

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 104]

Peach and Nectarine Research Program

The Department of Agriculture (Department), Bureau of Market Development, proposes to amend Chapter 104 (relating to enforcement of marketing programs) by adding Subchapter E (relating to Peach and Nectarine Research Program) to address the Pennsylvania Peach and Nectarine Research Program (Program). The proposed amendment is offered under authority of sections 3 and 11 of the Pennsylvania Agricultural Commodities Marketing Act of 1968 (act) (3 P. S. §§ 1003 and 1011) which, respectively, direct the Department to administer and enforce the act and delegate to the Department the power to adopt regulations necessary to implement the act.

The act allows the producers of a particular agricultural commodity to establish a marketing program if a referendum is held and both the majority of affected producers and the majority by volume of production vote to establish the proposed Program. The Program was established in 1989 as a result of a referendum. The Program was continued for 5 years as the result of a referendum conducted in 1994.

The Program is funded through the collection of a \$5-per-acre producer charge from those peach and nectarine producers having 500 or more peach or nectarine trees in their production operations. This producer charge formula was included in the referendum under which the Program was voted into existence. Producer charges accrue on a July 1-to-June 30 marketing season basis.

The proposed amendments define terms, set forth the obligation of an affected producer to account for and pay annual producer charges owed the Program, clarify the procedures by which this obligation can be met and set forth penalties for noncompliance.

Proposed § 104.62 (relating to definitions) sets forth the basic definitions necessary to implement the subchapter, and incorporates the definition of "affected producer" verbatim from the Program order under which the Program was established.

Proposed §§ 104.63—104.65 (relating to producer charge; responsibility for payment of producer charge; and accounting and payment) describe the applicable \$5-per-acre producer charge, clarify the obligation of an affected producer to pay that charge and describe the appropriate procedure by which to make payment, respectively.

Proposed § 104.65(e) prescribes a civil penalty of between \$100 and \$500 for those affected producers who fail to meet their obligations to the Program. This civil penalty must be as nearly the equivalent of the delinquent producer charges as is practicable.

Through the proposed amendments, the Department more clearly defines the responsibilities of affected producers with respect to the Program. In addition, the proposed amendments provide for the imposition of a civil penalty for noncompliance. This should result in a more fully-funded Program that more equitably spreads its expenses among those who receive its benefits.

Fiscal Impact

Commonwealth

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

Political Subdivisions

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

Private Sector

The proposed amendments will impose no costs and have no fiscal impact upon the private sector.

General Public

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

Paperwork Requirements

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

Regulatory Review

The Department submitted a copy of the proposed amendments, on April 18, 1997, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs, in accordance with section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)). The Department also 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 an objection to any portion of the proposed amendments, it must so 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 sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to final publication of the final-form regulations.

Contact Person

Interested persons are invited to submit written comments regarding the proposed amendments within 30 days following publication in the *Pennsylvania Bulletin*. Comments are to be submitted to the Department of Agriculture, Bureau of Market Development, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Michael Varner.

Effective Date

The proposed amendments will become effective upon final adoption.

CHARLES C. BROSIUS,
Secretary

Fiscal Note: 2-110. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART IV. BUREAU OF MARKET DEVELOPMENT
CHAPTER 104. ENFORCEMENT OF MARKETING
PROGRAMSSubchapter E. PEACH AND NECTARINE
RESEARCH PROGRAM

Sec.	
104.61.	Scope.
104.62.	Definitions.
104.63.	Producer charge.
104.64.	Responsibility for payment of producer charge.
104.65.	Accounting and payment.

§ 104.61. Scope.

This subchapter establishes the procedures by which peach and nectarine producers pay producer charges owed the Program.

§ 104.62. Definitions.

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

Act—The Pennsylvania Agricultural Commodities Marketing Act of 1968 (3 P. S. §§ 1001—1013).

Affected producer—A person who produces, grows or causes to be grown 500 or more peach trees or nectarine trees, or both, of all ages, for the production of peaches or nectarines, or both, for sale or marketing.

Department—The Department of Agriculture of the Commonwealth.

Peaches and nectarines—All peaches and nectarines (*prunus persica*) produced in this Commonwealth for the purpose of sale by a producer as defined in this subchapter.

Person—An individual, firm, partnership, corporation, association or other business unit.

Program—The Pennsylvania Peach and Nectarine Research Program.

§ 104.63. Producer charge.

The producer charge owed the Program is \$5 with respect to each acre of peach trees or nectarine trees, or both, grown by an affected producer. This producer charge may be changed by subsequent amendment of the Program in accordance with the referenced procedure in Chapter 103 (relating to referendums).

§ 104.64. Responsibility for payment of producer charge.

It is the responsibility of an affected producer to submit an annual statement, as described in § 104.65 (relating to accounting and payment) and to pay the appropriate producer charge owed the Program.

§ 104.65. Accounting and payment.

(a) *Annual statement.* The Program will provide the producer with annual statement forms with which to verify the producer's name and address, whether the producer is an affected producer and the number of acres of peach or nectarine, or both, trees grown that are subject to the producer charge. The affected producer shall complete and submit the annual statement form in accordance with this section.

(b) *Form of payment.* Payment of a producer charge shall be by check or money order payable to the "PA Peach and Nectarine Research Program."

(c) *Address.* The annual statement form and payment described in subsections (a) and (b) shall be mailed or delivered to:

Department of Agriculture
Bureau of Market Development
Attn: PA Peach and Nectarine
2301 North Cameron Street
Harrisburg, Pennsylvania 17110-9408

(d) *Deadline.* The annual statement form and payment described in subsections (a) and (b) shall be postmarked and mailed, or actually delivered to the Program, by October 1 each year any person is an affected producer. This due date may be changed by amendment of the Program in accordance with the referendum procedure in Chapter 103 (relating to referendums).

(e) *Penalty for noncompliance.* An affected producer who fails to mail or deliver the required annual statement form as described in subsection (a), and the producer charges owed the Program within 30 days of the due date, as described in subsection (d), shall be required to pay a penalty of at least \$100 but not more than \$500, and as nearly equivalent to 100% of the amount of the delinquent producer charges as is practicable. An action seeking imposition of a penalty, plus payment of producer charges owed the Program, may be brought in the appropriate magisterial district. A penalty shall be in addition to the delinquent producer charges owed the Program.

[Pa.B. Doc. No. 97-676. Filed for public inspection May 2, 1997, 9:00 a.m.]

DEPARTMENT OF
REVENUE

[61 PA. CODE CH. 117]

Return of Information as to Payment in Excess of
\$10

The Department of Revenue (Department), under authority contained in section 354 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7354), proposes an amendment to § 117.18 (relating to return of information as to payment in excess of \$10) to read as set forth in Annex A. Section 354 of the TRC specifically authorizes and empowers the Department to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of and the collection of taxes imposed by Article III of the TRC (72 P. S. §§ 7301—7361) relating to Personal Income Tax.

Purpose

In March 1996, the Department adopted a final-form regulation that amended § 117.18 in addition to other Personal Income Tax regulatory sections. During the final stages of the adoption process, a public comment was made regarding the information return required to be made by a regulated investment company. As a result of this public comment, the Department has proposed an amendment to § 117.18.

Explanation of Regulatory Requirements

This proposed amendment allows a regulated investment company to meet the information return require-

ment of § 117.18(c) in two additional ways. A regulated investment company that furnishes a Federal Form 1099-DIV to its distributees may now attach or provide a separate statement that, together with the information on the Federal form, allows distributees to compute the correct amount of Pennsylvania exempt-interest dividends. A regulated investment company that is not required to furnish its distributees with a Federal Form 1099-DIV may provide a statement that allows the distributees to compute the amount of taxable dividend distributions and any adjustment to basis or taxable gain for the taxable year.

Affected Parties

Regulated investment companies that have chosen not to report their investors' items of income and distribution using either the Pennsylvania Form 1099-DIV or a separate statement showing the ratio of Pennsylvania exempt-interest dividends to total ordinary dividends reported on the Federal Form 1099-DIV will be affected by this proposed amendment.

Fiscal Impact

The Department has determined that the proposed amendment will have no fiscal impact on the Commonwealth.

Paperwork

The proposed amendment will not generate additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The proposal will become effective upon final publication in the *Pennsylvania Bulletin*. This regulation is scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing comments, suggestions or objections regarding the proposed amendment to Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061, within 30 days of the date 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 April 23, 1997, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the 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, "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 proposed amendment, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the regulation, by the Department, the General Assembly and the Governor.

ROBERT A. JUDGE, Sr.,
Secretary

Fiscal Note: 15-380. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE V. PERSONAL INCOME TAX

CHAPTER 117. RETURN AND PAYMENT OF TAX

§ 117.18. Return of information as to payment in excess of \$10.

* * * * *

(c) *Pennsylvania information return.* The Pennsylvania information return shall be made in one of the following ways:

* * * * *

(2) If a regulated investment company furnishes Federal Form 1099-DIV to a recipient in compliance with Federal Income Tax requirements, the Pennsylvania information return may be made by attaching [a] or providing one of the following:

(i) A separate statement showing the ratio of Pennsylvania exempt-interest dividends paid to total ordinary dividends reported on the Federal form.

(ii) A separate statement showing other information, provided that the statement and Federal form contain sufficient information to enable distributees to compute the correct amount of Pennsylvania exempt-interest dividends.

(3) If a regulated investment company is not required to furnish Federal Form 1099-DIV, the Pennsylvania information return may be made by separate statement showing the amount of dividends, nontaxable distributions and Pennsylvania exempt-interest dividends paid or containing sufficient information to enable distributees to compute the amount of taxable dividend distributions and any adjustment to basis or taxable gain for the taxable year.

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[Pa.B. Doc. No. 97-677. Filed for public inspection May 2, 1997, 9:00 a.m.]

**ENVIRONMENTAL
QUALITY BOARD**

[25 PA CODE CHS. 78—80]

Oil and Gas Amendments

The Environmental Quality Board (Board) proposes to amend Chapters 78—80 (relating to oil and gas wells; oil and gas conservation; and gas well classification). The proposed amendments to Chapter 78 simplify notification and reporting requirements, clarify requirements for the discharge to land surface of topsoil water, clarify surface casing and cementing procedures and clarify plugging procedures for wells in coal areas. The proposed amendment to Chapter 79 provides consistency with the requirements of Chapter 78. Chapter 80 is proposed to be deleted since the gas well classification program under the Federal Natural Gas Policy Act of 1978 has been terminated.

This proposed rulemaking was adopted by the Board at its meeting of March 18, 1997.

A. *Effective Date*

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

B. *Contact Persons*

For further information contact James E. Erb, Director, Bureau of Oil and Gas Management, P. O. Box 8765, Rachel Carson State Office Building, Harrisburg, PA 17105-8765, (717) 772-2199, or Kurt Klapkowski, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, 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&Ts 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*

The proposed rulemaking is being made under the authority of section 604 of the Oil and Gas Act (58 P. S. § 601.604), which directs the Board to adopt regulations to implement the provisions of that act; section 5 of the Oil and Gas Conservation Law (58 P. S. § 405), which authorizes the Department to promulgate and enforce rules and regulations to effectuate the purposes and intent of that act; section 105 of the Solid Waste Management Act (35 P. S. § 6018.105), which requires the Board to adopt rules and regulations to carry out the provisions of that act; section 5 of The Clean Streams Law (35 P. S. § 691.5), which authorizes the Department to adopt rules and regulations for the purpose of implementing that act; and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20) which authorizes the Board to adopt regulations necessary for the Department to perform its work.

D. *Background and Purpose*

This proposed rulemaking is a result of the Department's Regulatory Basics Initiative. The Regulatory Basics Initiative was announced in August 1995 as an overall review of the Department's regulations and policies. The Department solicited public comments in August 1995 by giving the regulated community, local governments, environmental interests and the general public the opportunity to identify specific regulations and guidance which were either more stringent than Federal standards, served as barriers to innovation, were obsolete or unnecessary, which imposed costs beyond reasonable environmental benefits or served 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.

As a result of the request for public comments, six commentators submitted 40 comments on the regulations pertaining to the Oil and Gas Program. The Department prepared a comment and response document responding to the comments received. Copies of the comment and response document are available from the Department. Those comments, plus internal staff review of the regulations, resulted in these proposed amendments.

This proposal has been reviewed by the Oil and Gas Technical Advisory Board (OGTAB). The OGTAB reviewed the proposal at its September 19 and November 7, 1996, meetings. The OGTAB developed a written report containing comments on December 19, 1996. That report was presented to the Board as part of the proposed regulatory package.

E. *Summary of Regulatory Requirements*

The proposed rulemaking amends the regulations as follows:

§ 78.14. Transfer of well ownership or change of address.

The proposed amendments allow notification to the Department of the sale or transfer of a well by the new owner or operator. Prior procedures also required the prior owner or operator to also sign the transfer form. This caused difficulties in cases where prior owners or operators were unavailable or otherwise unable to sign the transfer document. Simplification of this notification procedure should result in more timely notification of well transfers and result in less burden to prior owners.

§ 78.52. Predrilling or prealteration survey.

Predrilling surveys are used to establish the background quality of water wells in the area where an oil or gas well is to be drilled. These surveys are optional under the Oil and Gas Act (58 P. S. §§ 601.101—601.605). Results of the predrilling survey can be used by an operator to defend against the presumption of guilt that a water supply was affected by the drilling activity. Operators were required to submit the results of the survey to the landowner and Department within 45 days of conducting the survey. Most oil and gas wells are drilled without affecting water supplies. The proposed amendments provide the operator who wishes to preserve its defense 10 days after being notified by the Department to submit a copy of the survey results. Survey results will not have to be routinely copied or reported.

§ 78.60. Discharge requirements.

Operators who are drilling wells may discharge uncontaminated water to the land surface. The quality of water allowed to be discharged is stipulated in § 78.60. Two changes are proposed by these amendments. The first removes the requirement that the water be characteristic of the natural background quality of the groundwater. This requirement, and associated testing of groundwater in the area, is unnecessary due to the standards the water must meet in order to be discharged. The second amendment would allow the Department to approve the use of makeup water to buffer the pH of the water in the pit prior to discharge of the water to the land surface.

§ 78.83. Surface and coal protective casing and cementing procedures.

When Chapter 78 was adopted in August 1987, staff of the Department felt that the annulus of the surface or coal protective casing should be left open if cement could not be circulated to surface due to geologic conditions. This was based on the potential for gas to migrate up the well bore into fresh water zones. It was believed that the open annulus would provide an escape for the gas to the atmosphere. This belief was not shared by the industry, which felt that the open annulus would provide a conduit for pollution of groundwater from the surface and preclude proper support of the casing above the zone of lost circulation.

Since 1987, these gas migration concerns have not been realized. Industry has requested to be able to use a

cement basket to support cement above the zone of lost circulation in the manner they are permitted if the well penetrates a mine void. After further discussion with the OG TAB, the Department concurs that this proposed change is appropriate.

§ 78.91. General provisions.

Well plugging procedures in this section allow an operator to fill the well with cement from the bottom of the well to the surface. The Coal and Gas Resource Coordination Act (58 P.S. §§ 501—518), and §§ 78.92 and 78.93 (relating to wells in coal areas—surface or coal protective casing is cemented; and wells in coal areas—surface or coal protective casing anchored with a packer or cement) require that a well plugged in a coal area be provided with a vent to prevent a buildup of gas in a coal seam. These proposed amendments clarify the need for the vent if the well is being filled with cement.

§ 78.123. Logs and additional data.

These proposed amendments correct a typographical error regarding a subsection number and delete reference to an expired program for determining gas well classifications under the Federal Natural Gas Policy Act. These proposed changes will reduce confusion.

§ 78.125. Disposal and enhanced recovery well reports.

Operators of disposal wells or enhanced recovery wells are required to submit to the Department copies of annual monitoring reports submitted to the Environmental Protection Agency (EPA). These reports are part of the Underground Injection Control Program administered by EPA (the Commonwealth did not seek delegation). The proposed amendments would have operators submit copies of the reports to the Department only upon request. The Department uses these reports, on occasion, when investigating complaints. These proposed amendments reduce for operators unnecessary copying and mailing of reports to the Department.

§ 79.15. Fire prevention.

Operators are required, under Federal regulations (40 CFR 112) to construct and maintain a dike or other method of secondary containment around oil storage tanks of a certain size to prevent oil pollution. In December 1994, these requirements were adopted by the Board by reference as part of § 78.64 (relating to containment around oil tanks). These proposed amendments to Chapter 79 adopt the same standard by reference for oil tanks at conservation wells. The proposed amendments provide consistent State and Federal standards in place of outdated standards adopted at 1 Pa.B. 1726 (August 12, 1971), which required earthen dikes with capacity of one and one-half times the capacity of the tank it surrounds.

Chapter 80. Gas Well Classification.

These amendments delete Chapter 80 in its entirety. Chapter 80 was adopted by the Board at 9 Pa.B. 3634 (November 2, 1979), to allow the Department to conduct gas well classifications under the Federal Natural Gas Policy Act of 1978 (15 U.S.C.A. §§ 3301—3432; and 42 U.S.C.A. § 7255). This program provided incentive well head gas prices to certain classifications of gas wells which might otherwise not be drilled. Due to deregulation of portions of the natural gas industry by the Federal Energy Regulatory Commission, this program was discontinued on January 1, 1993. Consequently, Chapter 80 is outdated and no longer needed.

F. Benefits, Costs and Compliance

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

Benefits

The proposed amendments will benefit oil and gas operators by reducing reporting requirements, clarifying technical requirements pertaining to casing and cementing procedures and plugging procedures, providing standards for oil spill prevention that are consistent with Federal requirements, and eliminating outdated and obsolete requirements.

Compliance Cost

The proposed amendments impose no additional compliance costs on the oil and gas operator. The proposed changes to the reporting requirements should decrease compliance costs to oil and gas operators by \$12,500 per year. The Department's costs of administering and enforcing these requirements will not change significantly.

Paperwork Requirements

The proposed amendments will not result in additional forms or reports. Since reports of predrilling surveys and annual monitoring reports for disposal or enhanced recovery wells will only be submitted upon request of the Department, paperwork requirements are being reduced.

G. Sunset Review

These 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 21, 1997, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and 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 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 Department, the Governor and the General Assembly before final publication of the regulations.

I. Public Comment

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by June 2, 1997 (within 30 days of publication in the *Pennsylvania Bulletin*). Interested parties may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by June 2, 1997 (within 30 days following publication in the *Pennsylvania Bulletin*). The one-page

summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@A1.dep.state.pa.us and must also be received by the Board by June 2, 1997. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-318. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

CHAPTER 78. OIL AND GAS WELLS

**Subchapter B. PERMITS, TRANSFERS AND
OBJECTIONS**

PERMITS AND TRANSFERS

§ 78.14. Transfer of well ownership or change of address.

(a) Within 30 days after the sale, assignment, transfer, conveyance or exchange of a well, [the former and] the new owner or operator shall notify the Department, in writing, of the transfer of ownership.

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**Subchapter C. ENVIRONMENTAL PROTECTION
PERFORMANCE STANDARDS**

§ 78.52. Predrilling or prealteration survey.

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(d) [The] An operator electing to preserve its defenses under section 208(d)(1) of the act shall provide a copy of the results of the survey to the Department and the landowner or water purveyor within [45] 10-calendar days of [conducting the survey] being notified by the Department to submit a copy of the survey results.

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§ 78.60. Discharge requirements.

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(b) The owner and operator may not discharge top-hole water or water in a pit as a result of precipitation by land application unless the discharge is in accordance with the following requirements:

(1) [The water is characteristic of the natural background quality of the groundwater.

(2)] No additives, drilling muds, pollutional materials or drilling fluids other than gases or fresh water have been added to or are contained in the water, unless otherwise approved by the Department. [The Department may approve treatment prior to discharge as a condition to approving additives in the water.

(3)] (2) * * *

[(4)] (3) * * *

[(5)] (4) * * *

[(6)] (5) * * *

[(7)] (6) * * *

[(8)] (7) * * *

[(9)] (8) If the water does not meet the requirements of paragraph [(3)] (2) or [(5)] (4), [it shall be contained and treated to meet the requirements prior to land application. Treatment may not include dilution] the Department may approve treatment prior to discharge to the land surface.

**Subchapter D. WELL DRILLING, OPERATION AND
PLUGGING**

CASING AND CEMENTING

§ 78.83. Surface and coal protective casing and cementing procedures.

* * * * *

(j) If [the] it is anticipated that cement used to permanently cement the surface casing [is] can not be circulated to the surface [due to lost circulation in the wellbore, except as provided in subsection (h) and in enhanced recovery injection wells and disposal wells, no] a cement [baskets] basket may be installed [and no additional] immediately above the depth of the lost circulation zone. The casing shall be permanently cemented by the displacement method. Additional cement may be added above the cement basket, if necessary, by pumping through a pour string from the surface [into] to fill the annular space. [Under these conditions, the annular space shall be kept open and vented.]

PLUGGING

§ 78.91. General provisions.

* * * * *

(h) In lieu of the plugging requirements of §§ 78.92—78.95 and 78.97, an operator may cement a well from the total depth or attainable bottom to the surface. Wells in coal areas still shall meet the venting requirements of § 78.92 or § 78.93 (relating to wells in coal areas—surface or coal protective casing is cemented; and wells in coal areas—surface or coal protective casing anchored with a packer or cement).

Subchapter E. WELL REPORTING

§ 78.123. Logs and additional data.

* * * * *

(c) The information requested by the Department under subsections (a) [—(c)] and (b) shall be provided to the Department by the operator, within 3 years after completion of the well unless the Department has granted an extension or unless the Department has requested information as described in subsection (d). If the Department has granted an extension, the information shall be submitted in accordance with the extension, but in no case may the extension exceed 5 years from the date of completion of the well.

(d) In accordance with the request of the Department, the operator shall submit the information described in this section for use in investigation or enforcement proceedings, [in making designations or determinations

under the Natural Gas Policy Act of 1978 (15 U.S.C.A. §§ 3301—3432 and 42 U.S.C.A. § 7255) and section 1927-A of The Administrative Code of 1929 (71 P. S. § 510-27)] or in aggregate form for statistical purposes.

§ 78.125. Disposal and enhanced recovery well reports.

(a) The operator of a disposal or enhanced recovery well shall submit to the Department, **upon request**, a copy of the annual monitoring report submitted to the EPA summarizing the results of the operator's monitoring as required by 40 CFR Part 146 (relating to underground injection control program) when these reports are submitted to the EPA. This summary, at a minimum, shall include the following:

* * * * *

**CHAPTER 79. OIL AND GAS CONSERVATION
WELL DRILLING AND USE**

§ 79.15. Fire prevention.

* * * * *

(b) When it is deemed necessary by the Department to protect life, health or property, the Department may require any [lease or] oil storage [tanks] tank to [be surrounded by an earthen dike which shall have a capacity of 1 1/2 times the capacity of the tanks or tanks it surrounds, which dike shall be continually maintained; and the reservoir within shall be kept free from vegetation, water or oil] have a method of secondary containment which meets the requirements of § 78.64 (relating to containment around oil tanks).

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CHAPTER 80. (Reserved).

(*Editor's Note:* As part of the regulatory package, the Department is proposing to delete the existing text of Chapter 80, which appears at 25 Pa. Code pages 80-1—80-17, serial pages (158659)—(158675).)

§ 80.1. (Reserved).

§ 80.11. (Reserved).

§ 80.12. (Reserved).

§§ 80.21—80.26. (Reserved).

§§ 80.31—80.34. (Reserved).

[Pa.B. Doc. No. 97-678. Filed for public inspection May 2, 1997, 9:00 a.m.]

**[25 PA. CODE CHS. 121, 126 AND 139]
Gasoline Volatility**

The Environmental Quality Board (Board) proposes to amend Chapters 121, 126 and 139 (relating to general provisions; standards for motor fuels; and sampling and testing) to read as set forth in Annex A. The proposed amendments will limit the volatility of gasoline sold in the Pittsburgh-Beaver Valley Area during the ozone season.

If adopted, these amendments will be submitted to the Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

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

A. Effective Date

These 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 Director, 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. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). These proposed amendments are 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 of the Air Pollution Control Act (35 P. S. § 4005) 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

These proposed amendments establish controls on the volatility of gasoline in the Pittsburgh-Beaver Valley Area as part of the Commonwealth's demonstration of attainment of the health-based ozone standard. Based on 1991 through 1994 monitoring data, the EPA on July 19, 1995, determined that measured air quality in the area met the ozone National Ambient Air Quality Standard (NAAQS) and that the statutory requirement for an attainment demonstration (and other related requirements) was no longer applicable. However, there were a number of ozone exceedances in 1995 that resulted in a violation of the ozone NAAQS. In response to this violation, the Governor formed the Southwestern Pennsylvania Ozone Stakeholder Working Group (Stakeholders) to review the ozone problem and recommend additional emission control programs.

In response to the 1995 ozone NAAQS violation, the EPA, on June 4, 1996, published a finding in the *Federal Register* (61 FR 28061 et seq.) that the area was no longer attaining the ozone standard and reinstated the applicability of the attainment demonstration and related requirements. These requirements are those established by Part D of Title I of the Clean Air Act, sections 182(b) and 172(c)(9) (42 U.S.C.A. §§ 7511a(b) and 7502(c)(9)). The EPA recognized the work of the Stakeholders when it published the schedule for completion of the attainment demonstration for the Pittsburgh-Beaver Valley Ozone Nonattainment Area. The schedule was a result of a letter submitted by the Commonwealth. Under the schedule, by December 31, 1997, the Commonwealth must submit to the EPA, as a SIP revision, final regulations establishing the emission controls contained in Annex A. In the event the Commonwealth fails to meet this schedule, the sanctions established by the Clean Air Act will go into effect early in January 1998. These sanctions include 2 to 1 emission offsets and (after 6 months) the loss of Federal highway funds in the Pittsburgh-Beaver Valley Ozone Nonattainment Area.

This proposal is one of four core emission reduction strategies necessary for the demonstration of attainment of the ozone standard. The four strategies are:

1. Minor changes to the proposed low-enhanced (decentralized) motor vehicle emission inspection and maintenance program.
2. The second phase (55% reduction) of the Ozone Transport Commission No_x Memorandum of Understanding.
3. Clean gasoline proposal.
4. Stage II vapor control requirements.

These four core strategies were recognized by the Stakeholders as necessary to achieve the ozone standard in the Pittsburgh-Beaver Valley Area and this proposal was recommended by the Stakeholders. In addition, the Department discussed these proposed amendments with the Air and Water Quality Technical Advisory Committee (AWQTAC). At its January 10, 1997, meeting, the Air Subcommittee of the AWQTAC, acting on behalf of AWQTAC, recommended adoption of the proposed amendments.

E. Summary of the Regulatory Revisions

The Department is proposing to add definitions for the terms "compliant fuel," "RFG—Federal reformulated gasoline," "importer," "low RVP gasoline," "Pittsburgh-Beaver Valley Area" and "RVP—Reid vapor pressure." In addition, the Department proposes to modify the definition of "distributor."

This proposal adds a new Subchapter C (relating to gasoline volatility requirements) to Chapter 126. Section 126.3 (relating to scope), provides that this new subchapter applies to the sale of gasoline in the Pittsburgh-Beaver Valley area between May 1 and September 30 of each calendar year.

Section 126.301 (relating to compliant fuel requirement) imposes a Reid vapor pressure (RVP) limit on all gasoline marketed in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland Counties. The proposed amendments also provide for Federal reformulated gasoline (RFG) as an alternate compliant fuel. The proposed restrictions on fuel would be effective between May 1 and September 30 of each year beginning in calendar year 1998. Finally, if the RFG is required by Federal law to be sold in the Pittsburgh-Beaver Valley Area, the requirements of these amendments are terminated.

Section 126.302 (relating to labeling) establishes labeling requirements for gasoline dispensed at any retail outlet in the Pittsburgh-Beaver Valley area. It requires a label providing that "from May 1 through September 30, the gasoline dispensed from this pump is a cleaner burning blend, designed to reduce ground level ozone, or smog, in the Pittsburgh area. For more information about air quality and clean fuels, contact the Pennsylvania Department of Environmental Protection at (717) 787-9702."

Section 126.303 (relating to recordkeeping and reporting) requires each entity in the gasoline dispensing network, beginning with the terminal owner, to maintain records of the date, name and address of transferor or transferee, the location and volume of gasoline being sold or transferred, and a statement certifying that the gasoline meets the RVP or RFG requirements. These records must be retained for at least 2 years from the date of sale or transfer of the compliant fuel.

Section 126.304 (relating to compliance and test methods) and the proposed amendments to Chapter 139 establish the compliance test methods for evaluating fuel volatility and RVP. These test methods are consistent with the requirements established by the EPA.

F. Benefits, Costs and Compliance

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

Benefits

The approximately 2.8 to 3 million people in the seven counties affected by these proposed amendments will benefit from the sale of cleaner burning fuel. Both low RVP gasoline and RFG have been proven to reduce emissions of volatile organic compounds (VOC), compounds that are instrumental in the formation of ground level ozone. In addition, RFG lowers emissions of air toxics, nitrogen oxides, carbon monoxide and benzene.

Compliance Costs

There will be an increased cost to the regulated community to produce compliant fuel. Both low RVP and RFG cost more to make than conventional gasoline. It is anticipated that the increased cost of production the refiners experience will be passed onto the consumer and, consequently, the regulated community will not bear the increased cost. Estimates regarding the price per gallon increases vary depending on a number of factors, but generally the increase has been documented to be 1¢ to 2¢ per gallon for low RVP and 3¢ to 5¢ per gallon for RFG. This cost, based on an estimate of the number of gallons sold in a 5-month period in the seven-county area, could range from \$4 million to \$20 million each ozone season.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community 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

There will be additional recordkeeping and reporting costs for any entity that sells or transfers gasoline intended for use in the seven-county Pittsburgh-Beaver Valley Area during the ozone season. Each transferor or transferee will be required to alter its current recordkeeping documents to include the information required by these proposed amendments.

G. Sunset Review

These 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 21, 1997, the Department submitted a copy of the proposed rulemaking on April 21, 1997, 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 the regulations.

*I. Public Comment and Board Public Hearing
Public Hearing*

The Board will hold one public hearing for the purpose of accepting comments on the proposed amendments. The hearing will be held on June 3, 1997, at 10 a.m., Department of Environmental Protection, Southwest Regional Office, 500 Waterfront Drive, Pittsburgh, PA.

Persons wishing to present testimony at the hearing must contact Nancy Roush 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 hearing and require an auxiliary aid, service or other accommodations in order to participate, should contact Nancy Roush 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 hearing, 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 July 3, 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 1 page in length and must be received by July 3, 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 regulations will be considered.

The Department is specifically requesting comments on the May 1 through September 30 compliance period. While this is the time frame established as the ozone season by the Department, other states and the EPA, the EPA has recognized the nature of the gasoline production and transmission process in establishing the implementation period for its Federal RVP Program. This Federal program allows a ramp-up period beginning May 1 with a requirement for compliant fuel beginning June 15. In addition, a ramp-down period begins September 1 and ends on September 30. The Federal RFG Program is a year-round program. The Department requests comments on whether to include a ramp-up and ramp-down period for terminal operators, retail outlets and others in the distribution system to implement the compliant fuel requirements during the ozone season.

The Department is also requesting comments on the possibility of generating emission reduction credits when the RFG is sold rather than 7.8 RVP gasoline. Specifi-

cally, the Department requests comments on the amount of credit, the mechanism for generating, banking and using the mechanism and quantifying the credits along with the procedure for ensuring that the reductions are permanent.

Finally, the Department requests comments on the sampling and testing protocol to determine whether gasoline dispensing facilities selling mixtures of 7.8 RVP gasoline and the RFG comply with the regulations.

Electronic Comments

Comments may be submitted electronically to the Board at RegComments@al.dep.state.pa.us. A subject heading identifying the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by July 3, 1997.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-319. (1) Clean Air Fund; (2) Implementing Year 1996-97 is \$0; (3) 1st Succeeding Year 1997-98 is \$79,000; 2nd Succeeding Year 1998-99 is \$51,000; 3rd Succeeding Year 1999-00 is \$51,000; 4th Succeeding Year 2000-01 is \$51,000; 5th Succeeding Year 2001-02 is \$51,000; (4) Fiscal Year 1995-96 \$25,770,000; Fiscal Year 1994-95 \$19,045,000; Fiscal Year 1993-94 \$18,483,000; (8) recommends adoption.

These regulations may also result in increased costs to Commonwealth agencies to purchase gasoline for Commonwealth vehicles. The total increased costs will depend on the type and amount of fuel purchased, and market conditions. The total increased costs cannot be estimated at this time, but is not expected to be significant.

(Editor's Note: Proposals to amend § 121.1, proposed to be amended in this document, remain outstanding at 27 Pa.B. 1822 (April 12, 1997) and 27 Pa.B. 1829 (April 12, 1997).)

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subchapter 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:

* * * * *

***Compliant fuel*—Low RVP gasoline or RFG.**

* * * * *

***Distributor*—[For purposes of the oxygenated fuels program, a] A person who transports, stores or causes the transportation or storage of gasoline at any point between a refinery, an oxygenated blending facility or terminal and a retail outlet or wholesale purchaser-consumer's facility. The term distributor includes a refinery, an oxygenated blending facility or a terminal.**

* * * * *

Importer—A person who imports gasoline or gasoline blending stocks or components from a foreign country into the United States.

* * * * *

Low RVP gasoline—Gasoline that has an RVP of 7.8 pounds per square inch or less as determined in accordance with the appropriate sampling and testing methodologies in 40 CFR Part 80, Appendix E (relating to test for determining Reid Vapor Pressure (RVP) of gasoline and gasoline-oxygenate blends).

* * * * *

Pittsburgh-Beaver Valley area—The seven county-area comprised of the following Pennsylvania Counties: Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland.

* * * * *

RFG—Federal reformulated gasoline—Gasoline that meets the requirements for RFG as specified in 40 CFR Part 80 Subpart D (relating to reformulated gasoline).

RVP—Reid vapor pressure—The measure of pressure exerted on the interior of a special container as determined by the appropriate methodologies in 40 CFR Part 80 Appendix E.

* * * * *

CHAPTER 126. STANDARDS FOR MOTOR FUELS

(Editor's Note: Sections 126.301—126.305 are new and are printed in regular type to enhance readability.)

Subchapter C. GASOLINE VOLATILITY REQUIREMENTS

- Sec. 126.301. Compliant fuel requirement.
- 126.302. Labeling requirements.
- 126.303. Recordkeeping and reporting.
- 126.304. Compliance and test methods.

§ 126.301. Compliant fuel requirement.

(a) This subchapter applies to gasoline which is sold or transferred into or within the Pittsburgh-Beaver Valley area during the period May 1 through September 30, 1998, and continuing every year thereafter.

(b) No refiner, importer, distributor, reseller, carrier, wholesale purchaser-consumer or retailer may:

(1) Sell, exchange or supply gasoline that is not a compliant fuel during the period described in subsection (a).

(2) Blend, mix, store or transport or allow blending, mixing, storing or transporting of compliant fuel with noncompliant fuel during the period described in subsection (a).

(c) If RFG is required by operation of Federal law to be sold in the Pittsburgh-Beaver Valley, this subchapter no longer applies after the date that RFG is required to be sold.

§ 126.302. Labeling requirements.

(a) Retailers are responsible for compliance with the labeling requirements of this section.

(b) During the time period described in § 126.301(a) (relating to compliant fuel requirements), each gasoline dispenser from which a compliant fuel is dispensed at a retail outlet in the Pittsburgh-Beaver Valley area shall have affixed a legible and conspicuous label which con-

tains the following statement: "From May 1 through September 30, the gasoline dispensed from this pump is a cleaner-burning blend, designed to reduce ground-level ozone, or smog, in the Pittsburgh area. For more information about air quality and clean fuels, contact the Pennsylvania Department of Environmental Protection at (717) 787-9702."

(c) The statement described in subsection (b) shall be in block letters of at least 20-point (3/16") bold type and in a color that contrasts with the background.

(d) The label shall be placed on the upper 2/3 of the vertical surface on each side of the dispenser with gallonage and price meters.

§ 126.303. Recordkeeping and reporting.

(a) Beginning with the terminal owner or operator who sells or transfers gasoline intended for use in the Pittsburgh-Beaver Valley area during the period described in § 126.301(a) (relating to compliant fuel requirements), each time the physical custody of or title to a shipment of gasoline changes hands other than when gasoline is sold or transferred for use in motor vehicles at a retail outlet or wholesale purchaser-consumer's facility, the transferor shall provide to the transferee a copy of the record described in this subsection. This record shall legibly and conspicuously contain, at a minimum, the following information:

- (1) The date of the sale or transfer.
- (2) The name and address of the transferor.
- (3) The name and address of the transferee.
- (4) The location of the gasoline at the time of transfer.
- (5) The volume of gasoline which is being sold or transferred.

(6) A statement certifying that the gasoline has an RVP of 7.8 pounds per square inch or less per gallon or is certified as RFG. If the gasoline is certified as RFG, each invoice, loading ticket, bill of lading, delivery ticket and other document that accompanies a shipment of RFG shall contain a statement from the refiner that certifies this fact.

(b) A person who transports, stores or sells compliant fuel that is intended for use in the Pittsburgh-Beaver Valley area during the period described in § 126.301(a), shall segregate the compliant fuel from noncompliant fuel and shall accompany the compliant fuel by the documentation described in subsection (a), at all times.

(c) Each person in the gasoline distribution network shall maintain records containing the compliance information listed in subsection (a). These records shall be retained for at least 2 years from the date of the sale or transfer of compliant fuel.

§ 126.304. Compliance and test methods.

(a) Compliance with the 7.8 pounds per square inch RVP standard shall be determined by use of the sampling and testing methods specified in this section. Any sampling or testing of gasoline required by this chapter shall be accomplished as follows:

(1) Sampling of gasoline for the purpose of determining compliance with this subchapter shall be conducted in accordance with 40 CFR Part 80, Appendix D (relating to sampling procedures for fuel volatility).

(2) Testing of gasoline for purposes of determining compliance with this rule shall be conducted in accordance with 40 CFR Part 80, Appendix E (relating to test

for determining Reid Vapor Pressure (RVP) of gasoline and gasoline—oxygenate blend).

(b) RFG shall be certified and tested in accordance with the requirements listed in 40 CFR Part 80 Subpart D (relating to reformulated gasoline).

CHAPTER 139. SAMPLING AND TESTING

Subchapter A. SAMPLING AND TESTING METHODS AND PROCEDURES

GENERAL

§ 139.4. References.

The references referred to in this subchapter are as follows:

* * * * *

(18) "Sampling Procedures for Fuel Volatility," 40 CFR Part 80, Appendix D (relating to reformed gasoline).

(19) "Tests for Determining Reid Vapor Pressure (RVP) of Gasoline and Gasoline-Oxygenate Blends," 40 CFR Part 80, Appendix E (relating to test for determining Reid Vapor Pressure (RVP) of gasoline and gasoline—oxygenate blends).

STATIONARY SOURCES

§ 139.14. Emissions of VOCs.

* * * * *

(b) The following are applicable to tests for determining the emissions of VOCs:

* * * * *

(8) Test methods for the determination of RVP in gasoline shall be in accordance with the procedures in 40 CFR Part 80, Appendix E (relating to test for determining Reid Vapor Pressure (RVP) of gasoline and gasoline—oxygenate blends).

[Pa.B. Doc. No. 97-679. Filed for public inspection May 2, 1997, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 1 AND 74]

[L-970122]

Perfection of Security Interests in Intangible Transition Property

The Pennsylvania Public Utility Commission (Commission) on April 10, 1997, adopted a proposed rulemaking to establish processes necessary for the perfection of security interests in intangible transition property required by 66 Pa.C.S. § 2812(d) (relating to approval of transition bonds). These proposed regulations are necessary to guarantee investors that they will have first priority in the money being collected to pay off any security bonds issued under 66 Pa.C.S. § 2812(d). These bonds may be necessary to help electric utilities manage the transition to electric competition in this Commonwealth. The bonds would help retire the stranded costs a utility faces. Stranded costs represent the expenses a utility incurred to provide electricity before competition, which expenses

may not be recovered now that competition is going to be implemented in this Commonwealth.

Executive Summary

At its public meeting of April 10, 1997, the Commission adopted an order establishing proposed ministerial requirements for the perfection of security interests in intangible transition property pursuant to 66 Pa.C.S. § 2812(d) of the Electric Generation Customer Choice Act of 1996 (act). Final regulations are necessary to facilitate the issuance of the transition bonds allowed under 66 Pa.C.S. § 2812.

A public comment period of 20 days will be provided for good cause under 45 P.S. § 1204(1)(iii). This is being done for several reasons. First, regulations should be in place, near the time the Commission takes action on a qualified rate order under 66 Pa.C.S. § 2812, so that transition bonds can be issued. Second, final regulations should be in place so that petitioners can avail themselves of the review options provided for in the act without adverse consequences on plans for the issuance of transition bonds. Finally, the absence of these ministerial regulations, which only establish agency process or procedure for securing perfection, might delay the issuance of transition bonds. The resulting loss of marketing opportunities and higher costs might be contrary to those reasonably intended by the act.

The Commission contacts are Joseph K. Witmer, Assistant Counsel, Law Bureau (717) 787-3663 and Shirley M. Leming, Regulatory Coordinator, Law Bureau (717) 772-4597.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 21, 1997, the Commission submitted a copy of these proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed regulations, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

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

Public meeting held April 10, 1997

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

Proposed Rulemaking Order (Corrected)

By the Commission:

Before the Commission for disposition today is a proposed rulemaking required under 66 Pa.C.S. § 2812(d) of the Electric Generation Customer Choice and Competition Act.

Background

On December 3, 1996, Governor Tom Ridge signed into law the Electricity Generation Customer Choice and Competition Act (act). The act revised the Public Utility Code, 66 Pa.C.S. § 101 et seq., by, inter alia, adding Chapter 28 (relating to restructuring of the electric utility industry).

The purpose of the act is to provide for an orderly transition of the Pennsylvania electric industry from a vertically integrated monopoly to a structure which would support the development of a competitive retail electric generation market while retaining a natural monopoly in the transmission and distribution markets. The ultimate goal is to permit all Pennsylvania retail electricity customers to have direct access to a competitive generation market while simultaneously enjoying the continued reliability and safety of existing transmission and distribution services.

One component of the transition to a competitive generation market involves the issuance of Qualified Rate Orders (QROs) to facilitate the recovery or financing of certain qualified transition expenses of an electric utility or assignee as part of the restructuring contemplated under the act. 66 Pa.C.S. § 2812(a).

QROs may issue upon application of an electric utility either concurrently with, prior to, during or following the filing of an electric utility's restructuring plan and, in certain instances, an electric utility may also seek expedited review of a QRO application. 66 Pa.C.S. §§ 2812(a)(2)(ii); 2812(b).

The general requirements governing the QRO applications are set forth in the act. Each application for a QRO shall contain a complete accounting of the utility's transition or stranded costs, detailed information regarding the utility's proposal for the sale of intangible transition property or the issuance of transition bonds and information regarding the electric utility's planned use of the proceeds of the sale or issuance. 66 Pa.C.S. § 2812(a)(2)(i). After notice and opportunity to be heard, the Commission may issue a final QRO for all or a portion of the amount of transition or stranded costs that it finds would be just and reasonable for the utility to recover from ratepayers under sections 2804 and 2808 (relating to standards; and competitive transition charge) of the act. The Commission will issue a final QRO only for the amounts found to be in the public interest. 66 Pa.C.S. § 2812(a)(2)(iii).

The Commission is required to complete its review of the application and issue its final determination by the later of 9 months from the filing, unless the electric utility requests expedited treatment under 66 Pa.C.S. § 2812(b), or 15 days following the filing of the electric utility's restructuring plan under 66 Pa.C.S. § 2806. 66 Pa.C.S. § 2812(a)(2)(iii). In the case of expedited review under 66 Pa.C.S. § 2812(b), the Commission is required to complete its review of the application and issue its final determination within 120 days after the request for expedited review, but, in no event, earlier than 15 days after the utility has filed its restructuring plan under section 2806 of the act. 66 Pa.C.S. § 2812(b)(1)(i).

The granting, perfection and enforcement of security interests in intangible transition property is necessary before the issuance of transition bonds issued under the Commission's determination regarding a petitioner's stranded costs. The perfection is governed by the act instead of Title 13 of *Pennsylvania's Uniform Consolidated Statutes*. 66 Pa.C.S. § 2812(d)(2).

Discussion

The Commission is required under 66 Pa.C.S. § 2812(d)(3) to promulgate regulations governing the perfection of security interests arising under any Commission-issued QRO. 66 Pa.C.S. § 2812(d)(3). The Commission is also required by 66 Pa.C.S. § 2812(d)(4) to establish and maintain a separate system of records to reflect the date and time of receipt of all filings. The Commission may also provide for the transfer of intangible transition property to an assignee in accordance with such a system. Consequently, the Commission must adopt regulations to fulfill these statutory requirements. The Commission is required to act in an extremely abbreviated time frame.

The regulations developed by the Commission in furtherance of section 2812's requirements, attached to this order as Annex A, are ministerial in nature. The proposed regulations will establish agency process or procedures for securing perfection. The regulations would be located in Chapter 74. The regulations are entitled "Perfection of Security Interests in Intangible Transition Property."

This rulemaking will facilitate the timely and cost-effective perfection of security interests in intangible transition property as required by section 2812(d) of the act. Regulations for the perfection of security interests are critical to the bond closing that precedes the sale of issued transition bonds.

The Commission currently has before it one petition for expedited issuance of a QRO. The Commission could issue a QRO as early as May 1997.

In addition, the Commission has several restructuring filings pending before it. See *PP&L Petition*, Docket No. R-00973954; *PECO Petition*, Docket No. R-00973953. The Commission expects additional restructuring filings and more petitions for QROs during or after review of the restructuring filings.

The absence of regulations, given these developments, could delay the implementation of section 2812(d) of the act and result in higher-than-necessary costs for Pennsylvania's ratepayers. That is because the absence of regulations necessarily delays the issuance of transition bonds by Pennsylvania's utilities. The failure to be able to expeditiously market transition bonds, backed by security interests perfected under these regulations, could result in the loss of an opportunity for Pennsylvania utilities to lower transition costs. The later issuance of transition bonds, especially if coupled with changes in the interest rate, would result in higher costs. Those additional costs could frustrate the act's goal of reducing electric costs with adverse economic consequences for Pennsylvania.

The Commission developed the proposed regulations after research and consultation with the Department of State's Corporation Bureau and others. The Commission began reviewing the act in January 1997, in conjunction with issuance of its earlier guidelines governing QRO applications under section 2812 of the act, with a view to fashioning the necessary regulations. The Commission consulted with the Department of State's Corporation Bureau on existing procedures used under Pennsylvania law for the perfection of security interests. The Commission also consulted with the Pennsylvania Electric Association (PEA) regarding the procedural devices necessary to perfect a security interest that would support the issuance of transition bonds.

Regulations must be in place for marketable transition bonds to be issued. Absent regulations, a petitioner possessing a QRO will be unable to proceed to bond

closing because of the inability to secure perfection of an underlying security interest. With regulations in place, a petitioner can rapidly proceed to perfect a security interest and issue marketable transition bonds sooner than later.

In addition, section 2812(d)(3) of the act requires the Commission to have regulations governing the perfection of security interests without regard to whether or not a petitioner is seeking expedited review under the act. The Commission believes that the necessity of providing the process for security interest perfection under the act, the potentially adverse consequences of not having regulations in place, and the ministerial nature of the regulations, which only establishes the agency procedure or practice for securing perfection, justify a 20-day public comment period under 45 P. S. § 1204(1)(iii).

The Commission is also taking other measures that effectively extends the public comment period beyond 20 days. The Commission is placing the text of the proposed regulations and the public comment deadline on the Commission's publicly available electronic bulletin board. The Commission is also mailing the proposed regulations and public comment deadline to all parties that participated in our earlier implementation orders. The Commission is further providing a copy of the proposed regulations and public comment deadline to the PEA, the Pennsylvania Bankers' Association, the Securities Commission and the Department of State's Corporation Bureau.

Given these considerations, the Commission concludes that the ministerial nature of the regulations, which only establishes the agency procedure or practice for securing perfection, and the exigencies of the act constitute good cause for a 20-day public comment period under 45 P. S. § 1204(1)(iii). That conclusion is bolstered by the additional steps the Commission is taking to expand opportunities for providing public comment during that 20-day period.

Section 74.1 (relating to purpose) sets forth the purpose of the regulations. Section 74.2 (relating to definitions) provides a list of definitions for the regulations. The definition section consists of definitions taken from the act as well as those derived from the comments of others.

Section 74.3 (relating to liberal construction) provides for the liberal construction of the regulations to facilitate perfection of security interests. Section 74.4 (relating to information, filing and hours) sets forth the location for information about the filing and the hours for receipt of filings under the regulations. Section 74.5 (relating to place of filing; informational filing) establishes the place of filing and requires an informational filing be made with the Department of State's Corporation Bureau.

Section 74.6 (relating to intangible transition property notice requirements; amendments; forms; error; recharacterization) sets forth the general rule and requirements for filing an intangible transition property notice under the regulations and the procedures that will govern minor errors, amendments and recharacterizations. Section 74.7 (relating to intangible transition property notice filing; duration lapses; filing officer; fees) governs the filing of notices, the duration of notice, lapses in notice and the role of the filing officer under the regulations. Section 74.8 (relating to termination notice; filing officer; fees) governs termination notices and filing officer duties under the regulations.

Section 74.9 (relating to assignment of security interest; filing officer; fees) establishes procedures for the assign-

ment of security interests and the role of the filing officer in these matters. Section 74.10 (relating to release or retransfer; filing officer; fees) governs the release or retransfer of a security interest. Section 74.11 (relating to information requests; filing officer) establishes procedures for obtaining information requests on a security filing as well as the furnishing of certificates for any security filing.

Section 74.12 (relating to record retention; admissibility; filing officer) establishes the requirements for record retention. Section 74.13 (relating to fees; notice of changes) governs notice changes. Section 74.14 (relating to forms officer) establishes a forms officer and sets forth the forms required to be available for filing under the regulations.

The filing fees for the perfection of security interests under the act are set forth in § 1.43(a) (relating to schedule of fees payable to the Commission). These filing fees are required by the Commission to cover the reasonable costs, including staffing and related infrastructure support and development, needed to establish and operate the perfection processes required by the act. These perfection processes for transition bonds may run as long as 9-years under 66 Pa.C.S. §§ 2808 and 2812. The filing fees imposed by the Commission would facilitate the fair and orderly transition to competition as required by 66 Pa.C.S. § 2802(13) (relating to declaration of policy) and are flexible as required by 66 Pa.C.S. § 2812(b)(9). In addition, the fees would allocate the costs of providing such services to the source of cost causation consistent with the general principle of economic pricing. Finally, the fees collected by the Commission for perfection-related services constitute reasonable cost-based charges as required by 66 Pa.C.S. § 317(a) (relating to fees for services rendered by commission).

The Commission notes that the proposed regulations are an amalgam of material from several sources. They differ in minor procedural ways from the comments provided by others.

The Commission seeks general comments on the proposed regulations as well as specific comments on the minor procedural variations. In both instances, persons submitting comments are requested to provide supporting justification for requested revisions and proposed regulatory language.

The Commission has identified five issues for specific comment. These are as follows:

Issue 1: Filing Date v. Effective Date. The Commission's proposed regulations make a distinction between the filing date and the effective date for perfection of a security interest. The Commission thinks this distinction is necessary so that it has the ability to reject filings that have more than minor problems under § 74.6(h). Without this distinction, every filing is effective when filed regardless of its conformity with the regulations.

Issue 2: Definitions. The Commission has defined terms under the act. In the absence of language in the act, the Commission has crafted definitions to support perfection of security interests. Some adjustments may be necessary.

Issue 3: Liberal Construction. The Commission requires the liberal construction of the proposed regulations. The Commission thinks that liberal construction is necessary to resolve the ambiguities that could arise from application of the regulations in specific instances. Without this authority, the Commission's inability to act could jeopardize the perfection of security interests.

Issue 4: Retention of Discretion. Section 74.9(a) preserves administrative discretion. The Commission believes that discretion is necessary to respond to factual and regulatory developments arising after the regulations go into effect.

Issue 5: Use of Proposed Forms and UCC-1 and UCC-3. The Commission proposes to require the filing of Form A and Form B as well as UCC-1 and UCC-3. The Commission thinks this is necessary in light of the informational filing with the Department of State which will be required by these regulations. The Commission also thinks that such a requirement is supported by the fact that other security interests are perfected in this Commonwealth by filing the UCC Form-1 and UCC Form-3.

Accordingly, under 66 Pa.C.S. §§ 501 and 2812(d) of the Public Utility Code; the Commonwealth Documents Law (45 P. S. § 1201 et seq.); and 71 P. S. § 745.1 et seq., the Commission issues the proposed regulations, attached as Annex A of this order and as published in the *Pennsylvania Bulletin*, for comment; *Therefore,*

It is Ordered that:

1. A rulemaking docket shall be opened to promulgate regulations for the perfection of security interests in intangible transition property under 66 Pa.C.S. § 2812(d) as set forth in Annex A of this order.

2. The Secretary shall submit this order and Annex A to Office of the Attorney General for preliminary review as to form and legality.

3. The Secretary shall submit a copy of this order, together with Annex A, to the Governor's Budget Office for review of fiscal impact.

4. The Secretary shall submit this order and Annex A for informal review and comments by the designated standing committees of both Houses of the General Assembly, and for informal review and comments by IIRC.

5. The Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. The Secretary shall provide a copy of this order and Annex A for placement on the Commission's electronic Bulletin Board, to the Department of State's Corporation Bureau, the Pennsylvania Electric Association, the Pennsylvania Banking Association and the Commonwealth of Pennsylvania Securities Commission for review and comment within the period prescribed by 45 P. S. § 1204(1)(iii) below.

7. That, within 20 days of this order's publication in the *Pennsylvania Bulletin*, consistent with 45 P. S. § 1204(1)(iii), an original and 15 copies of any comments concerning this order should be submitted to the Office of the Prothonotary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265.

JOHN G. ALFORD,
Secretary

Fiscal Note: 57-183. No fiscal impact; (8) recommends adoption. The fees assessed by the Commission under these regulations are anticipated to offset related administrative costs, thereby resulting in a net effect of no increased costs to the Commission.

Annex A
TITLE 52. PUBLIC UTILITIES
PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION

Subpart A. GENERAL PROVISIONS
CHAPTER 1. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

§ 1.43. Schedule of fees payable to the Commission.

(a) *Fees for services.* The fees for services rendered by the Commission are as follows:

<i>Description</i>	<i>Fee (in dollars)</i>
* * * * *	
Initial filing and perfection of Form A & UCC-1 for intangible transition property notice	\$.00005 of Transition Bond Face Value or \$100,000 whichever is lower.
Subsequent filing of notice changes in intangible transition property notice on Form B & UCC-3	\$.0000005 of Transition Bond Face Value or \$1,000 whichever is lower.
Public information requests	\$10 and per page copying costs.
* * * * *	

Subpart C. FIXED SERVICE UTILITIES
CHAPTER 74. PERFECTION OF SECURITY INTEREST IN INTANGIBLE TRANSITION PROPERTY

<i>Sec.</i>	<i>Purpose.</i>
74.1.	Purpose.
74.2.	Definitions.
74.3.	Liberal construction.
74.4.	Information, filing and hours.
74.5.	Place of filing; informational filing.
74.6.	Intangible transition property notice requirements; amendment; forms; error; recharacterization.
74.7.	Intangible transition property notice filing; duration lapses; filing officer; fees.
74.8.	Termination notice; filing officer; fees.
74.9.	Assignment of security interest; filing officer; fees.
74.10.	Release or retransfer; filing officer; fees.
74.11.	Information requests; filing officer; fees.
74.12.	Record retention; admissibility; filing officer.
74.13.	Fees; notice changes.
74.14.	Forms officer.

§ 74.1. Purpose.

This chapter implements the ministerial requirements of section 2812(d)(1)–(4) of the act (relating to approval of transition bonds) governing the granting, perfection or enforcement of a security interest in intangible transition property. This chapter establishes the recordkeeping regulations and requirements and provides technical rules on administration. This chapter also establishes how an intangible transition property notice is filed, what a filing shall contain and what obligatory record retention requirements are imposed on the Commission. This chapter governs notice, amendment, effectiveness and termination of the security interest.

§ 74.2. Definitions.

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

Act—66 Pa.C.S. Chapter 28 (relating to restructuring of electric utility industry).

Assignee—A person, partnership, corporation, public authority or trust, whether public or private, that succeeds to the interest of a financing party in intangible transition property. The term includes a transferee and any other relevant party. The term also includes a party necessary for any action taken. The term does not include the Commission.

Assignment—A transfer of an existing security interest, or of the interest of an assignee, in intangible transition property.

Assignor—An electric utility or others who transfer an interest in intangible transition property to an assignee.

Certificate—A document establishing whether there is on file with the Commission on the date and hour stated a presently effective intangible transition property notice with information sufficient to provide the necessary identification information.

Commission—The Pennsylvania Public Utility Commission, including an appointed successor entity.

Continuation notice—A filing submitted to extend the effective date of a filing beyond the initial 12-year effective date.

Department of State—The Corporation Bureau of the Department of State of the Commonwealth including an appointed successor entity.

Effective date—The date an intangible transition property notice filing will be deemed complete.

File number—A numerical sequence used to identify a filing by means other than the qualified rate order docket number and the general docket number.

Filing—The submission of a completed intangible transition property notice or other document described in this chapter to the filing officer, together with the applicable filing or processing fee, and the acceptance thereof as complete by the filing officer.

Filing date—The date on which a filing is made as described in this chapter.

Filing officer—An authorized person in the Office of the Prothonotary of the Commission, including an appointed successor entity or office.

Filing party—A party, person, partnership, corporation, public authority or trust, whether public or private, who makes a filing under this chapter. The term does not include the Commission.

Financing party—A party, person, partnership, corporation, public authority or trust, whether public or private, including an assignee, whose interest in intangible transition property is or may be secured. The term includes anyone necessary for action to be taken. The term does not include the Commission.

General docket number—The generic docket location established by the Commission as a repository for filings pertaining to the granting, perfection or enforcement of a security interest.

Grantor—An electric utility or other party, partnership, person, corporation, public authority or trust, whether public or private, who grants a security interest in intangible transition property to another person. The term does not include the Commission.

Information request—A request from a party or person to the Commission concerning the granting, perfection or enforcement of a security interest.

Intangible transition property—A notice of a security interest in, or of a transfer to an assignee of, intangible transition property. References to an intangible transition property include all properly filed amendments to a notice, unless the context otherwise requires, and subject to the limitations provided.

Intangible transition property notice—A section filing submitted by a party in furtherance of section 2812(d) of the act (relating to approval of transition bonds).

Lapse—An event that causes the perfection accorded a security interest to become unperfected.

Party—A person, partnership, corporation, public authority or trust, whether public or private, seeking the granting, perfection or enforcement of a security interest. The term does not include the Commission.

Person—A human being, partnership, corporation, public authority or trust, whether public or private, existing under the laws of the Commonwealth, another state, the United States or a foreign country.

Qualified rate order—An adopted and entered order of the Commission consistent with the act.

Qualified rate order docket number—The established Commission filing number for an adopted and entered qualified rate order.

Release—An action taken by an assignee to return to an assignor all or a portion of the interest of the assignee in intangible transition property.

Retransfer—An action taken by a party to alter a right, duty or obligation concerning the granting, perfection or enforcement of a security interest.

Security interest—An interest in intangible transition property securing the payment of performance of an obligation.

Successor—A party, person, partnership, corporation, public authority or trust, whether public or private, which succeeds in interest to the rights and responsibilities of a party to a transaction concerning intangible transition property. The term does not include the Commission.

Termination notice—The notification provided to a requesting grantor concerning the termination of an encumbrance arising from a security interest previously granted and perfected.

§ 74.3. Liberal construction.

(a) This chapter will be liberally construed to ensure that legal, equitable, efficient and cost-effective requirements are in place concerning the granting, perfection or enforcement of a security interest.

(b) The Commission or filing officer may waive a requirement of this chapter when necessary or appropriate, if the waiver does not adversely affect a substantive right of a person or party, in order to effectuate the granting, perfection or enforcement of a security interest arising under the act or this chapter.

§ 74.4. Information, filing and hours.

(a) Information as to procedures and forms for filing under this chapter, and instructions supplementing this chapter in special instances, may be obtained upon request:

Office of the Prothonotary
 Pennsylvania Public Utility Commission
 P. O. Box 3265
 Harrisburg, Pennsylvania 17105-3265

(b) Submittal, filings, requests, forms and all other communications either written or otherwise should be addressed as follows:

Office of the Prothonotary
 Pennsylvania Public Utility Commission
 P. O. Box 3265
 Harrisburg, Pennsylvania 17105-3265

(c) Unless directed otherwise by the Governor or due to unforeseen circumstances, the Commission offices will be open from 8 a.m. until 4:30 p.m. on business days except Saturdays, Sundays and legal holidays.

§ 74.5. Place of filing; informational filing.

(a) *Place of filing.* An intangible transition property notice shall be filed with the filing officer of the Commission by the filing party and be accompanied by the payment of all filing fees established by the Commission.

(b) *Informational filing.* An intangible transition property notice shall also be filed by the filing party with the Department of State in accordance with the procedures and fees as determined to be necessary by the Department of State. An intangible transition property notice filed with the Department of State will be deemed for informational purposes only and will have no force and effect under section 2812(d) of the act (relating to approval of transition bonds). The filing party shall file a copy of an intangible transition property notice for informational purposes with the Department of State within a reasonable time after the filing date.

(c) *Effect of successor entity on filing.* An effective intangible transition property notice continues in force and effect even though the grantor or assignor whose intangible transition property notice is (or originally was) the subject of a filing merges, consolidates or otherwise reorganizes.

§ 74.6. Intangible transition property notice requirements; amendment; forms; error; recharacterization.

(a) *General.* An intangible transition property notice will be deemed complete and have an effective date if it provides the following:

- (1) The name of the grantor or assignor.
- (2) The address of the grantor or assignor.
- (3) A signature of an authorized person acting on behalf of the grantor or assignor.
- (4) The name of the financing party or assignee.
- (5) The address of the financing party or assignee.
- (6) The signature of an authorized person acting on behalf of the financing party or assignee.
- (7) A statement constituting notice to the public that information concerning the security interest or assignment which is the subject of the intangible transition property notice may be obtained from the financing party or assignee and which provides the name and address of the financing party or assignee.
- (8) A statement setting forth whether all or a portion of the recovery permitted under the qualified rate order, from which the intangible transition property notice is derived, is covered by the intangible transition property notice. If the portion covered by an intangible transition

property notice relates to less than all of the qualified rate order, the portion or the amount thereof to which the intangible transition property notice shall be stated.

(9) The Commission docket number and date of entry of the qualified rate order from which an intangible transition property is derived.

(10) The general docket number established by the filing officer as a repository at the Commission for all filings submitted for the granting, perfection or enforcement of a security interest.

(b) *Filing sequence.* An intangible transition property notice may be filed before a security agreement or assignment is made or a security interest otherwise attaches or an assignment becomes effective.

(c) *Effect of partial completion.* An intangible transition property notice which otherwise complies with this section will be deemed complete and effective when it is signed by the financing party or assignee instead of the grantor or assignor, if it is filed to perfect a security interest in or record a transfer to an assignee of:

(1) In the case of a security interest, intangible transition property as to which the filing of a security interest has lapsed.

(2) Intangible transition property under a security agreement or an agreement effecting a transfer to an assignee signed by the grantor or assignor and authorizing the financing party or the assignee, as the case may be, to file an intangible transition property notice. An intangible transition property notice shall state that it is filed in accordance with a security agreement or an agreement effecting a transfer signed by the grantor or assignor and authorizing the filing of the notice and may be filed by the financing party or the assignee.

(d) *Form.* A filing party shall submit Form A and UCC-1, to comply with this section. Both Form A and UCC-1 shall be filed with the Commission and the Secretary of State.

(e) *Amendments.* An intangible transition property notice may be amended only with a filed writing signed by both the grantor or assignor and the financing party or assignee, as the case may be. An amendment does not extend the period of effectiveness of an intangible transition property notice. If any amendment adds intangible transition property, it is effective as to the added intangible transition property only from the effective date of filing of the amendment.

(f) *Amendment form.* A filing party shall submit Form B and UCC-3 to comply with this section.

(g) *Sufficiency of name.* An intangible transition property notice sufficiently shows the name of the grantor or assignor if it gives the partnership or corporate name of a party, whether or not it adds other trade names or the names of partners. A filed intangible transition property notice remains effective with respect to intangible transition property transferred by the grantor or assignor even though the financing party or the assignee knows of or consents to the transfer.

(h) *Effect of minor errors; recharacterization.* An intangible transition property notice substantially complying with this section will be sufficient even if it contains minor errors which are not seriously misleading. If an intangible transition property notice is filed with respect to an assignment of interest in intangible transition property under this chapter, and an assignment is thereafter held for a reason or purpose to constitute the grant

of a security interest in intangible transition property, the intangible transition property notice will be deemed to constitute a filing with respect to a security interest under this chapter, from and as of the date and time of the effective date of the original intangible transition property notice, without the necessity of any amendment of (or other action by the parties with respect to) the originally filed intangible transition property notice.

§ 74.7. Intangible transition property notice filing; duration lapses; filing officer; fees.

(a) *What constitutes a filing with an effective date.* Presentation for filing of an intangible transition property notice and tender of the filing or processing fee, and acceptance of the intangible transition property notice by the filing officer, will constitute a filing with an effective date under the act and this chapter. Nothing in the act or this chapter will preclude the filing officer from rejecting or otherwise returning an unreasonable and insufficient filing to a person or party.

(b) *Purposes of filing.* An intangible transition property notice may be filed to perfect the security interest of a financing party in intangible transition property. An intangible transition property notice shall also be filed in respect of each transfer to an assignee of an interest in intangible transition property.

(c) *Duration of effectiveness of filing in general.* A filed intangible transition property notice filed to perfect the security interest of a financing party will be effective for 12 years from the effective date. The effectiveness of a filed intangible transition property notice filed to perfect the security interest of a financing party lapses on the expiration of the 12-year period unless a continuation notice is filed prior to the lapse. If a security interest perfected or continued by filing exists at the time insolvency proceedings are commenced by or against the grantor, the security interest will remain so perfected until the later of the expiration of the applicable 12-year period or a period ending 60-days following the termination of the insolvency proceedings.

(d) *Lapse.* Upon lapse, the security interest becomes unperfected. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchase or lien creditor before the lapse. A filed intangible transition property notice filed and perfected to record the transfer to an assignee of intangible transition property is continuously effective.

(e) *Continuation notice.* A continuation notice shall be filed by a financing party no earlier than 6 months prior to the expiration of the 12-year period specified in subsection (c). A continuation notice shall be signed by the financing party, identify the original notice by file number and state that the original intangible transition property notice is still effective. A continuation notice signed by a person other than the financing party or transferee of record shall be accompanied by a separate written statement of assignment signed by the financing party or transferee of record and comply with this chapter, including payment of the required fees. Upon timely filing of the continuation notice, the effectiveness of the original notice is continued for 12 years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (d) unless another continuation notice is filed prior to a lapse. Succeeding continuation notices may be filed in the same manner to continue the effectiveness of the original notice.

(1) Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed notice from the files and destroy it immediately if he has retained a microfilm or other photographic record or in other cases 1 year after the lapse.

(2) The filing officer will so arrange matters by physical annexation of intangible transition property notices to continuation notices or other related filings, or by other means, that if the filing officer physically removes the intangible transition property notices of a period more than 12 years past, those which have been continued by a continuation notice shall be retained.

(3) The filing officer will place a filing in the Commission's docketed qualified rate order which legitimized a subsequent intangible transition property notice as well as in the general docket number established by the Commission and set aside for an intangible transition property notice.

(f) *Establishment and duties of filing officer.*

(1) The Commission will establish and appoint a filing officer who will be responsible for maintaining the records and taking the other actions described or otherwise necessary. The filing officer will place copies of filings submitted under this chapter in the appropriate dockets for future reference and otherwise manage all filings.

(2) The filing officer will also mark each intangible transition property notice and each subsequent filing in a general docket number with a consecutive file number and with the date and time of filing and will hold the intangible transition property notice and each subsequent filing or a microfilm or other photographic or electronic copy thereof for public inspection. Consecutive file numbers for intangible transition property notices and subsequent filings for notices filed in each calendar year will begin with the number one preceded by the last two digits of the calendar year in which the filing occurs. In addition, the filing officer will index the intangible transition property notices according to the name of the grantor or assignor and will note in the index the file number and address of a party.

(g) *Fees.* The Commission will prescribe one uniform filing fee for filing, indexing and furnishing filing data for an original or a continuation notice based upon the total direct and indirect administrative cost of providing for filings.

(h) *Legible papers.* The duties of the filing officer prescribed in this chapter will relate only to clearly legible papers filed with the filing officer or submitted to the filing officer for filing. A filing officer will promptly return to the person a filing that is not clearly legible. No intangible transition property notice nor another related filing will be accepted unless it is typed or printed in black ink and, in the determination of the filing officer, interpreted or reproduced using the technology employed by the Commission.

§ 74.8. Termination notice; filing officer; fees.

(a) *General.* Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the financing party shall on written demand by the grantor send the grantor a termination notice to the effect that it no longer claims a security interest under the applicable intangible transition property notice, which shall be identified by its file number. A termination notice signed by a person other than the financing party of record shall be accompanied by a separate written notice of assignment signed by the

financing party of record and complying with this chapter, including payment of the required fee. If the affected financing party fails to file a termination notice as required by this subsection, or to send a termination notice within 10 days after proper demand therefor, the financing party shall be liable for a loss caused to the grantor by reason of the failure.

(b) *Duties of filing officer.* On presentation to the filing officer of a termination notice, the filing officer shall note the filing on the termination notice. If the filing officer has received the termination notice in duplicate, the filing officer will return one copy of the termination notice to the financing party stamped to show the date of receipt thereof. If the filing officer has a microfilm or other photographic record of the intangible transition property notice and of a related continuation notice, notice of assignment and notice of release, the filing officer may remove the originals from the file at a time after receipt of the termination notice, or if the filing officer has no record, the filing officer may remove the originals from the files 1 year after receipt of the termination notice.

(c) *Fees for filing.* The Commission will prescribe the uniform fee for filing and indexing the termination notice. A duplicate of the termination notice will be returned to the financing party. There will be a fee for each name (more than one) against which the termination notice is required to be indexed. The fee is the fee for filing Form B and UCC-3 in § 1.43 (relating to schedule of fees payable to the Commission).

§ 74.9. Assignment of security interest; filing of fees; fees.

(a) *Assignment disclosed in intangible transition property notice.* An intangible transition property notice may disclose an assignment of a security interest of a financing party or the interest of an assignee in the intangible transition property described in the intangible transition property notice by indication in the notice of the name and address of the transferee or by an assignment itself or a copy thereof on the face or back of the notice. Either the original financing party or assignee or the transferee may sign this statement as the financing party or assignee. On presentation to the filing officer of an intangible transition property notice, the filing officer will mark it as provided for in this chapter.

(b) *Fees.* The Commission will prescribe the uniform fee for filing, indexing and furnishing filing data for an intangible transition property notice plus an additional fee for each name against which the intangible transition property notice is required to be indexed. The fee is the fee for filing Form B and UCC-3 in § 1.43 (relating to schedule of fees payable to the Commission).

(c) *Separate notice of assignment.* A financing party or assignee of record may assign all or a part of its rights under an intangible transition property notice by the filing of a separate written notice of assignment signed by the financing party or assignee of record and setting forth the name of the financing party or assignee of record, the grantor or assignor, the file number and the date of filing of the intangible transition property notice and the name and address of the transferee and a description of the intangible transition property assigned, including the information described in § 74.6(a) (relating to intangible transition property notice requirements; amendment; forms; error; recharacterization). A copy of the assignment is sufficient as a separate notice if it complies with the preceding sentence. On presentation to the filing officer of a separate notice, the filing officer will mark a separate

notice with the date and hour of the filing. The filing officer will note the assignment on the indices of the intangible transition property notice or enter the assignment information into the computerized system for intangible transition property notices.

(d) *Fees.* The Commission will prescribe the uniform fee for filing, indexing and furnishing filing data about a separate notice of assignment, plus, for each additional person, firm or organization, beyond the first, named as a grantor or assignor in the notice, an additional fee. The fee is the fee for filing Form B and UCC-3 in § 1.43.

(e) *Status of transferee.* After the disclosure or filing of an assignment under this section, the transferee is the financing party or assignee of record.

§ 74.10. Release or retransfer; filing officer; fees.

(a) *Release of intangible transition property interest.* A financing party or assignee of record may by its signed notice release or retransfer all or a part of an intangible transition property described in a filed intangible transition property notice. The notice of a release or retransfer is sufficient if it contains a description of the intangible transition property being released or retransferred (including the information described in § 74.6(a) (relating to intangible transition property notice requirements; amendments; forms; error; recharacterization)), the name and address of the grantor or assignor, the name and address of the financing party or assignee, the docket number for the qualified rate order from which an intangible transition property is derived, the file number of the intangible transition property notice and the general docket number. A notice of release or retransfer signed by a person other than the financing party or assignee of record shall be accompanied by a separate written statement of assignment signed by the financing party or assignee of record and comply with § 74.6(a), including payment of the required fee. Upon presentation of a notice of release or retransfer to the filing officer, the filing officer will mark the notice with the date of filing and will note the same upon the margins of the indices of the filing of the intangible transition property notice.

(b) *Fees.* The Commission will prescribe the uniform fee for filing and noting a notice of release or retransfer plus, for each additional person, firm or organization, beyond the first, named as a grantor or assignor in the notice, an additional fee. The fee is the fee for filing Form B and UCC-3 in § 1.43 (relating to schedule of fees payable to the Commission).

§ 74.11. Information requests; filing officer; fees.

(a) *Marking copy of intangible transition property notice filed.* If the filing party submitting an intangible transition property notice, continuation notice, termination notice, notice of assignment, notice of release or notice of retransfer, furnishes the filing officer with a copy, the filing officer will upon request note upon the copy the file number and date of the filing of the original and deliver or send the copy to the filing party.

(b) *Fees.* The fee for information requests is the fee in § 1.43 (relating to schedule of fees payable to the Commission) for public information requests.

(c) *Furnishing certificates and copies.* Upon request of a person, the filing officer will issue a certificate showing whether there is on file on the date and hour stated therein, a presently effective intangible transition property notice naming a particular grantor or assignor and a notice of assignment and if there is, giving the date and hour of filing of each notice and the names and addresses

of each financing party or assignee named therein. The certificates will also show whether there is on file on the date and hour stated therein, a notice of Federal tax lien or other certificate or notice affecting intangible transition property of the grantor or assignor, naming a party, and if there is, giving the date and hour of filing of each notice or certificate. The Commission will prescribe the uniform fee for a certificate premised upon the total direct and indirect administrative costs of providing the service. Upon request, the filing officer will furnish a copy of a filed intangible transition property notice, notice of Federal tax lien or notice or certificate affecting intangible transition property of a grantor or assignor, or a continuation notice, termination notice, notice of assignment, notice of release or notice of retransfer respecting an intangible transition property notice, all for a uniform fee prescribed by the Commission.

§ 74.12. Record retention; admissibility; filing officer.

In lieu of retaining the original of a filing, a filing officer may make microfilm, photographic, photostat, electronic or other copies which accurately reproduce an original and may thereafter dispose of the originals so copied, and the copy will be admissible in evidence in a proceeding with the same effect as though it were an original. If a filing officer upon making a copy of a paper will have disposed of the original, then upon the filing of a termination notice the filing officer will be relieved of the duties imposed regarding the underlying intangible transition property notice, and instead will note the termination notice on the index and will send to the financing party an acknowledgement of the filing of the termination notice.

§ 74.13. Fees; notice changes.

(a) The fees are those in § 1.43(a) (relating to schedule of fees payable to the Commission) for services. The fees

in § 1.43(a) governing this chapter are based on the total direct and indirect administrative cost of providing the service, including staffing and infrastructure support, necessary to effectuate the granting, perfection or enforcement of a security interest under the act and as required by 66 Pa. Code § 317(a) (relating to fees for services rendered by Commission).

(b) The initial filing and perfection fee will be that in § 1.43 for the filing of Form A and UCC-1. The fee for changes and other action with respect to an intangible transition property notice in connection with an amendment, continuation, termination, assignment, release or retransfer will be that in § 1.43 for the filing of Form B and UCC-3. Forms will be available from the forms officer of the Commission.

§ 74.14. Forms officer.

There will be a forms officer responsible for providing forms to the public. The forms will include, at a minimum, the following:

- (1) Form A for intangible transition property notice.
- (2) Form UCC-1.
- (3) Form B for any amendment, assignment, continuation, release, retransfer or termination of interest in an intangible transition property notice.
- (4) Form UCC-3.
- (5) An established fee schedule.
- (6) Other forms as may be necessary to effectuate the granting, perfection or enforcement of a security interest under the act and this chapter.

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