PROPOSED RULEMAKING

ENVIRONMENTAL HEARING BOARD

[25 PA. CODE CH. 1021]
Practice and Procedure

The Environmental Hearing Board (Board) proposes to revise Chapter 1021 (relating to practice and procedures) by adding new procedural rules to read as set forth in Annex A.

The proposed procedural rules have several objectives:

(1) To provide the regulated community and the Department of Environmental Protection (Department) and other potential litigants with more specific guidance on how to represent their interests before the Board.

(2) To improve the rules of practice and procedure before the Board.

I. *Statutory Authority for Proposed Revisions*

The Board has the authority under section 5 of the Environmental Hearing Board Act (act) (35 P. S. § 7515) to adopt regulations pertaining to practice and procedure before the Department.

II. *Description of Proposed Revisions*

The proposed revisions are modifications to provisions of the rules to improve practice and procedure before the Board. These proposed revisions are based on the recommendations of the Board Rules Committee, a nine member advisory committee created by section 5 of the act to make recommendations to the Board on its rules of practice and procedure. For the recommendations to be promulgated as regulations, a majority of the Board members must approve the recommendations.

This summary provides a description of: (1) the existing rules of practice and procedure when relevant to proposed revisions; (2) the Board's proposed revisions; and (3) how the proposal differs from the Board Rules Committee's recommendations.

Some of the recommendations of the Board Rules Committee were not in proper legislative style and format, so they have been modified, where necessary, to conform to those requirements. Similarly, some of the recommendations did not contain proper cross references to 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), so references to those rules have been added.

The proposed rules consist of substantive amendments or additions as follows: referral of pro se parties to pro bono counsel (§ 1021.24); substitution of parties (§ 1021.54); and authority delegated to hearing examiners (§ 1021.99)

1. *Referral of Pro Se Parties to Pro Bono Counsel*

The Board's existing regulation in § 1021.22 (relating to representation) requires that parties, except individuals appearing on their own behalf, shall be represented by an attorney at all stages of the proceedings subsequent to filing the notice of appeal. While this regulation permits individuals to appear on their own behalf, it encourages them to appear through counsel and further states that they may be required to appear through counsel if the Board determines they are acting in concert or as a representative of a group of individuals.

In 1998, the Environmental, Mineral and Natural Resources Law Section (EMNRLS) of the Pennsylvania Bar Association initiated a pro bono program for the purpose of providing pro bono representation for pro se parties appearing before the Board who demonstrated financial inability to retain an attorney. The Board requested the Rules Committee to consider a rule which would provide the Board with authority to refer these parties to the EMNRLS program or to another entity willing to provide pro bono representation.

The Committee proposed a rule: (1) authorizing the Secretary to the Board to refer pro se individuals, who claim inability to afford an attorney, to a county bar association lawyer referral service; an individual attorney, law firm or organization whose name appears on a Board register of attorneys who have volunteered to take on the representation; or the pro bono committee of the EMNRLS; and (2) authorizing the Secretary to the Board to establish a register of qualified pro bono attorneys, law firms and organizations to whom pro se parties may be referred on a rotational basis.

The Board concurred with the recommendation, but made two changes to the rule as drafted by the Rules Committee. First, it renumbered the order in which the entities willing to provide pro bono services were listed in subsection (a) of the proposed rule. Whereas under the proposed rule, the EMNRLS program had been listed third, the Board determined that it should be listed first since it was a program which had been established specifically to provide pro bono representation to financially eligible parties in Board proceedings. Second, the Board added language clarifying when the Secretary to the Board may be required to establish a register of pro bono attorneys.

2. *Substitution of Parties*

The Board's existing regulations do not provide for substitution of parties in the case of a person who has succeeded to the interests of a party to an appeal.

The Committee recommended adding § 1021.54 (relating to substitution of parties), which will allow a person who has succeeded to the interests of a party to an appeal to become a party to the pending action by filing with the Board a petition for substitution of party. The proposed section further provides that the substituted party shall have the rights and liabilities of the original party to the proceeding, and that any other party to the proceeding may move to strike the substituted party for just cause.

The Board concurred with the recommendation but made two changes. First, it required that a petition for substitution must be verified. Second, it granted a substituted appellant the right to amend his appeal if both he and the original appellant meet the conditions of amending an appeal as contained in the Board's existing rule on amending appeals in § 1021.53 (relating to amendments to appeal; nunc pro tunc appeals). The effect of this change is to permit a substituted appellant to amend his appeal at early stages of the proceeding but would prevent amendments to the appeal at very late stages of the proceeding which might require reopening of discovery.

3. *Hearing Examiners*

The Board's existing regulations do not contain a rule for the delegation of authority to hearing examiners.

The Committee recommended adopting proposed § 1021.99 (relating to authority delegated to hearing examiners). This section authorizes the Board to appoint hearing examiners to preside at hearings and to handle certain other matters as authorized by this rule. The proposed rule is patterned after the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers). Proposed § 1021.99 will supersede and supplant 1 Pa. Code § 35.187.

The Board concurred with this recommendation.

III. *Fiscal Impact of the Proposed Revisions*

The proposed rules will have no measurable fiscal impact on the Commonwealth, political subdivision or the private sector. The rules may have a favorable economic impact in that they may eliminate potential litigation over existing uncertainties in Board procedures, authority and requirements.

IV. *Paperwork Requirements for Proposed Revisions*

The proposed revisions will not require the Board to modify its standard orders.

V. *Public Meeting on Proposed Rules*

Under 65 Pa.C.S. § 704 (relating to open meetings), a quorum of the members of the Board voted to adopt the proposed rules at a public meeting held on March 14, 2000, at the Board's Harrisburg office, Hearing Room 2, Second Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

VI. *Government Reviews of Proposed Revisions*

On May 22, 2000, as required by section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted copies of the proposed revisions to the Independent Regulatory Review Commission (IRRC) and the Senate and House Standing Committees on Environmental Resources and Energy. The Board also provided IRRC and the Committees with copies of a Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1982-2 (relating to improving government regulations). Copies of the Regulatory Analysis Form are available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any of the proposed revisions, it will notify the Board within 10 days of the close of the Committees' review period, specifying the regulatory review criteria that have not been met. The Regulatory Review Act sets forth procedures for review, prior to final publication of the proposed revisions, by the Board, the General Assembly and the Governor of objections raised.

VII. *Public Comment Regarding Proposed Revisions*

The Board invites interested persons to submit written comments, suggestions or objections regarding the proposed revisions to William T. Phillipy, IV, Secretary to the Environmental Hearing Board, 2nd Floor, Rachel Carson State Office Building, P. O. Box 8457, Harrisburg, PA 17105-8457, within 30 days of the date of this publication.

GEORGE J. MILLER,
Chairperson

Fiscal Note: 106-5. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART IX. ENVIRONMENTAL HEARING BOARD

CHAPTER 1021. PRACTICE AND PROCEDURES

Subchapter A. PRELIMINARY PROVISIONS

REPRESENTATION BEFORE THE BOARD

§ 1021.24. Referral of pro se parties to pro bono counsel.

(a) The Secretary to the Board is authorized to refer parties who appear before the Board on a pro se basis, who claim not to be able to afford a lawyer, to one of the following:

(1) The pro bono committee of the Pennsylvania Bar Association's Environmental, Mineral and Natural Resources Law Section.

(2) A county bar association lawyer referral service.

(3) An individual attorney, law firm or organization whose name appears on the Board's register of attorneys who have volunteered to take on the representation.

(b) If the Secretary to the Board exercises authority under subsection (a)(3), the Secretary shall establish a register of qualified pro bono attorneys, law firms and organizations and will refer pro se parties to counsel from the register on a rotational basis. To participate on the Board's register of attorneys, an attorney shall:

(1) Be admitted to practice before the Supreme Court of Pennsylvania.

(2) Have indicated a willingness and commitment not to charge a fee for services (but may be permitted to charge the reasonable expenses of the litigation).

(3) Have registered with the Secretary.

Subchapter C. FORMAL PROCEEDINGS

APPEALS

§ 1021.54. Substitution of parties.

(a) A person who has succeeded to the interests of a party to an appeal by operation of law, election, appointment or transfer of interest may become a party to the pending action by filing with the Board a verified petition for substitution of party, which includes a statement of material facts upon which the right to substitute is based.

(b) The substituted party shall have all the rights and liabilities of the original party to the proceeding provided that any other party to the proceeding may move to strike the substituted party for just cause. A substituted party-appellant is limited to pursuing only those objections raised by the original appellant in its appeal, unless both the original appellant and the substituted appellant meet the conditions of § 1021.53 (relating to amendments to appeal: nunc pro tunc appeals).

HEARING EXAMINERS

§ 1021.99. Authority delegated to hearing examiners.

(a) The Board may appoint hearing examiners to preside at hearings. Subject to the approval of the Board member assigned to the case, the hearing examiner shall have the following authority:

(1) To schedule and regulate the course of the hearings.

(2) To administer oaths and affirmations.

(3) To rule on motions in limine, offers of proof and the admission or exclusion of evidence.

(4) To conduct pretrial conferences, settlement conferences and related pretrial proceedings and to dispose of procedural matters.

(5) To schedule the filing of posthearing briefs following the conclusion of the hearing.

(6) To recommend to the Board member or to the Board an opinion and order or adjudication disposing of the matters considered at the hearing.

(b) Subsection (a) supersedes 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers).

[Pa.B. Doc. No. 00-939. Filed for public inspection June 2, 2000, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 210 AND 211]

Licensing of Blasters and Storage, Handling and Use of Explosives

The Environmental Quality Board (Board) proposes to amend Chapters 210 (relating to blasters' licenses) to read as set forth in Annex A. The proposed amendments will rename these chapters and modernize and clarify the Department's blasting regulations. The proposed amendments to Chapter 210 will significantly improve the process and criteria for obtaining and retaining a blaster's license. The proposed amendments to Chapter 211 (relating to use, storage and handling of explosives in surface applications) are a comprehensive modernization of the standards and procedures for handling, storing and using explosives.

This proposal was adopted by the Board at its meeting of March 21, 2000.

A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information contact J. Scott Roberts, Director, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103, or Marc Roda, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8646, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section I of this preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection (Department) Web site (http://www.dep.state.pa.us).

C. *Statutory Authority*

The proposed rulemaking is being made under the authority of:

(1) Sections 7 and 11 of the act of July 1, 1937 (P. L. 2681, No. 537) (73 P. S. §§ 157 and 161); section 3 of the act of July 10, 1957 (P. L. 685, No. 362) (73 P. S. § 166); and Reorganization Plan No. 8 of 1981 (71 P. S. § 751-35), which authorizes the Department to promulgate implementing regulations for the licensing of blasters and the use, storage and handling of explosives in most contexts other than mining.

(2) Section 2(f) of the act of May 18, 1937 (P. L. 654, No. 174) (43 P. S. § 25-2(f)); and Reorganization Plan No. 2 of 1975 (71 P. S. § 751-22) which authorizes the promulgation of regulations addressing, inter alia, the use, handling and storage of explosives in underground noncoal mining.

(3) Section 4(b) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4(b)) and section 11(e) of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § 3311(e)), which direct the Department to promulgate regulations concerning the handling and use of explosives at coal and noncoal surface mine sites as well as the licensing of blasters.

(4) Sections 1917-A and 1920-A(b) of The Administrative Code of 1929 (71 P. S. §§ 510-17 and 510-20(b)) which authorize the Board to adopt regulations to prevent the occurrence of a nuisance and to formulate, adopt and promulgate regulations that are necessary for the Department to perform its work.

D. *Background and Purpose*

This proposed regulatory package revises the current explosive regulatory program. The regulation of explosives presents a unique blend of health, safety and environmental concerns. This proposed rulemaking ensures that only qualified individuals are authorized to use explosives. It contains provisions for the safe storage of explosives, including standards for storage containers and structures and distances from railways, buildings and highways. Public and private buildings and structures will be protected from the adverse effects of blasting by limits placed on ground vibration and air-overpressure. Finally, safety procedures are established for the benefit of the general public, those working in blast areas and the blasters themselves.

This proposed rulemaking will establish minimum standards for explosives used in all aboveground operations including coal and noncoal mining, construction and demolition. The proposed rulemaking does not apply to underground coal mining, or the use, handling or storage of explosives in underground noncoal mines. Currently, separate regulations exist for anthracite coal mining, bituminous coal mining and noncoal mining. To the extent that these separate regulations contain requirements that are comparable to, but less stringent than provisions in Chapter 211, they will be superseded by the more stringent provisions in Chapter 211. In addition to complying with Chapters 210 and 211, persons using explosives must comply with other applicable provisions of Pennsylvania law or implementing regulations. For example, persons planning to use explosives in the waters of this Commonwealth for engineering purposes must obtain a permit from the Fish Commission, 30 Pa.C.S. § 2906 (relating to permits for use of explosives).

The Federal Government regulates some aspects of explosives. The Bureau of Alcohol, Tobacco and Firearms (ATF) regulates the storage and interstate sale and purchase of explosives. The Office of Surface Mining (OSM) has the authority to regulate the use of explosives at coal mines, however, the Department has received a primary delegation of authority to regulate the use of explosives at coal mines. Finally, the Federal Highway Administration (FHA) regulates the transportation of explosives.

The Mining and Reclamation Advisory Board (MRAB) was involved during the development of the proposed rulemaking. The regulatory changes were reviewed and discussed with the MRAB's Regulation, Legislation and Technical Committee on August 10, 1999. The Board recommended that the Board approve the amendments as proposed rulemaking at its meeting on October 21, 1999. During the meeting, the MRAB asked the Department to clarify two issues. The Department discussed these issues with the MRAB at its meeting on January 6, 2000. The MRAB first asked if seismic monitoring could occur between the blast location and the closest dwelling instead of at the closest dwelling. The Department explained that it normally requires monitoring at the structure to be protected, but in unusual cases the Department will allow monitoring at other locations. The other issue concerned a possible conflict with the mining requirements for analyzing seismic records. The Department explained that it intends to make appropriate revisions to the mining regulations once the Board has taken final action on this rulemaking. Following this discussion, the MRAB unanimously approved the proposed rulemaking.

E. *Summary of Regulatory Requirements*

The existing text in Chapters 210 and 211 is being deleted in its entirety. The proposed revisions rename these chapters which only contain new text. The following is a description of the proposed sections along with a brief discussion of the changes. Federal counterpart regulations are identified where they exist.

Chapter 210. Blasters' Licenses

Sections 210.1—210.6 are deleted in their entirety.

§ 210.11. Definitions.

Section 210.11 defines the following terms: "blaster," "blaster learner," "blaster's license" and "person."

§ 210.12. Scope.

Section 210.12 provides that, Chapter 210 applies to persons responsible for blasting activities at surface coal mines, noncoal surface and underground mines, construction, demolition and other industrial applications.

§ 210.13. General.

Subsection (a) requires any person, which by definition is limited to natural persons, who detonates explosives to have a blaster's license. Subsection (b) gives the Department authority to waive this requirement for blasts involving extremely small amounts of explosives for industrial or research purposes. Subsection (c) requires a blaster to show his license when requested by specific authorities. Subsection (d) prohibits transfers of blaster licenses.

§ 210.14. Eligibility requirements.

Section 210.14 retains the existing qualifications for a blaster's license: The applicant must have 1 year of experience in preparing blasts; must take the Department's course on explosives; and must pass the licensing examination. In addition, the minimum age has been raised to 21 years. The United States Highway Administration requires operators who transport explosives to be at least 21 years old. The Department believes it is appropriate to adopt the Highway Administration's age requirement because the responsibilities of a blaster are more significant than those of a vehicle operator.

Section 210.14 will, for the first time, prohibit the Department from issuing or renewing a blaster's license unless the person is of good moral character. Given the extremely dangerous capabilities of explosives, the Department believes that persons with proven violent tendencies should not be authorized to handle explosives. Further, a license will not be issued or renewed to a person who has demonstrated an unwillingness or lack of intention to comply with the Department's blasting regulations.

§ 210.15. License application.

Section 210.15 retains the current application requirements. The application must be on a form prepared by the Department, be complete, include a $50 fee and be submitted to the Department at least 2 weeks prior to the examination. The application must also include documentation of the applicant's experience including an assessment from the applicant's supervisor as to whether the applicant has sufficient experience in the type of blasting operations for which a license is being sought.

§ 210.16. Examinations.

The Department will continue to schedule and conduct the blaster license examinations. As under the current regulations, an applicant who misses the examination without prior notice and except for good cause, such as illness, forfeits the application fee. In lieu of refunding the fee, the Department may issue a credit for a future examination.

§ 210.17. Issuance and renewal of licenses.

Section 210.17 gives the Department the authority and responsibility for specifying the different types of blaster licenses. The general license no longer applies to blasting at demolition sites or underground noncoal mines. In the Department's experience, experience gained in other types of blasting does not sufficiently prepare an individual to blast at a demolition site or at an underground noncoal mine. The proposed rulemaking still requires compliance with all of the eligibility requirements if the license is to be amended to include another category of blasting.

Under the proposed § 210.17, the blaster's license will be issued for 3 years rather than 1 year. In the Department's experience, requiring licenses to be renewed annually imposes unnecessary paperwork on blasters and the Department. The Department has adequate authority to suspend those few individuals who do not follow the applicable regulations.

To renew a blaster's license, the proposed § 210.17 requires the applicant to obtain 8 hours of continuing education during the 3-year term of the license. This provision is designed to ensure that blasters remain current with the technology and regulations affecting their industry. Industry and the public have expressed their support for this proposal. The current fee for renewing a blaster's license is $10 per year. The fee for renewing this 3-year term license will be $30. Finally, the proposed § 210.17 will require a person who fails to renew a license within 1 year of its expiration date to requalify for that license.

§ 210.18. Recognition of out-of-State blaster's license.

This new provision will allow the Department to recognize another state's decision to license a blaster as proof of adequate training and experience. The basis for recognizing an out-of-State license will be whether the other state's program training and examination requirements are essentially equal to those required by these regulations.

§ 210.19. Suspension, modification and revocation.

This section describes the Department's authority to issue orders suspending, modifying or revoking a blaster's license. The proposed rulemaking allows the licensee an informal meeting to discuss the facts and issues related to the order.

Chapter 211. Use, Storage and Handling of Explosives in Surface Applications

This chapter establishes standards and procedures for permitting and performing blasting activities. For clarity, §§ 211.1—211.88 are deleted in their entirety, and new regulations begin with § 211.101. The proposed chapter is divided into eight subchapters.

Subchapter A. General Provisions

§ 211.101. Definitions.

This section defines the key terms used in Chapter 211. Many of the terms have been modified from the existing regulations, several terms have been deleted and new terms have been added. The following is a summary of changes to this section:

"Airblast"

This is the airborne shock wave from an explosion. The proposed definition sets limits on airblast.

"Blast area"

This is a new term for the area which must be cleared to prevent injury or damage to persons or property. This term has been added for clarity because the proposed rulemaking imposes certain obligations on blasting activity permittees and blasters to prevent injury and damage to persons or property in the area surrounding the blast site.

"Blaster"

The term "licensed blaster" was changed to "blaster" to eliminate redundancy. By definition, a person who is a blaster is licensed by the Department to be a blaster.

"Blaster-in-charge"

The "blaster-in-charge" is a new term. It means the blaster responsible for ensuring that all aspects of a particular blast comply with the applicable standards in this chapter. Based on its experience, the Department believes it is necessary to have only one person in control of the blasting activities for the safe and proper performance of a blast.

"Blasting activity"

This new term is defined broadly to include all aspects of preparing, performing and reporting on a blast. This term is added, because the Department believes it is necessary to require a permit for all blasting activities.

"Blast site"

The blast site is the area where the blast is being set. This new term is defined for clarity because the proposed rulemaking establishes requirements for activities within the blast site.

"Building"

The definition for "building" has been broadened and simplified. Unnecessary and redundant language has been eliminated. A "building" is broadly defined to include all structures used by humans. It now includes buildings that are used in the manufacture of explosives and explosives components.

"Delay interval"

This term has been reworded for clarity.

"Demolition activity"

"Demolition activity" is the wrecking of a building or structure with explosives. The term is added because of provisions expressly addressing demolition activities.

"Detonator"

"Detonator" is broadly defined to be any device that uses an explosive to initiate an explosion. The term is added because the proposed rulemaking places unique requirements on the transportation of detonators.

"Explosive"

The proposed rulemaking continues to define "explosive" broadly. Almost any material that can cause an explosion or is used to ignite an explosion is an explosive. The definition has been modified to exempt from regulation explosive materials such as smokeless powder, commercially manufactured black powder and percussion caps used for sporting events or firearms.

"Flyrock"

"Flyrock" is defined to be any material ejected from the blast site due to the force of the explosion.

"Magazine"

This definition has been simplified to include any structure used to store explosives.

"Misfire"

A misfire is an incomplete detonation of explosives.

"Particle velocity" and *"Peak particle velocity"*

Particle velocity is the speed at which a particle of ground vibrates in response to a blast. Peak particle velocity is the maximum intensity of particle velocity. The terms are defined because of their use in § 211.151 (relating to prevention of damage).

"Purchase"

"Purchase" is defined as acquiring ownership of explosives. The definition is added for clarity.

"Sale or sell"

"Sale or sell" is defined simply to be a transfer of ownership to another person. The definition is added for clarity.

"Scaled distance (Ds)"

Scaled distance is a factor that relates the weight of explosives to distance, usually to the nearest protected structure. The term is defined because of its use in determining the potential for damage and the need for seismic monitoring.

"Structure"

This new term is defined broadly as everything that is built or constructed. The prevention of damage provisions of this chapter are directed at structures.

"Utility lines"

Generally, utility lines include pipelines, power lines, cables and transmission lines. This new definition is necessary for proper implementation of the provisions for protecting these facilities.

The following terms are not retained in the proposed rulemaking because they are no longer used. These terms

are: "actual distance," "approved," "barricade," "establishment," "explosive plant," "factory building," "highway," "railroad" and "vehicle."

§ 211.102. Scope.

This chapter applies to the use, storage and handling of explosives in all contexts except underground mining. Even in the underground mining context, this chapter applies to the storage of explosives on the surface at an underground noncoal mine. Finally, any provision of this chapter that is more stringent than the comparable provision in the coal or noncoal surface mining blasting regulations supersedes and preempts that regulation.

§ 211.103. Enforcement actions.

As with all regulatory programs, the Department has the authority to issue orders necessary to enforce the implementing regulations. However, before issuing an order modifying the peak particle velocity or air blast limit in a permit, the permittee will be given an opportunity to discuss the proposed modifications with the Department.

Subchapter B. Classification and Storage of Explosives

§ 211.111. Scope.

This subchapter establishes the standards and procedures for licensing and maintaining explosive storage magazines. It also specifies how explosives are to be classified.

§ 211.112. Magazine license and fees.

This section contains the existing requirements for licensing magazines as well as the fee structure. The key requirements include that no magazine may be constructed or modified until the Department has approved the license or proposed modification. The license will be valid for 1 year, will specify the types and quantities of explosives to be stored, and will contain such conditions as are necessary to ensure compliance with applicable statutes and this chapter.

§ 211.113. Application contents.

Except for a site map, the existing regulations do not specify what information is to be included in the application. Proposed § 211.113 specifies the information to be included in applications to obtain, renew or modify a magazine license. All applications must identify the applicant and contact person for the applicant as well as the types and quantities of explosives to be stored at the facility. In addition, applications to obtain or modify a license shall also include plans depicting the site and the magazine.

§ 211.114. Displaying the license.

This section contains the existing requirement that the magazine license or a legible copy of it be displayed at the magazine.

§ 211.115. Standards for classifying and storing explosives and constructing, maintaining and siting magazines.

The proposed rulemaking does not retain the existing classifications for explosives and standards for siting, constructing and maintaining explosive magazines. Instead, this section is proposed to incorporate by reference the United States Department of the Treasury's Bureau of Alcohol, Tobacco and Firearms' regulations found in 27 CFR Part 55, Subpart K (relating to commerce in explosives) (ATF regulations). The standards in the ATF regulations ensure that magazines are constructed, sited and maintained in a manner that protects the public's health, safety and welfare. Therefore, maintaining different and possibly more stringent standards for storing explosives than contained in the ATF regulations merely imposes additional costs on industry without providing any additional protections to the public.

The ATF regulations establish five categories of explosives and specify standards for constructing a magazine to house each type of explosive. Siting criteria for each type of magazine ensures that the public is protected from harm if there is an explosion at the magazine. A variance provision allows the Department to approve magazines other than those specified in the regulations on a case-by-case basis. However, the proposed rulemaking does not incorporate by reference the variances issued by the Federal government under the ATF regulations. In the Department's experience many of the variances issued under the ATF regulations do not adequately protect the public from the hazards posed by storing explosives.

Subchapter C. Permits

§ 211.121. General requirements.

The proposed § 211.121 retains the requirement that the purchase and sale of explosives must be authorized by a permit. The purchase and sale permits are primarily used for tracking the ownership of explosives. The Department proposes to directly regulate the use of explosives through a blasting activity permit. The requirement for a blasting activity permit will only affect the use and handling of explosives in the nonmining context. Surface mining permits will continue to regulate the use of explosives at surface mine sites. Finally, the purchase, sale and use of fireworks is not subject to the requirements of this chapter.

To obtain a purchase, sale or blasting activity permit, the application must demonstrate that the proposed activity complies with this chapter. The Department will not issue a purchase, sale or blasting activity permit to a person who either is currently in violation of any provision of this chapter or a permit issued thereunder, or who has demonstrated an unwillingness or inability to properly perform the activities authorized by these permits.

§ 211.122. Permits to sell explosives.

Under the proposed § 211.122, the permit to sell is a tracking mechanism to identify who is selling what explosives in this Commonwealth. The sale permit will continue to be nontransferable, expire on April 30 of each year and be renewable. The proposed rulemaking requires the permit application to identify the applicant, the type of business, the types of explosives to be sold, whether the applicant is the manufacturer of the explosives, and if applicable, the license number of the magazine used to store the explosives.

§ 211.123. Permits to purchase explosives.

The proposed § 211.123 retains the requirement that the person who purchases explosives must have a purchase permit. Persons purchasing explosive services will no longer be required to obtain a purchase permit. In the Department's experience, the purchase permit is not an effective mechanism for tracking and controlling the use of explosives. As explained in the following, the new blasting activity permit will be the mechanism for regulating the use of explosives.

The purchase permit application will no longer be required to identify all blasters working for the permittee. This information is now irrelevant because the permit is simply a mechanism for tracking and controlling who can

purchase explosives. The application must identify the purchaser, a contact person, the location of storage magazine, the types and quantities of explosives purchased, and whether the explosives are being purchased for resale or use.

As with the existing regulations, purchase permits are not transferable. In addition, they are effective for a maximum of 12 months, terminating on April 30. The proposed rulemaking will expressly allow persons to act under an expired permit, if a complete renewal application was submitted by April 30.

§ 211.124. Blasting activity permits.

The new blasting activity permit controls where and how blasting activities occur. The requirement for a permit is only new for blasting in nonmining operations. Blasting at coal and noncoal surface mines will continue to be authorized by the surface mining permit.

At a minimum, the application for a blasting activity permit must identify the applicant, the types and quantities of explosives to be used, the purpose of the blasting activity, the location and timing of the blasts, the duration of the blasting activity, how monitoring will be conducted, and the blaster who prepared the application. The application should contain any other information necessary to demonstrate that the proposed activity will comply with the applicable requirements of this chapter. There is no fee for a blasting activity permit.

Section 211.124 also imposes on blasting activity permittees two obligations not contained in the existing regulations. First, notice of the proposed blasting activity must be given to persons who could be affected by the proposed blasting activity. This was an issue raised by the Citizens Advisory Council and discussed at the meeting of the MRAB. This requirement is a result of that discussion. This provision will ensure that, just as with blasting at surface mines, persons who could be affected by blasting at nonmining operations are provided notice of that activity. Second, the blasting activity permittee must possess general third-party liability insurance of at least $300,000 per occurrence. Again, as in the surface mining context, this insurance requirement is necessary to ensure that damage due to blasting is corrected.

The blasting activity permit is not transferable. It identifies who can operate under the permit and the types of explosives, the duration of the permit, and limits on peak particle velocity and air blasts. The permit will contain any other conditions the Department considers necessary to ensure compliance with the law.

§ 211.125. Blasting activity permit-by-rule.

The Department recognizes that a full blasting activity permit is not needed for small blasts. Further, the Department believes it is reasonable to give permit applicants the ability to continue their operation by conducting small-scale blasting while their permit application is pending. Therefore, this proposal establishes a permit-by-rule (PBR) for small blasting activities.

To be small enough to qualify for this PBR the blast must have a scale distance of at least 90, not use more than 15 pounds (6.81 kilograms) of explosives per delay interval of less than 8 milliseconds, and must not use more than 150 pounds per blast (68.18 kilograms). The permittee must notify the Department before blasting activity can occur. Notices can be given orally, but they must be confirmed in writing. The information in the notice will identify the permittee and the activity for the Department to ensure that it does not pose a risk of damage to people or property. Finally, the Department can revoke a PBR if the permittee fails to comply with the applicable regulations or the blasting activity proves to be sufficiently dangerous to warrant an individual permit.

Subchapter D. Records of Disposition of Explosives

The proposed rulemaking in this subchapter specifies the recordkeeping requirements applicable to sales, purchase and blasting activity permittees. This chapter no longer contains the requirement that a competent person maintain a daily inventory of all explosives used or received in the field. The existing language is unclear and creates an unnecessary and ambiguous obligation.

§ 211.131. Sales records.

Section 211.131 retains the requirement that the seller maintain a record of all sales of explosives. The retention time has been extended from 2 to 3 years to be consistent with other recordkeeping requirements of this chapter. The proposed § 211.131 simply requires the seller to identify the purchaser and the types of explosives sold. In the Department's experience, the existing requirement to identify the vehicle, the person picking up the explosives and that person's business is not relevant.

§ 211.132. Purchase records.

The proposed § 211.132 requires purchasers of explosives to keep a record of when they buy explosives and from whom. The record will assist in tracking the disposition and use of explosives.

§ 211.133. Blast report.

The proposed § 211.133 establishes a requirement to prepare a blast report to provide the Department with sufficient information to reconstruct the conditions and events surrounding a blast. This information is essential if the Department is to effectively investigate incidents at blast sites and damage complaints. To ensure the accuracy of these reports, the blaster-in-charge is responsible for the blast report. This is because the blaster-in-charge is responsible for ensuring that all aspects of the blast conform to this chapter. The time for retaining these reports is extended from 2 to 3 years. Broadly speaking, as with the existing regulations, the report must identify who did the blasting, where and when the blasting occurred, how the blast was designed and detonated, and where the monitoring was done.

The time for generating and attaching the monitoring record to the blast plan is reduced from 30 to 7 days. This reduction in time will enable the Department to respond more quickly to complaints of blast damage. The proposed § 211.133 requires the use of modern monitoring instruments that generate reports data that do not have to be analyzed by a third party. However, some permittees may need some time to acquire these monitoring instruments. Therefore, the requirement that monitoring reports be attached within 7 days does not become effective until 3 years after this proposed rulemaking goes into effect. In the Department's opinion, the cost savings from not having to analyze monitoring reports outweighs the cost of acquiring new equipment.

Subchapter E. Transportation of Explosives

§ 211.141. General requirements.

This proposed § 211.141 establishes the requirements for loading and holding explosives in vehicles. This proposal restates requirements in the current regulations. However, in the Department's experience, some of the

transportation requirements in the existing regulations are unnecessary and have not been included in this proposal.

Subchapter F. Blasting Activities

This subchapter establishes the requirements for preparing and conducting a blast.

§ 211.151. Prevention of damage.

This proposed section retains the requirement that blasting be conducted so as not to cause flyrock or damage to real property not owned by the permittee. If damage to property or flyrock occurs, the Department must now be notified within 4 hours of the occurrence. This notification is necessary if the Department is to make an effective and timely investigation of the incident.

Section 211.151(c) establishes limits on ground vibration. Currently, there are different standards for blasting at noncoal, bituminous and anthracite surface mines. The standards for bituminous surface coal mines are consistent with the comparable Federal standards for coal mining. In the Department's experience these standards do not adequately protect nearby buildings from damage by ground vibration. Consequently, the Department proposes the standard described as follows to ensure that blasting in any context will not cause damage to surrounding buildings.

Blasts shall be performed and conducted to achieve either a scaled distance of 90 or meet the ground vibration limits (peak particle velocity) established in Figure 1 of § 211.151(c). Scaled distance is derived from the amount of explosives and distance to the nearest structure. A higher scaled distance will have less effect on adjacent structures. A scaled distance of 90 is more restrictive than counterpart Federal regulations for coal mining and will require operators to conduct more monitoring. This higher scaled distance will ensure that the blast will meet the lower allowable vibration limit in Figure 1 of § 211.151(c) and will not cause damage.

Figure 1, § 211.151(c), establishes a variable ground vibration limit. This limit is based on frequency. The former United States Bureau of Mines (BOM), in Report of Investigation 8507, recommended this method to regulate blast vibration. According to the BOM, if ground vibration is below this limit, there is essentially no probability of damage to structures located near the blasts.

Section 211.151(d) establishes an airblast limit for blasts. Airblast, if high enough, can break windows. Prior to this proposal, airblast limits applied only to mining operations. This regulation uses the proven regulation of airblasts in mining operations and establishes a Statewide limit for all blasting operations.

If necessary, the Department can establish a more stringent peak particle velocity or scaled distance limit or airblast limit. This change in limits would be based upon site-specific factors such as the population density, age of structures and geology of the area.

§ 211.152. Control of noxious gases.

This new provision results from several reported occurrences of gases from construction blasting migrating through the soil and bedrock to nearby homes.

§ 211.153. General requirements for handling explosives.

This section deals with the safe handling of explosives to prevent accidental detonation. It restates the existing requirements.

§ 211.154. Preparing the blast.

This section contains many provisions from the current regulations. It also adds the requirement that the blasting activity permittee designate a blaster-in-charge.

§ 211.155. Preblast measures.

A standard warning signal is being proposed for blasting operations. Warning signals have been required for all blasting operations, but there has never been any standardization of these signals. This has been confusing for individuals who visit many different operations. A warning signal in one operation could be the all-clear signal for another operation. Standardized signals will make all operations safer.

§ 211.156. Detonating the blast.

This section adds a new requirement that allows only the blaster-in-charge to detonate a blast.

§ 211.157. Postblast measures.

A standardized all-clear signal is being proposed in this section. Standardized all-clear signals will ensure that all persons working on a blasting operation will know that a blast has been detonated and it is safe to resume other activities.

§ 211.158. Mudcapping.

This provision is a carry-over from the current regulations.

§ 211.159. Electric detonation.

This section proposes to require blasting machines, which provide the electric power for detonation, to have a sticker showing that they have been properly tested.

§ 211.160. Nonelectric detonation.

This is a new provision. It requires nonelectric initiation or detonation systems to be checked for proper installation.

§ 211.161. Detonating cords.

The requirements for the safe use of detonating cord have been rewritten to clarify the language dealing with how detonating must be used.

§ 211.162. Safety fuse.

The requirements for the safe handling of safety fuses have been rewritten to clarify the language dealing with testing the rate at which fuse burns.

Subchapter G. Requirements for Monitoring

§ 211.171. General provisions for monitoring.

This regulation proposes trigger levels for automated seismographs. The purpose of a seismograph is to ensure that vibration and airblast are below the compliance limits. Therefore, this regulation establishes a ground vibration trigger level at 50% of the compliance option.

§ 211.172. Monitoring instruments.

The standards for seismographs have been updated. The standards for calibrating instruments have been expanded.

§ 211.173. Monitoring records.

Seismographs are used to monitor and record the effects of blasts. Given the importance of this information, this proposal requires that a competent individual train those who operate seismographs.

Subsection (b) identifies the acceptable methods for determining the frequency component of a ground vibra-

tion waveform. The frequency component of a waveform is a factor in regulatory compliance. The methods most commonly used to determine frequency in blasting are called the "half-cycle zero crossing analysis" and the "single degree of freedom response spectrum." Therefore, these methods have been proposed in this rulemaking.

Because this regulation establishes a vibration limit based on frequency, a particle velocity versus frequency plot is needed to determine compliance. Therefore, subsection (b)(6) includes a plot as part of the monitoring requirements.

Subchapter H. Blasting Activities Near Utility Lines

§ 211.181. Scope.

This new subchapter contains standards for blasting near underground utility lines.

§ 211.182. General provisions.

This new section requires blasts near utility lines to be designed to minimize vibration and ground movement. The section also sets standards for the diameter and depth of blast holes and for the types of explosives.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost and benefit analysis of the proposed rulemaking.

Benefits

The proposed changes are designed to modernize an outdated explosives regulatory program. The explosives industry will benefit because current products and technologies are addressed in a manner that is consistent with their current use. Citizens will benefit because this proposal establishes limits on ground vibration and airblast that are designed to prevent damage to structures. In addition, annoyance from unexpected blasts will be reduced because the public will be notified prior to the commencement of most blasting operations. Additionally, the public and blasting industry will benefit from the continuing education that is required for renewing a blaster's license.

Compliance Costs

The explosives industry will see an increase in the cost of compliance because of the requirement for continuing education for blasters. The new requirement for general liability insurance is not expected to create a significant increase in costs, since most blasting companies currently carry liability insurance. This proposed rulemaking requires more monitoring than previously required. However, because the records produced from the monitoring no longer require analysis or verification by an independent third party, cost savings will be realized. These savings can be used by the operator to purchase additional modern monitoring equipment that provides more information more quickly. There is no change to the current fee structure.

Compliance Assistance Plan

The Department will provide written notification of these changes to licensed blasters in this Commonwealth. Outreach sessions are planned with the Pennsylvania chapters of the International Society of Explosive Engineers and various mining organizations. If requested, public meetings will be scheduled to share this information with concerned citizens, industry representatives or others.

Paperwork Requirements

This proposal will result in a slight increase in paperwork. Licensed blasters will be required to document their continuing education. The new blasting activity permit will require a new application form. Additional information will be required in the postblast report.

G. *Sunset Review*

This proposed rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 17, 2000, the Department submitted a copy of the proposed amendments to Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Department, the General Assembly and the Governor of objections raised.

I. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by August 2, 2000 (within 60 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by August 2, 2000 (within 60 days following publication in the *Pennsylvania Bulletin*). The one page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@dep.state.pa.us and must also be received by the Board by August 2, 2000. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

J. *Public Hearings*

The Board will hold four public hearings for the purpose of accepting comments on this proposal. The hearings will be held at 1 p.m. as follows:

July 5, 2000	Greensburg Four Points Sheraton 100 Sheraton Drive (Route 30 East) Greensburg, PA
July 6, 2000	Holiday Inn—Clarion I-80 at Route 68 Clarion, PA
July 11, 2000	Best Western—Exton Hotel and Conference Center 815 North Pottstown Pike (at Turnpike Exit 23) Exton, PA
July 12, 2000	Quality Hotel 100 South Centre Street Pottsville, PA

Persons wishing to present testimony at a hearing are requested to contact Joan Martin at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Joan Martin directly at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-349. No fiscal impact; (8) recommends adoption.

(*Editor's Note*: As part of this proposal, the Board is proposing to delete the existing text of Chapter 210, §§ 210.1—210.6, which appears at 25 Pa. Code pages 210-1—210-5, serial numbers (243459)—(243463).)

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE IV. OCCUPATIONAL HEALTH AND SAFETY

CHAPTER 210. BLASTERS' LICENSES

GENERAL PROVISIONS

210.11. Definitions.
210.12. Scope.
210.13. General.
210.14. Eligibility requirements.
210.15. License application.
210.16. Examinations.
210.17. Issuance and renewal of licenses.
210.18. Recognition of out-of-State blaster's license.
210.19. Suspension, modification and revocation.

§ 210.11. Definitions.

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

Blaster—A person who is licensed by the Department under this chapter to detonate explosives and supervise blasting activities.

Blaster learner—An individual who is learning to be a blaster and who participates in blasting activities under the direct supervision of a blaster.

Blaster's license—A license to detonate explosives and supervise blasting activities issued by the Department under this chapter.

Person—A natural person.

§ 210.12. Scope.

This chapter applies to persons engaging in the detonation of explosives within this Commonwealth. This chapter does not apply to persons authorized to detonate explosives or to supervise blasting activities under:

(1) The Pennsylvania Anthracite Coal Mine Act (52 P. S. §§ 70.101—70.1405).

(2) The Pennsylvania Bituminous Coal Mine Act (52 P. S. §§ 701-101—701-706).

§ 210.13. General.

(a) A person may not detonate explosives or supervise blasting activities unless the person has obtained a blaster's license.

(b) The Department may exempt certain individuals from needing a blaster's license if the person is detonating extremely small amounts of explosives for industrial or research purposes. The Department will consider a written request for an exemption from the person seeking the exemption.

(c) A blaster upon request shall exhibit a blaster's license to the following:

(1) An authorized representative of the Department.

(2) The blaster's employer or an authorized representative of the employer.

(3) A police officer acting in the line of duty.

(d) A blaster's license is not transferable.

§ 210.14. Eligibility requirements.

(a) To be eligible for a blaster's license, a person shall:

(1) Be 21 years of age or older.

(2) Have at least 1 year of experience as a blaster learner in preparing blasts in the classification for which a license is being sought.

(3) Have taken the Department's class on explosives. It is not necessary for a blaster to retake the class when adding an additional classification to a license.

(4) Have successfully passed the Department's examination for a blaster's license.

(b) The Department will not issue or renew a license unless the following conditions are met:

(1) The applicant is of good moral character.

(2) The applicant has demonstrated an inability or lack of intention to comply with the Department's regulations concerning blasting activities.

§ 210.15. License application.

(a) The license application shall be on forms prepared by the Department and be accompanied by a check for $50 payable to the Commonwealth of Pennsylvania. The complete application shall be submitted to the Department at least 2 weeks prior to the examination.

(b) The license application shall include a signed notarized statement from the blaster who supervised the applicant, or the applicant's employer. The statement shall:

(1) Describe the applicant's experience in blasting. In particular, the statement shall describe in detail how the applicant assisted in the preparation of the blasts and for how long.

(2) State the author's opinion as to whether the applicant is competent to prepare and detonate blasts in the classification for which the license is being sought.

§ 210.16. Examinations.

(a) The Department will conduct examinations for specific types of blasting, as specified in § 210.17(a) (relating to issuance and renewal of licenses).

(b) The Department will schedule and conduct examinations as needed.

(c) An applicant failing to appear for a scheduled examination forfeits the application fee unless the applicant provides written notice to the Department prior to the examination date or submits a valid medical excuse in writing.

(d) Refund of the fee or admittance to a subsequent examination without a reapplication fee will be at the discretion of the Department.

§ 210.17. Issuance and renewal of licenses.

(a) A blaster's license is issued for a specific classification of blasting activities. The classifications will be determined by the Department and may include general blasting (which includes all classifications except demolition and underground noncoal mining), trenching and construction, seismic and pole line work, well perforation, surface mining, underground noncoal mining, industrial, limited and demolition.

(b) A person may apply to amend the blaster's license for other classifications by meeting the requirements of § 210.14 (relating to eligibility requirements) and by submitting a complete application.

(c) A blaster's license will be issued for 3 years.

(d) A blaster's license is renewable if the blaster can demonstrate that he has had 8 hours of continuing education in Department-approved courses related to blasting and safety within the 3-year period.

(e) The blaster's license may be renewed for a 3-year term by submitting a renewal application to the Department and a check for $30, payable to the Commonwealth of Pennsylvania.

(f) A person who intends to be a blaster and whose blaster's license was not renewed within 1 year of its expiration date shall apply for a new license under §§ 210.14—210.16 (relating to eligibility requirements; license application; and examinations).

§ 210.18. Recognition of out-of-State blaster's license.

(a) The Department may license a person who holds a blaster's license or its equivalent in another state. The Department may issue the license if, in the opinion of the Department, that state's licensing program provides training on the use, storage and handling of explosives and an examination that is equivalent to the requirements of this chapter.

(b) A request for a license under this section shall be made in writing. Copies of the other state's explosives training and examination material and proof that the applicant holds a license in the other state shall be provided to the Department so that the Department can make a proper evaluation.

§ 210.19. Suspension, modification and revocation.

The Department may issue orders suspending, modifying or revoking a blaster's license. Before an order is issued, the Department will give the blaster an opportunity for an informal meeting to discuss the facts and issues that form the basis of the Department's determination to suspend, modify or revoke the license. The Department may suspend, modify or revoke a blaster's license for violations of this chapter and Chapter 211 (relating to use, storage and handling of explosives in surface applications).

(*Editor's Note*: As part of this proposal, the Board is proposing to delete the existing text of Chapter 211, §§ 211.1, 211.2, 211.31—211.44, 211.51—211.56, 211.61, 211.62, 211.71—211.76 and 211.81—211.88 which appears at 25 Pa. Code pages 211-1—211-38, serial numbers (243465)—(243502).)

CHAPTER 211. USE, STORAGE AND HANDLING OF EXPLOSIVES IN SURFACE APPLICATIONS

Subch.

A. GENERAL PROVISIONS
B. STORAGE AND CLASSIFICATIONS OF EXPLOSIVES
C. PERMITS
D. RECORDS OF DISPOSITION OF EXPLOSIVES
E. TRANSPORTATION OF EXPLOSIVES
F. BLASTING ACTIVITIES
G. REQUIREMENTS FOR MONITORING
H. BLASTING ACTIVITIES NEAR UTILITY LINES

Subchapter A. GENERAL PROVISIONS

Sec.

211.101. Definitions.
211.102. Scope.
211.103. Enforcement.

§ 211.101. Definitions.

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

Airblast—An airborne shock wave resulting from an explosion, also known as air overpressure, which may or may not be audible.

Blast area—The area around the blast site that should be cleared to prevent injury to persons and damage to property.

Blaster—An individual who is licensed by the Department under Chapter 210 (relating to blasters' licenses) to detonate explosives and supervise blasting activities.

Blaster-in-charge—The blaster designated to have supervision and control over all blasting activities related to a blast.

Blasting activity—The actions associated with the use of explosives from the time of delivery of explosives to a worksite until all postblast measures are taken, including priming, loading, stemming, wiring or connecting, detonating, and all necessary safety, notification and monitoring measures.

Blast site—The area where the explosive charges are located.

Building—A structure that is regularly occupied where people live, work or assemble.

Charge weight—The weight in pounds of an explosive charge.

Delay interval—The designed time interval, usually in milliseconds, between successive detonations.

Demolition activity—The act of wrecking or demolishing a structure with explosives.

Detonator—A device containing an initiating or primary explosive that is used for initiating detonation of explosives. The term includes electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating cord, delay connectors and nonelectric instantaneous and delay blasting caps.

Explosive—A chemical compound, mixture or device that contains oxidizing and combustible materials or other ingredients in such proportions or quantities that an ignition by fire, friction, concussion, percussion or detonation may result in an explosion.

(i) The term includes safety fuse, squibs, detonating cord and igniters.

(ii) The term does not include the following:

(A) Commercially manufactured black powder, percussion caps, safety and pyrotechnic fuses, matches and friction primers, intended to be used solely for sporting, recreational or cultural purposes in antique firearms or antique devices, as defined in 18 U.S.C.A. § 921 (relating to definitions).

(B) Smokeless powder, primers used for reloading rifle or pistol cartridges, shot shells, percussion caps and smokeless propellants intended for personal use.

Flyrock—Overburden, stone, clay or other material ejected from the blast site by the force of a blast.

Magazine—A building or structure used for the storage of explosives.

Misfire—Incomplete detonation of explosives.

Particle velocity—A measure of the intensity of ground vibration, specifically the time rate of change of the amplitude of ground vibration.

Peak particle velocity—The maximum intensity of particle velocity.

Person—A natural person, partnership, association, or corporation or an agency, instrumentality or entity of state government. Whenever used in any clause prescribing and imposing a penalty, or imposing a fine or imprisonment, or both, the term includes the members of an association and the directors, officers or agents of a corporation.

Primer—A cartridge or package of high explosives into which a detonator has been inserted or attached.

Purchase—To obtain ownership of explosives from another person.

Sale or *sell*—To transfer ownership of explosives to another person.

Scaled distance (Ds)—A value calculated by using the actual distance (D) in feet, measured in a horizontal line from the blast site to the nearest building, neither owned nor leased by the blasting activity permittee or its customer, divided by the square root of the maximum weight of explosives (W) in pounds, that is detonated per delay period of less than 8 milliseconds.

$$Ds = D \div \sqrt{W}$$

Stemming—Inert material placed in a blast hole after an explosive charge for the purpose of confining the explosion gases to the blast hole, and inert material used to separate explosive charges in decked holes.

Structure—A combination of materials or piece of work built or composed of parts joined together in some definite manner for occupancy, use or ornamentation. The term includes everything that is built or constructed, including bridges, offices, water towers, silos and dwellings.

Utility lines—An electric cable, fiber optic line, pipeline or other type of conduit used to transport or transmit electricity, gases, liquids and other media including information.

§ 211.102. Scope.

(a) This chapter applies to persons using, storing, purchasing and selling explosives and engaging in blasting activities within this Commonwealth. Persons using and storing explosives at underground mines are exempt from this chapter. The storage of explosives in magazines on the surface at an underground noncoal mine is subject to the applicable requirements of this chapter. The provisions of this chapter that are more stringent than the blasting provisions in Chapters 77, 87 and 88 (relating to noncoal mining; surface mining of coal; and anthracite coal) apply to blasting activities at coal or noncoal surface mines.

(b) Compliance with this chapter does not relieve a person who is engaged in the purchase or sale of explosives, or blasting activities, from compliance with other applicable laws or regulations of the Commonwealth.

§ 211.103. Enforcement.

(a) The Department may issue orders necessary to implement this chapter including an order to suspend, modify or revoke a license or permit authorized by this chapter.

(b) Before issuing an order modifying peak particle velocity or airblast limits in a blasting activity permit, the Department will first provide the permittee with an opportunity to meet and discuss modifications.

Subchapter B. STORAGE AND CLASSIFICATION OF EXPLOSIVES

Sec.

211.111. Scope.
211.112. Magazine license and fees.
211.113. Application contents.
211.114. Displaying the license.
211.115. Standards for classifying and storing explosives and constructing, maintaining and siting magazines.

§ 211.111. Scope.

This subchapter applies to the classification and storage of explosives. It establishes the requirements, procedures and standards for licensing, constructing, siting and maintaining magazines.

§ 211.112. Magazine license and fees.

(a) A person storing explosives shall do so in a magazine licensed by the Department. A person may not construct, install or modify a magazine until the Department has issued or amended the license in writing. The licensee shall store explosives in accordance with the approved application, the license and this chapter.

(b) The license specifies the types and quantities of explosives to be stored in the magazine and any other condition necessary to ensure that the proposed activity complies with applicable statutes and this chapter.

(c) Licenses expire annually on December 31 of each year. If the Department receives a complete renewal

application by December 31, the licensee may continue to operate under the current license until the Department acts on the renewal application.

(d) License fees are as follows:

(1) License:

(i) Application—$50

(ii) Site inspection—$50

(2) License modifications—$50

(3) License renewals—$50

(4) License transfers—no fee

§ 211.113. Application contents.

(a) An application to obtain, renew, modify or transfer a magazine license shall be on forms approved by the Department. Before the Department issues, renews, transfers or modifies a license, the application must demonstrate that the applicant has complied with the applicable requirements of this chapter.

(b) A license application shall include:

(1) The applicant's identity, including name, address and telephone number.

(2) A contact person, including name, title and telephone number.

(3) The types and quantities of explosives to be stored at the magazine.

(4) A map, plan or a sketch of the site location showing the nearest buildings, nearest railways, nearest highways, and existing barricades, if any, and proposed barricades.

(5) A plan showing the design and specifications of the magazine to be licensed.

(c) A license renewal application shall include:

(1) The applicant's identity, including name, address and telephone number.

(2) A contact person, including name, title and telephone number.

(3) The maximum amount and type of explosives for which the magazine is currently licensed.

§ 211.114. Displaying the license.

The magazine license, or a legible copy of the license, shall be conspicuously displayed. If possible, the license shall be displayed inside the magazine. In all other cases, the license shall be displayed at the site and adjacent to the magazine to which it applies.

§ 211.115. Standards for classifying and storing explosives and constructing, maintaining and siting magazines.

(a) The provisions of 27 CFR Part 55, Subpart K (relating to storage), are incorporated herein by reference. These provisions shall be used to:

(1) Classify explosives.

(2) Determine which class of explosives may be stored in each type of magazine.

(3) Determine the quantity of explosives that may be stored.

(4) Determine the applicable construction standards for each type of magazine.

(5) Site the magazine.

(6) Specify maintenance and housekeeping standards for a magazine.

(7) Grant variances.

(b) For purposes of incorporation by reference of 27 CFR Part 55 Subpart K, the term "Department" is substituted for the term "director," and the term "representatives of the Department" is substituted for the term "ATF Official."

Subchapter C. Permits

Sec.

211.121. General requirements.
211.122. Permits to sell explosives.
211.123. Permits to purchase explosives.
211.124. Blasting activity permits.
211.125. Blasting activity permit by rule.

§ 211.121. General requirements.

(a) Except as otherwise provided in this subchapter, a person may not engage in blasting activities, or sell or purchase explosives in this Commonwealth without first obtaining the appropriate permit from the Department issued under this chapter.

(b) Permits under this chapter are not required for the sale, purchase or use of fireworks governed by the act of May 15, 1939 (35 P. S. §§ 1271—1277).

(c) A permit issued under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.18), or the Noncoal Surface Mining and Conservation and Reclamation Act (52 P. S. §§ 3301—3326), and the regulations promulgated thereunder, authorizing blasting activity shall act as a blasting activity permit issued under this chapter.

(d) An application for a permit for the sale or purchase of explosives or to conduct blasting activities shall be on a form provided by the Department. A permit will not be issued unless the application is complete and demonstrates that the proposed activities comply with the applicable requirements of this chapter. The permittee shall comply with the approved application, the permit and this chapter.

(e) The Department will not issue a permit to any person who has either:

(1) Failed and continues to fail to comply with this chapter or a condition of a permit issued under this chapter or an order issued to enforce this chapter.

(2) Demonstrated an inability or lack of intention to comply with this chapter as indicated by past or continuing violations.

§ 211.122. Permits to sell explosives.

(a) An application for a permit to sell explosives shall:

(1) Identify the applicant's name, address, telephone number and type of business.

(2) Identify a contact person, including name, title and telephone.

(3) Specify the type of explosives to be sold.

(4) State whether the applicant will purchase or manufacture the explosives to be sold.

(5) For in-State sellers, include the applicant's magazine license number, if applicable.

(b) Permits to sell explosives are not transferable.

(c) Permits to sell explosives expire on April 30 of each year. If the Department receives a complete renewal application by April 30, the permittee may continue to

operate under the current permit until the Department acts on the renewal application.

(d) A permit to sell explosives shall:

(1) Identify the permittee.

(2) Specify the type of explosives that the permittee may sell.

(3) Contain conditions, as necessary, to ensure that the proposed activity complies with applicable statutes and this chapter.

§ 211.123. Permits to purchase explosives.

(a) An application for a permit to purchase explosives shall:

(1) Identify the applicant's name, address, telephone number and type of business.

(2) Identify a contact person, including name, title and telephone number.

(3) Identify the location and license number of the magazine to be used for storing the explosives, if applicable.

(4) Specify the type of explosives that will be purchased.

(5) Specify whether the explosives are being purchased for sale or use by the permittee.

(b) Permits to purchase explosives are not transferable.

(c) Permits to purchase explosives expire on April 30 of each year. If the Department receives a complete renewal application by April 30, the permittee may continue to operate under the current permit until the Department acts on the renewal.

§ 211.124. Blasting activity permits.

(a) An application for a blasting activity permit shall be prepared by a blaster and shall include:

(1) The applicant's name, address, telephone number and type of business.

(2) A contact person's name, title and telephone number.

(3) The identity of independent subcontractors who will be performing the blasting activities.

(4) The type of explosives to be used.

(5) The maximum amount of explosives that will be detonated per delay interval of less than 8 milliseconds.

(6) The maximum amount of explosives that will be detonated in any one blast.

(7) A map indicating the location where the explosives will be used.

(8) The purpose for which the explosives will be used.

(9) The location and license number of the magazine that will be used to store the explosives, if applicable.

(10) A description of how the monitoring requirements of Subchapter G (relating to requirements for monitoring) will be satisfied.

(11) Proof of third party general liability insurance in the amount of $300,000 or greater per occurrence. This requirement is not applicable if the permittee is a noncoal surface mine operator who produces no more than 2,000 tons (1,814 metric tons) of marketable minerals per year from all its noncoal surface mining operations.

(12) The anticipated duration of the blasting activity for which the permit is needed.

(13) The anticipated days of the week and times when blasting may occur.

(14) The distance and direction to the closest building not owned by the permittee or its customer.

(15) Other information needed by the Department to determine compliance with applicable laws and regulations.

(16) The printed name, signature and license number of the blaster who prepared the application.

(17) Proof that residents within 200 feet (65.61 meters) of the blast site were informed of the proposed blasting operation. This notification could be a personal notification, written material left at each residence or first class mail. The notification will provide general information about the blasting operation including the duration of the operation.

(b) Blasting activity permits are not transferable.

(c) The blasting activity permit shall specify:

(1) The blasting activity permittee.

(2) Any independent subcontractors performing work under this permit.

(3) Limits on particle velocity and airblast.

(4) The types of explosives that may be used.

(5) The duration of the permit.

(6) Other conditions necessary to ensure that the proposed blasting activity complies with the applicable statutes and this chapter.

(d) The permittee may request extensions and modifications by submitting an amended application.

§ 211.125. Blasting activity permit by rule.

(a) A person shall be deemed to have a permit for a blasting activity if:

(1) The blasts are designed and performed for a scaled distance of 90 or greater.

(2) No more than 15 pounds (6.81 kilograms) of explosives are detonated per delay interval of less than 8 milliseconds.

(3) The total charge weight per blast does not exceed 150 pounds (68.18 kilograms).

(4) The person notifies the Department either verbally, in writing, or by other means approved by the Department prior to the initial blast. If the person gives verbal notification, a written notice shall be received by the Department within 5 working days. The notification shall indicate the following information for all blasts that will occur under this permit:

(i) The identity of the person.

(ii) The location where the blasting will occur.

(iii) The purpose of the blasting.

(iv) The distance to the nearest building not owned or leased by the person or its customer.

(v) The days of the week and times when blasting may occur.

(vi) The duration of blasting activities under this permit by rule.

(vii) The minimum scaled distance.

(viii) The maximum weight of explosives detonated per delay period of less than 8 milliseconds.

(ix) The maximum total weight of explosives per blast.

(x) A contact person and telephone number.

(5) Blast reports are completed in accordance with § 211.133 (relating to blast report).

(6) The other monitoring and performance standards of this chapter are met.

(b) The Department may revoke a blasting activity permit by rule under one of the following:

(1) The permittee has demonstrated an unwillingness or inability to comply with the applicable regulations.

(2) The blasting activity possesses a sufficient risk of harm to the public or the environment to warrant an individual blasting activity permit.

Subchapter D. RECORDS OF DISPOSITION OF EXPLOSIVES

Sec.

211.131. Sales records.
211.132. Purchase records.
211.133. Blast report.

§ 211.131. Sales records.

The seller shall keep an accurate record of every sale of explosives for 3 years. The record shall identify the purchaser's name and address, the Department purchase permit number, the date of the sale and the amount and types of explosives.

§ 211.132. Purchase records.

The purchaser shall keep a record of all purchases of explosives for 3 years. The record shall identify the date, types and amounts of explosives purchased and the name and address of the seller.

§ 211.133. Blast report.

(a) The blaster-in-charge shall prepare a report of each blast report to provide the Department with sufficient information to reconstruct the conditions and events surrounding a blast. The Department may develop and require a blast report form to be used. The blasting activity permittee shall retain the blast report for at least 3 years and shall make the blast report available to the Department upon request. Blast reports shall contain, at a minimum, the following:

(1) The locations of the blast and monitoring readings.

(2) The name of the blasting activity permittee.

(3) The permit number.

(4) The date and time of the blast.

(5) The printed name, signature and license number of the blaster-in-charge.

(6) The type of material blasted.

(7) A sketch showing the number of blast holes, burden, spacing, pattern dimensions and point of initiation.

(8) The diameter and depth of blast holes.

(9) The height or length of stemming and deck separation.

(10) The types of explosives used and arrangement in blast holes.

(11) The total weight in pounds of explosives and primer cartridges used.

(12) The maximum weight in pounds of explosives detonated per delay period of less than 8 milliseconds.

(13) The type of circuit, if electric detonation was used.

(14) The direction and distance in feet from the blast site to the nearest building not owned by the blasting activity permittee or its customer.

(15) A description of the nearest building location based upon local landmarks.

(16) The scaled distance.

(17) The weather conditions.

(18) The direction from which the wind was coming.

(19) The measures taken to control flyrock, including whether or not mats were used.

(20) The total quantity and type of detonators used and delays used.

(21) The number of individuals in the blasting crew.

(22) The maximum number of blast holes or portions of blast holes detonated per delay period less than 8 milliseconds.

(23) The monitoring records required by § 211.173 (relating to monitoring records). Monitoring records shall be made part of the blast report within 30 days of the blast. Beginning _____ (*Editor's Note*: The blank refers to a date 3 years from the effective date of adoption of this proposal.), monitoring records shall be made part of the blast report within 7 days of the blast.

(24) If a misfire occurred, the actions taken to make the site safe.

(b) The Department may require monthly summaries of these reports. The summaries shall include the date and time of the blasts, scaled distance, peak particle velocity, airblast, monitoring location, amount and types of explosives used and other information the Department deems necessary to ensure compliance with this chapter.

Subchapter E. TRANSPORTATION OF EXPLOSIVES

§ 211.141. General requirements.

The blasting activity, purchase or sale permittee shall:

(1) Immediately unload a vehicle carrying explosives upon reaching a magazine location. The unloaded vehicle shall be removed from the site. The only exception to this requirement is if the vehicle is a licensed magazine under Subchapter B (relating to the storage and classification of explosives).

(2) Load or unload explosives from a vehicle only after the engine is turned off, unless power is needed for the loading or unloading operation. The permittee shall take all precautions necessary, such as blocking the wheels, to prevent the movement of the vehicle while it is being loaded or unloaded.

(3) Load explosives only into a vehicle that is marked in accordance with the Department of Transportation standards for placarding vehicles transporting explosives.

(4) Prohibit smoking within 100 feet of a vehicle used for transporting explosives. "NO SMOKING" signs shall be posted when a vehicle containing explosives is parked at a blast site or magazine.

(5) Load no more than 2,000 pounds (908 kilograms) of explosives into an open body vehicle for transporting. The ends and sides shall be high enough to prevent explosives from falling off, and the load shall be covered with a fire-resistant tarpaulin, unless the explosives are transported in a magazine securely attached to the vehicle.

(6) Only load explosives into a closed body vehicle if the load is 2,000 pounds (908 kilograms) or more of explosives.

(7) Only load explosives into a vehicle with a bed made of wood or other nonsparking material.

(8) Load explosives into a vehicle which is also transporting metal, metal tools, blasting machines or other articles or materials likely to damage the explosives, only if these items are separated from the explosives by substantial nonsparking bulkheads constructed to prevent damage to the explosives.

(9) Load detonators and other explosives into the same vehicle only if the detonators are in containers that conform to the current version of the Institute of Makers of Explosives Safety Library Publication # 22 available from the Institute of Makers of Explosives, 1120 Nineteenth Street, N. W., Suite 310, Washington, DC 20036-3605.

(10) Not load explosives into the same vehicle with materials such as matches, firearms, electric storage batteries, corrosive compounds, flammable substances, acids, oxidizing agents and ammonium nitrate not in the original containers.

(11) Only load explosives into vehicles equipped with at least two fire extinguishers approved and coded by the National Board of Underwriters. The fire extinguishers shall be easily accessible and ready for immediate use. If the vehicle has:

(i) A gross weight of 14,000 pounds (6,356 kilograms) or less, the extinguishers shall have a combined capacity of 4-A:20-B,C, or equivalent.

(ii) A gross weight of greater than 14,000 pounds (6,356 kilograms) and for tractor/semitrailers, the extinguishers shall have a combined capacity of 4-A:70-B,C, or equivalent.

(12) Load explosives into a vehicle so that explosives containers are not exposed to sparks or hot gases from the exhaust tailpipe. Exhaust systems that discharge upwards are recommended to avoid possible exposure of sparks or hot gases to explosives.

(13) Only load explosives into vehicles that have passed the State safety inspection or certification.

Subchapter F. BLASTING ACTIVITIES

Sec.

211.151. Prevention of damage.
211.152. Control of noxious gases.
211.153. General requirements for handling explosives.
211.154. Preparing the blast.
211.155. Preblast measures.
211.156. Detonating the blast.
211.157. Postblast measures.
211.158. Mudcapping.
211.159. Electric detonation.
211.160. Nonelectric detonation.
211.161. Detonating cords.
211.162. Safety fuse.

§ 211.151. Prevention of damage.

(a) Blasting may not damage real property except for real property under the control of the permittee. If damage occurs, the blaster-in-charge shall notify the Department within 4 hours of learning of the damage.

(b) Blasting may not cause flyrock. If flyrock occurs, the blaster-in-charge shall notify the Department within 4 hours of learning of the flyrock.

(c) Blasts shall be designed and conducted in a manner that achieves either a scaled distance of 90 or meets the maximum allowable peak particle velocity as indicated by Figure 1. However, blasting activities authorized prior to _____ (*Editor's Note*: The blank refers to the effective date of the adoption of this proposal. Figure 1 appears on page 2782.) may continue as authorized unless the authorization is modified, suspended or revoked by the Department. The scaled distance and maximum allowable peak particle velocity does not apply at a building or other structure owned or leased by the permittee or its customer.

(d) Blasts shall be designed and conducted to control airblast so that it does not exceed the noise levels specified in Table 1 at a building or other structure designated by the Department unless the building is owned or based by the permittee or its customer.

Table 1

Lower frequency limits of measuring System in Hz(+3dB)	Maximum allowable levels in dBL
0.1 Hz or lower—flat response*	134 peak
2.0 Hz or lower—flat response	133 peak
6.0 Hz or lower—flat response	129 peak
C—weighted—slow response*	105 peak
*only when approved by the Department	

(e) The Department may reduce the maximum peak particle velocity or airblast level if it determines that a lower standard is appropriate because of density of population, land use, age or type of structure, geology or hydrology of the area, frequency of blasts or other factors.

§ 211.152. Control of noxious gases.

A blast shall be conducted so that the gases generated by the blast do not affect the health and safety of individuals. Effects from gases may be prevented by taking measures such as venting the gases to the atmosphere, interrupting the path along which gases may flow, and evacuating people from areas that may contain gases.

§ 211.153. General requirements for handling explosives.

(a) Only a nonferrous, nonsparking tool shall be used to open containers of explosives.

(b) Matches, lighters and smoking are prohibited within 100 feet (30.84 meters) of the blast site and areas where explosives are used or stored.

(c) If it becomes necessary to destroy damaged or deteriorated explosives, the permittee shall immediately contact the manufacturer for technical advice and assistance.

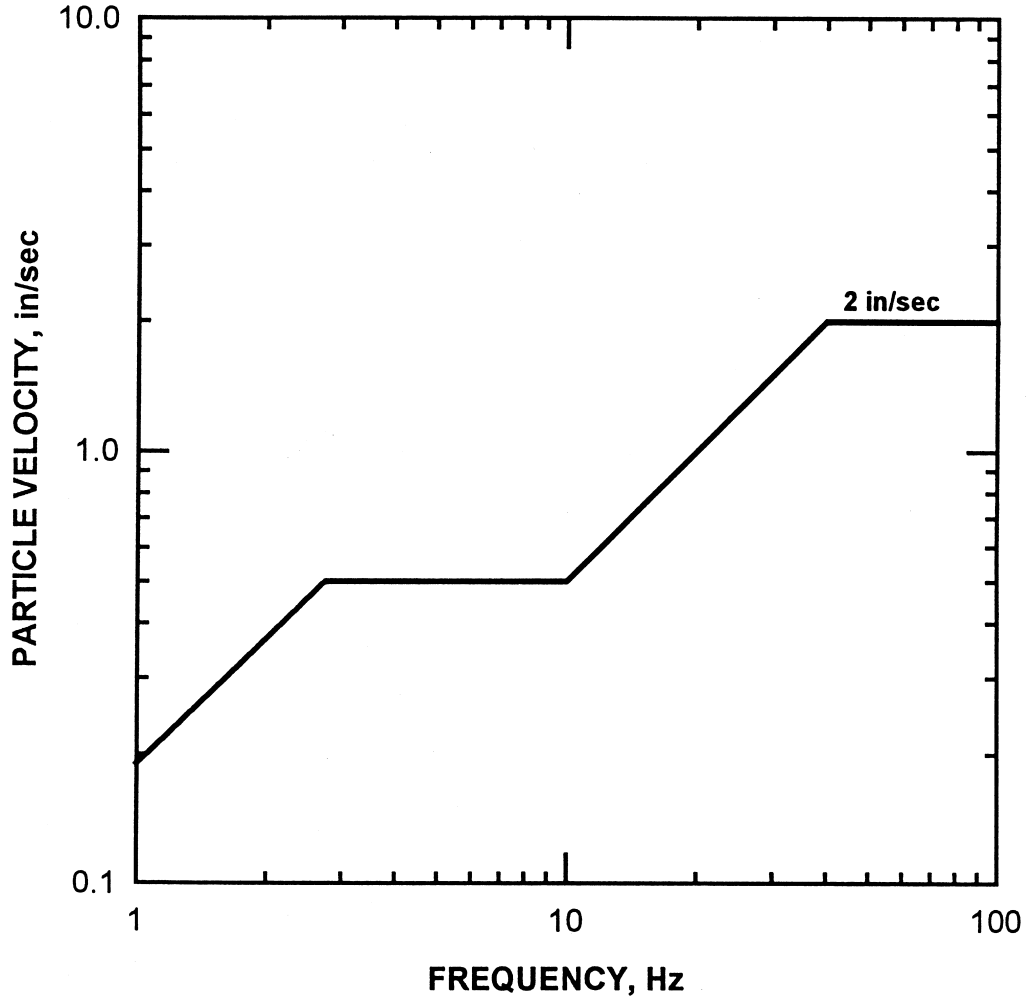
(d) Detonators may not be forced into cartridges of explosive or cast boosters. Detonators shall be completely inserted into a hole in an explosive cartridge made with an approved powder punch or into the detonator well of a cast booster.

(e) Explosives may not be left unattended. They are to be stored in a licensed magazine or kept under the permittee's supervision and control.

(f) A loaded blast shall always be under the continuous observation of the blaster-in-charge or a designee.

(g) Shooting or carrying ammunition or firearms on a blast site and in areas where explosives are used or stored is prohibited, except for material needed to initiate the blast.

Figure 1.



(h) If blasting activities are conducted in the vicinity of electric lines such as transmission lines or electrified railways, a test shall be made for presence of stray electric currents. Electric blasting caps may not be used if stray electric currents in excess of 50 milliamperes are present.

(i) A package of explosives may not be thrown, slid along floors or over other packages of explosives, or handled roughly.

(j) If an electrical storm approaches an area where there is an activity involving explosives, the area shall be cleared by the permittee or licensee, who shall post guards at all approaches to prevent trespass of unauthorized persons.

(k) Explosives and equipment that are obviously damaged or deteriorated may not be used.

(l) Explosives may not be abandoned.

§ 211.154. Preparing the blast.

(a) The blasting activity permittee shall designate a blaster-in-charge for each blast. The blaster-in-charge shall control and supervise the blasting activity. The blaster-in-charge is responsible for all effects of the blast.

(b) Only equipment necessary for loading blast holes may be allowed to operate within 50 feet (15.24 meters) of the blast site. The Department may establish in writing a different distance limitation.

(c) A person may not prepare or detonate a blast unless another person is present, able and ready to render assistance in the event of accident or injury.

(d) The blaster-in-charge shall make every effort to determine the condition of the material to be blasted from the individual who drilled the blast holes or from the drill log.

(e) Only the blaster-in-charge, other blasters, and up to six assistants per blaster may be at a blast site once loading of blast holes begins.

(f) While loading a blast hole, the following measures shall be followed:

(1) Ferrous material may not be used in the blast hole unless the use is approved by the Department in writing. This includes the use of steel casings, ferrous tools and retrieving equipment.

(2) Only nonferrous, nonsparking tamping sticks may be used in loading a blast hole. Sectional poles connected

by brass fittings are permitted, if only the wooden end of the pole is used for tamping. Retrieving hooks shall be made from nonsparking metal such as brass or bronze.

(3) When using a pneumatic loading device, every precaution shall be taken to prevent an accumulation of static electricity. A loading operation shall be stopped immediately if static electricity or stray electrical currents are detected. The condition shall be remedied before loading may be resumed.

(4) The blast hole shall be carefully checked for obstructions with a wooden tamping pole, a tape, a light or a mirror before it is loaded. The use of magnifying mirrors is prohibited. Explosives may not be forced past an obstruction in a blast hole.

(5) The blast hole shall be logged to measure the amount and location of explosives placed in the blast hole. The information is to be recorded on the blast report required by § 211.133 (relating to blast report).

(6) A blast hole containing loose dynamite shall be stemmed but not tamped.

(7) The Department may specify the type and amount of stemming.

(g) Before connecting one loaded blast hole to another, all activity within the blast area shall cease, and all nonessential persons shall retreat to a safe place. The blaster-in-charge shall determine the blast area.

(h) Primers shall be prepared only at the hole to be loaded, immediately prior to loading. The components of the primer are to be kept separated at the collar of the blast hole. The primer may not be slit, dropped, deformed or carelessly handled and may not be tamped or forced into the blast hole.

(i) Immediately upon completing the loading of a blast hole, any wood, paper or other materials used to pack explosives shall be inspected for the presence of explosives and removed to an isolated area. These materials may be burned after the blast has been fired. Persons may not be within 100 feet (30.48 meters) of these burning materials.

(j) Measures shall be taken to reduce the chance of flyrock including:

(1) The use of blasting mats or other protective devices, if, in the opinion of the blaster-in-charge, the measures are necessary to prevent injuries to persons or damage to property.

(2) When blasting to an open, vertical face, checking the face for loose, hanging material or other faults prior to loading the blast holes.

(k) Explosives may not be brought to a blast site in greater quantities than that needed for that blast. Surplus explosives may not be stored at the blast site.

(l) Before a blast hole is loaded, it shall be checked to ensure that it is cool and does not contain any hot metal or smoldering material remaining from drilling the hole.

(m) The use of abrasive or sharp-edged constituents in stemming material shall be avoided if tamping is necessary and the tamping may sever blasting cap leg wires, shock tubes or detonating cords.

(n) Blasting activities may not be conducted within 800 feet (243.84 meters) of a public roadway unless precautionary measures are taken to safeguard the public. Precautionary measures include stopping or slowing of traffic and posting signs.

§ 211.155. Preblast measures.

Prior to detonating a blast, the blaster-in-charge shall:

(1) Ensure that all excess explosives have been removed from the blast area and are located in a safe area.

(2) Inspect the blast site to ensure that connections are proper and adequate.

(3) Ensure that the blast area is cleared and safeguarded.

(4) In addition to the warning signal, notify all persons who may be in danger.

(5) Ensure that the necessary precautions are in place to protect the public on public roads.

(6) At least 1 minute but no more than 2 minutes prior to detonation, sound a warning signal of three blasts, each lasting approximately 5 seconds. The warning signal shall be of sufficient power to be heard 1,000 feet (304.80 meters) from the blast site.

§ 211.156. Detonating the blast.

(a) A blast may be detonated only between sunrise and sunset unless the Department authorizes a blast at another time of day.

(b) Only the blaster-in-charge may detonate a blast.

§ 211.157. Postblast measures.

(a) After a blast has been detonated, no one may return to the blast area until all smoke and fumes have dissipated.

(b) After the smoke and fumes have cleared, the blaster-in-charge shall return to the blast site and closely inspect the blast site to ensure that it is safe with respect to the blasting activity.

(c) After the blaster-in-charge has determined the blast area is safe, the blaster-in-charge shall sound an all-clear signal, consisting of one long blast, lasting approximately 10 seconds. This all-clear signal shall be of sufficient power to be heard 1,000 feet (304.80 meters) from the blast site.

(d) The blaster-in-charge shall determine if a misfire occurred and shall take all actions necessary to render the blast site safe. The blast site shall be made safe before drilling or muck removal begins.

(e) If the blaster-in-charge suspects that undetonated ammonium nitrate/fuel mixture remains in the muck pile, the muck pile shall be thoroughly wetted down with water before any digging is attempted. Special attention shall be given to determine if primers, other explosives or detonators are present in the muck pile.

(f) The blaster-in-charge shall immediately complete the blast report as required by § 211.133 (relating to blast report).

(g) The blaster-in-charge shall notify the Department within 24 hours of the occurrence of a misfire. A copy of the blast report shall be forwarded to the Department.

§ 211.158. Mudcapping.

Mudcapping in blasting activities is allowed only if the blaster-in-charge determines that drilling the material to be blasted would endanger the safety of the workmen. If mudcapping is necessary, no more than 10 pounds (4.53 kilograms) of explosives shall be used for a blast.

§ 211.159. Electric detonation.

(a) Electric blasting caps shall be tested for continuity with a blaster's galvanometer or blaster's multimeter specifically designed for testing blasting circuits. Testing shall be done:

(1) Before the primers are made up.

(2) After the blast hole has been loaded but prior to stemming.

(3) As the final connecting of the circuit progresses.

(b) When a shunt is removed from electric blasting cap leg wires, the exposed wires shall be reshunted.

(c) Electric blasting caps may not be employed in a blast if there is any possibility of wires from the circuit being thrown against overhead or nearby electric lines.

(d) An effort may not be made to reclaim or reuse electric blasting caps if the leg wires have been broken off near the top of the cap.

(e) Leg wires on electric blasting caps shall extend above the top of the blast hole. Wire connections and splices are not allowed in the blast hole.

(f) Only solid wire shall be used in a blasting circuit. The use of stranded wire is prohibited.

(g) When electric detonation is used near public roads, signs shall be erected at least 500 feet (152.40 meters) from the blast areas reading: "BLAST AREA—SHUT OFF ALL TWO-WAY RADIOS."

(h) A blasting machine is the only permissible source of electrical power for a detonation.

(i) The blasting circuit shall remain shunted until the time for detonation unless the circuit is being tested or connections are being made.

(j) A sticker shall be displayed on blasting machines that shows they have been tested within the last 30 days by procedures recommended by the manufacturer or supplier to ensure performance at rated capacity. If blasting caps are used in the test, they shall be covered with earth or sand.

(k) When electronic detonation is used, the blaster-in-charge shall determine that adequate current, as specified by the manufacturer of the detonators, is available to properly energize the detonators in the circuit.

§ 211.160. Nonelectric detonation.

Nonelectric initiation systems shall be checked and tested for secure connections in accordance with recommendations of the manufacturer of the system in use.

§ 211.161. Detonating cords.

(a) Detonating cord shall be cut from the supply roll immediately after placement in the blast hole. A sufficient length of downlines shall be left at the top of the blast hole for connections to trunk lines. The supply roll shall be immediately removed from the site. Scrap pieces of detonating cord shall be destroyed after connections are made.

(b) A trunk line shall be covered with at least 12 inches (0.30 meter) of earth or sand, unless otherwise authorized by the Department.

(c) Detonating cord may not be spliced if the resulting splice will fall within a blast hole.

§ 211.162. Safety fuse.

(a) When safety fuse is used in blasting, it shall be long enough to provide a burn time of 120 seconds or longer.

(b) Prior to using safety fuse, the blaster-in-charge shall conduct a test burn. The test burn will utilize at least a 12-inch (0.30-meter) section of fuse which is lit, then timed to determine actual burn time.

(c) A blasting cap shall only be crimped to a safety fuse with a proper crimping tool. A blasting cap may not be attached to safety fuse in or within 10 feet (3.05 meters) of a magazine.

Subchapter G. REQUIREMENTS FOR MONITORING

Sec.

211.171. General provisions for monitoring.
211.172. Monitoring instruments.
211.173. Monitoring records.

§ 211.171. General provisions for monitoring.

(a) If the scaled distance of a blast is 90 or numerically less at the closest building not owned or leased by the blasting activity permittee or its customer, ground vibration and airblast monitoring shall be conducted. The Department may require the permittee to conduct ground vibration and airblast monitoring at other buildings or structures even if the scaled distance is greater than 90.

(b) Blasting activities without monitoring may be considered in compliance with this chapter if at a specified location, on at least five blasts, monitoring has demonstrated that the maximum peak particle velocity at the specified location represents more than a 50% reduction from the limit in the permit and this chapter. Future blasts shall maintain a scaled distance equal to or greater than the scaled distance for the monitored blasts.

(c) If monitoring is required, a ground vibration and airblast record of each blast shall be made part of the blast report.

(d) If monitoring is performed with instruments that have variable "trigger levels," the trigger for ground vibration shall be set at a particle velocity of no more than 50% of the compliance limit unless otherwise directed by the Department.

(e) If the peak particle velocity and airblast from a blast are below the set trigger level of the instrument, a printout from the instrument shall be attached to the blast report. This printout shall provide the date and time when the instrument was turned on and off, the set trigger levels and information concerning the status of the instrument during the activation period.

§ 211.172. Monitoring instruments.

If monitoring is required, the monitoring instrument shall provide a permanent record of each blast.

(1) A monitoring instrument for recording ground vibration, at a minimum, shall have:

(i) A frequency range of 2 Hz to 100 Hz.

(ii) Particle velocity range of .02 to 4.0 inches (5.08×10^{-4} to 0.10 meters) per second or greater.

(iii) An internal dynamic calibration system.

(2) A monitoring instrument used to record airblast shall have:

(i) A lower frequency limit of 0.1, 2.0 or 6.0 Hz.

(ii) An upper end flat-frequency response of at least 200 Hz.

(iii) A dynamic range that, at a minimum, extends from 106 to 142 dBL.

(3) A monitoring instrument shall be calibrated annually and when an instrument is repaired and the repair may effect the response of the instrument. Calibration shall be done by the manufacturer of the equipment, or by an organization approved by the manufacturer, or by an organization having verifiable knowledge of the calibration procedures developed by the manufacturer. The calibration procedure shall include testing the response of the entire system to externally-generated dynamic inputs. These inputs shall test the entire monitoring system at a sufficient number of discrete frequency intervals to assure flat response throughout the frequency ranges specified by this chapter. Dynamic reference standards used for calibration shall be traceable to the National Institute of Standards and Technology (NIST). Calibration procedures and documentation of calibration shall be made available for review by the Department.

(4) A nonalterable sticker that is clearly visible shall be firmly affixed to the instrument. The sticker shall indicate the name of the calibration facility, the calibration technician, the date of calibration and frequency range of the airblast monitor.

§ 211.173. Monitoring records.

(a) Anyone using a monitoring instrument shall be trained on the proper use of that instrument by a representative of the manufacturer or distributor, or other competent individual. A record of that training is to be maintained and available for review by the Department.

(b) Monitoring records, at a minimum, shall contain:

(1) The calibration pulse.

(2) The calibration signal of the gain setting, for instruments with variable gain settings.

(3) The time history of particle velocities for three mutually perpendicular ground vibration traces and one air-overpressure trace, including time base, amplitude scales and peak values for all traces.

(4) The results of a field calibration test for each channel.

(5) The frequency content of all vibration signals using either single degree of freedom (SDF) response spectrum or half-cycle zero-crossing analysis methods.

(6) Frequency versus particle velocity plots as indicated in § 211.151(c), Figure 1 (relating to prevention of damage).

(7) The name and signature of the individual taking the recording.

(8) The location of the monitoring instrument, date and time of the recording.

(9) The last calibration date of the monitoring instrument.

(c) The Department may require a ground vibration or airblast recording to be analyzed or certified by an independent, qualified consultant who is not related to the blasting activity permittee or its customer. When the Department requires that a recording be analyzed or certified, it shall be performed and included with the blast report within 30 days.

Subchapter H. BLASTING ACTIVITIES NEAR UTILITY LINES

Sec.

211.181. Scope.
211.182. General provisions.

§ 211.181. Scope.

This subchapter applies to buried or underground utility lines and utility lines making contact with the surface of the ground.

§ 211.182. General provisions.

(a) Blasts shall be designed and conducted so that they provide the greatest relief possible in a direction away from the utility line and to keep the resulting vibration and actual ground movement to the lowest possible level.

(b) Blasting shall use a type of explosive specifically designed to minimize the likelihood of propagation between explosive charges.

(c) When blasting within 200 feet (60.96 meters) of a utility line, blast holes may not exceed 3 inches (7.62 x 10^{-2} meters) in diameter.

(d) Blasting in the vicinity of a utility line shall be conducted as follows:

(1) Excavation from the ground surface to a depth corresponding to the elevation of the top of the buried utility line may proceed at the discretion of the blaster-in-charge, using safe, accepted techniques.

(2) Once the excavation has attained a depth equal to the elevation of the top of the buried utility line or if the line is exposed, or makes solid contact with the surface, the vertical depth of subsequent blast holes shall be restricted to one half the horizontal distance from the closest portion of the utility line.

(e) If one or more of the requirements listed in this section are not feasible or creates a potential safety problem, the permittee may apply to the Department for a waiver of the provision or provisions in question. This waiver will be granted if, in the judgment of the Department, the alternate procedure does not endanger the utility line.

[Pa.B. Doc. No. 00-940. Filed for public inspection June 2, 2000, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 4225 AND 4226]
Early Intervention Services

Statutory Authority

The Department of Public Welfare (Department), under the authority of the Early Intervention Services System Act (act) (11 P. S. §§ 875-102—875-503), proposes to adopt amendments to read set forth in Annex A.

Background

The Department is proposing regulations under the authority of the act that directs the Department to develop regulations for early intervention services for infants and toddlers under 3 years of age.

Community Early Intervention was initiated in 1971 with Federal P. L. No. 89-313 money going directly from the Department of Education to early intervention provider agencies.

Early Intervention categorical funding was initiated during fiscal year 1975-76. The Education Amendments Act of 1974, P. L. No. 93-380, defined the intent of Federal P. L. 89-313 moneys. The Education Amendments Act of 1974, contained a provision that the Federal P. L. No. 89-313 money earned must be given directly to that child who generated the funds, for the provision of supplemental educational services only.

As a result of this, the Department was directed to cease targeting of funds to specific agencies. A program revision request was developed for $1.5 million to replace, with State money, the amount of excess targeted Federal money so that programs could remain operational once the Federal funds were distributed equally. Legislative approval of this request allowed the Department to continue participation in the Federal P. L. No. 89-313 program. By receipt of State dollars, all eligible agencies serving eligible children were able to apply for Federal and State money to supplement the early intervention program. All eligible agencies (those who were serving children and submitting child counts) were offered the opportunity to receive Federal P. L. No. 89-313 funds.

The Federal Rights to Education Act 94-142 required all states having responsibility for the education of children with disabilities to have requirements for procedural safeguards. The Federal Department of Education Program Review of 1979 cited the Commonwealth, specifically the Department, for not having a system of procedural safeguards and surrogate parent provisions as required.

The Department established Chapter 4225 (relating to procedural safeguards for children in early intervention) to specify procedures for providing procedural safeguards for notice and consent; confidentiality; placement in least restrictive environment; development, implementation and review of individual program plans; and protection in evaluation for children in early intervention services; and established the rights the families were required to receive.

In 1986, the Individuals with Disabilities Education Act (IDEA) went into effect. Federal Part H of IDEA required the Department to provide procedural safeguards for children enrolled in the early intervention program and include the child's family in the family assessment.

Federal Part H of IDEA required that states designate a lead agency to be responsible for the Early Intervention Program. The act designates the Department to be responsible for the early intervention program for infants and toddlers under 3 years of age. The act also requires early intervention funding to be distributed through the county Mental Health/Mental Retardation Program (HM/HR) Offices. The legal entity may meet this requirement to assure appropriate early intervention services by contracting with public or private agencies that meet all the requirements and program standards of the act. The act further directed the Department to define and address all the issues concerning early intervention services by promulgating program regulations.

Since the act directed the Department to promulgate program regulations, policy bulletins were issued to clarify early intervention services requirements. Office of Mental Retardation Bulletins 4225-91-01; 4225-91-02; 4225-91-03; 4225-91-04; and 4225-91-05 were issued and the Department monitored the effect of the policy bulletins. Along with policy bulletins, intense involvement began for stakeholders to work in conjunction with the Department to draft early intervention program regulations.

Effective in 1997, IDEA was amended by Congress to update the law and the 1997 Amendment replaced Part H with Part C.

The purpose of this chapter is to assure that quality early intervention supports and services are consistently managed. These regulations address the needs of the child and the family's concerns, priorities and resources related to enhancing the development of the child with an individualized family service plan (IFSP). The chapter also establishes criteria for eligibility, contracting guidelines, standards for service delivery, staff qualifications and parental rights established in Part C of IDEA.

These proposed draft regulations are deleting Chapter 4225, 21 Pa.B. 2953 (June 29, 1991). The procedural safeguards are incorporated into the draft program regulations that will be in Chapter 4226.

Regulatory Development Process

A work plan describing the process and time frames that would be followed leading to final promulgation of Chapter 4226 was completed in July 1997. The plan provided for regular consultation with the State Interagency Coordinating Council, parents, early intervention consultants, early intervention provider organizations, legislative staff members and representatives from the county mental health and mental retardation program offices.

On September 22 and 23, 1997, December 11, 1997, and March 3, 1998, group meetings were held with Statewide representatives from the State Interagency Coordinating Council, parents, early intervention consultant organizations, provider organizations, legislative staff and the county mental health and mental retardation program offices. The meetings were convened to give briefings on the scope of the new chapter and to obtain input on major issues of particular concern to the different individuals and organizations represented. These meetings were referred to as stakeholder meetings.

The first in the series of meetings with stakeholders was convened on September 22 and 23, 1997. Prior to this meeting, invited participants were sent a preliminary draft of the proposed amendments. They were asked to review the document, submit written comments and attend the meeting prepared to make suggestions to improve the proposed amendments. Approximately 55 people were invited to attend the meeting.

Based on group recommendations, the proposed amendments were revised and sent back to the stakeholder group for written comments. Written comments were considered and further regulatory revisions were drafted prior to the December 11, 1997, meeting. Based on group recommendations again, all parties at the stakeholder meeting held on December 11, 1997, agreed to parallel Federal language from Federal Part C of IDEA where possible in drafting the proposed amendments to early intervention.

Written comments were again considered, and further revisions were drafted prior to the stakeholder meeting held on March 3, 1998, and prior to submission of this document as proposed rulemaking.

Scope

These proposed amendments are intended to apply to the legal entities administering early intervention services. The proposed amendments will direct legal entities to develop and implement a Statewide family-centered, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families. The legal entities will administer approximately 260 early intervention service providers to provide consistent early intervention services.

Format

Chapter 4226 regulations are written to be applied to the legal entities that administer early intervention services. In addition to the general provisions and the Definition sections, the proposed chapter is divided into sections that fall under six additional headings.

The Financial Administration heading contains §§ 4226.11—4226.15 that explain how the money is allocated and how the financial obligations are mandated. The General Requirements heading contains §§ 4226.21—4226.43 that detail the eligibility process, screening process and the training process. The Personnel heading contains §§ 4226.51—4226.57 that explains staffing requirements and qualifications.

The Evaluation and Assessment heading contains §§ 4226.61—4226.63 that details how the initial evaluation should be coordinated with the child's family. The Individualized Family Service Plans (IFSPs) heading contains §§ 4226.71—4226.75 that details procedures for the IFSP development, review and evaluation. The last heading, Procedural Safeguards, contains §§ 4226.91—4226.105 that explain hearings, appeals, mediations and parental rights. The Procedural Safeguards were in effect since 1983 and the Department is proposing to incorporate the safeguards into the proposed rulemaking.

Need for Proposal

The General Assembly directed, in section 302(a) of the act, that the Department develop regulations to comply with the act and the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Act Amendments of 1997, 20 U.S.C.A. §§ 1431—1445. Specifically, the Department was authorized to develop regulations to govern the methods for locating and identifying eligible children; criteria for eligible programs; contracting guidelines; personnel qualifications and a system of preservice and inservice training; early intervention services; procedural safeguards; appropriate placement, including the least restrictive environment; a system of quality assurance, including evaluation of the developmental appropriateness; quality and effectiveness of programs; assurance of compliance with the program standards; and provisions of assistance to assure compliance; data collection and confidentiality; interagency cooperation at the State and local level through the State interagency agreement and local interagency agreements; content and development of IFSPs; and any other issues which are required under the act and Part H and Part C.

In addition, the Legislative Budget and Finance Committee (LBFC) under the authority of House Resolution 354 recommended the Department should promulgate program regulations as required by the act. The LBFC determined the early intervention program would benefit from the structure that program regulations provide and would also promote standardization of practices and procedures among counties.

Financial Management

§§ 4226.11—4226.15 (relating to financial management)

The proposed financial management section on financial administration of early intervention services applies Chapter 4300 (relating to county mental health and mental retardation fiscal manual), to the legal entities to identify allowable costs and the responsibility to access all private and public funding sources.

The section explains why legal entities are responsible for administering all early intervention services, whether or not the services are eligible under Medicaid waiver.

General Requirements

§ 4226.21 (relating to delegation of responsibilities)

This section allows a legal entity to contract with another agency to execute necessary requirements of this chapter. Although a legal entity possibly will contract with another agency to deliver early intervention services, the legal entity retains responsibility for assuring compliance with the program.

§ 4226.22 (relating to eligibility for early intervention services)

The criteria and standards by which legal entities shall measure early intervention services eligibility for all eligible children are defined in this section.

§ 4226.23 (relating to waiver eligibility)

This section of the regulations relate to the Medicaid waiver for the infants, toddlers and families reflects responsibilities for administration of services funded under this waiver.

The Medicaid waiver is established under section 1915(c) of the Social Security Act. Waiver funded services have been available to provide services for individuals with mental retardation, since 1983. The Medicaid waiver for infants, toddlers and families is approved for a 3 year period from July 1, 1998, to June 30, 2001, and may be renewed for additional 5 year periods based on the approval of the Secretary of the Department of Health and Human Services.

Proposed waiver regulatory provisions mirror county responsibilities that have already been established by a Department under Mental Retardation Bulletin 00-98-05, titled: Supplemental Grant Agreement for the infants, toddlers and families waiver, issued May 7, 1998. County MH/MR Program offices are required to sign this agreement as agents of the Commonwealth to assure Federal requirements are being met.

Regulations for administration of the waiver include provisions dealing with fiscal administration, eligibility, provider enrollment, freedom of choice safeguards, service management, and maintenance of state assurances required by the Federal Health Care Financing Administration. The regulations will establish requirements for independent multidisciplinary team evaluations; implementation of family-centered principles, and monitoring of cost and utilization of services. The legal entities would be responsible to administer services funded under this waiver in accordance with these proposed amendments.

§ 4226.24 (relating to comprehensive child find system)

Available services are directed to be coordinated by the legal entity to allow eligible children within a defined geographical location the opportunity to receive all eligible early intervention services and supports. This pro-

posed section requires a legal entity to develop an effective method to locate all eligible infants and toddlers and deliver the needed early intervention services. Legal entities must coordinate this child find system with the local interagency coordinating council and all other appropriate programs.

§§ 4226.25—4226.32 (relating to screening and tracking)

These sections detail the processes of initial screening of children who may be eligible for early intervention services. They describe and provide information concerning how eligibility is determined and when the multidisciplinary evaluations (MDE) team makes recommendations for further evaluations.

These sections define procedures to perform the screening as well as providing how information shall be shared in writing with the families. This information concerns the developmental status of their infants or toddlers and the supports and services that will be available to address the individualized needs of each child and family, based on the priorities and resources identified by the family.

The criteria for an at-risk child is defined here as stated in the act, and the legal entity is directed to develop a tracking system for at-risk children.

§ 4226.33 (relating to legal entity monitoring responsibilities)

This section requires a legal entity to monitor its early intervention service providers. The legal entity is required to monitor all early intervention services that occur within a defined geographical location, or any services that are contracted to an agency outside its defined geographical location. The legal entity is required to monitor each early intervention service provider at least once every 12 months.

§ 4226.34 (relating to community evaluations)

The regulations will require at least once in every 3 years, the legal entity to conduct an early intervention self-assessment review to ensure that all early intervention services are accomplishing their desired program goals and to ensure family satisfaction is occurring.

The Department will continue to develop the assessment process and provide training to the legal entities. During the past 5 years, the Department was paying an outside entity to develop and pilot an assessment instrument, based on Federal and State statute and Department policy bulletins. The Department has been using a formalized monitoring instrument for 3 years. The assessment process and the instrument for self-assessment are based on family-centered principles and other best practices.

§§ 4226.35—4226.37 (relating to training; preservice training; and annual training)

All professional and para-professional personnel providing early intervention services will be required to have preservice training as outlined in the regulations prior to working with family and children.

The Department will determine how many hours of training early intervention staff will receive on an annual basis. At least 24 hours of training on an annual basis seems to be the most appropriate. This training is required to be in early childhood developmental and health areas.

§ 4226.38 (relating to criminal history record check)

This section is proposed to ensure that the legal entities comply with, and monitor the Child Protective Services Law, 23 Pa.C.S. §§ 6301—6384 (Act 33). Although all legal entities and all early intervention service agencies must already comply with Act 33, a section in the proposed Early Intervention regulations will reinforce to all staff persons what is required in Act 33.

§ 4226.41 (relating to traditionally underserved groups)

To ensure that all proposed populations within a defined geographical location are equally involved in the planning and implementation of early intervention services, this section is intended to allow families access to culturally competent services.

§§ 4226.42 (relating to local interagency coordinating council)

When the act was enacted, the Department was directed to establish and maintain local interagency coordinating councils for defined geographic areas. This council is required by the Education of the Handicapped Act Amendments of 1986 (P. L. No. 99-457, 100 Stat. 1145).

This section directs the legal entity to ensure the local interagency coordinating councils are established, and to whom membership is to be limited. This section clarifies the powers and duties of the local council and establishes its authorization in the advisement and comments on the development of local interagency agreements. This section directs the local interagency coordinating council with whom it shall communicate regarding local interagency agreements.

Personnel

§§ 4226.51—4226.57 (relating to personnel)

The personnel sections define and outline specific qualifications and activities required of services coordinators and the early interventionists who perform early intervention services within each legal entity. A grandfather clause is included in the personnel qualifications for hiring and promoting before the effective date of these regulations.

The Department reviewed the literature regarding personnel qualifications and considered other regulations that are being applied to similar services. The Department determined that early interventionists and service coordinators do not have state-required certification, licensure or registration. The qualifications and activities outlined in these regulations are comparable with similar services in other regulations.

Evaluation and Assessment

§§ 4226.61—4226.63 (relating to evaluation and assessment)

These proposed sections require evaluation and assessment to determine initial and ongoing eligibility for early intervention services. Evaluation and assessment provides information for IFSP. These sections propose to mandate parental consent and nondiscriminatory practices.

IFSP

§§ 4226.71—4226.75 (relating to IFSP)

The outcome of evaluation and assessment is a written plan using information obtained during the evaluation and assessment process. The IFSP is a detailed description of services and supports, which will be provided to an infant or toddler and family, for a maximum period of 12 months with a review process every 6 months or less.

Federal Part C of IDEA specifies that the family is required to be involved in the planning, development, review and evaluation of the IFSP.

These sections detail the IFSP, which must be completed for each eligible child. Guidelines for the development, review, evaluation and content of the IFSP are detailed; when and where an IFSP meeting will be conducted is detailed; participants to be included in IFSP meetings and reviews are listed; and the steps for transition from early intervention are explained.

Procedural Safeguards

§§ 4226.91—4226.105 (relating to conflict resolution procedures and parental rights)

In these sections of the proposed amendments, the Department outlines procedures, parental rights and child status within a program during review and resolution of individual complaints.

These sections define the provisions of the procedural safeguards system for infants, toddlers and their families. The sections specify the legal entities' responsibilities relative to the actual processing of requests from families and the requirements that must be met to assist the families in understanding their rights regarding consent, native language, personally identifiable information and the parent's rights to examine records or to decline services.

Federal Part C of the 1997 amendments to IDEA specify that mediation between the legal entity and families is required for all issues concerning the early intervention services each child is receiving. This section requires the legal entity to ensure that procedures are adopted to allow the mediation process to occur.

This section outlines policies and procedures available to families, on a voluntary basis, for resolution of disputes through an independent mediation process.

§ 4226.105 (relating to surrogate parents)

This section will establish the procedures a legal entity must adopt to ensure the rights of eligible children when appointing surrogate parents.

Also in this section, the qualifications and rights of surrogate parents and foster parents will be established.

Summary of Fiscal Note

In drafting proposed Chapter 4226, consideration was given to the effect the regulations will have on the cost of providing early intervention services. These regulations incorporate requirements already imposed under the act, Part C of the IDEA, and accompanying regulations, and the infants, toddlers and families Medicaid waiver approved by the Health Care Financing Administration, all of which are currently in place. Therefore, no additional cost or savings is anticipated.

Paper Requirements

There are no additional paperwork requirements for these proposed amendments.

Effective Date

The final-form regulations will take effect upon publication as final rulemaking in the *Pennsylvania Bulletin*.

Sunset Date

No sunset date has been established for these proposed amendments.

Public Hearings

The Department will hold public hearings as follows:

Western Region
July 17, 2000
Western Instructional Support Center
5347 William Flynn Highway, Route 8
Gibsonia, PA 15044
10 a.m.—1 p.m.

Central Region
July 24, 2000
Central Instructional Support Center
6340 Flank Drive, Suite 600
Harrisburg, PA 17112
10 a.m.—1 p.m.

Southeast Region
July 25, 2000
Eastern Instructional Support Center
200 Anderson Road
King of Prussia, PA 19406
10 a.m.—1 p.m.

Requests to provide verbal comments are to be addressed to:

Mary Puskarich
Western Region OMR
1403 State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
(412) 565-5144

Tom Harfman
Northeast Region OMR
315 State Office Building
100 Lackawanna Avenue
Scranton, PA 18503
(570) 963-4391

Vicki Stillman-Toomey
Southeast Region OMR
306 State Office Building
1400 Spring Garden Street
Philadelphia, PA 19130
(215) 560-2247

Paul Hindman
Central Region OMR
Room 430 Willow Oak Building
P. O. Box 2675
Harrisburg, PA 17105-2675
(717) 772-6507

Individuals wishing to comment at the public forums are requested to limit their comments to 5 minutes. Three copies of written comments are also requested to be provided.

Public Comment Period

Interested parties are invited to submit written comments, suggestions or objections regarding the proposed amendments to the Department of Public Welfare, Mel Knowlton, P. O. Box 2675, Harrisburg, PA 17105-2675, (717) 783-5764, fax (717) 787-6583 within 60-calendar days after the date of publication in the *Pennsylvania Bulletin*. All comments received within 60-calendar days will be reviewed and considered in the preparation of the final-form regulations. Comments received after the 60-day comment period will be considered for subsequent revisions of these proposed amendments.

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)) on May 23, 2000, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Aging and Youth and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of The Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria, which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments of objections raised by the Department, the General Assembly and the Governor.

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-452. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART VI. MENTAL HEALTH AND MENTAL RETARDATION MANUAL

Subpart C. ADMINISTRATION AND FISCAL MANAGEMENT

(*Editor's Note*: As part of this rulemaking, the Department is proposing to delete the text of Chapter 4225, which appears at 55 Pa. Code pages 4225-1—4225-27, serial pages (247755)—(247786). The following Chapter 4226 is new. It has been printed in regular type to enhance readability.)

§§ 4225.1—4225.4. (Reserved).

§§ 4225.11—4225.15. (Reserved).

§§ 4225.21—4225.50. (Reserved).

§§ 4225.61—4225.64. (Reserved).

§§ 4225.71—4225.82. (Reserved).

§§ 4225.91—4225.99. (Reserved).

§§ 4225.101—4225.106. (Reserved).

CHAPTER 4226. EARLY INTERVENTION SERVICES

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GENERAL PROVISIONS

§ 4226.1. Introduction.

(a) Early intervention services and supports are provided to families and eligible children under 3 years of age maximize the child's developmental potential. Early intervention services for an infant and toddler are provided in conformity with an IFSP.

(b) Early intervention services are founded on a partnership between families and early intervention personnel which is focused on the unique needs of the child and the concerns and priorities of each family and builds on family and community resources.

§ 4226.2. Purpose.

This chapter establishes required procedures and standards for the early intervention program.

§ 4226.3. Applicability.

This chapter applies to a legal entity providing early intervention services.

§ 4226.4. Noncompliance.

The failure of a public legal entity to comply with this chapter so that needs of children eligible under this chapter are not being adequately met, shall subject the public legal entity to penalties consistent with section 512 of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4512).

§ 4226.5. Definitions.

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

Appropriate professional requirements—Entry level requirements that:

(i) Are based on the highest requirements in the profession or discipline in which a person is providing early intervention services to enable the individual to obtain licensure, certification or registration in the profession.

(ii) Establish suitable qualifications for personnel providing early intervention services under this part to eligible children and their families who are served by public and private agencies.

Assessment—The ongoing procedures used throughout the period of a child's eligibility under this part to identify the following:

(i) The child's unique strengths and needs and the services appropriate to meet those needs.

(ii) The resources, priorities and concerns of the family and the identification of supports and services necessary to enhance the family's capacity to meet the developmental needs of its infant or toddler with a disability.

Assistive technology device—An item, piece of equipment or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain or improve the functional capabilities of children with disabilities.

Assistive technology service—A service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device. The term includes:

(i) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment.

(ii) Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by children with disabilities.

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive technology devices.

(iv) Coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs.

(v) Training or technical assistance for a child with disabilities or, if appropriate, that child's family.

(vi) Training or technical assistance for professionals (including individuals providing early intervention services) or other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities.

At risk infant or toddler—An individual under 3 years of age eligible for screening and tracking as defined by the Early Intervention Systems Services Act (11 P. S. §§ 875-101—875-503).

Audiology services—Includes the following:

(i) Identification of children with auditory impairment, using audiologic screening techniques.

(ii) Determination of the range, nature and degree of hearing loss and communication functions, by use of audiological evaluation procedures.

(iii) Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment.

(iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services.

(v) Provision of services for prevention of hearing loss.

(vi) Determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

Child—An individual under 3 years of age who has been determined eligible for services under this chapter.

County MH/MR program (legal entity)—A MH/MR program established by a county or two or more counties acting in concert and includes a complex of services providing a continuum of care in the community for the mentally disabled.

Department—The Department of Public Welfare of the Commonwealth.

Developmental delay—The extent or type of developmental delay that a child demonstrates to be eligible for early intervention services.

Early intervention program—The development, management and administration of the delivery of services in a geographic location that is directed toward meeting the developmental needs of children and their families eligible under this chapter.

Early intervention services—Developmental services that are:

(i) Provided under public supervision.

(ii) Provided at no cost to families.

(iii) Designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas:

(A) Physical development.

(B) Cognitive development.

(C) Communication development.

(D) Social or emotional development.

(E) Adaptive development.

(iv) Meeting the requirements of this chapter.

(v) Including the following:

(A) Family training, counseling and home visits.

(B) Special instruction.

(C) Speech-language pathology and audiology services.

(D) Occupational therapy.

(E) Physical therapy.

(F) Psychological services.

(G) Service coordination services.

(H) Medical services only for diagnostic or evaluation purposes.

(I) Early identification, screening and assessment services.

(J) Health services necessary to enable the infant or toddler to benefit from the other early intervention services.

(K) Social work services.

(L) Vision services.

(M) Assistive technology devices and assistive technology services.

(N) Transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph.

(vi) Provided by qualified personnel, including at a minimum, the following:

(A) Special educators.

(B) Speech-language pathologists and audiologists.

(C) Occupational therapists.

(D) Physical therapists.

(E) Psychologists.

(F) Social workers.

(G) Nurses.

(H) Nutritionists.

(I) Family therapists.

(J) Orientation and mobility specialists.

(K) Pediatricians and other physicians.

(L) Early interventionists.

(M) Service coordinators.

Evaluation—Procedures used to determine a child's initial and continuing eligibility under this chapter, consistent with the definition of "infants and toddlers with disabilities" including determining the status of the child in each of the developmental areas.

Family training, counseling and home visits—Services provided by social workers, psychologists and other qualified personnel to assist the family of a child eligible under this chapter in understanding the special needs of the child and enhancing the child's development.

Health services—

(i) Services necessary to enable a child to benefit from the other early intervention services during a time that the child is receiving medical intervention. The term includes the following:

(A) Clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags.

(B) Consultation by physicians with other service providers concerning the special health care needs of an eligible child that will need to be addressed in the course of providing other early intervention services.

(ii) The term does not include the services that are:

(A) Surgical in nature (such as cleft palate surgery, surgery for club foot or the shunting of hydrocephalus).

(B) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose).

(C) Devices necessary to control or treat a medical condition.

(D) Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

IFSP—Individualized family service plan—A written plan for providing early intervention services to a child eligible under this chapter and the child's family.

Infant and toddler with disabilities—An individual under 3 years of age who needs early intervention because the individual meets one of the following conditions:

(i) Is experiencing developmental delays in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development.

(ii) Has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay.

Legal entity—A public or private entity responsible for administering the early intervention program in a defined geographical location.

Location—The actual place where a service will be provided.

MDE—Multidisciplinary evaluation.

Method—How a service is provided including whether the service is given directly to the child with family/child care participation or without family/child care participation, or if the service is provided as instruction to the family or caregiver.

Multidisciplinary—The involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities and development of the IFSP.

Native language—The language or mode of communication normally used by the parent of an eligible child. If the parent is deaf or blind, or has no written language, the mode of communication shall be that normally used by the parent (such as sign language, braille or oral communication). The written information is translated orally or by other means to the parent in the parent's native language or other mode of communication.

Natural environments—Settings that are natural or normal for the child's age peers who have no disabilities.

Nursing services—Include:

(i) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems.

(ii) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development.

(iii) Administration of medications, treatments and regimens prescribed by a licensed physician.

Nutrition services—Include:

(i) Conducting individual assessments in the following:

(A) Nutritional history and dietary intake.

(B) Anthropometric, biochemical and clinical variables.

(C) Feeding skills and feeding problems.

(D) Food habits and food preferences.

(ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this chapter, based on the findings in subparagraph (i).

(iii) Making referrals to appropriate community resources to carry out nutrition goal.

Occupational therapy—An array of services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor and postural development, which are designed to improve the child's functional ability to perform tasks in home, school and community settings, and includes the following:

(i) Identification, assessment and intervention.

(ii) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills.

(iii) Prevention or minimization of the impact of initial or future impairment, delay in development or loss of functional ability.

Parent—A natural or adoptive parent, a guardian, a person acting as a parent of a child or a surrogate parent who has been appointed under § 4226.105 (relating to surrogate parents). The term does not include the county agency.

Personally identifiable information—Information that would make it possible to identify a particular child or family including one or more of the following:

(i) The name of the child, the child's parent or other family member.

(ii) The address of the child or family.

(iii) A personal identifier, such as the child's or parent's Social Security number.

(iv) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Physical therapy—An array of services to address the promotion of sensory/motor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation, and includes:

(i) Screening, evaluation and assessment of infants and toddlers to identify movement dysfunction.

(ii) Obtaining, interpreting and integrating information appropriate to program planning to prevent, alleviate or compensate for movement dysfunction and related functional problems.

(iii) Providing individual and group services or treatment to prevent, alleviate or compensate for movement dysfunction and related functional problems.

Psychological services—Includes:

(i) Administering psychological and developmental tests and other assessment procedures.

(ii) Interpreting assessment results.

(iii) Obtaining, integrating and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development.

(iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training and education programs.

Qualified—Meeting State-approved or recognized certification, licensing, registration or other comparable requirements that apply to the area in which the person is providing early intervention services.

Service coordination (case management)—The activities carried out by a service coordinator to assist and enable an eligible child and the child's family to receive the rights, procedural safeguards and services that are authorized to be provided under the early intervention program.

Special instruction—Includes:

(i) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction.

(ii) Curriculum planning, including the planned interaction of personnel, materials and time and space, that leads to achieving the outcomes in the child's individualized family service plan.

(iii) Providing families with information, skills and support related to enhancing the skill development of the child.

(iv) Working with the child to enhance the child's development.

Speech-language pathology—Includes:

(i) Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills.

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills.

(iii) Provision of services for the habilitation, rehabilitation or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.

Transportation and related costs—Includes the cost of travel (for example—mileage, or travel by taxi, common carrier, or other means) and other costs (for example—tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services.

Vision services—Includes:

(i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays and abilities.

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both.

(iii) Communication skills training, orientation and mobility training for all environments, visual training, independent living skills training and additional training necessary to activate visual motor abilities.

FINANCIAL MANAGEMENT

§ 4226.11. Financial administration.

Chapter 4300 (relating to county mental health and mental retardation fiscal manual) applies to the County Mental Health and Mental Retardation Program legal entity for purposes of identifying allowable costs and for the general financial administration of early intervention services.

§ 4226.12. Waiver funds.

The legal entity shall allocate and expend supplemental grant funds for the provision of services for infants, toddlers and families under the home and community waiver known as the Infant, Toddlers and Families Medicaid Waiver approved by the Department of Health and Human Services under section 1915(c) of the Social Security Act (42 U.S.C.A. § 1396n(c)).

§ 4226.13. Nonsubstitution of funds.

(a) Early intervention State funds may not be used to satisfy a financial commitment for services that would have been paid for from another public or private funding sources. A legal entity is responsible for providing all of the early intervention services in the child's IFSP whether or not those services are eligible under the Medicaid program.

(b) Parents who have private insurance are not required to use their insurance. The parents may volunteer to use their insurance. Parents will not suffer financial losses, which include one or more of the following:

(1) A decrease in available lifetime coverage or any other benefit under an insurance policy.

(2) An increase in premiums or the discontinuation of the policy.

(3) An out-of-pocket expense such as the payment of a deductible amount in filing a claim.

§ 4226.14. Documentation of other funding sources.

(a) Written documentation that all other private and public funding sources available to the child and family have been accessed and exhausted shall be kept with the child and family's permanent legal entity's file.

(b) Written procedures used by the legal entity, and approved by the Department, to identify and access all other private and public funding sources shall be kept.

§ 4226.15. Interim payments.

(a) When necessary to prevent a delay in the receipt of early intervention services by an infant, toddler or family in a timely fashion, early intervention State funds shall be used to pay the provider of services pending reimbursement from the agency or funding source that has ultimate responsibility for the payment.

(b) The legal entity shall seek reimbursement from the appropriate funding source to cover the interim payments incurred for early intervention services.

GENERAL REQUIREMENTS

§ 4226.21. Delegation of responsibilities.

The legal entity shall comply with this chapter. The legal entity may contract with another agency for delivery of services that are required in this chapter. The legal entity shall ensure compliance by all agencies providing services under the requirements of this chapter.

§ 4226.22. Eligibility for early intervention services.

(a) The legal entity shall ensure that early intervention services are provided to all eligible children who meet one or more of the following eligibility criteria:

(1) The child is experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures indicating that the child is delayed by 25% of the child's chronological age in one or more developmental areas:

(i) Cognitive development.

(ii) Physical development, including vision and hearing.

(iii) Communication development.

(iv) Social or emotional development.

(v) Adaptive development.

(2) The child is delayed in one or more of the developmental areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; or adaptive development. Delay in developmental areas shall be documented by the test performance of 1.5 standard deviations below the mean on accepted or recognized standard tests for infants and toddlers.

(3) The child has a diagnosed physical or mental condition which has a high probability of resulting in a developmental delay as specified in paragraph (1). A child who is determined by a multidisciplinary team as having an identifiable physical or mental condition, but who is not exhibiting delays in a developmental area at the time of diagnosis, is included as a child with a high probability of resulting in developmental delay.

(b) Informed clinical opinion may be used when there are no standardized measures or the standardized procedures are not appropriate for a child's chronological age or developmental area. Informed clinical opinion makes use of qualitative and quantitative information to assist in forming a determination regarding difficult-to-measure aspects of current developmental status and the potential need for early intervention.

§ 4226.23. Waiver eligibility.

(a) The legal entity shall ensure that infants and toddlers until the age of 3 are eligible for level of care in accordance with the criteria for an ICF/MR or ICF/ORC as follows:

(1) A licensed psychologist, certified school psychologist or a licensed physician shall certify that the applicant or recipient has significantly subaverage intellectual functioning which is documented by one of the following:

(i) Performance that is more than two standard deviations below the mean as measurable on a standardized general intelligence test.

(ii) Performance that is slightly higher than two standard deviations below the mean of a standardized general intelligence test during a period when the person manifests serious impairments or adaptive behavior.

(2) A professional shall certify that the applicant or recipient has other related conditions that include cerebral palsy and epilepsy, as well as other conditions—such as autism— other than mental illness—that result in impairments of general intellectual functioning or adaptive behavior, and require early intervention services and treatment.

(3) A professional certifies that the applicant or recipient has impairments in adaptive behavior as provided by an assessment of adaptive functioning which shows that the applicant or recipient has one of the following:

(i) Significant limitations in meeting the standards of maturation, learning, personal independence or social responsibility of the applicant's or recipient's age and cultural group evidenced by a minimum of a 50% delay in one or 33% delay in two of the following developmental areas:

(A) Cognitive development.

(B) Physical development, including vision and hearing.

(C) Communication development.

(D) Social and emotional development.

(E) Adaptive development.

(ii) Substantial functional limitation in three or more of the following areas of major life activities:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

(iii) The applicant's or recipient's conditions are likely to continue indefinitely for at least 12 months.

(b) The legal entity shall cooperate with the county assistance office in determining an infant, toddler and family's initial and continuing financial eligibility for waiver services.

§ 4226.24. Comprehensive child find system.

(a) The legal entity shall develop a child find system that will ensure that:

(1) All infants and toddlers in the geographical area of the legal entity who are eligible for services under this chapter are identified, located and evaluated.

(2) An effective method is developed and implemented to determine which children are receiving needed early intervention services, and which children are not receiving those services.

(b) The legal entity, with the assistance of the local interagency coordinating council, shall ensure that the child find system is coordinated with all other major efforts to locate and identify children which includes the following:

(1) The local preschool program authorized under Part B of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. §§ 1400—1485).

(2) The Maternal and Child Health Programs under Title V of the Social Security Act (42 U.S.C.A. §§ 601—701).

(3) The Early Periodic Screening, Diagnosis and Treatment (EPSDT) Programs under Title XIX of the Social Security Act (42 U.S.C.A. §§ 1396—1396v).

(4) The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C.A. §§ 6000—6083).

(5) The Head Start Act (42 U.S.C.A. §§ 9831—9852).

(6) The Supplemental Security Income Programs under Title XVI of the Social Security Act (42 U.S.C.A. §§ 1381—1383f).

(c) The legal entity, with the assistance of the local interagency coordinating council, shall take steps to ensure that under the child find system:

(1) There will not be unnecessary duplication of effort by the various agencies involved in the local child find system.

(2) The legal entity will coordinate and make use of resources available through the local public agencies to implement the child find system in an effective manner.

(d) The child find system shall include procedures for use by primary referral sources for referring a child to the legal entity as follows:

(1) Evaluation and assessment, in accordance with §§ 4226.62 and 4226.63 (relating to MDE; and nondiscriminatory procedures).

(2) As appropriate, the provision of services, in accordance with § 4226.72(a) or § 4226.75 (relating to procedures for IFSP development, review and evaluation; and provision of services before evaluation and assessment are completed).

(e) The procedures required in subsection (b):

(1) Provide for an effective method of making referrals by primary referral sources.

(2) Ensure that referrals are made no more than 2 working days after a child has been identified.

(3) Provide referral sources under subsection (d), which includes the following:

(i) Hospitals, including prenatal and postnatal care facilities.

(ii) Physicians.

(iii) Parents.

(iv) Day care programs.

(v) Local educational agencies.

(vi) Public health facilities.

(vii) Other social service agencies.

(viii) Other health care providers.

(f) Timelines to act on referrals are as follows:

(1) Once the legal entity receives a referral, it shall appoint a service coordinator as soon as possible.

(2) Within 45 days after it receives a referral, the legal entity shall do one of the following:

(i) Complete the evaluation activities in § 4226.62.

(ii) Hold an IFSP meeting, in accordance with § 4226.72.

(iii) Develop a plan for further assessment and tracking.

§ 4226.25. Initial screening.

(a) An initial screening shall be completed with written parental consent on each child referred to the legal entity to assist the child and family to access early intervention, to determine the existence of previous evaluations and to recommend the need for referral for an MDE to determine eligibility for early intervention.

(b) The initial screening, and the evaluation specified in § 4226.62 (relating to MDE) may be conducted simultaneously.

§ 4226.26. Purpose of initial screening.

The purpose of the initial screening shall be to determine the need for referral for an MDE to determine eligibility for early intervention services or tracking.

§ 4226.27. Content of screening.

The initial screening shall include a review of at least one of the following completed within 6 months prior to the child's referral to the legal entity and family reports of identified concerns:

(1) A review of written professional reports that are based upon systematic observation or informed clinical

opinion, including reports from referring physicians, neonatal intensive care units, health care workers, a community-wide screening program or well baby clinic, early periodic screening diagnosis and treatment examination, social service departments, child protection programs, early intervention programs or any other source.

(2) Information about a child's developmental status obtained through a formalized screening process developed and conducted by the legal entity or an agency under contract with the legal entity.

§ 4226.28. Recommendations to parents.

As a result of the initial screening, the legal entity shall make one of the following recommendations to the child's parent.

(1) The child is recommended for referral to the MDE to confirm eligibility determination for early intervention, based on information contained in medical records, clinical opinion or recorded documentation and for providing information for the development of the IFSP.

(2) The child is recommended for referral to the MDE for further evaluation to determine eligibility for early intervention.

(3) The child is recommended for referral to the tracking system.

(4) The child is not eligible for early intervention or tracking services currently and the parents have been informed of their options for continued contact with the legal entity if the needs change.

§ 4226.29. Notice to parent.

The legal entity shall provide a written notice, in the native language of the parent or other mode of communication of the family, to the child's parent of the screening results as specified in § 4226.27 (relating to content of screening). If the parent is deaf or blind, or has no written language, the mode of communication shall be that normally used by the parent (such as sign language, braille or oral communication). The written information is translated orally or by other means to the parent in the parent's native language or other mode of communication.

§ 4226.30. At-risk children.

A child identified through the initial multidisciplinary evaluation is eligible for tracking if the child is identified in one of the population groups which include:

(1) Children whose birth weight is under 1,500 grams.

(2) Children cared for in neonatal intensive care units of hospitals.

(3) Children born to chemically dependent mothers and referred by a physician, health care provider or parent.

(4) Children who are seriously abused or neglected, as substantiated and referred by the county children and youth agency under 23 Pa.C.S. Chapter 63 (relating to Child Protective Services Law).

(5) Children with confirmed dangerous levels of lead poisoning as set by the Department of Health.

§ 4226.31. Tracking system.

The legal entity shall develop a tracking system to conduct or arrange for reevaluations for children identified in § 4226.30 (relating to at-risk children).

§ 4226.32. Contacting families.

(a) The legal entity shall contact families by telephone, in writing, or through a face-to-face meeting at least every 4 months after a child is referred to the tracking system, or until a parent requests no further contact by the legal entity.

(b) The contact shall offer reevaluation to determine the need and eligibility for early intervention services.

§ 4226.33. Monitoring responsibilities.

(a) The legal entity shall be responsible for monitoring early intervention services, including service coordination, for which the legal entity contracts. This includes monitoring of services provided in another county or state.

(b) Legal entity monitoring shall include the measurement and assurance of compliance with applicable sections of this chapter and of the quality of services provided.

(c) The legal entity shall complete monitoring of each early intervention service provider at least once every 12 months.

§ 4226.34. Community evaluations.

The legal entity, in consultation with the local interagency coordinating council and the legal entity advisory board, shall conduct an early intervention self-assessment review at least once in every 3 years. Family satisfaction with the program shall include:

(1) The legal entity advisory board and the local interagency coordinating council shall participate in the development and application of the community evaluation system.

(2) At least half of the persons who participate in the development and application of the community evaluation system shall be family members of children who are receiving, or have received, early intervention services.

§ 4226.35. Training.

Professional and paraprofessional personnel who serve on the interdisciplinary team or who provide direct care or service to a child shall be certified, licensed or registered, as approved by the Department of State, for the discipline that they are providing.

§ 4226.36. Preservice training.

The service coordinator, early interventionist and other early intervention personnel who work directly with the child, including personnel hired through contract, shall be trained before working with children or families in the following areas:

(1) Orientation to early intervention service system of the Commonwealth and family centered approaches, including the purpose and operation of the State and local interagency coordinating councils.

(2) The requirements of this chapter.

(3) The duties and responsibilities of their position.

(4) The methods for working with families (family centered approaches) to encourage and support family preference and involvement.

(5) The interrelated social, emotional, health, developmental and educational needs of children.

(6) The knowledge and use of available local and State community resources.

(7) The principles and methods applied in the provision of services in the natural environment.

(8) The fiscal operations of the early intervention service system, and its relationship to each individual involved and the specific funding systems.

(9) Training in fire safety, emergency evacuation, first aid techniques and child cardiopulmonary resuscitation (for all staff), as well as for the early interventionist and other personnel who work directly with the child. The date of the completion of training shall be documented by the signature of a representative of the training entity. Documentation shall be retained in the agency's personnel file. Recertification will be required on or before expiration of specific certification.

§ 4226.37. Annual training.

(a) The service coordinator, early interventionist and other personnel who work directly with the child, including personnel hired through contract, shall have at least 24 hours of training annually, relevant to early intervention services, child development, community resources or services for children with disabilities. Specific areas shall include cultural competence, mediation, procedural safeguards and universal health procedures.

(b) The training specified in § 4226.36(9) (relating to preservice training) shall be renewed annually, unless there is a formal certification for first aid or cardiopulmonary resuscitation by a recognized health source valid for more than 1 year. If there is a formal certification by a recognized health source valid for more than 1 year, the time period specified on the certification applies.

(c) Records of all training shall be kept in the agency's personnel files.

§ 4226.38. Criminal history records check.

Under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) each legal entity shall ensure that all staff persons who will have direct contact with children comply with 23 Pa.C.S. Chapter 63. Compliance includes the following:

(1) The staff persons who will have direct contact with children, including part-time and temporary staff persons who will have direct contact with children, shall submit, along with their employment application, a Pennsylvania criminal history record check.

(2) The staff persons who reside outside of this Commonwealth and who will have direct contact with children, including part-time and temporary staff persons who will have direct contact with children, shall submit, along with their employment application, a Pennsylvania criminal history check and a Federal Bureau of Investigation (FBI) criminal history record check.

(3) The Pennsylvania and FBI criminal history record checks shall have been completed no more that 1 year prior to the staff person's date of hire

§ 4226.39. Penalties for noncompliance.

(a) Noncompliance with this chapter, either as a result of legal entity action or inaction, or an early intervention service provider action or inaction, shall result in loss or delay of early intervention funding to the legal entity.

(b) Appeals related to loss of early intervention funding shall be made by the legal entity in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law).

§ 4226.40. Reporting.

(a) The legal entity shall submit reports in a form and contain information as the Department may require.

(b) The legal entity is responsible for keeping records and affording access to those records as the Department may find necessary to assure compliance with the requirements of this part, the correctness and verification of reports and the proper disbursement of funds provided under this chapter.

§ 4226.41. Traditionally underserved groups.

The legal entity shall ensure that:

(1) Traditionally underserved groups, including minority, low-income and rural families, are provided the opportunity to be active participants involved in local interagency coordinating councils and parent advisory groups. Traditionally underserved groups will also be provided the opportunity to participate in the planning, development of a plan of services for their eligible child and implementation of the services.

(2) Families have access to culturally competent services within their local geographical areas.

§ 4226.42. Local interagency coordinating council.

The legal entity shall ensure that the following conditions are met:

(1) The local interagency coordinating councils are established and maintained, which shall include parents and private providers.

(2) The local interagency coordinating councils are authorized to advise and comment on the development of local interagency agreements.

(3) The local interagency coordinating councils communicate directly with the Department of Education, the Department of Health, the Department of Public Welfare and the State Interagency Coordinating Council regarding the local interagency agreement and any other matters pertaining to this part.

§ 4226.43. Confidentiality of information.

Each legal entity shall ensure the protection of a personally identifiable information collected, used or maintained under this chapter, including the right of parents to written notice of and written consent to the exchange of this information among agencies consistent with Federal and State law.

PERSONNEL

§ 4226.51. Service coordination.

Service coordination shall include activities carried out by a service coordinator to meet the developmental needs of the child and the family's concerns, priorities and resources relating to enhancing the child's development.

§ 4226.52. Provision of service coordination.

(a) At the point of referral of the child and family to early intervention, the legal entity, either directly or through subcontract, shall immediately provide the services of a service coordinator to the family.

(b) Each eligible child and the child's family shall be provided with one service coordinator who is responsible for coordinating all services across agency lines, and serving as the single point of contact in helping parents to obtain the services and assistance they need.

§ 4226.53. Activities.

Service coordination is an active, ongoing process that involves the following:

(1) Coordinating the completion of initial screenings, evaluations, tracking, IFSP development and IFSP implementation.

(2) Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the IFSP.

(3) Coordinating, facilitating and monitoring the timely delivery of early intervention services.

(4) Facilitating communication with and between the family and the early intervention service provider.

(5) Informing the family of the availability of advocacy services.

(6) Assisting the family in arranging for the child to receive medical and health services, if the services are necessary. Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided.

(7) Offering the family opportunities and support for the child to participate in community activities with other children.

(8) Informing the family of appropriate community resources.

(9) Facilitating the development of a transition plan as part of the IFSP.

§ 4226.54. Requirements and qualifications.

(a) A minimum of one service coordinator intervention service shall be employed directly or through subcontract by the legal entity.

(b) A service coordinator is responsible for the activities specified in § 4226.53 (relating to activities).

(c) A service coordinator shall have one of the following groups of qualifications:

(1) A bachelor's degree or above from an accredited college or university and 1 years' work or volunteer experience working directly with children, families or people with disabilities, or in counseling, management or supervision.

(2) An associate's degree, or 60 credit hours, from an accredited college or university and 3 years' work or volunteer experience working directly with children, families or people with disabilities, or in counseling, management or supervision.

(3) Certification by the Civil Service Commission as meeting the qualifications of a Caseworker 2 or 3 classification.

§ 4226.55. Early interventionist.

An early interventionist is responsible for the following:

(1) Participating in the development of the child's IFSP.

(2) Implementing the child's IFSP directly or by supervising the implementation of services provided by other early intervention personnel.

(3) Working with the family to assure that the needs of the child and family are met.

(4) Completing written communication reviews and 6-month IFSP reviews in accordance with this chapter.

§ 4226.56. Requirements and qualifications.

(a) An early interventionist shall have one of the following groups of qualifications:

(1) A bachelor's degree or above from an accredited college or university and 1 year work or volunteer experience working directly with children, families or people with disabilities or in counseling.

(2) An associate's degree, or 60 credit hours, from an accredited college or university and 3 years work or volunteer experience working directly with children, families or people with disabilities or in counseling.

(b) An early interventionist shall obtain a minimum of 6 credit hours annually in the field of infant and toddler developmental services, early childhood services, or any specific areas that relate to infant and child disabilities.

§ 4226.57. Effective date of personnel qualifications.

Sections 4226.54(c) and 4226.56(a) (relating to requirements and qualifications) apply to service coordinators and early interventionist hired or promoted after _____ (*Editor's Note*: The blank refers to the effective date or adoption of this proposal.).

EVALUATION AND ASSESSMENT

§ 4226.61. Parental consent.

(a) Written consent from the child's parent shall be obtained prior to:

(1) Conducting the initial evaluation and assessment of a child under § 4226.62 (relating to MDE).

(2) Initiating the provision of early intervention services. See § 4226.72(e) (relating to procedures for IFSP development, review and evaluation).

(b) If consent is not given, the legal entity shall make reasonable efforts to ensure that the parent:

(1) Is fully aware of the nature of the evaluation and services that would be available.

(2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

§ 4226.62. MDE.

(a) *Requirements for MDE*. The legal entity shall ensure that the following conditions are met:

(1) The performance of a timely, comprehensive, MDE of each child under 3 years of age, referred for evaluation, including assessment activities related to the child and the child's family.

(2) The initial MDE is conducted by personnel independent of service provision.

(3) The requirements of this section are implemented by all affected contracted agencies and service providers.

(b) *Evaluation and assessment of the child*.

(1) The evaluation and assessment of each child shall:

(i) Be conducted by personnel trained to utilize evaluation and assessment methods and procedures.

(ii) Be based on informed clinical opinion.

(iii) Include the following:

(A) A review of pertinent records related to the child's current health status and medical history.

(B) An evaluation of the child's level of functioning in each of the following developmental areas:

(I) Cognitive development.

(II) Physical development, including vision and hearing.

(III) Communication development.

(IV) Social and emotional development.

(V) Adaptive development.

(C) An assessment of the unique needs of the child in terms of each of the developmental areas in subparagraph (ii), including the identification of services appropriate to meet those needs.

(2) The annual MDE will be composed of the family, service coordinator, anyone whom the parent would like to invite and at least one other professional who meets State approved or recognized certification, licensing, registration or other comparable requirements, if applicable, in which the person is providing services.

(c) *Family assessment.*

(1) Family assessment shall be a family-directed assessment of the resources, priorities and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant and toddler.

(2) An assessment shall be voluntary on the part of the family.

(3) If an assessment of the family is carried out, the assessment shall:

(i) Be conducted by personnel trained to utilize assessment methods and procedures.

(ii) Be based on information provided by the family through a personal interview.

(iii) Incorporate the family's description of its resources, priorities and concerns related to enhancing the child's development.

(d) *Timelines.*

(1) Except as provided in paragraph (2), the evaluation and initial assessment of each child (including the family assessment) shall be completed within the 45-day time period.

(2) The legal entity shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days (for example, if a child is ill), the county will do the following:

(i) Document those circumstances.

(ii) Develop and implement an interim IFSP consistent with § 4226.75 (relating to provision of services before evaluation and assessment are completed).

§ 4226.63. Nondiscriminatory procedures.

Each legal entity shall adopt nondiscriminatory evaluation and assessment procedures. The procedures for the evaluation and assessment of children and families under this chapter shall ensure, at a minimum, that the following conditions are met:

(1) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so.

(2) Assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory.

(3) No single procedure is used as the sole criterion for determining a child's eligibility under this chapter.

(4) Evaluations and assessments are conducted by qualified personnel.

IFSPs

§ 4226.71. General.

(a) Each legal entity shall adopt policies and procedures regarding IFSPs.

(b) As used in this chapter, the term "IFSP" means a written plan for providing early intervention services to a child eligible under this chapter and the child's family. The plan shall:

(1) Be developed in accordance with §§ 4226.72 and 4226.73 (relating to procedures for IFSP development, review and evaluation; and participants in IFSP meetings and periodic reviews).

(2) Be based on the evaluation and assessment described in § 4226.62 (relating to MDE).

(3) Include the matters specified in § 4226.62.

(4) Be developed prior to funding option decisions.

(c) The legal entity shall ensure that an IFSP is developed and implemented for each eligible child.

§ 4226.72. Procedures for IFSP development, review and evaluation.

(a) For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP shall be conducted within the 45-day time period in § 4226.24(f) (relating to comprehensive child find system).

(b) The IFSP shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals, or more often based on infant or toddler and family needs. The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants. The review shall include:

(1) The degree to which progress toward achieving the outcomes is being made.

(2) Whether modification or revision of the outcomes or services is necessary.

(c) A meeting shall be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and, as appropriate, to revise its provisions. The results of current evaluations conducted under § 4226.62(c) (relating to MDE), and other information available from the ongoing assessment of the child and family, shall be used in determining what services are needed and will be provided.

(d) IFSP meetings shall be conducted as follows:

(1) In settings and at times that are convenient to families.

(2) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so. If the parent is deaf or blind, or has no written language, the mode of communication shall be that normally used by the parent (sign language, braille or oral communication).

(3) Meeting arrangements shall be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(e) The contents of the IFSP shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in the plan. If the parents do not provide consent with respect to a particular early intervention service or withdraw consent after first pro-

viding it, that service may not be provided. The early intervention services to which parental consent is obtained shall be provided.

§ 4226.73. Participants in IFSP meetings and periodic reviews.

(a) Each initial meeting and each annual meeting to evaluate the IFSP shall include the following participants:

(1) The parents of the child.

(2) Other family members, as requested by the parent, if feasible to do so.

(3) An advocate or person outside of the family, if the parent requests that the person participate.

(4) The service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the legal entity to be responsible for implementation of the IFSP.

(5) Persons directly involved in conducting the evaluations and assessments in § 4226.62 (relating to MDE).

(6) Persons who will be providing services to the child or family, as appropriate.

(b) If a person listed in subsection (a)(5) is unable to attend a meeting, arrangements shall be made for the person's involvement through other means, including one or more of the following:

(1) Participating in a telephone conference call.

(2) Having a knowledgeable authorized representative attend the meeting.

(3) Making pertinent records available at the meeting.

(c) Each periodic review shall provide for the participation of persons in subsection (a)(1)—(5). If conditions warrant, provisions shall be made for the participation of other representatives identified in subsection (a).

§ 4226.74. Content of IFSP

The IFSP shall be in writing and the standardized formats will contain:

(1) *Information about the child's status.*

(i) A statement of the child's present levels of physical development (including vision, hearing and health status), cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria.

(ii) The statement in subparagraph (i) shall be based on professionally acceptable objective criteria.

(2) *Family information.* A statement of the family's resources, priorities and concerns related to enhancing the development of the family's infant or toddler with a disability.

(3) *Outcomes.* A statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timeliness used to determine:

(i) The degree to which progress toward achieving the outcomes is being made.

(ii) Whether modifications or revisions of the outcomes or services are necessary.

(4) *Early intervention services.*

(i) A statement of the specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity and method of delivering the services.

(ii) Early intervention services shall be provided by qualified personnel, including the following:

(A) Audiologists.

(B) Early interventionist.

(C) Family therapists.

(D) Nurses.

(E) Nutritionists.

(F) Occupational therapists.

(G) Orientation and mobility specialists.

(H) Pediatricians and other physicians.

(I) Physical therapists.

(J) Psychologists.

(K) Service coordinator.

(L) Social workers.

(M) Special educators.

(N) Speech and language pathologists.

(iii) As used in this section the following apply:

(A) "Frequency" and "intensity" are the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis.

(B) "Method" is how a service is provided.

(iv) "Location" is the actual place where a service will be provided.

(5) *Natural environments.* A statement of the natural environments in which early intervention services shall appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment.

(6) *Other services.*

(i) The IFSP shall include:

(A) Medical and other services that the child needs, but that are not required under this chapter.

(B) The funding sources to be used in paying for those services or the steps that will be taken to secure those services through public or private sources.

(ii) The requirement in subparagraph (i) does not apply to routine medical services (for example, immunizations and "well-baby" care), unless a child needs those services and the services are not otherwise available or being provided.

(7) *Dates; duration of services.* The IFSP shall include the following:

(i) The projected dates for initiation of the services in paragraph (4) as soon as possible after the IFSP meetings described in § 4226.72 (relating to procedures for IFSP development, review and evaluation).

(ii) The anticipated duration of those services.

(8) *Service coordinator.* The identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this chapter), who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

(9) *Transition from early intervention services.*

(i) The following steps shall be taken to support the transition of the child to meet the following requirements:

(A) Ensure a smooth transition for toddlers receiving early intervention services under this chapter to preschool or other appropriate services, including a description of how the following conditions will be met:

(I) The families of toddlers will be included in the transition plans required by clause (C).

(II) The legal entity shall:

(-a-) Notify the local educational agency for the area in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B, of IDEA as determined in accordance with State law.

(-b-) In the case of a child who may be eligible for preschool services, with the approval of the family of the child, convene a conference among the legal entity, the family, and the local educational agency at least 90 days (and at the discretion of all of the parties, up to 6 months) before the child is eligible for the preschool services, to discuss services that the child may receive.

(-c-) In the case of a child who may not be eligible for preschool services, with the approval of the family, make reasonable efforts to convene a conference among the legal entity, the family, and providers of other appropriate services for children who are not eligible for preschool services to discuss the services the child may receive.

(B) Review the child's program options for the period from the child's 23rd birthday through the remainder of the school year.

(C) Establish a transition plan.

(ii) The local educational agency, which is responsible for providing preschool programs under the Early Intervention Services System Act (11 P. S. §§ 875-101—875-502), and the legal entity providing early intervention programs for infants and toddlers will develop interagency agreements between the two agencies to ensure coordination on transition matters.

§ 4226.75. Provision of services before evaluation and assessment are completed.

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessment in § 4226.62 (relating to MDE), if the following conditions are met:

(1) Parental consent is obtained.

(2) An interim IFSP is developed that includes the following:

(i) The name of the service coordinator who will be responsible, consistent with § 4226.74(7) (relating to content of IFSP), for implementation of the interim IFSP and coordination with other agencies and persons.

(ii) The early intervention services that have been determined to be needed immediately by the child and the child's family.

(3) The evaluation and assessment are completed within the time period required in § 4226.62(d).

PROCEDURAL SAFEGUARDS

§ 4226.91. General responsibility of legal entity for procedural safeguards.

A legal entity is responsible for the following:

(1) Adopting procedural safeguards that shall include, at a minimum, conflict resolution, mediation and administrative hearings as set forth in this chapter.

(2) Ensuring effective implementation of the safeguards by providers of early intervention services.

§ 4226.92. Notice of rights.

The legal entity shall inform parents of their right to request conflict resolution, mediation or an administrative hearing as described in this chapter.

§ 4226.93. Conflict resolution.

The legal entity shall establish an internal system of conflict resolution to facilitate the prompt, amicable resolution of disagreements and conflicts among parents, legal entities, agencies or other parties. Conflict resolution shall be a process whereby parents, legal entity staff and providers, as appropriate, or other representatives, may request a meeting to discuss and resolve issues relating to the provision of services to an infant or toddler eligible for services under this chapter. The conflict resolution process shall ensure that the following are met:

(1) Parents can request conflict resolution either orally or in writing.

(2) When a parental request for mediation under § 4226.94 (relating to mediation) or a request for an impartial administrative hearing under § 4226.100 (relating to administrative resolution of individual child complaints by an impartial decisionmaker) is received, a meeting with the parents and the legal entity administrator or designee shall be held, unless the parents do not agree to participate, within 7-calendar days following a parental request. This meeting may not delay the processing of parental requests for mediation or an impartial hearing.

(3) When a resolution or agreement is reached at the meeting, the IFSP or other appropriate documents shall be revised.

(4) If the conflict resolution meeting is unsuccessful, all other due process rights and procedures continue to be available.

(5) The conflict resolution process will not impede or deny other child and family rights under this chapter.

§ 4226.94. Mediation.

(a) The legal entity shall adopt procedures that afford a party who presents a complaint with respect to any matter relating to the identification, evaluation, or the placement of the child, or the provision of appropriate early intervention services, the opportunity to resolve disputes through a mediation process, which, at a minimum, shall be available whenever a hearing is requested under § 4226.100 (relating to administrative resolution of individual child complaints by an impartial decisionmaker).

(b) The procedures shall ensure that the mediation process is:

(1) Voluntary on the part of the parents.

(2) Not used to deny or delay a parent's right to a due process hearing under §§ 4226.100—4226.104, or to deny other rights afforded under this chapter.

(3) Conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(c) The legal entity shall establish procedures whereby parents who choose not to use the mediation process may request a meeting, at a time and location convenient to

the parents, unless the parents do not agree to participate, with a disinterested party who is under contract with one of the following:

(1) A parent training and information center or community parent resource center.

(2) An alternative dispute resolution entity to encourage the use, and explain the benefits, of the mediation process to the parents.

(d) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(e) An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

(f) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of this process.

§ 4226.95. Consent and native language information.

(a) The following requirements apply for consent from parents:

(1) The parent shall be fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication.

(2) The parent shall be informed and agree in writing to the carrying out of the activity for which consent is sought, and the consent shall describe that activity and list the records (if any) that will be released and to whom.

(3) The parent shall be informed that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(b) Native language, when used with reference to persons of limited English proficiency, is the language or mode of communication normally used by the parent of an eligible child.

§ 4226.96. Opportunity to examine records.

In accordance with the confidentiality procedures in Federal regulations at 34 CFR 300.560—300.576 (relating to Family Educational Rights and Privacy Act—FERPA), the parents of a child eligible under this chapter shall be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child, and any other records about the child and the child's family.

§ 4226.97. Prior notice; native language.

(a) Written prior notice shall be given to the parents of a child eligible under this chapter before a legal entity proposes, or refuses, to initiate or change the identification, evaluation or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) The notice shall be in sufficient detail to inform the parents about the following:

(1) The action that is being proposed or refused.

(2) The reasons for taking the action.

(3) The procedural safeguards that are available under this chapter.

(c) The notice shall be:

(1) Written in language understandable to the general public.

(2) Provided in the native language of the parents, unless it is not feasible to do so.

(d) If the native language or other mode of communication of the parent is not a written language, the legal entity shall take steps to ensure that:

(1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication.

(2) The parent understands the notice.

(3) There is written evidence that the requirements of this subsection have been met.

(e) If a parent is deaf or blind, or has no written language, the mode of communication shall be that normally used by the parent (such as sign language, braille or oral communication).

§ 4226.98. Parent consent.

(a) Written parental consent shall be obtained on the standardized parents right agreement before:

(1) Conducting the initial evaluation and assessment of a child under § 4226.62 (relating to MDE).

(2) Initiating the provision of early intervention services under § 4226.72(e) (relating to procedures for IFSP development, review and evaluation).

(b) If consent is not given, the legal entity shall make reasonable efforts to ensure that the parent:

(1) Is fully aware of the nature of the evaluation and assessment or the services that would be available.

(2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

§ 4226.99. Parental right to decline service.

The parents of a child eligible under this chapter may determine whether they, their child, or other family members will accept or decline an early intervention service and may decline a service after first accepting it, without jeopardizing other early intervention services provided under this chapter.

§ 4226.100. Administrative resolution of individual child complaints by an impartial decisionmaker.

Each legal entity shall implement procedures for the timely administrative resolution of individual child complaints by parents concerning any of the matters in § 4226.97(a) (relating to prior notice; native language).

§ 4226.101. Parent rights in administrative proceedings.

(a) Each legal entity shall ensure that the parents of children eligible under this chapter are afforded the rights in subsection (b) in administrative proceedings carried out under § 4226.100 (relating to administrative resolution of individual child complaints by an impartial decisionmaker).

(b) A parent involved in an administrative proceeding has the following rights:

(1) To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this chapter.

(2) To present evidence and confront, cross-examine and compel the attendance of witnesses.

(3) To prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least 5 days before the proceeding.

(4) To obtain a written or electronic verbatim transcription of the proceeding.

(5) To obtain written findings of fact and decisions.

§ 4226.102. Impartial hearing officer.

(a) The legal entity shall ensure that the person appointed to implement the administrative resolution process meets the following:

(1) Is not an employe of an agency or other entity involved in the provision of early intervention services or care of the child.

(2) Does not have a personal or professional interest that would conflict with the person's objectivity in conducting the hearing and rendering a decision.

(b) A person who otherwise qualifies under this section tion is not an employe of an agency solely because the person is paid by the agency to implement the administrative resolution process.

§ 4226.103. Convenience of proceedings; timelines.

A proceeding for implementing the administrative resolution process shall be carried out at a time and place that is reasonably convenient to the parents.

§ 4226.104. Status of a child during proceedings.

(a) During the pendency of a proceeding involving a complaint under this chapter, unless the legal entity and parents of a child otherwise agree, the child shall continue to receive the early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this chapter, the child shall receive those services that are not in dispute.

(c) Parents have the right to accept or decline services. The rejection of one service does not jeopardize other early intervention services or activities. During a child/family resolution process the services or activities not in dispute will be initiated or continued.

§ 4226.105. Surrogate parents.

(a) Each legal entity shall ensure that the rights of children eligible under this chapter are protected if one of the following apply:

(1) A parent, as defined in § 4226.5 (relating to definitions), cannot be identified.

(2) The legal entity, after reasonable efforts, cannot discover the whereabouts of a parent.

(3) The child is in the legal custody of the county children and youth agency and the birth parents are "unknown or unavailable," which includes situations when the birth parents are deceased or parental rights have been terminated.

(b) The duty of the legal entity under subsection (a) includes the assignment of an individual to act as a surrogate for the parent. This shall include a method for:

(1) Determining whether a child needs a surrogate parent.

(2) Assigning a surrogate parent to the child.

(c) The legal entity shall select a surrogate parent.

(d) The legal entity shall ensure that a person selected as a surrogate parent:

(1) Has no interest that conflicts with the interests of the child the surrogate represents.

(2) Has knowledge and skills that ensure adequate representation of the child.

(3) Is not an employe of an agency involved in the provision of early intervention or other services to the child.

(e) A person who otherwise qualifies to be a surrogate parent under subsection (d) is not an employe solely because the surrogate is paid by a public agency to serve as a surrogate parent.

(f) A foster parent qualifies under this part if the following apply:

(1) The natural parents' authority to make early intervention or educational decisions on the child's behalf has been relinquished under State law.

(2) The county children and youth agency has been given the custody of the child and approves the recommendation that the foster parent would be the most appropriate surrogate parent.

(3) The foster parent has an ongoing, long-term parental relationship with the child.

(4) The foster parent is willing to participate in making early intervention or educational decisions on the child's behalf.

(5) The foster parent has no interest that would conflict with the interests of the child.

(g) A surrogate parent may represent a child in all matters related to the following:

(1) The evaluation and assessment of the child.

(2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews.

(3) The ongoing provision of early intervention services to the child.

(4) Other rights established under this chapter.

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