PROPOSED RULEMAKING

DEPARTMENT OF BANKING

[10 PA. CODE CHS. 61, 63, 65 AND 67]

Pawnbrokers License

The Department of Banking (Department), under the Pawnbrokers License Act (act) (63 P. S. §§ 281-1—281-32), and the authority given to the Department to promulgate regulations in section 8 of the act (63 P. S. § 281-8), proposes to amend Chapters 61, 63, 65 and 67 to read as set forth in Annex A. The amendments will impose procedures for initial requirements, restrictions on the usage of the name "pawn" and "pawnbroker" in this Commonwealth, and assessment by licensees of a $1 charge for governmental reporting costs and license changes of licensees' office location.

Purpose

The purpose of these proposed amendments is to implement the act of December 28, 1994 (P. L. 1402, No. 163) (Act 163) which amended sections 2, 4, 4.1, 5.1, 6, 8 and 12 of the act (63 P. S. §§ 281-2, 281-4, 281-4.1, 281-5.1, 281-6, 281-8 and 281-12). The Secretary of the Department is authorized by section 8 of the act to issue regulations that may be necessary for the protection of the public and to insure the proper conduct of the pawnbroker business and enforcement of the act. The purposes of the proposed amendments are consistent with the requirements of Act 163 and the authority of the Secretary of Banking to issue regulations.

Explanation of Regulatory Requirements

The proposed amendments to the existing regulations provide procedures for initial pawnbroker license applications, including posting a notice of initial application and hearing at the proposed pawnbroker location and publishing notice of the hearing in a newspaper of general circulation. The proposed amendments also require a newspaper notice of renewal application to be published in a newspaper of general circulation by an applicant for renewal of a pawnbroker license. A change of place of business by a licensed pawnbroker could not be implemented until a notice of proposed relocation had been posted at the proposed new office location. Use of the formal name or fictitious name "pawn" or "pawnbroker" would not be permissible unless the entity using the formal name or fictitious name was a licensed pawnbroker under the act. Use of the terms "pawn" or "pawnbroker" would not be permissible in any advertisement unless the person or entity using the name was a licensed pawnbroker. A $1 charge per pledge could be assessed by a licensee to cover only governmental reporting costs pertaining to reports required to be issued by a licensee to the local or State police pertaining to a particular pledge, or as otherwise permitted by the Secretary of the Department. The minimum start-up and ongoing capital requirement applicable to an initial applicant or renewal applicant for a pawnbroker license would be $10,000 per licensed pawnbroker office. The licensee would be required to report counterfeit pawn tickets to local police authorities. Interest and charges would be amended consistent with the statutory amendments to permit 3% per month aggregate interest and charges on the entire principal amount.

Entities Affected

The number of entities that will be affected by these proposed amendments are as follows:

(1) An estimated five to ten initial applicants for pawnbroker licenses per annum regarding the hearing requirements applicable to initial applicants.

(2) The approximately 77 licensed pawnbrokers in this Commonwealth regarding the minimum capital requirements.

(3) The approximately 77 licensed pawnbrokers regarding the $1 charge per pledge that may be assessed by a licensee to cover governmental reporting costs.

(4) The approximately 77 licensed pawnbrokers regarding the newspaper notice of renewal application to be published in a newspaper of general circulation.

(5) An estimated one or two licensed pawnbrokers per annum who might seek to relocate their licensed offices would have to post at the proposed new office location a notice of proposed relocation.

(6) An estimated two or three unlicensed entities per annum would be restricted from utilizing the word "pawn" or "pawnbroker" in an advertisement or in their name or fictitious name unless licensed as pawnbrokers under the act.

Cost and Paperwork Requirements

These proposed amendments will impose paperwork requirements on the Department to process initial pawnbroker license application hearings, and the notices of license application applicable to initial applicants and renewal applicants respectively.

These proposed amendments will not impose paperwork requirements on any political subdivision and will not affect the costs of any political subdivision of the Commonwealth.

Costs of hearing shall be paid by the initial applicant, including costs for stenographer services, transcript printing costs and Department expenses for providing a designee of the Secretary of the Department to preside at the public hearing.

Effectiveness/Sunset Date

The anticipated effective date is 30 days after final adoption.

A sunset date is inapplicable as the statute imposes an ongoing requirement for the licensing and regulation of pawnbrokers.

Contact Person

Interested persons are invited to submit their written comments, if any, within 30 days of the date of this publication, to Reginald S. Evans, Chief Counsel, Department of Banking, 333 Market Street, 16th Floor, Harrisburg, PA 17101-2290, (717) 787-1471.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 1, 1997, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee for Business and Economic Development and the Senate Committee on Banking and Insurance. In addition to submitting the

proposed amendments, the Department has 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." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the 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 and comments including objections to the proposed amendments by IRRC, the General Assembly and the Office of Attorney General, prior to final publication and approval of the proposal.

RICHARD RISHEL,
Secretary

Fiscal Note: 3-33. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 10. BANKS AND BANKING

PART V. PAWNBROKERS

CHAPTER 61. GENERAL PROVISIONS

§ 61.1. Definitions.

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

***Act*—The Pawnbrokers License Act (63 P. S. §§ 281-1—281-32).**

***Capital*—Tangible net worth which shall be maintained at all times by the licensee.**

* * * * *

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

***Initial applicant*—An individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or a group of individuals however organized applying for a license under the act or a person appearing as owner, partner, officer, director, trustee or other official of a partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or a group of individuals however organized, on the application for license under the act. This application for license does not possess a license for the license term that expires immediately prior to the term being applied for regarding the proposed license location.**

***License*—A license issued by the Secretary under the act that permits an initial applicant or renewal applicant to engage in the pawnbroker business at a particular business location to the extent provided in the license's terms.**

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***Newspaper notice of renewal application*—The written notice in a form prescribed by the Department, which is to be advertised in a newspaper of general circulation by a renewal applicant for a pawnbroker's renewal license. The advertisement shall be in a form prescribed by the Department.**

***Newspaper of general circulation*—A newspaper issued daily, or not less than once per week, intended for general distribution and circulation, sold at fixed prices per day or week, published in the English language, which satisfies the requirements of 45 Pa.C.S. §§ 301—310 (relating to Newspaper Advertising Act). The newspaper shall be one of the following:**

(i) A newspaper which is one of general circulation in the county and is published in the city, borough or township in which the pawnbroker's office is to be located or already is located.

(ii) If there is no newspaper of the type described in subparagraph (i), a newspaper of general circulation in the county, published at the county seat.

(iii) If there is no newspaper of the type described in subparagraphs (i) and (ii), a newspaper of general circulation published in the county at the place nearest the city, borough or township.

(iv) If there is no newspaper of the type described in subparagraphs (i)—(iii), the newspaper of general circulation published at the place nearest the city, borough or township in an adjoining county.

Newspaper publications required by the act and this part shall be at the cost of the applicant for license.

***Newspaper notice of hearing*—The written notice in a form prescribed by the Department, which is to be published in a newspaper of general circulation by an initial applicant for a new pawnbroker's license.**

***Notice of initial application and hearing*—The written notice in a form prescribed by the Department, which is to be posted by an initial applicant for a new pawnbroker's license at the proposed pawnbroker's business location, as further specified in this part.**

***Renewal applicant*—The definition applies, except that the renewal applicant does possess a license for the license term that expires immediately prior to the renewal term being applied for regarding the licensed location.**

***Resident*—A person as defined in section 2 of the act (63 P. S. § 281-2) residing or operating at an address within 500 feet of an initial applicant's proposed new pawnbroker's business location.**

***Secretary*—The Secretary of the Department or a person designated by the Secretary. This definition contemplates, among other things, that a designee of the Secretary may preside over a hearing required by the act.**

§ 61.2. License applications**, public notice, hearings and capital requirements.**

(a) Blank forms of application and bond will be supplied by the Department upon request. A license fee **[of $100]** is required.

(b) Licenses shall be issued on the basis of information **[set forth]** in the application for license. Changes in title, place of business, office manager, owner, partners or corporate officials occurring during a license year shall require prior **written** approval of the Department.

(c) Every initial applicant for a license shall post a notice of initial application and hearing for at least 30 days beginning with the day the application is accepted as filed with the Secretary, in a conspicuous place at the proposed location for which the initial applicant has applied for a license, unless another location for posting the notice of initial application and hearing is approved by the Secretary. The notice of initial application and hearing shall be in the form prescribed by the Secretary. The conspicuous place of posting the notice of initial application and hearing shall face to the outside of the proposed location for which the initial applicant is applying, so that persons observing the normal main window or facade of the proposed location may readily see and read the notice of initial application and hearing, unless otherwise permitted by the Secretary due to the circumstances of the proposed pawnbroker location. At the end of at least 30 days continual posting of the notice of initial application and hearing, the initial applicant shall deliver to the Department an affidavit in a completed form as prescribed by the Department certifying that the notice of initial application and hearing has been properly posted for the required 30 day time period. A photocopy of the completed notice of initial application and hearing also shall be provided by the initial applicant to the Department as part of the initial application.

(d) A public hearing shall be held regarding a pawnbroker's license application submitted by an initial applicant. The public hearing is a fact-gathering mechanism to assist the Department in its review of the initial applicant's pawnbroker's license application while providing an opportunity for interested residents to testify regarding matters relevant to the Secretary's consideration of whether to approve the initial applicant's license application for the proposed location.

(1) A hearing regarding an initial applicant's license application will not be held by the Department until after the Department has accepted as complete a license application from the initial applicant. The initial applicant shall provide the affidavit required in subsection (c) certifying to the posting of the notice of initial application and hearing for the requisite 30-day time period, and a proof of publication of a newspaper notice of hearing.

(2) The separate newspaper notice of hearing shall be published at least once in a newspaper of general circulation at least 10 days prior to the hearing date. The initial applicant shall cause proof of publication of the newspaper notice of hearing to be provided to the Department in a written form issued and executed by a representative of the newspaper.

(3) The hearing shall occur at a date, time and place deemed appropriate in the sole reasonable discretion of the Secretary.

(4) The Secretary will preside over the hearing. The hearing rules in 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) and Chapter 3 (relating to hearings and conferences) do not apply to hearings regarding an initial applicant, as described in this section, because of the fact-gathering nature of these hearings. Formal rules of evidence do not apply to these hearings. The Secretary has the authority to swear witnesses at a hearing. Procedural issues regarding a hearing will be determined by the Secretary.

(5) Witness testimony may be limited as to time by the Secretary. The initial applicant may testify once after all witnesses, if any, have testified. Residents attending the hearing and seeking to testify shall be permitted to testify. The number of witnesses including resident witnesses may be restricted in the sole discretion of the Secretary, including, but not limited to, circumstances in which the Secretary determines that witnesses seek to offer similar testimony or to facilitate completion of the hearing within a reasonable time. Witnesses other than residents may be permitted to testify at the hearing, in the sole discretion of the Secretary.

(6) Costs of the hearing shall be paid by the initial applicant, including the costs for stenographer services, transcript printing costs and Department expenses for providing a designee of the Secretary to preside at the public hearing. Two copies of the hearing transcript shall be provided to the Department. If there is no testimony at the hearing, the transcript requirement shall be waived by the Secretary.

[(c)] (e) Licenses shall expire on October 1 of each year. Applications for renewal shall be filed with the Department at least 30 days before the end of the license year. Applications for renewal shall be accompanied by a new bond and a check or money order **[for $100]** payable to the Commonwealth of Pennsylvania. **The renewal applicant shall cause a newspaper notice of renewal application to be published once, in a form prescribed by the Department at least 30 days prior to license renewal. The renewal applicant shall cause proof of publication to be provided to the Department in a written form issued and executed by a representative of the newspaper of general circulation. The Secretary will consider written comments timely received after publication of the newspaper notice of renewal application.**

(f) The minimum start-up capital requirement applicable to an initial applicant for a license is $10,000 per licensed pawnbroker office. The ongoing capital requirement applicable to a renewal applicant is $10,000 per licensed pawnbroker office. If there are multiple licensed offices held by the same licensee, the maximum total capital requirement for all of the offices is $100,000. The minimum capitalization shall be maintained as permanent capital which may not be distributed to a stockholder or owner of the licensee or be purchased by a licensee without the prior written approval of the Secretary. Licensees holding valid licenses on ____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposal) shall meet the minimum capitalization requirements in this section by _____ (*Editor's Note*: The blank refers to a date 2 years after the effective date of adoption of this proposal).

(g) Applicants for a pawnbroker's license shall demonstrate that the proposed pawnbroker's location contains security measures and devices, such as a vault for the storage of pledge items, for the conduct of a pawnbroker's business under the cir-

cumstances of that location. The initial applicant shall demonstrate to the Department's reasonable satisfaction that the initial applicant has the requisite experience or knowledge, or both, to conduct the business of a pawnbroker under the act and this part. The knowledge or experience may include retaining an office manager with at least 1 year of knowledge and experience in the pawnbroker business or other business experience determined to be relevant in the Department's reasonable discretion. Renewal applicants shall demonstrate to the Department's reasonable satisfaction that the renewal applicant continues to have the requisite experience or knowledge to conduct the business of a pawnbroker under the act and this part.

[(d)] (h) ***

§ 61.3. Change of place of business.

(a) Any change of place of business of a pawnbroker shall require prior approval of the Department**, which will not be provided until a notice of proposed relocation has been posted at the proposed new office location for at least 30 days. The notice of proposed relocation shall be in the form prescribed by the Secretary and shall contain language requesting public comment on the proposed relocation. The conspicuous place of posting the notice of proposed relocation shall face to the outside of the proposed new location, so that persons observing the normal main window or facade of the proposed new location may readily see and read the notice of proposed relocation, unless otherwise permitted by the Secretary due to the circumstances of the proposed new location. At the end of at least 30 days continual posting of the notice of proposed relocation, the licensee shall deliver to the Department an affidavit in a completed form as prescribed by the Department certifying that the notice of proposed relocation has been properly posted for the required 30-day time period. A photocopy of the completed notice of proposed relocation also shall be provided by the licensee to the Department as part of the request to change place of business.**

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(c) Licensees who wish to change their place of business to a municipality other than that indicated on the current license shall obtain a new license by filing a new application and bond and paying the license fee **[of $100]**.

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§ 61.4. Partnerships.

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(b) **[Any] A** change in a partnership occurring during a license year and requiring a new license shall require the payment of an additional license fee **[of $100]**.

§ 61.5. Fictitious names **and other name usage**.

(a) The conduct of business by a licensee under **[any] an** assumed or fictitious trade name is prohibited unless **the following conditions are met**:

(1) **[the] The** licensee has complied with **[the Fictitious Corporate Name Act (15 P. S. § 51 *et seq.*) or the act of May 24, 1945, P. L. 967 (54 P. S. § 28.1 *et seq.*)] 54 Pa.C.S. (relating to names)**, as applicable**[, and].**

* * * * *

(c) A person or entity which is not a licensee under the act is prohibited from using in its name or fictitious name the words "pawn" or "pawnbroker" or any similar terms. Notwithstanding regulation under the act to the contrary, a person or entity may use its name or fictitious name legally in use on _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposal).

(d) A person or entity which is not a licensee under the act is prohibited from advertising in any manner as a pawnbroker, and from using the words "pawn" or "pawnbroker" in a heading to or otherwise in any advertisement. Notwithstanding any regulation under the act to the contrary, advertisements in use on _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposal) may be used but may not be renewed.

§ 61.6. Examinations.

* * * * *

(c) In case of nonpayment, the Department is authorized to recover the cost of examination **[either] from the following:**

(1) **[from the] The** surety on the bond**[; or]**.

(2) **[by the] The** institution of court action against the licensee.

CHAPTER 63. CHARGES, PAYMENT AND RECORDS

CHARGES

§ 63.1. Interest **and charges**.

The prescribed maximum total charges, including interest, shall be equivalent to an aggregate rate of **[3.0] 3**% per month on that part of the unpaid principle balance of any loan **[not in excess of $150, and 2.0% per month on any remainder of such unpaid principal balance].**

§ 63.5. Charge for reports to police.

A charge of $1 per pledge may be assessed and collected by a licensee to cover only those governmental reporting costs pertaining to reports required to be issued by a licensee to the local or State police pertaining to that pledge, or as otherwise permitted by the Secretary.

CHAPTER 65. PAWN TICKETS

§ 65.9. Counterfeit ticket.

Whenever a counterfeit pawn ticket is presented to a licensee, the licensee may seize and retain **[such] the** ticket. Upon seizure of a counterfeit pawn ticket, the licensee shall immediately notify the Department **and local police authorities**.

CHAPTER 67. SALE OF PLEDGE

GENERAL PROVISIONS

§ 67.2. Time.

(a) Pledges **[shall] may** not be sold prior to the expiration of 90 days after the due **[notice] date** of the loan, except as otherwise provided in subsection (b) **[of this section]**.

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[Pa.B. Doc. No. 97-552. Filed for public inspection April 11, 1997, 9:00 a.m.]

[10 PA. CODE CHS. 11, 13, 17, 35 AND 41]

Repeal of Various Provisions

The Department of Banking (Department), under the authority contained in sections 201 and 202 of the Department of Banking Code (71 P. S. §§ 733-201 and 733-202), section 103 of the Banking Code of 1965 (7 P. S. § 103) and section 12 of the Consumer Discount Company Act (7 P. S. § 6212), proposes to eliminate the following regulations: §§ 11.1—11.5, 13.2(b) and (c), 13.3(a)(3), 17.1, 35.1—35.3 and 41.3.

Purpose

The proposed amendments targeted for elimination have been deemed by the Department to be obsolete, preempted or unnecessary for the conduct of the business of banking or the making of consumer loans.

Explanation of Regulatory Requirements

The Department is unable to articulate the purposes of or necessity for the provisions listed as follows. These provisions are not enforced by Department examiners and are deemed to be unnecessary for the safety and soundness of regulated institutions. Furthermore, the Department is unable to ascertain any consumer protection which is derived from these subsections.

§ 13.2(b) and (c) (relating to participation in evidences of indebtedness and agreements for the payment of money).

Department personnel are unable to articulate the purposes of or necessity for these provisions. These provisions are not enforced by Department examiners and are deemed by the Department to be unnecessary for the safe and sound conduct of the business of banking.

§ 13.3(a)(3) (relating to participants in pools of evidences of indebtedness or agreements for the payment of money).

Department personnel are unable to articulate the purposes of or necessity for these provisions. These provisions are not enforced by Department examiners and are deemed by the Department to be unnecessary for the safe and sound conduct of the business of banking. This section is substantially similar to another section proposed to be repealed, § 13.2(c).

§ 13.3(b) (relating to participants in pools of evidences of indebtedness or agreements for the payment of money).

This provision contributes little or nothing to the safety and soundness of State-chartered institutions. Additionally, this provision is not enforced by examiners and is deemed by the Department to be unnecessary for the safe and sound conduct of the business of banking.

Chapter 11 (relating to reserves against deposits).

Chapter 11 sets forth reserve requirements for State-chartered banking institutions. However, in light of more restrictive Federal regulations applicable to State-chartered banking institutions as found in regulation D, 12 CFR Part 204, this chapter is deemed to be obsolete.

Chapter 17 (relating to audits and examinations).

Chapter 17 sets forth the minimum standards for director's audits of State-chartered banking institutions. This chapter is redundant and essentially meaningless. It sets forth no requirements other than notifying State-chartered institutions that the Department maintains instructions with regard to minimum requirements for internal audits.

Chapter 35 (relating to mortgage loans).

Chapter 35 sets forth restrictions on service charges and premiums charged by savings associations with regard to mortgage loans. In light of broad Federal preemption with regard to mortgage lending found in the Depository Institution Deregulation and Monetary Control Act of 1980 (12 U.S.C.A. § 173f-7a) and in the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C.A. § 3801 *et seq.*), Chapter 35 is obsolete.

§ 41.3(i) (relating to contracts with consumers).

The second sentence in § 41.3(i) requires consumer discount companies which are licensed by the Department to obtain a license for places of business at which payments are received from borrowers. This section has been overridden by recent amendments to the Consumer Discount Company Act (7 P. S. §§ 6201—6219). The amendment which nullifies the second sentence of § 41.3(i) is found at section 8 of the Consumer Discount Company Act (7 P. S. § 6208).

Entities Affected

As the regulations targeted for elimination are largely obsolete, preempted and/or not enforced by the Department of Banking, the eliminations of these regulations will have no effect on the regulated community. Section 41.3(i) governs the extension of credit by the 620 licensed consumer discount companies in this Commonwealth. The rest of the regulations targeted for elimination are applicable to the 176 Pennsylvania-chartered banks, bank and trust companies and savings banks.

Cost and Paperwork Requirement

The regulations targeted for elimination are obsolete or preempted by other laws. Therefore, these regulations impose no cost or burdens to the regulated community and, thus, their elimination will have no effect on costs or paperwork requirements.

Contact Person

Interested persons are encouraged to submit their written comments, if any, within 30 days from the day of this publication to Valentino F. DiGiorgio III, Staff Attorney, Department of Banking, 333 Market Street, 16th Floor, Harrisburg, Pennsylvania 17101-2290, telephone number (717) 787-1471.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of this proposed regulation on April 1, 1997, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee for Business and Economic Development and the Senate Committee on Banking and Insurance. In addition to submitting the regulation, 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 Relations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulation, 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 and comments including objections to the proposed regulations by IRRC and the General Assembly prior to final publication and approval of the proposed regulation.

Fiscal Note: 3-32. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 10. BANKS AND BANKING

PART II. BUREAU OF BANKS

CHAPTER 11. [RESERVES AGAINST DEPOSITS] (Reserved)

[LEGAL RESERVE FUNDS]

§ 11.1. **[Definition] (Reserved)**.

[The term "transaction account," as used in this chapter, means a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instruments for the purpose of making payments or transfers to a third person; the term includes demand deposits, negotiable order of withdrawal accounts and savings deposits subject to automatic transfers.]

§ 11.2. **[General provisions] (Reserved)**.

[(a) The opening deposit figures for each business day shall be used as the base in computing the required legal reserve fund for such business day.

(b) The required reserve and the reserve held shall be computed daily and averaged for each 14-day period beginning January 6, 1966. The required reserve for nonbusiness days such as Saturdays, Sundays and holidays shall be that of the succeeding business day.

(c) If there is a deficiency in the reserve fund of a banking institution according to the average daily computation at the end of any 14-day period, that institution shall notify the Department in writing within three business days after the end of that 14-day period. The notice shall state the amount of the deficiency and the corrective action taken to prevent the recurrence of future deficiencies.]

§ 11.3. **[Reserves to be maintained by institutions] (Reserved)**.

[The amount of the reserve fund which shall be established and maintained against deposits is fixed at the following percentages:

(1) 7.0% of the total of transaction accounts.

(2) 3.0% of the total of all other deposit accounts.]

§ 11.4. **[Savings banks] (Reserved).**

[The minimum amount of the reserve fund which a savings bank shall establish and maintain is 6.0% of the total of its deposits.]

§ 11.5. **[Component parts—legal reserve fund] (Reserved)**.

[(a) No less than 50% shall, and the total of the reserve fund may, consist of United States coin and currency kept on hand at the place of business of the institution or on deposit in a reserve agent subject to call without notice.

(b) To determine United States coin and currency kept on deposit in a reserve agent subject to call without notice, the balance due to the reserve agent shall be deducted from the balance due from the reserve agent, unless the balance due to the reserve agent is by contract or agreement separate and apart and not deductible.

(c) The remainder of the legal reserve fund, which shall be no more than 50% of the total, may consist of obligations of the following:

(1) The United States or its instrumentality.

(2) The Commonwealth.

(3) A political subdivision of the Commonwealth.

(4) A public body of the Commonwealth.

(5) A public body of a political subdivision of the Commonwealth.

(6) The following governmental agencies:

(i) Government National Mortgage Association.

(ii) Farmers Home Administration.

(iii) Export-Import Bank of the United States.

(iv) Student Loan Marketing Association.

(v) The Federal Home Loan Mortgage Corporation.

(vi) The Tennessee Valley Authority.]

CHAPTER 13. LOANS

PARTICIPATIONS

§ 13.2. Participations in evidences of indebtedness and agreements for the payment of money.

[(a)] ***

[(b) Participations may not be acquired from or sold to individuals, partnerships or associations who do not have an interest other than an investment interest in such evidences of indebtedness or agreements.

(c) Institutions may not sell participations upon terms under which the institutions would be required, at the option of the purchaser, to repurchase the participations.]

§ 13.3. Participants in pools of evidences of indebtedness or agreements for the payment of money.

[(a)] Institutions may purchase from and sell to other institutions, **[national] National** banks or similar banking companies existing under the laws of any other **[State] state**, and may sell to other corporations,

participations or undivided interests in pools of evidences of indebtedness or agreements for the payment of money, if:

* * * * *

[(3) An institution which sells a participation in a pool, may be under no obligation to repurchase the participation.]

* * * * *

[(b) No participations in a pool may be purchased from a person except an institution, national bank and similar banking company existing under the laws of another state.]

CHAPTER 17. **[AUDITS AND EXAMINATIONS] (Reserved)**

[DIRECTORS AUDITS]

§ 17.1. **[Minimum standards for directors audits] (Reserved).**

[(a) Instructions setting forth the minimum acceptable requirements for directors audits have been compiled by the Department and will be distributed to all State-chartered institutions. These instructions are available upon request from the Department.

(b) Institutions with internal audit programs which have been approved pursuant to section 1407(c) of the Banking Code (7 P. S. § 1407(c)) will not be subject to the minimum requirements set forth in the instructions referred to in subsection (a).]

PART III. SAVINGS ASSOCIATION BUREAU

CHAPTER 35. **[MORTGAGE LOANS] (Reserved)**

§ 35.1. **[Premiums] (Reserved).**

[An association may charge a premium on a mortgage loan of 1.0% per annum if paid in installments. If the premium is deducted in advance it shall not exceed 10% of the amount of the loan. An association shall be permitted to collect only one of these two alternative premiums on any one mortgage loan.]

§ 35.2. **[Service charges] (Reserved).**

[An association shall be permitted to collect a reasonable service charge on a mortgage loan, in addition to the customary closing costs. Such service charges shall be restricted to the following rates:

(1) Not more than 1.0% of the amount of the loan or mortgages secured by improved property.

(2) Not more than 2.0% of the amount of the loan on construction loans.]

§ 35.3. **[Excessive premiums and service charges] (Reserved).**

[Any premiums or service charges in excess of the rates authorized by §§ 35.1 and 35.2 (relating to premiums; service charges) shall be considered excessive, and the amount exceeding such rates shall be refunded to the borrower by the association.]

PART IV. BUREAU OF CONSUMER CREDIT AGENCIES

CHAPTER 41. CONSUMER DISCOUNT COMPANIES

§ 41.3. Contracts with consumers.

* * * * *

(i) A licensee may not permit a person other than an employe of the licensee to accept payments on loan accounts at a place of business of the licensee other than a licensed office. **[An office, room, or building at which a practice is made of accepting payments shall be construed as a place of business of the licensee and shall be licensed.]** This subsection does not apply to the collection of a contract in default by an attorney at law, public official or a collection agent authorized by a licensee. This subsection does not apply to a payment system whereby payments are accepted at a bank, a savings and loan association or other depository institution, organized and existing under the statutes of the Commonwealth, or of other states or of Federal law, on behalf of the licensee, in an arrangement commonly known as a lock box arrangement. When a consumer elects to mail payments, a licensee may, except on final payments, require the consumer to furnish self-addressed stamped envelopes for the purpose of forwarding receipts. When the mailing of receipts is conditioned upon the furnishing of self-addressed stamped envelopes by a consumer, a statement to that effect shall be furnished to the consumer.

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[Pa.B. Doc. No. 97-553. Filed for public inspection April 11, 1997, 9:00 a.m.]

DEPARTMENT OF HEALTH

[28 PA. CODE CHS. 701, 709, 711 AND 713]

Repeal of Hotline and Drop-In Shelter Regulations

The Department of Health (Department) proposes to delete, in part, Part V (relating to drug and alcohol facilities and services) under the authority of the Pennsylvania Drug and Alcohol Abuse Control Act (act) (71 P. S. §§ 1690.101—1690.115), Reorganization Plan No. 2 of 1977 (71 P. S. § 751-25) and Reorganization Plan No. 4 of 1981 (71 P. S. § 751-31). The relevant portions of Part V set forth the activity matrix, provisions for licensure of shelter activities in free-standing and health care related facilities and the approval of drop-in activities and hotline activities.

Purpose

The Department was authorized by the General Assembly under Reorganization Plan No. 2 of 1977, Reorganization Plan No. 4 of 1981 and amendments to the act to assume the functions and responsibilities of the Governor's Council on Drug and Alcohol Abuse (Council). The Council's authority to regulate and promulgate rules and regulations was transferred to the Department through those reorganization plans. See Reorganization Plan No. 2 of 1977 (transferring duties under the Public Welfare Code with regard to regulation, supervision and licensing of drug and alcohol facilities to the Council), Reorganization Plan No. 4 of 1981 (transferring the functions of the Council to the Department and establishing it as an

advisory council) and the act of December 20, 1985 (P. L. 529, No. 119) (amending the act to reference the Pennsylvania Advisory Council on Drug and Alcohol Abuse (Advisory Council)).

The relevant regulations in Part V, address the matrix definitions and the activity matrix and three areas of licensure or approval: (1) the licensure of shelter activities in free-standing and health care related facilities; (2) the approval of drop-in activities; and (3) the approval of hotline activities. In addition, the definitions relating to the previously mentioned activities will be deleted.

The purpose of the rescission is to delete the matrix and the regulation of various activities so that Department staff and other resources may be directed toward oversight of entities providing substance abuse treatment services. This will reduce the workload and allow for more efficient regulatory oversight of the substance abuse treatment delivery system. This should result in the redirection of State government costs in ensuring safe and effective substance abuse treatment.

The Department is proposing to delete these regulations because regulation of the substance abuse service delivery system has changed significantly over the past few years. Even more changes are predicted in the coming years based on current plans to change the health care delivery system at both the State and Federal levels. In point of fact, the present proposal involving HealthChoices indeed proposes a new system of managed care on a pilot basis in five counties in southeast Pennsylvania on both physical health and behavioral health sides. To better address the needs of the substance abuse service delivery system and maximize existing resources, it will be necessary to modify the regulatory process beginning with the cessation of licensing shelter, drop-in and hotline activities. This will reduce the overload on survey staff resources and enable the Department's attention to focus on the oversight of activities which actually provide treatment to the substance abusing client.

The activities that the Department proposes to cease licensing do not provide treatment to clients. Shelters provide beds for individuals to stay while they make arrangements to receive treatment elsewhere. Drop-in centers, similarly, provide a place for individuals to gather and make arrangements for referral to treatment providers. Hotlines, even less so, only provide referral to treatment providers over the telephone. No assessment is done by any staff of any of these three activities. As indicated, the most that occurs is that the substance abuse client is referred to a facility where an assessment can occur. The referral system carried out through these activities will not be diminished as a result of these proposed actions. The Department's specific resources will be better focused on activities by which specific substance abuse treatment services are being provided. Currently, the Department licenses ten shelters, and approves 17 drop-in centers and 28 hotlines.

Further, the matrix and definitions have no practical purpose. Not all the activities that are in the matrix are being performed. They are not necessary for licensure since any activity that is licensed is already defined in § 701.1 (relating to definitions) and has accompanying standards within the remainder of Part V. The activity matrix is not appropriate for regulation but merely shows levels, activities and approaches.

Requirements of the Regulations

A. *§ 701.1. Definitions.*

The Department proposes to delete the definitions of "shelter," "drop-in center activity" and "hotline activity."

B. *Section 701.2. General Matrix Definitions.*

Section 701.2 sets forth definitions and a matrix which categorizes drug and alcohol services. The matrix has no practical purpose. Some activities which are listed are not licensed, for example, driving while intoxicated activities. Other activities which are licensed have specific regulations elsewhere in Part V. This matrix is not part of the licensing process, nor is it necessary for licensing. It simply identifies levels and activities and is not regulatory in nature.

C. *Sections 709.101, 709.102 and 711.101—711.106. Standards for Shelter Activities.*

These sections set forth licensing standards for current shelter activities in free-standing facilities and health care facilities. Shelter activities are the provision to the client of food, clothing, hygienic facilities, referral services and overnight housing in a supportive atmosphere.

Facilities licensed for these activities do not actually provide substance abuse prevention, intervention or treatment services, but serve persons with multiservice needs in addition to or in conjunction with substance abuse problems. A shelter provides no substance abuse treatment services, rather, it provides a place for individuals to stay and avail themselves of referrals for other services related to their individual needs.

D. *Sections 713.51—713.55. Standards for Drop-in Center Activities.*

These sections set forth standards for approval of drop-in center activities. Drop-in center activities are the provision of information, referral and crisis intervention as well as the opportunity to discuss personal problems in an informal setting.

Drop-in activities fall within the intervention level of care which is aimed at assisting the client in decision making and supporting the client until the client can cope independently. Referral is provided if the need for a structured treatment regimen or other services is indicated. The drop-in center provides information, referral and crisis intervention as well as the opportunity to discuss problems in an informal setting, which are not treatment activities. Client records are maintained only when crisis intervention, short term counseling or referral services are rendered.

E. *Sections 713.61—713.63. Standards for Hotline Activities.*

These sections set forth standards for approval of hot-line activities. Hotline activities are the provision of information, referral, advice and crisis intervention through telephone service. Again, these activities are not treatment activities. Records are maintained on standardized forms which indicate the nature of the telephone call and the disposition of the call. The maintenance of client specific records is optional as the project deems appropriate and feasible.

Affected Persons

Shelters, drop-in and hotline activities holding Department license or approval at the time of the publication of this proposal in final-form will remain licensed or approved until the expiration of that license or approval. These activities will be affected in that no new shelter,

drop-in or hotline activities will be licensed or approved as of the effective date of the adoption of this proposal. The lack of Department license or approval, however, will not prohibit the continuation of these activities. They will merely no longer be licensed or approved by the Department.

Cost and Paperwork Estimate

There will be neither additional costs nor additional paperwork to the Commonwealth, local governments or the private sector resulting from the proposed deletions of certain provisions of Part V.

Effective Date/Sunset Date

The proposed deletion of the relevant portions of Part V will be effective upon final publication in the *Pennsylvania Bulletin*. No sunset date is necessary.

Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to John C. Hair, Director, Bureau of Community Program Standards, Quality Assurance and Health Planning, 132 Kline Plaza, Suite A, Harrisburg, PA 17104 (717) 783-8665, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Persons with a disability may submit comments, suggestions or objections regarding this proposal in alternative formats, such as by audio tape, braille or using TDD: (717) 783-6514. Persons with disabilities who require alternative formats of this document (such as, large print, audio tape, braille) should contact the Department so that necessary arrangements may be made.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of this proposal on March 18, 1997, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposal, the Department has provided IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposal, 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 the proposal, by the Department, the General Assembly and the Governor, of objections raised.

DANIEL F. HOFFMANN,
Secretary

Fiscal Note: 10-147. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART V. DRUG AND ALCOHOL FACILITIES AND SERVICES

CHAPTER 701. GENERAL PROVISIONS

Subchapter A. DEFINITIONS

§ 701.1 General definitions.

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

* * * * *

[*Drop-in center activity*—The provision of information, referral and crisis intervention as well as the opportunity to discuss personal problems in an informal setting.]

* * * * *

[*Hotline activity*—The provision of information, referral, advice, and crisis intervention through a telephone service.]

* * * * *

[*Shelter activity*—The provision to the client of food, clothing, hygienic facilities, referral services, and overnight housing in a supportive atmosphere.]

* * * * *

§ 701.2. **[General matrix definitions] (Reserved).**

[(a) The Department has categorized its drug and alcohol services in a matrix outlined in subsection (b). This matrix outlines the four major levels and then lists the specific activities that are performed in each of these levels. These levels and activities are utilized for fiscal and data reporting and for licensing/approval purposes.

(1) *Level.* Categorization of drug and alcohol services into four major areas.

(2) *Activity.* The type of prevention or intervention service or the Treatment setting under which client services are provided.

(3) *Approach.* Principal method utilized in serving clients. Approaches are utilized for treatment activities.

(b) The drug and alcohol activity matrix is as follows:

Levels	*Activity*	*Approaches*
Administration (SCA)	**Administration** **Training** **Research** **Evaluation**	
Prevention	**Education/Information** **Alternative Activities**	
Intervention	**Drop—in Center** **Hotline**	

Levels	*Activity*	*Approaches*
	Driving While Intoxicated Occupational Program	
Treatment	**Intake**	**Detoxification**
	Referral	**Drug Free**
	Inpatient Nonhospital	**Other Chemotherapy**
		Experimental
	Inpatient Hospital	**Detoxification**
		Drug Free
		Other Chemotherapy
		Experimental
	Correctional Institution	**Detoxification**
		Drug Free
		Experimental
	Partial Hospitalization	**Detoxification**
		Drug Free
		Other Chemotherapy
		Experimental
	Outpatient	**Detoxification**
		Maintenance
		Drug Free
		Other Chemotherapy
		Experimental
	Shelter	**Detoxification**
		Drug Free
		Experimental]

Subchapter J. **[STANDARDS FOR SHELTER ACTIVITIES] (Reserved)**

§ 709.101. **[Intake and admissions] (Reserved).**

[(a) A qualified staff member shall be available 24 hours a day to accept a client into the project.

(b) A client shall be observed upon intake for withdrawal symptoms from substances abused. If serious symptoms of drug/alcohol abuse or dependence or other physical problems are observed, prompt medical attention shall be obtained. Data obtained during the observation period shall be recorded.

(c) A client shall be provided with a shower or bath, food, clean clothing, and a clean bed with bedding.

(d) The shelter project shall have a written plan or description of its activities and services. The written plan shall include, but not be limited to the following:

(1) Client admission criteria.

(2) Documentation of services available, either through direct provision or agreement.

(3) Involuntary discharge/termination criteria.

(4) Client transportation to the selected referral agency/resource.

(e) The shelter project shall have written policies and procedures for communication with law enforcement authorities, local or State health, or welfare authorities, as appropriate, regarding clients whose condition or its cause is reportable; for example, persons having contagious diseases or victims of suspected criminal acts such as rape or gunshot wounds, 18 Pa.C.S. § 5106 (relating to failure to report injuries by firearm or criminal act) and child abuse under the Child Protective Services Law (11 P. S. §§ 2201—2224).

(f) The shelter project shall have written policies and procedures to address special issues regarding treatment of clients. These policies and procedures shall include, but not be limited to:

(1) Unconscious individuals.

(2) Minors.

(3) Individuals with communicable disease.

(4) Individuals requiring transfer to a hospital or other treatment facility.

(5) Individual being treated by another social service agency.

(6) Individuals requiring detoxification.]

§ 709.102. **[Client records] (Reserved).**

[(a) The shelter project shall maintain a client record on an individual receiving services which includes, but is not limited to:

(1) Basic personal data.

(2) Consent to treatment.

(3) Other consent forms.

(4) Progress notes.

(5) Record of services provided for the client.

(6) Discharge summary.

(7) Client-related correspondence.

(8) Follow-up information.

(b) The project shall develop and maintain client records on standardized project client record forms.]

Subchapter I. [STANDARDS FOR SHELTER ACTIVITIES] (Reserved)

§ 711.101. [Intake and admission] (Reserved).

[(a) A qualified staff member shall be available 24 hours a day to accept clients into the project.

(b) A client shall be observed upon intake for withdrawal symptoms from substances abused. If serious symptoms of drug/alcohol abuse, or dependence, or other physical problems are observed, prompt medical attention shall be obtained. Data obtained during the observation period shall be recorded.

(c) A client shall be provided with a shower or bath, food, clean clothing and a clean bed with bedding.

(d) The shelter project shall have a written plan or description of its activities and services. The written plan shall include, but not be limited to, the following:

(1) Client admission criteria.

(2) Services available, either through direct provision or agreement.

(3) Involuntary discharge/termination criteria.

(4) Client transportation to the selected referral agency/resource.

(e) The shelter project shall have written policies and procedures for communication with law enforcement authorities, local or State health or welfare authorities, as appropriate, regarding clients whose condition or its cause is reportable; for example, persons having contagious diseases or victims of suspected criminal acts such as rape or gunshot wounds; 18 Pa.C.S. § 5106 (relating to failure to report injuries by firearm or criminal act) and child abuse under the Child Protective Services Law (11 P. S. §§ 2201—2224).

(f) The shelter project shall have written policies and procedures to address special issues regarding treatment of clients. These policies and procedures shall include, but not be limited to:

(1) Unconscious individuals.

(2) Minors.

(3) Individuals with communicable diseases.

(4) Individuals requiring transfer to a hospital or other treatment facility.

(5) Individuals being treated by another social service agency.

(6) Individuals requiring detoxification.

(g) The project shall obtain written letters of agreement or understanding with primary referral sources.]

§ 711.102. [Client records] (Reserved).

[(a) *Record requirements.* In addition to the requirements in § 115.32 (relating to contents), the shelter project shall maintain a client record on an individual receiving services which shall include, but not be limited to:

(1) Basic personal data.

(2) Drug and alcohol consent forms.

(3) Progress notes.

(4) Record of services provided for the client.

(5) Follow-up information.

(b) *Client access to records.* A client has the right to inspect his own records. The project director may temporarily remove portions of the record, prior to the inspection by the client, if the director determines that the information may be detrimental if presented to the client. Reasons for removing sections shall be documented and kept on file.

(c) *Confidentiality.*

(1) A written procedure shall be developed by the project director which shall comply with 4 Pa. Code § 255.5 (relating to projects and coordinating bodies: disclosure of client-oriented information). The procedure shall include, but not be limited to:

(i) Confidentiality of client identity and records.

(ii) Staff access to client records.

(2) The project shall obtain an informed and voluntary consent from the client for the disclosure of information contained in the client record. The consent shall be in writing and shall include, but not be limited to:

(i) Name of the person, agency, or organization to whom disclosure is made.

(ii) Specific information disclosed.

(iii) Purpose of disclosure.

(iv) Dated signature of the client or guardian.

(v) Dated signature of a witness.

(vi) Expiration date of the consent.

(3) A copy of a client consent shall be offered to the client and a copy maintained in the client records.

(4) Where consent is not required, the project personnel shall:

(i) Fully document the disclosure in the client records.

(ii) Inform the client, as readily as possible, that the information was disclosed, for what purposes, and to whom.]

§ 711.103. [Uniform Data Collection System] (Reserved).

[(a) If a project utilizes Department funds, it shall comply with the Department's UDCS.

(b) A data collection system shall be developed that allows for the efficient retrieval of data needed to measure the project's performance.]

§ 711.104. [Notification of termination] (Reserved).

[(a) The project director shall notify the client, in writing, of a decision to involuntarily terminate the client's treatment at the project. The notice shall include the reason for termination.

(b) The client shall have the opportunity to request reconsideration of a decision terminating treatment.]

§ 711.105. [Medication control] (Reserved).

[When the drug and alcohol project is not physically located within the parent health care facility, it shall have a written policy regarding medications used by clients which shall include, but not be limited to:

(1) Administration of medication.

(2) Drug storage areas.

(3) Inspection of storage areas.

(4) Methods for control and accountability of drugs.

(5) Security of drugs.

(6) Inventories.

(7) Medication errors and drug reactions.]

§ 711.106. [Physical plant] (Reserved).

[When the project is not physically located within a health care facility, it shall be site visited annually for the following requirements:

(1) Counseling areas.

(2) Office space.

(3) Lavatories.

(4) Fire escapes/emergency exits.

(5) Fire extinguishers.

(6) General maintenance.

(7) Food service areas, if applicable.

(8) Certificate of Occupancy from the Department of Labor and Industry or it equivalent.

(9) Compliance with applicable local ordinances and regulations.]

CHAPTER 713. STANDARDS FOR APPROVAL OF PREVENTION AND INTERVENTION ACTIVITIES

Subchapter E. [STANDARDS FOR DROP—IN CENTER ACTIVITIES] (Reserved)

§ 713.51. [Services] (Reserved).

[The drop-in center shall provide the following services:

(1) Crisis intervention.

(2) Short-term counseling to provide guidance and advice to deal with the problems of the client.

(3) Referral of the client to another agency if the project does not deliver the needed services.]

§ 713.52. [Location] (Reserved).

[The facility shall be located so as to be easily accessible to clients.]

§ 713.53. [Hours of operation] (Reserved).

[(a) The drop-in center shall be open an appropriate number of hours. A minimum of 25 of its operating hours per week shall be scheduled during evenings or weekends, or both.

(b) The hours of operation and location of the project shall be made known to the public.]

§ 713.54. [Client records] (Reserved).

[(a) *Recordkeeping system.* A recordkeeping system shall be utilized to record drop-in center activities which includes, but is not limited to:

(1) The use of standardized recordkeeping forms.

(2) Signature and dating requirements.

(b) *Record information required.* Client records shall be maintained when crisis intervention, short term counseling and referral services are rendered. These records shall include, but not be limited to:

(1) Basic personal data.

(2) Appraisal of client needs.

(3) Progress/activity notes.

(4) Disposition.

(5) Follow-up.

(c) *Record accessibility.* If client specific records are maintained, the project shall comply with the following:

(1) A written policy statement shall be developed which includes, but is not limited to:

(i) Confidentiality of client identity and records.

(ii) Staff access to client records.

(iii) Client access to records.

(2) The project shall obtain an informed and voluntary consent from the client for the disclosure of information to a service provider to which the client is referred. The consent shall be in writing and shall include, but not be limited to:

(i) The name of the person, agency, or organization to whom disclosure is made.

(ii) The specific information disclosed.

(iii) The purpose of disclosure.

(iv) The dated signature of client or guardian.

(v) The dated signature of witness.

(vi) The expiration date of the consent.

(3) The project shall secure client specific records within locked storage containers.

(d) *Retention of client records.*

(1) Client records, whether original, reproductions or microfilm, shall be kept on file for a minimum of 4 years following the discharge of a client.

(2) If a project discontinues operation, it shall inform the Department where its records are stored.]

§ 713.55. [Personnel management] (Reserved).

[Staff training and education shall be provided and include basic familiarization with:

(1) Pharmacology.

(2) Physical and behavioral aspects of substance abuse or dependence, or both.

(3) Legal aspects of substance abuse or dependence, or both.

(4) Crisis intervention techniques.

(5) Referral sources.

(6) Communication and counseling skills.]

Subchapter F. **[STANDARDS FOR HOTLINE ACTIVITIES] (Reserved)**

§ 713.61. **[Hours of operation.] (Reserved).**

[The project's hours of operation and telephone numbers shall be made known to the public.]

§ 713.62. **[Client records] (Reserved).**

[(a) *Recordkeeping system*. A system for maintaining a record of calls shall be established and utilized which includes, but is not limited to:

(1) Standardized recordkeeping forms.

(2) Entries on the nature of calls.

(3) Appraisal of client needs, if applicable.

(4) Dispositions.

(5) Signature and dating requirements.

(b) *Record information required*. If client specific records are maintained, the project shall comply with the following:

(1) A written policy statement shall be developed which includes, but is not limited to:

(i) Confidentiality of client identity and records.

(ii) Staff access to client records.

(iii) Client access to records.

(2) The project shall obtain a voluntary verbal consent from the client for the disclosure of information to a service provider to which the client is referred.

(3) The project shall secure client specific records within locked storage containers.

(c) *Retention of client records*.

(1) Client records, whether original, reproductions or microfilm, shall be kept on file for 4 years following the discharge of a client.

(2) If a project discontinues operation, it shall inform the Department where the records are stored.]

§ 713.63. **[Personnel management] (Reserved).**

[Staff training and education shall be provided and include basic familiarization with:

(1) Pharmacology.

(2) Physical and behavioral aspects of substance abuse or dependence, or both.

(3) Legal aspects of substance abuse or dependence, or both.

(4) Crisis intervention techniques.

(5) Referral sources.

(6) Communication and counseling skills.]

[Pa.B. Doc. No. 97-554. Filed for public inspection April 11, 1997, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 105]

Mechanical, Electrical and Electronic Speed-Timing Devices

The Department of Transportation (Department), Bureau of Motor Vehicles, under the authority contained in 75 Pa.C.S. §§ 3368 and 6103 (relating to speed timing devices; and promulgation of rules and regulations by department) proposes to amend § 105.15 (relating to calibration and testing procedure) to read as set forth in Annex A.

Purpose of Chapter 105

The purpose of this chapter is to provide rules concerning the calibrating and testing of mechanical, electrical and electronic speed-timing devices by stations appointed by the Department.

Purpose of these Proposed Amendments

The purpose of this proposed amendment is to prescribe the method for calibrating and testing electronic devices (radar) which operate in the Ka-Band frequency to assure their accuracy under 75 Pa.C.S. § 3368. Historically, the Department does not identify electronic devices (radar) by name in the regulations, but only the method of calibration for particular frequencies and that once the calibration method is approved in the regulations, the Department will list specific electronic devices (radar), by name, in its annual publication in the *Pennsylvania Bulletin* of approved devices and speed-timing calibration stations.

The most significant provisions of the proposed rulemaking are the inclusion of the test frequencies for calibrating and testing Ka-Band electronic devices (radar) in § 105.15 (a)(3)(iii), (5)(v) and (7)(iii).

Persons and Entities Affected

This proposed amendment will affect drivers of motor vehicles, stations which calibrate and test speed-timing devices and the State Police.

Fiscal Impact

This proposed amendment will not impose increased costs on private persons, speed-timing device calibration and testing stations, or State or local governments. The State Police may incur cost if it elects to purchase an electronic device (radar) which operates in the Ka-Band frequency. There are a few manufacturers that make an electronic device (radar) which operates in the Ka-Band frequency. The cost of one these devices tested and approved for accuracy by the State Police is priced at approximately $1,385.

This proposed amendment will not result in additional reports or other paperwork requirements.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 31, 1997, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Transportation Committees. In addition to submitting this proposed amendment, the Department has 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." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of this proposed amendment, it will notify the Department witin 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 this final-form regulation, since this regulation is needed to administer provisions required under 75 Pa.C.S. (relating to Vehicle Code). This regulation will be continuously monitored for their effectiveness by the Department and the State Police.

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed amendment to Mary E. Sheriff, Bureau of Motor Vehicles, Vehicle Inspection Division, Third Floor, Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

Contact Person

The contact person is John P. Munafo, Bureau of Motor Vehicles, Vehicle Inspection Division, Third Floor, Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104 (717) 787-2895.

BRADLEY L. MALLORY,
Secretary

Fiscal Note: 18-340. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VI. OPERATION OF VEHICLES

CHAPTER 105. MECHANICAL, ELECTRICAL AND ELECTRONIC-SPEED TIMING DEVICES

Subchapter B. ELECTRONIC DEVICES (RADAR)

§ 105.15. Calibration and testing procedure.

(a) *General.* An electronic device shall be calibrated and tested as follows:

* * * * *

(3) *Stability test.* The stability test shall be conducted in the following manner:

* * * * *

(iii) Adjust square wave output of function generator**[,]** to the switching level of the pin diode switch. While observing the frequency counter, adjust frequency of function generator to 1726 Hz (X-Band) **[or],** § 3961 Hz (K-Band) **or 5692 Hz (Ka-Band)**.

* * * * *

(5) *Accuracy test.* The accuracy test shall be conducted in the following manner:

* * * * *

(v) While observing the frequency counter, adjust the function generator to each test frequency. Note and record the speed indicated on the electronic device display. Each test frequency shall produce the correct speed in mph within the limits of +0, -1 mph.

[*Test Frequencies in Hz K Band*]

Test Frequencies (in Hz)

X Band	***K Band***	***Ka Band***	*Indicated Test Speed mph*
628	1440	**2070**	20
785	1801	**2588**	25
942	2161	**3105**	30
1099	2521	**3622**	35
1256	2881	**4140**	40
1412	3241	**4657**	45
1569	3601	**5175**	50
1726	3961	**5692**	55
1883	4321	**6210**	60
2040	4681	**6727**	65
2197	5042	**7246**	70
2354	5402	**7762**	75
2511	5762	**8281**	80
2668	6122	**8797**	85
2825	6482	**9316**	90
2982	6842	**9832**	95
3139	7202	**10351**	100
3296	7562	**10867**	105
3453	7922	**11385**	110
3610	8283	**11902**	115
3767	8643	**12420**	120
3924	9003	**12937**	125
4081	9363	**13455**	130
4238	9723	**13972**	135
4394	10083	**14490**	140

* * * * *

(7) *Rejection of extraneous RF fields.*

* * * * *

(iii) Activate the 4 watt signal source, modulated at 100%, 1726 Hz (X-Band) or 3961 Hz (K-Band) **[or],** § 5692 Hz (Ka-Band).

* * * * *

[Pa.B. Doc. No. 97-555. Filed for public inspection April 11, 1997, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121—123, 137 AND 139]

Air Quality-RBI 1

The Environmental Quality Board (Board) proposes to amend Chapters 121—123, 137 and 139 to read as set forth in Annex A.

The changes to § 121.1 (relating to definitions) conform the definitions related to coke ovens, "major modification," "modification," "potential to emit," "responsible official" and "secondary emissions" to the Federal definitions of these terms. The changes to Chapter 122 (relating to National Standards of Performance for New Stationary

Sources) incorporate by reference the new source performance standard guidelines established under section 111(d) of the Clean Air Act. The changes to Chapter 123 (relating to standards for contaminants) make this chapter consistent with the maximum achievable control technology (MACT) standards for coke ovens promulgated by the Environmental Protection Agency (EPA) under the Clean Air Act. The change to Chapter 137 (relating to air pollution episodes) eliminates the mandatory requirement for submission of standby plans to address air pollution episodes. The changes to Chapter 139 (relating to sampling and testing) make the provisions for particulate matter testing and monitoring of coke oven emissions consistent with Federal requirements. The changes to Chapter 139 also establish consistent data availability requirements for all continuous emission monitoring systems (CEMS) sources and extend the monitoring provisions applicable to municipal waste incinerators to hospital waste incinerators.

This notice is given under Board order at its meeting of February 18, 1997.

A. *Effective Date*

These proposed amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Compliance and Enforcement, Bureau of Air Quality, 12th Floor Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468 (717) 787-1663, or M. Dukes Pepper, Jr., Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, 9th Floor Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464 (717) 787-7060.

C. *Statutory Authority*

This action is being taken under the authority of section 5(a)(1) of the Air Pollution Control Act (35 P. S. § 4005(a)(1)), which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background of the Proposed Amendment*

The Regulatory Basics Initiative was announced in August 1995 as an overall review of the Department of Environmental Protection's (Department) regulations and policies. The Department solicited public comments in August of 1995 by giving the regulated community, local governments, environmental interests and the general public the opportunity to identify specific regulations which are either more stringent than Federal standards, serve as barriers to innovation, or are obsolete or unnecessary, or which impose costs beyond reasonable environmental benefits or serve as barriers to adopting new environmental technologies, recycling and pollution prevention.

In February 1996, the Governor executed Executive Order 1996-1 Regulatory Review and Promulgation establishing standards for the development and promulgation of regulations. This proposal meets the requirements of Executive Order 1996-1.

These proposed amendments are the first in a series of regulatory proposals implementing changes to the Department's air resource regulations resulting from the Regulatory Basics Initiative. In general, these proposed changes make the Department's regulations consistent with Federal requirements, delete obsolete and unnecessary provisions and apply the Department's monitoring requirements in a consistent fashion for all affected sources.

The Department worked with the air subcommittee of the Air and Water Quality Technical Advisory Committee (AWQTAC) in the development of these regulations. At its December 11, 1996, meeting, the AWQTAC recommended adoption of the proposed amendments.

E. *Summary of Regulatory Revisions*

The Department is proposing modifications to the definitions of "coke oven battery," "coke oven gas collector main," "door area," "major modification," "modification," "potential to emit," "responsible official" and "secondary emissions." In each case, the proposed changes make the definitions consistent with Federal definitions of these terms promulgated under the Clean Air Act. The definition of "major modification" does not include the Federal exclusion for combustion of municipal waste and is, therefore, more stringent than the Federal definition. Because of the public concern about municipal waste combustion, the Department proposes to retain authority to evaluate municipal waste combustion on a case-by-case basis.

The Department's regulations in § 122.3 (relating to adoption of standards) adopt by reference the Federal new source performance standards promulgated under section 111 of the Clean Air Act (42 U.S.C.A. § 7411). The Department is proposing to amend the regulations at § 122.3 to incorporate Federal standards established under section 111 of the Clean Air Act. The existing language does not incorporate by reference emission guidelines established under section 111(d). However, Chapter 121 already defines section 111(d) guidelines to be "applicable requirements." The Department's permitting regulations in §§ 127.12(a)(4) and 127.411(a)(5) (relating to content of applications) require permit applicants to demonstrate that they meet the applicable requirements. Consequently, the proposed regulatory modification will simply codify at § 122.3 the Department's existing regulatory requirement.

The changes to § 123.44 (relating to limitations of visible fugitive air contaminants from operation of any coke oven battery) make this section consistent with the MACT for coke ovens promulgated by the EPA under the Clean Air Act.

The changes to § 137.4 (relating to standby plans) change the provisions for standby plans to address air pollution episodes. Specifically, subsection (b) proposes that the Department classify each county as an area requiring a standby plan based on monitored exceedances of any National ambient air quality standard (NAAQS). The existing regulation lists each pollutant along with its ambient concentration. The Department proposes to reference the NAAQS as the reference point for determining counties subject to the standby plan requirements. In addition, subsection (c) is proposed to be modified to only require standby plans when requested by the Department. This provision will conform § 137.4 to the existing requirements in § 127.411(a)(8). Finally, subsection (f) is being modified to make clear that the standby plan shall be provided by an individual responsible for the entire facility to the Department.

Chapter 139 is being modified in five ways. First, § 139.12 (relating to emissions of particulate matter) proposes to delete a portion of the monitoring requirements for particulate matter sampling because the provi-

sion is more stringent than the applicable Federal requirement and provides little environmental benefit. Second, §§ 139.61 and 139.62 (relating to requirements; and waiver of certain monitoring requirements) are proposed for deletion. These provisions establish monitoring standards for coke ovens which have been superseded by the promulgation of the coke oven MACT standard by the EPA. This change will make the Commonwealth's regulations consistent with Federal requirements. Third, § 139.101 (relating to general requirements) changes the requirements related to data availability for data captured by a CEM. A general data availability requirement in § 139.101 was adopted in 1990, and CEMs covered in § 139.104 (relating to sulfur dioxide and nitrogen oxides monitoring requirements for combustion sources) were grandfathered. With deletion of § 139.104, the general data availability standard in § 139.101 would apply. CEMS would be required to meet the following minimum data availability requirements: (1) in each calendar month, at least 90% of the time periods for which an emission standard or an operational parameter applies shall be valid; or (2) in each calendar quarter, at least 95% of the hours during which the monitored source is operating shall be valid. Fourth, the Department is proposing to delete the requirements of § 139.104 related to sulfur dioxide and nitrogen oxide monitoring for combustion sources and establish these monitoring requirements under the general provisions of § 139.101. Finally, the Department is proposing to modify § 139.111 (relating to waste incinerator monitoring requirements) to apply to hospital waste incinerators as well as municipal waste incinerators. These incinerators, generally, are similar in nature and the monitoring requirements are applicable to both. Section 139.111 also changes the data availability requirements to be consistent with the other proposed changes for CEMs described previously.

F. *Benefits, Costs and Compliance*

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

Benefits

Overall, the citizens of this Commonwealth will benefit from these recommended changes because they make the Department's air quality program consistent with Federal requirements and apply monitoring provisions for affected sources in a consistent manner. These provisions reduce unnecessary paperwork while continuing to provide the appropriate level of air quality protection.

The proposed revisions to the data availability requirements will result in an estimated savings in penalties to the regulated community of approximately $70,000 per year (1996 data were used). This would be the result of sources under § 139.104 complying with § 139.101. Data from 3rd quarter 1995 through 2nd quarter 1996 were used to estimate savings in penalties.

The proposed revisions to Chapter 122 National standards of performance for new stationary sources provisions are anticipated to result in no additional costs for the regulated community. Savings estimated to be $150,000 to $250,000/year can be expected after Chapter 122 is revised.

The additional annual cost to coke oven battery operators for providing daily readings to satisfy both current State and Federal regulations is approximately $190,000. The proposed revisions to the coke oven requirements in §§ 123.44, 139.61 and 139.62 are anticipated to reduce costs to coke oven operators by approximately $190,000 annually.

The proposed revisions of the particulate sampling requirements in § 139.12 are anticipated to result in annual savings to the regulated community of approximately $345,000.

The proposed revisions to the air pollution episode requirements in Chapter 137 are estimated to reduce costs to the regulated community by approximately $250,000 annually.

No additional costs or cost savings are predicted to result from the proposed revision of § 121.1.

Compliance Costs

These proposed amendments will, in general, reduce compliance costs by deleting unnecessary monitoring, recordkeeping and permitting requirements.

Compliance Assistance Plan

The Department plans to educate and assist the public with understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing regional compliance assistance program.

Paperwork Requirements

The regulatory revisions delete unnecessary paperwork requirements related to permitting standby plans and monitoring.

G. *Sunset Review*

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

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 1, 1997, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the 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 the Department, the Governor and the General Assembly to review these objections before final publication of this proposal.

I. *Public Comment and EQB Public Hearings*

Public Hearings

The Board will hold three public hearings for the purpose of accepting comments on the proposed amendments. The hearings will be held on the following dates and at the following locations: at 10 a.m.

May 13, 1997 DEP Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA

May 15, 1997 DEP 1st Fl. Conference Room, Rachel Carson State Office Building, 400 Market St., Harrisburg, PA

May 19, 1997 Upper Merion Township Building, 175 West Valley Forge Road, King of Prussia, PA

Persons wishing to present testimony at the hearings must contact Sharon Freeman at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to 10 minutes for each witness and three written copies of the oral testimony must be submitted at the hearing. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to attend the hearings and require an auxiliary aid, service or other accommodations in order to participate, should contact Sharon Freeman at (717) 787-4526 or through the Pennsylvania AT&T relay service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Written Comments

In lieu of or in addition to presenting oral testimony at the hearings, interested persons may submit written comments, suggestions or objections regarding the proposed amendments to the Board, 15th Floor Rachel Carson State Office Building, P. O. Box 8477, Harrisburg, PA 17105-8477. Comments received by facsimile will not be accepted. Comments must be received by June 18, 1997. In addition to the written comments, interested persons may also submit a summary of their comments to the Board. This summary may not exceed one page in length and must be received by June 18, 1997. The summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

Electronic Comments

Comments may be submitted electronically to the Board at Regcomments@a1.dep.state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by June 18, 1997.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-313. (1) Clean Air Fund; (2) Implementing Year 1997-98 is $70,000; (3) 1st Succeeding Year 1998-99 is $70,000; 2nd Succeeding Year 1999-00 is $70,000; 3rd Succeeding Year 2000-01 is $70,000; 4th Succeeding Year 2001-02 is $70,000; 5th Succeeding Year 2002-03 is $70,000; (4) FY 1996-97 $26,119,000; FY 1995-96 $25,770,000; FY 1994-95 $19,045,000; (7) Fines and Penalties; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Coke oven battery—A **process consisting of a** jointly operated group of slot-type coke ovens, the operation of which results in the destructive distillation of coal by the indirect application of heat to separate the gaseous and liquid distillates from the carbon residue and includes coal preparation, coal charging, coking, separation and cleaning of the distillate, coke pushing, hot coke transfer and coke quenching. A coke oven battery is a single source for the purpose of this article and shall include, but not be limited to, the following, when present: the ovens; coal preheaters; underfiring systems; waste heat stack; offtake piping; flues; closed charging systems; door hoods; and operating equipment including larry cars, jumper pipes, pusher machines, door machines, mud trucks and quench cars associated with the operation of a battery. Existing batteries are identified as follows:

Operator	*Plant*	*Identifying Symbol*
Bethlehem Steel	Bethlehem	**[#2, #3, #5,] "2A" (includes Batteries #2 and #3),** "A"
	[Franklin]	**[#18]**
[Crucible Steel]	**[Midland]**	**["A"]**
[Jones & Laughlin Steel]	**[Aliquippa]**	**[A-1, A-4, A-5]**
[Keystone Coke Company]	**[Conshohocken]**	**[#3, #4]**
[Koppers Company] Erie Coke Corporation	Erie	#1
[United States Steel]	**[Fairless]**	**[#1, #2]**
[Wheeling-Pittsburgh Steel] Koppers Industries	Monessen	**[#1] #1B, #2 (operated as one battery for purposes of meeting the charging standard)**

Coke oven gas collector main—The **[pipe] pipes** or **[duct] ducts** by which the gaseous byproducts of coking are transported from the offtake piping of coke ovens to the byproduct plant.

* * * * *

Door area—The vertical face of a coke oven between the bench and the top of the battery and between two adjacent **[backstays] buckstays.**

* * * * *

Major modification—

(i) A physical change or change in the method of operation of a major facility that would result in **[an increase in emissions equal to or exceeding an emission rate threshold or significance level specified in § 127.203] a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act.**

(ii) Net emissions increase that is significant for VOCs will be considered significant for ozone. A

physical change or change in the method of operation does not include **[routine repairs and maintenance, a change in the hours of operation or an increase in the rate of production, unless prohibited by a permit condition.]:**

(A) Routine maintenance, repair and replacement.

(B) The use of an alternative fuel or raw material by reason of any order under section 2(a) and (b) of the energy supply and Environmental Coordination Act of 1974 (ESECA) (15 U.S.C.A. § 792(a) and (b)) (or any superseding legislation) or by reason of a natural gas curtailment plan under the Federal Power Act.

(C) The use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act (42 U.S.C.A. § 7425).

(D) The use of an alternative fuel or raw material by a stationary source which meets one of the following conditions:

(I) The source was capable of accommodating before January 6, 1975, unless the change would be prohibited under an operating permit condition.

(II) The source is approved to use under an operating permit.

(E) An increase in the hours of operation or in the production rate, unless the change would be prohibited under the conditions of an operating permit.

(F) Any change in ownership at a stationary source.

(G) The addition, replacement or use of a pollution control project at an existing source, unless the Department determines that the addition, replacement or use renders the source less environmentally beneficial, or except when the following apply:

(I) The Department has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emission of any criteria pollutant over levels used for that facility in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any (42 U.S.C.A. §§ 7401—7515).

(II) The Department determines that the increase will cause or contribute to a violation of any National ambient air quality standard or PSD increment, or visibility limitation.

(H) The installation, operation, cessation or removal of a temporary clean coal technology demonstration project, if the project complies with the following:

(-a-) The SIP.

(-b-) Other requirements necessary to attain and maintain the National ambient air quality standards during the project and after it is terminated.

(I) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the source. This exemption applies on a pollutant-by-pollutant basis.

(J) The reactivation of a very clean coal-fired electric utility steam generating source.

* * * * *

Modification—A physical change in a source or a change in the method of operation of a source which would increase the amount of an air contaminant emitted by the source or which would result in the emission of an air contaminant not previously emitted, except that routine maintenance, repair and replacement are not considered physical changes. **An increase in the hours of operation is not considered a modification unless the hours of operation have been limited in a way that is Federally enforceable or legally and practicably forceable by an operating permit condition.**

* * * * *

Potential to emit—The maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and limitations on hours of operation or on the type or amount of material combusted, stored or processed shall be treated as part of the design if the limitation or the effect it would have on emissions is Federally enforceable **or legally and practicably enforceable by an operating permit condition.**

* * * * *

Responsible official—An individual who is:

(i) For a corporation: a president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or another person who performs similar policy or decision making functions for the corporation, or an authorized representative of the person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for**,** or subject to**,** a permit and one of the following applies:

* * * * *

(B) The delegation of authority to the representative is approved**,** in advance**,** in writing**,** by the Department.

* * * * *

(iv) For affected sources:

* * * * *

(B) The designated representative **or a person meeting provisions of subparagraphs (i), (ii) and (iii)** for **any** other **[purposes] purpose** under 40 CFR Part 70 (relating to operating permit programs) **or Chapter 127 (relating to construction, modification, reactivation and operation of sources).**

* * * * *

Secondary emissions—Emissions which occur as a result of the construction or operation of a major stationary source or major modification of a major stationary source, but do not come from the major stationary source or major modification itself. **The secondary emissions shall be specific, well defined, quantifiable and impact the same general area as the stationary source or modification which causes secondary emissions.** The term includes emissions from an offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. The term does not include emissions which

come directly from a mobile source regulated under Title II of the Clean Air Act (42 U.S.C.A. §§ 7521—7589).

* * * * *

CHAPTER 122. NATIONAL STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

§ 122.3. Adoption of standards.

Standards of Performance for New Stationary Sources, promulgated in 40 CFR Part 60 (relating to standards of performance for new stationary sources) by the Administrator of the **[United States Environmental Protection Agency] EPA** under section 111**[(b)]** of the Clean Air Act (42 U.S.C.A. § 7411) are **[hereby]** adopted in their entirety by the Department and incorporated herein by reference.

CHAPTER 123. STANDARDS FOR CONTAMINANTS

VISIBLE EMISSIONS

§ 123.44. Limitations of visible fugitive air contaminants from operation of any coke oven battery.

(a) **[No] A** person may **not** permit the operation of a coke oven battery in a manner that visible fugitive air contaminants are emitted in excess of the emissions allowed by the following limitations:

(1) The following open charging limitation applies to existing batteries listed in § 121.1 (relating to definitions) **[except Jones and Laughlin's A-5 battery at Aliquippa].** The following closed charging limitation **[shall apply] applies** to **[the A-5 battery at Aliquippa and]** any **[other]** existing battery on which a closed charging system is installed:

* * * * *

CHAPTER 137. AIR POLLUTION EPISODES

GENERAL

§ 137.4. Standby plans.

* * * * *

(b) The Department will annually classify each county as an area requiring a standby plan based on monitored exceedance of **[the following criteria:] any of the NAAQS.**

[SO_2—0.02 p.p.m., annual arithmetic mean; 0.1 p.p.m., 24 hour maximum; 0.5 p.p.m., maximum 3-hour average.

PM_{10}—60 µg/m^3, annual geometric mean; 150 µg/m^3, 24-hour maximum.

CO—48 p.p.m., 1-hour maximum; 12 p.p.m., 8-hour maximum.

NO_2—0.06 p.p.m., annual arithmetic mean.]

Ozone—0.10 p.p.m., 1-hour maximum.

(c) **[A] Any** person responsible for the operation of a **[source] facility [identified]** in subsection (a) and located in a county classified in subsection (b) as requiring a standby plan shall **[prepare] submit** standby plans for reducing the emission of air contaminants from that **[source] facility** during alert, warning and emergency levels **to the Department within 90 days of the Department's request**. The plans shall be designed to reduce or eliminate the emissions of air contaminants in accordance with the objectives in §§ 137.11—137.14 (relating to level actions). The plans shall be in writing on forms published and distributed by the Department and shall identify the approximate amount of reduction of various air contaminants and a description of the manner in which the reductions will be achieved.

* * * * *

(f) **[During] For facilities required to submit standby plans under subsection (c), during** a forecast, alert, warning or emergency level, the standby plan shall be made available by the person responsible for the **[source] facility** to employes of the Department on the premises of the source.

CHAPTER 139. SAMPLING AND TESTING

Subchapter A. SAMPLING AND TESTING METHODS AND PROCEDURES

STATIONARY SOURCES

§ 139.12. Emissions of particulate matter.

Tests for determining emissions of particulate matter from stationary sources shall conform with the following:

(1) Test methods for particulate emissions shall include **[both]** dry filters **[and wet impingers]** and provide for at least a 95% collection efficiency of particulate matter.

(2) Isokinetic sampling procedures shall be used in sampling for particulate matter emissions and the **[weights of soluble and insoluble particulate] weight** determined gravimetrically after the removal of uncombined water.

* * * * *

(5) Results shall be calculated based upon sample train component weights specified in § 139.4(5) **[and insoluble weights in the impinger solution and on sample-exposed surfaces subsequent to the final filtration media. Insoluble weights shall be determined by .22u membrane filtration]** Results shall be reported as pounds of particulate matter per hour and in accordance with the units specified in §§ 123.11—123.13 (relating to particulate matter emissions).

[SOURCES]

§ 139.61. **[Requirements] (Reserved).**

[(a) Persons responsible for the operation of a source included in a class of sources listed in the first column of Table I shall do the following:

(1) Conduct source tests, air sampling, and analyses or perform visual observations of the air contaminants specified by name or by reference to an applicable emission standard in the second column of Table I.

(2) Conduct the required tests, sampling, analyses, or observations at the frequency required by the third column of Table I.

(3) Submit monitoring reports in accordance with the requirements of § 139.53 (relating to filing monitoring reports) at the frequency specified in the fourth column of Table I.

(b) Table I follows:

TABLE I

Class of Sources	*Air Contaminants to be Monitored*	*Frequency of Testing Sampling, or Observations*	*Frequency of Filing Monitoring Reports*
Coke oven batteries	**§ 123.44(a)(1), (3)—(7)**	**Daily during daylight**	**Quarterly**
Pushing	**§ 123.13(b)**	**Annual**	**Annual]**

§ 139.62. **[Waiver of certain monitoring requirements] (Reserved).**

[(a) The requirements of § 139.61(b) (relating to requirements), Table I, which relate to the frequency of visible emissions observations for the purpose of monitoring compliance at a coke oven battery with the provisions of § 123.44(a) (relating to limitations of visible fugitive air contaminants from operation of any coke oven battery) may be waived by the Department, provided the Department finds, upon a showing by the battery operator and after inspection, all of the following:

(1) The battery operator has complied with this section and §§ 139.51—139.53 and 139.61 (relating to general; and requirements) during the previous calendar quarter.

(2) Visible emission observations performed in accordance with § 123.44(b) by the operator and the Department during the preceding calendar quarter demonstrate that the calculated mean visible emission performance for the quarter is within the limits for visible emissions allowed by each paragraph of § 123.44(a).

(3) Visible emission observations performed in accordance with § 123.44(b) by the operator and the Department during the calendar quarter demonstrate full compliance with each paragraph of § 123.44(a) during at least one period of 5 consecutive days.

(4) Visible emission observations performed in accordance with § 123.44(b) during an inspection conducted by the Department after receipt of a request for a waiver under this section from the battery operator demonstrate full compliance with each paragraph of § 123.44(a).

(b) A waiver granted by the Department under this section will be in writing, will identify the data relied upon for the findings required by subsection (a), and will notify the battery operator of his obligation to comply with conditions established under subsection (c).

(c) Visible emission observations for the purpose of monitoring compliance with § 123.44(a) at a coke oven battery after the issuance of a waiver under subsection (a) shall be conducted in accordance with § 123.44 during each calendar quarter excepting holidays recognized by union contract. The observations shall commence the first day of the quarter which is not a holiday and shall continue until a period of 5 consecutive days has been completed during which all observations demonstrate compliance with each paragraph of § 123.44(a) on each of the 5 days. Upon the completion of observations demonstrating at least 5 consecutive days of compliance in any quarter or additional number of consecutive days of compliance that the Department may require by notice issued under subsection (b), there may be no further obligation to perform daily observations of visible emissions for the remainder of the quarter; provided that each of the conditions established by the notice issued under subsection (b) are met. The conditions shall include, but not be limited to the following:

(1) Submission of the records, summary and report of quarterly visible emission observations as may be required by the Department within 14 days after completion of 5 consecutive days of observation showing compliance in any quarter.

(2) Specification of a number of consecutive days, which shall be 5 or more at the discretion of the Department, during which compliance shall be demonstrated.

(3) Maintenance of compliance with each paragraph of § 123.44(a).

(d) A waiver granted under this section shall terminate at any time the Department finds a violation of a standard contained in § 123.44(a). The coke oven battery operator shall resume recording and reporting visible emission observations in accordance with the requirements of §§ 139.51—139.53 and 139.61 within 10 days of receipt of a notice of violation with respect to any standard contained in § 123.44(a).]

Subchapter C. REQUIREMENTS FOR SOURCE MONITORING FOR STATIONARY SOURCES

§ 139.101. General requirements.

This section applies to monitoring systems as defined in the manual referenced at § 139.102(3) (relating to references), installations required or approved under Chapters 122, 124, 127 and 129 or in an order issued under section 4 of the act (35 P. S. § 4004).

* * * * *

(12) Required monitoring shall meet at least one of the following minimum data availability requirements unless other data availability requirements are stipulated elsewhere in this title, in a plan approval or permit condition under Chapter 127 (relating to construction, modification, reactivation and operation of sources), or in an order issued under section 4 of the act. For purposes of calculating data availability, "process down" time, as specified in the manual referenced in § 139.102(3), shall be considered valid time.

* * * * *

(ii) In each calendar quarter, at least 95% of the hours **[during which the monitored source is operating]**

shall be valid as set forth in the quality assurance section of the manual referenced in § 139.102(3).

* * * * *

§ 139.104. **[Sulfur dioxide and nitrogen oxides monitoring requirements for combustion sources] (Reserved).**

[This section applies to combustion sources monitoring sulfur dioxide or NO_x.

(1) In addition to sulfur dioxide or to NO_x, either oxygen or carbon dioxide shall be monitored to provide data to permit conversion of monitoring system data, when applicable, to the standard of pounds of sulfur dioxide per million Btus of heat input or to the standard of pounds of NO_x, expressed as nitrogen dioxide, per million Btus of heat input. These conversions shall be performed by using the "F Factor" as specified in the manual referenced in § 139.102(3) (relating to references). The Department may approve other methods of conversion to units of pounds pollutant per million Btus of heat input.

(2) Continuous monitoring systems installed under the requirements of this section shall meet the following minimum data availability requirements:

(i) At least 23 days during each running 30-day period shall be valid days as set forth in the quality assurance section of the manual referenced in § 139.102(3).

(ii) At least 50% of the hours during each running 30-day period shall be valid hours as set forth in the quality assurance section of the manual referenced in § 139.102(3).]

§ 139.111. **[Municipal waste] Waste** incinerator monitoring requirements.

This section applies to monitoring systems installed on municipal **and hospital** waste incinerators **[(MWIs)]**.

(1) Carbon monoxide, combustion efficiency and temperature monitoring systems shall meet the following minimum data availability requirements:

(i) One hundred percent of the data hours **[during which the incinerator is operating]** shall be valid hours as set forth in the quality assurance section of the manual referenced in § 139.102(3) (relating to references).

* * * * *

(2) Opacity monitoring systems shall meet the following minimum data availability requirement: At least 95% of the data hours **[during which the incinerator is operating]** each day shall be valid hours as set forth in the quality assurance section of the manual referenced in § 139.102(3).

(3) Hydrogen chloride, sulfur dioxide and nitrogen oxide monitoring systems shall meet the following minimum data availability requirement: At least 90% of the data hours **[during which the incinerator is operating]** each month shall be valid hours as set forth in the quality assurance section of the manual referenced in § 139.102(3).

[Pa.B. Doc. No. 97-556. Filed for public inspection April 11, 1997, 9:00 a.m.]

[25 PA. CODE CHS. 121 AND 123]
Nitrogen Oxides Allowance Program

The Environmental Quality Board (Board) proposes to amend Chapters 121 and 123 (relating to general provisions; and standards for contaminants) to read as set forth in Annex A. The proposed amendments establish a program to limit the emission of nitrogen oxides (NO_x) from fossil fired combustion units with rated heat input capacity of 250 MMBtu/hour or more and electric generating facilities of 15 megawatts or greater.

The Board approved the proposed amendments at its February 18, 1997 meeting.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact J. Wick Havens, Chief, Division of Air Resources Management, Bureau of Air Quality, 12th Floor Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468 (717) 787-4310, or M. Dukes Pepper, Jr., Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, 9th Floor Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464 (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this Preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department's) Web site (http://www.dep.state.pa.us).

C. *Statutory Authority*

This action is being taken under the authority of section 5(a)(1) of the Air Pollution Control Act (35 P. S. § 4005(a)(1)), which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background of the Amendment*

In the 1990 amendments to the Federal Clean Air Act, Congress recognized that ground level ozone (smog) is a regional problem not confined to state boundaries. Section 184 of the Clean Air Act, 42 U.S.C.A. § 7511c, establishes the Northeast Ozone Transport Commission (OTC) to assist in developing recommendations for the control of interstate ozone air pollution.

Ozone is not directly emitted by pollution sources but is created as a result of the chemical reaction of NO_x and volatile organic compounds (VOC), in the presence of light and heat, to form ozone in the air masses traveling over long distances. Exposure to ozone causes decreased lung capacity, particularly in children and elderly individuals. Decreased lung capacity from ozone exposure can frequently last several hours after the initial exposure. States in the Northeast Ozone Transport Region, except for Vermont, have experienced since 1990 levels of ozone

during the months of May through September in excess of the National Ambient Air Quality Standard (NAAQS).

Because NO_x from large fossil fired combustion units is a major contributor to regional ozone pollution, the OTC member states, including this Commonwealth, proposed development of a regional approach to address NO_x emissions. Beginning in 1993, the Northeast States for Coordinated Air Use Management (NESCAUM), the Mid-Atlantic Regional Air Management Association (MARAMA) and the United States Environmental Protection Agency (EPA) began working with the OTC to study the feasibility of implementing regional NO_x emission reductions utilizing an emission budget program in the northeast. Regional airshed modeling was used to identify the appropriate level of emission reductions that would contribute to a significant improvement in air quality.

As a result of these evaluations, the OTC proposed two additional phases of NO_x emissions reduction beyond that already achieved by the Reasonably Available Control Technology (RACT) program. This recommendation was formally adopted by the OTC in a Memorandum of Understanding (OTC MOU) in September of 1994. The OTC states, in the MOU of September 27, 1994, agreed to propose regulations for the control of NO_x emissions in accordance with the following guidelines:

1. The level of NO_x required would be established from a 1990 baseline emissions level.

2. The reduction would vary by location, or zone, and would be implemented in two phases utilizing a regionwide trading program.

3. The reduction would be determined based on the less stringent of the following:

a. By May 1, 1999, the affected facilities in the inner zone shall reduce their rate of NO_x emissions by 65%, or emit NO_x at a rate no greater than 0.20 pounds per million Btus.

b. By May 1, 1999, the affected facilities in the outer zone shall reduce the rate of NO_x emissions by 55% from baseline, or shall emit NO_x at a rate no greater than 0.20 pounds per million Btu.

c. By May 1, 2003, the affected facilities in the inner and outer zones shall reduce their rate of NO_x emissions by 75% from baseline, or shall emit NO_x at a rate no greater than 0.15 pounds per million Btu.

d. By May 1, 2003, the affected facilities in the northern zone shall reduce their rate of NO_x emissions by 55% from baseline, or shall emit NO_x at a rate no greater than 0.20 pounds per million Btu.

In this Commonwealth, the counties of Berks, Bucks, Chester, Delaware, Montgomery and Philadelphia are in the inner zone; the remaining counties in this Commonwealth are in the outer zone.

Under section 7.4 of the Commonwealth Air Pollution Control Act (35 P. S. § 4007.4) the control strategies approved by the OTC and by the Commonwealth's representatives set forth in the OTC MOU are commitments by the Department to pursue regulatory actions under State law to implement the control strategies. In order to provide for the optimal degree of flexibility and to minimize compliance costs, the Department joined with the member states of the OTC to develop a regionwide market-based cap and trade program. A cap and trade program sets a regulatory limit on mass emissions from a discreet group of sources, allocates allowances to the sources authorizing emissions up to the regulatory limit, and permits trading of allowances in order to effect cost efficient compliance with the cap.

To ensure that OTC states included common elements in the rules implementing the OTC MOU, the states worked through the NESCAUM, the MARAMA and the EPA to develop a model rule containing the common program elements. In addition to the state and Federal representatives, the NESCAUM, MARAMA NO_x budget task force was joined by an ad hoc committee comprised of representatives from industry, utilities and environmental groups to ensure broad-based participation and consensus in the model rule.

The task force and ad hoc committee recognized that state program consistency is critical to the overall success of the NO_x allowance program. State programs that are substantively identical in key areas will ensure that a ton of emissions reduced in one state is equivalent to a ton reduced in another state. Since states desire to promote cost effective compliance through intrastate and interstate emission trading, this level of consistency is essential to an effective trading program. The NESCAUM/MARAMA Model Rule meets these objectives and represents substantial consensus among the state and Federal governmental representatives and the ad hoc committee members on key regulatory elements of a NO_x allowance program to implement the OTC MOU. The Model Rule applies to fossil-fired combustion units with rated capacity of 250 MMBtu/hour or more and electric generating facilities of 15 megawatts or greater. Under the program, the OTC MOU emission reductions are applied to a 1990 baseline for NO_x emissions in the ozone transport region to create a cap on the emissions budget for each of the two target years: 1999 and 2003. The 1990 baseline was established through extensive work of the OTC, the EPA and industry to refine and quality assure the data available on actual NO_x emissions for 1990. The 1990 emissions and budget for the OTC region has been disaggregated to a state level and the states are allocating allowances to the facilities in the program. Beginning in 1999, the sum of NO_x emissions from NO_x affected sources during the May 1 through September 30 control period cannot exceed the equivalent number of allowances allocated in the region. An allowance is equal to one ton of NO_x emissions. NO_x affected sources must hold allowances for all NO_x emitted during the ozone season months of May through September and NO_x affected sources are allowed to buy, sell or trade allowances as needed.

These proposed amendments are part of the Commonwealth's State Implementation Plan (SIP) to meet the reasonable further progress requirements of the Clean Air Act. In addition, the amendments are proposed as being comparable with and in lieu of implementation of Stage II vapor recovery system requirements throughout the State. As a comparable measure, it will satisfy the requirements under Section 184(b)(2) of the Clean Air Act (42 U.S.C.A. § 7511c(b)(2)). Finally, as part of the considerations and current assumptions as outlined in the *Operating Agreements for Stakeholder Deliberations*, Southwestern and Southeastern Pennsylvania Ozone Stakeholder Groups recognized that the Phase II of the Northeast Ozone Transport Commissions's "Memorandum of Understanding" (NO_x MOU) would be adopted by the Commonwealth as a NO_x reduction strategy. Therefore, the 55% and 65% reductions in NO_x from utility, IPP and other large industrial boilers (that are subject to Phase II of the NO_x MOU) have been understood to be one of the precursor reduction options in the attainment strategy modeled for the Pittsburgh-Beaver Valley and Philadelphia Ozone Nonattainment Areas.

This proposal is part of the ozone attainment strategy for the OTC states. The Commonwealth plans to finalize this proposal when a consistent program is developed for the states of New York, New Jersey, Connecticut and Maryland.

The AWQTAC has been intimately involved in the allocation of allowances to budgeted sources and the development of both the model rule and this regulatory proposal. On December 11, 1996, AWQTAC concurred in a recommendation from the Air Subcommittee that the Department proceed with the proposed amendments including the allocation methodology for individual sources.

E. *Summary of the Proposal*

The proposed amendments establish definitions for the following terms: "account," "account number," "acquiring account," "electric generating facility," "fossil fuel," "fossil fuel fired," "general account," "heat input," "indirect heat exchange combustion unit," "maximum heat input capacity," "NO_x affected source," "NO_x allocation," "NO_x allowance," "NO_x allowance deduction," NO_x Allowance Continuous Emissions Monitoring System (NO_x allowance CEMS)," "NO_x allowance control period," "NO_x allowance curtailment," "NO_x allowance Tracking System (NATS)," "NO_x allowance transfer," "NO_x allowance transfer deadline," "NO_x budget," "NO_x Budget Administrator," "NO_x Emissions Tracking System (NETS)," "OTC MOU NO_x budget," "Ozone Transport Commission Memorandum Of Understanding (OTC MOU)," and "replacement source."

These defined terms are used in the substantive provisions contained in Chapter 123.

This regulatory proposal implements the NO_x MOU in a manner consistent with the NESCAUM/MARAMA Model Rule. The proposal identifies each known facility and each source within the facility subject to the rule along with the annual allowance allocation for the May 1 through September 30 control period in Appendix A. The rule also describes the process and procedure for transferring allowances between NO_x affected sources in §§ 123.106 and 123.107 (relating to NO_x allowance transfer protocol; and NO_x allowance transfer procedures). The compliance requirements for sources and the remedy in the event the sources fail to comply is described in §§ 123.110 and 123.111 (relating to source compliance requirements; and failure to meet source compliance requirements).

Because this proposal is dependent upon accurate tracking of NO_x emissions, the interstate NO_x Allowance Tracking System (NATS) is established along with procedures for tracking emissions in §§ 123.104 and 123.105 (relating to source authorized account representative requirements; and NO_x Allowance Tracking Systems Provisions). The source monitoring, recordkeeping and reporting requirements contained in §§ 123.108, 123.109 and 123.113 (relating to source emissions monitoring requirements; source emissions reporting requirements; and source recordkeeping requirements) detail the methodology that NO_x affected sources must follow to accurately characterize and report NO_x emissions during the control period.

Sections 123.116 and 123.117 (relating to source opt-in provisions; and new NO_x affected source provisions) describe the mechanism for including additional sources in the NO_x allowance program. Section 123.116 describes the procedure for sources to opt into the program and obtain an allowance allocation. Section 123.117 describes the process for both new sources meeting the thresholds for regulation and newly identified sources.

There were concerns expressed by independent power producers that were not operational in 1990 related to obtaining NO_x allowances. Since NO_x allowances are based on 1990 emissions, these facilities did not have a baseline to establish NO_x allowances. The proposal provides allowances to these sources in Appendix A by allocating a portion of the Pennsylvania budget to the independent power producers. In addition, § 123.121 (relating to additional requirements for independent power producers) establishes additional requirements for independent power producers which describe the methodology for use of allocations by this class of NO_x affected sources.

Because the NO_x affected sources are all "major sources" for purposes of the new source review program contained at Chapter 127, Subchapter E (relating to new source review), modifications of these sources that increase their potential to emit above new source review thresholds or the addition of a new source above the new source review threshold will require both emission reduction credits and NO_x allowances. Section 123.118 (relating to emission reduction credit provisions) describes the relationship between the emission reduction credit provisions and the NO_x allowance program provisions.

Finally, § 123.120 (relating to audit) establishes an audit program to evaluate the effectiveness of the emission reductions achieved under the NO_x allowance program. This evaluation occurs on an ongoing basis with a more complete review at least every 3 years. Section 123.120 authorizes the Department to condition, limit, suspend or terminate any NO_x allowances or authorization to emit which such allowances represent under specifically identified circumstances. Subsection (d) describes the procedure the Department will follow in order to make such a modification to the allowance allocation.

Because some sources may be willing to make reductions in emissions prior to the time the rule becomes finalized, § 123.119 (relating to bonus NO_x allowance awards) allows those sources to receive bonus NO_x allowances. This will encourage early control and increased environmental benefits.

F. *Benefits, Cost and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments. Overall, the citizens of this Commonwealth will benefit from the proposed amendments because they will provide appropriate protection of air quality both in this Commonwealth and the entire Northeastern United States. In addition to reducing ozone pollution, this program will assist the Commonwealth in meeting its requirements for reasonable further progress and Stage II comparability under the Clean Air Act.

These proposed amendments are expected to result in public health cost savings of $35-730 million per year from ozone reductions and $120 million per year resulting from reductions in particulate matter emissions.

Worker health care costs and productivity should yield cost savings, as well as the welfare benefits, and decreased structural deterioration of concrete, paints and metals for instance should also result in benefits.

A control technology cost analysis of the public electric utility industry was conducted by the Department. Over 95% of the affected sources are electric generating utilities. Using the worst case $42 million per year estimate, the cost of generation is expected to increase by approximately 1.2% using 1995 technology cost data. Recent developments in control technology have demonstrated large cost reductions on the order of 50% for this level of

emission reduction since this estimate was completed. The total cost without trading based on 1995 data was $60 million per year and trading will reduce this by one third to $42 million per year. Substantiating this estimate, the OTAG completed cost studies in October of 1996 showing that the cost of reducing emissions to a much lower standard, 0.15 lb/mmBTU or by 75% would cost $73 million per year. Overall, these proposed amendments will have negligible impact on costs in comparison to the normal variations in other costs such as fuel and other operating and maintenance items.

By implementing the required emission reductions through a trading program, cost savings are estimated to be over 30% of what would otherwise be incurred. This level of savings has been realized in similar trading programs implemented by the EPA.

Some of the electric generating facilities and some of the remaining 5% of the nonutility sources which cannot cost effectively control emissions to comply with these proposed amendments will be able to comply by acquiring allowances from other sources on the open market, through mechanisms such as trade agreements, contracts and purchases. Allowances will be available both from electric generating companies with which many of these sources are owned or with which they do business and from the interstate market. It is anticipated that the market will provide for the least cost sources to control and minimize costs for all affected sources.

Since most of the affected sources already have the monitoring and reporting systems installed to comply with existing Federal requirements, only small changes will have to be made and reports will be consolidated with those existing requirements. On the whole, costs should be minimal for the majority of affected sources.

A few unmonitored sources may require additional reporting; however, the costs should also be small since the monitoring guidance allows for minimized and streamlined procedures which do not require new equipment. Common desktop personal computer based spreadsheet software and data entry would be required. Since most sources already maintain this data, reformatting and submission is likely to be the most that is required for these sources.

Compliance Costs

It is expected that a number of Commonwealth facilities will be required to install emission controls to meet the emissions cap established by these proposed amendments. The open market approach which allows trading of emission reductions between sources will encourage the installation of the most cost-effective controls and trading of emission reductions between sources. This open market approach will significantly reduce compliance costs in comparison to a command and control approach. In addition to the control costs imposed, some of the sources covered by the program will be required to install additional monitoring equipment to accurately characterize NO_x emissions from the facility.

Compliance Assistance Plan

The Department plans to educate and assist the regulated community and the public with understanding the NO_x budget program.

Paperwork Requirements

This regulatory program will have paperwork impact on the Commonwealth and the regulated entities. In addition to monitoring, recordkeeping and reporting at the source level, the NO_x allowance tracking system and NO_x emissions tracking system require extensive multistate management.

G. *Pollution Prevention*

While this regulatory proposal does not directly include pollution prevention provisions, it may encourage some affected parties to switch from more polluting to less polluting fossil fuel sources.

H. *Sunset Review*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 1, 1997, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the 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 the Department, the Governor and the General Assembly to review these objections before final publication of this proposal.

J. *Public Comment and Board Public Hearings*

The Department is specifically requesting comments on two sections of the proposal. First, § 123.121 establishes additional requirements for independent power producers. Subsection (a) would take 90% of the unused allowances from each control period and place them into an account administered by the Department for economic growth and prosperity in the Commonwealth. The Department specifically seeks comment on:

1) How this fund should be managed including the mechanism to prioritize projects, whether to limit the amount of allowances allocated to any single source or project and what happens to the account in the event that additional reductions are necessary to achieve air quality goals.

2) Should the fund be used to both support growth and to assist in providing allowances to entities where the cost of control is disproportionate to the emissions from that facility.

3) If revenues are received from the operation of the fund, how should those revenues be managed by the Department.

The Department is also seeking comment on § 123.117 related to new NO_x affected source provisions. Specifically, the Department is proposing that sources not identified in this section as an initial allocation source must acquire NO_x allowances from those available in the NO_x allowance tracking system. The only exception to this requirement would be for affected sources which emitted NO_x in 1990 and notify the Department within 6 months following the date of final promulgation of this proposal that they are subject to the provisions. In that

case, the Department will petition the OTC to include emissions from those sources in the NO_x MOU budget and will provide NO_x allowances to the sources in the event that the budget is modified. The Department specifically requests comments on this approach.

Public Hearings

The Board will hold three public hearings for the purpose of accepting comments on the proposed amendments. The hearings will be held at 1 p.m. on the following dates and at the following locations:

May 13, 1996, DEP Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA

May 15, 1997, DEP, 1st Floor Conference Room, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA

May 19, 1997, Upper Merion Township Building, 175 West Valley Forge Road, King of Prussia, PA

Persons wishing to present testimony at the hearings must contact Sharon Freeman at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to 10 minutes for each witness and three written copies of the oral testimony must be submitted at the hearing. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to attend the hearings and require an auxiliary aid, service or other accommodations in order to participate, should contact Sharon Freeman at (717) 787-4526 or through the Pennsylvania AT&T relay service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Written Comments

In lieu or in addition to presenting oral testimony at the hearings, interested persons may submit written comments, suggestions or objections regarding the proposed amendments to the Board, 15th Floor Rachel Carson State Office Building, P. O. Box 8477, Harrisburg, PA 17105-8477. Comments received by facsimile will not be accepted. Comments must be received by June 18, 1997. In addition to the written comments, interested persons may also submit a summary of their comments to the Board. This summary may not exceed one page in length and must be received by June 18, 1997. The summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

Electronic Comments

Comments may be submitted electronically to the Board at Regcomments@a1.dep.state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by June 18, 1997.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-314. 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 III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. DEFINITIONS.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

***Account*—The place in the NO_x allowance tracking system where allowances are recorded including allowances held by a NO_x affected source.**

***Account number*—The identification number given by the NO_x budget administrator to an account in which NO_x allowances are held in the NO_x allowance tracking system.**

***Acquiring account*—The party in a NO_x allowance transfer who obtains NO_x allowances through purchase, trade, auction, gift or any other lawful means.**

* * * * *

***Electric generating facility*—For the purposes of NO_x allowance requirements, any fossil fuel fired combustion facility of 15 MW or greater electrical generating capacity.**

* * * * *

***Fossil fuel*—Natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from this material.**

* * * * *

***Fossil fuel fired*—The combustion of fossil fuel or, if in combination with any other fuel, fossil fuel comprises 51% or greater of the annual heat input on a BTU basis.**

* * * * *

***General account*—An account in the NATS that is not a compliance account.**

* * * * *

***Heat input*—Heat derived from the combustion of fuel in a NO_x affected source. The term does not include the heat derived from preheated combustion air, recirculated flue gas or exhaust from any other source or combination of sources.**

* * * * *

***Indirect heat exchange combustion unit*—Combustion equipment in which the flame or products of combustion, or both, are separated from any contact with the principal material in the process by metallic or refractory walls, including, but not limited to, steam boilers, vaporizers, melting pots, heat exchangers, column reboilers, fractioning column feed preheaters, reactor feed preheaters, fuel-fired reactors such as steam hydrocarbon reformer heaters and pyrolisis heaters.**

* * * * *

***Maximum heat input capacity*—The maximum steady state heat input under which a source may be operated as determined by its physical design and characteristics. Maximum heat input capacity is expressed in millions of British Thermal Units (MMBtu) per unit of time.**

* * * * *

***NATS—NO_x allowance tracking system* —The computerized system used to track the number of NO_x allowances held and used by any person.**

***NETS—NO_x emissions tracking system* —The computerized system used to track NO_x emissions from NO_x affected sources.**

***NO_x affected source*—Fossil fuel fired indirect heat exchange combustion units with a maximum rated heat input capacity of 250 MMBtu/hour or more and all fossil fuel fired electric generating facilities rated at 15 megawatts or greater or any other source that voluntarily opts to become a NO_x affected source.**

***NO_x allocation*—Assignment by the Department of NO_x allowances to a NO_x affected source and recorded by the NO_x budget administrator to a NO_x allowance tracking system account.**

***NO_x allowance*—The limited authorization to emit 1 ton of NO_x during a specified NO_x allowance control period.**

***NO_x allowance CEMS—NO_x allowance continuous emissions monitoring system*—For the purposes of the NO_x allowance requirements, an emission monitoring system which continuously measures and records NO_x emissions.**

***NO_x allowance control period*—The period beginning May 1 of each year and ending on September 30 of the same year, inclusive.**

***NO_x allowance curtailment*—For the purposes of NO_x allowance requirements, a reduction in the hours of operation or in the rate of production.**

***NO_x allowance deduction*—The withdrawal of NO_x allowances for permanent retirement by the NO_x budget administrator from a NATS account.**

***NO_x allowance transfer*—The conveyance to another NATS account of one or more NO_x allowances from one person to another by whatever means, including, but not limited to, purchase, trade, auction or gift.**

***NO_x allowance transfer deadline*—The deadline by which NO_x allowances may be submitted for recording in a NO_x affected source's compliance account for purposes of meeting NO_x allowance requirements.**

***NO_x budget*—The total tons of NO_x emissions which may be released from NO_x affected sources.**

***NO_x budget administrator*—The person or agency designated by the Department as the NO_x budget administrator of the NATS and the NETS.**

***OTC MOU NO_x budget*—The NO_x budget is 93,392 tons during the 5-month period of May through September.**

* * * * *

***Ozone Transport Commission Memorandum of Understanding (OTC MOU)*—The memorandum of understanding (MOU) signed by representatives of ten states and the District of Columbia as members of the Ozone Transport Commission (OTC) on September 27, 1994.**

* * * * *

***Replacement source*—A new source which is replacing a NO_x affected source where both sources are under common ownership located within this Commonwealth. The NO_x affected source shall be deactivated or permitted only as an emergency standby unit to the replacement source with operation limited to a maximum of 500 hours per year following commencement of operation of the replacement source.**

* * * * *

CHAPTER 123. STANDARDS FOR CONTAMINANTS

(*Editor's Note*: The following §§ 123.101—123.121 are new and are printed in regular type to enhance readability.)

NO_x ALLOWANCE REQUIREMENTS

§ 123.101. Purpose.

These §§ 123.102—123.121 and this section establish a NO_x budget and an NO_x allowance trading program for NO_x affected sources for the purpose of achieving the health based ozone ambient air quality standard.

§ 123.102. Source NO_x allowance requirements and NO_x allowance control period.

(a) The owner or operator of each NO_x affected source shall, not later than December 31 of each calendar year, hold a quantity of NO_x allowances in the source's current year NATS account that is equal to or greater than the total NO_x emitted from that source during that year's NO_x allowance control period.

(b) The initial NO_x allowance control period begins on May 1, 1999.

§ 123.103. General NO_x allowance provisions.

(a) All NO_x allowances shall be allocated, transferred or used as whole NO_x allowances. To determine the number of whole NO_x allowances, the number of NO_x allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

(b) A NO_x allowance does not constitute a security or other form of property.

(c) Allowances may not be used to meet the requirements of this subchapter prior to the year for which they are allocated.

(d) For the purposes of account reconciliation, NO_x allowances allocated for the NO_x allowance control period shall be deducted first, and remaining allowances if not otherwise designated by the source shall be deducted on a first-in, first-out basis.

§ 123.104. Source authorized account representative requirements.

(a) The owner or operator of an NO_x affected source shall designate for each source account, one authorized account representative and one alternate. Initial designations shall be completed 30 days after _____(*Editor's Note:* The blank refers to the effective date 30 days after adoption of this proposal.) An authorized account representative may be replaced or, for a new NO_x affected source, designated with the submittal of a new "Account Certificate of Representation."

(b) The "Account Certificate of Representation" shall be signed by the authorized account representative for the NO_x affected source and contain, at a minimum, the following:

(1) Identification of the NO_x affected source by plant name, state and fossil fired indirect heat transfer combustion unit number for which the certification of representation is submitted.

(2) The name, address, telephone and facsimile number of the authorized account representative and any alternate.

(3) A list of owners and operators of the NO_x affected source.

(4) The verbatim statement, "I certify that I, _____, (name) was selected as the Authorized Account Representative by an agreement binding on the owners and operators of the NO_x affected source legally designated as _____." (name of facility)

(c) The alternate authorized account representative shall have the same authority as the authorized account representative. Correspondence from the NATS NO_x budget administrator shall be directed to the authorized account representative.

(d) Only an authorized account representative or the designated alternate may request transfers of NO_x allowances in a NATS account. The authorized account representative shall be responsible for all transactions and reports submitted to the NATS.

(e) Authorized account representative designation or changes become effective upon the logged date of receipt of a complete application by the NO_x budget administrator from the Department. The NATS NO_x budget administrator will acknowledge receipt and the effective date of the changes by written correspondence to the authorized account representative.

§ 123.105. NATS provisions.

(a) The NATS account records shall constitute an NO_x affected source's NO_x allowance holdings.

(b) Transfer, use and NO_x allowance deduction of NO_x allowances become effective only after entry in the tracking system account records.

§ 123.106. NO_x allowance transfer protocol.

(a) NO_x allowances may be transferred at any time between January 31 and December 31 in accordance with § 123.107 (relating to NO_x allowance transfer procedures).

(b) NO_x allowances shall be held by the originating account at the time of the transfer request.

(c) A transfer request shall be filed by the person named as the authorized account representative for the originating account.

(d) The transfer is effective as of the date the NO_x budget administrator completes certification of the transfer.

§ 123.107. NO_x allowance transfer procedures.

NO_x allowances may be transferred under the following conditions:

(1) The transfer request shall be documented on a form, or electronic media, approved by the Department. The following information, at a minimum, shall be provided:

(i) The account number identifying both the originating account and the acquiring account.

(ii) The name and address associated with the owners of the originating account and the acquiring account.

(iii) The identification of the serial numbers for each NO_x allowance being transferred.

(2) The transfer request shall be authorized and certified by the authorized account representative for the originating account. To be considered correctly submitted, the request for transfer shall include the following statement of certification:

> "I am authorized to make this submission on behalf of the owners and operators of the NO_x affected source and I hereby certify under the penalty provisions contained in the Air Pollution Control Act, that I have personally examined the foregoing and am familiar with the information contained in this document, and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment."

The authorized account representative for the originating account shall provide a copy of the transfer request to each owner or operator of the NO_x affected source.

§ 123.108. Source emissions monitoring requirements.

The owner and operator of each NO_x affected source shall comply with the following requirements:

(1) NO_x emissions from each NO_x affected source shall be monitored as specified by this section and in accordance with the procedures contained in the document titled, "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(2) The owner or operator of each NO_x affected source shall submit to the Department and the NO_x Budget Administrator a monitoring plan in accordance with the procedures outlined in the document titled, "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(3) New and existing unit emission monitoring systems, as required and specified by this section, shall be installed and be operational and shall have met all of the certification testing requirements in accordance with the procedures and deadlines specified in the document titled, "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(4) Monitoring systems are subject to initial performance testing and periodic calibration, accuracy testing and quality assurance/quality control testing as specified in the document titled "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program." Notwithstanding this provision, Non-Part 75 Sources which have Department approved NO_x CEMS reporting in accordance with § 139.101 (relating to general requirements) in units of pounds of NO_x per hour shall complete the periodic self-audits listed in the quality assurance section of § 139.102(3) (relating to references) at least annually and no sooner than 6 months following the previous periodic self-audit. If practicable, the audit shall be conducted between April 1 and May 31.

(5) During a period when valid data is not being recorded by devices approved for use to demonstrate

compliance with this subchapter, missing or invalid data shall be replaced with representative default data in accordance with 40 CFR Part 75 (relating to continuous emission monitoring) and the document titled, "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program." Notwithstanding this provision, Non-Part 75 Sources which have Department approved NO_x CEMS reporting in accordance with § 139.101 in units of pounds of NO_x per hour shall report this data to the NETS and shall continue report submissions as required under Chapter 139 (relating to sampling and testing) to the Department.

(6) Sources subject to 40 CFR Part 75 shall demonstrate compliance with this section with a certified Part 75 monitoring system.

(i) If the source has a flow monitor certified under Part 75, NO_x in pounds per hour shall be determined using the Part 75 NO_x CEMS and the flow monitor. The NO_x emission rate in pounds per million Btu shall be determined using the procedure in 40 CFR Part 75 Appendix F, Section 3 (relating to procedures for NO_x emission rate). The hourly heat input shall be determined by using the procedures in 40 CFR Part 75 Appendix F, Section 5 (relating to procedures for heat input). NO_x in pounds per hour shall be determined by multiplying the NO_x per million Btu by the Btus per hour.

(ii) If a Part 75 source does not have a certified flow monitor, but does have a certified NO_x CEMS, NO_x emissions in pounds per hour emissions shall be determined by using the NO_x CEMS to determine the NO_x emission rate in pounds per million BTU and the heat input shall be determined by using the procedures in 40 CFR Part 75 Appendix D (relating to optional SO_2 emissions data protocol for gas-fired and oil-fired units). NO_x in pounds per hour shall be determined by multiplying the NO_x per million Btu and Btus per hour.

(iii) If the owner or operator of a source uses the procedures in 40 CFR Part 75, Appendix E (relating to option NO_x emissions estimation protocol for gas-fired peaking units and oil-fired peaking units) to determine the NO_x emission rate, NO_x emissions in pounds per hour shall be determined by multiplying the NO_x emission rate determined by using the Appendix E procedures times the heat input determined using the procedures in 40 CFR Part 75, Appendix D.

(iv) If the owner or operator of a source uses the procedures in 40 CFR Part 75, Appendix E to determine NO_x emission rate, NO_x emissions in pounds per hour shall be determined using the alternative monitoring method approved under 40 CFR Part 75 Subpart E (relating to alternative monitoring systems) and the procedures contained in the document titled, "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(v) If the source emits to common or multiple stacks, or both, the source shall monitor emissions according to the procedures contained in the document titled, "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(7) Sources not subject to 40 CFR Part 75 and not meeting the requirements of paragraph (11) shall meet the monitoring requirements of this section by:

(i) Preparing and obtaining approval of a monitoring plan as specified in the document titled, "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(ii) Determining NO_x emission rate and heat input using a methodology specified in paragraphs (8) and (9) respectively or determining NO_x concentration and flow using a methodology specified in paragraphs (8) and (9) respectively.

(iii) Calculate NO_x emissions in pounds per hour using the procedure described in paragraph (11).

(8) The owner or operator of any NO_x affected source which is not subject to 40 CFR Part 75, may implement an alternative emission rate monitoring method. The NO_x emission rate in pounds per million Btu or NO_x concentration in ppm shall be determined using one of the following methods:

(i) The owner or operator of any NO_x affected source that has a maximum rated heat input capacity of 250 MMBtu/hr or greater which is not a peaking unit as defined in 40 CFR 72.2 (relating to definitions), which combusts any solid fuel or is required to or has installed a NO_x CEMS for the purposes of meeting either the requirements of 40 CFR Part 60 (relating to standards of performance for new stationary sources) or any other Department or Federal requirement, shall use that NO_x CEMS to meet the requirements of this section. If the owner or operator of the unit monitors flow according to the provisions of paragraph (9) the owner or operator may use the NO_x CEMS to measure NO_x in ppm, otherwise the NO_x CEMS shall be used to measure the emission rate in lb/MMBtu. The owner or operator shall install, certify, operate and maintain this monitor in accordance with the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program." Any time an NO_x CEMS cannot be used to report data for this program because it does not meet the requirements of the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program," missing data shall be substituted using the procedures in that document. In addition, the NO_x CEMS shall meet the initial certification requirements contained in the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(ii) The owner or operator of a source that is not required to have a NO_x CEMS, may request approval from the Department to use any of the following appropriate methodologies to determine the NO_x emission rate:

(A) Boilers or turbines may use the procedures contained in 40 CFR Part 75 Appendix E to measure NO_x emission rate in pounds/MMBtu, consistent with the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(B) Owners and operators of combustion turbines that are subject to this section and §§ 123.101—123.107 and 123.109—123.121 may also meet the monitoring requirements of this section and §§ 123.101—123.107 and 123.109—123.121 by using default emission factors to determine NO_x emissions in pounds per hour as follows:

(I) For gas-fired turbines, the default emission factor is 0.7 pounds NO_x per MMBtu.

(II) For oil-fired turbines, the default factor is 1.2 pounds NO_x per MMBtu.

(III) Owners and operators of gas turbines or oil-fired turbines may perform testing, consistent with the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program," to determine unit specific maximum potential NO_x emission rates.

(C) Owners and operators of boilers that are subject to this section and §§ 123.101—123.107 and 123.109—

123.121 may meet the monitoring requirements of this section and §§ 123.101—123.107 and 123.109—123.121 by using a default emission factor of 2.0 pounds per MMBtu if they burn oil and 1.5 lb/MMBtu if they burn natural gas to determine NO_x emissions in pounds per hour, or may perform testing consistent with the provisions in the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program," to determine a unit specific maximum potential emission rate.

(9) The owner or operator of a source which is not subject to 40 CFR Part 75, and not meeting the requirements of paragraph (11), shall determine heat input in MMBtu or flow in standard cubic feet per hour using one of the following methods:

(i) The owner or operator of a source may install and operate a flow monitor according to the provisions of 40 CFR Part 75.

(A) The owner or operator may either use the flow CEMS to monitor stack flow in standard cubic feet per hour and a NO_x CEMS to monitor NO_x in ppm.

(B) In the alternative, the owner or operator may use the flow CEMS and a diluent CEMS to determine heat input in MMBtu and a NO_x CEMS to monitor NO_x in lbs/MMBtu.

(ii) The owner or operator of a source that does not have a flow CEMS may request approval from the Department to use any of the following methodologies to determine their heat input rate:

(A) The owner or operator of a source may determine heat input using a flow monitor and a diluent monitor meeting the requirements of 40 CFR Part 75 and the procedures in 40 CFR Part 75, Appendix F Section 5.

(B) The owner or operator of a source that combusts only oil or natural gas may determine heat input using a fuel flow monitor meeting the requirements of 40 CFR Part 75 Appendix D and the procedures of 40 CFR Part 75, Appendix F Section 5.

(C) The owner or operator of a source that combusts only oil or natural gas which uses a unit specific or generic default NO_x emission rate, may determine heat input by measuring the fuel usage for a specified frequency of longer than an hour. This fuel usage shall then be reported on an hourly basis by apportioning the fuel based on electrical load in accordance with the following formula:

$$\text{Hourly fuel usage} = \frac{\text{Hourly electrical load} \times \text{total fuel usage}}{\text{Total electrical load}}$$

(D) The owner or operator of a source that combusts any fuel other than oil or natural gas, may request permission from the Department to use an alternative method of determining heat input. Alternative methods include:

(I) Conducting fuel sampling and analysis and monitoring fuel usage.

(II) Using boiler efficiency curves and other monitored information such as boiler steam output.

(III) Any other methods approved by the Department and which meet the requirements contained in the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(E) Alternative methods for determining heat input are subject to both initial and periodic relative accuracy, and quality assurance testing as prescribed by "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(10) If the owner or operator determines NO_x emission rate in pounds per million Btu in accordance with paragraph (6)(iii) and heat input rate in MMBtu per hour in accordance with paragraph (7), the two values shall be multiplied to result in NO_x emissions in pounds per hour. If the owner or operator determines NO_x emissions in ppm and flow in standard cubic feet per hour, they may use the procedures in "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program" to determine NO_x emissions of this rule in pounds per hour. This value shall be reported to the NETS.

(11) Non-Part 75 sources which have Department approved NO_x CEMS reporting in accordance with § 139.101 (relating to general requirements) in units of pounds of NO_x per hour may meet the monitoring requirements of paragraph (7); or shall comply with the following:

(i) Calibration standards used shall be in accordance with both 40 CFR Part 75, Appendix A, Section 5.2 (relating to concentrations) and with § 139.102(3) (relating to references).

(ii) Testing listed in 40 CFR Part 75, Appendix A, Section 6.4 (relating to cycle time/response time test) not already conducted as part of the response time testing listed in § 139.102(3) shall be conducted.

(iii) Bias testing of the relative accuracy test data in accordance with the procedures in 40 CFR Part 75, Appendix A, Section 6.5 (relating to relative accuracy and bias tests) shall be conducted. Data from previously conducted relative accuracy testing may be used to meet this requirement.

(iv) Adjustment of data due to failure of bias test (in accordance with the procedures in 40 CFR Part 75, Appendix A, Section 7.6.5 (relating to bias adjustment) and Appendix B, Section 2.3.3 (relating to bias adjustment factor)) or relative accuracy greater than 10% but less than or equal to 20% (by multiplying the NO_x emissions rate by 1.1), or both, is to be conducted only for reporting to the NETS NO_x budget administrator for purposes of this section.

(v) A Data Acquisition Handling System (DAHS) verification demonstrating that both the missing data procedures and formulas as applicable to this section shall be conducted.

§ 123.109. Source emissions reporting requirements.

(a) The authorized account representative for each NO_x affected source shall submit to the NETS NO_x Budget NO_x budget administrator, electronically in a format which meets the requirements of the EPA's Electronic Data Reporting (EDR) convention, emissions and operations information for the second and third calendar quarters of each year in accordance with the document titled, "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(b) Upon permanent shutdown, NO_x affected sources may be exempted from the requirements of this section after receiving written Department approval of a request filed by the authorized account representative for the NO_x affected source which identifies the source and date of shutdown.

§ 123.110. Source compliance requirements.

(a) Each year during the period November 1 through December 31, inclusive, the authorized account representative shall request the NO_x budget administrator to deduct, consistent with § 123.104 (d) (relating to source authorized account representative requirements) a designated amount of NO_x allowances by serial number, from the NO_x affected source's compliance account in an amount equivalent to the NO_x emitted from the NO_x affected source during that year's NO_x allowance control period in accordance with the following:

(1) Allowances allocated for the current NO_x control period may be used without restriction.

(2) Allowances allocated for future NO_x control periods may not be used.

(3) NO_x allowances which were allocated for any preceding NO_x allowance control period which were not used (banked) may be used in the current control period even if this may result in an unlimited exceedance of the NO_x budget. Banked allowances shall be deducted against emissions in accordance with a ratio of NO_x allowances to emissions as specified by the NO_x budget administrator as follows:

(i) If the total NO_x allowances remaining in the NATS for all sources in the OTR NO_x budget for preceding NO_x allowance control periods are less than 110% of the total NO_x allowances allocated for that NO_x allowance control period, the ratio is 1:1.

(ii) If the total NO_x allowances remaining in the NATS for all sources in the OTR NO_x budget for preceding NO_x allowance control periods are 110% or greater than the NO_x allowances allocated for that NO_x allowance control period, the ratio is 2:1 for the portion of banked allowances in an account which are in excess of the amount calculated by multiplying the total allowances banked in the account times the PFC:

where

$$PFC = \frac{0.1 \times (\text{OTC MOU Budget})}{\text{Account banked allowances}}$$

(b) If, by the December 31 compliance deadline, the authorized account representative either makes no NO_x allowance deduction request, or a NO_x allowance deduction request insufficient to meet the requirements of subsection (a), the NO_x budget administrator may deduct the necessary number of NO_x allowances from the NO_x affected source's compliance account. The NO_x budget administrator shall provide written notice to the authorized account representative that NO_x allowances were deducted from the source's account. If the necessary number of NO_x allowances is available, the source will be in compliance after the NO_x allowance deduction is completed. If there is an insufficient number of NO_x allowances available for NO_x allowance deduction, § 123.111 (relating to failure to meet source compliance requirements) applies.

(c) For each NO_x allowance control period, the authorized account representative for the NO_x affected source shall submit an annual compliance certification to the Department.

(d) The compliance certification shall be submitted no later than the NO_x allowance transfer deadline (December 31) of each year.

(e) The compliance certification shall contain, at a minimum, the following:

(1) An identification of the NO_x affected source, including the name, address, the name of the authorized account representative and the NATS account number.

(2) A statement indicating whether or not emissions data has been submitted to the NETS in accordance with § 123.108 (relating to source emissions monitoring requirements).

(3) A statement indicating whether or not the NO_x affected source held sufficient NO_x allowances, as determined in subsection (a), in it's compliance account for the NO_x allowance control period, as of the NO_x allowance transfer deadline, to equal or exceed the NO_x affected source's actual emissions and the emissions reported to the NETS for the NO_x allowance control period.

(4) A statement indicating whether or not the monitoring plan which governs the NO_x affected source was operated to measure actual operation of the NO_x affected source.

(5) A statement indicating that all emissions from the NO_x affected source were accounted for, either through the applicable monitoring or through application of the appropriate missing data procedures.

(6) A statement indicating whether there were any changes in the method of operation of the NO_x affected source or the method of monitoring of the NO_x affected source during the current year.

(f) The Department may verify compliance by whatever means necessary, including one or more of the following:

(1) Inspection of facility operating records.

(2) Obtaining information on NO_x allowance deduction and transfers from the NATS.

(3) Obtaining information on emissions from the NETS.

(4) Testing emission monitoring devices.

(5) Requiring the NO_x affected source to conduct emissions testing in accordance with Chapter 139 (relating to sampling and testing).

§ 123.111. Failure to meet source compliance requirements.

(a) Failure by the NO_x affected source to hold in its compliance account, for any NO_x allowance control period, as of the NO_x allowance transfer deadline, sufficient NO_x allowances equal to or exceeding actual emissions for the NO_x allowance control period as specified under § 123.102 (relating to source allowance requirements and NO_x allowance control period) shall result in NO_x allowance deduction from the NO_x affected source's compliance account at the rate of 3 NO_x allowances for every 1 ton of excess emissions. If sufficient allowances meeting the requirements of § 123.110(a)(2) (relating to source compliance requirements) are not available, the source shall provide other sufficient allowances which shall be deducted prior to the beginning of the next NO_x allowance control period, otherwise the source may not operate during subsequent control periods.

(b) In addition to the NO_x allowance deduction required by subsection (a), the Department may enforce the provisions of this section and §§ 123.101—123.110 and 123.112—123.121 under the act and the Clean Air Act.

(1) For purposes of determining the number of days of violation, any excess emissions for the NO_x allowance control period shall presume that each day in the NO_x allowance control period constitutes a day in violation (153 days) unless the NO_x affected source can demon-

strate, to the satisfaction of the Department, that a lesser number of days should be considered.

(2) Each ton of excess emissions is a separate violation.

§ 123.112. Source operating permit provision requirements.

The operating permit required under Chapter 127 (relating to construction, modification, reactivation and operation of sources) shall prohibit the source from emitting NO_x during each NO_x allowance control period in excess of the amount of NO_x allowances held in the source's compliance account for the NO_x allowance control period as of the NO_x allowance transfer deadline. The NATS compliance account number and the authorized account representative shall be listed on the permit.

§ 123.113. Source recordkeeping requirements.

The owner or operator of a NO_x affected source shall maintain for each NO_x affected source and for 5 years, or any other period consistent with the terms of the NO_x affected source's operating permit, the measurements, data, reports and other information required by §§ 123.101—123.112, 123.114—123.121 and this section.

§ 123.114. General NO_x allocation provisions.

(a) NO_x allocations to NO_x affected sources may only be made by the Department.

(b) Except as provided in § 123.116 (relating to source opt-in provisions), for NO_x affected sources which shutdown after an allocation has been made to the source, the source account will continue to receive NO_x allowances for each NO_x allowance control period.

§ 123.115. Initial NO_x allowance NO_x allocations.

The sources contained in Appendix A are subject to the requirements of this subchapter. These sources are allocated NO_x allowances for the 1999—2002 NO_x allowance control periods as listed in the Appendix. Except as provided in § 123.120 (relating to audit), if no allocation is specified for the control periods beyond 2002, the current allocations continue indefinitely.

§ 123.116. Source opt-in provisions.

(a) A person who owns, operates, leases or controls a non-NO_x affected source located in this Commonwealth may apply to the Department to opt-in that source to become a NO_x affected source. For replacement sources, all sources to which production may be shifted to shall be opted-in together.

(b) A source which began operations without emission reduction credits transferred from a NO_x affected source may become a NO_x affected source under the following conditions:

(1) Submission of an opt-in application to the Department, including:

(i) Documentation of baseline NO_x allowance control period emissions which shall be the average of the actual emissions for the preceding two consecutive NO_x allowance control periods. The Department may approve selection of an alternative two consecutive NO_x allowance control periods within the 5 years preceding the opt-in application if the preceding two control periods are not representative of normal operations. The baseline may not exceed applicable emission limits.

(ii) Evidence that the requirements of § 123.101—123.115, 123.117—123.121 and this section can be complied with, including, submission of an emission monitoring plan, designation of an authorized account representative, and that the source is not on the compliance docket established under section 7.1 of the act (35 P. S. § 4005).

(2) Submission of NO_x allowances established under paragraph (1)(i) or subsection (c) by the Department to the NO_x budget administrator.

(c) A source which began operations with emission reduction credits from an NO_x affected source may become an NO_x affected source by complying with subsection (b)(1). To operate the source, NO_x allowances shall be acquired by the owner or operator from those available in the NATS.

(d) Opt-in sources which opted-in under subsection (b) and which shutdown or curtail operations during any NO_x allowance control period within the 5-calendar years after opting-in shall, prior to January 31 following the shutdown or curtailment, surrender to the Department NO_x allowances for the current NO_x allowance control period equivalent to the difference between the NO_x allowance control period allowance allocation and the emissions reported in accordance with § 123.109 (relating to source emissions reporting requirements). NO_x allocations for future NO_x allocation control periods shall also be surrendered. NO_x allowances which were allocated for any preceding NO_x allowance control period which were not used (banked) may not be surrendered. Surrendered NO_x allowances shall be retired from the NATS and NO_x MOU NO_x budget except that upon request by the source owner or operator, the Department may reallocate the NO_x allowances to a qualifying replacement source.

(e) Opt-in sources which remain in operation for 5-calendar years from the date of opt-in shall have a new baseline and allowance allocation set in accordance with the procedure in subsection (b)(1)(i). This baseline may not exceed the opt-in baseline. Thereafter, the source is not subject to this section.

(f) Once electing to opt-in, a source may not revert to a non-NO_x affected source unless it is shut down.

§ 123.117. New NO_x affected source provisions.

(a) NO_x allowances may not be created for new NO_x affected sources. New NO_x affected sources are sources which are not listed in § 123.115 (relating to initial NO_x allowance NO_x allocations). The owner or operator of a new NO_x affected source shall establish a compliance account prior to the commencement of operations and is responsible to acquire any required NO_x allowances from those available in the NATS.

(b) Newly discovered NO_x affected sources not included in Appendix A which operated at any time between May 1 and September 30, 1990, shall comply with § 123.101—123.116, 123.118—123.121 and this section within 1-calendar year from the date of discovery. For those sources which notify the Department by _____(*Editor's Note:* The blank refers to a date 6 months after the effective date of adoption of this proposal), the Department will petition the OTC to include the emissions in the NO_x MOU Budget and provide NO_x allowances to the source using the historical May 1 to September 30, 1990, emissions reduced as specified in § 123.116(b)(2)(i) (relating to source opt-in provisions).

§ 123.118. Emission reduction credit provisions.

(a) NO_x affected sources may create, transfer and use emission reduction credits in accordance with Chapter 127 (relating to construction, modification, reactivation and operation of sources) and this section.

(b) Emission reductions made through overcontrol, curtailment or shutdown for which allowances are banked are not surplus and may not be used to create ERCs.

(c) A NO_x affected source may transfer NO_x ERCs to a NO_x affected source if the new or modified NO_x affected source's ozone season allowable emissions do not exceed the ozone season portion of the baseline emissions which were used to generate the NO_x ERCs.

(d) A NO_x affected source may transfer NO_x ERCs to a non-NO_x affected source under the following conditions:

(1) The non-NO_x affected source's ozone season allowable emissions may not exceed the ozone season portion of the baseline emissions which were used to generate the NO_x ERCs.

(2) The NATS account for NO_x affected sources which generated ERCs transferred to non-NO_x affected sources shall be reduced to reflect the transfer of emissions regulated under §§ 123.101—123.117, 123.119—123.121 and this section to the NO_x nonaffected sources. The amount of annual NO_x allowances deducted shall be equivalent to that portion of the nonaffected source's NO_x control period allowable emissions which were provided for by the NO_x ERCs from the affected source.

(3) Allocations for NO_x allowance control periods following 2002 to the NO_x ERC generating source may not include the allowances identified in paragraph (2).

§ 123.119. Bonus NO_x allowance awards.

(a) The Department may, upon receipt of a complete application by October 1, 1998, award a NO_x affected source with bonus NO_x allowances for certain emission reductions which are in excess of the OTC MOU reduction requirements and any applicable emission limits including RACT, and MACT, made during the 1997 and 1998 ozone seasons (May 1—September 30).

(b) Bonus NO_x allowances shall be calculated by multiplying the actual total heat input for the entire ozone season times the difference between the following:

(1) The after-control emission rate calculated using the average rate occurring during the 1997 or 1998 NO_x allowance control.

(2) The lower of the source's applicable emission rate for NO_x expressed in pounds of NO_x per MMBtu, or the baseline emission rate established in Appendix A after applying the following reduction, as applicable. The reduction for sources located in the outer zone is 55% or 0.2 lbs/MMBtu whichever is less, and for sources located in the inner zone, 65%, or 0.2 lbs/MMBtu whichever is less. The inner zone includes Berks, Bucks, Chester, Delaware, Montgomery and Philadelphia counties, and the outer zone includes the remaining counties within this Commonwealth.

(c) Applications shall include all information necessary to determine that the reductions meet the requirements of this section.

(d) On or before May 1, 1999, the Department will publish a report in the *Pennsylvania Bulletin* which documents the number of bonus NO_x allowances awarded.

§ 123.120. Audit.

(a) The Department will complete an audit of the program established by §§ 123.101—123.119, 123.121 and this section (relating to NO_x allowance requirements) prior to May 1, 2002, and at a minimum every 3 years thereafter. The audit shall including the following:

(1) The resulting geographic distribution of emissions as well as the hourly, daily and running average emission totals shall be examined in the context of ozone control requirements. This analysis shall be used in making a determination as to whether the zonal, seasonal and interseasonal trading and banking provisions of the rule require modification to ensure the reductions are as effective as daily emission limits on all sources would be at reducing ozone. If they are not, the NO_x allocations in § 123.115 (relating to initial NO_x allowance NO_x allocations) may be modified to provide for this level of effectiveness.

(2) Confirmation of emissions reporting accuracy through validation of NO_x allowance CEMS and data acquisition systems at the NO_x affected source.

(3) If emissions in excess of the NO_x allowances allocated occurred in any NO_x allowance control period, as a result of banking provisions, a determination whether or not the NO_x allowance banking provisions require modification or deletion.

(4) NO_x allowance banking privileges will be examined to determine whether they adversely influenced market availability and price of NO_x allowances or created unfair competitive advantages and if so, recommend amendments to rectify these problems.

(5) An assessment of whether the program is providing the level of emission reductions included in the current State Implementation Plan (SIP).

(b) In addition to the Department audit, the Department may seek a third party audit of the program. The third party audit can be implemented on a state by state basis or can be performed on a region-wide basis under the supervision of the Ozone Transport Commission.

(c) The operation of the program will be continuously monitored by the Department. The Department may, after notice in the *Pennsylvania Bulletin* and providing for a 60-day period of public comment, condition, limit, suspend or terminate any NO_x allowances or authorization to emit which the NO_x allowance represents if the following apply:

(1) Emissions in excess of the NO_x allowances allocated for a NO_x allowance control period occur.

(2) NO_x allowance banking privileges have adversely influenced factors including, but not limited to, market availability, or price of NO_x allowances, or created unfair competitive advantages.

(3) The program is not providing the level of emission reductions included in the SIP.

(d) The Department may modify the allowance allocation as provided in this section through the following procedure:

(1) The Department will provide written notice to the affected source.

(2) The Department will publish a notice in the *Pennsylvania Bulletin* providing for an opportunity for public comment. The notice will describe the proposed revisions and provide the name, address and telephone number of the person from whom the text of the proposed revisions can be obtained.

(3) The comment period will be at least 30 days from the date of the publication of the notice in paragraph (2).

(4) After the public comment period, the Department will evaluate the comments and finalize the proposed revisions to the allocations.

§ 123.121. Additional requirements for independent power producers.

(a) An independent power producer identified in Appendix A that emits NO_x, during any NO_x allowance control period at a level less than the allowances allocated to the independent power producer for the NO_x allowance control period shall retain 10% of the unused allowances from the current NO_x allowance control period allocation in the independent power producer's NATS compliance account for any present or future use. The remaining 90% of the unused allowances from the current NO_x allowance control period allocation shall be transferred on or before December 31 preceding the NO_x allowance control period to an account administered by the Department for economic growth and prosperity in this Commonwealth.

(b) Notwithstanding the provisions of subsection (a), an independent power producer identified in Appendix A that, after February 18, 1997, installs or installed an additional control device that reduces emissions of NO_x shall retain, in the independent producers' NATS compliance account for any present or future use, all of the unused allowances allocated to the independent power producer during any NO_x control period resulting from operation of the additional control device.

Appendix A

County	*Facility*	*Combustion Source Name*	*Point ID*	*Allowance*	*Baseline NO_x lb/MMBtu*	*Baseline MMBtu*
Adams	Met Edison Hamilton		031	4	0.59	18,716
Adams	Met Edison Ortanna		031	3	0.59	13,130
Adams	Metropolitan Edison Company	G.E. N Frame Turbine #1	031	17	0.45	89,908
Adams	Metropolitan Edison Company	G.E. N Frame Turbine #2	032	6	0.45	29,243
Adams	Metropolitan Edison Company	G.E. N Frame Turbine #3	033	14	0.45	74,249
Allegheny	Duquesne Light Company, Brunot	Boiler	001	0	0.48	2,492
Allegheny	Duquesne Light Company, Brunot	Boiler	002	1	0.48	3,136
Allegheny	Duquesne Light Company, Brunot	Boiler	003	1	0.49	2,674
Allegheny	Duquesne Light Company, Brunot	Boiler	004	0	0.48	2,156
Allegheny	Duquesne Light Company, Brunot	Boiler	006	1	0.48	6,818
Allegheny	Duquesne Light Company, Brunot	Boiler	008	2	0.48	9,380
Allegheny	Duquesne Light Company, Cheswick	Boiler	001	2,116	0.61	15,025,580
Armstrong	Penelec - Keystone	Boiler No. 1	031	4,101	0.80	25,149,236
Armstrong	Penelec - Keystone	Boiler No. 2	032	3,694	0.70	22,657,898
Armstrong	West Penn Power Co.	Foster Wheeler	031	1,141	0.95	5,355,101
Armstrong	West Penn Power Co.	Foster Wheeler	032	1,066	1.02	5,007,467
Beaver	AES Beaver Valley Partners, Inc.	Babcock and Wilcox	032	314	0.83	1,747,462
Beaver	AES Beaver Valley Partners, Inc.	Babcock and Wilcox	033	257	0.83	1,431,342
Beaver	AES Beaver Valley Partners, Inc.	Babcock and Wilcox	034	297	0.83	1,655,847
Beaver	AES Beaver Valley Partners, Inc.	Babcock and Wilcox	035	123	0.81	683,951
Beaver	Penn Power Co. - Bruce Mansfield	Boiler Unit 1	031	2,996	0.90	16,618,929
Beaver	Penn Power Co. - Bruce Mansfield	Foster Wheeler Unit No. 2	032	3,870	0.90	21,464,786
Beaver	Penn Power Co. - Bruce Mansfield	Foster Wheeler Unit 3	033	3,507	0.70	19,455,843
Beaver	Zinc Corporation Of America	Coal Boiler 1	034	241	0.80	1,380,627
Beaver	Zinc Corporation Of America	Coal Boiler 2	035	204	0.80	1,168,776
Berks	Metropolitan Edison Co. - Titus	Unit 1	031	205	0.65	1,836,587
Berks	Metropolitan Edison Co. - Titus	Unit 2	032	183	0.68	1,632,072
Berks	Metropolitan Edison Co. - Titus	Unit 3	033	202	0.66	1,805,003

County	Facility	Combustion Source Name	Point ID	Allow-ance	Baseline NO_x lb/MMBtu	Baseline MMBtu
Berks	Metropolitan Edison Co. - Titus	No. 4 Combustion Turbine	034	2	0.44	20,010
Berks	Metropolitan Edison Co. - Titus	No. 5 Combustion Turbine	035	2	0.44	15,484
Blair	Penelec - Williamsburg	No. 11 Boiler - Rily	031	38	0.87	200,874
Bucks	PECO Energy - Croyden	Croyden - Turbine #11	031	11	0.70	42,451
Bucks	PECO Energy - Croyden	Croyden - Turbine #12	032	7	0.70	26,382
Bucks	PECO Energy - Croyden	Croyden - Turbine #21	033	44	0.70	175,640
Bucks	PECO Energy - Croyden	Croyden - Turbine #22	034	20	0.70	81,649
Bucks	PECO Energy - Croyden	Croyden - Turbine #31	035	11	0.70	42,534
Bucks	PECO Energy - Croyden	Croyden - Turbine #32	036	14	0.70	54,905
Bucks	PECO Energy - Croyden	Croyden - Turbine #41	037	8	0.70	30,191
Bucks	PECO Energy - Croyden	Croyden - Turbine #42	038	37	0.70	152,094
Bucks	United States Steel Corp., The	Power House Boiler No. 3	043	63	0.26	655,625
Bucks	United States Steel Corp., The	Power House Boiler No. 4	044	14	0.27	147,330
Bucks	United States Steel Corp., The	Power House Boiler No. 5	045	73	0.26	756,980
Bucks	United States Steel Corp., The	Power House Boiler No. 6	046	85	0.26	871,810
Cambria	Cambria CoGen Company	A Boiler	031	200	0.24	2,003,177
Cambria	Cambria CoGen Company	B Boiler	032	212	0.23	2,116,233
Cambria	Colver Power Project			411	0.20	4,112,640
Cambria	Ebensburg Power Company	CFB Boiler		206	0.08	2,058,858
Cambria	Ebensburg Power Company	Aux Boiler		1	0.13	5,236
Carbon	Panther Creek Energy Facility	Boiler 1		116	0.12	1,543,574
Carbon	Panther Creek Energy Facility	Boiler 2		117	0.12	1,553,778
Chester	PECO Energy - Cromby	Boiler No 1	031	247	0.82	1,660,770
Chester	PECO Energy - Cromby	Boiler No 2	032	187	0.28	1,257,120
Clarion	Piney Creek Project	CFB Boiler		122	0.18	1,217,989
Clearfield	Penelec - Shawville	Babcock Wilcox Boiler	031	832	1.22	3,737,976
Clearfield	Penelec - Shawville	Babcock Wilcox Boiler	032	807	1.21	3,624,416
Clearfield	Penelec - Shawville	Combustion Engineering	033	1,015	0.86	4,558,942
Clearfield	Penelec - Shawville	Combustion Engineering	034	823	0.87	3,697,889
Clinton	International Paper Co.	1 Riley Stoker Vo-Sp	033	143	0.55	1,220,703
Clinton	International Paper Co.	2 Riley Stoker Vo-Sp	034	142	0.55	1,218,878
Clinton	International Paper Co.		037	33	0.32	283,298
Columbia	Penelec - Benton		002	2	2.33	2,661
Columbia	Penelec - Benton		003	1	2.93	2,330
Cumberland	Metropolitan Edison Company	G.E. N Frame Turbine #1	031	9	0.45	46,665
Cumberland	Metropolitan Edison Company	G.E. N Frame Turbine #1	032	11	0.45	55,480
Delaware	BP Oil, Inc.	7 Boiler	032	35	0.37	331,917
Delaware	BP Oil, Inc.	8 Boiler	033	58	0.48	535,337
Delaware	BP Oil, Inc.		038	191	0.55	1,789,455
Delaware	PECO Energy - Eddystone	No. 1 Boiler	031	664	0.54	5,571,014
Delaware	PECO Energy - Eddystone	No. 2 Boiler	032	432	0.55	3,629,294
Delaware	PECO Energy - Eddystone	No. 3 Boiler	033	256	0.28	2,153,713
Delaware	PECO Energy - Eddystone	No. 10 Gas Turbine	037	1	0.49	9,464
Delaware	PECO Energy - Eddystone	No. 20 Gas Turbine	038	1	0.48	7,560
Delaware	PECO Energy - Eddystone	No. 30 Gas Turbine	039	2	0.48	19,502
Delaware	PECO Energy - Eddystone	No. 40 Gas Turbine	040	1	0.49	9,450
Delaware	PECO Energy - Eddystone	No. 4 Boiler	041	249	0.28	2,089,539
Delaware	Scott Paper Co.	Boiler No. 9	034	12	0.52	264,600
Delaware	Scott Paper Co.	10 Culm Cogen. Fbc Plant	035	75	0.08	1,602,169
Delaware	Sun Refining & Marketing		089	46	0.09	1,211,002
Delaware	Sun Refining & Marketing		090	185	0.08	4,927,837
Elk	Penntech Papers, Inc.	B&W Model Pm106 Boiler #6	038	0	0.00	0
Elk	Penntech Papers, Inc.	B & W #81 Boiler	040	103	0.83	570,989
Elk	Penntech Papers, Inc.	B&W #82 Boiler	041	109	0.83	603,471
Erie	General Electric Co.	B & W Boiler No. 2	032	26	1.01	587,180
Erie	International Paper Company	Coal Fired Boiler No. 21	037	40	0.58	321,958

County	Facility	Combustion Source Name	Point ID	Allowance	Baseline NO_x lb/MMBtu	Baseline MMBtu
Erie	International Paper Company	Recovery Boiler No.22	040	32	0.55	262,300
Erie	Norcon Power Partners	Turbine 1	001	50	0.07	1,483,488
Erie	Norcon Power Partners	Turbine 2	002	50	0.07	1,483,488
Erie	Penelec - Front Street	Erie City Iron Works No.7	031	5	0.92	38,964
Erie	Penelec - Front Street	Erie City Iron Works No.8	032	5	0.90	39,881
Erie	Penelec - Front Street	Comb. Eng. Boiler No.9	033	134	0.57	1,033,388
Erie	Penelec - Front Street	Comb. Eng. Boiler No.10	034	134	0.57	1,033,528
Greene	West Penn Power - Hatfield's Ferry	Babcock & Wilcox	031	3,981	1.04	15,502,912
Greene	West Penn Power - Hatfield's Ferry	Babcock & Wilcox	032	3,705	1.04	14,429,251
Greene	West Penn Power - Hatfield's Ferry	Babcock & Wilcox	033	2,162	1.04	8,416,290
Indiana	Penelec - Conemaugh	Boiler No. 1	031	3,305	0.76	20,130,686
Indiana	Penelec - Conemaugh	Boiler No. 2	032	4,194	0.76	25,543,024
Indiana	Penelec - Homer City	Boiler No. 1-Foster Whelr	031	2,349	1.20	11,325,278
Indiana	Penelec - Homer City	Boiler No. 2-Foster Whelr	032	3,191	1.20	15,382,211
Indiana	Penelec - Homer City	Boiler No. 3- B.& W.	033	4,554	0.62	21,951,003
Indiana	Penelec - Seward	Boiler No. 12 (B&W)	032	141	0.79	849,307
Indiana	Penelec - Seward	Boiler No. 14 (B&W)	033	134	0.83	809,011
Indiana	Penelec - Seward	Boiler No. 15 (Comb.Eng.)	931	689	0.75	4,155,275
Lackawanna	Archbald Power Corporation	Cogen		82	0.05	818,013
Lancaster	PP&L - Holtwood	Unit 17 Foster Wheeler	934	808	1.05	3,553,318
Lawrence	Penn Power Co. - New Castle	Foster Wheeler	031	108	0.91	553,994
Lawrence	Penn Power Co. - New Castle	B.W. Boiler	032	97	0.91	498,559
Lawrence	Penn Power Co. - New Castle	Babcock And Wilcox	033	185	0.91	947,292
Lawrence	Penn Power Co. - New Castle	Babcock And Wilcox	034	340	0.91	1,737,996
Lawrence	Penn Power Co. - New Castle	Babcock And Wilcox	035	623	0.91	3,183,091
Luzerne	Continental Energy Associates	Turbine		269	0.13	2,687,577
Luzerne	Continental Energy Associates	HRSG		129	0.20	1,288,248
Luzerne	UGI Corp. - Hunlock Power	Foster Wheeler	031	375	0.95	1,821,127
Monroe	Met Edison Shawnee		031	3	0.59	15,285
Montgomery	Merck Sharp & Dohme	Cogen II Gas Turbine	039	79	0.16	1,028,875
Montour	PP&L - Montour	Montour No. 1	031	3,586	0.77	18,669,673
Montour	PP&L - Montour	Montour No. 2	032	4,704	0.98	24,489,052
Montour	PP&L - Montour	Aux.Start-Up Boiler No. 1	033	9	0.17	44,436
Montour	PP&L - Montour	Aux.Start-Up Boiler No. 2	034	7	0.17	34,076
Northampton	Bethlehem Steel Corp.	Boiler 1 Boiler House 2	041	92	0.23	Confidential
Northampton	Bethlehem Steel Corp.	Boiler 2 Boiler House 2	042	92	0.23	Confidential
Northampton	Bethlehem Steel Corp.	Boiler 3 Boiler House 2	067	93	0.23	Confidential
Northampton	Met Edison Co. - Portland	Unit No. 1	031	494	0.59	3,593,611
Northampton	Met Edison Co. - Portland	Unit No. 2	032	629	0.66	4,578,297
Northampton	Met Edison Co. - Portland	Combustion Turbine No. 3	033	1	0.53	9,795
Northampton	Met Edison Co. - Portland	Combustion Turbine No. 4	034	6	0.53	40,931
Northampton	Northampton Generating Company	Boiler	001	210	0.10	4,208,112
Northampton	PP&L - Martins Creek	Foster-Wheeler Unit No. 1	031	409	1.19	2,825,705
Northampton	PP&L - Martins Creek	Foster-Wheeler Unit No. 2	032	449	0.91	3,102,923
Northampton	PP&L - Martins Creek	C-E Unit No. 3	033	825	0.51	5,696,956
Northampton	PP&L - Martins Creek	C-E Unit No. 4	034	743	0.50	5,132,553
Northampton	PP&L - Martins Creek	No. 3a Auxiliary Boiler	035	1	0.17	4,592
Northampton	PP&L - Martins Creek	No. 4b Auxiliary Boiler	036	1	0.17	2,394
Northampton	PP&L - Martins Creek	Combustion Turbine No. 1	037	30	0.02	206,640
Northampton	PP&L - Martins Creek	Combustion Turbine No. 2	038	30	0.02	206,640
Northampton	PP&L - Martins Creek	Combustion Turbine No. 3	039	30	0.02	206,640
Northampton	PP&L - Martins Creek	Combustion Turbine No. 4	040	30	0.02	206,640
Northumberland	Foster Wheeler Mt. Carmel Cogen	Cogen	031	181	0.10	1,814,911
Philadelphia	Allied Chemical Corp	Boiler	050	9	0.44	90,250
Philadelphia	Allied Chemical Corp	Boiler	051	12	0.63	125,819
Philadelphia	Allied Chemical Corp	Boiler	052	56	0.50	565,480
Philadelphia	Container Corporation Of America	Boiler	001	201	0.10	4,344,433
Philadelphia	PECO Energy		037	28	0.60	117,455

County	Facility	Combustion Source Name	Point ID	Allowance	Baseline NO_x lb/MMBtu	Baseline MMBtu
Philadelphia	PECO Energy		038	37	0.60	156,375
Philadelphia	PECO Energy - Delaware		013	111	0.45	918,037
Philadelphia	PECO Energy - Delaware		014	129	0.45	1,066,091
Philadelphia	PECO Energy - Delaware		015	1	0.67	7,089
Philadelphia	PECO Energy - Delaware		016	1	0.67	9,452
Philadelphia	PECO Energy - Delaware		017	1	0.67	11,259
Philadelphia	PECO Energy - Delaware		018	2	0.67	15,012
Philadelphia	PECO Energy - Schuylkill		003	175	0.28	1,459,923
Philadelphia	PECO Energy - Schuylkill		007	1	0.67	9,285
Philadelphia	PECO Energy - Schuylkill		008	0	0.67	1,946
Philadelphia	Phila Thermal - Sansom		001	31	0.45	318,459
Philadelphia	Phila Thermal - Sansom		002	27	0.45	280,748
Philadelphia	Phila Thermal - Sansom		003	12	0.45	126,824
Philadelphia	Phila Thermal - Sansom		004	15	0.45	155,123
Philadelphia	Phila Thermal - Schuylkill		001	49	0.28	511,191
Philadelphia	Phila Thermal - Schuylkill		002	22	0.28	228,162
Philadelphia	Phila Thermal - Schuylkill		005	24	0.45	248,138
Philadelphia	Sun Refining And Marketing 1 Of 2		006	49	0.45	513,255
Philadelphia	Sun Refining And Marketing 1 Of 2		007	81	0.44	837,798
Philadelphia	Sun Refining And Marketing 1 Of 2		038	57	0.41	589,265
Philadelphia	Sun Refining And Marketing 1 Of 2		039	57	0.41	589,265
Philadelphia	U. S. Naval Base		098	1	0.14	14,294
Philadelphia	U. S. Naval Base		099	0	0.14	1,960
Schuylkill	Gilberton Power Company	Boiler		335	0.17	3,352,372
Schuylkill	Northeastern Power Company	CFB Boiler		202	0.06	2,022,148
Schuylkill	Northeastern Power Company	Aux Boiler		0	0.27	1,396
Schuylkill	Schuylkill Energy Resources	Boiler	031	435	0.20	4,349,117
Schuylkill	Westwood Energy Properties	Boiler		135	0.17	1,351,408
Schuylkill	Wheelabrator Frackville Energy Co	Boiler		205	0.14	2,046,694
Snyder	PP&L - Sunbury	Sunbury SES Unit 1a	031	310	0.85	1,679,317
Snyder	PP&L - Sunbury	Sunbury SES Unit 1b	032	310	0.85	1,679,317
Snyder	PP&L - Sunbury	Sunbury SES Unit 2a	033	309	0.72	1,679,197
Snyder	PP&L - Sunbury	Sunbury SES Boiler 2b	034	309	0.72	1,679,197
Snyder	PP&L - Sunbury	Sunbury SES Unit No. 3	035	653	0.88	3,542,301
Snyder	PP&L - Sunbury	Sunbury SES Unit No. 4	036	795	0.93	4,312,439
Snyder	PP&L - Sunbury	Diesel Generator 1	037	0	3.39	709
Snyder	PP&L - Sunbury	Diesel Generator 2	038	0	3.23	806
Snyder	PP&L - Sunbury	Combustion Turbine 1	039	3	0.49	14,581
Snyder	PP&L - Sunbury	Combustion Turbine 2	040	3	0.49	14,581
Tioga	Penelec - Tioga		031	3	0.48	30,267
Vernango	Scrubgrass Power Plant	Unit 1	031	182	0.14	1,816,817
Venango	Scrubgrass Power Plant	Unit 2	032	179	0.15	1,790,997
Warren	Penelec - Warren	Boiler No. 1	031	76	0.62	569,825
Warren	Penelec - Warren	Boiler No. 2	032	73	0.64	546,534
Warren	Penelec - Warren	Boiler No. 3	033	77	0.61	572,007
Warren	Penelec - Warren	Boiler No. 4	034	80	0.61	596,377
Warren	Penelec - Warren		001	11	0.69	77,943
Washington	Duquesne Light Co. - Elrama	No. 1 Boiler	031	334	0.87	1,116,538
Washington	Duquesne Light Co. - Elrama	No. 2 Boiler	032	333	0.90	1,114,175
Washington	Duquesne Light Co. - Elrama	No. 3 Boiler	033	446	0.87	1,490,615
Washington	Duquesne Light Co. - Elrama	No. 4 Boiler	034	1,017	0.89	3,398,150
Washington	McGraw-Edison Co.	Foster-Wheeler	032	0	0.00	0
Washington	Washington Power Co.	Boiler 1		155	0.15	2,068,438
Washington	Washington Power Co.	Boiler 2		155	0.15	2,068,438
Washington	West Penn Power Co. - Mitchell	Combustion Eng Coal Unit	034	932	0.72	5,968,482
Wayne	Penelec - Wayne		031	11	0.84	62,736
Westmoreland	Monessen Inc.	Boiler House	031	42	0.15	587,980

County	Facility	Combustion Source Name	Point ID	Allowance	Baseline NO_x lb/MMBtu	Baseline MMBtu
Wyoming	Procter & Gamble Paper Products Co.	Westinghouse 251B10	035	246	0.68	1,654,800
York	Glatfelter, P. H. Co.	1 Recovery Boiler & Dce	031	82	0.17	663,631
York	Glatfelter, P. H. Co.	Number 4 Power Boiler	034	122	0.80	978,985
York	Glatfelter, P. H. Co.	Number 1 Power Boiler	035	62	0.80	500,276
York	Glatfelter, P. H. Co.	Number 5 Power Boiler	036	199	0.29	1,602,840
York	Met Edison Tolna		031	4	0.59	20,492
York	Met Edison Tolna		032	4	0.59	19,306
York	PP&L - Brunner Island	Brunner Island 2	032	1,476	0.63	10,260,211
York	PP&L - Brunner Island	Brunner Island Unit 1	931	1,300	0.61	9,037,867
York	PP&L - Brunner Island	Brunner Island Unit 3	933	2,910	0.71	20,238,806

[Pa.B. Doc. No. 97-557. Filed for public inspection April 11, 1997, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 117]
Anti-Arson Application

The Insurance Department (Department) proposes to delete Chapter 117 (relating to anti-arson application) to read as set forth in Annex A. The Department proposes the deletions under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412), The Insurance Department Act of 1921 (40 P. S. §§ 1—321), The Insurance Company Law of 1921 (40 P. S. §§ 341—991) and the Anti-Arson Application Law (act) (40 P. S. §§ 1615.1—1615.11). The Department is publishing the deletion of the regulations as proposed rulemaking to allow for public comment. The regulations require an insurance company issuing a commercial monoline fire policy insuring property located in this Commonwealth against the peril of fire to secure a completed anti-arson application and specify the required content of the anti-arson application. The regulations further require an insured to update the information contained in the application and requires the company to retain the application for 5 years.

Purpose

The purpose of this rulemaking is to delete Chapter 117, to eliminate outdated regulations which do not serve any compelling public purpose. The regulations were promulgated in 1987 to implement the regulatory provisions of the act. Section 4 of the act (40 P. S. § 1615.4) mandates the use of the anti-arson application for commercial monoline fire policies, designated types of occupancies and designated geographic areas if, after public hearing, the Insurance Commissioner (Commissioner) designates the class as subject to an abnormally high number of claims resulting from arson. In 1986, the Commissioner designated the commercial monoline fire policy as particularly prone to arson and the Department promulgated the subject regulations to clarify the requirements relating to the anti-arson application. See 17 Pa.B. 20 (January 3, 1987).

Following careful review, the Department proposes the deletion of these regulations for the following reasons. First, under the regulations, only companies issuing commercial monoline fire policies need to secure anti-arson application information. Commercial fire insurance is usually sold as a package along with liability and other business lines of insurance; it is generally not issued as a single or monoline policy. Therefore, the regulations have limited practical application. Second, subsequent to the adoption of the regulations, no issues relating to arson affecting commercial monoline fire policies have been raised before the Commissioner. The lack of activity over a 10-year period indicates that the regulatory requirements in this area do not serve any compelling public interest. Third, because no method to accurately measure the effect of the anti-arson application requirement was ever implemented, the appropriateness and necessity of the requirement cannot be demonstrated at this time.

Under the act, the Commissioner retains the authority to require anti-arson applications at a future time if it is found that commercial monoline policies have become subject to an abnormally high number of claims resulting from arson.

Fiscal Impact

Property owned and insured by the Commonwealth or its political subdivisions is excluded from the purview of these regulations. Consequently, the Department has determined that the proposed deletion will have no fiscal impact on the Commonwealth or local government entities.

The deletion of the regulations will remove costs placed upon insurance companies, insurance agents and brokers and applicants for commercial fire insurance due to the elimination of the requirement that companies collect and maintain information on the anti-arson application. The impact is nevertheless expected to be unremarkable because commercial monoline policies insuring against the peril of fire are seldom issued.

Persons Regulated

The regulations apply to all insurance companies issuing policies of property insurance where coverage includes the peril of fire. Only companies issuing commercial monoline fire policies need to secure anti-arson application information under these regulations. Comments were received from the Insurance Federation of Pennsylvania, Inc. recommending the deletion of these regulations as outmoded and unnecessary.

Paperwork

The deletion of these regulations will not impose additional paperwork requirements on the Department, insurance companies, insurance agents or brokers, the Commonwealth or the general public. To the extent that commercial monoline fire insurance policies are issued insuring property in this Commonwealth, the deletion of these regulations will reduce paperwork for insurance companies, agents and brokers and applicants.

Effective/Sunset Date

The Department plans to adopt the date of final publication in the *Pennsylvania Bulletin* as the effective date. Because the rulemaking proposes the deletion of obsolete regulations, no sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Victor DiCicco, Chief, Field Investigations Division, Bureau of Enforcement, 1321 Strawberry Square, Harrisburg, PA 17120, (717) 783-2627, within 30 days of the publication of this notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 28, 1997, the Department submitted a copy of this proposal to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. In addition to submitting this proposal, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department 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 proposal, 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 the regulations by the Department, the General Assembly and the Governor of objections raised.

LINDA S. KAISER,
Insurance Commissioner

Fiscal Note: 11-150. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE

CHAPTER 117. **[ANTI-ARSON APPLICATION] (Reserved)**

§ 117.1. **[Purpose and scope] (Reserved).**

[(a) *Purpose.* This chapter interprets and implements the Anti-Arson Application Law (40 P. S. §§ 1615.1—1615.11), by providing the method by which insurance companies are to obtain the disclosure of information to control the incidence of arson fraud and designating the instances in which the use of anti-arson application is mandatory.

(b) *Scope.* This chapter applies to insurance companies issuing policies of property insurance in which coverage includes the peril of fire.]

§ 117.2. **[Definitions] (Reserved).**

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

***Act*—The Anti-Arson Application Law (40 P. S. §§ 1615.1—1615.11).**

***Anti-arson application*—An application for insurance covering the peril of fire that elicits the disclosure of information required by this chapter.**

***Commercial Monoline Fire Policy*—An insurance policy on a commercial or industrial premise in which coverage is limited to the perils of fire, lightning and removal. The term also includes an insurance policy on a commercial or industrial premise in which coverage is limited to the perils of fire, lightning, removal and extended coverage—including windstorm or hail, smoke, explosion, riot or civil commotion, aircraft and vehicle, vandalism or malicious mischief.**

***Commissioner*—The Insurance Commissioner of the Commonwealth.**

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

***Designated area*—A geographic area designated in this chapter as having an abnormally high incidence of arson.**

***Designated occupancy*—An occupancy designated in this chapter as having an abnormally high incidence of arson.**

***Insurance policy*—Written evidence of new insurance, including a contract of insurance, providing coverage from the peril of fire. Except for the assignment of an existing insurance policy because of the transfer of a financial interest of 25% or more in the insured property, the renewal of an existing insurance policy does not constitute evidence of new insurance.**

***Insurance company*—An insurer authorized to transact the business of insurance in this Commonwealth and empowered to issue policies of insurance against loss by the peril of fire, including the Pennsylvania Fair Plan created under The Pennsylvania Fair Plan Act (40 P. S. §§ 1600.101—1600.502).**

***Occupancy*—The use of a property or the type of structure on a property.**

***Peril of fire*—A peril characterized by burning including the peril of explosion.**

***Property*—Real property and the buildings and improvements thereon.]**

§ 117.3. **[Anti-arson application—designation] (Reserved).**

[(a) An insurance company issuing a Commercial Monoline Fire Policy to insure property against peril of fire after January 2, 1987 shall first secure from the insured a completed anti-arson application.

(b) The necessity of securing an anti-arson application from an insured does not preclude an insurance company from issuing a binder prior to acceptance of the risk.]

§ 117.4. **[Anti-arson application—content] (Reserved).**

[An anti-arson application shall comply with the following requirements:

(1) The anti-arson application shall be signed and affirmed by the insured and shall contain the following language:

I (we) certify that all information contained herein is true and correct to the best of my (our) knowledge and belief. I (we) acknowledge that this statement is signed under the pains and penalties of perjury and any material false statement contained herein is punishable pursuant to 18 Pa.C.S. § 4904(b). I (we) acknowledge that this application shall constitute a part of any policy issued whether attached or not and that any willful concealment or misrepresentation of a material fact or circumstance shall be deemed grounds to void any policy issued. I (we) acknowledge that I (we) must notify the insurer in writing of any change in the information contained in this application within 60 days.

(2) The anti-arson application shall secure, at a minimum, the disclosure of the following information:

(i) The name and address of the applicant.

(ii) The applicant's relationship to the property.

(iii) The location of the property and type of occupancy.

(iv) If the applicant is other than an individual or sole proprietor, the name, address, position and percentage of interest of the following:

(A) Shareholders possessing an ownership interest of 25% or more, except for closed corporations in which case all owners shall be listed.

(B) Partners, including limited partners, possessing an ownership interest of 25% or more.

(C) Trustees and beneficiaries.

(v) The name and address of a mortgagee or a party who has an ownership interest in the property, other than ownership interests disclosed under subparagraph (iv), and the degree of interest of the party.

(vi) Mortgage payments on the property which are overdue by 3 months or more, the name of the mortgagee, the amount owed and the date due.

(vii) Other encumbrances against the property.

(viii) Tax liens against the property or business, and the nature, extent and due date of taxes which are unpaid or overdue for a period of 1 year or more.

(ix) Current fire, safety, health, building or construction code violations on the property to be insured and the nature of the violations.

(x) The existence of a conviction against anyone with a financial interest in the property under subparagraphs (iv) and (v) for arson, fraud or another crime which resulted in a loss on property owned now or during the last 5 years.

(xi) Losses during the past 5 years which exceeded $1,000 in damage to the property to be insured or to property in which anyone with a financial interest in the property to be insured under subparagraphs (iv) and (v) had an equity interest or held a mortgage—except mortgages procured through Federal or State chartered lending institutions—and the nature, location, date and extent of the losses.

(xii) An existing or expected vacancy in the occupation of the property to be insured; the date, degree and nature of the vacancy; and the existence of protection from unauthorized entry in or on to the property. The applicant need not report the specific units subject to routine and temporary vacancies in apartment buildings, hotels or other residential facilities, but shall report the overall vacancy rate and vacancies of specific units for a period of more than a 3 month duration.

(xiii) A governmental order issued to vacate or destroy the property, or the classification of the property as uninhabitable or structurally unsafe.

(xiv) Damage to the property in excess of $1,000.

(xv) A disruption in the service of water, sewage, electricity or heat to the property which exceeds a period of 60 days.

(xvi) The refusal to write coverage on the property, or the cancellation or nonrenewal of coverage on the property within the past 3 years.

(xvii) The existence of other insurance covering, or which will cover, this property, including the name of the other insurance company, the date, status and number of the policy and the amount of insurance.

(xviii) The dates and sale prices in real estate transactions involving the property in the past 3 years.

(xix) The amount of insurance requested, the method of valuation used to establish the amount of insurance and the name and address of the person who determined the value.

(xx) The estimated replacement cost and fair market value—exclusive of land—of the property.

(3) A recommended anti-arson application which satisfies the disclosure requirements in paragraph (2) and which may be used without the prior approval of the Commissioner is provided in Appendix A. A company electing to use this preapproved form shall notify the Department in writing of its election to do so within 30 days of its use. Use of an anti-arson application other than that provided in Appendix A requires the prior filing with and approval of the Commissioner prior to use.]

§ 117.5. [Notice of change in the information contained in the anti-arson application] (Reserved).

[(a) An insured shall notify the insurance company in writing of a change in the information contained in the anti-arson application within 60 days from the date of the change.

(b) Failure by the insured to notify the insurance company of a material change in information contained in the anti-arson application, or a material misrepresentation in notification, constitutes grounds to void the insurance policy.]

§ 117.6. [Required record retention] (Reserved).

[(a) An anti-arson application secured by an insurance company under this chapter shall be retained in the files of the company for a period of 5 years from the date the policy is issued.

(b) Upon written request of the Commissioner, the company shall, within 30 days from the date of

the Commissioner's request, provide a written report of those applications for which coverage under the policy was denied due to a loss by fire. The company shall also provide the Commissioner copies of the applications, if requested.

(c) Upon written request of the State Police Fire Marshall, another appropriate law enforcement agency or the Fire Commissioner or Fire Chief of first, second, second class A and third class cities, the company shall provide copies of anti-arson applications relevant to the conduct of a fire investigation.]

§ 117.7. **[Exclusions] (Reserved).**

[This chapter does not apply to an insurance policy insuring against the peril of fire issued to cover any of the following:

(1) One- to four-family owner-occupied dwellings.

(2) Property owned and insured by the Commonwealth or its political subdivisions.]

§ 117.8. **[Penalties] (Reserved).**

[The Commissioner may impose a penalty of not more than $10,000 against an insurance company for a willful violation of the act.]

(*Editor's Note*: As part of this proposal, the Department is proposing to delete the text of Appendix A (relating to Anti-Arson Application) which appears at 31 Pa. Code pages 117-6—117-9, serial pages (115154) to 115156) and (155075).)

Appendix A. (Reserved)

[Pa.B. Doc. No. 97-558. Filed for public inspection April 11, 1997, 9:00 a.m.]

[31 PA. CODE CH. 113]

Mass Merchandising of Property and Casualty Insurance

The Insurance Department (Department) proposes to delete Chapter 113, Subchapter D (relating to mass merchandising of property and casualty insurance) to read as set forth in Annex A, under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); sections 601 and 621 of The Insurance Department Act of 1921 (40 P. S. §§ 231 and 251); section 354 of The Insurance Company Law of 1921 (40 P. S. § 477b); The Fire, Marine and Inland Marine Rate Regulatory Act (40 P. S. §§ 1221—1238); and The Casualty and Surety Rate Regulatory Act (40 P. S. §§ 1181—1199).

Purpose

The purpose of this rulemaking is to delete Subchapter D to eliminate redundant regulations. Adopted in 1971, the regulations were prescribed to prevent abuses in the mass merchandising of property and casualty insurance. The regulations imposed requirements on insurance companies licensed to do business in this Commonwealth, and on their agents, where mass merchandising is used as a method of selling. The regulations require the Department's approval of rates and policies prior to the sale of the insurance policies, and requires the licensure of agents who sell the policies. The regulations also prohibit specific sales practices. In addition, the regulations require the insurer to give notice to the insured prior to cancellation for nonpayment of premiums, to provide assistance in obtaining other insurance to individuals who are denied insurance under the mass merchandising plan and require the maintenance of statistics. The regulations are no longer necessary because their requirements merely repeat or duplicate present statutory requirements, are unduly burdensome or are no longer used.

Specifically, these regulations duplicate existing authorities governing the filing of insurance rates and policy forms. The Department has statutory authority to review property and casualty policy rates prior to use under The Fire, Marine and Inland Marine Rate Regulatory Act and The Casualty and Surety Rate Regulatory Act. The Department also has the existing authority to review property and casualty policy forms prior to use under section 354 of The Insurance Company Law of 1921. These regulations also repeat the requirement of agent licensure provided under sections 601 and 621 of the Insurance Department Act.

Further, the attempt to prevent specific abuses in the mass merchandising of property and casualty insurance is no longer necessary since the statutory authority to regulate unfair practices in the business of insurance exists under the Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.15) (UIPA). The requirement of providing written notice to the insured prior to cancellation for nonpayment of premiums exists under the act of June 5, 1968 (P. L. 140, No. 78) (40 P. S. §§ 1008.1—1008.11) known as Act 78, and relating to the cancellation and nonrenewal of private passenger automobile insurance, the act of July 3, 1986 (P. L 396, No. 86) (40 P. S. §§ 3401—3409) known as Act 86, and relating to commercial property and casualty risks, and in particular, section 5(a)(9) of the UIPA (40 P. S. § 1171.5(a)(9)) relating to owner occupied residential properties and personal property of individuals. Finally, the sections requiring the rendering of assistance to individuals in obtaining insurance is unduly burdensome and the report of statistics is no longer used by the Department.

Comments regarding the deletion of these regulations were solicited from the various trade associations representing the insurance industry. Comments were received from the Insurance Federation of Pennsylvania, Inc. This organization's comments were in agreement with the Department that the regulations are redundant to the authorizing statutes.

Fiscal Impact

The deletion of these sections will have no fiscal impact. Because of the redundancy of the regulatory provisions to authorizing statutes, the provisions of the regulations remain in effect under the statutes.

Paperwork

The deletion of these sections will have no effect on paperwork requirements.

Affected Parties

The deletion of these sections will affect insurers who are licensed to sell insurance in this Commonwealth.

Effectiveness/Sunset Date

The rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. Because the rulemaking proposes to delete redundant regulations, no sunset date has been assigned.

Contact Person

Questions and comments concerning this proposed rulemaking may be addressed to Randolph L. Rohrbaugh, Director, Property and Casualty Bureau, 1311 Strawberry Square, Harrisburg, PA 17120 (717) 787-4192, within 30 days of its publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 28, 1997, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of the material is available to the public upon request.

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

LINDA S. KAISER,
Insurance Commissioner

Fiscal Note: 11-144. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE

CHAPTER 113. MISCELLANEOUS PROVISIONS

Subchapter E. **[MASS MERCHANDISING OF PROPERTY AND CASUALTY INSURANCE] (Reserved)**

§ 113.51. **[Definitions] (Reserved).**

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

***Mass merchandising plan*—A method of selling property and casualty insurance wherein the insurance is offered to employes of particular employers or to members of particular associations, or organizations or to persons grouped in other ways; the insurer maintains its right to underwrite each individual risk; and the employer, association or organization has agreed to, or otherwise affiliated itself with, the sale of the insurance to those employes or members.**

***Property and casualty insurance*—Forms of fire, casualty and inland marine insurance.]**

§ 113.52. **[Applicability] (Reserved).**

[This subchapter shall apply only to insurance policies issued or renewed in this Commonwealth after its effective date, and may not apply to methods of merchandising other than "mass merchandising plans," as defined in § 113.51 (relating to definitions).]

§ 113.53. **[Purpose] (Reserved).**

[The purpose of this subchapter is to prescribe rules to prevent abuses in connection with the sale of property and casualty insurance in this Commonwealth under mass merchandising plans, while preserving for consumers the potential benefits of this form of merchandising.]

§ 113.54. **[Approval prior to sale or use] (Reserved).**

[Prior to the sale or use of a mass merchandising plan in this Commonwealth, the form and rates of the plan shall first be filed with and approved by the Insurance Commissioner under the provisions of section 354 of The Insurance Company Law of 1921 (40 P. S. § 477b) and the applicable rate regulatory act referred to in § 113.55 (relating to premium rates).]

§ 113.55. **[Premium rates] (Reserved).**

[Premium rates under a mass merchandising plan shall comply with the filing requirements and standards set forth in the insurance laws and regulations of the Commonwealth, particularly as set forth in The Casualty and Surety Rate Regulatory Act (40 P. S. § 1181—1199) and the Fire, Marine and Inland Marine Rate Regulatory Act (40 P. S. § 1221—1238). Rates will not be deemed to be unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, provided the rates reflect the differences with reasonable accuracy. Rates may not be deemed to be unfairly discriminatory if they are averaged broadly among persons insured under a mass merchandising plan.]

§ 113.56. **[Premium payments.] (Reserved).**

[Premiums for policies issued under mass merchandising plans may be paid by any of the following methods:

(1) By the sponsoring employer, association or organization, wholly from its own funds.

(2) Wholly from funds supplied by the insured employes or group participants through payroll deductions or other appropriate means.

(3) Partly from funds supplied by the sponsoring employer, association, organization or other group and partly by the insured employes or group participants.]

§ 113.57. **[Insurance agents or brokers] (Reserved).**

[(a) No person, sponsoring employer, association, organization or other group shall act as an insurance agent or insurance broker in connection with a mass merchandising plan for a kind of insurance, unless the person is licensed as an agent or broker for that kind of insurance, under sections 601 or 621 of The Insurance Department Act of 1921 (40 P. S. §§ 231 or and 251).

(b) For the purposes of this subchapter, none of the following activities engaged in by a sponsoring employer, association, organization or other group shall require the licensing of the entity as an insurance agent or broker:

(1) Uncompensated endorsement or recommendation of the mass merchandising program to its employes or members.

(2) Distribution, by mail or otherwise, to its employes or members of information pertaining to the mass merchandising program.

(3) Collection of premiums through payroll deductions or other appropriate means, and remittance of such to an insurer.

(4) Receipt of compensation from an insurer for administrative services in connection with the mass merchandising program, provided the compensation bears a reasonable relationship to the services actually performed. The amount of the compensation may not be based solely upon the amount of premiums paid or the number of employes or members participating in the program.

(5) Other activities as may, from time to time, be approved by the Insurance Commissioner.]

§ 113.58. **[Prohibited practices] (Reserved).**

[(a) *Compulsory participation.* No insurer may sell insurance under a mass merchandising plan if it is a condition of employment or of membership in an association, organization or other group that an employe or member purchase insurance under the plan, or if an employe, member or person will be subject to any penalty by reason of nonparticipation in the insurance program. A contribution by an employer or other group entity may not be deemed a penalty against a nonparticipant.

(b) *Tie-in sales.* No insurer may sell insurance under a mass merchandising plan which makes the purchase of insurance available under the plan contingent upon the purchase of another insurance, product or service, or the purchase of another insurance, product or service contingent upon the purchase of insurance available under the plan. This subsection may not be considered to prohibit the reasonable requirement of safety devices, such as heat detectors, lightning rods, theft prevention equipment and the like.]

§ 113.59. **[Underwriting standards] (Reserved).**

[No insurer may use underwriting standards for individual risk selection in a mass merchandising plan which are, on the whole, more restrictive than the standards used by the insurer for individual risk selection in the sale of the same kind of insurance in this Commonwealth other than under mass merchandising plans. If the insurer does not sell the kind of insurance in this Commonwealth other than under mass merchandising plans, its underwriting standards for individual risk selection in the plans shall, on the whole, be no more restrictive than the standards used by its principal affiliate, if any, for individual risk selection in the scale of the kind of insurance in this Commonwealth other than under mass merchandising plans. The insurer shall be willing to educate members through seminars, bulletins, safety programs and the like.]

§ 113.60. **[Failure to remit premiums] (Reserved).**

[The failure of an employer, association, organization or other group to remit premiums when due for any reason may not be regarded as nonpayment of premium by an insured under a plan providing for remittance of premium by the employer, association, organization or other group, until the insured shall have been given not less than 15 days written notice. The 15-day notice shall be calculated from the date of the receipt of the same by the insured.]

§ 113.61. **[Other insurance plans] (Reserved).**

[An insurer, agent or broker selling insurance under a mass merchandising plan shall, with respect to an employe or member who applies for but is denied insurance under the plan, assist the person in obtaining insurance through another appropriate existing voluntary or mandatory insurance plan, such as the Pennsylvania Assigned Risk Plan or the Pennsylvania Fair Plan.]

§ 113.62. **[Statistics to be maintained] (Reserved).**

[An insurer selling insurance under mass merchandising plans shall maintain separate statistics as to exposures, premiums, losses and expense experience pertinent thereto. The statistics shall be compiled in accordance with the company's statistical plans and reported annually in summary form to the Insurance Department by July 15 of each year, starting in 1974.]

[Pa.B. Doc. No. 97-559. Filed for public inspection April 11, 1997, 9:00 a.m.]

[31 PA. CODE CH. 137]
Miscellaneous

The Insurance Department (Department) proposes to delete Chapter 137 (relating to miscellaneous) to read as set forth in Annex A, under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412). Chapter 137 was previously promulgated under sections 213, 214 and 216 of The Insurance Department Act of 1921 (40 P. S. §§ 51, 52 and 54) (now repealed); the act of June 5, 1947 (P. L. 445, No. 202) (40 P. S. §§ 1151—1162) (now repealed); and The Casualty and Surety Rate Act (40 P. S. §§ 1181—1199).

Purpose

The purpose of this rulemaking is to delete Chapter 137 to eliminate obsolete regulations. The regulations, adopted in 1971, imposed several requirements on insurance companies licensed to do business in this Commonwealth. The regulations required companies to provide the Department with reports on unsafe products, to provide notification of internal consumer affairs programs and to practice honest advertising of insurance products. What follows is a description of the three sections of Chapter 137 and the reasons for the deletion of this chapter in its entirety.

Section 137.1 is presently a reserved section and will remain the same.

Section 137.2 (relating to report on unsafe products) requires insurers to report to the Department every 6

months on unsafe products as revealed by their claims data. The Department has determined that this information is not essential, the requirement has not been enforced and statutory authority already exists to request this information, if necessary. See 40 P. S. §§ 323.1—324.13. In addition, the requirement regarding unsafe products duplicates information required to be supplied by manufacturers, retailers and distributors to the Consumer Products Safety Commission of the Federal Government and, thus, need not be routinely collected by an insurance regulator.

Section 137.3 (relating to consumer affairs programs) requires insurance companies to establish a program to handle consumer complaints and to notify the Department of the corporate officer in charge. Further, the section requires that the program be structured to provide policyholders with access to a high level executive who reports directly to the board of directors of the company. The Department already monitors insurers' handling of consumer complaints through its market conduct examinations and requires compliance with the Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.15) (UIPA) and companion regulations, in Chapter 146 (relating to unfair insurance practices).

Section 137.4 (relating to advertising practices) requires insurers to advertise in an honest manner. This is already a requirement of, and is enforced through, section 5 of the UIPA (40 P. S. § 1171.5). Further, advertising is the subject of Chapter 51 (relating to advertising provisions).

Comments regarding the deletion of these regulations were solicited from the various trade associations representing the insurance industry. Comments were received from the American Insurance Association and the Insurance Federation of Pennsylvania, Inc. Both of these organizations were in agreement with the Department that the regulations are obsolete and serve no purpose. Comments were also received from Pennsylvania Blue Shield recommending that the sections of Chapter 137 be editorially amended if the chapter is not deleted.

Fiscal Impact

The Department estimates that 4 to 5 million claims are reviewed by Pennsylvania insurers annually. The cost of reviewing these claims for the purpose of identifying unsafe products, as well as the cost of developing a system for retrieving and reporting this information, would exceed $5 million annually. Therefore, the approximate savings of this deletion is estimated to be $5 million on an annual basis.

Paperwork

The deletion of these sections will decrease paperwork requirements for the affected parties in that the deletion eliminates unnecessary reporting requirements for the insurance industry.

Affected Parties

The deletion of these sections will affect insurers who are licensed to sell insurance in this Commonwealth.

Effectiveness/Sunset Date

The rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. Because the rulemaking proposes to delete obsolete regulations, no sunset date has been assigned.

Contact Person

Questions or comments regarding this proposed rulemaking may be addressed in writing to Diana Donovan, Special Assistant, Office of Special Projects, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, within 30 days of the publication of this notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 28, 1997, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to submitting this proposal, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of the material is available to the public upon request.

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

LINDA S. KAISER,
Insurance Commissioner

Fiscal Note: 11-141. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE

CHAPTER 137. **[MISCELLANEOUS] (Reserved).**

§ 137.2. **[Report on unsafe products] (Reserved).**

[The insurance industry's extensive data on unsafe and hazardous products shall be made available for analysis and disclosure to the public. Each insurer shall therefore submit to the Insurance Department, prior to January 31 and July 31 of each year, a report on unsafe products and products unreasonably prone to damage, as revealed by the claims and underwriting files of the company, and any other related files or studies undertaken during the 6 months previous to the reporting date. The reports should set forth relevant information including the brand names of the products in question.]

§ 137.3. **[Consumer affairs programs] (Reserved).**

[The prompt and equitable handling of consumer complaints and claims is an essential duty of insurance companies. Insurers which have not already undertaken the formation of a special department or designated a corporate officer for this purpose should do so prior to December 31, 1971. Each program should be structured to provide policyholders with access to a high level executive in the company who reports directly to the board of directors. The Insurance Department should be notified promptly upon the implementation of this program and advised in detail of the manner in which it is intended to function.]

§ 137.4. **[Advertising practices] (Reserved).**

[The advertising programs of many insurers do not reflect their actual underwriting policies. Advertising which gives the impression that a company is soliciting and serving a broad spectrum of policyholders at preferred rates, if the company is in fact accepting business only from a small and select segment of the insurance market or on a restricted basis, is misleading. The advertising practices of an insurer shall therefore be consistent with its actual underwriting practices and the Insurance Department will exert every effort to protect the insurance-buying public from misinformation.]

[Pa.B. Doc. No. 97-560. Filed for public inspection April 11, 1997, 9:00 a.m.]

LIQUOR CONTROL BOARD

[40 PA. CODE CHS. 3, 5, 7, 9, 11, 13 AND 15] Numerous Revisions

The Liquor Control Board (Board) under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), proposes to amend §§ 3.6, 3.31—3.33, 3.35—3.37, 3.51, 5.15, 5.16, 5.22, 5.23, 5.31, 7.1, 7.3—7.5, 7.7, 7.31, 7.32, 7.43, 7.51—7.54, 9.11, 9.13, 9.23, 9.24, 9.27—9.30, 11.21, 11.23, 11.42, 11.51, 11.62, 11.72, 11.172, 11.176, 11.181, 13.72 and 15.62.

Purpose

In accordance with Executive Order 1996-1, the Board has reviewed its licensing requirements and determined that these proposed amendments are necessary to alleviate some of the burdensome and unnecessary requirements which have been placed on licensees of the Board and applicants for various licenses and permits. Obsolete regulations which are no longer part of the Board's practice or procedure have also been amended or deleted.

Summary of Amendments

Chapter 3 (relating to applications). The application process has been amended relating to financial disclosure affidavit, photographs, fingerprints and interior connection to licensed premises.

Chapter 5 (relating to duties and rights of licensees). The requirement for possession of birth certificates of minors by employers has been deleted. The appointment of managers, and outside employment by retail licensees, has been liberalized. Amusement permits have been extended to coincide with multiple year licensing.

Chapter 7 (relating to transfer, extension, surrender and exchange of licenses). The proposed rulemaking seeks to amend the license application process as it relates to the number of applications required, abolishes the requirement that applicants be open and in operation before the license transfer is approved from one location to another, extends the reporting time upon the death of a licensee, reflects the fact that liquor licensees are issued two wholesale purchase permit cards, extends the time period a license (except a club license) may be held in escrow, replaces vehicle identification cards with emblems for Distributors and Importing Distributors and deletes Subchapter E (relating to suspension of licenses notice of suspension) in its entirety since suspension of licenses as it relates to agency practice and procedure is governed by the more recently enacted Chapter 15 (relating to special rules of administrative practice and procedure regarding matters before the Office of Administrative Law Judge).

Chapter 9 (relating to transportation, importation, disposition and storage). Vehicle identification windshield emblems will replace vehicle identification cards, transporter-for-hire licensees will no longer be required to file monthly reports with the Bureau of Liquor Control Enforcement and reference to the Federal Interstate Commerce Commission was deleted as this agency no longer exists.

Chapter 11 (relating to purchases and sales). The following permits will be issued for a 4-year term rather than annually as presently required: Wholesale Alcohol Purchase Permits, Wholesale Liquor Purchase Permits for registered pharmacists, hospitals, State-owned institutions, chemists and manufacturing pharmacists. Bulk purchase permits will also be issued for a 4-year term to nonbeverage manufacturers. The requirement for certification of Sunday sales figures by a public accountant or CPA has been deleted. The licensee will provide information in the application for or renewal of Sunday sales permit which supports 30% food and nonalcoholic beverage sales.

Chapter 13 (relating to promotion). The requirement for fingerprinting agents of liquor vendors has been eliminated inasmuch as this has not been a practice of the agency.

Chapter 15. Language relative to violation of a suspension order previously in Subchapter E was added to § 15.62 (relating to suspensions and revocations).

Affected Parties

This proposal affects the Board's licensees and permit holders as well as applicants for licenses and permits.

Paperwork Requirements

This proposal will not increase paperwork for the Board or for the licensees affected by the regulations. Paperwork will be reduced for license applicants, for permit applicants and for transporters-for-hire as well as for the Board.

Fiscal Impact

This proposal will have no adverse fiscal impact on the regulated community, the Commonwealth or local governments. Multiyear permit renewals represent a convenience to permit holders and a savings to the Board.

Effective Date/Sunset Date

This proposal will become effective upon final publication in the *Pennsylvania Bulletin*. No sunset date has been assigned.

Public Comment/Contact Person

Written comments, suggestions or objections will be accepted for 30 days of publication of this proposal in the *Pennsylvania Bulletin*. Comments should be addressed to Jerry Danyluk, Regulatory Coordinator, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 24, 1997, the Board submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Liquor Control and

the Senate Committee on Law and Justice. In addition to submitting the proposal, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board. A copy of this material is available to the public upon request.

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

JOHN E. JONES, III,
Chairperson

Fiscal Note: 54-50. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 3. LICENSE APPLICATIONS

Subchapter A. GENERAL PROVISIONS

§ 3.6. Individual financial disclosure affidavit.

* * * * *

[(b) Financing agreements identified in the report shall be attached to the report.

(c)] (b) ***

Subchapter D. PHOTOGRAPHS [,] AND CRIMINAL HISTORY RECORD INFORMATION CHECKS **[AND FINGERPRINTS]**

PHOTOGRAPHS

§ 3.31. Personal photographs.

(a) **[Two photographs] A photograph** shall be furnished **to the Board's representative** by the following:

* * * * *

(3) Applicants for registration as promotional/sales agents. **(Two photographs are required.)**

(b) **[Photographs] The photograph** shall:

(1) Be 1 1/2 inches square and unmounted **with a matte finish.**

* * * * *

§ 3.32. Photographs of premises.

(a) Applications for new Retail Liquor or Retail Dispenser Malt Beverage Licenses and applications for transfer thereof, except Public Service Licenses, shall be accompanied by **[four] two** photographs of the premises proposed to be licensed.

(b) **[Two photographs] One photograph** shall be a view of the exterior of the building, showing the street number, if any.

(c) **[Two photographs] One photograph** shall be a view of the main serving room.

(d) Applications for new Distributor and Importing Distributor Licenses and applications for transfer thereof shall be accompanied by **[two photographs] one photograph** each of the exterior of the principal place of business and additional storage warehouses, showing the street number, if any.

(e) Photographs shall:

(1) Be at least **[5] 4** by **[7] 6** inches in size **with a matte finish**.

* * * * *

§ 3.33. Renewal of photographs **of registered agents.**

[(a) Personal photographs of licensees, principal officers of a corporation, except public service and club licensees, and managers of licensed establishments shall be renewed every 3 years. The new photographs shall be filed with the application for renewal of license at regular 3-year intervals.

(b)] Personal photographs of registered agents shall be renewed every year. New photographs as required in § 3.31 (relating to personal photographs), shall be filed with each application for renewal of the registration of agents.

CRIMINAL HISTORY RECORD INFORMATION CHECKS **[FINGERPRINTS]**

§ 3.35. Persons from whom **[a]** criminal history record information **[check and fingerprints] checks** are required.

* * * * *

[(c) The Board may request the fingerprints of a person from whom a criminal history record information check is required.

(d) The request for fingerprints will be in writing. The person from whom fingerprints are requested shall comply within 15 days.]

§ 3.36. **[By whom taken] (Reserved).**

[Fingerprints required by § 3.35 (relating to persons from whom a criminal history record information check and fingerprints are required) will be taken by or in the presence of Board enforcement officers, or may be taken by the Pennsylvania State Police, the police of a municipality, county sheriffs, or county detectives or constabulary bureau, or both, of a municipality in this Commonwealth authorized and equipped to take fingerprints, which agency shall certify as follows:

I hereby certify that the fingerprints of_____ as portrayed on the attached fingerprint card were taken by the undersigned on the _____ day of _____, 19__ .

_____
Name

_____
Title]

§ 3.37. Failure to comply.

Failure to comply with **[§]** § 3.35 **[and 3.36]** (relating to persons from whom **[a]** criminal history record information **[check and fingerprints] checks** are required**[; and by whom taken]**) will be sufficient cause for refusal to grant, transfer or renew a license or for the issuance of a citation to show cause why a license may not be suspended or revoked.

Subchapter E. **LICENSING** HEARINGS

Subchapter F. PREMISES

EMPLOYMENT OF MINORS

§ 3.51. Connection with residence.

Licensed premises may not have an inside passage or communication to or with a residence other than the residence of the licensee**, corporate officer** or manager.

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter B. EMPLOYES OF LICENSEES

§ 5.15. **[Possession of birth certificates of minors by employer] (Reserved).**

[For the purposes of this subchapter, it shall be the duty of the employer to have in his possession on the licensed premises, and to produce on demand, a certified copy of the birth certificate, of any employe under the age of 21 years.]

§ 5.16. Appointment of managers.

(a) The operation of a licensed business requires the full time and attention of a manager. A licensee holding one or more licenses shall appoint an individual as manager for each licensed establishment and the manager shall devote full time and attention to the licensed business. If the licensee is an individual, he may designate himself as manager of one licensed establishment, except in the case of distributors or importing distributors. If a license is held by more than one individual, the manager may be one of the individuals or another person the licensee may designate, except in the case of distributors and importing distributors.

(b) The manager appointed by a licensee shall be a reputable person. The licensee shall notify the Board in writing of the name and home address of the manager and the date and place of birth. If there is a change of manager, the licensee shall **[immediately give to the Board written notice] give the Board written notice within 15 days** of the change together with full information for the new individual who is appointed as manager. Each notice of the appointment of a manager or notice of a change of manager shall be accompanied by a fee of $60 **[, except if a licensee or a corporate officer of a licensee is named manager].**

(c) When a background investigation shall be conducted to obtain or verify information regarding an individual appointed as manager, an additional fee of $75, for a total fee of $135, will be assessed. An individual may not act in the capacity of manager after the licensee has been notified that the individual has been disapproved by the Board. The designated manager shall devote full time to the licensed business and may not be employed or engaged in another business unless prior written approval is obtained from the Board.

EMPLOYMENT OF OTHERS

§ 5.22. Employment of licensees.

* * * * *

[(b) An individual holding a retail license in his own name is not permitted to be employed at, or engaged in another business, except the associated business as permitted under § 3.52 (relating to connection with other business). If the license is issued in the name of a partnership, it is permissible for the partners, except one, to have outside employment.

(c)] (b) An individual holding a Distributor or Importing Distributor License may not be employed in other work, **[nor] or**, as provided in section 492(12) of the Liquor Code (47 P. S. § 4-492(12)), engage in another business, on or off the licensed premises, without Board approval. If the license is issued in the name of a partnership, the Board may permit the partners, except one, to have outside employment. The partnership shall first secure written permission from the Board before its members may be employed in an occupation or enterprise other than the licensed business.

§ 5.23. Appointment of managers.

* * * * *

[(b) An individual may not act in the capacity of manager in a licensed establishment until the licensee has received approval from the Board. The following rules apply:

(1) The manager shall be a reputable resident of the United States, and the licensee shall immediately notify the Board in writing of his desire to appoint a manager, giving the name and home address of the manager and the date and place of birth.

(2) If there is a change of manager, the licensee shall immediately give to the Board written notice of the change, together with full information for the new individual desired to be appointed.

(3)] (b) ***

[(4)] (c) ***

[(c)] (d) In the event of the illness or extended vacation of a licensee, the Board may approve the appointment of a manager for a period not to exceed 30 days. In case of emergency, the approval may be extended upon written request of the licensee. **[The Board may waive the fee as prescribed in § 5.16 (relating to appointment of managers) for the temporary appointment of a manager.**

(d)] (e) ***

[(e)] (f) ***

* * * * *

Subchapter C. AMUSEMENT AND ENTERTAINMENT

§ 5.31. Amusement permit.

(a) *Requirements.*

* * * * *

(2) An application for an amusement permit may be filed with the Board at any time during the license **[year] period**. If issued, the permit will expire with the license **[of the licensee] and may be extended at the time of validation unless revoked or otherwise subject to suspension.**

* * * * *

CHAPTER 7. TRANSFER, EXTENSION, SURRENDER**[,] AND EXCHANGE [AND SUSPENSION]** OF LICENSES

Subchapter A. TRANSFER OF LICENSES

§ 7.1. Filing of applications for transfer.

Licenses issued by the Board, under Article IV of the Liquor Code (47 P. S. §§ 4-401—4-498), may be transferred in accordance with this subchapter. Applications for transfer of licenses may be filed at any time, but when filed within 30 days of the expiration date of the license term, the transfer shall apply to the renewal license only, except in the case of death. Applications for transfer shall be made on the regular transfer form, which shall be accompanied by **[two copies of]** the application for license, proper bond and remittance of proper fees in accordance with the applicable provisions of section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14A).

§ 7.3. Transfers of location.

(a) *Retail liquor or retail dispenser licenses.* If a retail liquor or retail dispenser licensee moves his place of business from one address to another, the new establishment shall be **[open for business and in] ready for** operation before the license transfer will be approved. **[A liquor] Liquor** or malt or brewed beverages may not be sold or served at the new establishment until formal approval of the transfer is given by the Board.

* * * * *

§ 7.4. Transfers of ownership and location.

[Where] When a transfer involves a change of both location and ownership, the new establishment, if retail liquor or retail dispenser, shall be **[open for business and in full] ready for** operation, **[except as to the sale of alcoholic beverages,]** before the license transfer will be approved. The new applicant shall satisfy the Board that he is the owner or lessee of the premises, the fixtures and equipment therein. **[A liquor] Liquor** or malt or brewed beverages may not be sold by the applicant until the transfer of the license has been approved. The transferor, provided his fixtures and equipment are not involved in the transfer, may continue to operate at his original place of business until notified that the transfer of the license to the applicant has been approved, at which time the license and Wholesale Purchase Permit Card, if any, shall be surrendered by the transferor to the Board.

§ 7.5. Transfers on death of the licensee.

On the death of the licensee, the license may be transferred immediately to the surviving spouse or to the administrator or executor of the estate of the licensee, upon presentation of the transfer form, application, bond transfer or filing fee, and short form certificate from the registrar of wills. **[Where] If** it is desired to transfer the license to a person designated by and acting for the administrator or executor, the transfer form application and the bond and fee, or both, with written evidence of the designation, shall be submitted by the administrator or executor. The Board will be notified in writing within **[5] 30** days of the death of a licensee.

§ 7.7. Approval of a transfer of license.

* * * * *

(b) During the interim, the original license and Wholesale Purchase Permit **[Card] Cards** shall be returned to the Board.

Subchapter C. SURRENDER OF LICENSES

§ 7.31. Surrender of licenses in certain cases.

(a) A licensee whose licensed establishment is not in operation for **[a period of]** 15-consecutive days shall return his license and, if a liquor **[license] licensee**, his Wholesale Purchase Permit **[Card] Cards**, to the Board not later than the expiration of the 15-day period. The return of the license and **[card] cards** will not invalidate the license, which will be held in safekeeping for the benefit of the licensee and be available for his use when operations are resumed at the licensed premises, or for transfer.

* * * * *

(c) If the license and Wholesale Liquor Purchase Permit **[Card] Cards** are not surrendered and returned voluntarily by the licensee, **[enforcement officers] authorized representatives** of the Board will lift and return the license and card to the Board.

(d) A license surrendered to the Board, or a renewal thereof in possession of the Board, will not be held for the benefit of the licensee for a period exceeding **[1 year] 2 years** from the date of surrender, except when, in the opinion of the Board, circumstances beyond the control of the licensee prevent reactivation and except as provided in section 474 of the Liquor Code (47 P. S. § 4-474) with regard to club licenses. Failure of the licensee to reactivate the license and resume operation of the licensed business or to effect a transfer of the license within the **[1] 2**-year period shall be sufficient cause for revocation of the license.

* * * * *

§ 7.32. Surrender of licenses for cancellations or transfer.

* * * * *

(c) **[Where] Except as provided by section 461(f) of the Liquor Code (47 P. S. § 4-461(f)), when** an application for transfer of a retail license of a different type to premises already licensed is approved, the license then in effect in the name of the applicant for that establishment shall be surrendered to the Board before the issuance of the transferred license in the name of the applicant. In **[such] this** case, the license surrendered to the Board, or a renewal thereof in possession of the Board, will be held available for the benefit of the licensee solely for transfer for **[a period of] up to [1 year] 2 years** from the date of surrender. When a transfer is not effected within the **[1] 2**-year period, the license will automatically be cancelled with no refund of the license fee, or a portion thereof. A transfer application pending at the expiration of the **[1] 2**-year period may be processed to conclusion.

Subchapter D. EXCHANGE OF LICENSES

DISTRIBUTOR AND IMPORTING DISTRIBUTOR LICENSES

§ 7.43. Fees.

(a) When an application for the exchange of a Distributor License for an Importing Distributor License is filed for a full license year, it shall be accompanied by a license fee, and a renewal filing fee as required for a malt beverage Importing Distributor by section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14), and the applicable vehicle **[card] emblem** fee, if any.

(b) When an application for the exchange of a Distributor License for an Importing Distributor License is filed for the last 6 months of a license year, it shall be accompanied by a filing fee, and one-half the license fee required for a malt beverage Distributor License by section 614-A of The Administrative Code of 1929, and the applicable vehicle **[card] emblem** fee, if any.

(c) When an application for the exchange of an Importing Distributor License for a Distributor License is filed for a full license year, it shall be accompanied by a license fee, and a renewal filing fee as required for a malt beverage Distributor License by section 614-A of The Administrative Code of 1929, and the applicable vehicle **[card] emblem** fee, if any.

(d) When an application for the exchange of an Importing Distributor License for a Distributor License is filed for the last 6 months of a license year, it shall be accompanied by a filing fee as required for a malt beverage Distributor License by section 614-A of The Administrative Code of 1929, and the applicable vehicle **[card] emblem** fee, if any. In this type of exchange, a refund equal to one-half the difference between the Distributor and Importing Distributor License Fees required by section 614-A of The Administrative Code of 1929, will be granted to the licensee upon approval by the Board of the exchange and the claim for refund. The refund shall be requested by the licensee on standard forms furnished by the Board.

Subchapter E. **[SUSPENSION OF LICENSES] (Reserved)**

[NOTICE OF SUSPENSION]

§ 7.51. **[Posting of notice] (Reserved).**

[On the suspension of the license of a licensee, the Board will, on the date the suspension becomes effective, cause to be posted in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises, a notice of the suspension, in the form and size, and containing the provisions, as the Board may require. The notice shall remain posted during the entire period of suspension.]

§ 7.52. **[Other closing notices] (Reserved).**

[During the suspension period, a licensee, his servants, agents or employes, may not cause to be advertised in any manner, or place in, on or about the premises, notice of any kind stating that the licensed establishment is closed for any reason other than the suspension of the license.]

§ 7.53. **[Removal of notice] (Reserved).**

[A licensee, his servants, agents or employes, may not cover, remove, alter, deface or disturb the notice of suspension until after the period of suspension has expired. The notice may not be removed until the license is returned to the licensee or until the licensee receives confirmation from the Board that the suspension period has terminated.]

§ 7.54. **[Violations] (Reserved).**

[A violation of this subchapter constitutes sufficient cause for the issuance of a citation to show cause why the license should not be suspended or revoked.]

CHAPTER 9. TRANSPORTATION, IMPORTATION, DISPOSITION AND STORAGE

Subchapter A. TRANSPORTATION OF LIQUOR, MALT OR BREWED BEVERAGES OR ALCOHOL

LICENSES

§ 9.11. Transportation for hire

* * * * *

(b) Liquor, malt or brewed beverages or alcohol, may be transported for hire without a transporter-for-hire license under the following conditions:

* * * * *

(4) If transportation is by licensees of the Board whose licenses or permits authorize the transportation of liquor, malt or brewed beverages or alcohol in the regular operation of their licensed business if the licensees have secured vehicle identification **[cards] emblems** in accordance with § 9.23 (relating to vehicle identification **[cards] emblems**).

(5) If transportation is by persons who transport liquor, malt or brewed beverages or alcohol, through **[the] this** Commonwealth commercially **[under ICC authority,]** and not for delivery therein **[; provided the operator]**:

(i) Operator of the vehicle **[has] shall have** in his possession at all times while in this Commonwealth, an invoice and a bill of lading or waybill (showing the brand name, size and number of containers of liquor, malt or brewed beverages or alcohol so transported), which shall be produced for inspection upon the request of an authorized police or enforcement officer of this Commonwealth**[; and further provided the]**

(ii) The cargo **[remains] shall remain** intact and upon the same vehicle or conveyance while in this Commonwealth, unless prevented by an accident or other similarly uncontrollable circumstance.

§ 9.13. Records and reports.

* * * * *

[(b) *Reports.* Transporter-for-hire licensees shall, on or before the 15th day of each month, file with the State Police, Bureau of Liquor Control Enforcement, reports as prescribed by the Board covering the operation of their licensed business for the preceding month. A copy of each report shall be retained by the licensee for a period of 2 years from the date of filing.

(c)] (b) ***

VEHICLES

§ 9.23. Vehicle identification **[cards] emblems.**

A licensee whose license authorizes the transportation of liquor, malt or brewed beverages, or alcohol in the regular operation of his licensed business and who desires to transport liquor, malt or brewed beverages, or alcohol shall obtain a vehicle identification **[card] emblem** from the Board for each vehicle used. **Each vehicle shall be lettered in accordance with § 9.22 (relating to identification of vehicles).** A vehicle identification **[card] emblem** is not required of a retail licensee, or his authorized agent named on his Wholesale Purchase Permit **[Card] Cards**, for the transportation of liquor purchased at a State Liquor Store for use in the licensed

business, **[nor] or** the transportation of alcohol purchased at a State Store by an alcohol permittee; **[nor] or** the transportation of liquor purchased at a State Store by holders of Pharmacy Permits, Hospital Pharmacy Permits, or Chemists and Manufacturing Pharmacists Permits**[; nor the transportation by a Transporter-for-Hire Licensee].**

§ 9.24. Application for vehicle identification **[card or]** emblem.

(a) Application for **[vehicle identification cards or]** self-adhering vehicle identification emblems shall be made on forms furnished by the Board and filed with the original or renewal application for licenses required by statute and when additional vehicles are intended to be used in connection with the license.

(b) A charge of $10 will be made for each vehicle identification **[card or]** emblem.

§ 9.27. **[Issuance and replacement of cards] (Reserved).**

[(a) Vehicle identification cards will be issued only for vehicles which are properly lettered in accordance with § 9.22 (relating to identification of vehicles), and which are used for the delivery of liquor, malt or brewed beverages or alcohol, and are either owned by the licensee or permittee, or possessed under lease or agreement which contains the following conditions:

(1) That the vehicle is in the possession of and under exclusive control of the licensee.

(2) That the vehicle is operated by the licensee or by a paid employe of the licensee.

(3) That the licensee shall pay expenses incurred in the operation of the hired vehicle, including gas, oil, repairs and so forth.

(4) That the vehicle is lettered in accordance with § 9.22.

(b) Vehicle identification cards shall be carried with all vehicles for which cards have been issued.

(c) If the vehicle identification card becomes marred, defaced, damaged or lost, application for a new card shall be made immediately, accompanied by a fee of $10 and filed with the Board.]

§ 9.28. Use of vehicles.

(a) A licensee engaged in the purchase or sale of liquor, malt or brewed beverages, or alcohol may not use or permit to be used a vehicle bearing his vehicle identification **[card or]** emblem for the transportation of a liquor, malt or brewed beverages, or alcohol other than that used in the operation of his licensed business. Holders of transporter-for-hire licenses may, however, subject to the limitations of their respective licenses, transport, for a person, liquor, malt or brewed beverages, or alcohol in vehicles owned or possessed by the licensees or operated by them under lease or agreement.

* * * * *

(c) A licensee may not sell, lease or permit the use by another of a vehicle for which a vehicle identification **[card or]** emblem has been issued without first defacing the lettering on the vehicle as described in § 9.22 (relating to identification of vehicles), and **[removing the card and returning it to the Board or]** removing and destroying the vehicle identification emblem affixed thereto and notifying the Board of the sale, lease or disposition of the vehicle.

§ 9.29. Expiration and termination.

Vehicle identification **[cards or]** emblems shall expire on the date indicated by the Board unless the license of the licensee has been previously revoked or terminated by the Board, which action automatically terminates the validity of the vehicle identification **[card or]** emblem issued to the licensee. **[In the event of suspension of] If** the license **is suspended** by the Board, the use of the identification **[card or]** emblem shall be suspended for a like period.

§ 9.30. Temporary use of vehicles.

When a licensee of the Board whose license or permit authorizes the transportation of liquor, malt or brewed beverages, or alcohol in the regular operation of his licensed business desires to use a vehicle not registered with the Board for **[a period of]** less than 10 days, the licensee may, upon application and the payment of a fee of $10, be issued a temporary **[vehicle identification card or other]** authorization for the nonregistered vehicle. The **[card or other]** authorization will include a description of the vehicle and the period of time during which the **[card] authorization** is valid. **[The card shall be surrendered to the Board upon its expiration.]** While the vehicle is in operation, there shall be affixed to each side a temporary sign containing the name, address and license number of the licensee, in letters no smaller than 4 inches in height. Transporter-for-Hire Licensees desiring to use a vehicle not registered with the Board for a period of less than 10 days shall apply for the temporary authorization the Board may deem appropriate for the particular class of transporter-for-hire. An application for temporary vehicle authorization shall be accompanied by a fee of $10. The authorization will include a description of the vehicle and the period of time during which the authorization is valid. **[The authorization shall be surrendered to the Board upon its expiration.]**

CHAPTER 11. PURCHASES AND SALES

Subchapter A. GENERAL PROVISIONS

WHOLESALE ALCOHOL PURCHASE PERMITS

§ 11.21. Classification, fees and requirements.

* * * * *

(b) *Duration.* **[Three classes are issued by the Board for the calendar year.] Permits issued in calendar year 1997 expire December 31, 1997. Permits issued in calendar years 1998, 1999 and 2000 expire December 31, 2000. Thereafter, 4-year terms shall be established whereby all permits issued within a term expire December 31, of the fourth year.**

(c) *Fees.* Fees shall be charged in accordance with the following:

(1) AB and AN permits are issued for a **nonrefundable** fee of $10 **for** each **calendar year or part thereof.**

* * * * *

§ 11.23. Issuance of card.

* * * * *

(c) When a change in agents is desired, a new Wholesale Alcohol Purchase Permit Card shall be obtained by applying to the Board on forms provided by the Board. A **nonrefundable** fee of $10 **for each calendar year or part thereof** is required with each application. Forms may be obtained at a State Liquor Store.

TRANSFER, RENEWAL, REVOCATION OR SUSPENSION

§ 11.42. Renewal of permits.

[An alcohol permit issued under this subchapter shall expire December 31 of the calendar year for which issued. The permits may be renewed by filing an application and the required fee at least 30 days prior to the expiration date of the current permit.] Permits shall be renewed in accordance with § 11.21(b) (relating to classification, fees and requirements).

Subchapter B. SPECIAL PURCHASES OF LIQUOR

PHARMACISTS, HOSPITALS AND STATE INSTITUTIONS

§ 11.51. Applications and permits.

(a) A registered pharmacist operating a drug store or pharmacy who desires to purchase liquor from a State Liquor Store at wholesale, and sell or dispense the liquor or prescription, or use the liquor in compounding of prescriptions, shall apply to the Board for a Wholesale Liquor Purchase Permit, on the form provided by the Board, and shall include a **nonrefundable** fee of $10 **for each calendar year or part thereof.**

* * * * *

(d) Wholesale Purchase Permits issued to pharmacists, hospitals and State-owned institutions **[shall expire on December 31 of the year in which issued, and may be renewed upon filing, by December 1, of an application] in calendar year 1997 expire December 31, 1997. Permits issued in calendar years 1998, 1999 and 2000 expire December 31, 2000. Thereafter, 4-year terms shall be established whereby all permits issued within a term expire December 31, of the fourth year**, and in the case of pharmacists only, payment of **[the prescribed] a** fee of $10 **for each calendar year or part thereof will be required.**

* * * * *

CHEMISTS AND MANUFACTURING PHARMACISTS

§ 11.62. Applications for permits.

* * * * *

(b) Application for the permit shall be made by and in the name of the owner, if a natural person; by an authorized partner, if a partnership; or by a principal officer, if a corporation. An application shall be accompanied by a permit fee of $10 **for each calendar year or part thereof** and shall include the following:

* * * * *

(g) **[Permits expire on December 31 of the year in which issued, and may be renewed upon the filing by December 1 of an application for renewal, accompanied by a permit fee of $10.] Permits issued in calendar year 1997 expire December 31, 1997. Permits issued in calendar years 1998, 1999 and 2000 expire December 31, 2000. Thereafter 4-year terms shall be established whereby all permits issued within a term expire December 31, of the fourth year. Permits may be renewed by filing an application with a nonrefundable fee of $10 for each calendar year or part thereof.**

NONBEVERAGE MANUFACTURERS

§ 11.72. Applications for permits.

(a) Application for a bulk purchase permit shall be made by and in the name of the owner, if a natural person; by an authorized partner, if a partnership; or by a principal officer, if a corporation. An application shall be accompanied by a **nonrefundable** permit fee of $20 **for each calendar year or part thereof** and shall contain the information specified in § 11.62(b) (relating to applications for permits).

* * * * *

(c) Upon receipt of the application in proper form, the Board may issue a bulk purchase permit authorizing the purchase of the required types of liquor. **[Permits shall expire on December 31 of the year in which issued and may be renewed upon the filing by December 1 of an application for renewal, accompanied by a permit fee of $20.] Permits issued in calendar year 1997 expire December 31, 1997. Permits issued in calendar years 1998, 1999 and 2000 expire December 31, 2000. Thereafter, 4-year terms shall be established whereby all permits issued within a term expire December 31, of the fourth year.**

Subchapter I. SALE OF ALCOHOLIC BEVERAGES ON SUNDAY

§ 11.172. Application for Sunday sales permit.

(a) A licensee who wishes to make Sunday sales of alcoholic beverages shall file an application in the form as may be prescribed by the Board for a Sunday sales permit. The application for a Sunday sales permit shall contain **[all of the following]**:

* * * * *

(4) **[A certification by a certified public accountant or public accountant] Information to support the applicant's assertion** that for **[a period of not less than] at least** 90-consecutive days during the 12 months immediately preceding the date of application, sales of food and nonalcoholic beverages by the applicant at the licensed premises were equal to or exceed 30% of the combined gross sale of both food and alcoholic beverages. **[The form of the certification shall be as the Board may from time to time determine.]**

(b) **[The accuracy of the application shall be verified by affidavit of the applicant.] The licensee shall be strictly liable for the accuracy of the information contained in the application and any inaccuracy shall be cause to show why the license should not be suspended or revoked or a fine imposed.**

§ 11.176. Renewal.

Renewals of Sunday sales permits shall be accomplished **[in the manner] as** set forth in § 11.172 (relating to application for Sunday sales permit), except that the **[certification] information** required by **[subsection] § 11.172**(a)(4) shall be for the 12-month period or portion thereof immediately preceding the date of the application for renewal.

Subchapter J. REPORTING OF DISHONORED INSTRUMENTS.

§ 11.181. Notification of the Board.

(a) A person licensed by the Board under Article IV of the Liquor Code (47 P. S. §§ 4-401—4-497) who receives in payment for malt or brewed beverages any check, draft or similar order for the payment of money, which is subsequently dishonored by the bank, banking institution, trust company**[,]** or other depository upon which drawn, for any reason, shall so notify the Board within 20 days of dishonor, by letter, through the United States mail, addressed to the **[Chief of Enforcement Examining, Bureau of Enforcement] Investigative Unit**, Liquor Control Board, Harrisburg, Pennsylvania 17124.

* * * * *

CHAPTER 13. PROMOTION

Subchapter B. PROMOTION OF SALE OF LIQUOR BY VENDORS

§ 13.72. Registration of agents.

* * * * *

(b) *Applications.*

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[(4) The prospective agent shall present himself for fingerprinting at one of the enforcement offices of the Board, located at Allentown, Altoona, Erie, Harrisburg, Philadelphia, Pittsburgh, Punxsutawney, Wilkes-Barre and Williamsport. The Statement of Agent and photographs shall be submitted by the agent at this time. If the agent to be registered has been previously registered and fingerprinted, the provisions of this paragraph may be waived and the application and photographs submitted directly to the Board.]

* * * * *

CHAPTER 15. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE REGARDING MATTERS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGE

Subchapter E. PENALITIES

§ 15.62. Suspensions and revocations.

(a) In the case of a suspension of a license, the Order of the Administrative Law Judge shall direct the licensee to post in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises, a notice of the suspension in the form and size and containing the provisions the Office of Administrative Law Judge may require. The notice shall remain posted during the entire period of suspension.

(b) During the suspension period, a licensee, its servants, agents or employes, may not cause to be advertised in any manner, or place in, or about the premises, notice of any kind stating that the licensed establishment is closed for any reason other than the suspension of the license.

(c) Suspensions or revocations of permits or licenses shall be carried out as directed in the adjudication. **Failure to adhere to the adjudication is sufficient cause for the issuance of a citation to show cause why the license should not be suspended or revoked or a fine imposed.**

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