

# PROPOSED RULEMAKING

## DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 255]

### Messenger Service; Notice of Intent to Promulgate Regulation and Request for Public Participation

The Department of Transportation, Bureau of Motor Vehicles, under the authority of 75 Pa.C.S. §§ 6103 and 7501 (relating to promulgation of rules and regulations by department; and authorization of messenger service), and consistent with the goals of Executive Order 1996-1, February 6, 1996, Regulatory Review and Promulgation, announces its intention to amend Chapter 255 (relating to messenger service).

The purpose of this rulemaking is to revise provisions relating to qualifications and operations of messenger services. These revisions are intended to increase the accountability of messenger services to the Department and the general public.

The Department anticipates that this rulemaking will directly affect persons who apply for or are currently authorized messenger services, the Pennsylvania State Police and local law enforcement agencies. The individual public users of messenger services will be positively affected by the increased accountability of messenger service providers.

The Department requests that, within 30 days of the publication of this notice in the *Pennsylvania Bulletin*, all interested persons desiring to participate in the development of this rulemaking or having questions, suggestions, or comments on messenger service regulations, please contact Joseph Centurione, Manager, Messenger Service Center, Bureau of Motor Vehicles, 1101 South Front Street, Harrisburg, PA 17104, (717) 787-4020.

BRADLEY L. MALLORY,  
*Secretary*

[Pa.B. Doc. No. 98-963. Filed for public inspection June 19, 1998, 9:00 a.m.]

## GAME COMMISSION

[58 PA. CODE CHS. 141 AND 143]

### Hunting and Trapping; Hunting and Furtaker Li- censes

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its April 21, 1998, meeting, proposed amendments to read as set forth in Annex A.

Amend § 141.6 (relating to illegal devices) to permit the use of snares in addition to using leg hold and body gripping traps for the taking of beaver; and amend §§ 141.62 and 141.63 (relating to beaver trapping; and definitions) to further define tagging requirements of traps; provide for additional beaver taking opportunities by expanding the counties where beaver restrictions are

relaxed; rearrange the unlawful acts portion and provide a definition for the type of snare to be used.

Amend §§ 143.42, 143.45, 143.51, 143.52 and 143.55, to provide for the issuance of unsold antlerless deer licenses by returning to the former definition of "surplus tags" and rewriting these sections to reflect the Commission's changes in this process. This proposed change will also provide for over the counter sales of unsold antlerless deer licenses beginning on the first Monday in November as well as by United States mail, until the supply is exhausted.

These proposed amendments will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for this proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

These proposals were made public at the April 21, 1998, meeting of the Commission, and comments on these proposals can be sent to the Executive Director of the Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797 until July 3, 1998.

*(Editor's Note: A proposal to amend §§ 143.45 remains outstanding at 27 Pa.B. 6334 (December 6, 1997).)*

*Proposed amendments to §§ 141.6, 141.62 and 141.63*

#### 1. Introduction

To effectively manage the wildlife resources of this Commonwealth, the Commission at its April 21, 1998, meeting proposed changing §§ 141.6, 141.62 and 141.63 to allow the trapping of beaver using snares. These changes were proposed under sections 322(c)(5) and 2102(a) of the code (relating to powers of the Commission; and regulations).

#### 2. Purpose and Authority

Currently, snares cannot lawfully be used to trap furbearers in this Commonwealth. Snares, however, are less expensive, easier to use and, if properly used, can be very effective. The Commission has therefore proposed changing §§ 141.6, 141.62 and 141.63 to authorize the use of snares, on a limited basis, to trap beavers. The snares must be completely submerged under water.

Section 322(c)(5) of the code empowers the Commission to fix the type and number of devices which may be used to take game or wildlife. Section 2102(a) of the code authorizes the Commission to promulgate regulations relating to the hunting of game or wildlife in this Commonwealth. The proposed changes would be adopted under this authority.

#### 3. Regulatory Requirements

The proposed changes would authorize what is not currently permitted.

#### 4. Persons Affected

Individuals wishing to trap beavers in this Commonwealth could be affected by the proposed changes.

5. *Cost and Paperwork Requirements*

None

*Proposed changes to §§ 143.42, 143.45, 143.51, 143.52 and 143.55*

1. *Introduction*

To effectively manage the wildlife resources of this Commonwealth, the Commission at its April 21, 1998, meeting proposed changing §§ 143.42, 143.45, 143.51, 143.52 and 143.55 to modify provisions and procedures for issuing surplus antlerless deer licenses. The proposed changes allow individuals to purchase one surplus license from unexhausted allocations remaining after the fourth Monday in August. They would also allow over the counter issuance. These changes are being proposed under authority contained in section 2722(g) of the code (relating to regulations).

2. *Purpose and Authority*

As a result of the elimination of bonus antlerless deer licenses and their replacement by very limited surplus licenses, which involved issuance only by mail, many of the allocated antlerless deer licenses were not sold in 1997. This fact could severely impact the Commission's ability to manage deer populations in this Commonwealth. The Commission has therefore proposed changes to §§ 143.42, 143.45, 143.51, 143.52 and 143.55 which would allow the sale of one surplus antlerless deer license per hunter from unexhausted allocations starting the fourth Monday in August and which would also allow over the counter sale of the licenses beginning the first Monday in November. These measures should eliminate the large discrepancy between antlerless licenses allocated and those sold.

Section 2722(g) of the code directs the Commission to adopt regulations for the administration, control and performance of licenses issuance. The proposed changes would be made under this authority.

3. *Regulatory Requirements*

The proposed changes would relax current regulatory requirements.

4. *Persons Affected*

County treasurers and their employes and those seeking bonus antlerless deer licenses would be affected by these proposed changes.

5. *Cost and Paperwork Requirements*

The proposed changes relating to over-the-counter issuance may result in slight additional costs to county treasurers which should be offset by additional license issuance fees.

6. *Effective Date*

These proposed changes would be effective on publication of final adoption in the *Pennsylvania Bulletin* and would remain in effect until changed by the Commission.

7. *Contact Person*

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

DONALD C. MADL,  
*Executive Director*

**Fiscal Note:** 48-103. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.6. **Illegal devices.**

It is unlawful to:

\* \* \* \* \*

(2) Use snares to take wildlife or furbearers **except beavers may be taken with snares completely submerged under water.**

\* \* \* \* \*

Subchapter D. TRAPPING

§ 141.62. **Beaver trapping.**

(a) **General.** There shall be one durable identification tag attached to each trap or snare by means of an extension wire of sufficient length so that the name tag is completely above the water or ice level and totally visible for inspection purposes. The name tag shall visibly set forth the owner's first and last name and legal home address, or a number issued by the Commission.

(b) **Unlawful acts.** It is unlawful to:

[ (a) It is unlawful to place ] (1) Place, or make use of, materials or products except raw native wood or stone to direct the travel of beaver. Man-made materials may be used only to support traps or snares.

[ (b) It is unlawful to place ] (2) Place, check, reset or tend a trap or snare on an established beaver dam or beaver house, or within 15 feet of either a dam, or a house. Measurement shall be from directly above the trap or snare, across the water, ice or land to the nearest point of the structure.

[ (c) It is unlawful to ] (3) Set [ set ] body gripping traps larger than 10 inches × 10 inches.

[ (d) It is unlawful, in ] (4) In an area where beavers are known to inhabit, [ to ] set, tend or operate more than a combined total of ten traps or snares. No more than two of the traps may be body gripping traps [ with a jaw spread not exceeding 10 inches, ] except in the counties of Bradford, McKean, Potter, Susquehanna, Tioga and Wayne where the two body gripping trap limit does not apply.

[ (e) It is unlawful to check ] (5) Check, set, reset or otherwise maintain a beaver trap or snare, or [ to ] remove a beaver from a trap or snare, unless the person is identified by the attached name tag as the owner. This [ subsection ] paragraph does not prohibit the lending of assistance when the person whose name appears on the trap tag is present.

[ (f) There shall be one durable identification tag attached to each trap or trap chain by means of an extension wire of sufficient length so that the name tag is completely above the water or ice level and totally visible for inspection purposes. The name tag shall visibly set forth the owner's first and last name and legal home address. ]

(6) Equip snares with a spring-activating mechanism or any device designed to aid the closing of the snare loop.

§ 141.63. Definitions.

In addition to the definitions contained in the act and this part, the following words, when used in the enforcement of section 2361(a)(11) of the act (relating to unlawful acts concerning taking of furbearers), have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

**Snare**—A looped galvanized or stainless stranded steel cable 3/32 inches in diameter equipped with a mechanical sliding metal release lock. A metal ferule shall be crimped on the cable to prevent the snare loop from closing to a circumference less than 20 inches.

\* \* \* \* \*

CHAPTER 143. HUNTING AND FUR TAKER LICENSES

Subchapter C. ANTLERLESS DEER LICENSES

§ 143.42. Definitions.

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

\* \* \* \* \*

**Surplus tag**—An antlerless deer license permitting properly licensed [flintlock muzzleloader hunters] persons to take an additional antlerless deer during the regular firearms antlerless deer season, archery or flintlock muzzleloader deer seasons in the county of issue.

**Surplus tag application**—The form contained in the *Hunting and Trapping Digest* used in applying for a surplus tag [and unlimited antlerless deer licenses in special regulations areas].

\* \* \* \* \*

§ 143.45. Completing and submitting applications.

(a) Except as otherwise provided in § 143.52 (relating to procedure for [unlimited antlerless licenses] unexhausted allocation) and for those applications submitted by qualified landowners, it is unlawful for a county treasurer to accept an application in a manner other than by standard mail delivery through and by the United States Postal Service. County treasurers with unsold antlerless deer licenses shall accept applications over the counter and may immediately issue licenses beginning on the first Monday in November.

\* \* \* \* \*

§ 143.51. Application and issuance of surplus tags.

(a) County treasurers shall accept and process surplus applications from applicants in possession of a current flintlock muzzleloader license (stamp) beginning the third Monday in August. Surplus applications accepted by county treasurers on the third Monday in August shall have the applicant's flintlock muzzleloader license number written in the upper corners of the surplus application. The applicant shall write or indicate "Flintlock/Muzzleloader" in the lower left corner of the official envelope.

(b) Beginning on the fourth Monday in August, remaining unsold antlerless deer licenses will be made available as surplus tags to properly licensed applicants under §§ 143.45 and 143.50 (relating to completing and submitting applications; and procedure for nonresidents of this Commonwealth). Other appropriate sections of this chapter apply.

[ (b) ] (c) An applicant for this tag may not use the regular antlerless deer license application. An applicant shall [ only ] use the surplus application contained in the *Hunting and Trapping Digest* or a reasonable facsimile thereof.

[ (c) ] (d) \* \* \*

[ (d) ] (e) \* \* \*

[ (e) Surplus tags shall be validated by the addition of the county treasurer's signature or signature stamp, date of issue and the applicant's regular hunting license back tag number. The county treasurer shall write in ink the applicant's regular hunting license back tag number on the antlerless deer ear tag. ]

(f) In a county where surplus tags become available, a person who may lawfully hunt without a license as defined in section 2706 of the act (relating to resident license and fee exemptions) may take the number of surplus antlerless deer without a license during the regular firearms antlerless deer season or the archery and flintlock muzzleloader deer season equal to the number of licenses available to a licensed individual. Deer taken shall be tagged and reported as set forth in section 2323(b) of the act (relating to tagging and reporting big game kills). The tag and report shall contain the wording "antlerless deer," along with the other information required.

(g) Surplus tags shall be validated by the addition of the county treasurer's signature or signature stamp, the date of issue and the applicant's regular hunting license back tag number. The county treasurer shall write in ink the applicant's regular hunting license back tag number on the antlerless deer ear tag.

§ 143.52. Procedure for [unlimited antlerless licenses] unexhausted allocation.

(a) A county treasurer who has unsold licenses on the fourth Monday in August and thereafter, shall accept regular antlerless, and surplus applications (see subsection (b)) by mail from residents and nonresidents of this Commonwealth and issue licenses to the applicants until the county allocation is exhausted.

(b) Beginning on the date defined in subsection (a), residents and nonresidents of this Commonwealth shall be eligible to apply for and receive one surplus tag—under the conditions in subsection (a).

(c) Beginning on the [ fourth Monday in August ] date defined in subsection (a), residents and nonresidents of this Commonwealth shall be eligible to

apply to any county within the special regulations areas defined in § 141.1 (relating to special regulations areas) for an unlimited number of **[ antlerless deer licenses by mail ] surplus tags under the conditions of subsection (a)**. Applicants shall be limited to submitting not more than three applications per official envelope **when application is made through the mail**.

**[ (b) ] (d)** Beginning on the date **[ specified ] defined** in subsection (a), county treasurers within the special regulations areas defined in § 141.1 (relating to special regulations areas) shall accept **regular antlerless and surplus** applications over the counter **and by mail** from residents and nonresidents of this Commonwealth and may immediately issue licenses to applicants.

**§ 143.55. Unlawful acts.**

It is unlawful:

\* \* \* \* \*

(5) Except as specified in §§ 143.52 **[ (a) and ] (b) and (c)** and 143.53 (relating to procedure for **[ unlimited antlerless licenses ] unexhausted allocation**; and re-application), to apply for or receive more than one **[ antlerless license or more than one surplus license ] of the following**:

**(i) One antlerless license.**

**(ii) One surplus license.**

\* \* \* \* \*

[Pa.B. Doc. No. 98-964. Filed for public inspection June 19, 1998, 9:00 a.m.]

**PENNSYLVANIA  
EMERGENCY  
MANAGEMENT AGENCY**

**[ 4 PA. CODE CH. 116 ]**

**Radiation Emergency Response Fund**

The Pennsylvania Emergency Management Agency (PEMA), under the authority contained in 35 Pa.C.S. § 7313 (relating to powers and duties), proposes amendments to Chapter 116 (relating to Radiation Emergency Response Fund) to read as set forth in Annex A.

The proposed amendments are intended to streamline and improve the ability of PEMA to administer and operate the Radiation Emergency Response Fund (Fund) and to carry out the many goals and objectives of the Radiation Emergency Response Program which was established to protect the health and welfare of all residents of this Commonwealth living within the vicinity of the five nuclear power plants in this Commonwealth.

*Need for the Proposed Amendments*

These proposed amendments are needed to change the current funding process by which State agencies, counties, municipalities, school districts and volunteer organizations receive annual funding amounts from the Fund as set forth in Chapter 116. Under the present funding process, these entities receive two equal payments during the funding year to purchase radiological protection equipment, conduct emergency responder training and

public information activities, and participate in radiation emergency response exercises and drills. The second payment is contingent upon PEMA's receipt of an interim performance report which the counties submit to PEMA by January 15 of a funding year.

Over the past 2 years, PEMA has determined that the submission of the interim performance report is an unnecessary and burdensome requirement on the counties which should be eliminated. PEMA has also determined that it is more cost effective and practical to make one grant payment to each county on an annual basis rather than the current two payment process. This will allow the counties and their subgrantees to spend their grant moneys in a more timely and effective manner.

In addition, the role of the Pennsylvania Emergency Management Council (Council) in approving the county grant applications has become an increasingly proforma or perfunctory administrative exercise over the past several years. During that time, the Council has always, without debate, accepted and approved PEMA's recommendations concerning the amounts of the annual county grants and the intended purposes for those grants. Due to scheduling problems, however, it has been difficult for the Council to meet in a timely manner to approve PEMA's grant recommendations. As a result, delays have occurred in the distribution of grant payments to the counties. This has hindered the counties' ability to perform certain functions under their radiation emergency response programs. For these reasons, it is proposed to remove the Council from its supervisory role in the grant program and to replace it with PEMA which has been the actual program administrator and implementing agency for this grant program since its inception in 1985.

PEMA also proposes to delete the section of the regulations dealing with the reimbursement of certain retroactive expenses of the counties and other eligible parties because PEMA has completed the payment of those retroactive expenses to all eligible counties and other eligible applicants. Therefore, this section of the regulations no longer serves any purpose and should be deleted because it is no longer needed.

*Affected Persons*

These proposed amendments should have a favorable impact on State agencies, counties, municipalities, school districts and volunteer organizations that apply for grants from the Fund because it will allow them to receive their grant moneys in one payment instead of two, will eliminate an unnecessary interim performance report, and will allow the grant recipients to receive their grant moneys in a more timely manner.

*Sunset Requirement*

PEMA has not set a sunset date for these regulations because the Fund operates on a continuing basis. PEMA continues to monitor the operation of this Fund and will propose improvements such as these amendments when required.

*Paperwork Requirements*

The proposed amendments will reduce the amount of paperwork that State agencies, counties, municipalities, school districts and volunteer organizations shall submit during the funding year as part of PEMA's administration of the Fund.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 9, 1998, a copy of these proposed amendments was submitted to the Independent Regulatory Review Commission (IRRC), the Senate State Government Committee and the House Veterans Affairs and Emergency Preparedness Committee. In addition to the proposed amendments, IRRC and the Committees were provided with a copy of a detailed regulatory analysis form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of the form is available to the public from the agency upon request. The agency will consider any comments or suggestions received from IRRC or the Committees, together with any comments or suggestions received from the public, prior to adopting the proposed amendments.

As provided by sections 5(c) and 6(a) of the Regulatory Review Act, the proposed amendments will be deemed approved by the Committees on June 9, 1998 and by IRRC on June 9, 1998, unless the Committees or IRRC recommend disapproval before these dates. If the Committees or IRRC recommends disapproval, the Regulatory Review Act provides detailed procedures for review by the agency, the Governor and the General Assembly.

*Contact person*

Interested persons are invited to submit written comments, suggestions or objections regarding these proposed amendments to Mark Goodwin, Chief Counsel, Pennsylvania Emergency Management Agency, P. O. Box 3321, Harrisburg, PA 17105, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

CHARLES F. WYNNE,  
*Director*

**Fiscal Note:** 30-49. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 4. ADMINISTRATION**

**PART V. EMERGENCY MANAGEMENT**

**CHAPTER 116. RADIATION EMERGENCY RESPONSE FUND**

**§ 116.1. Definitions.**

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

\* \* \* \* \*

[ *Council*—The Pennsylvania Emergency Management Council. ]

\* \* \* \* \*

[ *Retroactive expense*—An expense incurred by risk and support counties, risk municipalities, school districts, volunteer organizations and State agencies as a direct result of the preparation, establishment and testing of emergency response plans surrounding each nuclear electrical generation facility, and for the payment of personnel costs, training expenses, and protective supplies and equipment. The expense must have been incurred during the periods from March 28, 1979 to June 30, 1985. ]

\* \* \* \* \*

*Risk municipality*—A municipality partially or wholly within the plume exposure pathway EPZ [ or ] of a fixed nuclear facility.

\* \* \* \* \*

*Work plan*—A written narrative explaining how the recipient will use funds received under the [ **Emergency Management Assistance Program** ] **Radiation Emergency Response Program**. It shall comply with the guidelines in the Agency's program requirements and will become part of a grant agreement.

**§ 116.2 Purpose.**

The purpose of this chapter is:

\* \* \* \* \*

[ (3) To provide reimbursement for expenses incurred during the period from March 28, 1979, to June 30, 1985, by eligible risk and support counties, risk municipalities, school districts, volunteer organizations and State agencies for costs which were required to be expended, but which were not previously reimbursed, as a direct result of the preparation, establishment and testing of radiation emergency response plans, for personnel costs, training expenses, and protective supplies and equipment. ]

**§ 116.4. Allocation of funds.**

(a) [ *Allocation of initial year funds.*

(1) The initial year/one time fees deposited into the RERF will be allocated for the reimbursement of expenses incurred by those eligible applicants set forth in section 503(b) of the act (35 P. S. § 7110.503(b)). These expenses will be reimbursed under § 116.8 (relating to reimbursement provisions for retroactive expenses).

(2) Fees not expended for the reimbursement of expenses described in paragraph (1), will be administered under subsection (b).

(b) ] *Allocation of funds from annual fees.*

(1) On or before August 1 of each funding year, the Agency will obtain a **fiscal year-end balance** report [ **from the Pennsylvania Treasurer's Office** ] concerning the total amount of the RERF. The total amount of the fund as stated in that report shall represent the disbursement ceiling for the amount of funds that may be available for distribution to all eligible applicants, excluding the Agency, during the current funding year of July 1 to June 30.

(2) Each year, the total amount of RERF as established in paragraph (1) will be disbursed and expended in accordance with the following schedule:

\* \* \* \* \*

(iii) [ **Once the Agency and all other State agency allocations have been approved by the Council, the** ] The total remaining amount of the RERF will be [ **divided between** ] dispersed to the eligible [ **support and risk** ] risk and support counties. [ **The Council, at the recommendation of the Agency, will then approve a funding allocation for each eligible support and risk county.**

(3) The Council will approve all funding allocations for each funding year.

(4) (3) An eligible [support and risk] risk and support county will receive its approved funding allocation in [two separate and equal payments] one advance payment during the funding year. [These payments will be made in accordance with a schedule which will be furnished to an eligible support and risk county at the beginning of each funding year. These payments will be made if a county satisfactorily complies with § 116.6 (relating to application and review procedures for funding) and § 116.7 (relating to reporting requirements and disbursement of funds).]

(5) (4) An eligible State agency will receive its approved funding allocation in one advance payment during a funding year. [This payment will be made if the State agency satisfactorily complies with §§ 116.6 and 116.7 (relating to application and review procedures for funding; and reporting requirements and disbursement of funds).]

(6) (5) \* \* \*

§ 116.5 Program requirements and eligible expenditures.

\* \* \* \* \*

(b) Eligible expenditures.

(1) County and State agency expenditures shall contribute to the development of a radiation emergency response capability in conformity with the standards and criteria established by the NRC, FEMA and Annex E to the Commonwealth of Pennsylvania's [Disaster] Emergency Operations Plan [(DOP)] (EOP).

(2) The following list of activities are appropriate uses of grant funds by risk counties. If a grant applicant wishes to use grant funds for a purpose other than those listed in subparagraphs (i)–(ix), the applicant shall secure the Agency's prior written approval for the use or activity.

\* \* \* \* \*

(vii) Pay the personnel costs directly involved in the development or implementation of the Radiation Emergency Response Program[, or both]. Detailed justification of personnel costs shall be included in the application work plan.

\* \* \* \* \*

(3) The following list of activities are appropriate uses of grant funds by support counties. If a grant applicant wishes to use grant funds for a purpose other than those listed in this paragraph, the applicant shall secure the Agency's prior written approval for the use or activity.

\* \* \* \* \*

(ii) Participate in drills and exercises[—], including remedial drills and exercises[—], scheduled by the Agency or by the Federal government.

\* \* \* \* \*

(4) The following list of activities are appropriate uses of grant funds by State agencies. If a grant applicant wishes to use grant funds for a purpose other than those listed in this paragraph, the applicant shall secure the Agency's prior written approval for the use or activity.

\* \* \* \* \*

(ii) Participate in drills and exercises[—], including remedial drills and exercises[—], scheduled by the Agency or by the Federal government.

\* \* \* \* \*

§ 116.6. Application and review procedures for funding.

\* \* \* \* \*

(b) Applicants, except State agencies, shall submit their funding requests to the appropriate [County Emergency Management Agency] county emergency management agency. The [agency] county emergency management agency shall review the request in terms of its compliance with and advancement of the county's Emergency Preparedness Plan. Upon approval by the [County Emergency Management Agency] county emergency management agency, the individual funding requests of a risk municipality, school district[, ] or volunteer organization shall be incorporated into the county's application for funding from the RERF. State agencies shall submit their funding requests directly to the Agency. The request shall be submitted under the signature of the State agency's secretary/director or designee.

(c) [In order to] To be eligible for funding, a county or State agency shall submit its funding application to the Agency by June 1 preceding each applicable funding year—July 1 to June 30. [The funding application shall include the following information submitted upon forms provided by the Agency:

- (1) Funding application.
(2) Emergency preparedness work plan.
(3) Budget.
(4) Nondiscrimination clause.]

\* \* \* \* \*

(f) During the review of the work plan and budget, the Agency may involve the county, its risk municipalities, school districts, volunteer organizations[, ] or State agency in negotiations and revisions of part of the work plan or budget, or both, so that the goals and objectives established for the applicant's participation in the Radiation Emergency Response Program can be met. It shall be the obligation of the county to participate in negotiations and revisions concerning its work plan and budget. The county shall attempt to resolve disputes that arise between the county and its risk municipalities, school districts or volunteer organizations concerning the inclusion of their individual funding requests in the county's application. Disputes that cannot be resolved at the county level through negotiations will be resolved by the Agency during its review of the county's funding application. [During this review process, the Agency may request that the Council consider and decide the facts and issues in dispute between the county and its risk municipalities, school districts, and volunteer organizations.]

(g) Upon completion of the Agency's application review process, the Agency will [make a recommendation to the Council concerning an application received and

reviewed. Based upon the recommendation, the Council will ] approve those work plans and budgets that are determined to be eligible for funding. The [ Council ] Agency will then approve a recommended funding allocation for an eligible applicant.

(h) After the [ Council's ] Agency's approval of a funding allocation, the Agency will forward the [ first ] payment of the allocation to an eligible applicant. This payment [ and other payments ] will be dependent upon the availability of funds being present in the RERF at the time of their intended disbursement.

**§ 116.7. Reporting requirements and disbursement of funds.**

(a) [ *Required reports.* During a funding year, the following reports are required:

(1) An interim performance report and a final performance report shall be submitted by a county.

(2) A final performance report shall be submitted by a State agency.

(b) *Requirements.* The requirements for these performance reports are set forth in subsections (c) and (d).

(c) *Interim performance report.*

(1) A county that has received a funding allocation shall submit an interim performance report to the Agency by January 15 of a funding year. This report will cover the period from July 1 through December 31.

(2) The interim performance report shall supplement the county's work plan so that actual accomplishments can be compared to the work plan schedule.

(3) The interim performance report shall contain the following information:

(i) A discussion of the progress made toward accomplishing the goals and objectives of the work plan.

(ii) A discussion of changes or modifications made to the work plan during the first 6 month period—July 1 to December 31—or changes or modifications that need to be made during the second 6 month period—January 1 to June 30—of the funding year.

(iii) A description of unforeseen events or problems that have affected the performance goals of the county or its participating risk municipalities, school districts, or volunteer organizations, together with proposals to correct or eliminate those problems or events.

(iv) A financial accounting of the items either purchased or ordered to date, together with a description of remaining items, such as equipment, training, supplies, to be purchased during the second 6 month period. The accounting shall include:

(A) A list of expenditures made by the county either for its own use or on behalf of its risk municipalities, school districts, or volunteer organizations.

(B) Copies of invoices or vouchers received for those expenditures or a copy of receipts or other financial documentation that verifies the payment of the expenditures made during the reporting period.

(v) Other relevant information that the county believes supports and explains its overall performance in meeting the goals and objectives of its work plan and budget.

(4) The Agency will review the interim performance report for accuracy and completeness. The agency will then make a determination, based upon the report, that the county is or is not in satisfactory performance of the goals and objectives of its work plan. Each county will be notified of this determination in writing. The notification will state reasons for disapproving the report and will provide suggested corrective actions to be taken by those counties determined to be in unsatisfactorily performance of their goals and objectives.

(5) A county that is in satisfactory performance of its work plan will receive the second payment of its funding allocation in a reasonable period of time.

(6) A county that is not in satisfactory performance of its work plan will not receive the second payment of its funding allocation until the Agency determines that the county has taken the necessary action to bring itself into compliance with its work plan.

(d) *Final performance ] Required report.* During a funding year, a final performance report shall be submitted by a county and a State agency. The requirements for this final performance report are as follows:

(1) A county and State agency that has received a funding allocation shall submit a final performance report to the Agency by July [ 15 of a ] 30 following the funding year. The report shall cover the period [ from January 1 through June 30 for each county and the period ] from July 1 through June 30 [ for a State agency ].

(2) The final performance report shall contain the following information:

(i) A complete description of the work plan goals and objectives accomplished during the reporting [ periods ] period.

\* \* \* \* \*

(4) [ A State agency that has satisfactorily performed its work plan will be reimbursed for all verifiable expenditures listed in the final report.

(5) A State agency that has not satisfactorily performed its work plan will not be reimbursed for expenditures, whether verifiable or not, until the Agency determines that the State agency has taken the necessary action to bring itself into compliance with its work plan. ] A county or State agency that has not satisfactorily performed its work plan will be required to return the funds provided under its grant agreement.

[ (e) ] (b) *Eligibility for future funding allocations.*

(1) [ At the end of each funding year (June 30), the ] The Agency will review the [ overall perfor-

mance ] final performance report of each county and State agency [ that received a funding allocation during that funding year. The performance standard that will be applied to this review is whether or not the county or State agency satisfactorily participated ] to verify satisfactory participation in the further development, improvement [ , ] and implementation of the Agency's Radiation Emergency Response Program.

\* \* \* \* \*

§ 116.8. [ Reimbursement for retroactive expenses ] (Reserved).

[ (a) Certain retroactive expenses incurred by eligible counties, risk municipalities, school districts, volunteer organizations, and State agencies during the period from March 28, 1979, to June 30, 1985, may be reimbursed by funds from the RERF under this section.

(b) Applicants, except State agencies, that seek reimbursement for retroactive expenses not previously reimbursed shall submit their funding requests to the appropriate County Emergency Management Agency. That agency will review the request to determine that it is eligible for a reimbursement payment from the RERF. Upon approval by the County Emergency Management Agency, the individual funding requests of a risk municipality, school district, or volunteer organization shall be incorporated into the county's application for a reimbursement payment from the RERF. A State agency shall submit funding requests directly to the Agency. That request shall be submitted under the signature of the State agency's secretary/director or his designee.

(c) In order to be eligible for a reimbursement payment, a county or State agency shall submit its funding application to the Agency by November 1, 1985. The funding application shall include the following information submitted upon forms provided by the Agency:

- (1) Retroactive expenses application.
- (2) Financial accounting statement.
- (d) The retroactive expenses application shall contain the following information:
  - (1) An itemized list of expenditures.
  - (2) The date of each expenditure.
  - (3) The purpose of the expenditure.
  - (4) A copy of the receipt or other financial documentation that verifies the payment of an itemized expenditure.

(e) A county funding application shall also include the individual funding requests of a risk municipality, school district or volunteer organization submitted to the county for review, whether or not those requests were incorporated into the county's financial accounting statement. It shall be the obligation of the county to participate in negotiations and revisions concerning its funding application. In particular, the county shall attempt to resolve disputes that arise between the county and its risk municipalities, school districts or volunteer organizations concerning the inclusion of their individual funding requests into the county's finan-

cial accounting statement. Disputes that cannot be resolved at the county level through negotiations will be resolved by the Agency during its review of the county's funding application. During this review process, the Agency may request that Council consider and decide the facts and issues in dispute between the county and its risk municipalities, school districts, and volunteer organizations.

(f) Upon receipt of a funding application, the Agency will review the application for accuracy and completeness. The Agency will apply the following standards to its application review process:

- (1) The expenditures were incurred during the period from March 28, 1979 to June 30, 1985.
- (2) The expenditures were not previously recouped or reimbursed from other sources.
- (3) The expenditures were required as a direct result of the preparation, establishment, and testing of Radiation Emergency Response Plans.
- (4) The expenditures were required for either the payment of personnel costs, training costs, or for the purchase of protective supplies and equipment.
- (5) The expenditures shall be verifiable.

(g) Upon completion of the Agency's application review process, the Agency will make a recommendation to the Council concerning an application received and reviewed. Based upon that recommendation, the Council will approve a reimbursement payment for an eligible applicant.

(h) After the Council's approval of the reimbursement payment, the Agency will forward the reimbursement payment to an eligible applicant. Payments will be dependent upon the availability of funds being present in the RERF at the time of their intended disbursement.

(i) Reimbursement payments for retroactive expenses incurred by eligible applicants will not be considered for disbursement after December 31, 1985, except in unusual circumstances that are approved by the Council.

(j) Any portion of the reimbursement of expenses fund described in § 116.4(a)(1) (relating to allocation of funds), that is not disbursed or obligated by December 31, 1985, shall revert to the RERF and shall be administered under § 116.4(b) for the allocation of funds from annual fees. ]

§ 116.9. Retention of records for audit.

(a) [ A county and State agency that has received a funding allocation shall retain financial records, receipts, invoices, vouchers, supporting documents, statistical records and other records that were used to support and document the following reports and applications:

- (1) Funding application.
- (2) Interim performance report.
- (3) Final performance report.
- (4) Retroactive expenses application.

(b) The ] All records [ described in subsection (a) shall ] and supporting documents (that is, receipts, invoices, vouchers, and the like) related to grant funds must be retained for a period of 3 years.



The retention period starts at the end of the funding year—June 30—in which the funding allocation was made.

**[(c)] (b)** A county and State agency shall make the records described in subsection (a) available for audit by Commonwealth audits and Agency officials within 10 days after receiving a written request that those records be made available for audit. The audit request may be made at any time during the 3 year record retention period.

#### § 116.10. Agency report.

On September 1 of each year, the Agency will submit a report on its operation of the RERF for the preceding funding year to the Governor **[ and ]**, the General Assembly **and the Pennsylvania Emergency Management Council**. The report will include a summary of the activities of the Radiation Emergency Response Program as provided for in Chapter 5 of the act (35 P.S. §§ 7110.501—7110.503). The report will also include a proposed operating budget, a financial statement, a list of applications received<sup>[ , ]</sup> and the disbursements or reimbursements made to the eligible counties, risk municipalities, school districts, volunteer organizations<sup>[ , ]</sup> and State agencies. An analysis of the adequacy of the fees established under section 402(c) of the act (35 P.S. § 7110.402(c)) will also be included in the report. The proposed funding formula for each subsequent funding year will be included in either an annual or a special report to the Governor **[ and ]**, the General Assembly **and the Pennsylvania Emergency Management Council**.

[Pa.B. Doc. No. 98-965. Filed for public inspection June 19, 1998, 9:00 a.m.]

### [4 PA. CODE CH. 117]

#### Radiation Transportation Emergency Response Fund

The Pennsylvania Emergency Management Agency (PEMA), under the authority contained in 35 Pa.C.S. § 7313 (relating to powers and duties), proposes amendments to Chapter 117 (relating to Radiation Transportation Emergency Response Fund) to read as set forth in Annex A.

The proposed amendments are intended to streamline and improve the ability of PEMA to administer and operate the Radiation Transportation Emergency Response Fund (RTERF) and to carry out the many goals and objectives of the Radiation Transportation Emergency Response Program which was established to protect the health and welfare of all residents of this Commonwealth living within the vicinity of a highway used for the shipment of spent nuclear fuel.

#### *Need for the Proposed Amendments*

PEMA has found that the role of the Pennsylvania Emergency Management Council (Council) in approving the RTERF grant applications has become an increasingly proforma or perfunctory administrative exercise over the past several years. During that time, the Council has always, without debate, accepted and approved PEMA's recommendations concerning the amounts of the RTERF grants and the intended purposes for those grants. Due to scheduling problems, however, it has been difficult for the

Council to meet in a timely manner to approve PEMA's grant recommendations. As a result, delays have occurred in the distribution of grant payments to the counties. This has hindered the counties' ability to perform certain functions under their radiation transportation emergency response programs. For these reasons, it is proposed to remove the Council from its supervisory role in the grant program and to replace it with PEMA which has been the actual program administrator and implementing agency for this grant program since its inception in 1985.

#### *Affected Persons*

These proposed amendments should have a favorable impact on all State agencies, counties, municipalities and volunteer organizations that apply for grants from the RTERF because it will allow them to receive their grant moneys in a more timely manner.

#### *Sunset Requirement*

PEMA has not set a sunset date for these regulations because the RTERF operates on a continuing basis. PEMA continues to monitor the operation of the RTERF and will propose improvements such as these amendments when required.

#### *Paperwork Requirements*

The proposed amendments will not change the amount of paperwork that State agencies, counties, municipalities and volunteer organizations submit to PEMA to receive a grant from the RTERF.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 9, 1998, a copy of these proposed amendments was submitted to the Independent Regulatory Review Commission (IRRC), the Senate State Government Committee and the House Veterans Affairs and Emergency Preparedness Committee. In addition to the proposed amendments, IRRC and the Committees were provided with a copy of a detailed regulatory analysis form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of the form is available to the public from the agency upon request. The agency will consider any comments or suggestions received from IRRC or the Committees, together with any comments or suggestions received from the public, prior to adopting the proposed amendments.

As provided by sections 5(c) and 6(a) of the Regulatory Review Act (71 P.S. §§ 745.5(c) and 745.6(a)), the proposed amendments will be deemed approved by the Committees on June 9, 1998 and by the IRRC on June 9, 1998, unless the Committees or IRRC recommend disapproval before these dates. If the Committees or IRRC recommends disapproval, the Regulatory Review Act provides detailed procedures by review by the agency, the Governor and the General Assembly.

#### *Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding these amendments to Mark Goodwin, Chief Counsel, Pennsylvania Emergency Management Agency, P. O. Box 3321, Harrisburg, Pennsylvania 17105, within 30 days following publication of this proposed amendment in the *Pennsylvania Bulletin*.

CHARLES F. WYNNE,  
*Director*

**Fiscal Note:** 30-50. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART V. EMERGENCY MANAGEMENT AGENCY

CHAPTER 117. RADIATION TRANSPORTATION EMERGENCY RESPONSE FUND

§ 117.1. Definitions.

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

\* \* \* \* \*

**Applicant**—An all inclusive term that refers to all counties, municipalities, volunteer organizations and State agencies that are eligible to apply for funds from the RTERF.

**[ Council**—The Pennsylvania Emergency Management Council. ]

\* \* \* \* \*

§ 117.2. Purpose.

The purpose of this chapter is to accomplish the following:

\* \* \* \* \*

(2) Establish within the Agency a financial assistance program that will provide for the payment of [ expenses ] costs incurred by an eligible [ county, municipality, volunteer organization and State agency ] applicant for the procurement of equipment and the training and employment of personnel as a result of direct participation in the development and implementation, or both, of the EOP, Hazardous Materials Annex F. Information about the Plan may be obtained from the Agency or the county emergency management office.

§ 117.4. Allocation of funds.

\* \* \* \* \*

(b) [ As a result, an ] An application from an eligible county[, municipality, volunteer organization ] or State agency will be processed by the Agency on an individual basis in the order that the application is received during a funding year—July 1 to June 30.

\* \* \* \* \*

§ 117.6. Application and review procedures for funding.

(a) The application procedures in this section apply to [ an ] eligible [ county, municipality, volunteer organization and State agency ] applicants that [ seeks ] seek funding from the RTERF.

(b) [ An applicant ] Applicants, except for [ a ] State [ agency ] agencies, shall submit a funding [ request ] application to the appropriate [ County Emergency Management Agency ] county emergency management agency. [ That agency ] The county emergency management agency shall review the [ request ] application in terms of its compliance with and advancement of the county's Radiation Emergency Response Plan. Upon approval by the [ County Emergency Management Agency ] county emergency management agency, the individual funding [ request ] application of the eligible [ county, ] municipi-

ality or volunteer organization shall be incorporated into the county's application for funding from the RTERF. [ A ] State [ agency ] agencies shall submit [ a ] funding [ request ] applications directly to the Agency. That [ request ] application shall be submitted under the signature of the State agency's secretary/director or designee.

(c) [ To be eligible for funding, a county or State agency shall submit its funding application to the Agency. The funding application shall include the following information submitted on forms provided by the Agency:

- (1) Funding application.
(2) Financial accounting statement.

(d) The financial accounting statement shall contain the following information:

- (1) An itemized list of proposed expenditures.
(2) The projected date of an expenditure.
(3) The purpose of the expenditure.

(4) A copy of the bids, contract or other financial documentation that verifies the proposed expenditure.

(e) A county funding application shall also include the individual funding requests of an eligible municipality, volunteer organization, or both, submitted to that county for review, whether or not those requests were incorporated into the county's financial accounting statement. ]

It is the obligation of the county to participate in negotiations and revisions concerning its funding application. In particular, the county shall attempt to resolve disputes that arise between the county and its municipalities and volunteer organization, or both, concerning the inclusion of individual funding requests into the county's [ financial accounting statement ] application. Disputes that cannot be resolved at the county level through negotiations will be resolved by the Agency during its review of the county's funding application. [ During this review process, the Agency may request that the Council consider and decide the facts and issues in dispute between the county and its municipalities and volunteer organizations, or both.

(f) ] (d) \* \* \*

\* \* \* \* \*

[ (g) The Agency's application review process will be completed prior to the scheduled meeting date of the Council. At the Council's meeting, the Agency will make a recommendation to the Council concerning an application received and reviewed since the last meeting of the Council. Based upon that recommendation, the Council will approve a payment for an eligible applicant.

(h) A funding application received after the close of an application review period—2 working days before a scheduled Council meeting—will be re-

viewed by the Agency and be considered by the Council for a payment at its next scheduled meeting. ]

(e) Upon the completion of the application review process, the Agency will approve a funding allocation for the eligible applicant.

(f) After the Agency's approval of a funding allocation, the Agency will forward the payment to an eligible applicant.

§ 117.7. [ Disbursement of funds ] (Reserved).

[ (a) After the Council's approval of a payment, the Agency will forward the payment to an eligible county, municipality, volunteer organization or State agency.

(b) A payment will be dependent upon the availability of funds being present in the RTERF at the time of the intended disbursement. ]

§ 117.8. Retention of records for audit.

(a) [ A county, municipality, volunteer organization and State agency that has received a payment shall retain financial records, receipts, invoices, vouchers, supporting documents, statistical records and other records that were used to support and document the funding application.

(b) The records described in subsection (a) shall be retained for 3 years. The retention period starts at the end of the funding year—June 30—in which the funding allocation was made.

(c) A county, municipality, volunteer organization and State agency shall make the records described in subsection (a) available for audit by Commonwealth auditors and Agency officials, or both, within 10 days after receiving a written request that those records be made available for audit. An

audit request may be made at any time during the 3-year record retention period. ]

Records and supporting documents (that is, receipts, invoices, vouchers, and the like) related to grant funds shall be retained for 3 years. The retention period starts at the end of the funding year—June 30—in which the funding allocation was made.

(b) A county and State agency shall make the records described in subsection (a) available for audit by Commonwealth and Agency officials within 10 days after receiving a written request that those records be made available for audit. The audit request may be made at any time during the 3-year record retention period.

§ 117.9. Agency report.

On September 1 of a year, the Agency will submit a report on its operation of the RTERF for the preceding fiscal year to the Governor, [ and ] the General Assembly and the Pennsylvania Emergency Management Council. The report will include a summary of the activities of the [ EOP, Hazardous Materials Program ] Radiation Transportation Emergency Response Program. The report will [ also ] include [ a proposed operating budget, a financial statement, ] a list of the applications received and the amounts [ made to the ] allocated to eligible [ jurisdictions, volunteer organizations and State agencies ] applicants. An analysis of the adequacy of the fee established for the shipment of spent nuclear fuel will also be included in the report.

[Pa.B. Doc. No. 98-966. Filed for public inspection June 19, 1998, 9:00 a.m.]