protected water uses), the Department is utilizing guidance titled "Special Protection Waters Selection Criteria." This guidance appears in the Department's "Special Protection Waters Implementation Handbook."

E. *Summary of Comments and Responses on the Proposed Rulemaking*

Notice of the proposed rulemaking was published at 24 Pa.B. 5981 (December 3, 1994) and included provisions for a public hearing, which was held on January 25, 1995, at the Penns Valley High School, and a 65-day public comment period which concluded on February 6, 1995.

The Board received comments from 4,763 commentators during the public comment period on the proposed redesignations, which included 75 witnesses presenting testimony at the public hearing. Individually composed written comments were received from 688 commentators, while another 4,075 written comments were received as one of 21 different form letters which supported the proposed redesignations of Pine and Elk Creek basins.

The comments and testimony and the Department's responses are summarized as follows:

A majority of the written comments and oral testimony received by the Board expressed support for an Exceptional Value (EV) waters designation for Pine and Elk Creek basins. A smaller portion of the commentators submitted comments and testimony in opposition to redesignating the basins as EV Waters. Eight of the witnesses presented opposing testimony during the public hearing, while 68 of the witnesses presented testimony which supports the EV Waters designation. Some of the witnesses also submitted written comments during the public comment period.

Witnesses at the public hearing who presented testimony to support the proposed redesignation of Pine and Elk Creeks to EV described various recreational and ecological features and the regional economic importance of the Pine and Elk Creek basins. Most of the witnesses providing supportive testimony also suggested that the entire Pine Creek and Elk Creek basins, not just portions of the basins, should be redesignated as EV Waters.

The Department recommendations are based on the results of the stream evaluations and comparison to the Special Protection Selection Criteria and applicable regulatory definitions. The segmentation of the basins' proposed designations as High-Quality-Cold Water Fishes (HQ-CWF) and EV Waters is the result of differences observed in the geomorphic characteristics and biotic communities throughout their course and the presence of the backward sedge, which is a rare and endangered semi-aquatic plant.

Some commentators suggested that the Department recommended the current stream redesignation proposal to support designating the ConStone reserves as unsuitable for mining.

The Department did not recommend the stream redesignation to support designating portions of the limestone resources as unsuitable for mining. The Areas Unsuitable For Surface Mining decisions are separate and distinct from the Special Protection Waters redesignation proceedings considered by the Board.

Some of those opposing the redesignations were concerned about an alleged economic impact on communities which they claim result in decreased land values, increased taxes and additional planning and engineering fees associated with revisions to existing sewage and land use planning modules or increased costs associated with construction of new water and wastewater facilities or upgrading existing facilities. Others were concerned that the EV waters designation would restrict the use of their land and constitute a taking of property.

The Department is not aware of any municipalities having raised taxes or of land values decreasing as a result of a stream being designated as EV waters. There have been indications that EV waters designations may, in fact, actually increase property values. It is possible that municipalities could experience increased costs due to additional planning and engineering fees associated with revisions to existing sewage and land use planning modules. The Department cannot accurately predict or anticipate all costs or expenditures directly associated with the redesignations since such decisions are very case-specific. The EV Waters designation does not prohibit property owners from conducting existing activities or other new activities that do not result in any measurable change in existing water quality in stream segments designated EV. Moreover, it is clear that the redesignations do not constitute a compensable taking of property.

The farming community expressed concerns about what regulatory requirements would need to be met to satisfy the EV water designations. They and others felt that they should be better informed and that any proposal should be better circulated among the various groups it may effect. Education (on the issues) is necessary to better understand each other's problems.

The Department does not propose any new restrictions on the existing farming operations within the basin because of the EV Waters designation. Farmers are already required to use best management practices and comply with the policies and regulations contained in Chapters 101, 102 and 105 (relating to special water pollution regulations; erosion control; and dam safety and waterway management). There should be no additional cost to the local farming community as a result of this redesignation.

In addition, the Department participated in a public meeting on June 10, 1993, at the Penns Valley High School to specifically address the public's concerns and questions on the Pine and Elk Creeks redesignation. The Department has also conducted informational meetings and training in general about the Special Protection Waters Program and the Department's Implementation Handbook for various municipal planning organizations, conservation districts and other interested groups. The

meetings were attended by many local government officials, developers, landowners, farmers, farming leaders and citizens with a general interest in the program or its implementation, or both.

Several commentators suggested that the petitioner's and the Department's data did not fully support the proposed redesignations.

The petitioner provided additional information and the Department collected additional water quality data to better document water quality conditions. The Department has incorporated discussion of the information and data, which further supports the proposed redesignations, into revisions of the evaluation report that is available for review.

Some commentators believe that an EV designation is not necessary to protect the backward sedge, the Green Drake hatch and other sensitive species indigenous to the habitat because they are thriving under the current CWF designation.

The Department agrees that the existing water quality appears to be protecting sensitive species. However, since CWF or even HQ-CWF, with social or economic justification (SEJ), allows for a lowering of existing quality, an EV designation (which does not allow SEJ) is necessary to maintain the existing water quality which is supporting the current ecosystem in the watershed.

Some commentators were concerned about how the EV designation will affect the property owners that currently have onsite septic systems when public sewer is made available.

The Department's evaluation of the Pine and Elk Creek watershed EV designation takes into consideration all existing activities as contributing to the overall, existing water quality, which includes the presence of onlot sewage systems. The proposed upgrade to EV Waters does not impact upon the use of these onlot systems as long as these systems are not malfunctioning or degrading existing water quality.

Some commentators believed the proposed rule to redesignate these streams to EV waters was a misuse of the rulemaking process and was not in the public interest.

The Department and Board have followed all established procedures and policies for processing petitions and rulemakings. This proposed rulemaking and public notice also included provisions for an extended public comment period, 65 days, and a public hearing. The final rule reflects the appropriate designation for each segment of the basin and is, therefore, in the public interest.

The Independent Regulatory Review Commission (IRRC) expressed concern that the criteria outlined in the "Special Protection Waters Implementation Handbook" are being applied as regulations. IRRC requested that the Department explain exactly how it applies the standards in determining whether to make the recommendation advocated in a petition. In IRRC's view, if the criteria are generic standards which form the basis of a uniform, Statewide policy that is ministerially applied in all cases, rather than on a case-by-case basis, they should be promulgated as regulations.

In addition, the Department must assess the impact and provide supporting justification if a change in designation will result in new regulatory requirements.

The Department is not applying the Special Protection Selection Criteria as a regulation. The Selection Criteria policy constitutes the Department's interpretation of the regulatory definitions of "High Quality Waters" and "Exceptional Value Waters" in § 93.3. The selection criteria are part of an implementation guidance used by the Department to evaluate candidate streams for inclusion into the Special Protection program. There are portions of this guidance that are very case or site-specific and require analysis that is believed to be germane to only the candidate stream and should not be applied on a Statewide basis. The most notable feature of the evaluation is the comparison of the candidate stream selection criteria results to a reference stream's results. In order to have an appropriate comparison, selection of the reference stream is very important, and case-specific.

In order to assess the impact of the proposed designation, the Department has provided a brief financial impact statement as part of this Preamble, and developed a regulatory analysis form as required by the Regulatory Review Act (71 P. S. §§ 745.1—745.15).

F. *Summary of Changes to the Proposed Rulemaking*

There are no changes made to the rulemaking proposal which was originally accepted by the Board and published in the *Pennsylvania Bulletin*.

G. *Benefits, Costs and Paperwork*

Executive Order 1982-2 requires a statement of the benefits of a recommended regulation, as well as the costs which may be imposed. It also requires a statement of the need for, and a description of, any forms, reports or other paperwork required as a result of the recommended amendments. These will be described in separate paragraphs for the Commonwealth, its political subdivisions and the private sector.

1. *Commonwealth*—The amendment should have no fiscal or paperwork impact on the Commonwealth.

2. *Political Subdivisions*—Generally, the amendment should have no fiscal or paperwork impact on political subdivisions. Except as noted in paragraph 3 of this Preamble, no costs will be imposed directly upon local government by these changes. However, indirect costs may result from revisions to Act 537 Sewage Facilities Plans due to consultant and other administrative fees. Political subdivisions which have current or proposed sewage treatment plants in the basin may experience changes in cost as noted this Preamble in discussion of impacts on the private sector.

3. *Private Sector*—Persons proposing activities or projects which result in discharges to streams must comply with the regulatory requirements relating to current stream designations. These persons could be adversely affected by the recommended changes that increase the level of protection provided to a stream, if they expand their discharge, or add a new discharge point, since they may need to provide a higher level of treatment for their new or expanded discharge. These increased costs take the form of higher engineering, construction or operating costs for wastewater treatment facilities. Treatment costs are site-specific and may depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs. In addition, nonpoint source controls necessary to protect HQ and EV waters generally add to the cost of planning and development for new or expanded nonpoint source discharges.

Overall, the citizens of this Commonwealth will benefit from these recommended designations because they will provide, in some cases, an added degree of protection for

important public natural resources and, in all cases, the most appropriate degree of protection for each stream in question.

H. *Sunset Date*

Water Quality Standards regulations are reviewed every 3 years as part of the Department's Triennial Water Quality Standards Review mandated by section 303 of the Federal Clean Water Act; therefore, no sunset date has been set.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of this proposed amendment on November 14, 1994, to IRRC and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments, as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC and the public. These comments are addressed in the comment and response document and Section E of this Preamble. The Committees did not provide comments on the proposed rulemaking.

This final-form regulation was deemed approved by the Committees on March 25, 1996, and was approved by IRRC on April 3, 1996, in accordance with section 5(c) of the Regulatory Review Act.

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 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 amendment does not enlarge the purpose of the proposal published at 24 Pa.B. 5981.

(4) This amendment is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

K. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 93, are amended by amending § 93.9m to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(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 and review as to the legality and form as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the House and Senate Environmental Resources and Energy Committees as required by the Regulatory Review Act.

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

(e) This order shall take effect immediately.

JAMES M. SEIF,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 1885 (April 20, 1996).)

Fiscal Note: Fiscal Note 7-284 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

§ 93.9m. Drainage List M

Susquehanna River Basin in Pennsylvania
Susquehanna River

Stream	*Zone*	*County*	*Water Uses Protected*	*Exceptions To Specific Criteria*
	* * * * *			
2—Penns Creek	Basin, Source to Pine Creek	Centre	CWF	None
3—Pine Creek	Basin, Source to Downstream Boundary of Hook Natural Area	Centre	EV	None
3—Pine Creek	Basin, Downstream Boundary of Hook Natural Area to Stony Run	Centre	HQ-CWF	None
4—Stony Run	Basin	Centre	EV	None
3—Pine Creek	Basin, Stony Run to PA Route 45 Bridge	Centre	HQ-CWF	None
3—Pine Creek	Basin, PA Route 45 to Elk Creek	Centre	EV	None

Stream	*Zone*	*County*	*Water Uses Protected*	*Exceptions To Specific Criteria*
4—Elk Creek	Basin, Source to Railroad Creek	Centre	HQ-CWF	None
5—Railroad Creek	Basin	Centre	EV	None
4—Elk Creek	Basin, Railroad Creek to SR 1012 at RM 5.9	Centre	HQ-CWF	None
4—Elk Creek	Basin, SR 1012 Bridge to Mouth	Centre	EV	None
3—Pine Creek	Basin, Elk Creek to Mouth	Centre	EV	None
2—Penns Creek	Basin, Pine Creek to Cherry Run	Union	HQ-CWF	None

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[Pa.B. Doc. No. 96-759. Filed for public inspection May 10, 1996, 9:00 a.m.]

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 89]

Approval of Life, Accident and Health Insurance Medicare Supplement Insurance Minimum Standards

The Insurance Department (Department), Accident and Health Bureau, by this order, adopts amendments to Chapter 89, Subchapter K (relating to Medicare Supplement Insurance Minimum Standards) in particular, §§ 89.771, 89.772, 89.775, 89.776, 89.778, 89.780, 89.783 and 89.784 and Appendices E and I as set forth in Annex A. The amendments establish and detail the minimum requirements for the approval of Medicare supplemental policies for issuance and sale in this Commonwealth. The amendments bring the Department's regulations for the approval of Medicare supplemental policies into compliance with the minimum Federal statutory requirements of the Social Security Act (act) (42 U.S.C.A. § 1395ss). Sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) provides the Insurance Commissioner with the authority and duty to promulgate regulations governing the enforcement of the laws relating to insurance. This is a final rulemaking with proposed rulemaking omitted in accordance with sections 204(2) and (3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(2) and (3)), known as the Commonwealth Documents Law (CDL) and the regulation thereunder, 1 Pa. Code § 7.4.

Section 204(2) of the CDL provides that notice of proposed rulemaking may be omitted when all persons subject to the administrative regulation are named therein and have been given actual notice. Section 204(3) of the CDL provides that notice of proposed rulemaking may be omitted when the agency for good cause finds that public notice of its intention to amend an administrative regulation is, in the circumstances, impracticable or unnecessary. In order to comply with the Federal statutory minimum requirements for Medicare supplemental policies, and because of both the time constraints associated with the adoption of the Federal minimum standards and the notice given to insurers advising them of the upcoming changes, proposed rulemaking is properly omitted under section 204(2) and (3) of the CDL.

The Social Security Act Amendments of 1994, Pub. L. No. 103-432, Oct. 31, 1994, 108 Stat. 4398 (42 U.S.C.A. § 1395ss(a—t)) (SSAA-94) revised the Federal minimum standards for Medicare supplemental policies. The Department's amendment of its regulations to adopt the changes is mandated by SSAA-94 (42 U.S.C.A. § 1395ss(p)(1)). More specifically, section 171(m) of SSAA-94, sets out as a note titled State Regulatory Programs under the Historical and Statutory Notes (Statutory Notes) following 42 U.S.C.A. § 1395ss(t), which establishes a timetable which requires the Department to adopt the standards by April 28, 1996.

With certain limited exceptions, interested parties have been required to comply with the revised Federal law since its enactment on October 31, 1994. On September 29, 1995, the Department's revised regulations were transmitted to the Insurance Federation of Pennsylvania, Life/Health Steering Committee. Comments were received, considered and responded to by the Department. Insurers providing Medicare supplemental insurance in this Commonwealth also received notice from the Insurance Commissioner of the upcoming changes to the Department's regulations by letter dated March 6, 1996. Public comment will not change the Federal statutory minimum requirements. Accordingly, the Department finds that notice of proposed rulemaking is, under the circumstances, unnecessary and impracticable and may therefore be omitted for this additional reason.

Purpose

In 1980, Congress enacted the first Federal legislation dealing with Medicare supplemental insurance. In that legislation, as well as in each subsequent amendment, Congress gave the National Association of Insurance Commissioners (NAIC) the opportunity to establish standards to be incorporated by statutory reference as Federal requirements. In the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) in particular section 4351, Simplification of Medigap Policies, and section 4353, Enforcement of Standards, 42 U.S.C.A. § 1395ss(p), the previously voluntary Federal certification program was replaced by a mandatory program, and the NAIC model act and regulation became the minimum Federal standards for state laws and regulations related to the issuance and sale of Medicare supplemental insurance policies.

In similar fashion, the present amendments to Subchapter K are required by SSAA-94, which made changes in the Federal minimum statutory requirements regulating Medicare supplemental policies. Further, SSAA-94, 42 U.S.C.A. § 1395ss(p)(1)(A), (C), and section 171(m) of the act required the NAIC to modify its Medicare Supplement Insurance Minimum Standards Model Act and/or Model Regulation (model regulation) within 6 months and required the Department within 1 year to modify its regulations to incorporate the NAIC's

revisions. The NAIC membership adopted revisions to its model regulation effective April 28, 1995. Therefore, the Department was required to modify its regulations by April 28, 1996. By this rulemaking, the Department adopts the NAIC's revisions to its model regulations in order to comply with the current minimum requirements of the act.

The fundamental purpose of these amendments is to provide for the reasonable standardization of coverage; to simplify terms and benefits of Medicare supplemental policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosure in the sale of accident and sickness insurance coverages to persons eligible for Medicare.

Explanation of Regulatory Requirements

Several revisions of the Department's regulations are worthy of special note. Briefly, these are:

1. Section 89.772 (relating to definitions)—After December 31, 1995, new enrollments in Health Care Prepayment Plans (HCPPs) under section 1833 of the act (42 U.S.C.A. § 1395l), will no longer be exempt from the definition of a "Medicare Supplement Policy" unless these plans are employer or union based. Thereafter, nonexempt HCPPs are to be held to all Medicare supplement requirements, including standardization and loss ratios.

2. Section 89.776 (relating to benefit standards for policies or certificates issued or delivered on or after July 30, 1992)—The language in paragraph (1)(vii)(A) requiring refund of premiums for retroactively-determined periods of Medicaid eligibility has been stricken. This change ensures that refunds of premiums will not adversely affect beneficiaries' retroactive Medicaid eligibility.

3. Section 89.778 (relating to open enrollment)—Effective January 1, 1995, a 6-month open enrollment period is extended at age 65 to all those individuals who are both 65 and enrolled in Medicare Part B, regardless of previous enrollment.

4. Section 89.780 (relating to loss ratio standards and refund or credit of premium)—The amendment clarifies that insurers will not be required to meet the lifetime loss ratios set forth in § 89.780(a) of 65% for individual business and 75% for group business for policies issued prior to December 1, 1990; instead, the insurers must meet the originally-filed anticipated lifetime loss ratio. Insurers are required to meet the ratio in § 89.780(a) for experience accumulating after December 1, 1990. Insurers whose business does not meet the applicable loss ratio may be required to refund a portion of the premium paid or give a credit toward premium due.

In addition, for any policies issued prior to November 5, 1991, insurers were not previously required to make refund calculations and submit them to the Department. Under the amendment to the regulation, insurers will be required to calculate and submit refund calculations to the Department for policies issued before November 5, 1991.

5. Section 89.783 (relating to required disclosure provisions)—General Rules, subsection (a)(6) removes the "other than incidentally" qualifier to hospital or medical expense indemnity products.

In addition, SSAA-94 now permits, with proper disclosure, the sale of health insurance policies that duplicate Medicare benefits. Thus, the notice requirement for non-Medicare supplement products, subsection (d) removes exceptions for basic, catastrophic, major medical and single premium nonrenewable policies. Now, the products must disclose the extent to which they duplicate Medicare through the use of the appropriate disclosure statement. The form disclosure statements in Appendix I disclose the extent to which a policy duplicates any of the beneficiary's Medicare benefits.

6. Section 89.784 (relating to requirements for application forms and replacement coverage)—With respect to applications, both the "Statements" and "Questions" sections in subsection (a) have been changed to provide sufficient information to companies to assist them in following the SSAA-94 revisions to the anti-duplication provisions.

The statement required on the application form advises consumers to consider whether it would be beneficial to have additional health insurance.

The revised Federal law continues the prohibition of sales of Medicare supplemental policies to Medicaid beneficiaries; however, the revised statute allows the sale of certain policies to persons who meet certain resource criteria. The revised "Questions" provide necessary information to insurers regarding an applicant's qualification for Medicaid.

With respect to replacement coverage, the amendment recognizes the continuing prohibition against insurers selling duplicate Medicare supplement policies and the required replacement notice in subsection (e) advises consumers purchasing a replacement policy to terminate present Medicare supplement coverage.

Affected Parties

These amendments apply to insurers who market Medicare supplemental insurance policies.

Fiscal Impact

The Department has determined that the amendments will have no significant adverse fiscal impact on the Commonwealth or the insurers that offer Medicare supplemental policies.

Paperwork

Insurers may experience an increase in paperwork due to the amendment of existing policy forms. The Department is not expected to experience any significant increase in paperwork.

Effective/Sunset Date

These amendments will become effective upon publication in the *Pennsylvania Bulletin*. Under SSAA-94, the Department was required to incorporate the amendments into its regulations by April 28, 1996. (42 U.S.C.A. § 1395(p)(1)(A), (C) and section 171(m) of the act set forth in the Statutory Notes.)

A sunset date is inapplicable because the requirements of the regulations are mandated by Federal law.

Contact Person

Questions or comments regarding the amendments may be addressed in writing to LeMar Myers, Supervisor, Accident and Health Bureau, 1311 Strawberry Square, Harrisburg, PA 17120, (717) 783-2107.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the amendments with proposed rulemaking omitted on March

6, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. On the same date, the amendments were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-1—732-101). In accordance with section 5(c) of the Regulatory Review Act, the amendments were deemed approved by the House Insurance Committee on March 26, 1996, and deemed approved by the Senate Banking and Insurance Committee on March 26, 1996. IRRC met on April 3, 1996, and approved the amendments.

Findings

The Insurance Commissioner finds that:

(1) There is good cause to forego public notice of the intention to amend Chapter 89, Subchapter K because all persons subject to the administrative regulations are named therein and have been given actual notice and notice is impracticable and unnecessary under section 204(2) and (3) of the CDL.

(2) The amendments to Chapter 89 are required by the SSAA of 1994 to bring the Department's regulations into compliance with Federal minimum requirements for Medicare supplemental policies; interested parties have received notice of the changes to the minimum requirements through the revised Federal law and notice from the Insurance Commissioner and, with certain exceptions, have been required to comply with the revised law since its enactment on October 31, 1994. Public comment cannot change the minimum Federal requirements. Under the timetable established by the SSAA, the Department was required to amend its regulations by April 28, 1996; consequently, it is necessary to amend these regulations as expeditiously as possible.

Order

The Insurance Commissioner, acting under the authority in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 hereby orders that:

(a) The regulations of the Department, 31 Pa. Code Chapter 89, are amended by amending §§ 89.771, 89.772, 89.775, 89.776, 89.778, 89.780, 89.783 and 89.784, and Appendices E and I to read as set forth in Annex A with ellipses referring to the existing text of the regulations.

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

(c) The Department 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 its publication in the *Pennsylvania Bulletin*.

LINDA S. KAISER,
Insurance Commissioner

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 1885 (April 20, 1996).)

Fiscal Note: 11-133. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART IV. LIFE INSURANCE

CHAPTER 89. APPROVAL OF LIFE, ACCIDENT AND HEALTH INSURANCE

Subchapter K. MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS

§ 89.771. Applicability and scope.

(a) Except as otherwise specifically provided in §§ 89.775, 89.779, 89.780, 89.783 and 89.788, this subchapter applies to:

(1) Medicare supplement policies delivered or issued for delivery in this Commonwealth on or after July 30, 1992.

(2) Certificates issued under group Medicare supplement policies which certificates have been delivered or issued for delivery in this Commonwealth.

(b) This subchapter does not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employes or former employes, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

§ 89.772. Definitions.

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

Applicant—

(i) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits.

(ii) In the case of a group Medicare supplement policy, the proposed certificateholder.

Certificate—A certificate delivered or issued for delivery in this Commonwealth under a group Medicare supplement policy.

Certificate form—The form on which the certificate is delivered or issued for delivery by the issuer.

Commissioner—The Insurance Commissioner of the Commonwealth.

Issuer—The term includes insurance companies, fraternal benefit societies and nonprofit corporations subject to 40 Pa.C.S. Chapters 61 and 63 (relating to hospital plan corporations; and professional health services plan corporations) and other entities delivering or issuing for delivery in this Commonwealth Medicare supplement policies or certificates.

Medicare—The program established by The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 (42 U.S.C.A. §§ 1395—1395b-4) as then constituted or later amended.

Medicare supplement policy—A group or individual policy of accident and sickness insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued under a contract under section 1876 of the Social Security Act (42 U.S.C.A. § 1395mm) or an issued policy under a demonstration project specified in 42 U.S.C.A. § 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

Policy form—The form on which the policy is delivered or issued for delivery by the issuer.

§ 89.775. Minimum benefit standards for policies or certificates issued for delivery prior to July 30, 1992.

A policy or certificate may not be advertised, solicited or issued for delivery in this Commonwealth as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are consistent with this subchapter.

(1) *General standards.* The following standards apply to Medicare supplement policies and certificates and are in addition to the other requirements of this subchapter:

* * * * *

(v) *Restrictions on termination of policies and certificates.*

* * * * *

(D) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy will not result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced.

* * * * *

§ 89.776. Benefits standards for policies or certificates issued or delivered on or after July 30, 1992.

The following standards are applicable to Medicare supplement policies or certificates delivered or issued for delivery in this Commonwealth on or after July 30, 1992. A policy or certificate may not be advertised, solicited, delivered or issued for delivery in this Commonwealth as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(1) *General standards.* The following standards apply to Medicare supplement policies and certificates and are in addition to other requirements of this subchapter:

* * * * *

(v) *Cancellation or nonrenewal of policy.* Each Medicare supplement policy shall be guaranteed renewable.

* * * * *

(E) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to persons covered under the old group policy on its date of termination. Coverage under the new policy may not result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced.

* * * * *

(vii) *Suspension by policyholder.*

(A) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period (not to exceed 24 months) in which the policyholder or certificateholder has applied for and is determined to be entitled to Medical Assistance under Title XIX of the Social Security Act (42 U.S.C.A. §§ 1396—1396u), but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within 90 days after the date the individual becomes entitled to this assistance.

* * * * *

(3) *Standards for additional benefits.* The following additional benefits shall be included in Medicare Supplement Benefit Plans B, C, D, E, F, G, H, I and J only as provided by § 89.777.

* * * * *

(x) *At-home recovery benefit.* Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(A) For purposes of this benefit, the following definitions apply:

* * * * *

(II) *Care provider.* A qualified or licensed home health aid or homemaker, personal care aid or nurse provided through a licensed home health care agency or referred by a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

* * * * *

§ 89.778. Open enrollment.

(a) An issuer may not deny or condition the issuance or effectiveness of a Medicare supplement policy or certificate available for sale in this Commonwealth, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the 6-month period beginning with the first day of the first month in which an individual is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

(b) Except as provided in § 89.789, subsection (a) will not be construed as preventing the exclusion of benefits under a policy, during the first 6 months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the 6 months before the coverage became effective.

§ 89.780. Loss ratio standards and refund or credit of premium.

(a) *Loss ratio standards.*

* * * * *

(3) For policies issued prior to July 30, 1992, expected claims in relation to premiums shall meet the following:

(i) The originally filed anticipated loss ratio when combined with the actual experience since inception.

(ii) The appropriate loss ratio requirement from paragraph (1) when combined with actual experience beginning with May 11, 1996, to date.

(iii) The appropriate loss ratio requirement from paragraph (1) over the entire future period for which the rates are computed to provide coverage.

(b) *Refund or credit calculation.*

(1) An issuer shall collect and file with the Commissioner on May 31 of each year the data contained in the

applicable reporting form contained in Appendix E for each type in a standard Medicare supplement benefit plan.

(2) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a Statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) For the purposes of this section, for policies or certificates issued prior to July 30, 1992, the issuer shall make the refund or credit calculation separately for all individual policies combined and all other group policies combined for experience after May 11, 1996. The first report is due by May 31, 1998.

(4) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. This refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but it may not be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

* * * * *

§ 89.783. Required disclosure provisions.

(a) *General rules.*

* * * * *

(6) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to a person eligible for Medicare, shall provide to these applicants a *Guide to Health Insurance for People with Medicare* in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than 12 point type. Delivery of the *Guide* shall be made whether or not these policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this subchapter. Except in the case of direct response issuers, delivery of the *Guide* shall be made to the applicant at the time application and acknowledgment of receipt of the *Guide* shall be obtained by the issuers. Direct response issuers shall deliver the *Guide* to the applicant upon request but not later than at the time the policy is delivered.

(7) For the purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character and line spacing.

(8) Medicare supplement policies or certificates shall be issued to insureds by direct mailing from the insurer and not issued through an agent or broker to these insureds. Except in the case of a direct response insurer, a copy of the completed application shall be a part of or affixed to the policy or certificate issued to the insured.

* * * * *

(d) *Notice regarding policies or certificates which are not Medicare supplement policies.*

(1) An accident and sickness insurance policy or certificate, other than a Medicare supplement policy; a policy issued under a contract under section 1876 of the Social Security Act (42 U.S.C.A. § 1395mm), disability income policy; or other policy identified in § 89.771(b) (relating to applicability and scope) issued for delivery in this Commonwealth to persons eligible for Medicare, shall notify insured under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds.

The notice shall be at least 12 point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in subsection (d)(1) shall disclose, using the applicable statement in Appendix I (relating to Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries that Duplicate Medicare), the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

§ 89.784. Requirements for application forms and replacement coverage.

(a) Application forms shall include the following questions designed to elicit information as to whether, as of the date of application, the applicant has another Medicare supplement or other health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing these questions and statements may be used.

(Statements)

(1) You do not need more than one Medicare supplement policy.

(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(3) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(4) The benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstituted if requested within 90 days of losing Medicaid eligibility.

(5) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

(Questions)

"To the best of your knowledge:

(1) Do you have another Medicare supplement policy or certificate in force?

(a) If so, with which company?

(b) If so, do you intend to replace your current Medicare supplement policy with this policy (certificate)?

(2) Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?

(a) If so, with which company?

(b) What kind of policy?

(3) Are you covered for Medical Assistance through the state Medicaid program?

(a) As a Specified Low Income Medicare Beneficiary (SLMB)?

(b) As a Qualified Medicare Beneficiary (QMB)?

(c) For other Medicaid medical benefits?

(d) Agents shall list other health insurance policies they have sold to the applicant.

* * * * *

(e) The notice required by subsection (d) for an issuer shall be provided in substantially the following form in no less than twelve (12) point type:

* * * * *

You should review this coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

* * * * *

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement coverage because you intend to terminate your existing Medicare supplement coverage. The replacement policy is being purchased for the following reason(s) (check one):

* * * * *

APPENDIX E

MEDICARE SUPPLEMENT REFUND CALCULATION FORM FOR CALENDAR YEAR _____

TYPE[1] _____ SMSBP[2] _____

For the State of _____

Company Name _____

NAIC Group Code _____ NAIC Company Code _____

Person Completing This Exhibit _____

Title _____ Telephone Number _____

line		*(a) Earned Premium*[3]	*(b) Incurred Claims*[4]
1	Current Year's Experience		
	a. Total (all policy years)		
	b. Current year's issues[5]		
	c. Net (for reporting purposes = 1a − 1b)		
2	Past Years' Experience (All Policy Years)		
3	Total Experience (Net Current Year + Past Years' Experience)		
4	Refunds last year (Excluding Interest)		
5	Previous Since Inception (Excluding Interest)		
6	Refunds Since Inception (Excluding Interest)		
7	Benchmark Ratio Since Inception (SEE WORKSHEET FOR RATIO 1)		
8	Experienced Ratio Since Inception		
	Total Actual Incurred Claims (line 3, col b = Ratio 2		
	Tot. Earned Prem. (line 3, col a) − Refunds Since Inception (line 6)		
9	Life Years Exposed Since Inception _____		

If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.

10 Tolerance Permitted (obtained from credibility table)

MEDICARE SUPPLEMENT REFUND CALCULATION FORM FOR CALENDAR YEAR _____

TYPE[1] _____ SMSBP[2] _____

For the State of _____

Company Name _____

NAIC Group Code _____ NAIC Company Code _____

11 Adjustment to Incurred Claims for Credibility
Ratio 3 = Ratio 2 + Tolerance

If Ratio[3] is more than benchmark ratio (ratio 1), a refund or credit to premium is not required.

If Ratio 3 is less than the benchmark ratio, then proceed.

12 Adjusted Incurred Claims =
(Tot. Earned Premiums (line 3, col a) − Refunds Since Inception (line 6)) × Ratio 3 (line 11)

13 Refund = Total Earned Premiums (line 3, col a) − Refunds Since Inception (line 6)

$$\frac{\text{Adjusted Incurred Claims (line 12)}}{\text{Benchmark Ratio (Ratio 1)}}$$

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premium to be used must be attached to this form.

Medicare Supplement Credibility Table

Life Years Exposed Since Inception	*Tolerance*
10,000 +	0.0%
5,000—9,999	5.0%
2,500—4,999	7.5%
1,000—2,499	10.0%
500—999	15.0%

If less than 500, no credibility.

MEDICARE SUPPLEMENT REFUND CALCULATION FORM FOR CALENDAR YEAR _____

TYPE[1] _____ SMSBP[2] _____

For the State of _____

Company Name _____

NAIC Group Code _____ NAIC Company Code _____

1 Individual and Group only.
2 "SMSBP" = Standardized Medicare Supplement Benefit Plan—Use "P" for prestandardized plans.
3 Includes model loadings and fees charged.
4 Excludes Active Life Reserves.
5 This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios"

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

_____
Signature

_____
Name—Please Type

_____
Title

_____
Date

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES FOR CALENDAR YEAR _____

TYPE[1] _____ SMSBP[2] _____

For the State of _____

Company Name _____

NAIC Group Code _____ NAIC Company Code _____

Address _____

Person Completing This Exhibit _____

Title _____ Telephone Number _____

(a)[3] Year	(b)[4] Earned Premium	(c) Factor	(d) (b) × (c)	(e) Cumulative Loss Ratio	(f) (d) × (e)	(g) Factor	(h) (b) × (g)	(i) Cumulative Loss Ratio	(j) (h) × (i)	(o)[5] Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.4
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		1.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15		4.175		0.493		8.684		0.725		0.77
Total:		(k):		(l):		(m):		(n):		

Benchmark Ratio Since Inception: (l + n)/(k + m):

1: Individual and group only
2: "SMSBP" = Standardized Medicare Supplement Benefit Plan.—Use "P" for prestandardized plans.
3: Year 1 is the current calendar year − 1
Year 2 is the current calendar year − 2 (etc.)
(Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)
4: For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.
5: These loss ratios are not explicitly used in computing the benchmark loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown for informational purposes only.

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR GROUP POLICIES FOR CALENDAR YEAR _____

TYPE[1] _____ SMSBP[2] _____

For the State of _____

Company Name _____

NAIC Group Code _____ NAIC Company Code _____

Address _____

Person Completing This Exhibit _____

Title _____ Telephone Number _____

(a)[3] Year	(b)[4] Earned Premium	(c) Factor	(d) (b) × (c)	(e) Cumulative Loss Ratio	(f) (d) × (e)	(g) Factor	(h) (b) × (g)	(i) Cumulative Loss Ratio	(j) (h) × (i)	(o)[5] Policy Year Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.8
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84

(a)[3] Year	(b)[4] Earned Premium	(c) Factor	(d) (b) × (c)	(e) Cumulative Loss Ratio	(f) (d) × (e)	(g) Factor	(h) (b) × (g)	(i) Cumulative Loss Ratio	(j) (h) × (i)	(o)[5] Policy Year Loss Ratio
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15		4.175		0.567		8.684		0.838		0.89
Total:		(k):		(l):		(m):		(n):		

Benchmark Ratio Since Inception: (l + n)/(k + m):

1: Individual and group only
2: "SMSBP" = Standardized Medicare Supplement Benefit Plan.—Use "P" for prestandardized plans.
3: Year 1 is the current calendar year − 1
Year 2 is the current calendar year − 2 (etc.)
(Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)
4: For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.
5: These loss ratios are not explicitly used in computing the benchmark loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown for informational purposes only.

APPENDIX I

Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries that Duplicate Medicare

1. Federal law, P. L. 103-432, prohibits the sale of health insurance policies (the term policy or policies includes certificates) that duplicate Medicare benefits unless it will pay benefits without regard to other health coverage and it includes the prescribed disclosure statement on or together with the application.
2. All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attachment statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).
3. State and Federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement.
4. Property/Casualty and Life insurance policies are not considered health insurance.
5. Disability income policies are not considered to provide benefits that duplicate Medicare.
6. The Federal law does not pre-empt state laws that are more stringent than the Federal requirements.
7. The Federal law does not pre-empt existing state form filing requirements.

[For policies that provide benefits for expenses incurred for an accidental injury only]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

Before You Buy This Insurance

- Check the coverage in all health insurance policies you already have.
- For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that provide benefits for specified limited services]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any of the services covered by the policy are also covered by Medicare

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

Before You Buy This Insurance

- Check the coverage in all health insurance policies you already have.
- For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that reimburse expenses incurred for specified disease(s) or other specified impairment(s). This includes expense incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

- Check the coverage in all health insurance policies you already have.
- For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

- Check the coverage in all health insurance policies you already have.
- For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

- Check the coverage in all health insurance policies you already have.
- For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that provide benefits for both expenses incurred and fixed indemnity basis]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medical Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare; or
- it pays the fixed dollar amount stated in the policy and Medicare covers the same event

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice care
- other approved items and services

Before You Buy This Insurance

- Check the coverage in all health insurance policies you already have.
- For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For long-term care policies providing both nursing home and noninstitutional coverage]

IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

- This is long term care insurance that provides benefits for covered nursing home and home care services.
- In some situations Medicare pays for short periods of skilled nursing home care, limited home health services and hospice care.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most long term care expenses.

Before You Buy This Insurance

- Check the coverage in all health insurance policies you already have.
- For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.
- For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies providing nursing home benefits only]

IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

- This insurance provides benefits primarily for covered nursing home services.
- In some situations Medicare pays for short periods of skilled nursing home care and hospice care.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most nursing home expenses.

Before You Buy This Insurance

- Check the coverage in all health insurance policies you already have.
- For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.
- For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies providing home care benefits only]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

- This insurance provides benefits primarily for covered home care services.
- In some situations, Medicare will cover some health related services in your home and hospice care which may also be covered by this insurance.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most services in your home.

Before You Buy This Insurance

- Check the coverage in all health insurance policies you already have.
- For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.
- For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For other health insurance policies not specifically identified in the previous statements]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- the benefits stated in the policy and coverage for the same event is provided by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

- Check the coverage in all health insurance policies you already have.
- For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Pa.B. Doc. No. 96-760. Filed for public inspection May 10, 1996, 9:00 a.m.]

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 5]

Events, Tournaments and Contests

The Liquor Control Board (Board) under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), adopts an amendment to § 5.32 (relating to restrictions/exceptions) as set forth in Annex A.

The amendment will remove current restrictions related to events, tournaments and contests on licensed premises to the extent that hotel, restaurant, club, privately-owned public golf courses, privately-owned private golf courses, municipal golf courses, brew pubs and malt beverage eating place licensees will be permitted to sponsor the activities and award prizes to participants. Governing bodies of professional golf, tennis, skiing, bowling and pocket billiards will also be permitted to hold events, tournaments and contests on licensed premises.

Comments

Notice of proposed rulemaking was published at 26 Pa.B. 31 (January 6, 1996), with a 30-day public written comment period. During the public comment period a letter of support for the amendment was received from Attorney Joseph D. Halston, Jr. on behalf of his client, the Miller Brewing Company.

The Independent Regulatory Review Commission (IRRC) at the meeting of March 6, 1996, recommended amending § 5.32(f)(7) to include the specific monetary amount for prize limitations in order to improve clarity. The proposed amendment provided that the total value of all prizes for a given event, tournament or contest may not exceed the limits as established by secton 17 of the Local Option Small Games of Chance Act (10 P. S. § 311.327). The Board agrees with the recommendation of IRRC and further amends § 5.32(f)(7) to restrict the total value of all prizes for any event, tournament or contest to $500. The total value of all prizes awarded in any 7-day period may not exceed $5,000.

Fiscal Impact

This amendment will impose no additional costs on the Board nor will it have any adverse impact on State or local government costs. The legalization of events, tournaments and contests within the constraints of this amendment will increase business opportunities for licensees.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking on December 21, 1995, to IRRC and the Chairperson of the House Committee on Liquor Control and the Senate Committee on Law and Justice for review and comment. The final-form rulemaking was transmitted to the Chairpersons of the Committees and IRRC on March 20, 1996.

This final-form regulation was deemed approved by the Senate Committee on Law and Justice on April 9, 1996, and was deemed approved by the House Committee on Liquor Control on April 9, 1996, and was approved by IRRC on April 18, 1996, in accordance with section 5(c) of the Regulatory Review Act.

Contact Person

Anyone requiring an explanation of the amendment or information related thereto should contact Jerry Danyluk, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Findings

The Board finds that:

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

(2) The adoption of the amendment is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Board, acting under the enabling statute, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapter 5, are amended by amending § 5.32 to read as set forth in Annex A.

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

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

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

JOHN E. JONES, III,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 2134 (May 4, 1996).)

Fiscal Note: Fiscal Note 54-47 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter C. AMUSEMENT AND ENTERTAINMENT

§ 5.32. Restrictions/exceptions.

(a) A licensee may not use or permit to be used inside or outside of the licensed premises a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, can be heard on the outside of the licensed premises.

(b) A licensee may not maintain on the licensed premises a platform or stage level with or elevated above the floor and used by musicians or entertainers, if the platform or stage or the entertainment produced thereon can be seen from outside the licensed premises.

(c) A licensee may not permit an employe, servant, agent, event/tournament/contest participant or a person engaged directly or indirectly as an entertainer in the licensed establishment or a room or place connected therewith, to be in contact or associate with the patrons in the establishment, room or place for a lewd, immoral, improper or unlawful purpose. A copy of this restriction shall be constantly and conspicuously displayed on the wall of the dressing room used by the entertainers, as

well as in a conspicuous location visible to employes, servants, agents and event/tournament/contest participants.

(d) A licensee may not directly or indirectly employ a minor person under 18 years of age as an entertainer in the licensed establishment, or in a room or place connected therewith, nor may a licensee permit in the establishment, room or place, a minor person under 18 years of age to act as an entertainer.

(e) A hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensee may not hold or permit to be held, on the licensed premises an event, tournament or contest; nor advertise, offer, award or permit the award on the licensed premises of trophies, prizes or premiums, for any purpose except as follows:

(1) A hotel, restaurant, club or malt beverage eating place licensee may permit to be held within the licensed premises an event sanctioned by the State Athletic Commission under 5 Pa.C.S. Part I, Subparts A and B (relating to general provisions; and boxing) or under 5 Pa.C.S. Part I, Subpart C (relating to the Wrestling Act). Only malt or brewed beverages, as generally permitted by the class of license involved, may be sold, served or delivered on that portion of the licensed premises where the event is held, and not sooner than 1 hour before, and not later than 1 hour after the event. Service of malt or brewed beverages at these events will be conducted only with the prior written approval of the State Athletic Commission filed with the Board. Drinks shall be dispensed in that portion of the licensed premises where the event is conducted only in paper or plastic cups.

(2) A hotel, restaurant, club or malt beverage eating place licensee may hold or permit to be held within the licensed premises or in a bowling alley immediately adjacent thereto as provided in sections 406(a)(1) and 442(b) of the Liquor Code (47 P. S. §§ 4-406(a)(1) and 4-442(b)), a bowling tournament or bowling contest. Liquor and malt or brewed beverages, as generally permitted by the class of license involved, may be served, sold or delivered at the bowling tournament or bowling contest by the licensee.

(3) A hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensee may permit the conduct of events on the licensed premises by groups constituting a league. Liquor and malt or brewed beverages, as generally permitted by the class of license involved, may be sold, served or delivered at the events on the licensed premises.

(4) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensees may permit the conduct of tournaments and contests on the licensed premises for the benefit of, and officially sponsored by, bona fide charitable organizations.

(i) A charitable organization for the purposes of this section is defined as one qualified, approved by and registered with the Department of State and operated under 49 Pa. Code Part I, Subpart B (relating to charitable organizations).

(ii) Charitable organization functions shall be operated in accordance with the Solicitation of Funds For Charitable Purposes Act (10 P. S. §§ 162.1—162.24) and, if applicable, the Local Option Small Games of Chance Act (10 P. S. §§ 311—327), and the Bingo Law (10 P. S. §§ 301—308.1).

(5) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub and malt beverage eating place licensees may conduct self-sponsored tournaments, events or contests on their own licensed premises so long as the activities are in conformance with the applicable provisions of this subchapter.

(f) For an activity conducted under this subchapter, the following apply:

(1) There may not be lewd, immoral or improper conduct by the licensee, its servants, agents, employes, patrons or event, contest or tournament participants.

(2) There may not be unlawful gambling directly or indirectly associated with an activity on the licensed premises. A licensee will be held strictly liable for unlawful gambling on the licensed premises.

(3) There may not be an event, contest or tournament which involves the consumption of alcoholic beverages by an event, tournament or contest participant.

(4) The price of a ticket or evidence of admission to an event, tournament or contest may not include a charge or assessment for alcoholic beverages or entitle the holder thereof to receive an alcoholic beverage anywhere on the licensed premises except for alcoholic beverages included in a meal package offering as provided for in Chapter 13 (relating to promotion).

(5) A licensee or sponsoring charity may advertise an event, tournament or contest.

(6) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub and malt beverage eating place licensees, as well as governing bodies of professional golf, skiing, tennis, bowling, pocket billiards and nonlicensee sponsors as provided in subsection (e) may award prizes to contestants or participants of events, tournaments or contests.

(7) The total value of all prizes for any given event, tournament or contest may not exceed $500. The total value of all prizes awarded in any 7-day period may not exceed $5,000.

(8) Golf, skiing, tennis, pocket billiards or bowling events, tournaments, contests and events sanctioned by the State Athletic Commission are exempted from the prize value restrictions in this section.

(9) Licensees shall maintain on the licensed premises for 2 years, from the date of the event, an itemized list of all prizes for each event, tournament, contest indicating each prize, its value and the name and address of the recipient.

(g) The restrictions in this section apply not only to the licensee, but to partners, officers, directors, servants, agents and employes of a licensee.

[Pa.B. Doc. No. 96-761. Filed for public inspection May 10, 1996, 9:00 a.m.]