

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CHS. 3, 5 AND 7—9]

Tuberculosis and Brucellosis Testing and Documentation Requirements for Cattle, Goats and Bison

The Department of Agriculture (Department) proposes to amend Chapters 3, 5 and 7—9. The purpose of this proposal is to relieve this Commonwealth's animal production industry of unnecessary test requirements restricting the transportation and marketing of cattle, bison and goats, and the products of these animals.

Section 1702 of The Administrative Code of 1929 (71 P. S. § 442) makes it the duty of the Department to take measures to prevent, control and eradicate diseases of animals. Sections 2, 3 and 9 of the act of April 17, 1929 (P. L. 533, No. 236) (3 P. S. §§ 342, 343 and 349) require the Department to identify dangerous transmissible diseases of animals, authorize the Department to establish and enforce quarantines, prevent or otherwise restrict the transportation of suspect animals into or within this Commonwealth and empower the Department to regulate in this area, respectively. The foregoing comprises the statutory authority upon which these proposed amendments are founded.

Tuberculosis and brucellosis are dangerous transmissible diseases of cattle, bison and goats and are also communicable to humans. In recent years, incidents of tuberculosis or brucellosis infection in cattle, bison and goats have become increasingly infrequent in the United States. These diseases are currently not known to be present in 36 states, including this Commonwealth.

The proposal is consistent with a Nationwide trend toward loosening tuberculosis and brucellosis testing requirements with respect to the intrastate and interstate movement of cattle, bison and goats. The proposed amendments will revise current authority by deleting the requirement that cattle, bison and goats be tested for tuberculosis and brucellosis as a condition of intrastate movement.

The proposal would also amend § 9.34 (relating to milk for human or animal consumption) to delete the requirement that pasteurized milk for human or animal consumption originate from a herd that has been tuberculin tested within 5 years. This requirement was unnecessary in light of the fact that pasteurization would kill any tuberculosis virus present in milk. Raw (that is, unpasteurized) milk for human or animal consumption, though, would have to originate from a herd that was tuberculin tested within the previous year. If brucellosis or tuberculosis recurs, restrictions will be imposed on the disposition of animals and products (milk and meat) originating from exposed herds.

The Department believes the proposal to be a reasonable response to the decreased risk posed by tuberculosis and brucellosis. To the extent that some risk—however slight—still exists, the Department is satisfied that its ongoing disease monitoring efforts and Federal requirements with respect to the interstate shipment of cattle,

bison and goats are adequate to detect, isolate and eradicate any outbreaks of tuberculosis or brucellosis in these animals.

This proposal would decrease brucellosis and tuberculosis testing costs for cattle, bison and goat producers. It would also allow the Department to more efficiently direct its resources toward those diseases which pose a greater threat to this Commonwealth's human and animal populations. These diseases include pseudorabies, rabies, pullorum, influenza and others. In addition, the Department and the United States Department of Agriculture (USDA) must maintain surveillance and emergency preparedness with respect to numerous foreign animal diseases which, although not currently found in this Commonwealth or the rest of the United States, pose a real and constant threat. The proposal would free manpower and financial resources and allow the Department to provide surveillance and response that is more proportional to the various threats to animal and human health posed by transmissible diseases of animals, while decreasing testing expenses and paperwork requirements for this Commonwealth's cattle, bison and goat producers.

The Department believes the proposed amendments address a compelling public interest (that is, the identification, containment and eradication of dangerous transmissible diseases of animals at minimal cost and inconvenience to this Commonwealth's animal producers), and are otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Fiscal Impact

Commonwealth

The proposed amendments will impose no costs and have no fiscal impact upon the Commonwealth, other than to free financial resources to be redirected as necessary to address the identification, containment and eradication of other dangerous transmissible diseases of animals in this Commonwealth.

Political Subdivisions

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

Private Sector

The proposed amendments will decrease costs and paperwork requirements previously imposed upon the private sector. In particular, producers of cattle, bison and goats within this Commonwealth would be relieved of the cost of testing animals for tuberculosis or brucellosis prior to intrastate shipment. These costs are not readily measurable.

General Public

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

Paperwork Requirements

The proposed amendments will not result in an appreciable increase in paperwork.

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 amendments on July 31, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs. In addition to the

proposed amendments, the Department provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1982-2, "Improving Government Regulations," and Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has an objection to any portion of the proposed amendments, it must 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 final publication of the proposed amendments, by the Department, the General Assembly and the Governor of the objections raised.

Contact Person

Interested persons are invited to submit written comments regarding the proposed amendments within 30 days following publication in the *Pennsylvania Bulletin*. Comments are to be submitted to the Department of Agriculture, Bureau of Animal Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Phillip DeBok, D.V.M.

Effective Date

The proposed amendments will become effective upon final adoption.

CHARLES C. BROSIUS, Secretary

Fiscal Note: 2-106. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART I. BUREAU OF ANIMAL INDUSTRY

CHAPTER 3. HEALTH REQUIREMENTS FOR IMPORTATION AND INTRASTATE TRANSPORTATION OF ANIMALS

Subchapter A. GENERAL PROVISIONS

§ 3.1. Definitions.

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

* * * * *

Hazardous substance—A substance, including chemicals, toxins and biologicals, which threatens the health of domestic animals or humans.

* * * * *

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

* * * * *

Subchapter I. INTRASTATE TRANSPORTATION OF CATTLE, GOATS AND BUFFALO

§ 3.151. General provisions.

(a) **Identification required.** Cattle, goats and buffalo [, except feeder steers, spayed heifers and those for immediate slaughter,] transported within this Commonwealth [for addition to herds in this Commonwealth shall be accompanied by a Pennsylvania

health certificate indicating compliance with the health requirements of this subchapter and Subchapter A (relating to general provisions)] described in subsections (b) and (c) shall be identified by an official eartag or other unique identification device approved and recorded by the Department.

(b) [A Pennsylvania health certificate shall conform with the following:

(1) Cattle, goats and buffalo shall be identified on the health certificate by an eartag. Eartags from other states will be accepted.

(2) Tuberculosis deviators may not be sold but animals tested negative may be sold. Tuberculosis suspects will prohibit the sale of any member of the herd and the herd will be placed under quarantine. Deviators should be retested and suspects shall be retested after 60 days from previous tuberculin test or retested with a comparative cervical test within 10 days of previous injection date. If the tuberculosis suspect is slaughtered and no gross lesions are found on post mortem the herd shall be retested and negative 60 days after previous test before health charts may be issued.

(3) Brucellosis hemolyzed, broken, insufficient serum samples and brucellosis suspects may not be sold but other animals that were tested with negative results may be sold for a period of 60 days after which the suspect shall be retested before charts can be renewed for any member of the herd. If the suspect is no longer in the herd then the entire herd shall be retested and negative before health charts may be issued.

(4) Animals originating from herds that do not qualify for certified or accredited herd status will have area plan status.]

Diseased or contaminated animals. Cattle, goats and buffalo affected with or exposed to diseases or disease agents determined by the Department to be dangerous and transmissible or hazardous to animal or human health shall, when transported within this Commonwealth, be accompanied by a permit issued by the Department.

(c) **Animals for exhibition.** Cattle, goats and buffalo transported within this Commonwealth for exhibition purposes shall meet the applicable requirements of Chapters 3, 5 and 7-9.

§§ 3.152-3.158 (Reserved).

(Editor's Note: The Department is proposing to delete the current versions of §§ 3.152-3.158 as they currently appear in the *Pennsylvania Code* at pages 3-33-3-36 (serial pages (160895)-(160898)).)

CHAPTER 5. ANIMAL MARKETS

Subchapter A. GENERAL PROVISIONS

§ 5.1. Definitions.

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

* * * * *

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

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Subchapter D. BREEDING ANIMALS

§ 5.45. Checking of health certificates.

[(a)] Checking of health certificates of animals presented at the animal market is the responsibility of the management of the market and Department personnel.

[(b) Dairy and breeding animals unloaded at an animal market not accompanied by an approved health certificate may not be sold for dairy or breeding purposes and shall be sold for slaughter only or returned to the owner.]

Chapter 7. BRUCELLOSIS REGULATIONS

Subchapter F. CERTIFIED BRUCELLOSIS-FREE AREA

§ 7.53. [Herd additions] (Reserved).

[Cattle may be moved in herds in certified brucellosis-free counties from other certified brucellosis-free counties if they come from individual plan certified herds, or if they come from herds in certified brucellosis-free areas which have been negative to a blood test within 1 year whether tested by the milk ring test or not, the individual animal to be moved shall be negative to a blood test within 30 days prior to movement and must be accompanied by an official health certificate. Additions shall meet the requirements in Chapter 3 Subchapters B and I (relating to importation of cattle, goats and buffalo; and intrastate transportation of cattle, goats and buffalo).]

CHAPTER 8. APPRAISAL AND INDEMNITY FOR DISEASED ANIMALS

Subchapter C. PROVISIONS FOR PAYMENT OF INDEMNITY

§ 8.26. Animals purchased without health certificates.

Animals purchased without approved health certificates required under this title that [became] become diseased and must be condemned are not eligible for indemnity.

CHAPTER 9. CONTROL AND ERADICATION OF TUBERCULOSIS OF LIVESTOCK

Subchapter A. GENERAL PROVISIONS

§ 9.5. Animals to be tested (cattle, goats and buffalo).

* * * * *

(b) [Area plan—test animals over 24 months of age.

(c)] Other tests—test animals regardless of age.

§ 9.6. Animals not to be tested.

Retests of tuberculin response [animals] cattle, goats and buffalo may not be conducted for 60 days following [previous] the last test because of desensitization. The exception is the retest of response animals by the comparative cervical test which can be done within 10 days of the previous caudal test by approved regulatory veterinarians only [and if]. If over 10 days, then the comparative cervical test shall be conducted after 60 days.

Subchapter C. RETESTING OF HERDS DISCLOSING REACTORS

§ 9.34. [Milk] Raw milk for human or animal consumption.

[(a)] The sale of raw milk for human or animal consumption is prohibited unless the herd—that is, all animals that have freshened or are over 24 months of age—has been tuberculin-tested within [5 years or within the time stipulated by the current rules of the area plan] 1 year.

[(b) Herds from which milk is sold under a raw milk permit shall be tested annually under the individual herd plan by an accredited veterinarian.]

[Pa.B. Doc. No. 96-1298. Filed for public inspection August 9, 1996, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 43]

Temporary Registration Cards and Plates

The Department of Transportation (Department), Bureau of Motor Vehicles, under the authority contained in 75 Pa.C.S. §§ 1310, 1331, 1374 and 6103, proposes to amend Chapter 43 (relating to temporary registration cards and plates) as set forth in Annex A. The statutory provisions, respectively, direct the Department to issue temporary registration cards; require the Department to provide registration plates; set forth requirements for issuing temporary vehicle registration plates; prescribe relevant mitigating events and monetary penalties; and authorize the Department to promulgate regulations to implement the provisions of the Vehicle Code.

Purpose of this Chapter

The purpose of Chapter 43 is to establish rules and procedures governing the issuance of temporary registration plates and cards by designated dealers, manufacturers, full agents and card agents, and to allow vehicle owners the use of their vehicles pending the issuance of permanent registration cards or plates. These regulations help to assure the proper disposition of registration titling, and sales tax fees associated with the sale or transfer of vehicles.

Purpose of These Amendments

The purpose of these amendments is to clarify those who are eligible for authorization as an issuing agent and that an application to become an issuing agent must be completely executed. These amendments also clarify the type of records that issuing agents are required to keep, the type of registration plates that issuing agents may issue and how they may issue them, the type of losses that are covered by a surety bond, and the manner in which claims upon the surety bond will be handled and prioritized. The alternative of obtaining a letter of credit in lieu of a surety bond is eliminated by these regulations, because no one has ever used this alternative due to its cost prohibitiveness.

These amendments also amend the schedules of sanctions appearing in § 43.11 (relating to sanctions for

violations by issuing agents). These amendments provide for the consideration of relevant mitigating events prior to imposing a sanction for certain offenses. If an agent alters the date of purchase upon an application, however, that agent will not be entitled to exoneration or reduction of a monetary penalty. In addition, these amendments authorize the imposition of a monetary penalty instead of a suspension for certain offenses.

The initial impetus for the clarification and amendments was the decision rendered by Commonwealth Court in *Department of Transportation, Bureau of Motor Vehicles v. Century III Chevrolet, Inc.*, 151 Pa. Cmwlth. Ct. 32, 617 A.2d 43 (1992). In that case, Commonwealth Court held that when the term "may," is employed within the same section of the regulations by itself without modification in one subsection, yet with the modifying phrase "in its discretion" in another subsection, the term "may" means "shall" when standing alone, and means "may" when modified by the phrase "in its discretion." The effect of this decision was to make the schedule of penalties found in § 43.11 mandatory and not discretionary.

The *Century III* decision induced members of the affected industry to contact the Department in an effort to amend the regulations. In addition to an exchange of letters and telephone calls, representatives of the Department met and discussed the regulations with representatives of the Pennsylvania Automotive Association (PAA) and the Pennsylvania Independent Automobile Dealers Association (PIADA) on July 18, August 31 and October 24, 1995, and on January 23, 1996. After extensive consultation with these representatives of the entities who will be affected by these regulations, the Department proposes to amend the schedule of penalties, in order to clarify when a sanction will be mandatory or discretionary. The sanctions prescribed for violations of Category I offenses shall be mandatory; the sanctions prescribed for violations of Category II offenses may be imposed within the discretion of the Department.

By clarifying when the imposition of sanctions for violations of Chapter 43 is mandatory or discretionary, the Department believes that the ambiguity of the current regulations will be eliminated. These proposed amendments will provide express written notice to issuing agents, dealers, manufacturers and other affected persons, that violation of this chapter will result in the imposition of a sanction for a Category I offense and may result in a sanction for a Category II offense.

After consultation with the representatives of the entities affected, the Department has described at § 43.11(h) the relevant mitigating events that the Department will consider for certain offenses. Relevant mitigating events that will result in exoneration are prescribed at § 43.11(h)(1); relevant mitigating events that will result in reduction of a monetary penalty are prescribed at § 43.11(h)(2). Monetary penalties are prescribed at § 43.11(a) for violations of § 43.11(a) Category II(5) (relating to untimely submission of documents, fees or taxes).

These regulations also will delete language relating to a letter of credit, which the Department inadvertently neglected to remove from § 43.9(h) of a final rulemaking published at 23 Pa.B. 3347 (July 10, 1993). When the notice of proposed rulemaking was published at 21 Pa.B. 1316 (March 30, 1991), § 43.9(f) included a proposed amendment to allow a full agent to submit an irrevocable letter of credit in lieu of the bond required by § 43.9(b), subject to Department verification and approval. Section

43.2 (relating to definitions) defines a full agent as "a county treasurer or a person other than a manufacturer authorized by the Bureau to issue temporary registration cards and plates." The Department received comments from the Independent Regulatory Review Commission (IRRC) and the Pennsylvania Association of Notaries, who were concerned that full agents would not utilize this option because of the expense associated with an irrevocable letter of credit. Since many full agents do not issue a high volume of cards and plates, the irrevocable letter of credit would be a cost prohibitive alternative to the bond required by § 43.9(b).

The Department, realizing that the option of obtaining an irrevocable line of credit would occasion additional expense and would likely not be utilized by full agents because of this, eliminated the proposed § 43.9(f) language from the final rulemaking. Subsequent to the publication of the final rulemaking, the Department realized that § 43.9(h)(3), which had also been amended, still contained language referring to a letter of credit. These proposed amendments will delete this language to ensure that full agents are aware that an irrevocable letter of credit is not available as an option to satisfy the bonding requirement of § 43.9(b).

Significant Amendments

The following represent a summary of the significant amendments to these regulations:

Section 43.4(d) (relating to authorization to issue temporary registration plates) is amended to provide that an application to be an issuing agent may be denied if the applicant's business is operated, managed or otherwise controlled or influenced by a corporate officer or shareholder who is ineligible for authorization. The purpose of this amendment is to close a loophole in existing regulations. For example, an individual may be suspended or revoked as an issuing agent for various violations. The agent may form a corporation, which under the law is considered a separate person. Nevertheless, in reality, the same person who has been suspended by the Department for violations, is actually involved in running the corporation's business. The amendment to § 43.4(d) will prevent prior offenders from using the corporate veil to resume operations prior to serving their suspension for prior offenses.

Section 43.5(d)(ii)(3) (relating to issuance of temporary registration cards) is amended to require issuing agents who are also dealers to keep as part of their records the bill of sale and a copy of the document used for identification. By requiring agents to keep a copy of the document used for identification, the Department will be better able to verify whether an agent is complying with the insurance verification requirements of 75 Pa.C.S. § 1318 (relating to duties of agents). Requiring agents, who are also dealers, to keep copies of the bill of sale of an automobile assists the Department and the State Police in monitoring the accuracy of applications submitted by those issuing agents, who, because they are also dealers, may have a personal, pecuniary interest in the transaction for which they are forwarding the registration documents, taxes and fees to the Department.

Section 43.6 (relating to issuance of temporary registration plates) is amended to clarify that only the Bureau and not issuing agents may issue temporary registration plates for reconstructed and specially constructed vehicles. This amendment is needed because an official inspection mechanic must first inspect the vehicle for road-worthiness under Chapter 19 (relating to specially

constructed vehicles, reconstructed vehicles and street rods). The public safety aspect of Chapter 19 would be undermined if issuing agents are permitted to issue temporary registration for a reconstructed or specially constructed vehicle before the vehicle's road-worthiness is verified by the official inspection mechanic.

Section 43.9(d) (relating to bond) is amended to clarify that the surety bond is only intended to cover losses that result from an issuing agent submitting a dishonored or uncollectible check, failing to remit to the Commonwealth a fee or tax resulting from the issuance of title or registration, or failing to remit a monetary penalty. The bond may not cover losses that are not mentioned in § 43.9(d). This amendment clarifies that the bond is not available for other claims, such as those pertaining to liability incurred by an agent for failing to verify proof of financial responsibility prior to issuing temporary registration.

Because the surety bond is only required to be in the amount of \$20,000, it is not intended to serve as casualty insurance, in the event that an issuing agent failed to verify financial responsibility for a motorist, who was subsequently involved in a motor vehicle accident and did not have insurance. Thus, this amendment makes it clear that the surety bond is only intended to cover taxes, fees and monetary penalties.

Section 43.9(h) (relating to effective dates) is amended to delete the reference to prior effective dates for these regulations which have since expired. Because these regulations are now effective, there is no need to list the prior effective dates. This subsection is replaced with a provision authorizing the Bureau to make and settle claims upon the bond with the surety company on behalf of the Commonwealth and a person who has incurred a monetary loss. This amendment permits a claimant to demand that the Commonwealth assign its right to make claim on the claimant's behalf directly to the claimant. However, in this event the Commonwealth is released from any duty to the claimant towards obtaining satisfaction for that person. This amendment also specifies the priority in which claims will be paid. The order of priority for payment of claims is as follows: claims made by the Commonwealth; claims made by the Commonwealth for aggrieved persons; claims made by persons who obtained assignment from the Bureau.

The purpose of this amendment is as follows. In a situation where a dealer defaults in remitting taxes and fees, many consumers may be involved. In order to reduce litigation and legal fees for the innocent consumers, the Department has historically handled all the paperwork and negotiations with the surety company in order to make whole the innocent consumers. These amendments specifically sanction this practice. However, if a claimant insists on individually pursuing his claim, as is his right, these regulations make clear that he may do so. Of course, if a person does not wish to permit the Department to handle the matter, the amended regulations provide that the Department will be relieved of any responsibility to obtain satisfaction for that claimant.

In addition, a provision for priority of claims is added to make clear that the Commonwealth's claim for sales tax and fees has priority above all others, and that claims made by the Department, for consumers who paid taxes and fees to a dealer, that failed to remit them, take precedence over those persons who do not participate in the Department's program to obtain satisfaction for aggrieved persons. This amendment is necessary because it is in the best interest of the Department, the dealer, the

surety company and the aggrieved consumers that litigation be minimized, by permitting the Department to process the claims. Rather than having to deal with possibly scores of individual claimants, the dealer and surety company may deal exclusively with the Department in settling the claims. The aggrieved persons are relieved of legal fees and incur far less inconvenience and loss of time, if the Department handles their claims upon the surety bond.

Section 43.9(h)(3) is amended by eliminating the option of submitting a letter of credit in lieu of the surety bond. This option was proposed in a notice of proposed rulemaking published at 21 Pa.B. 1316, however the Department was informed that it is costly and difficult for many full agents to obtain a letter of credit. The Department deleted the option from § 43.9(f) when the final rulemaking was published at 23 Pa.B. 3347, yet inadvertently neglected to delete the reference to § 43.9(h)(3). This proposed amendment will rectify the error and ensure that full agents realize that a letter of credit is not available as an alternative to a bond.

The schedule of sanctions set forth at § 43.11(a) (relating to sanctions for violations by issuing agents) is amended, to clarify when a sanction will be mandatory or discretionary. The sanctions prescribed for violations of Category I offenses shall be mandatory; the sanctions prescribed for violations of Category II offenses may be imposed within the discretion of the Department. By clarifying when the imposition of sanctions for violations of Chapter 43 is mandatory or discretionary, the Department believes that the ambiguity of the current regulations will be eliminated. These proposed amendments will provide express written notice to issuing agents, dealers, manufacturers and other affected persons, that violation of these chapters will result in the imposition of a sanction for a Category I offense and may result in a sanction for a Category II offense. Serious offenses are placed in Category I, which mandates sanctions. Less serious offenses are placed in Category II, which gives the Department discretion to sanction or not to sanction the agent. Although no new offenses are created, various offenses within the schedule of sanctions at § 43.11(a), have been transferred between the current Category I and Category II schedules, in order to properly classify the offense, within the revised mandatory Category I and discretionary Category II offenses, depending upon an offense's relative seriousness.

In addition to the provision for a monetary penalty of \$50 to \$100 for a second offense and \$100 to \$200 for a third offense, § 43.11(a) Category I(4) has been transferred to Category II and the sanction for a fourth or subsequent offense has been amended from a "revocation" to a "3-month suspension up to revocation." The Department believes that the current sanction of revocation only for a fourth or subsequent offense is too harsh. Consequently, the sanction for a fourth offense is amended to a 3-month suspension up to revocation. This will permit the Department to exercise discretion based upon the circumstances leading to the violations.

Section 43.11(c) is amended to delete the phrase "in its discretion" in response to the *Century III* case, to clarify that the term "may" truly means "may," when it appears within these regulations. This subsection is additionally amended to provide that when an agent, who is also a dealer, is sanctioned with a monetary penalty as a dealer for a violation under Chapter 53, and for which violation the agent may also be sanctioned with a monetary penalty under Chapter 43, only the monetary penalty

prescribed at Chapter 53 may be imposed. The purpose of this amendment is to prevent the imposition of double monetary penalties upon an issuing agent who is also a dealer.

Section 43.11(h) is added to the regulations in order to prescribe relevant mitigating events for a violation of section 43.11(a) Category II(5) (relating to late submission of documents, fees and taxes). Because the General Assembly has mandated the Department to consider relevant mitigating events for dealers who commit this same type of violation as a dealer, the Department believes that agents should be similarly treated in order for the Department to be consistent and fair when sanctioning those who are subject to regulation by this Department.

Based upon the type of event, the Department deems it reasonable to establish two types of relevant mitigating events: those that are of such a superseding nature as to completely exonerate the agent; and those that are of a negligent nature, yet by which no consumer was harmed, and, further, the agent has subsequently remedied the problem. These latter events will result in reduction of the monetary penalty that otherwise could be imposed by the Department. Superseding events that will result in exoneration are enumerated at § 43.11(h)(1)(i)—(v), and include acts of God, whether the late submissions were caused by criminal or fraudulent action by an employe or authorized messenger of the Department of which the agent was not aware, or by the failure of a lienholder to promptly forward a title to an agent after satisfaction of a lien.

Relevant mitigating events that will result in reduction of a monetary penalty, but not exoneration, are enumerated at § 43.11(h)(2)(i) and (ii), and include whether subsequent to the notice of hearing issued by the Department, the Department's records reflect that the agent has remedied the event which caused the late submissions and that no additional late submissions have occurred; and whether the applications, fees and taxes were less than 40 days late and that no vehicle purchaser or consumer was harmed by the agent's failure to timely submit the applications, taxes and fees. If applications, fees and taxes are submitted more than 40 days late, it is nearly impossible for the Department to process the paperwork, and mail the vehicle purchaser his annual registration before this 60-day temporary registration expires. If an applicant's temporary registration expires, before he has received his annual registration, he is subject to prosecution under 75 Pa.C.S. § 1301 (relating to registration and certificate of title required) for not having his vehicle properly registered. Even if not cited, the stress created for this consumer by the agent's failure to timely deliver the application, taxes or fees, warrants this Department drawing the line at 40 days when determining whether to reduce the monetary penalty.

Section 43.11(i) is added to authorize suspension without a hearing when an agent refuses to allow an inspection of its records under § 43.7(d) (relating to records available for inspection). Because the Department's ability to review documents is the key means of verifying and enforcing compliance with the provisions of this chapter, an immediate and prompt suspension of an agent is most appropriate, if the agent refuses to permit inspection of his records.

The Department is amending § 43.12, use of temporary registration plate, by removing the substance of the existing § 43.12(d), regarding prosecution, to a newly established subsection (e) and by incorporating a new rule

at subsection (d). This amendment will clarify when issuing agents may issue temporary metal registration plates and temporary cardboard registration plates for commercial motor vehicles. Commercial motor vehicles with a gross weight or registered gross weight in excess of 26,000 pounds are required by the International Registration Plan (IRP) to display an apportioned registration plate whenever the vehicle is from an IRP state and is operating in another IRP state. The Commonwealth adopted the IRP under the authority of section 6144 of the Vehicle Code (relating to Vehicle registration and licensing). See also 26 Pa.B. 634 (February 10, 1996). However, if the commercial motor vehicle is not operated outside of its home state and is not operated within an IRP state, it does not have to display an apportioned registration plate. Because temporary registration plates are not apportioned registration plates, § 43.12(d)(1) clarifies that issuing agents may issue these plates for commercial motor vehicles only if the vehicle weighs or is registered at 26,000 pounds or less, or if it is not operated outside of this Commonwealth or is only operated in a non-IRP state.

Section 43.12(d)(2) clarifies that a commercial vehicle may not be laden when displaying temporary cardboard registration plates. Under the definition of temporary registration plate at § 43.2 (relating to definitions), cardboard registration plates may only be used on vehicles that are being driven or moved to another state for the purpose of titling, registration, use or resale in that state. Under § 43.6(g) the maximum fee for this plate is \$10. Because the purpose of the cardboard plate is merely to give the owner authority to drive the vehicle out of the Commonwealth, the normal fee based upon the weight of the vehicle as prescribed at 75 Pa.C.S. § 1916 (relating to passenger cars) is not charged. If the applicant has not requested a commercial registration plate, nor paid the appropriate fees for such a plate, but instead has obtained a cardboard registration plate, the applicant cannot use the cardboard registration plate on a laden commercial vehicle. Consequently, the Department has made this clear by adding § 43.12(d)(2).

Persons and Entities Affected

These proposed amendments affect all persons who will apply for the authority to issue, or who are currently authorized to issue, temporary registration cards and plates; those vehicle owners who request the issuance of a temporary card or plate; the State Police and local law enforcement agencies.

Fiscal Impact

These proposed amendments will not impose any costs on the Commonwealth, local municipalities or affected persons who comply with the regulations. Issuing agents, who fail to timely submit documents, taxes and fees to the Department, may be subject to significant fines. These proposed amendments will not occasion the preparation of any additional forms, reports or other paperwork.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of these proposed amendments on July 15, 1996, to IRRC and the Chairperson of the House Transportation Committee and the Senate Transportation Committee. In addition to submitting these proposed amendments, 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 1982-2,

"Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of these proposed amendments, 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 final publication of these regulations, by the Department, the General Assembly and the Governor of objections raised.

Sunset Provisions

The Department is not establishing a sunset date for these proposed amendments, since these amendments are needed to administer provisions required under 75 Pa.C.S. (relating to Vehicle Code). The Department, however, will continue to monitor these regulations for their effectiveness.

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Louis J. Curl III, Director, Bureau of Motor Vehicles, 104 Transportation and Safety Building, Harrisburg, PA 17120, within 30 days of publication of this notice in the Pennsylvania Bulletin.

Contact Person

For further information, the contact person is Linley Oberman, Manager, Customer Service Division, Bureau of Motor Vehicles, Room 104, Transportation and Safety Building, Harrisburg, PA 17122, (717) 783-2780.

BRADLEY L. MALLORY, Secretary

Fiscal Note: 18-337. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE III. REGISTRATION

CHAPTER 43. TEMPORARY REGISTRATION CARDS AND PLATES

§ 43.4. Authorization to issue temporary registration plates.

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(d) Denial of application. The Department may deny an application for a certificate of authorization on the basis of information revealed in [the] an investigation, or if the applicant fails to disclose material information required or if the applicant has made a materially false statement on the application, or if the applicant's business is [directly or indirectly] operated, managed or otherwise controlled or influenced by a person who is ineligible for authorization, including a relative, [or] family member, corporate officer or shareholder.

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§ 43.5. Issuance of temporary registration cards.

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(d) Duty to examine documents. The duty to examine documents includes the following:

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(2) A temporary registration card may not be issued unless the following items are found to be in order:

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(ii) Application. The application shall be properly and completely executed and verified or notarized, as required, accompanied by the correct fees, taxes and other required forms or [document] documents.

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(f) Copies of temporary registration card. Copies of the temporary registration card shall be handled as follows:

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(3) The agent's copy of the temporary registration card, copies of related documents including bills of sale when the agent is also the dealer and a copy of the document used for identification and copies of the documents used for insurance verification shall be retained at the place of business of the issuing agent for at least 3 years and shall be made available for inspection only by police and authorized representatives of the Department. Cards issued in conjunction with the transfer of registration plates shall be kept separate from cards issued in conjunction with temporary registration plates. Cards shall be kept in chronological order according to the date of issuance.

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§ 43.6. Issuance of temporary registration plates.

(a) Limits on issuance. Temporary registration plates will be issued in the following manner:

(1) Temporary registration plates other than those specified in paragraph (4) will be issued only by the Bureau, approved governmental agencies, dealers, manufacturers and full agents authorized by the Bureau.

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(4) Temporary registration plates for reconstructed and specially constructed vehicles will be issued only by the Bureau.

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(f) Issuance of cardboard temporary registration plate. Upon issuance of a cardboard temporary registration plate, the authorized dealer, manufacturer or full agent shall punch out the month, day and year of expiration at the space provided and shall record the following information clearly and indelibly on the face of the temporary plate:

(1) The date of issuance [in characters at least 1/2 inch high].

(2) The year, make and model of vehicle.

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§ 43.9. Bond.

(a) Authorized dealers, manufacturers and full agents to be bonded. Every authorized dealer, manufacturer and full agent shall file and maintain with the Bureau a bond executed by a surety company authorized to transact business in this Commonwealth. The bond shall be for the use and benefit of the Commonwealth and a person who has sustained a monetary loss [in connection with the issuance of a temporary registration card or plate, or both, or a violation of this chapter, by the authorized dealer, manufacturer or full agent] within the limitations of the bond as specified at subsection (d).

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(d) *Limitations of bond.* The bond required under this section shall cover transactions in which the Commonwealth or a person specified in subsection (a) has sustained a monetary loss due to the agent, dealer or manufacturer submitting a dishonored or uncollectible check to the Commonwealth (including protest and uncollectible check fees), or failing to remit to the Commonwealth a fee or tax when the monetary loss is incurred in connection with the business of the dealer or manufacturer. A check which is dishonored upon presentment, or an application for title or registration which is received without a required fee or tax, shall constitute a monetary loss. Failure to pay a monetary penalty within 45 days of assessment shall also constitute a monetary loss. The bond required under this section may not cover a loss for a transaction which is not mentioned in this subsection relating to the issuance of temporary registration cards or plates [that are entered into] in connection with the business of the dealer, manufacturer or full agent. If the dealer, manufacturer or full agent has one or more branch offices, the amount of the bond shall be increased by the amount specified in subsection (b) for each branch office, except that the total amount of the bond [shall be limited to] will not be required to exceed \$200,000.

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(h) [*Effective dates.* This section shall take effect as follows:

(1) Manufacturers and dealers currently authorized under this chapter to issue temporary registration plates, or those filing an initial application for authorization, shall comply with subsection (b) by August 9, 1990.

(2) Full agents filing an initial application for authorization to issue temporary registration plates

after the date of adoption of the amendment to subsection (b), shall comply with subsection (b).

(3) Full agents authorized to issue temporary registration plates prior to the date of adoption of the amendment to subsection (b) shall file a new bond, or a letter of credit, conforming to subsection (b), on a form furnished by the Department, by November 10, 1993.]

Authorized claims. The Bureau has the right to make and settle claims upon the bond with the surety company on behalf of the Commonwealth and a person who has incurred a monetary loss as specified in subsection (a). The Bureau will, upon written request, assign this right to a person for that person's claim; however, in this event, the Commonwealth is released from any duty to the person towards obtaining satisfaction of that person's claim. The Commonwealth will have priority, to the exclusion of all others, in receiving payment from the surety. If the aggregate amount of valid claims exceeds the amount of the bond, priority for the payment of claims shall be as follows:

- (1) Claims made by the Commonwealth.
- (2) Claims made by the Commonwealth for persons.
- (3) Claims made by persons who obtained assignment from the Bureau.

§ 43.11. Sanctions for violations by issuing agents.

(a) *Schedule.* After providing an opportunity for a hearing, the Department [may] will impose the suspensions or sanctions on an issuing agent according to the [following] schedule of Category I violations [by the agent], and may impose suspensions or sanctions on an issuing agent according to the schedule of Category II violations, when the Department finds upon sufficient evidence that:

Reason for [*suspension*]
sanction of agent

[*Duration of Suspension*] *Type of Sanction*

	[1st] First Offense	[2nd] Second Offense	[3rd] Third Offense	[4th] Fourth and Subsequent Offense
<i>Category I</i>	* * *	* * *	* * *	
(4) The agent has issued temporary plates but has [not delivered] failed to deliver proper documents [or], fees [and] or taxes to the Department [within the prescribed time].	Suspension [Until] until the documents, fees or taxes are delivered, plus a written warning.	Suspension [Until] until the documents, fees or taxes are delivered, plus 1 Month.	Suspension [Until] until the documents, fees or taxes are delivered, plus 6 Months.	Revocation
	* * *	* * *	* * *	
(8) The agent has submitted a document to the Department for processing which has been accompanied by an uncollectible or dishonored check drawn on [the] an account [of] used by the agent.	Suspension [Until] until uncollectible checks, protest fees and collection charges under the act are paid, plus a written warning.	Suspension [Until] until uncollectible checks, protest fees and collection charges under the act are paid, plus 1 Month.	Suspension [Until] until uncollectible checks, protest fees and collection charges under the act are paid, plus 6 Months.	Revocation

Reason for [*suspension*]
sanction of agent

[Duration of Suspension] Type of Sanction

	[1st] First Offense	[2nd] Second Offense	[3rd] Third Offense	[4th] Fourth and Subsequent Offense
	* * *	* * *		
(12) [The agent has failed to retain proper records under 43.5(f) (relating to issuance of temporary registration cards.]	[Written warning]	[1 Month]	[6 Months]	[Revocation]
The agent has issued temporary registration plates at a location not approved by the Department.	Written Warning	1 Month Suspension	3 Months Suspension	6 Months Suspension
(13) [The agent has on two or more occasions violated, or failed to comply with, a provision of 75 Pa.C.S. Chapter 11, 13, 21, 23, or 71, or Departmental regulations promulgated under these Chapters.]	[1 Month]	[6 Months]	[Revocation]	
The agent has operated a branch office without notifying the Department		Suspension until the branch office is approved by the Department or closed by the agent.		
	* * *	* * *		
(20) [The agent has been convicted of a summary offense, relating to the titling, registration or payment of sales tax for a vehicle, which was committed in connection with the business of the issuing agent.]	[1 Month]	[3 Months]	[6 Months]	[Revocation]
The agent has failed to maintain an established place of business.		Suspension until an established place of business is approved by the Department.		
Category II	* * *	* * *		
(5) [The manufacturer, dealer or full agent has failed to notify the Department of a change in ownership or other changes affecting the business of the issuing agent before or within 10 days of the change.]		[Until an application related to the change has been approved.]		

Reason for [*suspension*]
sanction of agent

[Duration of Suspension] Type of Sanction

	[1st] First Offense	[2nd] Second Offense	[3rd] Third Offense	[4th] Fourth and Subsequent Offense
The agent has issued temporary plates up but has not timely delivered proper documents, fees or taxes to the Department within the time prescribed by law or regulation.	Written Warning	Monetary penalty of \$50 to \$100 per violation; and suspension, for failure to pay the penalty or deliver the documents, fees or taxes within 45 days after the date the notice was sent, or a greater time period as specified by the Department, until the penalty is paid or documents, fees or taxes are delivered to the Department	Monetary penalty of \$100 to \$200 per violation; and suspension, for failure to pay the penalty or deliver the documents, fees or taxes within 45 days after the date the notice was sent, or a greater time period as specified by the Department, until the penalty is paid or documents, fees or taxes are delivered to the Department	3 Months suspension to Revocation
	* *	* * *		
[(13) The agent has issued temporary registration plates at a location not approved by the Department.]	[Written Warning]	[1 Month]	[3 Months]	[6 Months]
[(14) The agent has operated a branch office without notifying the Department.]	[Until the branch office is approved by the Department or closed by the agent.]			
[(15)] (13) The agent has failed to provide proper security for temporary registration cards and plates.	Written Warning	1 Month suspension	3 Months suspension	6 Months suspension
[(16)] (14) The agent has refused to issue, upon request, a temporary registration card to an owner or lessee of a vehicle who possesses proper documentation.	Written Warning	1 Month suspension	3 Months suspension	6 Months suspension
[(17)] (15) The agent has failed to maintain an adequate schedule of business hours.	Written Warning	1 Month suspension	3 Months suspension	6 Months suspension
[(18)] (16) The agent has issued a cardboard temporary tag without verification that the vehicle will be transported to another state for registration as required by § 43.5(d)(2)(i)(C).	Written Warning	1 Month suspension	3 Months suspension	6 Months suspension
[(19) The agent has failed to maintain an established place of business.]	[Until an established place of business is approved by the Department.]			

Reason for [**suspension**]
sanction of agent

[**Duration of Suspension**] **Type of Sanction**

	[1st] First Offense	[2nd] Second Offense	[3rd] Third Offense	[4th] Fourth and Subsequent Offense
[(20)] (17) The agent has:				
(i) Failed to furnish receipts as required.	Written Warning	1 Month suspension	3 Months suspension	6 Months suspension
(ii) Failed to retain duplicate copies of receipts for 3 years	Written Warning	1 Month suspension	3 Months suspension	6 Months suspension
[(21)] (18) The agent has issued a temporary registration to an applicant without proper documentation.	Written Warning	1 Month suspension	3 Months suspension	6 Months suspension
(19) The manufacturer, dealer or full agent has failed to notify the Department of a change in ownership or other changes affecting business of the issuing agent before or within 10 days of the change.	Suspension until an application related to the change has been submitted to the Department.			
(20) The agent has failed to retain proper records under § 43.5(f) (relating to issuance of temporary registration cards).	Written Warning	1 Month suspension	6 Months suspension	Revocation
(21) The agent has on two or more occasions violated, or failed to comply with, a provision of 75 Pa.C.S. Chapter 11, 13, 21, 23 or 71, or Departmental regulations promulgated under these Chapters, except for untimely submissions as provided at paragraph (5).	1 Month suspension	3 Months suspension	6 Months suspension	Revocation
(22) The agent has been convicted of a summary offense, relating to the titling, registration or payment of sales tax for a vehicle which was committed in connection with the business of the agent, except for untimely submissions as provided at paragraph (5).	Written Warning	1 Month suspension	3 Months suspension	Revocation suspension

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(c) *Multiple violations.* In the case of multiple violations considered at one time, the Department may impose separate sanctions for each violation under the schedule in subsection (a). The Department may [, **in its discretion,**] direct that a suspension or revocation imposed be served concurrently or consecutively. **If an agent, which is also a dealer, has been sanctioned with a monetary penalty as a dealer under Chapter 53 (relating to manufacturers, dealers and miscellaneous motor vehicle businesses registration plates), for a violation that involves the same violation for which a monetary penalty may be imposed under this chapter, only the monetary penalty prescribed at Chapter 53 will be imposed upon the agent, which is also a dealer, for the violations that constitute offenses of both this chapter and Chapter 53. The offenses will be noted upon the record for both this chapter and Chapter 53.**

(d) *Suspension authority reserved.* The description of grounds for suspension [**shall**] will not be deemed to

limit the authority of the Department to control the issuance of temporary registration cards and plates as granted by 75 Pa.C.S. §§ 1310 and 1331 (relating to temporary registration cards; and issuance of registration plates). The Department may [, **in its discretion,**] suspend an issuing agent for offenses not described in subsection (a), such as any use of temporary registration plates or official documents, or conduct on the part of the issuing agent, that does not conform to the law of the Commonwealth. Sanctions imposed under this subsection shall be consistent with the sanctions imposed under subsection (a) according to the seriousness of the violation as evidenced by factors such as the number of persons or documents involved, the amount of money involved, and the like.

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(h) *Relevant mitigating events.* For a violation of subsection (a) Category II(5), second, third or subsequent offense, the Department will consider the following relevant mitigating events that serve to

exonerate the agent of the offense or to reduce the monetary penalty that may be imposed. The agent has the burden of establishing the relevant mitigating event and that the relevant mitigating event was the cause of the violation or violations.

(1) *Exoneration.* In determining whether the relevant mitigating events serve to exonerate the agent of the offense, the Department will consider evidence offered by the agent pertaining to the following:

(i) Whether the failure to timely submit the applications, taxes or fees was the result of an Act of God, such as fire, flood or other natural disaster.

(ii) Whether the failure to timely submit the applications, taxes or fees was the result of criminal or fraudulent action by an employe or licensed messenger of which the agent was not aware and could not have prevented and that the agent had in place customary business practices to effectuate the timely submission of taxes, fees and title applications to the Department.

(iii) Whether the failure to timely submit the applications was the result of a lienholder's failure to promptly forward the titles to the agent, and, in this case, whether the lienholder received prompt repayment of the debt from the vehicle owner or licensed dealer and immediately released its liens.

(iv) Whether the agent would have been exonerated of prior sanctions that were issued against the agent within the 3 years prior to _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal) had the Departmental regulations that were effective _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal) been in effect.

(v) Whether the failure to timely submit the applications was the result of criminal, fraudulent or negligent action by an authorized messenger of the Department. This subparagraph does not apply when the same person controls the agent and the messenger. The agent has the burden of presenting evidence acceptable to the Department that it submitted the documents, taxes and fees to the authorized messenger within 15 days of the date of purchase of the vehicle, transfer of a registration or issuance of a temporary registration plate or card, whichever occurred first.

(2) *Reduction in monetary penalty.* In determining whether the events serve to reduce the monetary penalty that the Department may impose, but which will not exonerate the agent of the offense, the Department will consider evidence offered by the agent pertaining to the following:

(i) Whether subsequent to the applicable notice of hearing issued by the Department, the Depart-

ment's records reflect that the agent has remedied the event which was the cause of the untimely submissions and that no additional late submissions have occurred.

(ii) Whether the applications, taxes or fees were submitted by more than 20 but less than 40 days after the date of purchase of the vehicle, provided that no consumer or vehicle purchaser was harmed by the agent's failure to timely submit the applications, taxes or fees and that the agent had in place customary business practices to effectuate the timely submission of taxes, fees and title applications to the Department. Failure of the consumer or vehicle purchaser to receive the annual registration documents prior to expiration of the temporary registration constitutes harm.

(3) *Preclusion from mitigation.* If the Department discovers that the agent, or an employe of the agent, altered the date of purchase of a vehicle upon any application, the Department will be precluded from exonerating the agent of the offense or reducing the monetary penalty and will impose the sanction prescribed by subsection (a).

(i) *Suspension without hearing.* The Department will suspend an issuing agent without a hearing when the agent refuses to allow inspection of records in accordance with § 43.7(d) (relating to inventory of temporary registration cards and plates).

§ 43.12. Use of temporary registration plate.

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(d) *Use of temporary registration plates on vehicles transporting a load.* Vehicles transporting a load shall comply with the following:

(1) Temporary metal registration plates may be used on a vehicle transporting a load if the vehicle has a gross vehicle weight rating of 26,000 pounds or less and the vehicle and load have a gross weight of 26,000 pounds or less.

(2) Temporary metal registration plates may not be used on a vehicle transporting a load, if the vehicle has a gross vehicle weight rating in excess of 26,000 pounds or the vehicle and load have a gross weight in excess of 26,000 pounds, unless the vehicle is operating only within this Commonwealth or through jurisdictions which are not members of the International Registration Plan.

(3) Temporary cardboard registration plates may not be used on a commercial vehicle transporting a load.

(e) *Prosecution.* A person who violates subsection (c) shall be subject to prosecution under 75 Pa.C.S. § 1301 (relating to driving unregistered vehicle prohibited).

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