

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 285]

### Marking of Infectious Waste Containers

The Environmental Quality Board (Board) proposes to amend Chapter 285 (relating to storage, collection and transportation of municipal waste) to read as set forth in Annex A.

This proposal was adopted by the Board at its regular meeting on April 16, 1996.

#### A. *Effective Date*

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

#### B. *Contact Persons*

For further information, contact Ronald C. Hassinger, Chief, General Permits/Beneficial Use Section, Bureau of Land Recycling and Waste Management, Rachel Carson State Office Building, 14th Floor, 400 Market Street, P. O. Box 8472, Harrisburg, PA 17105-8472, telephone: (717) 787-7381, or Marc A. Roda, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, 9th Floor, 400 Market Street, P. O. Box 8464, Harrisburg, PA 17105-8464, telephone (717) 787-7060. Information regarding submitting comments on this proposal appears in Section I of this Preamble. These proposed amendments are available electronically through the Department of Environmental Protection (Department) Web site (<http://www.dep.state.pa.us>).

#### C. *Statutory Authority*

This proposal is being made under the provisions of sections 105 and 201 of the Solid Waste Management Act (35 P. S. §§ 6018.105 and 6018.201); sections 1 and 4 of the Infectious and Chemotherapeutic Waste Disposal Act (35 P. S. §§ 6019.1 and 6019.4); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20). Under sections 105 and 201 of the Solid Waste Management Act and sections 1 and 4 of the Infectious and Chemotherapeutic Waste Disposal Act, the Board has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of infectious and chemotherapeutic waste as are necessary to protect the public's health, safety and welfare, as well as protect the environmental resources of the Commonwealth. Section 1920-A of The Administrative Code of 1929 grants the Board the authority to promulgate rules and regulations that are necessary for the proper work of the Department.

#### D. *Background and Purpose of the Proposed Rulemaking*

The purpose of this proposed amendment is to provide greater flexibility in the Department's regulations pertaining to the marking and labeling of containers holding infectious and chemotherapeutic waste (ICW). Currently, generators and transporters of ICW must both color code (red for infectious and yellow for chemotherapeutic) and label. These amendments will allow color coding or labeling to be alternative methods of identifying the container. This proposed rulemaking is in response to a petition by DeRoyal Industries Incorporated (DeRoyal) to

amend § 285.147(d) (relating to marking of containers) to allow an alternative to the requirement that ICW containers must be red or yellow in color.

On August 1, 1995, DeRoyal submitted to the Board a petition to amend § 285.147(d) to allow an alternative to the requirement that ICW containers used for storage and transportation be red or yellow in color. DeRoyal has submitted this petition to facilitate the sale of its product the "TraceCart." The TraceCart is a medical product and ICW storage and transportation container. The TraceCart is blue in color with a red lid and is designed to have labels attached which appropriately describe the nature of the container's contents.

The TraceCart is marketed Nationally. According to DeRoyal, the mandatory color coding requirements of § 285.147 are unique to the Commonwealth. Furthermore, this unique color coding requirement makes it more expensive to manufacture the TraceCart for sale in this Commonwealth.

At its March 14, 1996, meeting, the Department's Solid Waste Advisory Committee (Committee) voted to recommend the Department proceed with the draft regulations as they pertain to rigid containers.

Section 285.146 (relating to storage containers) requires that bags used as ICW containers be color coded, red for infectious and yellow for chemotherapeutic waste. The Department had proposed to the Committee to amend § 285.146(d) to allow as an alternative to the container color coding, labeling the containers with the universal biological hazard symbol and the words "infectious and chemotherapeutic waste", as described in § 285.147(c). The Committee voted to recommend deletion of the draft language that would have changed this requirement.

This proposed rulemaking reflects the recommendations of the Committee as made in their March 14, 1996, meeting. The Department wishes to solicit additional comment through this notice on § 285.146(d) as described in this Preamble.

#### E. *Summary of Proposed Rulemaking*

When the Department's container color coding requirements were first promulgated in 1988, those requirements were consistent with industry practice at that time. However, since 1988 several changes have taken place at the Federal level, including rule changes at the United States Department of Labor's Occupational Safety and Health Administration (OSHA) and the United States Department of Transportation (USDOT).

Currently, the Department's container color coding requirements for ICW containers are more stringent than what is required by Federal law. OSHA is responsible for promulgating regulations setting standards for the protection of workers. Under OSHA's Bloodborne Pathogen Rule (29 CFR Part 1910.1030), infectious waste containers must either be labeled with the universal biological hazard symbol or colored red. USDOT is responsible for promulgating regulations establishing standards for the safe transportation of hazardous materials. USDOT recently amended 49 CFR Parts 171-173 which in part applied OSHA's labeling requirements to the packaging requirements for shipments of infectious materials.

The Department's container color coding requirements are also more stringent than the practices recommended by the United States Environmental Protection Agency

(USEPA). USEPA is responsible for promulgating standards for the storage and transportation of hazardous wastes. USEPA does not currently have regulations addressing infectious or chemotherapeutic wastes. However, their guidelines recommend using either the universal biological hazard symbol as described in the OSHA regulations, color coding or clearly labeled (*EPA Guide for Infectious Waste Management* (May, 1986)).

There are no legal requirements or environmental or public health reasons mandating that the Department maintain its dual labeling and color coding requirements for infectious and chemotherapeutic wastes. Allowing either labeling or color coding as alternative methods of identifying containers of infectious and chemotherapeutic waste is reasonable and appropriate and is consistent with the Department's commitment to adopt environmental regulations that are no more stringent than Federal requirements when there is no purpose served by being more stringent.

The existing requirements at § 285.147(d) and (e) require that all containers be color coded as well as labeled with the biological hazard symbol. The Board proposes to amend § 285.147(d) and (e) to allow color coding as an alternative to the labeling requirements.

F. *Benefits and Costs*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendment.

*Benefits*

By amending § 285.147, companies that manufacture and Nationally market containers for the storage and transportation of ICW will be able to market the same container in this Commonwealth. This should reduce the cost of the containers in this Commonwealth.

*Costs*

If adopted, this proposed amendment will not impose any new costs on individuals managing infectious and chemotherapeutic wastes.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed amendment on June 4, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the agency in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendment, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to the final publication of the amendments, by the Department, the General Assembly and the Governor of objections raised.

H. *Sunset Review*

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. *Public Comments.*

*Written Comments*—Interested persons are invited to submit written comments, suggestions or objections regarding the proposal to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Environmental Quality Board, 15th Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17105-8477). Comments received by facsimile will not be accepted. Comments, suggestions or objections must be received by the EQB by July 15, 1996, within 30 days of publication in the *Pennsylvania Bulletin*. Interested persons may also submit a summary of their comments to the Board. The summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which final regulations will be considered. The summary shall not exceed one page in length and must be received by July 15, 1996.

*Electronic Comments*—Comments may be submitted electronically to the Board at RegComments@A1.dep.state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by July 15, 1996.

Persons with a disability who require an accommodation to comment on these proposed regulations should contact the Department at (717) 787-4526 to discuss how we may best accommodate their needs. If necessary, use the AT&T Relay Service by calling 1 (800) 654-5984 (TDD users) or 1 (800) 654-5988 (voice users) and request that they relay the call to Sharon Freeman at (717) 787-4526.

JAMES M. SEIF,  
*Chairperson*

**Fiscal Note:** 7-298. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**

**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE VIII. MUNICIPAL WASTE**

**CHAPTER 285. STORAGE, COLLECTION AND TRANSPORTATION OF MUNICIPAL WASTE**

**Subchapter A. STORAGE OF MUNICIPAL WASTE**

**§ 285.147. Marking of containers.**

\* \* \* \* \*

(c) The following information shall be printed on the outermost container for each package of infectious or chemotherapeutic waste for either onsite movement or offsite transportation:

(1) The words "infectious waste" or "chemotherapeutic waste," whichever is applicable.

(2) The universal biohazard symbol that conforms to the design shown in regulations of the United States Occupational Safety and Health Administration at 29 CFR 1910.145(f)(8)(ii) (relating to specifications for accident prevention signs and tags).

(d) [ **Except for sharps containers used in patient or examination rooms, for corrugated fiberboard boxes, or for stationary waste storage containers,**

the color of the outermost container for each package of infectious or chemotherapeutic waste shall be as follows:

(1) Red for infectious waste.

(2) Yellow for chemotherapeutic waste. ]

The labeling information specified in subsection (c) shall be fluorescent orange or orange-red in color, or predominately so, with a background of a contrasting color for infectious waste, and yellow in color, or predominately so, with a background of a contrasting color for chemotherapeutic waste.

(e) Red bags or red containers for infectious waste and yellow bags or yellow containers for chemotherapeutic waste may be substituted for the marking requirements in subsection (c).

[ (e) ] (f) \*\*\*

[Pa.B. Doc. No. 96-956. Filed for public inspection June 14, 1996, 9:00 a.m.]

## FISH AND BOAT COMMISSION

[58 PA. CODE CH. 51]

Administration

The Fish and Boat Commission (Commission) proposes to adopt Chapter 51, Subchapter J (relating to royalties for sand and gravel permits). The Commission is publishing these additions as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed regulations deal with adjustments to the royalty rates for merchantable sand and gravel extracted from Commonwealth waters.

### A. Effective Date

These proposed regulations will, if approved on final rulemaking, go into effect on October 1, 1996, or upon publication of an order adopting the regulations, whichever occurs later.

### B. Contact Person

For further information on the proposed regulations, contact Dennis Guise, Chief Counsel, (717) 657-4525, P. O. Box 67000, Harrisburg, PA 17106-7000.

### C. Statutory Authority

These proposed regulations are published under the statutory authority of section 503(c) of the Conservation and Natural Resources Act (CNRA) (71 P. S. § 1340.503(c)).

### D. Purpose and Background

There are six companies that currently dredge material from the navigable waters of this Commonwealth and pay royalties under section 1808(d) of The Administrative Code of 1929 (71 P. S. § 468(d)). Royalties from sand and gravel extracted from Commonwealth waters are paid to the Fish Fund, which is administered under Chapter 5 of the code (relating to fiscal affairs).

Current royalty rates for merchantable sand and gravel extracted from Commonwealth waters were set in 1970 at 10¢ per adjusted dry ton of 2,000 pounds, or alternatively, 15¢ per cubic yard based on 3,000 pounds per adjusted

dry weight for usable and merchantable sand or gravel, or both, or other minerals, or both, extracted, but in any event an amount of at least \$1,000 per year. When the royalty rates were established in 1970, the royalty payment of 10¢ per adjusted dry ton or 15¢ per cubic yard was about 6% of the selling price of the dredged material. Section 503(c) of the CNRA provides that the Commission may by regulation, with the concurrence of the Department of Environmental Protection (DEP), adjust the amount of the royalty payments per ton or cubic yard of usable or merchantable sand or gravel extracted from Commonwealth waters.

### E. Summary of Proposal

The Commission is seeking public comment on proposed regulations that would increase the sand and gravel royalties to 6% of the average Pennsylvania Free On Board price of the material or 25¢ per dry ton/37.5¢ per cubic yard, whichever is greater (but at least \$1,000 per year).

### F. Fiscal Impact

The proposed regulations will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed regulations, however, will impose new costs on the private sector. These costs will total approximately \$300,000 to \$600,000 per year for all businesses engaged in dredging.

### G. Paperwork

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

### H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed regulations to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,  
Executive Director

**Fiscal Note:** 48A-56. No fiscal impact; (8) recommends adoption.

## Annex A

### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

##### Subpart A. GENERAL PROVISIONS

#### CHAPTER 51. ADMINISTRATIVE PROVISIONS

##### Subchapter J. ROYALTIES FOR SAND AND GRAVEL PERMITS

Sec.	Authority.
51.91.	Royalty rates
51.92	

#### § 51.91. Authority.

Under section 503(c) of the Conservation and Natural Resources Act (71 P. S. § 1340.503(c)), the Commission, with the concurrence of the Department of Environmental Protection, is authorized to adjust the amount of royalty payments per ton or cubic yard of usable or merchantable, or both, sand or gravel, or both, extracted from Commonwealth waters.

#### § 51.92. Royalty rates.

(a) Persons holding permits granting them nonexclusive rights and privileges of dredging, excavating, removing and carrying away merchantable sand and

gravel under agreements between the permittees and the Department of Environmental Protection (DEP) shall pay royalties equal to the greater of one of the following amounts:

- (i) One thousand dollars per year.
- (ii) Twenty-five cents per adjusted dry ton of 2,000 pounds or 37 1/2¢ per cubic yard of 3,000 pounds, adjusted dry weight of merchantable sand and gravel or other merchantable material which is removed.
- (iii) Six percent of the average Pennsylvania Free On Board (F.O.B.) price of the material, as determined by the Commission, after consultation with DEP.
- (b) On or before \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal), the Commission, after consultation with DEP will determine the average Pennsylvania F.O.B. price applicable to the remainder of the year in which this subchapter takes effect for the materials to be extracted. The Commission will notify permittees of the average Pennsylvania F.O.B. price.
- (c) On or before December 1 of each year, the Commission, after consultation with DEP, will determine the average Pennsylvania F.O.B. price applicable to the following year for the materials to be extracted. The Commission will notify permittees of the average Pennsylvania F.O.B. price.

[Pa.B. Doc. No. 96-957. Filed for public inspection June 14, 1996, 9:00 a.m.]

# MUNICIPAL POLICE OFFICERS' EDUCATION AND TRAINING COMMISSION

[37 PA. CODE CHS. 201 AND 203]  
Administration of the Training Program

The Municipal Police Officers' Education and Training Commission (Commission) proposes to reserve Chapter 201 (relating to administration of the program) and to adopt Chapter 203 (relating to administration of the program) under the authority of section 5 of the act of June 18, 1974 (act) (P. L. 359, No. 120) (53 P. S. § 744 (15)), to read as set forth in Annex A.

*Purpose*

The purpose of these proposed amendments is to implement mandatory recruit training for all police officers subject to the act, to provide certification procedures for those individuals who successfully complete the training, pass a State certification test and are employed by a political subdivision or certain colleges or are deputy sheriffs employed by the Allegheny County Sheriff's Office. The proposal also provides that certifications must be renewed every 2 years and mandates that an officer must complete at least 12 hours of in-service training yearly and maintain certification in first aid, CPR and weapons qualification. The proposal also sets physical, psychological and criminal standards for police officers and requires a job related certification test. Those officers that do not meet the standards are subject to decertification by the Commission.

*Effect*

The proposal affects every police officer as that term is defined in section 2 of the act (53 P. S. § 741). All existing school certifications shall continue. All existing police office certifications shall continue until their expiration date. Those police officer certifications without an expiration date shall expire upon the effective date of these rules and regulations. All existing instructor certifications issued to instructors who have taught at a certified school during the 2 years preceding publication for adoption of the final rulemaking shall continue, all others shall expire upon the effective date of the final rulemaking.

*Legal Issues*

There is a possible legal issue that has arisen in the development of these proposed amendments. The act provides that certification runs for 2 years. The proposed amendments provide, however, that if the officer fails to complete 12 hours of mandatory in-service training yearly and maintain certification in first aid, CPR and weapons qualifications his certification would be considered expired. The Commission would not revoke the certification of that officer, however, until the end of the 2-year period. An officer who fails to meet the standards as set forth in Chapter 203 could be decertified by the Commission.

*Policy*

There is a policy issue concerning the impact of the proposed amendments on current officers. Officers will have to comply with mandatory in-service training, first aid, CPR and weapons qualifications yearly, or they may be decertified. Therefore, some officers who were grandfathered for basic training purposes will now have to comply with mandatory in-service training, first aid, CPR and weapons qualification requirements for the first time. Most police officers have been complying with these requirements on a nonmandatory basis since Act 180 of 1988 became law. Police officers will also be required to meet standards for physical and psychological fitness and with regard to criminal convictions, or face the possibility of being decertified.

*Fiscal Impact*

The proposed amendments will have no additional fiscal impact on the Commonwealth.

The costs to municipalities would be for transportation of officers to in-service training schools and in maintaining first aid, CPR and firearms qualifications and costs associated with paying overtime or salaries to officers attending the aforementioned. The proposed amendments do not, however, require political subdivisions to pay salaries to officers attending in-service training.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of these proposed amendments on May 21, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Judiciary Committee and the Senate Law and Justice Committee. In addition to submitting these proposed amendments, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has any objections to the proposed amendments, it will notify the Commission within 30 days of the close of the public comment period. The notification shall

specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Commission, the General Assembly and the Governor of objections raised.

#### *Sunset Date*

The legislation under which the Commission was re-established has a sunset date of December 31, 1998.

#### *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to the Commission within 30 days of the publication of this notice in the *Pennsylvania Bulletin*. All comments should be directed to: Major Richard C. Mooney, Executive Director, Municipal Police Officers' Education and Training Commission, 75 East Derry Road, Hershey, PA 17033, who may be contacted at (717) 533-5987 for further information.

COLONEL PAUL J. EVANKO,  
*Chairperson*

*(Editor's Note: The Commission is proposing to delete Chapter 201 as it currently appears in the Pennsylvania Code serial pps. (41063)—(41068), (26077), (26078), (83495)—(83498), (26083), (26084), (83499), (83500), (52570), (52511), (52596), (52597), (52634), (52635), (83501), (83502), (26087), (26088), (41071)—(41078), (52582)—(52591), (41081)—(41092), (110687) and (110688)) and replace it with Chapter 203 which appears in Annex A.)*

**Fiscal Note:** 17-55. No fiscal impact; (8) recommends adoption.

### **Annex A**

#### **TITLE 37. LAW**

#### **PART IV. MUNICIPAL POLICE OFFICERS' EDUCATION AND TRAINING COMMISSION**

#### **Subpart A. MUNICIPAL POLICE OFFICERS TRAINING PROGRAM**

#### **CHAPTER 203. ADMINISTRATION OF THE PROGRAM**

##### **Subch.**

- A. GENERAL
- B. POLICE OFFICER CERTIFICATION REQUIREMENTS
- C. SCHOOL REQUIREMENTS
- D. COURSE REQUIREMENTS
- E. INSTRUCTOR CERTIFICATIONS
- F. REIMBURSEMENT OF EXPENSES
- G. NOTICE AND HEARINGS

#### **Subchapter A. GENERAL**

- Sec.  
203.1. Definitions.

#### **§ 203.1. Definitions.**

In addition to the definitions contained in the act, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

*Act*—The act of June 18, 1974 (P. L. 359, No. 120) (53 P. S. §§ 740—749).

*Certification*—The assignment of a certification number to a police officer after successful completion of a mandatory basic training course or receipt of a waiver of basic training from the Commission and successful completion of mandatory in-service training.

*Certified police officer*—A police officer who is authorized to enforce 18 Pa.C.S. (relating to the Crimes Code) moving violations of 75 Pa.C.S. (relating to the Vehicle Code) and carry a firearm.

*Chairperson of the Commission*—The Commissioner of the State Police.

*Commission*—The Municipal Police Officers Education and Training Commission.

*Conviction*—An adjudication of guilt including the imposition of a sentence.

*Disqualifying criminal offense*—A criminal offense for which more than 1 year in prison can be imposed as punishment.

*Executive Director*—The Commission elected head of staff responsible for administration. See section 5(10) of the act (53 P. S. § 744(10)).

*Program*—The Municipal Police Officers' Education and Training Program.

*School*—A training school or academy which provides a basic police training course. The term includes an organization which provides such a course within the functional organization of a police department or an educational entity within this Commonwealth which provides such a course at its base facility and at other locations approved by the Commission. Each separate geographical location is considered a school.

#### **Subchapter B. POLICE OFFICER CERTIFICATION REQUIREMENTS**

- Sec.  
203.11. Qualifications.  
203.12. Waiver of training.  
203.13. Certification as a municipal police officer.  
203.14. Revocation of certification.  
203.15. Application packet submission.

#### **§ 203.11. Qualifications.**

Persons who are to be employed as police officers by police departments in this Commonwealth from \_\_\_\_\_ (*Editor's Note: The blank refers to the effective date of adoption of this proposal*), shall meet the following requirements:

- (1) Applicants shall be 18 years of age or older.
- (2) Applicants shall possess a high school diploma or GED Equivalency.
- (3) Applicants shall be citizens of the United States.
- (4) Applicants shall be personally examined by a doctor of medicine licensed by the State Board of Medicine or a doctor of osteopathy licensed by the State Board of Osteopathic Medicine and found to meet the physical standards contained in this chapter. The examination shall include the following elements:
  - (i) Applicants shall be free from the addictive or excessive use of alcohol or drugs which shall be determined using current laboratory testing procedures.
  - (ii) Applicants shall be free from the use of illegal controlled substances which shall be determined using current laboratory, testing procedures.
  - (iii) Applicants physical condition shall be such that applicants could reasonably be expected to withstand significant cardiovascular stress.
  - (iv) Applicants shall be free from debilitating conditions such as tremor, incoordination, convulsion, fainting episodes or other neurological conditions which may affect the applicants' ability to perform as police officers.

(v) Applicants shall have visual acuity of at least 20/70, uncorrected in the stronger eye, correctable to at least 20/20; and at least 20/200, uncorrected in the weaker eye, correctable to at least 20/40. In addition, applicants shall have normal depth and color perception and be free of any other significant visual abnormality.

(vi) Applicants shall have audio acuity sufficient to distinguish a normal whisper at a distance of 15 feet. The test shall be independently conducted for each ear while the tested ear is facing away from the speaker and the other ear is firmly covered with the palm of the hand. The applicant may not use a hearing aid or other aid to perform the test. If the applicants fail this test, the applicant shall be required to take a decibel audio test and meet standards established by the Commission.

(vii) Applicants may not be missing any extremities, including appropriate digits, which would prevent performance of required police duties or meeting minimum training requirements.

(viii) Applicants shall be free from other significant physical defects or disorders which would, in the physician's opinion, impair the applicant's ability to perform the duties of a police officer or complete the required minimum training requirements.

(5) Applicants shall be personally examined by a psychologist who is licensed by the State Board of Psychology and found to be psychologically capable to exercise appropriate judgment or restraint to perform the duties of a police officer at the time of the examination. The examination shall include the following elements:

(i) *Interview and history.* The psychologist shall personally interview the applicant. The interview shall include a summary of the applicant's personal, educational, employment and criminal history.

(ii) *Required psychological test.* Applicants shall be administered any current standard form of the Minnesota Multiphasic Personality Inventory (MMPI) by a licensed psychologist or a paraprofessional employed by and under the direct control and supervision of a licensed psychologist.

(iii) *Other testing methods.* After initial testing, if the licensed psychologist is unable to certify the applicant's psychological capability to exercise appropriate judgment and restraint to perform the duties of a police officer including the handling of a lethal weapon, the psychologist shall employ whatever other psychological techniques are deemed necessary to form a professional opinion of the applicant's psychological ability. The use of these additional techniques requires a full and complete written explanation to the Commission.

(6) Applicants shall certify that they have not failed a physical examination or psychological evaluation conducted in conjunction with an application for police employment within the previous year.

(7) Applicants shall be subject to a thorough background investigation conducted by the applicant's employing police department. The investigation shall include the following:

(i) A criminal history check including the submission of fingerprints to the Central Repository for the Commonwealth and to the Federal Bureau of Investigation.

(ii) A check of the applicant's credit history.

(iii) Personal interviews conducted with at least 3 people that have personal knowledge of the applicant but are not related to the applicant.

(iv) Interviews of the applicant's employers for the past 5 years to determine the applicant's work history.

(v) A check of the applicant's driving record verifying that the applicant has a valid driver's license.

(vi) Other investigative techniques deemed appropriate by the applicant's employing police department which are consistent with law.

(8) Applicants shall successfully complete a basic police training course given at a Commission-certified school or obtain a waiver of training as enumerated in § 203.12 (relating to waiver of training).

(i) Successful completion of a basic police training course shall be determined by the training school, based upon Commission standards.

(ii) In order to qualify for this certificate, each applicant shall:

(A) Achieve a minimum qualifying firearms score of 75%.

(B) Receive certification for first aid and CPR from the American Red Cross, the Department of Health or the American Heart Association.

(C) Comply with Commission and school rules and regulations.

(D) Pass the same certification exam administered to those seeking waiver of training as set forth in § 203.12(4).

(E) Attend 100% of all classes.

(I) Excused absences shall be mutually agreed upon by the police officer's department head and school director. School directors shall determine excused absences for applicants not employed as police officers.

(II) Excused absences shall include personal illness or injury, illness in the immediate family requiring the applicant's attention or death in the immediate family.

(F) Complete the basic training course approved by the Commission with a minimum grade of 75% on each tested area of examination.

(I) Applicants not achieving the minimum grade in a tested area are permitted to take that tested area at another Commission-certified school. If the applicant fails to achieve the minimum grade on his second attempt, the applicant shall be required to successfully complete the entire basic police training course at a later time in order to qualify for certification.

(II) Applicants not achieving the minimum grade in two separate tested areas during one basic police training course shall be required to successfully complete the entire basic police training course at a later time in order to qualify for certification.

#### § 203.12. Waiver of training.

Applications for certification for which waivers of training are requested shall be submitted by the applicant's employing police department. All applicants for a waiver of training shall satisfy the following requirements:

(1) Applicants for a waiver of training shall be employed as police officers.

(2) Applicants for a waiver of training shall satisfy one of the following requirements:

(i) Successfully completed a Pennsylvania basic police training course approved by the Commission.

(ii) Previously was a Commission-certified police officer.

(iii) Previously was employed as a full-time police officer in this Commonwealth before June 18, 1974, who was not required to obtain certification from the Commission, and worked as a full time police officer for at least 5 years.

(iv) Previously or currently employed as a full-time police officer of another state and met the certification standards of that state, as evidenced by documentation from the state agency responsible for establishing the standards.

(3) All applicants for waiver of training shall undergo proficiency testing in the following three areas. Documentary proof of each qualification shall accompany the waiver of training application.

(i) *Firearms.* Applicants shall qualify on a police firearms course conducted by a certified police firearms instructor with the weapon the applicant will use in the performance of his police duties. The Commission will publish the requirements for a police firearms course in the Commission Newsletter on an annual basis.

(ii) *First aid/CPR.* Applicants shall have valid certification in first aid and adult, child and infant CPR, from the American Red Cross, the American Heart Association, the Department of Health or other agency approved by the Department of Health.

(iii) *Patrol vehicle operation.* Applicants shall successfully pass the patrol vehicle operation test required in the basic police training course at a certified school or by a certified instructor.

(4) Applicants for a waiver of training shall take a certification examination administered by the Commission at a location and time designated by the Commission. The schedule for the examinations can be obtained by writing the Commission office.

(i) The examination will be comprised of sections which shall coincide with each major topic in the basic training curriculum, but shall exclude those topics which can be proficiency tested only. See paragraph (3).

(ii) The minimum passing score for each tested section shall be established by the Commission.

(A) Applicants for a waiver of training who do not achieve a passing score in any tested area shall take the basic police training course corresponding to the failed examination section at a school certified by the Commission, in order to be permitted to retake the certification examination.

(B) Applicants will not be certified without obtaining a passing score on the certification examination.

(iii) Examination results shall be valid for 2 years. For applicants obtaining a passing score, no further examinations will be administered within this period.

#### **§ 203.13. Certification as a municipal police officer.**

(a) *General.*

(1) The Commission will supply written verification to the applicant's employing police department upon completion of the Commission's requirements for certification as a police officer.

(2) Verification shall be valid only in the department identified on the document provided. Upon termination of employment in a department, certification for that department shall be void and shall be returned to the Commission by the department.

(3) If the certification document has been lost or destroyed, a notarized statement shall be provided to the Commission concerning the certification.

(b) *Initial certification.*

(1) Initial certification is valid for 2 years from the date of issuance. The document provided by the Commission will contain the date of issuance and expiration in addition to a certification number for identification purposes.

(2) Upon receipt of certification a police officer is authorized to enforce 18 Pa.C.S. (relating to the Crimes Code) and moving violations of 75 Pa.C.S. (relating to Vehicle Code) and to carry a firearm.

(c) *Renewal of certification.*

(1) The Commission will issue a renewal certificate only to police officers who have satisfied the mandatory in-service training requirement set forth in § 203.52 (relating to mandatory in-service training courses). Mandatory in-service training schools shall provide written notice to the Commission of police officers who have successfully completed the mandatory in-service training course.

(2) Certification shall be renewed every 2 years.

(3) Renewal certification has the same force and effect as the initial certification.

#### **§ 203.14. Revocation of certification.**

(a) The Commission maintains the right to revoke certification for one or more of the following:

(1) Failure to maintain employment as a police officer under the act.

(2) Failure to maintain first aid or CPR certification.

(3) Failure to qualify with firearms as specified in the Commission newsletter.

(4) Failure to successfully complete annual mandatory in-service training as specified in the Commission newsletter.

(5) Physical or psychological impairment which renders the officer permanently unable to perform his duties.

(6) Conviction for a disqualifying criminal offense.

(7) Submission to the Commission of any documents that contain known false information including fraudulent application.

(8) A certification issued in error.

(9) Cheating.

(10) Other just cause determined by the Commission.

(b) Under subsection (a)(1), (5) and (6), it shall be the responsibility of the head of the applicant's employing police department to provide written notice to the Commission of the following:

(1) An officer's termination of employment.

(2) An officer who has been determined to have a permanent physical or psychological condition which renders the officer unable to perform his duties.

(3) An officer's arrest for a disqualifying offense within 15 days from the date of arrest.

#### **§ 203.15. Application packet submission.**

(a) *General.*

(1) Forms shall be original.

(2) Forms shall be typewritten.

(3) Signatures shall be original.

(b) *Application packets.* Application packets may be obtained by contacting the Commission at the Commission office. Each application packet shall include:

(1) One application form for certification. All questions shall be answered and appropriate sections completed.

(2) Two fingerprint cards—one State Police Applicant Fingerprint Card and one FBI Applicant Fingerprint Card.

(i) Only fingerprint cards obtained from the Commission can be submitted with the application for certification.

(ii) The fingerprints of the applicant shall be affixed on the fingerprint cards.

(iii) Both fingerprint cards shall contain the contributor number PAPSP0100. Criminal fingerprint cards or fingerprint cards not containing this contributor number will not be accepted.

(3) One physical examination form.

(i) Physical examinations shall be performed by a licensed physician or osteopath as described in § 203.11(4) (relating to qualifications).

(ii) The physical examination form shall be submitted regardless of the results of the examination.

(iii) At the discretion of the hiring authority, a physical examination conducted in conjunction with police employment may be valid for 6 months and may be used in support of any police employment application during that period. If a change in the applicant's physical condition invalidates the prior physical examination, a reexamination shall be necessary.

(4) One psychological evaluation form.

(i) Psychological evaluations shall be performed by a licensed psychologist as described in § 203.11(5).

(ii) The psychological evaluation form shall be submitted regardless of the results of the evaluation.

(iii) At the discretion of the hiring authority, a psychological evaluation specifically conducted in conjunction with police employment may be valid for 6 months and may be used in support of any police employment application during that period. If a change in the applicant's psychological condition invalidates the prior psychological evaluation, a reevaluation shall be necessary.

(c) *Submission of packets.* Application packets shall be submitted by the head of the applicant's employing police department when an officer must attend basic police training or when a waiver of training is requested.

**Subchapter C. SCHOOL REQUIREMENTS**

- Sec. 203.31. Eligibility for school certification.
- 203.32. Initial school certification procedure.
- 203.33. Minimum school standards and requirements.
- 203.34. School inspections.
- 203.35. Emergency suspension of school certification.
- 203.36. Revocation of school certification.

**§ 203.31. Eligibility for school certification.**

(a) The Commission will promote the most efficient and economical program for police training by utilizing existing facilities, programs and qualified State, local and Federal police personnel.

(1) The Commission will determine the need for police training schools by:

(i) Considering the police population in the area.

(ii) Determining if there is adequate police training available to support the police population.

(2) The Commission will have the authority to revoke the certification of schools, either Statewide or regionally, when it determines that excess police training schools exist.

(b) Until the Commission determines that additional schools are required, only those schools in existence and Commission-certified on or before January 1, 1994, shall be eligible for Commission certification.

**§ 203.32. Initial school certification procedure.**

(a) In the event the Commission determines there is a demonstrated need for additional schools and programs for police training, applications for initial school and training course certification will be accepted from all potential schools within limitations defined by the Commission.

(b) Schools applying for initial school and training course certification shall:

(1) File an application for approval with the Commission on a form supplied by the Commission, which shall be signed by the school's director.

(2) Meet the requirements contained in § 203.33 (relating to minimum school standards and requirements).

(c) Commission approval will be as follows:

(1) Upon receipt of an application, the Commission Chairperson will designate an inspection committee to inspect the facilities of eligible entities applying for certification. The inspection committee shall prepare a report indicating which entities meet the minimum Commission standards along with appropriate documentation, which shall subsequently be presented to the Commission for final review.

(2) The Commission will review the application and inspection reports of the committee and certify those schools which meet the minimum standards of the act and this chapter, and which promote the policy stated in § 203.31 (relating to eligibility for school certification).

(d) Certification of approved school and training course will be as follows:

(1) If the Commission determines that the application of the school and course complies with the requirements of the act and this chapter, the Executive Director, in the name of the Commission, will affix a certification number to the approved application and the corresponding approval. This certification number will have the prefix MPS, for municipal police school. The certification number shall be issued Statewide in numerical sequence, starting with 0001.

(2) If the Commission determines that the school does not meet the requirements of the act and this chapter, the Executive Director will notify the school by certified mail, return receipt requested, of the reasons upon which the adverse determination is based under Subchapter G (relating to notice and hearings).

(3) Notice of the Commission's determination will be issued within 120 days following receipt of the application, except in instances for cause shown.

**§ 203.33. Minimum school standards and requirements.**

(a) Schools shall initially meet and subsequently maintain the following standards:



(1) Comply with all Federal, State or local statutes, ordinances, and rules and regulations pertaining to the statutes and ordinances.

(2) School buildings shall comply with public safety standards set forth in sections 1-14 of the act of April 27, 1927 (P. L. 465, No. 299) (35 P. S. §§ 1221-1235), known as the Fire and Panic Act.

(3) A comfortable temperature shall be maintained in all classrooms.

(4) Ventilation shall assure a proper supply of fresh air and its circulation in all parts of the school. Provisions shall be made to prevent direct drafts on students and staff members.

(5) Noise control will be such that each student can hear all instruction.

(6) Smoking shall be prohibited in any training facility authorized, approved or funded by the Commission, except in Commission-approved outdoor smoking areas.

(7) Artificial lighting facilities shall provide an adequate light intensity in all rooms used for instructional purposes, dormitory or study facilities.

(8) The drinking water facilities shall conform to the requirements prescribed for these facilities by the governmental authority having jurisdiction.

(9) There shall be separate, properly ventilated toilet and lavatory facilities for males and females. There shall be a sufficient number of flush toilets for females and a sufficient number of urinals and flush toilets for males. Each toilet room shall have at least one lavatory.

(10) Provisions shall be made for separate men's and women's locker and shower facilities. A sufficient number of showers and lockers shall be available.

(11) The furniture, equipment and supplies of the school shall be of such type, quality and amount as to meet with the approval of the Commission.

(12) Sufficient space shall be available in the classrooms. Classrooms shall be a minimum physical size determined by the Commission.

(13) Dining facilities, cafeterias, kitchens, dormitory facilities and recreational facilities shall comply with the construction and maintenance requirements prescribed for these facilities by the governmental authority having jurisdiction.

(14) Each school shall have and use a suitable area adequate for conducting physical conditioning and defensive tactics in a safe manner. At a minimum, the facilities shall contain the following:

- (i) An isokinetic weight machine.
- (ii) A measured running course.
- (iii) A sufficient number of batons to be utilized during that portion of training (minimum of 1 baton for every 2 students).
- (iv) A sufficient number of handcuffs for handcuffing portion of training (minimum of 1 pair of handcuffs for every 2 students).
- (v) A stopwatch or chronograph.
- (vi) A sit and reach flexibility evaluation station.
- (vii) Skinfold calipers or cloth tape to determine body fat.

(viii) Additional exercise equipment related to physical conditioning training which may include free weights, an exercycle, a rowing machine and boxing equipment.

(ix) Other equipment required by the curriculum.

(15) An approved type of outdoor firing range shall be available to the school and used for firearms training. The range does not have to be a part of the school facilities; however, it shall have at least ten firing points with a minimum firing distance of 50 yards. The range shall be within a reasonable traveling distance from the school. The range shall present no apparent danger to the public as determined by the Commission inspector.

(i) The school shall ensure that all weapons utilized in this portion of training are safe. A minimum of .38 caliber or .380 auto caliber with a capacity of at least 6 rounds of ammunition shall be required for firing.

(ii) No weapon may be utilized during the training program that is not normally carried by police officers while on duty. At the discretion of the firearms instructor, students working for departments that utilize "exotic" or "unusual" weapons shall utilize a more conventional weapon for training purposes. Upon the student's successful completion of the training program, the student's employing police department shall also qualify the student with the weapon prior to assuming duties as a police officer.

(iii) The school can refuse to allow the use of a weapon that the firearms instructor determines to be unsafe, inadequate or not appropriate for police training.

(iv) The school shall maintain adequate supplies of common ammunition utilized in law enforcement handguns, shotguns and rifles for training programs.

(v) Schools may not permit participation in firearms training that violates 18 Pa.C.S. Chapter 61, Subchapter A (relating to Pennsylvania Uniform Firearms Act).

(vi) The school may not utilize students in a training program to reclaim lead from impact areas at any police firearms course, nor may students be involved in any range construction projects whereby they may be exposed to lead or other toxic substances.

(16) A sufficient number of parking spaces shall be available to accommodate all students, staff and visitors of the school whether at the firing range, classroom facilities or physical fitness facilities.

(17) Insure the availability of all audio/visual equipment necessary to properly present the curriculum prepared by the Commission. The equipment shall, at a minimum, consist of:

- (i) A 16 mm movie projector.
  - (ii) A 35 mm slide projector.
  - (iii) Overhead transparency projector or Opaque overhead projector.
  - (iv) Projection screens or other appropriate projection surface.
  - (v) A video cassette player.
  - (vi) Nineteen inch or larger color television monitors.
  - (vii) A chalk board or equivalent.
- (18) Other standards deemed necessary by the Commission to conduct basic police training.
- (19) Equipment, facilities, supplies, books, and the like, shall be maintained in a safe and proper working condition.

(b) In addition to subsection (a), schools shall comply with the following requirements:

(1) Conduct at least one basic police training course every year the school is certified.

(2) Submit a training calendar to the Commission containing dates and class size for each basic training course to be conducted during the fiscal year. The calendar shall be received by the Commission by June 1st of each year.

(3) Develop course outlines and update as changes occur.

(4) Prepare and update class schedules.

(5) Establish a records management system as needed for the Commission records which shall consist of class rosters, attendance, academic grades, firearms scores, student critiques of course content and a list of instructors.

(6) Develop rules and regulations, including discipline, for student conduct, school operation and instructor standards.

(7) Develop and update detailed written standards for application procedures, including a statement about the maximum enrollment the school can accommodate within the standards established by the Commission.

(8) Prepare a current list of tuition charges for students attending the basic training program.

(9) Utilize only certified instructors as described in Subchapter E (relating to instructor certifications).

(i) Prepare and update the roster of certified instructors and the areas of their certification.

(ii) Instructors may not teach more than 180 hours of any one Basic Police Training Course.

(10) Prepare lesson plans and course outlines for each area of the curriculum using the basic training manuals provided by the Commission as source material. Lesson plans and course outlines shall be accessible in the classrooms to Commission inspectors and official visitors.

(11) Provide to the Commission a copy of tentative weekly class schedules, including dates, times, locations, instructors, subjects, and the like, by the first day of a basic training program. Changes to the schedule provided shall be submitted to the Commission as necessary.

(12) Prepare tests and quizzes as required by the Commission.

(13) Obtain required textbooks, supplemental textbooks, movies, videos, overhead transparencies, and the like, that are listed as necessary in the curriculum prepared by the Commission.

(14) Prior to administering a written examination, instructors shall inform students taking the examination of the Commission cheating policy. See § 203.54 (relating to Commission cheating policy).

(15) Other requirements the Commission deems necessary to conduct basic police training.

(c) Upon completion of the basic police training course, the school shall submit a roster of all students, including grades and Social Security numbers, to the Commission within 5 working days of the date of course completion. Under 20 U.S.C.A. § 1232(g) (The Buckley Amendment), no personally identifiable information of a student may be disclosed by the school without the school first obtaining a written waiver from the student.

(d) A proposed change in the location of an approved school shall be reported to the Executive Director at least 30 days before the move.

(1) If a fire marshal or an inspector from the Department of Labor and Industry deems the new location satisfactory, the Executive Director may give tentative approval of the new location.

(2) After the new location has been visited by an inspection committee from the Commission, final approval for the move shall be voted upon by the Commission.

(3) If final approval is given for the new location, certification to conduct training at the previous location shall automatically be rescinded.

#### § 203.34. School inspections.

(a) *Frequency of inspections.*

(1) An initial inspection will be made of all schools that have applied for certification to conduct basic police training.

(2) The Commission's inspectors will visit and inspect each approved school at least once a year.

(3) Schools shall meet the minimum school standards set forth in § 203.33 (relating to minimum school standards and requirements).

(b) *Commission inspectors.* For the purpose of school inspections, the following shall constitute a Commission Inspector:

(1) A Commission member.

(2) A full time staff employe so designated by the Executive Director.

(3) Other contractual personnel employed by the Commission to conduct school inspections.

#### § 203.35. Emergency suspension of school certification.

If a Commission inspector determines that a condition exists at a school which presents a clear and present danger to the public, students or staff of the school, the inspector, with the approval of the Executive Director, may immediately suspend the school's certification and cause all training to cease. In those situations:

(1) The school may correct the situation or request an administrative hearing as outlined in this chapter.

(2) Schools electing to correct the situation shall notify the Commission in writing by certified mail, return receipt requested, when the correction is complete. The Commission inspector shall re-inspect the facility within 30 days of receipt of notice from the school, except in instances for cause shown.

(3) Notice of results of the reinspection shall verbally be provided to the school by the inspector after the inspection has concluded and in writing within 10 days of the reinspection, except in instances for cause shown.

#### § 203.36. Revocation of school certification.

The Commission maintains the right to revoke the certification of a school for one or more of the following reasons:

(1) A Commission determination that excess police training schools exist under § 203.31 (relating to eligibility for school certification).

(2) Failure to comply with the minimum school standards set forth in this chapter.

(3) Submission of a known false or fraudulent document or allowing the submission of known false or fraudulent documents to the Commission.

(4) Subcontracting of police training to another non-certified entity.

(5) Failure to take corrective action after suspension under § 203.35 (relating to emergency suspension of school certification).

(6) Failure to conduct one basic police training course each year the school is certified.

#### **Subchapter D. COURSE REQUIREMENTS**

Sec.

- 203.51. Basic police training course curriculum.  
 203.52. Mandatory in-service training courses.  
 203.53. Nonmandatory in-service training courses.  
 203.54. Commission cheating policy.

#### **§ 203.51. Basic police training course curriculum.**

(a) The Commission will set the number of hours required in the basic police training course.

(b) The Commission will reserve the right to determine the course content of each area as needed. The basic police training course curriculum shall include instruction in at least the following areas:

- (1) Pennsylvania criminal law.
- (2) Pennsylvania Rules of Criminal Procedures.
- (3) Pennsylvania Vehicle Code.
- (4) Antisocial behavior.
- (5) Professional relations.
- (6) Physical conditioning.
- (7) Human relations skills.
- (8) Application of force.
- (9) Firearms training.
- (10) Patrol Procedures and Operations.
- (11) Investigations.
- (12) Communications.
- (13) Handling violent and dangerous people.
- (14) Custody.
- (15) First aid and CPR.
- (16) Operation of patrol vehicle.
- (17) Other subjects the Commission deems necessary.

#### **§ 203.52. Mandatory in-service training courses.**

(a) Mandatory in-service training is required of all police officers.

(b) Mandatory in-service training shall consist of continuous in-service requirements and academic in-service requirements.

(1) Continuous in-service requirements shall consist of the following:

(i) Qualify annually on a police firearms course with any firearm, shotgun or rifle authorized for use, including personal weapons carried in lieu of issued weapons or as a second weapon. At no time may a weapon be carried on duty for which an officer is not qualified.

(ii) Maintenance of a first aid and CPR certification issued by the American Red Cross, the American Heart Association, the Department of Health or other agency approved by the Department of Health.

(iii) Other requirements deemed necessary by the Commission.

(2) Academic in-service requirements shall consist of at least 12 hours of annual training as determined yearly by the Commission. The course content and specific hours shall be published in the Commission newsletter.

(c) Mandatory in-service administration shall consist of the following:

(1) Applicants for instructor in the mandatory in-service training program shall meet the requirements of § 203.72(b) (relating to certification requirements).

(2) Each school shall submit a training calendar to the Commission prior to the beginning of each quarter of the calendar year. Included in the calendar shall be: course title, dates of training, time of classes and location.

(3) Maximum class size for mandatory in-service courses shall be established by the Commission.

(4) Mandatory in-service training courses are subject to inspection by a Commission inspector.

(i) Certification of instructors may be withdrawn immediately by a Commission inspector for one or more of the following reasons:

- (A) Failing to present the full program.
- (B) Teaching improper or incorrect material or not presenting the Commission program.
- (C) Cheating.
- (D) Inadequate preparation for class.
- (E) Being intoxicated in class.
- (F) Using inappropriate language.
- (G) Any other activity or behavior the Commission Inspector finds to be inappropriate or objectionable.

(ii) Withdrawal of mandatory in-service instructor certification by a Commission inspector will be reviewed by the Commission and the instructor's certification may be subject to revocation by the Commission under § 203.73 (relating to revocation of instructor certification).

(iii) Classes may be suspended immediately during an inspection by a Commission inspector for cause. Costs for classes suspended during an inspection for cause will not be paid by the Commission.

(5) Acceptance into classes for which reimbursement is to be requested from the Commission shall be limited to currently employed police officers and county detectives. No fee will be charged to these individuals for any program paid for by the Commission.

(6) Only examinations prepared by the Commission shall be used to determine successful completion of academic requirements for these courses. Minimum passing scores will be determined by the Commission for each examination.

(7) An individual failing to pass the examination to be administered at the end of a course shall be given the opportunity for an immediate re-examination by the course instructor. The re-examination process shall consist of a review of course objectives, content and course summary, prior to an orally administered re-examination utilizing a different examination from the failed examination. If an individual fails the re-examination, a written notice of failure shall immediately be sent by certified mail, return receipt requested, to the employing municipality. An individual failing both the examination and the re-examination for a course shall be permitted to partici-

pate in another offering of the course, if the individual continues to be a currently employed police officer.

(8) The certified school, and the course instructors, shall be held responsible by the Commission for proper administration of in-service training courses, including maintenance of proper examination security.

(9) Newly certified police officers are not required to participate in the mandatory in-service training courses in the year they were certified. Departments are encouraged to have these officers participate in the mandatory in-service training program.

(10) Municipalities may request extensions of time from the Commission for officers unable to complete in-service training enumerated within the time frame. This is accomplished by filing with the Commission a request for the extension, supported by proper justification.

**§ 203.53. Nonmandatory in-service training courses.**

(a) A political subdivision of the Commonwealth may apply for in-service training grants for the actual expenses of providing nonmandatory in-service training programs to police officers. A political subdivision shall apply for a nonmandatory in-service training grant by filing an application and resolution with the Commission.

(1) A copy of the application and resolution shall be obtained from the Commission.

(2) The Commission will only consider requests for nonmandatory in-service training grants that comply with the following:

- (i) All sections of the application shall be completed.
- (ii) The application shall be accompanied by a certified copy of the resolution. The resolution shall be adopted by the governing body and shall provide that the political subdivision will adhere to the standards for training established by the Commission while receiving Commonwealth funds under the act and this chapter.

(3) Applications and resolutions shall be filed with the Commission and received at least 45 days prior to the commencement of the proposed training program. The Commission, or its designee, has the discretion to waive the 45-day filing limitation for good cause, but only if the grant request was submitted prior to the commencement of the proposed training program.

(b) Limitations for funding of nonmandatory in-service training programs shall be as follows:

(1) Only courses approved by the Commission will be eligible for nonmandatory in-service training grants.

(i) The Commission has the discretion to approve or disapprove a proposed course, based upon law enforcement requirements.

(ii) Approved courses shall be published in the Commission newsletter.

(2) Courses with less than 12 or more than 40 police officers enrolled will not be approved for nonmandatory in-service training grants. However, at the discretion of the Executive Director or by a majority vote of the In-Service Training Committee, a different minimum or maximum enrollment may be established for a specific course.

(3) Nonmandatory in-service training grant requests will not be approved unless the instructors for the course are approved by the Commission or the In-Service Training Committee.

(4) The Commission will not approve nonmandatory in-service training grant requests for the following:

- (i) Firearms qualification.
- (ii) Special Weapons and Tactics (SWAT) type training.
- (iii) First aid and CPR training.

(c) Nonmandatory in-service training grant requests in the amount of \$3,000 or less may be approved by the Commission's In-Service Training Committee. The Committee will be appointed by the Commission chairperson and consist of five Commission members including a designated chairperson of the Committee.

(1) The Committee chairperson has the authority to convene a Committee meeting for reviewing grant requests. The Committee may not act on a grant request unless at least three Committee members are present at the meeting.

(2) The Committee members shall vote to either approve or deny each grant request based on the information presented and the standards established by this chapter. In the case of a tie vote by the Committee, the Commission will make the final determination on the grant request.

(3) The Committee chairperson shall formally report all action taken by the Committee at the next regularly scheduled Commission meeting.

(d) Nonmandatory in-service grant requests in excess of \$3,000 may be approved only by the Commission. The In-Service Training Committee shall review every request and make a recommendation to the Commission.

(1) The chairperson of the Committee shall formally report the recommendation of the Committee, including dissenting or minority statements, to the Commission prior to the Commission's final decision on the grant request.

(2) The Commission members shall vote to approve or deny each grant request based on the Committee's recommendations, the information presented and the standards established by this chapter.

(e) The Executive Director shall notify the political subdivision in writing of the Commission's determination concerning the grant request. Notice shall be forwarded to the requesting political subdivision by certified mail, return receipt requested.

**§ 203.54. Commission cheating policy.**

(a) An individual observed cheating shall be barred from further participation in Commission-required training.

(b) A written notice of the cheating incident will immediately be sent to the individual's employing municipality by the school, with a copy forwarded to the Commission. A copy of the notice will be made available to the individual by the school.

(c) Prior to administering a written examination, the instructors shall inform students taking the examination of the Commission cheating policy.

**Subchapter E. INSTRUCTOR CERTIFICATIONS**

Sec.	
203.71.	General.
203.72.	Certification requirements.
203.73.	Revocation of instructor certification.

**§ 203.71. General.**

(a) Certifications shall be approved by the Commission and issued by the Executive Director.

(b) Instructor certifications issued under this chapter are for the sole purpose of identifying those qualified to teach in a police training course—basic or mandatory in-service—certified by the Commission.

(c) The instructor application procedure is as follows:

(1) Application for instructor certification shall be made on a form supplied by the Commission. The form may be obtained by writing to the Commission office.

(2) Application for instructor certification shall be submitted by the Director of a school certified by the Commission. Individual instructors may not apply on their own behalf. Applications may be made only for individuals teaching at a certified school.

(3) Documentary proof shall accompany each application verifying satisfaction of all requirements for certification including required degrees. See § 203.72 (relating to certification requirements).

(4) Applicants shall be interviewed by the director of the school at which time the director shall review the supporting documentation to be submitted with the application and the director shall so indicate on the application.

(5) The application shall be notarized.

(6) Applicants may not have been convicted of a disqualifying criminal offense.

#### § 203.72. Certification requirements.

(a) *Basic police training instructors.*

(1) *Types.* The Commission will certify the following two types of instructors for basic police training:

(i) *General instructors.* An instructor eligible to teach a course other than first aid, CPR, firearms, physical conditioning, application of force and patrol vehicle operation.

(ii) *Special instructors.* An instructor eligible to teach first aid, CPR, firearms, physical conditioning, application of force and patrol vehicle operation.

(2) *Qualifications.*

(i) Attorneys licensed to practice in this Commonwealth or other instructors for topic areas that require professional education or licensure, need not meet the following requirements concerning police experience. In order to obtain certification as a general instructor, an applicant shall satisfy the following requirements:

(A) Successfully complete a Commission approved instructor development course, or possess a teaching certificate issued by the Department of Education, or have full-time employment with academic rank at an accredited college or university.

(B) Have 5 years police experience, or have an associate of arts degree and 4 years police experience, or have a bachelor of arts degree and 3 years police experience. Copies of degrees shall be accompanied by transcripts.

(ii) In order to obtain certification as a special instructor in one of the courses listed in this subparagraph, an applicant shall provide documentation evidencing the special requirements listed for each course:

(A) *First aid and CPR.* Possess a current instructor certification issued by the American Red Cross, the American Heart Association, the Department of Health or other agency approved by the Department of Health. (40 hour curriculum)

(B) *Firearms.* Possess a current Police Firearms Instructor rating from the National Rifle Association, the State Police, the Federal Bureau of Investigation, Smith and Wesson Academy, the Philadelphia Police Academy, United States Secret Service or other certification approved by the Commission.

(C) *Physical conditioning.* Provide documentation of successful completion of an instructor development course and training or education which evidences expertise as a physical conditioning instructor.

(D) *Application of force.* Provide documentation of successful completion of an instructor development course and training or education which evidences expertise as a defensive tactics instructor.

(E) *Patrol vehicle operation.* Provide documentation of successful completion of an instructor development course and an instructor's course in emergency vehicle operation or police driver proficiency.

(3) *Renewal and lapse of basic police training instructor certification.*

(i) Basic police training instructor certification shall be valid for 2 years and each certificate shall contain an expiration date. No instructor will be permitted to teach without a current certificate.

(ii) Renewal of basic police training instructor certification shall be effected automatically by the Commission if the certified instructor has satisfied the following requirements:

(A) Has taught in either a basic training course or a mandatory in-service training course certified by the Commission at least one time during the 2-year period he is certified, as evidenced by the records of a certified school which must be submitted to the Commission on an annual basis.

(B) Maintained current qualifications in the main subject areas for which certification has been granted, and provides documentation of these qualifications to the Commission.

(iii) Failure to satisfy subparagraph (ii) shall prevent renewal of the instructor certification and cause the certification to expire. A lapsed certification cannot be renewed and to regain certification, the school shall submit an application on behalf of the individual as a new instructor.

(b) *Mandatory in-service training instructor qualifications.* In order to obtain certification as a mandatory in-service training instructor, an applicant shall satisfy the following requirements:

(1) Be employed by a certified basic training academy.

(2) Be certified as a basic police training instructor in the area of instruction the applicant will present or satisfy one of the following:

(i) If not currently a basic police training certified instructor but eligible for certification, an application for certification shall be submitted to the Commission and a temporary certificate obtained. At the discretion of the Executive Director, a temporary certification may be issued which shall be valid for 6 months. Temporary certificates are not renewable.

(ii) When courses are offered in mandatory in-service training that are not available in the basic police training course, the Commission will determine requirements for selections as an instructor in the program.

(3) Attend Commission instructor training programs for the courses in which certification is sought. Application for certification as a basic police training instructor shall be submitted to the Commission prior to attending any instructor training programs.

(4) Other requirements deemed necessary by the Commission.

**§ 203.73. Revocation of instructor certification.**

The Commission may revoke an instructor certification for one or more of the following reasons:

- (1) Conviction of a disqualifying criminal offense.
- (2) Conduct which reflects unfavorably upon a certified school or the Commission.
- (3) Evidence of inability to instruct, including those conditions enumerated in § 203.52(c)(4)(i) (relating to mandatory in-service training courses).
- (4) Knowing falsification of a document submitted to the Commission or submission to the Commission of a document knowing it to be false. False documents include: scores on examinations, grades for a course, classroom hours presented, attendance of participants or other information received directly from the instructor or through a certified school or police department.
- (5) Assisting a student to cheat in a Commission training course.
- (6) Use of instructor certification for an unauthorized purpose.
- (7) Termination for any reason of the instructor by a certified school
- (8) Any other condition which the Commission deems of such seriousness as to warrant revocation.

**Subchapter F. REIMBURSEMENT OF EXPENSES**

- Sec. 203.81. Basic training.
- 203.82. Mandatory in-service training.
- 203.83. Grants for nonmandatory in-service training programs.

**§ 203.81 Basic training.**

(a) The Commission will reimburse each political subdivision for allowable tuition and expenses incurred by its police officers while attending certified basic police training, if the political subdivision adheres to the training standards established by the Commission. Application for reimbursement shall be made in the following manner:

- (1) A political subdivision shall file an application with the Commission on a form supplied by the Commission within 120 days of the completion of the training.
  - (i) Requests submitted after 120 days shall be accompanied by a justification for late submission. The Commission will not consider requests for reimbursement received more than 1 year after the completion of the training.
  - (ii) A separate form shall be submitted for each police officer requesting reimbursement in accordance with this chapter.
  - (2) Following the political subdivision's annual audit, the head of the political subdivision and the individual performing the audit shall verify the proper expenditure of Commission funds.
    - (i) Verification shall be provided on a form supplied by the Commission.
    - (ii) The verification shall be filed with the Commission.

(iii) The political subdivision shall file the form only for fiscal years in which Commission funding was provided.

(b) The political subdivision may request reimbursement for the following:

- (1) Sixty percent of the police officer's regular salary while attending a certified basic training course.
- (2) Reasonable tuition for the basic police training course.
  - (i) The Commission must approve the tuition rate prior to reimbursement. Tuition rate approval will require a majority vote of the Commission.
  - (ii) The Commission will consider the reasonableness of the tuition rate based on the following:
    - (A) The length of the course.
    - (B) The instructor salaries.
    - (C) The facility costs.
    - (D) The administrative costs.
    - (E) The supply costs.
    - (F) The cost-effectiveness of the tuition compared with tuition charged by other institutions.

(iii) The Commission-approved tuition rate shall be the only amount a certified school may charge a participant in the training program.

(iv) A certified basic police training school may not change its tuition rate for a particular course without prior approval from the Commission.

- (A) Requests for tuition increases will not be considered by the Commission more than once every 2 years.
- (B) Requests for tuition increases shall enumerate all sources of revenue the institution receives.

(C) The Commission will consider any tuition increase requests in conjunction with program changes mandated by the Commission.

(3) The Commission will reimburse reasonable subsistence and lodging costs for police officers who are not commuting to and from the basic police training course. A police officer who is commuting to and from the basic police training course shall only be reimbursed for the cost of lunch.

(4) Reasonable travel expenses are as follows:

- (i) The Commission will reimburse for police officers commuting to the basic police training course for the mileage incurred while attending the course.
- (ii) Noncommuters are eligible for mileage of one round trip while attending the course.
- (iii) Mileage reimbursement, whether for commuters or noncommuters, shall only be allowed to the nearest available certified basic police training school from the police officer's place of employment.
- (iv) Travel shall be by the most direct route.

(5) Reasonable living and travel expenses shall be governed by 4 Pa. Code Chapter 40 (relating to travel and subsistence).

(c) Limitations on reimbursement are as follows:

(1) A police officer who has successfully completed a certified basic training course, and for whom reimbursement was claimed or obtained by a political subdivision, may not again be claimed for reimbursement for repeat-

ing a basic police training course regardless of employment by another police department.

(2) A police officer who does not successfully complete the certified basic police training course and for whom reimbursement has been claimed or obtained by a political subdivision is not eligible for additional reimbursement while attending a subsequent basic police training course.

(d) If the Commission determines that a request for reimbursement does not meet the requirements of the act and this chapter, the Executive Director will specify in writing and forward to the requesting political subdivision, by certified mail, return receipt requested, the reason upon which the adverse determination is based. The Commission will issue notice of the adverse determination, within 45 days following receipt of the request, except for good cause.

**§ 203.82. Mandatory in-service training.**

(a) The Commission will reimburse all schools certified by the Commission or other training resources deemed necessary by the Commission only in the form of tuition.

(1) The Commission will establish the tuition for each course considering the following factors: historical training costs; course requirements; and course development costs.

(2) The tuition established by the Commission will be published in the Commission newsletter and remain in effect for the duration of each course.

(3) The tuition established by the Commission for each course shall apply to all schools certified by the Commission and all other training resources deemed necessary by the Commission.

(4) Certified schools or other training resources unable to conduct the required training at the established tuition rate shall have the right to a hearing under Subchapter G (relating to notice and hearings).

(b) The Commission will reimburse schools or other training resources for law enforcement officers authorized by the Commission. Law enforcement officers employed by a law enforcement agency not eligible for reimbursement under the act may attend mandatory in-service training courses after the law enforcement agency pays the tuition to the Commission.

(c) The Commission will only reimburse a school or other training resource for a police officer to attend a course one time. Invoices of police officers who have attended the mandatory in-service training course shall be submitted to the Commission within 30 days of the course's completion.

**§ 203.83. Grants for nonmandatory in-service training programs.**

(a) The Commission will provide grants only for actual expenses incurred by political subdivisions for providing nonmandatory in-service training programs to police officers within this Commonwealth in accordance with the act and this chapter.

(1) Allowable nonmandatory in-service training expenses shall be limited to the following:

(i) *Instructors.* Reasonable expenditures, as determined by the Commission.

(ii) *Services.* Reasonable expenditures for rental and contractual services.

(iii) *Supplies.* Expenditure for necessary supplies for course instruction not including nonexpendable equipment purchases.

(iv) *Administration.* Reasonable expenditures for developing and implementing the training program. This expenditure may not exceed 5% of the total grant amount unless otherwise approved by the Commission or in-service training committee. This expenditure may not exceed 10% of the total grant amount.

(2) The Commission has the discretion to approve additional expenditures not explicitly provided for in this chapter. Expenses which are not approved by the Commission shall be borne by the political subdivision providing the training program.

(b) The Commission has the authority to establish the maximum amount of funds which may be granted to each county for providing nonmandatory in-service training to police officers.

(c) The Commission will disburse moneys approved for nonmandatory in-service training grants in the following manner:

(1) The Commission will disburse one half of the grant to the political subdivision within 45 days of the Commission's approval, except for good cause.

(2) In order to receive the remaining grant moneys, the political subdivision shall submit a final audit and course roster to the Commission within 120 days following the conclusion of the training course. Requests for reimbursement will not be considered after 120 days following the conclusion of the training course.

(3) The Commission has the discretion to request an independent audit of the political subdivision to verify its actual nonmandatory training expenditures prior to disbursing the remaining grant amount.

(d) Nonmandatory in-service training grant funds that have been disbursed to a political subdivision in error or as a result of an unauthorized or improper request for reimbursement shall immediately be returned to the Commission. A political subdivision which fails to comply with the Commission's demand for the return of funds in accordance with this subsection shall be ineligible for further funding from the Commission until the funds are returned.

(e) The allocation of grants for nonmandatory in-service training programs shall be contingent upon the availability of funds appropriated for the programs.

**Subchapter G. NOTICE AND HEARINGS**

Sec.  
203.101. General.  
203.102. Adverse determination.  
203.103. Hearing procedures.

**§ 203.101. General.**

A notice or hearing required under this chapter will be conducted in accordance with 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

**§ 203.102. Adverse determination.**

Notices of an adverse determination by the Commission and requests for a hearing shall be as follows:

(1) The Commission will specify in writing and forward to the individual/school by certified mail, return receipt requested, the reasons upon which the adverse determination is based. This notice is required in all cases when the Commission:

(i) Disapproves an application or a reapplication for enrollment in a municipal police officers' training course.

(ii) Disapproves an application for which waiver of training is requested.

(iii) Revokes a previously issued certification under § 203.14 (relating to revocation of certification).

(iv) Disapproves an application for school or course certification.

(v) Revokes a previously issued school certification under § 203.36 (relating to revocation of school certification).

(vi) Disapproves an application for instructor certification.

(vii) Revokes a previously issued instructor certification under § 203.73 (relating to revocation of instructor certification).

(viii) Acts in accordance with the Commission cheating policy.

(ix) Disapproves an application for reimbursement.

(2) An individual school given notice of an adverse determination by the Commission may file a written request for a hearing. Any request for a hearing shall be received by the Commission within 15 days after receipt of the adverse notice.

### § 203.103. Hearing procedures.

(a) When a hearing is requested as a result of any adverse determination by the Commission as enumerated in § 203.101 (relating to general), a hearing shall be scheduled and a notice of the hearing shall be sent to all parties to the proceedings. Hearings shall be held at the Commission in Hershey, Pennsylvania, unless otherwise stipulated by the parties.

(b) A hearing examiner will be appointed by a majority vote of the Commission to preside over an authorized hearing.

(c) Hearings shall be stenographically recorded and a transcript of the record shall be made part of the record.

(d) The parties shall have the right to obtain independent counsel, submit motions and briefs, present evidence and witnesses, object to evidence, cross-examine witnesses and argue their position to the hearing examiner. The hearing examiner is not bound by the technical rules of evidence at the hearing. Rather, all relevant and material evidence with probative value may be admissible at the discretion of the hearing examiner.

(e) Upon request by a party, the Commission will provide subpoenas for the attendance of witnesses or for the production of documentary evidence. Compliance with subpoenas may be excused by the hearing examiner if he determines that the testimony or documents are not relevant or material to the proceedings.

(f) At the conclusion of the proceedings the hearing examiner shall issue a recommendation, findings of fact and conclusions of law.

(1) The Commission will review the hearing examiner's recommendation, findings of fact, and conclusions of law in arriving at a final decision.

(2) The Commission will specify in writing and forward to all the relevant parties by certified mail, return receipt requested, the final decision of the Commission.

[Pa.B. Doc. No. 96-958. Filed for public inspection June 14, 1996, 9:00 a.m.]

# PENNSYLVANIA PUBLIC UTILITY COMMISSION

[L-00960116]

[52 PA. CODE CH. 59]

## Meter Tests

The Pennsylvania Public Utility Commission (Commission) adopted a proposed rulemaking to modify regulations of gas meter tests pursuant to petitions filed by the Pennsylvania Gas Association. The proposed amendment will correct a typographical error in the present regulations, increase by 4 years the time between tests of residential gas meters, and allow for two alternative testing methods. The two new methods will permit a regulated gas utility to choose to adopt a program of random testing based on a statistical sampling or a variable interval model. The contact persons are Janet M. Sloan, Assistant Counsel, Law Bureau, (717) 787-3663 and Jerry Wells, Utility Standards Supervisor, Bureau of Transportation and Safety, (717) 787-2805.

### *Executive Summary*

By order entered April 2, 1996, the Commission adopted a Proposed Rulemaking to Modify Regulations of [Gas] Meter Tests pursuant to petitions filed by the Pennsylvania Gas Association. The proposed amendment will correct a typographical error in the present regulations, increase by 4 years the time between tests of residential gas meters, and allow for two alternative testing methods. The two new methods will permit a regulated gas utility to choose to adopt a program of random testing based on a statistical sampling or a variable interval model.

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of this proposed amendment on May 30, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendment, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Legislative Committees have any objection to any portion of the proposed amendment, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has any objections to any portion of the proposed amendment, it will notify the agency within 30 days after the close of the public comment period. Such notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the agency, the General Assembly and the Governor of any objections raised.

Public Meeting held  
March 28, 1996

*Commissioners Present:* John M. Quain, Chairperson; Lisa Crutchfield; John Hanger; David W. Rolka; and Robert K. Bloom



### Proposed Rulemaking Order

*By the Commission:*

This matter is before the Commission pursuant to several petitions filed by the Pennsylvania Gas Association (PGA) seeking to amend the regulation regarding meter tests at 52 Pa. Code § 59.21. After reviewing the proposed changes to the Commission's regulation, we are persuaded that the modifications would be prudent and should be considered.

Under 52 Pa. Code § 59.21(b), PGA suggests that the regulation clearly define "A," "B" and "C" as separate and distinct classes by including the word "Class" before each designation. We believe that it is a reasonable clarification of our regulation and we will thus propose that amendment.

The "Extended Test Schedule" enumerated under 52 Pa. Code § 59.21(c) sets forth the requirements for testing Classes A, B and C meters. PGA's petition requests that the Commission extend the C meters. PGA's petition requests that the Commission extend the testing periods for Class A meters (residential) by an additional 4 years.

Commission staff has looked into the viability of allowing an additional 4 years for its regulated gas utilities to test the Class A meters. Staff concurs with PGA's representation that testing these particular meters involves a large economic outlay for regulated utilities, mostly associated with personnel costs. Extending the time requirements for testing will probably reduce the economic costs sustained by the utilities for the Class A testing.

The Commission is acutely aware of its duty to ensure the safety of utility service. Consequently, staff has made inquiries of various manufacturers and other experts as to the safety factor of extending meter testing by 4 years for Class A meters. It is our belief that safety would not be compromised by the longer testing periods. Therefore, we are proposing to lengthen the extended meter testing requirements for Class A meters by 4 years.

In a separate petition, PGA points to a typographical error in our regulation at § 59.21(c)(2) for Class B meters. Under the "Current Year's Permitted Test Period (Years)" listing, the second number is indeed an error. PGA is correct in suggesting that the number "6" on the second line of that table should be "7." We will correct this error through this rulemaking process.

Finally, PGA recently submitted a third petition seeking to add two additional subsections to our meter tests regulation at 52 Pa. Code § 59.21. PGA's proposal will provide two alternative meter testing formats for Pennsylvania's gas utilities. The first subsection will allow for a statistical sampling method whereby the utility will group its meters into categories based on their technology, design, manufacture, model, and other operating characteristics. The utility would then draw a test sample of sufficient size to assure 90% statistical accuracy within a 2% range. Based on this test sample, the utility will have to either remove all the meters in this category (in the case of the test showing meter inaccuracy) or take no further action (in the case of the test showing meter accuracy).

The second proposed alternative meter testing is a variable interval approach. Under this subsection, the retirement rate for a meter category is tied directly to that category's demonstrated level of accuracy.

Both of the proposed alternatives have been explored within Pennsylvania by pilot programs. These programs have been successful. In addition, the proposed alternatives are similar to the protocols suggested by the Ameri-

can National Standards Institute (ANSI), a group that is developing National standards for meter testing. The PGA petition adopts the protocol suggested by ANSI for the variable integral alternative and for the statistical sampling alternative with the modification of tightening the allowance for the failure rate under this latter alternative. Specifically, the statistical sampling as proposed calls for 80% of the meters tested to be within the accuracy rate; the ANSI standard allows for 75% passing.

However, the proposed rulemaking does contain several changes to PGA's proposed language in its third petition after consultation with PGA representatives. Section references to the ANSI specifications were erroneous. The corrected references have been incorporated into our proposed rulemaking. In addition, representatives from PGA agreed to change the statistical sampling section in order to clarify the proposal.

After careful review of our pilot programs' results and with consideration to the efficiency of adopting National standards, we are persuaded that including these alternatives is economically sound and safety conscious. Accordingly, pursuant to sections 501, 1501 and 1504 of the Public Utility Code (66 Pa.C.S. §§ 501, 1501 and 1504) and the Commonwealth Documents Law and the regulations promulgated thereunder, we institute a rulemaking proceeding.

*Therefore, It Is Ordered That:*

1. A rulemaking proceeding is hereby instituted at this docket.
2. The Commission's regulations are thereby proposed to be amended as per the Annex A attached to this order.
3. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
4. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
5. The Secretary shall submit this order and Annex A for informal review by the designated standing committees of both houses of the General Assembly, and for informal review and approval to the Independent Regulatory Review Commission.

6. That the Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Interested persons may submit written comments, an original and 10 copies, to John G. Alford, Secretary, Pennsylvania Public Utility Commission, and shall have 30 days from the date this order is published to submit comments.

JOHN G. ALFORD,  
*Secretary*

*(Editor's Note: A proposal to amend § 59.21, proposed to be amended in this document, remains outstanding at 26 Pa.B. 1370 (March 30, 1996).)*

**Fiscal Note:** 57-152. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 52. PUBLIC UTILITIES PART I. PUBLIC UTILITY COMMISSION Subpart C. FIXED UTILITY SERVICES CHAPTER 59. GAS SERVICE SERVICE AND FACILITIES

#### § 59.21. Meter tests.

\* \* \* \* \*

(b) *Standard test schedule for Class A, Class B and Class C Meters.* Unless otherwise provided by this section, each public utility shall make and record tests of Class A, Class B and Class C meters on the following schedule:

\* \* \* \* \*

(c) *Extended test schedule for Class A, Class B and Class C meters.* Extended schedules shall conform with the following:

(1) A public utility may depart from the requirements of subsection (b) as to Class A, Class B or Class C meters

in a year, and in lieu thereof make and record tests of the class of meters under the schedule prescribed therefor in paragraph (2), if [all of] the following qualifications are met:

\* \* \* \* \*

(2) Subject to the qualifications prescribed in paragraph (1), a public utility may make and record tests of Class A, Class B or Class C meters on the following schedule:

<i>Next Preceding Year</i>		<i>2d Preceding Years</i>		<i>Current Year's</i>
<i>Slow Meter</i>	<i>Fast Meter</i>	<i>Slow Meter</i>	<i>Fast Meter</i>	<i>Permitted Test</i>
<i>Ratio (%)</i>	<i>Ratio (%)</i>	<i>Ratio (%)</i>	<i>Ratio (%)</i>	<i>Period (Years)</i>
CLASS A METERS				
10	10	12	12	[ 10 ] 14
8	8	10	10	[ 12 ] 16
6	6	8	8	[ 14 ] 18
4	4	6	6	[ 16 ] 20
CLASS B METERS				
10	10	12	12	6
8	8	10	10	[6] 7
6	6	8	8	8
4	4	6	6	10
* * * * *				

(d) *Statistical sampling.* A public utility may depart from the requirements of subsections (b), (c) or (e) as to Class A, Class B or Class C meters, and instead make and record tests of the Class A, Class B or Class C meters under a statistical sampling program, if the following qualifications are met:

(1) The composition and description of each group of meters shall be fully described in the annual report to the Commission.

(2) Sufficient meters shall be tested annually to insure a 90% confidence level that the meter groups are performing within prescribed limits.

(3) For a group to remain in service, at least 80% of the meters in the sample test shall meet the accuracy limits of 98% average accuracy (2% slow) and 102% average accuracy (2% fast). If a group of meters does not meet the performance standards, corrective action shall be taken. The corrective action may consist of removing the entire group from service within 4 years or, if the group consists of one or more subgroups, implementing a selective meter removal program to improve the accuracy of the group to within acceptable limits. The selective removal program may be as follows:

(i) If test results indicate that one or more subgroups do not meet the performance standards, the subgroup shall be identified and removed within 4 years.

(ii) Once identified as a group or subgroup not meeting the performance standards and during the removal process, that group or subgroup shall be eliminated from the sampling plan.

(4) The statistical sampling schedule shall be in accordance with the provisions of ANSI B109.1 Part IV Sec. 4.3.2.1 or its successor.

(5) A utility electing the statistical sampling program shall remain on that program for a minimum of 4 years and shall remove groups or subgroups of meters scheduled for removal within the 4-year requirement.

(e) *Variable interval.* A public utility may depart from the requirements of subsection (b), (c) or (d), as to Class A, Class B or Class C meters, and instead make and record tests of the Class A, Class B or Class C meters under a variable interval program, if the following qualifications are met:

(1) The composition and description of each group of meters shall be fully described in the annual report to the Commission and shall be in accordance with ANSI Spec. B109.1 Part IV Sec. 4.3.2.2 or its successor.

(2) The number of meters to be removed in any year will be determined from the test results of the next preceding year's incoming meters.

(3) Except as provided in paragraphs (4) and (5), the ratio (r) of the number of meters in a test group to be removed to those in service in that test group shall be determined by the formula  $(r = .02 + .3d)$  where (d) is the ratio of meters which have an average accuracy of less than 98% or more than 102% as reported to the nearest 1/2%.

(4) Meters removed in a test group in excess of the ratio (r) as described in paragraph (3) shall be credited towards the ratio (r) for a better performing test group.

(5) A utility may apply to the Commission for an Accelerated Retirement Program (ARP) for a specific meter type that the utility may desire to purge from its system. Meters removed in an ARP in excess of the ratio (r) as described in paragraph (3)

may be credited towards the ratio (r) for any other test group regardless of performance.

(6) A utility electing the variable interval plan shall remain on that plan for 4 years.

- [ (d) ] (f) \*\*\*
- [ (e) ] (g) \*\*\*
- [ (f) ] (h) \*\*\*
- [ (g) ] (i) \*\*\*
- [ (h) ] (j) \*\*\*
- [ (i) ] (k) \*\*\*
- [ (j) ] (l) \*\*\*
- [ (k) ] (m) \*\*\*
- [ (l) ] (n) \*\*\*
- [ (m) ] (o) \*\*\*

[Pa.B. Doc. No. 96-959. Filed for public inspection June 14, 1996, 9:00 a.m.]

## [52 PA. CODE CHS. 29—31]

[L-950111]

### Rescission of Obsolete Regulations Regarding Motor Carriers; Amendment of Medallion Program

The Pennsylvania Public Utility Commission (Commission) adopted a rulemaking order December 14, 1995, that rescinds obsolete regulations regarding motor carriers and provides for cross-referencing of existing, interdependent regulations. The Commission also proposes to amend two regulations. The first amendment would require motor carriers of property to ensure that the equipment they are using has a valid inspection decal or complies with Federal inspection requirements. The second amendment adds to the list of prohibited discriminations, the discrimination by taxicab drivers against a person with a disability. The contact person is John Herzog, Assistant Counsel, Legal Division, Bureau of Transportation and Safety, (717) 783-3173.

#### *Executive Summary*

This rulemaking rescinds obsolete regulations regarding motor carriers and provides for cross referencing of existing, interdependent regulations. The Commission also proposes to amend two regulations. The first amendment would require motor carriers of property to ensure that the equipment they are using has a valid inspection decal or complies with Federal inspection requirements. The second amendment adds to the list of prohibited discriminations, the discrimination by taxicab drivers against a person with a disability.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of these proposed amendments on May 30, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting these proposed amendments, the Commission has provided IRRC and the Committees with a copy of a

detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Committees have objections to any portion of the proposed amendments, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has any objections to any portion of the proposed amendments, it will notify the Commission within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Commission, the General Assembly and the Governor of any objections raised.

Public meeting held  
December 14, 1995

*Commissioners Present:* John M. Quain, Chairperson, Statement follows; Lisa Crutchfield, Vice Chairperson; John Hanger; David W. Rolka; Robert K. Bloom

### Proposed Rulemaking Order

#### *By the Commission:*

By Order entered May 23, 1995, we issued an Advance Notice of Proposed Rulemaking To Review And Rescind All Obsolete And Excessive Rules And Regulations at Docket No. L-950103. The advance notice was published in the *Pennsylvania Bulletin* on June 3, 1995, 25 Pa.B. 2188, and 60-day comment period set.

We received comments from Erie Limousine Service, the Western Pennsylvania Limousine Association, and our own Bureau of Transportation and Safety which reveal the need to evaluate and update the procedures contained in the affected chapters. We are setting forth proposed changes in four sections in Chapters 29 and 31. We believe these changes will clarify, simplify and remove excessive and burdensome requirements from our motor carrier regulations.

Our review of the affected chapters was careful and meticulous. We are well aware of our duty to ensure the safety of utility service, and our proposed changes will not result in any lapse in our mandate. At the same time, this is not a complete list of regulations which have become obsolete. Due to the Federal legislation which preempted a portion of the Commission's jurisdiction in the motor carrier field, we are preparing another rulemaking to bring affected regulations up to date. Those included in the present rulemaking are those which are not affected by the Federal legislation but should be amended or deleted for other reasons.

What follows is a summary of the proposed changes.

#### *Chapter 29. Motor Carriers of Passengers.*

§ 29.71. *Marking of vehicles.* This section is amended to provide a cross-reference to § 29.333(b).

#### *Chapter 31. Motor Carrier Property.*

§ 31.13. *Transportation of explosives.* This section is deleted as obsolete in light of the existing hazardous materials regulations.

§ 31.14. *Transportation of unauthorized persons.* This section is deleted as obsolete in light of Chapter 37, which addresses the transportation of passengers by property carriers.

§ 31.32. *Equipment.* Additional language permits a motor carrier to take possession of equipment under lease

after either performing an inspection or ensuring that the vehicle has a valid inspection decal, or complies with the periodic inspection requirements now found at § 37.204(7).

In proposing these changes, we believe that our efficiency as a regulatory agency will be enhanced. We are eliminating those sections which no longer serve a useful purpose and we are modifying others to promote the ease of application as well as fairness. We encourage those affected by these changes to file comments.

Further, as part of this rulemaking, we are amending the regulations found at 52 Pa. Code Chapter 30, concerning taxicab service in cities of the first class. Specifically, Subchapter F of those regulations provides for regulation of taxicab drivers. 52 Pa. Code § 30.75 provides for driver standards. Subsection (f) of that provision prohibits drivers from refusing service to a member of the public on the basis of sex, race, religion, nationality, age, and origin and destination points. We wish to add to this list a prohibition against drivers refusing service to persons with a disability.

Accordingly, under sections 501, 504, 505, 506, 1301 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 505, 506, 1301 and 1501, and the Commonwealth Documents Law, 45 P. S. §§ 1201 et seq., and the regulations promulgated thereunder, we shall institute a rulemaking proceeding to accomplish the objectives described in the body of this order. *Therefore,*

*It Is Ordered that:*

- 1. A rulemaking proceeding is hereby instituted at this docket.
- 2. The Commission's regulations are hereby proposed to be amended by:
  - (a) deleting §§ 31.13 and 31.14;
  - (b) amending §§ 29.71, 30.75 and 31.32.
- 3. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
- 4. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
- 5. The Secretary shall submit this order and Annex A for informal review by the designated standing committees of both houses of the General Assembly, and for informal review and approval by the Independent Regulatory Review Commission.
- 6. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Interested persons may submit written comments, an original and 10 copies, to John G. Alford, Secretary, Pennsylvania Public Utility Commission, and shall have 30 days from the date this order is published to submit comments.
- 7. A copy of this order shall be served upon all persons who submitted comments in this rulemaking proceeding.

JOHN G. ALFORD,  
*Secretary*

*Statement of Chairperson John M. Quain*

Before us today are two significant rulemakings that, when combined, will delete or rescind 62 obsolete and redundant sections of our regulations and revise another 43 sections. Furthermore, when this Commission again

meets on January 11, 1996, we will consider another 58 sections pertaining to Chapters 63, 64 and 56 for possible rescission or revision.

I wish to express my appreciation to all of the staff of the various bureaus, and those public commentators who contributed to this massive undertaking.

**Fiscal Note:** 57-167. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 52. PUBLIC UTILITIES**  
**PART I. PUBLIC UTILITY COMMISSION**  
**Subpart B. CARRIERS OF PASSENGERS OR PROPERTY**  
**CHAPTER 29. MOTOR CARRIERS OF PASSENGERS**  
**Subchapter B. COMMON CARRIERS**  
**MARKINGS AND POSTING NOTICE**

**§ 29.71. Marking of vehicles.**

\* \* \* \* \*

**(b) [ Exception ] Exceptions.**

(1) Subsection (a) is not applicable to vehicles owned by another carrier which may be used temporarily in situations arising from accident, breakdown or peak demand.

**(2) Subsection (a) is not applicable to vehicles operated in luxury limousine service as provided in § 29.333(b) (relating to vehicle and equipment requirements).**

\* \* \* \* \*

**CHAPTER 30. MEDALLION PROGRAM**  
**Subchapter F. DRIVER REGULATIONS**

**§ 30.75. Driver standards.**

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(f) *Discrimination prohibited.* A driver may not refuse service to a member of the public on the basis of sex, race, religious preference, nationality, age, point of origin, [ or ] point of destination, or to a person with a disability. A driver shall, when on duty and not engaged, furnish trip service on demand to an orderly person for lawful purposes.

\* \* \* \* \*

**CHAPTER 31. MOTOR CARRIER PROPERTY TRANSPORTATION**

**GENERAL PROVISIONS**

**§ 31.13. [ Transportation of explosives ] (Reserved).**

**[ (a) A common carrier by motor vehicle, contract carrier by motor vehicle and forwarder, when transporting an article or commodity now classified, or which may be classified as dangerous for transportation by motor vehicle under the regulations of the Interstate Commerce Commission for the transportation of explosives and other dangerous articles, shall transport the same as provided by the laws of the Commonwealth and the regulations of the Interstate Commerce Commission not inconsistent with those laws.**

(b) Subsection (a) is subject to changes and modifications that the laws of the Commonwealth or the regulations of the Interstate Commerce Commission may provide. ]

§ 31.14. [ Transportation of unauthorized persons ] (Reserved).

[ No person, other than employes of the common carrier by motor vehicle, contract carrier by motor vehicle or forwarder, may be transported on a motor vehicle not designed or adapted and used for the transportation of passengers, unless specifically authorized in writing by the carrier. Nothing contained in this section shall be construed to prohibit the carrying of a person in case of an accident or in other emergencies. ]

COMMON CARRIERS OF PROPERTY BY MOTOR VEHICLE

§ 31.32. Equipment.

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(c) Augmenting equipment. The augmenting of equipment shall conform with the following:

\* \* \* \* \*

(4) Safety inspection of equipment. It shall be the duty of the motor carrier, before taking possession of equipment, to ensure that the equipment has a valid State inspection decal or complies with the periodic inspection requirements set forth in § 37.204(7) (relating to adoption of portions of 49 CFR by reference), or to inspect or to have the equipment inspected by a person who is competent and qualified to make an inspection and who has been authorized by the carrier to make the inspection as a representative of the carrier, to insure that the equipment is in a safe condition to be operated on the highways. The inspection report shall be retained by the motor carrier for [ a period of ] at least 1 year. If the inspection discloses that the equipment is not in a safe condition to be operated on the highways, possession thereof may not be taken by the motor carrier. The person making the inspection shall certify the results on a report in the form which follows:

\* \* \* \* \*

[Pa.B. Doc. No. 96-960. Filed for public inspection June 14, 1996, 9:00 a.m.]

[L-960113]

[52 PA. CODE CHS. 63 and 64] Residential Telephone Service

The Pennsylvania Public Utility Commission (Commission) on February 8, 1996, adopted a proposed rulemaking regarding revisions to telephone regulations contained in Chapters 63 and 64. The proposed changes are necessary to: (1) clarify and simplify existing requirements; (2) update certain regulations to reflect present industry standards; and finally, (3) eliminate provisions believed to be excessive and to no longer serve a useful purpose. The contact persons are Maureen A. Scott, Assistant Counsel, Law Bureau, (717) 787-3639 and Louis Sauers, Bureau of Consumer Services, (717) 783-6688.

Executive Summary

By Order entered May 23, 1995, the Commission issued an Advance Notice of Proposed Rulemaking to Review and Rescind All Obsolete and Excessive Rules and Regulations. Comments were received from the Pennsylvania Telephone Association, GTE North and the Pennsylvania Office of Consumer Advocate. Based upon the comments received and upon its own review, the Commission has identified approximately 30 sections of its telephone regulations contained in Chapters 63 and 64, which are in need of revision. These changes were incorporated in the above proposed rulemaking by Order adopted February 8, 1996.

The proposed changes are necessary to: (1) clarify and simplify existing requirements; (2) update certain regulations to reflect present industry standards; and finally, (3) eliminate provisions believed to be excessive and to no longer serve a useful purpose.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of these proposed amendments on May 30, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendments, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Legislative Committees have objections to any portion of the proposed amendments, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed amendments, it will notify the Commission within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Commission, the General Assembly and the Governor of any objections raised.

Public Meeting held February 8, 1996

Commissioners Present: John M. Quain, Chairperson, Concurring and Dissenting in Part—Statement follows; Lisa Crutchfield, Vice Chairperson; John Hanger, Concurring and Dissenting in Part—Statement follows; David W. Rolka, Concurring and Dissenting in Part—Statement follows; Robert K. Bloom, Concurring and Dissenting in Part

Proposed Rulemaking Order

By the Commission:

By Order entered May 23, 1995, we issued an Advance Notice of Proposed Rulemaking To Review And Rescind All Obsolete And Excessive Rules And Regulations and Docket No. L-950103. The advance notice was published in the Pennsylvania Bulletin on June 3, 1995, 25 Pa.B. 2188, and a 60-day comment period set.

We received detailed comments from the telephone industry on sections in Chapters 63 and 64, regarding those sections which are obsolete, excessive and in need of revision. Accordingly, we have reviewed the comments and have developed proposals dealing with 30 sections. The following is a summary of the proposed changes

which we request comment on from interested parties. In addition to the specific modifications set forth below, the Commission is interested in receiving comment from parties on whether Chapters 63 and 64 adequately provide for the special circumstances of customers with disabilities. In particular, the Commission requests comment on the following questions. Do the procedures and standards in Chapters 63 and 64 adequately serve and provide sufficient protections for customers with disabilities? Are current regulations adequate or are more specific requirements necessary? For instance, are the proposed regulations adequate to serve the hearing impaired? Should braille notices be required for the visually impaired? Is in-person customer contact necessary to convey the required information to customers with certain disabilities? Interested parties are encouraged to address these and related questions, and to give concrete suggestions on specific revisions to Chapters 63 and 64 which the Commission should incorporate to better address the special needs of Pennsylvanians with disabilities.

*Chapter 63. Telephone service*

§ 63.15. *Complaint procedures.* Subsection (a) has been changed to clarify the nature of the utility's required response, which has been perceived by the utilities to be the preparation of a supplemental report. The proposed amendment clearly establishes that the utility may terminate the investigation by submitting a copy of the service order which identifies the action taken by the utility to resolve the service complaint.

§ 63.17. *Number of subscribers per line.* This section is being deleted since it contains standards and procedures applicable prior to December 19, 1983. The four subscriber maximum presently used by the industry is being added to Section 63.18.

§ 63.18. *Multiparty line subscribers.* A single sentence changing the limit for maximum subscribers to a multiparty line is being added to reflect the change in industry standards.

§ 63.21. *Directories.* Subsection (e) is replaced to clarify a local exchange carrier's (LEC's) authority to investigate, evaluate and require modification or deletion of misleading directory listings without being as duplicative or onerous as the present language.

§ 63.31. *Classification of telephone public utilities.* This section is being amended to reflect the standards included in Chapter 30 and recent Commission rulemakings to provide for two classes of telephone utilities: Class A carriers are defined as those with more than 50,000 access lines; while Class B carriers are defined as carriers with 50,000 access lines or less. The Commission also requests comment on whether parties believe that the definitions should also contain a revenue threshold to further distinguish between Class A and Class B carriers.

§ 63.95. *Sufficiency of public telephone service.* The existing section is being replaced as outdated and excessive with wording closely following the legislative mandate of 66 Pa.C.S. § 2912, which it is intended to implement. The new wording continues to restrict when a public coin telephone can be removed by a LEC, as intended by the statute.

§ 63.96. *Service requirements for coin telephones.* Subsections (b) through (h) are replaced to update the Commission's requirements for converting two-way coin telephone service to one-way. Under the proposal, the Bureau of Consumer Services has 10 days to determine

whether the request is justified and will then provide written notice of its determination.

*Chapter 64. Standards and Billing Practices for Residential Telephone Service*

§ 64.2. *Definitions.*

*Dispute*—The definition of dispute is changed to allow a customer or applicant to resolve a disagreement with the LEC during either the initial contact or follow-up response without the LEC being charged with a dispute.

The definition of dispute has also been modified to specifically exclude a disagreement which arises from: (1) any matter outside the scope of Chapter 64; (2) the inability of a customer or the customer's designee and the LEC to enter into a mutually satisfactory payment arrangement; or (3) billing data provided to the LEC by an interexchange carrier.

§ 64.11. *Method of payment.* This section is modified to provide that a LEC may treat an unpaid check as a payment never made by the customer, and consequently, may take immediate action to suspend or terminate service once a check is returned as "unpaid." The proposed language prohibits suspension or termination of service when the bill is in dispute and further provides that a LEC may not impose a handling charge if the customer stops payment on a check due to a good faith billing dispute.

§ 64.12. *Due date for payment.* The proposed language adds an exception to the 20 day rule in those instances where the LEC has negotiated earlier due date arrangements with the customer.

§ 64.17. *Application of partial payments.* This section is being altered to provide that partial payments be applied first to payment of basic charges before going toward payment of any other service. This change corrects a problem that arises when basic service is not always afforded the highest degree of protection.

§ 64.18. *Application of partial payments between past and current bills.* This section is being deleted as repetitive of the previous section.

§ 64.21. *Separate billing for nonbasic service, toll service and basic service.* The proposed changes allow LECs to bill in two "pots" rather than one for each service, with the requirement that basic service be billed separately being retained.

§ 64.31. *Policy statement.* New language clarifies that a LEC is not required to furnish service to any applicant if any member of applicant's household is indebted to the LEC for service previously furnished.

§ 64.33. *Payment of outstanding balance.* Subsection (b), which prohibits a LEC from requiring payment for a residential service previously furnished under an account in the name of persons other than the applicant without a legal determination that the applicant is obligated to pay, has been deleted.

§ 64.34. *Written procedures.* This section is modified to permit LECs to give a "brief" explanation of credit and deposit procedures rather than the lengthy explanation given by some LECs now.

§ 64.41. *Interest.* The interest rate is being changed from 9% per annum to the current legal rate.

§ 64.61. *Authorized suspension of service.* This section is changed to allow a LEC to suspend service whenever there exists an unpaid indebtedness for telephone service

from a previous customer and the previous customer continues to occupy the premises.

§ 64.63. *Unauthorized suspension of service.* Reason number (7) has been replaced to remove the requirement that a legal obligation must be established prior to suspending service. Under the proposed language, service may not be suspended for nonpayment of a previous occupant of the residence unless that occupant continues to reside there.

§ 64.71. *General notice provisions.* Additional language to this section provides that a LEC may revert to the 24 hour personal notice of suspension provision of § 64.81 when the customer fails to comply with the material terms of a payment agreement for toll and/or nonbasic service.

§ 64.74. *Procedures upon customer contact before suspension.* Language is added to subsection (b) to provide that the LEC may suspend toll or nonbasic service after complying with the limited notice provision in § 64.81 when a customer breaches a payment agreement for toll or nonbasic service.

§ 64.81. *Limited notice upon noncompliance with report or order.* Proposed language expands this section to allow the LECs to use limited notice in instances where a customer fails to keep the terms of a payment agreement for toll or nonbasic service.

§ 64.108. *Right of LEC to petition the Commission.* This section recognizes the new section 64.109 which deals with the circumstances under which a LEC can suspend service before the expiration of a medical certification.

§ 64.109. *Suspension prior to expiration of medical certification.* This new section provides that a telephone company may suspend service prior to the expiration of a medical certification if the customer has failed to make timely payments for service provided if the company follows the notice procedures in section 64.71.

§ 64.133. *Termination stayed.* Added language provides that the disputing party shall pay or enter into a reasonable payment agreement on all undisputed portions of the bill.

§ 64.141. *General rule.* Subsection (5) is changed to reduce the paperwork of a company if a customer is satisfied with the dispute resolution.

§ 64.142. *Contents of the LEC report.* Subsection (6) is revised to specify that a LEC must provide the information at § 64.152(a)(1), (2), (3) and (6) when a written report is neither requested or deemed necessary.

§ 64.153. *Commission informal complaint procedures.* Proposed language prohibits a LEC from suspending or terminating service based on the complaining party's nonpayment of other billed amounts where these other amounts reflect the same underlying problem as the contested billed amounts.

§ 64.161. *General rule. (Formal complaints).* Added language limits a broad stay provision to specifically provide that a LEC may still suspend or terminate service based on the complaining party's nonpayment of other billed amounts.

§ 64.191. *Public information.* Language is added to this section to specify which verbal information must be transmitted to an applicant in order to relieve the LECs of the necessity of giving all information to the applicant.

Accordingly, under sections 501, 504, 505, 506, 1301 and 1501 of the Public Utility Code (66 Pa.C.S. §§ 501,

504, 505, 506, 1301 and 1501) and the Commonwealth Documents Law (45 P. S. § 1201 et seq.) and the regulations promulgated thereunder, we shall institute a rulemaking proceeding to accomplish the objectives described in the body of this order. *Therefore, It Is Ordered That:*

1. A rulemaking proceeding is hereby instituted at this docket.

2. The Commission's regulations are hereby proposed to be amended by:

(a) adding § 64.109.

(b) deleting §§ 63.17 and 64.18.

(c) amending §§ 63.15, 63.18, 63.21, 63.31, 63.95, 63.96, 64.2, 64.11, 64.12, 64.17, 64.21, 64.31, 64.33, 64.34, 64.41, 64.61, 64.63, 64.71, 64.74, 64.81, 64.108, 64.133, 64.141, 64.142, 64.153, 64.161 and 64.191.

3. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

4. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

5. The Secretary shall submit this order and Annex A for informal review by the designated standing committees of both houses of the General Assembly, and for informal review and approval by the Independent Regulatory Review Commission.

6. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Interested persons may submit written comments, an original and 10 copies, to John G. Alford, Secretary, Pennsylvania Public Utility Commission, and shall have 30 days from the date this order is published to submit comments.

7. A copy of this order shall be served upon all persons who submitted comments in this rulemaking proceeding.

JOHN G. ALFORD,  
Secretary

*Statement of Chairperson John M. Quain*

I respectfully dissent from the Motions offered today by my colleagues which delete sections from the Law Bureau's recommendation regarding this rulemaking.

It was my hope that this Commission could have gained some important perspectives by at least publishing these sections for comments. Unfortunately, that input will not be possible at this time.

Many of these recommendations, in fact, were suggested and supported by the Bureau of Consumer Services for the purpose of soliciting comments on whether modifications to our procedures are appropriate.

*Statement of Commissioner John Hanger*

Most of the proposed changes appropriately eliminate unnecessary or obsolete regulations and should be adopted subject to public comment. These rules reduce unnecessary regulatory expense and give utilities greater flexibility to do their job well. Several of the proposals, however, could make life difficult for those already strenuously attempting to overcome poor health, lack of income or other problems. Such proposals are not consistent with the goals of this rulemaking which is to rescind obsolete or unnecessary regulations. Regulations which retain important consumer protection without unnecessary administrative burdens must be retained. Some other proposed modifications require a great deal of

common sense in order to apply them effectively, and comments are encouraged so that the Commission may determine whether changes are in order.

Consequently, while I support most of the proposed rule changes, I specifically reject changes to the following provisions and dissent from any order that may change them:

(1) Section 64.33. Payment of outstanding balances.

The proposed changes to Section 64.33 would permit a LEC to deny service for non-payment of bills that are more than 4 years old. While this section does not change liability for the old bills, it makes no sense to take pressure off the LEC to collect bills in a timely fashion. The 4 year limitation should be retained.

(2) Section 64.61. Authorized suspension of service.

The proposed changes to section 64.61 would permit a LEC to suspend service whenever it determines that an applicant who has received service should have been required to pay a debt that accrued in someone else's name. Commission policy requires that the LEC seek Commission approval of this type of action on a case-by-case basis. Consequently, this proposal should not be entertained in this rulemaking.

The proposed changes regarding the advanced payment of toll and/or nonbasic service and the imposition of credit limits on toll and/or nonbasic service violate section 1509. Therefore, the proposed changes in the following sections should not be addressed in this rulemaking:

1. 64.12. Due date for payment.
2. 64.14. Billing Information.
3. 64.15. Advance payments.
4. 64.32. Credit standards.
5. 64.34. Written procedures. Subsection (3).
6. 64.35. Deposit, advance payment, and credit limits requirements for existing customers.
7. 64.61. Authorized suspension of service. Subsections (10) and (11).
8. 64.71. General notice provisions. Subsection (b) only.

*Statement of Commissioner David W. Rolka*

I disagree with the proposed inclusion of PTA's recommendation regarding section 64.11. No rationale is offered for including this proposal in the proposed rulemaking or for rejecting the reasoned evaluation of the Bureau of Consumer Services. Given the current language that permits a LEC to refuse further payment by check from a customer whose tendered check was returned for non-sufficient funds, should not the limited notice provision of section 64.81 be invoked when a check that is tendered as part of a payment agreement is returned for non-sufficient funds? If the LEC refused further payments by check, would not the notice be required on a one-time basis? If the check covers basic charges, should a 7 day notice for failure to keep a payment agreement be issued in regard to basic service? I request commenting parties to address these specific questions.

I support the proposed changes to sections 64.31 and 64.63 with some reservation. These proposals contemplate the assignment of the legal obligation to pay a telephone bill to an individual who lives in the dwelling to which service is provided; and who uses and benefits from telephone service, although the individual may not be the customer of record. In certain egregious circumstances this result may be appropriate. However, it should be

made clear that this result can only be attained upon a ruling of this Commission or some other formal legal tribunal such as a court. The utility should not be permitted to exercise this level of discretion on its own initiative. Commentators are requested to identify specific standards that should be used to evaluate whether someone other than the billing responsible party may be held legally accountable for accrued charges.

**Fiscal Note:** 57-170. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 63. TELEPHONE SERVICE**

**Subchapter B. SERVICE AND FACILITIES**

**§ 63.15. Complaint procedures.**

(a) *Investigations.* A public utility shall make a full and prompt investigation of **service** complaints made to it through the Commission by its customers or **third parties. Upon receiving a service complaint from a customer of a utility, the Commission will transmit a summary of the service report to the utility. If a service complaint is resolved, the utility may terminate the investigation by submitting or transmitting a copy of the service order which identified the action taken by the utility to resolve the service complaint. When complaints are referred to the public utility through the Commission, the public utility and the Commission shall work to process and resolve all complaints.**

\* \* \* \* \*

**§ 63.17. [Number of subscribers per line] (Reserved).**

**[(a) The number of subscribers connected to a multiparty line shall be limited to a maximum of ten before December 19, 1983, and to a maximum of six after December 18, 1983, except for seasonal and temporary connections and circumstances arising from national emergencies.**

**(b) A public utility may file a petition with the Commission for waiver from the 1-year time limitation found in subsection (a) by setting forth the reasons for the waiver request and the date on which the number of subscribers per line will be limited to six, which date in no event may be later than December 18, 1985.**

**(c) A public utility may file a petition with the Commission for exemption from the six subscriber per line limitation found in subsection (a), setting forth the circumstances justifying the exemption and other information as requested by the Commission.**

**(d) Subsections (b) and (c) supplement § 5.43 (relating to petitions for issuance, amendment, waiver or repeal of regulations). ]**

**§ 63.18. Multiparty line subscribers.**

A multiparty line subscriber may be required to take service of a different grade if his use of service interferes unreasonably with the necessary service of the other



subscribers on the line. The number of subscribers connected to a multiparty line is limited to a maximum of four.

§ 63.21. Directories.

\* \* \* \* \*

(e) [ Upon receipt of a written complaint by the public utility that a listing is misleading, deceptive or confusing or where the public utility has reason to believe that the listing will mislead or deceive or confuse the public, the public utility shall investigate the matter permitting the listing-party an opportunity to respond before rendering a decision. If no response is received within 15 days, the public utility shall delete the listing from future issues of the directory. The utility's investigation and decision shall be made within 45 days of receipt of the complaint. After reaching its decision the public utility shall advise interested parties in writing of its opinion and shall inform them of the right to file a complaint with the Commission. ] Upon receiving a customer complaint alleging misleading, deceptive or confusing directory listings, a public utility shall investigate the complaint under § 63.15 (relating to complaint procedures). If the utility determines that a directory listing is misleading, deceptive or confusing, it shall delete the listing from future directories.

Subchapter C. ACCOUNTS AND RECORDS

§ 63.31. Classification of [ telephone ] public utilities.

[ (a) ] For accounting and reporting purposes, telephone public utilities are classified as follows:

(1) *Class A.* [ Telephone public ] Public utilities having [ average annual operating revenues exceeding \$100,000 ] 50,000 or more access lines.

(2) *Class B.* [ Telephone public ] Public utilities having [ average annual operating revenues exceeding \$50,000 but not more than \$100,000 ] less than 50,000 access lines.

\* \* \* \* \*

[ (b) Classification of a telephone public utility is determined by its average annual telephone operating revenues for 3 consecutive years. A change in the classification of a utility shall be made when its average annual telephone operating revenues for 3 consecutive years exceed the maximum of its class. ]

Subchapter G. PUBLIC COIN TELEPHONE SERVICE

§ 63.95. Sufficiency of public coin telephone service.

[ (a) A local exchange carrier shall maintain the number of public telephones within its service territory which existed on December 31, 1985, except where a local exchange carrier public telephone is replaced by a comparable public telephone. As of January 1, 1986, a local exchange carrier may eliminate a public telephone where it is replaced by a comparable public telephone.

(b) A local exchange carrier or nonpublic utility shall notify the Commission of a plan to remove a public telephone. The notification shall be submitted in writing to the Commission. This notification

is not required if the public telephone is replaced by a comparable public telephone.

(c) The Commission may require a local exchange carrier or a nonpublic utility to place or replace a public telephone at a particular location if it is determined that a placement or replacement is in the public interest. ]

A local exchange carrier may not remove an existing public coin telephone station except in the following circumstances:

(1) The local exchange carrier's public coin telephone is replaced by a comparable public telephone.

(2) Removal of a public coin telephone is required by a law enforcement agency or other governmental entity.

(3) The local exchange carrier determines that a public coin telephone has insufficient usage to justify its placement, which insufficient usage is caused by one or more competing comparable public telephones.

§ 63.96. Service requirements for coin telephones.

\* \* \* \* \*

(b) [ A local exchange carrier or nonpublic utility shall investigate each request from a coin telephone agent or another party for conversion of a coin telephone to one-way outgoing service. If the local exchange carrier or nonpublic utility concludes on the basis of its investigation that the requested conversion is warranted it shall submit a written request to the Commission seeking Commission approval of the conversion. The written request shall specify the reasons for the conversion, location of the telephone to be converted and the identity of the agent of the party who requested the conversion. If the conditions underlying the request are believed to be temporary, the request shall state the anticipated duration of the conditions. The request shall also certify that the notice required by subsection (c) has been posted. ] A local exchange carrier, nonpublic utility or other interested party may seek Commission review of whether conversion of a coin telephone from two-way service to one-way is justified by extraordinary circumstances. Conversion requests shall be made in writing and shall identify the telephone number and location of the coin telephone, and describe the circumstances which justify conversion.

(c) [ On or before the date the request is sent, the local exchange carrier or nonpublic utility shall post a conspicuous notice on or immediately adjacent to the public telephone advising users of the telephone of the request to convert the telephone to one-way outgoing service. The notice shall state reasons for the request, advise users how to provide comments to the Commission regarding the request, and set forth the date by which comments shall be provided, which date shall be at least 20 days from the date of the request. The notice shall also set forth both a nonpublic utility or a public utility telephone number and the Commission's toll-free Consumer Hot-Line number, and shall advise users that they should call either number if they do not understand the notice or desire further information, and shall call the Consumer Hot-Line

number if they wish to provide oral comments.] Upon review of a conversion request, the Commission's Bureau of Consumer Services will determine whether the request is justified within 10 days of receipt of the conversion request unless the information provided by the requesting party is inadequate to make a determination. The Bureau may initially notify the requesting party and the owner of the coin telephone of its determination by telephone. The Bureau will provide the requesting party and the owner of the coin telephone written notice of its determination. The Bureau may limit the duration of the conversion authorization if it appears that the circumstances justifying the conversion are temporary in nature.

(d) [The local exchange carrier, nonpublic utility or other party requesting the conversion, and a person who submits comments regarding the conversion request, shall be deemed parties to the request proceeding.] A party may appeal the Bureau's determination or request that a coin telephone previously approved for one-way conversion be returned to two-way service by filing a formal complaint with the Commission.

(e) [After the 20-day comment period and not later than 45 days from the date of the request, the Commission's Bureau of Consumer Services will issue a written determination of the conversion request setting forth the reasons for its determination. A copy of the determination, together with a notice of appeal rights detailed in this section, will be mailed to the public utility or nonpublic utility and to parties of record to the proceeding. A determination approving a conversion based on a condition expected to be of limited duration shall specify that the public utility or nonpublic utility is required to reconvert the telephone to two-way service upon the termination of the condition.] In instances where a conversion request involves allegations of drug trafficking from a coin telephone or other emergency circumstances pertaining to public health, safety or welfare concerns, the Bureau may telephonically authorize the owner of the coin telephone to convert the telephone to one-way service on the same day the emergency conversion request is received. Following an emergency conversion authorization, the Bureau will review the conversion request under the procedures established in subsection (c).

[ (f) A party to a conversion request proceeding who is aggrieved by the staff determination may appeal the determination by filing a formal complaint with the Commission within 20 days of the date the determination is mailed from the Commission. In an appeal from a conversion approval, the timely filing of a formal complaint stays the conversion unless the determination finds that a stay is inappropriate due to exigent circumstances or frivolous complaint.

(g) A formal complaint appealing a staff conversion determination will be heard and decided in the same manner as an appeal of an informal complaint decision under § 64.163 (relating to formal complaint procedures).

(h) A request to reconvert public telephones from one-way outgoing service to two-way service shall initially be made to the local exchange carrier or

non-public utility responsible for the public telephone. The local exchange carrier or nonpublic utility shall promptly investigate and decide the requests based upon the standard for conversion in subsection (a). If a reconversion request is denied, the requesting party shall have the right to seek Commission relief under the Commission's informal and formal complaint procedures.]

**CHAPTER 64. STANDARDS AND BILLING PRACTICES FOR RESIDENTIAL TELEPHONE SERVICE**

**Subchapter A. PRELIMINARY PROVISIONS**

**§ 64.2. Definitions.**

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

\* \* \* \* \*

*Dispute*—[A disagreement between an ] (i) An applicant, [ a ] customer, or [ a customer's designee and an LEC with respect to the ] customer designee's grievance about a utility's application of one or more provisions covered by this chapter [—including ], regarding credit determinations, deposit requirements, accuracy of amounts billed [ or ], and the proper party to be charged, which remains unresolved after the initial contact or utility follow-up response when the applicant, customer or customer's designee consents to the utility reviewing pertinent records or other information and calling back. If, at the conclusion of [ an initial inquiry, ] the initial contact or utility follow-up response, the applicant, customer or [ the ] customer's designee [ indicates satisfaction ] is satisfied with the resulting resolution or explanation, the contact [ may ] will not be considered a dispute. The term does not include failure to negotiate a mutually satisfactory payment agreement regarding undisputed amounts.

(ii) The term does not apply to any disagreement which arises from one or more of the following:

(A) A matter which is outside the scope of this chapter.

(B) The inability of a customer or the customer's designee and the LEC to enter into a mutually satisfactory payment arrangement.

(C) Billing data provided to the local exchange carrier by an interexchange carrier.

\* \* \* \* \*

**Subchapter B. PAYMENT AND BILLING STANDARDS**

**§ 64.11. Method of payment.**

Payment may be made in any reasonable manner including payment by personal check, unless the customer within the past year has tendered a check which has been returned **unpaid to the local exchange carrier** by a financial institution for a reason for which the customer is at fault. When [ payment is made by ] a tendered personal check [ which ] is returned **unpaid to the LEC** by a financial institution for a reason for which the customer is at fault, the LEC **may treat the unpaid check as a payment never made by the customer and, if it does so, will not be obligated to halt suspension or termination action based on its**

receipt of this check from the customer. The LEC also may impose a handling charge, the amount of which shall be set forth in the carrier's approved tariff. Notwithstanding the provisions of this section, the LEC may not proceed with suspension or termination of service based on a disputed billed amount or impose a [ No ] handling charge [ will be imposed ] if the customer stops payment on a check due to a good faith billing dispute.

§ 64.12. Due date for payment.

The due date for payment of a monthly bill shall be at least 20 days from the date of mailing by the LEC to the customer except when the LEC has negotiated earlier due date arrangements with the customer.

§ 64.17. Application of [ Partial ] partial payments.

(a) Payments received by a LEC which are insufficient to pay the balance due for [ telephone ] basic service, toll service and nonbasic service shall first be applied to [ telephone ] any balance due for earlier basic service, then to basic service billed during the current billing period, then to toll service before being applied to nonbasic service.

(b) Payments received by [ a ] an LEC which are insufficient to pay the amount due for [ telephone ] basic and toll service shall first be applied to any balance due for earlier basic service and then to basic service billed during the current billing period.

\* \* \* \* \*

§ 64.18. [ Application of partial payments between past and current bills ] (Reserved).

[ In the absence of written instruction, or a disputed bill or a payment arrangement, payments received by the LEC which are insufficient to pay a balance due both for earlier services and for services billed during the current billing period shall first be applied to the balance due for earlier services, including late payment charges. ]

§ 64.21. Separate billing for [ nonbasic service, toll service and ] basic service.

(a) Charges for [ nonbasic service, toll service and ] basic service shall be billed separately from charges for other services.

(b) A customer's failure to pay charges for [ nonbasic service ] other services may not be a basis for termination of basic service unless the LEC is technically unable to terminate toll service without also terminating basic service as provided in § 64.63 (relating to unauthorized suspension of service).

[ (c) A customer's failure to pay charges for toll service may not be a basis for termination of basic service unless the LEC is technically unable to terminate toll service without also terminating basic service. ]

Subchapter C. CREDIT AND DEPOSIT STANDARDS POLICY

§ 64.31. Policy statement.

An essential ingredient of the credit and deposit policies of each [ local exchange carrier ] LEC shall be the equitable and nondiscriminatory application of those pre-

cepts to potential and actual customers throughout the service area or a part thereof. Deposit policies shall be based on the credit risk of the applicant or customer rather than upon the credit history of the affected premises or upon the collective credit reputation or experience in the area in which the applicant or customer lives without regard to race, religion, gender, age if over 18, national origin or marital status. An LEC will not be required to furnish its service to an applicant if, at the time of the application, the applicant or a member of applicant's household is indebted, under an undisputed bill, to the LEC for service previously furnished the applicant, or furnished another member of the applicant's household.

§ 64.33. Payment of outstanding balance.

(a) The LEC may require, as a condition for furnishing residential service to an applicant, the payment of an outstanding residential account with the LEC which accrued within the past 4 years, and for which records consistent with the information requirements in § 64.192 (relating to record maintenance) maintained by the LEC for the period covering collection, for which the applicant is legally responsible and for which the applicant was billed properly. However, the outstanding residential account with the LEC may be spread out over a reasonable period of time. Factors to be taken into account shall include, but not be limited to, the size of the unpaid balance, the payment history of the customer, and the length of time over which the bill accumulated.

[ (b) A LEC may not require, as a condition for the furnishing of residential service, payment for residential service previously furnished under an account in the name of persons other than the applicant unless a court, district justice or administrative agency has determined that the applicant is legally obligated to pay for the service previously furnished.

(c) ] (b) \*\*\*

§ 64.34. Written procedures.

Each LEC shall establish written procedures for determining the credit status of an applicant. Each LEC employ processing applications or determining the credit status of an applicant shall be familiar with and have ready access to a copy of the written procedures of the LEC. A copy of the procedures shall be maintained on file in each business office of the LEC and be made available, upon request, for inspection by the public and the Commission.

(1) Informing applicants of procedures. The LEC personnel shall [ fully explain ] provide a brief explanation of the credit and deposit procedures to each customer or applicant for service.

\* \* \* \* \*

§ 64.41. Interest.

Interest rate at the legal rate [ of 9% per annum ] provided for in section 202 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 202) shall be payable on deposits without deductions for taxes thereon unless otherwise provided by law. Interest shall be paid annually to the customer or, at the option of either the LEC or the customer, shall be applied to the customer's bill.

Subchapter E. SUSPENSION OF SERVICE  
**GROUND S FOR SUSPENSION**

**§ 64.61. Authorized suspension of service.**

Telephone service to a dwelling may be suspended for any of the following reasons:

\* \* \* \* \*

**(9) Unpaid indebtedness for telephone service rendered to a previous customer who occupied the premises and continues to occupy the premises.**

**§ 64.63. Unauthorized suspension of service.**

Unless expressly and specifically authorized by the Commission, basic service may not be suspended and a suspension notice may not be sent for any of the following reasons:

\* \* \* \* \*

**(7) [ Nonpayment for residential service already furnished in the name of persons other than the customer unless a court, district justice, or administrative agency has determined that the customer is legally obligated to pay for the service previously furnished. This paragraph may not affect the creditor's rights and remedies of the LEC otherwise permitted by law. ] Nonpayment for services rendered to a previous customer who occupied the premises unless the customer continues to occupy the premises.**

\* \* \* \* \*

**NOTICE PROCEDURES PRIOR TO SUSPENSION**

**§ 64.71. General notice provisions.**

**(a)** The LEC shall mail or deliver written notice to the customer at least 7 days before the date of proposed suspension regardless of the grounds upon which suspension is sought.

**(b)** An exception to subsection (a) is made for failure to comply with the material terms of a payment agreement for toll or nonbasic, or both, service. In these cases, the LEC shall comply with § 64.81 (relating to limited notice upon noncompliance with report or order).

**§ 64.74. Procedures upon customer contact before suspension.**

\* \* \* \* \*

**(b)** The LEC, through its employes, shall exercise good faith and fair judgment in attempting to enter into a reasonable payment agreement regarding undisputed amounts or to otherwise equitably resolve the matter. Factors to be taken into account when attempting to make a reasonable payment agreement shall include but not be limited to the size of the unpaid balance, the payment history of the customer[, ] and the length of time over which the bill accumulated. **If the customer breaches a payment agreement for toll or nonbasic, or both, service, the LEC may suspend the toll or nonbasic, or both, service after complying with § 64.81 (relating to limited notice upon noncompliance with report or order). At the time a payment agreement is entered into, the LEC shall explain to the customer the consequences of breaching the payment agreement, including the possible suspen-**

**sion of toll or nonbasic, or both, service without further written notice.** The LEC may not suspend service for an undisputed delinquent bill under either of the following circumstances:

\* \* \* \* \*

**NOTICE PROCEDURES AFTER DISPUTE FILED**

**§ 64.81. Limited notice upon noncompliance with report or order.**

Upon the customer's failure to timely appeal from or comply with [ a ] an LEC report as defined in § 64.142 (relating to contents of the LEC report), an informal complaint report [ or ], an order from a formal complaint, or a payment agreement negotiated for toll or nonbasic, or both, service, the original grounds for suspension shall be revived and the LEC may not be required to give further written notice before suspension if the telephone company makes a reasonable attempt to contact the customer personally at least 24 hours before suspension.

**EMERGENCY PROVISIONS**

**§ 64.108. Right of LEC to petition the Commission.**

**(a)** To completely suspend service before the expiration of the medical certification, except where allowed according to § 64.109 (relating to suspension prior to expiration of medical certification) [ a ] an LEC may petition the Commission for waiver from the medical certification procedures to contest the validity of a certification.

\* \* \* \* \*

**§ 64.109. Suspension prior to expiration of medical certification.**

A telephone company may suspend service prior to the expiration of the medical certification when the customer fails to make timely payments for service provided by the LEC after the date on which service is restored or suspension postponed. The company shall follow notice procedure prior to suspension according to §§ 64.71—64.74.

**Subchapter G. DISPUTES; INFORMAL AND FORMAL COMPLAINTS  
  GENERAL PROVISIONS**

**§ 64.133. Termination stayed.**

Except as otherwise provided in this chapter, where a dispute is properly registered in accordance with this subchapter, suspension or termination based on disputed portions of the bill is prohibited until resolution of the dispute [ ; however, ]. However, the disputing party shall pay, or enter into a reasonable payment agreement on, all undisputed portions of the bill[ . ]; if the disputing party does not do so, the LEC may suspend or terminate service based on the nonpayment, if the suspension or termination is otherwise permitted under this chapter.

**TELEPHONE COMPANY DISPUTE PROCEDURES**

**§ 64.141. General rule.**

If, at any time before suspension or termination of service, a customer registers a dispute, the LEC shall do the following:

\* \* \* \* \*

**(5)** Within 30 days of the registration of the dispute, review findings with the customer in a manner which

outlines clearly the results of the investigation and which indicates what action will be necessary for the customer to continue service. The findings shall be [ included in a written summary and shall be sent to the customer and the Commission upon request, or if deemed necessary by the LEC ] summarized in a report as follows:

(i) If the complainant is not satisfied with the dispute resolution, the LEC report shall be in writing and conform to § 64.142 (relating to contents of the LEC report). Further, in these instances, the written report shall be sent to the complaining party if requested, or if deemed necessary by the LEC. The written report shall also be sent to the Commission upon request.

(ii) If the complaining party is satisfied with the orally conveyed dispute resolution, the written LEC report may be limited to the information at § 64.142(1), (2), and, when applicable, § 64.142(7).

(iii) If the complaining party expresses satisfaction but requests a written report, the report shall conform with § 64.142, in its entirety.

§ 64.142. Contents of [ written summary by ] the LEC report.

[ Each written summary of a dispute, whether conveyed orally or in writing to the customer, ] An LEC report shall include the following:

\* \* \* \* \*

(6) A complete explanation of procedures for filing an informal complaint with the Commission [ including ] see § 64.152 (relating to informal complaint filing procedures). If a written report is not requested by the complaining party or deemed necessary by the LEC, the LEC shall provide the information at § 64.152(a)(1)—(3) and (6). In addition, the LEC should always provide the telephone number and address of the [ nearest regional ] office of the Commission where the informal complaint may be filed.

\* \* \* \* \*

INFORMAL COMPLAINT PROCEDURES

§ 64.153. Commission informal complaint procedures.

(a) The timely filing of an informal complaint acts as a limited stay and the LEC may not suspend or terminate service [ pending resolution of the informal complaint ] based on the complaining party's nonpayment of a billed amount which is contested in the informal complaint until the complaint is resolved. The LEC may not suspend or terminate service based on the complaining party's nonpayment of additional billed amounts that reflect the same underlying problem as the billed amounts contested in the informal complaint. This limited stay does not prevent the LEC from suspending or terminating service based on the complaining party's nonpayment of other billed amounts, where the suspension or termination is otherwise permitted under this chapter.

\* \* \* \* \*

FORMAL COMPLAINTS

§ 64.161. General rule.

\* \* \* \* \*

(b) The timely filing of a formal complaint acts as a limited stay and the LEC [ shall ] may not suspend or terminate service [ pending resolution of the formal complaint ] based on the complaining party's nonpayment of any billed amount which is contested in the formal complaint until the complaint is resolved. This limited stay does not prevent the LEC from suspending or terminating service based on the complaining party's nonpayment of other billed amounts, if the suspension or termination is otherwise permitted under this chapter, and if the suspension or termination is preceded by the required notification.

Subchapter I. PUBLIC INFORMATION; RECORD MAINTENANCE

§ 64.191. Public information.

(a) LEC service representatives shall provide applicants who apply for residential telephone service in person with a concise, easy-to-understand[ , ] and printed price list showing all available service and equipment options. The price of basic, plain rotary dial telephone service shall be clearly and conspicuously displayed on the list. If an applicant applies for service by telephone, the applicant shall be given a verbal recitation first of [ all available ] the choices available for basic service [ and equipment options and their prices. The price of basic, plain rotary dial telephone service shall be recited first. If an applicant applies ], including installation (payment options, access line), dial tone line charge (available local calling plans), touch tone (explanation identifying it as optional), directory listing options, available blocking options (900, 976, collect call), and, if applicable, services for customers with disabilities. Second, the applicant shall be given an explanation of choices for toll service that would include choice of carrier and choice of calling cards. The LEC shall then inform the applicant of the date that service will be installed and working, and then ask if the LEC may present other optional services that the applicant might be interested in purchasing. At the conclusion of an application for telephone service by telephone, the LEC service representative shall tell the applicant that a written price list of available service and equipment options will be mailed to the applicant upon request. Applicants for residential telephone service shall be informed that, instead of leasing a telephone, they have the option to purchase a telephone and that, if they do so, their monthly bill will not include a rental charge. Applicants shall be quoted the basic monthly charge for the service and equipment they select, with and without the lease of a telephone.

\* \* \* \* \*

[Pa.B. Doc. No. 96-961. Filed for public inspection June 14, 1996, 9:00 a.m.]

# STATE BOARD OF PSYCHOLOGY

## [49 PA. CODE CH. 41] Continuing Education

The State Board of Psychology (Board) proposes to amend § 41.59 (relating to continuing education) to read as set forth in Annex A.

The purpose of the proposal is to amend the existing continuing education requirements for biennial renewal to give psychologists more flexibility in their choice of continuing education programs and to expand the opportunities for meeting the requisite contact hours for continuing education credit.

The existing provisions of § 41.59 were adopted by the Board on June 13, 1992 (22 Pa.B. 2982). Since that date, the Board has evaluated the effectiveness of the regulation. Also, a number of licensed psychologists subject to the regulation have offered comments and suggestions on how to improve the regulation for the betterment of the profession.

Following is a summary of the proposed amendment:  
*§ 41.59. Continuing education.*

(b) *Continuing education requirement for biennial renewal.*

Language is proposed to be added to subsection (b) to require psychologists to obtain at least 3 contact hours of continuing education per biennium in ethical issues. A significant percentage of consumer complaints which are filed against licensed psychologists (approximately 66.66%) are focused on ethical issues. With this proposal, the Board hopes to increase psychologists' understanding of ethical issues as they develop in today's practice and thereby reduce the number of complaints which result from ethical infractions.

The Board also proposes to delete obsolete language relative to 1993 renewals under paragraph (1), and to eliminate paragraph (2). As amended, the language originally appearing in paragraph (2) will appear under subsection (b), with one exception. The Board proposes to allow up to 10 contact hours in excess of 30 from the preceding biennium to be carried over from one biennium to the next. This proposed amendment is responsive to comments received from several psychologists opining that contact hours in excess of 30 for the preceding biennium should be able to be carried forward and credited toward the next renewal period.

(c) *Reports to the Board.*

The Board proposes to delete the requirement under subsection (c) that psychologists list, at the time of biennial renewal, the continuing education courses or programs attended. This information is now required only from psychologists who are randomly selected by the Board for an audit of continuing education compliance.

An amendment is also proposed to subsection (c) to clarify that psychologists shall retain documentation showing completion of the prescribed number of continuing education contact hours for at least two bienniums.

(d) *Approved providers; acceptable courses and programs.*

In response to comments from licensed psychologists, the Board proposes to add under paragraph (3) an

additional "approved provider" of continuing education courses and programs. As amended, the Board would approve for continuing education purposes, courses and programs offered by providers approved by the American Medical Association (AMA) who meet the criteria of paragraph (4)(i)—(ii), if the programs offered by the AMA relate to the practice of psychology.

### *Additional Amendments*

The Board proposes to shift the language of existing subsections (f) and (g), relating to "exemptions and proration" and "reinstatement of licensure," respectively, to new subsections (h) and (i), and to provide two additional means under new subsections (f) and (g) for psychologists to receive credit for 50 to 60 minutes of participation in professional activities. As amended, subsection (f) would be entitled "instruction," and would allow a psychologist to accrue up to 15 of the required 30 contact hours of continuing education by offering a course in psychology for a regionally accredited college or university (if the course generates semester/quarter hour credit), or by offering a workshop for an approved sponsor. As proposed, a clock hour of instruction would equal 1 contact hour. An individual course or workshop would be credited to an instructor only once. The number of hours granted to a psychologist for participation as an instructor in a workshop would be determined by dividing the number of continuing education hours granted for the workshop by the number of instructors participating in the workshop.

As amended, proposed subsection (g) would be entitled "professional writing." Under this new subsection, a psychologist would be permitted to accrue up to 10 of the required 30 contact hours of continuing education by writing an article published in a journal abstracted in PSYCHLIT, or by writing one or more chapters in a text or trade book for psychologists which is published by a commercial publisher or by a state or National psychological association. As proposed, no more than 10 contact hour equivalents of professional writing may be granted for an article or chapter published during the preceding biennium. The number of contact hours granted per person per publication would be determined by dividing 10 hours per publication by the number of participating authors.

Consistent with the amendments to existing subsections (f) and (g), the existing language of subsections (h) and (i), relating to "waivers" and "curing deficiencies," respectively, will now appear in subsections (j) and (k).

### *Fiscal Impact*

The proposed amendment should have no negative fiscal impact upon the Commonwealth, its political subdivisions or the general public.

### *Paperwork Requirements*

The proposed amendment should not result in additional paperwork requirements.

### *Statutory Authority*

The amendment is proposed under the dual authority of sections 3.2(2) and 15 of the Professional Psychologists Practice Act (act) (63 P. S. §§ 1203.2(2) and 1215). Section 3.2(2) of the act empowers the Board to adopt and, from time to time, revise the rules and regulations as may be necessary to carry into effect the provisions of the act. Section 15 of the act authorizes the Board to require continuing education as a condition of biennial renewal.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), a copy of this proposal was submitted on June 3, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendment, the Board has provided IRRC and the Committees with a copy of the Regulatory Analysis Form. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendment, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Board, the General Assembly and the Governor of objections raised.

*Public Comment*

Interested parties are invited to submit written comments, suggestions or objections regarding the proposed amendment to Jackie Wiest Lutz, Counsel, State Board of Psychology, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of the proposed amendment in the *Pennsylvania Bulletin*.

PATRICIA M. BRICKLIN, PH.D.,  
*Chairperson*

**Fiscal Note:** 16A-632. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 41. STATE BOARD OF PSYCHOLOGY MISCELLANEOUS**

**§ 41.59. Continuing education.**

\* \* \* \* \*

(b) *Continuing education requirement for biennial renewal.* As a condition of biennial license renewal, a psychologist shall have completed during the preceding biennium [ **the required number** ] a minimum of 30 contact hours (3 CEUs) of continuing education in acceptable courses [ or ], programs [ offered by approved providers ] or activities which shall include at least 3 contact hours in ethical issues. Up to 10 contact hours in excess of 30 from the preceding biennium may be carried over from one biennium to the next.

[ (1) For 1993 renewals, a psychologist shall have completed a minimum of 15 contact hours (1.5 CEUs) between December 1, 1991, and November 30, 1993.

(2) For 1995 renewals and thereafter, a psychologist shall have completed a minimum of 30 contact hours (3 CEUs). Contact hours in excess of 30 may not be carried over from one biennium to the next. ]

(c) *Reports to the Board.* A psychologist shall certify to compliance with the contact hours requirement [ and list

the courses/programs attended on forms provided by the Board ] at the time of biennial renewal. A psychologist shall retain [ until ] for at least [ the next relicensing cycle ] two bienniums, certificates, transcripts or other documentation showing completion of the prescribed number of contact hours. These records are subject to audit by the Board.

(d) *Approved providers; acceptable courses and programs.*

(1) [ Only courses ] Courses and programs offered by Board-approved providers will be accepted as satisfying all or part of the continuing education requirement. It is the responsibility of the psychologist to ascertain the approval status of the provider before undertaking a continuing education activity.

\* \* \* \* \*

(3) The Board has approved the following providers:

\* \* \* \* \*

(iii) Providers approved by the American Medical Association who meet the criteria of paragraph (4). Programs offered by these providers shall relate to the practice of psychology.

\* \* \* \* \*

(f) [ Exemptions and prorrations.

(1) The Board will exempt from the continuing education requirement a psychologist who received a license within 2 years of the psychologist's first application for biennial renewal.

(2) A psychologist who is licensed under § 41.52 (relating to persons licensed in other states) shall comply with the continuing education requirement, but the psychologist's contact hours will be prorated on a quarterly basis from the date of licensure in this Commonwealth to the next biennial renewal date. Each quarter will consist of 3 months. Beginning with the quarter immediately following licensure in this Commonwealth, at least 3.75 contact hours (.375 CEU) shall be earned for each quarter. ]

**Instruction.**

(1) A psychologist may accrue up to 15 of the required contact hours by offering one of the following:

(i) A course in psychology for a regionally accredited college or university if the course generates semester/quarter hour credit.

(ii) A workshop for an approved sponsor.

(2) A clock hour of instruction equals one contact hour. An individual course or workshop may be credited to the instructor only once. The hours of continuing education granted to a psychologist who participates as a workshop instructor will be determined by dividing the number of continuing education hours granted for the workshop by the number of instructors participating in the workshop.

(g) [ Reinstatement of licensure. Reinstatement of licensure shall be subject to the following conditions:

(1) A person whose license has lapsed or been inactive shall show compliance with the continuing

education requirement during the biennium immediately preceding the request for reinstatement.

(2) A person whose license has been suspended or restricted shall show compliance with the continuing education requirement during the period of suspension or restriction. ]

*Professional writing.*

(1) A psychologist may accrue the equivalent of up to 10 of the required contact hours by writing one of the following:

(i) An article published in a journal abstracted in PSYCHLIT.

(ii) A chapter, or more, in a text or trade book for psychologists published by a commercial publisher or a state or National psychological association.

(2) No more than 10 contact hour equivalents of professional writing may be granted for one article or chapter published during the preceding biennium. Ten hours per publication, divided by the number of authors, will result in the number of contact hours granted per person per publication.

(h) *Exemptions and prorations.*

(1) The Board will exempt from the continuing education requirement a psychologist who received a license within 2 years of the psychologist's first application for biennial renewal.

(2) A psychologist who is licensed under § 41.52 (relating to persons licensed in other states) shall comply with the continuing education requirement, but the psychologist's contact hours will be prorated on a quarterly basis from the date of licensure in this Commonwealth to the next biennial renewal date. Each quarter will consist of 3 months. Beginning with the quarter immediately following licensure in this Commonwealth, at least 3.75 contact hours (.375 CEU) shall be earned for each quarter.

(i) *Reinstatement of licensure.* Reinstatement of licensure shall be subject to the following conditions:

(1) A person whose license has lapsed or been inactive shall show compliance with the continuing education requirement during the biennium immediately preceding the request for reinstatement.

(2) A person whose license has been suspended or restricted shall show compliance with the continuing education requirement during the period of suspension or restriction.

[ (h) ] (j) \*\*\*

[ (i) ] (k) \*\*\*

[Pa.B. Doc. No. 96-962. Filed for public inspection June 14, 1996, 9:00 a.m.]