

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Water Quality Standards

The Environmental Quality Board (Board) by this order amends §§ 93.9e, 93.9f, 93.9k, 93.9l, 93.9o, 93.9q and 93.9z to read as set forth in Annex A.

This order was adopted by the Board at its meeting of July 15, 1997.

A. *Effective Date*

These amendments are effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information, contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Watershed Conservation, (formerly the Division of Assessment and Standards, Bureau of Water Quality Management), 10th Floor Rachel Carson State Office Building, P. O. Box 8555, 400 Market Street, Harrisburg, PA 17105-8555, (717) 787-9637 or William J. Gerlach, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) and request that the call be relayed. This proposal is available electronically through the Department of Environmental Protection's (Department) Web site (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

This final rulemaking is being made under the authority of the following acts: sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grant to the Board the authority to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law. In addition, the Federal regulation at 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

D. *Background of the Amendment*

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

The Department considers candidates for Special Protection status and redesignation in its ongoing review of water quality standards. In general, Special Protection waters must be maintained at their existing quality, and wastewater treatment requirements must comply with § 95.1 (relating to general requirements). Candidates may be identified by the Department based on routine

waterbody investigations. Requests for consideration may also be initiated by other agencies, such as the Fish and Boat Commission and by the general public through a rulemaking petition to the Board.

The Department evaluated the following streams in response to requests or petitions from the following:

Little Fishing Creek, Lick Run, Finley Run, and Shirley Run: Fish and Boat Commission

Letort Spring Run: Department's Southcentral Regional Office

Tinicum Creek: Tinicum Creek Watershed Association

Lofty Creek: Eugene J. Dougherty

Unami Creek: Marlborough Township Board of Supervisors

Pine Creek: Pine Creek Headwaters Protection Group and Tiadaghton Audubon Society

Sideling Hill Creek: Fulton County Conservation District

The physical, chemical and biological characteristics and other information on these waterbodies were evaluated in order to determine the appropriateness of the current designations. Aquatic surveys of these streams were conducted by the Department's Bureau of Water Quality Management and others. Based upon the data collected in these surveys and information gathered from Department records and other sources, the Board made changes to the proposed designations as described in Section F of this Preamble.

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

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

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

The proposed regulations were approved by the Board at its June 20, 1995, meeting, and notice of the proposed rulemaking was published at 25 Pa.B. 3111 (August 5, 1995). The proposal included provisions for a 60-day public comment period and a public hearing to receive additional written and oral testimony on the Unami Creek proposal, which was held on September 27, 1995, at the Tylersport Fire Company. The public comment period concluded on October 4, 1995. However, requests for a public hearing or meeting on the Letort Spring Run redesignation were received at the end of the regular public comment period. As a result, the Department agreed to hold a public meeting to discuss the Special Protection Waters designation program, and to respond to public concerns and receive additional information on the Letort Spring Run proposal. This meeting was held on December 4, 1995, at the South Middleton Township Municipal Office. Although the Board's public comment period had already closed on October 4, 1995, the Depart-

ment accepted additional comments, suggestions and objections on the Letort Spring Run proposal until December 15, 1995.

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

The Board received comments from a total of 59 commentators during the public comment period. The Pennsylvania Farm Bureau provided comments on the entire proposed rulemaking package by generally opposing all EV redesignations. Two commentators provided comments on the Lofty Creek recommendation for no change (one supporting and one opposing). Thirty-eight commentators commented or testified on the Unami Creek EV proposal; twenty-two of these were witnesses at the Unami Creek public hearing. Eight commentators and 14 witnesses supported the EV designation, one was a neutral witness, and nine commentators and seven witnesses opposed the Unami Creek proposal. Seventeen commentators (four supporting, 11 opposing, one neutral, and one with an indeterminate position) provided comments on Letort Spring Run during the regular public comment permit. Two commentators supported the Sideling Hill Creek redesignation as EV.

The Independent Regulatory Review Commission (IRRC) provided comments on Letort Spring Run, Pine Creek and Unami Creek, which address issues that relate to clarity and reasonableness of the rulemaking. The Standing Committees did not provide any written comments on the proposed Tinicum Creek, et al rulemaking package.

Thirty commentators provided additional comments on Letort Spring Run during the December 4, 1995, public meeting and extended comment period (1 supporting and 29 opposing). The Department did not maintain a verbatim transcript of this public meeting. The Department conducted additional field survey work and stream evaluations on Pine Creek and Letort Spring Run in response to public comments and to provide additional information to further support or verify the proposed recommendations. The additional work on Pine Creek was performed by a staff biologist in the Department of Conservation and Natural Resources (DCNR), to verify the current status of the historic reference to broad-leafed water plantain being last documented in the basin during 1980. The biologist was able to confirm that this "Pennsylvania Endangered" species is still found near the same locations in the Pine Creek basin as reported in 1980, following several visits in August and September 1996. The Department also conducted additional water quality sampling on Letort Spring Run to verify the current condition of the water quality that had been questioned during the public comment period, at the public meeting and by IRRC. The additional sampling shows that the Letort Spring Run water quality is better than applicable water quality criteria, and supports excellent macroinvertebrate communities typical of limestone streams.

The Department believes that these redesignations are necessary to maintain the existing high quality of the streams. The Department does not propose any new regulatory restrictions on the existing dischargers or operations within these basins because of the HQ or EV Waters redesignations. The existing operations are currently required to obtain and maintain applicable Department permits, use best management practices where applicable, and must comply with the policies and regulations contained in The Clean Streams Law, and various chapters of the *Pennsylvania Code*. However, new or expanded discharge facilities or operations will be re-

quired to demonstrate that any proposed expansion or new operation will not have an adverse impact on the basin's water quality.

Several commentators and IRRC questioned the fiscal and economic impacts from these regulatory amendments, especially the EV redesignations. One commentator and witness at the Unami Creek public hearing chronicled the increased costs and bureaucratic effects of an EV designation on building and development in EV basins. This local developer estimated that it may cost him an additional \$10,000 per lot for additional permitting fees/costs, engineering costs, construction modification and additional ground required for the silt basins necessary in an EV watershed. He also described his belief that a developer would be prohibited from doing even the simplest road or bridge repair or encroachment on a wetland because it will require additional permits, planning, engineering and regulatory restrictions.

The Department is unable to predict future costs or impacts, if any, that will be incurred by a new or expanding discharger as the result of an HQ or EV Waters redesignation. While the Department acknowledges that development in an HQ or EV watershed must be consistent with the designation, such designations do not prohibit development. The Department recommends that new or expanding dischargers pursue alternatives such as protective buffer zones, or multi-functional or strategic placement of facilities and physical features, and encourages creative planning and discharge alternatives; the Department will work with facility operators and developers in order to develop options that will help them comply with the regulatory requirements. These efforts to reduce pollution at the source, and thereby protect our important resources, are supported by the Department's Office of Pollution Prevention and Compliance Assistance.

F. *Summary of Changes to the Proposed Rulemaking*

Based upon questions raised during the public comment period and the development of this final rulemaking, relating to the appropriateness of the proposed Exceptional Value Waters (EV) designation for Unami Creek, the Department reexamined the factors that supported the EV recommendation. The high level of interest that was demonstrated by the affected public during the comment period has caused the Department to again reassess its original recommendation to the Board.

The proposal for EV Waters for portions of the Unami Creek basin was based on applicable regulatory criteria and EV Criteria IV.2—Outstanding Ecological Attributes and III.1—Regional/local Resource with Protective Mechanisms. As pointed out by a stakeholder in the basin, the reference streams to which Unami Creek was compared are not designated as EV Waters in Chapter 93, but are High Quality Waters. Determination of EV Waters under this circumstance makes it necessary to evaluate how much better than the reference station a candidate stream must be, rather than whether it compares equivalently to the reference stream. Scores for the sampling stations ranged from 59% to 112% of the reference station scores. The Department believes that these scores are sufficient to characterize Unami Creek as deserving the same designation (HQ) as the references, but not a higher (EV) designation.

Because of this reexamination of the factors supporting the redesignation of Unami Creek, the Department revises its previous recommendation to the Board, and supports redesignation of the Unami Creek basin as High Quality Waters.

Also, the Letort Spring Run evaluation was revised to incorporate the results of additional evaluations which were conducted by the Department. These revisions include revising the scope of EV protection on Letort Spring Run from the Route 34 bridge crossing to the abandoned railroad bridge at Letort Park. The proposed rule had recommended EV protection from the source to the southern boundary of Carlisle Borough. These changes are consistent with the Scenic River District established by South Middleton Township. Letort Spring Run from the source to the Route 34 bridge crossing will continue to be protected as HQ-CWF.

G. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final regulations.

1. *Benefits*—Overall, the citizens of this Commonwealth will benefit from these recommended designations because they will provide, in some cases, an added degree of protection for important public natural resources and, in all cases, the most appropriate degree of protection for each stream in question.

2. *Compliance Costs*—Generally, these changes should have no fiscal impact on, or create additional compliance costs for the Commonwealth or its political subdivisions. Except as noted, no costs will be imposed directly upon local government by this recommendation.

However, indirect costs may result from revisions to Act 537 Sewage Facilities Plans due to consultant and other administrative fees. Political subdivisions which add a new sewage treatment plant or expand an existing plant in the basin may experience changes in cost as noted in the discussion of impacts on the private sector.

Persons proposing activities or projects which result in new or expanded discharges to streams must comply with the regulatory requirements relating to current stream designations. Persons could be adversely affected by the recommended changes that increase the level of protection provided to a stream if they expand their existing discharge, or add a new discharge point, since they may need to provide a higher level of treatment for their new or expanded discharge. These increased costs take the form of higher engineering, construction or operating costs for wastewater treatment facilities. Treatment costs are site-specific and may depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs. In addition, nonpoint source controls necessary to protect High Quality and Exceptional Value Waters generally add to the cost of planning and development for new or expanded nonpoint source discharges. Economic impacts would primarily involve the potential for higher treatment costs for new or expanding dischargers to streams which are upgraded, and potentially lower treatment costs for dischargers to streams which are downgraded.

3. *Compliance Assistance Plan*—The rulemaking has been developed as part of an established program that has been implemented by the Department since the early 1980's. Additional central office or regional staff are not expected to be needed in order to implement the proposal. The redesignations are consistent with current policies and, therefore, no policy changes are anticipated. The final rulemaking extends additional protection to selected waterbodies that exhibit exceptional water quality and environmental features, and is consistent with antidegradation requirements established by the Federal Clean Water Act and Pennsylvania Clean Streams Law.

All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards which prevent pollution and protect existing water uses.

The final regulations will be implemented through the National Pollutant Discharge Elimination System (NPDES) permitting program since the stream use designation is a major basis for determining the allowable stream discharge effluent limitations. These permit conditions are established to assure the water quality criteria are achieved and the designated uses are protected. New and expanded dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with the proposed revised designated water uses.

The Department has developed technical guidance to assist the potentially affected and regulated community in understanding the impacts and requirements of the Special Protection Stream Designation Process. The Special Protection Waters Implementation Handbook, (1992), provides guidance on the regulatory designation process, protection of candidate streams, and most importantly, general considerations for proposed new or expanded discharges to Special Protection Waters. This handbook also contains appendices which present management practices and technologies relevant for point and nonpoint source dischargers to Special Protection Waters. The Department has conducted various workshops, seminars and public meetings on the Special Protection Waters program. Public meetings have been held for specific stream redesignation concerns. Permitted point source discharges are regularly evaluated through discharger self-monitoring reports (DMRs) and DEP inspections, to assure they are complying with permit conditions. The Handbook sets forth recommended Best Management Practices (BMPs) for nonpoint sources.

4. *Paperwork Requirements*—The regulatory revisions should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions, or the private sector. These regulatory revisions are based on existing Department programs and policies. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to Special Protection (HQ or EV). For example, NPDES general permits are not currently available for new or expanded discharges to Special Protection streams. Thus, an individual permit, and its associated additional paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification (SEJ), and the nonfeasibility of nondischarge alternatives, may be required for new or expanded discharges to certain Special Protection waters.

H. *Pollution Prevention*

The antidegradation program, which applies to the quality of waters in streams designated as HQ and EV, is a major pollution prevention tool because its objective is to prevent degradation by maintaining and protecting existing water quality. Although new and expanded wastewater discharges are not prohibited by the antidegradation program, nondischarge alternatives are encouraged and required, when appropriate. Nondischarge alternatives, when implemented, remove impacts to surface water and reduce the overall level of pollution to the environment by remediation of the effluent through the soil.

I. *Sunset Date*

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.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking on July 25, 1995, to IRRC and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment. The notice was published at 25 Pa.B. 3111 (August 5, 1995). In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Standing Committees with copies of all comments received, as well as other documentation.

In preparing these final-form regulations, the Board has considered all comments received from IRRC and the public. The Standing Committees did not provide comments on the proposed rulemaking.

This final-form regulations were deemed approved by the House and Senate Environmental Resources and Energy Committee on August 25, 1997. IRRC met on September 4, 1997, and deemed approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

K. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These final-form regulations do not enlarge the purpose of the proposal published at 25 Pa.B. 3111 (August 5, 1995).

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

L. Order of the Board

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

(1) The regulations of the Department of Environmental Protection, 25 Pa. Code Chapter 93, are amended by amending §§ 93.9e, 93.9f, 93.9k, 93.9l, 93.9o, 93.9q and 93.9z to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

(5) This order shall take effect immediately.

JAMES M. SEIF,
Chairperson

(Editor's Note: A proposal to amend §§ 93.9f, 93.9k, 93.9l, 93.9o and 93.9q, amended in this document, remains outstanding at 27 Pa.B. 1449 (March 22, 1997).) A proposal to amend §§ 93.9e, 93.9f, 93.9k, 93.9l, 93.9o, 93.9q and 93.9z, amended in this document, remains outstanding at 27 Pa.B. 1459 (March 22, 1997).) For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 4879 (September 20, 1997).

Fiscal Note: Fiscal Note 7-290 remains valid for the final adoption of the subject regulations.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE II. WATER RESOURCES
CHAPTER 93. WATER QUALITY STANDARDS**

§ 93.9e. Drainage List E.

**Delaware River Basin in Pennsylvania
*Delaware River***

Stream	Zone	County		Water Uses Protected	Exceptions To Specific Criteria
		*	*		
2—Gallows Run	Basin	*	*	CWF	None
2—Tinicum Creek	Basin	*	*	EV	None
		*	*		

§ 93.9f. Drainage List F.

Delaware River Basin in Pennsylvania
Schuylkill River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * *		
4—Deep Creek	Basin	Montgomery	TSF	None
4—Unami Creek	Basin	Montgomery	HQ-TSF	None
4—Swamp Creek	Basin	Montgomery	TSF	None
		* * *		

§ 93.9k. Drainage List K.

Susquehanna River Basin in Pennsylvania
Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * *		
3—Little Fishing Creek	Basin, Source to Lick Run	Columbia	EV	None
4—Lick Run	Basin	Columbia	CWF	None
3—Little Fishing Creek	Basin, Lick Run to Mouth	Columbia	CWF	None
3—Hemlock Creek	Basin	Columbia	CWF	None
		* * *		
2—Roaring Creek	Basin, Source to Lick Run	Columbia	HQ-CWF	None
2—Roaring Creek	Main Stem, Lick Run to Mouth	Columbia-Montour	TSF	None
3—Unnamed Tributaries to Roaring Creek	Basins, Lick Run to Mouth	Columbia-Montour	CWF	None
3—Lick Run	Basin	Columbia	HQ-CWF	None
		* * *		

§ 93.9l. Drainage List L.

Susquehanna River Basin in Pennsylvania
West Branch Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * *		
5—Square Timber Run	Basin	Cameron	HQ-CWF	None
5—Sterling Run				
6—Finley Run	Basin, Source to Unnamed Tributary at RM 1.7	Cameron	HQ-CWF	None
6—Finley Run	Basin, Unnamed Tributary at RM 1.7 to Confluence with Portable Run	Cameron	CWF	None
6—Portable Run	Basin, Source to Confluence with Finley Run	Cameron	CWF	None
5—Sterling Run	Basin, Confluence of Portable Run and Finley Run to Mouth	Cameron	CWF	None
		* * *		
3—Pine Creek	Main Stem, South Branch Pine Creek to Marsh Creek	Tioga	EV	None
		* * *		

§ 93.9o. Drainage List O.

Susquehanna River Basin in Pennsylvania
Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * *	* *		
3—Letort Spring Run	Basin, Source to PA 34 Bridge	Cumberland	HQ-CWF	None
3—Letort Spring Run	Basin, PA 34 Bridge to Railroad Bridge at Letort Park	Cumberland	EV	None
3—Letort Spring Run	Basin, Railroad Bridge at Letort Park to Mouth	Cumberland	CWF	None
	* * *	* *		

§ 93.9q. Drainage List Q.

Ohio River Basin in Pennsylvania
Allegheny River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * *	* *		
4—Thompson Creek	Basin, Source to Shirley Run	Crawford	CWF	Add TON
5—Shirley Run	Basin	Crawford	HQ-CWF	Add TON
4—Thompson Creek	Basin, Shirley Run to Mouth	Crawford	CWF	Add TON
	* * *	* *		

§ 93.9z. Drainage List Z.

Potomac River Basin in Pennsylvania
Potomac River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * *	* *		
2—Fifteen Mile Creek	Basin (all sections in PA)	Bedford	WWF	None
2—Sideling Hill Creek				
3—West Branch Sideling Hill Creek	Basin, Source to Confluence with East Branch	Bedford	EV	None
3—East Branch Sideling Hill Creek	Basin, Source to Confluence with West Branch	Bedford	EV	None
2—Sideling Hill Creek	Basin, Confluence of West and East Branches to PA-MD State Border	Fulton	EV	None
3—Crooked Run	Basin (all sections in PA)	Fulton	EV	None
2—Sideling Hill Creek (MD)				
3—Unnamed Tributaries to Sideling Hill Creek	Basins (all sections in PA), PA-MD State Border to Mouth	Fulton	EV	None
3—Bear Creek	Basin (all sections in PA)	Fulton	EV	None
	* * *	* *		

[Pa.B. Doc. No. 97-1618. Filed for public inspection October 10, 1997, 9:00 a.m.]

Title 37—LAW

STATE POLICE

[37 PA. CODE CH. 55]

Megan's Law—Neighbor Notification

The State Police, by this order, adopts Chapter 55 (relating to Megan's Law—neighbor notification) as derived specifically from 42 Pa.C.S. § 9799.1(3) (relating to duties of Pennsylvania State Police), to read as set forth in Annex A. Notice of proposed rulemaking was published at 26 Pa.B. 2907 (June 22, 1996), with an invitation to submit written comments within 30 days of publication. The State Police received four comments.

Comments Received

The State Police received comments from the Independent Regulatory Review Commission (IRRC), the City of Bethlehem's Department of Police, the Palmer Township Police Department and the Cumberland County Probation and Parole Office. The following is a summary of the comments received and the State Police's response:

(1) The Bethlehem Police Department and IRRC questioned the appropriateness of using the originally proposed 1,000-foot radius (relating to the notification area of the residence of a sexually violent predator); specifically, a 200-foot radius was suggested. The State Police agreed to a 250-foot radius after extensive consultations with various criminal justice agencies in this Commonwealth. This standard is supported by the General Assembly's intention that notifications are public information. If individuals or places of employment outside the notification area have the desire to know the locations of sexually violent predators, they may go to their local law enforcement agency and receive a copy of the written notification.

The Bethlehem Police Department and IRRC also questioned the validity of the proposed regulations not imposing costs on State and local government. The State Police agrees and has revised the Regulatory Analysis Form accordingly. Local law enforcement agencies and the State Police have a great responsibility to see that the intent of this act is carried through. As a result, both face potentially significant time, manpower and documenting costs associated with full compliance. These will only continue to multiply as more and more offenders are released from incarceration and into society. No monetary reimbursements have been made a part of the act. Potentially, as the number of released "sexually violent predators" multiplies, the costs to local law enforcement agencies, and hence their local governments, could be very significant. Time and manpower efforts alone could potentially be crippling at times to these agencies, especially the smaller departments. Compliance with the act and regulation comes at the expense of other patrol and crime fighting duties and functions. Every effort has been made by the State Police to minimize these costs and efforts where possible and within the requirements of the act. The State Police will continuously monitor these costs and efforts to search for more efficient and cost-effective ways to comply with our legislative mandate.

The Bethlehem Police Department and IRRC raised an issue which was of much debate within the State Police; namely, the need to document notification efforts. The State Police agrees and § 55.6 (relating to documentation of notification) has been added to provide general parameters and requirements for documenting notifications.

(2) The Palmer Township Police Department questioned whether law enforcement would be responsible for notification of parents of children attending day care facilities within a sexually violent predator notification zone. The act mandates appropriate municipal police departments provide written notices to the directors of licensed day care centers and licensed preschool programs, directors of county children and youth services, superintendents of each school district and presidents of colleges and universities. Chapter 56 (relating to guidelines for administration of Megan's law—statement of policy) details this process; specifically, § 56.4 (relating to guidelines for schools and children and youth services) is intended to assist these individuals in the dissemination of information concerning sexually violent predators.

(3) The Cumberland County Probation and Parole Office questioned the omission of county juvenile and adult probation and parole departments. The intended purpose of the immunity for good faith conduct found in 42 Pa.C.S. § 9799 (relating to immunity for good faith conduct) and in § 55.3 (relating to immunity for good faith conduct) is that for those agencies or individuals so immunized there exists the possibility that they may be required to disseminate some portion of the sexually violent predator information to the public. The county probation and parole departments, correctional facilities, juvenile agencies, and the like, are not responsible for disseminating any of the Megan's Law information to the public, and thus require no immunity.

Effect

The regulations will affect all Commonwealth law enforcement agencies. As a requirement of 42 Pa.C.S., Chapter 97, Subchapter H (relating to registration of sexual offenders) (act), these regulations are necessary for the general administration of the act (relating to Megan's Law). The effective date of the act was April 21, 1996. As set forth, these regulations primarily define what a neighbor will be for the purposes of community notification when sexually violent predators are released from incarceration or change residences. Training for municipal police departments concerning the requirements of the act are continuous and ongoing. The State Police regularly conducts training and informational forums for various agencies and groups. The full resources of the State Police are available at all times to any agency at any level.

Fiscal Impact

The regulations will not impose costs on State and local government. Local law enforcement agencies and the State Police have a great responsibility to see that the intent of this act is carried through. As a result, both face potentially significant time, manpower and documenting costs associated with full compliance. These costs will continue to multiply as more and more offenders are released from incarceration and into society. No monetary reimbursements have been made a part of the act. Potentially, as the number of released sexually violent predators multiplies, the costs to local law enforcement agencies, and hence their local governments, could be very significant. Time and manpower efforts alone could potentially be crippling at times to these agencies, especially the smaller departments. Every effort has been made by the State Police to minimize these costs and efforts where possible and within the requirements of Act 24 of 1995. The State Police will continuously monitor these costs and efforts to search for more efficient and cost-effective ways to comply with the Legislative mandate. A potential reduction of civil law suits against the

Commonwealth and local municipalities is the primary benefit and savings since notifications will take place in a clearly defined manner.

Paperwork Requirements

The regulations will require the completion of additional forms, reports or other paperwork. Sexually violent predator notices provided by the State Police will need to be reproduced at the local level in volumes sufficient to complete community notification. Additionally, chief law enforcement officers, or the State Police where no municipal police jurisdiction exists, are required to establish written procedures and records documenting community notification of sexually violent predators.

Review

Due to the sensitivity and emotion that crimes like these evoke in people and communities, every facet of the regulations, and the program in general, will be continuously reviewed for effectiveness, clarity and whether they are serving the greater interests of the citizens of this Commonwealth. The State Police is committed to its success and has taken a proactive approach to soliciting comments from the regulated community and the public. This will be furthered by regularly scheduled training and regional meetings to which various elements of the criminal justice community and various private entities are invited.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the State Police submitted a copy of these regulations to IRRC and the Chairpersons of the House Judiciary Committee and the Senate Law and Justice Committee for review and comment on June 29, 1997. In compliance with section 5(b.1) of the Regulatory Review Act, the State Police also provided IRRC and the Committees with copies of the comments received, as well as with a detailed copy of the Regulatory Analysis Form prepared by the State Police in compliance with Executive Order 1996-1. A copy of the material is also available to the public upon request.

In preparing these final-form regulations, the State Police considered the comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House Judiciary Committee and the Senate Law and Justice Committee on August 19, 1997. IRRC met on August 22, 1997, and approved these final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

Contact Person

The contact person is Trooper R.M. Van Buskirk, State Police, Bureau of Research and Development, 1800 Elmerton Avenue, Harrisburg, PA 17110, (717) 772-4898.

Findings

The State Police finds that:

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

(2) The adoption of the regulations of the State Police in the manner provided in this order is necessary and appropriate. A public comment period was provided as required by law and the comments received were considered.

(3) The modifications that were made to these regulations in response to comments received do not enlarge the purpose or scope of the proposed regulations published at 26 Pa.B. 2907.

(4) The adoption of the regulations in the manner provided is necessary and appropriate for the administration of the authorizing statute.

Order

The State Police, acting under the authorizing statutes, orders that:

(a) The regulations of the State Police, 37 Pa. Code, are amended by adding §§ 55.1—55.6 to read as set forth in Annex A.

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

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

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

COLONEL PAUL J. EVANKO,
Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 4596 (September 6, 1997).)

(Editor's Note: The addition of § 55.6 (relating to documentation of notification) was not included in the proposal at 26 Pa.B. 2907).)

Fiscal Note: Fiscal Note 17-57 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 37. LAW

PART I. STATE POLICE

Subpart H. ADMINISTRATION OF MEGAN'S LAW

CHAPTER 55. MEGAN'S LAW—NEIGHBOR NOTIFICATION

Sec.	
55.1.	Policy.
55.2.	Legislative finding.
55.3.	Immunity for good faith conduct.
55.4.	Definitions.
55.5.	Notification.
55.6.	Documentation of notification.

§ 55.1. Policy.

(a) The General Assembly has declared its intention to protect the safety and general welfare of the people of this Commonwealth by providing for registration and community notification regarding sexually violent predators who are about to be released from custody and will live in or near their neighborhood.

(b) The General Assembly further declared it to be the policy of the Commonwealth to require the exchange of relevant information about sexually violent predators among public agencies and officials and to authorize the release of necessary and relevant information about sexually violent predators to members of the general public as a means of assuring public protection and that the same is not to be construed as punitive.

(c) The General Assembly has determined and declared as a matter of Legislative finding that the release of information about sexually violent predators to public

agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information is rationally related to the furtherance of those goals.

(d) Information gathered under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), will not be disclosed outside the established criminal justice system, except as allowed by law.

§ 55.2. Legislative finding.

(a) The General Assembly has determined and declared that if the public is provided adequate notice and information about sexually violent predators and certain other offenders, the communities can develop constructive plans to prepare themselves and their children for the offender's release. This allows communities to meet with law enforcement agencies to prepare and obtain information about the rights and responsibilities of the communities and to provide education and counseling to their children.

(b) Persons found to have committed sexually violent offenses have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.

(c) Release of information about sexually violent predators to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

§ 55.3. Immunity for good faith conduct.

The General Assembly has also declared that the following entities shall be immune from liability for good faith conduct under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders):

- (1) The State Police and local law enforcement agencies and employees of law enforcement agencies.
- (2) District attorneys and their agents and employees.
- (3) Superintendents, administrators, teachers, employees and volunteers engaged in the supervision of children of any public, private or parochial school.
- (4) Directors and employees of county children and youth agencies.
- (5) Presidents or similar officers of universities and colleges, including community colleges.
- (6) The Board of Probation and Parole and its agents and employees.
- (7) Directors of licensed day care centers.
- (8) Directors of licensed preschool programs.

§ 55.4. Definitions.

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

Neighbor—For the purposes of 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), those persons occupying both residences and places of employment located within a 250-foot radius of a sexually violent predator's residence, or the 25 most immediate residences and places of employment in proximity to the sexually violent predator's residence, whichever is greater.

Sexually violent predator—A person who has been convicted of a sexually violent offense as set forth in 42

Pa.C.S. § 9793(b) (relating to registration of certain offenders for ten years) and who is determined to be a sexually violent predator under 42 Pa.C.S. § 9794(e) (relating to designation of sexually violent predators) due to a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

§ 55.5. Notification.

Chief law enforcement officers, or the State Police where no municipal police jurisdiction exists, shall provide written notices of the current address of sexually violent predators to neighbors within 72 hours of receipt. Notwithstanding other provisions, verbal notification may be used if written notification would delay meeting this time requirement. See Chapter 56 (relating to guidelines for administration of Megan's Law—statement of policy).

§ 55.6. Documentation of notification.

Chief law enforcement officers, or the State Police where no municipal police jurisdiction exists, shall establish written procedures and policies concerning community notification of sexually violent predators. The policy and procedures should include general parameters and basic requirements for documenting notifications. For example, records shall reflect the date and times, geographic areas, methods employed, whether verbal notification was necessary, and whether all notifications were provided to the identified area. The record shall also reflect if follow-up notification attempts were necessary. The record will not reflect great detail or the names and addresses of all individuals to whom notification was provided.

[Pa.B. Doc. No. 97-1619. Filed for public inspection October 10, 1997, 9:00 a.m.]

Title 64—SECURITIES

PART I. SECURITIES COMMISSION

[64 PA. CODE CHS. 102, 202—204, 207, 209, 302, 606 AND 609]

Registration of Securities, Broker-Dealers, Agents, Investment Advisers and Administration

Statutory Authority

The Securities Commission (Commission), under the authority contained in sections 102(k), 202(h) and (i), 203(r), 204(a), 207(h), (i) and (k), 209(a), 606(a) and 609(a) of the Pennsylvania Securities Act of 1972 (act) (70 P. S. §§ 1-102(k), 2-202(h) and (i), 2-203(r), 2-204(a), 2-207(h), (i) and (k), 2-209(a), 6-606(a) and 6-609(a)), has amended regulations concerning the subject matter of the act to read as set forth in Annex A.

Public Comments

No public comments were filed with the Commission concerning the proposed rulemaking published at 27 Pa.B. 2739 (May 31, 1997) during the 30-day public comment period.

Comments of the Independent Regulatory Review Commission (IRRC)

By letter dated July 30, 1997, IRRC provided two comments, both of which related to typographical errors appearing in §§ 207.091 and 606.011 (relating to sub-

scription contracts; and financial reports to security holders). These corrections have been included in the final-form rulemaking.

Changes from Proposed Rulemaking adopted by Commission

In addition to adopting changes to the proposed rulemaking published at 27 Pa.B. 2739 which were suggested by IRRRC, the Commission adopted two nonsubstantive changes to §§ 203.189 and 209.010 (relating to isolated exemption; and required records; report on sales of securities and use of proceeds). With respect to § 203.189(b), the Commission reordered the criteria to be met for the waivers granted by that subsection in order to provide greater clarity. With respect to § 209.010, the Commission deleted the reference to Form AM in item 5 of the general instructions to Form 209 since the Commission, in the proposed rulemaking, indicated its intention to amend § 609.011 to delete Form AM in its entirety.

Summary and Purpose of Amendments

- § 102.111 Offers and sales of securities to institutional investors are exempt from the securities registration provisions of the act. Section 102.111 (relating to institutional investor) is amended to expand the definition of institutional investor in section 102(k) of the act to include a "qualified institutional buyer" as that term is defined in Rule 144A of the United States Securities and Exchange Commission (17 CFR 230.144A (relating to private resales of securities to institution)). The Commission amends § 102.111 as published at 27 Pa.B. 2641.
- § 202.080 The amendment to this regulation eliminates the requirement that a registered broker-dealer proposing to offer and sell its securities to its officers, partners or employees who are residents of this Commonwealth in reliance upon section 202(h) of the act make a notice filing on Commission Form 202-H. Since this regulation originally was promulgated, the Commission has adopted several self-executing exemptions which may be available for the same transaction. The Commission deletes § 202.080 (relating to securities issued by broker-dealers) as published at 27 Pa.B. 2641.
- § 202.094 Currently, many large, multinational corporations domiciled outside of the United States cannot take advantage of exemptions from registration under the act because their securities are not listed on a United States stock exchange or they are not reporting companies to the Securities and Exchange Commission (SEC). Section 202.094 designates securities issued by large, multinational corporations that do not have securities listed on a United States securities exchange as exempt from the registration provisions of the act. This will provide parity with securities of large United States corporations whose securities are exempt under section 202(f) of the act. The Commission adopts § 202.094 (relating to world class issuer exemption) as published at 27 Pa.B. 2642.
- § 203.189 The amendment to this regulation increases the number of sales permitted under this exemption and would waive the general solicitation prohibition and Pennsylvania domicile requirement for certain sales. The amended regulation provides an exemption from the securities registration requirements where there will be only isolated offers and sales made in this Commonwealth of a de minimis nature. The Commission amends § 203.189 (relating to isolated transaction exemption) as published at 27 Pa.B. 2642, except that it further adopts nonsubstantive amendments to § 203.189(b) to provide additional clarity.
- § 203.190 Section 203.190 (relating to certain Internet offers exempt) codifies the Commission's existing order granting an exemption for offers of securities made on the Internet that are not intended to be sold to Commonwealth residents. The Commission adopts § 203.190 as published at 27 Pa.B. 2642.
- § 204.012 Section 204.012 (relating to waivers for offerings where sales are made only to accredited investors) waives the offer and sale numerical limitations in sections 203(d) and (e) of the act and the general solicitation prohibitions for offerings of securities where sales only will be made to accredited investors. The Commission adopts § 204.012 as published at 27 Pa.B. 2643.
- § 207.081 The amendment to this regulation eliminates the requirement that debt securities, as a condition of registration by qualification under section 206 of the act, be issued under a trust indenture complying with Trust Indenture Act of 1939 (15 U.S.C.A. §§ 77aaa—77bbbb) or similar State requirements. The Commission deletes § 207.081 (relating to trust indenture requirements) as published at 27 Pa.B. 2644.
- § 207.091 The amendment to this regulation reduces the types of offerings which must file a copy of the subscription contract with the Commission. This amendment also eliminates the requirement that issuers of securities sold under the Federal exemption for intrastate offerings and registered under section 206 of the act use a subscription contract prepared in a specified format. Additionally, the amendment deletes recordkeeping requirements for subscription contracts that duplicate requirements in § 209.010(a)(6). The Commission amends § 207.091 (relating to subscription contracts) as published at 27 Pa.B. 2644.
- § 207.110 The amendment to this regulation eliminates the requirement that issuers selling securities registered under section 206 of the act but not registered under the Federal Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa), file reports with the Commission on a quarterly basis. The Commission deletes § 207.110 (relating to quarterly reports of the progress of a registered offering) as published at 27 Pa.B. 2645.
- § 209.010 First, § 209.010 (relating to required records; report on sales of securities) is amended to repeal the requirement to file a report of sales and use of proceeds for sales of securities made in this Commonwealth under

section 203(d) and (p) of the act. Second, § 209.010 is amended to conform with the National Securities Markets Improvement Act of 1996 (NSMIA) (Pub.L. No. 104-290) 110 Stat 3416 by deleting all references to registration or exemption of securities offerings by investment companies under section 205, 206 or 203(i) of the act. (*Note:* Section 209 of the act was amended by Act 4 of 1993 to reflect that the section 203(i) exemption was no longer available for investment companies but this registration requirement now has been preempted by NSMIA). The Commission amends § 209.010 to conform with the requirements of NSMIA and eliminate use of terms which may cause confusion within the regulated community.

On October 11, 1996, section 102 of NSMIA became effective which amended section 18 of the Securities Act of 1933 (15 U.S.C.A. § 77r-1) to prohibit the application of any State law requiring the registration or qualification of securities of investment companies registered under the Federal Investment Company Act of 1940. NSMIA, in section 18(c)(1) of the 1933 Act, however, did preserve the ability of the states to require notice filings (as opposed to registration or exemption filings), fee payments and sales reports. Both section 209 of the act and § 209.010, however, describe the requirement to file sales reports by investment companies using the terms "registration or exemption" under section 205, 206 or 203(i) of the act. This amendment will eliminate all references to registration or exemption provisions of the act, adopt a new uniform sales report form to be used by all states which also eliminates references to registration or exemption and establish a uniform filing period for classes of investment companies consistent with Federal law. The Commission amends § 209.010 as published at 27 Pa.B. 2745 with a further amendment to Item 5 of the General Instructions to Form 209 to delete the reference to Form AM which the Commission, by adopting amendments to § 609.011 (relating to amendments to filings with Commission), is deleting in its entirety.

§ 302.065 This new regulation will exempt Canadian broker-dealers and agents that are licensed and in good standing in Canada from the broker-dealer and agent registration provisions of the act if the Canadian broker-dealer or agent effects transactions only with persons from Canada who are preexisting clients and who temporarily are present in this Commonwealth when the transactions occur. The Commission adopts § 302.065 (relating to Canadian broker-dealer exempt) as published at 27 Pa. B. 2648.

§ 606.011 Section 606.011 (relating to financial reports to security holders) would be amended to exclude from specified financial statement delivery requirements issuers of securities that are not reporting companies under the Federal securities laws and are exempt from registration under the act where the transaction was made in connection with a merger, a distribution to existing shareholders or the

Commission granted a discretionary exemption. Issuers of securities filing under sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78m and 780(d)), if they have made a filing within the past 120 days, also would be excluded from the financial statement delivery requirement. The Commission amends § 606.011 as published at 27 Pa.B. 2649, except that this section was amended to correct a typographical error in a legal citation.

§ 609.011 The amendment to this regulation deletes Commission Form AM and the requirement that amendments to Commission filings be made on Commission Form AM and adopts a general procedural requirement to amend notices, registration statements and other matters previously filed with the Commission. The Commission amends § 609.011 (relating to amendments to filings with Commission) as published at 27 Pa.B. 2749.

Persons Affected by these Amendments

With respect to the amendment to § 102.111, issuers of securities to qualified institutional buyers will be affected by the proposed action.

With respect to the deletion of § 202.080, broker-dealers who rely upon the exemption in section 202(h) of the act to offer and sell securities to their officers, partners and employees who are residents of this Commonwealth no longer have to file Commission Form 202-H.

With respect to the adoption of § 202.094, the persons affected are large multinational foreign corporations offering and selling securities to investors in the United States.

With respect to the amendment to § 203.189, the persons affected are those issuers that want to offer and sell securities to only a few persons in this Commonwealth.

With respect to adoption of § 203.190, persons affected are those persons using the Internet to make offers of securities.

With respect to adoption of § 204.012, persons affected are issuers of securities in offerings when sales will be made only to accredited investors.

With respect to the deletion of § 207.081, persons affected are issuers of debt securities subject to registration under section 206 of the act.

With respect to amendments to § 207.091, persons affected are issuers of offerings made in reliance upon the Federal exemption from registration for intrastate offerings and offerings of interests in public direct participation programs.

With respect to deletion of § 207.110, persons affected are issuers selling securities registered under section 206 of the act but not registered under the Securities Act of 1933.

With respect to amendments to § 209.010, persons affected are issuers of securities sold in reliance upon the exemptions provided by sections 203(d) and (p) of the act and investment companies selling securities in this Commonwealth.

With respect to the adoption of § 302.065, persons affected are licensed Canadian brokers and agents effecting transaction in this Commonwealth with a preexisting

client who temporarily is present in this Commonwealth at the time of the transactions.

With respect to amendments to § 606.011, persons affected are issuers of securities exempt from registration under the act because the transaction involved a merger, distribution to existing shareholders or Commission granted discretionary exemption, and issuers of securities filing under sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78mm), if a filing has been made within the past 120 days.

With respect to amendments to § 609.011, persons affected are those seeking to amend documents previously filed with the Commission.

Fiscal Impact

The regulatory actions will decrease regulatory costs to the public. The Commonwealth General Fund will sustain a loss of approximately \$20,000 in fee revenue from the amendment to § 203.189 as securities offered and sold in certain isolated transactions will no longer be required to make a notice filing under section 203(d) of the act and pay the applicable fee. Likewise, the General Fund may sustain a minimal loss of fee revenue from the adoption of § 302.065 as certain Canadian brokers and their agents no longer would be subject to registration requirements.

The remaining amendments, adoptions and deletions do not have a fiscal impact on the Commonwealth.

Paperwork

Sections 202.080, 207.081, 207.110 and 209.010 will eliminate paperwork as the regulatory actions delete rules requiring the filing of specified forms and documents. With respect to §§ 207.091 and 609.011, paperwork would be reduced as information will no longer be required to be filed with the Commission in a specified format.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of the notice of proposed rulemaking published at 27 Pa.B. 2639 (May 31, 1997) on April 24, 1997 to IRRC and the Chairpersons of the House Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance for comment and review. In compliance with section 5(b.1) of the Regulatory Review Act, the Commission also provided IRRC and the Committees with copies of all comments received as well as other documentation.

In preparing its final-form rulemaking, the Commission has considered all comments received from IRRC, the Committees and the public. This final-form rulemaking was deemed approved by the House Committee on Commerce and Economic Development and by the Senate Committee on Banking and Insurance on August 27, 1997. IRRC met on September 4, 1997, and approved the final-form rulemaking on that date.

Availability in Alternative Formats

This final-form rulemaking may be made available in alternative formats upon request. TDD users should use the AT&T Relay Center (800) 854-5984. To make arrangements for alternative formats, contact Joseph Shepherd, ADA Coordinator at (717) 787-6828.

Contact Person

The contact person is G. Philip Rutledge, Deputy Chief Counsel, Pennsylvania Securities Commission, Eastgate

Building, 1010 N. Seventh Street, 2nd Floor, Harrisburg, PA 17102-1410, (717) 783-5130.

Order

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

(a) The regulations of the Commission, 64 Pa. Code Chapters 102, 202, 203, 207, 209, 302, 606 and 609 are amended by amending §§ 102.111, 203.190 and 609.011, by deleting §§ 202.080, 207.081 and 207.110; and by adding §§ 202.094, 204.012 and 302.065 to read as set forth at 27 Pa.B. 2739; and by amending §§ 203.189, 207.091, 209.010 and 606.011 to read as set forth in Annex A with ellipses referring to the existing text of the regulations.

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

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

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

M. JOANNA CUMMINGS,
Secretary

Fiscal Note: Fiscal Note 50-110 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 64. SECURITIES

PART I. PENNSYLVANIA SECURITIES COMMISSION

Subpart A. REGISTRATION OF SECURITIES

CHAPTER 203. EXEMPT TRANSACTIONS

§ 203.189. Isolated transaction exemption.

(a) *General.* Under section 203(r) of the act (70 P. S. § 1-203(r)), the Commission finds it neither necessary nor appropriate for the protection of investors to require registration under section 201 of the act (70 P. S. § 1-201) for the offer and sale of securities by an issuer if:

(1) Sales made under this section do not result in the issuer having made sales of its securities to more than two persons in this Commonwealth during a period of 12 consecutive months. Only sales described in subsection (c) will be counted as sales for purposes of the numerical limitations contained in this paragraph.

(2) Offers made under this section do not result in the issuer having made offers to sell its securities to more than 90 persons in this Commonwealth during a period of 12 consecutive months. Only offers described in subsection (c) will be counted as offers for purposes of the numerical limitations contained in this paragraph.

(3) The issuer either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth.

(4) Neither the issuer nor a promoter, officer or director of the issuer is subject to the disqualifications in § 204.010(b) (relating to increasing the number of purchasers and offerees).

(5) No public media advertisement is used or mass mailing is made in connection with offers and sales made under this section.

(6) Cash or securities are not given or paid, directly or indirectly, to a person as compensation in connection with a sale under this section unless the compensation is given or paid in connection with a sale made by a broker-dealer who either is registered under section 301 of the act (70 P. S. § 1-301) or exempt from registration under section 302(a) of the act (70 P. S. § 1-302(a)) and a person receiving compensation is either the broker-dealer or an agent of the broker-dealer who either is registered under section 301 of the act or exempt from registration under section 302(b) of the act.

(b) *Waivers.*

(1) Subsection (a)(3) and (5) does not apply if the following criteria are met:

(i) The securities to be sold in reliance on this section are registered with the United States Securities and Exchange Commission under section 5 of the Securities Act of 1933 (1933 Act) (15 U.S.C.A. § 77e) or exempt from registration under Regulation A adopted under section 3(b) of the 1933 Act (15 U.S.C.A. § 77c(b)).

(ii) The issuer has complied with section 203(h) of the act (70 P. S. § 1-203(h)).

(2) Subsection (a)(3) does not apply if the following criteria are met:

(i) The offers and sales of securities made in reliance on this section would qualify for an exemption from registration under section 5 of the 1933 Act under Rule 505 or Rule 506 of Regulation D (17 CFR 230.505 and 230.506 (relating to exemption for limited offers and sales of securities not exceeding \$5 million; and exemption for limited offers and sales without regard to dollar amount of offering)) promulgated under sections 3(b) and 4(2) of the 1933 Act.

(ii) The offers made in this Commonwealth in reliance on this section are made only to accredited investors as that term is defined in § 204.010 (relating to increasing the number of purchasers and offerees).

(iii) The sales made in this Commonwealth in reliance on this section are made only to accredited investors as that term is defined in § 204.010.

(c) *Inclusion of prior offers and sales.* Offers and sales which occurred within the preceding 12 months from the date of an offer or sale to be made under this section that were made in reliance upon section 203(d) or (f) of the act, §§ 203.187 and 204.010(a)(1) and (2) (relating to small issuer exemption; and increasing number of purchasers and offerees), 17 CFR 230.506 or this section shall be counted against the numerical limitations in subsection (a)(1) and (2).

(d) *Integration.* Offers and sales made by the issuer under this section shall be counted as offers and sales under the applicable numerical limitations in § 204.010(a)(1) and (2) if offers and sales occur under § 204.010 within 12-consecutive months of an offer or sale made under this section.

(e) *Counting of offerees and purchasers.* Section 609.012 (relating to computing the number of offerees, purchasers and clients) applies to offers and sales of securities made under this section.

CHAPTER 207. GENERAL REGISTRATION PROVISIONS

§ 207.091. Subscription contracts.

(a) With respect to securities proposed to be sold under one of the following registration statements, a copy of a

subscription or sale contract proposed to be used shall be filed with the Commission, as an exhibit, prior to its use in this Commonwealth:

(1) A registration statement filed under section 205 of the act (70 P. S. § 1-205) when the securities to be sold are exempt from registration under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) under Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)).

(2) A registration statement filed under section 206 of the act (70 P. S. § 1-206) when the securities to be sold are exempt from registration pursuant to section 5 of the Securities Act of 1933 under section 3(a)(4) or (11), Regulation A promulgated under section 3(b) of the Securities Act of 1933, or Rule 504 of Regulation D promulgated under section 3(b) of the Securities Act of 1933.

(3) A registration statement filed under section 205 or 206 of the act where the securities to be sold are interests in a direct public participation program.

CHAPTER 209. BOOKS, RECORDS AND ACCOUNTS

§ 209.010. Required records; report on sales of securities.

* * * * *

(b) Except as set forth in paragraph (3), filing requirements are as follows:

(1) Issuers which have an effective registration for the offer and sale of securities in this Commonwealth under section 206 of the act, except for open-end or closed-end investment companies, face amount certificate companies or unit investment trusts, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), shall file a report with the Commission by completing Parts I and II of the form in subsection (c) within 55 days after 1 year from the effective date of the registration statement filed under section 206 of the act.

(2) An issuer which is an open-end or closed-end investment company, face amount certificate company or unit investment trust, as those persons are classified in the Investment Company Act of 1940, shall file with the Commission an annual report on sales of securities in this Commonwealth on Form NF adopted by the North American Securities Administrators Association, Inc. (or a successor form thereto) within the following time periods:

(i) With respect to an open-end or closed-end investment company or face amount certificate company, the report required by this subsection shall be filed with the Commission within 120 days after its fiscal year end.

(ii) With respect to a unit investment trust, the report required by this subsection shall be filed with the Commission within 60 days after 1 year from the date the registration statement relating to the securities sold in this Commonwealth became effective with the United States Securities and Exchange Commission.

(3) The following issuers are not required to file the form in subsection (c) or Form NF (or successor form thereto):

(i) Issuers which are open-end or closed-end investment companies, face amount certificate companies or unit investment trusts, as those persons are classified in the Investment Company Act of 1940, that have paid the

maximum fee specified in section 602(b.1)(iv) of the act (70 P. S. § 1-602(b.1)(iv)).

(ii) Issuers with an effective registration statement for the offer and sale of securities in this Commonwealth under section 206 of the act which also have an effective registration statement under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) and have paid the maximum fee specified in section 602(b.1)(iii) of the act.

(iii) Issuers with an effective registration statement for the offer and sale of securities in this Commonwealth under section 206 of the act which also have paid the maximum fee specified in section 602(b.1)(iii) of the act.

(c) The form for reports required in subsection (b), except for subsection (b)(2), shall be filed with the Commission on the following form, designated by the Commission as Form 209:

**PENNSYLVANIA SECURITIES COMMISSION
REPORT ON SALES OF SECURITIES
General Instructions**

FORM 209

WHO MUST FILE: Issuers which have sold securities in Pennsylvania pursuant to registration by qualification under Section 206, EXCEPT where the offering is registered under Section 5 of the Securities Act of 1933 AND the maximum fee has been paid (see Section 602 (b) (iii)).

WHEN TO FILE: File Form 209 within 420 days after the effective date of the registration statement in Pennsylvania.

FORM 209

1. For a further explanation of terms used in the Form, refer to Section 102 of the Pennsylvania Securities Act of 1972 ("Act").
2. One manually signed copy of the Form with all attachments shall be filed with the Commission. If mailed, it is advisable to send it by registered or certified mail, postage prepaid, return receipt requested.
3. Typewrite or print all answers in the space provided. Answer each item completely. An answer of "not applicable" is inappropriate. If the space is insufficient, attach a schedule to the Form and make reference to each item included in the schedule.
4. The Form filed with the Commission must be manually signed by the issuer. If the issuer is a corporation, it should be signed in the name of the corporation by an executive officer duly authorized; if a partnership, it should be signed in the name of the partnership by a general partner; and if an unincorporated association or other organization not a partnership; this Form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.
5. In the event that, at any time after the filing of the Form, the issuer becomes aware that any information provided on the Form becomes inaccurate in any material respect, the issuer shall file an amendment with the Commission within 5 business days from the date the issuer became aware that the information previously submitted was inaccurate at the time it was filed.
6. In lieu of answering any specific question in the Form, the issuer may incorporate by reference information contained in any document attached thereto or previously on file with the Commission. Any such reference should be to the page and paragraph number or other specified portion of the document where the information is located.
7. Please remove instruction sheet before filing this Form.

FILE NO.: _____

FORM 209

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION**

PART I Issuer Information

1. Exact Name of Issuer: _____
2. Address of Principal Office of Issuer: _____
Number and Street

City	State	Zip Code	Telephone No.
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3. Name and address of person to whom correspondence regarding this filing should be sent:

Name	Title	Number and Street
City	State	Zip Code
		Telephone No.

PART II Report of Sales of Securities Registered under Section 206.

4. Date of effectiveness of registration statement under Section 206 _____
5. (A) Offering in Pennsylvania:
 - (i) Total number of shares or other units: _____
 - (ii) Per share or unit price: _____

- (iii) Maximum aggregate offering price: _____
- (B) Sales in Pennsylvania or other units: _____
 - (i) Number of shares or other units: _____
 - (ii) Aggregate offering price: _____

Each of the persons executing this report on behalf of the Issuer hereby affirms that the statements made herein, including all attachments hereto, are not incomplete in any material respect or false or misleading with respect to any material fact. Each of such persons further affirms that he is familiar with the penalties contained in the Pennsylvania Securities Act of 1972, and all regulations adopted thereunder for making any false or incomplete statement in connection with the sale of a security or in any filing with the Commission.

IN WITNESS WHEREOF, this report has been executed on (insert date)

(Name of Issuer)

By: _____

(Title)

Subpart F. ADMINISTRATION

CHAPTER 606. MISCELLANEOUS POWERS OF COMMISSION

§ 606.011. Financial reports to security holders.

(a) In the case of securities issued under section 203(d) of the act (70 P. S. § 1-203(d)), or registered under sections 205 or 206 of the act (70 P. S. §§ 1-205 and 1-206), the issuer shall, so long as the securities are held of record by a Commonwealth resident, deliver its financial statements to each holder at least annually and within 120 days after the close of the fiscal year of the issuer.

(b) The financial statements shall comply with section 609(c) of the act (70 P. S. § 1-609(c)) and the rules and regulations adopted thereunder, except that, if the securi-

ties were issued in a transaction subject to this section wherein none of the financial statements delivered to offerees were required to be audited or if no financial statements were required to be given to the offerees, the financial statements need not be audited.

(c) This section does not apply if, on the date of the close of the issuer's fiscal year, the issuer is subject to sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78m and 78o(d)) and, within 120 days of that date, has made a filing with the United States Securities and Exchange Commission in accordance with either of those sections.

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