

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[Correction]

[25 PA. CODE CHS. 72 AND 73]

Administration of Sewage Facilities, Planning Program and Standards for Sewage Disposal Facilities (Act 149)

Errors appeared at 27 Pa.B. 5877, 5913, 5930, 5931 (November 8, 1997) in §§ 72.22(a), 73.16(e) and 73.31(b)(4) (relating to permit issuance; absorption and spray field area requirements; and standards for septic tanks). The correct version appears in Annex A hereto.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subchapter C. PROTECTION OF NATURAL RESOURCES

CHAPTER 72. ADMINISTRATION OF SEWAGE FACILITIES PERMITTING PROGRAM

§ 72.22. Permit issuance.

(a) A person may not install, award a contract for construction or construct an individual or community onlot sewage system, or install, construct, occupy or use a building to be served by that system without first obtaining a permit from the local agency, except as provided in subsections (c)—(e).

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§ 73.16. Absorption and spray field area requirements.

* * * * *

(e) *Spray fields.* Table B shall be used in calculating the square footage of spray fields based on flows determined in subsection (a). Table B includes allowances for garbage grinders, automatic washing machines, dishwashers and water softeners.

TABLE B

Soil Characteristics		Slope	Required Spray Field Area (Ft ²)	
Depth To Rock	Depth To Water Table		3 Bedroom Home	Additional Area Per Bedroom
16 to 20 inches	10 to 40 inches	≤12%	40,000	10,000
		>12%	80,000	20,000
	>40 inches	≤12%	15,000	3,750
		>12%	30,000	7,500
>20 inches	10 to 20 inches	≤12%	20,000	5,000
		>12%	40,000	10,000
	>20 inches	≥12%	10,000	2,500
		>12%	20,000	5,000

CHAPTER 73. STANDARDS FOR ONLOT SEWAGE TREATMENT FACILITIES

TREATMENT TANKS

§ 73.31. Standards for septic tanks.

* * * * *

(b) *Construction.*

* * * * *

(4) Septic tank installations shall consist of tanks with multiple compartments or multiple tanks. The first compartment or tank shall have at least the same capacity as the second but may not exceed twice the capacity of the second. Tanks or compartments shall be connected in series and may not exceed four in number in any one installation.

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[Pa.B. Doc. No. 97-1818. Filed for public inspection November 7, 1997, 9:00 a.m.]

**ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CH. 123]**

[Correction]

Nitrogen Oxides Allowance Requirements

An error appeared at 27 Pa.B. 5683, 5696 (November 1, 1997) in Chapter 123, Appendix A. The correct version appears in Annex A hereto.

Annex

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 123. STANDARDS FOR CONTAMINANTS

APPENDIX A

<i>County</i>	<i>Facility</i>	<i>Combustion Source Name</i>	<i>Point ID</i>	<i>Allowance</i>	<i>Baseline NO_x lb/MMBtu</i>	<i>Baseline MMBtu</i>
		* * *	* * *			
Clinton	International Paper Co.	1 Riley Stoker Vo-Sp	033	145	0.55	1,220,703
Clinton	International Paper Co.	2 Riley Stoker Vo-Sp	034	145	0.55	1,218,878
Clinton	PP&L—Lock Haven	CT 1		3	0.49	14,818
		* * *	* * *			

[Pa.B. Doc. No. 97-1776. Filed for public inspection October 31, 1997, 9:00 a.m.]

PART VII. PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY

[25 PA. CODE CHS. 962, 963 AND 965]

Water Pollution Control Revolving Fund

The Board of Directors (Board) of the Pennsylvania Infrastructure Investment Authority (Authority) by this order deletes § 962.1 (relating to value engineering analysis); amends Chapter 963 (relating to Pennsylvania Infrastructure Investment Authority Assistance); and adds Chapter 965 (relating to the Clean Water State Revolving Fund). The amendments set forth the requirements of the Clean Water State Revolving Fund (CWSRF) and provide for a second opinion project review in accordance with sections 5(c)(2) and 6(4) of the Pennsylvania Infrastructure Investment Authority Act (35 P. S. §§ 751.5(c)(2) and 751.6(4)).

A. Effective Date

The amendments are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

The amendments are promulgated under the statutory authority of sections 5(c)(2) and 6(4) of the Pennsylvania Infrastructure Investment Authority Act which grants to the Board the authority to establish the CWSRF; make bylaws for the management and regulation of its affairs make and from time to time adopt, amend and repeal rules and regulations governing the administrative procedures and business of the authority; and accept grants from and enter into contracts or other transactions with any Federal, State or local agency.

C. Purpose and Background

The Authority was created on March 1, 1988, by the Pennsylvania Infrastructure Investment Authority Act

(act) (35 P. S. § 751.1—751.20). The Authority is governed by a Board consisting of 13 members. The Authority, acting through its Board awards loans and grants to finance or assist in financing water, sewer and stormwater infrastructure projects to protect the health and safety of the citizens of this Commonwealth and to promote the economic development of this Commonwealth.

The act requires the establishment of a State Revolving Fund in accordance with section 212 of the Water Quality Act of 1987 (33 U.S.C.A. §§ 1251—1387), which provided appropriations necessary for the establishment of the CWSRF through the 1994 Federal fiscal year. Thereafter, the Federal government has provided continuous appropriations even though the Water Quality Act of 1987 has not been reauthorized. The Authority established the CWSRF in compliance with section 212 of the Water Quality Act and closed its first loan funded by the CWSRF on August 15, 1989. Up through June 30 1997, the Authority has disbursed \$324.5 million to finance sewerage infrastructure needs throughout this Commonwealth.

These amendments are necessary to set forth the CWSRF program and to clarify certain requirements which have been changed from those previously required by the Water Quality Act of 1987. One provision is the value engineering requirement which these regulations replace with a less onerous requirement, the second opinion project review. Like value engineering, the second opinion project review has the objective of indicating the most cost effective alternative available to the applicant but rather than utilizing an entire value engineering team to conduct the review, it requires as few as one independent design engineer. Also like the value engineering requirement, the second opinion project review is only required for projects with an anticipated cost of construction plus contingency in excess of \$10 million. The

Authority has determined that value engineering has resulted in sufficient cost savings to warrant the incorporation of a second opinion project review for all projects in Chapter 963.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 25 Pa. B. 3000 (July 29, 1995). The Authority received comments from the Pennsylvania State Association of Township Supervisors (PSATS) and the Independent Regulatory Review Commission (IRRC). Responses to these comments follow.

IRRC recommended that the Authority's threshold for the value engineering requirement be no greater than the Federal threshold of \$10 million and that the parameters that trigger the requirement be more clearly identified. The Authority agrees with IRRC and has changed the threshold for triggering the requirement to a total project construction cost plus contingency in excess of \$10 million dollars. Further, the Authority revised the requirement to make the review less costly to perform and has renamed the section to the second opinion project review.

The PSATS commented on the value engineering requirement referring to it as "simply an unfunded mandate" and further commenting that "[i]t makes no sense to add another layer of costs onto an application merely to save costs. PENNVEST is thus asking the applicant to absorb the cost of the study which is designed to save PENNVEST money."

The Authority does not agree that the value engineering requirement amounts to an unfunded mandate. No one is obligated or mandated to apply to the Authority for financing, therefore an application requirement can not be construed as an unfunded mandate. In any event, the Authority appreciates the concern regarding the increase in cost to the applicant and has revised the requirement to a less costly second opinion project review whereby a single design engineer may evaluate the project rather than a value engineering team and whereby the review is undertaken when the cost of construction plus contingency is greater than \$10 million rather than \$5 million. Further, any cost incurred by the applicant in conducting the review may be eligible for funding from the Authority.

The Authority does not agree with the PSATS suggestion that the value engineering requirement (reconfigured and renamed the second opinion project review) has been designed to save the Authority costs. Rather, it is the Authority's position that the requirement is designed to save the applicant and ultimately the community excessive project costs. The amount of money the Authority has available to finance infrastructure projects is finite. Therefore, the money not disbursed by the Authority for the funding of a particular project is used to fund some other project. In application, the cost savings of one community may be the funding source for another.

The Authority quantified the cost savings for those projects where value engineering was required and found that the average savings was 5.3 times the cost of the value engineering study. Therefore, it is the opinion of the Authority, that the Authority is being fiscally responsible requiring the second opinion project review and by requiring the applicant to incur an additional application cost only to result in a greater project cost savings for the community.

IRRC recommended the Authority clarify the requirements of the value engineering study and require the study be undertaken earlier in the design phase. The

Authority agrees with IRRC and while it revised the value engineering requirement to the less onerous second opinion project review, it clarified the language in the regulation as to what is required. Also at the suggestion of IRRC, the Authority revised § 965.7(b)(1) (relating to second opinion project review) to require completion of the second opinion project review by the time the project design is 20% to 40% complete rather than prior to or at the time the project design is 50% complete.

IRRC suggested the Authority clarify the interrelationship of the Authority and the applicant in various provisions of the regulation regarding the value engineering requirement. To follow are each of IRRC's suggestions and the Authority's respective position: in the proposed rulemaking, IRRC objected to the ambiguity in the requirement that the value engineering team of choice be satisfactory to the Authority. These final-form regulations changed the requirement from a value engineering team to either a single design engineer or a design engineering firm either of which must be independent of the project engineer and the choice of which is no longer subject to the Authority's review and satisfaction. Similarly, IRRC commented that requiring the implementation of the value engineering team's recommendations to the maximum extent possible subject to the Authority's approval needed clarification. The Authority agrees and removes the requirement "subject to the Authority's approval" from § 963.20(b)(4) (relating to second opinion project review) and § 965.7(b)(4). IRRC suggested the Authority place a time frame for rejecting the teams recommendation. The Authority agrees and includes in § 963.20(b)(5) and § 965.7(b)(5) the proviso that the applicant submit its proposal to the Authority within 90-calendar days from the completion of the second opinion project review with its reasons, if any, for not incorporating the second opinion project review recommendations. Finally, IRRC suggested clarification on when the Administrative staff may recommend disapproval to the Board for any portion of a project not incorporating a study recommendation as set forth in §§ 963.20(b)(5)(i) and 965.7(b)(5)(i). The section has been changed to state that the administrative staff may not recommend approval to the Board for that portion of the project. IRRC suggested identifying at what Board meeting this would occur. Since projects go to the Board based upon ranking priority, not date of application, the administrative staff would make its recommendation for approval at the meeting which the project ranks high enough to be funded.

IRRC suggested clarification of the phrase "excessive infiltration/inflow" as stated in § 965.6(a)(4)(i) (relating to application procedures), of the proposed rulemaking. This was, but is no longer, a requirement of the Water Quality Act of 1987 and it, along with § 965.6(a)(4)(iii) has been removed from the final-form regulations.

IRRC recommended that the Authority change § 965.9(h) (relating to loan conditions) from requiring the borrower to maintain financial records in accordance with government accounting standards to requiring compliance with Generally Accepted Accounting Principles. The Authority requires borrowers, of its funding programs, to comply with the less restrictive government accounting principles and has done so from inception. Having had no problem with this requirement and the borrower's understanding of what is required, the Authority sees no reason to require a more expansive standard than that imposed by the Federal government under the Water Quality Act of 1987.

Finally, IRRC recommended deleting the Authority's statement of policy in § 962.1. The Authority agrees and is reserving the section.

E. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation.

The Authority reviewed these amendments and considered their purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. These amendments address a compelling public health interest in setting forth the requirements for obtaining affordable financing from the CWSRF for the construction or rehabilitation of community sewerage systems in this Commonwealth. These amendments offer communities a cost effective way to address environmental concerns, some of which would not be addressed without the CWSRF financing.

F. Fiscal Impact and Paperwork Requirements.

These amendments will not have a negative fiscal impact on the Commonwealth, or political subdivisions or the private sector. In fact, cost savings can be anticipated for the applicant through the incorporation of the second opinion project review requirement.

These amendments will not cost the Commonwealth any new money. The CWSRF has been operational since 1989. The funding for the CWSRF comes from Federal appropriations under the Water Quality Act of 1987 and a 20% match in State funding. The Water Quality Act of 1987 only authorized appropriations up through the 1994 Federal Fiscal year. In any event, the Commonwealth has applied for and received continuous appropriations for the CWSRF from the Federal government up through the 1997 Federal fiscal year and has no reason to believe it won't receive another appropriation in 1998, despite the fact that the Water Quality Act of 1987 has not been reauthorized. The State match money required by the CWSRF comes from loan repayments of principal and interest and interest earned on investments of the Authority, as well as, certain previously authorized Commonwealth General Obligation Bond proceeds.

Since inception, the CWSRF has required value engineering for projects with costs exceeding \$10 million. The value engineering analysis involves hiring a team to conduct an extensive review of the proposed project. These amendments reduce that requirement to a less extensive and less expensive requirement, the second opinion project review. Like the value engineering analysis, the second opinion project review is designed to save the applicant money on its project costs. In addition, it will reduce the cost of the requirement.

The amendments will not affect the paperwork requirements in this Commonwealth or political subdivisions or the private sector except that less paperwork from the applicant will be required as a result of the elimination of § 965.6(a)(4)(i) and (iii), Davis Bacon Wage Rates as set forth in the Davis-Bacon Act (40 U.S.C.A. § 276(a)—276(a)(5)) and certain other Title II requirements of the Water Quality Act of 1987, deleted from the Appendix and the final-form regulations.

The application forms are provided by the Authority as well as all loan documents. Additional documents and information required by these regulations are routinely generated in the course of sound business and engineering practice. The reporting requirements are reduced to the minimum necessary to validate disbursements and record the progress of the project and status of the loan and to comply with Federal requirements. In most in-

stances, the annual financial report of the facility or system can be used rather than a special budget report. The paperwork requirements are minimized to the extent possible consistent with prudent management of the Commonwealth and Federal funds.

G. Sunset Date

These final-form regulations will be reviewed periodically by the Authority. In addition, the administrative staff of the Authority will continuously monitor the program for backlogs and unnecessary delays in processing financial assistance applications and advise the Board of unnecessary administrative burdens on applicants. Accordingly, no sunset date is being established for the regulations at this time.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Authority submitted a copy of the notice of proposed rulemaking published at 25 Pa.B. 3000 to IRRC and to the Chairpersons of the Senate Committee on Environmental Resources and Energy and the House Committee on Appropriations (Committees). In addition to the proposed rulemaking, IRRC and the Committees were provided a copy of the regulatory analysis form prepared by the Authority in compliance with the then applicable Executive Order 1982-2 "Improving Government Regulations." Further, the Authority provided IRRC and the Committees with copies of the comments received on the proposed rulemaking as is required by section 5(b.1) of the Regulatory Review Act.

In preparing the final-form regulations, the Authority considered the comments received from IRRC, the Committees, the public and the informal comments received from the Department of Environmental Protection.

Under section 5(b.4) of the Regulatory Review Act, the Authority submitted the regulations as final-form rulemaking on August 21, 1997, to IRRC and the Committees. In addition to the final-form rulemaking, the Authority provided IRRC and the Committees with a regulatory analysis form prepared by the Authority in compliance with the Executive Order 1996-1, "Regulatory Review and Promulgation," and the Regulatory Review Act. A copy of this material is available to the public upon request. On September 10, 1997, the Authority submitted a written request to IRRC to toll the regulatory review period, under section 5.1(g) of the Regulatory Review Act (71 P. S. § 745.5a(g)), to revise certain typographical errors in the regulations. IRRC did not object to the request for tolling and the Authority submitted the revised final-form regulations on September 18, 1997, to IRRC and the Committees.

The final-form regulations were deemed approved by the Committees on September 28, 1997, and approved at public meeting by IRRC on October 9, 1997, in accordance with section 5(c) of the Regulatory Review Act.

I. Contact Person

Further information may be obtained by contacting Jayne B. Blake, Assistant Counsel, Pennsylvania Infrastructure Investment Authority, Keystone Building, 22 South Third Street, Harrisburg, PA 17101 (717) 783-6776. Email address: jblake@pennvest.pa.state.us.

J. Findings

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 the 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 amendments do not enlarge the purpose of the proposed rulemaking published at 25 Pa. B. 3000.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this Preamble.

K. Order

The Authority, acting under its authorizing statute orders that:

(a) The regulations of the Authority, 25 Pa. Code Chapters 962, 963 and 965, are amended by amending §§ 963.1 and 963.11; by deleting § 962.1; and by adding §§ 963.20 and 965.1—965.10 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Authority shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Authority 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.

PAUL K. MARCHETTI, Executive Director

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 5561 (October 25, 1997).)

Fiscal Note: 101-003. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART VII. PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY ASSISTANCE

CHAPTER 962. (Reserved)

§ 962.1. (Reserved).

CHAPTER 963. PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY ASSISTANCE

§ 963.1. Definitions.

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

* * * * *

Applicant—An owner or operator of a facility or system for the collection, treatment or disposal of wastewater, including industrial wastewater, or for the collection, treatment, storage or distribution of drinking water or of nonpoint source projects or estuary protection projects that submits a written application requesting financial assistance.

Approved applicant—An applicant whose application for financial assistance has been approved by the Board.

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Binding commitment—A legal obligation between the Authority and an approved applicant that defines the

terms and conditions for financial assistance from the Authority including assistance from the Clean Water State Revolving Fund.

* * * * *

Borrower—An approved applicant who has entered into a binding commitment with the Authority.

Clean Streams Law—The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

Clean Water Act—The Federal Water Pollution Control Act of 1977, as amended by the Water Quality Act of 1987 (33 U.S.C.A. §§ 1251—1387).

* * * * *

Construction—Actions necessary for the erection, building, acquisition, alteration, remodeling, improvement or expansion of drinking water or sewerage facilities or nonpoint source projects or estuary protection projects.

* * * * *

EPA—The United States Environmental Protection Agency.

* * * * *

Estuary protection project—A project necessary for development and implementation of an estuary conservation and management plan under section 320 of the Clean Water Act (33 U.S.C.A. § 1330).

* * * * *

Nonpoint source project—A project which does not have a discernable or confined discrete conveyance, and which is necessary for the implementation of a nonpoint source pollution control program under section 319 of the Clean Water Act (33 U.S.C.A. § 1329).

Operation/maintenance costs—Costs associated with activities required to assure the dependable, efficient and economical function of wastewater or drinking water facilities, nonpoint source projects and estuary protection projects or costs associated with the preservation of the functional integrity and efficiency of equipment and structures, including preventative maintenance and replacement equipment.

Part I Permit—A National Pollutant Discharge Elimination System (NPDES) permit issued by the Department under section 5 of The Clean Streams Law (35 P. S. § 691.5) and section 402 of the Clean Water Act (33 U.S.C.A. § 1342).

Part II permit—A Water Quality Management permit issued by the Department under section 5 of The Clean Streams Law.

Project—The eligible costs associated with the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of any system or facility, whether publicly or privately owned:

(i) For the collection, treatment or disposal of wastewater, including industrial waste, or for nonpoint source projects or estuary protection projects.

(ii) For the supply, treatment, storage or distribution of drinking water.

(iii) In a public system or facility for the control of stormwater, which may include, the transport, storage and infiltration of stormwater, or costs for the best management practices to address point or nonpoint source pollution associated with stormwater runoff, or

other innovative techniques identified in the county-prepared watershed plan under the Storm Water Management Act.

* * * * *

Second opinion project review—A review and evaluation of a project engineering design which shall include the analysis of the basic functions of a facility, system or process and shall identify alternatives, if any, for achieving these basic functions at lower costs or increased revenues. The evaluation shall be conducted by a design engineer or design engineering firm, at the discretion of the applicant. The design engineer or design engineering firm chosen by the applicant shall be independent of the project engineer and shall be a professional engineer licensed by the Commonwealth.

* * * * *

Sewage Facilities Act—The Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).

* * * * *

Useful life—The period of time for which a facility operates and serves its intended purpose.

User—A single connection to a system.

* * * * *

§ 963.11. Eligible costs.

(a) In addition to the costs eligible for assistance enumerated in the act, eligible project costs considered by the Board include the following:

(1) Project design and engineering incorporated in the final project, including the development of prefeasibility, feasibility and planning studies, plans, specifications, cost estimates, surveys, project inspection and management and costs associated with the completion of a second opinion project review required under § 963.20 or § 965.7 (relating to second opinion project review).

* * * * *

§ 963.20. Second opinion project review.

(a) If the total estimated construction cost plus any amount allocated for contingency for a project is greater than \$10 million, the applicant shall have a second opinion project review completed.

(1) Prior to project design, an applicant shall participate in a project consultation with the Department and, if required by this section, shall make plans for a second opinion project review.

(2) An applicant shall provide the Department with a time line indicating the anticipated beginning and end dates of the second opinion project review if a review is required by this section.

(b) An applicant shall meet the following requirements when undertaking a second opinion project review:

(1) The second opinion project review shall be planned for and completed by the time the project design is 20% to 40% complete, unless the applicant requests in writing from the Authority an extension of time due to some reasonable and unforeseen circumstance.

(2) The second opinion project review shall focus primarily on the treatment facilities but shall also include an analysis of the total project design. In either case, the review shall include an evaluation of cost effectiveness, complexity and impact of the project on the community.

(3) Upon completion of the second opinion project review, the reviewer shall provide a written report to the

applicant which summarizes findings and describes proposed implementation of recommendations. The written report of the second opinion project review shall be issued under seal of a professional engineer licensed to practice in this Commonwealth.

(4) The applicant shall cause the implementation of the reported recommendations to the maximum extent feasible.

(5) A copy of the second opinion project review shall be submitted to the Authority along with a proposal addressing each recommendation and their incorporation into the project design unless to do so would not be cost effective, reliable or reasonable based upon the delay it would cause in the project or because to do so would cause an unreasonable burden upon a factor critical to the treatment or collection system and the environmental impact of the project. The copy of the second opinion project review and the applicant's proposal shall be submitted to the Authority within 90-calendar days from the completion of the review.

(i) If the Authority disagrees with the reason set forth by the applicant for not adopting a second opinion project review recommendation, the administrative staff may not recommend approval of financial assistance to the Board for that portion of the project.

(ii) An applicant may appeal the administrative staff's recommendation to the Board, in accordance with 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

(c) The second opinion project review report may be used by the administrative staff in the cost effectiveness evaluation performed during the application review process.

CHAPTER 965. CLEAN WATER STATE REVOLVING FUND

Sec.	
965.1.	Definitions.
965.2.	Applicability.
965.3.	Eligibility.
965.4.	Eligible costs.
965.5.	Preapplication procedures.
965.6.	Application procedures.
965.7.	Second opinion project review.
965.8.	Terms of financial assistance.
965.9.	Loan conditions.
965.10.	Statutory and procurement requirements.

§ 965.1. Definitions.

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

Ad valorem tax—A tax based on the value of real property.

Affirmative performance certificate—A certification by the borrower 1 year following the date of initiation of operation stating that the wastewater treatment portion of the project is capable of meeting the design specifications and effluent limitations in the NPDES Part I Permit.

CWSRF—Clean Water State Revolving Fund—The funding account established in accordance with the requirements of both the act and the Water Quality Act for the purpose of establishing an environmental infrastructure revolving loan program.

Capital financing plan—A 10-year plan which projects future requirements for wastewater treatment service within the applicant's jurisdiction which includes a description of necessary future expansions or reconstruction

for wastewater treatment services, or both, and how this future expansion or reconstruction will be financed.

Corrective action report—A report submitted by the borrower if an affirmative performance certification cannot be provided following the 1-year performance period containing an analysis of the causes of the inability to certify, a schedule for the necessary corrective actions and a date that an affirmative performance certification is expected.

General facilities plan—The plans and studies which directly relate to sewerage facilities which are needed to comply with the Water Quality Act and The Clean Streams Law.

IUP—Intended Use Plan—A plan identifying the intended uses of the moneys in the CWSRF and describing how those uses support the goals of the CWSRF.

Infiltration—Groundwater entering a sewer system through broken pipes, defective pipe joints or illegal connections of foundation drains.

Inflow—Surface water runoff that enters a sewer system through manhole covers; exposed, broken and defective pipe joints; cross connections between storm sewers and sanitary sewers; and illegal connections of roof leaders, cellar drains, yard drains or catch basins.

Initiation of operation—The date specified by the borrower when the project begins operation for the use for which it was planned, designed and built. The term includes only essential facilities considered functional and does not include nonoperational facilities such as landscaping which may not have been completed.

NEPA—The National Environmental Policy Act of 1969 (42 U.S.C.A. §§ 4321—4347)

NPDES permit—A National Pollutant Discharge Elimination System permit. A permit issued by the Department of Environmental Protection under section 5 of The Clean Streams Law (35 P.S. § 691.5) and section 402 of the Clean Water Act (33 U.S.C.A. § 1342).

Project priority list—The list of identified public sewerage project needs in this Commonwealth established in accordance with Chapter 103 (relating to financial assistance).

SERP—State Environmental Review Processes—Processes based upon adopted State regulations set forth in Chapters 71, 109, 963 and 965 which include procedures substantially equivalent to a NEPA review, as described by 40 CFR Part 6, Subparts A—E.

Sewer use ordinance—An ordinance or resolution adopted by a governmental unit establishing the requirements for the users of the sewerage facilities. The requirements include:

- (i) The prohibition of new connections from inflow sources.
- (ii) The design and construction of new connections in accordance with local municipal plumbing codes.
- (iii) Wastewater may not contain toxics or pollutants in amounts which endanger public safety or the physical integrity of the sewerage facilities as determined by criteria in 40 CFR Part 403 (relating to general pretreatment regulations for existing and new sources of pollution).
- (iv) The prohibition against violations of effluent limits or water quality limits as outlined in the NPDES permit.

User charge system—The method by which charges are levied on users of sewerage systems, or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of debt service, operation and maintenance (including replacement) of that system. The user's proportionate share shall be based on the ratio of the user's contribution to the total wastewater loading from all users. The user charge system shall also include the following:

- (i) A provision that each user will receive annual written notice of the user rate which may be in the form of a bill or a form satisfactory to the Authority.
- (ii) A provision for a financial management system which will accurately account for revenues and expenditures of the sewer system.

Water Quality Act—The Water Quality Act of 1987 (33 U.S.C.A. §§ 1251—1387).

§ 965.2. Applicability.

(a) This chapter applies to governmental units which own sewerage facilities and which apply for financial assistance for sewerage projects and governmental units or private individuals who are constructing or maintaining nonpoint source projects or estuary protection projects.

(b) Chapter 963 (relating to Pennsylvania Infrastructure Investment Authority Assistance) also applies to this chapter except to the extent it is inconsistent with this chapter.

§ 965.3. Eligibility.

Eligible applicants are governmental units which own or will own sewerage facilities or governmental units and private individuals who are constructing or maintaining nonpoint source projects or estuary protection projects.

§ 965.4. Eligible costs.

Eligible costs include:

- (1) Costs approved by the Board which are necessary for construction of public sewerage facilities.
- (2) Costs approved by the Board which are necessary for construction associated with secondary treatment or advanced treatment, or both.
- (3) Costs approved by the Board which are necessary for construction associated with cost-effective alternatives to secondary treatment or advanced treatment, or both.
- (4) Costs approved by the Board which are necessary for the construction of interceptor sewers.
- (5) Costs approved by the Board which are necessary for construction associated with the correction of an infiltration/inflow problem.
- (6) Costs approved by the Board which are necessary for construction associated with the rehabilitation or replacement of collector sewer systems only when the applicant demonstrates that the collector sewer system is necessary to assure the total integrity of the sewerage system.
- (7) Costs approved by the Board which are necessary for construction of new collector systems only when the applicant demonstrates that sufficient treatment capacity exists.
- (8) Costs associated with the completion of the second opinion project review required under § 965.7 (relating to second opinion project review).

(9) Other eligible costs as defined under § 963.1 (relating to definitions) which are approved by the Board, except that costs associated with the purchase of land for rights of way or easements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C.A. §§ 4601—4655), are not eligible.

(10) Costs associated with the refinancing of local debt incurred after March 5, 1985, only when the applicant demonstrates the following:

(i) The construction started after March 5, 1985, but before March 1, 1988.

(ii) The original debt was incurred to comply with a State or Federal compliance schedule.

(iii) The project has met the requirements of the Water Quality Act.

(iv) The project has undergone an environmental review as required by the Department.

(11) Costs associated with the refinancing of local debt incurred after March 1, 1988, only when the applicant demonstrates that it meets the requirements of § 963.17 (relating to funding limitations).

(12) Costs approved by the Board which are necessary for the implementation of a nonpoint source project or estuary protection project.

§ 965.5. Preapplication procedures.

An applicant may be required to attend a preapplication conference during which financial assistance documents will be identified and explained. This conference will not be considered as part of the formal application procedure and verbal statements made during the conference will not bind the Authority, the Department or the applicant.

§ 965.6. Application procedures.

(a) In addition to the requirements under Chapter 963 (relating to Pennsylvania Infrastructure Investment Authority Assistance), an applicant for sewerage facilities shall also include the following information in the application:

(1) An ordinance or resolution passed by the governmental unit authorizing the filing of the application and identifying the individuals authorized to sign the application and act on behalf of the governmental unit.

(2) Two separate ordinances or resolutions authorizing the governmental units to file an application and designate the governmental unit to be the lead applicant and a draft of an intermunicipal agreement, if two or more governmental units are filing one application.

(3) A written statement that the applicant will comply with applicable Federal and State laws and regulations required for projects funded by the CWSRF.

(4) A comprehensive official sewage plan or update revision developed in accordance with the Pennsylvania Sewage Facilities Act (35 P.S. §§ 750.1—750.20) and Chapter 71 (relating to Administration of Sewage Facilities Planning Program) and which includes the following requirements of projects funded by the CWSRF:

(i) A written certification that innovative and alternative technologies were considered and evaluated when developing solutions to the applicant's needs.

(ii) A written certification that the applicant had one public hearing before the adoption of its comprehensive official sewage plan.

(5) A written certification that the project is included in the governmental unit's official sewage plan or revision approved by the Department under the Pennsylvania Sewage Facilities Act.

(6) A written certification that the project will comply with the CWSRF program and will undergo the SERP as required by the Department and the Authority.

(7) A copy of permits or approvals necessary for the completion of the project as designed except for permits or approvals which cannot be obtained until construction is started.

(8) A copy of a draft sewer ordinance and a draft ordinance establishing a user charge system.

(9) A copy of a draft engineering agreement for building services.

(10) A copy of the Capital Financing Plan.

(11) Other information which may be required by the Authority to demonstrate the applicant's compliance with the laws of the Commonwealth and to effectuate the purposes of the act and the CWSRF.

(b) In addition to the requirements under Chapter 963, applicants for nonpoint source projects or estuary protection projects shall also include a written certification that the applicant will comply with applicable Federal and State laws and regulations required for projects funded by the CWSRF.

(c) An applicant is not required to supply duplicate copies of information when satisfying the application requirement of this section. The applicant may meet this requirement by referencing another part of the application where this information is being supplied.

(d) The IUP will be prepared by the Authority based upon a proposed annual budget and the project priority list and will contain proposed fundable projects. The IUP will consist of those projects which are expected to be funded. A project on the IUP may be bypassed when the Authority determines that the project on the approved IUP list is not ready to proceed, the applicant has other funds available at reasonable rates, or the project is ineligible under the act or this chapter. A project from the project priority list may replace a project from the IUP. These projects shall be ready to proceed and also meet the requirements of this chapter.

(e) The IUP may be amended to remove projects which are ineligible or add projects from project priority list.

§ 965.7. Second opinion project review.

(a) If the total estimated construction cost plus any amount allocated for contingency for a project is greater than \$10 million, the applicant shall have a second opinion project review completed.

(1) Prior to project design, the applicant shall participate in a project consultation with the Department and, if required by this section, shall make plans for a second opinion project review.

(2) When a second opinion project review is required, applicant shall provide the Department with a time line indicating the anticipated beginning and end dates for the review

(b) An applicant shall meet the following requirements when undertaking a second opinion project review:

(1) The second opinion project review shall be planned for and completed by the time the project design is 20% to 40% complete, unless the applicant requests from the

Authority in writing an extension of time due to some reasonable and unforeseen circumstance.

(2) The second opinion project review shall focus primarily on the treatment facilities but shall also include an analysis of the total project design and shall include an evaluation of the cost effectiveness, complexity and impact of the project on the community.

(3) Upon completion of the second opinion project review, the reviewer shall provide a written report to the applicant which summarizes findings and describes proposed implementation of recommendations. The second opinion project review report shall be issued under seal of a professional engineer licensed to practice in this Commonwealth.

(4) The applicant shall cause the implementation of the reported recommendations to the maximum extent feasible.

(5) A copy of the second opinion project review report shall be submitted to the Authority along with a proposal submitted by applicant discussing each recommendation and its incorporation in the project design except when to do so would be cost ineffective or unreliable or would cause unreasonable delay in the project or would result in some other unreasonable burden upon a factor critical to the treatment or collection system and the environmental impact of the project. The second opinion project review and the proposal shall be submitted by the applicant to the Authority within 90-calendar days following the completion of the second opinion project review.

(i) If the Authority disagrees with the reason set forth by the applicant for not adopting a second opinion project review recommendation, the administrative staff may not recommend approval of financial assistance to the Board for that portion of the project.

(ii) An applicant may appeal the Board recommendation of the administrative staff to the Board in accordance with 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

(c) The second opinion project review report may be used by the administrative staff in the cost effectiveness evaluation performed during the application review process.

§ 965.8. Terms of financial assistance.

Financial assistance from the CWSRF shall be in the form of loans and the loans may not be longer than the term permitted by section 603(d)(1)(A) of the Water Quality Act (33 U.S.C.A. § 1383(d)(1)(A)).

§ 965.9. Loan conditions.

(a) The borrower shall certify in writing that it has the legal, institutional and financial capability to implement the project over its entire design life. For sewerage facilities, this certification shall include the following:

(1) A certified copy of its sewer use ordinance which shall be enacted prior to receiving 95% of the loan funds.

(2) A certified copy of its ordinance or resolution establishing a user charge system, which shall be implemented prior to receiving 95% of the loan funds.

(b) The borrower shall certify in writing that the project has met the requirements of the CWSRF and undergone a SERP as required by the Department and the Authority.

(c) The borrower shall meet project performance standards within 1 year after the initiation of operation in

accordance with The Clean Streams Law design specifications and the effluent requirements of its NPDES permit.

(d) The borrower shall submit an affirmative performance certification within 1 year after the initiation of operation.

(e) If the borrower cannot submit an affirmative performance certification, the borrower shall submit a corrective action report.

(f) The borrower shall provide the Authority with the right to audit its sewer use ordinance or its user charge system.

(g) The borrower shall provide the Authority with status reports at the Authority's request until the project is completed.

(h) The borrower shall maintain financial records in accordance with governmental accounting standards and conduct an annual audit of the financial records as required by the CWSRF and the Single Audit Act of 1984 (31 U.S.C.A. §§ 7501—7507) and the corresponding regulations at 15 CFR Part 8 Subpart A (relating to general provisions; prohibitions: nondiscrimination clause; applicability to programs).

§ 965.10. Statutory and procurement requirements.

(a) The borrower shall comply with State and Federal laws, including those listed in Appendix A, for project-related activities, including related procurement actions for equipment, construction, engineering, management, financial, legal or other services or goods.

(b) The Authority may approve a noncompetitive procurement proposal under one or more of the following circumstances:

(1) The borrower can only obtain the equipment, goods or services from a single source.

(2) The borrower demonstrates that there is a public emergency. The Authority will seek independent confirmation from the Department or other appropriate State or Federal agencies that a public emergency justifying a noncompetitive procurement proposal exists.

APPENDIX A

The requirements for funds received from the CWSRF shall include requirements found in the following Federal statutes, Executive Orders and regulations:

(1) The act of May 24, 1974 (Pub. L. No. 93-291, 88 Stat. 174) (16 U.S.C.A. §§ 469—469c), known as the Archaeological and Historical Preservation Act of 1974.

(2) Section 176(c) of the Clean Air Act (42 U.S.C.A. § 7506 (c)).

(3) Sections 2—17 of the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531—1543).

(4) Executive Order 11593, Protection and Enhancement of the Cultural Environment.

(5) Executive Order 11988, Floodplain Management.

(6) Executive Order 11990, Protection of Wetlands.

(7) Title XV of the Farmland Protection Policy Act (7 U.S.C.A. §§ 4201—4209).

(8) The Fish and Wildlife Coordination Act (16 U.S.C.A. § 661—666(c)).

(9) The National Historic Preservation Act of 1966 (16 U.S.C.A. §§ 470—470 W-6).

(10) Section 1424(e) of the Safe Drinking Water Act (42 U.S.C.A. § 300 H-3).

(11) The Wild and Scenic Rivers Act (16 U.S.C.A. §§ 1271—1287).

(12) The Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C.A. §§ 3301—3374).

(13) Section 306 of the Clean Air Act (42 U.S.C.A. § 7601) and section 508 of the Clean Water Act (33 U.S.C.A. § 1368), including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans.

(14) The Age Discrimination Act of 1975 (42 U.S.C.A. §§ 6101—6107).

(15) The Civil Rights Act of 1964 (42 U.S.C.A. §§ 1981—2000g).

(16) Executive Order 11246, 30 FR 12319, as amended by Executive Order 11375, 32 FR 1403, as amended by Executive Order 11478, 34 FR 12985, as amended by Executive Order 12007, 42 FR 34617 (Women and Minority Business Enterprise).

(17) Executive Order 11625, 36 FR 19967, as amended by Executive Order 12007, 42 FR 42839, and Executive Order 12138, 44 FR 29637, as amended by Executive Order 12608, 42 FR 34617 (Women and Minority Business Enterprise).

(18) The Rehabilitation Act of 1973 (29 U.S.C.A. §§ 701—796(h) (including Executive Orders 11914 and 11250).

(19) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C.A. §§ 4601—4655).

(20) Executive Order 12549, 51 FR 6370 (Debarment and Suspension).

(21) The Single Audit Act of 1984 (31 U.S.C.A. §§ 7501—7507) and the corresponding regulations at 15 CFR Part 8 Subpart A (relating to general provisions; prohibitions: nondiscrimination clause; applicability to programs).

[Pa.B. Doc. No. 97-1851. Filed for public inspection November 21, 1997, 9:00 a.m.]

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[28 PA. CODE CHS. 6 AND 25]

Drugs Which May Be Used By Qualified Optometrists; Schedules of Controlled Substances

The Department of Health (Department) is amending Chapter 6 (relating to drugs which may be used by certain optometrists) by adding Rev-Eyes (Dapiprazole HCL) to the list of drugs which optometrists may use in the course of their practice in § 6.1 (relating to approved drugs).

The Department is also amending the schedules of controlled substances in Chapter 25 (relating to controlled substances, drugs, devices and cosmetics). The amendments under this section will reschedule one substance from Schedule I to Schedule II and add three previously

unscheduled substances to Schedule I of the controlled substances list in § 25.72 (relating to schedules of controlled substances).

A. Statutory Authority

The statutory authority for the amendment to the list of drugs which optometrists may use in the course of their practice is derived from section 2 of the Optometric Practice and Licensure Act (OPL act) (63 P. S. § 244.2). The statutory authority for the amendment to the schedules of controlled substances are sections 103 and 104 of The Controlled Substance, Drug, Device and Cosmetic Act (CSDDC act) (35 P. S. §§ 780-103 and 780-104). Both amendments are also adopted under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

B. Purpose of the Amendments

Chapter 6 (relating to drugs which may be used by certain optometrists)

Under the OPL act, optometrists who are certified by the State Board of Optometry to do so, may prescribe and administer certain drugs approved by the Secretary of Health (Secretary). The Department has approved a request from the State Board of Optometry to add Rev-Eyes (Dapiprazole HCL) to the list of approved drugs.

Chapter 25 (relating to controlled substances, drugs, devices and cosmetics)

The CSDCC act recognizes the fact that there is a need to control substances which have potential for abuse while also recognizing that some of those substances have medical uses. The CSDCC act provides for a system of five schedules of controlled substances as a means of grouping potentially dangerous substances based on their differing potentials for abuse and on their potential for medical use. Penalties for illegal use of the controlled substances vary according to the schedule on which the substance is listed. The health and safety of the public is protected by having a substance placed on the proper schedule. Additionally, proper scheduling ensures appropriate enforcement when a substance is abused or otherwise used illegally.

The CSDDC act requires that a controlled substance be placed in Schedule I when there is : (1) a high potential for abuse; (2) no currently accepted medical use in the United States; and (3) a lack of accepted safety for use under medical supervision. A controlled substance is placed in Schedule II when there is : (1) a high potential for abuse; (2) currently accepted medical use in the United States or currently accepted medical use with severe restrictions; and (3) abuse may lead to severe psychic or physical dependence.

The final-form regulations reschedule Levo-Alpha-Acetyl-Methodol (LAAM), previously listed in Schedule I of the schedules of controlled substances, to Schedule II. They further list Methcathinone, 4 Bromo 2, 5 Dimethoxyphenethylamine and Dimethylamphetamine, all previously unscheduled substances, in Schedule I.

C. Summary of Regulations

Rev-Eyes (Dapiprazole HCL)

The Secretary of Health, upon the advice from the Drug, Device and Cosmetic Board, is adding the ophthalmic use only product Rev-Eyes (Dapiprazole HCL) to the approved drug products listed in § 6.1(a)(2). Rev-Eyes (Dapiprazole HCL) is a drug that reverses pupillary dilation (pupil enlargement) and partially reduces cycloplegia (paralysis of focusing muscle), two effects of diagnostic eyedrops used in routine eye examinations.

The reversal of these effects permits the patient to leave the doctor's office with less light sensitivity and improved visual performance.

Levo-Alpha-Acetyl-Methodol (LAAM)

The Secretary, upon the advice of the Drug, Device and Cosmetic Board, finds that placing the Schedule I narcotic known as Levo-Alpha-Acetyl-Methodol (LAAM) into Schedule II will make it available as an alternative to methadone in substance abuse treatment facilities in this Commonwealth. In 1993, the Federal Drug Enforcement Administration transferred LAAM from Schedule I into Schedule II of the Federal Controlled Substances Act.

LAAM is a synthetic opiate developed in 1948 and clinically tested for treatment of opiate dependence since 1968. LAAM's primary advantage over methadone, the current approved drug for maintenance treatment, is its ability to relieve and prevent opiate withdrawal symptoms in addicts for up to 72 hours. Due to its long duration of action, the frequency of visits to a clinic can be reduced from daily to three times weekly even for patients just entering treatment. In general, addicts find participation in treatment more acceptable and return to the clinic more regularly. This is especially true for those addicts trying to engage in work, education or rehabilitation activities outside of the clinic, because travel time and effort is greatly reduced.

In addition, researchers found that LAAM offers the patient a smoother, sustained drug effect. Oral consumption even during the period of escalating doses did not produce excessive sedation or subjective euphoria. Researchers also emphasize that LAAM is less likely to be a reinforcer of daily drug taking behavior than methadone since a three times weekly dosage schedule frees the patient from the daily necessity of engaging in drug seeking and drug taking behavior.

Facilities utilizing LAAM for treatment of narcotic addiction will be subject to compliance with the requirements of the Narcotic Addict Treatment Act of 1974 (Pub. L. 93-281) and numerous regulations, both State and Federal, concerning narcotic treatment programs. The Department's Division of Drug and Alcohol Program Licensing currently inspects narcotic treatment facilities twice per year for compliance with these regulations.

Methcathinone HCL; 4 Bromo 2, 5 Dimethoxyphenethylamine and Dimethylamphetamine

In addition, the Secretary, upon the advice of the Drug, Device and Cosmetic Board is placing Methcathinone HCL; 4 Bromo 2, 5 Dimethoxyphenethylamine; and Dimethylamphetamine into Schedule I of the controlled substances listing.

Methcathinone HCL

Methcathinone HCL is produced for street distribution in clandestine laboratories. There are no indications of current medical use of Methcathinone HCL in or outside of the United States. It has a high potential for abuse and is administered by nasal insufflation, oral ingestion, intravenous injection and smoking. Methcathinone HCL produces pharmacological effects and appears to have an abuse potential similar to that of amphetamines. It is usually sold as itself under street names of "CAT" and "GOOB." In 1993, the Drug Enforcement Administration placed Methcathinone HCL into Schedule I of the Federal Controlled Substances Act (21 U.S.C.A. § 823).

4 Bromo 2, 5 Dimethoxyphenethylamine

4 Bromo 2, 5 Dimethoxyphenethylamine has been represented as 3, 4 Methylendioxy Methamphetamine

(MDMA) and has been sold in sugar cubes as LSD. More recently, it has been promoted as an aphrodisiac and distributed under the product name of NEXUS whose purported active ingredient is brominated cathinone. It is produced for street distribution in clandestine laboratories and has no known medical use. In 1994, the Drug Enforcement Administration placed this drug into Schedule I of the Federal Controlled Substances Act.

Dimethylamphetamine

Dimethylamphetamine is a drug which produces a significant central nervous system stimulant. Dimethylamphetamine is routinely sold on the street as methamphetamine or speed and is produced in clandestine laboratories. There are no known medical uses for this drug. In 1990, the Drug Enforcement Administration placed Dimethylamphetamine into Schedule I of the Federal Controlled Substances Act.

D. Public Comments

Notice of proposed rulemaking was published at 27 Pa.B. 1939 (April 19, 1997) and provided a 30-day comment period. The Department received one comment to the proposed amendments. The comment was from the president of the Pennsylvania Medical Society in support of the rescheduling of LAAM as a Schedule II controlled substance. No comments were received from either the Independent Regulatory Review Commission (IRRC) or the Senate Public Health and Welfare Committee or the House Health and Human Services Committee.

E. Fiscal Impact

The amendments to the schedules of controlled substances will have no measureable fiscal impact on the Commonwealth, local government, the private sector or the general public. Similarly, the addition of Rev Eyes (Dapiprazole HCL) to the list of approved drugs under the OPL act will not result in additional costs.

F. Paperwork Requirements

A system already exists for the handling of controlled substances under the CSDDC act and the amendments will not increase paperwork. Similarly, the addition of Rev Eyes (Dapiprazole HCL) to the list of approved drugs under the OPL act will not result in additional paperwork requirements.

G. Effective Date/Sunset Date

The amendments are effective immediately. These regulations are continually monitored and updated as needed. Therefore, no sunset date has been set.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 9, 1997, the Department submitted a copy of notice of proposed rulemaking, published at 27 Pa.B. 1939, to IRRC and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment. In compliance with sections 5(c) and 5.1(a) of the Regulatory Review Act (71 P.S. §§ 745.5(c) and 745.5a(a)), the Department also provided IRRC and the Committees with copies of all comments received as well as other documentation. In addition, 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.

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

These final-form regulations were deemed approved by the House Committee on Health and Human Services on October 20, 1997, and deemed approved by the Senate Committee on Public Health and Welfare on October 20, 1997. IRRC met on October 23, 1997, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act.

I. *Contact Person*

Any questions regarding the amendments may be addressed to John C. Hair, Director, Bureau of Community Program Standards, 132 Kline Plaza, Suite A, Harrisburg, PA 17104, (717) 783-8665. Persons with a disability who have questions regarding the amendments may submit their questions to John Hair in alternative formats, for example, by audio tape, braille or by using TDD: (717) 783-6514. Persons with a disability who require an alternative format of this document (for example, large print, audio tape, braille) should contact John Hair to make the necessary arrangements.

J. *Findings*

The Department finds that:

(1) Notice of proposed rulemaking was published at 27 Pa.B. 1939, as required by 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and that the comments received were considered.

(3) The adoption of the amendments in the manner provided by this order is necessary and appropriate for the administration of the authorizing statutes.

Order

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

(a) The regulations of the Department, 28 Pa. Code Chapters 6 and 25, are amended by amending §§ 6.1 and 25.72 to read as set forth at 27 Pa.B. 1939.

(b) The Secretary shall submit this order and 27 Pa.B. 1939 to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(c) The Secretary shall certify this order and 27 Pa.B. 1939 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall be effective upon publication in the *Pennsylvania Bulletin*.

DANIEL F. HOFFMANN,
Secretary

Fiscal Note: Fiscal note 10-144 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 97-1852. Filed for public inspection November 21, 1997, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF PODIATRY

[49 PA. CODE CH. 29]

Volunteer License

The State Board of Podiatry (Board) adopts § 29.55 (relating to volunteer license) to read as set forth in Annex A.

A. *Effective Date*

The regulation will be effective upon publication in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

Section 5 of the Volunteer Health Services Act (VHSA) (35 P. S. § 449.45) mandates regulations governing: (1) qualifications for placing an active license on volunteer status; (2) criteria under which a retired licensee who has allowed a license to become inactive may obtain a volunteer license; and (3) procedures under which a volunteer license holder may return to active status. The Board is authorized to adopt regulations necessary to the administration of its enabling statute under section 15 of the Podiatry Practice Act (63 P. S. § 42.15).

C. *Background and Purpose*

The purpose of the VHSA is to increase the availability of primary health services by establishing a procedure for podiatrists and other health care practitioners who have retired from active practice to provide professional services as volunteers in approved clinics. Primary health services are defined in the VHSA as including services such as regular checkups, immunizations, school physicals, health education, prenatal and obstetrical care, early periodic screening and diagnostic testing, and health education.

The VHSA permits persons who have been issued a license by the State Boards of Medicine, Osteopathic Medicine, Dentistry, Podiatry, Nursing, Optometry and Chiropractic to practice a component of the healing arts to apply for a volunteer license. A volunteer license will be issued to a retired individual who documents to the satisfaction of the Board that the individual will practice without remuneration in approved clinics.

D. *Summary of Comments and Responses on Proposed Rulemaking*

Notice of proposed rulemaking was published at 27 Pa.B. 2960 (June 21, 1997). The Board received comments from Representative Patricia H. Vance, the prime sponsor of the VHSA, two public commentators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC).

Both Representative Vance and IRRC noticed that proposed § 29.55(b), as published, was incongruent with the VHSA which makes retired persons, or persons intending to retire, eligible for a volunteer license. Editorial changes to the proposed rulemaking filed with the Legislative Reference Bureau erroneously created, on publication, three, rather than two, pathways by which a Board-regulated practitioner could qualify for a volunteer license. Representative Vance correctly noted that proposed § 29.55(b)(3) would be applicable to both para-

graphs (1) and (2), and suggested paragraph (3) be incorporated into the text of subsection (b). The House Committee supported Representative Vance's suggestion. IRRC recommended that paragraph (3) be deleted in its entirety and suggested that parts of it be incorporated into a new definitional section. In final rulemaking, the Board has accepted both suggestions, adding a definitional subsection in § 29.55(a) and restructuring § 29.55(b). The Board also accepted the suggestion of IRRC to move § 29.55(c)(1)(ii) to the new definitional section.

The Pennsylvania Academy of Family Physicians commented that the VHSA may be interpreted as permitting nonphysicians to perform acts which require a medical license and, accordingly, requested that the issue be clarified and resolved through regulation. The Board does not concur in the view that the VHSA creates an ambiguity regarding the scope of practice for any licensee. The Board has found no language in the VHSA which creates a different scope of practice for a volunteer license in any of the enumerated categories for which a volunteer license may be granted. Therefore, the Board has determined that additional rulemaking on this subject is not needed.

Finally, the Hospital and HealthSystem Association of Pennsylvania supported the regulation, but did not comment on the need for change in final rulemaking.

E. Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulation, the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the professionals and to nonprofit organizations who represent qualified providers of volunteer services.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The regulation creates a new license for which no fee will be charged. As such, the expenses of the program will be borne as a part of the Board's overall operating expenses which are financed through biennial renewals of active licensees. Therefore, the administration and enforcement of a new license category may have a fiscal impact on overall Board costs. The net effect, however, is estimated to be minimal, owing to the relatively small number of licensee population who will seek a volunteer license compared with the number of active licensees. Additional paperwork will be incurred by the Board and the private sector to complete and file application forms.

2. *Political subdivisions*—There will be no adverse fiscal impact or paperwork requirements imposed.

3. *Private sector*—The amendments will have a positive fiscal impact on individual licensees who restrict their professional activities to volunteer work since these individuals are exempt from maintaining professional liability insurance required under the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006) and the biennial renewal fee for licensure. The amendments should impose no additional fiscal or paperwork requirements.

G. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on June 6, 1997, the Board submitted a copy of the notice of proposed rulemaking, published at 27 Pa.B. 2960 to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), the Board also provided IRRC and the Committees with copies of comments received as well as other documentation.

In preparing this final-form regulation the Board has considered the comments received from IRRC, the Committees and the public.

This final-form regulation was approved by the House Committee on October 22, 1997, and by the Senate Committee on October 28, 1997. IRRC met on November 6, 1997, and approved the regulation in accordance with section 5(e) of the Regulatory Review Act.

I. Public Information

Interested persons may obtain information regarding the amendments by writing to Gina Bittner, Board Administrator, State Board of Podiatry, P.O. Box 2649, 116 Pine Street, Harrisburg, PA 17105-2649.

J. Findings

The Board find 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 the 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) This amendment does not enlarge the purpose of proposed rulemaking published at 27 Pa.B. 2960.

(4) This amendment is necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 29, are amended by adding § 29.55 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board 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 on publication in the *Pennsylvania Bulletin*.

STANLEY E. BOC, D.P.M.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6128 (November 22, 1997).)

Fiscal Note: Fiscal Note 16A-443 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 29. STATE BOARD OF PODIATRY
LICENSURE APPLICATIONS

§ 29.55. Volunteer license.

(a) *Purpose and definitions.*

(1) The following subsections implement the Volunteer Health Services Act (35 P.S. §§ 449.41—449.50) and provide for the issuance of a volunteer license to a qualified individual who retires from active practice and seeks to provide professional services as a volunteer. A volunteer license authorizes the holder to practice only in an organized community-based clinic without remuneration.

(2) The following words and terms, when used in this section, have the following meanings:

Approved clinic—An organized community-based clinic offering primary health care services to individuals and families who cannot pay for their care, to Medical Assistance clients or to residents of medically underserved areas or health professionals shortage areas. The term may include a State health center, nonprofit community-based clinic and Federally qualified health center, as designated by Federal rulemaking or as approved by the Department of Health or the Department of Public Welfare.

Unrestricted license—A license which is not restricted or limited by order of the Board under its disciplinary power.

(b) *Issuance of license.* A volunteer license may be issued to a licensee of the Board who documents to the satisfaction of the Board that the applicant will practice without personal remuneration in approved clinics and meets one of the following conditions:

(1) Holds a currently renewed, active, unrestricted license as a podiatrist in this Commonwealth and retires from active practice at the time the applicant applies for a volunteer license.

(2) Retires from active practice in this Commonwealth in possession of an unrestricted license which was allowed to lapse by not renewing it. A retired licensee shall meet any requirements of the act or the regulations pertaining to continued education or continued competency to be eligible for renewal.

(c) *Applications.* An applicant for a volunteer license shall complete an application obtained from the Board. In addition to providing information requested by the Board, the applicant shall provide:

(1) An executed verification on forms provided by the Board certifying that the applicant intends to practice exclusively as follows:

(i) Without personal remuneration for professional services.

(ii) In an approved clinic.

(2) A letter signed by the director or chief operating officer of an approved clinic that the applicant has been

authorized to provide volunteer services in the named clinic by the governing body or responsible officer of the clinic.

(d) *Validity of a license.* A volunteer license shall be valid for the biennial period for which it is issued, subject to biennial renewal. During each biennial renewal period, the volunteer license holder shall notify the Board of any change in clinic or volunteer status within 30 days of the date of a change, or at the time of renewal, whichever occurs first.

(e) *Renewal of license.* A volunteer license shall be renewed biennially on forms provided by the Board.

(1) As a condition of biennial renewal, the applicant shall satisfy the same continuing education requirements as the holder of an active, unrestricted license.

(2) The applicant shall be exempt from § 29.13 (relating to fees) pertaining to the biennial renewal fee and shall be exempt from the requirements with regard to maintenance of liability insurance coverage under section 701 of the Health Care Services Malpractice Act (40 P.S. § 1301-701) and §§ 29.51—29.54.

(f) *Return to active practice.* A volunteer license holder who desires to return to active practice shall notify the Board and apply for biennial registration on forms provided by the Board in accordance with §§ 29.51 and 29.52 (relating to applicants; and requirements for applicants).

(g) *Disciplinary provisions.* A volunteer license holder shall be subject to the disciplinary provisions of the act and this chapter. Failure of the licensee to comply with the Volunteer Health Services Act (35 P.S. §§ 449.41—449.50) or this chapter may also constitute grounds for disciplinary action.

[Pa.B. Doc. No. 97-1853. Filed for public inspection November 21, 1997, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 141]

Corrective Amendment to 58 Pa. Code §§ 141.22 and 141.25

The Game Commission has discovered a discrepancy between the agency text of 58 Pa. Code §§ 141.22 and 141.25 (relating to small game; and early and late goose hunting seasons), as deposited with the Legislative Reference Bureau and as published at 27 Pa.B. 3788 (August 2, 1997), and the official text as published in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 275) and as currently appearing in the *Pennsylvania Code*. Proposed amendments to § 141.25 were inadvertently incorporated into § 141.22 upon codification.

Therefore, under 45 Pa.C.S. § 901: The Game Commission has deposited with the Legislative Reference Bureau a corrective amendment to 58 Pa. Code §§ 141.22 and 141.25. The corrective amendment to 58 Pa. Code §§ 141.22 and 141.25 is effective as of October 4, 1997, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of 58 Pa. Code §§ 141.22 and 141.25 appears in Annex A.

DONALD C. MADL,
Executive Director

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter B. SMALL GAME

§ 141.22. Small game.

(a) *Unlawful activities.* It is unlawful to:

(1) Take small game, furbearers, protected mammals or protected birds using shot larger than #4 lead, #4 Bismuth/tin or #2 steel.

(2) Possess a firearm while hunting with a raptor.

(3) Use or possess single projectile ammunition or use or possess single projectile designed for use in a firearm while hunting small game during the muzzleloading firearms deer or bear season, except for a .22 caliber rimfire rifle. This exception does not apply to the Southeast Special Regulations Area. See § 141.1(b)(2) (relating to special regulations areas).

(4) Hunt in a party of more than six persons.

(5) Hunt for groundhogs without a cap or hat made of a daylight fluorescent orange material as a part of the requirements in section 2524 of the act (relating to protective material required).

(6) Hunt for or assist to hunt for other small game, except waterfowl, mourning doves and crows without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material. The material shall be worn on the head, chest and back combined so it is visible in a 360° arc.

(b) *Definition.* For the purpose of enforcing section 2308(a)(4) of the act (relating to unlawful devices and methods), the term "plugged" means a magazine shotgun which is plugged with a one-piece filler, incapable of removal without disassembling the shotgun or magazine.

§ 141.25. Early and late goose hunting seasons.

(a) *Early season and description.*

(1) Subject to approval of the United States Fish and Wildlife Service, there will be an early Canada goose hunting season starting on September 1 (except when Sunday, then September 2), and ending on September 25 (except when Sunday, then September 24) Statewide. Geese may be taken on the Pymatuning State Park Reservoir and an area to extend 100 yards inland from the shoreline of the reservoir excluding the area east of L. R. 20006.

(2) Geese may not be taken in that portion of Crawford County which is in the area south of Route 6 from the Ohio line to its intersection with Route 322 in the town of Conneaut Lake and north of Route 322 west to the Ohio line, or in Lancaster/Lebanon Counties in the area east of S. R. 501 from Shaefferstown to the Pa. Turnpike, north of the Pa. Turnpike to S. R. 272, west of S. R. 272 to S. R. 897, and south of S. R. 897 to Shaefferstown, referred to as closed areas.

(3) Bag limits are as follows:

(i) There is a daily bag limit of five and a possession limit of ten in the area east of I-83 from the Maryland

State line to the intersection of U. S. Route 30 to the intersection of S. R. 441, east of S. R. 441 to the intersection of I-283, east of I-283 to I-83, east of I-83 to the intersection of I-81, east of I-81 to the intersection of I-80, and south of I-80 to the New Jersey State line.

(ii) There is a daily bag limit of three and a possession limit of six in the remainder of the State with the exception of the closed areas in Crawford and Lancaster/Lebanon Counties.

(b) *Late season and description.*

(1) *Areas.* Subject to approval of the United States Fish and Wildlife Service, there is a late Canada goose hunting season beginning on January 15 (except when Sunday, then January 16), and ending on February 15 (except when Sunday, then February 14) Statewide, with the exception of Erie, Mercer, Butler, Crawford and the area east of I-83 from the Maryland State line to the intersection of U. S. Route 30 to the intersection of S. R. 441, east of S. R. 441 to intersection of I-283, east of I-283 to I-83, east of I-83 to intersection of I-81, east of I-81 to intersection of I-80, and south of I-80 to the New Jersey State line.

(2) *Bag limit.* There is daily bag limit of five and a possession limit of ten geese.

(3) *Map.* See map of Late Canada Goose Areas in Appendix E.

(c) *Shooting hours.* Shooting hours for goose hunting during the early and late goose hunting seasons is 1/2 hour before sunrise to sunset.

(d) *Unlawful acts.* It is unlawful to hunt Canada geese during the early or late goose hunting seasons inside the boundaries of the closed area.

[Pa.B. Doc. No. 97-1854. Filed for public inspection November 21, 1997, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CHS. 141 AND 143]

Hunting and Trapping

Amendment to § 141.22

1. Introduction

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 24, 1997, meeting proposed, and at its October 7, 1997, meeting finally adopted changing § 141.22 (relating to small game), to increase the size of shot that can lawfully be used to take furbearers to size BB, lead and bismuth tin and size T steel. This change is adopted under 34 Pa.C.S. §§ 322(c)(5) and 2102 (relating to specific powers and duties; and regulations) (code).

2. Purpose and Authority

Representatives of the furtaking community requested the change because of their belief that the smaller shot currently required does not have adequate shocking and penetrating power to humanely harvest furbearers. Commission staff review of the recommendation produced agreement.

Section 322(c)(5) of the code authorizes the Commission to fix the type and number of devices which may be used to take game or wildlife. Section 2102 of the code directs

the Commission to promulgate regulations relating to the types of devices allowed for hunting or furtaking. These provisions provide the statutory basis for the change.

3. *Regulatory Requirements*

The change relaxes current regulatory requirements.

4. *Persons Affected*

All individuals who wish to engage in furtaking are affected.

6. *Cost and Paperwork Requirements*

The proposed change would not result in any additional cost either to the Commission or to hunters.

Amendment to Chapter 143

1. *Introduction*

On December 19, 1996, the Governor signed Act 184 of 1996, which amended section 2522 of the code (relating to shooting at or causing injury to human beings). Two major changes introduced by Act 184 involve the imposition of additional prerequisites to receiving a hunting or furtaking license after suspension for having shot at, injured or killed a human being. One of these prerequisites is the providing of evidence to the Commission, of having successfully completed a hunter/trapper education course. The other is the providing of evidence of having taken a vision examination administered by a licensed ophthalmologist or optometrist. The additions to Subchapter G provide standards for the vision examination and require proof of completion of a hunter/trapper education course. These provisions are adopted under authority contained in section 2721 of the code (relating to license issuance supervision) and section 2102 of the code.

2. *Purpose and Authority*

As was indicated in the Introduction, the recently adopted Act 184 requires successful completion of a hunter/trapper education course and a vision examination before individuals who have had their hunting and furtaking license suspended by reason of having shot at, injured or killed a human being can have their privileges reinstated. To implement these provisions, the Commission, at its June 24, 1997, meeting proposed and at its October 7, 1997, meeting finally adopted, adding four new sections, §§ 143.124—143.127, to Subchapter G, which prescribe standards for those vision examinations and implement the requirements.

Section 2721 of the code provides that the issuance of all hunting and furtaking licenses “. . . shall be in accordance with regulations of the Commission.” Section 2102 of the code authorizes the Commission to promulgate regulations relating to hunting and furtaking.

3. *Regulatory Requirements*

Under the adopted sections, persons whose hunting and furtaking privileges have been denied as a result of having shot at, injured or killed a human being would need to provide to the Commission, on forms provided, proof of meeting minimum visual acuity standards and evidence of having successfully completed a Commission sponsored hunter/trapper education course.

4. *Persons Affected*

The only persons affected by the adopted sections are those who have been denied hunting and furtaking

privileges as the result of having shot at, injured or killed a human being.

6. *Cost and Paperwork Requirements*

Those persons wishing to have their hunting and furtaking privileges restored need to bear the costs of having a visual examination by a licensed ophthalmologist or optometrist and submitting simple forms evidencing satisfaction of all requirements. Because of the relatively small number of persons involved, it is anticipated that the cost to the Commission will be minimal.

Comment and Response Summary

No comments were received with regard to the changes.

Effective Dates

The changes are effective on final publication in the *Pennsylvania Bulletin* and remain in effect until changed by the Commission.

Contact Person

For further information on the change, the contact person is James R. Fagan, Director, Bureau of Law Enforcement, (717) 783-6526, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order 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 thereunder 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission are amended by adding §§ 143.124—143.127 to read as set forth at 27 Pa.B. 4458 and by amending § 141.22 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall submit this order, Annex A and 27 Pa.B. 4458 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order amending § 141.22 and adding §§ 143.124—143.127, shall become effective upon final publication in the *Pennsylvania Bulletin*.

(*Editor's Note:* See 27 Pa.B. 6092 (November 22, 1997, for a corrective amendment relating to § 141.22 amended in this document.)

DONALD C. MADL,
Executive Director

Fiscal Note: Fiscal Note 48-100 remains valid for the final adoption of the subject regulations.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 141. HUNTING AND TRAPPING
Subchapter B. SMALL GAME

§ 141.22. Small game.

- (a) *Unlawful activities.* It is unlawful to:
 - (1) Take small game, protected mammals or protected birds using shot larger than #4 lead, #4 Bismuth/tin or #2 steel.
 - (2) Take furbearers using shot larger than size BB lead, size BB Bismuth/tin or size "T" steel.
 - (3) Possess a firearm while hunting with a raptor.
 - (4) Use or possess single projectile ammunition or use or possess single projectile designed for use in a firearm while hunting small game during the muzzleloading firearms deer or bear season, except for a .22 caliber rimfire rifle. This exception does not apply to the Southeast Special Regulations Area. See § 141.1(b)(2) (relating to special regulations areas).

(5) Hunt in a party of more than six persons.

(6) Hunt for groundhogs without wearing a cap or hat made of a daylight fluorescent orange material as part of the requirements in section 2524 of the act (relating to protective material required).

(7) Hunt for or assist to hunt for other small game, except waterfowl, mourning doves and crows without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material. The material shall be worn on the head, chest and back combined so it is visible in a 360° arc.

(b) *Definition.* For the purpose of enforcing section 2308(a)(4) of the act (relating to unlawful devices and methods), the term "plugged" means a magazine shotgun which is plugged with a one-piece filler, incapable of removal without disassembling the shotgun or magazine.

[Pa.B. Doc. No. 97-1855. Filed for public inspection November 21, 1997, 9:01 a.m.]