

RULES AND REGULATIONS

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 67]

Catastrophic Loss Benefits Continuation Fund

The Insurance Department (Department), by this order, adopts amendments to Chapter 67, Subchapter A (relating to Catastrophic Loss Trust Fund) to read as set forth in Annex A. This rulemaking is necessary due to the repeal of the Catastrophic Loss Trust Fund and the subsequent implementation of the Catastrophic Loss Benefits Continuation Fund.

Purpose

Sections 67.1—67.15 were originally promulgated to provide guidance for the handling of claims under the Catastrophic Loss Trust (CAT) Fund created in 1984 under 75 Pa.C.S. §§ 1761—1769, which was repealed effective December 12, 1988, by the act of December 12, 1988 (P. L. 1120, No. 144) (Act 144). Subsequently, the act of April 26, 1989 (P. L. 13, No. 4) (Act 4) added 75 Pa.C.S. Chapter 17, Subchapter I (relating to miscellaneous provisions). Section 1798.4 of Act 4 established the Catastrophic Loss Benefits Continuation Fund (Fund) to provide funds necessary to pay catastrophic loss benefits to individuals who suffered a catastrophic loss after October 1, 1984, and prior to June 1, 1989, or during the December 1988-89 registration year for which payment for CAT Fund coverage was made in accordance with former 75 Pa.C.S. § 1762.

Section 1798.2 of Subchapter I contains a “savings provision” providing that despite the repeal of Subchapter F by Act 144, persons experiencing catastrophic losses during the time the CAT Fund was in effect (October 1, 1984, through June 1, 1989) or during the December 1988-89 vehicle registration year for which a fee was paid, shall continue to receive, or will be eligible to receive, catastrophic loss benefits as if Subchapter F had not been repealed. Because of the repeal of Subchapter F and the addition of Subchapter I allowing claimants to continue to receive Fund benefits, it is necessary to modify various sections of Chapter 67 as well as add a new section to reflect these statutory changes and provide a more accurate reflection of current Fund needs.

Statutory Authority

These amendments are published under the authority of sections 506 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 186 and 412).

Comments

Notice of the proposed rulemaking was published at 27 Pa.B. 6229 (November 29, 1997) as a proposed rulemaking with a 30-day public comment period.

No comments were received from the Standing Committees or the public. On January 30, 1998, the Independent Regulatory Review Commission (IRRC) submitted its comments and recommendations to the Department. The following is a summary of the comments and the Department's response in its final rulemaking.

Section 67.18 (relating to coordination of benefits), provided that an eligible CAT Fund claimant shall cooperate in providing coordination of benefit information to the Fund and the Fund's administrator. The section as pro-

posed further provided that a claimant's failure to cooperate in providing this information will result in a claimant's suspension of benefits.

IRRC questioned the Department's statutory authority to suspend claimant benefits under this section and recommended that if this section remains, the Department clarify what would be considered a “failure to cooperate.” In accord with IRRC's concerns, the Department has deleted the suspension of benefits language from the regulations. Section 67.18 now reads “an eligible claimant shall cooperate in providing coordination of benefit information to the Administrator and the Fund.” Because the Department deleted the suspension of claimant benefits language from the regulations, it is unnecessary to clarify “failure to cooperate.”

In § 67.1 (relating to purpose), IRRC recommended that the Department add “after October 1, 1984, but” before “prior to June 1, 1989” in § 67.1 to clarify the inclusive dates during which claimants may have suffered catastrophic losses. The Department agrees and has revised § 67.1 to respond to IRRC's clarity concern.

In § 67.2 (relating to definitions), the Department agreed with IRRC's comments and has revised § 67.2 to incorporate “limitations provided in the act” into the regulations since the act has been repealed. The act's limitations on eligibility are contained in 75 Pa.C.S. §§ 1761 and 1766. Because of the repeal of the act, and the resultant difficulty for claimants to reference the act, 75 Pa.C.S. §§ 1761 and 1766 (now repealed) will be appended to the regulations as Appendix A. The definition of “benefits” in § 67.2 has been revised.

In § 67.6 (relating to appeals), IRRC questioned whether the date of the “written determination” is the same as the mailing date, and if not, recommended that the Department calculate the 30-day time period for appeal from the date of mailing.

The Department considered IRRC's recommendation but finds that use of the mailing date to calculate the 30-day time period will be administratively difficult. As an alternative, the Department suggests that the date of the written determination continue to be utilized to calculate the appeal period, but that the 30-day time period be increased to 33 days to allow time for claimants to receive the written determination through the mail. The additional 3 days will benefit claimants because it should afford the full 30-day time-frame during which to file an appeal, and the Department will know the specific date from which the 33-day appeal period will begin to run.

Fiscal Impact

State Government

These amendments will not have an impact on costs of the Fund or the Department.

General Public

These amendments are not expected to have a fiscal impact upon the general public.

Political Subdivisions

These amendments have no impact on costs to political subdivisions.

Private Sector

These amendments have no impact on costs to the private sector.

Paperwork

These amendments impose no additional paperwork requirements on the Department or the Fund.

Persons Regulated

These amendments apply to claimants who are currently receiving benefits from the Fund, catastrophically injured claimants who are not currently eligible to receive benefits from the Fund but who may be eligible in the future, the Administrator for the Fund and the Fund itself.

Contact Person

Questions or comments regarding the amendments may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 29, 1997, the Department submitted a copy of these amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to the submitted amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received. A copy of that material is available to the public upon request.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), these final-form regulations were deemed approved by the House and Senate Committees on September 15, 1998. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 24, 1998, and approved the final-form regulations.

Findings

The Insurance Commissioner finds that:

(1) Public notice of intention to adopt this rulemaking as amended 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 this rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Insurance Commissioner, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapter 67, are amended by amending §§ 67.3—67.5 and adding §§ 67.16 and 67.17 to read as set forth at 27 Pa.B. 6229 (November 29, 1997); and by amending §§ 67.1, 67.2, 67.6 and by adding § 67.18 and Appendix A to read as set forth in Annex A.

(b) The Commissioner shall submit this order, 27 Pa.B. 6229 and Annex A to the Office of General Counsel and

Office of Attorney General for approval as to form and legality as required by law.

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

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

M. DIANE KOKEN,
Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 5189 (October 10, 1998).)

Fiscal Note: Fiscal Note 11-160 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 31. INSURANCE

PART II. AUTOMOBILE INSURANCE

CHAPTER 67. CATASTROPHIC LOSS BENEFITS CONTINUATION FUND

§ 67.1. Purpose.

The purpose of this subchapter is to provide procedures for the establishment and administration of the Fund, which continues the Catastrophic Loss Trust Fund eligibility determinations for certain individuals suffering catastrophic losses on or after October 1, 1984, but prior to June 1, 1989, or who may have suffered a catastrophic loss during the December 1988 to December 1989 vehicle registration year for which payment for Catastrophic Loss Trust Fund coverage was made in accordance with former section 1762 of the act (repealed).

§ 67.2. Definitions.

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

Act—75 Pa.C.S. §§ 1701—1798 (relating to the Motor Vehicle Financial Responsibility Law).

Administrator—The person or entity designated by the Fund to review claims for catastrophic loss benefits, determine the eligibility of the claimant and make payment where appropriate.

Benefits—Payments by the Fund for reasonable, necessary and accident-related expenses for medical treatment and rehabilitative services which exceed \$100,000, subject to limitations provided in sections 1761 and 1766 of the act (now repealed). Reference may be made to sections 1761, 1762 and 1766, in Appendix A.

Claims manager—The Department employe designated by the Commissioner to manage the daily activities of the Fund.

Department—The Insurance Department of the Commonwealth.

Eligible claimant—An individual who meets the requirements of § 67.16 (relating to eligible claimant for fund benefits).

Fund—The Catastrophic Loss Benefits Continuation Fund established to provide benefits required by the act.

Surcharge—The amount to be paid by drivers upon conviction of any traffic violation, exclusive of parking offenses, to fund the Fund.

§ 67.6. Appeals.

(a) A claimant who disputes a determination by the Administrator or Fund concerning eligibility for or allowance of benefits, may file a written complaint with the claims manager. The written determination by the Fund or Administrator shall advise the claimant how to file a complaint with the claims manager. A complaint is timely filed by the claimant if received by the claims manager no later than 33 days after the date of the written determination from the Administrator or the Fund denying eligibility for or allowance of benefits.

(b) The claims manager will issue a written determination notifying the claimant of the results of the claims manager's review. If the claimant is not satisfied with the results of the claims manager's review, the claimant may request in writing a formal administrative hearing before the Commissioner. The written determination by the claims manager will advise the claimant how to request a hearing. A request for hearing is timely if received by the Department no later than 33 days after the date of the written determination from the claims manager.

(c) Appeals are conducted in accordance with 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) as applicable to the Department and in accordance with Chapter 56 (relating to special rules of administrative practice and procedure).

§ 67.18. Coordination of benefits.

An eligible claimant shall cooperate in providing coordination of benefit information to the Administrator and the Fund.

APPENDIX A

Section

1761.	Definitions (Repealed).
1762.	Funding (Repealed).
1766.	Benefits (Repealed).

§ 1761. Definitions (Repealed).

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrator." The administrator designated by the Catastrophic Loss Trust Fund Board.

"Board." The Catastrophic Loss Trust Fund Board.

"Catastrophic loss." An injury, arising out of the maintenance or use of a motor vehicle, for which the reasonable and necessary expenses for medical treatment and rehabilitative services, as described in section 1712(1) (relating to availability of benefits), exceed \$100,000.

"Catastrophic loss benefit." Payments by the Catastrophic Loss Trust Fund for those reasonable and necessary expenses only for medical treatment and rehabilitative services which, as described in section 1712(1), exceed \$100,000, subject to the limitations provided in section 1766 (relating to benefits). Catastrophic loss benefits shall not duplicate any other payments for medical treatment and rehabilitative services.

"Eligible claimant." Except as provided in the definition of ineligible claimant, eligible claimant includes a resident of this Commonwealth who suffers injury on or after the effective date of this subchapter arising out of the maintenance or use of a motor vehicle in the United States, its territories or possessions and Canada. The estate of an eligible claimant shall be entitled to receive catastrophic loss benefits pursuant to section 1766 to the

extent that financial obligations for reasonable and necessary medical treatment and rehabilitative services were incurred by the eligible claimant prior to the death of that person. Otherwise eligible claimants shall not be disqualified from participating in or receiving benefits from the Catastrophic Loss Trust Fund for injuries suffered after the effective date of this subchapter but prior to their first registration renewal after the effective date of this subchapter.

"Executive director." The executive director of the Catastrophic Loss Trust Fund Board.

"Fund." The Catastrophic Loss Trust Fund.

"Fund charge." The fund charge established under this subchapter.

"Ineligible claimant." Any of the following:

(1) A person who is the owner of a motor vehicle who has not complied with the registration requirements of Chapter 13 (relating to registration of vehicles).

(2) A person who is the driver or occupant of a recreational vehicle not intended for highway use, a motorcycle, a motorized pedalcycle, a motor-driven cycle or like type vehicle required to be registered under this title but not subject to the charge levied in section 1762 (relating to funding).

"Manager." The manager designated by the Catastrophic Loss Trust Fund Board.

§ 1762. Funding (Repealed).

The Catastrophic Loss Trust Fund shall be funded by levying an initial charge of \$5 upon all motor vehicles required to be registered under Chapter 13 (relating to registration of vehicles) except trailers, recreational vehicles not intended for highway use, motorcycles, motor-driven cycles, motorized pedalcycles or like type vehicles. This charge shall be remitted to an insurance company or other party as may be designated by the Insurance Department. Upon receipt of the charge, the insurance company or other designated party shall remit it to the Insurance Department for deposit in the trust fund. The Catastrophic Loss Trust Fund Board shall by regulation determine by January 1 of each calendar year the amount of the fund charge for each registration year subsequent to the initial registration year and shall notify the Insurance Department which shall notify the insurance companies or other designated parties to collect the charge.

§ 1766. Benefits (Repealed).

(a) *General rule.*—Subject to the limitations set forth in subsection (b), the Catastrophic Loss Trust Fund shall provide catastrophic loss benefits to eligible claimants only for the payment of expenses for medical treatment and rehabilitative services in excess of \$100,000. No payment shall be made by the fund for the first \$100,000 of expense for medical treatment and rehabilitative services incurred by an eligible claimant.

(b) *Maximum benefit.*—The maximum catastrophic loss benefit which shall be paid by the fund on behalf of any one eligible claimant shall be \$50,000 per year and \$1,000,000 lifetime aggregate. During the first 18 months of eligibility, the administrator may approve payments on behalf of a claimant without regard to the \$50,000 per year limit but subject to the \$1,000,000 lifetime aggregate.

(c) *Effect of other benefits.*—Except for workers' compensation, catastrophic loss benefits paid or payable by the fund shall be primary to any other available source of accident or health benefits including any program, group contract or other private or public source of benefits unless the law authorizing or providing those benefits makes the benefits primary to the benefits provided under this subchapter.

(d) *Structured settlements.*—The administrator may enter into structured settlements to pay benefits under this subchapter. Where it appears the settlement will be both cost effective to the fund and in the best interest of the claimant, the restrictions in subsection (b) shall not apply to this subsection, but in no event shall the cost of the structured settlement exceed the present value of the future annual payments up to the maximum lifetime aggregate benefit remaining calculated at 6% simple interest.

(e) *Preclusion of pleading, proving and recovering benefits.*—In any action for damages against a tortfeasor arising out of the maintenance or use of a motor vehicle, a person who is eligible to receive catastrophic loss benefits shall be precluded from pleading, introducing into evidence or recovering the amount of medical and rehabilitative expenses for which catastrophic loss benefits were paid or are payable. This preclusion applies only to catastrophic loss benefits.

(f) *Subrogation.*—There shall be no subrogation or reimbursement from a claimant's tort recovery with respect to catastrophic loss benefits.

[Pa.B. Doc. No. 98-1788. Filed for public inspection October 30, 1998, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF PHARMACY [49 PA. CODE CH. 27]

[CORRECTION]

Corrective Amendment to 49 Pa. Code § 27.26

The State Board of Pharmacy has discovered a discrepancy between the agency text of 49 Pa. Code § 27.26 (relating to pharmacy internship) as deposited with the Legislative Reference Bureau, and the official text as published at 28 Pa.B. 4532 (September 5, 1998), and as scheduled to appear in the November 1998 *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 288). Text following subsection (h)(3) was inadvertently omitted.

Therefore, under 45 Pa.C.S. § 901: The State Board of Pharmacy has deposited with the Legislative Reference Bureau a corrective amendment to 49 Pa. Code § 27.26. The corrective amendment to 49 Pa. Code § 27.26 is effective September 5, 1998, the date the defective official text was printed in the *Pennsylvania Bulletin*.

The correct version of 49 Pa. Code § 27.26 appears in Annex A, with ellipses referring to the existing text of the regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 27. STATE BOARD OF PHARMACY PHARMACISTS

§ 27.26. Pharmacy internship.

* * * * *

(h) The requirements for registration as a pharmacist preceptor are as follows:

(1) A pharmacist preceptor may not have been convicted of a criminal offense relating to the practice of pharmacy.

(2) An applicant shall hold a license without restriction to practice pharmacy in this Commonwealth and shall be engaged in the active practice of pharmacy in this Commonwealth.

(3) An applicant shall be working on a full-time basis in a pharmacy approved for intern training.

(4) A pharmacist preceptor may not direct the training of more than two pharmacy interns at any one time, unless the program has been approved by the Board for a greater number.

(5) A pharmacist preceptor shall be willing to cooperate with the Board in developing an intern program and shall apply to the Board signifying the desire to do so.

(6) A pharmacist preceptor shall certify to the commencement and completion of intern training and may make recommendations to the Board concerning the competency of the intern under his supervision.

(7) A pharmacist preceptor shall report to the Board, as required by the Board, on the progress of an intern under the pharmacist's supervision.

(8) A pharmacist preceptor shall be charged with the responsibility for seeing that his intern receive proper pharmaceutical training and experience, always keeping in mind the objections of the practical training program.

(i) Credit shall be granted for practical experience gained in pharmacies outside this Commonwealth upon presentation of evidence satisfactory to the Board to indicate that the experience gained is substantially equivalent to that required by this chapter.

(j) The pharmacy internship may not be deemed satisfactorily completed until the intern has filed affidavits with the Board certifying that the intern has obtained a total of 1,500 hours of practical experience since registration as a pharmacy intern.

(k) When a candidate receives his first certificate and identification card to practice as a pharmacist, his certificate as an intern terminates.

[Pa.B. Doc. No. 98-1789. Filed for public inspection October 30, 1998, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CHS. 139 AND 141]

Seasons and Bag Limits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 6, 1998, meeting, adopted the following changes:

Amend § 139.4 (relating to seasons and bag limits for the license year) by removing the pound sign (#), footnote and language that is applicable to the Spring Turkey hunting season and bag limit. This change will keep the season limit for turkey during the spring gobbler season of May 1, 1999, to May 29, 1999 as 1.

Amend § 141.43 (relating to deer) to require archers to wear or display fluorescent orange-colored material only during the time when the dates of the fall turkey hunting season and the fall archery season run concurrent.

These amendments are hereby adopted under the authority of 34 Pa.C.S. (relating to the Game and Wildlife Code) (code).

Amendment to § 139.4

1. Introduction

When it adopted the hunting and furtaking seasons and bag limits for 1998-1999 at its April 21, 1998 meeting, the Commission included some language providing for a two bird limit during the spring turkey season contingent upon Legislative approval of a spring turkey license or stamp. This adoption has caused great confusion and opposition. As a result, the Commission at its July 14, 1998, meeting proposed, and at its October 6, 1998, meeting finally adopted, removing the contingency language. This change is adopted under sections 322(c)(1) and 2102(b)(1) of the code, relating to powers and duties of the Commission and regulations.

2. Purposes and Authority

As is stated previously, the contingency provision contained in the spring turkey season bag limit created a great deal of confusion and opposition. It links two issues which, on hindsight, should not be linked, namely, a spring turkey license or stamp and the taking of two turkeys in the spring. Removal of the contingent language will remove this link. The Commission will continue to pursue both issues separately.

Section 322 of the code specifically empowers the Commission to "... fix seasons . . . and daily, season and possession limits for any species of game or wildlife." Section 2102(b) of the code mandates that the Commission promulgate regulations relating to seasons and bag limits.

3. Regulatory Requirements

The change will limit the spring season turkey bag limit to one turkey with no contingency.

4. Persons Affected

Hunters wishing to hunt turkeys in the spring 1999 season will be affected by the change.

5. Comment and Response Summary

A number of comments were received criticizing the original proposal for having a two turkey bag limit

contingent upon Legislative approval of a spring turkey license or permit. The adopted change will eliminate this contingency.

Amendment to § 141.43

1. Introduction

To better provide for the safety of hunters in the field while minimizing impact on hunting effectiveness, the Commission at its July 14, 1998, meeting proposed, and at its October 6, 1998, meeting finally adopted, changing § 141.43, to require archery deer hunters to wear fluorescent orange-colored material during the period that season overlaps the fall turkey season rather than the general small game season. These changes are adopted under the authority contained in section 2102(a) of the code, relating to regulations.

2. Purpose and Authority

At its April 21, 1998, meeting, the Commission extended the general small game season to coincide with the start of the early small game season. Since § 141.43 currently requires archery deer hunters to wear fluorescent orange during the period that their season overlaps the general small game season, this meant an increase in the fluorescent orange requirement and some reduced effectiveness. The adopted changes will reduce the requirement accordingly.

Section 2102(a) of the code directs the Commission to "... promulgate such regulations as it deems necessary and appropriate concerning . . . the ways, manner, methods, and means of hunting or furtaking and the health and safety of persons who hunt or take wildlife . . ." This provision provides the authority for the changes.

3. Regulatory Requirements

The changes relax an existing requirement.

4. Persons Affected

Archery deer hunters hunting during the fall turkey season will be affected by the adopted changes.

5. Comment and Response Summary

No official comments were received with regard to the changes.

Cost and Paperwork Requirements

The changes will not result in any additional cost or paperwork.

Effective Date

The change will be effective on filing by the Legislative Reference Bureau.

Contact Person

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

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 the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 139 and 141, are amended by amending §§ 139.4 and 141.43 to read as set forth at 28 Pa.B. 3804 (August 8, 1998).

(b) The Executive Director of the Game Commission shall submit this order and 28 Pa.B. 3804 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order amending § 139.4 and § 141.43, shall become effective upon final publication in the *Pennsylvania Bulletin*.

DONALD C. MADL,
Executive Director

Fiscal Note: Fiscal Note 48-104 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 98-1790. Filed for public inspection October 30, 1998, 9:00 a.m.]

[58 PA. CODE CH. 143]

Hunting and Furtaker Licenses; Antlerless Deer Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 6, 1998 meeting, adopted the following changes:

Amend §§ 143.42 and 143.51 (relating to definitions; and application and issuance of surplus tags) to provide for the issuance of unsold antlerless deer licenses by amending these sections to reflect the Commission's changes in this process. These amendments will provide for the issuance of surplus tags in the counties of Armstrong, Beaver, Cambria, Fayette, Greene, Indiana, Somerset, Washington and Westmoreland.

These amendments are adopted under the authority of 34 Pa.C.S. (relating to the Game and Wildlife Code) (code).

Amendment to Chapter 143

1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its meeting held on April 21, 1998, proposed changes to Chapter 143 to modify provisions and procedures for issuing surplus antlerless deer licenses. At its July 14, 1998, meeting, the Commission finally adopted only a change to § 143.45 (relating to completing and submitting applications) to allow over the counter issuance of unsold antlerless deer licenses starting on the first Monday in November. At its October 6, 1998, meeting, the Commission finally adopted changes to allow for the issuance of surplus antlerless licenses above those issued to muzzleloaders and in special regulation areas only in counties included in the Commission's Southwest Region. These changes were adopted 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 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. After much deliberation, the Commission, at its October 6, 1998, meeting decided to expand the issuance of surplus antlerless licenses only in those counties included in the Commission's Southwest Region which includes Armstrong, Beaver, Cambria, Fayette, Greene, Indiana, Somerset, Washington and Westmoreland Counties. Allegheny County, as a county in a special regulation area, is already authorized to issue surplus licenses. It is in these counties that deer population control is most needed.

Section 2722(g) of the code directs the Commission to adopt regulations for the administration, control and performance of license issuance. The change is made under this authority.

3. *Regulatory Requirements*

The change will relax current regulatory requirements.

4. *Persons Affected*

County treasurers in the Southwest Region and their employes and persons wishing to hunt antlerless deer in counties in the Southwest Region will be affected by the changes.

5. *Comment and Response Summary*

No official comments were received with regard to the proposed changes but the Commission has continued to receive expressions of concern about deer populations in parts of this Commonwealth.

6. *Cost and Paperwork Requirements*

The changes will not result in any additional cost or paperwork except to the extent of increasing sales of already allocated licenses.

7. *Effective Date*

The change will be effective on filing by the Legislative Reference Bureau.

8. *Contact Person*

For further information on the change, contact 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, 58 Pa. Code Chapter 143, are amended by amending § 143.42 to read as set forth at 28 Pa.B. 2814 (June 20, 1998), and by amending § 143.51 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall submit this order, 28 Pa.B. 2814 and Annex A and deposit

them with the Legislative Reference Bureau as required by law.

(c) This order amending §§ 143.42 and 143.51, shall become effective upon final publication in the *Pennsylvania Bulletin*.

DONALD C. MADL,
Executive Director

(*Editor's Note:* Amendments to §§ 141.6, 141.62, 141.63, 143.45, included in the proposal at 28 Pa.B. 2814 were adopted at 28 Pa.B. 3801 (August 8, 1998). The proposal to amend §§ 143.52 and 143.55, included in the proposal at 28 Pa.B. 2814, has been withdrawn.)

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

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 143. HUNTING AND FURTAKEE LICENSES

Subchapter C. ANTLERLESS DEER LICENSES

§ 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) Except as provided in subsection (a) and § 143.52 (relating to procedures for unlimited antlerless licenses), beginning on the fourth Monday in August, residents and nonresidents of this Commonwealth shall be eligible to receive a surplus tag in one of the following counties: Armstrong, Beaver, Cambria, Fayette, Greene, Indiana, Somerset, Washington and Westmoreland.

(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.

(d) The applicant shall use the official antlerless deer license application envelope.

(e) Remittance in the form of a negotiable check or money order for the total amount due as specified in the act, payable to "County Treasurer," shall accompany the application.

(f) 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.

[Pa.B. Doc. No. 98-1791. Filed for public inspection October 30, 1998, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CHS. 9 AND 47]

Public Transportation Assistance Fund Taxes and Fees

The Department of Revenue (Department), under the authority contained in section 506 of The Administrative Code of 1929 (71 P.S. § 186), by this order adopts amendments by adding § 47.19 (relating to Public Transportation Assistance Fund taxes and fees) and by deleting § 9.4 (relating to Public Transportation Assistance Fund taxes and fees).

Purpose of Amendments

Currently, the Department's interpretation of section 3 of the act of July 1, 1994 (P.L. 413, No. 67) section 2301 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 9301), which replaced 74 Pa.C.S. § 1314 (repealed by the act of June 16, 1994 (P.L. 279, No. 48)) relating to Public Transportation Assistance Fund taxes and fees, is set forth as a pronouncement and codified in § 9.4. Under the notice of proposed rulemaking, the Department received a comment from an interested party and the Independent Regulatory Review Commission (IRRC). As set forth in greater detail as follows, the Department has addressed the comments, and several revisions are reflected in this final rulemaking. Therefore, in addition to adopting § 47.19, the Department is deleting the pronouncement which appears in § 9.4.

Explanation of Regulatory Requirements

Subsection (a) provides general information regarding the authorizing tax statute; registration; returns; payment of taxes and fees; imposition of tax; exemption certificates; direct payment permit and applicability of the TRC.

Details regarding the tire fee are explained in subsection (b). Paragraph (1) provides definitions for use in the subsection of the terms "highway use" and "sale." Paragraph (2) establishes the scope of taxation effective October 1, 1991. Paragraph (3) enumerates transactions that are excluded from tax. Paragraph (4) sets forth examples of sales subject to the tire fee and paragraph (5) sets forth examples of sales not subject to the tire fee.

Subsection (c) provides information regarding motor vehicle lease tax. Paragraph (1) provides definitions for use in the subsection of the terms "lease," "lease price" and "motor vehicle." Paragraph (2) details the scope of taxation effective October 1, 1991. It also provides that lease payments made on or after April 1, 1995, for the use of trucks in Class 4 or higher as defined in 75 Pa.C.S. § 1916(a)(1) of the TRC are not subject to the tax. Paragraph (3) relating to exclusion provides that if the lease of a motor vehicle is exempt from Sales and Use Tax imposed by section 202 of the TRC (72 P.S. § 7202), the lease is exempt from the tax imposed under this subsection.

Information regarding motor vehicle rental fee is in subsection (d). Definitions of "motor vehicle" and "rental" for use in this subsection are in paragraph (1). Paragraph (2) provides the scope of taxation effective October 1, 1991. If the rental of a motor vehicle is exempt from sales

and use tax imposed by 72 P. S. § 7202, paragraph (3) relating to exclusions, provides that the rental is exempt from the fee imposed under this subsection. Examples of rentals subject to the rental fee are enumerated in paragraph (4).

Comment and Response Summary

Notice of proposed rulemaking was published at 26 Pa.B. 2919 (June 22, 1996). This rulemaking is being adopted with changes to the proposed rulemaking to read as set forth in Annex A.

The Department received one comment from the public during the public comment period. The Department also received comments from IRRIC. No comments were received from the House or Senate Finance Committees.

The amendments to the proposed rulemaking in response to comments are as follows:

(1) IRRIC's initial comment stated that general citations to Article II of the TRC (72 P. S. §§ 7201—7282) that reference numerous sections do not provide sufficient guidance to the public and that where possible, the Department should reference only the specific applicable statutory citation. The Department has amended the statutory references in § 47.19(a)(2), (b)(1), (c)(2) and (3), (d)(2) and (3) and (e)(1)—(4) accordingly.

(2) In its comments, IRRIC stated that the phrase, "unless otherwise specifically noted" as it is used in § 47.19(a)(8) and (e)(4) is unnecessary and in as much as there is nothing that is specifically noted as an exception to these Articles of the TRC, the phrase should be deleted. The Department agrees with IRRIC's comment and has deleted the phrase from both paragraphs.

(3) IRRIC's comments suggested that a more specific citation to the Vehicle Code in § 47.19(b)(1) would be more helpful to the public. The Department has therefore amended the citation to specifically reference the appropriate chapter of the Vehicle Code.

(4) The definition of "rental" in § 47.19(d)(1) provides in part, "... and the rental payments continue to be subject to the tax until the rental contract is terminated." IRRIC suggested that the Department use the term "fee" instead of "tax" to more closely tract the statute. The Department has amended the section accordingly. In addition, IRRIC believed that the second sentence in the definition of "rental," is a substantive provision. The Department agrees with this comment and has moved the sentence to § 49.19(d)(2). IRRIC also suggested the addition of an example at § 47.19(d)(4) which mirrors the practice in the car rental industry of treating the rental period that extended beyond the original period as a separate contract. The Department has added an example in subsection (d)(4)(iii) to address this type of situation.

(5) In § 49.19(e)(1), IRRIC noted that the subsection does not define the specific entities covered by the regulation. To address this concern, the Department has amended the paragraph by replacing the term "entity" with "public utility, as defined in section 1101-A of the TRC (72 P. S. § 8101-A)." As referenced, the Department amended statutory references in paragraphs (1)—(4) to reference specific statutory sections.

(6) Both IRRIC and the public comment questioned the need for the provision set forth in subsection (f) relating to periodicals. When the Department initially drafted the proposal, there was a concern that the information should be preserved for historical and auditing purposes. The passage of time has diminished this need; therefore, the Department is deleting the subsection.

Comments that did not result in amendments to the regulation are as follows:

(1) IRRIC indicated that part of the introductory phrase in § 47.19(b)(1), (c)(1) and (d)(1) "unless the context clearly indicates otherwise" promotes uncertainty and should be deleted. This phrase is from language that is set forth in all definition sections within the *Pennsylvania Code*. If the Department did not include the phrase in a regulation, it would be added by the *Pennsylvania Code* and *Bulletin* when the document was published.

(2) In its comments, IRRIC indicated that it believes that the definition of "lease price" in § 47.19(c)(1) contains substantive information in subparagraphs (i)—(v) and the provisions should be removed from the definition. It is the Department's position that standing alone, the introductory paragraph is inadequate and would provide an incomplete definition to the public. The provisions in subparagraphs (i)—(v) further explain and define what a "lease price" is under subsection (c).

(3) In the definition of "lease price" in § 47.19(c)(1), IRRIC questioned the Department's authority to state in subparagraph (v), "If the lessor fails to separately state the lease price of other property, such as a trailer, from the lease of a motor vehicle, the total lease price is subject to tax." It is IRRIC's opinion that the statute limits the tax to the lease of a motor vehicle and does not mention a tax on other properties.

It is the Department's position that statutory authority is found in 72 P. S. § 9301(d)(1) which provides that "... an additional tax of three per cent of the total lease price charged." The key is that the tax is imposed on the total lease price not simply the lease of a motor vehicle.

(4) IRRIC raised a number of concerns regarding § 47.19(d). The first concern related to the necessity of the second sentence in the definition of "rental," which the Department has agreed is substantive and should be moved to § 49.19(d)(2). IRRIC believed that there could be confusion if a rental goes beyond the 29-day period, in that the lessee could believe he would be subject to both the rental fee and the lease tax. It is not the Department's intention to tax a transaction as both a rental and a lease. If a rental goes beyond the 29-day period, the original rental contract remains controlling until it is terminated and the lessee remains liable for the \$2 per day rental fee. To further clarify this point, the Department has added a sentence to § 47.19(d)(2).

IRRC also indicated that the Department needed to include an exclusion that provides a rental contract for more than 29 days is a lease contract by definition, and that such a contract is not subject to the daily fee; instead, it is subject to the 3% tax on motor vehicles. The terms "rental" and "lease" are clearly defined in the regulation; the Department does not ascertain a need to reiterate these definitions in a separate paragraph.

IRRC also wanted the Department to specifically exclude rentals from the lease tax when the rental contract was originally for less than 29 days and subsequently the vehicle was used for more than 29 days. This issue is addressed in the sentence that the Department is removing from the definition of "rental" and adding to paragraph (2); therefore, no further revision is necessary.

In its comments, IRRIC asked that the Department explain the basis for the regulation's definitions of "lease" in subsection (c) and "rental" in subsection (d) since the enabling statute does not define either term. The Department relied on industry guidelines in formulating the

subject definitions which were later confirmed by the passenger car rental tax legislation which defined the term "rental."

(5) In response to IRRC's suggestion that the Department amend § 31.29 (relating to books, printed matter and advertising materials), the Department notes that this section is currently being revised in a separate proposed rulemaking.

During its final review of the regulation, the Office of Attorney General directed the Department to make the following revisions to the final-form regulation:

(1) The first sentence in § 47.19(b)(3) has been moved to (b)(2) because it modifies and further explains the scope of the regulation. The remaining sentence in paragraph (3) has been amended to more accurately introduce the examples that follow in subparagraphs (i)—(v).

(2) The definition of "motor vehicle" in § 47.19(c)(1) and (d)(1) has been amended to bring it into conformity with the definition of "motor vehicle" in the Statutory Construction Act, 1 Pa.C.S. § 1991.

(3) To make § 47.19(d)(2) consistent with the authorizing statute, the phrase "lessor charges the lessee for rental of the vehicle" has been deleted and replaced with "vehicle is rented."

(4) Subsection (e) of § 47.19 relating to utility realty additional tax is deleted because its placement in § 47.19, a regulatory section under 61 Pa. Code, Article II. Sales and Use Tax, is inappropriate because Public Utility Realty Tax is not a part of Sales Tax. Its inclusion in this regulatory section would, at a minimum, make the language difficult to find.

Fiscal Impact

The Department has determined that the amendments will have no significant fiscal impact on the Commonwealth.

Paperwork

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

Effectiveness/Sunset Date

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

Contact Person

The contact person for an explanation of the final-form regulations is Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 12, 1996, the Department submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 2919 (June 22, 1996) to IRRC and the Chairpersons of the House and Senate Committees on Finance for review and comment. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

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

These final-form regulations were deemed approved by the House and Senate Committees on March 23, 1998. IRRC met on March 26, 1998, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

Findings

The Department finds that:

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

(2) The regulations are necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code Chapters 9 and 47, are amended by adding § 47.19 and deleting § 9.4 to read as set forth in Annex A.

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

(c) The Secretary of the Department 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*.

ROBERT A. JUDGE, Sr.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 1806 (April 11, 1998).)

Fiscal Note: Fiscal Note 15-373 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart A. GENERAL PROVISIONS

CHAPTER 9. REVENUE

PRONOUNCEMENTS—STATEMENTS OF POLICY

§ 9.4. (Reserved).

Subpart B. GENERAL FUND REVENUES

ARTICLE II. SALES AND USE TAX

CHAPTER 47. RENTALS

§ 47.19. Public Transportation Assistance Fund taxes and fees.

(a) General provisions.

(1) *General.* This section is promulgated to administer section 2301 of the TRC (72 P. S. § 9301).

(2) *Registration.* A person who makes sales, rentals or leases subject to a tax or fee under subsection (b), (c) or (d) is required to apply for a Public Transportation Assistance Tax License Number on a form prescribed by the Department. The registration is separate from sales tax registration required under section 208 of the TRC (72 P. S. § 7208).

(3) *Returns.* The taxes and fees collected under subsection (b), (c) or (d) shall be reported on a return prescribed by the Department. The returns shall be filed under sections 217—220 of the TRC (72 P. S. §§ 7217—7220) and § 34.3 (relating to tax returns).

(4) *Payment.* Payment of the taxes and fees under subsection (b), (c) or (d) shall be made under sections 221—224 of the TRC (72 P. S. §§ 7221—7224).

(5) *Imposition of tax.* The taxes and fees imposed under subsection (b), (c) or (d) are in addition to Sales or Use Tax and are excluded from the computation of tax for Sales and Use Tax purposes.

(6) *Exemption certificates.* Claims for exemption from the taxes and fees imposed under subsection (b), (c) or (d) shall be supported by the use of a valid Pennsylvania Exemption Certificate.

(7) *Direct payment permit.* A direct payment permit issued under § 34.4 (relating to direct payment permit) may be used in conjunction with the taxes and fees imposed under this section.

(8) *Applicability of TRC.* Article II of the TRC (72 P. S. §§ 7201—7282) and regulations promulgated thereunder apply to the taxes and fees imposed under subsection (b), (c) or (d).

(b) *Tire fee.*

(1) *Definitions.* The following words and terms, when used in this subsection, have the following meanings, unless the context clearly indicates otherwise:

Highway use—The use of a tire on a vehicle which is required to be licensed for highway use. If a tire is of the type used on a vehicle normally required to be licensed for highway use under 75 Pa.C.S. §§ 1301—1318 (relating to general provisions), the tire shall be presumed to be for highway use.

Sale—A transfer of the ownership of new tires for a consideration whether the transfer is absolute or conditional and by whatever means the transfer has been effected. The term does not include a rental or lease.

(2) *Scope.* Effective October 1, 1991, the sale of a new tire which is delivered to a location in this Commonwealth for highway use is subject to a \$1 fee. The fee shall be collected by the vendor from the purchaser. If the vendor fails to collect, report or remit the tire fee, the vendor shall be assessed the fee. If the purchaser does not pay the fee to the vendor, the purchaser shall be assessed the tire fee. The sale of new tires in conjunction with the sale of other property shall be subject to the tire fee. There is no exclusion for exempt organizations or businesses engaged in manufacturing, processing, farming, dairying, printing, mining or rendering a public utility service.

(3) *Exclusions.* The following transactions are excluded from tax:

- (i) The sale of tires not for highway use.
- (ii) The sale of new tires to governmental entities.
- (iii) The rental or lease of new tires. The lessor is required to pay the tire fee on the purchase of tires to be rented or leased.
- (iv) The sale of used tires including retreads or recaps.
- (v) The sale of tires when delivered to the purchaser at an out-of-State location. The subsequent use of the tires within this Commonwealth is not subject to the tire fee.

(4) *Examples of sales subject to the tire fee.*

(i) A purchaser buys a new or used automobile with four new tires and one spare tire. A tire fee of \$5 is due on the sale of five new tires.

(ii) A leasing company buys new tires to use as replacements on its leased licensed vehicle fleet. Since the tires are for highway use, the purchase of the tires by the leasing company is subject to the tire fee.

(iii) A church buys a new tire to replace a tire on a vehicle registered in the name of the church. The purchase of the tire by the church is subject to the tire fee.

(iv) A trucking company buys tires from an out-of-State vendor. The tires are delivered to the trucking company in this Commonwealth. The sale of the tires is subject to the tire fee.

(v) A new car dealer withdraws an automobile from inventory and makes a taxable use of the automobile for sales and use tax purposes. The dealer is required to pay the tire fee directly to the Department.

(vi) A garage replaces a tire in connection with the repair of a damaged motor vehicle. The sale of the tire is subject to the tire fee regardless of whether the cost of the repair is covered by an insurance contract.

(5) *Examples of sales not subject to the tire fee.*

(i) A used car dealer buys new tires to place on a vehicle to be resold. The purchase of tires by the dealer is not subject to the tire fee. The subsequent sale of the vehicle with the new tires to a purchaser for highway use is subject to the tire fee.

(ii) A lessee rents a vehicle with new tires from a leasing company. A tire fee is not due on the rental. The lessor is liable for paying the tire fee on the purchase of the tires.

(iii) A manufacturer purchases new tires for use on forklifts not required to be licensed for highway use. The purchase is not subject to the tire fee.

(iv) A trucking company buys new tires from an out-of-State vendor. The tires are delivered to the trucking company at an out-of-State location. The sale or use of the tires is not subject to the tire fee even though the tires are subsequently used in this Commonwealth.

(v) A retail tire dealer purchases tires from a tire manufacturer for resale. As the retail tire dealer is not purchasing the tires for highway use, the purchase is not subject to the tire fee. The retail tire dealer's subsequent sale of the tire to a customer for highway use is subject to the tire fee.

(c) *Motor vehicle lease tax.*

(1) *Definitions.* The following words and terms, when used in this subsection, have the following meanings, unless the context clearly indicates otherwise:

Lease—A contract for the use of a motor vehicle for 30 days or more.

Lease price—Full consideration paid or delivered or promised to be paid or delivered to the lessor for a lease period under a lease agreement, whether it is money or otherwise, even though the consideration is separately stated and designated as a payment for downpayment, service, maintenance, insurance, repairs, depreciation, excess mileage fees or similar charges.

(i) The term also includes an accelerated lease payment or buy out purchase price whether or not made in connection with the termination of the lease.

(ii) The term does not include the option purchase price, penalty fees for early termination of lease, damage fees or similar charges.

(iii) The term does not include Sales Tax imposed on the lease price.

(iv) Credits or refunds which reduce the lease price reduce the amount subject to tax even though the credits or refunds are issued after termination of the lease.

(v) If the lessor fails to separately state the lease price of other property, such as a trailer, from the lease of a motor vehicle, the total lease price is subject to tax.

Motor vehicle—A self-propelled device in, upon or by which a person or property is or may be transported or drawn upon a public highway, except tractors, power shovels, road machinery, agricultural machinery and vehicles which move upon or are guided by a track or trolley. The term does not include trucks in Class 4 or higher as defined in 75 Pa.C.S. § 1916(a)(1) (relating to trucks and truck tractors). Title 75 Pa.C.S. § 1916(a)(1) currently defines trucks in Class 4 as those having a registered gross or combination weight between 9,001 and 11,000 pounds.

(2) *Scope*. Effective October 1, 1991, each lease of a motor vehicle subject to the tax imposed by section 202 of the TRC (72 P. S. § 7202) is subject to an additional tax of 3% of the total lease price charged. This tax will be imposed upon lease payments due on or after October 1, 1991, regardless of the date upon which the lease was executed. Lease payments made on or after April 1, 1995, for the use of trucks in Class 4 or higher as defined in 75 Pa.C.S. § 1916(a)(1) are not subject to the tax. The tax shall be collected by the lessor from the lessee. If the lessor fails to collect, report or remit the tax, the lessor shall be assessed the tax. If the lessee does not pay the tax to the lessor, the lessee shall be assessed the tax.

(3) *Exclusions*. If the lease of a motor vehicle is exempt from Sales and Use Tax imposed by section 202 of the TRC, the lease is exempt from the tax imposed under this subsection.

(d) *Motor vehicle rental fee*.

(1) *Definitions*. The following words and terms, when used in this subsection, have the following meanings, unless the context clearly indicates otherwise:

Motor vehicle—A self-propelled device in, upon or by which a person or property is or may be transported or drawn upon a public highway, except tractors, power shovels, road machinery, agricultural machinery and vehicles which move upon or are guided by a track or trolley.

Rental—A contract for the use of a motor vehicle for less than 30 days.

(2) *Scope*. Effective October 1, 1991, each rental of a motor vehicle subject to the tax imposed by section 202 of the TRC is also subject to a fee of \$2 for each day or part of a day for which the vehicle is rented. The fee shall be collected by the lessor from the lessee. If the lessor fails to collect, report or remit the fee, the lessor shall be assessed the fee. If the lessee does not pay the fee to the lessor, the lessee shall be assessed the fee. If a motor vehicle is rented for less than 30 days, and the use of the motor vehicle subsequently extends beyond a 29-day period, the transaction remains a rental, and the rental payments continue to be subject to the fee until the rental contract is terminated. With respect to lease payments

paid in accordance with a lease contract, lease payments are subject to tax at the rate of 3%.

(3) *Exclusions*. If the rental of a motor vehicle is exempt from Sales and Use Tax imposed by section 202 of the TRC (72 P. S. § 7202), the rental is exempt from the fee imposed under this subsection.

(4) *Examples of rentals subject to the rental fee*.

(i) A lessee rents a motor vehicle from a rental company for 5 hours. The rental is subject to a \$2 rental fee.

(ii) A lessee rents a motor vehicle from a rental company for 1 day. The vehicle is returned to the lessor 5 hours after the end of the rental period. If the lessee is charged the daily rental rate plus an additional charge for the period after the end of the rental period, a rental fee of \$4 is due.

(iii) A lessee rents a motor vehicle from a rental company under a daily rental contract. The rental is subject to a \$2 per day rental fee. The lessee returns the motor vehicle to the lessor at the end of the 15th day and enters into a lease contract. During the first 15 days, the lessee is required to pay a rental fee of \$2 per day. For the period after the 15th day, the lessee is required to pay a tax of 3% of the lease payment.

[Pa.B. Doc. No. 98-1792. Filed for public inspection October 30, 1998, 9:00 a.m.]

[61 PA. CODE CHS. 9 AND 47]

Vehicle Rental Tax

The Department of Revenue (Department), under the authority set forth in section 270 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7270), by this order adopts amendments by adding § 47.20 (relating to vehicle rental tax) and by deleting § 9.14 (relating to passenger car rental tax).

Purpose of Amendments

Currently, the Department's interpretation of Article XVI-A of the TRC (72 P. S. §§ 8601-A—8604-A) relating to passenger car rental tax (now known as Vehicle Rental Tax (VRT)) is set forth as a pronouncement and codified at § 9.14. Under the notice of proposed rulemaking, the Department received comments from the Independent Regulatory Review Commission (IRRC). As set forth in greater detail as follows, the Department has addressed the comments, and several revisions are reflected in this final rulemaking. Therefore, in addition to adopting § 47.20, the Department is deleting the pronouncement relating to passenger car rental tax which appears at § 9.14.

Explanation of Regulatory Requirements

Subsection (a) relates to definitions. The Department has developed several definitions to assist in the interpretation of this section.

Subsection (b) relates to general provisions. This subsection provides taxpayers with information regarding statutory authority for the collection of vehicle rental tax, registration, returns, payments, including direct payment permits and the applicability of the TRC.

Subsection (c) relates to scope. In accordance with section 1604-A of the TRC, paragraph (1) provides that, with respect to rental contracts involving motor vehicles designed to transport 15 or fewer passengers, a tax of 2%

is imposed upon the rental payments. With respect to rental contracts involving trucks, trailers and semitrailers used in the transportation of property other than commercial freight, entered into on or after July 1, 1997, a tax of 2% is imposed upon the rental payments made on or after July 1, 1997. Paragraph (2) sets forth examples of transactions that are and are not subject to the VRT.

Subsection (d) relates to exclusions and provides that, if the rental of a motor vehicle is exempt from State Sales or Use Tax, the rental is also exempt from VRT. The subsection also details the use of an exemption certificate to support a claim for exemption.

In accordance with section 1603-A of the TRC, subsection (e) provides in paragraph (1) that an annual reconciliation report shall be filed on or before February 15 of the subsequent calendar year. Paragraph (2) provides for the date of filing, paragraph (3) sets forth the information the reconciliation report must contain, paragraph (4) details the particulars regarding refunds and paragraph (5) provides an example of how the refund process works.

Affected Parties

Persons and businesses responsible for collecting and remitting VRT may be affected by the amendments.

Comment and Response Summary

Notice of proposed rulemaking was published at 26 Pa.B. 2007 (April 27, 1996). These amendments are being adopted with changes to the proposed rulemaking to read as set forth in Annex A.

The Department did not receive comments from the public, the House Finance Committee or the Senate Finance Committee. The Department did receive comments from IRRC.

As a result of the act of May 7, 1997 (P. L. 85, No. 7) (Act 7), which in part amended Article XVI-A of the TRC, the Department is amending the proposed rulemaking as follows:

- (1) The name of § 47.20 and all references in the regulation are changed from "passenger car rental tax" or "PCRT" to "VRT."
- (2) The definition of "rental vehicle" was added and utilized throughout the regulation.
- (3) Subsection (c) of § 47.20 relating to scope was amended to set forth the incidence of tax prior to and on or after July 1, 1997.

During its internal review of the proposal, the Department determined that an explanatory sentence should be added to § 47.20(e)(2) to specify that when an envelope containing the annual reconciliation report does not reflect a United States Postal Service postmark date, the date of receipt by the Department shall determine the date of filing.

The amendments to the proposed rulemaking in response to comments from IRRC are as follows:

- (1) In response to IRRC's comment that the Department should provide a specific statutory cite within the Vehicle Code relating to licensing and title fees, the definition of "licensing and title fees" is amended to reference 75 Pa.C.S. §§ 1912, 1916(a), 1920 and 1952(a). A statutory reference was also added to the definition of "PTA" in response to an IRRC comment.
- (2) Though the Department explained in the proposal that it created the term "passenger car" instead of using the term "motor vehicle" because the term "motor vehicle" has a specific meaning and using it in this section could

create confusion, IRRC recommended that the Department only use a term defined and used in the authorizing statute for consistency with the statute and to improve the clarity of the regulation. The Department agrees with this; however, in accordance with Act 7, the term "rental vehicle" not "motor vehicle" will be used throughout the regulation.

(3) In response to a concern raised by IRRC that the definition of "rental contract" contained substantive regulatory provisions, the Department is amending the definition by deleting the phrase "and the rental payments continue to be subject to the PCRT until the rental contract is terminated." The definition is also amended by deleting the phrase "less than 30" and adding "29 or fewer consecutive" to more closely track the statute. Finally, the Department amended the definition to clarify that if a vehicle is rented for 29 or fewer consecutive days and the use of the rental vehicle extends beyond a 29-day period without entering into a new written contract, the transaction remains a rental unless the parties enter into a written lease agreement.

(4) Within the definition of "vehicle rental company" IRRC questioned the use of the phrase "... owns or ..." stating that its reading of the statute requires the reporting of owned or leased vehicles when those company motor vehicles are used for rental. Based on this rationale, IRRC also suggested that the Department amend subsection (e)(4) by deleting the word "owns." Finally, IRRC suggested that the phrase "which owns or has available for rental five or more passenger cars" be moved to subsection (b)(2). In response to these comments, the Department is amending the definition of "vehicle rental company" by deleting the phrase "which owns or has available for rental five or more passenger cars," and adding the phrase "five or more" to the first sentence in the definition. Also, subsection (e)(4) is amended by deleting the phrase "passenger cars that the vehicle rental company owns or has available for rental."

(5) Within subsection (b)(3), IRRC questioned the need to retain the reference to October 20, 1994 (the due date of the initial PCRT (now VRT) return) given the passage of time. The Department agrees with IRRC's observation and has deleted the date.

(6) In response to IRRC's comment regarding the applicability of the phrase "unless otherwise specifically noted" in subsection (b)(6), the phrase is deleted.

(7) Subsection (c)(1) provides that if a rental company fails to collect the tax, the purchaser shall pay the tax directly to the Department. IRRC indicated that though it understands the Department's concern in ensuring that all taxes are collected and remitted to the Commonwealth, it feels that in reality this requirement is unenforceable. IRRC further indicated that since most purchasers are tourists and will have no notice of the requirement, the Department should delete the sentence from the final-form regulations. IRRC did suggest, if the Department retains the sentence, that some procedure should be provided to make the remittances. Because there is no exclusion in law for tourists, the Department is unable to delete the sentence; however, a phrase is added that provides that the purchaser shall pay the tax directly to the Department on a form prescribed by the Department.

(8) IRRC indicated in its comments that the example in subsection (c)(2)(i)(A) as written, is inconsistent with the authorizing statute. IRRC stated that at the point the 14-day period of the rental agreement was exceeded (a

taxable transaction), the original contract ended and the purchaser essentially entered into a new agreement for an additional 22 days, also a taxable transaction. IRRC stated that if an individual wishes to keep the vehicle longer than the time of the original contract, the rental company will close-out the original rental agreement and enter into a new agreement. It is the Department's position that not only is the example consistent with the statute but it also mirrors the reality of the market place and provides a degree of flexibility for a rental company. As written, the rental company is not required to close-out the original contract, it can simply extend it to cover the additional time period requested by the client. To clarify the Department's position, the second sentence of the example is amended to specify that the parties did not enter into a new contract.

(9) IRRC believes that since the collection of the PCRT (now VRT) has been in effect since July, 1994, there is no need for the example in subsection (c)(2)(ii)(C) that provides that the rental is not subject to VRT because the rental was entered into prior to the effective date of the PCRT now VRT. The Department agrees with IRRC and has deleted the example that was proposed at clause (C) and added a new example interpreting the new definition of rental vehicle.

IRRC comments that did not result in amendments to the regulation are as follows:

(1) IRRC indicated that part of the introductory phrase in subsection (a) "unless the context clearly indicates otherwise" promotes uncertainty and should be deleted. This phrase is from language that is set forth in all definition sections within the *Pennsylvania Code*. If the Department did not include the phrase in a regulation, it would be added by the *Pennsylvania Code* and *Bulletin* when the document was published.

(2) IRRC recommended that the Department include statutory citations in various definitions in subsection (a). All citations that were set forth in the proposal published in the *Pennsylvania Bulletin* will be included in the final rulemaking. It was noted in IRRC's comments that the term "PTA," though defined, is not used in the regulation and should be deleted. The term is used in the definition of "rental payment." With regard to IRRC's suggestion that the Department define the term "TRC" and provide a statutory citation, the Department references IRRC to 61 Pa. Code § 1.1 (relating to definitions) which defines specific terms, including "TRC," that are used throughout Part I, of which this chapter is a part.

(3) Within subsection (b)(3) and (4), IRRC questioned the Department's use of the term "return" and suggests using the term "report" which is used in the authorizing statute. It is the Department's position that the term "return" has a historical meaning which the public is oriented to and that the use of the term "report" would cause unnecessary confusion.

(4) In the example set forth in subsection (c)(2)(i)(B), IRRC disagreed with the Department's interpretation that a vehicle damage waiver, a child's car seat and a car top carrier are part of the rental payment and therefore subject to the VRT. The Department's position is governed by section 201(g)(4) of the TRC (72 P. S. § 7201(g)(4)) which provides: "Where there is a transfer or retention of possession or custody, whether it be termed a rental, lease, service or otherwise, of tangible personal property including, but not limited to linens, aprons, motor vehicles, trailers, tires, industrial office and construction equipment, and business machines the full consideration

paid or delivered to the vendor or lessor shall be considered the purchase price, even though such consideration be separately stated and be designated as payment for processing, laundering, service, maintenance, insurance, repairs, depreciation or otherwise." Under this definition, the full value of the rental contract is subject to the VRT regardless of how it is designated. Therefore, a vehicle damage waiver fee, a child's car seat or a car top carrier that is included in the rental contract is also included in the purchase price subject to the vehicle rental tax. There is no statutory basis to exclude these items from tax.

(5) A final comment from IRRC suggests that the Department consider putting all of the reporting and exemption requirements in one section or area of the regulation to improve organization and ease of reference. In addition, IRRC recommended that the Department incorporate provisions which allow vehicle rental companies to remit the VRT and the \$2 fee (PTA) together. The Department considers the three areas mentioned to be separate and not able to be put together in one section. Returns are used to remit the amount of tax due. Annual reconciliation reports are used to claim a refund equal to licensing and title fees. Exemptions apply to the rental customer, not the entity reporting the tax or seeking the refund. For administrative reasons, the VRT and PTA can not be remitted together. Each remittance goes into a different fund and refunds/credits are handled from separate accounts.

Finally, in subsection (d), the proposal provided that if the rental of a rental vehicle is exempt from State sales or Use Tax, the rental is also exempt from the VRT. IRRC the Department explain this position and provide a statutory citation for the exclusion. 72 P. S. § 8603-A(c) states, "Unless otherwise noted, the provisions of Article II of this act shall apply to the tax required under this article." Within Article II is section 204 (72 P. S. § 7204) that provides specific exclusions from tax. These exclusions also apply to VRT.

Fiscal Impact

The Department has determined that the amendments will have no significant fiscal impact on the Commonwealth.

Paperwork

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

Effectiveness/Sunset Date

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

Contact Person

The contact person for an explanation of the final-form regulations is Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 11, 1996, the Department submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 2007 (April 27, 1996) to IRRC and the Chairpersons of the House and Senate Committees on Finance for review and comment. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

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

These final-form regulations were deemed approved by the House and Senate Committees on June 10, 1998. IRRC met on June 18, 1998, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

Findings

The Department finds that:

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

(2) The final-form regulations are necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code Chapters 9 and 47, are amended by deleting § 9.14 and by adding § 47.20 to read as set forth in Annex A.

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

(c) The Secretary of the Department 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*.

ROBERT A. JUDGE, Sr.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 3338 (July 11, 1998).)

Fiscal Note: 15-376. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart A. GENERAL PROVISIONS

CHAPTER 9. REVENUE PRONOUNCEMENTS—STATEMENTS OF POLICY

§ 9.14. (Reserved).

Subpart B. GENERAL FUND REVENUES

ARTICLE II. SALES AND USE TAX

CHAPTER 47. RENTALS

§ 47.20. Vehicle Rental Tax.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Licensing and title fees—Licensing and title fees imposed by 75 Pa.C.S. §§ 1912, 1916(a), 1920 and 1952(a) and collected by the Department of Transportation. The term does not include encumbrance fees.

Local sales or use tax—Sales or Use Tax imposed by a county of this Commonwealth or the city of Philadelphia and administered by the Department.

PTA—The Public Transportation Assistance Fund created by Article XXIII of the TRC (72 P. S. § 9301).

Purchaser—A person who acquires, for money or other consideration, the custody or possession of a rental vehicle under a rental contract.

Rental contract—A contract between a purchaser and a vehicle rental company for the use of a rental vehicle for 29 or fewer consecutive days. If a rental vehicle is rented for 29 or fewer consecutive days, and the use of the rental vehicle extends beyond a 29-day period without entering into a new written contract, the transaction remains a rental unless the parties enter into a written lease agreement.

Rental vehicle—A motor vehicle designed to transport 15 or fewer passengers or a truck, trailer or semitrailer used in the transportation of property other than commercial freight, that is rented without a driver. The term does not include a motorcycle, motor-driven cycle, school bus, hearse, motor home, camper or mobile home.

Rental payment—Full consideration paid or delivered or promised to be paid or delivered to the vehicle rental company under a rental contract, excluding charges for local sales or use tax, State Sales or Use Tax and PTA fees.

State Sales or Use Tax—Sales or Use Tax imposed by Article II of the TRC (72 P. S. §§ 7201—7281.2).

VRT—Vehicle Rental Tax—The tax authorized under Article XVI-A of the TRC (72 P. S. §§ 8601-A—8604-A).

Vehicle rental company—A business entity engaged in the business of renting five or more rental vehicles in this Commonwealth.

(b) *General provisions.*

(1) *General.* This section is promulgated to administer Article XVI-A of the TRC relating to the VRT.

(2) *Registration.* A vehicle rental company renting rental vehicles that are subject to the VRT shall register with the Department.

(3) *Returns.* A vehicle rental company shall report the VRT on a return prescribed by the Department. The return is due on a quarterly basis.

(4) *Payment.* A vehicle rental company shall make payment with the return.

(5) *Direct payment permit.* A purchaser cannot use a direct payment permit issued under § 34.4 (relating to direct payment permit) in conjunction with the VRT because the vehicle rental company may be entitled to a refund of the tax collected.

(6) *Applicability of TRC.* Article II of the TRC and regulations promulgated thereunder apply to the VRT.

(c) *Scope.*

(1) *General.* With respect to rental contracts involving motor vehicles designed to transport 15 or fewer passengers, a tax of 2% is imposed upon the rental payments. With respect to rental contracts involving trucks, trailers and semitrailers used in the transportation of property other than commercial freight, entered into on or after July 1, 1997, a tax of 2% is imposed upon the rental payments made on or after July 1, 1997. If the vehicle rental company fails to collect the applicable tax, the

purchaser shall pay the tax directly to the Department on a form prescribed by the Department.

(2) *Examples.*

(i) The following are examples of transactions that are subject to the VRT:

(A) "A" rents a rental vehicle from a vehicle rental company for 14 days. Due to circumstances unforeseen at the commencement of the rental, "A," without entering into a new contract, continues to use the car on a day by day basis and eventually returns the car on the 36th day. Because the transaction continues to be governed by the rental contract for the entire 36-day period, the rental payment is subject to the VRT.

(B) "B" rents a rental vehicle from a vehicle rental company for 10 days. The rental contract provides for an additional charge for excess mileage as well as a pick up and drop off fee. In addition, under the rental contract, "B" elects to obtain a vehicle damage waiver, a child's car seat and a car top carrier. Because the charges for excess mileage, a pick up and drop off fee, a vehicle damage waiver, a child's car seat and a car top carrier are all part of the rental payment, the cost of these items is subject to the VRT.

(C) "P" rents a rental vehicle for 7 days from "R." "R" owns two and leases 28 of the 30 rental vehicles that it rents to others. Because "R" has five or more rental vehicles available for rental, "R" is a vehicle rental company, and the rental payment made by "P" is subject to the VRT.

(D) "R" rents a truck to transport a used living room set to "R's" hunting camp. The rental payments are subject to VRT as the living room set does not qualify as commercial freight.

(ii) The following are examples of transactions that are not subject to the VRT:

(A) "Y" rents a rental vehicle from "E" vehicle rental company for 28 days. Due to circumstances unforeseen at the commencement of the rental, "Y" wishes to use the car for a longer period of time. After using the car for 28 days, "Y" returns the car to "E," and pays the VRT on the rental payment, and the parties terminate the rental contract. They then enter into a lease agreement under which "Y" leases the same car from "E" for 2 years. Because the second transaction is a lease agreement and not a rental, the lease payments are not subject to the VRT.

(B) "Z" rents a rental vehicle from "D" car dealership, which has only three rental vehicles available for rental. Because "D" has fewer than five rental vehicles available for rental, "D" is not a vehicle rental company and the rental payment is not subject to the VRT.

(C) "M" manufacturer rents a truck used exclusively to deliver "M's" own manufactured products to "M's" customers. The rental payments are not subject to VRT as "M's" products qualify as commercial freight.

(d) *Exclusions.* If the rental of a rental vehicle is exempt from State Sales or Use Tax, the rental is also exempt from the VRT. A purchaser shall support a claim for exemption from the VRT by submitting a completed Pennsylvania exemption certificate setting forth a valid basis for exemption. A purchaser may use the same

exemption certificate used to claim an exemption from State sales or use tax, but the exemption certificate shall clearly indicate that the purchaser is claiming an exemption from the VRT. The purchaser shall make that indication either by checking the appropriate blocks for the VRT on the exemption certificate form or by checking the paragraph labeled "other" on the older exemption certificate form and explaining that an exemption is being claimed from the VRT.

(e) *Annual reconciliation reports.*

(1) *General.* A vehicle rental company that has remitted the VRT and is claiming a refund shall file an annual reconciliation report. An annual reconciliation report shall be on a form prescribed by the Department. An annual reconciliation report is not required if the vehicle rental company is not claiming a refund. An annual reconciliation report shall be filed on or before February 15 of the subsequent calendar year.

(2) *Date of filing.* The United States Postal Service postmark date will be used to determine the date of filing of an annual reconciliation report. When the envelope containing the report does not reflect a United States Postal Service postmark date, the date of receipt by the Department shall determine the date of filing.

(3) *Contents.* An annual reconciliation report shall set forth the amount of both:

(i) The VRT remitted during the previous calendar year.

(ii) The total amount of licensing and title fees imposed by the Commonwealth on a vehicle rental company's rental vehicles and paid to the Department of Transportation by the vehicle rental company in the previous calendar year.

(4) *Refund.* The Department will refund to a vehicle rental company that has remitted the VRT an amount, not including interest or penalties that may have been paid by the vehicle rental company, equal to the total amount of licensing and title fees paid to the Department of Transportation on the rental vehicles. The amount of refund cannot exceed the amount of the VRT remitted by the vehicle rental company in the previous calendar year.

(5) *Example.* "R" owns a vehicle rental company that "R" sells to "S" on July 30, 1995. Prior to the sale, "R" pays licensing and title fees on a portion of its fleet of vehicles. "R" also files tax returns and remits the VRT on January 20, April 20 and July 20, 1995. Under paragraph (4), "R" may claim a refund up to the amount of the VRT remitted by "R" with the three tax returns. After acquiring ownership of the vehicle rental company, "S" pays the licensing and title fees due between August 1 and December 31, 1995, on the other vehicles in the fleet, and remits the VRT for the third quarter on October 20, 1995. "S" may claim a refund of the licensing and title fees paid from August to December. The amount of the refund to "S" may not exceed the amount of the VRT "S" remitted in October. To claim a refund, both "R" and "S" shall file their respective annual reconciliation reports on or before February 15, 1996.

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